

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LYNN ADAMS, IRMA ALVAREZ, MARGARET BARTLETT, PATRICIA BRANDAO, FAINA BURKO, LOIDA CANCEL, KAREN CHATMAN, CHARLES CINTRON; CHRISTINE CLARKE, RONALD DAVIS, BARBARA DEUTSCH, CHRISTINE DOBUSH, THERESA MASSO EINHORN, MARINA GONZALEZ, ANNE GORDON, MARY GRATE, JARRETT GREENE, VIRGINIA HAMILTON, ANDREA HERNANDEZ, PATRICIA HUGHES, JACQUELINE JAMIESON, KISHA JOHNSON, LISA JOSEPH, DAWN KOHL, THOMAS KIRCHMER, STEPHEN KRAMER, ADAM KREISELMAN, EMELINE MAESTRE, LYNETTE MATTHEWS, MONICA MIDDLETON, ANITA MILLES, NEREIDA MUNOZ, SUSAN OLIVERAS, MYRNA ORTIZ, CLEMENT PAINSON, REGINA PARKER, MUJEEB UR RAHMAN, JOSE RAMOS, BENJAMIN ROMANO, MAVIS SEEHAUS, MICHAEL SELICK, JOAN SOWMA, TANYA TAYLOR, YMA THOMA, ANGIE THOMAS, KLAUDIO TROMBIN, SARAH WILKINS, and BARBARA WILLIAMS;

Plaintiffs,

-against-

MF ASSOCIATES OF NEW YORK LLC, YORKVILLE PLAZA ASSOCIATES LLC, and OGDEN CAP PROPERTIES LLC;

Defendants.

VERIFIED COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs are the tenants of apartments (each an “Apartment” and together the “Apartments”) in 205, 215, 225, and 235 East 95th Street, New York, New York 10028 (the “Buildings”).

2. Plaintiffs bring the instant action seeking: (i) a declaratory judgment that the Apartments are rent-stabilized; (ii) injunctive relief ordering the Defendants to offer Plaintiffs renewal leases pursuant to the Rent Stabilization Law and Code; (iii) overcharge damages, including treble damages, arising from Plaintiffs (a) being charged rent increases in excess of the Rent Guidelines Board increases authorized for rent stabilized leases between 2016 and 2019, in violation of DHCR's "waiver rule," and (b) being charged more than the amount of their preferential rents as of June 14, 2019, subject to maximum annual increases set forth by the Rent Guidelines Board; and (iv) attorney's fees.

3. Upon information and belief, the Buildings received a 421-a tax benefit which rendered the Apartments rent stabilized for the duration of the 421-a tax benefit period.

4. After the 421-a tax benefit expired, Defendants were permitted to deregulate a Plaintiff's Apartment if either: (i) the Defendants had provided the tenants with notices in at least 12-point font at each lease and renewal lease advising the Plaintiff that the Apartment would become deregulated after the expiration of the tax benefit and stating the approximate date that the tax benefit period was scheduled to expire; or (ii) the Apartment became vacant.

5. Upon information and belief, the tax benefit period expired on June 30, 1999, but each of the Plaintiffs received a lease or renewal lease (or succeeded to the tenancy of a person who received a lease or renewal lease) that instead listed June 30, 1997 as the date that the 421-a tax benefits for the Buildings would expire.

6. Upon information and belief, the notices that Plaintiffs received regarding the expiration of the 421-a tax benefits were in a font size less than 12-point font.

7. There have been no vacancies in any of the Apartments since June 30, 1999, because each of the Plaintiffs moved into their Apartment (or succeeded to the tenancy of a person who moved into their Apartment) before June 30, 1999.

8. As a result of the foregoing, the Apartments continue to be rent-stabilized and Plaintiffs are entitled to overcharge damages.

VENUE

9. Venue is properly placed in the County of New York pursuant to Civil Practice Law and Rules Section 503(c) because the subject premises and Defendants' principal places of business are located in this county.

