

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

ERIN DOLAK, Y.D. VALDEZ and DAVID
MORHOVICH, on behalf of themselves and
all others similarly situated,

Plaintiffs,

-v-

ACI VI DENIZEN LLC

Defendant.

Dated Filed: October 12, 2022

Index No. _____
(NYSCEF Case)

SUMMONS

Plaintiffs designate New York
County as the place of trial. The
basis of venue is Defendant's residency.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 12, 2022

NEWMAN FERRARA LLP



By: _____

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

ERIN DOLAK, Y.D. VALDEZ and DAVID
MORHOVICH, on behalf of themselves and
all others similarly situated,

Index No.:

Plaintiffs,

**PLAINTIFFS' CLASS ACTION
COMPLAINT**

-v-

ACI VI DENIZEN LLC

Defendant.

Plaintiffs Erin Dolak, Y.D. Valdez and David Morhovich (“Plaintiffs”), individually, and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against Defendant ACI VI Denizen LLC (“Defendant”).

INTRODUCTION

1. Defendant is the owner-in-fee of the apartment building located at 54 Noll Street, in Brooklyn.

2. The Building participates in the 421-a Program, which requires landlords to register their apartments with the Division of Housing and Community Renewal (“DHCR”), and that those units be treated as rent-stabilized.

3. Defendant has evaded the 421-a Program’s requirements, and governing rent-stabilization laws, in two ways.

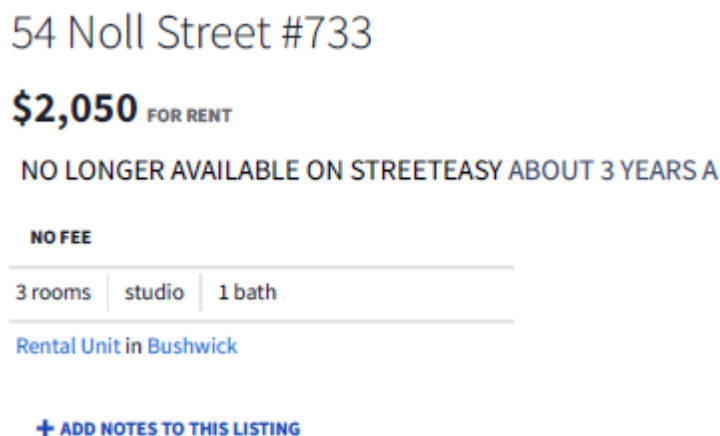
4. *First*, the initial legal regulated rent to be registered for an apartment in a 421-a building must be the “monthly rent charged and paid by the tenant,” and all subsequent rent increases are to be derived from that number.

5. Here, Defendant registered initial rents at amounts far higher than what the initial tenant was paying.

6. For example, the rent history for Unit 733, shows that the apartment was registered, as follows:

2017	*REG NOT FOUND FOR SUB...			11/26/2018
2018-I	RS	12/19/2018	2425.00	11/30/2019
	TENANT: NICHOLAS ALEKHINE			
2019	RS	07/02/2019	2425.00	11/26/2018
	TENANT: NICHOLAS ALEKHINE			11/30/2019
				12/01/2019

7. However, based on contemporaneous advertisements, from the online apartment website Streeteasy, shows a significantly lower number and reinforces that the initial registration amount of \$2,425 was inflated. One listing showed:



8. **Second**, Defendant fails to abide by the rent regulations with respect to “preferential rents.”

9. For example, at the Building, Plaintiff Morhovich first occupied Apartment 349 on September 30, 2020, with a lease expiring on September 31, 2021.

10. Plaintiff Morhovich's lease, commencing September 1, 2021 contained a purported "Legal Regulated Rent" of \$2,385.25, and a "Preferential Rent" of \$2,350.00.

11. Plaintiff Morhovich also received a three-month rent concession, making the "net effective rent," \$1,762.50.

12. That "net effective rent" represents the actual rent charged and paid for Apartment 349, and that figure is what should have been registered as the preferential rent for Plaintiff Morhovich's unit.

13. On June 15, 2019, our state's legislature passed the Housing Stability and Tenant Protection Act of 2019 ("HSTPA").

14. HSTPA provides that a landlord can only increase a preferential rent by a percentage amount promulgated by the Rent Guidelines Board ("RGB").

15. For Plaintiff Morhovich's second renewal lease, Defendant pulled his concession, and wrongfully increased his preferential rent by approximately 35% (the permitted RGB increase was only 1.5%).

16. The aforementioned conduct evinces an attempt, by Defendant, to circumvent the requirements of New York City's rent regulations, all at the expense of the Building's many tenants.

