2024-10-07

957 Park Avenue LLC v. Ordonez

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

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957 PARK AVENUE LLC,

Petitioner,

Index No. 61283/2018

-against-

FRANCISCO ORDONEZ,

DECISION/ORDER

Respondent.

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Present: Hon. Jack Stoller
Judge, Housing Court

957 Park Avenue LLC, the petitioner in this proceeding ("Petitioner"), commenced this holdover proceeding against Francisco Ordonez ("Respondent"), a respondent in this proceeding, and John MacKenzie ("Co-Respondent"), another respondent in this proceeding, seeking possession of 957 Park Avenue, Apt. 5E, New York, New York ("the subject premises") on the allegation that Co-Respondent is a rent-controlled tenant who did not maintain the subject premises as his primary residence and that Respondent's occupancy was derivative of Co-Respondent's tenancy. Respondent interposed an answer with a defense that he is entitled to succeed to Co-Respondent's tenancy. The Court held a trial of this matter on February 5, 2024, July 15, 2024, July 24, 2024, and September 10, 2024.

The trial record

Petitioner proved that it is the owner of the subject premises; that Co-Respondent was a rent-controlled tenant of the subject premises; and that Petitioner caused a predicate notice to be served prior to the commencement of this proceeding.

Petitioner submitted into evidence Co-Respondent's living will dated February 8, 2010 appoints Locke McKenzie ("Co-Respondent's Son") as a proxy; a durable power of attorney

appointing Co-Respondent's Son as an attorney-in-fact; Co-Respondent's health care proxy; and Co-Respondent's hospice care form. Petitioner submitted into evidence a visitor log for a nursing facility where Co-Respondent had been living ("the Facility") that showed that fRespondent visited Co-Respondent on February 24, 2019, October 26, 2019, and February 23, 2020. Petitioner submitted into evidence Co-Respondent's death certificate, which shows that Co-Respondent was born on March 26, 1927 and died on June 15, 2022 and that the informant was Michael McKenzie, who is Co-Respondent's brother ("Co-Respondent's Brother"), who lived in New Orleans.

Ahron Freidus ("the Property Manager") testified that Co-Respondent died; that Co-Respondent was rent-controlled tenant; that Respondent is in possession of the subject premises; and that Petitioner received an email from Co-Respondent's Son when Co-Respondent moved out.

The Property Manager testified on cross-examination that he has seen Respondent as someone who is living in the subject premises; that he was seeing Respondent in the subject premises at the time Petitioner took title to the Building in 2015; that Co-Respondent was an elderly gentleman; that Co-Respondent had aides living with him in the subject premises; that he understood Respondent to be Co-Respondent's roommate; that Respondent called him saying that Respondent is Co-Respondent's roommate; that Respondent called about repairs; that he did not remember Co-Respondent calling about repairs; that he got notice of Co-Respondent's vacancy from Co-Respondent's Son; and that he has never met Co-Respondent's family members who were acting on Co-Respondent's behalf as an attorney-in-fact.

Respondent testified that Co-Respondent was born in 1927; that Co-Respondent was a veteran; that Respondent moved into the subject premises with Co-Respondent in 2009; that he

was working at CUNY at the time; that Co-Respondent sent a letter to Petitioner; that Petitioner acknowledged this; that Co-Respondent was fragile when he moved in; that he felt that Co-Respondent was abandoned and Respondent wanted to take care of Co-Respondent; that the subject premises was full of clutter; that he started cleaning the subject premises; that he had to figure out what kind of relationship they had; that "the Odd Couple" showed what kind of relationships they had; that he is gay; that he did not want to live with himself; that he was exploring something new; that he could not let Co-Respondent live like that; that Co-Respondent's life was in the computer; that their connection was strong; that Co-Respondent had been in the army in the Pacific war, so he thought that Co-Respondent saved people, and so Respondent thought that Respondent himself had to save someone; that he had a strong relationship with Co-Respondent's family, but they did not want to help; that there were photographs of Co-Respondent's Brother; that Co-Respondent did not like other people and other people did not like him; that they spent holidays together, including Thanksgiving and Christmas; that he celebrated birthdays with Co-Respondent; that their relationship was happy; that he does instruction and technology; that Co-Respondent changed from being isolated with Respondent first moved in; that Co-Respondent wanted to die at home, not in a facility; that he and Co-Respondent were living as a family; that Co-Respondent did not want to leave the subject premises after an accident in 2014; that he arranged everything to remind Co-Respondent who he was; that he got Co-Respondent a lamp; that Co-Respondent was 82 years old when Respondent moved in and Respondent was 32 years old; that Co-Respondent had accidents and messed up the subject premises; that he got Co-Respondent a king-sized bed; that Co-Respondent had gallstones; that he told a doctor that Co-Respondent was deteriorating; that he told Co-Respondent's brother this too; that Co-Respondent did not want to go with EMS; that

