

SUPREME COURT FOR THE STATE OF NEW YORK
NEW YORK COUNTY

TALLEN TODOROVICH on behalf of himself
and all others similarly situated,

Plaintiff,

-v-

63 WALL STREET OWNER, L.L.C. and 67
WALL STREET OWNER, L.L.C.

Defendants.

Date Filed: November 24, 2019

Index No. _____
(NYSCEF Case)

SUMMONS

Plaintiffs designate New York
County as the place of trial. The
basis of venue is that this County is the
location of the real property at issue.

TO THE ABOVE-NAMED DEFENDANTS:

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
November 24, 2019

NEWMAN FERRARA LLP

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28 LIBERTY ST.
NEW YORK, NEW YORK, 10005

SUPREME COURT FOR THE STATE OF NEW YORK
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TALLEN TODOROVICH on behalf of himself
and all others similarly situated,

Index No.:

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**PLAINTIFF'S CLASS ACTION
COMPLAINT**

63 WALL STREET OWNER, L.L.C. and 67
WALL STREET OWNER, L.L.C.

Defendants.

Plaintiff Tallen Todorovich ("Plaintiff"), individually, and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against Defendants 63 Wall Street Owner, L.L.C. and 67 Wall Street Owner, L.L.C.

INTRODUCTION

1. Defendants are the owners in fee of the building located at 63-67 Wall Street (the "Building") in Manhattan.
2. For purposes of marketing and rentals, the Buildings are treated as one entity, known as "the Crest" or "63 Wall."
3. The Building, the former headquarters of Brown Brothers Harriman & Co., receives certain tax abatements and/or exemptions pursuant to the 421-g tax benefits program (the "421-g Program").
4. Landlords participating in the 421-g Program are required to provide their tenants with rent-stabilized leases as a condition of receiving the tax benefits.

5. Plaintiff did not receive a rent-stabilized lease at the time he moved into his apartment at the Building,

6. Plaintiff was and has been provided with only non-rent stabilized lease renewals.

7. Landlords of buildings receiving 421-g tax benefits are legally required to provide their tenants with appropriate riders (the "421-g Rider") detailing the tax credit, and disclosing when it expires. Real Property Tax Law ("RPTL") § 421-g(6).

8. Failure to provide tenants with the 421-g Rider, entitles those tenants to rent-stabilized leases for as long as they remain in their apartments.

9. Because they did not receive 421-g Riders, Plaintiff and members of the putative class were and are entitled to rent-stabilized leases for as long as they occupy their apartments.

10. Landlords of buildings in the 421-g Program are required to register the apartments in their buildings with the Division of Housing and Community Renewal ("DHCR").

11. Plaintiff's apartment were not registered with DHCR, and were, in fact, listed as exempt from rent stabilization.

12. The Housing Stability and Tenant Protection Act ("HSTPA"), and the Rent Stabilization Code ("RSC") § 2522.6 provides that when rent-history is unreliable, a default formula, codified at RSC § 2522.6(b)(3) is to be utilized to determine the legal regulated rent.

13. The base date is six years before the filing of this complaint.

14. Defendants' failure to follow the rent regulations renders Plaintiff's rent-history unreliable

15. Accordingly, the RSC §2522.6(b)(3) default formula is required to be used to calculate the legal regulated rent for Plaintiff's apartment and for each of the apartments occupied by the members of the putative class.

16. Upon information and belief, the use of the RSC §2522.6(b)(3) default formula will result in a rent lower than the legal regulated rent being charged for Plaintiff's apartment, and for each of the apartments occupied by the members of the putative class, for the period preceding this complaint.

17. The amount of Plaintiff's correct legal regulated rent can only be determined after discovery.

18. Accordingly, Plaintiff and the putative class have suffered damages in the form of rent overcharges.

19. Defendants' tax filings for the Building demonstrate that there are other tenants who are similarly situated to Plaintiff.

20. Although the Building has nearly 1000 units, as of June 2019, Defendants' tax filings indicate that only one (1) of the units were listed as rent-stabilized.

21. Defendants' failure to treat the apartments at the Building as rent-stabilized violates the rent-stabilization laws and the 421-g Program's rules, which required all the Building's units to be rent-stabilized.

22. The aforementioned conduct demonstrates an attempt by Defendants to circumvent the requirements of New York's rent regulations, all at the expense of the tenants residing at the Building.

PARTIES

Plaintiff

23. Plaintiff resides in Apartment 19G in the Building.

24. The Building receives 421-g tax benefits from New York City, entitling the tenants therein to rent-stabilized leases.

25. Upon moving into their apartment, Plaintiff was impermissibly provided with a purported “free market” lease.

26. Defendants subsequently provided Plaintiff with impermissible “free market” lease renewals.

27. Upon information and belief, Defendants failed to file the legally required registrations for Plaintiff’s apartment, and his apartment is wrongfully listed as “exempt” in its DHCR rent history.

