

Briarwood Affordable, LLC v Flowers
2026 NY Slip Op 32099(U)
June 3, 2026
Civil Court of the City of New York, Queens County
Docket Number: Index No. LT-317845-25/QU
Judge: Kimon C. Thermos
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B
-----X
BRIARWOOD AFFORDABLE, LLC,

Index No.: LT-317845-25/QU

Motion Seq. No. 1

-against- Petitioner-Landlord,

TIESHA FLOWERS,

DECISION/ ORDER

Respondent-Tenant,

“JOHN DOE” AND “JANE DOE”,

Respondents-Undertenants.
-----X

Present: Hon. Kimon C. Thermos, J.H.C.

Recitation, as required by CPLR §2219(a) of the papers considered in the review of
Respondent’s motion:

PAPERS	NUMBERED
Respondent’s Motion, Affirmations, and Exhibits (NYSCEF #8-15).....	1
Petitioner’s Affidavit or Affirmation in Opposition (NYSCEF #16).....	2
Respondent’s Affirmation in Reply (NYSCEF #17).....	3

Appearing for the Petitioner:	Becker, NE, P.C
Appearing for the Respondent:	New York Legal Assistance Group

Upon the foregoing cited papers, the Decision/Order on the motion is as follows:

 This is a non-payment proceeding seeking possession of premises located at 81-09 134th Street, Apartment 4K, Queens, NY 11435 (the “Subject Premises”) and a money judgment in the amount of \$6,988.65.

 Respondent initially appeared pro se and filed an answer asserting the following defenses: 1) that the monthly rent sought is not the legal rent or amount on the current lease; and 2) a general denial. Thereafter, Respondent was represented by the New York Legal Assistance Group (“NYLAG”). On March 6, 2026, after extensive negotiations that did not result in a settlement, the Court adjourned this case for Respondent to file the instant motion to dismiss and

for Petitioner to oppose. The motion was heard on April 17, 2026, and the court reserved decision.

The Court first notes that Respondent's Reply Affirmation was filed late pursuant to the motion schedule assigned on March 6, 2026. Petitioner filed a "Notice of Rejection" stating that it would not consent to Respondent's untimely-filed Reply. It also attached an e-mail sent to Respondent's attorney stating the same. Despite the untimely filing, the Court will consider Respondent's Reply given that Respondent's attorney cites to an exigent emergency as the reason for the late filing, and the fact that the Reply was filed only three days late, leaving Petitioner's attorney ample time to review the Reply before the motion's return date. Regardless, Respondent's Reply merely serves to restate that arguments in support of the motion to dismiss.

Turning to the merits of Respondent's motion, Respondent seeks an order 1) dismissing the Petition pursuant to CPLR §3211(a)(7) and RPAPL §741(2)-(4) for failure to disclose the proper regulatory status of the Subject Premises; or 2) dismissing the Petition for failure to properly verify the Petition; or 3) granting Respondent permission to file an amended answer; and 4) awarding Respondent legal fees and costs in this proceeding.

Respondent first argues that the Petition should be dismissed because it does not properly plead the rent regulatory status of the Subject Premises. Respondent contends that while the Petition pleads that the Subject Premises is subject to the Rent Stabilization Law, it does not plead the existence of Petitioner's receipt of a Division of Alternative Management Programs ("DAMP") and Article XI Tax Incentive administered by HPD. Respondent argues that Petitioner's failure to fully plead the regulatory status of the Subject Premises, including Petitioner's regulatory agreement with HPD offering a DAMP and Article XI Tax Incentive, is prejudicial to Respondent in that it prevents her from knowing the full extent of the regulatory framework of the Subject Premises. In opposition, Petitioner argues that Respondent is not prejudiced by the Petition's lack of reference to the DAMP and Article XI Tax Incentive, as Respondent has not identified any substantive rights afforded to her by the Tax Incentive's regulatory scheme. Additionally, Petitioner argues that even if the Court finds that Petitioner must plead this regulatory status, Petitioner should be afforded the opportunity to amend the Petition. Petitioner attaches a proposed amended Petition which adds a paragraph stating that "[t]he Subject Premises is subject to a Division of Alternative Management Programs ('DAMP') and Article XI Tax Incentive." *See* Petitioner's Exhibit A, NYSCEF Doc. 16 at 10.

