

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2023-03-14

### WHGA MANNIE L. WILSON TOWERS L.P. v. SINGLETARY

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"WHGA MANNIE L. WILSON TOWERS L.P. v. SINGLETARY" (2023). *All Decisions*. 795.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/795](https://ir.lawnet.fordham.edu/housing_court_all/795)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

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

-----X  
WHGA MANNIE L. WILSON TOWERS L.P.,

Petitioner,

Index No. 301580/2021

- against -

**DECISION/ORDER**

TALIEK SINGLETARY,

Respondent.

----- X  
Present: Hon. Jack Stoller  
Judge, Housing Court

WHGA Mannie L. Wilson Towers L.P., the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Taliek Singletary, the respondent in this proceeding (“Respondent”), seeking possession of 565 Manhattan Avenue, Apt. 6C, New York, New York (“the subject premises”) on the allegation of termination of a license given by the passing of Nancy J. Singletary (“the Prior Tenant”) in a tenancy subject to Section 202 of the Housing Act of 1959. Respondent interposed an answer with an affirmative defense that the Prior Tenant was subject to a project-based Section 8 subsidy and that Respondent is entitled to succeed to the tenancy of the Prior Tenant. The Court held a trial on February 10, 2023 and adjourned the matter for post-trial submissions to February 27, 2023.

**The trial record**

Petitioner proved that it is the proper party to commence this proceeding, that the Prior Tenant had previously been the tenant of the subject premises, that the Prior Tenant passed away, that Respondent remained in the subject premises after the Prior Tenant’s passing, and that Petitioner caused Respondent to be served with a notice to quit pursuant to RPAPL §713(10).

Petitioner submitted into evidence a regulatory agreement dated June 26, 2007 (“the 2007

Regulatory Agreement”) it entered into with the Department of Housing Preservation and Development of the City of New York (“HPD”) that stated, *inter alia*, that Petitioner’s predecessor-in-interest (“the Prior Owner”) developed the building in which the subject premises is located (“the Building”) under Section 202 of the Housing Act of 1959 (“Section 202”); that the Prior Owner wished to repay or refinance a mortgage loan from the Department of Housing and Urban Development (“HUD”); that otherwise references a repayment or a refinancing of such a loan; and that further makes reference to a mortgage from the New York City Housing Development Corporation (“HDC”).

Petitioner submitted into evidence a subsequent regulatory agreement dated February 25, 2021 that HDC entered into with Petitioner (“the 2021 Regulatory Agreement”). The 2021 Regulatory Agreement stated, *inter alia*, that occupancy restrictions apply to the Building and further stated at ¶4.01(d) that Petitioner shall lease each income-restricted unit as a senior housing unit to an eligible household that “upon initial occupancy” includes not less than one individual who is 62 or older, at ¶4.11 that Petitioner is not required to provide a lease to any successor to the tenancy of a unit, “unless doing so is required by Rent Stabilization or any other law”, at ¶5.02(a) that all income-restricted units are subject to Rent Stabilization, and at ¶5.02(b) that, except as may be specifically set forth in the agreement, Petitioner may not claim any exemption from Rent Stabilization.

Petitioner submitted into evidence the original lease between Petitioner and the Prior Tenant, signed in April of 2006. The original lease used HUD forms and has a HUD project number and showed that the Prior Tenant lived alone. The original lease stated that Petitioner agreed to limit occupancy of the project to elderly or handicapped families and individuals as defined in Section 202. Petitioner submitted into evidence another lease between Petitioner and

the Prior Tenant that commenced in April of 2015 and expired in March of 2016, which also referenced Section 202. Petitioner submitted into HUD forms that the Prior Tenant filled out, the most recent being in 2010, showing that the Prior Tenant was the only member of the household composition.

Petitioner submitted into evidence a death certificate for the Prior Tenant showing that she passed on July 23, 2020; that the subject premises was her address; and that Latisha Singletary (“Respondent’s Mother”) is the informant as the Prior Tenant’s granddaughter.

Terrence Watson (“the Property Manager”) testified that he has worked for Petitioner since May 31, 2018; that he handles all recertifications; and that the subject premises is Section 202 project-based Section 8 for the elderly and disabled.

