

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

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In the Matter of the Application of NEW YORK FOUNDATION
FOR SENIOR CITIZENS, GUARDIAN SERVICES INC.
As Guardian for

Index No.: 402682/05

NOTICE OF MOTION

Helena Rajewsky a/k/a Ilyana Rajewsky
a/k/a Helen Rajewsky
an Incapacitated Person

Assigned to:
Hon. Kelly O'Neill-Levy

inc:
attor

inc:
attor X

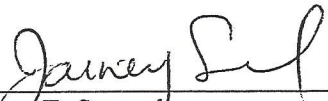
ti **UPON THE READING** and filing the annexed affirmation of Jainey E. Samuel, Esq., attorney for movant-landlord 20-22 Prince LLC herein, dated August 19, 2016, and the affidavit of the property manager, Liz Serrano-Rodriguez, sworn to on August 10, 2016, the affidavit of the property manager, Wilson Brito, sworn to on August 16, 2016, the Order and Judgment of Hon. Martin Schoenfeld, J.S.C. entered on February 2, 2006, the Order and Judgment of the Hon. Lottie E. Wilkins, J.S.C., entered on March 25, 2013 and upon all papers and proceedings had herein, the undersigned will move this Court at Part 19, Room 1164B, of the Supreme Court of the State of New York, County of New York at the Courthouse, located at 111 Centre Street, New York, New York 10013 on **August 31, 2016** at 9:30 a.m. for an Order:

- a. Granting movant-landlord 20-22 Prince LLC leave to commence a nuisance holdover summary proceeding against New York Foundation for Senior Citizens, Guardian Services Inc., as Guardian for Helena Rajewsky a/k/a Ilyana Rajewsky a/k/a Helen Rajewsky, after the expiration of the Notice of Termination, and

b. Granting such other and further relief as the Court may deem just and proper.

Dated: August 19, 2016
Rego Park, New York

Yours, etc.


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To: Helena Rajewsky a/k/a
Ilyana Rajewsky a/k/a
Helen Rajewsky
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SUPREME COURT OF THE STATE OF NEW YORK
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In the Matter of the Application of NEW YORK FOUNDATION
FOR SENIOR CITIZENS, GUARDIAN SERVICES INC.

As Guardian for

Index No.: 402682/05

Helena Rajewsky a/k/a Ilyana Rajewsky
a/k/a Helen Rajewsky
an Incapacitated Person

**AFFIRMATION IN
SUPPORT**

Assigned to:
Hon. Kelly O'Neill-Levy

-----X
Jaimey Samuel, an attorney at law duly admitted to practice before all courts of the State
of New York, hereby affirms the following as true under penalties of perjury:

1. I am an associate of the firm of Daniels, Norelli, Cecere & Tavel P.C., attorneys
for the movant-landlord herein, 20-22 Prince LLC, landlord of the building known as 20 Prince
Street a/k/a 20-22 Prince Street, New York, New York (the "Building"). Helena Rajewsky a/k/a
Ilyana Rajewsky a/k/a Helen Rajewsky, the incapacitated person herein, resides as the tenant of
record of Apartment 36 (the "Apartment") in the Building.

2. Based upon a review of the files maintained by this office with respect to this
matter, I am fully familiar with the facts and circumstances set forth herein.

3. I make this affirmation in support of an order from this Court:

- a. Granting movant-landlord 20-22 Prince LLC leave to commence a
nuisance holdover summary proceeding against New York Foundation for
Senior Citizens, Guardian Services Inc., as Guardian for Helena Rajewsky
a/k/a Ilyana Rajewsky a/k/a Helen Rajewsky, after the expiration of the
Notice of Termination, and
- b. Granting such other and further relief as the Court may deem just and
proper.

4. The relief requested is necessary in order to safeguard the health and safety of Ms. Rajewsky, herself, and the other tenants and occupants in the Building, as well as the agents and employees of the Landlord, as detailed more fully in the accompanying affidavits of Liz Serrano-Rodriguez, the Landlord's property manager for the Building, and Wilson Brito, the Landlord's superintendent for the Building.

