

<b>Tribbs v 326-338 E 100th LLC</b>
2021 NY Slip Op 32607(U)
December 6, 2021
Supreme Court, New York County
Docket Number: Index No. 150179/2018
Judge: W. Franc Perry
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At IAS Part 23 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the 10 day of DECEMBER, 2021.

PRESENT: W. F. Perry  
Hon. W. Franc Perry, J.S.C.

STUART DAVIDSON TRIBBS, on behalf of himself and others similarly situated,

Plaintiff,

- against -

326-338 E 100<sup>th</sup> LLC, STEVE CROMAN,

Defendants.

Index No. 150179/2018  
(NYSCEF Case)

**ORDER and JUDGMENT**

This matter having duly come before this Court on the 11<sup>th</sup> day of September 2020, by motion of Stuart Davidson Tribbs [Motion Seq. No. 7], made by him as class representative of the class and subclass in this class action as defined in this Court's order (July 2019 Order) dated July 15, 2019, and filed on July 16, 2019 [NYSCEF Doc. No. 128], for (i) an order dismissing Defendants 326-338 E 100<sup>th</sup> LLC and STEVE CROMAN's (collectively "Defendants") affirmative defenses and counterclaims as alleged in Defendants answer to Plaintiff's Second Amended Complaint [NYSCEF Doc. No. 189], and, for (ii) summary judgment on the issue as to whether a fraudulent scheme existed during the J-51 tax benefit period warranting the application of the default formula in this Action ("Plaintiff's Motion").

**WHEREAS** the class was defined in the July 2019 Order as all tenants at 326-338 East 100<sup>th</sup> Street, New York, New York ("326-338 East 100<sup>th</sup> Street") living, or

who had lived, in apartments that were deregulated during the period when J-51 tax benefits were being received by owner of 326-338 East 100<sup>th</sup> Street, except that the class should not include: (i) any tenants who vacated before January 8, 2014, or (ii) any tenants whose occupancy in any such apartment commenced after such J-51 tax benefits to the building ended (the "Class"); and

**WHEREAS**, the subclass was defined in the July 2019 Order as consisting of all current tenants at 326-338 East 100<sup>th</sup> Street whose tenancy commenced prior to the expiration of the J-51 tax benefits (the "Subclass");

**NOW**, upon reading and filing the papers submitted to this Court in support of the Plaintiff's Motion [NYSCEF Docket Nos. 191-202, 224-232, 263, 269, 273, and 275] and on behalf of Defendant in opposition to Plaintiff's Motion [NYSCEF Docket Nos. 211-223, 266, 271, 276 and 277], and upon the Court's Decision and Order on Motion dated May 11, 2011 [NYSCEF Docket No.280] (the "Decision"), it is hereby

**ORDERED** that that portion of Plaintiff's Motion seeking to dismiss Defendants' Affirmative Defenses and Counterclaims is granted, and same are hereby dismissed; and it is further

**ORDERED** that that portion of Plaintiff's Motion for summary judgment for an order determining that a fraudulent scheme existed during the J-51 tax benefit period warranting the application of the default formula in this Action is hereby granted. As such, it is hereby

**ORDERED and ADJUDGED** that Defendants engaged in a fraudulent scheme to evade the Rent Stabilization Law and/or code during the period in which the building received J-51 tax benefits and, as such, the formula codified at Rent Stabilization Code [9 NYCRR] §§2522.6(b)(3) and 2526.1(g) (the "Default Formula") is to be applied in calculating the rent overcharge claims of those tenants who fall

within the definition of the Class who are entitled to a rent overcharge award; and it is further

**ORDERED and ADJUDGED** that the rent overcharge claim of any applicable Class member shall be calculated by using the rent in effect on or actually paid by the applicable Class member, whichever is less, on the base date of January 8, 2014 or the date the applicable Class member took occupancy ("Base Date"), whichever is later, and through and including the date the Class member vacated his/her apartment (the "Vacate Date"), less the Default Formula rent in effect on the Base Date; and it is further

**ORDERED and ADJUDGED** that the amount of any rent overcharge award due to any Class member entitled to such an award, shall be limited to the time period commencing January 8, 2014, and through and including the Vacate Date (the "Liability Period") and shall be reduced by any rent arrears owed by the Class member and/or credits and/or rent concessions provided to the Class member during the Liability Period;

**ORDERED and ADJUDGED** that no treble damages shall be imposed or assessed upon any rent overcharge amount calculated to be awarded to any Class member, that relief having been waived in this Action as a statutory condition precedent of maintaining the Action; and it is further

**ORDERED and ADJUDGED** that statutory interest be assessed on any overcharge award; and it further

**ORDERED and ADJUDGED** that members of the Subclass who are currently tenants at 326-338 East 100<sup>th</sup> Street as of the date of this Order and Judgment, and whose tenancy commenced prior to the expiration of the J-51 tax benefits, are entitled to receive rent-stabilized leases in a form promulgated by the New York State Division of Housing and Community Renewal ("DHCR") and the apartment shall only be subject to

Rent Stabilization through the date that any such Subclass member vacates the apartment; and it is further

**ORDERED** that this matter is hereby referred to a Referee to hear and report on the following issues in accordance with the directives stated in this Order and Judgment:

- (a) the computation of the legal rent applicable to members of the Class and/or Subclass who fall within the Class and/or Subclass definition set forth in this Order and Judgment, which shall be computed by applying the Default Formula as applicable to any and/or each apartment; and
- (b) the computation of any rent overcharge collected from any member of the Class from January 8, 2014, and through and including the Vacate Date, which shall be computed by applying the Default Formula as applicable to any and/or each apartment; and
- (c) the amount of statutory interest to be awarded based upon any overcharge amount found to be due and owing.

**ENTER:**



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**W. FRANC PERRY, J.S.C.**