

**601 West 136 St. HDFC v Olivares**

2014 NY Slip Op 31474(U)

June 9, 2014

Civ Ct, New York County

Docket Number: 86650/2013

Judge: Jack Stoller

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

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601 WEST 136 STREET HDFC,

Petitioner/Landlord,

Index No. 86650/2013

- against -

**DECISION/ORDER**

CHRISTINA OLIVARES,

Respondents/Tenants.

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Present: Hon. Jack Stoller  
Judge, Housing Court

601 West 136 Street HDFC, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Christina Olivares, the respondent in this proceeding (“Respondent”) seeking possession of 601 West 136<sup>th</sup> Street, Apt. 23, New York, New York (“the subject premises”) on the ground that Respondent refused an offer of a lease renewal. Respondent interposed a defense that the proposed rent increase contained in the lease renewal was so high as to constitute an evasion of the requirement that, as a Housing Development Fund Corporation (“HDFC”), Petitioner must have cause to terminate Respondent’s tenancy.<sup>1</sup> The Court held a trial on this matter on May 20, 2014.

At trial, Petitioner proved that it is the proper party to bring this proceeding; that it is an HDFC organized pursuant to Article XI of the Private Housing Finance Law and that it therefore has as one of its objectives the provision of affordable housing to persons of low income; that it has complied with the registration requirements of MDL §325, that Respondent occupies the

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<sup>1</sup> Respondent interposed other defenses as well, but the Court dismissed those defenses prior to this matter being referred to the trial part.

subject premises, and that Petitioner timely caused an appropriate predicate notice to be served on Respondent prior to the commencement of this proceeding.

The president of the HDFC (“the Board President”) testified that work relating to the service of water to the building in which the subject premises is located (“the Building”) cost Petitioner \$12,000.00; a sidewalk bridge that Petitioner had to install cost \$14,000.00; the elevator system at the Building may need to be replaced at an anticipated cost of \$180,000.00; Petitioner may have to redo the sidewalk on one side of the Building at an anticipated cost of \$70,000.00; Petitioner is incurring multiple expenses and increases in water bills and property taxes; and Petitioner had to install a call box in the elevator at a cost of \$7,000.00.

In part to address these financial needs of Petitioner, the Board President testified that Petitioner’s Board considered measures like raising rents. The rent for the subject premises, which is a two-bedroom apartment, had been \$1,000.00 on a month-to-month basis.<sup>2</sup> The Board President testified that Board members did research into rents of apartments comparable to the subject premises in the same neighborhood, and found that the least expensive end of the range of monthly rents for comparable apartments was approximately \$1,800.00. Petitioner introduced into evidence advertisements for apartments in West Harlem with two bedrooms for \$1,900.00; \$2,000.00; \$2,300.00; \$1,800.00; and \$3,200.00. Petitioner offered Respondent a one-year renewal lease with a monthly rent of \$1,750.00, up from her prior rent of \$1,000.00. Petitioner introduced the proposed lease and a cover letter into evidence.

The Board President also testified that Respondent denied Petitioner access to the subject

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<sup>2</sup> While there was a lease introduced into evidence with this rent, it was not executed. Be that as it may, the Board President testified that the prior rent was \$1,000.00, Respondent did not rebut this testimony, and Respondent’s answer pleads that the prior rent was \$1,000.00.

premises to install new windows there as a part of a building-wide project.

On cross-examination, the Board President testified that the Building has at least four commercial tenants who collectively pay a monthly rent of at least \$41,000 a month. The Board President also testified on cross-examination that there are thirty-nine residential units in the Building, of which approximately ten or eleven are occupied by renters, while shareholders occupy the remainder. He testified that the average rent paid by the tenants is approximately seven to eight hundred dollars a month, and that the rent paid by them differs depending on their circumstances. For example, he testified, if a tenant is elderly or disabled, Petitioner might charge that tenant a lower rent than if a tenant does not have a disability or have a fixed income.

The Board President testified further on cross-examination that the subject premises is approximately 520 square feet, and that the two other units in the Building with the same footprint as the subject premises rent for \$1,300.00 a month and \$1,000.00 a month. The Board President testified that he could not remember the exact rent in apartments that are smaller than the subject premises, units of about 420 square feet, but that one such unit rents for \$950.00. He testified on cross-examination that he didn't know that Petitioner has ever raised any tenant's rent by as much as twenty percent in the past, much less the 75% increase proposed for Respondent.

