

**SUPREME COURT FOR THE STATE OF NEW YORK
KINGS COUNTY**

NICHOLE FABO, J.L. BETANCOURT, ANNA SHEEHY, K.M. KACZOR, J. P. BROWN, MOIN HYDARI, K. E. LEWIS, A.J. BRESLOW, and ANDREW SHERMAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

-v-

KUSHNER COMPANIES LLC, 89 HICKS STREET LLC, and WESTMINSTER MANAGEMENT, L.P.,

Defendants.

Index No.:

**PLAINTIFFS' CLASS ACTION
COMPLAINT**

Plaintiffs Nichole Fabo, J.L. Betancourt, Anna Sheehy, K.M. Kaczor, J.P. Brown, Moin Hydari, K. E. Lewis, A. J. Breslow, and Andrew Sherman (collectively "Plaintiffs"), individually, and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against Defendants Kushner Companies, 89 Hicks Street LLC, and Westminster Management, L.P. (collectively "Defendants").

Plaintiffs' allegations are based upon knowledge as to their own acts and experiences and upon information and belief as to all other matters.

Plaintiffs' information and belief is based upon, among other things, a comprehensive analysis undertaken by their attorneys, public records, tenancy-related documents, and the relevant law.

Plaintiffs believe that after a reasonable opportunity for discovery, substantial additional evidentiary support will exist for the allegations set forth herein

INTRODUCTION

1. Kushner Companies LLC (“Kushner”) owns 89 Hicks Street LLC, a single purpose entity, which in turn owns the apartment building located at 89 Hicks Street (“89 Hicks”) in Brooklyn.
2. Westminster Management, L.P., (“Westminster”) serves as the property management company for 89 Hicks.
3. In the late 1990s, the owner of 89 Hicks, the Watchtower Bible and Tract Society of New York, Inc. (“Watchtower Society”), began registering the apartments in that building as temporarily exempt from the rent stabilization laws.
4. Upon information and belief, 89 Hicks was subsequently purchased by Brooklyn Law School for use as student housing, and the units in that building continued to be temporarily exempt from the rent stabilization laws pursuant to Section 2520.11(f) of the Rent Stabilization Code (“RSC”).
5. In February 2014, Kushner purchased 89 Hicks from Brooklyn Law School, and began renting out the units in that building.
6. Pursuant to R.S.C. §§ 2520.11 and 2526.1(a)(3)(iii), apartments that are listed as temporarily exempt from the rent-stabilization laws are required to be registered as rent-stabilized once the exemption ends.
7. Defendants did not provide the tenants at 89 Hicks with rent-stabilized leases.
8. The tenants at 89 Hicks were provided with free-market leases by Defendants.
9. R.S.C. § 2526.1(a)(3)(iii) mandates that once any exemption ended, Defendants were required to offer a lease with a rent that had been calculated by utilizing the last registered rent prior to the temporary exemption, and adding to that (a) the annual increases promulgated by

the Rent Guidelines Board (“RGB”); (b) a single vacancy increase; and (c) a single longevity increase.

10. Defendants did not set the legal rent at 89 Hicks as required by § 2526.1(a)(3)(iii).

11. To the contrary, the tenants at 89 Hicks were given monthly rents far in excess of the legal rent.

12. The aforementioned conduct represents Defendants’ blatant attempt at circumvention of New York City’s rent registration and regulation process, at the expense of current and former tenants at 89 Hicks.

PARTIES

Plaintiffs

13. Plaintiff Nichole Fabo resided in Apartment 2C at 89 Hicks Street.

14. Upon moving into the apartment, Plaintiff Fabo was impermissibly provided with a purported “free market” lease.

15. Pursuant to the Rent Stabilization Code, Defendants were required to offer Plaintiff Fabo a rent-stabilized lease.

16. Plaintiff Fabo is entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

17. Plaintiff J.L. Betancourt resides in Apartment 2G at 89 Hicks.

18. Upon moving into the apartment, Plaintiff J.L. Betancourt was impermissibly provided with a purported “free market” lease.

