

ACP 140 W. End Ave. Assoc. v Kelleher
2005 NYSlipOp 51839(U)
Decided on November 16, 2005
Appellate Term, First Department
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Decided on November 16, 2005

APPELLATE TERM OF THE SUPREME COURT, FIRST DEPARTMENT

PRESENT: November 16, 2005

September 2005 Term

McCooe, J.P., Gangel-Jacob, Schoenfeld, JJ.

**ACP 140 West End Avenue Associates, NY County
Clerk's Petitioner-Landlord-Respondent, No. 570261/05**

against

**Ian Kelleher and Quent Kelleher, Calendar No. 05-169
Respondents-Tenants-Respondents, -and- "John Doe"
and "Jane Doe", Respondents-Undertenants.**

Landlord appeals from a final judgment of the Civil Court, New York County (Laurie L. Lau, J.), entered on or about August 19, 2004, which dismissed the petition against respondent Quent Kelleher in this holdover proceeding.

PER CURIAM:

Final judgment (Laurie L. Lau, J.) entered on or about August 19, 2004, affirmed, with \$25 costs.

The stipulated facts established that respondent Quent Kelleher, son of the rent stabilized tenants, continuously used the premises as his primary residence since 1975, and thus was entitled to succeed his parents' tenancy upon their departure in 1998 (see 9 NYCRR §2523.5[b][1]; *Navarra v. Levy*, 214 AD2d 470 [1995]). Quent was not a party to the surrender agreement executed by his parents and brother Ian, and did not waive his otherwise meritorious succession claim (see *Jefpaul Garage Corp. v. Presbyterian Hosp.*, 61 NY2d 442 [1984]).

This constitutes the decision and order of the court.^[*2]

Decision Date: November 16, 2005