The Property Manager testified on cross-examination that he never met the Prior Tenant; that the last recertification on file is from 2010; that Respondent has been living in the subject premises since January 4, 2020; that Respondent has been in Court since he started working for Petitioner; that he never registered the subject premises with the New York State Division of Housing and Community Renewal (“DHCR”); that there is a process to add someone to the household composition; that they have to be approved and qualify to live in the Building; that they have to be sixty-two or above and/or eighteen or above with a mobile disability; that Petitioner is required to respond to an application to add someone to household composition; and that an applicant to be added to a household composition would have to provide proof of income, social security, bank statements, and identification.

The parties stipulated that Respondent and the Prior Tenant had been in a family relationship with one another.

Respondent submitted into evidence Respondent’s birth certificate, showing that

Respondent's Mother is his mother; Respondent's W-2 forms from 2018 and 2019, Respondent's pay stub dated September 20, 2018, Respondent's 1099 form from 2019, documentation that Respondent received Unemployment Insurance Benefits ("UIB") in 2020, letters sent to Respondent from the Human Resources Administration ("HRA"), and a tuition statement for Respondent from 2018, all of which show the subject premises as Respondent's address. The HRA records also include a driver's license issued on June 13, 2019 with Respondent's address as 75 West End Avenue, Apt. R61, New York, New York ("the Other Address"). Respondent submitted into evidence a power of attorney that the Prior Tenant executed on January 22, 2016 appointing Respondent as her attorney-in-fact, which shows that the Prior Tenant's address is the subject premises and Respondent's address as the Other Address.

Respondent's Mother testified that she lives in the Other Address; that the Prior Tenant was her grandmother; that the Prior Tenant died in July of 2020; that she was present when the Prior Tenant died; that Respondent was born on January 9, 1993; that the Prior Tenant lived at the subject premises from July 23, 2018 through the date of her death ("the Relevant Time Period"), which she knew because she visited weekly; that she saw that Respondent was living at the subject premises; that Respondent's personal property was in the subject premises; that Respondent was the Prior Tenant's caretaker; that Respondent went there after they graduated college in 2015; and that Respondent last lived in her household when they left for college.

Respondent's Mother testified on cross-examination that she has lived at the Other Address since 2006; that Respondent was living with her at that time; that Respondent moved out in 2011 when they went to college; that Respondent went to the University of Buffalo; that Respondent lived in a dorm; that Respondent lived at an apartment in Buffalo at some point during their sophomore or junior year; that her apartment is a low-income tax credit apartment;

that she recertifies annually; and that she provides her family composition to her landlord when she recertifies. Petitioner submitted into evidence a recertification that Respondent's Mother filled out for the Other Address on May 15, 2018 that listed Respondent as a member of her household for the Other Address. Respondent's Mother testified that in 2019, 2020, 2021, and 2022 she is not sure if she filled out recertifications.

Respondent's Mother testified on redirect examination that Respondent did not live with her at the Other Address during the Relevant Time Period and that she put them on her recertification because Respondent is her child.

Respondent testified that they have lived at the subject premises with the Prior Tenant from 2015 through the date that the Prior Tenant passed; that they are the one who took the Prior Tenant to the hospital when she had a heart attack maybe a week before she passed; that the Prior Tenant was bed-bound during the Relevant Time Period; that they were the primary caregiver for the Prior Tenant; that they did not have a lease anywhere else or rented another apartment; that they notified two of Petitioner's employees that they lived in the subject premises; that the employees asked for a copy of their identification and a way to establish a family relationship between them and the Prior Tenant; that they never received a written or oral response to that request; that they tried to follow up with Petitioner's employees; that they paid utilities in their name at the subject premises, like the cable bill; that utilities were in the Prior Tenant's name beforehand; that after the Prior Tenant died Respondent got a new account, so their history with Spectrum in their name was a different account; that Respondent filed their taxes late for 2018; that they were a freelance creative director; that they worked at a nonprofit as a director of LGBTQ services; that they were freelancing from October 2017 through 2019; that they did not receive UIB before the Prior Tenant died; that they did not have a bank account during the

Relevant Time Period; that they got SNAP assistance and some cash assistance; that they got recertification letters and letters regarding HASA benefits; that they did not know that the building was a Section 202 project; and that they did not know that the Building was set for certain types of people until they heard about it in Court.

