

RSA Member LeFrak Brings Lawsuit Against NYC Housing Court

In response to the massive delays in New York City's housing courts, which remain largely unimproved since the end of the pandemic-related restrictions, a number of entities managed by the LeFrak organization have commenced a Supreme Court action against the Queens County Housing Court and various court administrators, alleging that the time delays in housing court violate the timetables provided by state law. Specifically, the lawsuit alleges that the housing court is failing to follow the mandates of the RPAPL, which requires that initial court appearances are set within 3-8 days of an answer being filed and which requires issuance of a warrant of eviction immediately upon obtaining a final judgment. In practice, it is alleged that the housing court routinely schedules nonpayment proceeding

3-4 months after an answer is filed, and that warrants take approximately 4-6 months to issue.

The petition by LeFrak, which is brought in the form of an Article 78 proceeding seeking a "writ of mandamus", or an order to compel a municipal or governmental entity or officer to perform their duties as required by law, was commenced at the end of February 2024 in Queens Supreme Court and was assigned to Judge Denise Johnson. The case is scheduled to be heard on July 2, 2024, subject to any additional adjournments by the Court.

A copy of the petition filed by LeFrak through its attorneys, Kucker Marino Winiarsky and Bittens, LLP, can be found here: <https://tinyurl.com/53jvbfph> ■

Recent Court Decisions

In the Matter of 5400 Company v. New York State Div. of Hous. & Comm. Renewal, 2024 WL 2061474 (App Div 1st Dept): The Appellate Division upheld the Supreme Court's denial of an Article 78 petition by a landlord, in a case which centered on the issue of whether a parking garage in a building commonly owned was also subject to the Rent Stabilization Law and thus deemed an ancillary and required service. The Court found that DHCR's determination that the parking garage was so subject, because the owner of the parking garage was also the superintendent of the building, and the parking garage owner failed to separately incorporate or pay rent each month for the space to the owner of the building. The Court's decision can be found here: <https://tinyurl.com/5r29tmhz>

900 Eight Avenue Condo LLC v. New York State Div. of Hous. & Comm. Renewal, 2024 NY Slip Op. 02361 (App Div 1st Dept): The Appellate Division upheld the Supreme Court's order which affirmed DHCR's determination that doorman service at the condominium was an ancillary and required service for the rent stabilized tenants of the building. Doorman service had been discontinued in 2018, and landlord's argument that the removal of the doorman was de minimus was unavailing, as it had never applied to DHCR to discontinue doorman services. Therefore, the removal of the service provide a rational basis for a rent reduction order. The Court's decision can be found here: <https://tinyurl.com/58v3apy2>

Bascom v. 1875 Atlantic Ave Development, LLC, 2024 NY Slip Op. 02515 (App Div 2d Dept): The Appellate Division upheld the lower court's order which denied a property owner's motion to dismiss in a class action rent overcharge case where it was alleged that the owner failed to register the monthly rents actually charged, instead inflating the registered initial rents by offering a pro-rated discount of a one-time monthly concession, therefore resulting in subsequent rent overcharges. The decision by the Appellate Division only means that the case can continue to the discovery stage, as the tenants have sufficiently alleged a rent overcharge case for the purposes of surviving dismissal based on the issue of whether a one-time rent concession, which is advertised as a pro-rated net effective rent, constitutes a preferential rent that must then be continued upon renewal. The Court's decision can be found here: <https://tinyurl.com/54b2hsjd>

57 Elmhurst LLC v. Morales, 2024 NY Slip Op. 50531(U) (Civ Ct Queens County): In a nonpayment proceeding where the landlord obtained a default judgment for rent arrears totaling \$248 that were not actually owed, the Court on its own motion sanctioned the landlord \$5,000 for frivolous conduct, to be paid to the Clerk of the Court, given the owner's many opportunities and warnings to cease maintaining cases against tenants for monies not due pursuant to a DHCR rent reduction order. The housing court's decision can be found here: <https://tinyurl.com/4tx22yxc> ■