PARTIES

Plaintiffs

17. Plaintiff Erin Dolak resides in Apartment 501 at the Building.

18. Apartment 501's rent history on file with DHCR provides that the unit was first occupied in 2018, with an initial legal rent of \$3,200.00.

19. Upon information and belief, the first tenant to occupy Apartment 501 received a rent concession, which is not reflected in the initial legal regulated rent registered with DHCR.

20. Had the initial legal regulated accounted for the rent concession, the actual sum to have been registered would have been lower than \$3,200.00.

21. Because subsequent rent increases were based upon an incorrect initial legal regulated rent, the entire rent history is tainted.

22. The correct legal regulated rent for Apartment 501 must be calculated pursuant to the rent regulations, is currently unknowable to said Plaintiff, and can only be determined after discovery.

23. Plaintiff Y. D. Valdez resides in Apartment 733 at the Building.

24. Apartment 733's rent history on file with DHCR provides that the unit was first occupied in 2018, with an initial legal rent of \$2,425.00.

25. Upon information and belief, the first tenant to occupy Apartment 733 received a rent concession, which is not reflected in the initial legal regulated rent registered with DHCR.

26. Had the initial legal regulated accounted for the rent concession, the actual sum to have been registered would have been lower than \$2,425.00.

27. Because subsequent rent increases were based upon an incorrect initial legal regulated rent, the entire rent history is tainted.

28. The correct legal regulated rent for Apartment 733 must be calculated pursuant to the rent regulations, is currently unknowable to said Plaintiff, and can only be determined after discovery.

29. Plaintiff David Morhovich resides in Apartment 349 at the Building.

30. Apartment 349's rent history on file with DHCR provides that the unit was first occupied in 2018, with an initial legal rent of \$2,350.00.

31. Upon information and belief, the first tenant to occupy Apartment 349 received a rent concession, which is not reflected in the initial legal regulated rent registered with DHCR.

32. Had the initial legal regulated accounted for the rent concession, the actual sum to have been registered would have been lower than \$2,350.00.

33. Because subsequent rent increases were based upon an incorrect initial legal regulated rent, the entire rent history is tainted.

34. In addition, in violation of HSTPA, for Plaintiff Morhovich's renewal lease commencing September 2022, Defendant pulled the preferential rent for Apartment 349, and increased the charged rent from \$1,762.50 to \$2,385.25.

35. The correct legal regulated rent for Apartment 349 must be calculated pursuant to the rent regulations, is currently unknowable to said Plaintiff, and can only be determined after discovery.

Defendant

36. Defendant ACI VI Denizen LLC is a corporation with its principal place of business in County, City and State of New York.

37. Defendant ACI VI Denizen LLC is the Building's registered owner-in-fee

38. Upon information and belief, Defendant ACI VI Denizen LLC conducts and transacts business in the County, City and State of New York.

THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT

The Rent Stabilization Law and the Rent Stabilization Code

39. In 1969, citing a continuing shortage of residential rental housing, the New York City Council enacted a rent stabilization statute, the Rent Stabilization Law (“RSL”), N.Y. Unconsol. Law § 26-501 (McKinney).

40. Thereafter, the New York City Council gave DHCR authority to promulgate regulations in furtherance of the RSL. And DHCR did so by establishing the Rent Stabilization Code (“RSC”), N.Y. Comp. Codes R. & Regs. Tit. 9, § 2520.1, *et seq.*

41. The RSL and RSC limit the rent that landlords can charge and, *inter alia*, circumscribe the way landlords can raise rents, cover the cost of improvements, and deregulate apartments.

42. The rent that a landlord may charge for a regulated unit is based on an “initial legal rent.”

43. For the Building, that initial legal rent was to be based on the rent “charged and paid,” by the unit’s first tenant.

44. Landlords of rent-stabilized apartments may be entitled to increase rents:

- a. when permitted by the Rent Guidelines Board (“RGB”);
- b. following a DHCR approved Major Capital Improvement;
- c. an increase following a vacancy; and/or
- d. following Individual Apartment Improvements that are properly supported by documentation and made either during the vacancy of a unit or agreed upon by the tenant.

45. In New York City, the RGB annually sets the maximum rates for rent increases that are effective for rent stabilized leases commencing on or after October 1st of each year through September 30th of the following year. RSC § 2522.4.

The 421-a Program

46. In 1971, the New York State Legislature enacted the Real Property Tax Law (“RPTL”) § 421-a, which provides tax incentives for developers who construct new, market-rate, multi-family housing.

