

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART N

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2090-92 AMSTERDAM AVENUE HOLDING LLC,

Index No.: 084132/2007  
Judgment Seq #001

Petitioner(s),

-against-

JOHN, MICHAEL A  
DOE, JOHN  
DOE, JANE

Respondent(s).

**DECISION AND JUDGMENT**

**Decision and Judgment** is rendered based upon a decision made after trial as follows:

Judgment of possession is granted in favor of:

2090-92 Amsterdam Avenue Holding LLC, and  
against Johnson, Michael A

A counterclaim is granted in favor of the respondent in the  
amount of \$0.00 (which if not being entered separately is  
offset and reflected in the total amount due, listed below.)

A money judgment is hereby granted, along with costs and disbursements in the amount of  
\$0.00 in favor of:

2090-92 Amsterdam Avenue Holding LLC, and against  
Johnson, Michael A for a total of \$0.00

(Monthly use and occupancy is set as \$0.00 per month, as per order, stipulation or decision in record.)

Warrant to be issue forthwith

Execution \_\_\_\_\_

Dated: 10/23/08

Gary F. Morton  
Judge, Civil Housing Court

Section 5020(c) of the Civil Practice Law and Rules requires that a satisfaction be filed with the clerk when the  
judgment is satisfied. Failure to do so subjects the judgment creditor to penalties.

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**ENTRY OF JUDGMENT**

Judgment entered in accordance with the above on 10/23/08

Jack Baer  
Chief Clerk, Civil Court

Warrant issued to Marshal \_\_\_\_\_ on \_\_\_\_\_

CIVIL COURT OF THE CITY OF NEWYORK  
COUNTY OF NEW YORK: PART N

-----X  
AMSTERDAM REALTY PARTNERS, LLC,

Claimant(s)/Plaintiffs)/Petitioner(s),  
-against-

MICHAEL A. JOHNSON,

Defendant(s)/Respondent(s).

Index No.: 84132/07  
Motion Cal.#\_\_\_\_ Motion Seq.#\_\_\_\_

**DECISION/ORDER**

Recitation, as required by CPLR §2219(a),  
of the papers considered in the review of  
this Motion

Papers

Notice of Motion and Affidavits Annexed.....  
Order to Show Cause and Affidavits Annexed....  
Answering Affidavits.....  
Replying Affidavits.....  
Exhibits.....  
Other.....

Numbered

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Upon the foregoing cited papers, the Decision/Order on this Motion to\_\_\_\_\_

This is a holdover proceeding. After conducting a trial on 10/20/08, is as follows: and after considering the testimony of the witnesses and the other evidence, the court grants petitioner a judgment of possession. The warrant may issue forthwith, but such issuance shall be without prejudice to any application for relief pursuant to RPAL §753.

The court finds that petitioner is the owner of the building on 163<sup>rd</sup> Street in Manhattan in which the premises is located, that petitioner is the landlord of the premises, that the premises is a rent-stabilized apartment for which the rent is duly registered at DHCR, that the building is a multiple dwelling duly registered as such with HPD, that the tenant of record was Ira Johnson, now deceased, that a predicate notice of termination, notice of petition, and petition were duly served. The court finds that the testimony of petitioner's witnesses Onix Sosa was credible, and the court holds that petitioner proved a *prima facie* case.

Respondent Michael Johnson defended on the ground that he was entitled to succeed to Ira Johnson's tenancy because Ira Johnson was his father and they lived in the premises as their primary residence for two years immediately preceding Ira Johnson's death in 2000. Michael Johnson testified to this effect and also to the effect that he had lived at the premises ever since he got a job at Columbia-Presbyterian Hospital which is a convenient walk away from the premises. However, the residence showed that he first started to work at Columbia-Presbyterian Hospital in October 1985 while his father's tenancy did not begin until March, 1986.

Rather more damaging to respondent's defense is the fact that he used his mother's Bronx address (confusingly also on 163<sup>rd</sup> St. and also only a short bus ride away from Columbia-Presbyterian) as his address for mail, banking, voter registration, NYNEX/ Bell Atlantic bills, and virtually all other correspondence.

Respondent produced only one set of documents that had his name and the address of the premises, and this was four (4) bank statements for the months of May, June, July, and August, 1999 for a joint account in both his and his father's name, and this account did not at any time during the four months have in it more than .14 cents. The court accords very little probative value to this document.

Respondent explained that he had lived with his mother but moved in with his father when he got the job at Columbia-Presbyterian, and that over the ensuing 14 years – until his father's death – he had not changed his mailing address because it did not seem important to do so. From this the court infers that Michael Johnson must have gone frequently to his mother's apartment to get his mail, and otherwise maintained significant contact with the Bronx apartment.

Respondent accrued testimony from a sister who lives in White Plains, N.Y. who stated that she always knew of her brother residing at the father's apartment. This testimony was conclusory and, the court holds, did little to show that respondent occupied the premises as his primary residence. Respondent also served testimony from the superintendent during the relevant two (2) year period. He testified that when he went to the premises to make repairs, he saw respondent there. However, he testified as well that he had not been to the apartment often, and that he had been to the apartment perhaps no more than one (1) or two (2) times during the two (2) years.

Respondent did not provide the testimony of occupants of neighboring apartments to the effect that he lived at the premises and he did not provide testimony from his mother to the effect that her son did not live at the Bronx apartment.

The court holds that respondent did not prove his affirmative defense of a right to succeed to possession of the premises. Accordingly, the court grants the relief set out in the first paragraph above.

The court will mail back to the parties their exhibits along with a copy of this decision and order.

Dated: 10/23/08

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HON. GARY F. MARTON