Co-Respondent fell and lost consciousness; that he cleaned after Co-Respondent's accidents; that Co-Respondent had no one to help him; that Co-Respondent ended up in a hospital; that he asked Co-Respondent's family to come; that he gave Co-Respondent food; that the family did not come for nine days; that Co-Respondent's Son blocked him from seeing Co-Respondent; that he could not visit Co-Respondent in the Facility; that Co-Respondent said that he missed Respondent when Co-Respondent was at the Facility; that Co-Respondent did not have a computer; that he tried to get a computer for Co-Respondent; that he was engaging with Co-Respondent at the Facility; that Co-Respondent was hard of hearing; that Co-Respondent's phone did not have a hearing device; that Co-Respondent was not doing anything; that he has hearing aids; that Co-Respondent loved chocolate; that he also had to get beer; that Co-Respondent smiled at Respondent and recognized Respondent; that Co-Respondent had different nurses every three months; that Co-Respondent's health declined; that he always saw Co-Respondent on Co-Respondent's birthday and Thanksgiving and Christmas; that the last time he visited Co-Respondent it was Co-Respondent's birthday; that Co-Respondent was nonresponsive; that when the pandemic started, he could not go to the Facility; that he asked Co-Respondent's family for contact information but they refused; that Co-Respondent died; that one of the Co-Respondent's brothers let him know; that Co-Respondent wanted to be buried in Clifford, Connecticut; that Co-Respondent's family cremated Co-Respondent and sent the ashes to Co-Respondent's Brother; that he went to Family Court to inquire about adoption and received papers but there were practical problems with getting that done; that there were home attendants at the subject premises; that home attendants had work to do; that it was not enough to care for a person of that age; that they were there for three hours; that they did basic things; that they only had home attendants during the week; that on weekends he cooked for Co-Respondent and cleaned; that

Co-Respondent's family's relationship with him turned hostile once Co-Respondent moved out to the Facility; that when he separated from Co-Respondent he was depressed; that his lawyer quit; that Co-Respondent got sick in September of 2017; that his family was not around; that he was the only person in the hospital when Co-Respondent was sick; that he was the only one who visited Co-Respondent in the Facility; that Co-Respondent was important to him; that Co-Respondent's family isolated him from Co-Respondent; that he finally got to see Co-Respondent in 2018; that Co-Respondent's health had declined; that Co-Respondent did not have a computer with him at the nursing home; that he tried to get a computer for Co-Respondent; that Co-Respondent's family denied him access to Co-Respondent during the pandemic; that he knew Co-Respondent's wishes but he was denied a role in planning the funeral; that Co-Respondent's Brother was his main contact; that Co-Respondent's Brother has a daughter named "Poppy"; that Co-Respondent's niece and grandson came to the subject premises; and that Co-Respondent's Brother thanked him for maintaining the subject premises.

Respondent submitted into evidence a form that Co-Respondent sent to Petitioner dated August 6, 2011 saying that Respondent lived in the subject premises. Respondent submitted into evidence a letter dated August 6, 2011 from Co-Respondent stating that he had a "familial relationship based upon emotional and financial commitment with [Respondent]", that they have relied and continued to rely upon each other for payment of household costs and food, and that Co-Respondent relied upon Respondent's assistance during illness and hospitalization from the period of June 1, 2010 and April 3, 2011. Respondent submitted into evidence a letter from Petitioner to Co-Respondent dated October 13, 2011 stating that the rights of Respondent are inchoate and cannot be determined until Co-Respondent permanently vacates.

