

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART B

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HUGH GRANT GARDENS HDFC,

X

Petitioner-Landlord

-against-

DECISION & ORDER  
Index No.: L&T 21443/2010

**HON. SABRINA B. KRAUS**

ELISA RODRIGUEZ, AS EXECUTRIX  
OF THE ESTATE OF OLGA RODRIGUEZ  
1966 NEWBOLD AVENUE- APT 1102  
BRONX, NEW YORK 10472

Respondent-Tenant

ERIC FALCON  
"JOHN DOE" and/or "JANE DOE"

Respondent-Undertenants

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X

**BACKGROUND**

This summary holdover proceeding was commenced by **HUGH GRANT GARDENS HDFC** (Petitioner) and seeks to recover possession of **APARTMENT 1102** at **1966 NEWBOLD AVENUE, BRONX, NEW YORK 10472** (Subject Premises) based on allegations that **ELISA RODRIGUEZ, AS EXECUTRIX OF THE ESTATE OF OLGA RODRIGUEZ** (Respondent), is subletting the Subject Premises without the consent of the Board, and in violation of the proprietary lease, to **ERIC FALCON** (Undertenant).

**PROCEDURAL HISTORY**

Petitioner issued a thirty day notice to cure on December 16, 2009, alleging that the

Subject Premises were being illegally sublet, that the shareholder of the Subject Premises had died in 2006 and that Undertenant was living in the Subject Premises without the approval of Petitioner. The notice provide for a cure period through January 30, 2010. On February 12, 2010, Petitioner issued a Five Day Notice of Termination terminating Respondent's lease effective March 15, 2010. The petition was verified on April 12, 2010, and the proceeding was initially returnable April 30, 2010.

Respondent appeared by counsel, and the proceeding was adjourned on two successive dates by stipulation. On June 4, 2010, Respondent filed an answer, and the parties conferenced the case with the Court on the record. The parties' agreed to enter a stipulation of facts, and to set the matter down for a hearing for the Court to determine the sole contested issue between the parties. The hearing took place on July 7, 2010, and at the conclusion of the hearing, the Court reserved decision.

### **STIPULATED FACTS**

On or about July 6, 2010, the parties entered into a stipulation of facts which was marked into evidence at the hearing on July 7, 2010 (Petitioner's Exhibit 2). The stipulation of facts provides in pertinent part:

1. Olga Rodriguez was the last proprietary lessee of record for the Subject Premises, pursuant to a proprietary lease dated May 22, 2003 . Ms. Rodriguez died on February 23, 2006. Respondent, Elisa Rodriguez, is the sister of Olga Rodriguez and the executrix of the estate of Olga Rodriguez, pursuant to Letters Testamentary (Respondent's Exhibit 2).
2. Undertenant, is the grandson of Olga Rodriguez and the nephew of Elisa Rodriguez, and has lived in the Subject Premises since February 23, 2006. Prior to that Undertenant lived

at Apt. 1102 in the same building.

3. On or about July 2009, Respondent requested Petitioner's consent to transfer the stock and proprietary lease for the Subject Premises to Undertenant. On or about July 29, 2009, Petitioner advised that Undertenant was not financially qualified to obtain sole ownership of the Subject Premises, but Petitioner did consent to a 1 year sublet during which time an assessed fee of 25% of the monthly maintenance would be added to the Respondent's monthly maintenance.

The parties further had stipulated that the sole issue before the Court would be whether Petitioner's denial of consent to transfer to Undertenant was reasonable and in accordance with the proprietary lease. The parties' further stipulated that the governing provision of the proprietary lease was paragraph 16(b) which provides in pertinent part "(i)f the Lessee shall die, consent shall not be unreasonably withheld to an assignment of the Lease and a transfer of the shares to a financially responsible member of the Lessee's family...". As it is uncontested that Undertenant is a member of the Lessee's family, the sole remaining determination before the Court is whether Petitioner's determination that he was not "financially responsible" was reasonable.

### THE HEARING

The following documents were placed into evidence:

- a) The proprietary lease between Petitioner and Olga Rodriguez for the Subject Premises (Respondent's Exhibit 1).
- b) Certificate of Appointment of Executors for Respondent (Respondent's Exhibit 2).
- c) Notorized Letter confirming Undertenant's employment at KMART from April 4, 2009 to the present day, at a salary of \$7.47/hr and a 30 hr work week; and copies of some of Undertenant's weekly pay stubs for the period of April through June 2010 (Respondent's Exhibit 3).