FACTUAL AND PROCEDURAL BACKGROUND

3. On September 20, 2005, the Commissioner of Social Services of the City of New York moved by Order to Show Cause and verified petition for the appointment of a guardian of the personal needs and property of Ms. Rajewsky.

4. In his Appointing Order, Justice Schoenfeld ordered and adjudged Ms. Rajewsky to be a person requiring the appointment of a guardian under Article 81 of the Mental Hygiene Law. New York Foundation for Senior Citizens, Guardian Services Inc. was appointed her Article 81 Guardian (hereinafter, "Article 81 Guardian"). A copy of the Order is annexed hereto as Exhibit "A".

5. The Court found, at page 3 of the Appointing Order, that Ms. Rajewsky "is likely to suffer harm because of an inability to provide for her personal needs and property management and is unable to adequately understand and appreciate the nature and consequences of such inability..."

6. The Appointing Order, at page 8 thereof, provided, inter alia, that the Article 81 Guardian shall:

- (a) exercise the utmost care and diligence when acting on behalf of the incapacitated person;
- (b) exhibit the utmost degree of trust, loyalty, and fidelity in relation to the incapacitated person...

7. At page 11 of the Appointing Order, the Article 81 Guardian was charged with making decisions concerning the "personal needs" of the incapacitated person:

- (a) make decisions regarding the social environment and other social aspects of her life;
- (b) determine who shall provide personal care or assistance;
- (c) assess the needs for and obtain, arrange for and maintain the appropriate level of home care services, including but not limited to home care and visiting nurse services and regular apartment cleaning as needed;
- (d) assess the need for repairs and/or heavy duty cleaning(s) of the incapacitated person's apartment and arrange for same...

8. In 2008, the Landlord commenced a nuisance holdover proceeding in the Civil Court of the City of New York, County of New York against Ms. Rajewsky and her Article 81 guardian under Index no. 58235/08. In its Petition, the Landlord alleged, *inter alia*, that Ms. Rajewsky had maintained a nuisance at the building by reason of the filthy condition in which she maintained her apartment. As a result, Ms. Rajewsky had created a safety, fire, and health hazard for herself as well as other tenants in the Building.

9. The holdover proceeding was resolved by a so-ordered Stipulation of Settlement dated June 12, 2008 (the "Stipulation") entered into by the Article 81 Guardian and providing for a probationary period of twelve months. The probationary period under the Stipulation ended on June 12, 2009.

10. In 2013, the Landlord commenced another nuisance holdover proceeding in the Civil Court of the City of New York, County of New York against Ms. Rajewsky and the New York Foundation entitled 20-22 Prince LLC v. Helen Rajewsky, et al, Index No. 51910/13.

11. During that proceeding, an Order of the Article 81 Court was subsequently issued allowing landlord to restore the summary holdover proceeding against Ms. Rajewsky in or about September 2013. A copy of the Order is annexed hereto as **Exhibit "B"**.

12. During the same proceeding, the Article 81 guardian obtained expanded powers to hire a professional cleaning service, obtaining key access to your apartment, and arranging for the cleaning of your apartment. Movant respectfully refers the Court to its file to take judicial notice of the Court's order from 2013 in which the Court expanded the Article 81 guardian's powers.

13. The landlord, thereafter, relied on the Article 81 guardian exercising its expanded powers to permanently address the nuisance conduct although the landlord was able to establish the non-curable nuisance conduct. Subsequently, the conditions had been abated to a certain extent although not completely corrected. (Serrano-Rodriguez Aff. ¶ 4).

14. In or about April 2015, the landlord's management received several complaints from other tenants and occupants as to noxious odors emanating from Ms. Rajewsky's apartment and the landlord's management, employees, and/or contractors observed the same. (Serrano-Rodriguez Aff. ¶ 5).

15. The nuisance conditions compelled the landlord to serve a Notice of Termination in December 2015 with a termination date in January 2016, despite the landlord's efforts to avoid another proceeding by contacting Ms. Rajewsky's Article 81 guardian directly numerous times in writing and by telephone to address the nuisance conduct and the conditions of Ms. Rajewsky's apartment described herein. (Serrano-Rodriguez Aff. ¶ 6).

