

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

DAVA WEINSTEIN and  
DOROTHY CALVINI,

Plaintiffs,

v.

WEINREB MANAGEMENT LLC,  
JACOB WEINREB, and SABINA WEINREB,

Defendants.

Index No. \_\_\_\_\_

**Complaint**

Plaintiffs DAVA WEINSTEIN and DOROTHY CALVANI (“Plaintiffs”), a married couple, by their attorneys, Lambda Legal Defense and Education Fund, Inc. and Kramer Levin Naftalis & Frankel LLP, for their complaint allege as follows:

**Preliminary Statement**

1. Plaintiffs Dava Weinstein (“Dava”) and Dorothy Calvani (“Dorothy”) are a married lesbian couple who have been in a loving, committed relationship for 37 years. Plaintiffs bring this action to challenge the egregious discrimination they have experienced at the hands of the Defendants, who have defied the explicit mandate of New York law that married same-sex couples and different-sex couples be treated equally for all purposes, including under New York’s housing protections.

2. Since 1977, Dava and Dorothy have lived together in a rent-stabilized apartment presently owned by Defendant Sabina Weinreb, and managed by Defendant Weinreb Management LLC, the president and managing partner of which is Defendant Jacob Weinreb (“Defendants”). Dava has been listed as a tenant on the lease throughout that time. Dorothy has never been listed as a co-tenant.

3. On March 17, 2011, Dava and Dorothy entered a legal and valid marriage in Iowa.

4. In January 2013, at the first opportunity to renew the lease after their marriage, Dava requested that Defendants add Dorothy to the lease as a co-tenant. Under the New York State Rent Stabilization Code (“RSC”), 9 N.Y.C.R.R. § 2522.5(g)(1), a tenant has the right to have his or her spouse added to the lease or any renewal thereof as an additional tenant when that spouse resides in the housing accommodation as his or her primary residence. This includes same-sex spouses like Dava and Dorothy.

5. Dava and Dorothy’s marriage in Iowa was validly entered and is therefore unquestionably recognized by the State of New York. Pursuant to longstanding comity principles, New York has consistently recognized the lawful marriages of same-sex couples entered in other jurisdictions. *See In re Estate of Ranfile*, 81 A.D.3d 566 (1st Dep’t 2011); *Martinez v. Cnty. of Monroe*, 50 A.D.3d 189 (4th Dep’t 2008); *see also United States v. Windsor*, 133 S.Ct. 2675, 2692 (2013).

6. New York’s recognition of the marriages of same-sex couples was codified in 2011, when the New York Legislature passed and the Governor signed into law the Marriage Equality Act (“MEA”), Chs. 95, 96 of the Laws of 2011. The MEA, which took effect on July 24, 2011, amended the Domestic Relations Law to require, among other things, that marriage licenses be granted to same-sex couples and different-sex couples on equal terms, and further provided that all marriages, whether between same- or different-sex couples, must be treated equally under the laws of New York.

7. Flagrantly disregarding Dava and Dorothy's marriage and their legal rights as spouses, Defendants denied Dava's request to add Dorothy to the lease of the apartment solely on the grounds that they are a same-sex couple.