- d) Copies of some of Undertenant's bank statements and cancelled checks for a period covering December 2009 through May 2010 (Respondent's Exhibit 4a-d).
- e) August 27, 2009 letter from Respondent and Judith Falcon to Petitioner requesting a meeting with Petitioner regarding the denial of the transfer of the Subject Premises to Undertenant (Respondent's Exhibit 7).
- f) Maintenance stubs for the Subject Premises for July 2009 and July 2010 (Respondent's Exhibits 8a-b).
- g) A letter from Elisa Rodriguez to Judith Healy, a managing agent for Petitioner, representing that Undertenant did not file a Federal Tax Return in 2008, and annexing copies of pages from Undertenant's savings account passbook, checking account statements and paycheck stubs (Petitioner's Exhibit 1).
- h) Copy of the Bylaws and offering plan (Petitioner's Exhibit 3).

*Witnesses*

At the hearing, Petitioner presented the testimony of Clarence Greer. Mr. Greer is a member of the Board of Directors and has lived in the Subject Building for 39 years, in apartment 1101. The building was converted to an HDFC in 2003. Mr. Greer was the President of the Board of Directors at the time of the conversion, has since also served terms as Vice President and Secretary, and has continually been a member of the Board of Directors since the conversion. Mr. Greer testified that his duties included oversight of the corporation, the review of applications for tenancy, and insuring that there were sufficient funds to cover the building's operating expenses.

Mr. Greer testified that in connection with Respondent's request to transfer the Subject Premises to Undertenant, Petitioner required an application with financial information. Mr. Greer testified that the financial information provided was the basis of Petitioner's decision to deny consent to the transfer. Mr. Greer testified that Petitioner's Exhibit 1 in evidence was the

financial documentation provided by Undertenant and Respondent in support of their request for the transfer. Mr. Greer testified that generally Petitioner's decision in approving an applicant focuses on the income of the applicant, but stated that Petitioner also considers family history. Mr. Greer stated that after reviewing the financial information submitted, Petitioner determined that Undertenant's income was insufficient for him to be able to pay on going maintenance for the Subject Premises on a monthly basis.

Mr. Greer testified that the information provided showed Undertenant was bringing home on average \$800.00 per month. The basic monthly maintenance for the Subject Premises is \$704.74 per month. At the time of the application, Undertenant was showing a balance in his bank account of approximately \$2000.00.

Mr. Greer stated Petitioner has no governing standard regarding the ratio of income to maintenance required to approve an applicant, just an overall determination by Petitioner as to whether the income established is adequate. Mr. Greer testified that he believes a determination as to whether an applicant is financially responsible requires that petitioner determine whether the applicant shows sufficient income to meet the obligations of a shareholder. Mr. Greer testified that Petitioner uses the same standard and review process to determine whether any applicant is qualified. Mr. Greer stated that Petitioner has never permitted an applicant to compensate for inadequate income by providing a guarantor, or by putting a certain amount of funds in escrow.

On cross-examination Mr. Greer acknowledged that Petitioner as an HDFC is a low income Coop, and that an applicants income can not exceed the median income issued by HUD on an annual basis. Mr. Greer testified that the median income limit for the Subject Building for

one person is \$93,000.00. Mr. Greer also testified that he has known Undertenant for most of Undertenant's life. Undertenant, his mother and grandmother all lived next door to Mr. Greer in a different apartment on the same floor as the Subject Premises. Mr. Greer testified that he has never known Undertenant to be irresponsible. Petitioner called no further witnesses.

Respondent was the next witness at the hearing. Respondent testified that she has lived in the subject building for 27 years, and that her mother, sister and nephew also all live in the building. Respondent and her mother live on the same floor. Respondent stated that after the death of Olga Rodriguez she contacted Century Management a few times by phone, regarding their request to transfer the Subject Premises to Undertenant. Respondent stated that she subsequently started writing letters to Petitioner, and expressing that her mother, Olga Rodriguez, had expressly indicated prior to dying her wish for Undertenant to have the apartment. Respondent believed, based on representations by Petitioner and Mr. Greer, that Petitioner would consent to the proposed transfer. Respondent testified that she was told not to worry, and that Mr. Greer represented both to Respondent and Olga Rodriguez that there would be no problem with an assignment of the Subject Premises to Undertenant after Olga Rodriguez died.

Respondent testified that Undertenant is a financially responsible individual. In support of this conclusion, Respondent testified that Undertenant has two student loans which he has been timely paying and that on occasion he makes the payments early. Respondent testified that Undertenant's loan payments run approximately \$100-\$200 per month, per loan. Respondent testified that she felt Petitioner's denial of consent to the transfer was unreasonable, because since the death of Olga Rodriguez the maintenance had always been paid on time.

