

27 A.D.3d 265, 809 N.Y.S.2d 910, 2006 N.Y. Slip Op. 01716

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Supreme Court, Appellate Division, First Department, New York.

Irene B. **SMITH**, Plaintiff-Respondent,

v.

**IG SECOND** GENERATION PARTNERS, L.P., et al., Defendants-Appellants.

March 9, 2006.

Shaw & Binder, New York (Robert H. Gordon of counsel), for appellants.

Collins, Dobkin & Miller, LLP, New York (Seth A. Miller of counsel), for respondent.

Judgment, Supreme Court, New York County (Walter B. Tolub, J.), entered November 1, 2004, in favor of plaintiff tenant and against defendants landlords in the amount of \$88,703.06, consisting of a refund of unlawfully charged rent in the amount of \$39,380.17 as directed in a Division of Housing and Community Renewal fair market rent appeal order, prejudgment interest on the latter amount from the date of the Rent Administrator's order in the amount of \$34,539.05, and attorneys' fees in the amount of \$14,783.84, unanimously affirmed, with costs.

Defendants' failure to timely challenge plaintiff's use of CPLR 3213 to enforce DHCR's order precludes our consideration of such challenge ( see P. Ballantine & Sons v. Boston Celtics Basketball Club, 36 A.D.2d 914, 320 N.Y.S.2d 876 [1971] ). Because plaintiff was obliged to commence a plenary action to enforce DHCR's order, attorneys' fees and interest were authorized ( see Paganuzzi v. Primrose Mgt. Co., 268 A.D.2d 213, 701 N.Y.S.2d 350 [2000] ), and, under the circumstances, plaintiff was not obliged to offset her recovery by means of a rent abatement prior to commencing a plenary action ( see Msibi v. JRD Mgt. Corp., 154 Misc.2d 293, 583 N.Y.S.2d 1003 [1992] ). Nor was the methodology used to compute attorneys' fees improper ( see Matter of New York Convention Ctr. Dev. Corp., 234 A.D.2d 167, 651 N.Y.S.2d 479 [1996] ). We have considered defendants' remaining contentions and find them unavailing.

MAZZARELLI, J.P., SAXE, SULLIVAN, NARDELLI, WILLIAMS, JJ., concur.

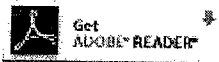
N.Y.A.D. 1 Dept. 2006.

**Smith v. IG Second** Generation Partners, L.P.

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