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2022-12-02

### Palacio v. Moursy

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**Palacio v Moursy**

2022 NY Slip Op 34124(U)

December 2, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-050122-21/KI

Judge: Kimberley Slade

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This opinion is uncorrected and not selected for official publication.

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

ALDI PALACIO  
Petitioner-Landlord,  
-vs-  
NAGLAA MOURSY  
Respondent-Tenant  
Address: 563 Glenmore Avenue  
Brooklyn, NY 11222

L&T Index No. 50122-21/KI

**DECISION/ORDER**

Hon. Kimberley Slade  
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Respondent’s Order to Show Cause to vacate the August 12, 2022 stipulation consented to while both sides were represented and then dismiss the proceeding and impose sanctions.

The papers considered in these motions are contained on NYSCEF and are numbered 25-47 and various documents and exhibits that may be referenced herein.

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In this expired lease holdover proceeding the parties entered into a two -attorney stipulation dated August 12, 2022 whereby respondent agreed to vacate at the end of September 2022. Pursuant to the stipulation, respondent agreed to apply for ERAP and petitioner agreed to pay respondent \$3,000 in consideration of her timely vacatur. Petitioner filed a consent to change attorney on NYSCEF on 10/28/22 (NYSCEF doc 47) which was accepted by the court, albeit technically a discharge of petitioner’s counsel by petitioner. Accordingly, petitioner appeared *pro se* on the most recent return date of November 29, 2022.

Respondent now moves to vacate the two-attorney stipulation and dismiss the proceeding. Shortly after the stipulation was entered into respondent’s counsel learned that an ERAP application was already approved and monies tendered for the subject unit (ERAP confirmation# HHH4E). The application was approved and paid for the maximum amount

allowed of 15 months at a monthly rent of \$1800, for a total of \$27,000. The application was submitted on 9/17/21 and the monies tendered on 2/16/22 as per the subpoenaed records from OTDA. The check was made out to Silvia Luque Diaz, the wife of petitioner who is also on the deed to the property (pursuant to the court's check on ACRIS). The ERAP paid \$1800.00 per month. Respondent asserts her rent was either \$650.00 or \$700.00. At argument on this motion petitioner asserts that respondent told him, in effect, that he could charge whatever he wanted upon learning that she had moved her partner into the unit. This is disputed and the ERAP application completed by petitioner's wife appears designed to extract as much money as possible from OTDA for this single room.

Respondent alleges fraud in seeking to vacate the stipulation and dismiss the proceeding pursuant to CPLR 409(b) which provides "[s]ummary determination. The court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. The court may make any orders permitted on a motion for summary judgment." Respondent alleges that petitioner committed fraud as she did not participate in the ERAP application and was unaware that it was submitted on her behalf. In his opposition, petitioner alleges he thought he had applied for LRAP and was surprised to find out that it was in fact ERAP monies that he received.

Pursuant to the ERAP statute, when ERAP and LRAP funds are accepted, a landlord agrees not to evict for 12 months after the ERAP rental assistance is received. As the ERAP monies were tendered to petitioner on February 16, 2022 and cashed by petitioner shortly thereafter, and these significant facts were known to petitioner but not to respondent when the stipulation was consented to the stipulation is vacated. Had respondent applied for and obtained ERAP on her own, and petitioner accepted the payment under these conditions, any eviction

would be stayed for one year from the date of receipt of the payment. That did not occur as it appears that petitioner or his wife applied for and obtained the ERAP payment in respondent's name and thus deprived her of critical information that would have changed the outcome of the proceeding had respondent been aware of the fact, and her rights, remedies and recourses based upon the fact of the application and payment.

While this court defers any formal finding of fraud to the Office of Temporary Disability (OTDA) it is observed that multiple ERAP applications were made utilizing respondent's name and contact information that she denies are hers or that she created (email) and that the rents requested and paid are roughly three times the rents acknowledged or agreed to. And then, after having received payment, petitioner negotiated that *respondent* apply for ERAP upon vacating the unit. While the court acknowledges petitioner's assertion that having lost his job, and then renting rooms to make ends meet might have led to great stress, it does not excuse manipulating a program designed to alleviate a risk of eviction for tenants by facilitating the payment of arrears to landlords.

Based on the foregoing, the stipulation of August 12, 2022 is vacated, and the instant proceeding dismissed. This proceeding is dismissed without prejudice to a properly commenced holdover or nonpayment case. The escrowed monies are released to petitioner. The balance of petitioner's motion is denied without prejudice to any investigation being conducted by OTDA or any other entity charged with such matters or claims or defenses thereto in another forum.

This constitutes the decision and order of the court.

Dated: December 2, 2022  
Brooklyn, New York

  
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Honorable Kimberley Slade  
Kings Housing Court