

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

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TIMOTHY E. DAVIDSON,

Petitioner,

-against-

L&T Index No. 19600/12

Motion Sequence 001

DECISION/ORDER

HOUSE OF HOPE, BLUE WAY REALTY, INC.,
MR. PERNEL, MR. CANDITO, EASTBRIDGE CO.,
"JOHN DOE" and "JANE DOE"

Respondent(s).

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TIMOTHY E. DAVIDSON,

Petitioner,

-against-

L&T Index No. 20086/12

HOUSE OF HOPE, BLUE WAY REALTY, INC.,
MR. PERNEL, MR. CANDITO, EASTBRIDGE CO.,
"JOHN DOE" and "JANE DOE"

Respondent(s).

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Present:

Hon. BRUCE E. SCHECKOWITZ
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner's
"Illegal Lockout" Order to Show Cause.

Papers

Numbered

Notice of Motion & Affidavits Annexed..... 1

Notice of Cross-Motion and Affidavits Annexed	_____
Answering Affidavits	_____
Replying Affidavits.....	_____
Exhibits	_____
Memorandum of law.....	_____

After hearing and upon the foregoing cited papers, the decision and order on this order to show cause to be restored in lieu of petition is as follows:

The two illegal lockout proceedings: *Timothy E. Davidson v. House of Hope*, bearing Index Number L&T 19600/12 and *Timothy E. Davidson v. House of Hope, et al*, bearing Index Number L&T 20086/12 are hereby consolidated under Index Number L&T 19600/12.

Petitioner moved by order to show cause to be restored to possession to 672 Decatur Street, Top Fl, Top Bunk, Brooklyn, NY. Petitioner appeared through counsel, MFY Legal Services. Respondent, House of Hope appeared through Henry Purnell, its program director, as well as Candido Devalle, the house manager. Pursuant to Mr. Purnell's testimony, House of Hope is a transitional support residence for men with mental impairment and substance abuse issues. Mr. Purnell testified the subject building provides housing for twenty-six men who are referred to House of Hope through the courts, parole officers and various agencies. The typical client stays at the premises for an average of eight to twelve months and then moves on to independent living.

The following facts in this case are undisputed: House of Hope is not licensed, regulated or funded by the State of New York, or any other governmental agency. Petitioner moved into the premises on August 2, 2012 and paid his monthly rent of \$215.00 through the Department of Social Services. On August 15, 2012, petitioner signed a residency agreement. The agreement consists of House Rules, a list of regulations governing the occupants of the building, along with a

rider entitled "Waiver of Tenant Rights." The rider provides in pertinent part:

At the program the resident is **NOT** a tenant of a room, apartment, house or dwelling space, but is in fact a claimant on "*Landlord Tenants Law as per uniform Landlord and Tenant Act: set Part 11, section 1.202(a) Residence as an institution.*" Therefore the resident does not have *ANY* claim of further stay to rights unto the property, if the resident is asked to leave the program for any reason.

Petitioner was removed from the premises by Mr. Purnell on October 22, 2012 without prior notice or court order permitting a New York City marshal or sheriff to execute upon a warrant of eviction. The removal occurred three days after respondents cashed petitioner's rent check for October 2012. (Resp, Ex. C).

Mr. Purnell does not dispute that he removed petitioner from the premises without court order. However, he argues that the duly executed Waiver of Tenant Rights permits House of Hope to remove any occupant that fails to comply with the House Rules. Purnell states that three incidents occurred at the building between September 1, 2012 and October 19, 2012 whereby petitioner engaged in prohibited conduct that warranted respondents engaging in self help, including yelling at a fellow resident and failing to report back to the facility as required under the program. Purnell argues the goal of House of Hope is to keep "a safe environment . . . help the residents . . . and provide a tool to guide them to get their life back together." Purnell testified that since the House of Hope is a residence where people pay for a bed and the service of rehabilitation assistance, residing at the premises does not create a typical landlord-tenant relationship. He claims, therefore, that the Waiver of Tenant Rights is enforceable and respondents are imbued with the right to evict people without summary proceeding or court order.

