

**Urban Horizons Hous. Dev. Fund Corp. v Graciano**

2026 NY Slip Op 32058(U)

May 11, 2026

Civil Court of the City of New York, Bronx County

Docket Number: Index No. 322087-24/BX

Judge: Krzysztof Lach

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART

URBAN HORIZONS HOUSING DEVELOPMENT L&T Index No: 322087-24/BX  
FUND CORPORATION

Petitioner

**DECISION/ORDER**

-against-

MABEL GRACIANO

Respondent

JOHN DOE  
JANE DOE

Respondents-Undertenants

Recitation, as required by CPLR § 2219 (a), of the papers considered in review of the motion and cross-motion.

<b>PAPERS</b>	<b>NUMBERED</b>
Respondent’s Notice of Motion (sequence #1); Affirmations; Memorandum of Law; & Exhibits	1 (NYSCEF Doc. Nos. 7 - 12)
Petitioner’s Cross-Motion (sequence #2); Affirmations in Support of Cross-Motion and in Opposition to Respondent’s Motion; & Exhibit	2 (NYSCEF Doc. Nos. 14 - 17)
Respondent’s Memorandum of Law in Opposition to Cross-Motion and in Reply; Affirmation & Exhibit	3 (NYSCEF Doc. Nos. 19 - 21)
Affirmation in Reply to Petitioner’s Cross Motion & Exhibit	4 (NYSCEF Doc. Nos. 23 – 24)

Upon the foregoing cited papers, the Decision and Order is as follows:

**BACKGROUND**

This summary proceeding was commenced by Urban Horizons Housing Development Fund Corporation (“Petitioner”) against Mabel Graciano (“Respondent

Graciano”) seeking a money judgment and a judgment of possession for the premises located at 50 East 168<sup>th</sup> Street, Apt 608, Bronx, New York 10452 on the basis of nonpayment of rent.

Respondent Graciano moves this Court for an order seeking leave to amend her *pro se* answer. Petitioner, in turn, has cross-moved for an order amending the petition to date and for an order amending the pleadings to reflect the complete regulatory status of the subject premises. Although the premises at issue is subject to a regulatory agreement with the Department of Housing Preservation and Development (“DHPD”), the petition omitted this fact. Both motions are consolidated for disposition herein.

## MERITS

### I. Petitioner is Not Entitled to Amendment of its Petition

Paragraph seven (7) of the petition currently describes the subject premises as follows:

The apartment is presently subject to the Rent Stabilization Law of 1969, as amended by chapter 576, Laws of 1974, as amended by chapter 403, Laws of 1983; and the rent demanded herein does not exceed the legal regulated rent permitted the owner under said Law, code and appropriate Rent guidelines Board Orders. The owner of the Premises has registered rents and services with the New York State Division of Housing and Community Renewal pursuant to the Administrative code, and is in compliance with the Rent Stabilization Law and Code.

The Petitioner, by way of its cross-motion, seeks leave to amend paragraph 7 of the petition so that it reads to include the following:

The premises are subject to Rent Stabilization Law of 1969, as amended by chapter 576, Laws of 1974, as amended by chapter 403, Laws of 1983; and the rent demanded herein does not exceed the legal regulated rent permitted the owner under said Law, code and appropriate Rent guidelines Board Orders. The owner of the Premises has registered rents and services with the New York State Division of Housing and Community Renewal pursuant to the Administrative code, and is in compliance with the Rent Stabilization Law and Code. The apartment is also subject to an Amended and Restated Affordable Housing Regulatory Agreement, dated December 21, 2023, with the Department of Housing Preservation and Development (“HPD”) and the Owner is in full compliance with said Regulatory Agreement.