19. Pursuant to the RSC, Defendants were required to offer Plaintiff Betancourt a rent-stabilized lease.

20. Plaintiff Betancourt is entitled to reformation of his lease to provide for the correct legal regulated rent, and to reflect accurately his rent stabilized status.

21. Plaintiff Betancourt is entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

22. Plaintiff Anna Sheehy resides in Apartment 3F at 89 Hicks.

23. Upon moving into the apartment, Plaintiff Sheehy was impermissibly provided with a purported “free market” lease.

24. Pursuant to the RSC, Defendants were required to offer Plaintiff Sheehy a rent-stabilized lease.

25. Plaintiff Sheehy is entitled to reformation of her lease to provide for the correct legal regulated rent, and to reflect accurately her rent stabilized status.

26. Plaintiff Sheehy is entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

27. Plaintiff K. M. Kaczor resided in Apartment 4G at 89 Hicks.

28. Upon moving into the apartment, Plaintiff Kaczor was impermissibly provided with a purported “free market” lease.

29. Pursuant to the RSC, Defendants were required to offer Plaintiff Kaczor a rent-stabilized lease.

30. Plaintiff Kaczor is entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

31. Plaintiff J.P. Brown resided in Apartment 5A at 89 Hicks.

32. Upon moving into the apartment, Plaintiff Brown was impermissibly provided with a purported “free market” lease.

33. Pursuant to the RSC, Defendants were required to offer Plaintiff Brown a rent-stabilized lease.

34. Plaintiff Brown is entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

35. Plaintiff Moin Hydari resides in Apartment 5C at 89 Hicks.

36. Upon moving into the apartment, Plaintiff Hydari was impermissibly provided with a purported “free market” lease.

37. Pursuant to the RSC, Defendants were required to offer Plaintiff Hydari a rent-stabilized lease.

38. Plaintiff Hydari is entitled to reformation of his lease to provide for the correct legal regulated rent, and to reflect accurately his rent stabilized status.

39. Plaintiff Hydari is entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

40. Plaintiffs K. E. Lewis and A. J. Breslow reside in Apartment 5D at 89 Hicks.

41. Upon moving into the apartment, Plaintiffs Lewis and Breslow were impermissibly provided with a purported “free market” lease.

42. Pursuant to the RSC, Defendants were required to offer Plaintiffs Lewis and Breslow a rent-stabilized lease.

43. Plaintiffs Lewis and Breslow are entitled to reformation of their lease to provide for the correct legal regulated rent, and to reflect accurately their rent stabilized status.

44. Plaintiffs Lewis and Breslow are entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

45. Plaintiff Andrew Sherman resides in Apartment 5E at 89 Hicks Street.

46. Upon moving into the apartment, Plaintiff Sherman was impermissibly provided with a purported “free market” lease.

47. Pursuant to the RSC, Defendants were required to offer Plaintiff Sherman a rent-stabilized lease.

48. Plaintiff Sherman is entitled to reformation of his lease to provide for the correct legal regulated rent, and to reflect accurately his rent stabilized status.

49. Plaintiff Sherman is entitled to damages from Defendants for rent paid over and above what Defendants were legally entitled to charge.

Defendants

50. Defendant Kushner Companies LLC is a corporation with its principal place of business in New York City.

51. Upon information and belief, Kushner is the owner of 89 Hicks LLC.

52. Upon information and belief, Defendant Kushner conducts and transacts business in the City, County, and State of New York.

53. Defendant 89 Hicks LLC is the registered owner of the apartment building located at 89 Hicks Street in Brooklyn.

54. Upon information and belief, Defendant 89 Hicks LLC conducts and transacts business in the City, County, and State of New York.

55. Defendant Westminster Management L.P. is a corporation with its principal place of business in New York City.

56. Upon information and belief, Westminster Management L.P. is the operator and managing entity of 89 Hicks.

57. Upon information and belief, Defendant Westminster Management L.P. conducts and transacts business in the City, County, and State of New York.

THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT

The RSL and RSC

58. Over a million New York City housing units are subject to some form of rent regulation.

59. In 1969, citing a continuing shortage of residential rental housing, the New York City Council enacted its rent stabilization statute, the Rent Stabilization Law (“RSL”), N.Y. Unconsol. Law § 26-501 (McKinney).

60. Thereafter, the New York City Council gave the Division of Housing and Community Renewal (“DHCR”) authority to promulgate regulations in furtherance of the RSL. DHCR did so by establishing the RSC.

61. The RSC limits the rent that landlords can charge and circumscribes a landlord’s ability to raise rents, cover the cost of improvements, and deregulate apartments.

62. The rent that a landlord can charge for a regulated unit is based on an initial legal rent.

63. The initial legal rent is often based on the rent the previous tenant paid.

Temporary Exemption of Rent-Stabilized Units Under the RSC

64. Rent-stabilized apartments may become temporarily exempt from rent-stabilization due to a number of circumstances, as codified in Section 2520.11 of the RSC.

65. For instance, a rent-stabilized unit may become temporarily exempt from rent stabilization if it is occupied by a family member of the owner, if the unit is provided to a landlord’s employee, or if the building is owned and occupied by a convent or monastery.

66. Pursuant to Sections 2520.11 and 2526.1(a)(3)(iii) of the RSC, upon the expiration of the exempt use, the premises return to rent regulation, as the exemption is only temporary in nature.

67. Under Section 2526.1(a)(3)(iii), if the temporary exemption lasts for longer than one year, the rent charged to the first tenant shall be “the prior legal regulated rent for the housing accommodation, the appropriate increase under section 2522.8 of this Title, and if vacated or temporarily exempt for more than one year, as further increased by successive two year guideline increases that could have otherwise been offered during the period of such vacancy or exemption and such other rental adjustments that would have been allowed under [the RSC].” *Id.*

Defendants Fail to Provide the Tenants at 89 Hicks with Rent Stabilized Leases

68. Upon information and belief, the Watchtower Society was the longtime owner of 89 Hicks.

69. In 2006, the Watchtower Society retroactively registered all the apartments at 89 Hicks as temporarily exempt from the rent-stabilization laws, back to the late 1990s.

70. All along, the Watchtower Society was treating other units at 89 Hicks as temporarily exempt for even longer – for instance, Apartment 3F at 89 Hicks was listed as temporarily exempt as early as 1991.

71. In 2006, 89 Hicks was sold to Brooklyn Law School for, upon information and belief, use as student housing.

72. Because 89 Hicks was apparently used as student housing, it continued to remain temporarily exempt from the rent-stabilization laws pursuant to Section 2520.11(f) of the RSC, which temporarily exempts housing accommodations operated by educational institutions.

73. In February 2014, 89 Hicks was purchased by Kushner, and the temporary exemption of the units at 89 Hicks ended shortly thereafter, when Defendants began renting out units.

74. Although required to treat the units at 89 Hicks as rent-stabilized, and to offer the tenants at 89 Hicks rent-stabilized leases, Defendants instead offered the tenants of that building free-market leases.

75. Further, Defendants did not calculate the rents for the units at 89 Hicks pursuant to Section 2526.1(a)(3)(iii) of the RSC.

76. Defendants valued the units as if they were free-market units.

77. Defendants, either directly or indirectly, charged Plaintiffs and the Class market rate rents or rents otherwise in excess of the legal regulated rent for their apartments.

78. Defendants, either directly or indirectly, overcharged Plaintiffs and the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

CLASS ALLEGATIONS

The Class and Sub-Class

79. This action may be properly maintained as a class action pursuant to the provisions of Article 9 of the CPLR.

80. The proposed Class consists of current and former tenants at 89 Hicks who, between February 2014 and the present date, resided in units at 89 Hicks and who paid rent in excess of the legal limit (the "Class").