In the alternative, Respondent argues that the Petition should be dismissed because the Petition was not properly verified pursuant to CPLR §2106 and RPAPL §741. In opposition, Petitioner argues that the Petition was properly verified as it was verified by an authorized agent of Petitioner pursuant to the provisions of RPAPL §741.

Discussion

On a motion to dismiss under CPLR § 3211(a)(7), the court must afford pleadings a liberal construction, accept all facts alleged in the petition as true, accord the petitioner the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83 (1994).

RPAPL §741 requires that every Petition “[d]escribe the premises from which removal is sought” and “[s]tate the facts upon which the special proceeding is based.” See RPAPL §741(3)-(4). Where a tenancy is subject to a specific form of regulation, the RPAPL’s pleading requirements mandate that the petition set forth the premises’ regulatory status, including government contracts to which the petitioner is a party, as this status may determine the scope of the tenant’s rights and defenses. See *Volunteers of America-Greater N.Y., Inc. v. Almonte*, 17 Misc3d 57 (App. Term 2d Dep’t 2007); *Villas of Forest Hills Co. v. Lumberger*, 128 A.D.2d 701 (2d Dep’t 1987). “Material misstatements or omissions about rent-stabilized tenancies will subject a petition to dismissal.” *Ash Ave. LLC v. Allision*, 2025 NYLJ LEXIS 869 (Civ. Ct. Queens Cnty. 2025) (citing *Jamaica Seven, LLC v. Villa*, 67 Misc.3d 168[A][App. Term 2d Dep’t 2020]); *Henry v. Kingsberry*, 66 Misc.3d 143[A][App. Term 2d Dep’t 2020]); see *King-Knights v. Hall*, 2024 N.Y. Misc. LEXIS 2629 (App. Term 2d Dep’t 2024).

Here, the Petition states that “[t]he Subject Premises is subject to rent stabilization law and the rent does not exceed the legal regulated rent.” See Petition, NYSCEF Doc. 1. It is undisputed that the Subject Premises are also subject to a DAMP and Article XI Tax Incentive pursuant to a contract between Petitioner and HPD, and this regulatory agreement was not plead in the Petition.

The DAMP and Article XI tax incentive is available to new construction projects or rehabilitation of affordable housing carried out by the Housing Development Fund Company (“HDFC”). Requests for the tax exemption originate from the HPD loan or subsidy program facilitating each project. See Respondent’s Exhibit B, NYSCEF Doc. 14. It is Respondent’s position that by failing to plead this regulatory agreement, Respondent has been prejudiced as

she was not made aware of her rights under the contract and was unable to adequately prepare defenses to this proceeding. Respondent specifically draws the Court's attention to the fact that under the contract with HPD, the Subject Premises' rent determination is not only based on legal regulation under the Rent Stabilization Law; it is also based upon a "programmatic rent limit." *See* Respondent's Affirmation in Support, Exhibit C, NYSCEF Docs. 10, 15. This programmatic limit applies to income-restricted units and is "usually based on a percentage of AMI and required by one or more subsidy programs". *See* NYSCEF Doc. 15 at 24. The regulatory agreement further provides that, if applicable, the rent is limited by what is allowed by a Rental Assistance Program. *Id.* Additionally, the contract provides the calculations by which Petitioner must set the maximum program rent. *Id.*