16. The roach infestation in the apartment resulted in the landlord receiving a Class "B" HPD violation to abate the nuisance consisting of roaches in the entire apartment. This is despite the landlord having an exterminator go to the apartment regularly. At that time, Ms. Rajewsky quarreled with, and refused to give access to, the exterminator on a number of occasions and, on those occasions when access was provided, Ms. Rajewsky's conduct and the

conditions of her apartment as described herein, prevented the exterminations from being effective. (Serrano-Rodriguez Aff. ¶ 7).

17. Any attempts to discard the spoiled and rotten food and/or infested food by the landlord's management, employees, and/or contractors, on her behalf, for her health and safety and the health and safety of other tenants in the building met with resistance in that Ms. Rajewsky took the food out of trash bags and put it back in her apartment. (Serrano-Rodriguez Aff. ¶ 8).

18. Her conduct resulted in property damage, as a kitchen cabinet infested with roaches in her apartment had to be discarded and replaced due to the roach infestation in her apartment. (Serrano-Rodriguez Aff. ¶ 9).

19. Additionally, Petitioner's employees and/or contractors were unable to commence repairs and/or correct violations in Ms. Rajewsky's apartment due to the noxious odors and roach infestation, which created a serious health and safety hazard and danger of disease. (Serrano-Rodriguez Aff. ¶ 10).

20. After the service of the Notice of Termination in December 2015 with a termination date in January 2016, the the Article 81 guardian arranged for a deep cleaning of Ms. Rajewsky's apartment and a home aide attendant. Due to the Article 81 guardian hiring a professional cleaning service and arranging for a home aide attendant, the landlord, thereafter, relied on the Article 81 guardian exercising its powers to permanently address Ms. Rajewsky's nuisance conduct although the landlord was able to establish her non-curable nuisance conduct. (Serrano-Rodriguez Aff. ¶ 11).

21. To date, the landlord and landlord's management continue to receive complaints that there is an ongoing, recurring foul, pungent, noxious, disturbing and undesirable odor emanating from Ms. Rajewsky's apartment, permeating into the hallway, common areas, including the building lobby, neighboring apartments, and throughout the floors in the building. (Serrano-Rodriguez Aff. ¶ 12).

22. Tenants in the building also regularly complain to the landlord about Ms. Rajewsky digging through the garbage on the public street and in the building and bringing items and discarded food back into her apartment, the unsanitary conditions of her apartment, and the roaches, vermin and other pests originating from her apartment. Personal onsite visits and observations by landlord's management and employees have confirmed the same. (Serrano-Rodriguez Aff. ¶ 14).

23. Some tenants with apartments adjacent to Ms. Rajewsky's apartment have vacated and/or threatened to not renew their leases alleging it is due to her conduct and conditions of her apartment, as described herein. Other tenants have complained about the recurring noxious odor which travels throughout the building from the lobby to the top floor. (Serrano-Rodriguez Aff. ¶ 15).

24. The superintendent of the building must open all of the windows of the building to air out the odor in the building. A porter is assigned to mop Ms. Rajewsky's floor daily with scented floor cleaner to minimize the odor emanating from her apartment. In one week alone, the landlord had to purchase two bottles of Lysol floor cleaner as a result. (Brito Aff. ¶ 9).

25. Even as recently as August 10, 2016 and August 15, 2016, a tenant complained about the noxious odor emanating from Ms. Rajewsky's apartment. One tenant literally stated in her written complaint (with an email correspondence subject line of "URGENT: 20 Prince building smell") that she does "not feel safe inhaling whatever is making the air like this". Another tenant recently complained in writing that "the hallway smelled so badly that I literally almost threw up walking up the stairs just now (gagged the entire way up)." A copy of said email correspondence is annexed hereto as **Exhibit "C"**.

26. It is important to highlight that the written complaints are, indeed, not isolated, as the landlord, property manager, superintendent, and others on the landlord's staff received multiple verbal complaints from tenants and residents in the subject building mirroring the written complaints annexed hereto.

27. Photographs of Ms. Rajewsky going through the building's garbage and the public street garbage as well as trails of garbage leading to Ms. Rajewsky's apartment are annexed hereto, collectively, as **Exhibit "D"**. (Serrano-Rodriguez Aff. ¶ 16).

