CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

1334 B LLC

Petitioner,

-against-

LT-333720-23/KI

DECISION AND ORDER

NORA PRITCHARD

Respondents,

"JOHN DOE" and "JANE DOE"

Undertenants.

HON KAREN MAY BACDAYAN, JHC

Nissan Shapiro, Esq., for the petitioner; *Benjamin Epstein, Esq.* – at the request of the court
New York Legal Assistance Group (Ryan McNamara, Esq.) for the respondent

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc Nos: 5-9, 11-22, 39-48, 51.

BACKGROUND

The Current Proceeding

This is a summary holdover proceeding against Nora Pritchard on the basis that she is either a licensee or a squatter in what is pleaded as a rent stabilized premises. (NYSCEF Doc No. 1, petition at 3, notice to quit dated October 31, 2023; RPAPL 713 [7].) Petitioner, 1334 B LLC, was transferred ownership of the building by deed recorded with the City Register on June 28, 2023. The notice to quit, signed by "Roy Rave, Managing Member" states, "The premises are subject to Rent Control, Rent Stabilization Law of 1969 as amended or to the emergency (sic) Tenant Protection Act of 1974 however the occupants are not tenants as they never paid rent or entered into a tenancy with the owner." (*Id.*) Petitioner demands $2,500 per month in use and occupancy. (NYSCEF Doc No. 1, petition ¶ 10.) The petition is verified by Nissan Shapiro, Esq. on behalf of "Roy Rave – Managing Agent." Mr. Shapiro is a partner in the law firm of Epstein, Schreier & Shapiro, LLP. According to the New York Department of State searchable database, the law firm incorporated in October 2023. The firm comprises three attorneys formerly in solo practice, Benjamin Z. Epstein, Esq., Nissan Shapiro, Esq., and Jonathan Schreier, Esq.

Petitioner served respondent with the notice to quit on November 3, 2023. (NYSCEF Doc No. 1 at 3-4, notice to quit and affidavit of service.) The petition was filed on November 14, 2023, and noticed

to be heard on May 28, 2024 as a "new part" case to enable respondent to seek counsel through the Universal Access to Counsel ("UAC") initiative. Unfortunately, respondent did not obtain counsel.[1]

On July 15, 2024, the second appearance of the proceeding on the court's calendar, respondent, *pro se*, entered into a stipulation by which she agreed to a final judgment of possession, with the warrant of eviction to issue to issue forthwith and stayed two months until September 15, 2024. Respondent signed the stipulation in the hallway prior to allocution pursuant to RPAPL 746. (NYSCEF Doc No. 5 at 5, proposed stipulation.) Alleged conditions in need of repair were not included in the stipulation, standard practice in Housing Court and required by the court's rules.[2]

Upon allocution of the fully executed stipulation as is statutorily required by RPAPL 746, respondent apprised the court of the following alleged facts: Respondent stated that she has lived in the premises for over 20 years, and currently lives with her [autistic] adult son who was present in court. Respondent stated that her last rent stabilized lease was not renewed by the prior owner, and she believes her rent was $1,600 per month. Respondent alleged that her Section 8 Housing Choice Voucher Program subsidy was terminated due the condition of the apartment, and, if true, would be due to violations of Housing Quality Standards prescribed by the program. Respondent believes that she is the last rent stabilized tenant in the building. Respondent alleged that all other tenants pay market rent, and that petitioner offered her a "buyout." Respondent stated that she could not accept the alleged buyout offer because she felt it would be too difficult to find an affordable apartment, especially with a disabled adult son who is prone to constant, disruptive outbursts and will not leave her side. The court comprehended that the agreement, *if* the court so ordered it, would result in the eviction of an individual who considered herself to be a long-term, rent stabilized tenant and single mother, whose Section 8

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[1] Because of the many challenges that were not necessarily possible to predict, UAC has emerged as problematic and unrealistically aspirational. The initiative is plagued with 1) underfunding woes and delayed receipt of the funds that are available; 2) large court calendars replete with eligible tenants who do not receive representation (and sometimes – due to the volume of tenants who must be seen on any given day – not even advice); and 3) the high attrition rate of overworked lawyers from organizations that are overwhelmed by the demand. *See* Sam Rabiya, *Less Than 10% of Tenants Facing Eviction Actually Got a Lawyer [in September 2022], Undermining 'Right to Counsel' Law*, The City, Oct. 27, 2022, available at https://www.thecity.nyc/2022/10/27/23425792/right-to-counsel-housing-court-tenant-lawyers/ (last accessed September 15, 2024.)

[2] See Part Rules at X ("If repairs are an issue, a list of alleged repairs, access times and dates, and completion dates must be included or alleged repairs will be added by the court if the tenant raises during allocution and repairs were listed in a prior stipulation or raised in the Answer"), available at https://www.nycourts.gov/COURTS/nyc/housing/Judge/partrules/KBacdaya.pdf, last accessed September 27, 2024.

subsidy was likely terminated through no fault of her own.[3] The court then requested the presence of Mr. Shapiro in the courtroom to assist the court in understanding the factual canyon between the pleadings and respondent's statements made during allocution.

Mr. Shapiro stated to the court that he had not heard any of the respondent's allegations before, that his client had tried to obtain information about the premises prior to commencing this proceeding, that petitioner could not determine who resided in the premises, and that, based on the foregoing, petitioner asked Mr. Shapiro to commence this combined licensee/squatter holdover proceeding. The proceeding was adjourned to August 15, 2024 at 9:30 a.m. for all purposes.

Between the morning and afternoon sessions on July 15, 2024, the court gleaned the following facts from information readily available to the court, and to owners of rent stabilized buildings (the regulatory status pleaded by petitioner): The building is an eight-unit building. Respondent's apartment was registered with the Department of Housing and Community Renewal ("DHCR") as recently as November 28, 2023, at a monthly rental of $2,850.00. (NYSCEF Doc No. 5 at 6.) Nora Pritchard is the named tenant of record. The printout states, "Reason actual rent paid differs from legal: Tenant never pays." In fact, the DHCR records (later provided to the court and available at all times to petitioner) indicate that respondent has been the registered tenant of record since 2003 (NYSCEF Doc No. 21 at 21, DHCR 2003 registration rent roll report). The DHCR rent registration history reflects respondent received Section 8 benefits since at least 2005, NYSCEF Doc No. 13 at 3-4, that apartment was registered as vacant ("RS-V") with a legal regulated rent of $1,433.36 in 2022, *Id.* at 5, and that in 2023, after the purported vacancy, the registered rent in 2023 was registered at $2,850.00, which represents an increase of $1,416.64. (*Id.*) The petition which seeks use and occupancy at a rate of $2,500.00. (NYSCEF Doc No. 1 at 1, petition ¶ 10.) While, substantively, this is likely a moot point at this juncture, this is a pleading error inconsistent with public records and the rent registered by petitioner itself. The court took judicial notice pursuant to Multiple Dwelling Law § 328 (3) that respondent's apartment had approximately 40 open Housing Maintenance Code violations originally placed by the Department of Housing Preservation and Development ("HPD") between 2021 and July 2023. Most recently, on July 6, 2023, 20 violations were placed by HPD, 19 of which are "C" class violations, which are considered

[3] Mr. Shapiro offered to withdraw the petition; however, the court indicated that the proceeding would be adjourned for a hearing on the court's *sua sponte* motion to determine if sanctions were warranted. The court also hoped to afford respondent an opportunity to retain counsel.

immediately hazardous.[4] On September 12, 2024, the number of "C" class violations placed on July 6, 2023 appeared on the HPD website as 13, and two additional "C" violations had been placed on July 24, 2024.[5]

The next day, July 16, 2024, Mr. Shapiro requested to approach the bench and advised the court that he had "looked into it" and "the [premises] was sub rehabbed in 2016" despite being pleaded and registered as rent stabilized.[6] Mr. Shapiro further stated, "I have the DHCR documents." The ready availability of this purported documentation does not explain why the apartment status -- *i.e.* regulated or deregulated -- had not been verified prior to the commencement of the proceeding, or why the proceeding was brought as a licensee/squatter proceeding if it were true that respondent was, in fact, a long-term rent stabilized tenant who was in residence during the purported substantial rehabilitation of the building. The court verbally indicated to Mr. Shapiro that it was becoming apparent further investigation of the facts should have been conducted prior to filing and affirming the truth of the facts pleaded in the petition, even if pleaded upon information and belief from information provided by his client. The next day, the court issued an order that a hearing would be held on August 15, 2024, to enable Mr. Shapiro a fair opportunity to explain these inconsistent representations and to avoid the possibility of sanctions pursuant to 22 NYCRR 130-1.1 et seq. (NYSCEF Doc No. 5, decision and order dated July 16, 2024.) Were the alleged facts and circumstances determined to be true, the court's original intention was to admonish Mr. Shapiro that he is obligated as an attorney to diligently investigate the truth of facts alleged in a verified petition.

