SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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CLARE GRADY,

Plaintiff,

- v -

HESSERT REALTY L.P., 118 EAST 92ND STREET, LLC, ALVIN GLICK, MAUTNER-GLICK CORP.

Defendants.

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INDEX NO. 153565/2017

MOTION DATE

MOTION SEQ. NO. 1

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion for summary judgment

HON. BARBARA JAFFE:

Plaintiff commenced this action on April 17, 2017, seeking declaratory and injunctive relief, money damages due to alleged rent overcharges, and attorney fees. She moves pursuant to CPLR 3212 for an order granting her summary judgment and/or partial summary dismissal of all defenses. Defendants oppose and cross-move for summary judgment dismissing the claims against Mautner-Glick Corp. (MGC) and Alvin Glick on the ground that they are disclosed agents of the owner.

I. PLEADINGS

A. Verified complaint (NYSCEF 11)

Plaintiff alleges that she is the tenant of apartment 2C in a building at 118 East 92nd Street, New York, New York, owned by defendants Hessert and 118 East 92nd Street, and that her tenancy commenced in 1999, pursuant to a one-year lease dated May 9, 1999, at a monthly rent of $1,400. The lease contains no rent stabilization rider nor any basis for deregulation. Defendant MGC's principal, defendant Alvin Glick, signed the lease and signed ensuing lease renewals variably as landlord and on the landlord's behalf. All rent checks are paid to MGC. The renewals also contain no rent stabilization riders. An attorney for MGC offered and sent plaintiff lease renewals, but in early 2017, he orally advised her that her lease would not be renewed upon its expiration on May 31, 2017. Soon thereafter, plaintiff obtained pertinent records from the Department of Housing and Community Renewal (DHCR) reflecting that the last registered rent for the apartment was $1,022.92 in 1998.

Plaintiff thus seeks a judgment declaring that she and the apartment are protected under the Rent Stabilization Law and the Rent Stabilization Code, and that the legal rent is no more than $1,022.92, and an injunction mandating that defendants register the apartment at that rent and comply with the RSL and RSC including offering plaintiff renewal leases in DHCR-specified forms at the rent pursuant to the rent guidelines increase, and barring defendants from terminating her tenancy or refusing to offer her a renewal lease any basis not permitted by law. (*Id.*).

B. Verified answer (NYSCEF 12)

Defendants admit that the apartment is rent stabilized, and assert as affirmative defenses that plaintiff waived any claims for damages and other relief, that she was refunded any

overcharges with interest, that an award to her would constitute a windfall, that her claim is time-barred, that she failed to exhaust her administrative remedies, that this court lacks jurisdiction, that her claim is barred to the extent she has sought relief from an administrative agency, that she is entitled neither by law nor her lease to attorney fees, that some or all of her claims are barred on the ground that she is not the primary tenant of the apartment, that she fails to state a claim upon which relief may be granted, and that she is not entitled to declaratory relief absent any genuine dispute as to the rent regulatory status of her apartment.

II. PERTINENT UNDISPUTED FACTS

By indenture dated August 28, 1974, R. John Punnett and Hessert & Co., Inc., purchased the building in issue as tenants in common. (NYSCEF 42). On November 30, 1976, Punnett and Hessert sold the building to Punnett Realty Corp. (NYSCEF 43). On December 6, 1976, Punnett Realty sold the building to Punnett and Hessert. (NYSCEF 44).

DHCR records reflect that from 1998 to 1999, the tenant occupying the apartment before plaintiff paid a monthly rent of $1,022.92. (NYSCEF 16). Thereafter, the rent for the apartment was not registered with DHCR, until after plaintiff commenced this action. (*Id.*).

By lease dated May 8, 1999, plaintiff rented the apartment from "owner" Kent Realty Company at a monthly rent of $1,450. On February 17, 2000, plaintiff and Kent Realty, as landlord, agreed to a one-year lease renewal at an annual rent of $18,300, in equal monthly installments of $1,495. (NYSCEF 34).