PARTIES

10. Plaintiff Lynn Adams is the tenant of 215 East 95th Street, Apartment 18D and has lived there since 1987. She is a single mother who raised her daughter in the apartment. Ms. Adams is a director of legal affairs at Services for the Underserved, Inc., a government-funded human services organization which assists vulnerable populations such as the homeless, veterans, domestic violence survivors, and the disabled. Currently her daughter, son-in-law, and grandchildren live with her, including one grandchild who is autistic.

11. Plaintiff Irma Alvarez is the tenant of 205 East 95th Street, Apartment 9K, and she has lived there since 1987.

12. Plaintiff Margaret Bartlett is the tenant of 235 East 95th Street, Apartment 12D and has lived there since 1988. Ms. Bartlett raised her children and grandchildren in this apartment, and three of her grandchildren currently live with her there. Ms. Bartlett is a retired police department worker who worked at One Police Plaza during the World Trade Center attack,

which led her to develop PTSD, asthma, and respiratory problems. She is diabetic, and Ms. Bartlett's doctors and hospitals are located near her apartment.

13. Plaintiff Patricia Brandao is the primary tenant at 235 East 95th Street, Apartment 20D. She has lived in this apartment since around 1986 and raised her family here. Ms. Brandao currently works as an airline agent.

14. Plaintiff Faina Burko is the tenant of 235 East 95th Street, Apartment 14D and has lived there since 1986. She raised her son in this apartment, and he lives with her now due to the pandemic. Ms. Burko is a retired teacher who taught in New York City high schools for 34 years.

15. Loida Cancel is the primary tenant at 215 East 95th Street, Apartment 10K. She has been living in this apartment since the building opened in 1985. Her grandchildren, daughter-in-law, and partner live with her in the apartment. She is 62 years old, and her partner is 73 years old and has cancer.

16. Plaintiff Karen Chatman is the tenant of 215 East 95th Street, Apartment 17M, and she has lived there since 1987.

17. Plaintiff Charles Cintron is the tenant of 225 East 95th Street, Apartment 12C, and he has lived there since 1986.

18. Plaintiff Christine Clarke is the tenant of 225 East 95th Street, Apartment 29D and has lived there since 1989. Ms. Clarke raised her son in this apartment. Ms. Clarke works in a doctor's office coordinating patient care for spinal cord patients and is nearing to retirement.

19. Ronald Davis is the primary tenant at 215 East 95th Street, Apartment 19M. He has lived in this apartment since 1987. Mr. Davis worked as a claims investigator for the workers' compensation board and as a director of personnel administration with the NY State Health

Department. Mr. Davis is currently the primary caregiver for his father, a Korean War veteran who lives nearby to the Buildings.

20. Plaintiff Barbara Deutsch is the tenant of 235 East 95th Street, Apartment 29C and has lived there since 1995.

21. Plaintiff Christine Dobush is the primary tenant at 215 East 95th Street, Apartment 17F. She has been living in this apartment since 1987. Ms. Dobush trained as a ballet dancer and founded an arts non-profit organization that engages in educational outreach regarding dance and licenses artistic intellectual properties.

22. Plaintiff Theresa Masso Einhorn is the tenant of 235 East 95th Street, Apartment 26D and has lived there since 1986. She raised her son in this apartment. Ms. Einhorn is retired, was recently widowed, and has substantial medical costs for multiple chronic health conditions.

23. Plaintiff Marina Gonzalez is the tenant of 215 East 95th Street, Apartment 20A, and she has lived there since 1986.

24. Plaintiff Anne Gordon is the tenant of 215 East 95th Street, Apartment 23D and has lived there since 1995. Ms. Gordon raised her family in this apartment. Currently, her 35-year-old daughter and 11-year-old granddaughter live in the apartment with her. Ms. Gordon is currently retired and previously worked for the New York City Department of Homeless Services.

