STATE OF NEW YORK
SUPREME COURT: COUNTY OF SULLIVAN

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THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, State Attorney General,
Petitioner,

- against -

RIVER VALLEY ESTATES, LLC, GEORGE LEVIN,
and GAYLA SUE LEVIN,
Respondents.

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DECISION & ORDER
Index No. E2024-1710

Appearances: NYS Attorney General
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For Respondents

Papers Considered: NYSCEF Filings 1-107, Oral Argument of December 12, 2024

Galligan, J.

This action pursuant to Executive Law § 63(12), General Business Law §§ 349 and 518, Real Property Law §§ 233, 233-b, 235-b and 277-e, Sullivan County Local Law No. 1 of 1992 and New York State's Emergency Rental Assistance Program stems from petitioner's allegations of infirmities at a manufactured home park in Sullivan County owned by respondents. Petitioner seeks an order granting it injunctive relief, damages and penalties against respondents. Respondents oppose.

Petitioner alleges that the administration of a manufactured home park known as River Valley Estates and formerly known as Foxcroft Village,[1] wherein residents live within its 324 lots,[2] has committed repeated and persistent violations of the law, including sanitary code violations. Day-to-day management of the park is supervised remotely from the State of Florida by respondent George Levin and carried out by an on-site manager, Aram Avagyan. In addition to River Valley Estates, LLC, L & F Enterprises, Inc. was created by respondents George Levin and/or Gayla Sue Levin to manage and operate the park.

Petitioner brought a special proceeding against respondents in 2018 which was ultimately discontinued.[3]

[1] Foxcroft Village LLC is the deeded owner of the park, which is operated by River Valley Estates, LLC.

[2] Between 2019 and 2024, occupancy levels varied between 204 and 287 occupied lots.

[3] Respondent George Levin represented that petitioner "dropped" the 2018 action. NYSCEF 85, p.2. The court has reviewed the record of that proceeding at Sullivan County Index Number 2500-2018 and found that the matter was closed pursuant to a stipulation of discontinuance. Petitioner avers that the 2018 matter was discontinued "after certain necessary repairs had been made to the water and septic system." NYSCEF 4, p.6. Settlement of the 2018 lawsuit pursuant to certain agreements among the parties comports with the totality of evidence submitted by petitioner and respondents; respondents represent that they have engaged in many communications with petitioner with respect to the current state of their contracts and fees, apparently because of that 2018 settlement agreement.

I. The Causes of Action

Petitioner alleges seven causes of action, summarized generally as follows:

1. Repeated and Persistent Illegality in violation of Executive Law § 63(12) in the form of Real Property Law § 233 Violations, to wit: 51 rent increases for tenants of less than twelve months in between 2019 and 2023, 605 lease offers without required tenant rights riders between 2020 and 2022, 24 rent increases outside lease renewal periods between 2021 and 2022, imposition of $39.50 monthly garbage removal fees with less than 90 days of notice for all 275 residences in August of 2022, 701 impermissibly high late fees of $35 each between 2019 and 2023, and improper handling of a veteran's exemption;

2. Repeated and Persistent Illegality in violation of Executive Law § 63(12) in the form of Violations of the Warranty of Habitability and Real Property Law §§ 235 and 233(m), to wit: dangerous conditions in the common areas of the park, insufficient remedies of citations from the Town of Fallsburg and Department of Health, and violations of an April 2024 agreement with the Department of Health;

3. Repeated and Persistent Illegality in violation of Executive Law § 63(12) in the form of New York State Sanitary Code and Town of Fallsburg Code Violations, to wit: 105 Sanitary Code violations and 20 Department of Health deficiencies between April 14, 2021, and September 4, 2024, 212 violations, with 104 remaining open at the time of filing, of the Town of Fallsburg Code between January 9, 2019, and April 19, 2024, and general maintenance and lighting disrepair and unsanitary disposal of waste;

4. Repeated and Persistent Illegality in violation of Executive Law § 63(12) in the form of Real Property Law § 233-b Violations, to wit: rental increases of more than 6 percent for 8 tenants;

5. Repeated and Persistent Illegality in violation of Executive Law § 63(12) in the form of General Business Law § 518 Violations, to wit: unnoticed credit card surcharges of 3% charged on 450 occasions;

6. Repeated and Persistent Illegality in violation of Executive Law § 63(12) in the form of Illegal Lease Provisions, to wit: 2023 leases with incorrect lease start dates and terms, representations that tenants can be evicted upon expired leases contrary to law, impermissible shifting of the duty to mitigate damages upon early termination of occupancy, and representations in violation of the security deposit law; and

7. Repeated and Persistent Illegality in violation of Executive Law § 63(12) in the form of Deceptive Practices in Violation of General Business Law § 349, to wit: representations to tenants that garbage fees had previously been absorbed by respondents instead of combined with rental costs as represented by respondents in May of 2014, improper restriction of the ability of residents to put out recycling, constituting materially misleading statements.

Petitioner alleges that the unsanitary conditions now extant at the park have existed for several years, including: (i) sewage entering homes via tubs, toilets and dishwashers and overflowing onto lawns; (ii) discolored water; (iii) failure to disseminate boil water notices causing residents illness from consumption of tainted water, frequent water outages and low water pressure; (iv) unpermitted construction at all hours; (v) failure to attend to garbage and debris; (vi) failure to secure abandoned and/or dilapidated properties; (viii) failure to maintain roadways leading to dangerous conditions; and (ix) failure to install and/or maintain adequate outside lighting.[4]

Petitioner alleges that lease agreements offered by respondents violate tenant protection provisions of the Real Property Law, including by lacking Housing and Community Renewal lease riders informing residents of certain rights afforded to them by law. Petitioner further alleges that respondents repeatedly acted illegally with respect to their financial obligations to park residents, including by: (i) improperly administering tax credits; (ii) rental increases in violation of the Emergency Rent Assistance Program; (iii) improperly increasing rents; (iv) deceptively causing residents to incur garbage and recycling fees; and (v) imposing credit card surcharges without notice.

At the outset, respondents attack the good faith of petitioner.[5] The court rejects those attacks. Petitioner has not acted as a legal advisor or representative of respondents. Respondents aver that, pursuant to a 2018 agreement between the parties, respondents have transmitted certain proposed leases for input. This arrangement was expressly contemplated by the parties and does not constitute legal representation of respondents by petitioner. The court likewise rejects respondents' argument that, because one or more municipalities charge certain trash fees that may or may not be reasonably related to the cost thereof, petitioner has improperly "singled out" respondents. Finally, the court rejects respondents' unfounded allegation that petitioner has exerted undue influence upon other government entities to bring enforcement proceedings against them.

Having reviewed all submissions of the parties, the court finds that no material or triable issues of fact exist warranting hearing or trial.[6] The court disregards so much of petitioner's argument as is unsupported by the record and makes the following determinations based upon so much of petitioner's argument as is established by the record, including those issues conceded by respondents.

