



CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART H

**COPY**

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JUDITH GRUNBAUM,

L&T Index No. 62648/16, *et seq.*

Petitioner-landlord,

NOTICE OF MOTION

-against-

JULES SKLOOT, *et al.*

Respondent-tenant,  
70 South Elliot Place  
Apt. Ground Floor Back  
Brooklyn, NY 11217

-and-

“JOHN DOE” and/or “JANE DOE”,

Respondents-undertenants.  
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PLEASE TAKE NOTICE, that upon the annexed affirmation of TAYLOR ANVID, dated June 12, 2018, the annexed exhibits, and upon all papers and proceedings heretofore had herein, the Respondent, by her attorney, will move this Court, in Part H thereof, Room 509, at 141 Livingston Street, Brooklyn, New York, June 14, 2018, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order:

- (1) Pursuant to C.P.L.R. § 3211(a), dismissing the proceeding; or,
- (2) Granting such other and further relief as the Court deems just and proper.

Dated: June 12, 2018  
Brooklyn, New York

BROOKLYN LEGAL SERVICES  
Taylor Anvid  
105 Court Street, 4<sup>th</sup> Floor  
Brooklyn, NY 11201  
(718) 237-5500

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*Attorneys for Respondent*

TO:

SIDRANE & SCHWARTZ-SIDRAINE, LLP  
119 No. Park Avenue, Suite 201  
Rockville Centre, New York 11570  
*Attorneys for Petitioner*  
(516) 569-9539

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART H

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JUDITH GRUNBAUM,

Petitioner-landlord,

L&T Index No. 62648/16, *et seq.*

AFFIRMATION IN  
SUPPORT OF MOTION  
TO DISMISS

-against-

JULES SKLOOT, *et al.*

Respondent-tenant,  
70 South Elliot Place  
Apt. Ground Floor Back  
Brooklyn, NY 11217

-and-

“JOHN DOE” and/or “JANE DOE”,

Respondents-undertenants.  
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TAYLOR ANVID, an attorney duly licensed to practice law in the courts of this state, hereby swears to the following facts under penalty of perjury, and sets for the following facts and propositions of law:

1. I am of counsel to BROOKLYN LEGAL SERVICES, counsel to the Respondent JULES SKLOOT, and as such I am fully familiar with all the facts and circumstances of this case.
2. I make this affirmation in support of Respondent’s motion for summary judgment pursuant to C.P.L.R. § 3211(a) dismissing the Petition; or,
3. Granting such other and further relief as the Court deems just and proper



6. The current tenants of record at the premises are Respondent Jules Skloot, along with Heidi Chua, Jacob Hodes, Yashna Maya Padamsee, Lucas Shapiro, Sonny Singh, Shruti Parekh and Heidi Chua. David Suarez vacated the premises on December 31, 2014 and has signed a notarized affidavit of surrender to any tenancy rights at the premises.

7. The tenants, through assistance of counsel with the Urban Justice Center (UJC) filed a complaint with the Department of Housing and Community Renewal (DHCR) March 10, 2014 seeking a determination as to whether or not their building was subject to rent stabilization. *See Exhibit A.*

8. Petitioner's Notice of Intention of Non-Renewal of Tenancy and Intent to Commence an Action or Proceeding Based on Owner's Personal Use and Occupancy ("Golub Notice") states that "the owner intends to use the subject premises for her own personal use and occupancy and primary residence and to accommodate her large family consisting of four (4) children and thirty (30) grandchildren and great-grandchildren." The Golub Notice continues, stating that the premises is "also conveniently located to her business dealings and is located close to her chosen temple, the Chabad Jewish Center of Fort Greene." *See Exhibit B.*

9. On November 21, 2017 DHCR issued its determination regarding the regulatory status of the building and declared that the building was subject to rent stabilization and the tenants are entitled to leases at the stated amounts in the decision. *See Exhibit A.*

10. On the first court date, April 11, 2016, these holdover proceedings were adjourned for these tenants, including Respondent Jules Skloot, to obtain counsel. Your affiant's office was retained for each of the tenants, including Respondent, on or around May 25, 2016.

11. At the next court date, May 26, 2016, Respondent's counsel entered a notice of appearance on behalf of Respondent and all of the named tenants at 70 South Elliot Place.

