

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

CHAD VIGNOLA, LOUIZA CHIRINIAN,
BENJAMIN DAVIS, COLLEEN TRIPP,
VINEET DUTTA, and CHRISTOPHER
KANARICK on behalf of themselves and all
others similarly situated,

Plaintiff,

-v-

JDM WASHINGTON STREET LLC

Defendant.

Index No.: 152025/2020

PLAINTIFF'S FIRST AMENDED
CLASS ACTION COMPLAINT

Plaintiffs Chad Vignola, Louiza Chirinian, Benjamin Davis, Colleen Tripp, Vineet Dutta, and Christopher Kanarick (collectively "Plaintiff"), individually, and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against Defendant JDM Washington Street LLC ("Defendant").

INTRODUCTION

1. JDM Washington Street LLC is the owner in fee of the apartment building located at 90 Washington Street (the "Building") in the county of Manhattan.

2. Until June 2018, the Building received certain tax abatements and/or exemptions pursuant to the 421-g tax benefits program (the "421-g Program").

3. Plaintiffs first took up occupancy in the Building prior to the expiration of the 421-g benefits.

4. On June 25, 2019, the Court of Appeals entered its ruling in *Kuzmich v 50 Murray Street Acquisition LLC* (34 NY3d 84 [2019]), holding that landlords participating in the 421-g

Program were required to provide their tenants with rent-stabilized leases as a condition of an owner receiving the tax benefits.

5. 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).

6. 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.

7. Defendant could have followed the ruling in *Kuzmich*, advised its tenants of their rent-stabilized status, and provided the latter with rent-stabilized leases.

8. Instead, Defendant chose to engage in a practice which deprived Plaintiffs, and their fellow tenants, of their rights under the Rent Stabilization Code.

9. For example, Plaintiff Kanarick occupied Apartment 17C in the Building in November 2015.

10. Kanarick signed successive lease renewals for Apartment 17C, most recently a one-year lease in October 2018.

11. When that lease expired (after *Kuzmich*), Defendant insisted that Kanarick transfer to a different apartment, or vacate his unit.

12. Defendant did not advise Kanarick he was rent stabilized.

13. Upon information and belief, Defendant did advise Kanarick of his rent-stabilized rights, and forced his transfer, because it intended to contend that by transferring units, Kanarick somehow waived those rights.

14. Kanarick transferred to Apartment 24H.

15. In August 2021, Defendant advised Kanarick that it would not renew his lease, and required him to vacate his unit.

16. Defendant engaged in similar conduct with respect to the other Plaintiffs, and the members of the class.

17. Defendant's conduct requires imposition of the RSC §2522.6(b)(3) default formula, to calculate the rent for Plaintiffs' units, and the amount of rent overcharges.

18. The actual amount of Plaintiffs' legal regulated rent and the legal regulated rent for the Class, can only be determined after discovery.

19. Defendant's aforementioned conduct demonstrates an attempt by Defendant to circumvent the requirements of New York's law, particularly its rent regulations, all at the expense of the tenants residing at the Building.

PARTIES

Plaintiffs

Chad Vignola

20. Plaintiff Vignola occupies Apartment 7A in the Building.

21. Upon moving into his apartment, Vignola was provided with a purported "free market" lease.

22. Defendant subsequently provided Vignola with "free market" lease renewals.

23. Vignola's most recent lease renewal expired in April 2020.

24. In violation of the rent-regulations, Defendant has refused to provide Vignola with a renewal lease.

25. Defendant has also refused to accept Vignola's rent payments, and has attempted to charge him thousands of dollars in legal fees.

26. Defendant's refusal to renew Vignola's lease, accept his rent payments, and to charge him legal fees (apparently, its costs for defending itself in this action), are practices intended to deprive f Vignola of his rights under the Rent Stabilization Code, requiring imposition of the default formula.

Louiza Chrinaian

27. Plaintiff Chirinian first occupied Apartment 8N at the Building in October 2016, pursuant to a free-market lease.

28. Chirinian subsequently signed free-market lease renewals for Apartment 8N, the most recent of which expired in November 2019, after *Kuzmich*.

29. Rather than provide Chirinian with a rent-stabilized lease, Defendant insisted she either transfer to a different apartment, or vacate her unit.

30. Upon information and belief, Defendant did so because it intended to contend that by transferring units, Chirinian somehow waived her rent-stabilized rights.

