

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

-----X

HOFFMAN & PARTNERS LLC,

Index No. 74074/18

Petitioner,

DECISION/ORDER

-against-

Mot. seq. nos. 4 & 5

DAVID RUTIGLIANO, ET AL.,

Respondents.

-----X

The following e-filed document listed by NYSCEF document number (motion no. 1) 5-20; 22-23 13-16; 38-41 were read on these motions for leave to reargue/renew and for sanctions.

Petitioner’s initial allegation concerning the premises in this nonpayment summary eviction proceeding was that the apartment was exempt from rent regulation by virtue of high rent vacancy decontrol. Petitioner then moved to amend the petition (mot. seq. no. 2) to allege that, in addition to high rent vacancy decontrol, the apartment was also exempt from rent regulation “because Respondent’s tenancy is not protected by any form of rent regulation including but not limited to the Loft Law.” Respondent cross-moved for dismissal. In its decision/order (November 26, 2019), the court denied Petitioner’s motion and dismissed the petition, finding that the premises were subject to rent regulation because, independent of the Loft Law, the building was built before 1974 and had a residential certificate of occupancy for more than five residential units.

Petitioner has moved to reargue the prior motion, arguing that the court misconstrued *Acevedo v Piano Building* (70 AD3d 124 [1st Dept 2009]), and now alleging that the building was substantially rehabilitated, and that for those units for which Loft Law coverage was not granted, the building is exempt from rent regulation by virtue of the substantial rehabilitation (*cf. Bartis v Harbor Tech, LLC*, 147 AD3d 51 [2d Dept 2016]).

In dismissing the petition, the court noted that Respondent’s withdrawal of application for coverage before the Loft Board had no bearing on his regulatory status. This was incorrect. As set forth in MDL § 286(3), rent regulatory coverage is afforded to those occupants who have been determined to qualify for protection under the Loft Law. As Respondent withdrew his application for such coverage before the Loft Board, no such determination has been made. It

follows that if Respondent would not qualify for protection under the Loft Law, and if the premises were substantially rehabilitated, he might not be subject to rent regulation.

Accordingly, it is ORDERED that Petitioner's motion is GRANTED as follows and otherwise DENIED. It is

ORDERED that Petitioner is granted leave to reargue the prior motion;

ORDERED that upon reargument, the court's decision/order dated November 26, 2019 is vacated;

ORDERED that inasmuch as the petition initially pleaded high rent vacancy decontrol and that in the sought amendment (mot. seq. no. 2) continued that allegation, the petition is dismissed without prejudice; and

ORDERED that Respondent's cross-motion (mot. seq. no. 5) was withdrawn on the record.

This is the court's decision and order.

Dated: October 25, 2021



Michael L. Weisberg, JHC