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New Yorker Hotel Mgmt. Co., Inc. v. Barreto

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SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

September 2020 Term

Edmead, P.J., Cooper, Higgitt, JJ.

New Yorker Hotel Management
Company, Inc.,
Petitioner-Licenser-Appellant,

NY County Clerk's No.
570134/20

-against-

Mickey Barreto,
Respondent-Licensee-Respondent,

Calendar No. 20-134

-and-

Matthew Hannan, "John Doe" and "Jane
Doe,"
Respondents.

Petitioner appeals from a final judgment of the Civil Court of the City of New York, New York County (Jean T. Schneider, J.), entered May 29, 2019, after a nonjury trial, in favor of respondent Barreto dismissing the petition in a holdover summary proceeding.

Per Curiam.

Final judgment (Jean T. Schneider, J.), entered on or about May 29, 2019, affirmed, without costs.

Petitioner commenced this licensee holdover proceeding to recover possession of Room 2565 at the building known as the Hotel New Yorker. The petition and the attached 10-day notice to quit allege that the unit is exempt from Rent Stabilization because "the Room was rented on May 31, 1968

for more than \$350 per month or \$88 per week," and that respondent Mickey Barreto's license to occupy the room was revoked and/or terminated. At the commencement of trial, petitioner's counsel reiterated its claim that the hotel unit is "not Hotel Stabilized because the rent was over the threshold \$350 a month or \$88 a week in May of 1968." The proceeding was litigated on this issue.

To meet its burden of establishing that the hotel dwelling unit was exempt from rent stabilization coverage pursuant to Rent Stabilization Code [9 NYCRR] § 2520.11(g)(2), petitioner was required to establish that the "rent charged" for the subject unit exceeded \$350 per month or \$88 per week on the statutory base date of May 31, 1968 (see Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-506[a]; *Alphonse Hotel Corp. v Roseboom*, 46 Misc 3d 136[A], 2015 NY Slip Op 50006[U] [App Term, 1st Dept 2015]).

The trial court's determination that petitioner failed to meet this burden is supported by a fair interpretation of the evidence (see *Thoreson v Penthouse Intl.*, 80 NY2d 490, 495 [1992]). As the court properly found, petitioner "offered no direct evidence of what rent was charged for the room, or for any other room in the hotel, in 1968" (see *Alphonse*

Hotel Corp. v Roseboom, supra; Chelsea 23rd St. Corp. v Nolan, 2001 NY Slip Op 40301[U] [App Term, 1st Dept 2001]), and the documentary proof relied upon by petitioner, including the 1966 edition of the national "Hotel & Motel Red Book" indicating the single- and double-occupancy rates for any of the 2,100 units in the subject hotel through April 1967, one year prior to the relevant base date, and an accountant's report dated December 3, 1969 based, in part, upon historical monthly average daily rates in the same "Pennsylvania [Station] Zone," was "too equivocal" to establish the rent charged on the base date.

Since petitioner failed to meet its burden on the issue as framed, the petition was properly dismissed. We reach no other issue.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur

I concur

I concur