31. Plaintiff Chirinian transferred to Apartment 18D at Defendant's request.

32. Defendant provided a lease renewal to Chirinian, and on September 3, 2021, signed that lease renewal and provided it to Defendant

33. After Chirinian signed that renewal, she received an email advising her that "[w]e will not be countersigning the renewal due to non renewal mailed out via certified mail on 8/31/21, as per the nonrenewal you must vacate by 10/31/2021, please find move out procedures attached below as per the landlord."

34. Chirinian subsequently received a purported notice of non-renewal.

Benjamin Davis

35. Plaintiff Davis previously occupied Apartment 10A, before moving to Apartment PHA.

36. Davis signed a free-market lease for Apartment PHA, which expired in May 2020, after *Kuzmich*.

37. Without advising Davis of his rent-stabilized rights, Defendant informed Plaintiff Davis that he needed to exchange apartments with the tenant in Apartment PHD.

38. Davis signed a free-market lease for Apartment PHD, but Defendant cancelled the transfer at the last minute.

39. Since May 2020, Defendant has failed to provide a lease to Davis.

Colleen Tripp

40. Plaintiff Tripp previously occupied Apartment PHB, before moving to Apartment PHD.

41. Plaintiff Tripp signed a free-market lease for Apartment PHD, which expired in February 2020, after *Kuzmich*.

42. Without advising Plaintiff Tripp of her rent-stabilized rights, Defendant informed her that she needed to vacate, and then advised her that she needed to exchange apartments with the tenant in Apartment PHA.

43. Defendant cancelled the transfer at the last minute.

44. Since May 2020, Defendant has failed to provide a lease to Tripp.

Vineet Dutta

45. Plaintiff Dutta occupied Apartment 11E in 2012.

46. Dutta subsequently signed free-market lease renewals for Apartment 11E, the most recent of which expired in October 2019, after *Kuzmich*.

47. Rather than provide Dutta with a rent-stabilized lease, Defendant insisted he either transfer to a different apartment, or vacate his unit.

48. Upon information and belief, Defendant did so because it intended to contend that by transferring, Dutta waived his rent-stabilized rights.

49. Dutta transferred to Apartment 24M at Defendant's request.

50. Although Dutta wishes to remain in his unit, Defendant has refused to renew his lease, and instead he received a notice of non-renewal.

Christopher Kanarick

51. Plaintiff Kanarick first occupied Apartment 17C at 90 Washington Street in November, 2015.

52. Kanarick subsequently renewed his lease for that unit, most recently in October 2018, when he signed a one-year lease.

53. When that lease expired, Defendant insisted that Kanarick either transfer to a different apartment, or vacate his unit.

54. Defendant did not inform Kanarick that Apartment 17C was rent-stabilized at the time it advised him that he would have to transfer or vacate.

55. Upon information and belief, Defendant forced Kanarick to transfer units, because it intended to contend that by transferring, Kanarick waived his rent-stabilized rights.

56. Kanarick transferred to Apartment 24H.

57. On or about August 25, 2021, Defendant advised Kanarick it intended to offer him a lease renewal, and that that lease renewal will be provided in seven (7) days.

58. On or about August 31, 2021, Kanarick was advised that Defendant “will not be renewing your lease as per the nonrenewal sent on 8/31/2021, we would require you to vacate by 11/30/2021.”

59. On or about September 1, 2021, Kanarick received a lease renewal, increasing his rent by \$700.00, a 29% increase.

60. That renewal specifically advised him that his apartment was purportedly not subject to rent regulation.

Defendant

61. Defendant JDM Washington Street LLC is a domestic corporation with its principal place of business in New York City.

62. JDM Washington Street LLC is the registered owner of the Building.

63. Upon information and belief, JDM Washington Street LLC conducts and transacts business in the City, County, and State of New York.

THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT

The Rent Stabilization Law and the Rent Stabilization Code

64. 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).

65. Thereafter, the New York City Council gave an agency, commonly known as “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.*

66. The RSL and RSC limit the amount of 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 units.

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

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

69. 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 as agreed upon by the tenant.

70. 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

71. 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.

72. RPTL § 421-g(6) provides in pertinent part:

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.

73. 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.

74. 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 units would otherwise be exempt.

75. 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.

DEFENDANT'S PRACTICES TO DEPRIVE PLAINTIFFS, AND THE CLASS MEMBERS, OF THEIR RIGHTS UNDER THE RENT REGULATIONS

76. Upon information and belief, certain units in the Building are subject to the rent-regulations because of the owner's receipt of 421-g Benefits.

77. Upon information and belief, Defendant knowingly and willfully failed to comply with the requirements of the rent regulations 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, improperly declaring the apartments to be “free market” or “deregulated,” and forcing tenants to transfer units.

