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Thank you in taking your time in doing your best job and thinking about the issues. And I really appreciate that on behalf of the building. Now, the Judge will tell you in order for Mr. Chavez to be able to get a rent abatement -- in order to get a reduction of rent one of two things has to happen. The Judge will tell you that the landlord must have a notice of conditions, must know about the conditions or have constructive notice of conditions. In other words, that even if the landlord couldn't get into the apartment he should have known that the mice, roaches and bedbugs that they're allegedly claiming existed.

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As you've seen to the testimony of many witnesses there are procedures of this

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building, 315 94th Street. If you have a problem, repair problem, you have the ability -- and every witness testified, including the witnesses against us -- you have the ability to go to the manager's office, fill out a form and tell the landlord what's wrong with my apartment -- fix it. And as you heard from everybody, that once you do that your apartment gets fixed.

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Well, for example, even a witnesses who is being sued by a landlord -- has been sued by a landlord stated, yes, the procedure in the building, is if I have a problem I go to the manager's office, and I do the repairs.

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The exterminator, how did he find out what room to exterminate? He goes to the

18 manager's office, and he says, what do you
19 have for me today, and you do the repairs.
20 You heard the worker. I know he was very,
21 very nervous. The policy; I don't go talk to
22 the tenants. How do I find out what room to
23 fix? I go to the manager's office.

24 You heard Mr. Chavez testify. You
25 heard him testify that he's never been to the

1 manager's office to complain. He's never ⁴
2 been there. In fact, the story changed four,
3 five, six times, as I believe you heard. I
4 know it's complicated. You saw the
5 conversations that he said he had with
6 Phytos, changed four times, of what actually
7 happened. And Pedro hasn't been there in
8 many years. It's undisputed that Pedro has
9 not worked in many years at 315 West 94th
10 Street -- didn't work there.

11 You're the evaluators of the truth.
12 You're the only thing between the truth and
13 reality. You're going to decide if someone is
14 telling the truth or making misstatements and
15 lying. And how do you do it? You look at
16 the credible evidence, and the Judge will
17 tell you how to look it. You see something
18 on T.V. a lot of times -- we all have
19 opinions. I believe that this happened?

20 He's claiming that, at least, three
21 times since 1999 since he moved in he has
22 complained to someone. The years are long
23 ago. He says he hasn't complained for many
24 years, but he did complain to Pedro twice and
25 Phytos once. The story, how he complained to

1 Phytos, changes because he said Phytos comes
2 up to me for rent all the time, asked me for
3 rent. And then I said to him, Mr. Chavez,
4 did you tell him about the repairs when he
5 came and asked for the rent, and the answer
6 was no.

7 Well, don't you think if someone is
8 asking for rent you'd tell him about the
9 roaches, bedbugs, broken windows in your
10 room? Doesn't it make sense that you would
11 tell the person who is telling you all the
12 time that you're having problems in the
13 apartment?

14 He said he came up to him all the time.

15 Even the person -- they did bring up
16 some witnesses. And you see the witness was
17 sued, same type of case as this for rent, and
18 we have a judgement and won the case. She
19 didn't bring up roaches, mice, zero
20 issues. She actually paid rent. And there's
21 a case about to start against her, as you
22 heard her testify. And she admits she hates
23 the landlord, but even she said there is a
24 policy on how to get repairs done.

25 She actually said in the hallway, said

1 she saw mice. Mr. Chavez never said that.
2 Mr. Chavez never said he saw anything in the
3 hallway. He said the trash overflows once in
4 a while. He said they were always in his
5 room, never in the hallway.

6 He mentioned that as soon as he did
7 complain through his attorney -- first time

7 complain through his attorney. First time
8 he did complain -- almost immediately on
9 December 17th they came and fixed. You heard
10 Juan Carlos Mejia state he did the work. You
11 heard the exterminator say he went in there.
12 He exterminated, and he looked for bedbugs.
13 And he told you -- I heard some new
14 information -- he told you to look for
15 residue and droppings. And this is how you
16 look for it. And he didn't find any. And he
17 said -- you knew he wasn't lying. There were
18 roaches there -- there were roaches in the
19 apartment.