8. Dava and Dorothy have brought this suit because Defendants refuse to recognize Dava and Dorothy's legal and valid marriage even though the law unequivocally requires Defendants to do so. Plaintiffs seek: (i) a declaratory judgment as authorized by C.P.L.R. § 3001 that Plaintiffs are entitled to the protections afforded married couples under the RSC, 9 N.Y.C.R.R. § 2522.5(g)(1); (ii) a declaratory judgment as authorized by C.P.L.R. § 3001 that the actions, conduct, and practices of Defendants violate the prohibitions against sexual orientation discrimination in housing in the New York State Human Rights Law, N.Y. Exec. § 297(9) and in the New York City Human Rights Law, N.Y.C. Admin. Code § 8-502(a); (iii) an injunction and order permanently restraining Defendants, and all persons acting in concert or participation with any Defendant, or under any Defendant's supervision, direction, or control, from engaging in any actions, conduct, and practices that violate the Plaintiffs' rights as a married couple under the RSC or the MEA or that discriminate against the Plaintiffs based upon their sexual orientation in violation of the New York State Human Rights Law or the New York City Human Rights Law; (iv) an order directing Defendants to comply with the RSC, 9 N.Y.C.R.R. § 2522.5(g)(1), and add Dorothy Calvani as a co-tenant to the lease of [REDACTED] the primary residence she shares with her spouse, Dava Weinstein; (v) an award of damages to compensate Plaintiffs for any and all losses they have suffered as a result of Defendants' conduct alleged in this Complaint; (vi) an award of civil fines to the fullest extent permitted by law, including but not

limited to civil fines allowable under N.Y. Exec. § 297(4)(c); (vii) an award of punitive damages; (viii) an award of Plaintiffs' reasonable costs and attorneys' fees to the fullest extent permitted by law, including but not limited to costs and attorneys' fees allowable under N.Y. Exec. § 297(10) and N.Y.C. Admin. Code 8-502(f); and (ix) such other and further relief as the Court may deem just and proper.

### **The Parties**

9. Plaintiffs Dava Weinstein, age 68, and Dorothy Calvani, age 64, a married couple, have been in a loving, committed relationship for 37 years. Since 1977, they have lived together in [REDACTED] Manhattan as their primary residence.

10. Dava and Dorothy have been each other's family for nearly four decades. They have built a life together based on love, shared interests, and a mutual desire to give back to the community, and have sought to protect their relationship to the fullest extent by getting married.

11. Defendant Weinreb Management LLC ("Weinreb Management") is a private corporation, duly organized under the laws of the State of New York, and having its headquarters at 276 Riverside Drive in Manhattan, New York. Weinreb Management manages [REDACTED], where Dava and Dorothy reside, along with other apartments in the same building.

12. On information and belief, Defendant Jacob Weinreb is the president and managing partner of Weinreb Management. On information and belief, Mr. Weinreb is also an attorney licensed in New York. Mr. Weinreb is named as a Defendant in his individual capacity.

13. Defendant Sabina Weinreb owns [REDACTED] where Dava and Dorothy reside. On information and belief, Sabina Weinreb is also a partner of Weinreb Management. Ms. Weinreb is named as a Defendant in her individual capacity.

### **The Law**

14. Section 2522.5(g)(1) of Title 9 of the Rules and Regulations of the State of New York states in relevant part:

The lease provided to the tenant by the owner pursuant to subdivision (b) of this section shall be on the same terms and conditions as the expired lease.... Notwithstanding the foregoing, the tenant shall have the right to have his or her spouse added to the lease or any renewal thereof as an additional tenant where said spouse resides in the housing accommodation as his or her primary residence.

15. Section 296(5)(a)(2) of the New York State Human Rights Law states in relevant part:

It shall be an unlawful discriminatory practice for the owner, ... or other person having the right to sell, rent or lease a housing accommodation . . . (2) To discriminate against any person because of ... sexual orientation ... in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

16. Section 8-107(5)(a)(2) of the New York City Human Rights Law states in relevant part:

It shall be an unlawful discriminatory practice for the owner, ... or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation . . . (2) To discriminate against any person because of such person's actual or perceived ... sexual orientation ... in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith.

17. Section 10(a) of the New York State Domestic Relations Law states in relevant part:

[no] government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex.

**Facts Giving Rise to the Action**

18. Dava has lived at [REDACTED] in Manhattan since 1972, when she rented her first apartment in the building.

19. In 1973, Dava first met Dorothy.

20. In 1974, Dava moved into [REDACTED] and she has lived in that same apartment (the “Apartment”) through the present time. She has been named as a tenant on every lease for the Apartment since she moved in.