Respondent submitted into evidence a bank statement dated April 17, 2013 for a joint account between Respondent and Co-Respondent which was opened October 5, 2011 and closed on May 20, 2013. Respondent submitted into evidence a document from Respondent's insurance company which designates Co-Respondent as a 10% beneficiary and Respondent's mother as a 90% beneficiary. Respondent submitted into evidence Respondent's health care proxy dated May 14, 2013 appointing Co-Respondent as the proxy. Respondent submitted into evidence Respondent's living will dated May 14, 2013 according to which Respondent appointed Co-Respondent as a health care agent.

Respondent submitted into evidence letters complaining about harassment, a fax to Petitioner dated May 13, 2016 saying that Respondent lived in the subject premises, and a complaint to the Department of Housing Preservation and Development of the City of New York ("HPD") dated May 29, 2016 from Respondent at the subject premises.

Respondent submitted into evidence information about adoption. Respondent submitted into evidence a plan of care for home attendants for Co-Respondent. The plan does not list Respondent as a contact but lists Co-Respondent's brother is an emergency contact. Respondent submitted into evidence checks tendered to Petitioner and rejected because they were not in Co-Respondent's name and a letter from Petitioner about rent arrears.

Respondent submitted into evidence a photograph of Respondents and two children; some emails between family members talking about planning to get them to visit; photographs taken in 2012, 2014, 2016, 2018, 2019, and 2020, showing Respondent with Co-Respondent in what appears to be a hospital; emails between Co-Respondent's Son and Respondent starting on January 18, 2017, according to which Co-Respondent's Son stated that Respondent would have to deal with Co-Respondent on Respondent's own, that Co-Respondent's Son knew how difficult

Co-Respondent can be because Co-Respondent's Son lived with him; that Co-Respondent's Son's son wanted to temporarily stay at the subject premises; that Respondent said in the email thread that Co-Respondent was quite difficult, and that Co-Respondent's Son thanked Respondent for being there so many times when he was not.

Respondent submitted into evidence an email from Co-Respondent to Respondent where Co-Respondent threatened to lock Respondent out until Respondent returned Co-Respondent's wife's picture and added "then I will have a chance to start showing your room and charge what it's really worth!" Respondent submitted into evidence emails from Co-Respondent's Brother saying that he had not had a winning relationship with Co-Respondent and saying that Respondent showed patience and understanding of an "ancient man facing the unknown," and that Respondent's "Christian" response to Co-Respondent's "paranoia" and "outrageous accusations" was "worthy of sainthood." Respondent submitted into evidence Co-Respondent's Brother's email dated March 25, 2016 saying that Respondent was the reason Co-Respondent was still "on this earth", that without Respondent's caring guidance and attendance, Co-Respondent's needs would have self-destructed years ago, that Respondent's continued presence was testimony to Respondent's caring and supportive role, without which Co-Respondent would be in a deeper and more worrisome situation. Co-Respondent's Brother thanked Respondent for what Respondent did to make ends meet and to keep "this addled elder in check." Co-Respondent's Brother said that Respondent was an extremely kind roommate and that Co-Respondent's family would be forever in Respondent's debt.

Respondent submitted into evidence an email from Co-Respondent to Respondent dated May 2, 2013 according to which Co-Respondent stated that he figured that Respondent would steal Co-Respondent's computer equipment, but Respondent stole the computer equipment faster

than he thought. Respondent emailed that Respondent liked Co-Respondent like a father. Co-Respondent responded by saying, hello son. Respondent submitted into evidence an email dated May 28, 2013 according to which Respondent called Co-Respondent "Dad John" and stated that Respondent left cash for Co-Respondent. A dispute ensued over the email thread over whether Respondent left that money. The last email in the thread is from Respondent, dated June 4, 2013, stating "Hugs your son Francisco".

