

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

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CHELSEA DYNASTY, LLC

Petitioner, Landlord,

-against-

Index No. L&T 92321/11

DANIEL SHOMRON,

Respondent-Tenant(s)

DECISION AND ORDER

“JOHN DOE” and/ or “JANE DOE”

Respondents-Undertenants

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MICHELLE D. SCHREIBER, J.

Recitation as required by CPLR 2219(a), of the papers considered in the review of the petitioner’s motion for leave to conduct discovery and respondent’s cross-motion to renew and reargue.

Papers	Numbered
Notice of Motion and Affirmation	1
Notice of Cross-motion, Affirmation & Affidavit.....	2
Affirmation in Opposition.....	3
Reply Affirmation.....	4

Upon the foregoing cited papers, the Decision/Order of this Court on these motions is as follows:

In this third round of motion practice the petitioner moves for leave to conduct discovery and the respondent cross-moves to renew and reargue the denial of his motion for summary judgment. The motions are consolidated for disposition herein.

The petitioner’s claim in this holdover proceeding is that the respondent is a month to month tenant without a lease and that the premises are not subject to rent regulation “because rooms 810, 804 and 802 are connected and the combined rent is over \$2,000 per month, after a vacancy.” The respondent’s claim is that the premises are subject to rent stabilization and that he has occupied the premises since 1972. Because the Court overlooked the facts submitted and

based upon the presentation of additional documentation not previously available, the respondent's motion to renew and reargue is granted.

Notwithstanding petitioner's claims in various submissions to the Court, the petitioner has not moved to amend the petition. Accordingly, the petitioner's burden is to establish, as stated in the petition, that the subject premises is exempt from rent stabilization coverage based upon a rent in excess of \$2000 per month after a vacancy. The petitioner concedes it cannot meet its burden. In particular, the affidavit of Meyer Chetrit submitted in opposition to respondent's motion states that "Petitioner does not challenge the Respondent's presence in the building since an early date...." Faced with voluminous records showing the respondent's residency in the subject premises for approximately forty years, including, *inter alia*, birth certificates for the respondent's children, cancelled checks and bank statements, utility statements, public library records, and various mailings, Mr. Chetrit focuses not on the respondent's long term residency, but rather on when the rooms were combined and whether respondent had permission from the prior owner. This focus is not relevant to the issue of petitioner's claim regarding the rent regulatory status of the premises.

As a result of the Emergency Tenant Protection Act, the Rent Stabilization Law applies to privately owned housing accommodations built before 1974 and containing six or more residential units. *See e.g., Rent Stabilization Law of 1969, Administrative Code of the City of NY § 26-504; Emergency Tenant Protection Act of 1974, McKinney's Uncons. Laws of NY § 8621 et seq.; Gracecor Realty Co. Inc. v Hargrove, 90 N.Y.2d 350 (1997).* Here, the respondent submits a certified copy of the Certificate of Occupancy establishing these facts and petitioner

does not dispute them.

The petitioner's claim that there is an exemption from coverage is based upon an alleged vacancy and the amount of rent. Pursuant to *RSL § 26-504.2*, in order for the petitioner to meet its burden regarding this exemption it must show that there was a vacancy after 1997 and that at the time the rent was in excess of \$2000. As noted above the petitioner concedes the long term residency of the respondent and therefore cannot establish a vacancy after 1997. As to the amount of rent, the Court notes that respondent submits a certified DHCR document showing that there is no Registration Statement on file with DHCR for the premises from 1984 until 2011 (the time of the inquiry to the agency). "To establish a legally regulated rent and to deregulate an apartment under the high-rent-vacancy statute, a landlord must first subject the apartment to rent regulation." *Tribeca M. Corp. v Haller*, 2003 NY Slip Op 51271(U), (Civ. Ct. NY Cty.), *aff'd 11 Misc.3d 133A (AT 1st Dep't 2006)*. Because the subject apartment was never registered with the DHCR and a legal rent was therefore not established, petitioner cannot show that the legal regulated rent ever rose above \$2000.00. Having failed to demonstrate either a vacancy or legal rent over \$2000, petitioner cannot meet its burden of proof on its claim that the premises are exempt from rent stabilization as claimed in the petition.

Based upon the foregoing, and the Court having granted the respondent's motion to renew and reargue his motion for summary judgment, the motion for summary judgment is granted and the petition is dismissed. Accordingly, the petitioner's motion for leave to conduct discovery is denied as moot.

This is the decision and order of the Court, copies of which are being mailed to those indicated below.

Dated: New York, NY
December 31, 2012



Michelle D. Schreiber, JHC

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