On May 10, 2001, the lease was renewed by Kent and plaintiff for one year at an annual rent of $18,600, in equal monthly installments of $1,550. On February 14, 2002, the lease was renewed by Kent and plaintiff for one year at an annual rent of $18,600, in equal monthly installments of $1,550. On March 31, 2003, the lease was renewed by Kent and plaintiff for one

year at an annual rent of $18,600, in equal monthly installments of $1,550. On April 6, 2004, the lease was renewed by Kent and plaintiff for one year at an annual rent of $18,600, in equal monthly installments of $1,550. On April 6, 2004, the lease was renewed for one year at an annual rent of $18,600, in equal monthly installments of $1,550. (NYSCEF 34).

By renewal lease form, dated January 24, 2005, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,580, to commence on June 1, 2005, and end on May 31, 2006. Alvin Glick signed as "owner." By renewal lease form, dated February 21, 2006, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,595, again signed by Alvin Glick as owner. By renewal lease form, dated February 21, 2007, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,695, again signed by Alvin Glick as owner. (NYSCEF 35).

By renewal lease form, dated February 19, 2008, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,745, again signed by Alvin Glick as owner. By renewal lease form, dated February 19, 2009, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,745. By renewal lease form, dated February 19, 2010, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,650, again signed by Alvin Glick as owner. By renewal lease form, dated February 22, 2011, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,650, again signed by Alvin Glick as owner. (*Id.*). By renewal lease form,

dated February 15, 2012, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,675, again signed by Alvin Glick as owner. (NYSCEF 18, 35).

By deed dated December 27, 2012, R. John Punnett, c/o Mautner Glick Corp., sold the building to 118 East 92nd Street, LLC. (NYSCEF 46).

By renewal lease form, dated March 5, 2013, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,725, again signed by Alvin Glick as owner. (NYSCEF 19, 35). By renewal lease form, dated February 25, 2014, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,750, again signed by Alvin Glick as owner. (NYSCEF 20, 35).

By deed dated October 31, 2014, Hessert & Co. Inc., c/o Mautner Glick Corp., sold the building to Hessert Realty LP. (NYSCEF 45).

By renewal lease form, dated March 11, 2015, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $1,850, again signed by Alvin Glick as owner. By renewal lease form, dated March 23, 2016, and headed "not subject to rent regulation laws," "owner/agent" MGC and plaintiff agreed to a one-year lease renewal at a monthly rent of $2,050. (NYSCEF 35).

By letter dated April 11, 2017, MGC's general counsel advised plaintiff that it had "elected not to renew [her] lease," and that she was required to vacate as of May 31, 2017. (NYSCEF 21).

On or about April 18, 2017, plaintiff, through counsel, filed the instant complaint.

By letter dated April 21, 2017, MGC's attorney acknowledged receipt of plaintiff's summons and complaint, and provided for her a "complete rental analysis" of the apartment reflecting that the tenancy preceding hers had ended on April 30, 1998, and that her "vacancy lease" had commenced on May 9, 1999, the rent for which was set pursuant to the Rent Guidelines Board increase of 18 percent over the former tenant's $1,022.92. He also advised that the rent overcharges amounted to $4,626.15, and expressed his hope that she would "agree that the voluntary adjustment of [her] rent and refund of all monies collected in excess of the legal rent reflects that the owner's actions were not willful." Enclosed with the letter was a check for $4,626.15 and a two-year lease renewal commencing August 1, 2017, at $1,767.50 for the first year, and $1,802.80 for the second year. (NYSCEF 36). Plaintiff did not accept the settlement. (NYSCEF 10).

Plaintiff's check for May 2017 rent of $2,050 was returned to her. Her check for $1,767.50 was negotiated. (NYSCEF 10).

Defendants subsequently registered plaintiff's apartment with DHCR in May 2017: 5/9/1999-5/8/2000 at $1,207.05 per month. (NYSCEF 15). The registration for the year 2000 reflects a change in registration due to a "vacancy lease." (*Id.*). Defendants yearly registered the apartment with DHCR as follows:

5/9/2000-5/8/2001	1,231.19
5/9/1999-5/8/2000	$1,207.05
5/9/2000-5/8/2001	1,231.19
5/9/2001-5/8/2002	$1,280.43
5/9/2002-5/8/2003	1,331.65
5/9/2003-5/8/2004	$1,358.28
5/9/2004-5/8/2005	1,419.41
6/1/2005-5/31/2006	$1,469.09
6/1/2006-5/31/2007	1,509.49
6/1/2007-5/31/2008	$1,573.64
6/1/2008-5/31/2009	1,620.85
6/1/2009-5/31/2010	$1,693.79