47. As a condition to receiving 421-a Program benefits, a building owner must provide its tenants with the protections of the rent stabilization laws, even if those apartments would otherwise be exempt.

48. Because buildings participating in the 421-a Program, are new construction, an initial legal regulated rent must be established.

49. Under RSL § 26-517(a) (4), a landlord must register that legal regulated rent with DHCR.

50. RSC § 2521.1(g) provides, with respect to buildings participating in the 421-a Program, “[t]he initial legal regulated rent for a housing accommodation constructed pursuant to section 421-a of the Real Property Tax Law shall be the *initial adjusted¹ monthly rent charged and paid* but not higher than the rent approved by [the New York City Department of Housing and Preservation] pursuant to such section for the housing accommodation or the lawful rent charged and paid on April 1, 1984, whichever is later.”²

HSTPA and Preferential Rents

¹ “Adjusted” refers to the fact that the initial rent cannot include charges for “parking facilities, and electricity, gas, cooking fuel, and other utilities.” RPTL 421-a(1)(a)

² Emphasis added.

51. RSC § 2521.2 provides that a “preferential rent” is a rent which the owner agrees to charge that is lower than the unit’s legal regulated rent

52. RSL § 26-511(c)(14), established as part of HSTPA, prohibits owners who offer tenants preferential rents from increasing the preferential rent upon a lease renewal at an amount higher than the RGB-promulgated increase.

**DEFENDANT’S PRACTICES TO DEPRIVE ITS TENANTS OF THE PROTECTIONS
OF THE RENT STABILIZATION LAWS**

53. Upon information and belief, all units in the Building are subject to the RSL because the Building received 421-a Program benefits

54. Upon information and belief, Defendant knowingly and willfully failed to comply with the 421-a Program’s requirements by, among other things, improperly registering the Building’s apartments with DHCR.

55. Defendant did not register the Building’s units at the monthly rent actually “charged and paid” by the tenants, but instead registered rents at inflated amounts.

56. Upon information and belief, Defendant’s initial registration scheme extends to each of the Building’s apartments.

57. In addition, in violation of HSTPA, Defendant wrongfully rescinded Plaintiff Morhovich’s preferential rent and charged in excess of the RGB-promulgated amount.

58. Upon information and belief, Defendant’s preferential rent scheme extends to hundreds of the Building’s apartments.

CLASS ALLEGATIONS

The Class and Sub-Class

59. This action may be properly maintained as a class action under the provisions of Article 9 of the CPLR.

60. The proposed Class is defined as “ all current and former tenants of the Building, who resided in the Building at any time after October 12, 2016.”

61. The Class seeks certification of claims for damages.

62. Unless the law is changed, Plaintiffs, and the members of the putative class, will **NOT** seek any penalties in the event the Class is certified.

63. In addition, Plaintiffs propose a Sub-Class consisting of all current tenants at the Building.

64. The Sub-Class seeks certification of claims for declaratory and injunctive relief as described more fully below.

Class and Sub-Class Meet Requirements for Certification

65. The Class and Sub-Class are so numerous that joinder of all members is impracticable.

66. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiffs, it is reasonable to conclude that the practices complained of herein effect more than one thousand (1000) current and former tenants of the Building.

67. Nearly all factual, legal, and statutory issues that are raised in this Complaint are common to each of the members of the Class and Sub-Class and will apply uniformly to every member of the Class and Sub-Class.

68. The claims of the representative Plaintiffs are typical of the claims of each member of the Class.

69. Plaintiffs, like all other members of the Class, sustained damages arising from the Defendant’s fraudulent scheme to evade the rent stabilization laws.

70. The representative Plaintiffs and the members of the Class were, and are, similarly or identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of misconduct.

71. The claims of the representative Plaintiffs are typical of the claims of each member of the Sub-Class.

72. Plaintiffs, like all other members of the Sub-Class, are entitled to the same declaratory and injunctive relief as the members of the Sub-Class.

73. The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Class.

74. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class and Sub-Class that would make class certification inappropriate.

75. The counsel selected to represent the Class and Sub-Class will fairly and adequately protect the interest of the Class and Sub-Class, and they are lawyers who have experience in class and complex litigation and are competent counsel for this class action litigation.

