

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WILLIAM DUGAN, MASHA D'YANS,
GEORGETTE GAGNON, LOWELL D. KERN,
MICHAEL MCCURDY, JOSE PELAEZ,
TRACY SNYDER, MICHAEL J. WALSH,
LESLIE M. MACK, ANITA ZITIS, and JAMES
DOERR, on Behalf of Themselves and All Other
Persons Similarly Situated,

Plaintiffs,

-against-

LONDON TERRACE GARDENS, L.P.

Defendant.

Index No. 603468/2009

**AMENDED ORDER AND FINAL
JUDGMENT APPROVING SETTLEMENT
AND PAYMENT OF ADMINISTRATIVE
FEES AND COSTS, AND
AWARDING ATTORNEYS' FEES AND
EXPENSES**

WHEREAS:

A. Class Counsel applied to the Court for an order preliminarily approving the settlement of this class litigation (the "Action") in accordance with the Stipulation and Agreement of Settlement December 29, 2023 (the "Stipulation") that, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of this Action (the "Settlement"), and for a judgment dismissing the Action with prejudice upon the terms and conditions set forth in the Stipulation.¹

B. In the Order for Preliminary Approval of Settlement of Class Action, dated June 24, 2024 (the "Preliminary Approval Order"), this Court, among other things: (i) preliminarily certified a class, consisting of all current and former tenants who signed a non-rent-stabilized lease and who paid a rent for a unit ("Unit") at 415, 425, 435, 445 and 455 West 23rd Street, and 420, 430, 440, 450 and 460 West 24th Street, New York, New York ("Buildings") between

¹ Any undefined terms have the definitions set forth in the Stipulation.

November 13, 2005 and June 30, 2014 that was not calculated pursuant to the RSL and RSC, and exceeded the amount allowed by the Rent Stabilization Law and Code. (ii) appointed Himmelstein McConnell Gribben & Joseph LLP, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, and Bernstein Liebhard LLP as Class Counsel for the Class (“Class Counsel”); (iii) preliminarily approved the Settlement; (iv) scheduled a hearing for November 14, 2024 (the “Settlement Hearing”) to consider whether to approve the Settlement as being fair, reasonable, adequate, and to enter final judgment thereon and to consider any application for payment of the fees and costs of JND Class Action Administration (“Claims Administrator”) and an award of attorneys’ fees and expenses; and (v) directed that notice of the pendency of the Action, the proposed Settlement and the Settlement Hearing, substantially in the form annexed as Exhibit E to the Stipulation (the “Notice”), be mailed to all Class Members who could be identified with reasonable effort.

C. Class Counsel has submitted an affidavit from the Claims Administrator appointed in the Preliminary Approval Order attesting that the Notice and Summary Notice were disseminated in accordance with the Preliminary Approval Order.

D. The Class Administrator has identified two Class Members who properly and timely requested exclusion from the Class: Darlene Dzuba and Lawrence Rosen.

E. The Court held a Final Approval Hearing on November 14, 2024 and has considered all prior proceedings in the Action, the Stipulation and the exhibits annexed thereto, any submissions made in connection with the proposed Settlement and all proceedings during the Settlement Hearing.

NOW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. To the extent not defined herein, this Order and Final Judgment incorporates by reference the definitions in the Stipulation, and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

NOTICE

2. The Court hereby determines that the Notice complied with the requirements of CPLR § 904, Rules 907 and 908 and due process and was the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all Class Members who could be located through reasonable effort. The Notice provided due and adequate notice of these proceedings, the Settlement, the application of Class Counsel for the payment of the Claims Administrator's fees and costs, an award of attorneys' fees and expenses, and the other matters set forth therein, to all persons entitled to such notice.

3. Due and adequate notice of the proceedings having been given to the Class Members, and a full opportunity having been offered to the Class Members to object to the proposed Settlement, to participate in the Settlement Hearing thereon or to request exclusion from the Class, it is hereby determined that all Class Members who have not requested exclusion (except as otherwise set forth in the Stipulation) are bound by this Order and Final Judgment (whether or not any Class Member has objected to the Settlement) and are barred from contesting the Stipulation, Settlement or this Order and Final Judgment.

4. Class members Darlene Dzuba and Lawrence Rosen shall be excluded from the Class and any benefits under the Settlement and shall not be bound by the Stipulation except as otherwise set forth therein.

THE CLASS

5. Paragraphs 1 through 4 of the Preliminary Approval Order pertaining to class certification and appointment of Class Counsel and the Claims Administrator are hereby confirmed and made a part of this Order and Final Judgment.