6/1/2010-5/31/2011	1,650.00
6/1/2011-5/31/2012	$1,650.00
6/1/2012-5/31/2013	1,675.00
6/1/2013-5/31/2014	$1,708.50
6/1/2014-5/31/2015	1,750.00
6/1/2015-5/31/2016	$1,767.50

(*Id.*; NYSCEF 37). On these registrations, MGC is listed as the managing agent. (*Id.*).

III. LAW

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence to demonstrate the absence of any triable issues of fact. (*Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues that require a trial; "conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient." (*Amatulli v Delhi Constr. Corp.*, 77 NY2d 525, 533 [1991]; *McGinley v Mystic W. Realty Corp.*, 117 AD3d 504, 505 [1st Dept 2014]). In evaluating such a motion, the evidence must be viewed in the "light most favorable to the opponent of the motion and must give that party the benefit of every favorable inference." (*O'Brien v Port Authority of New York and New Jersey*, 29 NY3d 27, 37 [2017]).

Declaratory relief is a discretionary remedy which may be granted as "having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." (CPLR 3001; *see eg Jenkins v State of N.Y., Div. of Hous. & Community Renewal*, 264 AD2d 681 [1st Dept 1999]). In an action for a declaratory judgment, the court may determine the respective rights of all of the affected parties under a lease. (*See Leibowitz v Bickford's Lunch Sys.*, 241 NY 489, 500 [1926].)

Pursuant to NYC Administrative Code § 26-504.2, where a housing accommodation becomes vacant on or after April 1, 1997, and before the effective date of the Rent Act of 2011,

and where at the time the tenant vacated such housing accommodation the legal regulated monthly rent was $2,000 or more, it is not regulated.

> Where a residential landlord has overcharged rent, the tenant's action on it
>
> shall be commenced within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action."

(CPLR 213-a).

An exception to the statute has been created by the courts. Thus, "[u]nder certain circumstances, especially where a landlord has engaged in fraud in initially setting the rent or in removing an apartment from rent regulation, the court may examine the rental history for an apartment beyond the four-year statutory period allowed by CPLR 213-a." (*Taylor v 72A Realty Assocs., LP*, 151 AD3d 95, 102 [1st Dept 2017]). Additionally, where an apartment's rent history reflects "an attempt to circumvent the Rent Stabilization Law in violation of the public policy of New York . . . [it is] void at its inception," and any rent registration statement listing the illegal rent is "also a nullity." (*Thornton v Baron*, 5 NY3d 175, 181 [2005]). The four-year limitation is also disregarded where an "illusory prime tenancy" is alleged, and when "the standard base date rent is tainted by fraudulent conduct on the part of a landlord." (*Grimm v DHCR*, 15 NY3d 358, 362 [2010]). A "combination of factors" amounting to "substantial indicia of fraud" may constitute sufficient "evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization" so as to justify an inquiry beyond the four-year statute of limitations to determine the existence of such fraud and overcharge. (*Id.*).

Factors indicating fraud include: 1) that "the tenants immediately preceding petitioner paid significantly more than the previously registered rent"; 2) that those tenants "were [also] not

given a rent-stabilized lease rider"; 3) that "those tenants were informed that their rent would be higher but for their performance of upgrades and improvements at their own expense"; 4) that "[a]lmost simultaneously with the substantial increase in the rent for the affected unit, the owner ceased filing annual registration statements . . . [but] later filed several years' registration statements retroactively after receiving petitioner's overcharge complaint"; and 5) that "petitioner's [own] initial lease did not contain a rent-stabilized rider." (*Id.*). However, "an increase in the rent alone will not be sufficient to establish a 'colorable claim of fraud.'" (*Id.*) Rather, it must be shown that "a stratagem [exists and was] devised by [landlord] to remove tenants' apartment from the protections of rent stabilization." (*Conason v Megan Holding, LLC*, 25 NY3d 1, 16 [2015]).