21. Sabina Weinreb is the owner of the Apartment.

22. Weinreb Management or one of its predecessors has been the landlord or landlord’s agent of the Apartment since Dava has been a tenant there, and is listed as the Owner’s Agent on the current lease.

23. The Apartment is rent-stabilized and governed by the RSC.

24. In 1976, Dava and Dorothy became a committed couple.

25. On November 23, 1977, Dorothy moved into the Apartment with Dava. Since that time, the Apartment has been their primary residence. Dorothy has not been listed as a co-tenant on the lease.

26. On March 11, 1993, Dava and Dorothy registered as Domestic Partners in New York City. They were among the first couples in New York City to register for a domestic partnership.

27. Upon information and belief, Defendant Weinreb Management, through its partners and staff, has been aware since 1977 that Dava and Dorothy have lived together in the Apartment, and, at the very least, Defendants Weinreb Management and Jacob Weinreb have known this fact since at least 2001, when the couple started making their monthly rent payments to Defendant Weinreb Management with checks listing both of their names and drawn from their joint checking account.

28. In 2008, after having accepted rent payments by joint check for approximately seven years, Defendants rejected a check from Dava's individual account on which she had written in Dorothy's name, and demanded that Dava submit an affidavit setting forth the name and relationship of all persons living in the Apartment. Dava submitted an affidavit listing Dorothy as her Domestic Partner living in the Apartment and enclosing a copy of their Certificate of Domestic Partnership.

29. On March 17, 2011, Dava and Dorothy visited Iowa and validly married one another there. They had promised each other that they would get married by the earlier of either their thirty-fifth anniversary or whenever New York allowed same-sex couples to marry. Their thirty-fifth anniversary came first, and so Dava and Dorothy married in Iowa.

30. On October 29, 2011 Dava and Dorothy celebrated their nuptials in New York with their friends and family.

31. In December of 2012, Dava received a renewal lease for the Apartment from Defendant Weinreb Management.

32. By letter to Defendants Jacob Weinreb and Weinreb Management dated January 2, 2013, Dava requested that Dorothy be added to her lease as a co-tenant. Dava returned the renewal lease to Defendant Weinreb Management with both her signature and Dorothy's, along with a copy of their marriage certificate.

33. On January 29, 2013, Dava received a letter from Defendants Jacob Weinreb and Weinreb Management incorrectly stating that New York State does not recognize Dorothy as Dava's spouse. Defendants included with the letter a new renewal lease with instructions that Dava "execute [it] in [her] name alone without making any changes or additions."

34. On January 31, 2013, Dava sent an email to the offices of Defendant Weinreb Management, explaining that "people of the same sex can now marry in the State of New York" and that the rights afforded by their marriage "are the same as [for] marriages of persons of opposite sex." Dava included in that email a link to and excerpt from the Frequently Asked Questions about the Marriage Equality Act posted by the New York Department of Health on its website at [http://www.health.ny.gov/vital\\_records/marriage\\_equality\\_frequently\\_asked\\_questions.htm](http://www.health.ny.gov/vital_records/marriage_equality_frequently_asked_questions.htm). The excerpt from the website read:

On June 24, 2011, Governor Andrew M. Cuomo signed into law the Marriage Equality Act. The Law amends New York's Domestic Relations Law in the following ways:

- Applications for a marriage license shall be granted regardless of whether the parties are of the same or a different sex;
- A marriage that is otherwise valid shall be valid regardless of whether the parties to the marriage are of the same or a different sex;

- No government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage shall differ based on the parties to the marriage being of the same sex or a different sex;
- No religious entity, benevolent organization or not-for-profit corporation that is operated, supervised or controlled by a religious entity, or its employees, can be required to perform marriage ceremonies or provide its facilities for marriage ceremonies, consistent with its religious principles.

