



COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA)
REQUEST FOR APPEAL OF PETITION HEARING DECISION

Any Party to a petition may appeal the Decision by serving a written Request for Appeal on all applicable parties and then filing a copy of the completed form with the City within ten (10) calendar days after the mailing of the Petition Decision.

I hereby Appeal the Hearing Officer's Decision for the following Petition to the Rental Housing Committee:

Petition Case Number: 20210001
Name of Hearing Officer: Barbara M. Anscher Decision Date: April 17, 2021

For the following Property Address, including Unit Number(s), if applicable:

240 Monroe Drive, Mountain View 94040 All units
(Street Number) (Street Name) (Unit Number)

Person Appealing the Hearing Officer Decision (if more than one person is appealing the petition decision, attach their contact information as applicable):

Name: Enlightened Investments by Dan Ballester Phone: (408) 947-2416
Mailing Address: 60 South Market Street, #1400, San Jose Email: dan.ballesteros@hogefenton.com

I am:

Empty checkbox

A tenant affected by this petition.

Checked checkbox

Attorney for

A landlord affected by this petition.

Reason for Appeal:

Please use the space below to clearly identify what issue and part of the Decision is the subject of the appeal (include section headings and subheadings, as necessary). Thoroughly explain the grounds for the appeal.

SEE ATTACHMENT

(Continue on the next page; add additional pages if needed)

Filing Instructions:

Once you have completed this form and attached all relevant documents, serve all parties with complete copies before formally filing the Appeal with the City.

Declaration:

I (we) declare under penalty of perjury under the laws of the State of California that the foregoing and all attached pages, including documentation, are true correct, and complete.

Signature: Dan Ballesteros Date: April 28, 2021

Print Name: Dan Ballesteros

REQUEST FOR APPEAL OF PETITION HEARING DECISION

1. Due Process Requires that the Owners be Parties to the Proceedings, not Enlightened Investments, a Property Management Company.

In order to exercise jurisdiction, the party to be charged must be properly identified and brought before the court. Notice of the action alone is NOT a substitute for proper service of process and is not alone sufficient to confer jurisdiction. (see, e.g., *American Express Centurion Bank v. Zara* (2011) 199 CA4th 383, 392.) Here, despite knowing full well the identity of the owners, Petitioner chose to complain against Enlightened Investments, the property management company and not the owners.

2. The Property Is Not a “Rental Unit” Subject to The Act

A “Rental Unit” includes “Any building, structure, ... or any other rental property rented or offered for rent for residential purposes, together with all Housing Services connected with use or occupancy of such property” (underlining added). The Church does not rent a residence from the Owners, but rather leases the entire 4.74 acres including rental units, offices, kitchens, gazebos, shrines, laundry room, pool, and the open space. Thus, the entire premises are rented for the Church to further its religious and charitable activities of providing a community. The Master Lease does not rent a residence to the Church, but rather business premises for the Church’s twin business purposes of renting apartments to the public while attempting to convert the Property into a religious community. The parties have a business-to-business relationship whereby the Church has contracted with the Owners for its long-term use of the Property upon which the Church operates its business called “Ananda Apartments” or the “Ananda Community”.

3. The Master Lease Does Not Call for the Payment of “Rent” Subject to The Act

The Act’s Regulations at Chapter Two, “Definitions”, at (p) define “Rent” as: “All periodic payments and all nonmonetary consideration, including, but not limited to, the fair-market value of goods, labor performed, or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement concerning the use or occupancy of a Rental Unit and premises and attendant Housing Services, including all payment and consideration demanded or paid for parking, Utility Charges, pets, furniture, and/or subletting.” This definition does not describe the payments received by the Owners from the Church. The Master Lease payments do not concern “a Rental Unit” and do not include Housing Services, which the Master Lease expressly reserves to the Church. The Master Lease similarly makes no mention of any payments from the Church for parking, utilities, pets, furnishings, subletting, or the like. The Owners have no interaction with the residents of the Property and no right to access the Church’s rental income stream.

4. The Master Lease Is Not A “Rental Housing Agreement” Subject To The Act

A "Rental Housing Agreement" is "an agreement ... between a Landlord and Tenant for use or occupancy of a Rental Unit and for Housing Services." The Master Lease is not a Rental Housing Agreement because it is not for the Church's residential occupancy, but rather is expressly for the Church to rent out apartments to the public as the Church attempts to establish a religious community for the exclusive use of its members.

While that vision has not yet materialized, and the Church has always held out apartments for rent to the public as a business, using a registered fictitious business name. The Owners have nonetheless supported the Church's efforts to share its religious teachings and gather together in religious fellowship. This complex long-term relationship is not subject to the Act, and the Church is not a Tenant of the Owners under a Rental Housing Agreement.

5. The Church Is Not A "Tenant" Protected By The Act

A "Tenant" is defined as a person "entitled under the terms of a Rental Housing Agreement or this Article to the use or occupancy of any Rental Unit." The Church's Petition should have listed "The name(s) and contact information (current address, email address, and telephone number, if available) of each person(s) who lived in the Rental Unit during the period(s) in which unlawful Rents were accepted by the Landlord." [Petition Process G.3] There are 72 apartments at the Property apparently occupied by residential Tenants of the Church who have not been identified. The Church is a California religious non-profit corporation which reports to the Secretary of State that its principal location is 2171 El Camino Real in Palo Alto. Ananda manages the entire Property as one of its businesses, publicly advertises apartment availability, and sublets individual units to residential Tenants. Because the Church is a corporation, it is not "residing" in any of the apartments, and works out of its Palo Alto business location. Moreover, because the Church is a corporation it cannot "die" or even outgrow its space, as a normal tenant would. Instead, this extension of the CSFRA means that the Church will continue to receive the benefits of the CSFRA in perpetuity.

6. Neither Enlightened Investments nor any of the Owners Is A "Landlord" Under The Act

A "Landlord" is a person "entitled to receive Rent for the use and occupancy of any Rental Unit". Because the Master Lease payments from the Church to the Owners are not for the "use and occupancy" of a "Rental Unit", but rather for the Church's use of the entire project for a religious community, and until then, as an apartment business. The Owners have no right to receive payments directly from the residents who actually reside in the Rental Units at the Property, and the payments received by the Owners from the Church are not to permit the Church to reside at the Property, but to use the Property for its religious and, transitionally, its business purposes.

7. Neither Enlightened Investments Nor Any of the Owners Provide “Housing Services” to the Church or to the Residents Of The Ananda Community

“Housing Services” are defined by the Act to “include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.” However, the agreement between Ananda and the Property Owners provides that “Ananda shall be fully, solely, and completely responsible for the operation of all rental and other activities on the Premises, including the advertising and renting of apartments, the maintenance of the Premises, and the eviction of occupants who are in violation of the terms of this Master Lease or the tenancy agreement for the unit occupied.” (emphasis added) This broad definition appears to include all of the itemized activities in the Housing Services definition.

The Owners have no control over who occupies the residential units under the Church’s aegis. The Church creates the leases that are used by the residential occupants, and manages all rental and Property operations. The Church collects rent from the residents and the Master Lease payments do not entitle the Owners to any part of the Church’s rental income stream.

8. The Church Asserts that it has a Legal or Equitable Right to Continue to Use the Property

The Church’s non-Tenant status is further highlighted by its claim to be a “third party beneficiary” under the Owners’ Tenancy-in-Common Agreement. Accordingly, the Church asserts it has a non-terminable right to continue to use the property as a religious community, regardless of the details concerning rental amounts or written lease terms. Ananda has taken the position that “Because the Church is a third party beneficiary of the TIC, it can sue to enforce the contract including seeking an injunction against any sale if need be.” The Church should not be able to claim both (a) it is a residential tenant whose tenancy is protected by the Act, and that (b) it has an enforceable legal/equitable right to occupy the entire Property forever as a third party beneficiary, so as to someday establish a religious community.

9. Petitioner has Waived and/or is Estopped from Requesting a Rent Reduction

Equitable estoppel exists whenever a party has, by its own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief. (Evid. Code, § 623.) To create equitable estoppel, it is enough if a party has been induced to refrain from using such means or taking such action as lay in

his power, by which he might have retrieved his position and saved himself. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384.) Likewise, a party may waive an existing right by conduct so inconsistent with any intent to enforce the right as to induce a reasonable believe that it has been relinquished. (*Brookview Condominium Owners' Assn. v. Heltzer Enterprises-Brookview* (1990) 218 Cal.App.3d 502, 513.)

Here, the evidence demonstrates that Petitioner has waived and is estopped from contending that Respondent's rent increases were improper.

10. Respondent was Not Obligated to Register the Property as It had Already Been Registered.

a. Petitioner is Estopped from Asserting that Respondent Had to Register the Property

Petitioner is estopped from claiming that Respondent was required to register the subject property with the City of Mountain View or that its rent increases violated the Community Stabilization and Fair Rent Act ("CSFRA"). The evidence demonstrates that Petitioner and Respondent had numerous discussions regarding the implementation of the CSFRA. Never once did Petitioner assert that Respondent was also required to register the subject property with the City of Mountain View.

b. Petitioner Failed to Demonstrate Respondent Was Required to Register Property Twice

More to the point, it is indisputable that, consistent with this regulation, the subject property was registered with the RHC. This was done by Petitioner. There is no requirement in Chapter 11 of the CSFRA Regulations that a property be registered twice. Rather, registration is complete once, as was the case here, every Covered Rental Unit is registered.

11. Respondent is Entitled to a 2.6% Bankable Increase as it was in Substantial Compliance with the CSFRA.

The evidence showed that the owners were in substantial compliance with the CSFRA. Therefore, Respondent is entitled to the 2.6% bankable increase.

12. Respondent is Entitled to Claim an Increase in the Base Rent as an Offset

Equitable principles permit the claim of an offset or credit as an affirmative defense. (See *PJNR, Inc. v. Department of Real Estate* (1991) 230 Cal.App.3d 1176, 1189; see also *Minelian v. Manzella* (1989) 215 Cal.App.3d 457.)

The undisputed evidence presented during the Hearing demonstrates that Respondent artificially depressed the amount of Petitioner's rent. This was to enable Petitioner to establish its religious community at the subject property. This goal was expressly recognized in Recitals E and F of the Revised TIC Agreement, which state,

respectively, that the "the Master Lease [Revised Master Lease] provided to the Church [Petitioner] results in the Property being used for less than its highest and best valuation," and that Owners "do not intend to necessarily maximize the profits available[.]"

The evidence presented during the Hearing further demonstrated that if Petitioner were to succeed on its Petition, this would prevent Respondent from making the \$2,259,700 in capital improvements that **Petitioner** claims are necessary. In addition, evidence presented at the hearing showed that Petitioner charges additional fees as "community services" for an event space. This additional income to Petitioner is further evidence that the rent is below market.

Accordingly, to the extent that Petitioner now seeks to reduce its relationship with Respondent to that of a common landlord-tenant and petition for a rent reduction under the CSFRA, Respondent should be permitted to claim, as an offset, an entitlement to increase in base rent in order to realize a fair rate of return. In this case, determination of an appropriate base rent can be easily made. It is the amount of rent that Petitioner charged its tenants for the subject property in October 2015, \$146,924.

Applying the AGA step-ups to a base amount of \$146,924, Respondent would be entitled to charge Petitioner rent in the monthly amount of \$177,124.26. As Respondent has never charged Petitioner this amount for rent (nor the \$146,924 amount that Petitioner charges its tenants for the same subject property), Petitioner's Petition should fail.

Proof of Service of Request for Appeal

I declare that I am over eighteen years of age, and that I served one copy of the attached Notice of Appeal on the affected party(ies) listed above by:

Personal Service

Delivering the documents in person on the 28th day of April, 2021, at the address(es) or location(s) above to the following individual(s).

(Print name and address of each party served.)

Mail

Placing the documents, enclosed in a sealed envelope with First-Class Postage fully paid, into a U.S. Postal Service Mailbox on the 28th day of April, 2021, addressed as follows to the following individual(s).

(Print name and address as shown on envelope of each party served.)

Email

Emailing the documents on the 28th day of April, 2021 at the email address(es) as follows to the following individual(s). Email is the normal mode of communication with the following individual(s).

(Print name and email address of each party served.)

Brian Skarbek, Attorney for Petitioner brian@toddrothbardlaw.com

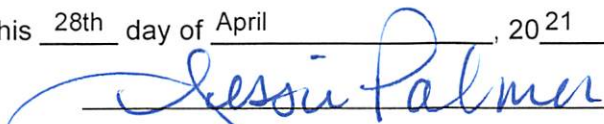
David Praver, President david@anandapaloalto.org

Emily Hislop CSFRA Hearing Administrator ehislop@housing.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Executed on this 28th day of April, 2021

Signature:



Print Name:

Jessie Palmer

Address:

60 South Market Street, #1400, San Jose, CA 95113