Respondent testified that Co-Respondent would accuse Respondent of things; that he gave Co-Respondent cash but Co-Respondent would forget; that electricity was cut; that Co-Respondent forgot to pay; and that Respondent left money for Co-Respondent. Respondent submitted into evidence an email dated August 23, 2013 from Co-Respondent saying that silverware had been found and offering apologies for any false accusations. Respondent responded by saying that Co-Respondent's words really hurt him this time and that Co-Respondent was his family in New York.

Respondent submitted into evidence emails with Co-Respondent's Brother from August of 2021 about accompanying Co-Respondent to a medical procedure. Respondent submitted into evidence an email dated April 6, 2015 where Co-Respondent's family thanks Respondent for getting Co-Respondent a computer as a birthday gift.

Respondent submitted into evidence his life insurance policy dated December 8, 2016, listing Co-Respondent as a beneficiary. Respondent submitted into evidence a Con Ed bill to Co-Respondent. Respondent submitted into evidence Co-Respondent's will from 1991 with a codicil from 1999. Respondent submitted into evidence a health care proxy that Co-Respondent signed in 2005 appointing someone other than Respondent to be a health care proxy.

Respondent submitted into evidence an emails dated from September of 2017 where Co-Respondent's Son says that he does not trust Respondent, that Respondent had a friend who would be staying at the subject premises for a few days or more because Respondent could not afford the rent, that Respondent "is trying to pull a fast one," and expressing a need to speak to Petitioner to see what can be done to cut Respondent off.

Respondent testified that he and Co-Respondent's family talked about giving him a proxy but they decided not to; that he and Co-Respondent were like a father and son; that he did not want people to think that they were a couple so they told people that it was like a parent-child relationship; that Co-Respondent was careless about money; that aides came three hours a week; that Co-Respondent did not care about that; that Co-Respondent did not want to go out with Respondent; that in the summer Co-Respondent did not want to dress up; that Co-Respondent said that Respondent was like a family; that at work he listed Co-Respondent as his contact; that Co-Respondent's family was difficult with him; that they were concerned with minimizing expenses; that they did not want to get Co-Respondent a computer; that Co-Respondent was sick and Co-Respondent's skin changed color; that he was the one who dealt with medical issues for Co-Respondent, not Co-Respondent's family; that they separated him from Co-Respondent when Co-Respondent was in the Facility because they wanted the subject premises; that they had a simple life, entailing waking up and eating and going to sleep; and that they did not have a lot of guests.

Respondent testified on cross-examination that the joint account with Co-Respondent closed in 2013; that Co-Respondent's family closed the account; that Co-Respondent's family did that by means of a "proxy"; that Co-Respondent's family wanted to have Co-Respondent get Medicaid; that Co-Respondent left the subject premises in September of 2017; that he is not

named on Co-Respondent's health care proxy or will; that Co-Respondent did not have insurance; that he did not know Co-Respondent when the 2010 living will was made; that he was not on a health care proxy for Co-Respondent; that he did not want to have a health care proxy on Co-Respondent's behalf; that he wanted Co-Respondent's family to be the ones who dealt with a health care proxy; that Respondent wrote a letter complaining about harassment to the prior management company; that he referred to himself as an additional occupant; that Co-Respondent's brother lives in Louisiana; that he asked Co-Respondent's Brother about paying a bill because they had the ability to access Co-Respondent's funds; that he was ready to move out of the subject premises in 2017 if Co-Respondent's Son moved in; that he did not want to fight with Co-Respondent's Son; that Co-Respondent died two years before his testimony, before the summer; and that Co-Respondent's birthday was March 27.

John Kearns ("Respondent's Friend") testified that he lives in Brooklyn; that Respondent is a friend of his; that he has been to the subject premises; that he came to the subject premises to see Respondent and Respondent introduced him to Co-Respondent more than ten years ago; and that Respondent came to live at the subject premises as a roommate and Co-Respondent did not have family and the relationship was like a family-type relationship.