Petitioner argues that the waiver provision is unenforceable as a matter of law and that

pursuant to RPAPL § 711 and NYC Administrative Code § 26-521, respondents are required to commence a summary proceeding to regain possession of the premises. Both RPAPL § 711 and NYC Administrative Code § 26-521 provide that an individual who has resided at a premises for thirty consecutive days or longer may not be removed from the premises without a special proceeding, warrant of eviction or court order. Furthermore, petitioner avers that the residence agreement is an unconscionable contract of adhesion; a contract drafted by a party with superior bargaining power and is offered to a party who does not have the option of negotiating the terms. See *Finkel and Ross v. A.G. Becker*, 622 F.Supp. 1505 (S.D.N.Y 1985). Petitioner also asserts that he did not violate the House Rules on the above cited occasions and needlessly received incident reports from respondents for otherwise lawful actions.

Whether or not petitioner violated the House Rules is not the issue in this case. The issue that needs to be determined by this court is whether petitioner could effectively waive his rights under the RPAPL and NYC Administrative Code to a lawful eviction, even had he violated the House Rules.

The court finds that the Waiver of Tenant Rights rider is unenforceable and that petitioner was illegally evicted from the premises without due process of law. RPAPL § 711 and NYC Administrative Code § 26-521 are clear that any individual who resided at a premises from more than thirty days is entitled to due process of law prior to eviction. Here, respondents admittedly engaged in self-help without seeking a court order or the assistance of a New York City marshal or sheriff prior to removing petitioner from the premises. Respondents do not cite any authority that indicates that their particular housing accommodation is a special class of housing that is exempt from following these laws.

Furthermore, a similar agreement was deemed unconscionable and rejected by the court in *Wright v. Lewis*, 21 Misc.3d 1120(A) (Supp. Ct. Kings Co. 2008). In *Wright*, a residency agreement, in a two family house in this county, provided that residents were not tenants of the room but were clients of a sober recovery residence and could be evicted without court process. The judge granted the tenants' motion for a preliminary injunction and held that the agreement was an unenforceable contract of adhesion because it contained terms that were unfair and arose from a disparity of bargaining power or oppressive tactics and waived the residents' statutory tenancy rights. *Wright v. Lewis*, 21 Misc.3d 1120(A) (Sup. Ct. Kings Co. 2008) quoting *Love M/Sheltering, Inc. V. County of Suffolk*, 33 A.D.3d 923, 924 (2nd Dept. 2006). See also *Rock v. Klepper*, 23 Misc.3d 1103(A) (Plattsburg City Ct. 2009). Here, the fact that the Waiver of Tenant Rights rider provides for an eviction with no legal process, no opportunity to challenge basis for eviction, and permits respondents to perform illegal evictions in clear violation of two statutes renders the agreement unenforceable.

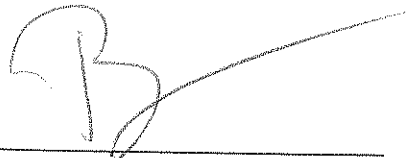
Respondent's argument, that the rider is enforceable because it provides an exception to the requirement for commencement of a special proceeding under the RPAPL is absolutely not persuasive. House of Hope is not licensed by the State of New York or governmental agency and has not cited any authority that would provide it with an exemption from complying with the RPAPL or New York City Administrative Code. To accept respondent's contention would create a special class of tenancy by virtue of the House Rules and rider that is not supported by law. Just as in *Wims v. Abraham Residence III*, 184 Misc.2d 271 (Civ. Ct. N.Y. Co. 2000), where a community residence lawfully regulated by the New York State Office of Mental Health was ordered to remove tenants by lawful eviction only, House of Hope may only remove residents through the

proper legal channels as any other landlord must.

It is undisputed that petitioner resided at the premise for over thirty days prior to being removed from the premises without due process of law as required by the RPAPL and New York City Administrative Code. Accordingly, the court awards Petitioner a judgment restoring Timothy E. Davison to possession of the premises located at 672 Decatur Street, Top Fl, Top bunk, Brooklyn, NY forthwith. Petitioner shall seek the assistance of NYPD or a NYC sheriff or marshal in the event restoration is denied.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York
November 15, 2012



HON. BRUCE E. SCHECKOWITZ
J.H.C.