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[4] *See* HPD website, available at https://hpdonline.nyc.gov/hpdonline/building/253176/violations, last accessed July 16, 2024.

[5] The court cannot explain this discrepancy.

[6] Pursuant to the guidance published by DHCR and in effect in 2016, "DHCR will find that a building has been substantially rehabilitated within the meaning of [9 NYCRR ("Rent Stabilization Code")] section 2520.11 (e), and is therefore exempt from coverage under the [Emergency Tenant Protection Act] or the [Rent Stabilization Law], for rent stabilized properties where the owner demonstrates, based upon the totality of the circumstances, that the following criteria have been met: [] At least 75% of the building-wide and apartment systems contained on the following list must each have been completely replaced with new systems. Additionally, all ceilings, flooring and plasterboard or wall surfaces in common areas must have been replaced; and ceiling, wall, and floor surfaces in apartments, if not replaced, must have been made as new as determined by DHCR." DHCR Operational Bulletin 95-2, superseded by Operational Bulletin 2023-3 (effective Nov. 21, 2023).

In an attempt to better understand the true regulatory status of the premises and respondent's connection to the premises, the court performed a simple search on NYBench for respondent's name,[7] and discovered that "Nora Pritchard" had been sued for nonpayment of rent pursuant to a "written lease" for the same apartment in 2017. (*Silvershore Properties 93, LLC v Nora Pritchard*, Civ Ct, Kings county, index No. LT-065103/17.) The pre-NYSCEF information recorded on NYBench indicated that Benjamin Epstein, Esq. was the attorney of record for the former owner, Silvershore Properties. The proceeding had not been active for some time; however, neither had it been discontinued or administratively dismissed. In fact, respondent retained the Legal Aid Society to represent her in that case. After the hard file had been converted to NYSCEF on August 5, 2024, the Legal Aid Society consented to participation on NYSCEF on August 7, 2024.

The Prior Proceeding

Respondent was sued for nonpayment of rent in April 2017 in the amount of $22,552.36, pursuant to a "written rental agreement." (*Id.*) The petition pleaded the subject premises were rent stabilized, despite Mr. Shapiro's information that the premises was substantially deregulated in 2016. (NY St Cts Elec Filing [NYSCEF] Doc No. 3, legacy file for index No. LT-065103/17 at 1, petition ¶¶ 2, 4, 7.) The monthly rent was pleaded as the full contract rent as registered with DHCR, to wit $1,433.66. The petition did not plead that respondent was the beneficiary of a Section 8 subsidy, and petitioner did not plead that it had obtained certification prior to commencement from the New York City Housing Authority ("NYCHA") as required by the *Williams* Consent Decree. (*See Williams v New York City Housing Authority,* 81 Civ. 1801 [SD NY 1995]). The petitioner in the prior proceeding was originally represented by Platte, Klarsfeld, Levine, Lachtman & Cohen LLP. Respondent retained the Legal Aid Society during the pendency of the proceeding. (NYSCEF Doc No. 3, legacy file at 16, notice of appearance dated May 18, 2017.) A guardian *ad litem* was appointed for respondent. Respondent's Section 8 subsidy had already been suspended at the time petitioner commenced the proceeding, which was acknowledged in several two-attorney stipulations that also provided for access dates for petitioner

[7] See *Message from Chief Judge Janet DiFiore*, March 1, 2021, (regarding new developments in the courts) available at https://nycourts.gov/whatsnew/pdf/March1-CJ-Message.pdf. ("NYBench is a web-based program that connects judges with the New York City Criminal Court's Universal Case Management System (or UCMS) in new ways that ensure instantaneous electronic access to . . . defendants' files in other cases pending across the city and state. NYBench will greatly improve the efficiency of case conferencing . . . and strengthen the quality of judicial dispositions, as judges will now have comprehensive information and a real-time 360-degree picture of each defendant appearing before them. Using NYBench, [information regarding parties to a case] will now be immediately visible to a judge presiding over additional matters involving the same defendant.") Originally rolled out in Criminal Court, NYBench is now available to judges in Housing Court.

to undertake to remove the housing quality standards ("HQS") violations. (NYSCEF Doc No. 3, legacy file at 39-41, 56, 58-60.)

Respondent had moved to dismiss the proceeding on the basis that petitioner was seeking the entire contract rent from respondent -- rather than only her tenant share which is calculated based on her income -- in violation of law. (NYSCEF Doc No. 3, legacy file at 21, notice of motion to dismiss.) The motion was settled by stipulation which memorialized, *inter alia*, that respondent had previously accepted a buyout offer of $4,000 and signed a surrender agreement dated January 5, 2016. (NYSCEF Doc No. 3, legacy file at 39, November 29, 2017 stipulation of settlement ¶ b.) This surrender agreement was voided by the terms of the stipulation after respondent returned the $4,000 to petitioner. (*Id.*)

At some point, Benjamin Z. Epstein, Esq. substituted in as counsel for petitioner, and filed papers for petitioner as early as July 2018. (NYSCEF Doc No. 3, legacy file at 47, consent to change attorney, dated May 24, 2018; NYSCEF Doc No. 3, legacy file at 42, notice of motion dated July 18, 2018.) On December 13, 2018, another party filed a duplicate notice of appearance on behalf of Mr. Epstein, seven months *after* Mr. Epstein consented to the change of attorneys as the incoming attorney, and five months *after* Mr. Epstein filed a motion in July 2018. (NYSCEF Doc No. 3, legacy file at 57, notice of appearance dated December 13, 2018.) Mr. Epstein filed two motions in that proceeding. (NYSCEF Doc No. 3, legacy file at 49, blueback and affidavit of service for notice of motion, dated July 18, 2024; NYSCEF Doc No. 3, legacy file at 92, notice of motion dated September 18, 2019.)[8] According to UCMS, there were 17 appearances scheduled subsequent to the May 24, 2018 filing of the consent to change attorneys.[9] On February 6, 2019, Nissan Shapiro, Esq. executed a stipulation of adjournment with respondent's attorney and respondent's guardian *ad litem*. (NYSCEF Doc No. 3, legacy file at 57, stipulation of adjournment.) Accordingly, Mr. Shapiro was aware of the prior proceeding at some juncture in time.[10] Because both Mr. Shapiro and Benjamin Epstein, Esq.

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[8] According to the Universal Case Management System ("UCSM"), a motion to amend the petition was filed on July 19, 2018, and a motion to restore the proceeding to the calendar was filed on September 26, 2019. UCMS indicates neither side appeared on July 19, 2018 and the proceeding was marked off-calendar, and that the motion to restore was granted on default on October 2, 2019.

[9] Because it was apparent to the court that Mr. Epstein either did not remember the case or had not retained the file or a record of the prior proceeding -- the court requested that the clerk upload the file to NYSCEF. The file was uploaded on August 5, 2024.

[10] The stipulation provided that, "Landlord shall repair electrical wiring on 2/14/2024 so subsidy will be restored." NYSCEF Doc No. 3, legacy file for index No. LT-065103/17 at 58. The court does not expect Mr. Shapiro to remember this single agreement, although it does indicate that Mr. Shapiro and Mr. Epstein have been appearing for each other for many years.

presumably possessed -- either from memory or from the open files in Mr. Epstein's control -- directly relevant information inconsistent with that affirmed by his partner Mr. Shapiro, the court amended the July 16, 2024 order to require the presence of all three partners comprising the law firm of Epstein, Schreier, Shapiro, LLP at the hearing. (NYSCEF Doc No. 8, Amended Order dated July 24, 2024.) The information available to the court at the time raised concerns regarding due diligence and frivolous litigation which might be sanctionable pursuant to 22 NYCRR 130-1.1. The court intended to inquire whether the firm had systems in place for keeping track of open cases, and for verifying the truth of the allegations in a petition.