Respondent's Friend testified on cross-examination that he met Respondent around 2000; that Respondent was living in Ecuador at that time; that he used to live in Ecuador; that he used to live in Manhattan ten years ago; that he visited the subject premises ten to twenty times; that Respondent and Co-Respondent lived at the subject premises; that it is possible that he was at the subject premises in 2017 but he did not remember; that he did not remember the last time that he saw Co-Respondent at the subject premises; that Co-Respondent now lives in a nursing home; that the subject premises has two bedrooms; that Co-Respondent lived in the bedroom facing the

street; that Respondent lived in a bedroom facing the courtyard; that mostly when he came to the subject premises it would be to get Respondent but he would say hello to Co-Respondent; that Respondent sometimes was with Co-Respondent, sometimes in Co-Respondent's bedroom, but he did not socialize in the subject premises; that sometimes Respondent would go out of the subject premises with him; and that Co-Respondent was not capable of going out with them.

David Landsel ("Respondent's Next Friend") testified that he lives in New Paltz; that he has known Respondent for twenty years; that he has been to the subject premises; that Respondent and Co-Respondent had previously lived there; that Co-Respondent was like a father to Respondent; that Co-Respondent lived in the back on the left side on the bedroom facing the street; that he visited the subject premises two times when Respondents were both living there; and that Co-Respondent was very old and had trouble taking care of himself.

Respondent's Next Friend testified on cross-examination that he was in the subject premises in 2014 and 2015; that he was living in the West Coast at the time; that in 2014 he was in the subject premises to just say hello; that he was there for about half an hour; that Co-Respondent was there both times; that he spoke with Co-Respondent both times; and that he did not leave with Respondent.

Luis Ordonez ("Respondent's Brother") testified that he lives in Long Island; that he is Respondent's brother; that he has been to the subject premises four or five times; that Respondent and Co-Respondent lived in the subject premises; that he went in 2014; that Co-Respondent said hello and went into the room; and that Respondent made food and drinks for Co-Respondent.

Respondent's brother testified on cross-examination that he has lived on Long Island for seventeen years; that he was at the subject premises two or three hours the first time; that he went

to visit Respondent; that he went out to eat with Respondent; that sometimes Respondent made food at the subject premises; that Co-Respondent did not want to go out; that they brought something home for Co-Respondent; that Co-Respondent never visited him in Long Island; that he has other family members in New York; that he never met Co-Respondent outside the subject premises; and that Co-Respondent met his daughter and his wife, who came with him to the subject premises.

Keyla Ordonez ("Respondent's Niece") testified that she lives in Long Island; that Respondent is her uncle, i.e., her father's brother; that she has been in the subject premises; and that Respondent introduced Co-Respondent to her as a roommate and a family member.

Respondent's Niece testified on cross-examination that she was at the subject premises a handful of times, meaning less than five times; that she saw Co-Respondent in the subject premises; that she never saw Co-Respondent outside the subject premises; that she greeted Co-Respondent there; that Co-Respondent did not join in a conversation with her and Respondent; that Co-Respondent would be in another room when she visited; that Co-Respondent did not attend any family affair outside the subject premises; and that she did not know if Co-Respondent was invited to any family affair.

Respondent's Niece testified on redirect examination that Respondent has been to see her outside the subject premises more than once.

Petitioner's counsel read into the record the following testimony from Respondent's deposition, taken on November 10, 2022: that money from rent came out of a joint account Respondent had with Co-Respondent in 2015 and 2016, that Co-Respondent signed the checks, but money came from either of them; that at the end of 2017 the Co-Respondent's family and Respondent had disagreements; that the family started paying the rent; that the family emailed

