

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

-----X  
MO HAK ASSOCIATES,

Petitioner,

110428/02  
L&T No. ~~110448/02~~

- against -

**DECISION and  
ORDER**

WARREN BRULEIGH,  
690 Greenwich Street  
Apt. 5-H  
New York, New York 10014

Respondent(Tenant),

-and-

"JOHN DOE" and "JANE DOE",

Respondent(Undertenants).

-----X  
Recitation, as required by CPLR 2219(A), of the papers considered in review of this motion of petitioner to strike respondent's affirmative defenses and counterclaims, for summary judgment, for use and occupancy and for attorneys fees and respondent's cross-motion for summary judgment and attorneys fees submitted this 10<sup>th</sup> day of March, 2003:

<i>Papers</i>	<i>Numbered</i>
Petitioner's Notice of Motion, Affidavit, Affirmation & Exhibits	1
Respondent's Cross Motion, Affirmation, Affidavit, & Memorandum of Law	2
Petitioners's Affirmation in Opposition & Exhibits	3
Respondent's Reply Affirmation	4
Oral Argument Tape No. Counters	5

---

Petitioner, Mo Hak Associates, seeks to evict respondent, Warren Bruleigh, from the premises located at 690 Greenwich Street, Apartment 5H, ("Apartment") in this proceeding commenced after service of a 30 day notice terminating respondent's tenancy of the Apartment.

Respondent alleges that the Apartment is subject to rent regulation and thus respondent's tenancy cannot be terminated by a 30 day notice. *see 512 East 11<sup>th</sup> St. HDFC v. Grimmet*, 181 A.D.2d 488 (1<sup>st</sup> Dept. 1992) *app.dism.* 80 N.Y.2d 892 (1992). Petitioner moves to strike respondent's affirmative defenses and counterclaims, for summary judgment, for use and occupancy and for attorneys fees. Respondent cross-moves for summary judgment and attorneys' fees.

Respondent's cross-motion is granted and the proceeding is dismissed. The standards for summary judgment is well settled. The movant must tender evidence, by proof in admissible form, to establish the cause of action "sufficiently to warrant the court as a matter of law in directing judgment." CPLR 3212[b]; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 502 (1980). The cross-motion is based upon petitioner's failure to correctly exempt the apartment from J-51 status after the J-51 tax benefit had expired.

It is undisputed that the apartment was once subject to rent stabilization under the J-51 tax abatement program and that the J-51 tax benefit expired in 1996. Both sides have also conceded that the original lease rider stated that the J-51 benefit expired June 30, 1992. The only remaining issue remaining is whether the petitioner has correctly complied with Section 26-504(c) of the Rent Stabilization Law ("RSL") to exempt the apartment from rent stabilized status.

RSL §26-504(c) clearly states that for a landlord to destabilize a J-51 apartment during a tenancy a notice must be given in "each lease and renewal thereof" and it must state "the approximate date on which such tax benefit period is scheduled to expire". The petitioner has not complied with either provision. The original lease rider stated that the J-51 expired on June 30, 1992. This date is four years previous to what petitioner eventually conceded as the actual expiration and as such does not comply as an approximate date pursuant to RSL §26-504(c). In

addition to the incorrect expiration date, there was never any notice attached to any lease renewal which, again, violates the statute (see exhibit E of respondent's cross motion). Petitioner's claim that respondent knowingly signed non-stabilized leases in years subsequent to the expiration of the J-51 thereby waiving his rights is ineffective in that waiver of benefit is void. *See Rent Stabilization Code §2520.13*. A deregulated lease entered into pursuant to consent judgment in which landlord and prime tenant purported to waive provisions of the Rent Stabilization Law was invalid. 390 West End Associates v. Baron 724 A.D.2d 330 (1<sup>st</sup> Dept. 2000). Therefore, the apartment is subject to rent stabilization and as such the tenants may only be evicted on grounds specified to the Rent Stabilization Code (9 NYCRR) §2524.3. The Code does not permit termination in the present situation.

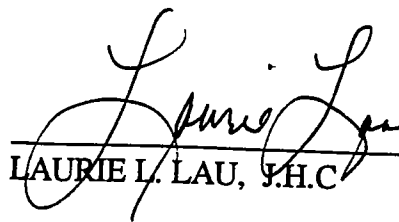
Petitioner's motion is denied as moot. However, the court notes that even if the motion were to be addressed the court would have been denied the motion on the merits. Respondent's affirmative defenses were based on the apartment's rent stabilized status and the affirmative defenses could not have been stricken as a matter of law..

The portion of respondent's motion for attorneys' fees is granted. Respondent has prevailed in this proceeding and is entitled to reasonable attorneys' fees as provided for in the parties lease.

This matter is restored to the calendar on June 19, 2003 at 9:30am in Part A, Room 523 where upon it shall be transferred to Part X for a hearing on respondent's reasonable attorneys' fees and costs incurred.

This is the decision and order of the court.

Dated: New York, New York  
May 28, 2003

  
LAURIE L. LAU, J.H.C.