Respondent testified on cross-examination that they were living in Buffalo before moving to the subject premises; that they were not living with Respondent's Mother from 2015 through 2018; that they did not know that Respondent's Mother listed them on her household composition for her apartment during that time; and that they did not provide Respondent's Mother with information about that.

Respondent submitted into evidence letters dated from 2017 and January of 2018 from the Prior Tenant saying that Respondent lived with her. Respondent testified on cross-examination that the telephone number and date on those letters are in Respondent's handwriting; that the Prior Tenant was aware of what she was signing; that in 2017, Respondent signed as an attorney-in-fact for the Prior Tenant; that they were an attorney-in-fact in 2017 because they were the Prior Tenant's primary caretaker and the Prior Tenant was bed-bound; and that the power of attorney was still in effect at the time of the second letter.

Respondent testified on cross-examination that there may have been college-related documents using the Other Address; that their handwriting does not appear on another document from HRA; that Respondent had requested that HRA assist them with housing; that the assistance they were trying to get was for the subject premises; that they were technically homeless because they were not on the lease; that Respondent did not recall saying that they lived alone; that they always said that they were living with the Prior Tenant; that Respondent wrote on a SNAP application that they lived alone; and that Respondent did not list on one

application that the Prior Tenant lived with him.

Respondent testified on redirect examination that they were applying for a HASA voucher to help them pay rent for the subject premises; that they had requested a key to the Building and they had requested to be added to the lease; that the Other Address was on their driver's license because their original driver's license that they had lost had issued when they were nineteen years old had that address; and that they did not have a utility bill in their name.

Paris Warren ("Respondent's Friend") testified that he lives in the Bronx; that Respondent is his best friend; that he visited Respondent between 2018 and 2020 thirty or forty times; that Respondent lived with their grandmother in Harlem; that he did not know the Prior Tenant's name; that the subject premises is on 125<sup>th</sup> Street around Manhattan Avenue in Manhattan; that he did not visit Respondent between 2013 and 2016; and that he only went to the Other Address one time.

Respondent submitted into evidence a Housing Assistance Payment ("HAP") Basic Renewal Contract for Project-Based Section 8 between Petitioner and HUD that commences on June 26, 2008 and runs for twenty years ("the HAP Contract"). The HAP Contract provides that the project is renewed at "exception rents" under Section 524(b)(1) of MAHRA Multifamily Assisted Housing Reform and Affordability Act of 1997.

On rebuttal, Petitioner submitted into evidence a tenant selection plan and an affordable rent roll. The Property Manager testified that the subject premises is a unit designated for the elderly, not for the disabled.

The Property Manager testified on cross-examination that an elderly person could live in a unit with another household member; that that if the household member was already on the lease then they could remain in the subject premises; and that designations on the affordable rent



roll cannot change depending on who is living there.

## **Discussion**

The only evidence placing Respondent at the Other Address during the Relevant Time Period was their driver's license. While a driver's license is probative of primary residence, Glenbriar Co. v. Lipsman, 5 N.Y.3d 388, 392-393 (2005), 300 East 34th St. Co. v. Habeeb, 248 A.D.2d 50, 55 (1st Dept. 1997), Columbus Manor, LLC v. Turnbull, 63 Misc.3d 143(A)(App. Term 1<sup>st</sup> Dept. 2019), so are Respondent's W-2 forms, Id., pay stubs, Cox v. J.D. Realty Assocs., 217 A.D.2d 179, 184 (1st Dept. 1995), Brg 321 LLC v. Hirschorn, 52 Misc.3d 131(A)(App. Term 1st Dept. 2016), 1099 forms, 310 E. 23rd LLC v. Colvin, 41 A.D.3d 149 (1st Dept. 2007), 111 Realty Co. v. Sulkowska, 21 Misc.3d 53, 54 (App. Term 1st Dept. 2008), UIB forms, 50 Lefferts LLC v. Cole, 56 Misc.3d 1216(A)(Civ. Ct. Kings Co. 2017), HRA records,<sup>1</sup> and tuition statements. St Owner LP v. Doe, 26 Misc.3d 198, 200 (Civ. Ct. N.Y. Co. 2009). The Court accords equal weight to all the documentary evidence. The documentary evidence that shows that Respondent lived at the subject premises during the Relevant Time Period clearly outweighs the documentary evidence that Respondent did not live at the subject premises. Furthermore, witnesses, including a disinterested witness, offered un rebutted testimony that Respondent co-resided with the Prior Tenant during the Relevant Time Period. Respondent has therefore proven by a preponderance of the evidence that they lived with the Prior Tenant during the Relevant Time Period.

