

Fordham Law School

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

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2016-07-11

### BH VYES LLC v Jones

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

---

#### Recommended Citation

"BH VYES LLC v Jones" (2016). *All Decisions*. 826.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/826](https://ir.lawnet.fordham.edu/housing_court_all/826)

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 K

-----X  
BH VYES LLC

*Petitioner,*

INDEX NO. 73128/15

-against-

DECISION/ORDER

REKAYA JONES

*Respondent-Tenant.*

CHANEL JONES, DESEAN FERREIN,  
JOHN DOE, JANE DOE

*Respondent Under-tenants*  
-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the instant motion seeking leave to conduct discovery.

Papers	Numbered
Notice of Motion and Exhibits (A-C) annexed .....	<u>1</u>
Supplemental affirmation in Support.....	2__
Affirmation in Opposition and Exhibits (A-C) annexed.....	3__
Replying Affirmation .....	4__
Sur-reply.....	
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:  
Respondent Jones moves for an order granting leave to conduct discovery and obtain the production of certain documents and business records in Petitioner's custody and control, enumerated in the request annexed to the motion as exhibit (C).

This summary holdover proceeding is predicated upon the service of a 30-day Notice of Termination, purporting to terminate a month to month tenancy. The premises are alleged to be deregulated pursuant to a high-rent vacancy occurring prior to the commencement of the subject tenancy.

In their answer, Respondents contest the deregulated status of the subject premises and allege that the premises is still subject to Rent Stabilization and further that Petitioner and or its predecessor improperly deregulated the apartment by registering increases to the legal regulated rent which were illegal or otherwise unsupported by the circumstances.

Respondent now moves for leave to conduct discovery pursuant to CPLR 408. Annexed as exhibit (C) to the motion is what is labelled "PROPOSED INTEROGATORIES AND DOCUMENT REQUEST". The Court notes that the request contains only a document production request seeking documentary and business record production concerning evidence supporting Individual Apartment Improvements, and vacancies increases dating back to 1986.

In opposition, Petitioner argues that Respondents have not met the ample need standard and further that even if discovery is appropriate, that the scope of discovery should be limited to the four year statute of limitations found in Rent Stabilization Code 26-516 (a)(2), see also CPLR § 213-a.

The Court disagrees that Respondent has shown that there is ample need for discovery for the limited purpose of establishing whether the premises are indeed exempt from regulation under the Rent Stabilization Law, as laid out in New York University v. Farkas, 121 Misc.2d 643; as favorably cited recently in 150 West 82nd Street Realty Assoc., LLC v. Linde, 36 Misc. 3d 155 (A) [AT1 2012]. The permissible look back is not limited to four years since the purpose is not to seek evidence on an overcharge, although this may be the practical consequence of such an inquiry if the base date rent for an overcharge determination is lower than what Petitioner charged and collected.

Our Appellate Term has consistently held that “ consideration of events beyond the statutory four-year period (*see* Rent Stabilization Law [Administrative Code of City of NY] § 26-516[a] [2] ) was proper, since it was not for the purpose of calculating a rent overcharge but rather to determine whether the demised apartment premises is regulated (*see East W. Renovating Co. v. New York State Div. of Hous. and Community Renewal*, 16 AD3d 166 [2005] )”, *656 Realty, LLC v. Cabrera* 27 Misc. 3d 138(A). However contrary to Respondent’s position that discovery may be obtained back to any time where the rent history indicates some anomaly in the increase of the rent charged, the cases appear to limit the look back to the date of deregulation of the premises and only those circumstances.

Respondents request to obtain documentation from 2003, when a major vacancy increase was taken but where the increase did not render the premises deregulated, does not appear to be permissible. For the particular facts of this case, the issue of the statute of limitations may not even be relevant since from the records provided by Respondent, the deregulation occurred as recently as 2013, well within the limitations period. Prior to that year, the apartment was still subject to the Code and was registered as such.

Accordingly, Respondent’s motion seeking leave to conduct discovery and to serve the annexed request for production of documents is granted. However, the time period for which the documents must be produced, if available, is limited to the date of the lease in 2012, entered into with tenant Crespo forward. The date of the request being the date that notice of entry of this order is served upon Petitioner. Upon completion of discovery, either parties may restore the matter to the Court’s calendar for all purposes.

The foregoing constitutes the decision and order of the Court.

Dated: Bronx, New York  
July 11, 2016

  
Hon. Kimon C. Thermos, JHC