25. Plaintiff Mary Grate is the tenant of 225 East 95th Street, Apartment 25D and has lived there since 1986. Ms. Grate is a retiree and lives in the apartment with her daughter, who is a student.

26. Plaintiff Jarrett Greene is the tenant of 215 East 95th Street, Apartment 3K and has lived there since March 1998, when he and his mother moved into the apartment. Mr. Greene's sister moved into the apartment in 2003 and has lived there since then. Their mother died on August 9,

2020. Mr. Greene is currently pursuing a masters' degree at St. John's University while working at Yelp and raising his younger sister. Mr. Greene and his younger sister volunteer at the Hospital for Special Surgery, where their mother worked for about 15 years prior to her death.

27. Plaintiff Virginia Hamilton is the tenant of 215 East 95th Street, Apartment 16F and has lived there since 1987. Ms. Hamilton is 76 years old and has Addison's disease, which leaves her bedridden. She also has severe anxiety and depression.

28. Plaintiff Andrea Hernandez is the tenant of 215 East 95th Street, Apartment 28D and has lived there since 1988. Ms. Hernandez raised her son in the apartment, primarily as a single mother. Ms. Hernandez worked as a teacher in her community and retired from her job as a school principal in July 2021. Her 94-year-old mother lives ten blocks away, and her adult son, who has special needs, also lives nearby.

29. Plaintiff Patricia Hughes is the tenant of 235 East 95th Street, Apartment 25D and has lived there since 1986. She raised her children in this apartment. Ms. Hughes works as a medical ultrasound technician and is a volunteer with Society of St. Vincent DePaul. Her 95-year-old mother lives nearby.

30. Plaintiff Jacqueline Jamieson is the tenant of 235 East 95th Street, Apartment 16D and has lived there since February 1999. She currently lives in the apartment with her husband and 12-year-old son. Ms. Jamieson works as a school nurse, her son attends school in Harlem, and her husband is a recent immigrant who works odd jobs while establishing his career.

31. Plaintiff Kisha Johnson is the tenant of 225 East 95th Street, Apartment 14C and has lived there since 1986, when she moved in with her parents. Her parents passed in 2007 and 2008 and she succeeded to their tenancy in 2014. Ms. Johnson currently lives with her 26-year-

old son who is a maintenance worker. Ms. Johnson works as a hostess in the food and nutrition department in a hospital.

32. Plaintiff Lisa Joseph is the tenant of 205 East 95th Street, Apartment 15A and has lived there since 1987. Ms. Joseph is a retired school secretary who is still involved in the teachers' union and is active in her local church.

33. Plaintiff Dawn Kohl is the tenant of 205 East 95th Street, Apartment 27A and has lived there since 1996. She raised her son and daughter in this apartment. Prior to becoming disabled in 2019, Ms. Kohl worked in finance at Mount Sinai Hospital, Planned Parenthood, and the Lighthouse Organization. Ms. Kohl suffers from anxiety, depression, agoraphobia, PTSD, and ADHD.

34. Plaintiff Thomas Kirchmer is the tenant of 225 East 95th Street, Apartment 22C and has lived there since 1992. He and his wife have raised their children in this apartment. Mr. Kirchmer works as a musician, has a business repairing instruments, and works as a contractor at a school that was closed for most of the pandemic. He plans to retire soon.

35. Stephen Kramer is the primary tenant at 225 East 95th Street, Apartment 11C. He has lived in this apartment since 1996 with his wife, Barbara, daughter and grandson. Mr. Kramer is a doorman in a nearby building on 87th Street and has been working there since 1999. He has raised three generations of his family in the apartment.

36. Plaintiff Adam Kreiselman is the tenant of 215 East 95th Street, Apartment 30B and has lived there since 1992. He has worked in theater management in nonprofit theater and on Broadway for 30 years.

37. Emeline Maestre is the primary tenant at 235 East 95th Street, Apartment 30B. She has lived in this apartment since 1987, where she has raised her two sons who continue to live with

her since they have special needs and autism. Moving would be difficult for her sons, who have difficulty with change as a result of their mental health challenges.