A family member who remains in a dwelling after the permanent vacatur of a former tenant may succeed to the tenancy if the dwelling is subject to the Rent Stabilization Law, 9

---

<sup>1</sup>New York State regulations require HRA to verify beneficiaries' residences, 18 N.Y.C.R.R. §351.2(b).

N.Y.C.R.R. §2523.5(b)(1), or if the dwelling is in a project-based Section 8 building. Los Tres Unidos Assocs., LP v. Colon, 45 Misc.3d 129(A)(App. Term 1<sup>st</sup> Dept. 2014), 2013 Amsterdam Ave. Hous. Assocs. v. Estate of Almeda Wells, 10 Misc.3d 142(A)(App. Term 1<sup>st</sup> Dept. 2006). Petitioner argues that these succession provisions do not apply to the subject premises in part because the subject premises is limited to occupancy of senior citizens, citing in support in part Petitioner’s tenant selection plan and an affordable rent roll. While these exhibits are probative, Petitioner itself generated these documents. Governing regulatory schemes and the various regulatory agreements more definitively determine any purported occupancy restrictions.

The 2021 Regulatory Agreement indeed requires that apartments in the Building be leased as senior housing units, but it also subjects such restricted apartments to the Rent Stabilization Law and compels Petitioner to provide a lease to a successor if required by the Rent Stabilization Law. Moreover, the 2021 Regulatory Agreement requires Petitioner to lease restricted apartments to households with at least one member who is a senior citizen “upon initial occupancy”.

If the parties to the 2021 Regulatory Agreement wished to restrict apartments in the Building solely to households that included a senior citizen, a simple statement to that effect without any caveats would have already covered households with a senior citizen upon initial occupancy. As the 2021 Regulatory Agreement characterizes itself as an agreement, the Court construes the language of the 2021 Regulatory Agreement according to the canons of contractual construction. The Court is supposed to construe contracts so as to give effect to every word contained in the contract. See Spaulding v. Benenati, 57 N.Y.2d 418, 425 (1982), Gessin Elec. Contrs., Inc. v. 95 Wall Assoc., LLC, 74 A.D.3d 516, 519 (1<sup>st</sup> Dept. 2010), J.P. Doumak, Inc. v. Westgate Fin. Corp., 4 A.D.3d 62, 64 (1st Dept.), *appeal dismissed*, 3 N.Y.3d 635 (2004). The

qualification of the requirement that eligible household include a senior citizen “upon initial occupancy” therefore appears to contemplate that while a household may include a senior citizen upon initial occupancy, the senior citizen may vacate at some point. Such a qualification, in combination with the language in the 2021 Regulatory Agreement requiring Petitioner to comply with the succession provisions of the Rent Stabilization Law, can only mean that a remaining family member after the passing of a senior citizen is not subject to eviction solely for not being a senior citizen.

Petitioner argues that the subject premises is subject to Section 202 and thus restricted to the occupancy of senior citizens, Eugene Smilovic Hous. Dev. Fund Corp. v. Lee, 61 Misc.3d 1216(A)(Civ. Ct. Bronx Co. 2018), and exempted from Rent Stabilization regardless of the language of subsequent regulatory agreements. Section 202 is codified at 12 U.S.C. §1701q. The purpose of Section 202 is to provide housing for low-income elderly tenants. 12 U.S.C. §1701q(d)(1). To advance this end, HUD makes below-market loans to eligible developers. Boston v. Harris, 619 F.2d 87, 89 (1st Cir. 1980). Petitioner correctly states that the pendency of a mortgage insured or held by HUD as such preempts local rent regulation. 5th & 106th St. Assocs., L.P. v. Hunt, 69 Misc.3d 19, 21 (App. Term 1<sup>st</sup> Dept. 2020).

