

Matter of Dias

OATH Index No. 1436/16, mem. dec. (May 16, 2016)
[Loft Bd. Dkt. No. PO-0023; 25 Jay Street, Brooklyn, N.Y.]

Respondent's motion to depose petitioner denied. Depositions are an extraordinary relief not generally available in administrative proceedings. Petitioner has already provided documentation in discovery and respondent will have an opportunity to cross-examine petitioner at the trial.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CLAUDIA DIAS
Petitioner

MEMORANDUM DECISION

ASTRID B. GLOADE, *Administrative Law Judge*

This is a proceeding referred by the Loft Board in which the petitioner, Claudia Dias, seeks a finding that she is entitled to succession rights as the protected occupant of unit 501 a/k/a 5B (the "Unit") at 25 Jay Street, Brooklyn, New York (the "Building"). Petitioner contends that the Building is registered as an Interim Multiple Dwelling ("IMD"), and the Unit is a registered IMD unit. She alleges that she is a family member of the former protected occupant, her deceased partner Ross Von Burg, and that they shared the emotional and financial commitment and interdependence necessary to entitle her to succession rights to the protected unit pursuant to 29 RCNY section 2-08.1(c)(3).

During a March 22, 2016 conference, Judge Alessandra Zoragniotti, denied respondent owner's oral request to depose petitioner, established a discovery schedule, and instructed the parties to direct discovery motions to my attention. On April 21, 2016, respondent submitted an application for leave to take petitioner's deposition ("Resp. Mot."). Petitioner submitted her opposition to the application on May 5, 2016 ("Pet. Opp.").

Under OATH's rules of practice, depositions are "extraordinary discovery devices" that are permissible upon motion "for good cause shown." 48 RCNY § 1-33(b) (Lexis 2015). This tribunal has consistently held that the threshold for permitting depositions is stricter than the

“material and necessary” standard that is applicable to “as of right” discovery devices, such as requests for the production of documents. *Matter of Kushner*, OATH Index Nos. 2736/09 & 2737/09 at 4 (June 11, 2009); *Human Resources Admin. v. Ben-Siyon Man of Jerusalem*, OATH Index No. 790/91, mem. dec. at 9 (Nov. 12, 1991). This tribunal must consider “the burden, costs and time associated with fulfilling a discovery demand . . . when determining whether to authorize discovery which is not as of right” *Matter of Prince*, OATH Index No. 1506/95, mem. dec. at 2 (Sept. 12, 1995).

Thus, the party seeking permission to take a deposition must show a “special heightened need” before an extraordinary discovery device such as a deposition will be authorized. *Kushner*, OATH 2736/09 & 2737/09 at 4; *Matter of Tenants of 223 15th Street*, OATH Index No. 2399/08, mem. dec. at 2 (Oct. 17, 2008); *Tenants of 51-55 West 28th Street v. Jo-Fra Properties, Inc.*, OATH Index No. 1019/05, mem. dec. at 2 (July 19, 2005) (citing *Conflicts of Interest Bd. v. Katsorhis*, OATH Index No. 1531/97, mem. dec. at 11 (June 27, 1997)). However, even where a discovery request is properly within the requirements of the rule, discovery related motions “are addressed to the discretion of the administrative law judge.” 48 RCNY § 1-33(d) (Lexis 2015); *see also Fire Dep’t v. Schmidt*, OATH Index No. 1760/05, mem. dec. at 1 (May 19, 2005); *Dep’t of Buildings v. DeAcetis*, OATH Index No. 1440/02, mem. dec. at 2 (June 10, 2002).

Respondent wishes to depose petitioner in order to ascertain “the specifics of the nature of the relationship between the deceased former tenant . . . and the [p]etitioner.” Resp. Mot. at 4. Respondent argues that the documents submitted by petitioner during discovery “do not lend themselves to disclosing personal feelings or information concerning whether two people shared meals, went out together, enjoyed movies together, exchanged birthday gifts, and things of that nature.” *Id.*

Respondent has failed to assert or establish a special need for taking the deposition that outweighs and justifies the associated costs, burdens, and delays. *See Business Integrity Comm’n v. D&D Salvage Corp.*, OATH Index No. 1913/14, mem. dec. at 4 (May 2, 2014); *Fire Dep’t v. Callan*, OATH Index No. 1733/05, mem. dec. at 2 (May 19, 2005). First, respondent relies on inapplicable civil court case law, rather than administrative proceedings or OATH decisions, in support of its motion to depose petitioner. Unlike the “special heightened need” standard used in administrative proceedings, a party in a civil case may generally depose the opposing party after

the action is commenced. *See* CPLR § 3106 (Lexis 2016); *see also Kushner*, OATH 2736/09 & 2737/09 at 5 (“discovery orders made in actions filed in civil court, rather than administrative proceedings . . . [are] subject to the [CPLR] under which depositions are routinely permitted.”).

Furthermore, in the course of discovery, petitioner produced documents which may aid respondent in determining whether there was an emotional and financial interdependence between petitioner and Mr. Von Burg. Pet. Opp. at 4. Finally, respondent will have an opportunity at trial to cross-examine petitioner and her witnesses about the documentary evidence and the particulars of her relationship with Mr. Von Burg. Accordingly, respondent’s motion is denied.

The trial in this matter will proceed as scheduled on June 16 and July 6, 2016, commencing at 9:30 a.m. each day.

Astrid B. Gloade
Administrative Law Judge

May 16, 2016

APPEARANCES:

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