Mr. Epstein's *Ex Parte* Communication With the Court

Immediately after the amended order was filed on NYSCEF, Mr. Epstein sent an *ex parte* email to the courtroom email address. The law secretary, aware of the upcoming hearing and amended order, forwarded the email to the undersigned. The amended order was attached to the email. The text of the email is copied here in full:

> **From:** Benjamin Epstein <ben@essllp.com>
> **Sent:** Wednesday, July 24, 2024 6:30:56 PM
> **To:** Joshua Kiel <JKIEL@nycourts.gov>; KI-HOUSING-509 <KI-HOUSING-509@nycourts.gov>
> **Cc:** Jonathan Schreier <jbs@essllp.com>; Nissan Shapiro <nissan@essllp.com>
> **Subject:** FW: THE COURT'S DECISION/ORDER IN THE MATTER OF 1334 v. PRITCHARD--333720/23 ISSUED TODAY
>
> Adding Joshua Kiel, Part G Court attorney to this email
>
> **From:** Benjamin Epstein
> **Sent:** Wednesday, July 24, 2024 6:08 PM
> **To:** KI-HOUSING-509 <KI-HOUSING-509@nycourts.gov>
> **Cc:** Jonathan Schreier <jbs@essllp.com>; Nissan Shapiro <nissan@essllp.com>
> **Subject:** THE COURT'S DECISION/ORDER IN THE MATTER OF 1334 v. PRITCHARD--333720/23 ISSUED TODAY
>
> Dear Judge:
>
> I am in receipt (from a short while ago) of the Decision/Order that you issued today ordering both myself and Jonathan Schreier to appear before the Court on August 15, 2024 at 2:15PM to potentially be sanctioned in the above matter.
>
> I am going to say this with the highest respect—and you know me for a very long time and my reputation in this Courthouse precedes me.

> What you did is sanctionable in that you have demanded that Mr. Schreier and myself, *who have absolutely zero connection to this case, never filed any substitution of counsel nor does our name appear on any of the pleadings nor have we even appeared Of Counsel to Nissan Shapiro on it*, to face the Court and be sanctioned (emphasis added).
>
> In my decades of sterling and reputable and honest practice before this Court I have never seen such a blatant abuse of far reaching discretion such as this. It is like literally plucking attorneys in the hallway and hauling them in on a case that they have nothing to do with and deciding to order them to stand before the court in a hearing on a case that they have NOTHING to do with. I can only surmise that because Nissan Shapiro is a partner in the Law Office of Epstein, Schreier & Shapiro LLP that the Court, sua sponte, without doing any due diligence and checking into NYSCEF first, threw myself and Jonathan Schreier into the bathtub with the baby.
>
> I am doing nothing other than speaking the truth as a veteran officer of the court. I am also not throwing Mr. Shapiro under the bus—Nissan is a highly respected and honest/reputable attorney who I'm sure will prove to the Court that he did nothing sanctionable BUT, to randomly throw Ben Epstein & Jonathan Schreier into an Order demanding that we, who have absolutely zero to do with this case, is an *unprecedented dictatorial abuse of discretion and as such, with the utmost respect for the court, I am requesting that Your Honor amend the Order dropping our names from it so that I do not have to take this matter further to higher authorities* (emphasis added).
>
> Wishing you only the best as always
> Benjamin Epstein, Esq.

The court, interpreting this e-mail as an informal, *ex parte* application to modify the July 24, 2024 amended order, denied the application. (NYSCEF Doc No. 9, July 25, 2024 order denying application and copy of July 24, 2024 e-mail from Mr. Epstein.)

Despite having received three weeks' notice from the court, Mr. Epstein filed an "affidavit of unavailability" on NYSCEF the evening of August 12, 2024, informing the court that he would be flying to Italy on August 14, 2024. Mr. Epstein stated that the trip had been planned some time ago and annexed boarding passes. Mr. Epstein reiterated, "I am a non party who has absolutely nothing to do with case [sic] nor was I involved in the commencement of this case nor did I appear on it *except on July 15, 2024 wherein I checked in 'of counsel'* and appeared, only to have been incredulously and shockingly dragged into this matter by the court for a sanctions hearing on a case that I had nothing to do with (emphasis added)." (NYSCEF Doc No.39, Epstein affirmation of unavailability).

That Mr. Epstein had "checked in 'of counsel'" was inconsistent with his earlier e-mailed recounting of events that he had "zero connection to this case, never filed any substitution of counsel nor

does our name appear on any of the pleadings *nor have we even appeared Of Counsel to Nissan Shapiro on it.*" (*See* NYSCEF Doc No. 9 at 2.) Despite Mr. Epstein's July 24, 2024 written proclamation, "I am doing nothing other than speaking the truth as a veteran officer of the court[,]" this was the first of several inconsistences with Mr. Epstein's testimony.[11] While Mr. Epstein had not requested an adjournment, the court adjourned Mr. Epstein's testimony to September 5, 2024. (NYSCEF Doc No. 41, Judicial Response to Attorney Affirmation of Unavailability.)

THE HEARING

Part 1 – August 15, 2024[12]

The hearing took place over the course of two days, August 15, 2024 and September 5, 2024.

On August 15, 2024, Mr. Shapiro appeared promptly in the courtroom.[13] Mr. Schreier appeared virtually with the permission of the court.[14] Also present were Nora Pritchard and her newly-retained attorneys. There was no available sitting space in the courtroom. The parties were placed under oath.

The court's primary concerns were whether Mr. Shapiro had conducted a reasonable inquiry to verify the allegations in the petitioner, and whether false material statements of fact that were known or should have been known were presented to the court, and the adequacy of communication between members of the firm

Mr. Shapiro clarified that Silvershore Properties is not united in interest with petitioner herein. He stated, based on documents from the Automated City Register Information System ("ACRIS"), that Silvershore Properties deeded the property to a bank in lieu of foreclosure, which in turn sold the property to 1334 B LLC.

> "My understanding from my client, Your Honor, is that the bank, at the time they sold him the property, did not have or provide any documents or records as to any of the prior tenants who were living there. My client essentially purchased a building that

[11] On September 5, 2024 Mr. Epstein admitted to having negotiated the stipulation and signing it. (Sept 5, 2024 tr at 14, lines 15-21.)

[12] On the morning of the hearing, Mr. Shapiro requested a stenographer. NYSCEF Doc No. 7. At that juncture it was too late to obtain one. No objection was raised when the hearing started. The hearing was memorialized on the digital record, and later transcribed and certified by a private company at the request of the court. All transcript references in this section of the decision are to the transcription of the August 15, 2024 hearing unless otherwise specified. The transcripts are being uploaded to NYSCEF along with this decision and order.

[13] When asked whether his client, Roy Rave, was appearing, Mr. Shapiro responded that Roy Rave would be unavailable as he was "traveling" in Europe and was seeking an adjournment. tr at 2, line 17, through 3, line 8.

[14] Shortly thereafter, Mr. Schreier voluntarily exited the Microsoft Teams platform after he indicated he would be retaining counsel.

> was vacant, some apartments in very good condition, some apartments in very poor condition, depending on how it had been treated by the prior tenants, current tenant -- current occupants or tenants, as well as by the prior management and owner. As such, when my client purchased the building, there were at a loss as to who was there, what they were doing – who was there, what they were doing, and what their rights were. My client did an initial investigation to determine, from what I understand, whether Ms. Pritchard was or was not a, a tenant there or had any rights to be there, and couldn't conclude whether she was or was not based on his conversations with her (tr at 11, lines 17-25; tr at 12, lines 1-10.)"

Mr. Shapiro testified that his client had asked respondent, "[D]o you want a lease? And her saying, apparently, refusing to sign a lease. This is not the behavior of an ordinary tenant." (tr at 12, lines 10-13.)[15] Mr. Shapiro testified that his client "couldn't make a determination as to whether Ms. Pritchard was the person who later on we, we found was, in fact, the prior regist-, rent stabilized tenant of this property." (tr at 12, lines 17-22.)

When questioned about the timing of the registration of the premises with DHCR and the filing of this proceeding, Mr. Shapiro stated that his client had registered the apartment as rent stabilized with DHCR on November 28, 2023, two weeks *after* the instant proceeding was commenced on November 14, 2024, in order to demonstrated that he did not have reason to know or to check the registration history prior to filing the petition. "It's not like I had a communication with my client, except to let him know that we had a court date. So I, I can't answer why my client did something that occurred after I filed my [petition]." (tr at 13 lines 16-19.) Mr. Shapiro repeated twice thereafter that the registration of the premises with DHCR was two weeks *subsequent* to the commencement of this proceeding, (tr at 14, lines 10-15.)

> MR. SHAPIRO: Your Honor, it's not that I take everything at my client's face value. There's a -- there's an extent prior to commencing a case that I can do in terms of a reasonable investigation. The court asked me whether my client knew that Ms. Pritchard was the person who was rent stabilized –
>
> THE COURT: Knew or should have known.
>
> MR. SHAPIRO: Knew or should have known. The answer is, to a certain extent, it's possible. I'm not going to say he had no inkling of it. I'm not a mind reader, Your Honor. What I'm saying is that my client, based on his, his behavior and communications with her, it seemed to indicate to him that she had no interest -- that

[15] Respondent had previously stated during the allocution that she did not sign a renewal lease because she could not afford the increased rent. However, tenants in receipt of Section 8 benefits in rent stabilized apartments continue to pay their tenant share, even after the subsidy has been terminated for any reasons.

she wasn't a tenant or had no interest in being a tenant in the property." (tr at 14, lines 19-25; at 15, lines 1-8.)