saying they were going to stop paying; that he, Co-Respondent's Brother, and Co-Respondent's Son were part of a team, with Co-Respondent's Brother in charge of 96% of everything about legal affairs for the Co-Respondent; that Co-Respondent's Son rarely intervened on anything; that the entire team except for him decided to stop paying rent; that from 2015 through 2018 they had an account where they were depositing money so it would be a de facto joint account; that the account had money from both of them; that the family closed the joint account; that the bank account was used to pay rent although Respondent's name not on account; that Co-Respondent's name was on bills for a landline until line got canceled; that the cable bill was in Co-Respondent's name; that when the cable service was canceled, Co-Respondent told Respondent that he paid, but he did not frequently pay cable or internet; that Respondent paid electricity because he had to be sure that was getting paid because the Co-Respondent once stopped paying; that he met Co-Respondent from a service that connects older people with younger people; that he contacted the agency and the agency got them to meet one another; that he was living in Battery Park City when he saw fliers for this agency; that that he was living on his own in 2009 when he saw this; that this agency was showing him apartments because that is what they do; that he contacted this agency in the first place because he wanted company; that this agency showed him one or two apartments and then they showed him the subject premises after a long period of time; that he was doing this when his prior lease had ended and he wanted to get a new apartment; that he did not pay this agency; that Co-Respondent was born in 1922; that Co-Respondent was 82 years old when Respondent moved into the subject premises in 2009 and Respondent was 34 years old; that Respondent was born in 1975; that Co-Respondent died recently, in August of this year or something like that, but he did not remember the date; that he assumed that the Co-Respondent died at the Facility; that the Facility did not contact him; that

Co-Respondent's family member called him to let him know that Co-Respondent died; that there was no funeral service for Co-Respondent; that Co-Respondent did not have a will; that Co-Respondent left some of the Co-Respondent's possessions to Respondent; that he was not a beneficiary or an executor; that Co-Respondent only left debt behind; that Respondent bought property in France or Ecuador, he did not remember; that he is the co-owner of one property and not the sole owner of one; that he has a property in Ecuador and he had a business in France but it did not work out; that when he bought property in Ecuador, Co-Respondent was not involved or contribute any money because the Co-Respondent had no mobility; that he let the Co-Respondent know about it and he got the Co-Respondent' opinion of it; that Co-Respondent never went to the dentist; that he never traveled or vacationed with the Co-Respondent; that Respondent goes to the opera; and that Co-Respondent did not go with him to the opera.

Discussion

When a rent-regulated tenant is in a facility with no discharge plan, a landlord can make a showing that the tenant no longer maintains the tenant's apartment as the tenant's primary residence. Lincoln Guild Hous. Corp. v. Stuckelman, 1993 N.Y. Misc. LEXIS 637 (App. Term 1st Dept.). Given that Co-Respondent died during the pendency of this proceeding, Petitioner's cause of action against Co-Respondent as such was mooted out, but Co-Respondent's passing underscores the merit of Petitioner's case against Co-Respondent. The Court further notes that that Respondent's defense of succession rests upon the proposition that Co-Respondent permanently vacated the subject premises. 9 N.Y.C.R.R. §2204.6(d)(1). Accordingly, as Petitioner's cause of action against Respondent is that Respondent's occupancy of the subject premises is derivative of Co-Respondent's tenancy, Petitioner has proven the merit of its cause of action against Co-Respondent and, therefore, a prima facie case against Respondent. The

parties litigated Respondent's succession defense in this proceeding, which is permitted in a nonprimary residence holdover proceeding. Malone v. Spinsky, 31 Misc.3d 1239(A)(Civ. Ct. N.Y. Co. 2011).

For the purposes of Respondent's succession claim, a "family member" includes any person who can prove an emotional and financial commitment and interdependence between such person and the tenant. 9 N.Y.C.R.R. §2204.6(d)(3)(i). The codification of the holding in the landmark decision Braschi v. Stahl Assocs. Co., 74 N.Y.2d 201 (1989) in the Rent Stabilization Code establishes criteria for finding a non-traditional family relationship: longevity of the relationship; mutual reliance for payment of expenses and necessities; intermingling of finances, shown as a matter of example by joint bank accounts; engaging in family-type activities like attending family functions together; formalizing of legal obligations by means such as naming one another as beneficiaries in wills and/or executions of powers of attorney; holding themselves out as family members to other family members, friends, community members, and religious institutions; reliance on each other for daily family services or functions; and other manifestations of a long-term emotionally-committed relationship. Id.