Respondent's motion to consolidate all of the individual holdover proceedings in front of the Honorable Howard Jacob Baum was granted on consent. On that same date in court, the parties by their respective counsel entered into a stipulation to schedule a motion briefing schedule.

12. On June 13, 2016, Respondent's counsel served an answer on Petitioner's counsel for each of the tenants and filed the same with this Court on June 14, 2016.

13. On July 18, 2016 the matter was adjourned until August 22, 2016 for Respondent's reply and on August 22, 2016 the court reserved decision on Respondent's discovery motion. Respondent's motion was granted on November 21, 2016 and the matter was marked off calendar for the parties to conduct discovery as directed by the court's order. *See Exhibit B.*

14. Respondent submitted its document request to Petitioner to which Petitioner provided two responses; the first on February 17, 2017 and the second on April 24, 2017.

15. Respondents deposed Petitioner on June 14, 2017 and July 19, 2017.

16. Petitioner provided its corrections to the official transcripts of those depositions on October 24, 2017.

17. On or about October 13, 2017 DHCR sent a request to UJC requesting an update on the status of the owner's use holdover proceeding. On approximately October 16, 2017 Brooklyn Legal Services provided UJC a letter stating the holdover was still in the discovery phase. *See Exhibit A.* Upon information and belief, UJC submitted Brooklyn Legal Services' letter in its response to DHCR's request for updated information. Shortly thereafter, on November 21, 2017, DHCR issued its decision with full knowledge that the holdover was still pending.

18. Petitioner never filed a Petition for Administrative Review based on DHCR's decision and the window period for filing such an appeal has passed, thus the Order from DHCR stands.

19. Petitioner filed a Motion to Restore the proceeding to the calendar on October 20, 2017 and Respondents opposed the motion on November 1, 2017.

20. After argument the motion was granted to the extent of the matter was transferred to Judge Ortiz in Part H and Respondents were permitted to file another Motion for Discovery.

21. The parties discussed stipulating to the additional discovery but the agreement was not completed by the February 14, 2018 return date.

22. Respondents filed their second discovery motion on February 14, 2018. The motion was argued on April 10, 2018 and the Court reserved decision.

23. The Court denied Respondents motion for further discovery on May 4, 2018 and set the proceeding for a pretrial conference on May 22, 2018. *See Exhibit B.* The matter was then adjourned for trial on June 14, 2018 and Respondents now submit their motion seeking dismissal of the proceeding. Respondents' arguments in support of its motion are discussed in its Memorandum of Law.

Dated: June 13, 2018  
Brooklyn, New York

  
BROOKLYN LEGAL SERVICES  
Taylor Anvid  
105 Court Street, 4th Floor  
Brooklyn, NY 11201  
(718) 237-5500  
*Attorneys for Respondents*

CIVIL COURT OF THE CITY OF NEW YORK  
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Petitioner-landlord,

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L&T Index No. 62648/16 *et seq.*

MEMORANDUM OF  
LAW

**ARGUMENT**

I. The Petition Should Be Dismissed Because Petitioner Has No Grounds Upon Which to Maintain the Proceeding

Summary judgment should be found in favor of Respondents because the Golub notice used to initiate the instant proceeding is no longer valid. In order to recover a Rent Stabilized premises for personal use the Petitioner must serve the tenants a notice of the owner’s intention not to renew the lease within 150-90 days prior to the end of the tenant’s lease term (Golub Notice). If the landlord does not provide a timely renewal lease then the tenant may elect to begin a one or two-year lease term from when a timely renewal lease offer would have been made. Once a new lease is offered, the landlord must wait until a new “window period” prior to the expiration of the new lease before initiating a new owner’s use holdover. *Golub v. Frank*, 65



N.Y.2d 900, 483 N.E.2d 126, 493 N.Y.S.2d 451(1985); *Koros v. Salas*, 15 Misc.3d 1145(A) (2007); *see also, Malafis v. Rosario*, 18 Misc.3d 1106(A) (2007), 2007 WL 4500391 at 3 ([Golub] “Notification prior thereto [the window period] or subsequent thereto [the window period] would vitiate the predicate notice and any subsequent proceeding, requiring the landlord to start the entire process all over again, one or two years hence, upon the expiration of the tenant’s new lease renewal.”).