35. After not receiving any response for nearly a month, Dava phoned the offices of Defendant Weinreb Management on February 27, 2013 to inquire about the status of her renewal lease. She was told that Defendants still refused to add Dorothy as a co-tenant on the lease.

36. On March 15, 2013, Lambda Legal Defense and Education Fund (“Lambda Legal”) sent a letter to Defendants Jacob Weinreb and Weinreb Management addressing New York law requiring recognition of Dava and Dorothy’s marriage. The letter explained that New York recognizes the valid and legal marriages of same-sex couples and requires that same-sex spouses be treated the same as different-sex spouses for all purposes.

37. On March 21, 2013, with the deadline for renewing the lease rapidly approaching, Dava mailed Defendants a copy of the original renewal lease, signed only by her, to take effect on April 1, 2013. In the cover letter accompanying the signed copy of the renewal lease, Dava wrote that she was “returning it in order to ensure a smooth renewal, but in no way am I waiving my right to have my spouse, Dorothy Calvani, added to lease as co-tenant.” She also provided another copy of the letter from Lambda Legal along with the cover letter and renewal lease.

38. On March 28, 2013, having received no response to that letter, a member of Lambda Legal's staff phoned the offices of Defendant Weinreb Management to inquire about the status of Dava's lease. Defendant Jacob Weinreb informed Lambda Legal that he was refusing to add Dorothy as a co-tenant to Dava's lease and was leaving the lease as it was. Mr. Weinreb confirmed that he was refusing to add Dava's spouse to the lease.

### **Claims For Relief**

#### **First Claim**

#### **(Action under C.P.L.R. § 3001 for Declaratory Judgment that Defendants Are Violating New York State's Rent Stabilization Laws)**

39. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this Complaint.

40. An actual, justiciable controversy exists between Plaintiffs and Defendants within the meaning of C.P.L.R. § 3001.

41. Under the RSC, 9 N.Y.C.R.R. § 2522.5(g)(1), a tenant shall have the right to have his or her spouse (including a same-sex spouse) added to the lease or any renewal thereof as an additional tenant if the spouse resides in the housing accommodation as his or her primary residence.

42. Under the plain terms of the MEA, N.Y. Dom. Rel. § 10-a, the right of a tenant to add a spouse as a co-tenant on a lease applies equally to all spouses, whether same- or different-sex.

43. Even though Dava and Dorothy are legally married and have resided together in the Apartment as their primary residence for more than thirty-five years,

Defendants have refused to recognize Dorothy as Dava's spouse and to add her as a co-tenant on the lease.

44. Because Defendants are in clear violation of this law, Plaintiffs are entitled to a declaratory judgment as authorized by C.P.L.R. § 3001 that Plaintiffs are entitled to – and Defendants must comply with – the statutory protections afforded married couples by the New York State Rent Stabilization Code, 9 N.Y.C.R.R. § 2522.5(g)(1).

### **Second Claim**

#### **(Action for Discrimination in Violation of New York State Human Rights Law)**

45. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this Complaint.

46. Defendants discriminated against Plaintiffs on the basis of sexual orientation in violation of the New York State Human Rights Law by refusing, in direct defiance of the mandates of the RSC and MEA, to add Dorothy as a co-tenant to the lease of the Apartment which she shares as a primary residence with her spouse, Dava. The sole basis for Defendants' refusal to recognize Dorothy as a spouse and to add Dorothy to Dava's lease is the fact that they are a same-sex couple.

47. As a direct and proximate result of Defendants' unlawful and discriminatory conduct, Plaintiffs were denied on the basis of their sexual orientation the right to equal terms, conditions and/or privileges in the rental of the Apartment, in violation of the New York State Human Rights Law.

48. Plaintiffs have suffered and continue to suffer harm for which they are entitled to an award of monetary damages and other relief.

49. Defendants' unlawful and discriminatory actions were malicious, willful, and wanton, and further show a complete and deliberate indifference to, and conscious disregard for, Plaintiffs' rights under the New York State Human Rights Law. Therefore, Defendants should be ordered to pay civil fines and penalties in an amount sufficient to punish Defendants or deter them and others from like conduct in the future.

