

Fordham Law School

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

---

All Decisions

Housing Court Decisions Project

---

2023-07-31

### Frank v Gayle

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

---

#### Recommended Citation

"Frank v Gayle" (2023). *All Decisions*. 1197.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/1197](https://ir.lawnet.fordham.edu/housing_court_all/1197)

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).

[\*1]

<b>Frank v Gayle</b>
2023 NY Slip Op 50948(U) [80 Misc 3d 1209(A)]
Decided on July 31, 2023
Civil Court Of The City Of New York, Queens County
Guthrie, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 July 31, 2023

Civil Court of the City of New York, Queens County

<p style="text-align: center;"><b>Chante Frank, Petitioner,</b></p> <p style="text-align: center;"><b>against</b></p> <p style="text-align: center;"><b>Ronald Gayle, Pauline Gayle, Jontue Boutique, Respondents,</b> <b>DEPARTMENT OF HOUSING PRESERVATION AND</b> <b>DEVELOPMENT, Respondent.</b></p>
--

Index No. HP 438/22

Jeffrey M. Compton, Esq.  
Center for Family Representation  
New York, NY  
Attorneys for petitioner

Andrew G. Neal, Esq.  
Jamaica, NY  
Attorney for respondents Ronald Gayle and Pauline Gayle

Clinton J. Guthrie, J.

### PROCEDURAL HISTORY

This HP action for an order to correct and for a finding of harassment and related relief

was commenced in August 2022. On September 9, 2022, this court issued an order to correct pursuant to CPLR § 409(b), requiring respondents to correct all open DHPD violations. Following additional adjournments and interim orders, counsel appeared for petitioner and respondents Ronald Gayle and Pauline Gayle, and the action was scheduled for trial on petitioner's harassment claims. The trial was held on three (3) days, January 31, 2023, March 28, [\*2]2023, and July 27, 2023. [\[FN1\]](#) On July 27, 2023, respondents and their attorney failed to appear. Petitioner rested on her case and the court deemed the trial to have concluded. Decision was reserved upon the conclusion of the trial.

## TRIAL

Petitioner Chante Frank was the sole witness at the trial. Ms. Frank testified that she has lived in the subject premises since January 2015. When asked about conditions in the subject premises, she testified that she had no heat every winter since she moved in, except the current winter, roaches, mold, and problems with her floors.

Ms. Frank next testified about a series of photographs of conditions in the subject premises. As to the photographs admitted as petitioner's Exhibits 1-4, Ms. Frank testified that she saw roaches in the kitchen, near her sink and cooking space. She testified that she had taken the photographs in the 3 to 4 months before the trial. When asked on voir dire if she had sprayed a roach depicted in a photograph, she testified that she had used a can of Raid to spray it.

When asked if she had made complaints to DHPD about the roaches, she replied that she had and that it was "one of many agencies" to which she had complained. Upon request, the court took judicial notice of the open violations on DHPD's website pursuant to Multiple Dwelling Law (MDL) § 328(3). Ms. Frank testified that an inspector placed violations in her apartment and that the violations reflected the conditions in her apartment.

Thereafter, Ms. Frank testified about photographs ultimately admitted as petitioner's Exhibits 5 and 6. Ms. Frank testified that they depicted a roach inside her kitchen sink knob. In response to a voir dire question, Ms. Frank testified that Mr. Gayle had cleaned out the knobs once, but that roaches returned. Ms. Frank also testified about petitioner's Exhibit 13, which she stated was a photograph of her kitchen table with her emergency inhaler on it. She stated that there was a dead roach inside the inhaler. The court admitted petitioner's Exhibit 13.

When asked if she had done anything to mitigate the roach condition herself, Ms. Frank testified that she had used glue traps, boric acid, and roach spray. She testified that she didn't buy these products any longer and "made him" (Mr. Gayle) get an exterminator. She stated, however, that she had only seen an exterminator three (3) times in eight (8) years. She testified that an exterminator came in September 2022, after this court issued its order to correct.

Ms. Frank next testified about a photograph admitted as petitioner's Exhibit 12. Ms. Frank stated that it showed the threshold between the kitchen and her bedroom. She explained that there was no tacking strip and that there was a hole in the floor. When asked what effects the roaches have on her, Ms. Frank testified that they make her embarrassed, affect her self-esteem, and make her allergic and affect her breathing. She also testified that they caused her to buy more outside food since she had to throw food out because of the infestation.

