

SUPREME COURT FOR THE STATE OF NEW YORK  
COUNTY OF NEW YORK

JEREMIAH HARDY, ERIC SCHLABS, and  
JAMES NUGENT, on behalf of themselves and  
all others similarly situated

Plaintiffs,

-v-

595 BALTIC ASSET LLC

Defendant.

Date Filed: February 27, 2022

Index No. \_\_\_\_\_  
(NYSCEF Case)

**SUMMONS**

Plaintiff designates New York  
County as the place of trial. The  
basis of venue is that this County is the  
location of Defendant's principle place of  
business.

TO THE ABOVE-NAMED DEFENDANT:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
February 27, 2022

**NEWMAN FERRARA LLP**



By: \_\_\_\_\_

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**Defendant's Address:**

595 Baltic Asset LLC  
c/o Adam America Real Estate  
850 Third Avenue, Suite 13D  
Attn: Omri Sachs  
New York, New York 10022

SUPREME COURT FOR THE STATE OF NEW YORK  
COUNTY OF NEW YORK

JEREMIAH HARDY, ERIC SCHLABS, and  
JAMES NUGENT, on behalf of themselves  
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Index No.:

Plaintiffs,

**PLAINTIFFS' CLASS ACTION  
COMPLAINT**

-v-

595 BALTIC ASSET LLC

Defendant.

Plaintiffs Jeremiah Hardy, Eric Schlabs, and James Nugent (“Plaintiffs”), individually, and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against Defendant 595 Baltic Asset LLC (“Defendant”).

**INTRODUCTION**

1. Defendant is the owner-in-fee of the apartment building located at 595 Baltic Street (the “Building”) in Brooklyn.

2. The Building participates in the 421-a Program, which requires landlords to register their units with the Division of Housing and Community Renewal, (“DHCR”), and that those apartments be treated as rent-stabilized.

3. Defendant has engaged in two separate sets of wrongdoing.

4. *First*, the initial legal regulated rent to be registered for an apartment in a 421-a building must be the “monthly rent charged and paid by the tenant,” and all subsequent rent increases are to be derived from that payment.

5. Here, Defendant hoodwinked the Building's tenants, and DHCR, by registering a legal regulated rent higher than the "monthly rent charged and paid by the tenant."

6. Defendant did so by utilizing a "rent concession."

7. For example, the first registered rent for Apartment 4D at the Building was in the amount of \$6,000.00.

8. Upon information and belief, as derived from the Building's "StreetEasy"<sup>1</sup> listing, the first tenant in Apartment 4D received a "rent concession," and actually paid less than \$4,000.00 per month, on average.

9. RSC § 2521.2 provides that a "preferential rent" is set when the owner agrees to charge a sum that is lower than the unit's legal regulated rent.

10. That "rent concession" afforded Unit 4D was and is a "preferential rent" by another name.

11. And rather than charge a lower rent each month over the course of a lease term, Defendant appears to have aggregated the rent discount.

12. So, for example, if a two-year lease contained a monthly payment of \$3,000.00, with two months "free," the average monthly rent (what landlords refer to as the "net effective rent") charged was actually \$2,750.00, but Defendant would only register the unit at the higher, "hypothetical" lease rate. In this instance, \$3,000.00.

13. Defendant presumably offered concessions because preferential rents cannot be legally utilized as the first rents in 421-a buildings.

14. Thus, by manipulating the way it assessed a unit's rent, Defendant was able to register a unit at initial rent higher than the amount actually charged, and all subsequent increases,

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<sup>1</sup> StreetEasy is a website that advertises apartments for rent, and is available at [StreetEasy.com](https://www.streeteasy.com).

such as vacancy increases and Rent Guidelines Board increases, were based off of that higher, impermissible figure.

15. The “net effective rent” represents the rent “charged and paid,” and that lower rate should have been registered as the initial rent with DHCR.

16. The correct amount of Plaintiffs’ legal regulated rent must be calculated pursuant to the rent laws.

17. Given that all pertinent documentation used, inter alia, to set the rent and secure increases, is within Defendant’s exclusive possession and control, the correct amount of Plaintiffs’ legal regulated rent can only be determined after discovery.

18. *Second*, with one exception,<sup>2</sup> inapplicable here, landlords are not permitted to pass along a building’s utility charges to the building’s tenants.

19. Yet, Defendant violated the law by impermissibly collecting utility charges.

20. For example, Defendant charges Plaintiff Nugent \$50.00 per month for natural gas.

21. The aforementioned conduct demonstrates an attempt by Defendant to circumvent the requirements of law, all at the expense of the Building’s tenants.