Mr. Shapiro then drew the court's attention to the petition which pleaded that the premises is rent stabilized, presumably to demonstrate that the pleadings were accurate. The court responded that he had shortly thereafter informed the court that the premises had been substantially rehabilitated in 2016, thereby taking the entire building out of rent regulation further confusing the court regarding why the premises was pleaded as regulated. The court and Mr. Shapiro quibbled about precisely when he had informed the court that the premises was *not* regulated although pleaded as regulated with a licensee/squatter in occupancy. (tr at 16, lines 5-25; at 17, lines 1-4.) Then Mr. Shapiro changed the subject:

"MR. SHAPIRO: In, in either event, Your Honor, to, to move on from there, like I said, I start many cases, and then these days, we wait about eight months, and the clients typically ask me whether a case has been filed and when, when the first or next court date is from there. We generally don't have any communications about it, unless some issue comes up. Should we accept rent? Should we not accept rent?" (tr at 17, lines 5-12.)

Mr. Shapiro then explained the process of filing a holdover petition and receiving a court date. In this case, the petition was filed on November 14, 2023. On February 1, 2024, the clerk assigned a court date of May 28, 2024 (tr at 17, lines 23-25; NYSCEF Doc No. 3, notice of petition assigned.) Thereafter, Mr. Shapiro informed his client of the court date.

MR. SHAPIRO: And that, and that was the extent of the communication regarding the case. They get an update.

THE COURT: And they didn't say, oh, oopsie, mistake. We, we registered her as rent stabilized.

MR. SHAPIRO: Your Honor, we didn't have that conversation because, again, if my client thought that it was pertinent to inform me of that issue, he would have.

THE COURT: Would you think to ask them if anything has changed, like if the tenant is vacated, or the -- or if --

MR. SHAPIRO: They -- again --

THE COURT: -- there has been any kind of change, material change?

MR. SHAPIRO: The answer is that, generally speaking, if there is a change, my clients will inform me of the change. I have --

> THE COURT: So you wait for your client to inform you? You don't ask the client if it's 12, 13, months later, has there been any kind of change, like do we even still need to go forward with this case?
>
> MR. SHAPIRO: Sometimes, we do. And in fact . . . I've had numerous times where I file notices of discontinuance [in] holdovers . . . ." (tr at 18, line 13, through 19, line 9.)

At another point in his testimony, Mr. Shapiro stated that "on the second court appearance when the proposed stipulation was, was drafted and signed, signed by [respondent], she did not communicate that any of her history or back history even giving us the opportunity to investigate. I'm not blaming her at all[.]" (tr at 27, lines 10-15.)

When the court inquired as to what kind of system the firm has in place to ensure that there is no overlap with cases the three partners brought in from their private practices, Mr. Shapiro testified that the two systems currently in use – LTX and Traina – are "not compatible. (tr at 23, lines 12-17.) Thus, numerous cases would not show up if a search was performed, "It wouldn't necessarily pull up any other case, because there wouldn't be a connection or a -- we wouldn't be able to pull the old file. We do have sometimes where we are able to pull it, but it usually shows up in the nonpay cases, not in the holdover cases. It's just the way the system is structured." (tr at 24, line 17, through 25, line 9.) At another point, Mr. Shapiro stated that this proceeding "started before we, before we integrated." (tr at 33, lines 22-23.)

The court then inquired, "[W]hat kind of due diligence do you do in -- that comports with the Rules of Professional Conduct before you file a case?" (tr at 29, lines 6-8.) Mr. Shapiro changed the subject and cited to the court cases in which the court either declined to grant a tenant's motion for sanctions, or sanctioned an attorney, to make the point that "many of them are far more egregious examples than this is." (tr at 31, lines 7-8.)

Mr. Shapiro testified that after the stipulation was allocuted and he inquired of his client about discontinuing the case, his client informed him that he believed the premises was deregulated when it was substantially rehabilitated in 2016. The court then inquired, "[I]f it was that easy to find out that [the building] was sub rehabbed or to get some additional information, why wouldn't it be easy enough to do that beforehand?" (tr at 39, lines 20-23.) After the court explicated the standard for an exemption from rent stabilization due to substantial rehabilitation, Mr. Shapiro clarified that he had "meant to say IAI

[Individual Apartment Improvements]."[16] (tr at 40, lines 2-13.) The court asked Ms. Pritchard whether any substantial work was done in her apartment in 2016. Respondent stated, "there was no work done at that time." (tr at 53, lines 17-21.) When the court inquired when work was done, Ms. Pritchard answer that "The new landlord [later identified as Roy Rave] fixed something in my tub, my sink, and gave me a new refrigerator." (tr at 53, lines 22-24.)

During the hearing, Mr. Shapiro unexpectedly testified that he had not been the attorney to either negotiate or sign the stipulation. (tr at 43, line 14, through 44, line 1.) When asked who wrote the stipulation, Mr. Shapiro stated that the handwriting looked to him to be Mr. Epstein's. (tr at 44, lines 14-17.) When the court asked "if that's Mr. Epstein's signature, then he --," Mr. Shapiro stated, "That's not my signature." (tr at 44, lines 20-22.) "I'm just saying for the record, I was in the Bronx that morning, came at 11:30 to handle [the case]." (tr at 44, line 24, through 45, line 1.)

When the court mused how often this same lack of diligence might occur, Mr. Shapiro answered:

> "MR. SHAPIRO: Well, Your Honor, considering the fact that in my illustrious career as a landlord-tenant attorney, this is the first time I've been called up and questioned as to whether I did my due diligence in the case, and I haven't ever been threatened with sanctions in the case before for not doing my due diligence, I would say fairly rare." (tr at 47, lines 16-22.)

After some additional back and forth, the hearing ended for the day. Mr. Shapiro and respondent's attorney began to discuss settling the proceeding.

Day 2 – September 5, 2024[17]

On day two of the hearing, all benches in front of the court officer were again filled almost exclusively with legal services attorneys. The court began by admonishing the audience that giggling, texting, and talking would not be tolerated as same had been observed on August 15, 2024. Present and placed under oath were Mr. Epstein, Mr. Shapiro, and Ms. Pritchard.

The court asked Mr. Epstein about the inconsistency between his statement in the July 24, 2024 email (that he had never appeared of counsel to Mr. Shapiro), and his statement in his August 12, 2024

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[16] Prior to the passage of the Housing Stability and Tenant Protection Act of 2019, Individual Apartment Improvements ("IAI") allowed a property owner to increase the legal regulated rent by one-fortieth for buildings with 35 or fewer housing accommodations, and by one-sixtieth for buildings with more than 35 housing accommodations. Former Rent Stabilization Law § 26-511 (c) (13). Here, respondent was paying a purportedly preferential rent of $1,433 from 2104 through 2022. The registered rent then increased to $2,850. However, Mr. Shapiro testified that his client, Roy Rave, informed him that the IAIs had been completed in 2016.

[17] All references to the transcript in this section refer to the certified transcript of Amanda Villa, Official Court Reporter unless otherwise specified. The transcripts are being uploaded to NYSCEF along with this decision and order.

affirmation of unavailability that "on July 15, 2024 wherein [sic] I checked in 'of counsel' and appeared." (NYSCEF Doc No.39, affirmation of unavailability.) Mr. Epstein began his answer by saying that when this case was filed, nine months after the firm incorporated and seven months after they began doing business by Mr. Shapiro and Mr. Epstein's account, the incompatible Traina and LTX systems for case and client tracking had not been fully integrated.

> "MR. EPSTEIN: Even up until today, there are still glitches. He's, pretty much, almost 95 percent in the grid today, but in May. Back when this -- I think in, I don't know, in July [2024] when this case was on the calendar, he -- this case was not even integrated. I knew nothing about this case. (tr at 5, lines 4-9.)
>
> Mr. Epstein continued:
>
> "I believe in a subsequent statement I clarified that I checked in on that morning. . . . So I checked in that morning, and I proceeded to speak to Mr. Shapiro, say, let me talk to the tenant, but he's going to finalize everything. I met the tenant in 508, what we call 508, which is the fifth floor conference room. The tenant was sitting on a bench with her son, and, again, all I knew, this is, apparently, a licensing [sic] holdover. She told me a date when she can vacate. I wrote up a stip, signed it. Mr. Shapiro appeared. I don't remember exactly how. . . . (tr at 6, lines 4-5; at 6, lines 7-17.)
>
> MR. EPSTEIN: I believe she signed it at that time, and I held the stipulation for Mr. Shapiro to review. And I believe that this is, again, this is -- the first time I knew about this case was the night before. I'm, I'm doing a licensing [sic] holdover the way I do hundreds, thousands of licensing [sic] holdovers in my career, and I knew nothing more than that. Mr. Shapiro then appeared, he came in and met me in the -- that room, the conference room in 508. I handed him the stip and I walked away. . . . (tr at 6, line 20, through 7, line 4.)
> ...
>
> THE COURT: So what systems did three very busy attorneys, what do you use if you don't have integrated systems to make sure that things like this don't happen? I mean, you were talking to a tenant who had an open case, and was represented by an attorney. The case is open in our systems. It's not discontinued. . . . (tr at 8, lines 11-17.)
>
> MR. EPSTEIN: The tenant had an attorney then?
>
> THE COURT: Patrick Langhenry. You entered into many –
>
> MR. EPSTEIN: Are you talking about –
>
> THE COURT: Right. . . . I'm just wondering what kinds of systems, if your case tracking systems aren't integrating, you're using to ensure that this kind of thing doesn't happen. That when one of the merged partners brings a case, that the other partner has an open, not discontinued, not administratively heavily-litigated case, with the same

respondent who is represented to make sure that a case with completely different facts, which might be edified by the prior case, isn't -- a stipulation isn't negotiated for her to move out within 60 days . . . . (tr at 8, line 20, through 9, line 11.)