The Board President testified on redirect examination that the tenant paying \$950.00 a month had been a co-worker of his prior to an injury she sustained that rendered her disabled.

Respondent did not introduce any evidence at the trial.

A nonprofit cooperative corporation organized under Article XI of the Private Housing Finance Law is statutorily exempt from Rent Stabilization. 546 W. 156th St. HDFC v. Smalls,

43 A.D.3d 7, 11 (1<sup>st</sup> Dept. 2007), 512 E. 11<sup>th</sup> St. HDFC v. Grimmet, 181 A.D.2d 488, 488-489 (1<sup>st</sup> Dept. 1992), *appeal dismissed*, 80 N.Y.2d 892 (1992). A government agency fixes the rentals of HDFC's, Private Housing Finance Law §576(1)(a); availability of units to occupants is assured within certain income guidelines, Private Housing Finance Law §576(1)(b); and the use of profits is restricted. Private Housing Finance Law §576(1)(c). These restrictions on the operation of the cooperative underscore a level of governmental involvement with the subject premises sufficient to trigger constitutional due process protections. 512 E. 11th St. HDFC, *supra*, 181 A.D.2d at 489. Accordingly, eviction of a tenant from such a cooperative "requires a cause other than mere expiration of the lease." *Id.*, Volunteers of America-Greater New York, Inc. v. Almonte, 65 A.D.3d 1155, 1157 (2<sup>nd</sup> Dept. 2009), Hudsonview Terrace v. Maury, 100 Misc 2d 331, 332 (App. Term 1<sup>st</sup> Dept. 1979). These restrictions even apply to tenants who take possession after an HDFC has taken title to the property and they also apply when the City's approval for the commencement of a holdover proceeding is not required. 330 South 3rd St. HDFC v. Bitar, 28 Misc.3d 51, 54 (App. Term 2<sup>nd</sup> Dept. 2010).

An HDFC is not allowed to use an extreme proposed rent increase in order to evade the requirement that it demonstrate cause to evict a tenant. 303 W. 122<sup>nd</sup> Street HDFC v. Hussein, 38 Misc.3d 1234A (Civ. Ct. N.Y. Co. 2013). Accordingly, the Court considers whether the evidence supports the proposition that the 75% rent increase Petitioner has offered Respondent undermines the requirement that Petitioner have good cause to terminate Respondent's tenancy. The Court credits the testimony of the Board President that Petitioner faces multiple expenses in the operation and maintenance of the Building and finite options with regard to revenue. The Court also notes that, given Petitioner's mission to provide housing for persons with low

incomes, Petitioner's voluntary forgoing of rent increases on elderly and disabled tenants is appropriate. Respondent did not introduce any evidence at trial that she requires such special consideration, nor that such an increase is a hardship for her. Finally, the Court credits Petitioner's evidence that the rent Petitioner sought for the subject premises was slightly below market for what a two-bedroom apartment would command in the neighborhood, and notes that Respondent introduced no evidence challenging that proposition.

Accordingly, the Court does not find that the rent increase Petitioner has proposed to Respondent constitutes an evasion of the requirement that Petitioner demonstrate good cause to terminate a tenancy. The Court awards Petitioner a final judgment of possession. As Petitioner's cause of action, as outlined in the termination notice, is a failure to sign a renewal lease, and as such a defect is curable, 210 Realty Assocs. v. O'Connor, 302 A.D.2d 396 (2<sup>nd</sup> Dept. 2003), 67 8th Ave. Associates v. Hochstadt, 88 A.D.2d 843 (1<sup>st</sup> Dept. 1982), Baja Realty, Inc. v. Karoussos, 120 Misc.2d 824, 825 (App. Term 1<sup>st</sup> Dept. 1983), 270-274 8th Ave., LLC v. Bakal, 34 Misc.3d 158A (App. Term 2<sup>nd</sup> Dept. 2012), the Court stays issuance of the warrant through June 19, 2014 to afford Respondent an opportunity to cure by executing the renewal lease offer pursuant to RPAPL §753(4).

The parties are directed to pick up their exhibits withing 30 days or they will either be sent to the parties or destroyed at the Court's discretion and in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York  
June 9, 2014

  
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HON. JACK STOLLER  
J.H.C.