

46 A.D.3d 294

(Cite as: 46 A.D.3d 294, 847 N.Y.S.2d 81)

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Candida v. Salvation Army, Inc.  
46 A.D.3d 294, 847 N.Y.S.2d 81  
NY,2007.

46 A.D.3d 294847 N.Y.S.2d 81, 2007 WL  
4260305, 2007 N.Y. Slip Op. 09684

Maria Candida et al., Plaintiffs, and Parkside-Ten  
Eyck Tenants Association et al., Appellants

v

The Salvation Army, Inc., Respondent.

Supreme Court, Appellate Division, First Depart-  
ment, New York

December 6, 2007

CITE TITLE AS: Candida v Salvation Army, Inc.

## HEADNOTE

Landlord and Tenant  
Rent Regulation

Two residences owned and operated by defendant were exempt from Rent Stabilization Law since primary use of residences was charitable; because tenants' initial occupancies commenced after defendant acquired residences, they were exempt from operation of Rent Stabilization Law and defendant was entitled to refuse to renew tenants' leases (Administrative Code of City of NY § 26-511 [c] [9] [c] [i]); leasing of some of rooms in residences to university students was incidental to primarily charitable purpose of residences, and did not bar application of exemption.

Phillips Nizer LLP, New York City (Marc A. Landis of counsel), for appellants.

Borah, Goldstein, Altschuler Nahins & Goidel, P.C., New York City (Jeffrey R. Metz of counsel), for respondent.

Himmelstein, McConnell, Gribben, Donoghue &

Joseph, New York City (David Hershey-Webb of counsel), for amici curiae.

Order, Supreme Court, New York County (Milton A. Tingling, J.), entered August 20, 2007, which granted defendant's cross motion for summary judgment declaring that two residences it owned and operated were exempt from the rent stabilization laws, and denying plaintiffs-appellants' cross motion for summary judgment declaring that defendant had forfeited its rent stabilization exemption, unanimously affirmed, without costs.

The court properly declared that the two residences owned and operated by defendant were exempt from the Rent Stabilization Law since the primary use of the residences was charitable (*see Salvation Army v Cruz*, 161 Misc 2d 265, 268-269 [1994]). Because the tenants' initial occupancies commenced after defendant acquired the residences, they were exempt from the operation of the Rent Stabilization Law and defendant was entitled to refuse to renew the tenants' leases (*New York City Administrative Code § 26-511 [c] [9] [c] [i]*; *Jewish Theol. Seminary of Am. v Roy*, 188 Misc 2d 723, 724 [2001]). Furthermore, the leasing of some of the rooms in the residences to university students was incidental to the primarily charitable purpose of the residences, and thus, did not bar the application of the exemption from the Rent Stabilization Law (*see Matter of Boiko v Higgins*, 195 AD2d 279, 282 [1993], *lv denied* 82 NY2d 664 [1994]).\*2

We have considered plaintiffs' remaining contentions, including that additional discovery should be conducted, and find them unavailing. Concur-Tom, J.P., Saxe, Friedman, Gonzalez and Catterson, JJ.

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York

NY,2007.

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