Here, DHCR knew about the instant owner’s use proceeding and still issued an order directing Petitioner to offer the tenants leases at the rent stabilized rates. Because DHCR’s order was issued after the commencement of this holdover, a new window period is created once Petitioner issues the leases pursuant to DHCR’s order, and because the Golub notice for this case was not served during the new window period, the Golub notice for this proceeding is fatally defective and deprives the Court of jurisdiction. *Golub v. Frank*, 65 N.Y.2d 900 (1985). Because the Golub notice underlying this proceeding is fatally defective and the tenants have a right to leases at the rent stabilized rents pursuant to the DHCR decision, the grounds for this owner’s use proceeding are moot and the proceeding should be dismissed.

II. The DHCR Order Entitles Tenants to New Leases and the Court May Not Substitute Its Judgment for that of DHCR.

In November 2017 DHCR declared the units at 70 S. Elliot are rent-stabilized single room occupancy units and that leases should be set for the rent amounts included in the order. While DHCR and housing court may have concurrent jurisdiction, once a tenant files a complaint, DHCR maintains jurisdiction over that issue. *Crowley v. Penniacchini*, 08/27/1997, p. 26, col. 1 (A.T. 1<sup>st</sup> Dept.). Housing court does not have the authority or jurisdiction to amend, modify, or nullify an order from DHCR directing the landlord to offer a lease to rent stabilized tenants.

*Koros v. Salas*, 15 Misc.3d 1145(A) (2007). DHCR issued an order declaring the subject premises Rent Stabilized and that Petitioner should issue leases at the given rent amounts.

The facts of *Koros v. Salas* are almost identical to the instant proceeding. In *Salas* the landlord brought a personal use holdover after serving the tenant a Golub notice stating he wanted to use the unit for himself or his family. *Id.* At 1. The tenant then filed a complaint with DHCR stating the landlord failed to offer her a renewal lease pursuant to the Rent Stabilization Code. *Id.* The landlord received notice of the DHCR complaint but failed to respond. DHCR then issued an order directing the landlord to offer the tenant a renewal lease. *Id.* The landlord did not comply and filed the summary proceeding in housing court. *Id.* The court held that even though the landlord had served the Golub notice, he lost at DHCR after having the opportunity to be heard. *Id.* At 4. When administrative determinations are made the court is not to substitute its judgment for that of the agency. *Id.* At 3 (citing, *Sanchez v. Columbus House Assoc.*, NYLJ, 7/2/03 p. 22, col.1).

Here, the facts are even less compelling for the Petitioner. The complaint was filed with DHCR in 2014, which was before Petitioner bought the building in September 2015. Petitioner had full knowledge of the pending DHCR matter when she purchased the building and submitted evidence to DHCR to try and rebut the tenants' claim that the building was rent stabilized. While the case was pending at DHCR Petitioner commenced the instant proceeding after serving a Golub notice on November 24, 2015, conceding the tenants' rent stabilized status in its holdover petition. Respondents never withdrew their complaint with DHCR and the agency finally issued its decision in November 2017. The decision states that the units are rent-stabilized single room occupancy units and that the landlord is to issue leases at the rent stabilized rent amounts included in the order. Exhibit A "DHCR Order".

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A plain reading of the language of the order indicates that the landlord was to issue leases to the tenants as of the date of the order. Petitioner, like the landlord in *Salas*, has not complied with the DHCR Order. Furthermore, Petitioner elected not to appeal the agency's decision and is now far beyond the permissible time period to do so. Because the Court may not upset the agency's determination, even if that determination requires the landlord to start the process all over again, the court should, like the court in *Salas*, grant summary judgment in favor of Respondents.

### CONCLUSION

Pursuant to the November 2017 order from DHCR Petitioner is compelled to issue new leases to Respondents. Once a new lease is in effect the court lacks jurisdiction over this proceeding because the underlying Golub notice is fatally defective. Petitioner cannot maintain this proceeding because the landlord must re-serve the Golub notice upon the expiration of the newly issued leases. The Golub notice for this proceeding is "expired" and Petitioner must serve a new Golub notice once the lease "window period" opens again, thus, the instant proceeding should be dismissed.

WHEREFORE the undersigned requests that the Court grant the relief requested herein in its entirety.

Dated: June 13, 2018

Brooklyn, New York



BROOKLYN LEGAL SERVICES

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*Attorneys for Respondent*