81. The Class seeks certification of claims for damages.

82. In addition, Plaintiffs propose a Sub-Class consisting of all current tenants at 89 Hicks, who currently reside in unlawfully deregulated apartments (the "Sub-Class").

83. The Sub-Class seeks certification of claims for declaratory and injunctive relief, as described more fully below.

Class and Sub-Class Meet Requirements for Certification

84. The Class and Sub-Class are so numerous that joinder of all members is impracticable.

85. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiffs, it is reasonable to conclude that the practices complained of herein affect more than one hundred current and former tenants at 89 Hicks.

86. Nearly all factual, legal, and statutory relief issues that are raised in this Complaint are common to each of the members of the Class and Sub-Class and will apply uniformly to every member of the Class and Sub-Class.

87. The claims of the representative Plaintiffs are typical of the claims of each member of the Class. They, like all other members of the Class, sustained damages arising from Defendant's wrongful evasion of the rent stabilization laws.

88. The representative Plaintiffs and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct.

89. The claims of certain of the representative Plaintiffs are typical of the claims of each member of the Sub-Class. They, like all other members of the Sub-Class, are entitled to the same declaratory and injunctive relief as the members of the Sub-Class.

90. The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Class.

91. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class and Sub-Class that would make class certification inappropriate.

92. The counsel selected to represent the Class and Sub-Class will fairly and adequately protect the interest of the Class and Sub-Class, and they are lawyers who have experience in class and complex litigation and are competent counsel for this class action litigation.

93. Counsel for the Class and Sub-Class will vigorously assert the claims of all members of the Class and Sub-Class.

94. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and Sub-Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- a. the interests of the members of the Class and Sub-Class in individually controlling the prosecution or defense of separate actions;
- b. the impracticability or inefficiency of prosecuting or defending separate actions;
- c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and Sub-Class;
- d. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- e. the difficulties likely to be encountered in the management of a class action.

95. Among the numerous questions of law and fact common to the Class and Sub-Class are:

- a. whether the Defendants acted or refuse to act on grounds generally applicable to the Plaintiffs, the Class, and the Sub-Class;

- b. whether the Defendants have established a pattern, practice, or policy of misrepresenting tenants' rent stabilization status or of failing to notify tenants that their apartments are, or should be, rent-stabilized;
- c. whether the Defendants have established a pattern, practice, or policy of misrepresenting legal regulated rents;
- d. whether Defendants have established a pattern, practice, or policy of overcharging rent;
- e. whether Defendants' practices, acts, and conduct violate the RSC;
- f. to what extent Plaintiffs and members of the Class are entitled to damages; and
- g. to what extent Plaintiffs and members of the Sub-Class are entitled to declaratory and injunctive relief.

COUNT ONE
VIOLATION OF THE RSC
(on behalf of the Class)

96. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 95 of this complaint.

97. At all times relevant hereto, apartments of Plaintiffs and the Class were subject to the provisions and protections of the RSC.

98. Defendants, either directly or indirectly, entered into leases with Plaintiffs and the Class, which misrepresented the amount of rent Defendants, and/or the entities controlled by Defendants, were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

99. Defendants, either directly or indirectly, charged Plaintiffs and the Class rents in excess of the legal regulated rent for their respective apartments.

100. Defendants, either directly or indirectly, overcharged Plaintiffs and the members of the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

101. Plaintiffs and members of the Class are entitled to recover monetary damages from Defendants based on the unlawful overcharges, as well as an award of interest thereon.

COUNT TWO
VIOLATION OF THE RSC
(on behalf of the Sub-Class)

102. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 95 of this complaint.

103. A justiciable controversy exists between the parties in that, among other things, certain Plaintiffs and the members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage, pursuant to the RSL.

104. Defendants, either directly or indirectly, entered into leases with certain Plaintiffs and the members of the Sub-Class, which incorrectly, falsely, and illegally misrepresented the amount of rent Defendants, and/or the entities controlled by Defendants, were legally entitled to collect and/or falsely represented that their apartments were not subject to rent stabilization.

