

**Turin Hous. Dev. Fund v Suarez**

2013 NY Slip Op 31737(U)

August 1, 2013

Civ Ct, NY County

Docket Number: 0082366/2012

Judge: Sabrina B. Kraus

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

\_\_\_\_\_  
TURIN HOUSING DEVELOPMENT FUND,

X

Petitioner-Landlord

-against-

**DECISION & ORDER**  
**Index No.: L&T 82366/2012**

**HON. SABRINA B. KRAUS**

ALFREDO SUAREZ  
609 Columbus Avenue, Apt 6L  
New York, New York, 10024

Respondent-Tenant

\_\_\_\_\_  
X

**BACKGROUND**

This summary nonpayment proceeding was commenced by **TURIN HOUSING DEVELOPMENT FUND** (Petitioner) and sought to recover possession of 609 Columbus Avenue, Apt 6L, New York, New York, 10024 (Subject Premises), based on the allegation that **ALFREDO SUAREZ** (Respondent) had failed to pay maintenance due pursuant to the parties' occupancy agreement.

**PROCEDURAL HISTORY**

Petitioner issued a predicate notice dated September 12, 2012, seeking \$4,285.66 in arrears for a period covering March 1, 2012 through September 1, 2012. The notice sought payment of the arrears within three days. The notice further provided "Please take further notice that this notice supercedes the previous notice dated June 20, 2012 that was served upon you on or about June 25, 2012." The affidavit of service asserts the notice was served by conspicuous

place delivery on September 17, 2012, at 10:57 am, with a prior attempt having been made on September 15, 2012 at 7:49 pm, and a mailing on September 17, 2012.

The petition issued on October 1, 2012, and was served by conspicuous place delivery on October 5, 2012, at 7:28 am with a prior attempt on October 4, 2012, at 3:30 pm and a mailing on October 6, 2012. No other person was named or served in this proceeding.

The petition asserts that the premises are exempt from Rent Control and Rent Stabilization because the Subject Premises is a cooperative financed pursuant to CFR 236 and the maintenance is set by HUD. The petition further asserts that the Subject Premises is the residence of Respondent, who is the proprietary lessee.

The notice of petition and petition were signed by Kamilla Aslanova, Esq., who affirmed “Pursuant to 22 NYCRR § 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.”

The petition was verified by Peter Axelrod, Esq (Axelrod) a principal in the law firm representing Petitioner. The verification provides :

The Undersigned affirms under penalty of perjury that he is one of the attorneys for the Petitioner; that he has read the forgoing Non Payment Dwelling Petition and knows the contents thereof; that the same are true to his own knowledge except as to matters stated to be upon information and belief; and as to those matters she believes them to be true. The grounds of his belief as to matters not stated upon her knowledge are statements and/or records provided by the Petitioner, its agents and/or employees and contained in the file in the attorney’s office.

Respondent never answered or appeared. By letter dated December 14, 2012, Axelrod, authorized City Marshal Justin Grossman to requisition the file for the proceeding for the issuance of a warrant of eviction and the entry of a final judgment. On December 14, 2012,

Petitioner applied to the court for a default judgment. Petitioner submitted several documents in support of its application.

Petitioner submitted an affidavit from Deborah Hassell-Dobies (Dobies) dated December 10, 2012. The affidavit asserts that Dobies is the managing agent of Petitioner and that she is “personally familiar with all the facts of this matter, and with the details of the petition which is dated July 5, 2012...”. Dobies acknowledges that the affidavit is made under penalty of perjury and further asserts “I am not aware of any physical or mental disability which might have prevented respondent from answering.”

Dobies also submitted an Affidavit of Investigation in support of Petitioner’s application for a default judgment. The affidavit provides in pertinent part:

On December 7, 2012 I called Mr. Suarez and spoke with him directly. I asked him if he was in the military service of the United States. He advised me that he is not in the military service of the United States nor is anyone in his family dependent of anyone in the military service of the United States.

On December 7 2012, I also called at the premises and had a conversation with the superintendent Louis Rozario. I asked him if the said respondent was in the military service of the United States or of the State of New York in any capacity. He informed me that the said respondent was not in the military service, nor was said respondent or anyone in his family dependant of any person in the military service of the United States or any nation allied with the united States.

From the facts above set forth, I am convinced that said tenant, ALFREDO SUAREZ is not (nor is any occupant of said premises a dependent of a person who is) in military service as defined in said Act. This affidavit is made for the purpose of obtaining a warrant to remove said respondent, ALFREDO SUAREZ from the possession of the above premises.

On January 2, 2013, the court (Hahn, J) granted Petitioner’s application for a default and entered a judgment of possession against Respondent. The warrant of eviction issued on January 4, 2013. On January 28, 2013, Marshal Justin Grossman executed the warrant of eviction and delivered legal possession of the Subject Premises to Petitioner.

Cruz Suarez (Movant) appeared through counsel and on July 9, 2013, moved by Order to Show Cause to vacate the judgment of possession, be restored to possession of the Subject Premises, for the imposition of sanctions and costs against Petitioner, its agents and Petitioner's attorneys and for related relief.

On the initial return date of the motion, Movant and Petitioner stipulated to vacate the judgment and warrant, restore Movant to possession of the Subject Premises and dismiss the underlying petition. The balance of the motion was adjourned to July 31, 2013, when the court heard argument and reserved decision.

### **THE MOTION**

Movant asserts that she and Respondent (her husband) were the shareholders, proprietary lessees and tenants of the Subject Premises pursuant to a stock certificate and proprietary lease issued in 1979. Movant is 84 years old and has been a shareholder and tenant for thirty-four years since 1979. Movant's nieces Misha Brea and Esther Alix reside in the Subject Premises.

Respondent died on September 10, 2007, Movant asserts her husband passed in the Subject Premises. Movant is the sole remaining shareholder and proprietary lessee. Movant asserts that Petitioner was fully aware that her nieces reside in the Subject Premises and that Respondent is deceased.

Movant asserts that she never received the notice of petition and petition in this proceeding and that they were never posted on the door to the Subject Premises. Movant further asserts that the petition was also never received by mail at the Subject Premises.

Movant further asserts that she had paid all maintenance due and had never received any notice that Petitioner believed there were arrears due. Movant submits receipts for eight money

orders, each in the amount of \$850, submitted between February and November 2012. Movant's nephew sent a letter to Petitioner's counsel dated May 16, 2013, with copies of receipts for said money orders asserting that Movant had been illegally evicted and unable to access the Subject Premises since January 28, 2013, and asking that the issue be resolved. Copies were also sent to Dobies and the President of the coop board.

Petitioner's counsel asserts that sanctions are not warranted. Petitioner's counsel asserts they did due diligence prior to the commencement of the proceeding, and that Movant is committing some type of fraud by not living in the Subject Premises and evading HUD requirements for annual re-certification.

Most disturbing is the affidavit in opposition submitted by Dobies, in which she admits she executed the non military affidavit without even reading it, and suggests that this is in fact her standard practice.

No affidavit is submitted by any member of Petitioner denying that Petitioner and the members of the board were well aware that Respondent had died. Rather, Dobies asserts there was nothing in the tenant file that would indicate that Respondent had passed. Petitioner provides one page of the alleged occupancy agreement that only has Respondent's name but no complete document of the agreement.

### **DISCUSSION**

The court finds that Movant has raised sufficient basis for a further inquiry as to whether sanctions should be imposed on Petitioner or its attorneys. The court has no jurisdiction over the managing agent and instead will attribute the acts of any of Petitioner's agents to Petitioner.

The filing of a false non-military affidavit is a criminal act. As this court has previously held “.. (w)here a false affidavit of non-military status is filed in connection with a landlord-tenant proceeding, the proceeding is deemed to be in violation of law [*Davidson Ave SIP HDFC v Ellis* 31 Misc3d 1206(A)(citations omitted)].

Here not only does Dobies cavalierly acknowledge that she signed said affidavit without reading it, but implies that this may not be the only such document she has executed without reading to secure the eviction of a tenant. Moreover, Dobies offers no explanation for not alerting the court that Respondent (assuming she believed him to be alive) would have been 90 years old. The tenant file with annual re-certifications contains the date of birth of both Respondent and Movant. Yet Dobies submitted an affidavit of default, asserting she was not aware of any limitation that might have prevented Respondent from answering the petition. The whole purpose of that affidavit is for Petitioner or its agent to make the court aware of any limitation that might prevent a Respondent from appearing.

Moreover, it is undisputed that Petitioner and its agents had written knowledge of Movant’s tenancy and her nieces occupancy and that Petitioner and its counsel evicted them without ever naming them or serving them with any papers and without a valid judgment or warrant being issued against them.

22 NYCRR 130-1.1 provides that conduct is frivolous if it is completely without merit in law or asserts material factual statements that are false. Petitioner’s actions and that of its attorneys in evicting an 84 year old shareholder from an apartment she has been the tenant of since 1979 without any notice is clearly an action without any merit in law. Moreover, Dobies freely admits that the affidavits she executed without reading to secure the eviction were false.

Finally, Petitioner was made aware of Movant's unlawful eviction claim as early as May 2013, but refused to restore her to possession until she secured counsel who made the underlying motion.

22 NYCRR 130-1.1 further provides :

In determining whether the conduct undertaken was frivolous, the court shall consider, among other issued the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

Movant's application is granted to the extent of setting the matter down for a hearing to provide Petitioner, its agents and counsel with a reasonable opportunity to be heard prior to a final determination on whether Petitioner and its attorneys engaged in frivolous conduct, the precise frivolous conduct engaged, whether costs and/or sanctions pursuant to 22 NYCRR 130-1.1 should be imposed on Petitioner and/or its attorneys, and if so the appropriate amount of said costs and/or sanctions.

Given that the court contemplates that the hearing will involve the testimony of multiple witnesses, the hearing shall be scheduled for August 12, 2013 at 9:30 am at which time the matter will be referred to Part X for assignment to a trial part where the hearing shall take place.

This constitutes the decision and order of the court.

Dated: August 1, 2013  
New York, NY

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Hon. Sabrina B. Kraus, J.H.C.



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