50. Because Defendants' unlawful and discriminatory actions were malicious, willful, and wanton, and further show a complete and deliberate indifference to, and conscious disregard for, Plaintiffs' rights under the New York State Human Rights Law, Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish Defendants or deter them and others from like conduct in the future.

51. Plaintiffs are also entitled to an award of their reasonable costs and attorneys' fees to the fullest extent permitted by law, including but not limited to costs and attorneys' fees allowable under N.Y. Exec. § 297 (10).

### **Third Claim**

#### **(Action for Discrimination in Violation of New York City Human Rights Law)**

52. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this Complaint.

53. By the actions described above, among others, Defendants discriminated against Plaintiffs on the basis of their sexual orientation in violation of the New York City Human Rights Law because Defendants refused, in direct defiance of the mandates of the RSC and MEA, to add Dorothy as a co-tenant to the lease of the Apartment that she shares as a primary residence with her spouse, Dava. The sole basis for Defendants'

refusal to recognize Dorothy as a spouse and to add Dorothy to Dava's lease is the fact that they are a same-sex couple.

54. As a direct and proximate result of Defendants' unlawful and discriminatory conduct, Plaintiffs were denied, on the basis of their sexual orientation, the right to equal terms, conditions and/or privileges in the rental of the Apartment, in violation of the New York City Human Rights Law.

55. Plaintiffs have suffered and continue to suffer harm for which they are entitled to an award of monetary damages and other relief.

56. Because Defendants' unlawful and discriminatory actions were malicious, willful, and wanton, and further show a complete and deliberate indifference to, and conscious disregard for, Plaintiffs' rights under the New York City Human Rights Law, Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish Defendants or deter them and others from like conduct in the future.

57. Plaintiffs are also entitled to an award of their reasonable costs and attorneys' fees to the fullest extent permitted by law, including but not limited to costs and attorneys' fees allowable under N.Y.C. Administrative Code 8-502(f).

### **Prayer For Relief**

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in their favor and against Defendants for the following relief:

- (i) a declaratory judgment as authorized by C.P.L.R. § 3001 that the actions, conduct, and practices of Defendants violate the New York State Rent Stabilization Code, 9 N.Y.C.R.R. § 2522.5(g)(1);

- (ii) a declaratory judgment as authorized by C.P.L.R. § 3001 that the actions, conduct, and practices of Defendants violate the New York State Human Rights Law and New York City Human Rights Law;
  - (iii) an injunction and order permanently restraining Defendants, and all persons acting in concert or participation with any Defendant or under any Defendant's supervision, direction, or control, from engaging in any actions, conduct, and practices that violate the Plaintiffs' rights as a married couple under the RSC or the MEA or that discriminate against the Plaintiffs based upon their sexual orientation in violation of the New York State Human Rights Law or the New York City Human Rights Law;
  - (iv) an order directing Defendants to comply with New York State Rent Stabilization Code 9 N.Y.C.R.R. § 2522.5(g)(1) and add Dorothy Calvani as a co-tenant to the lease of [REDACTED], the primary residence she shares with her spouse, Dava Weinstein;
  - (v) an award of damages to compensate Plaintiffs for any and all losses they have suffered as a result of Defendants' conduct alleged in this Complaint;
  - (vi) an award of civil fines to the fullest extent permitted by law, including but not limited to civil fines allowable under N.Y. Exec. § 297(4)(c);
  - (vii) an award of punitive damages;
  - (viii) an award of Plaintiffs' reasonable costs and attorneys' fees to the fullest extent permitted by law, including but not limited to costs and attorneys' fees allowable under N.Y. Exec. § 297 (10) and N.Y.C. Administrative Code 8-502(f);
- and

(ix) such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
October 2, 2013

Respectfully submitted,

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