28. Other tenants have mistaken Ms. Rajewsky for a homeless woman who roams the building's hallways due to her appearance, offensive and foul odor, and habit of going through the garbage and taking items and discarded food from the garbage. (Serrano-Rodriguez Aff. ¶ 17)(Brito Aff. ¶ 10).

29. In addition to the above, complaints have been received that Ms. Rajewsky takes other tenants' mail. (Serrano-Rodriguez Aff. ¶ 17).

30. Upon information and belief, Ms. Rajewsky may be refusing to allow a cleaning or housekeeping service to assist in attempting to maintain her apartment in a sanitary condition (based on your affiant's review of the Supreme Court file which it refers to Ms. Rajewsky's refusal to allow cleaning or housekeeping services in the subject premises) and/or the cleaning or housekeeping service is not properly or regularly maintaining her apartment.

31. The Notice of Termination served on Ms. Rajewsky and the Article 81 guardian, with an effective date of August 31, 2016 is annexed hereto as **Exhibit "E"**.

ARGUMENT

32. Simply put, Ms. Rajewsky continues to engage in a persistent pattern of conduct constituting a nuisance, substantially interfering with the comfort and safety of the other tenants and occupants in the Building and causing an imminent danger of disease in the Building. Specifically, Ms. Rajewsky has been frequently observed digging through garbage dumpsters on the public street and in the building's garbage and containers, bringing items from the garbage back into her Apartment, and storing rotted and spoiled food in her Apartment. The resulting unsanitary conditions give rise to an infestation of roaches, vermin, and other pests and Ms. Rajewsky's conduct causes an imminent danger of disease.

33. Several complaints have been received from tenants on the same floor as Ms. Rajewsky as well as tenants on different floors in connection with the offensive, foul smell emanating from Ms. Rajewsky's Apartment as well as roaches, vermin, and other pests coming from her Apartment. (Serrano-Rodriguez Aff. ¶¶ 12-15)(Brito Aff. ¶¶ 4-10). Attached as **Exhibit "C"** are copies of recent written complaints where tenants state that they are on the verge of vomiting and feel unsafe inhaling the air because of a serious concern that the noxious odors are detrimental to their health.

34. Some tenants with apartments adjacent to Ms. Rajewsky's apartment have vacated and/or threatened to not renew their leases due to her conduct and conditions of her apartment. (Serrano-Rodriguez Aff. ¶ 15).

35. The offensive, foul smell emanating from Ms. Rajewsky's Apartment travels throughout the building and it is present from the lobby to the top floor of the building. The superintendent must open the windows throughout the building as well as arrange for a porter to mop the hallways on Ms. Rajewsky's floor with scented floor cleaner daily in order to minimize the odor emanating from Ms. Rajewsky's Apartment. *Two bottles of Lysol were purchased in a one-week period alone to mop the hallway on Ms. Rajewsky's floor to minimize the noxious odor emanating from her apartment.* (Brito Aff. ¶¶ 8-9)(emphasis added).

36. Not only has Ms. Rajewsky's conduct caused a persistent offensive, foul odor throughout the Building and roach, vermin, and other pests to come into the Building, the Landlord has had to deal with other tenants' complaints, threats that they will not renew their leases, and threats that they will break their lease due to the conditions in Ms. Rajewsky's Apartment and her conduct described above. (Serrano-Rodriguez Aff. ¶¶ 12-15)(Brito Aff. ¶¶ 4-7).

37. As a result, the Landlord and the other tenant in the Building have been severely prejudiced by Ms. Rajewsky's conduct. Such conduct has been persistent over a substantial period of time to the detriment of other tenants and occupants in the Building. It has also substantially interfered with their comfort and safety as well as caused an imminent danger of

disease. This is so, despite her guardian apparently arranging for deep cleaning of the Apartment and home aide attendants for Ms. Rajewsky. (Serrano-Rodriguez Aff. ¶ 18)(Brito Aff. ¶¶ 4-13). Ms. Serrano-Rodriguez has contacted the guardian several times throughout the two years that she has been the property manager for the Building with complaints. Yet, no matter what the guardian arranges, the conduct and conditions have continued. (Serrano-Rodriguez Aff. ¶¶ 12-19)(Brito Aff. ¶¶ 4-10).

