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Verdict Is Reinstated in Apartment Succession Case

By Brendan Pierson

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An Appellate Term, First Department, panel has reinstated a jury verdict holding that a Manhattan man could not take over his deceased aunt's rent-controlled lease, ruling that a Civil Court judge improperly overturned the verdict based on a perceived error in the jury instructions that no one objected to and that could not have confused the jury.

The unanimous May 15 decision in *Fort Washington Holdings v. Abbott*, 570049/11, reversed an April 2010 decision by Civil Court Judge Arthur Engoron. The panel consisted of Justices Martin Shulman, Martin Schoenfeld and Robert Torres.

The case began as a holdover proceeding initiated by a landlord, Fort Washington Holdings LLC, against Maurice Abbott, the nephew of a recently deceased rent-controlled tenant in a building owned by the landlord. Abbott argued that he was entitled to succeed his aunt on the rent-controlled lease because he qualified as a "non-traditional family member," having had close emotional and financial ties with his aunt.

A jury disagreed, but Engoron overturned the verdict, saying he had found an error in his own jury instructions. Engoron said he had given the jury two separate questions about the emotional and financial aspects of Abbott's relationship with his aunt, when these should have been a "unitary question."

Fort Washington Holdings appealed, and the Appellate Term panel reversed. It first noted that all the evidence in the trial record supported the jury's finding.

"Under the definition of 'family member' provided by the court in its charge without objection by respondent, the jury's determination of the succession issue in petitioner's favor was supported by legally sufficient evidence and comported with the weight of the evidence," the panel wrote in unsigned decision.

It noted that, according to Abbott's own testimony, he and his aunt "did not jointly own property or intermingle their finances in any meaningful way; that tenant named her son, Jack, not respondent, as beneficiary under her will and as attorney in fact in a

power of attorney; that Jack handled the tenant's financial transactions and paid for durable household items, including a stove and an air conditioner; and that respondent generally did not contribute to such household costs as rent or electricity, although, so far as shown, financially able to do so for much of his cooccupancy with the tenant."

The panel continued, "The sparse evidence of financial interdependence that respondent was able to present—his incidental (and unsubstantiated) payments for holiday decorations and tenant's cosmetics, eye drops and the like, and his titular designation as representative payee of the tenant's social security benefits, which, it is undisputed, were deposited into tenant's own bank account solely managed by Jack—did not so preponderate over petitioner's proof as to render the jury verdict against the weight of the evidence."

The panel then addressed the error that Engoron perceived in the jury instructions. It noted, first, that no one had objected to those instructions, and so they "became the law of the case."

The panel also said Engoron's decision that the two questions about Abbott's relationship should have been one "appears to exalt form over substance."

It said it was "hard pressed to conclude that the form or syntax of the interrogatories drawn here altered the jurors' determination of the succession issue or affected the outcome of the case."

Finally, the panel suggested that Engoron was trying to reach what he saw as a more just result at the expense of the law.

"We recognize that respondent's circumstances are sympathetic, given his long-term, shared occupancy of his aunt's apartment," the panel wrote. "But the governing succession regulation and interpretive case law do not allow us to wink at the evidentiary gaps in respondent's succession defense, particularly given the procedural posture of this appeal involving review of the propriety of a jury verdict. Our resolution of this case may not be reached through an emotional approach to the facts, but instead must rest upon valid legal analysis rooted in the record."

Adam Leitman Bailey, who represented the landlord, said that the decision was "huge" because it provided important guidance on when jury verdicts could be overturned, an issue on which there is "almost no case law."

"It's very rare for a judge to overturn a jury verdict, but even more rare is to overturn a jury verdict because the judge saw he made a mistake in the jury instruction," **Bailey** said.

Anette Bonelli of DC 37 Municipal Employees Legal Services, who represented Abbott, could not be reached for comment.

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