28. Plaintiff did not receive any of the riders required by the 421-g Program for his unit.

29. Because the Building participated in the 421-g Program, Plaintiff’s apartment could not be listed as “exempt.”

30. Defendants’ failure to register Plaintiff’s apartment was part of a fraudulent scheme to deregulate the apartment and/or rendered Plaintiff’s rent history unreliable.

31. Accordingly, the RSC § 2522.6(b)(3) default formula is required to be used to calculate the legal regulated rent for Plaintiff’s apartment.

32. Upon information and belief, the use of the RSC § 2522.6(b)(3) default formula will result in a legal regulated rent lower than the rent charged for Plaintiff’s apartment.

Defendant

33. Defendant 63 Wall Street Owner, L.L.C. is a corporation with its principal place of business in New York City.

34. 63 Wall Street Owner, L.L.C. is the registered owner of the 63 Wall Street.

35. Upon information and belief, 63 Wall Street Owner, L.L.C. conducts and transacts business in the City, County, and State of New York.

36. Defendant 67 Wall Street Owner, L.L.C. is a corporation with its principal place of business in New York City.

37. 67 Wall Street Owner, L.L.C. is the registered owner of the 67 Wall Street.

38. Upon information and belief, 67 Wall Street Owner, L.L.C. conducts and transacts business in the City, County, and State of New York.

39. Together, 63 Wall Street Owner, L.L.C. and 67 Wall Street Owner, L.L.C. own the Building, and operate the Building's rental office at 63 Wall Street.

THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT

The Rent Stabilization Law and the Rent Stabilization Code

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

41. 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.*

42. The RSL and RSC limit the rent that landlords can charge and, *inter alia*, circumscribe the manner in which landlords are able to raise rents, cover the cost of improvements, and deregulate apartments.

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

44. The initial legal rent is based, in part, on the rent a previous tenant paid.

45. Landlords of rent-stabilized apartments are typically entitled to increase rents:

- a. when permitted by the 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 an apartment or agreed upon by the tenant.

46. In New York City, the RGB sets the maximum rates for rent increases once a year 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-g Program

47. In 1995, the New York State Legislature enacted RPTL § 421-g, which granted an exemption from local property taxes for up to 14 years for buildings in Manhattan's Financial District, that had been or would be converted from commercial use to residential, or mixed use.

48. RPTL § 421-g(6) provides:

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 each dwelling unit in an eligible multiple dwelling unit shall be fully subject to control under local law, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period for which the eligible multiple dwelling is receiving benefits pursuant to this section ... such rents shall continue to be subject to such control, except that such rents that would not have been subject to such control but for this subdivision, shall be decontrolled if the landlord has included in each lease and renewal thereof for such unit for the tenant in residence at the time of such decontrol a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of benefits pursuant to this section.

49. In other words, as a condition to receiving benefits pursuant to the 421-g Program, a building owner must provide its tenants with the protections of the rent stabilization laws.

50. Indeed, the apartments in a building receiving benefits pursuant to the 421-g Program, must be subject to the rent stabilization laws while the building is receiving those benefits, even if those apartments would otherwise be exempt.

51. Further, RPTL § 421-g provides that the rent regulation protections continue even after the expiration of the 421-g Benefits until the first vacancy thereafter, unless each and every lease and renewal issued during the period which the Building received benefits contains a prominent notice informing the tenant that rent regulation will expire when the tax benefits expire, and the approximate date thereof.

**DEFENDANTS' FRAUDULENT SCHEME
TO EVADE THE RENT STABILIZATION LAWS**

52. Upon information and belief, certain units in the Building are subject to the rent-regulations because the Building received benefits under the 421-g Program.

53. Upon information and belief, Defendants knowingly and willfully failed to comply with the requirements of the RSL by, among other things, failing to provide tenants at the Building with rent-stabilized leases, failing to properly register the apartments with DHCR, increasing rents beyond the limits set forth by the RGB, and, improperly declaring the apartments to be "free market" or "deregulated."

54. Defendants charged Plaintiff and the Class market rate rents or rents otherwise in excess of the legal regulated rent for their apartments.

55. Defendants overcharged Plaintiff and the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

CLASS ALLEGATIONS

The Class and Sub-Class

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

57. The proposed Class is defined as:

all tenants at the Building living, or who had lived, in apartments that were deregulated during the period when 421-g tax benefits were being received by the owner of the Building, except that the class shall not include (i) any tenants who vacated before November 24, 2013 (the "Class").

58. The Class seeks certification of claims for damages.

59. Plaintiff, and the members of the putative class, will not seek any penalties in the event the Class is certified.

60. In addition, Plaintiff proposes a Sub-Class consisting of all current tenants at the Building, who currently reside in an apartment that was deregulated apartment during the pendency of the Building's participation in the 421-g Program (the "Sub-Class").

61. 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

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

63. 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 thousand (1000) current and former tenants of the Building.

64. Nearly all factual, legal, and statutory relief 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.

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

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

67. 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.

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

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

70. 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.

71. 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.