105. As described above, and upon information and belief, Defendants' conduct was willful and designed to remove the apartments of certain Plaintiffs and members of the Sub-Class from the protections of rent stabilization.

106. A justiciable controversy exists in that, upon information and belief, Defendants dispute that the apartments of certain Plaintiffs and members of the Sub-Class are subject to rent stabilization under the RSC.

107. Certain Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

108. By reason of the foregoing, certain Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of certain Plaintiffs and members of the Sub-Class are each subject to the RSC;
- b. certain Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a form promulgated by the DHCR and consistent with the RSC;
- c. the amount of the legal regulated rent for the apartments of certain Plaintiffs and members of the Sub-Class;
- d. any leases offered by Defendants to certain Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. certain Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, said Plaintiffs and members of the Sub-Class.

109. Certain Plaintiffs and members of the Sub-Class are entitled to reformation of their leases to provide that their units were and are, in fact, subject to rent stabilization.

110. Certain Plaintiffs and members of the Sub-Class are entitled to reformation of their leases to represent accurately the amount of rent Defendants are legally entitled to charge Plaintiffs and members of the Sub-Class.

COUNT THREE
DECLARATORY RELIEF
(on behalf of the Sub-Class)

111. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 95 of this complaint.

112. A justiciable controversy exists between the parties in that, among other things, certain Plaintiffs and members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage.

113. Notwithstanding the clear requirements of the law, Defendants have not provided certain Plaintiffs and members of the Sub-Class with rent-stabilized leases and/or rent-stabilized leases in the legally correct amount.

114. Moreover, as set forth in more detail above, and upon information and belief, Defendants' conduct was willful and designed to remove the apartments of certain Plaintiffs and members of the Sub-Class from the protections of rent stabilization.

115. Certain Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

116. By reason of the foregoing, certain Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of certain Plaintiffs and members of the Sub-Class members are subject to the RSC and any purported deregulation by Defendants was invalid as a matter of law;
- b. certain Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a lease form promulgated by DHCR and consistent with the RSC;
- c. the amount of the legal regulated rent for the apartments of certain Plaintiffs and members of the Sub-Class;
- d. any leases offered by Defendants to certain Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. certain Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, said Plaintiffs and members of the Sub-Class.


PRAYER FOR RELIEF

WHEREFORE, and for the foregoing reasons, Plaintiffs pray to this Court for the following relief:

- A. Certifying the Class and Sub-Class proposed by Plaintiffs, appointing the Plaintiffs as representatives of the Class and Sub-Class; and appointing Plaintiffs' counsel as Class Counsel for the Class and Sub-Class;
- B. Appropriate money damages against Defendants resulting from their violation of the RSC;
- C. Because Plaintiffs and members of the Sub-Class have no adequate remedy at law for Defendants' ongoing violations of the RSC, against Defendants for injunctive relief to undertake all appropriate and corrective remedial measures, including, but not limited to, appointing an independent individual or entity to audit and undertake an accounting of every rent-stabilized and deregulated apartment at 89 Hicks and reforming leases to comply with the RSL and RSC, where necessary;
- D. Temporarily, preliminarily, and permanently enjoining Defendants from continuing to violate the RSL, RSC, and such other applicable law;
- E. Against Defendants for disgorgement of profits from fees earned as a direct and proximate result of rent overcharges;
- F. Against Defendants for judgment in the amount of Plaintiffs' attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial; and
- G. Granting such other and further relief as this Court deems just and proper.

DATED: August 15, 2017
New York, New York

NEWMAN FERRARA LLP

By: 
Lucas A. Ferrara
Jarred I. Kassenoff
Roger A. Sachar Jr. *pro hac to be filed*
1250 Broadway, 27th Floor
New York, New York 10001
(212) 619-5400
lferrara@nflfp.com
jkassenoff@nflfp.com
rsachar@nflfp.com