The tenant bears the burden of coming forward with indicia of fraud sufficient to warrant looking beyond the four-year limitations period. (*Grimm*, 15 NY3d at 359; *Breen v 330 E. 50th Partners, L.P.*, 154 AD3d 583 [1st Dept 2017]). Even absent fraud, "where an owner fails to file a 'proper and timely' registration, until such registration is filed, the rent is frozen at the legal regulated rent listed in the preceding registration statement." (*Bradbury v 342 West 30th Street Corp.*, 84 AD3d 681 [1st Dept 2011]).

Here, plaintiff commenced the instant action on April 17, 2017. Four years prior thereto, her monthly rent was $1,725, although the rent registered by defendants for that time period was $1,675. The legal regulated rent listed on the last registration statement before 2017 is $1,022.92.

IV. CONTENTIONS

Plaintiff characterizes the following actions by defendants as fraudulent: 1) setting plaintiff's initial rent at $1,450, which is in excess of 20 percent on the vacancy rental;

2) failing to provide plaintiff with rent stabilization riders on any lease or renewal; 3) treating plaintiff as a deregulated tenant; and 4) refusing to renew her lease in 2017. (NYSCEF 13). She adds that the attorney's attempt to obtain a settlement from her directly, knowing that she was represented, also reflects a fraudulent intent, and argues that defendants' failure to file proper and timely registrations bars them from collecting rent in excess of the legal regulated rent in effect on the last preceding registration statement, which was most recently and properly registered in 1998 at a monthly rent of $1,022.92, and was not thereafter registered. She thus maintains that the rent must be frozen at that figure. (*Id.*).

Defendants maintain that their treatment of the apartment as deregulated was based on advice given them by the preceding managing agent, and that the other conduct of which plaintiff complains is incidental to that error. (NYSCEF 38). They offer the affidavit of Glick, who asserts that because Kent Realty executed the initial 1999 lease with plaintiff, and renewed the lease to 2005, MGC is not responsible for the initial error in deregulating the apartment, and that upon taking over the management of the building from Kent and being informed that the apartment was deregulated, defendants mistakenly treated it as deregulated. Glick also states that the April 11, 2017, letter to plaintiff sent by counsel was "sent without the advice of counsel retained to handle the overcharge complaint and in error because, as explained above, the landlord was under the mistaken belief that plaintiff was not a rent stabilized tenant." (NYSCEF 31).

Having learned from the commencement of this action that the apartment is rent stabilized, defendants offered plaintiff a check to reimburse her, based on the following calculations:

> From the base date (4/18/13) rent of $1,675, the two percent increase allowed by the Rent Guidelines Board for one year yields the legal rent of $1,708.50. Having charged plaintiff $1,725 for the following year, defendants overcharged her monthly $16.50, or $198 for the year.

> Defendants charged plaintiff $1,750 for the next year, but were permitted a four percent increase to $1,750. Thus, there was no overcharge for that year.
>
> Defendants charged plaintiff $1,850 for 2015 to 2016. Based on the permissible rent for the previous year of $1,750, and the one percent permissible increase, the legal rent was $1,767.50, yielding an overcharge of $82.50, or $990 for the year.
>
> For the next year, no increase was permitted. Defendants charged plaintiff a monthly rent of $2,050, or $282.50 over the previous legal rent, or 3,107.50 for the 11 months through April 30, 2017, totaling $4,295.50 in overcharges.

(*Id.*).

Glick asserts that having evinced no intention to be personally liable for the building, neither he nor MGC may be held liable here, and he denies having been named on the deed as the landlord and/or on any of the leases. (*Id.*).

In opposition to defendants' cross motion, plaintiff rejects defendants' reliance on a "mistake" as to the rent regulatory status of the apartment, observing that Glick neither identifies the source of the misinformation nor offers any detail as to the relationship between the former managing agent and the current owners, and alleges that there was a close relationship among the Punnetts and Glick, and that one of the individuals associated with the Kent is still "involved in the building ownership." She notes that the rent when he took over the building was below the deregulation threshold of $2,000, and thus, he had no basis for believing that the apartment was not rent regulated. Plaintiff also questions whether MGC or Glick checked DHCR records. Plaintiff also relies on several of the renewal leases which Glick signed as owner, thus maintaining that the alleged agency was not disclosed. As additional indicia of fraud, plaintiff relies on defendants' failure to have offered her a two-year lease on the many renewals, and the absence of any rent stabilization rider. (NYSCEF 41).

