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### Bridge 202 Apts. v. Hermo

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

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Index No. 72147/19

BRIDGE 202 APARTMENTS,

Petitioner,

-against-

DECISION/ORDER

ANTHONY HERMO,

Respondent.

-----X

SCHNEIDER, J.

The petition in this summary nonpayment proceeding alleges that the premises at issue are not subject to rent control or rent stabilization because it is “owned or operated by an institution for charitable or educational purposes on a nonprofit basis and is occupied by a tenant whose initial occupancy was contingent upon an affiliation with the institution.” Respondent now moves to dismiss the proceeding on the grounds that this allegation is insufficient to inform the respondent of laws and regulations that govern his tenancy and may give him rights of which he is unaware. Petitioner opposes the motion and moves to amend the petition to allege, once again, the language cited above, plus the following addition: “The subject premises is a Congregate Care Level 2 facility which is regulated under 24 CFR 891.” Petitioner’s motion to amend is denied, respondent’s motion to dismiss is granted, and the proceeding is dismissed without prejudice to commencement of a new case on proper papers.

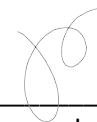
In *Volunteers of America Greater New York v. Almonte*, 65 AD 3d 1155 (2<sup>nd</sup> Dept. 2009) the court held that a petition containing an identical allegation to the one in the petition here was inadequate to give the respondent notice that the premises at issue were owned by the City of New York, operated as a shelter for homeless individuals with mental health challenges, and subject to a complex web of

regulations that gave the respondent certain rights and defenses. The court found that the proceeding based upon that allegation must be dismissed.

Here, the problem is identical. The respondent is a person with mental health challenges, and it appears that the premises at issue are part of a facility designed especially for tenants like him. It further appears that the facility is operated under regulatory agreements with the U.S. Department of Housing and Urban Development and the New York State Office of Mental Health. Petitioner's original pleading discloses none of this. Even though respondent is represented by knowledgeable counsel, neither counsel nor the court have been able to learn what rules govern the setting of rent in this facility. The proposed amended pleading still does not provide guidance in this regard. The section of the CFR cited contains regulations for many different types of supported housing, and it is impossible to tell which portions apply to this facility. The fact that respondent is a person with mental illness and has limited ability to assist counsel compounds the prejudice.

It is true that leave to amend a deficient pleading should normally be granted absent a showing of prejudice, *Pensee Associates v. Quon Shih-Shong*, 199 AD 2d 73 (1<sup>st</sup> Dept. 1993), but here there has been a clear showing of actual prejudice. This court adopts the persuasive reasoning of *Fortune Society v. Brown*, 68 Misc. 3d 956 (Civ. Ct. Bronx Co. 2020) on the issue of prejudice. The pleading in a summary proceeding must give the respondent notice of the regulations that govern the relationship between landlord and tenant. Where, as here, it does not, the case must be dismissed.

Dated: 10/5/21



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J. H. C.