

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

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INDEX NO. 77968/08

41-47 NICK LLC,

Petitioner,

-against-

DECISION/ORDER

MARSHEL HOLLIMAN, SHANTE WILSON,  
MOLESA BROWN, AND DENEANNE BROWN,

Respondents.

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SCHNEIDER, J.

This case came before me for trial on petitioner's claims against Deneanne Brown and for inquest as against the other named respondents. Petitioner and Deneanne Brown appeared by counsel. No other party appeared. The trial and inquest took place on September 24, 2009 and October 2, 2009.

The case is a licensee proceeding. Petitioner contends that its last rent controlled tenant of record, Earlene Hunt, died in February 2007 and that the named respondents are her licensees, whose licenses expired upon her death. Neither Marshel Holliman nor Shante Wilson ever appeared, Molesa Brown and Deneanne Brown appeared and asserted the right to succeed to the tenancy of Earlene Hunt, who was their mother. Molesa Brown later stopped participating in the litigation and defaulted at trial.

First, I note that there is no evidence in the record before me that Marshel Holliman or Shante Wilson ever lived in the subject apartment. Accordingly, petitioner's claims against those

two individuals are dismissed.

With respect to Molesa Brown, the evidence shows that she was Earlene Hunt's daughter and that she was raised in the apartment. The evidence also shows that she purchased a house in the Bronx in 2003, and that she took a STAR Homestead Exemption for the house in 2005, 2006 and 2007, and that she lived in the house in the Bronx from 2005 to 2007. Accordingly I find that petitioner is entitled to a final judgment of possession against Molesa Brown.

With respect to Deneanne Brown, the evidence at trial demonstrates that she also was raised in the apartment. She attended grade school, middle school, high school and college in the neighborhood, living with her mother in the apartment. In 1987, when she was 19 years old, she registered to vote using the apartment address, and she has never changed the address on her voting record.

Deneanne Brown had a son in 1996. She testified that in about 1997 she rented an apartment at 488 St. Nicholas Avenue, not far from her mother's apartment. She testified that from 1997 until about 2000 she lived in the apartment with her son and her son's father, who would later become her husband. She also testified that during this time her husband kept a separate apartment as well.

Ms. Brown testified that in about 2000 she left 488 St. Nicholas Avenue with her son and returned to living with her mother. She said that her husband remained alone at 488 St. Nicholas. However, she acknowledged, when shown documents apparently obtained from her landlord at 488 St. Nicholas, that in November 2001 she wrote a letter to the landlord of 488 St. Nicholas complaining that an upstairs neighbor was making noise that kept her son awake at night. In 2003 she signed off on two work orders for the apartment at 488 St. Nicholas. In 2006 she wrote a letter to the landlord of 488 St. Nicholas enclosing a check drawn on her bank account, paying

off substantial rent arrears for the 488 St. Nicholas apartment. The check had her name and the 488 St. Nicholas address printed on it. The letter asked for a transfer to a three bedroom apartment.

In November 2006 Deneanne Brown signed a lease for a three bedroom apartment at 200 West 136<sup>th</sup> Street, also not far from her mother's apartment. She testified that she, her husband and her son moved into that apartment in November 2006 but that she and her son moved out and returned to her mother's home in December 2006. She acknowledged that she continued to pay rent on the 136<sup>th</sup> Street apartment with her own check long after that, however. She also acknowledged that all of the utilities in the 136<sup>th</sup> Street have been in her name since the 2006 lease began and that they remain in her name. She testified that she changed the address on her bank account from 488 St Nicholas to 200 West 136<sup>th</sup> Street in 2006 and that she still receives her bank statements at 200 West 136<sup>th</sup> Street. She also acknowledged that she bought a refrigerator for the 136<sup>th</sup> Street apartment in 2007.

Respondent filed her tax returns for 2006, due to be filed in April 2007, from the 136<sup>th</sup> Street address. The return was not filed jointly with her husband but rather as a single head of household.

Respondent testified, with substantial credible support from three close friends, that her husband was both physically and verbally abusive and that she repeatedly left him to return to her mother's home. She said that her mother always made it clear to her that she could return home any time she wanted, and she obviously did so frequently. In addition, her mother became gravely ill in 2006 and required substantial assistance, which respondent provided. All three of the friends testified to visiting her mother's apartment and to seeing her there frequently with her son. I credit this testimony.

Nevertheless, the issue In this case is not whether the respondent spent time with her mother, whether she frequently spent the night with her mother, whether she provided care for her mother. Rather, it is whether her mother's apartment was her primary residence during the two years immediately before her mother's death. I find that it was not.

Earlene Hunt died in February 2007. The issue in this case is, then, the location of respondent's primary residence between February 2005 and February 2007. Respondent's son was nine to eleven years old during that time and presumably in school. Respondent produced no school records for him. Respondent was employed full time by the State of New York during that period. She produced no employment records. She produced no tax records, no banking records, and no credit card records. The only financial records produced were placed in evidence by the landlord and tied respondent either to the 488 St. Nicholas address where she was the leaseholder until 2006, or the West 136<sup>th</sup> Street address where she was the leaseholder from November 2006 to at least November 2008. Most tellingly, when respondent provided information for her mother's death certificate in February 2007, she gave her address as 200 West 136<sup>th</sup> Street.

Many of us think of our mother's home, the home where we were raised, as our own long after we have become adults and established homes of our own. If we are lucky enough to remain close by, we visit often, especially if we have frail, aging or ill parents. And if we are unfortunate enough to have a difficult and perhaps violent marriage, our mother's home may be a frequent place of refuge and a place to visit with friends free of interference. But this does not entitle us to succeed to our mother's rent controlled tenancy when she dies.

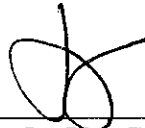
Based upon the credible evidence at the trial, I find that the subject apartment was not the primary residence of respondent Deneanne Brown during the last two years of her mother's life

and that she is not entitled to succeed to the tenancy.

Accordingly a final judgment is directed in petitioner's favor against Molesa Brown and Deneanne Brown. The warrant my issue forthwith. Execution of the warrant is stayed through November 15, 2009.

Dated:

10/2/09



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J. H. C.