38. Plaintiff Lynette Matthews is the tenant of 225 East 95th Street, Apartment 7C, and she has lived there since 1990.

39. Plaintiff Monica Middleton is the tenant of 225 East 95th Street, Apartment 5C, and she has lived there since 1986.

40. Plaintiff Anita Milles is the tenant of 235 East 95th Street, Apartment 19D and has lived there since 1986. Ms. Milles raised her son in this apartment. Ms. Milles is retired now but previously worked as an office manager of a dental office for 30 years.

41. Plaintiff Nereida Munoz is the tenant of 225 East 95th Street, Apartment 28D and has lived there since 1987. She raised her family in this apartment. Ms. Munoz is 73 years old and works part-time as a fitness instructor for senior citizens. She has colon cancer, liver tumors, and arthritis, which require frequent medical treatments.

42. Plaintiff Susan Oliveras is the tenant of 205 East 95th Street, Apartment 17A and has lived there since 1986. Ms. Oliveras is a breast cancer survivor, has a medical condition called achondroplasia, and lives with her caretaker. Ms. Oliveras worked for the city as a lab worker in the Pathology Department of Metropolitan Hospital for 31 years before retiring due to the onset of cancer and being struck by a car which resulted in three spinal surgeries.

43. Plaintiff Myrna Ortiz is the tenant of 215 East 95th Street, Apartment 28A and lived there since 1987. She is a retired accountant and a cancer survivor.

44. Plaintiff Clement Painson is the tenant of 205 East 95th Street, Apartment 3K and has lived there since 1987. Mr. Painson and his wife raised two children in this apartment. His wife passed away in 2018 and he currently resides in the apartment with his 41-year-old daughter,

who is a medical assistant. Mr. Painsen is a retired from his career as a security guard in a hospital.

45. Plaintiff Regina Parker is the tenant of 205 East 95th Street, Apartment 6K, and she has lived there since 1987.

46. Plaintiff Mujeeb Ur Rahman is the tenant of 225 East 95th Street, Apartment 18C and has lived there since 1992. Mr. Rahman lives in this apartment with his wife and daughter, and he raised his three children in the apartment. Mr. Rahman was previously a restaurant worker but is currently disabled.

47. Plaintiff Jose Ramos is the tenant of 225 East 95th Street, Apartment 8C and has lived there since 1986. Mr. Ramos has five grandchildren, and his 31-year-old special-needs son lives with him in the apartment. Mr. Ramos does tax preparation on the side and is active in his church, Manhattan Grace Tabernacle.

48. Plaintiff Benjamin Romano is the primary tenant at 235 East 95th Street, Apartment 10D. Mr. Romano has lived in this apartment since 1988 and has raised his family there. Mr. Romano worked in construction and as a security guard and has coached little league baseball for the Yorkville Youth Association for the past 40 years. Mr. Romano has difficulty walking due to back surgery, and daughter and grandson often visit him in the apartment.

49. Plaintiff Mavis Seehaus is the tenant of 225 East 95th Street, Apartment 5M and has lived there since 1987. Ms. Seehaus is a social worker who works with adults with chronic illness and children, as well as a child protection coordinator for a hospital, and has dedicated her work to the underserved in New York City her entire career.

50. Plaintiff Michael Sellick is the tenant of 205 East 95th Street, Apartment 18D and has lived there since he was born. His mother, Sharon Sellick, moved into the apartment in 1993 and

they both continuously lived there until 2015, when Ms. Sellick moved into a Mitchell Lama apartment. Mr. Sellick is 30 years old and is diagnosed with autism, so his mother is his legal guardian. In 2019, Mr. Sellick's name was added to the lease after Ms. Sellick filed a complaint with the New York City Human Rights Commission. Due to his disability, it would be traumatic for Mr. Sellick to be forced to move from his apartment.