## **PARTIES**

### **Plaintiff**

22. Plaintiffs Jeremiah Hardy and Eric Schlabs reside in Apartment 4D at 595 Baltic Street, in the County of Kings, in the City and State of New York.

23. Apartment 4D’s rent history on file with DHCR provides that the unit was first occupied in 2017, with an initial legal rent of \$6,000.00.

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<sup>2</sup> Where the landlord has individually provided sub-meters.

24. Upon information and belief, the first tenant to occupy Apartment 4D received a rent concession, which concessions are not reflected in the initial legal regulated rent registered with DHCR.

25. Had the initial legal regulated taken into account the rent concessions offered to the tenants of Apartment 4D, the actual sum to have been registered would have been lower than \$6,000.00.

26. Because subsequent rent increases were based off an incorrect initial legal regulated rent, the entire rent history is tainted.

27. The correct legal regulated rent for Apartment 4D must be calculated pursuant to the rent regulations, is currently unknowable to Plaintiffs, and can only be determined after discovery.

28. Furthermore, in violation of the rent regulations, Defendant improperly charges Plaintiffs Hardy and Schlabs \$75.00 per month in utility fees.

29. Plaintiff James Nugent resides in Apartment 6B at 595 Baltic Street, in the County of Kings, in the City and State of New York.

30. Apartment 6B's rent history on file with DHCR provides that the unit was first occupied in 2017, with an initial legal rent of \$3,509.00.

31. Upon information and belief, the first tenant to occupy Apartment 6B received a rent concession, which concessions are not reflected in the initial legal regulated rent registered with DHCR.

32. Had the initial legal regulated taken into account the rent concessions offered to the tenants of Apartment 6B, the actual sum to have been registered would have been lower than \$3,509.00.

33. Because subsequent rent increases were based on an incorrect initial legal regulated rent, the entire rent history is tainted.

34. The correct legal regulated rent for Apartment 6B must be calculated pursuant to the rent regulations, is currently unknowable to Plaintiffs, and can only be determined after discovery.

35. Furthermore, in violation of the rent regulations, Defendant improperly charges Plaintiff Nugent \$50.00 per month in utility fees.

**Defendant**

36. Defendant 595 Baltic Asset LLC is a corporation with its principal place of business in New York City.

37. Defendant 595 Baltic Asset LLC is the Building's registered fee owner.

38. Upon information and belief, Defendant 595 Baltic Asset LLC conducts and transacts business in the City, County, and State of New York.

39. Upon information and belief, Defendant's registered business address is: 850 Third Avenue, Suite 13D, New York, New York 10022.

**THE APPLICABLE STATUTORY AND REGULATORY ENVIRONMENT**

**The Rent Stabilization Law and the Rent Stabilization Code**

40. In 1969, citing a continuing shortage of residential rental housing, the New York City Council enacted a rent stabilization statute, the Rent Stabilization Law ("RSL"), N.Y. Unconsol. Law § 26-501 (McKinney).

41. Thereafter, the New York City Council gave DHCR authority to promulgate regulations in furtherance of the RSL. And DHCR did so by establishing the Rent Stabilization Code ("RSC"), N.Y. Comp. Codes R. & Regs. Tit. 9, § 2520.1, *et seq.*

42. The RSL and RSC limit the rent that landlords can charge and, *inter alia*, circumscribe the manner in which landlords are able to raise rents, cover the cost of improvements, and deregulate apartments.

43. The rent that a landlord may charge for a regulated unit is based on an initial legal rent.

44. For the Building, the initial legal rent is based on the rent “charged and paid,” by the unit’s first tenant.

45. Landlords of rent-stabilized apartments may be entitled to increase rents:

- a. when permitted by the Rent Guidelines Board (“RGB”);
- b. following a DHCR approved Major Capital Improvement;
- c. an increase following a vacancy; and/or
- d. following Individual Apartment Improvements that are properly supported by documentation, and made either during the vacancy of an apartment or agreed upon by the tenant.

46. In New York City, the RGB sets the maximum rates for rent increases once a year that are effective for rent stabilized leases commencing on or after October 1<sup>st</sup> of each year through September 30<sup>th</sup> of the following year. (RSC § 2522.4).

#### **The 421-a Program**

47. In 1971, the New York State Legislature enacted the Real Property Tax Law (“RPTL”) § 421-a, which provides tax incentives for developers who construct new, market-rate, multi-family housing.