V. ANALYSIS

A. Fraud

The circumstances indicative of fraud in *Altschuler v Jobman 478/480, LLC*, distinguish it from the instant case. There, the defendant not only failed to provide the plaintiff with a lease rider and failed to file required annual registrations with DHCR during the plaintiff's tenancy, it also increased the rent from $422.04 to over $2,000 in subsequent years at a time when it received J-51 tax benefits. (135 AD3d 439 [1st Dept 2016], *lv denied* 29 NY3d 903 [2017]). Here, by contrast, there was, at most, an intentional failure to register. There is no issue of tax benefits or AIA improvements, and each lease and renewal made it clear that the rent was not regulated. Plaintiff was free to, but did not, check on the last registration. (*Taylor v 72A Realty Assoc.*, LP, 151 AD3d 95, 103 [1st Dept 2017]).

Of the combination of factors indicative of fraud set forth in *Grimm*, the only one pertinent here is that petitioner's initial lease did not contain a rent-stabilized rider. The other conduct identified by plaintiff as indicative of fraud relates to the leases themselves and to the settlement letter, which are incidental or referable to the alleged mistaken belief that plaintiff was a deregulated tenant. An increase in rent, by itself, is insufficient to show fraud. (*Conason v Megan Holding, LLC*, 25 NY3d 1 [2015]). Nor does the alleged close relationship among the former managing agent and the current agent and owner establish a scheme to defraud sufficient to warrant summary judgment on that ground, absent any of the other indicia of fraud, and notwithstanding the weakness of their explanation for treating the apartment as deregulated. (*See infra*, V.B.).

However, as it is undisputed that defendants collected unlawful rent overcharges before filing the late rent registrations in 2017, the rent provided in the last proper rent registration from

1998 to 1999, which is $1,022.92, is deemed the lawful and frozen base rent. (*See Altschuler*, 135 AD3d 439 [court properly froze rent as landlord collected improper rent overcharges before filing late registrations]).

Moreover, as defendants collected the improper amount of rent before they registered the apartment in 2017, they are not entitled to the benefit of any legal increases. (*See e.g., Matter of 215 W. 88th St. Holdings LLC v New York State Div. of Hous. and Community Renewal*, 143 AD3d 652 [1st Dept 2016] [owner who files improper rent registration barred from collecting rent above base date rent unless rent increases were lawful except for failure to file timely registration; as landlord impermissibly overcharged tenant, calculation of overcharge should not give landlord benefit of percentage increases that would have applied to each renewal if it had been charging legal rent]; *Matter of Hargrove v Div. of Hous. and Community Renewal*, 244 AD2d 241 [1st Dept 1997] [landlord's overcharge not based on non-registration but on mistaken belief that apartment was no longer rent-regulated, and thus rent frozen to that on base date]).

Therefore, any rent charged above $1022.92 from May 2013 to April 2017 was improperly collected, as follows:

> May 2013: the difference between $1,022.92 and $1,675, the amount paid by plaintiff; and June 2013 through May 2014: the difference between $1,022.92 and $1,725, the amount paid by plaintiff, yields a total overcharge of $9,077.04;
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> June 2014 to May 2015: the difference between $1,022.92 and the $1,750 paid by plaintiff, for a total of $8,724.96;
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> June 2015 to May 2016: the difference between $1,022.92 and the $1,850 paid by plaintiff, for a total of $9,924.96; and
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> June 2016 to April 2017: the difference between $1,022.92 and the $2,050 paid by plaintiff, for a total of $11,297.88.
>
> Moreover, as plaintiff paid May 2017 rent in the sum of $1,767.50, she is entitled to a refund of $744.58.

Pursuant to Real Property Law 234, plaintiff is also entitled to recover reasonable attorney fees, and interest on the overcharge. (*Mohassel v Fenwick*, 5 NY3d 44 [2005]).