51. Plaintiff Joan Sowma is the tenant of 225 East 95th Street, Apartment 19B and has lived there since 1990.

52. Plaintiff Tanya Taylor is the tenant of 235 East 95th Street, Apartment 14B and has lived there since 1987. Ms. Taylor is a retiree who previously worked in a healthcare insurance agency and a hospital. She has several medical conditions including lupus, a pacemaker for a heart condition, and rheumatoid arthritis.

53. Plaintiff Yma Thoma is the primary tenant at 225 East 95th Street, Apartment 4K. She has lived in this building since 1985, starting out in a one-bedroom apartment and then moving to her current two-bedroom apartment in around March or May 1999. Ms. Thoma raised her daughter in her current apartment, was married there, and grew up in the neighborhood. All of her doctors are a mile away at Lenox Hill.

54. Plaintiff Angie Thomas is the tenant of 235 East 95th Street, Apartment 24H, and she moved into the apartment in June 1999. Ms. Thomas has worked as a teacher in Spanish and English as a second language at a nearby public school for 22 years, and she provides English tutoring in the neighborhood. Ms. Thomas has mobility issues due to chronic health conditions, and her doctors and church are located close to her home.

55. Plaintiff Klaudio Trombin is the tenant of 235 East 95th Street, Apartment 6B, and he has lived there since 1989.

56. Plaintiff Sarah Wilkins is the tenant of 235 East 95th Street, Apartment 21A and has lived there since 1986. Ms. Wilkins has a heart condition, for which she receives treatment nearby her home at Mt. Sinai.

57. Plaintiff Barbara Williams is the tenant of 205 East 95th Street, Apartment 4D and has lived there since 1987. She raised her daughter in this apartment as a single mother. Ms. Williams previously worked for the United States Department of Defense and is now retired. Her 39-year-old daughter lives with her and is currently serving in the military. When she originally moved in, Ms. Williams was told by management that the apartment would remain rent-stabilized until she left.

58. Plaintiff Albert Wright is the tenant of 215 East 95th Street, Apartment 10L, and he has lived there since 1989.

59. Defendant MF Associates of New York LLC is a domestic limited liability corporation that is registered with the New York Department of State. MF Associates of New York LLC owns the Buildings located at 215, 225, and 235 East 95th Street.

60. Defendant Yorkville Plaza Associates LLC is a domestic limited liability corporation that is registered with the New York Department of State. Yorkville Plaza Associates LLC owns the Building located at 205 East 95th Street.

61. Defendant Ogden Cap Properties LLC is a domestic limited liability corporation that is registered with the New York Department of State. Upon information and belief, Ogden Cap Properties LLC is the managing agent of each of the Buildings.

RELEVANT STATUTORY AND REGULATORY SCHEME

62. With some limited exceptions, tenants in rent-stabilized apartments must be offered renewal leases. *See* RSC § 2523.5(d).

63. Where the amount charged to and paid by the tenant under a rent stabilized lease is less than the legal regulated rent, such rent is known as a “preferential rent.” *See* RSC § 2521.2. For lease renewals taking effect after June 14, 2019, a landlord may increase such preferential rent by no more than the applicable rent guidelines increase or other increase specifically authorized under the rent stabilization laws. *Id.*

64. Prior to June 14, 2019, under DHCR’s “waiver rule,” where a landlord failed to offer a proper rent stabilized lease that properly advised the tenant of the landlord’s right to charge a higher legal rent, the landlord was determined to have waived its right to seek increases based on that higher legal rent. In such cases, the rent actually charged to the tenant in his or her lease agreement became the legal regulated rent for the duration of the tenancy and the landlord was permitted to increase this rent by no more than the maximum increases authorized by the Rent Guidelines Board.

65. If an owner has been found to have improperly deregulated an apartment or collected a rent higher than the proper legal regulated rent, “the owner shall be liable to the tenant for a penalty equal to three times the amount of such overcharge.” NYC Adm. Code § 26-516. It is the landlord’s burden to prove, by a preponderance of the evidence, that the overcharge was not willful, such that treble damages should not be imposed, in which case the owner is liable for the amount of the overcharge plus interest. *See* NYC Adm. Code § 26-516(a).

