

**Parkway HDFC, Inc. v McKee**

2013 NY Slip Op 31846(U)

August 12, 2013

Civ Ct, New York County

Docket Number: 52147/2013

Judge: Sabrina B. Kraus

Republished from New York State Unified Court  
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

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

\_\_\_\_\_  
PARKWAY HDFC, INC. X

Petitioners-Landlords

-against-

**DECISION & ORDER**  
Index No.: L&T 52147/2013

**HON. SABRINA B. KRAUS**

YUKO MCKEE  
110-112 WEST 109<sup>TH</sup> STREET - APT 4A  
NEW YORK, NY 10025

Respondent-Tenant  
\_\_\_\_\_ X

**BACKGROUND**

The underlying summary nonpayment proceeding was commenced by **PARKWAY HDFC, INC** (Petitioner) against **YUKO MCKEE** (Respondent) the rent-stabilized tenant of record of 110-112 WEST 109<sup>TH</sup> STREET - APT 4A, NEW YORK, NY 10025 (Subject Premises) based on the allegation that Respondent had failed to pay rent due pursuant to the parties' written lease agreement.

**PROCEDURAL HISTORY**

Petitioner issued a five day rent demand dated December 21, 2012, seeking \$8,987.71 in arrears for a period covering March 1, 2012 through December 31, 2012 at a monthly rate of \$959.01. The petition is dated January 15, 2013. Respondent appeared *pro se* and filed an answer on February 5, 2013, asserting a general denial. The proceeding was initially returnable on February 13, 2013, and was adjourned to February 20, 2013, for the court to obtain a

Japanese Interpreter for Respondent. On February 20, 2013, the parties entered a stipulation adjourning the proceeding to April 9, 2013 for settlement or trial.

On April 2, 2013, Counsel for Respondent filed a notice of appearance, and the court so-ordered a subpoena for Respondent to be served on HPD. On April 9, 2013, Respondent's motion to interpose an amended answer was granted pursuant to the parties' stipulation, and the proceeding was adjourned to May 22, 2013.

On May 22, 2013, Respondent moved for summary judgment and related relief, on the grounds that there is an agreement between Petitioner and HPD, which prevents Petitioner from collecting a monthly rent in excess of thirty percent of her income. The parties adjourned the motion and the proceeding pursuant to a stipulation, which provided Respondent's counsel may move for contempt or seek other means to have HPD appear in court pursuant to the subpoena in order to understand HPD's interpretation of the governing regulatory agreement. On June 19, 2013, the motion was adjourned to July 31, 2013, for the submission of additional motion papers. On July 31, 2013, the court briefly heard argument, and reserved decision on the motion.

#### **RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

Respondent lives in the Subject Premises with her sixteen year old daughter. Prior to moving into the Subject Premises, Respondent had been living in a New York City aided shelter for victims of domestic violence. The Department of Homeless Services placed Respondent in the Subject Premises in 2009 through the Work Advantage program.

In August 2009, Respondent and Petitioner executed a one year lease agreement for the Subject Premises (Ex P to moving papers). The agreement is dated July 12, 2009, and runs for a term from November 1, 2009 through October 31, 2010, at a monthly rent of \$882.43. At the

same time the lease was executed Petitioner executed a "statement of commitment" to the Work Advantage program (Ex N to moving papers).

The statement of commitment provides in pertinent part:

Under the Work Advantage Program, the city will issue a monthly supplement for a period of one year, directly to me, the landlord, on behalf of the eligible Work Advantage client ("tenant"). At the end of one year, the City will evaluate the client's needs and eligibility and if deemed appropriate, as determined by the City in its sole discretion, the City will issue a monthly rent supplement directly to me for an additional year.

The statement of commitment further provides that the tenant is responsible for contributing \$50 per month towards the rent.

Respondent states that she was never given an application to fill out for Section 8 benefits, and that Petitioner has never asked her to fill out annual recertification forms.

Respondent asserts her income varied from over \$10, 000 in 2010 to over \$20, 000 in 2012.

In 1989, the City of New York deeded the Subject Building to Parkway Housing Company, Petitioner's predecessor in interest, for the sum of one dollar. The deed ( Ex H to moving papers) indicated that the building was part of an urban renewal area to be developed. Executed simultaneously with the Deed is a Land Disposition Agreement (LDA), which specifies that the City wished to rehabilitate its housing stock and provide housing for low and moderate income tenants. The LDA provides that 30% of the units will be reserved for homeless families, 50% of the units will be affordable for low income tenants, and 20% of the units were to be rented to moderate income families at the HUD Fair Market rent.

In exchange for being given the building and a below market loan to finance the construction, the owner agreed to restrictions on the amount of rent that could be charged for a designated period which is still in effect.

On May 20, 2010, Petitioner and the City of New York entered an Amended and Restated Regulatory Agreement (RA)(Ex M to Moving Papers) which governs the case at bar. The RA distinguishes between rents that can be charged for Eligible Homeless Units and for other units. An Eligible Homeless Unit is defined as a unit occupied by an Eligible Homeless Tenant. An Eligible Homeless Tenant is defined as an Eligible Tenant referred by HPD, the New York City Department of Homeless Services, or such other referral source approved by HPD, who, prior to such tenant's initial occupancy in the premises, resided in an emergency shelter facility operated by or on behalf of the City, or is otherwise in need of emergency shelter as determined by the City, or is otherwise in need of emergency shelter as determined by the city.