38. As to the cleaning service and home aide attendants, the superintendent has been employed at the subject building for approximately 3 ½ months and he has observed 4 to 5 different home aide attendants for Ms. Rajewsky. (Serrano-Rodriguez Aff. ¶20) (Brito Aff. ¶ 11). During that time, the home aide attendants are seen standing in the hallway, because they do not want to go inside of Ms. Rajewsky's apartment due to the noxious odor, or they are talking on their cell phones sitting on the hallway stairways. (Brito Aff. ¶ 11). This is all while Ms. Rajewsky's apartment door is left wide open, causing the noxious odor from her apartment to travel throughout the floor hallway and building which makes the nuisance conduct worse. (Brito Aff. ¶ 11).

39. When her home aide attendants have been in the hallways on their cellphones, the superintendent has observed Ms. Rajewsky inside her apartment alone cooking, unattended and unsupervised. (Brito Aff. ¶ 12).

40. The superintendent has also stopped Ms. Rajewsky from going to the roof, unattended and unsupervised, while her home aide attendant was on their cell phones sitting on the hallway stairs. He informed the home aide attendant that he brought Ms. Rajewsky back to her apartment, at which time the home aide attendant was surprised and did not even know Ms. Rajewsky had left her apartment. (Brito Aff. ¶ 13).

41. It is important to highlight to the Court that this Order to Show Cause is a result of a deep concern for Ms. Rajewsky as well as the other tenants and occupants in the Building for which the Landlord is obligated to provide a habitable living space. Clearly, Ms. Rajewsky

requires much more extensive care and supervision than is being provided and the Article 81 guardian is able to provide. (Serrano-Rodriguez Aff. ¶ 23)(Brito Aff. ¶ 14).

42. In light of the above, the movant-landlord's motion, herein, for leave to commence a nuisance holdover summary proceeding against New York Foundation for Senior Citizens, Guardian Services Inc. as Guardian for Helena Rajewsky a/k/a Ilyana Rajewsky a/k/a Helen Rajewsky after the expiration of the Notice of Termination should be granted in its entirety.

43. Prior experiences with Ms. Rajewsky and her Article 81 guardian have taught the landlord that the only way that the rights of the other tenants and the landlord's rights will be addressed by Ms. Rajewsky's Article 81 guardian is by bringing a nuisance holdover summary proceeding. Short of that, Ms. Rajewsky's nuisance conduct and her apartment's conditions have not been a concern or they are too extensive for the Article 81 guardian to handle, as the landlord has contacted the Article 81 guardian countless times as to Ms. Rajewsky's conduct and the condition of her apartment. (Serrano-Rodriguez Aff. ¶ 24).

44. Clearly, Ms. Rajewsky requires more extensive care and supervision that a home aide attendant has and can provide and a purported regular cleaning service can assist with. The written complaints, photographs, and affidavits annexed hereto detail the results of Ms. Rajewsky's nuisance conduct has not only substantially interfered with the comfort and safety of tenants and residents as well as the landlord's employees but also has been causing an imminent danger of disease. (Exhibits "C" and "D").

45. Some tenants with apartments adjacent to Ms. Rajewsky's apartment have vacated and/or threatened to not renew their leases due to her conduct and conditions of her apartment. (Serrano-Rodriguez Aff. ¶ 15).

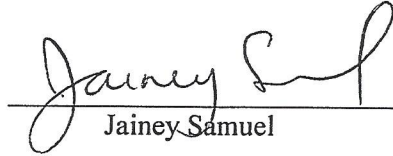
46. The landlord is compelled by its obligation to maintain a habitable living space for its other tenants and its right to exercise a landlord's rights under the Real Property Actions and Proceedings Law and the applicable rent control regulations to seek leave to commence a

nuisance holdover proceeding after the expiration of the Notice of Termination annexed hereto as **Exhibit "E"**.

47. No prior request for the relief sought in this Order to Show Cause has been previously made to this Court or any other Court since 2013, at which time landlord's application was granted. A copy of said Order is annexed as **Exhibit "B"**.

48. Accordingly, the landlord's motion must be granted in its entirety.

Dated: August __, 2016
Rego Park, New York


Jaimey Samuel