MR. EPSTEIN: If I may, first of all, that case, I don't remember that wasn't discontinued. I think it fell off the map by COVID.

THE COURT: I'm sure.

MR. EPSTEIN: COVID shut everything down, and it never reappeared, and I don't, I -- COVID kind of, like, muddled a lot of things, but --

THE COURT: I understand, but don't you have -- isn't there a responsibility to make sure that there is diligence in verifying facts? I mean, I guess that goes more to Mr. Shapiro with the petition, but, I mean, what kind of system is in place to ensure that this kind of thing doesn't happen? . . . (tr at 9, line 13, through 10, line 1.)

...

THE WITNESS: We're fully integrated now. Like I said, I testified before, I would say, 95 to 97 percent. There may be a margin of error of two, three percent left on a glitch. We're basically fully integrated now, so that would not be an issue again.

THE COURT: So you testified that you do not remember Ms. Pritchard.

THE WITNESS: I did not remember the case.

THE COURT: Ms. Pritchard, may I ask you, is this the man who negotiated the stipulation with you?" (tr at 10, line 5 -14.)

Respondent identified Mr. Epstein as the attorney who negotiated and signed the stipulation with her in room 508, and which she also signed. The court inquired of Mr. Epstein and respondent their recollection of the exchange in room 508:

"MR. ESPTEIN: Very quick, she said that she can vacate. She asked -- I don't remember exact words -- but she asked me for time. I said, you know, I'll give you time, whatever you need, I'll accommodate you, work with you. And she told me the time she can vacate by, and I wrote up the stip.

THE COURT: Ms. Pritchard, is that your recollection of the exchange?

THE RESPONDENT: I thought that he said three months, and then you said it was two months. And then you said I shouldn't sign anything.

THE COURT: I said I wanted to talk to the landlord's attorney because, thereafter, you told me a number of things, that you had Section 8, that you thought your rent was

> different than they said, that you lived there for 20 years, that you thought everybody else had been bought out, that you were the only rent-stabilized tenant left in the premises. So I felt duty-bound to ask what happened. . . . (tr at 11, lines 1-19.)
>
> THE COURT: Did you mention any of those things to Mr. Epstein?
>
> THE REPSONDENT: No, I did not. . . . . (tr at 11, lines 21-23.)
>
> THE COURT: And why not?
>
> THE RESPONDENT: Didn't occur to me. It doesn't -- I didn't -- I believed that, I mean, I didn't have a current voucher because of the state of my apartment. I didn't really think I was going. Obviously, you're not going to stay there forever if you can't figure something out, right? . . . (tr at 11, line 25, through 12, line 6.)
>
> MR. EPSTEIN: I've been doing this long enough, decades, that if Ms. Pritchard would have said that, I would have immediately walked away. I would never have drafted the stip. So in being that I did not remember the case, you know." (tr at 12, lines 13-17.)

Mr. Epstein then acknowledged that he had checked in on the case on July 15, 2024, and negotiated and signed the stipulation with respondent. This testimony is in stark contrast to Mr. Epstein's prior representations to the court that he had no connection whatsoever to this proceeding and had never checked in of counsel. (NYSCEF Doc No. 9 at 2, email to court dated July 24, 2024.)

In response to the court's inquiring about his statements that the court's actions in holding this hearing are sanctionable, and an "unprecedented dictatorial abuse of discretion" undertaken "without any due diligence" and that he intended to report the court to "higher authorities" if he and Mr. Schreier's names were not removed from the order, Mr. Epstein explained:

> "MR. EPSTEIN: . . . I was emotional, I was being very transparent, very transparent, I was angry, upset, this -- in my career, this never happened to me, and I don't practice like this. . . . (tr at 15, line 24, through 16, line 2.)
>
> MR. EPSTEIN: I, I felt that hauling in an attorney who appears of counsel that had nothing to do with the inception of the case, the pleadings of the case, duration of the case, I felt that it's setting a precedent of counsel attorneys who are per diem attorneys -- okay, not per diem, but of counsel attorneys. I felt that it was setting a dangerous precedent that if of counsel attorney drafts a document that, you know, if we start sanctioning of counsel attorneys all the time, and it was obviously a personal thing because –
>
> THE COURT: Who does that all of the time? I don't think I do that.

MR. EPSTEIN: No, I know. I didn't say that I said I, I took it personally. I'm going to be very transparent. I took it personally. I was upset. I'll apologize for the use of wording, I -- your Honor, I think I, I think my reputation precedes me in, in the five boroughs and the courthouses.

I've been -- I always deal very fairly, with all my colleagues. I, I'm pretty confident I can bring you in a hundred colleagues, all Legal Aid, would say that they've never had a problem with me. I practice with integrity, and I was very upset. I was very upset because I felt that I was being hauled in on something that I shouldn't have been. So I will formally apologize to the Court for the use of that wording.

THE COURT: That could have happened sooner. It's been a while, but at any rate, it doesn't show a whole lot of remorse." (tr at 16, line 9, through 17, line 15.)

Given an opportunity to make a closing statement, Mr. Epstein recounted his long years of practice, the lack of a disciplinary record, and his reputation.

"MR. EPSTEIN: I would just say that, again, I think the Court looks to -- you look at an attorney, you look at the history of the attorney. We work in a very highly-pressured industry, for lack of a better word, tempers flare, emotions run high, I've been doing this, you know –

THE COURT: I know how long you've been doing [this]. . . .(tr at 22, line 19, through 23, line 1.)

MR. EPSTEIN: I formally apologized to the Court for my use of wording. . . . (tr at 23, lines 13-14.)

MR. EPSTEIN: I explained to the Court my state of mind and my state of emotion. . . . (tr at 23, lines 16-17.)

MR. EPSTEIN: And I think that my reputation and my career and my decades of service to this business, practicing in this courthouse, speaks for itself, and, and I would ask the Court to look at my -- take that into -- to look at that considerably.

THE COURT: I will take that into consideration." (tr at 23, line 21, through 24, line 2.)

. . .

MR. EPSTEIN: In 20 -- 24 years, I've never been reprimand[ed] by any judge, which, considering over the course of 20,000 cases, I think is pretty incredible. And I don't ever speak like this. I've never spoken like this. And the judge -- and, again, this never happened to me.

> So sometimes when something for the first time happens to somebody, even to an attorney, you -- we're human beings besides being attorneys, and, and very, very upset about it. But I'm just trying to, again, explain in the most respectful way, I'm trying to explain my state of mind, state of emotion at the time. (tr at 24, lines 12-23.)

Applicable Rules of Professional Conduct and Ethics Opinions

22 NYCRR 130-1.1a (b) (1) states that "[b]y signing a paper, an attorney or party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances[,] the presentation of the paper or the contentions therein are not frivolous as defined in section 130-1.1(c) of this Subpart[.]"

22 NYCRR 130-1.1 (c) (3) states in relevant part:

> "For purposes of this Part, conduct is frivolous if [] it asserts *material factual statements that are false* (emphasis added).
>
> . . . In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues *the circumstances* under which the conduct took place, *including the time available for investigating the legal or factual basis of the conduct*, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, *should have been apparent*, or was brought to the attention of counsel or the party (emphases added)."

Federal Court has parallel rules. In particular, Rule 11 requires an attorney to certify all papers submitted to a court only "after an inquiry reasonable under the circumstances." (Fed Rules Civ Pro rule 11 [b].) Applying this rule, the court in *In re Australia and New Zealand Banking Group Ltd. Securities Litigation*, 712 F Supp 2d 255, 264 (SD NY 2010) found:

> "Given the centrality of Paragraph 25 to the Original Complaint's entire theory [of the case], any reasonable inquiry into the factual basis of the pleading would have prevented this mistake. Such indifference to the truth of the pleading's single most important factual allegation . . . is the sort of conduct that Rule 11 . . . seek[s] to deter."