Respondent meets the income requirements for a low income tenant. Respondent asserts that she is an Eligible Homeless Tenant as defined by the RA. The RA further defines an Eligible Homeless Tenant to be either a Cooperating Eligible Homeless Tenant, who has submitted income certifications as required by HPD and submitted all documentation required to receive Section 8, or Non-Cooperating Eligible Homeless Tenant, who has failed to submit such certifications and documentation.

Respondent asserts that Petitioner never presented her with any Section 8 documentation or certifications to complete, and that she should be considered a Cooperating Eligible Homeless Tenant. Respondent concludes that Petitioner is limited to collecting from her a rent that is 30% of her income, which Respondent asserts would be just over \$500 per month rather than the \$959 per month that Petitioner seeks to collect.

Petitioner argues that in 2009, when Respondent took occupancy, the Subject Premises was designated as a “Tax Credit Unit”<sup>1</sup> under the RA, not an Eligible Homeless Unit, and that Petitioner’s agreement with Respondent always contemplated she would be responsible for paying the full rent after the expiration of the two year supplement through the Work Advantage Program. To the extent that Petitioner argues that the Work Advantage Program constitutes an enforceable contract, this argument has been rejected by the Appellate Division in *Zheng v City of New York* (93 AD3d 510) wherein the court found that the Work Advantage rent subsidy program for the homeless was a social services program and that participation in the program did not bind the parties contractually.

Petitioner further asserts that even if the Subject Premises were a designated as an Eligible Homeless Unit, the rent being charged complies with the parameters of the RA.

The difference between the parties’ positions is based on their interpretation of the language of the RA. Paragraph 4(b) of the RA governs rent to be charged during the Restrictive Period. For an Eligible Homeless Unit it provides:

(1) the rent for an Eligible Homeless Unit that is occupied by a Non-Cooperating Eligible Homeless Tenant shall not exceed the least of (i) the Legal Rent, or (ii) 30% of 60% of AMI.

(2) the rent for an Eligible Homeless Unit that is occupied by a Cooperating Eligible Homeless Tenant shall not exceed the least of (i) the Legal Rent, or (ii) 30% of 60% of AMI, or (iii) for a Section 8 Unit, the section 8 Rent, provided that the share of the rent payable by such tenant (A) shall not exceed the least of the (I) the Legal Rent, or (II) 30% of 60% of AMI, or (III) the greater of 30% of such tenant’s household income as determined in accordance with this Agreement, or the Shelter Allowance, if applicable ...

Petitioner asserts that this is not a Section 8 unit, and therefore as the rent charged is the legal rent, and less than 30% of 60% of the AMI, the rent being sought complies with the RA.

---

<sup>1</sup> The RA does not include this term in its definitions.

Petitioner asserts that the balance of the language in paragraph 4(b)(2)(iii) is inapplicable to Respondent. Respondent argues that said section applies not only to Section 8 tenants, but to all Cooperating Eligible Homeless Tenants.

### DISCUSSION

The court finds that the Subject Premises is an Eligible Homeless Unit as defined by the RA. Petitioner argues that it is only obligated to hold 30% of the units in the building for homeless families. The court agrees. However, paragraph 3(a) of the Regulatory Agreement provides “... Owner shall lease **not less** than thirty percent (30%) of the Units in the Project to Eligible Homeless Tenants (emphasis added)” meaning that is the minimum. Given that the RA clearly defines any unit occupied by an Eligible Homeless Tenant as an Eligible Homeless Unit, the court finds that this includes the Subject Premises.

Petitioner’s argument that the calculation of the rent to be charged is the same for a Cooperating Eligible Homeless Tenant as a Non-Cooperating Eligible Homeless Tenant also is not accepted by the court. If Respondent is a Non-Cooperating Eligible Homeless Tenant then the rent being charged by Petitioner may conform to the requirements of paragraph 4(b)(B). There is insufficient evidence on this record for the court to determine the legal rent. No evidence of the registered rent with DHCR has been provided, nor are there any riders annexed to Respondent’s initial lease showing how the initial rent was arrived at.

Additionally, if the Respondent is a Cooperating Eligible Homeless Tenant, as alleged then the court must consider Respondent’s argument for interpretation of paragraph 4(b)(B)(2).

Whether Respondent is a Cooperating Eligible Homeless Tenant as defined by the RA is a question of fact which the court can not determine on motion papers. Respondent asserts she should be considered a Cooperating Eligible Homeless Tenant because she was never provided

with any documentation to execute. Respondent asks the court to rely on a hearsay statement made by an attorney for HPD in determining that she is a Cooperating Eligible Homeless Tenant. Petitioner argues Respondent's failure to provide documentation that she was ever considered to be eligible for Section 8 benefits should warrant a finding that she can not be a Cooperating Eligible Homeless Tenant. The language of the RA provides no guidance in this regard.

Based on the foregoing, Respondent's motion for summary judgment is denied as the court finds there are material questions of fact which must be determined at trial, including but not limited to the legal rent for the Subject Premises and whether Respondent is a Cooperating Eligible Homeless Tenant as defined by the RA.

Trial is scheduled for September 23, 2013 at 9:30 am.

This constitutes the decision and order of this court.

Dated: August 12, 2013  
New York, New York

---

Hon. Sabrina Kraus

SONTAG & HYMAN  
Attorneys for Petitioner  
69 Roslyn Road  
Roslyn Heights, New York 11577  
516.621.0600

STEVEN BANKS, ESQ, ATTORNEY IN CHIEF  
Sheryl Karp, of Counsel  
The Legal Aid Society  
Attorneys for Respondent  
230 East 106<sup>th</sup> Street  
New York, New York 10029  
212.426.3029