

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

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1641 PARK AVENUE ASSOCIATES

Index No. 81391/05

Petitioner,

-against-

Irma Graziani

Respondent-tenant,

Lea Wolfburg

Respondent-occupant.
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After trial on the underlying holdover proceeding, and in consideration of all testimonial and documentary evidence adduced therein, the court finds and decides as follows:

Respondent Irma Graziani concedes that she lives elsewhere and, before trial, had withdrawn any possessory claim for the premises, apartment #2B at 101 East 116th street, New York, New York.

Occupant Lea Wolfburg seeks succession rights to the rent stabilized apartment, asserting that she resided with her grandmother, Lidia "Lee" Graziani, the former tenant, for the requisite two-year period before Lidia's death in November 2003.

Petitioner's prima facie case was unchallenged. Thus, the burden of proof shifted to respondent to establish that Ms. Wolfburg had begun using the premises as her primary residence for at least the period of November 2001 through November 2003. Ordinarily, the court would rely heavily on documentary evidence to determine whether or not respondent had sustained its burden of proof for succession rights. However, in the absence of conclusive documentation,

either in support of respondent's claim or in rebuttal, the court must examine and weigh the credibility of the numerous witnesses. In addition to Ms. Wolfburg, respondent called her mother, her aunt (Irma Graziani) a long-time family friend from the neighborhood, and a neighbor from the building. Petitioner called three (3) rebuttal witnesses: the building manager, the former superintendent and a neighbor from another floor.

The clear picture which developed established that respondent Wolfburg had moved to the premises, with her two dogs, arriving shortly after 9/11/01. Although that represented a period almost eight years ago, because of the impact of 9/11 on New Yorkers especially, much of the testimony included vivid, specific recollections. Ms. Wolfburg testified to having left Florida on September 11, 2001, her mother's birthday, and ridden, with her dogs and a friend, to live with her aunt and her grandmother. As her aunt was working at that time, respondent's role was to help care for her grandmother, which she did, remaining in the apartment through November 2003 when her grandmother died.

The fact that Ms. Wolfburg was unemployed in Florida before she left and was unemployed in New York City when she arrived, was a significant reason for the paucity of documentary evidence offered by respondent. All of respondent's witnesses were credible.

Petitioner's witnesses were credible as well, but failed to offer any proof that respondent Wolfburg either arrived in NYC later than September 2001 or lived anywhere else during the period November 2001 through November 2003.

Accordingly, the court finds and decides that respondent Wolfburg has established her claim to succeed to the tenancy of the instant premises. Petition is dismissed with prejudice. This constitutes the decision and order of the court.

Dated: August 27, 2009



Arlene H. Hahn, JHC