Funding Section 202 depends in part on developers’ repayment of mortgages from HUD, Boston, *supra*, 619 F.2d at 89-90, although HUD retains the authority to condition a developer’s prepayment of a HUD mortgage on the developer’s continuing subjection to HUD strictures. 12 U.S.C.S. §1701q(j)(1). If a developer prepays a HUD mortgage but remains subject to HUD rules as such, the exemption from local rent regulation continues. 435 Cent. Park W. Tenant Ass’n v. Park Front Apartments, LLC, 164 A.D.3d 411, 413-14 (1<sup>st</sup> Dept. 2018). When this happens, HUD enters into an agreement the developer that would make clear the date according

to which the restriction ends, which would also be the date that the mortgage with HUD would have been paid off had it not been prepaid. Id. Once that date occurs, however, the HUD subsidy no longer operates to pre-empt local rent regulation. 221 W. 16th Realty LLC v. N.Y. Div. of Hous. & Cmty. Renewal, 277 A.D.2d 81 (1<sup>st</sup> Dept. 2000), 223 Chelsea Assocs., LLC v. Dobler, 189 Misc.2d 170, 171 (App. Term 1<sup>st</sup> Dept. 2001), TOPA Equities, Ltd. v. City of L.A., 342 F.3d 1065, 1072 (9th Cir. 2003).

The various leases, agreements, and other exhibits prove by a preponderance of the evidence that the Building was at least at some point subject to Section 202, with the most recent exhibit to that effect being a lease executed between Petitioner and the Prior Tenant in April of 2015. However, in order for the Court to find that the Building remains subject to Section 202, the Court would have to find that Petitioner obtained a mortgage from HUD that remains in effect or that would have remained in effect even if Petitioner had prepaid the mortgage. 435 Cent. Park W. Tenant Ass'n, supra, 164 A.D.3d at 413-14, 221 W. 16th Realty LLC, supra, 277 A.D.2d at 81, 223 Chelsea Assocs., LLC, supra, 189 Misc.2d at 171, TOPA Equities, Ltd., supra, 342 F.3d at 1072. Not only does the record lack any agreements with HUD, for mortgages or otherwise, but the reference in the 2007 Regulatory Agreement to Petitioner's repayment or refinancing of a HUD mortgage together with the reference in the 2007 Regulatory Agreement to a mortgage with HDC raises the possibility that Petitioner prepaid its mortgage from HUD with the proceeds of a new mortgage from HDC. On this record, the Court could only find that a prior mortgage from HUD would have still remained in effect by speculation about the date and term of such a prior mortgage. Accordingly, Petitioner does not prove by a preponderance of the evidence that the Building remains subject to Section 202.

Petitioner argues that Respondent did not sufficiently challenge the rent regulatory status

in their answer. However, Respondent's answer alleges that the subject premises is subsidized through the project-based Section 8 program. The answer does not concede that the Section 202, with its age restrictions that would exclude Respondent, applied to Respondent. Given that Respondent interposed a succession defense and that a defense Petitioner raised to the succession defense concerned the age restrictions of Section 202, Petitioner bore the burden of proving that Section 202 applied to the Building.

Without proof that Section 202 applied to the Building, Petitioner cannot successfully defend against Respondent's succession defense. However, Respondent's succession defense also relies on proof that an applicable regulatory scheme supports such a defense. As explained above, the record is insufficient to prove the rent regulatory status of the subject premises. While such a failure of proof might otherwise implicate an element of Respondent's defense, a petitioner in a summary proceeding ordinarily bears the burden of proving a rent regulatory status. Randall Assocs. LLC v. Davis, 20 Misc.3d 1116(A)(Civ. Ct. N.Y. Co. 2008).

Accordingly, the Court will dismiss both the petition and Respondent's defenses. Because such a dismissal would not resolve Respondent's status if its effect was indefinite, it is ordered that the Court exercises its discretion pursuant to CPLR §5013 to dismiss the petition and Respondent's defenses without prejudice to a reassertion of either Petitioner's cause of action or Respondent's defenses or causes of action asserted herein.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with **DRP-185**.

This constitutes the decision and order of this Court.

Dated: New York, New York  
March 14, 2023