Respondent testified that Undertenant pays her approximately \$50.00 per week to help with expenses. Respondent testified that since Olga Rodriguez passed away, Respondent has paid the maintenance charges for the Subject Premises, and that even if Petitioner consented to the transfer, Respondent would continue to be responsible for making the payments.

Respondent testified that the maintenance would continue to be deducted from her bank account automatically.

The next witness was Undertenant. Respondent is 21 years old and has lived in the Subject Building since he was born. Undertenant received an Associates Degree in multimedia arts in 2008. The Subject Premises is a two bedroom apartment and Respondent resides there alone.

Undertenant testified that he is employed at KMART at 770 Broadway, and that he has been employed there for over one year. Undertenant states he works part time, and has not yet requested a full time position. Undertenant does not believe he has yet earned the credentials for a full time position, which his employer generally reserves for manager, cashiers, or people who work on the floor. Undertenant testified that he has a weekly schedule of thirty hours per week, but often works over time and puts in 40 hours per week.

Undertenant testified that he is paid by the hour and that his pay is directly deposited into his checking account. Undertenant states he feels secure in his job, and that he considers himself to be a financially responsible person. Undertenant testified that one of the student loans he is currently paying off is in his mother's name.

Undertenant testified that he has no credit cards, and that the utility and phone bill for the Subject Premises are in Respondent's name and are paid by Respondent. Undertenant does

not own a car and has no other source of income besides his job at KMART. Undertenant has no health insurance, has never been married and has no children.

### DISCUSSION

In the context of a transfer or assignment of a proprietary lease and stock certificate its has been held that “a ‘financially responsible’ person is one whose past actions show an acceptable pattern of meeting obligations promptly, and whose present financial position and future expected earnings indicate that such person will be able to meet reasonably expected future obligations in the same manner (*Chapamn v. 2 King Street Apartments Corp.* 8 Misc3d 1026[A], NY Slip Op 51294 [U]). It is also well settled that an applicant for an assignment under a lease provision, such as the one that governs in this proceeding, has more favorable rights to be approved as an assignee to the Subject Premises than an unrelated purchaser would (*Id.*).

Generally, where the decision of a Cooperative Board has a legitimate relationship to the welfare of the cooperative the decision is to be accorded deference by the courts (*Levandusky v. One Fifth Ave. Apt. Corp.*, 75 NY2d 530). However, where an applicant asserts a claim that consent to a transfer under a provision entitling a financially responsible relative of a deceased owner to become an assignee, courts have held that a board’s denial must be supported by specific objections which are laid open to scrutiny (*Stowe v. 19 East 88<sup>th</sup> Street, Inc.*, 257 AD2d 355 [1<sup>st</sup> Dept, 1999]).

In this case, having carefully weighed the evidence presented by both sides at the hearing, the Court finds that Undertenant is not a “financially responsible” individual as that term is used in the proprietary lease. While Undertenant has met any personal obligations he

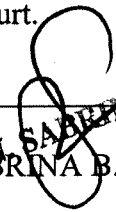


has had to date in a reasonable manner, Petitioner's determination that his income is insufficient to meet expected expenses of an assignee of the Subject Premises is reasonable on the undisputed facts of this proceeding. This conclusion is supported by the fact that although Undertenant has lived in the Subject Premises as the sole occupant since the death of Olga Rodriguez, all of the expenses for the Subject Premises, including maintenance and utilities have been paid by Respondent. Additionally, Undertenant's income is clearly insufficient for him to be able to pay maintenance for the Subject Premises and his own living expenses.

Petitioner has a fiduciary obligation to other shareholders in the building to deny consent to the assignment of the proprietary lease to an individual who does not show an ability to meet the financial obligations of a shareholder. The fact that Undertenant and his family have lived in the building on a long term basis does not dictate a different result.

As the parties had stipulated that this was the sole issue to be determined by the Court, Petitioner is entitled to a judgment of possession as against Respondent and Undertenant. Given that the proceeding is based on a breach of lease, Respondent is afforded 10 days from service of Notice of Entry of this decision to cure the breach. If the breach is not cured by the expiration of said period, Petitioner may apply for the issuance of the warrant of eviction upon an affidavit of default.

This constitutes the decision and order of this Court.

  
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~~SABRINA B. KRAUS~~  
SABRINA B. KRAUS

Dated: Bronx, New York  
July 19, 2010

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