Petitioner argues that Respondent is not prejudiced by the failure to plead the Subject Premises DAMP and Article XI Tax Incentive Status, as these specific regulatory schemes have no bearing on the allegations in the Petition or any defenses that could have been raised by Respondent. The Court disagrees. In *Diego Beekman v. Nieves*, this Court found that an unpled HUD/HPD low income regulation was an essential component of Petitioner's prima facie case because it bestowed Respondents with substantial rights in determining their rental obligation. *See Diego Beekman Mut. Hous. Assoc. Hous. Dev. Fund Corp. v. Nieves*, 2016 NYLJ LEXIS 4993, *11 (Civ. Ct. Bronx Cnty. 2016). Therefore, the regulatory agreement at issue was required to be pled in order to comply with the requirements of RPAPL §741. Similarly, here, the program-specific rent limits placed on the Subject Premises under the Article XI regulatory agreement restricted the monthly rent that Petitioner was legally allowed to charge Respondent. Although it is not stated that Respondent occupies an Income-Restricted Unit, it is clear that the regulatory agreement between Petitioner and HPD limit the rent that Respondent can legally be charged beyond the limits set by the Rent Stabilization Law. Thus, Petitioner's failure to plead this regulatory contract was a fatal defect in the Petition, as it prevented Respondent from being able to properly formulate defenses to the rent allegedly owed. *See Almonte*, 17 Misc3d, *supra*; *PCMH Crotona, L.P. v. Taylor*, 57 Misc. 3d 1212(A) (Civ. Ct. Bronx Cnty. 2017).

Petitioner argues that Respondent is not prejudiced because the information about the tax incentive contract is readily available via public records, and "Petitioner has no affirmative obligation to place Respondent on notice of information that is publicly and readily available." *See* Petitioner's Opposition, NYSCEF Doc. 16. Whether information about the regulatory status

of the Subject Premises is publicly available has no bearing on whether Petitioner must plead it as required by RPAPL §741. Further, even though the contract at issue here was publicly available, Respondent initially appeared pro se and was only made aware of the contract after litigation began and after retaining an attorney who investigated the matter. Therefore, Respondent was deprived of the opportunity to properly prepare defenses to this proceeding before appearing in court and filing her pro-se answer. *See East 168th St. Assocs. v. Castillo*, 60 Misc.3d 774 (Civ. Ct. Bronx Cnty. 2018) (“The pleading requirement is hollow if this [rent regulatory status] analysis takes place during litigation when, and if, the petitioner reveals the particular regulations to which the apartment is subject”).

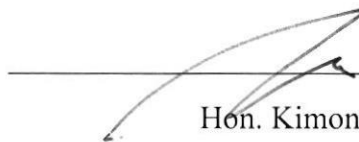
Based on the foregoing, the Court finds that Respondent was prejudiced as a result of the failure to fully plead the Subject Premises’ rent regulatory status. Petitioner requested the opportunity to amend the Petition to include reference to the DAMP and Article XI Tax Incentive and attached a proposed amended pleading. However, Petitioner never formally moved to amend the Petition. Nonetheless, amendment is not permitted if there has been a finding of prejudice, as there has here. *See Alsaidi v. Alsaede*, 227 A.D.3d 643 (2d Dep’t 2024).

Accordingly, Respondent’s motion to dismiss is granted and this proceeding is dismissed without prejudice. The Court need not address Respondent’s second grounds for dismissal nor the request for leave to file an amended answer as they are rendered moot by the dismissal. Respondent shall serve a notice of entry of this Decision/Order by filing to NYSCEF. As this proceeding has been dismissed, the parties do not need to appear at the previously scheduled June 8, 2026 return date.

This constitutes the Decision and Order of the Court and will be uploaded to NYSCEF.

June 3, 2026

Queens New York


Hon. Kimon C. Thermos, JHC

CHECK ONE:

MOTION SEQ. #: 1

☒

CASE
DISPOSED

☒

GRANTED

☐

DENIED

☐

NON-FINAL
DISPOSITION

GRANTED IN
PART

☐

OTHER