66. Real Property Tax Law § 421-a grants certain tax benefits to landlords and, in exchange, requires that apartments within a building receiving such benefits remain subject to rent

stabilization during the tax benefit period.

67. RPTL §421-a(2)(f) provides that:

Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of a unit shall be fully subject to control under such local law or such act, unless exempt under such local law or such act from control by reason of the cooperative or condominium status of the unit, for the entire period during which the property is receiving tax benefits pursuant to this section for the period any such applicable law or act is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such control to the same extent and in the same manner as if this section had never applied thereto, except that such rents shall be decontrolled if:

(i) with respect to units subject to the provisions of this section on the effective date of this subparagraph such a unit becomes vacant after the expiration of such ten year period or applicable law or act ...; or

(ii) with respect to units which become subject to the provisions of this section after the effective date of this subparagraph, such tax benefit period as provided in the opening paragraph of this paragraph or applicable law or act shall have expired and either each lease and renewal thereof for such unit for the tenant in residence at the time of such decontrol has included a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of such tax benefit period as provided in the opening paragraph of this paragraph or applicable law or act and states the approximate date on which such tax benefit period as provided in the opening paragraph of this paragraph is scheduled to expire; or such unit becomes vacant as provided under subparagraph (i) of this paragraph.

68. The effective date of RPTL § 421-a(2)(f) was July 3, 1984.

69. Accordingly, an apartment that became subject to rent stabilization under RPTL § 421-a exemption after July 3, 1984, can only be deregulated after the expiration of that tax benefit if either: (i) the landlord provided the tenants with notices in at least 12-point font at each lease and renewal lease that the apartment will become deregulated after the expiration of the tax benefit

and states the approximate date that the tax benefit period is scheduled to expire; or (ii) the apartment becomes vacant. *See* RPTL § 421-a (2)(f)(ii).

STATEMENT OF FACTS

70. Upon information and belief, Defendants completed construction of the Buildings from 1985 to 1988.

71. Upon information and belief, each of the Buildings benefited from property tax benefits pursuant to Section 421-a of the New York State Real Property Tax Law.

72. Upon information and belief, those 421-a tax benefits expired on June 30, 1999.

73. Upon information and belief, Defendants issued at least one renewal lease to each of the Plaintiffs with annexed riders stating that the 421-a tax benefits expired on June 30, 1997.

Attached as Exhibit A is an example of a renewal lease rider listing the erroneous expiration date for the 421-a tax benefits.

74. Upon information and belief, in addition to containing an erroneous expiration date, the 421-a notices provided to Plaintiffs were in a font size less than 12-point type.

75. Upon information and belief, the Defendants realized their error and began to issue renewal leases to Plaintiffs in 2001 with riders that listed the expiration of the 421-a tax benefits as June 30, 1999. Attached as Exhibit B is an example of a renewal leases rider listing the correct expiration date for the 421-a tax benefits.

76. By the time that Defendants began to offer Plaintiffs renewal leases with riders containing the correct expiration date, such date had already passed and the 421-a benefits period had expired.

77. In certain other pending litigation, the Defendant Yorkville Plaza Associates, LLC initially claimed that the 421-a tax benefits expired on June 30, 1999, but have recently begun

claiming that the expiration date was instead June 30, 1998. That Defendant has not provided any explanation for the ongoing confusion regarding the expiration date of the tax benefit nor have they provided documentation supporting the new expiration date. Attached as Exhibits C and D are affirmations from Defendant Yorkville Plaza Associates, LLC's employee and counsel in that litigation.

78. Additionally, there has not been a vacancy for any of the Apartments since June 30, 1999, because each of the Plaintiffs moved into their Apartment (or succeeded to the tenancy of a person who moved into their Apartment) before June 30, 1999.