Respondent makes an initial showing of some of the elements of a non-traditional family relationship, such as a joint bank account with Respondent and Co-Respondent for about twenty months and Respondent's designation of Co-Respondent as a beneficiary of Respondent's insurance and a health care proxy. However, evaluation of a non-traditional family succession claim is not an exercise of "check[ing] off which factors ... [R]espondent has successfully proven...." Lamarche v. Miles, 234 N.Y.L.J. 88 (Civ. Ct. Kings Co. 2005). As 9 N.Y.C.R.R. § 2204.6(d)(3)(i) specifically states that no single factor shall be solely determinative, "[t]he factors listed in the statute to consider in making the determination, such as sharing expenses and

intermingling finances, are merely suggestions and not requirements." Wiener Mgmt. Co. v. Trockel, 192 Misc.2d 696, 703 (Civ. Ct. Queens Co. 2002).[1] "[T]he totality of the relationship as evidenced by the dedication, caring and self sacrifice of the parties ... should, in the final analysis, control." Braschi, supra, 74 N.Y.2d at 213. See Also Matter of 530 Second Ave. Co., LLC v. Zenker, 160 A.D.3d 160, 163 (1st Dept. 2018)(the "totality" of evidence controls a determination of the emotional and financial commitment necessary to prove a non-traditional family relationship). [2]

A broader view of the relationship between Respondent and Co-Respondent raises some questions. Respondent designates Co-Respondent as a beneficiary of Respondent's life insurance and authorizes Co-Respondent to make decisions about Respondent's health care but Co-Respondent did not reciprocate. All else being equal, the designations of beneficiaries are proxies would be more consequential for an ostensible family member in his eighties than the family member in his thirties and forties. Co-Respondent's use of other family members on his will, living will, and durable power of attorney is of a piece with Co-Respondent's use of someone other than Respondent as an emergency contact.

The emails in evidence reveal a similarly asymmetric dynamic. Respondent would email Co-Respondent that he regarding Co-Respondent like a father, called Co-Respondent "Dad John", and signed off, "[h]ugs your son Francisco". With the exception of one response from Co-Respondent saying "hello, son", Co-Respondent's emails to Respondent did not respond in

[1] This decision interprets the Rent Stabilization Code, not the Rent Control Code, but the definitions of "family member" for succession purposes are identical in both codes, so the interpretation of the Rent Stabilization Code as such is instructive as the Rent Control Code. Matter of Albany Law School v. New York State Off. of Mental Retardation & Dev. Disabilities, 19 N.Y.3d 106, 121 (2012)(statutes that relate to the same subject are *in pari materia* and should be construed together unless a contrary intent is clearly expressed by the Legislature).
[2] This decision also interprets the Rent Stabilization Code. See footnote 1.

kind. One accused Respondent of stealing Co-Respondent's wife's picture and threatening to lock Respondent out so that Co-Respondent could charge Respondent's room for what it is worth. Another email accused Respondent of stealing Co-Respondent's computer equipment faster than Co-Respondent thought. Another email involved a dispute over where Respondent left money.

Notably, the tenor of the emails of Co-Respondent's family shifted over time, also, from offering Respondent thanks for watching out for Co-Respondent to expressing suspicion that Respondent's goal was to take over the subject premises, which is consistent with Respondent's testimony that Co-Respondent's family eventually took action to restrict contact between Respondent and Co-Respondent when Co-Respondent's condition rendered him unable to continue to live in the subject premises.

Family members can certainly have disagreeable exchanges that do not implicate the viability of the family member relationship. Be that as it may, the totality of the actions of Respondent and Co-Respondent paint a picture of a younger person making attempts to be deemed a family member of an older person who tolerates it at best but is not on board. A one-sided relationship as such does not show the kind of interdependence in a familial sense that characterizes a non-traditional family relationship. 390 W. End Assoc. v. Wildfoerster, 241 A.D.2d 402, 404 (1st Dept 1997).

Accordingly, the record does not show the level of emotional and financial interdependence that characterizes a family relationship between Respondent and Co-Respondent. Accordingly, it is ordered that the Court awards Petitioner a final judgment of possession. Issuance of the warrant of eviction is permitted forthwith, execution thereof is

stayed through November 7, 2024 for Respondent to vacate. On default, the warrant may execute after service of a marshal's notice. The earliest eviction date is November 8, 2024.

This constitutes the decision and order of this Court.

Dated: New York, New York
October 7, 2024

HON. JACK STOLLER, J.H.C.