Rejecting counsel's every hypothesis for why Rule 11 had not been violated, the court found that the misrepresented facts were "the crux of the entire complaint," and sanctioned the offending attorney in the amount of their adversary's attorney's fees and costs. (*Id.*)

Citing to *In Re New Zealand*, a New York-based treatise for Federal Court practice cautions:

> "Before signing a pleading or other document, counsel should request all relevant documentary evidence from the client and review it carefully, since the failure to discover or recognize the significance of those documents may indicate an

> unreasonable factual inquiry. Likewise, if an attorney does not have to rely on the client but can get the information necessary to certify the validity of a claim from public sources, the failure to do so may make the inquiry unreasonable." (1 Civil Practice in the Southern District of New York § 5:14 [2d ed.])

The New York Rules of Professional Conduct provide that:

> "Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. A lawyer should not engage in conduct that offends the dignity and decorum of proceedings or that is intended to disrupt the tribunal. While maintaining independence, a lawyer should be respectful and courteous in relations with a judge or hearing officer before whom the lawyer appears." (Rules of Prof Conduct with Commentary rule 3.3 Comment [13] [NY St Bar Assn rev Aug. 2022].)

22 NYCRR 100.3 (D) (2) provides a two-pronged test for determining whether a lawyer's conduct warrants some kind of "appropriate action" on the part of the judge. "A judge who receives information indicating a *substantial likelihood* that a lawyer has committed a *substantial violation* of the Rules of Professional Conduct . . . shall take *appropriate action* (emphases added)." Generally speaking, the court has broad latitude to determine the parameters of the appropriate action. As stated by the Advisory Committee on Judicial Ethics:

> "[W]hat determines 'appropriate action' depends upon all the surrounding circumstances known to the judge, including an assessment of whether the individual, if confronted by the judge, shows genuine remorse, contrition, or ignorance of a rule; whether the individual has any history of unprofessional or other conduct in violation of the Rules; or any other relevant conduct or factor known to the judge." (Advisory Comm on Jud Ethics Op 21-138 [2021].)

The New York Rules of Professional Conduct provide that "A lawyer shall not: (1) seek to or cause another person to influence a judge . . . ." (Rules of Prof Conduct [22 NYCRR 1200.00] rule 3.5.) Comment [2] to the same rules states in full: "Unless authorized to do so by law or court order, a *lawyer is prohibited from communicating ex parte with persons serving in a judicial capacity in an adjudicative proceeding*, such as judges, masters or jurors, or to employees who assist them, such as law clerk (emphasis added)." (Rules of Prof Conduct with Commentary rule 3.5 Comment [2] [NY St Bar Assn rev Aug. 2022].)

Additionally relevant here are the following rules. "A lawyer shall not knowingly make a false statement of fact concerning . . . conduct or integrity of a judge." (Rules of Prof Conduct [22 NYCRR 1200.00] rule 8.2.) "A lawyer or law firm shall not: . . . [] engage in conduct involving dishonesty, fraud,

deceit or misrepresentation; [or] [] engage in conduct that is prejudicial to the administration of justice[.] (Rules of Prof Conduct [22 NYCRR 1200.00] rule 8.4.)

Particularly germane to Mr. Epstein's circumstances is Ethics Opinion 13-61 from the Advisory Committee on Judicial Ethics ("ACJE"). There, the judge had requested guidance from the ACJE after an attorney accused them of "illegal and unethical" behavior "and threatened to report the judge to the Commission on Judicial Conduct if the judge did not 'undo' the judge's judicial decision[.]" The judge was "uncomfortable with the attorney's apparent efforts to use the judicial disciplinary process 'as a threat ... to get the judge to undo his or her decision,' and now asks if he/she must report the attorney to the grievance committee." (Advisory Comm on Jud Ethics Op 13-61 [2013].) The Committee advised that '[a] judge who concludes that an attorney has threatened to file a complaint against the judge in an effort to unduly influence the judge's judicial decision should report the attorney to the appropriate disciplinary committee." (*Id.*)

Mitigating and Aggravating Factors

The American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") provides a list of aggravating and mitigating factors which should be considered when imposing sanctions.

> "[] Aggravating factors include [] prior disciplinary offenses; [] dishonest or selfish motive; [] a pattern of misconduct; [] multiple offenses; [] bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; [] submission of false evidence, false statements or other deceptive practices during disciplinary process; [] refusal to acknowledge wrongful nature of conduct; [] vulnerability of victim; [] substantial experience in the practice of law; and [] indifference to making restitution."[18]
>
> "[] Mitigating factors include: [] absence of prior disciplinary record; [] absence of dishonest or selfish motive; [] personal or emotional problems; [] timely good faith effort to make restitution or to rectify consequences of misconduct; [] full and free disclosure to disciplinary board or cooperative attitude toward proceedings; [] inexperience in the practice of law; [] character or reputation; [] physical disability; [] mental disability or chemical dependency including alcoholism or drug abuse when: [] there is medical evidence that the respondent is affected by a chemical dependency or mental disability; [] the chemical dependency or mental disability caused the misconduct; [] the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and [] the recovery arrested the misconduct and recurrence of that

[18] ABA Standard 9.22, available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/sanction_standards.pdf (last accessed October 11, 2024).

> misconduct is unlikely [] delay in disciplinary proceedings; [] imposition of other penalties or sanctions; [] remorse [and] remoteness of prior offenses."[19]

Contrition is seen as a mitigating factor in attorney disciplinary proceedings and is strongly considered by courts who have imposed sanctions pursuant to 22 NYCRR 130-1.1. In *In re Grossman*, 132 AD3d 216 (2d Dept 2015), when determining the appropriate measure of discipline for an attorney who admitted driving his car under the influence of illegal drugs, the court considered in mitigation the "isolated nature of the misconduct, the respondent's voluntary efforts at rehabilitation, his sincere statements of remorse, the testimony of the character witnesses as to the respondent's integrity and reputation for excellence, and his unblemished disciplinary record" as mitigating factors. (*Grossman*, 132 AD3d at 218; *cf. In re Etah*, 148 AD3d 90, 95 [2d Dept 2017] [sanctions imposed against an attorney where "the respondent has not offered any evidence in mitigation; instead, he continues to claim that he has done nothing wrong, and requests that no discipline be imposed."])

In a 2013 research paper parsing the effect of apologies in judicial settings, the authors combined the results of several studies to reach a conclusion as to what constitutes a qualitatively effective and meaningful apology:

> "[A]pologies have four basic components: accepting responsibility, expressing remorse, offering recompense, and promising forbearance. While not all of these elements are always essential, the core of most successful apologies is the acceptance of responsibility and expression of remorse for some wrongdoing. A successful apology must convince the recipient that the wrongdoer's conduct did not reflect his or her true nature. To accomplish that, wrongdoers must convince the recipient that they understand that their actions were wrong and that the recipient can trust them not to engage in such conduct in the future."[20]

DISCUSSION

Nissan Shapiro, Esq.

In this court's opinion, Mr. Shapiro clearly did not perform a reasonable inquiry of the facts underlying the basis of this proceeding prior to filing the court papers and until the court ordered a sanctions hearing. The regulatory history, publicly available to petitioner and to Mr. Shapiro as

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[19] ABA Standard 9.32, available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/sanction_standards.pdf (last accessed October 11, 2024).

[20] Jeffrey J. Rachlinski, Chris Guthrie & Andrew J. Wistrich, *Contrition in the Courtroom: Do Apologies Affect Adjudication?*, Cornell Law Faculty Publications, Paper 604 [2013], available at https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2029&context=facpub (last accessed October 11, 2024).

petitioner's attorney, and available from the open court files of his partner, Mr. Epstein, would have revealed the mischaracterization of respondent as a licensee/squatter pursuant to RPAPL 713 (7), petitioner's stated cause of action.

From his testimony, it can be deduced that Mr. Shapiro spoke to his client twice before appearing in court on July 15, 2024, and three times total over the course of this proceeding from filing: 1) when he filed the proceeding; 2) when he received a court date from the clerk; and 3) when he spoke to his client about discontinuing the proceeding and was informed that the apartment had been deregulated in 2016. While there may have been other communications about the scheduled hearing and actual facts regarding respondent and the premises, this accounting is consistent with Mr. Shapiro's testimony regarding communications in general, and it appears that little may ever be done to verify the truth of the allegations in a petition. (tr at 18, lines 13-25; tr at 19, lines 1-9.)