The impetus for Petitioner’s cross-motion is RPAPL § 741. A summary proceeding is a special proceeding created by statute, and it is well established that there must be strict compliance with its statutory requirements (*Riverside Syndicate, Inc. v*

*Saltzman*, 49 AD3d 402 [2008]), including the requirement that the petition state, among other things, the respondent's interest in the premises and the facts upon which the proceeding is based (see RPAPL 741[2],[4]; *Gianni v. Stuart*, 6 AD2d 418 [1958]). Thus, pursuant to RPAPL § 741, where a tenancy is subject to a specific type of regulation, the petition must set forth the premises' regulatory status since the status may determine the scope of the parties' rights and defenses. A petition that fails to satisfy this requirement is subject to dismissal (*MSG Pomp Corp. v Doe*, 185 AD2d 798 [1st Dept 1992]; *Villas of Forest Hills v Lumberger*, 128 AD2d 701 [2d Dept 1987] [petitioner must also plead compliance with the rules and regulations governing the tenancy]; *Matter of Volunteers of Am.-Greater N.Y., Inc. v Almonte*, 65 AD3d 1155 [2d Dept 2009].)

In this Court's view, case law concerning the pleading requirements of RPAPL § 741 (as it relates to the description of the subject premises) can be properly categorized into several segments. The first segment or line of cases concerns deliberate misrepresentations or fundamental misstatements. Where it can be shown that a landlord deliberately misrepresented or fundamentally misstated the status of a leasehold, then a petition is subject to dismissal as a matter of equity and strict construction (*Hughes v Lenox Hill Hosp.*, 226 AD2d 4, 18 [1st Dept 1996] *lv dismissed in part and denied in part* 90 NY2d 829 [1997]). Thus, where a petition alleges that an apartment is not rent regulated when it is in fact rent regulated, the proceeding should be dismissed (e.g. *Mauro v Choi*, 11 Misc 3d 1070[A] [Civ Ct, New York County 2006]). Therefore, it would likely follow that a motion seeking to amend the petition to state that a subject premises is rent stabilized (when the original petition stated that it was not regulated) should not be granted given appellate authority and the mandate requiring strict construction in circumstances involving a deliberate misrepresentation. This situation was confronted in *Crotona Park W. HDFC v Oliver*, NYLJ, Sept 20, 2017 at 34 [Civ Ct, Bronx County, Bryan, J.].

A second segment concerns an erroneous pleading of inapplicable law, regulation and/or regulatory agreement. Where the pleading contains harmless error and the inaccurate inclusion of an alleged regulatory scheme, law or regulation is mere surplusage that does not affect the outcome of the proceeding, a motion seeking leave to amend the petition to correct any inaccuracy should pass muster and survive a RPAPL § 741 challenge (e.g. *Pri Villa Avenue L.P. v Santiago*, 62 Misc.3d 1206 [A] [Civ Ct, Bronx County 2019, Lutwak, JJ]).

A third discernable segment of cases concerns inadequate pleadings or a partial omission of the statutory, regulatory or contractual status of the subject premises. At times, cases in this area simply address the tenant's requested relief to dismiss the proceeding (e.g. *East 168th St. Assoc. v Castillo*, 60 Misc 3d 774 [Civ Ct, Bronx County 2018, Bacdayan, J.]). In other instances, a cross motion or motion is implicated which seeks leave to amend (e.g. *Jasper v Davis*, 63 Misc.3d 1209 [A] [Civ Ct, Bronx County 2019]). The rule, however, which has been developed to

determine the sufficiency of the pleadings and whether, by extension and where sought, an amendment should be granted is the same. Namely, in the absence of some procedural and/or substantive right to the tenant, a proceeding should not be dismissed and leave, where sought, should be granted (*see generally OLR ECW, L.P. v Myers*, 59 Misc 3d 650 [Civ Ct, Bronx County 2018, Lutwak, J.]). A non-prejudicial error, mistake or omission in the petition may be considered as a mere irregularity which can be corrected by amendment of the petition (*City of New York v Brown*, 119 Misc 2d 1054 [Civ Ct, New York County 1982, Fienberg, J]; *Jackson v. New York City Housing Authority*, 88 Misc 2d 121 [App Term, 1st Dept 1976]; *Dupont Realty, LLC v. Garcia*, 73 Misc 128[A] [App Term, 1st Dept 2021])

While the petition stated that the premises was subject to the Rent Stabilization Law, it failed to assert that the premises was also subject to an “Amended and Restated Affordable Housing Regulatory Agreement” (hereinafter, “Regulatory Agreement”) that was entered with the Department of Housing Preservation and Development (“DHPD”). This regulatory agreement restricted the use, occupancy, & rent levels to households with specific income levels tied to a percentage of the Area Median Income (AMI). In opposition to the cross-motion which seeks leave to amend the Petition to include the omission, the Respondent argues that

“the defect that Petitioner seeks to cover up by amendment-failure to plead that the apartment is subject to a regulatory agreement with a governmental agency that confers upon tenants rights beyond those guaranteed under law-however, is one that courts have routinely determined to be so prejudicial that it is not subject to correction by amendment, especially those in the First Department.”

