

Fordham Law School

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

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2023-03-20

### PRIVADA REALTY LLC v. HERNANDEZ

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

---

#### Recommended Citation

"PRIVADA REALTY LLC v. HERNANDEZ" (2023). *All Decisions*. 805.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/805](https://ir.lawnet.fordham.edu/housing_court_all/805)

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 BRONX: HOUSING PART B  
-----X

PRIVADA REALTY LLC,

L&T Index No. 309092/21

Petitioner,

-against-

**DECISION/ORDER**

GRISELLE HERNANDEZ,  
N.Y.C.H.A.,

Respondents.  
-----X

Present: Hon. OMER SHAHID  
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Petitioner’s Motion to Vacate the E.R.A.P. Stay (Motion #1 on N.Y.S.C.E.F.):

<b>Papers</b>	<b>Numbered</b>
Notice of Motion (Motion #1 on N.Y.S.C.E.F.).....	<u>1</u>
Affirmation in Opposition (Entries 14-16 on N.Y.S.C.E.F.).....	<u>2</u>
Affirmation in Reply (Entry 17 on N.Y.S.C.E.F.).....	<u>3</u>
Affirmation in Sur-Reply (Entry 19 on N.Y.S.C.E.F.).....	<u>4</u>

Petitioner moves to vacate the E.R.A.P. stay on the ground that funds distributed pursuant to an alleged application filed by Respondent has been recouped by O.T.D.A. due to Respondent being a subsidized tenant. Respondent claims that she never filed the application from which the funds were recouped but does have a pending application under another application number. In response, Petitioner still seeks to vacate the E.R.A.P. stay on the grounds that the matter is a holdover proceeding and that O.T.D.A. may not pay pursuant to Respondent’s E.R.A.P. application due to her status as a subsidized tenant.

As recently decided by this very court in Elliot Place Properties Inc. v. Jaquez, 77 Misc. 3d 1230(A) (Civ. Ct., Bronx Co. 2023), a stay associated with a subsidized tenant’s E.R.A.P. application shall continue to remain in place despite the applications of such tenants being low on the priority list. Just because O.T.D.A. is unable to pay pursuant to the applications of subsidized tenants now does not mean that these applications will not be paid at all when more funding will become available.

Furthermore, just because the instant proceeding is a holdover does not warrant the lifting of the stay. Section 8 of Part BB, Subpart A of the E.R.A.P. Statute as amended by Part A, Section 4 of the Act provides in pertinent part: “[I]n any pending eviction proceeding, whether filed prior to, on, or after the effective date of this act, against a household who has applied or

subsequently applies for benefits under this program or any local program administering federal emergency rental assistance program funds to cover all or part of the arrears claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility.” (Emphasis supplied.) The language “any pending eviction proceeding” incorporates both nonpayment and holdover proceedings and does not make a distinction between them when it concerns the stay. The exception to this language appears in Section 9-A of the E.R.A.P. Statute which concerns proceedings where respondents are committing nuisance or objectionable conduct, which is not the case here.

Section 8 of the E.R.A.P. Statute, as quoted above, states that a proceeding shall be stayed pending determination of eligibility if a “household” applies for the program funds to pay for all or part of the arrears claimed by a petitioner. Pursuant to Section 5(1)(a)(i) of the E.R.A.P. Statute, a “household” is eligible for the program if it “is a tenant or occupant obligated to pay rent in their primary residence in the state of New York.” Section 2(7) of the E.R.A.P. Statute defines “occupant” the same as R.P.L. § 235-f which defines that term as “a person, other than a tenant or a member of a tenant’s immediate family, occupying a premises with the consent of the tenant or tenants.” Furthermore, Section 2(9) of the E.R.A.P. Statute defines “rent” the same as R.P.A.P.L. § 702 which defines it, in pertinent part, as: “the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement.” And, finally, Section 2(10) of the E.R.A.P. Statute defines “rental arrears” as unpaid rent accruing on or after March 13, 2020.

Here, the Petition seeks \$41,142.42, representing rental arrears from April 1, 2019 to August 31, 2021 at a rate of \$1,201.67, based upon a rental agreement between the parties. Hence, Respondent’s application for program benefits qualifies for a stay pursuant to Section 8 of the E.R.A.P. Statute.

Accordingly, Petitioner’s motion is denied in its entirety and the matter shall remain on the E.R.A.P. administrative calendar pending determination. Once determination has been made, either party may reach out to the Part and request that the matter be placed back on the court’s calendar.

The foregoing constitutes the decision and order of the court.

Dated: March 20, 2023  
Bronx, N.Y.



---

Omer Shahid, J.H.C.