Mr. Shapiro did not request, or have his client request, the DHCR records prior to August 2, 2024, which would have revealed that respondent has been the registered tenant of record since 2003, was in receipt of Section 8 benefits as early as 2005, and is neither a licensee nor a squatter.[21] While Mr. Shapiro may not have *actually known* within the meaning of the New York Rules of Professional Conduct that respondent was registered as a rent stabilized tenant in receipt of Section 8 benefits and obviously not a licensee or a squatter, lawyers have a duty to exercise ordinary care when filing court papers. As observed by the court in *Noor v Asad*, 77 Misc 3d 1203 (A), 2022 NY Slip Op 51112 (U), *4 (Civ Ct, Kings County 2022), "It is the professional ethical duty of counsel to ensure that legal papers and documents filed in court have been vetted for veracity of facts proffered and comply with current state of laws."

Instead, Mr. Shapiro relied entirely upon the representations of his client that respondent was a licensee/squatter -- the crux of petitioner's cause of action -- when in fact she is a rent stabilized tenant. Even during the sanctions hearing, Mr. Shapiro continued to equivocate regarding the regulatory status of the building, acknowledging through his submissions on NYSCEF that the DHCR rent histories indicated that respondent is registered with DHCR as the rent stabilized tenant of record as far back as 2003, but then claiming that the apartment is deregulated – first as a result of a building-wide substantial rehabilitation, and then as a result of individual apartment improvements ("IAIs"). Other misstatements

[21] Rather than demonstrating remorse for this mischaracterization of respondent's relationship to the premises, suddenly concerned about detail, Mr. Shapiro corrected the court when the court referred to respondent as a "squatter licensee." "Licensee squatter, Your Honor, not the other way around." (tr at 15, lines 12-13.)

of fact include that the fair value of use and occupancy is $2,500, when in fact respondent can only be charged her former Section 8 tenant share of the full contract rent, and the registered rent is actually $2,850.

Mr. Shapiro's verification of the petition avers "that affirma[nt] is the attorney for the petitioner, that *he has read the foregoing petition and knows the contents thereof, that the same are true to his own knowledge* except as those matters stated to be upon information and belief; as to those matters he believes them to be true (emphasis added)." (NYSCEF Doc No. 1, petition at 2.) *None* of Mr. Shapiro's allegations in the petition are made upon information and belief. In *Midland Funding LLC v Wallace*, 34 Misc 3d 1206 (A), 2012 NY Slip Op 50008 (U), *3 (Mount Vernon City Court 2012), the court rejected an attorney's "contention that plaintiff need not be able to establish a *prima facie* case before issuing a summons and complaint." The court sanctioned the attorney in part because "plaintiff's counsel failed to obtain the requisite documentation substantiating the merits of plaintiff's alleged cause of action against the defendant, plaintiff's counsel could not certify the complaint as required under 22 NYCRR § 130 - 1.1-a. Accordingly, the certification here is disingenuous, misleading and false." (*Midland Funding LLC* at *4.)

Here, even on the date of the hearing, Mr. Shapiro continued to maintain, based on his client's representation, that the building was deregulated by way of "substantial rehabilitation." Mr. Shapiro purported to have conducted an investigation, and provided documents – either from his client or on his own initiative -- which he stated supported a building-wide substantial rehabilitation. When the court reminded Mr. Shapiro of the requirements for substantial rehabilitation,[22] Mr. Shapiro stated that he had misspoken, and the apartment was deregulated as a result of IAIs in 2016, an entirely different standard; Moreover, if, as it appears from the record herein, respondent was in occupancy during the alleged improvements, tenant consent is required.[23] While the court makes no finding regarding the regulatory status of the premises or the building, or whether or how it was deregulated, Mr. Shapiro's continued waffling regarding the deregulation of the premises, under threat of sanctions, supports this court's conclusion that little to no investigation into the veracity of the pleadings was conducted *prior* to commencing this proceeding, or even by the time (eight months later) an agreement from respondent to vacate within 60 days was obtained.

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[22] See n 6, supra

[23] See n 16, supra.

Even if Mr. Shapiro did not *actually know* that respondent is a long-term rent stabilized tenant eligible for Section 8 benefits -- because did he not conduct a reasonable inquiry during the many months between service of the notice to quit, commencement of the proceeding, and the second court date -- Mr. Shapiro "*reasonably should have known*" within the meaning of Rule 1.0 of the New York Rules of Professional Conduct. (Rules of Prof Conduct [22 NYCRR 1200.00] rule 1.0 [s] ["'Reasonably should know,'" when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question."]) Moreover, for Mr. Shapiro to intimate that respondent, a tenant at risk of eviction in Housing Court, should have informed him of prior related litigation or their tenancy status is absurd, given the inequality of bargaining power and sophistication between respondent's situation and Mr. Shapiro's experience with housing law and Housing Court. Such a suggestion is the antithesis of an apology. Regardless, respondent apparently did not have a chance to inform Mr. Shapiro of anything, given that Mr. Shapiro was *not* the one to negotiate or sign the stipulation.

Finally, the failure of Epstein, Schreier & Shapiro LLP to integrate their case tracking systems prior to or immediately after merging, systems which were seemingly still not integrated when this case first appeared in court in July 2024, is poor practice. This is especially true when the testimony was consistent that the three lawyers formally incorporated in October 2023, but, , they did not start doing business as a firm until January 2024, four months later. As Mr. Epstein testified, "We're basically fully integrated now, so that would not be an issue again." (Sept. 5, 2024, tr at 10, lines 8-9.) A reasonable conclusion from this statement is that the instant proceedings could have been avoided altogether.

Mr. Shapiro's lack of diligence and reasonable inquiry verifying facts presented to the court, and his failure to integrate his incompatible case tracking system with that used by Epstein, Schreier & Shapiro LLP, are not the actions of a lawyer of reasonable prudence and competence. Shifting the accountability for the false verification of the petition to his client and then to respondent, and failure to immediately express remorse for the harm that had almost occurred, are also actions that militate in favor of a sanction.[24] However, that Mr. Shapiro, in his long and self-described "illustrious career" has never been sanctioned, or questioned by a judge, and was never blatantly disrespectful to this court during these proceedings, or at any other time, are factors that may be considered in mitigation.

[24] The court notes that seeking to discontinue or withdraw a case upon the discovery that the pleaded facts are erroneous, after having proffered a fully executed stipulation to the court to be converted into an order, is not tantamount to showing remorse or contrition.

At the September 5, 2024 hearing, given a final opportunity to address the court, Mr. Shapiro testified as to a new development:

> "MR SHAPIRO: The only reason why I haven't filed the motion to discontinue at this point, not because of the hearing itself, your Honor, but because Mr. McNamara and I have been in communication, extensive communication, about relocating the respondent, Ms. Pritchard, from her current apartment, which from my understanding, is not in great shape for whatever reason, into the apartment, which we have gone together to look at, which is substantially better condition, and we've been waiting to obtain the Section 8 voucher from Section 8, if that's possible, because our understanding is it might be possible. (Sept. 5, 2024 tr at 25, lines 6-17.)
> . . .
>
> MR. SHAPIRO: [The potential apartment] it's a better apartment in many, many ways, not just related to conditions itself, your Honor, which, again, my understanding is, that's a whole different conversation for another time, but has more to do with, also, by placing them on a lower floor, and in a better-situated apartment. It actually will make it easier for Ms. Pritchard who, from what I understand, has a bad knee and her son, who has got his situation, as well as the fact that it might lower the noise temperature in the building. So that is, for the record, the only reason this case has not been discontinued at this point. (Sept. 5, 2024 tr at 26, lines 1-13.)

It cannot be said with any certainty that this development would have occurred had the court not intervened, or if the court had not denied a verbal offer to withdraw the petition pending the sanctions hearing it intended to hold. However, that respondent is now being relocated by petitioner to a renovated apartment, and that respondent was finally able to retain an attorney who is working together with NYCHA Section 8 Leased Housing to have her subsidy restored, is a silver lining in a proceeding clouded by poor lawyering. While this potential settlement is not an apology and does not demonstrate an understanding of his lack of a reasonable inquiry, it does indicate some willingness to make amends, although the level of selflessness is questionable.

Mr. Shapiro's sanction is set forth, *infra*.

Benjamin Z. Epstein, Esq.

Because Mr. Epstein had been on notice since July 24, 2024 that the hearing would take place on August 15, 2024 at 2:15 p.m., his eleventh-hour affirmation of unavailability was unexpected. That he did not think to inform the court of his vacation to Italy prior to August 12, 2024, that he did not explain the late notice given his earlier willingness to contact the court *ex parte*, and that he did not assume that he would have to testify at some juncture and seek an adjournment, all suggest to the court that Mr. Epstein hoped that the hearing would end with the testimony of Mr. Shapiro. As a result of his

correspondence, the court issued an order cautioning Mr. Epstein that his "[f]ailure to appear at the hearing may result in a default, or may inform this court's ultimate determination." (NYSCEF Doc No. 51, August 22, 2024 decision/order.) Mr. Epstein appeared in court on time on September 5, 2024.