B. Treble damages

Pursuant to Rent Stabilization Law § 26-516(a), an owner who is found to have collected a rent overcharge shall be liable to the tenant for a penalty equal to three times the amount of such overcharge; however, "[i]n no event shall such treble damage penalty be assessed against an owner based solely said owner's failure to file a timely or proper initial or annual rent registration statement." Treble damages may not be awarded for an overcharge occurring more than two years before the action is commenced. (Administrative Code of City of N.Y. § 26-516[a][2][i]).

To avoid the imposition of treble damages, the owner bears the burden of showing by a preponderance of the evidence that the overcharge was not willful. (*Matter of Obiora v New York State Div. of Hous. and Community Renewal*, 77 AD3d 755 [2d Dept 2010]).

Here, defendants' evidence of non-willfulness is based on its alleged mistaken belief that the apartment was deregulated. However, the mistake was allegedly conveyed to it by Kent, and defendants submit no non-hearsay evidence as to what Kent told them. Moreover, given MGC's extensive experience in managing apartments in New York City, the close relationship between Kent and MGC, and the fact that plaintiff was being charged a rental amount below the deregulation threshold, even if Kent gave MGC erroneous information, MGC had an independent duty to investigate and ascertain whether the apartment was regulated. (*See e.g., Butterworth v 281 St. Nicholas Partners, LLC*, 160 AD3d 434 [1st Dept 2018] [landlord failed to demonstrate that it did not act willfully as there were discrepancies in tenant's initial lease,

absence of annual registration statements after rent increase, and fact that initial rent did not reach deregulation threshold]).

Willful ignorance constitutes willful behavior. (*See e.g., Matter of Obiora*, 77 AD3d at 756 [landlord did not meet burden of disproving willful overcharge based on her ignorance of law and her attorney's incorrect advice]; *Matter of E. 163rd St. LLC v New York State Div. of Housing and Community Renewal*, 4 Misc 3d 169 [Sup Ct, Bronx County 2004] ["requiring the new owner to make some efforts to ascertain the reliability of the rent that had been charged by the predecessor landlord, in order to avoid carryover liability for treble damages within the scope of a rent overcharge, is clearly in harmony with pertinent regulations and case law]).

Plaintiff thus demonstrates that treble damages are warranted here, and that, therefore, she is entitled to an award of three times the overcharge from May 2015 to April 2017, in the amount of $21,949.92, for a total of $65,849.76.

C. Personal liability

As MGC signed numerous renewal leases as the "owner/agent" of the building, and as Glick signed them as the "owner," there is no basis for finding that they may not be held personally liable. Plaintiff also submits proof that Glick is listed as an officer of the property in DHCR records. (NYSCEF 52). (*Compare Crimmins v Handler & Co.*, 249 AD2d 89 [1st Dept 1998] [managing agent not personally liable for landlord's rent overcharge as agency was disclosed and no evidence that he intended to substitute or add his personal liability for or to principal]).

VI. CONCLUSION

Accordingly, it is hereby

Ordered, that plaintiff's motion for summary judgment is granted to the following extent:

(a) it is declared that plaintiff's apartment, #2C in 118 East 92nd Street, New York, New York, is subject to rent stabilization and that plaintiff is a rent-stabilized tenant;

(b) plaintiff is entitled to damages in the sum of $83,669.26, comprised of $17,074.92 in overcharges from May 2013 to April 2015, an overcharge of $744.58 in May 2017, and treble damages of $65,849.76 from May 2015 to April 2017, plus applicable interest; and

(c) defendants Alvin Glick and Mautner-Glick Corp. are held personally liable for plaintiff's damages;

It is further

ORDERED, that plaintiff is granted judgment in her favor against all defendants, jointly and severally, in the sum of $83,669.26 plus interest at the statutory rate from the date of the first overcharge at issue, May 2013, to the entry of judgment for a total sum of $_____; it is further

ORDERED, that plaintiff is also entitled to recover reasonable attorney fees, and plaintiff's counsel is directed to submit an affirmation and detailed documentation in support of his request for fees; and it is further

ORDERED, defendants' cross motion is denied in its entirety.

6/27/2018
DATE

BARBARA JAFFE, J.S.C.
HON. BARBARA JAFFE

CHECK ONE:	[X]	CASE DISPOSED			[ ]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[ ]	DENIED	[X]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER			[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	DO NOT POST			[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE