

**New York City Housing Authority, Petitioner v. Wilfredo Morales, Sr.
Respondent-Tenant, L&T 14410/14
L&T 14410/14**

**Civil Court, New York County, Housing Part N
NYLJ Publication Date: Jul 22, 2015**

Cite as: New York City Housing Authority v. Morales, L&T 14410/14, NYLJ 1202732550335, at *1 (Civ., NY, Decided July 9, 2015)

CASENAME

New York City Housing Authority, Petitioner v. Wilfredo Morales, Sr.

Respondent-Tenant

L&T 14410/14

Judge Phyllis Saxe

[Read Summary of Decision](#)

Decided: July 9, 2015

ATTORNEYS

For Petitioner-landlord: Harley Diamond, Esq., New York City Housing Authority, Law Department.

For Respondent-tenant: Shantonu Basu, of Counsel to NMIC Legal Services.

DECISION/ORDER

*1

Petitioner, New York City Housing Authority, commenced this illegal use proceeding against Wilfredo Morales Sr. to recover possession of the premises pursuant to RPAPL 711(5) and Real Property Law §231(1).

A trial was conducted and the following facts were adduced. Respondent-Morales is an elderly, disabled tenant of 3170 Broadway, Apartment 3G in New York City which is a public housing development of New York City Housing Authority. Morales lives at this address with his two sons, Wilfredo Morales, Jr. And Gilberto Morales. A third son, Ernesto Morales, was present when the search warrant was executed on January 30, 2014. However, Mr. Morales's credible and uncontradicted testimony was that Ernesto does not live with him and was only visiting his father on the day in question because it was Mr. Morales's birthday. Mr. Morales presented uncontradicted testimony that he is permanently disabled due to back pain and other ailment and receives Social Security benefits because of his disability.

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Petitioner called two witnesses, Officer Colon and the Housing Representative. Petitioner introduced five exhibits that were relevant to the case at bar. These exhibits were: 1) the search warrant; 2) the arrest record for Ernesto Morales; 3) vouchers for items recovered; 4) a lab report; and 5) certificates of disposition for Ernesto and Gilberto.

The amount of marijuana that was recovered from the premises was about 3 ounces. In addition to this, police recovered a small digital scale and \$1916.00 in cash. These items were recovered by Officer Colon. Officer Colon testified on cross-examination that these items were not recovered in plain view and were small enough to fit into a book bag. The larger amount of marijuana (about 52 grams) was recovered in the springs of the couch. The other, smaller amount of marijuana was recovered within a container in a dresser draw.

Mr. Morales testified credibly that he had never seen drugs in his apartment before. His testimony was bolstered by one of Petitioner's own Housing Representatives who testified that she had known Mr. Morales for several years and described Mr. Morales as a decent person.

As relevant here, RPAPL 711(5) allows a landlord to recover possession of a residential apartment where "[t]he premises, or any part thereof, are used or occupied for any illegal trade or manufacture, or other illegal business." In such a proceeding to recover possession under RPAPL 711(5) and RPL §231 "the landlord has the burden to prove by a preponderance of the credible evidence that the subject premises were used to facilitate the trade in drugs" (New York City Hous. Auth. v. Williams, 28 Misc 3d 1223[A] [NY County Civ Ct 2010]). "Personal use of illegal drugs within the subject premises, even if habitual and customary, does not constitute an illegal use of the premises for purposes of RPL §231 and RPAPL 711(5)" (Normandy Realty Inc. v. Boyer, 2Misc. 3d 407 [NY County 2003]). The landlord must establish that the presence of drugs was, at minimum, related to a commercial purpose. When a proceeding is brought under *3 RPL §231 and RPAPL 711(5) New York law also requires that petitioner show that the respondent knew or should have known of the illegal activity in the apartment. NYCHA v. Grillasca 18 Misc. 3d 524 (NY County 2007).

Petitioner's entire theory-namely that Mr. Morales' apartment was used as a focal point for manufacture or trade in illegal drugs-is belied by the light penalties that were imposed on Mr. Morales' sons. Both sons pled to minor drug related charges. Gilberto pled to violation of §221.15 of the penal law, which is criminal possession

of marijuana in the fourth degree, which is a misdemeanor, had to complete a few days of community service and had his driver's license suspended for six months. Ernesto pled to violation of §221.05 of the penal law, which is a violation and had to pay a fine of \$25.00.

Petitioner has failed to prove that respondent knew or should have known that the apartment was being used for the sale of drugs. The drugs found in the apartment were not within plain view. In fact the police officer found the majority of the drugs after turning over the couch, something the respondent would not have been unable to do based on his disability.

Accordingly, based on the information presented at trial this proceeding is dismissed.

This constitutes the decision and order of the court.

Dated: July 9, 2015

New York, New York