Like Mr. Shapiro, Mr. Epstein also sought to lay responsibility at respondent's feet for not affirmatively informing him of the prior proceeding or her tenancy status during what he testified was a "very quick" interaction. (tr at 10, line 24, through 11, line 1.) When the court reminded Mr. Epstein that he had previously stated that he did not remember *Ms. Pritchard* from the prior proceeding, Mr. Epstein corrected the record by stating, "I did not remember *the case* (emphasis added)." (tr at 10, lines 10-12.) Most inappropriately, Mr. Epstein suggested telling a "quite humorous" and "mind-boggling" story about forgetting where his car was parked as an explanation for not remembering and/or knowing what he should have known from his own open files. (tr at 7, lines 18-22.)

That Mr. Epstein expressed confusion that respondent was represented in the prior, still pending proceeding further demonstrated an offhand attitude toward the hearing given that the case file was made readily available on NYSCEF, and the Legal Aid Society consented to participation on NYSCEF one month prior to the September 5, 2024 court date. Apparently, Mr. Epstein did little in preparation for the hearing, taking the unyielding stance that he simply did not remember anything, and did nothing wrong, as opposed to attempting to refresh his memory by reading the file, or address the issue of the prior case directly. Had he informed himself of the extent of his prior association with respondent, he may have been moved to apologize to her; but there was no expression of remorse to respondent. His failure to review the file at issue is ironic given his conclusion that the court thoughtlessly required his presence at the hearing.

Given a final opportunity to express himself, Mr. Epstein spoke of his long years as an attorney practicing in Housing Court and the tens of thousands cases he has handled in his career. He testified that he has never been reprimanded by a judge which he believes to be "pretty incredible," and that he has never before spoken in the manner he addressed the court, all by way of explaining his state of mind when he sent the July 24, 2024 email to the court. Over the course of the hearing, this was a common refrain. In total, Mr. Epstein apologized for his "wording" five times.[25] Mr. Epstein explained his words

[25] Tr at 16, line 25, through 17, line 1 ("I'll apologize for the use of wording . . . ."); tr at 17, lines 11-12 ("So I will formally apologize to the Court for the use of that wording."); tr at 22, lines 1-2 ("I formally apologized about 10 minutes ago for my use of wording[.]"); tr at 22, line 5 ("I regret the use of wording . . . ."); tr at 23, lines 13-14 ("I formally apologized to the Court for my use of wording.")

as a result of his "emotions" or "emotional state" five times.[26] Mr. Epstein described his emotions as ranging from "angry" (tr at 15, line 25, through 16, line 1), to "excited" (tr at 21, line 9) to "shocked." (tr at 20, line 6.) Mr. Epstein spoke *only* of his own feelings, and not to what had transpired in this proceeding. He did not recognize that his "words" demonstrated a complete disregard of his "duty to uphold the legal process [and] to demonstrate respect for the legal system."[27]

During the hearing, despite his proclamation in his July 24, 2024 email to the court that he was "doing nothing other than speaking the truth as a veteran officer of the court," Mr. Epstein demonstrated no contrition or remorse for what had been revealed to be his false representations to the court on July 24, 2024 and August 12, 2024 regarding his involvement in this proceeding. He did not directly address that he had at least twice blatantly misrepresented to this court that he had "zero" to do with this proceeding and what transpired on July 15, 2024, when, *in fact, he had appeared in the courtroom to check in with the court officer, and personally negotiated and executed the surrender stipulation with respondent.*

Nor did Mr. Epstein demonstrate any remorse for his baseless threats should the court not rescind its decision. Rather than taking appropriate action, Mr. Epstein took it upon himself to bully the court *ex parte* and demand that he not be required to appear at the hearing in what he deemed to be a "sanctionable" and "unprecedented dictatorial abuse of discretion."[28] In an entirely specious, self-serving statement, Mr. Epstein offered, that he could have "a hundred colleagues, all Legal Aid" attest to his character[.]" (tr at 17, Line 6.) However, he produced not even one provider to testify on his behalf, while an audience of legal services providers sat silently in attendance. Mr. Epstein failed to demonstrate any understanding of why his actions were unbecoming of an officer of the court. Even if this is the only time that Mr. Epstein has (1) threatened a judge with sanctions or threated to report a

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[26] Tr at 15, line 24 ("I was emotional . . . ."); tr at 22, lines 5-6 ("I regret the use of wording, and I'm just trying to express my emotions at the time."); tr at 22, lines 21-23 ("We work in a very highly-pressured industry, for lack of a better word, tempers flare, emotions run high . . . ."); tr at 23, lines 16-17 ("I explained to the Court my state of mind and my state of emotion."); tr at 24, lines 22-23 ("I'm trying to explain my state of mind, state of emotion at the time.").

[27] NY Rules of Prof Conduct with Commentary, Preamble (3); (5) (NY St Bar Assn rev June 2022) ("[W]ithin the framework of the Rules, many difficult issues of professional discretion can arise. The lawyer must resolve such issues through the exercise of sensitive professional and moral judgment, guided by the basic principles underlying the Rules. . . . So long as its practitioners are guided by these principles, the law will continue to be a noble profession.")

[28] "Dealing with unprofessional lawyers is unpleasant. They're bullies who argue not about emotional facts but simply emotionally. Lawyers should know how to disagree without being disagreeable or allowing acrimony." Gerald Lebovits, *Winning Through Integrity and Professionalism*, 87 NY St BJ 64 (Feb. 2017)

judge to higher authorities if they did not modify their decision, (2) accused of judge of acting in an uninformed manner, (3) engaged in *ex parte* communications with a judge, (4) and/or blatantly and falsely without explanation misrepresented to a court the procedural history of a proceeding, Mr. Epstein, given the opportunity to be heard, did not establish any factors to mitigate his sanction.

The court finds that there is a substantial likelihood that Benjamin Epstein, Esq. has substantially violated one or more of the New York Rules of Professional Conduct, thereby breaching his duty to uphold the legal process and to demonstrate respect for the legal system and the proper administration of justice.

CONCLUSION

Accordingly, it is

ORDERED that the court finds that Nissan Shapiro, Esq. failed to conduct a reasonable inquiry into the facts underlying this proceeding, the truth of which he affirmed upon his personal knowledge under penalty of perjury, in sanctionable violation of 22 NYCRR 130-1.1a (b) (1); presented false material facts to the court in sanctionable violation of 22 NYCRR 130-1.1a (c) (3); and failed to conduct himself as a reasonably prudent lawyer while investigating the elements of the cause of action herein, and unreasonably relied on both his client and respondent for facts about which a reasonably prudent lawyer would have conducted an investigation; and it is further

ORDERED that, sanctions pursuant to 22 NYCRR 130-1.1 having been determined appropriate for frivolous conduct within the meaning of 22 NYCRR 130.1-1 (c), within twenty (20) days of service via NYSCEF of this order, Nissan Shapiro, Esq. shall pay $1,500.00 to the Lawyers' Fund for Client Protection at 119 Washington Avenue, Albany, New York 12210, pursuant to 22 NYCRR 130-1.3, and file proof of same on NYSCEF.; and it is further

ORDERED that the court finds that Benjamin Epstein, Esq. communicated inappropriately and *ex parte* with the court; directed baseless *ad hominem* attacks at the court; falsely accused the court of performing its duties in a sanctionable and uninformed way; threatened to report the court to "higher authorities" if the court did not modify an order (all of which was communicated *ex parte*); failed to demonstrate any remorse to respondent even for, seen in the best light, making a mistake; maintained a cavalier attitude toward the sanctions hearing; and failed to show any contrition for any of the foregoing actions, all of which are well-documented above, and such cumulative conduct warrants sanctions pursuant to 22 NYCRR 130-1.1 in order to deter conduct unbecoming of an officer of the court which inhibits the proper administration of justice and the court system; and it is further

ORDERED that within twenty (20) days of service of a copy of this order on him via NYSCEF, Benjamin Epstein, Esq. shall pay $3,000.00 to the Lawyers' Fund for Client Protection at 119 Washington Avenue, Albany, New York 12210, pursuant to 22 NYCRR 130-1.3, and file proof of same on NYSCEF.

Finally, because this court has determined that there is a substantial likelihood that Benjamin Epstein, Esq. has substantially violated one or more of the New York Rules of Professional Conduct, the court will report Mr. Epstein the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts and reference this decision and order.

This constitutes the decision and order of this court.

DATED: October 11, 2024
Brooklyn, New York

SO Ordered:
Hon. Karen May Bacdayan
Karen May Bacdayan, JHC

ENTERED

OCT 1 1 2024

CIVIL COURT
KINGS COUNTY