APPROVAL OF THE SETTLEMENT

6. Pursuant to CPLR Rules 907 and 908, the Court finds that the Settlement as set forth in the Stipulation is in all respects fair, reasonable and adequate to each of the Releasing Parties and each Class Member and consistent with the RSL and RSC, and the Settlement is hereby approved by the Court. In making this determination, the Court has considered, among other things, the benefits conferred on the Class by the Settlement, the risks faced by the Class in establishing damages, and the value of settlement now in comparison to the likely probable duration, complexity and further expense of this litigation in the absence of a settlement. The Court further finds that the Settlement has been the product of arm's-length negotiations and has been entered into in good faith. The Parties thereto are directed to consummate the Settlement in accordance with the terms and conditions of the Stipulation.

7. In determining that the Settlement is in all respects fair, reasonable and adequate to each of the Releasing Parties and each member of the Class, and in approving the Settlement, the Court has considered the two identical objections that were submitted by co-tenant class members Dameion Elvis and Taj Plaisance and found that such objections do not present a basis to bar the approval of the Settlement.

8. The Complaints against Defendant in this Action are dismissed on the merits and with prejudice, with each party to bear his, her or its own costs, except for the payment of the fees and costs of the Claims Administrator previously agreed to by the Parties and hereby

approved by the Court as provided for in Paragraph 12 below, and the payment of the attorneys' fees and reimbursement of expenses as otherwise provided for in Paragraph 10 below. To the extent they are currently timely, the counterclaims interposed by Defendant are dismissed. The following claims Defendant has against any Class Member are preserved: (a) unpaid rent for use and occupancy, which was not offset against the damage award, plus interest; (b) any claim for rent which exceeds the Past Damages Amount for that specific Class Member; (c) other charges due Defendant; or (d) any other default under their lease. All Class Members' defenses to Defendant's claims that are preserved under this paragraph are also preserved.

DECLARATORY RELIEF AWARDED

9. Declaratory Relief is awarded to the Parties as follows:

(a) Units that were treated as unregulated from July 1, 2003 to June 30, 2014 by Defendant, except for those deregulated pursuant to an order or judgment of a court or by an order of DHCR or a court of competent jurisdiction, are subject to the RSL, unless otherwise excluded pursuant to the Stipulation;

(b) The base date, pursuant to RSC § 2520.6(f)(1) for the calculation for lawful regulated rent for the tenant of any unit occupied by a Class Member is November 13, 2005;

(c) The facts and circumstances of this action do not permit an award of treble damages, punitive damages, fines or any other award aside from that provided for by the Stipulation;

(d) The Current Rent Levels of a Class Member presently in occupancy of a unit is that reflected in the most recent registration statement filed by Defendant with

DHCR;

(e) The declarations set forth in paragraphs 9(c) and 9(d) are not binding on Class Members who opt-outed of the Settlement;

(f) The maximum legal regulated rent permitted to be charged pursuant to the RSL and RSC (“Current Legal Rent”) for each of the Units, shall be calculated using the Base Date.

(g) The “Current Legal Rent” for each Unit shall be determined by increasing the Base Date Amount for each Unit by all of the following that occurred for that Unit from the Base Date to the Order and Final Judgment Date: all Standard Vacancy Increases; all Long Term Vacancy Increases; all Individual Apartment Improvement Increases; Rent Guideline Board Increases; all Rent Guidelines Board Increases; and all other rent increases and adjustments permitted under the Rent Stabilization Law and Code. The maximum legal collectable rent permissible to be charged pursuant to the RSL and RSC for each of the Units shall be calculated by reference to the Base Date. The amount of rent set out in the lease for each individual Unit as of the Base Date shall be the “Base Date Amount,” even if a lesser or greater amount was actually charged as of that date. In the event a lease or renewal cannot be located for the month of November 2005 or the apartment was vacant for that month or any part thereof, then the base rent shall be the rent that was actually paid for the month of November 2005 or the first rent paid thereafter. This paragraph does not apply to any apartment that was subject to rent control on the Base Date and subsequently decontrolled where a timely fair market rent appeal was filed with the DHCR. For Class Member Units subject to Rent Control Law on November 13, 2005 the base date rent is that

contained in the first lease executed after the date, subject to any Fair Market Rent Appeal, if any, heretofore.

(h) The Berdon Calculation and Analysis referenced in the Stipulation reflect the methodology set forth in paragraph 9 of this Order, and parties have agreed that the rents set forth in the Berdon Calculation and Analysis are accurate for purposes of this settlement and may be utilized as the basis for calculations of rent for the Units occupied by Class Members remaining subject to the RSL after July 1, 2014.