Ms. Frank additionally explained how roaches had become infested in various household items, causing damage to them. These included microwaves, an L.O.L. dollhouse that her children played with, art canvases and frames, vacuum cleaners, toasters, a Bluetooth speaker, a food saver/sealer, a nebulizer machine, cat beds, a rice cooker, an air fryer, a George Foreman grill, air conditioners, a CD player, a knife block, wigs, clothing, a Keurig coffee maker, a karaoke machine, and a crock pot. Ms. Frank testified about the respective costs of each of the items, [\*3] though did not produce any proof. She also stated that she had to pay \$200.00 per month on top of what her food stamps cover for food and has had to pay thousands of dollars in electricity bills.

Ms. Frank testified about a kitchen cabinet falling off. She testified that she asked Mr. Gayle to fix the problem, but that he responded by denying DHPD access to the premises. She stated that the roaches made the cabinets their "headquarters" thereafter. The court took judicial notice of DHPD violation #13948969, from 2020, placed as to a loose wall cabinet in the kitchen.

Ms. Frank next testified that her rent was paid through the CityFHEPS subsidy program. She also stated that the Gayles receive payments from CityFHEPS on her behalf. When asked what costs she incurred (in light of her rent being subsidized), Ms. Frank testified that she had to run the oven all of the time, she could not turn the lights off, she lost furniture in her daughter's bedroom and her own bedroom, and suffered four (4) herniated discs. In reference to the lost bedroom furniture, Ms. Frank testified that because the items, including

a bed, closet, dresser, decorations, television, and rug, were infested, she had to pay \$1,000.00 for replacements in July/August 2022. As for her own bedroom furniture, she testified that she was only able to replace items here and there, including a box spring and bedframes. She also testified about sloping floors. The court took judicial notice of defective floor violations issued by DHPD. Ms. Frank concluded her direct testimony by stating that she never denied access to respondents to make repairs.

On cross-examination, Ms. Frank was asked how long the roach infestation was going on. She testified that it was from 2015 until the present. When asked if roaches were attracted to food, Ms. Frank testified that she was not a "roach expert." Ms. Frank testified that the roaches were in the entire apartment. In reference to the photograph that was admitted as petitioner's Exhibit 1, Ms. Frank stated that there were two (2) dead roaches depicted in the photograph. As to the photograph admitted as petitioner's Exhibit 2, Ms. Frank stated that it showed roaches on the corner of her sink. When asked if she leaves food on her sink, Ms. Frank responded that she did not cook and throws food directly into the trash. When asked if there was food on the sink in Exhibit 2, Ms. Frank replied that a can of Raid was on the sink. When asked about petitioner's Exhibit 3, Ms. Frank testified that it depicted her sink and a roach in the sink. Asked if it showed a food container, Ms. Frank replied that a Tupperware container and utensils were in the sink in the photo.

Next, Ms. Frank was asked a series of questions about the cleanliness of her apartment. She stated that she keeps her microwave clean, puts food directly in the trash, and takes out the trash a few times a day to trash cans outside. Ms. Frank denied that cat food attracted the roaches, as she stated that she never sees roaches near the food set out for her cat.

Subsequently, Ms. Frank was asked about efforts to treat the roach infestation. She stated that she had used 7 to 8 bottles of Raid. She also used sticky tape. She explained that these measures had not abated the roach condition. In response to a question, she testified that she had not looked into fumigating the premises. When asked if her actions had exacerbated the roach condition, Ms. Frank stated that the condition was present before she moved in.

On redirect, Ms. Frank was asked about access dates for repairs in December 2022. She stated that no one came to make repairs. As for the September 2022 access dates, Ms. Frank testified that Mr. Gayle and his oldest child came but that they did not do much work; they only did painting and a repair to the bathroom door. When asked if there was any sign-up for regular [\*4]extermination or regular extermination generally, Ms. Frank replied in the

negative.

Finally, on re-cross, Ms. Frank denied again that anyone showed up to make repairs in December 2022.