II. The Legal Standard

This is a special proceeding pursuant to Article 4 of the Civil Practice Law and Rules and Section 63(12) of the Executive Law, wherein petitioner alleges repeated and persistent illegalities relating to respondents' administration of the mobile home park. Therefore, this court "shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. The court may make any orders permitted on a motion for summary judgment." NY CPLR §

[4] The previous action alleged similar sanitary code violations in 2018.

[5] These attacks are primarily furthered by the affidavit of respondent George Levin and are echoed by the submissions of other employees of respondents.

[6] Except as to the issue of the appropriate damages and penalties as will be more fully set forth herein as a result of the court's determinations herein.

409(b).[7] "An application by the Attorney-General for remedial orders under subdivision 12 of section 63 is addressed to the sound judicial discretion of the court." *State v Princess Prestige Co.*, 42 NY2d 104, 108 [1977].

"[A] landlord is not a guarantor of every amenity customarily rendered in the landlord-tenant relationship. The warranty of habitability was not legislatively engrafted into residential leases for the purpose of rendering landlords absolute insurers of services which do not affect habitability." *Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 327 [1979]. This court must analyze whether the conditions established by petitioner go to the heart of the landlord-tenant relationship and materially affect the health and safety of the residents of the park.

"To be sure, absent an express agreement to the contrary, a landlord is not required to ensure that the premises are in perfect or even aesthetically pleasing condition; he does warrant, however, that there are no conditions that materially affect the health and safety of tenants. For example, no one will dispute that health and safety are adversely affected by insect or rodent infestation, insufficient heat and plumbing facilities, significantly dangerous electrical outlets or wiring, inadequate sanitation facilities or similar services which constitute the essence of the modern dwelling unit. If, in the eyes of a reasonable person, defects in the dwelling deprive the tenant of those essential functions which a residence is expected to provide, a breach of the implied warrant of habitability has occurred." *Park W. Mgt. Corp.*, *supra*, 47 NY2d at 328.

"Substantial violation of a housing, building or sanitation code provides a bright-line standard capable of uniform application and, accordingly, constitutes prima facie evidence that the premises are not in habitable condition. However, a simple finding that conditions on the lease premises are in violation of an applicable housing code does not necessarily constitute automatic breach of the warranty. In some instances, it may be that the code violation is *de minimis* or has no impact upon habitability. Thus, once a code violation has been shown, the parties must come forward with evidence concerning the extensiveness of the breach, the manner in which it impacted upon the health, safety or welfare of the tenants and the measures taken by the landlord to alleviate the violation (*see Javins v First Nat. Realty Co.*, 428 F2d 1071, 1082 [1970], *cert den* 400 US 925 [1970]; *Jack Spring, Inc. v Little*, 50 Ill 2d 351, 366 [1972]; *King v Moorehead*, 495 SW2d 65, 76 [Mo Ct App 1973]; *cf. Mease v Fox*, 200 NW2d 791, 796-797 [Iowa 1972])." *Park W. Mgt. Corp*., *supra*, 47 NY2d at 327-328.

To succeed on its claim pursuant to Section 349 of the General Business Law, petitioner must allege and prove that: "(1) [respondents'] conduct was consumer-oriented; (2) [respondents'] act or practice was deceptive or misleading in a material way; and (3) [that consumers] suffered an injury as a result of the deception (General Business Law § 349[h]; *Plavin v Group Health Inc.*, 35 NY3d 1, 10 [2020])." *Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co.*, 37 NY3d 169, 176 [2021]. An "act or practice is consumer-oriented when it has 'a broader impact on consumers at large' (*Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank*, 85 NY2d 20, 25-27 [1995]; *New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 320 [1995]). For example, the consumer-oriented element precludes a General Business Law § 349 claim based on '[p]rivate contract disputes, unique to the parties' (*Oswego*, *supra,* 85 NY2d at 25)." *Himmelstein, McConnell, Gribben, Donoghue & Joseph,*

[7] Even where no triable issue of fact exists, the court must evaluate whether petitioner has established the claims advanced by a preponderance of the evidence. *See New York v Allen*, 2021 NYMiscLEXIS 45112, *21 [Sup Ct NY County Feb. 4, 2021, No. 452378/2019].

LLP, *supra*, 37 NY3d at 177. The Court of Appeals has "held that this statute 'cannot fairly be understood to mean that everyone who acts unlawfully, and does not admit the transgression, is being 'deceptive'' within the meaning of section 349 (*Schlessinger v Valspar Corp.*, 21 NY3d 166, 172 [2013])." *Collazo v Netherland Prop. Assets LLC*, 35 NY3d 987, 990 [2020].

III. Repeated and Persistent Illegality as to Rental Increases and Fees

Petitioner's first, fourth, fifth, and seventh causes of action alleges that respondents repeatedly engaged in illegal acts in the conduct of their business in violation of Executive Law § 63(12). Respondents are carrying on, conducting or transacting business for the purpose of the statute. *See, e.g., State v Feldman*, 210 FSupp2d 294, 301 [SDNY 2002]; *State v Fashion Place Associates*, 224 AD2d 280, 282 [1st Dept 1996].

Illegal acts petitioner alleges in support of these causes of action include: (i) increasing of rent for 51 of 136 new tenants between 2019 and 2023 who had not been renting for twelve months or more in violation of Section 233(e)(1) of the Real Property Law; (ii) offering leases to 605 potential tenants between 2020 and 2022 without required tenant rights riders in violation of Section 233(e)(1) of the Real Property Law;[8] (iii) increasing rent for 24 tenants outside of prescribed lease renewal periods in 2021 and 2022 in violation of the Real Property Law; (iv) imposition of a garbage fee for all 275 tenants in August of 2022, which operated as a rent increase, without proper notice or lease offers in violation of Sections 233(g)(3) and 233(e) of the Real Property Law; (v) 701 impositions of late fees in excess of three percent of the highest rent charged in violation of Section 233(r) of the Real Property Law, refunded after notice from petitioner of the illegality in all but 27 instances; (vi) failure to credit a veteran with a tax exemption for 13 years in violation of Section 233 of the Real Property Law; (vii) increasing rent by more than six percent for 8 tenants in violation of Section 233-b of the Real Property Law; (vii) charging a credit and debit card surcharge of three percent in violation of Section 518 of the General Business Law a total of 450 times; and (viii) engaging in deceptive acts and practices by representing that they had previously absorbed garbage removal fees by a notice imposing a new $39.50 fee[9] for garbage removal and not providing recycling services.

Petitioner seeks civil penalties of up to $1,500 for certain violations, up to $500 each for others, and up to $5,000 for each instance of deceptive practices. NY RPL § 233(v)(3); NY GBL §§ 349, 518.

Respondents address each allegation of illegality to varying degrees and make various admissions.[10]

Respondents admit having repeatedly increased rents less than one year into lease terms and offer to conduct a review of rent increases and refund monies illegally collected. Respondents argue that it is not

[8] Respondents do not directly address this failure; the court observes their argument, in other contexts, that compliance with the laws as they change is difficult for them.

[9] The fee could be increased for households with more than five residents and for garbage in excess of 30 gallons.

[10] Respondents, by the Viglione affidavit, aver that adhering to the law regarding lease revisions is difficult because the park has been operational for many years and keeping up with changing laws is onerous. NYSCEF 72, ¶9. The court finds that respondents are under a legal obligation to comply with all laws whenever they become effective, even if doing so increases overhead costs of operation and risks reducing the profitability of the park.

feasible for them to individually review leases as they expire and therefore all rents are increased at the same time each year.

Respondents submit the affidavit of Arlene Viglione as to the calculation of late fees and argue that the law on this issue recently changed. Viglione represents that respondents credited $15 to the accounts of residents who were improperly charged excessive late fees; as to late fees that were not adjusted, Viglione avers those errors were inadvertent. NYSCEF 72, ¶¶ 5, 6. Respondents argue that any penalties for excessive late fees should be addressed by crediting tenant accounts only for the amounts paid in excess of three percent, rather than refunds of the entire fees.

As to the veteran's tax credit, respondents argue that they have settled the issue directly with the tenant. They argue that the tenant paid his own real estate taxes and was eligible for a $1,050 annual exemption against the value of his home. Respondents further argue that the issue was improperly settled between the tenant and respondents, with respondents agreeing to credit the veteran $6,300 against future rent, though respondents now argue the veteran is entitled to only a $420 credit.

Respondents offer no evidence disputing that some tenants' rent impermissibly increased by more than six percent, nor that they violated terms of the Emergency Rental Assistance Program by increasing rents for 12 residents within twelve months of receipt of such assistance. Tenant transaction reports offered by petitioner demonstrate that, as to most of these increases, the increase was generally only nominally more than six percent, but not always. Respondents represent that any increase over six percent was inadvertent and request to only rebate the tenants the overcharged amount and not face any other penalties.

Respondents contend that they are authorized to charge a credit card transaction fee of three percent, representing that this is the same cost that they bear in processing such transactions. NYSCEF 85 p. 7; NY GBL § 518. Petitioner points to signage displayed by respondents, which reads "[t]here is a [three percent] fee on ALL credit and debit card charges" (NYSCEF 51), arguing that, instead, respondents should post a chart demonstrating the cash/check/money order cost of rent and its corresponding credit/debit card cost.[11] NYSCEF 96, ¶ 26. Respondents claim that that requirement is unfeasible, arguing that such a charge would require approximately 200 different signs for the different rental price points. NYSCEF 102, p. 10.

Respondents do not contest the notice requirement as to the garbage fees imposed, instead arguing that during the year that garbage fees were imposed, no lot rent increases were issued. They offer in support of this argument announcements of a garbage service company as to tipping fee increases and note petitioner's concession that the same monthly garbage fee is charged by the Town of Fallsburg. Respondents do not address the recycling issues raised by petitioner, nor the conflict between the notice's representation that fees had previously been absorbed and their 2014 notice that such fees were thereafter combined and charged together with other fees.

[11] Petitioner notes, without amplification, that a credit/debt card fee added to a rental increase of six percent could constitute an illegal rent increase in excess of six percent.

IV. Repeated and Persistent Illegality as to Breaches of the Warranty of Habitability

Petitioner's second and third causes of action allege that respondents have repeatedly and persistently acted illegally through violations of the warranty of habitability in violation of Section 233(m) and 235-b of the Real Property Law, the New York State Sanitary Code and the Town of Fallsburg Code. Petitioner argues that respondents have failed to ensure that common areas of the mobile home park: (i) are fit for human habitation; (ii) are fit for the uses reasonably intended by the parties; and (iii) do not subject occupants to dangerous or hazardous conditions or conditions that would be dangerous, hazardous or detrimental to their life, health or safety.

Petitioner argues that respondents were repeatedly cited by the Town of Fallsburg and New York State Department of Health as a result of the condition of the premises, and that deadlines for compliance passed for months or, in some cases, years before conditions were remedied. Petitioner points to water discoloration and low water pressure violations issued by the Department of Health and that, as of the date of filing of the petition, park residents remained subject to a boil water order.

Respondents' Water Quality Report

Respondents submit the May 2024 Annual Water Quality Report they provided to park residents.[12] The report avers that the park's water originates from two wells and supplies water at approximately 300 connections. The report concedes that the wells have "medium high to high susceptibility to enteric bacteria, halogenated solvents, herbicides/pesticides, metals, petroleum products, protozoa, other industrial organics and nitrates." NYSCEF 67, p.1. While reporting that the water is regularly tested, the report additionally notes: "Color has no health effects. In some instances, color may be objectionable to some people at as low as 5 units. Its presence is aesthetically objectionable and suggests that the water may need additional treatment." *Id.* at p.5.

The Kalter Affidavit

Petitioner submits an affidavit of Andrew Kalter, District Director of the New York State Department of Health's Middletown and Liberty offices, in support of its position.[13] NYSCEF 5. The Department of Health ("DOH") is responsible for ensuring respondents' compliance with, *inter alia*, the New York State Sanitary Code, which imposes upon respondents affirmative duties with respect to drinking water supply and sewage operations; additionally, respondents must report any interruption in such services to the Department of Health, which controls its operating permit.

As to color unit testing, Kalter affirms that in February of 2024, the DOH collected two pre-flushing water samples from the park, both of which returned color unit levels of 30, twice the maximum level as set by state and federal regulations.[14] After flushing, samples returned color unit levels within acceptable ranges. As a result of the finding that flushing was necessary to render water acceptable for human use,

[12] By the report, respondents alternately refer to themselves as Foxcroft Village and River Valley Estates.

[13] Kalter further affirmed the existence of abandoned homes that created vermin issues at the park, disrepair of communal areas park, including dead trees, garbage accumulation and dangerous conditions relating to the swimming pool, for which violations have been issued.

[14] This finding calls into question certain representations made by respondents' May 2024 Annual Water Quality Report.

the DOH issued a report to respondents determining that the installation of functioning flushing hydrants should be given a high priority by the park.

Since 2017, the DOH has issued violations to respondents for multiple violations of the Sanitary Code relating to failing septic and water distribution systems, which largely were unaddressed until at least 2023. Between April 14, 2021, and September 4, 2024, the DOH issued 105 violations of the Sanitary Code and 20 deficiencies in need of remediation to respondents. 18 violations were repeated violations as a result of respondents' failure to remediate conditions.

Kalter described DOH observations of the condition of the water at the park which included an observation in April 2023 of the only functioning hydrant emitting "dark brown (chocolate milk-like), visibly discolored water flowing from that hydrant."[15] NYSCEF 5, ¶ 19. Kalter further affirms that the park's water is undrinkable at times and is often discolored. The DOH determined that water discoloration at the park is likely due to the old pressure tanks and is exacerbated by the system's limited flushing capacity.[16] Until the middle of 2024, Kalter avers that the system could not appropriately be flushed because inadequate hydrants existed, and two of the extant hydrants were not functional.[17]

Although the 2003 water supply and distribution engineering plan for the park included 17 water flushing stations, only 3 such stations were ever installed. According to Kalter, the condition of the water distribution system at the park prevents it from consistently delivering potable water to residents because the system cannot be appropriately flushed of contaminants. The presence of two very old hydropneumatics pressure tanks contributes to the problem. In addition to the lack of flushing and old pressure tanks, low water pressure at the park has resulted from water main and line leaks and inadequate leak detection systems, a broken storage tank automatic control, deficiently identified isolation valves to depressurize areas of the main in need of repair, inoperable curb stop valves, a broken duplex booster pump check valve, and the insufficient capacity of the two wells supplying water to the park.[18]

Additional issues relating to the water system result from deficiencies in its water distribution resulting in low water pressure. When water pressure is too low throughout the system, the DOH issues boil water orders. Boil water orders were issued to the park by the DOH on May 9, 2022, June 19, 2022, July 26, 2022, August 8, 2022, November 21, 2022, December 19, 2023, and June 4, 2024. Kalter affirms that each of these orders has lasted for weeks at a time and, as of the date of filing of the Petition, the June 4, 2024, order remained in effect as a result of low water pressure in the park.

The water system of the park was inspected by the DOH on February 29, 2024, whereupon 2 critical and 2 non-critical violations were issued, and 6 other deficiencies were noted. One of the critical violations

[15] The court credits the Kalter affidavit and rejects respondent George Levin's non-expert, conclusory argument that the emission of this kind of water from a hydrant is normal (NYSCEF 85, p.6).

[16] The Kalter affidavit sets forth additional deficiencies that contribute to the poor water quality and pressure at the park.

[17] Respondents represented to the DOH that the hydrants that did not function could not be opened by the park due to a lack of tools; however, the proper tool was purchased by the park in early 2024, yet the hydrants still did not function as of the date of Kalter's affirmation in October 2024.

[18] Respondents have made some efforts to remedy the water problems at the park, including installation of gate valves and well cap and downward facing vent pipe replacement.

was for debris within the 200-foot protection radius of the park's two wells, and the other was for a lack of flushing points resulting in inability to flush the system. No substantial progress toward remediation of the debris was observed until the spring of 2024.

The DOH and respondents entered into a DOH Administrative Tribunal Stipulation on April 3, 2024, with respondents agreeing to install 15 flushing stations no later than December 1, 2024. As of September 4, 2024, respondents had installed 6 of the required 15 new flushing hydrants. Nonetheless, samples collected in September 2024 revealed that the variation of color unit levels between entry and distribution points of water had increased, evidencing the need to replace the old hydropneumatics pressure tanks. The DOH flushed the system again on September 30, 2024.

In July of 2024, the park suffered a fallen tree on its water plant which has hindered progress toward water system remediation.

In August of 2024, the New York Rural Water Association conducted a leak detection investigation at the park, which was compromised by a faulty water main gate valve with a nearby service line leak and low water pressure. While respondents attempted to remedy the issue by installing a new gate valve near a span of the system over a stream to isolate that area and thereby increase pressure throughout the rest of the system, the issue persists. Respondents' recent installation of isolation valves, according to Kalter, will aid in this effort.

The DOH's September 4, 2024, inspection of the park resulted in its issuance of 3 critical violations and 2 non-critical violations, and notation of 6 other deficiencies. The critical violations were for water filtration failures and excess water production and loss owing to a significant leak. While the park had identified 22 isolation valves in the system, three of them were inoperable and in need of replacement. Water pressure at many homes in the park remained below 20 psi, requiring continuation of the boil water order.

This inspection revealed new issues with the water system, to wit: the need for installation of redundant chemical feed pumps, repair of a water meter on one well, and repair of a water main leak which has required a valve to restrict water flow and created a dead end, which may have affected pressure in the northern end of the system.

With respect to the April 2024 Stipulation, the DOH's September inspection revealed that (i) although respondents represented that they have purchased new pressure tanks, new tanks were not installed by the September 1, 2024, deadline; (ii) respondents had not replaced the two non-operational flushing hydrants by the September 1, 2024, deadline; and (iii) respondents have not gained cooperation of their water filtration system servicer to replace solenoid valves to facilitate automatic backwashing. Kalter avers that the DOH is working with respondents to set new compliance dates for the violations addressed by the April 2024 Stipulation.

Water Conditions as Set Forth by Residents

Petitioner submits several affidavits of residents of the mobile home park. Residents affirm that their water is often discolored and unusable, that boil water orders frequently result in them purchasing their own drinking and/or cooking water, that they sometimes have no running water for extended periods,

and that they often experience low water pressure. NYSCEF 11,[19] Argento Aff. ¶¶ 6, 13; Efler Aff. ¶ 6; Griswold Aff. ¶¶ 7a, 7b, 7f; Hayden Aff. ¶¶ 5a, 5b, 5e; Jones Aff. ¶¶ 6, 7; Kikirov Aff. ¶¶ 6-8; Kogan Aff. ¶¶ 5a-5c; Kosenko Aff. ¶¶ 5, 6; Lown Aff. ¶¶ 7-10; Miah Aff. ¶¶ 3a- 3d; Morton Aff. ¶¶ 7-10; Reinshagen Aff. ¶¶ 5-8; Rossi Aff. ¶¶ 5-8; Ruffler Aff. ¶¶ 8-11, 13, 16; Siano Aff. ¶¶ 5-8; Sproba Aff. ¶¶ 6a, 6b; Ulbrich Aff. ¶ 6. These representations are consistent with the Kalter affidavit.

Septic Issues

As to the septic issues at the park, each unit in the park has its own septic system.[20] The DOH issued 10 public health hazard violations and 3 repeated violations for uncorrected violations to respondents between 2021 and 2022. *See* NYSCEF 5.

Petitioner submits DOH inspection reports as to the septic situation at the park. NYSCEF 17.[21]

An April 14, 2021, report found "inadequately treated sewage on the ground surface at 86 Cambridge Circle," with its "septic tank submerged in wastewater and [its] absorption field [did] not appear to be accepting discharges from septic tank for complete treatment." NYSCEF 17, p.1. The DOH found that immediate replacement of the tank was necessary, as after pumping and without precipitation the tank was full again within 48 hours. The DOH additionally found that the tank was inadequately covered, and photographs attached to the report demonstrate its condition. NYSCEF 17, p.2-3.

A July 28, 2021, DOH report found wastewater on the ground around the septic tank of 1 Cambridge Circle; the tank was covered with "a decaying piece of plywood," and its condition caused "irreversible damage to the absorption trench/leach field area." NYSCEF 17, p. 4. The DOH determined immediate replacement of the tank was necessary, and that the leach field might have required replacement.

On November 18, 2021, the DOH found "untreated household sewage on the ground surface immediately outside [the] mobile home located at 14 Dartmouth C[ourt]." NYSCEF 17, p.7.

On November 22, 2021, the DOH appeared a failing sewage system at 86 Cambridge Circle, with pooling liquid emitting a sewage order observed. NYSCEF 17, p.10-11.

[19] The court excludes hearsay allegations from its consideration.

[20] While respondents' employee Avagyan represents that many of the violations at the park referenced by petitioner are the responsibility of individual tenants to fix and not respondents, the conditions of the septic tanks and connections to the waste disposal system of the park fall directly upon respondents. 2023 lease agreements offered by the park provided that residents are responsible for "the costs of repair occasioned by waste line blockage between manufactured home[s] and septic tank[s], as well as repairs to the water line from the point of exit from the ground to the home and within the home," and that any "costs, paid by landlord will be charged to tenant[s]." NYSCEF 18, p.3. Respondents additionally contract with tenants to charge the costs of any tank pump out occurring more than once every five years back to the tenant together with an additional $75 "service charge." NYSCEF 18, p.3. The park's Community Covenants again set forth tenants' responsibility as to septic conditions. NYSCEF 23.

[21] There is no evidence that the conditions of the septic tanks at park lots were the result of unaddressed blockages of connections between septic tanks and individual residences, rather than issues caused by the dilapidated condition of the tanks themselves.

On December 3, 2021, the DOH observed the septic system of 3 Andover Lane "failing with raw sewage on [the] ground beneath a sheet of plywood," requiring immediate correction. NYSCEF 17, p.12. Additionally, the septic system at 86 Cambridge Circle was observed failing again, requiring immediate correction. *Id*.

A week later, on December 10, 2021, the DOH and unit resident at 86 Cambridge Circle conducted a test of the septic which "confirm[ed] that the system was failing." NYSCEF 17, p.17. Additionally, the septic at 84 Cambridge Circle also appeared to be failing. Again, the DOH recommended immediate correction. *Id*.

On February 3, 2022, the DOH again observed a failing septic at 84 Cambridge Circle with "observable waste products and distinct smell of sewage." NYSCEF 17, p.21. Again, immediate correction was necessary. On this date, the DOH additionally observed a failing septic at 43 Oxford Circle, melting snow in an approximate 35- by 5-foot area, also requiring immediate correction. *Id*. at p.21-22. Nearby, 41 Oxford Circle was also observed to have a potentially failing septic, with a white pipe protruding from the ground leading to an area of melted snow and non-odorous liquid; testing was recommended. *Id*. at p.22.

On November 22, 2022, uncapped sewage system pipes were found at 32 Oxford Circle, which did not maintain a watertight seal. NYSCEF 17, p.27.

The Panella Affidavit

Petitioner further submits the affidavit of Michael Panella on behalf of the Town of Fallsburg Code Enforcement Office. Panella avers that the Town has issued multiple violations to respondents since 2017. Significantly, in January of 2018, the Town issued a violation to respondents for failing to properly provide water to residence and failure to maintain a functioning septic system. Panella avers that respondents failed to appear in court in connection with those violations. Two hundred twelve violations followed between January of 2019 and April of 2024; as of September 2024, one hundred four remained open. Among these violations are "electrical issues, insufficient lighting, the presence of 'junk cars,' violations of general maintenance standards, appearance and landscaping violations, unsanitary disposal of waste, and violations based on road signs." NYSCEF 6, ¶ 9. The court sets aside those violations that relate to landscaping, junk cars, and others that do not necessarily materially affect the health and safety of tenants,[22] those violations relating to unsanitary disposal of waste and electrical deficiencies support all of the other evidence demonstrating that respondents have failed to provide adequate water and sewage facilities which do go to the heart of the landlord-tenant relationship.

The Avagyan Affidavit

Respondents submit the affidavit of Aram Avagyan, the resident on-site manager of the park's operations. Avagyan asserts that a former employee of the Town of Fallsburg has represented to him that his employment was terminated because he refused to sign an affirmation in connection with this

[22] Violations relating to unauthorized construction that affect septic system leach fields support petitioners' arguments. NYSCEF 6, ¶ 16.

action. This hearsay representation, unsupported by any affirmation or affidavit of the employee, Gregg Pitula, is insufficient to defeat summary relief herein.[23]

Avagyan concedes the accuracy of the Kalter affidavit, including that respondents have not complied with their obligations pursuant to the April 2024 Stipulation. Avagyan represents that, in accordance with the April 2024 Stipulation, respondents have removed debris from around the wells, repaired a well cap, repaired filters and ordered new tanks, installed 7 of the required 15 hydrants which are not necessarily connected to the water system yet, and identified isolation valves. NYSCEF 68, ¶13.

V. Illegal Lease Provisions

Petitioner's sixth cause of action alleges various illegal terms in respondents' leases, in violation of the Real Property Law (including Sections 227-e and 223(b) thereof) and Sections 7-108 and 7-103(2) of the General Obligations Law. Petitioner points to illegal lease terms including: (i) incorrect start and end dates; (ii) shifting mitigation responsibilities to tenants; (iii) allowing for tenants to be evicted for lapse of time in the lease; (iv) illegal procedures for handling and returning security deposits.

Respondents argue that their form lease is the same that they have been using for forty-five years;[24] they concede the lease probably requires revision, especially to conform with what they term recent changes in the law but note that valid provisions of the lease survive its unenforceable terms. Respondents represents that they are willing to amend their lease form upon the petitioner's recommendations. NYSCEF 74, p. 2. Respondents concede the wrong dates alleged by petitioner, but argue those dates were found only in a sample lease, and tenants received accurately dated leases. Respondents further represent that, as to many of the provisions at issue, they decline to enforce those terms, which they further argue are merely deterrents designed to discourage tenants from early terminations of occupancy.[25] *Id*. at p. 1.

VI. The Arguments

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[23] "While hearsay evidence may be utilized in opposition to a motion for summary judgment, such evidence is insufficient to warrant denial of summary judgment where it is the only evidence upon which the opposition to summary judgment is predicated (*see*, *Guzman v L.M.P. Realty Corp.*, 262 AD2d 99 [1st Dept 1999]; *Koren v Weihs*, 201 AD2d 268, 269 [1st Dept 1994])." *Narvaez v NYRAC*, 290 AD2d 400, 400-401 [1st Dept 2002]. Here, the only evidence offered by respondents in support of the position that the Town of Fallsburg has misrepresented violations against it is the hearsay affidavit of Avagyam. Respondents fail to proffer any excuse for the submission of hearsay alone on this issue. *See, e.g., Zuckerman v New York,* 49 NY2d 557, 562 [1980], *citing Alvord v Swift & Muller Constr. Co., 46 NY2d 276, 281-282; Fried v Bower & Gardner, 46 NY2d 765, 767; Platzman v American Totalisator Co., 45 NY2d 910, 912; Mallad Constr. Corp. v County Fed. Sav. & Loan Assn., 32 NY2d 285, 290* ("'We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form…'"). "A special proceeding is governed by the same standards that apply to a motion for summary judgment (*see* CLR 409[b]; *Matter of Port of N.Y. Auth. [62 Cortlandt St. Realty Co.]*, 18 NY2d 250, 255 [1966], *cert den sub nom* 308 US 1006 [1967]." *People v Telehublink Corp.*, 301 AD2d 1006, 1007 [3d Dept 2003].

[24] Significantly, Section 233(b)(1) of the Real Property Law was repealed in 2019; since that time, a tenant may not be eviction upon the expiration of a lease.

[25] Respondents offer no legal support for the proposition that such terms are permissible as deterrents if they are not enforced in court.

Petitioner narrows its argument pursuant to Executive Law § 63(12) to respondents' alleged repeated illegality in its administration of the mobile home park. Violations of federal, state or local laws and regulations constitute illegality within the meaning of this statute. *State v Princess Prestige Co.*, *id*., 42 NY2d 104, 107 [1977]; *see also, People v Ivybrooke Equity Enterprises, LLC*, 175 AD3d 1000 [4th Dept 2019]. Petitioner moves the court to render factual determinations consistent with the evidence submitted in this summary proceeding, arguing that respondents have not demonstrated the existence of triable issues of material fact by submitted evidence with probative value, noting that general denials or conclusory allegations are insufficient. *People v Telehublink Corp.*, *supra*, 301 AD2d at 1007; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].

As to respondents' arguments that many tenants were not subjected to certain illegal acts demonstrated by petitioner, petitioner notes that it is unnecessary for it to demonstrate that a large portion of respondents' transactions are affected by the illegalities demonstrated. *State v Princess Prestige Co.*, *supra*, 42 NY2d at 107. Petitioner argues: "Accordingly, the existence of some satisfied customers is not a defense to otherwise fraudulent and illegal practices. *State v Midland Equities of NY, Inc.* 117 Misc2d 203, 207 [Sup Ct NY Co 1982]; *FTC v Crescent Publishing Grp, Inc.*, 129 FSupp2d 311, 322 [Southern Dist NY 2001]." NYSCEF 76, p.8.

Respondents' legal arguments largely center upon petitioner's second cause of action and the warranty of habitability. Respondents contest whether the violations set forth by petitioner constitute an actional breach of the warranty of habitability or, instead, are mere inconveniences. Respondents argue that boil water notices are mere inconveniences to residents that do not deprive them of the essential functions of the mobile home park, who can use water for bathing and laundry and can just purchase bottled water instead of boiling it.[26] NYSCEF 102, p.2.

Respondents contend that the question is whether the conditions proven by petitioner "materially affect the health and safety of tenants or deficiencies that 'in the eyes of a *reasonable person* … deprive the tenant of those *essential functions* which a residence is expected to provide'." *Solow v Wellner*, 86 NY2d 582, 588 [1995] (emphasis in original), citing *Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 327-328 [1979].

Respondents further contend that, even if there has been a breach by respondents of the warranty of habitability, petitioner has not adequately established a basis for restitution in the amount of one-half lot rent reduction for two years. Respondent suggests the court should calculate the cost of bottled water for drinking or employ "some other reasonable calculation." NYSCEF 102, p.3.

By their answer, respondents raise nine objections in law, alleging:

(i) petitioner has failed to state a cognizable cause of action;
(ii) respondents' ongoing correspondence with petitioner since the prior action and other allegations of compliance or bad faith of petitioner warrant a discovery order herein;

[26] As part of their legal argument, respondents offer what is represented as the cost of bottled water, arguing that 40 16-ounce bottles of water cost $5 and can last tenants up to one week. Accepting, *arguendo*, respondent's representation as to the cost of water, a family of four consuming four bottles of water daily would require purchase of new packages of water every two days. Respondents' calculations are further undermined by the Levin affidavit, which represents that respondents incurred costs of more than $10,000 for bottled water for a short time when a fallen tree affected the water supply.

(iii) deposition of petitioner's attorney Haines is necessary;
(iv) petitioner's attorneys should be disqualified;
(v) petitioner's claims are barred by equitable estoppel and unclean hands;
(vi) all equitable or injunctive relief sought is barred;
(vii) jurisdiction lies with the Town of Fallsburg Code Enforcement Office and/or Department of Health and not this court;
(viii) petitioner's requests for restitution are arbitrary and unrelated to respondents' alleged conduct; and
(ix) petitioner is not entitled to a determination that respondents have violated Section 349 of the General Business Law. NYSCEF 65.

VII. Conclusions as to Petitioner's Causes of Action and Respondents' Objections in Law

Respondents' Objections in Law

As to respondents' objections in law, the court makes the following determinations:

Petitioner has set forth a cognizable cause of action. Respondents' first objection in law is overruled. As set forth herein, the court finds ample support in the record for the determinations made herein without need for further discovery or argument.

As set forth above, there is no conflict of interest with respect to petitioner's review of certain aspects of respondents' business activities following settlement of the 2018 action, including with respect to Assistant Attorney General Haines. The court finds no basis for respondents' position that deposition of Haines is necessary. Accordingly, respondents' second, third and fourth objections are overruled.

"An estoppel rests upon the word or deed of one party upon which another rightfully relies and so relying changes his position to his injury." *Metro. Life Ins. Co. v Childs Co.*, 230 NY 285, 292 [1921]. "The doctrine of equitable estoppel can be invoked only where the conduct of a party has induced a change of position or resulted in a substantial prejudice to the adverse party." *Estate of Smith*, 1999 NYLJ LEXIS 2302, *12 [Sur Ct Kings Co 1999]. Respondents have failed to demonstrate any prejudice they have suffered or any negative change in their position based upon the parties' interactions following the 2018 settlement.

"The general rule is that 'absent an unusual factual situation, 'estoppel is not available against a governmental agency engaging in the exercise of its governmental functions'" (*Advanced Refractory Technologies v Power Auth.*, 81 NY2d 670, 677 [1993], *quoting D'Angelo v Triborough Bridge & Tunnel Auth.*, 65 NY2d 714, 715-716 [1985])." *Slate v State*, 284 AD2d 767, 770 [3d Dept 2001]. The Attorney General's Office is empowered to bring actions including the 2018 suit and the instant litigation. It is uncontroverted that petitioner, by Mr. Haines, has reviewed some of respondents' business transactions over the past several years, whether pursuant to the 2018 stipulation, by demands that respondents cease and desist their illegal conduct, or otherwise upon consent of the parties. Nonetheless, the doctrine of equitable estoppel does not extend so far as to absolve respondents of any further responsibility for ongoing conduct and does not disqualify Mr. Haines from further representation of the State in this action. Moreover, "[t]he defense of unclean hands also lacks merit due to [respondents'] failure to come forward with admissible evidence showing that [petitioner's] conduct

was immoral or unconscionable (*see*, *National Distillers & Chem. Corp. v Seyopp Corp.*, 17 NY2d 12, 15 [1966]; *City of New York v Corwen*, 164 AD2d 212, 218 [1990]).” *Connecticut Natl. Bank v Peach Lake Plaza*, 204 AD2d 909, 910-911 [3d Dept 1994]. Respondents’ fifth objection is overruled.

Respondents’ sixth objection in law alleges that “any equitable or injunctive relief is barred and should not be granted by the [c]ourt since [p]etitioner has not shown a clear right to relief nor a likelihood of success on the merits.” NYSCEF 65, ¶105. Because respondents have failed to assert facts constituting a meritorious defense, this objection attempting to assert such a defense through allegations in conclusory form is overruled. *State by Abrams v Wiley*, 117 AD2d 856, 856 [3d Dept 1986].

Respondents next assert that petitioner has usurped the regulatory and enforcement jurisdiction of the Town of Fallsburg Code Enforcement Office and Department of Health. “Executive Law § 63(12) is the procedural route by which the Attorney General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts. The statute expressly provides that such an injunction, if granted, may also direct restitution. *** Without question, ‘[an] application by the Attorney General for remedial orders under subdivision 12 of section 63 is addressed to the sound judicial discretion of the court’ (*State of New York v Princess Prestige Co.*, *supra*, 42 NY2d at 108) …” *State by Abrams v Ford Motor Co.*, 74 NY2d 495, 502 [1989]. The Attorney General does not seek a ruling from this court modifying, vacating or replacing any regulation of the Town of Fallsburg or Department of Health; nor does the Attorney General seek a ruling vacating, modifying or otherwise affecting any separate enforcement actions brought by those agencies. The Executive Law vests the Attorney General with authority to sue respondents separate from the regulatory and enforcement actions of the Town of Fallsburg and Department of Health. Therefore, respondents’ seventh objection in law is overruled.

The court will fix, upon sufficient information, restitution and remedies which are reasonably related to respondents’ conduct; therefore, respondents’ eighth objection in law is overruled. *Matter of People v N. Leasing Sys., Inc.*, 234 AD3d 419, 420 [1st Dept 2025].

By their ninth objection in law, respondents further argue that petitioner has not sufficiently set forth a cause of action pursuant to Section 349 of the General Business Law. To satisfy the elements of that statute, petitioner must demonstrate that respondents engaged in materially deceptive consumer-oriented conduct that caused injury. Petitioner argues that *Aguaiza v Vantage Props., LLC*, 69 AD3d 422 [1st Dept 2010] is distinguishable from this case, and that respondents did engage in consumer-oriented conduct aimed at the public. The law requires proof of “affirmative conduct that would tend to deceive consumers.” *Collazo v Netherland Prop. Assets LLC*, *supra*, 35 NY3d at 991.

Petitioner submits its November 14, 2022, letter to respondents in support of its motion for a determination pursuant to Section 349 of the General Business Law. Therein, petitioner demands that respondents “affirmatively withdraw any notices that improperly claim that a tenant must pay garbage fees or move by a date certain or face eviction proceedings.” NYSCEF 80. By its description of the evidence submitted in support of this litigation, petitioner narrows its claims pursuant to the General Business Law as relating to the unnoticed imposition of garbage fees. NYSCEF 78. Insofar as petitioners do not allege that respondents’ conduct was aimed at any persons with whom respondents did not already have a contractual relationship, and that no advertisements or solicitation of new tenants was premised upon deceptive representations, petitioner has not sufficiently met the first prong of proof required to maintain its action pursuant to Section 349 of the General Business Law. *See, e.g., Collazo*,

id., 35 NY3d at 990-991 ("… we assume without deciding that a claim may lie under General Business Law § 349 based upon a landlord's alleged misrepresentation *to the public* that an apartment was exempt from rent regulation …" (emphasis added)). Respondents' ninth objection in law is therefore sustained and petitioner's seventh cause of action is dismissed.

Petitioners First Cause of Action

Respondents have failed to demonstrate the existence of any material issue of fact as to petitioner's first cause of action, and petitioner has satisfactorily established that respondents have engaged in repeated illegality over the course of several years, in violation of Section 63(12) of the Executive Law, in connection with their imposition of rent increases and fees, and their offering of leases to potential tenants.

Petitioner has established that respondents have repeatedly and persistently violated the law as set forth by its first cause of action, and respondents have admitted violations of Section 233 of the Real Property Law, including repeated illegal rent increases between 2019 and 2023, hundreds of lease offers made without required tenant rights riders, rent increases outside lease renewal periods, imposition of a garbage fee operating as an illegal *de facto* rent increase, and imposition of hundreds of impermissibly high late charges.[27]

The court finds no triable issue of fact as to respondents' repeated failures to comply with their legal obligation not to increase rents within the first year of a lease term. Similarly, the court finds no triable issue of fact as to respondents' repeated failures to comply with their legal obligation to refrain from increasing rents outside prescribed lease renewal periods in 2021 and 2022, on 24 occasions. Respondents do not contest the facts as to those actions, and the court rejects respondents' arguments in mitigation, which are centered upon respondents' position that the law is overly burdensome. Respondents are bound by the law as it exists. Respondents acknowledge the existence and applicability of the law to their business yet continue to operate in violation of it. Respondents have failed to demonstrate that it is impossible to comply with the law and conduct timely reviews of the leases for each of its 324 lots.

The court finds no triable issue of fact as to respondents' repeated failures to include required tenant rights riders on leases offered to potential tenants. Again, respondents admit their failures and offer arguments in mitigation. Respondents' conduct is not somehow ameliorated by their communications with petitioner following the discontinuance of a prior action against them pursuant to Section 63(12) of the Executive Law. Respondents are required to ensure its own adequate staffing and review of leases offered to comply with its obligations under the law.

As to respondents' imposition of a garbage fee with improper notice to tenants, the court finds no triable issue of fact exists. Again, respondents do not contest the illegal imposition of such fees without required notice to tenants, instead arguing in mitigation that tipping fees increased leading to increases in trash fees charged to others throughout the County. Nonetheless, respondents are required to comply with the notice provisions at law and failed to do so.

[27] Respondents have demonstrated remediation of their failure to credit a veteran's tax exemptions over a period of years; while the court finds that respondents have repeatedly incorrectly addressed that exemption, the court excludes this portion of petitioner's allegation from its analysis.

The court finds no triable issue of fact as to respondents' imposition of excessive late fees to tenants approximately 700 times between 2019 and 2023. Respondents admit their conduct and argue that they refunded substantially all of the fees, failing to raise any issue of fact as to the original imposition of such fees.

Petitioner has met its burden on this summary proceeding as to the allegations of its first cause of action.

Petitioner's Second and Third Causes of Action

Upon examination of all of the papers, including all of the arguments of respondents, the court finds no triable issue of fact exists as to respondents' repeated and persistent violations of the warranty of habitability in violation of the law, as well as violations of the Sanitary Code, Town of Fallsburg Code and Department of Health regulations with respect to the water and sewage conditions of the mobile home park between the years of 2019 and 2023.

As a result of respondents' failure to address serious deficiencies in the condition of the water and sewage systems extant at the park, respondents failed to ensure that that the 342 premises offered for rent by them and actually occupied by hundreds of residents were fit for human habitation, fit for the uses reasonably intended by the parties of the leases offered by respondents to their tenants, and subjected residents to dangerous or hazardous conditions, or conditions that would be dangerous, hazardous or detrimental to their lives, health or safety.

Respondents do not contest the accuracy of the affidavit of New York State Department of Health District Director Kalter as to the serious and ongoing deficiencies in the park's water systems or the numerous violations of the Sanitary Code issued to the park over the past several years. Moreover, respondents do not contest observations of the Department of Health and Town of Fallsburg of sewage issues resulting in repeated untreated sewage on the ground surface of the park and other unsafe conditions surrounding septic tanks. By their resident on-site manager, respondents concede that they have failed to live up to the promises made by them in a previous stipulation with the Department of Health but aver that they have attempted to perform certain upgrades to their water and waste disposal systems. Respondents further allege that their tenants could purchase their own water instead of relying upon the warranty of habitability to provide consumable water. Respondents have not demonstrated the existence of any material triable issue of fact as to the years of their illegality in falling far short of their obligations pursuant to the warranty of habitability as set forth herein, and petitioners have met their burden on these causes of action.[28,29]

[28] It should be noted that the court further finds that responsibility for violations described by petitioner as relating to "unsafe buildings and a requirement of building permits" do not fall squarely upon respondents, as various of those violations issued relate to conditions upon tenants' plots that may well have been created by those tenants.

[29] Petitioner has demonstrated the inadequacy of lighting conditions, which is not contested by respondents except to the extent that they allege the condition has now been remediated. NYSCEF 79, p. 2.

Petitioner's Fourth Cause of Action

Petitioner has demonstrated that respondents raised rents on occasion by more than the six percent in violation of Real Property Law § 233-b, and respondents have failed to demonstrate the existence of any material issue of fact on this issue. NYSEF 40; NYSEF 39. Therefore, petitioners have met their burden on this fourth cause of action.

Petitioner's Fifth Cause of Action

Petitioner has demonstrated that respondents have been uniformly imposing a three percent surcharge on all credit card transactions processed. NYSEF 52; NYSEF 53. While respondents have not demonstrated by any documentary evidence that the surcharge is exactly what is charged by the processor, as permitted by Section 518(1) of the General Business Law, petitioner narrows its argument to the lack of required signage, and not to the money amount of the fees charged. NYSCEF 96, ¶¶ 25-27.

Section 518(1) of the General Business Law provides that seller "shall clearly and conspicuously post the total price for using a credit card in such transaction, inclusive of surcharge," and that the "final sales price of any such sales transaction, inclusive of such surcharge, shall not amount to a price greater than the posted price for such sales transaction." NY GBL § 518(1).

Respondents argue in mitigation that the signage requirement is too onerous for it to comply, though petitioner notes that a chart demonstrating first the various rents charged throughout the park, in a column headed "cash/check/money order payment" and the same figures plus the credit card surcharge imposes in a column headed "credit/debit payment" would meet this burden.

Here, again, respondents are required to comply with the notice provisions at law and have failed to do so, without raising any material issue of fact on this cause of action; therefore, petitioners have met their burden on this fifth cause of action.

Petitioner's Sixth Cause of Action

Petitioner has demonstrated that there no triable issue of fact exists as to whether its leases contain illegal clauses; respondents concede many of the illegalities alleged. Notwithstanding the severability clauses of the leases which void only the illegal clauses thereof (NYSCEF 18, ¶26; *Jazilek v Abart Holdings, LLC*, 899 NYS2d 198, 200 [1st Dept 2010]), petitioners have met their burden on this sixth cause of action. Moreover, respondents' allegation that certain illegal provisions contained in the leases serve as deterrents from certain tenant actions aggravates the illegality, suggesting respondents' use of illegal representations within its leases, knowing their unenforceability, was intentionally undertaken. Again, the court notes that it is respondents' obligation to ensure its own adequate staffing and review of leases. Petitioner has met its burden on this cause of action.

VIII. Injunctive Relief, Damages and Penalties

Petitioner moves for various forms of relief on the causes of action sustained herein.

First, petitioner moves for an order directing respondents to perform certain actions to repair or replace their water distribution and septic systems, perform certain lighting, electrical and road repairs and upgrades, eliminate hazards and immediately correct all outstanding violations.

Next, petitioner moves for an order directing respondents to remedy its impermissible rent and fee administration by paying restitution and disgorgement totaling $2,317,627.65, including: (i) $945 in rent credits for improper late fees in excess of three percent of monthly rent that have not yet been refunded; (ii) $1,649.54 in rent credits for legal fees or certified mail fees not awarded to respondents by a court but charged to residents; (iii) $9,198.80 in rental credits for improperly noticed credit card surcharges; (iv) refunds of $6,350 in tax exemption credits; (v) the return of all garbage collection fees imposed after improper notice separate from lease offers, totaling $157,249.50; (vi) retroactively adjusting improper rent increases in excess of six percent (NY RPL § 233-b), totaling $7,737.91; (vii) rental credits or refunds to former tenants for rent increases imposed more than once in a twelve-month period (NY RPL § 233(x)), totaling $15,049.50; (viii) retroactive adjustments of improperly increased rents before initial twelve month rental periods (NY RPL § 233(e)(1)), totaling $13,827.75; and (ix) retroactive adjustments of rent for combined violations of the aforesaid restrictions on rental increases totaling $9,640.34.[30]

Third, petitioner moves for an order directing respondents to adopt specific corrective policy changes to conform with the law, including petitioner's review and approval of respondents' model lease and revised covenants, tracking of lease renewal periods and riders, ensuring permissible rental increases, hiring of a professional property management entity, creating a park complaint system that includes compensation for violations of the warranty of habitability, communications through mail and email, compensation to residents for out-of-pocket expenses caused by water system failures, and providing recycling services.

Fourth, petitioner moves for an order appointing an independent monitor to oversee and report on respondents' compliance with the obligations imposed by the court, to be compensated by respondents, and to include monthly reports on improvements and compliance.

Fifth, petitioner moves for an order directing the posting by respondents of a bond for compliance with the obligations imposed by the court.

Sixth, petitioner moves for an order directing restitution in the amount of fifty percent of rents paid for the twenty-three-month period for which there existed water outages and boil water orders, totaling $2,094,175.73.

Seventh, petitioner moves to permanently enjoin respondents from further specified illegal acts.

Eighth, petitioner moves to permanently enjoin respondents from retaliation against residents in violation of RPL § 223-b.

Ninth and tenth, petitioner moves for the assessment of a civil penalty of $27,500 for certain of respondents' acts in violation of Sections 350-d and 518 of the General Business Law, and up to $4,500 for each of respondents' 450 violations of the aforesaid Section 518.

[30] The amounts set forth herein by petitioner total $212,648.34, not $2,317,627.65, without explanation in the petition for the over $2,000,000.00 discrepancy.

Eleventh, petitioner moves for assessment of a maximum civil penalty of $263,000 payable to the manufactured home cooperative fund of the State of New York for 1,369 violations of Section 233 of the Real Property Law.

Twelfth, petitioner moves for assessment of a civil penalty of up to $3,000 payable to the manufactured home cooperative fund of the State of New York for respondents' six violations of Section 233(w) of the Real Property Law.

Thirteenth, petitioner moves the court to retain jurisdiction over this matter to ensure compliance with its orders.

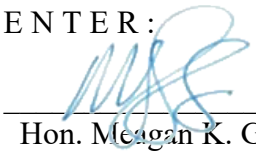
Fourteenth, petitioner moves for an award of costs and disbursements totaling $6,000.

The court finds, pursuant to Section 409(a) of the Civil Practice Law and Rules that more submissions on the issues of sanctions, restitution, penalties and other remedies sought is necessary. The court will schedule a conference to fix a briefing date on these limited issues forthwith.

The foregoing constitutes the Decision and Order of the Court. The signing of this decision and order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: October 14, 2025
Monticello, New York

E N T E R :



Hon. Meagan K. Galligan, JSC

Pursuant to CPLR § 5513, an appeal as of right must be taken within thirty (30) days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty (30) days thereof.