

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

S.B. VIOHL, on behalf of himself and all
others similarly situated,

Plaintiff,

-v-

CHELSEA W26 LLC

Defendant.

Dated Filed: October 12, 2022

Index No. _____
(NYSCEF Case)

SUMMONS

Plaintiff designates New York
County as the place of trial. The
basis of venue is situs of the property at
issue.

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 Plaintiff's 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
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S.B. VIOHL, on behalf of himself and all
others similarly situated,

Index No.:

Plaintiff,

-v-

**PLAINTIFF’S CLASS ACTION
COMPLAINT**

CHELSEA W26 LLC

Defendant.

Plaintiff S.B. Viohl (“Plaintiff”), individually, and on behalf of all others similarly situated, by and through his attorneys, bring this class action complaint against Defendant Chelsea W26 LLC (“Defendant”).

INTRODUCTION

1. Defendant is the owner-in-fee of the apartment building located at 260 West 26th Street, in the County, City and State of New York.
2. The Building participates in the 421-a Program, which requires landlords to treat their apartments as rent stabilized and that they be registered as such with the Division of Housing and Community Renewal (“DHCR”).
3. Defendant has evaded the 421-a Program’s requirements, and governing rent-stabilization laws, through the manipulation of preferential rents, and use of “concessions.”
4. Plaintiff first occupied Apartment 5D at the Building on October 15, 2020, pursuant to a 11.5 month lease, that had a putative monthly rent of \$3,000.

5. To induce Plaintiff to enter into tenancy, Defendant provided him with a rent concession of \$8,500.00, meaning his “net effective rent” was \$2,260.87.

6. On June 15, 2019, our state’s legislature passed the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”).

7. HSTPA provides that a landlord can only increase a preferential rent (defined as the rent “charged and paid”) by a percentage amount promulgated by the Rent Guidelines Board (“RGB”).

8. That “net effective rent” represents the actual rent “charged and paid” for Apartment 5D, and that figure is the preferential rent for Plaintiff’s unit.

9. On August 6, 2021, Plaintiff signed a one-year renewal lease for Apartment 5D at the Building.

10. Plaintiff also received a \$4,860.00 concession, which rendered the “net effective rent,” at \$2,595.00, an increase of 14.8% off his initial rate - - far in excess of the increase permitted by the RGB.

11. For Plaintiff’s most recent renewal lease, Defendant pulled the issued concession entirely, and wrongfully increased Plaintiff’s preferential rent to \$3,097.50; a 19.3% increase off the 2021 rent (approximately four times the permitted RGB increase), and 37% increase off Plaintiff’s initial rent.

12. Based upon publicly listed advertisements, Defendant utilized this concession scheme for a number of the Building’s units, as a means to circumvent HSTPA’s preferential rent bar.

13. 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 and the taxpayers of the City of New York.

PARTIES

Plaintiff

14. Plaintiff S.B. Viohl resides in Apartment 5D at the Building.

15. Plaintiff's first two leases provided for preferential rents, in the form of a rent concession.

16. In violation of HSTPA, Defendant impermissibly pulled Plaintiff Viohl's preferential rents at renewal, increasing his rent far more than permitted by the RGB.

17. The correct legal regulated rent for Apartment 5D must be calculated pursuant to the rent regulations.

18. That correct legal regulated rent for Apartment 5D is currently unknowable to Plaintiff, and can only be determined after discovery, as certain pertinent documentary evidence is within Defendant's sole and exclusive possession and control.

Defendant

19. Defendant Chelsea W26 LLC is a corporation with its principal place of business in County, City and State of New York.

20. Defendant Chelsea W26 LLC is the Building's registered owner-in-fee

21. Upon information and belief, Defendant Chelsea W26 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

22. 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).

23. 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.*

24. 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.

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

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

27. 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 as agreed upon by the tenant.

28. 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

29. 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.

30. 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.

HSTPA and Preferential Rents

31. 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

32. 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 DEPRIVED ITS TENANTS OF THE PROTECTIONS OF THE RENT STABILIZATION LAWS

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

34. Defendant knowingly and willfully failed to comply with the 421-a Program’s requirements, and violated HSTPA, by wrongfully rescinding Plaintiff Viohl’s preferential rent and charging in excess of the RGB-promulgated amount.

35. Upon information and belief, Defendant's preferential rent scheme extends to a number of the Building's apartments.

CLASS ALLEGATIONS

The Class and Sub-Class

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

37. 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 and who received a rent concession."

38. The Class seeks certification of claims for damages.

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

40. In addition, Plaintiff proposes a Sub-Class consisting of all current tenants at the Building.

41. 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

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

43. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiff, it is reasonable to conclude that the practices complained of herein effect more than one hundred (100) current and former tenants of the Building.

44. 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.

45. The claims of the representative Plaintiff are typical of the claims of each member of the Class.

46. Plaintiff, like all other members of the Class, sustained damages arising from the Defendant's fraudulent scheme to evade the rent stabilization laws.

47. The representative Plaintiff 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.

48. The claims of the representative Plaintiff are typical of the claims of each member of the Sub-Class.

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

50. The representative Plaintiff will fairly and adequately represent and protect the interests of the Class and Sub-Class.

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

52. 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.

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

54. 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.

55. 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 Plaintiff and members of the Class are entitled to damages; and
- f. to what extent Plaintiff 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)

56. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 55 of this complaint.

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

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

59. Defendant charged Plaintiff and the Class rents in excess of the correct rent for their apartments.

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

61. Plaintiff 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)

62. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 55 of this complaint.

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

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

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

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

67. Plaintiff and members of the Sub-Class lack an adequate remedy at law.

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

- a. the apartments, of Plaintiff and members of the Sub-Class, are subject to the RSL and RSC;
- b. Plaintiff 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 Plaintiff and members of the Sub-Class; and,
- d. Plaintiff 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, Plaintiff and members of the Sub-Class.

69. Plaintiff 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 them.

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

70. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 55 of this complaint.

71. Plaintiff is entitled to seek an award of attorneys' fees pursuant to CPLR 909 and/or HSTPA.

72. Plaintiff is 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, Plaintiff prays to this Court for the following relief:

- A. Certifying the Class and Sub-Class proposed by Plaintiff, appointing Plaintiff as representatives of the Class and Sub-Class; and appointing Plaintiff's 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 Plaintiff and members of the Sub-Class have no adequate remedy at law for Defendant's ongoing violations of the RSL and RSC, Plaintiff 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 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 Plaintiff, in an amount to be determined at a hearing or trial; and
- F. Granting Plaintiff 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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