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### JVAL Holding Corp. v. Ruiz

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[\*1]

<b>JVAL Holding Corp. v Ruiz</b>
2023 NY Slip Op 50354(U) [78 Misc 3d 1226(A)]
Decided on April 11, 2023
Civil Court Of The City Of New York, Bronx County
Ibrahim, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on April 11, 2023

Civil Court of the City of New York, Bronx County

<p><b>JVAL Holding Corp., Petitioner,</b></p> <p><b>against</b></p> <p><b>Abril Ruiz, Respondent-Tenant.</b></p>
--

L & T Index No. 325693/2022

Petitioner represented by: Hertz, Cherson & Rosenthal, PC Firm  
118-35 Queens Blvd, 9th Floor Forest Hills, New York 11375

Respondent represented by: Legal Services NYC- Bronx Firm  
369 East 148th Street 2nd Floor Bronx, New York 10455  
By: Issac Fink, Esq.

Shorab Ibrahim, J.

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION BY THE RESPONDENT TO DISMISS THE PROCEEDING: NYSCEF Documents 7-18 (Motion with Affirmation and Exhibits); 21-25 (Affidavit and Affirmation in Opposition with Exhibits); and 28-29 (Affirmation in Reply with Exhibit).

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

### BACKGROUND AND PROCEDURAL POSTURE

In relevant part, the petition in this non-payment proceeding alleges the tenancy is not subject to rent regulation because the premises were constructed or substantially rehabilitated after January 1, 1974. (*see* petition at NYSCEF Doc. 1, par. 7). Respondent now moves to dismiss the proceeding pursuant to CPLR § 3211(a)(7) and (a)(1) alleging that his tenancy is, in fact, subject to rent stabilization because he took possession pursuant to a lease entered while the property received a § 421-a tax abatement. [\[EN1\]](#)

Respondent argues that so long as a property receives the 421-a tax benefit, covered apartments are subject to rent stabilization and only exit regulation [even after the tax abatement [\*2] expires] when they become vacant or if the landlord provides in every lease [initial and renewals] "a notice informing such tenant that the unit shall become subject to such decontrol upon the expiration of such tax benefit" and "states the approximate date on which such tax benefit period is scheduled to expire. (*see* Affirmation in Support at NYSCEF Doc. 8, par. 20, citing RPTL § 421-a(2)(f) and 9 NYCRR § 2520.11(p) and (p)(2)).

The facts supporting respondent's motion are alleged to be as follows:

1. That petitioner received a § 421-a partial property tax exemption for the 2019—2020 New York City tax year that ended June 30, 2020.
2. That respondent's tenancy commenced on April 1, 2019.
3. That none of the leases offered to Respondent included a valid § 421-a(2)(f)(ii) rider.

Petitioner argues that the 421-a tax abatement "was not in effect" when it offered respondent a destabilized lease. (*see* Affidavit in Opposition at NYSCEF Doc. 22, par. 7). However, petitioner does not dispute respondent's documentation.

Petitioner makes no allegation that the respondent was given a lease with a valid 421-a rider. Thus, the threshold question is whether petitioner is correct that 421-a benefits had expired prior to the parties entering a lease.

### DISCUSSION

## 421-a and Rent Stabilization

Section 421-a of the Real Property Tax Law "provides for an exemption from local taxation for certain new multiple dwellings." ([Kew Gardens Dev. Corp. v Wambua](#), 103 AD3d 576, 577, 961 NYS2d 48 [1st Dept 2013]). Apartments in buildings receiving the 421-a tax abatement are subject to rent stabilization for the *duration* of the tax exemption, even if the building is otherwise exempt from rent regulation. (see RPTL 421-a; [North-Driggs Holdings, LLC v Burstiner](#), 44 Misc 3d 318, 323, 986 NYS2d 318 [Civ Ct, Kings County 2014] [emphasis added]; [Chernett v Spruce 1209, LLC](#), 200 AD3d 596, 596, 161 NYS3d 48 [1st Dept 2021] (building becomes subject to rent stabilization in exchange for §421-a tax benefits)).

Critically, these apartments can *only* be removed from rent stabilization *after* expiration of § 421—a tax benefits if the apartment becomes vacant or if proper notices are attached to every lease. (see RPTL § 421—a(2)(f)(ii); [Tribeca Equity Partners, L.P. v New York State Div. of Hous and Community Renewal](#), 144 AD3d 554, 554, 42 MYS3d 102 [1st Dept 2016])).

It follows that if respondent became a tenant during the time the tax abatement was in effect he was, at least initially, a rent stabilized tenant. Then, upon expiration of the tax exemption, he remains a rent stabilized tenant unless each lease petitioner provided contains the required notices. (see [125 Court Street, LLC v Nicholson](#), 67 Misc 3d 28, 33-34, 115 NYS3d 817 [App Term, 2nd Dept 2019]).

Notwithstanding disagreement over other leases, the parties agree there is a lease with the respondent commencing April 1, 2019 and ending March 31, 2020. (see Abril Ruiz Affidavit at NYSCEF Doc. 12, par. 1, respondent's exhibit E, at Doc. 13, and petitioner's exhibit 2, at Doc. 24).

