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Decision of Interest

NEW YORK COUNTY CIVIL COURT

Gay Man Entitled to Succession Rights to Late Partner's Apartment by Virtue of  
10-Year Residence

Judge Elsner

SOUTH PIERRE ASSOCIATES v. **MANKOWITZ**--Petitioner, South Pierre Associates ('petitioner') commenced the within licensee holdover proceeding against, Stanley **Mankowitz** a/k/a Stanley Mann ('respondent'), the occupant of 160 West 71st Street, Apt. 17F, New York, New York 10023 ('premises') on the basis that any right respondent had to occupy the premises ended in November 1989, upon the death of the former tenant of record, Kurt Freisinger. Respondent appeared by counsel who set forth an affirmative defense of succession rights pursuant to [Rent Stabilization Code § 2523.5\(b\)\(1\)](#).

TESTIMONY

Respondent testified that he met Mr. Freisinger in or about 1977 and moved into the subject premises in or about 1980. From 1980 until Mr. Freisinger's death on November 11, 1989, respondent and Mr. Freisinger lived together as a gay couple in a one-bedroom apartment. They shared household chores such as cooking, cleaning and shopping. Respondent paid a portion of the monthly rent. Mr. Freisinger paid respondent's health insurance premiums and both shared a savings account. Respondent paid for prescriptions when Mr. Freisinger was sick and cared for Mr. Freisinger during the last days of his life. The respondent was a beneficiary on Mr. Freisinger's Accidental Death & Dismemberment insurance policy.

Respondent testified that the doormen frequently saw them entering and exiting the subject building. Moreover, respondent testified that at the time the couple shared the apartment, Mr. Myers, petitioner's former building manager was aware they lived together. He also knew that Mr. Freisinger passed away and respondent remained in the premises. Respondent's witness, John Fell, testified that Mr. Freisinger referred to respondent as his 'better half' to other gay friends. The respondent admitted that he and his partner lived a closeted lifestyle. That although he visited Mr. Freisinger's mother regularly for a lengthy period before her death, the woman was unaware the couple was more than roommates. She was very old fashioned and would not have approved. They also did not tell Mr. Freisinger's brother or sister they were a couple, although the respondent believed Mr. Freisinger's brother was aware of their relationship.

Shortly before Mr. Freisinger passed away, he was hospitalized. Respondent visited him every day but avoided contact with Mr. Freisinger's sister. Mr. Freisinger's sister made all funeral arrangements and appears as 'next of kin' on his death certificate. Respondent did not attend the funeral or visit the cemetery. He has not maintained contact with Mr. Freisinger's family but still carries mementos in his wallet, including photographs and official documents relating to Mr. Freisinger as reminders of their life together.

After Mr. Freisinger's death in November 1989, respondent consulted an attorney affiliated with a gay rights organization. When he asked the attorney what he should tell the landlord about Mr. Freisinger's death, the attorney advised him to hide it as long as possible. Based on that advice, the respondent signed renewal leases with Mr.

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Freisinger's name and paid the rent with money orders.

#### LEGAL ANALYSIS

At the time of Mr. Freisinger's death in November 1989, [Section 2520.6\[o\] of the Rent Stabilization Code of 1987](#) governed succession rights in rent-stabilized premises. Under this provision, succession rights were only available to the tenant's: husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, father-in-law, mother-in-law, son-in-law, or daughter-in-law. [McKinneys Unconsolidated Laws, Sections 8581-8700](#), Main Volume, 1987.

In the landmark decision, [Braschi v. Stahl Assocs. Co., 74 NY2d 201 \[1989\]](#), which was decided four months prior to Mr. Freisinger's death, the Court of Appeals expanded the concept of 'family' to include nontraditional family units or gay life partners in order to gain succession rights in rent-controlled apartments. Under the statutory rent-control definition, only the tenant's spouse or 'family member' were afforded succession rights protection. The Court of Appeals explained that the term 'family':

[S]hould not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. In the context of eviction, a more realistic and certainly equally valid view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence....

Id. at 211.

On November 9, 1989, the New York State Division of Housing and Community Renewal ('DHCR') promulgated an emergency rule applicable to all four sets of administrative regulations under its administration to provide for expanded succession rights to nontraditional family members as set forth in *Braschi*. On April 4, 1990, DHCR published permanent regulations (identical to the November 9, 1989 emergency rule) which became effective immediately. The Rent Stabilization Association challenged these regulations but they were eventually upheld by the [Court of Appeals in RSA v. Higgins, 83 NY2d 930 \[1993\]](#).

The current succession provision of the [Rent Stabilization Code Section 2523.5\(b\)\(1\)](#) thus provides, in pertinent part, that a 'family member' shall be entitled to be named as a tenant if:

[S]uch tenant has permanently vacated the housing accommodation, any member of such tenant's family, as defined in [section 2520.6\(o\)](#) of this Title, who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years ... immediately prior to the permanent vacating of the housing accommodation by the tenant....

Rent Stabilization Code [9 NYCRR] [§ 2523.5\[b\]\[1\]](#).

[Rent Stabilization Code Section 2520.6\(o\)](#) defines a 'family member' as:

(2) Any other person residing with the tenant or permanent tenant in the housing accommodations as a primary residence who can prove emotional and financial commitment and interdependence between that person and the tenant or permanent tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation such factors as listed below. In no event would evidence of a sexual relationship between such persons be required or considered.

(i) longevity of the relationship;

(ii) sharing of or relying upon each other for payment of household or family expenses and/or common necessities of life;

(iii) intermingling of finances evidenced by, among other things, joint ownership of

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bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and beneficiary, granting each other authority to make health care decisions for the other, entering into a personal relationship contract, making a domestic partnership declaration or serving as a representative payee for purposes of public benefits, etc.;

(vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(vii) regularly performing family functions such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(viii) engaging in any other pattern of behavior, agreement or other action which evidences the intention of creating a long-term, emotionally committed relationship.