48. As a condition to receiving 421-a Program benefits, a building owner must provide its tenants with the protections of the rent stabilization laws, even if those apartments would otherwise be exempt.

49. Because buildings participating in the 421-a Program are new construction, an initial legal regulated rent must be established

50. Under RSL § 26-517(a) (4), a landlord must register that legal regulated rent with DHCR.

51. RSC § 2521.1(g) provides, with respect to buildings participating in the 421-a Program, “[t]he initial legal regulated rent for a housing accommodation constructed pursuant to section 421-a of the Real Property Tax Law shall be the *initial adjusted<sup>3</sup> monthly rent charged and paid* but not higher than the rent approved by [the New York City Department of Housing and Preservation] pursuant to such section for the housing accommodation or the lawful rent charged and paid on April 1, 1984, whichever is later.”<sup>4</sup>

### **HSTPA and Preferential Rents**

52. RSC § 2521.2 provides that a “preferential rent” is a rent which the owner agrees to charge that is lower than the legal regulated rent for the unit.

53. At the time of renewal, RSL § 26-511(c)(14), prohibits owners who offer tenants preferential rents from increasing the preferential rent to an amount in excess of the RGB approved increase.

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<sup>3</sup> “Adjusted” refers to the fact that the initial rent cannot include charges for “parking facilities, and electricity, gas, cooking fuel, and other utilities.” RPTL 421-a(1)(a)

<sup>4</sup> Emphasis added.

**DEFENDANT'S PRACTICES TO DEPRIVE ITS TENANTS OF THE PROTECTIONS  
OF THE RENT STABILIZATION LAWS**

54. Upon information and belief, all of the Building's units are subject to the RSL because the owner received benefits under the 421-a Program.

55. Upon information and belief, Defendant knowingly and willfully failed to comply with the requirements of the 421-a Program by, among other things, improperly registering the apartments with DHCR.

56. Defendant did not register the Building's units at the monthly rent actually "charged and paid" by the tenants.

57. Because the first registered rent must reflect what the tenant is charged and paid, a landlord is barred from utilizing a "preferential rent" as the first legal registered rent for a 421-a unit.<sup>5</sup>

58. To get around that prohibition, Defendant offered the first-occupying tenants a "rent concession," which provided for "free" rent of a month or more.

59. Defendant's "rent concession" is simply a "preferential rent" by another name.

60. Rather than give a discount each month, Defendant engaged in sleight-of-hand, and simply combined the discount into "free rent" for a certain period.

61. Whether termed a preferential rent, or a concession, the effect is the same - - the rent "charged and paid" by the tenant is less than the initial legal registered rent.

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<sup>5</sup> *125 Ct. St., LLC v Sher*, (58 Misc 3d 150(A) [App Term 2018]).

**DEFENDANT'S ILLICIT CONDUCT WITH RESPECT TO THE BUILDING'S  
UTILITIES**

62. Many years ago, New York's highest court affirmed a ruling by the Third Department, holding that landlords cannot charge their tenants for utility services. (*Campo v Feinberg*, 279 AD2d 302 [3d Dept 1952], *aff'd* 303 NY 994 [1952]).

63. Moreover, the Public Service Commission, which regulates utility service in New York, provides that landlords may only pass on their utility charges, such as gas charges, to their tenants, if the latter are provided individual utility meters. (N.Y. Pub. Serv. Law § 52).

64. Defendant has not provided its tenants with individual utility meters.

65. Contrary to law, Defendant assesses the Building's tenants, a separate charge for "gas," at a flat fee, which is unrelated to the tenant's actual gas usage.

**CLASS ALLEGATIONS**

**The Class and Sub-Class**

66. This action may be properly maintained as a class action under the provisions of Article 9 of the CPLR.

67. The proposed Class is defined as all tenants of the Building, who occupied their apartments between February 27, 2016 and the present.

68. The Class seeks certification of claims for damages arising out of Defendant's concession scheme.

69. Unless the law is changed, Plaintiffs, and the members of the putative class, will NOT seek any penalties in the event the Class is certified.

70. In addition, Plaintiffs propose a Sub-Class consisting of all current tenants at the Building, who reside in the Building.

71. The Sub-Class seeks certification of claims for declaratory and injunctive relief as described more fully below.

**Class and Sub-Class Meet Requirements for Certification**

72. The Class and Sub-Class are so numerous that joinder of all members is impracticable.

73. Although the exact number and identities of the members of the Class and Sub-Class are currently unknown to Plaintiff, it is reasonable to conclude that the practices complained of herein effect more than one hundred (100) current and former Building tenants.