78. Defendant charged Plaintiffs and the Class market rate rents or rents otherwise in excess of the legal regulated rent for their respective apartments.

79. Defendant overcharged Plaintiffs 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

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

81. 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 February 25, 2014 (the “Class”); or (ii) any tenants whose occupancy in any such apartment commenced after such 421-g tax benefits to the building ended.

82. The Class seeks certification of claims for damages.

83. Plaintiffs, and the members of the putative class, will not seek any penalties in the event the Class is certified, unless there is a change in law.

84. In addition, Plaintiffs proposes a Sub-Class consisting of all current tenants at the Building, who first occupied a unit in the Building during the pendency of the Building’s participation in the 421-g Program (the “Sub-Class”).

85. 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

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

87. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiffs, it is reasonable to conclude that the practices complained of herein impact more than five hundred (500) current and former tenants of the Building.

88. 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.

89. The claims of the representative Plaintiffs are typical of the claims of each member of the Class. They, like all other members of the Class, sustained damages arising from Defendant's fraudulent scheme to evade the rent stabilization laws.

90. The representative Plaintiffs 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.

91. The claims of the representative Plaintiffs are typical of the claims of each member of the Sub-Class. Plaintiffs, like all other members of the Sub-Class, are entitled to the same declaratory and injunctive relief as the members of the Sub-Class.

92. The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Class.

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

94. The counsel selected to represent the Class and Sub-Class will fairly and adequately protect the interest of the Class and Sub-Class, and are lawyers who have experience in class and complex litigation and are competent counsel for this class-action litigation.

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

96. 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.

97. 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 Plaintiffs, the Class, and the Sub-Class;
- b. whether the Defendant has 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 Defendant has established a pattern, practice, or policy of unlawfully deregulating apartments;

- d. whether the Defendant has established a pattern, practice, or policy of misrepresenting legal regulated rents;
- e. whether the Defendant has established a pattern, practice, or policy of failing to provide rent-stabilized leases to the Building's tenants;
- f. whether Defendant has established a pattern, practice, or policy of overcharging rent;
- g. whether Defendant's practices, acts, and conduct violate the RSL and RSC;
- h. to what extent Plaintiffs and members of the Class are entitled to damages; and
- i. to what extent Plaintiffs 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)

98. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 97 of this complaint.

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

100. Defendant entered into leases with Plaintiffs and the Class, which misrepresented the amount of rent Defendant was legally entitled to collect, and/or falsely represented that their apartments were not subject to rent stabilization, and/or forced Plaintiffs and the Class to vacate units, all practices intended to deprive Plaintiffs and the Class of their rent-regulatory rights.

101. Defendant charged Plaintiffs and the Class rents in excess of the legal regulated rent for their apartments.

102. Defendant overcharged Plaintiffs and the members of the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

103. 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)

104. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 97 of this complaint.

105. 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 rent regulations.

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

107. As described above, and upon information and belief, Defendant’s conduct was designed to remove the apartments of Plaintiffs and members of the Sub-Class from the protections of rent stabilization.

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

109. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

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

- a. the apartments of Plaintiffs and members of the Sub-Class are each subject to the RSL and RSC;

- b. Plaintiffs 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 Plaintiffs and members of the Sub-Class;
- d. any leases offered by Defendant to Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. Plaintiffs 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.

111. Plaintiffs 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.

112. Plaintiffs and members of the Sub-Class are entitled to reformation of their leases to represent accurately the amount of rent Defendant is legally entitled to charge Plaintiffs and members of the Sub-Class.

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

113. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 97 of this complaint.

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

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

116. 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 Plaintiffs and members of the Sub-Class from the protections of rent stabilization.

117. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

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

- a. the apartments of Plaintiffs 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. Plaintiffs 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 Plaintiffs and members of the Sub-Class;
- d. any leases offered by Defendant to Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. Plaintiffs 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 Plaintiffs and members of the Sub-Class.

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

119. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 97 of this complaint.

120. Plaintiffs are entitled to seek an award of attorneys' fees pursuant to, *inter alia*, CPLR 909, at the discretion of the Court.

121. Plaintiffs are entitled to reasonable attorneys' fees under CPLR 909, 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, Plaintiffs pray to this Court for the following relief:

- A. Certifying the Class and Sub-Class proposed by Plaintiffs, appointing the Plaintiffs 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 violation of the RSL and RSC;
- C. Because Plaintiffs and members of the Sub-Class have no adequate remedy at law for Defendant's ongoing violations of the RSL and RSC, the grant of injunctive relief against Defendant and compelling the latter 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 Plaintiffs' 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
[DATE]

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