(i) For purposes of this Order and Final Judgment, the terms Standard Vacancy Increases, Long Term Vacancy Increases, Individual Apartment Improvement Increases, and Rent Guidelines Board Increases shall have the meanings ascribed to them under the RSC and/or RSL (collectively, the “Rent Increases”). Rent Increase calculations for each Unit shall be based on the Data. The absence of any particular back-up documentation in Defendant’s files shall not invalidate any Rent Increase. The cost, scope and necessity of work performed in connection with Individual Apartment Improvement Increases shall be as reflected in Defendant’s records and shall not be subject to challenge by Class Members.

(j) Current Legal Rents shall only be available to Eligible Class Members who (i) are current tenants named on a lease on the date the proposed settlement receives preliminary Court Approval; (ii) participate in the Settlement; and (iii) offer releases to Defendant (the “Eligible Renters”). Eligible Renters shall not include other residential occupants. Current Legal Rent shall not be available to any person or persons who are not Eligible Renters, including: (a) Opt-Outs; (b) any persons occupying the Unit who are not signatories to the Unit’s lease; or (c) successor tenants of the Units occupied by Eligible Renters as of the Order and Final Judgment Date. Subject to this paragraph and the other

provisions of the Stipulation, Current Legal Rents shall take effect in the first full month after the Effective Date of the Stipulation and each renewal lease thereafter for Class Members who are: (i) tenants at one of the Buildings on the date the Settlement received Preliminary Approval; and (ii) have not opted out of the Settlement. For the purpose of this provision, Eligible Renter may include: (i) the Tenant of a Unit rented to a corporation, limited liability company, limited partnership, limited liability partnership, professional limited liability company or any other business entity, which status is in good standing in the jurisdiction that they were established and, if previously inactive, is in good standing prior to the time for Class Members to Opt-out expires (as set forth in paragraph 40 of the Stipulation); and (ii) a partner of Defendant or a member related to a partner of the Defendant during the Class Damages Period who has not opted out of the class prior to the execution of the Stipulation. Past Rent Claims and Current Legal Rents shall not include any amount based on any claim or calculation of treble damages, any other punitive damages, or fines. Provided Defendant does not willfully violate the provisions of paragraphs 1 to 10 of the Stipulation, all claims for treble damages under the RSL, RSC or any other provisions of law are hereby waived and released. Nothing in the Stipulation and this Judgment shall affect the status or rent of any Unit deregulated by an order of DHCR or a court of competent jurisdiction made at any time.

FEES, COSTS AND INCENTIVE AWARDS APPROVED

10. The application by Class Counsel for the award of attorneys' fees and reimbursement of expenses is granted, and said counsel are awarded legal fees and expenses of \$3,031,414.88. Said fees and expenses shall be paid from the escrow fund established pursuant to paragraph 12(c)(i) of the Stipulation.

11. The application for an incentive award in the amount of \$15,000 to each Named Plaintiff is granted. If any of the named Plaintiffs occupied the same apartment during the Class Damages Period, then the named Plaintiffs that lived in the same apartment will share the \$15,000 incentive award. Said incentive awards shall be paid from the escrow fund established pursuant to paragraph 12(c)(ii) of the Stipulation. Any unused or unclaimed funds from the account shall revert to Defendant pursuant to paragraph 12(e) of the Stipulation.

12. The application by Class Counsel for an award of the Claims Administrator's fees and costs for the continuing administration of the Settlement to be paid, up to the amount of \$100,000, is granted. Said fees and costs shall be paid from the escrow fund established pursuant to paragraph 11 of the Preliminary Approval Order. Any unused funds from the account shall revert to Defendant pursuant to paragraph 12(e) of the Stipulation.

13. All Class Members who have not requested exclusion are barred and enjoined from commencing, prosecuting, instigating or in any way participating in the commencement or prosecution of any action asserting any Settled Claims(as defined in paragraph 26 of the Stipulation), either directly, representatively, derivatively, or in any other capacity, against Defendant or any of the parties released in the Stipulation.

14. Neither the Stipulation nor any proceedings taken in accordance with the terms set forth therein shall be construed or deemed to be evidence, or any admission or concession, either (a) on the part of Class Counsel, of the lack of merit of this Action, or (b) on the part of Defendant, of any violation of any statute or regulation or principle of common law or of any liability or wrongdoing or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought in the Action. Any such evidence, admission or concession is expressly denied and disclaimed by

Class Counsel and the Defendant.

15. Without in any way affecting the finality of this Order and Final Judgment, this Court shall retain continuing jurisdiction over this Action and the Parties to the Stipulation and the Class Members in order to enforce the Stipulation and this Order and Final Judgment and to enter any further orders as may be necessary or appropriate to effectuate the Stipulation, the Settlement, and the provisions of this Order and Final Judgment.

Dated: New York, New York
November 26, 2024



ENTER:

Richard G. Latin

J.S.C. Richard G. Latin

Multon Adair Tompkins

Clerk

603468/2009

Judgment