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

73. Upon certification of the Class, Plaintiff will forego any claim to any penalty, or treble damages.

74. 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.

75. Among the numerous questions of law and fact common to the Class and Sub-Class are:

- a. whether the Defendants act or refuse to act on grounds generally applicable to the Plaintiff, the Class, and the Sub-Class;
- b. whether the Defendants have established a pattern, practice, or policy of misrepresenting tenants' rent stabilization status or of failing to notify tenants that their apartments are, or should be, rent-stabilized;
- c. whether the Defendants have established a pattern, practice, or policy of unlawfully deregulating apartments;
- d. whether the Defendants have established a pattern, practice, or policy of misrepresenting legal regulated rents;
- e. whether the Defendants have established a pattern, practice, or policy of failing to provide rent-stabilized leases to tenants in the Building;

- f. whether Defendants have established a pattern, practice, or policy of overcharging rent;
- g. whether Defendants' practices, acts, and conduct violate the RSL and RSC;
- h. to what extent Plaintiff and members of the Class are entitled to damages; and
- i. to what extent Plaintiff and members of the Sub-Class are entitled to declaratory and injunctive relief.

COUNT ONE
VIOLATION OF RSL § 26-512
(on behalf of the Class)

76. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 75 of this complaint.

77. At all times relevant hereto, apartments of Plaintiff and the Class were subject to the protections of the rent-stabilization laws.

78. Defendants entered into leases with Plaintiff and the Class, which misrepresented the amount of rent Defendants were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

79. Defendants charged Plaintiff and the Class rents in excess of the legal regulated rent for their apartments.

80. Defendants overcharged Plaintiff and the members of the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

81. Plaintiff and members of the Class are entitled to recover monetary damages from Defendants based on the unlawful overcharges, as well as an award of interest thereon.

COUNT TWO
VIOLATION OF RSL § 26-512
(on behalf of the Sub-Class)

82. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 75 of this complaint.

83. 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.

84. Defendants entered into leases with Plaintiff and the members of the Sub-Class, which incorrectly, falsely, and illegally misrepresented the amount of rent Defendants were legally entitled to collect and/or falsely represented that their apartments were “free market” or not subject to rent stabilization.

85. As described above, and upon information and belief, Defendants’ conduct was designed to remove the apartments of Plaintiff and members of the Sub-Class from the protections of rent stabilization.

86. A justiciable controversy exists in that, upon information and belief, Defendants dispute that the apartments of Plaintiff and members of the Sub-Class are subject to rent stabilization under the RSL and RSC, and/or that any wrongful conduct occurred.

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

88. 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 each 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 legal regulated rent for the apartments of Plaintiff and members of the Sub-Class;
- d. any leases offered by Defendants to Plaintiff and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. 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.

89. Plaintiff and members of the Sub-Class are entitled to reformation of their leases to provide that their units were and are, in fact, subject to rent stabilization.

90. Plaintiff and members of the Sub-Class are entitled to reformation of their leases to represent accurately the amount of rent Defendants are legally entitled to charge Plaintiff and members of the Sub-Class.

COUNT THREE
DECLARATORY RELIEF
(on behalf of the Sub-Class)

91. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 75 of this complaint.

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

93. Notwithstanding the clear requirements of the RSL and RSC, Defendants have not provided Plaintiff and members of the Sub-Class with rent-stabilized leases and/or rent-stabilized leases in the correct amount, as required by law.

94. Moreover, as set forth in more detail above, and upon information and belief, Defendants' conduct was willful and designed to remove the apartments of Plaintiff and members of the Sub-Class from the protections of rent stabilization.

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

96. 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 members are subject to the RSL and RSC and any purported deregulation by Defendants was invalid as a matter of law;
- b. Plaintiff and members of the Sub-Class are each entitled to a rent-stabilized lease in a lease form promulgated by DHCR;
- c. the amount of the legal regulated rent for the apartments of Plaintiff and members of the Sub-Class;
- d. any leases offered by Defendants to Plaintiff and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. 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, said Plaintiff and members of the Sub-Class.

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

97. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 75 of this complaint.

98. Plaintiff is entitled to seek an award of attorneys' fees pursuant to CPLR 909, at the discretion of the Court.

99. Plaintiff is entitled to reasonable attorneys' fees under CPLR 909, in a sum to be determined by the Court, but not less than \$250,000.00.

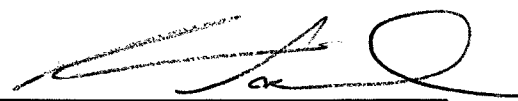
PRAYER FOR RELIEF

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 the 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 Defendants resulting from its violation of the RSL and RSC;
- 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, against Defendants for injunctive relief 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 Defendants from continuing to violate the RSL and RSC;
- E. A money judgment against Defendants for disgorgement of profits from fees earned as a direct and proximate result of rent overcharges;
- F. A money judgment against Defendants for judgment in the amount of Plaintiff's attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial; and
- G. Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York
November 24, 2019

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