74. Nearly all factual, legal, and statutory issues that are raised in this Complaint are common to each of the members of the Class and Sub-Class and will apply uniformly to every member of the Class and Sub-Class.

75. The claims of the representative Plaintiffs are typical of the claims of each member of the Class.

76. Plaintiffs, like all other members of the Class, sustained damages arising from Defendant's fraudulent scheme to evade the rent stabilization laws.

77. The representative Plaintiffs and the members of the Class were, and are, similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct.

78. The claims of the representative Plaintiffs are typical of the claims of each member of the Sub-Class.

79. Plaintiffs, like all other members of the Sub-Class, are entitled to the same declaratory and injunctive relief as the members of the Sub-Class.

80. Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Class.

81. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class and Sub-Class that would make class certification inappropriate.

82. The counsel selected to represent the Class and Sub-Class will fairly and adequately protect the interest of the Class and Sub-Class, and they are lawyers who have experience in class and complex litigation and are competent counsel for this class action litigation.

83. Counsel for the Class and Sub-Class will vigorously assert the claims of all members of the Class and Sub-Class.

84. Upon certification of the Class, and unless the law changes, Plaintiffs will forego any claim to any penalty, or treble damages, unless existing law is changed, or modified.

85. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and Sub-Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- a. the interests of the members of the Class and Sub-Class in individually controlling the prosecution or defense of separate actions;
- b. the impracticability or inefficiency of prosecuting or defending separate actions;
- c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and Sub-Class;
- d. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- e. the difficulties likely to be encountered in the management of a class action.

86. Among the numerous questions of law and fact common to the Class and Sub-Class are:
- a. whether the Defendant acts or refuses to act on grounds generally applicable to the Plaintiffs, the Class, and the Sub-Class;
  - b. whether the Defendant has established a pattern, practice, or policy of misrepresenting legal regulated rents;
  - c. whether Defendant has established a pattern, practice, or policy of overcharging rent;
  - d. whether Defendant's practices, acts, and conduct violate the RSL and RSC;
  - e. whether Defendant is permitted to charge utility fees to its tenants;
  - f. to what extent Plaintiffs and members of the Class are entitled to damages; and
  - g. to what extent Plaintiffs and members of the Sub-Class are entitled to declaratory and injunctive relief.

**COUNT ONE**  
**VIOLATION OF THE RENT STABILIZATION LAWS AND REGULATIONS**  
*(on behalf of the Class)*

87. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 86 of this complaint.

88. At all times relevant hereto, the apartments of Plaintiffs and the Class were subject to the provision of the RSL.

89. With respect to Plaintiffs and the Class, Defendant entered into leases which misrepresented the amount of rent Defendant was legally entitled to collect.

90. Defendant charged Plaintiffs and the Class rents in excess of the correct legal regulated rent for their apartments.

91. Defendant overcharged Plaintiffs and the members of the Class an amount equal to the difference between their monthly rents and the appropriate legal regulated rent-stabilized rents.

92. Plaintiffs and members of the Class are entitled to recover monetary damages from Defendant based on the unlawful overcharges, as well as an award of interest thereon.

**COUNT TWO**  
**VIOLATION OF THE RENT STABILIZATION LAWS AND REGULATIONS**  
*(on behalf of the Sub-Class)*

93. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 86 of this complaint.

94. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and the members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage, pursuant to the RSL.

95. Defendant entered into leases with Plaintiffs and the members of the Sub-Class, which incorrectly, falsely, and illegally misrepresented the amount of rent Defendant was legally entitled to collect.

96. As described above, and upon information and belief, Defendant's conduct was wrongfully and unlawfully designed to deprive Plaintiffs and members of the Sub-Class of the protections of rent stabilization.

97. A justiciable controversy exists in that, upon information and belief, Defendant disputes it acted wrongfully and/or that it charged a legally impermissible rent for the Building's units.

98. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

99. By reason of the foregoing, Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiffs and members of the Sub-Class are each subject to the RSL and RSC;

- b. Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a form promulgated by DHCR;
  - c. the amount of the legal regulated rent for the apartments of Plaintiffs and members of the Sub-Class; and,
  - d. Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, Plaintiffs and members of the Sub-Class.
100. Plaintiffs and members of the Sub-Class are also entitled to reformation of their leases to represent the actual amount of rent Defendant is legally entitled to charge Plaintiffs and members of the Sub-Class.