In New York City, the tax year runs from July 1 to June 30. [\[FN2\]](#) Respondent produces proof that the building received the 421-a tax benefit when the lease was entered. (see NYC Department of Finance (DOF) property tax records at NYSCEF Doc. 11).

These publicly available documents reveal that petitioner had the 421-a tax exemption for the 2019-2020 tax year. (*id.*) [\[FN3\]](#) While petitioner's agent maintains that respondent was offered a destabilized lease because the 421-a program was not in effect at the time the lease

was offered, (*see* NYSCED Doc. 22, par. 7), he utterly fails to refute the DOF records showing the opposite.

The lease does not include any riders or other language complying with RPTL § 421— a(2)(f)(ii).

### Motion to Dismiss Standard

On a motion to dismiss the complaint pursuant to CPLR § 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]; [Breytman v Olinville Realty, LLC, 54 AD3d 703](#), 703-704, 864 NYS2d 70 [2nd Dept 2008]). However, where evidentiary material is submitted and considered on a motion to dismiss a pleading pursuant to CPLR § 3211(a) (7), the question becomes whether the proponent of the pleading has a cause of action, not whether the proponent stated one. (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275, 401 NYS2d 182 [1977]). Dismissal is inappropriate unless the movant can show that a purported fact is no fact at all. ([see Cajigas v Clean Rite Centers, LLC, 187 AD3d 700](#), 701, 132 NYS3d 428 [2nd Dept 2020]).

Furthermore, dismissal under CPLR § 3211(a)(1) is appropriate only where documentary evidence "utterly refutes" the petitioner's "factual allegation" and thus "conclusively established a defense as a matter of law." (*Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314, 326, 746 NS2d 858 [2002]; [see also Fontanetta v Doe, 73 AD3d 78](#), 83, 898 NYS2d 569 [2nd Dept 2010]). Documents whose contents are essentially undeniable qualify as documentary evidence under this provision. (*id.* at 84-85).

### Dismissal is Required

The court may take judicial notice of the documents from the Department of Finance website. ([see Mendoza v Mortlen Realty Corp., 88 AD3d 611](#), 612, 931 NYS2d 62 [1st Dept 2011] *citing* CPLR § 4511(b); *Alphonse Hotel Corp. v Roseboom*, 46 Misc 3d 136(A), \*1, 2015 NY Slip Op 50006(U) [App Term, 1st Dept 2015]; [Siu Yat Chau v Marquez, 58 Misc 3d 1226\(A\)](#), \*2, 2018 NY Slip Op 50267(U) [Civ Ct, Bronx County 2018]). In any event, petitioner does not dispute the records submitted. (*see Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539, 544 [1975] (uncontroverted facts appearing in the movant's papers may be deemed to be admitted); *Tortorello v Carlin*, 260 AD2d 201, 206 [1st Dept 1999]).

Consequently, the documentary evidence here establishes that the premises were subject to rent stabilization when respondent entered the lease commencing April 1, 2019. Even if the 421-a abatement subsequently expired, the lease offered does not contain statutorily required language and, as such, the tenancy remains subject to rent stabilization, notwithstanding leases that allege the premises are destabilized.

As petitions must accurately state an apartment's rent-regulatory status, (*see 125 Court Street, LLC v Nicholson*, 67 Misc 3d at 34), the petition must be dismissed for its failure to do so. The court notes that this type of misstatement can be amended where there is no prejudice to the respondent. (*see 60 West 190Th Street LLC v Rodriguez*, 67 Misc 3d 362, 366, 123 NYS3d 413 [Civ Ct, Bronx County 2020]; *631 Edgecombe LP v Fajardo*, 39 Misc 3d 143(A), \*1, 2013 NY Slip Op 50779(U) [App Term, 1st Dept 2013] (where no "deliberate misrepresentation" of the rent stabilization status, petition's defect amendable, particularly where no prejudice results)). Here, however, petitioner does *not* seek amendment and insists that respondent's tenancy was never subject to rent stabilization, despite petitioner benefiting from the 421-a tax abatement at the onset and during the entirety of respondent's lease.

## CONCLUSION

Respondent's motion to dismiss the proceeding is granted and judgment shall enter in his favor for the reasons stated herein. This constitutes the decision and order of the court. It will be posted on NYSCEF.

Dated: April 11, 2023  
Bronx, New York  
SO ORDERED,  
HON. SHORAB IBRAHIM  
Judge, Housing Part

## **Footnotes**

**Footnote 1:** The motion was first calendared on October 25, 2022 but was not fully briefed until March 3, 2023. The court heard argument on March 16, 2023 and reserved decision.

**Footnote 2:** see <https://www.nyc.gov/site/finance/taxes/property-due-dates.page> [last accessed April 7, 2023].

**Footnote 3:** see also [https://a836-pts.access.nyc.gov/care/datalets/datalet.aspx?mode=asmt\\_fin\\_2020&sIndex=0&id x=1&LMparent=20](https://a836-pts.access.nyc.gov/care/datalets/datalet.aspx?mode=asmt_fin_2020&sIndex=0&id x=1&LMparent=20)

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