Here, for the purposes of the Regulatory Agreement, Respondent Graciano was an existing tenant<sup>1</sup> as she was in possession at the time DHPD and Petitioner executed the agreement. While the Rent Stabilization Law offers Respondent Graciano certain protections, the Regulatory Agreement potentially extended far greater benefits as it relates to the actual rent charged for the unit. For instance, as an existing tenant, Article 5 of the Regulatory Agreement set initial rents for existing tenants in one of two ways. Either by setting the rent “...at the Actual Rent that is due under the Tenant's current lease” OR at the Actual Rent that is set forth in Exhibit B of the Regulatory Agreement if Exhibit B requires the Owner to reduce the Tenant's Actual<sup>2</sup>. Thus, Respondent Graciano or any other existing tenant might inure the benefit of a rent reduction provided the exact conditions under Exhibit B of the Regulatory Agreement were met. As the instant summary proceeding concerns Respondent Graciano’s purported nonpayment of rent, the omission of the regulatory agreement from the petition was not a mere irregularity subject to amendment. Instead, it was a material, inadequate pleading that

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<sup>1</sup> *see* Amended and Restated Affordable Housing Regulatory Agreement, Article 4, Section 4.01 (a)(i)

<sup>2</sup> *see* Amended and Restated Affordable Housing Regulatory Agreement, Article 5, Section 5.01 (c)(i)

involved a substantial right of the tenant implicating overcharge and other related claims.

Accordingly, that prong of Petitioner's cross-motion seeking leave to amend paragraph 7 of the petition is DENIED.

## II. The Petition is Amended to Date

While a nonpayment proceeding is pending, the petition may be amended to add subsequent rents due (see, *Bldg Management Co., Inc. v Benmen*, 36 Misc 3d 1225[A] [Civ Ct, New York County 2012. Kraus, J.]). Accordingly, that prong of Petitioner's cross-motion seeking leave to amend the Petition to date is GRANTED to include all post-petition rent due through May of 2026.

## III. Respondent is Entitled to Amendment of Her Answer

Turning now to that portion of Respondent's motion which seeks leave to amend her answer, the Court grants the requested relief in part. Section 3025 [b] of the CPLR provides that "[a] party may amend his or her pleading ... at any time by leave of court or by stipulation of all parties." In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit (*Lucido v Mancuso*, 49 AD3d 220, 227 [2008], appeal withdrawn 12 NY3d 804 [2009], quoting *G.K. Alan Assoc., Inc. v Lazzari*, 44 AD3d 95, 99 [2007]). Here, the defenses contained in the proposed amended answer are not palpably insufficient or patently devoid of merit and warranting the relief sought in Respondent's motion.

## CONCLUSION

Accordingly, it is

ORDERED, that Respondent's motion seeking leave to amend her self-represented answer is GRANTED. The proposed amended answer, annexed as Exhibit B (NYSEF Doc. 12) is deemed served and filed, *nunc pro tunc*; and it is further

ORDERED, that Petitioner's cross-motion is DENIED, in part, and GRANTED, in part. To the extent that Petitioner seeks leave to amend paragraph seven (7) of the Petition, said prong of the cross-motion is DENIED. To the extent that Petitioner seeks leave to amend the petition to include all post-petition rent, said prong is GRANTED; and it is further

ORDERED that this matter is restored to the court's calendar in Part B, Room 360 on May 26, 2026 @ 9:30a.m. for a pre-trial conference.

This constitutes the decision and order of this Court.

Dated:           Bronx, New York  
                  May 11, 2026



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HON. KRZYSZTOF LACH  
Judge, Housing Court