**COUNT THREE**  
**DECLARATORY RELIEF**  
*(on behalf of the Sub-Class)*

101. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 86 of this complaint.
102. A justiciable controversy exists between the parties in that, among other things, Plaintiffs and members of the Sub-Class allege that their respective apartments are subject to rent stabilization coverage.
103. Notwithstanding the clear requirements of the RSL and RSC, Defendant has not provided Plaintiffs and members of the Sub-Class with rent-stabilized leases and/or rent-stabilized leases in the correct amounts, as required by law.
104. Moreover, as set forth in more detail above, and upon information and belief, Defendant's conduct was willful and designed to circumvent, and/or remove the apartments of Plaintiffs and members of the Sub-Class from, the protections of rent stabilization.
105. Plaintiffs and members of the Sub-Class lack an adequate remedy at law.

106. By reason of the foregoing, Plaintiffs and members of the Sub-Class are entitled to a declaratory judgment adjudging and determining:

- a. the apartments of Plaintiffs and members of the Sub-Class members are subject to the RSL and RSC and any purported deregulation by Defendant was invalid as a matter of law;
- b. Plaintiffs and members of the Sub-Class are each entitled to a rent-stabilized lease in a lease form promulgated by DHCR;
- c. the amount of the legal regulated rent for the apartments of Plaintiffs and members of the Sub-Class;
- d. any leases offered by Defendant to Plaintiffs and members of the Sub-Class are invalid and unlawful unless they are offered on lease forms and terms prescribed by DHCR; and
- e. Plaintiffs and members of the Sub-Class are not required to pay any rent increases unless and until legally permissible rent-stabilized lease offers are made to, and accepted by, said Plaintiffs and members of the Sub-Class.

**COUNT FOUR**  
**NATURAL GAS CHARGE REFUNDS**  
*(on behalf of the Class)*

107. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 86 of this complaint.

108. Defendant charged many of the Class members a utility fee for natural gas, in violation of law.

109. Plaintiffs and the members of the Class are entitled to refunds of such charges, plus interest as provided by law.

**COUNT FIVE**  
**NATURAL GAS CHARGE INJUNCTIVE RELIEF**  
*(on behalf of the Sub Class)*

110. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 86 of this complaint.

111. Defendant continues to charge many of the Sub-Class members for natural gas, in violation of law.

112. Plaintiffs and the members of the Sub-Class are entitled to injunctive relief, barring Defendant from continuing to assess and/or collect the illicit charges.

**COUNT SIX**  
**ATTORNEYS' FEES**  
*(on behalf of the Class)*

113. Plaintiffs re-allege and incorporate by reference the allegations in ¶¶ 1 thru 86 of this complaint.

114. Plaintiffs are entitled to reasonable attorneys' fees pursuant to their leases and/or under CPLR 909, in a sum to be determined by the Court, but not less than \$250,000.00.

**PRAYER FOR RELIEF**

WHEREFORE, and for the foregoing reasons, Plaintiffs pray to this Court for the following relief:

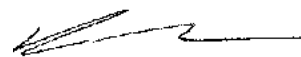
- A. Certifying the Class and Sub-Class proposed by Plaintiffs, appointing the Plaintiffs as representatives of the Class and Sub-Class; and appointing Plaintiffs' counsel as Class Counsel for the Class and Sub-Class;
- B. Appropriate money damages against Defendant resulting from its willful and wrongful violation of the RSL and RSC;
- C. Because Plaintiffs and members of the Sub-Class have no adequate remedy at law for Defendant's ongoing violations of the RSL and RSC, Plaintiffs requires injunctive relief in order to undertake all appropriate and corrective remedial measures, including, but not limited to, appointing an independent individual or entity to audit and undertake an accounting of every rent-

stabilized and deregulated apartment at the Building and reforming leases to comply with the RSL and RSC, where necessary;

- D. Temporarily, preliminarily, and permanently enjoining Defendant from continuing to violate the RSL and RSC;
- E. A money judgment against Defendant for disgorgement of profits from fees earned as a direct and proximate result of all rent overcharges, including, but not limited to, the inappropriate assessment and collection of utility fee charges;
- F. A money judgment against Defendant for judgment in the amount of Plaintiffs' attorneys' fees, costs and disbursements in an amount to be determined at a hearing or trial; and
- G. Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York  
February 27, 2022

**NEWMAN FERRARA LLP**



By: \_\_\_\_\_

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