79. As a result, the Plaintiffs' Apartments continue to be rent-stabilized pursuant to RPTL § 421-a(2)(f).

80. Upon information and belief, at or about the same time that Defendants completed construction on the Buildings, Defendants entered into regulatory agreements (the "80/20 Agreements") with the New York State Housing Finance Agency ("HFA"), wherein, among other things, Defendants agreed that 20% of the completed units would be occupied by low- or moderate-income families. Copies of the 80/20 Agreements are attached as Exhibits E and F.

81. As a result of the 80/20 Agreements, Defendants continued to charge Plaintiffs rents that were substantially below the prevailing market rents for such apartments, even after the expiration of the 421-a tax benefits on June 30, 1999.

82. Upon information and belief, the 80/20 Agreements terminated between 2012 and 2015, varying by building. For example, the 80/20 Agreement terminated at 215 East 95 Street in 2012, whereas it terminated at 205 East 95 Street in 2015.

83. Upon information and belief, beginning upon termination of the 80/20 agreements, the Defendants began to demand large rent increases from some Plaintiffs at lease renewal. These

rent increases were in excess of those promulgated by the Rent Guidelines Board and in some instances exceeded ten percent.

84. Upon information and belief, the Defendants continued to limit other Plaintiffs' rent increases for a period after the expiration of the 80/20 Agreements, taking only the maximum allowable rent increases for rent-stabilized apartments promulgated by the Rent Guidelines Board.

85. Upon information and belief, approximately three years after termination of the 80/20 Agreements, Defendants began to demand large rent increases from the remainder of the Plaintiffs at lease renewal. These rent increases were in excess of those promulgated by the Rent Guidelines Board and in some instances exceeded ten percent.

86. Rent Stabilization Code § 2521.2 states that where a tenant pays an amount of rent less than the legal regulated rent for her apartment, such rent is known as a "preferential rent." As a preferential rent is defined by reference to the legal regulated rent, the existence of a preferential rent necessarily contemplates that the tenant's apartment is subject to rent stabilization.

87. On June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (the "HSTPA") was passed and provides, among other things, that tenants who were paying a preferential rent as of that date retain the preferential rent for the duration of their tenancy, subject to maximum annual increases set forth by the Rent Guidelines Board and any other increases authorized by law.

88. As a result, Plaintiffs are entitled to refund of all rent charged in excess of their June 14, 2019 rents subject to maximum annual increases set forth by the Rent Guidelines Board.

89. Furthermore, upon information and belief, between 2012 and 2019, Defendants offered some Plaintiffs renewal leases which indicated that their apartments were no longer subject to rent stabilization.

90. Upon information and belief, Defendants began treating these Plaintiffs' apartments as exempt from rent regulation, charged Plaintiffs rent increases in excess of those authorized by the Rent Guidelines Board, and ceased registering Plaintiffs' apartments as rent stabilized with DHCR.

91. There is no such thing as a preferential rent in a free market lease, and an unlawful free market lease cannot properly preserve a landlord's right to seek increases based on a higher legal regulated rent than the rent actually charged to a tenant.

92. Under DHCR's "waiver rule," where a landlord fails to offer a proper rent stabilized lease advising the tenant of both her preferential rent and the higher, legal regulated rent that could have been charged upon vacancy or renewal, the rent actually charged in the tenant's lease becomes the legal rent for the duration of the tenancy and the landlord waives its right to collect the higher registered rent.

93. As Defendants failed to offer Plaintiffs proper rent stabilized leases, and instead offered them unlawful free market leases for their apartments, Defendants failed to preserve their right to demand rent increases calculated based on any higher legal regulated rent.

94. As such, during the period between the expiration of Plaintiffs' last rent stabilized renewal leases and the June 14, 2019 effective date of the HSTPA, Plaintiffs were only permitted to be charged rent increases upon the rents actually charged in their unlawful free market leases that were no greater than those authorized by the Rent Guidelines Board for rent stabilized apartments.