Rent Stabilization Code [9 NYCRR] [§ 2520.6\[o\]](#).

Meanwhile, in E. [10th St. Assocs. v. Goldstein, 154 AD2d 142](#) [1st Dept 1990], Appellate Division, First Department judicially extended Braschi's holding to rent-stabilized apartments which formerly had a narrower definition of 'family' in rent-controlled apartments. The Appellate Division held:

[T]here is no significant difference between the two regulatory schemes which would mandate a different definition of 'family'.... It would be anomalous to hold that a life partner could be a family member for the purpose of protection from eviction from a rent controlled apartment but not a valid family member insofar as eviction from a rent stabilized apartment is concerned.

Id. at 145.

Moreover, Courts have interpreted rent control laws as 'remedial in nature,' designed to promote the public good and, as a result, 'should be interpreted broadly to effectuate their purposes.' See Braschi, supra at 201; [Lesser v. Park 65 Realty Corp., 140 AD2d 169](#) [1st Dept 1998], appeal dismissed, [72 NY2d 1042 \[1988\]](#) (holding that the RSC's succession provision was intended 'to prevent the grievous harm that would ensue from the wholesale eviction of family members which would otherwise be permitted under the law' and applied retroactively the 1987 Rent Stabilization Code provision to include a grandson); [Post v. 120 E. End Ave. Corp., 62 NY2d 19 \[1984\]](#); [Gordon & Gordon v. Madavin, Ltd., 108 Misc2d 349](#) [App Term, 1st Dept]; [Knafo v. Ching, NYLJ, Dec. 6, 2000 at 28, col 2](#) [Civ Ct, NY Co] (applying retroactively Rent Succession Code succession provision to include tenant of record's disabled gay life partner).

In order to succeed to a rent-stabilized apartment, respondent must prove his/her entitlement by a preponderance of the evidence. 300 E. [34th St. Co. v. Habeeb, 248 AD2d 50](#) [1st Dept 1997]. Respondent herein has sustained his burden of proof. Respondent's credible testimony of an almost ten-year relationship with Mr. Freisinger in the subject premises was marked by a close emotional and financial commitment and interdependence. Respondent offered evidence of financial commingling, including a joint bank account, Mr. Freisinger's payment of respondent's health insurance premiums, respondent's purchase of Mr. Freisinger's prescriptions, the listing of respondent as Mr. Freisinger's life insurance beneficiary, and the sharing of household chores and expenses such as paying a portion of the rent. In 300 E. [34th St. Co. v. Habeeb, 248 AD2d 50](#) [1st Dept 1997], the court held:

It is well established that in non-jury trials, the trial court's fact-finding 'should not be disturbed on appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence, especially when findings of

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fact rest in large measure on considerations relating to the credibility of witnesses' (citations omitted).... [D]ue regard must be given to the decision of the trial judge who was in a position to assess the evidence and the credibility of the witnesses.

Although respondent conceded that they did not hold themselves out as a gay couple to family members, courts have held that it was unrealistic to expect a gay couple to hold themselves as a family to public or family members. See *Lerad Realty v. Reynolds*, NYLJ, Aug.29, 1990, at 22, col 5 [Civ Ct, NY Co]; see also, *Lamarche v. Miles*, NYLJ, Nov. 4, 2005, at 19, col 1 [Civ Ct, Kings Co]. Moreover, courts have held that even though financial interdependence is a factor in determining whether a nontraditional family exists, less weight should be given in lower income households. *W. 40th St. Realty Assn. v. Sullivan*, NYLJ, Nov. 22, 1995, at 26, col 5 [Civ Ct, NY Co].) What is paramount is the 'totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control.' *Braschi*, supra, at 213.

Petitioner's assertion that respondent's signing of Mr. Freisinger's name to renewal leases as fraudulent and its reliance on [Riverton Assocs. v. Knibb, 3 Misc3d 193](#) [Civ Ct, NY Co 2004], are misguided. The essential elements for fraud are 'representation of a material existing fact, falsity, scienter, deception and injury. [Friedman v. Anderson, 803 NYS2d 514](#) [1st Dept 2005]. Here, petitioner failed to prove any injury resulting from respondent's misrepresentations. Respondent was entitled to succession rights prior to his signing of Mr. Freisinger's name in the first renewal lease by virtue of his ten-year residence with Mr. Freisinger in the subject premises, coupled with his close emotional and financial interdependence with Mr. Freisinger. Furthermore, his reliance on the advice of counsel, which was given at a time the law relating to succession rights was unsettled at best, was understandable.

The court further notes that *Riverton Assocs.* was reversed on appeal on December 28, 2005. *Riverton Assocs. v. Knibb*, 2005 Slip Op 25552 [App Term, 1st Dept 2005]. The court held that the respondent-granddaughter did not forfeit her 'firmly established' succession rights by forging subsequent renewal leases bearing her grandmother's signature and that 'any fraud or irregularities committed in the aftermath of the grandmother's death cannot reasonably be said to have caused petitioner any discernible prejudice in the prosecution of its eviction claim.' Similarly, there was no injury to petitioner herein, especially where petitioner failed to show that it was discernibly prejudiced by the respondent's signing of the renewal leases. Petitioner had access to employees who were available to testify at trial but failed to subpoena them, including the former property manager and current resident, Mr. Myers.

#### CONCLUSION

Based upon the foregoing, this proceeding is dismissed with prejudice. This constitutes the decision and order of the court.

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