76. Counsel for the Class and Sub-Class will vigorously assert the claims of all members of the Class and Sub-Class.

77. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and Sub-Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- a. the interests of the members of the Class and Sub-Class in individually controlling the prosecution or defense of separate actions;
- b. the impracticability or inefficiency of prosecuting or defending separate actions;

- c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and Sub-Class;
 - d. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
 - e. the difficulties likely to be encountered in the management of a class action.
78. Among the numerous questions of law and fact common to the Class and Sub-Class are:
- a. whether the Defendant acts, or refuses to act, on grounds generally applicable to the Plaintiff, the Class, and the Sub-Class;
 - b. whether the Defendant has established a pattern, practice, or policy of misrepresenting legal regulated rents;
 - c. whether Defendant has established a pattern, practice, or policy of overcharging rent;
 - d. whether Defendant's practices, acts, and conduct violate the RSL and RSC;
 - e. to what extent Plaintiffs and members of the Class are entitled to damages; and
 - f. to what extent Plaintiffs and members of the Sub-Class are entitled to declaratory and injunctive relief.

COUNT ONE

VIOLATION OF THE RENT STABILIZATION LAWS AND REGULATIONS
(on behalf of the Class)

79. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 78 of this complaint.

80. At all times relevant hereto, apartments of Plaintiffs and the Class were subject to the protections of the RSL.

81. As far as Plaintiffs and the Class are concerned, Defendant entered into leases which misrepresented the amount of rent Defendant was legally permitted to charge and collect.

82. Defendant charged Plaintiffs and the Class rents in excess of the correct legal rent for their apartments.

83. Defendant overcharged Plaintiffs and the members of the Class an amount equal to the difference between their monthly rents and the appropriate rent-stabilized rents.

84. Plaintiffs and members of the Class are entitled to recover monetary damages from Defendant based on the unlawful overcharges, and assessment of excessive late fees, together with an award of interest thereon.

COUNT TWO
VIOLATION OF THE RENT STABILIZATION LAWS AND REGULATIONS
(on behalf of the Sub-Class)

85. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 78 of this complaint.

86. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and the members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage, pursuant to the RSL.

87. Defendant entered into leases with Plaintiffs and the members of the Sub-Class, which incorrectly, falsely, and illegally, misrepresented the amount of rent Defendant was lawfully permitted to collect.

88. As described above, and upon information and belief, Defendant's conduct was wrongfully and unlawfully designed to deprive Plaintiffs, and members of the Sub-Class, of the protections of rent stabilization and to subvert the rules governing the 421-a Program

89. A justiciable controversy exists in that, upon information and belief, Defendant disputes the Plaintiffs' contentions, including the amount of legally permissible rent for the Building's units.

90. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

91. By reason of the foregoing, Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments, of Plaintiffs and members of the Sub-Class, are subject to the RSL and RSC;
- b. Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a form promulgated by DHCR;
- c. the amount of the correct legal regulated rent for the apartments of Plaintiffs and members of the Sub-Class; and,
- d. Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, Plaintiffs and members of the Sub-Class.

92. Plaintiffs and members of the Sub-Class are also entitled to reformation of their leases to represent the actual amount of rent Defendant is legally entitled to charge Plaintiffs and members of the Sub-Class.

COUNT THREE
ATTORNEYS' FEES
(on behalf of the Class)

93. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 78 of this complaint.

94. Plaintiffs are entitled to seek an award of attorneys' fees pursuant to CPLR 909 and/or HSTPA.

95. Plaintiffs are thus entitled to reasonable attorneys' fees, in a sum to be determined by the Court, but not less than \$500,000.00.

PRAYER FOR RELIEF

WHEREFORE, and for the foregoing reasons, Plaintiffs pray to this Court for the following relief:

- A. Certifying the Class and Sub-Class proposed by Plaintiffs, appointing the Plaintiffs as representatives of the Class and Sub-Class; and appointing Plaintiffs' counsel as Class Counsel for the Class and Sub-Class;
- B. Appropriate money damages against Defendant resulting from its willful, wanton, and wrongful violation of the RSL and RSC and the governing requisites of the 421-a Program;
- C. Because Plaintiffs and members of the Sub-Class have no adequate remedy at law for Defendant's ongoing violations of the RSL and RSC, Plaintiffs requires injunctive relief in order to undertake all appropriate and corrective remedial measures, including, but not limited to, appointing an independent individual or entity to audit and undertake an accounting of every rent-stabilized and deregulated apartment at the Building and reforming leases to comply with the RSL and RSC, where necessary;
- D. Temporarily, preliminarily, and permanently enjoining Defendant from continuing to violate the RSL and RSC;
- E. A money judgment against Defendant for all attorneys' fees, costs and disbursements incurred by Plaintiffs, in an amount to be determined at a hearing or trial; and
- F. Granting Plaintiffs and all members of the Class and Sub-Class such other and further relief as this Court deems just and proper.

DATED: New York, New York
October 12, 2022

NEWMAN FERRARA LLP



By: _____

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