95. To the extent that the rent increases charged to Plaintiffs during the period between the expiration of Plaintiffs' last rent stabilized renewal leases and the June 14, 2019 effective date of the HSTPA exceeded those authorized by the Rent Guidelines Board for rent stabilized leases, such increases represent unlawful overcharges.

96. Finally, because the Defendants' actions in overcharging the Plaintiffs were willful, Plaintiffs are entitled to treble damages for any overcharges collected.

FIRST CAUSE OF ACTION:
Declaratory Relief that the Plaintiffs' Apartments are Rent-Stabilized

97. Plaintiffs hereby repeat and re-allege each and every allegation contained in paragraph 1-96 above as if they were stated herein

98. Upon information and belief, the Buildings received a tax benefit pursuant to Section 421-a of the New York State Real Property Tax Law, which expired on June 30, 1999.

99. Upon information and belief, each of the Plaintiffs received a lease or renewal lease (or succeeded to the tenancy of a person who received a lease or renewal lease) with annexed riders that failed to list in at least 12-point font the approximate date that the 421-a tax benefits for the Buildings would expire.

100. There has not been a vacancy for any of the Apartments since June 30, 1999 because each of the Plaintiffs moved into their Apartment (or succeeded to a person who moved into their Apartment) before June 30, 1999.

101. As a result, Plaintiffs are entitled to a declaratory judgment pursuant to CPLR § 3001 that their Apartments continued to be rent-stabilized after the expiration of the 421-a tax benefits for the Building on June 30, 1999.

SECOND CAUSE OF ACTION: Injunctive Relief Requiring Defendants to Offer Rent Stabilized Renewal Leases to Plaintiffs Pursuant to Rent Stabilization Law and Code

102. Plaintiffs hereby repeat and re-allege each and every allegation contained in paragraphs 1-96 as if they were stated herein.

103. Plaintiffs are entitled to injunctive relief ordering Defendants to offer Plaintiffs renewal leases pursuant to the Rent Stabilization Law and Code.

THIRD CAUSE OF ACTION: Rent Overcharge

104. Plaintiffs hereby repeat and re-allege each and every allegation contained in paragraph 1-96 above as if they were stated herein.

105. Because Plaintiffs' Apartments continued to be rent-stabilized after June 30, 1999, Plaintiffs are entitled to refund of all rents charged in excess of their June 14, 2019 rents subject to maximum annual increases set forth by the Rent Guidelines Board.

106. Because Defendants in the period between 2012 and 2019 offered Plaintiffs unlawful free market leases that failed to preserve Defendants' right to collect any higher legal regulated rent, Defendants waived their ability to charge rent increases in excess of the maximum annual increases set forth by the Rent Guidelines Board even prior to June 14, 2019.

107. Because the Defendants' actions in overcharging the Plaintiffs were willful, Plaintiffs are entitled to treble damages for any overcharges collected.

FOURTH CAUSE OF ACTION: Attorneys' Fees

108. Plaintiffs hereby repeat and re-allege each and every allegation contained in paragraph 1-96 above as if they were stated herein.

109. Plaintiffs are entitled to an award of attorneys' fees pursuant to the leases between the Defendants and each Plaintiff, and pursuant to RPL § 234, in an amount to be determined by the trier of fact upon being declared the prevailing party in this action.

110. Plaintiffs are also entitled to an award of costs and attorneys' fees pursuant to RSL (NYC Admin Code) § 26-516(a)(4) and RSC (9 NYCRR) § 2526.1(d).

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that this Court issue:

- a. a declaratory judgment that the Plaintiffs' Apartments are rent-stabilized;
- b. injunctive relief requiring that the Defendants offer Plaintiffs renewal leases that comply with the Rent Stabilization Law and Code;
- c. a judgment for overcharges collected by the Defendants in an amount to be determined at trial, plus treble damages;
- d. an award of reasonable attorney fees and costs; and
- e. such other and further relief as the Court may deem just, proper, and equitable.

Dated: November 17, 2021
New York, New York



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