## DISCUSSION AND CONCLUSION

The trial testimony and evidence established that respondent Ronald Gayle engaged in harassment against petitioner in violation of NYC Admin. Code § 27-2005(d). Specifically, the testimony and evidence established acts and omissions by Mr. Gayle that constituted "repeated failures to correct hazardous [and] immediately hazardous violations of [the Housing Maintenance Code] within the time required for such corrections" (NYC Admin. Code § 27-2004(a)(48)(ii)(b-2)). Petitioner credibly testified about a pervasive roach infestation that existed from the time that she moved in, which was in 2015. The roach infestation was also documented through photographs admitted at trial. The DHPD records confirm the existence of multiple open class "B" (hazardous) violations for an infestation of roaches, ranging from 2015 through 2022. Petitioner also credibly testified about the substantial negative effects that the roach infestation had on her and her family. Additionally, Petitioner credibly testified about other conditions, including kitchen cabinets that fell off the wall, mold, lack of heat, and problems with her floor, including a hole that was documented in Exhibit 12. Multiple open DHPD class "B" and class "C" (immediately hazardous) violations exist for the subject premises on the DHPD website, including for mold, defective flooring, and the wall cabinet in the kitchen (*see* MDL § 328(3)). The relevant open violations constitute prima facie evidence that the conditions related thereto constitute hazards to life, health, and/or safety (*see Fiondella v. 345 W. 70th Tenants Corp.*, 2023 NY Slip Op 03194, \*1 [1st Dept 2023]). The court also finds that Ronald Gayle is an "owner" as defined under the Housing Maintenance Code, insofar as petitioner testified that he was responsible for the repairs and because he was the registered owner with DHPD (*see Leung v. Zi Chang Realty Corp.*, 74 Misc 3d 126[A], 2022 NY Slip Op 50034[U] [App Term, 1st Dept 2022]; *Dept. of Hous. Preserv. & Dev. v. Livingston*, 169 Misc 2d 660, 661 [App Term, 2d Dept, 2d & 11th Jud Dists 1996]). Nonetheless, the court dismisses the harassment claims against Pauline Gayle and Jontue Boutique, as petitioner failed to establish that either were "owners" as defined under the Housing Maintenance Code. Only Ronald Gayle is registered with DHPD and petitioner's testimony was focused overwhelmingly on communications with Mr. Gayle. Accordingly, the court does not find an adequate basis to grant relief against Pauline Gayle and Jontue Boutique.

Ronald Gayle defaulted at trial after petitioner rested. Consequently, he failed to rebut the evidence that petitioner presented. Additionally, while the DHPD records show that the subject building is comprised of two (2) "A" units and is therefore a private dwelling where the rebuttable presumption that the aforementioned acts of harassment were intended to cause petitioner to vacate or otherwise surrender or waive her rights does not apply (*see* NYC Admin. Code § 27-2004(a)(48)(ii)), the trial testimony and evidence established the requisite intent. Petitioner's testimony about communications with Mr. Gayle about the need for repairs and DHPD violations being placed and uncorrected with the timeframes for correction demonstrated Mr. Gayle's knowledge of the conditions. Furthermore, Mr. Gayle's repeated failures to take necessary steps to repair the conditions and violations that were documented evinced his lack of regard for petitioner's health and safety *and* an intent for petitioner to live in substandard conditions. *Fiondella*, 2023 NY Slip Op 03194, \*1; *Berg v. Chelsea Hotel Owner, LLC*, 203 [\*5]AD3d 484, 486 [1st Dept 2022]; *Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983].

Having determined that Ronald Gayle engaged in harassment against petitioner under the Housing Maintenance Code, the court hereby ORDERS following relief pursuant to NYC Admin. Code §§ 27-2115(m) and § 27-2115(o):

(A) The court finds that a class "C" violation existed as a result of the harassment and that such violation existed at the time that this action was commenced (July 13, 2022). The court further finds that the violation is not deemed a continuing class "C" violation;

(B) The court restrains Ronald Gayle from violating NYC Admin. Code §§ 27-2005(d) and 27-2004(a)(48), and is directed to ensure that no further violation occurs;

(C) The court imposes a civil penalty against Ronald Gayle in the amount of \$4,000.00, which shall be subject to a judgment in favor of DHPD;

(D) The court awards statutory compensatory damages in the amount of \$1,000.00 to petitioner, which shall be subject to a judgment in favor of petitioner and against Ronald Gayle. Although petitioner testified as to losses and damages, she presented no proof of the same. Therefore, the court is not able to assess damages in excess of the statutory amount "with reasonable certainty." *See E.J Brooks Co. v. Cambridge Sec. Seals*, 31 NY3d 441, 449-450 [2018]; *Roach v. 215 Sterling LLC*, 74 Misc 3d 1221[A], 2022 NY Slip Op 50193[U] [Civ Ct, Kings County 2022, Stoller, J.]. The court declines to award punitive damages; and

(F) The court will award petitioner reasonable attorneys' fees, in accordance with NYC

Admin. Code § 27-2115(o). The fees hearing will be scheduled for September 14, 2023 at 9:30 AM, in Part O, Room 202, 89-17 Sutphin Boulevard, Jamaica, New York 11435. Any pre-marked exhibits for the fees hearing shall be emailed to the court (qn-housing-202@nycourts.gov) on or before September 12, 2023.

This Decision/Order will be emailed to the attorneys for the parties. The parties are directed to pick up their exhibits within 35 days or they will be sent to the parties or destroyed at the court's discretion in accordance with DRP-185.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Queens, New York  
July 31, 2023  
HON. CLINTON J. GUTHRIE, J.H.C.

### **Footnotes**

**Footnote 1:** There were intervening adjournments between March 28, 2023 and July 27, 2023 for various reasons attributable to both parties.

[Return to Decision List](#)