

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF KINGS

RACHEL SMALL, on behalf of herself and all
others similarly situated,

Plaintiff,

-v-

544 UNION DE LLC

Defendant.

Date Filed: January 26, 2021

Index No. _____
(NYSCEF Case)

SUMMONS

Plaintiff designates Kings
County as the place of trial. The
basis of venue is the situs of the real
property at issue in this action

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
January 26, 2021

NEWMAN FERRARA LLP

By: 

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SUPREME COURT FOR THE STATE OF NEW YORK
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RACHEL SMALL, on behalf of herself and all
others similarly situated,

Index No.:

Plaintiff,

-v-

**PLAINTIFF'S CLASS ACTION
COMPLAINT**

544 UNION DE LLC

Defendant.

Plaintiff Rachel Small ("Plaintiff"), individually, and on behalf of all others similarly situated, by and through her attorneys, bring this class action complaint against Defendant 544 UNION DE LLC ("Defendant").

INTRODUCTION

1. Defendant is the owner-in-fee of the apartment building located at 544 Union Avenue (the "Building") in Brooklyn.
2. The Building participates in the 421-a Program, which requires landlords to register their units with the Division of Housing and Community Renewal, and that those apartments be treated as rent-stabilized.
3. Defendant has evaded the 421-a Program's requirements, and governing rent-stabilization laws.
4. 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 payment.

5. Here, Defendant hoodwinked tenants, and DHCR, by registering a legal regulated rent higher than the “monthly rent charged and paid by the tenant.”

6. Defendant did so by utilizing a purported “rent concession.”

7. For example, the first registered rent for Apartment 8K at the Building was in the amount of \$4,300.00.

8. Upon information and belief, the first tenant in Apartment 8K received a “rent concession,” as did tenants in other units in the Building.

9. 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.

10. That “rent concession” is a “preferential rent” by another name.

11. And rather than charge a lower rent each and every month over the course of a lease term, Defendant aggregated the rent discount into a single month.

12. So, for example, if a two-year lease contained a monthly payment of \$3,000.00, with two months free, the average monthly rent was actually \$2,750.00, but Defendant would only register the unit at the higher, hypothetical lease rate. In this instance, \$3,000.00.

13. Defendant presumably offered concessions, because preferential rents cannot be utilized as the first rents in 421-a buildings.

14. Thus, by manipulating the way it configured a unit’s rent, Defendant was able to register a unit with at initial rent higher than the amount actually charged, and all subsequent increases, such as vacancy increases and Rent Guidelines Board increases, were based off that higher, impermissible figure.

15. The net effective rent represents the rent “charged and paid,” and that lower rate should have been registered as the initial rent with DHCR.

16. Defendant has publicly acknowledged that the “monthly rent charged and paid by the tenant” is the net effective rent.

17. In its initial rent listings on StreetEasy, Defendant advertised the apartment’s net effective rate as the unit’s rent.

18. The correct amount of Plaintiff’s legal regulated rent must be calculated pursuant to the rent laws.

19. And the correct amount of Plaintiff’s legal regulated rent can only be determined after discovery.

20. The aforementioned conduct demonstrates 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

Plaintiff

21. Plaintiff Rachel Small resides in Apartment 6K at 544 Union Avenue.

22. Apartment 6K’s rent history on file with DHCR provides that the unit was first occupied in 2016, with an initial legal rent of \$4,300.00.

23. Upon information and belief, the first tenant to occupy Apartment 6K received a rent concession, which concessions are not reflected in the initial legal regulated rent registered with DHCR

24. Had the initial calculation factored in the rent concession, the actual sum to have been registered would have been lower than \$4,300.00.

25. Because subsequent rent increases were taken off of an incorrect initial legal regulated rent, the entire rent history is tainted.

26. The correct legal regulated rent for Apartment 6K must be calculated pursuant to the rent regulations, is currently unknowable to said Plaintiff, and can only be determined after discovery.

Defendant

27. Defendant 544 Union DE LLC is a corporation with its principal place of business in New York City.

28. Defendant 544 Union DE LLC is the Building's registered owner.

29. Upon information and belief, Defendant 544 Union DE LLC conducts and transacts business in the County of Kings, and the City and State of New York.

THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT

The Rent Stabilization Law and the Rent Stabilization Code

30. 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).

31. 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.*

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

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

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

35. 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 an apartment or agreed upon by the tenant.

36. 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-a Program

37. 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.

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

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

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

41. 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

**DEFENDANT’S FRAUDULENT SCHEME
TO EVADE THE RENT STABILIZATION LAWS**

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

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

44. Defendant did not register the units at the Building at the monthly rent actually “charged and paid” by the tenants.

45. Because the first registered rent must reflect what the tenant is charged and paid, a landlord is barred from utilizing a “preferential rent” as the first legal registered rent for a 421-a unit.³

46. To get around that prohibition, Defendant offered the first-occupying tenants a “rent concession,” which provided for “free” rent of a month or more.

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.

³ *125 Ct. St., LLC v Sher*, (58 Misc 3d 150(A) [App Term 2018])

47. Defendant's "rent concession" is simply a "preferential rent" by another name.

48. Rather than give a discount each month, Defendant engaged in sleight-of-hand, and simply combined the discount into free rent for a certain period.

49. Whether termed a preferential rent, or a concession, the effect is the same - - the rent "charged and paid" by the tenant is less than the amount that was registered with DHCR as the initial legal regulated rent.

50. In a similar manner, by camouflaging the preferential rent as a concession, Defendant was able to take excess rent increases on subsequent renewals, in violation of HSTPA.

51. Defendant recognized that the net effective rent for a unit was/is the amount charged and paid by the tenant.

52. Its StreetEasy listings for the Building's units, advertised a monthly rent, and then disclosed that figure as the "net rent."⁴

53. Upon information and belief, Defendant's concession scheme extends to each of the apartments in the Building.

CLASS ALLEGATIONS

The Class and Sub-Class

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

55. The proposed Class is defined as all tenants at the Building, who occupied their units between June 14, 2015 and the conclusion of this litigation.

56. The Class seeks certification of claims for damages arising out of Defendant's concession scheme.

⁴ See e.g. <https://streeteasy.com/rental/1228929> advertising 544 Union Avenue Apt. 2F, in March 2014, and disclosing that \$2,864.00 is the "Net Rent Advertised"

57. 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.

58. In addition, Plaintiff proposes a Sub-Class consisting of all current tenants at the Building, who currently reside in the Building.

59. 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

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

61. 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.

62. 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.

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

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

65. 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.

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

67. 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.

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

69. 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.

70. 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.

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

72. Upon certification of the Class, Plaintiff will forego any claim to any penalty, or treble damages, unless existing law is changed, or modified, by the New York State Legislature and/or the New York City Council.

73. 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.

74. 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 RSL § 26-512
(on behalf of the Class)

75. Plaintiff re-alleges and incorporate by reference the allegations in ¶¶ 1 thru 74 of this complaint.

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

77. Defendant entered into leases with Plaintiff and the Class, which misrepresented the amount of rent Defendant was legally entitled to collect.

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

79. Defendant 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.

80. Plaintiff and members of the Class are entitled to recover monetary damages from Defendant 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)

81. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 74 of this complaint.

82. 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.

83. 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 legally entitled to collect.

84. 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.

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

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

87. 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; 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.

88. 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 Plaintiff and members of the Sub-Class.

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

89. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 74 of this complaint.

90. 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.

91. Notwithstanding the clear requirements of the RSL and RSC, Defendant has not provided Plaintiff and members of the Sub-Class with rent-stabilized leases and/or rent-stabilized leases in the correct amounts, as required by law.

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

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

94. 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 Defendant 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 Defendant 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)

95. Plaintiff re-alleges and incorporates by reference the allegations in ¶¶ 1 thru 74 of this complaint.

96. Plaintiff are entitled to seek an award of attorneys' fees pursuant to CPLR 909.

97. In addition, Plaintiff's leases contain attorneys' fee provisions.

98. 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.

99. If the Court finds that attorneys' fees may be awarded under the leases in this type of action, then Plaintiff is entitled to attorneys' fees 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 representative 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 and wrongful 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, 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 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 disgorgement of profits from fees earned as a direct and proximate result of rent overcharges;

- F. A money judgment against Defendant 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
January 26, 2021

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