20 Well, going back to the first thing I
21 said, law, if we don't have notice -- he
22 doesn't leave his door open. As you heard
23 Juan Carlos Mejia testify, if he doesn't
24 leave his door open we can't guess that it's
25 in there. We send an exterminator every

1 week, they do the hallways. They cannot do
2 apartments when they don't know what's going
3 on. If a window is broken we're not
4 responsible for fixing a window if they broke
5 it themselves, but this building does
6 anyhow. But if his window is broken and we
7 don't know about it how are we supposed to
8 fix it? He doesn't dispute that all the work
9 was done in December. He even says I have
10 had no problems from December, January,
11 February, March, April, May and June. He
12 admits that. We're asking for twelve months.
13 He admits that six of them he has no
14 problem.

15 Why isn't he paying his rent? You

16 heard he doesn't have a job. I feel bad he
17 doesn't have a job. You heard Phytos offer
18 him a job as a painter --

19 MR. WEINSTEIN: Objection.

20 THE COURT: Sustained, jury will
21 disregard any statements about Phytos making
22 an offer to the respondent for a job.

23 MR. BAILY: Coincidentally, you heard
24 Mr. Chavez say that he was employed. He also
25 stated that he was unemployed as of July

1 2003, the same time an when the rent isn't 8
2 paid. So thinking about why would he
3 automatically -- why would he not be able to
4 pay the rent and come up with the problems of
5 mice and roaches and bed bugs? It makes
6 sense why he would do that, because he
7 doesn't have the money to pay. And he was
8 able to get a lawyer to fight for him from a
9 special organization that was able to raise
10 these issues. But the question that's in
11 your hands is what's right and wrong.

12 And I feel bad that he doesn't have a
13 job either. I wish everybody -- I think it
14 should be guaranteed that you have a job. I
15 understand the programs. People who don't
16 have a job don't know much about it. I know
17 a little bit about it. When I was growing up
18 my parents had no money, they were on
19 whatever assistance they had in the '70s.
20 They were teachers and --

21 MR. WEINSTEIN: Objection.

22 THE COURT: Mr. Bailey, stay on the
23 issues that are relevant to this case, not

24 about issues that pertain to yourself,
25 please.

1 MR. BAILEY: If they relate -- I have a ⁹
2 story that relates --

3 THE COURT: I'm afraid that's not a
4 topic that's apropos as to what the jury has
5 to consider.

6 MR. BAILEY: Mr. Chavez recognized that
7 there is a procedure. He recognized that he
8 knew the procedure.

9 As far as the elevator, yes, I'm the
10 first to admit as well as all the witnesses
11 that there were -- and every witness --
12 whether they didn't believe it or not -- they
13 didn't get together and didn't have a pow-wow
14 over dinner what you should testify to. In
15 fact, one of them I just had this morning.
16 They all said the same thing, the elevator
17 was out maybe three times in the three months
18 that they're claiming. They're claiming the
19 elevator was out three months without
20 anybody working on them. None of the
21 witnesses are claiming that the elevator was
22 out for three total months.

23 In fact, the tenant organizer --
24 someone that for a living organizes tenants
25 so they can have more cases -- she says I've

1 only been to the building three times, not ¹⁰
2 more than five or six times. Then you
3 couldn't know if it wasn't working everyday.

4 Mr. Chavez never testified that the
5 building wasn't working for three months

5 building wasn't working for three months
6 completely. Yet you heard the exterminator
7 who came once a week -- I come once a week
8 for each of those months -- I come once a
9 week, yet it was working every time, but
10 once. Juan Carlos Mejia said in the three
11 months maybe three times it wasn't working.
12 And yet there were problems in the building,
13 and elevators breaking down and they got them
14 fixed. For an elevator to break down and get
15 it fixed that quickly, it takes a lot of time
16 and that costs money. And this building took
17 that time to make sure this elevator was
18 working.

19 Now, as far as the mice, I wish he
20 never had mice. But this is a court of law
21 and a burden of proof. What proof do we have
22 that he had mice in his apartment? We know
23 he had roaches in his apartment, because the
24 exterminator said "I saw roaches". But the
25 exterminator also said I didn't see any

bedbugs. And there's no residue on the
mattress. He didn't see any mice.

And he says compared to a lot of
buildings in New York this building is much
better. I will tell you that I think every
building -- I live on the Upper East side --
every building in Manhattan has a mouse
somewhere in their building. Maybe I'm
wrong, but that's my opinion. And you don't
have to take that with you, that's just my
opinion. However, he says that this building
isn't as bad as others.

There isn't no proof other than Mr.

14 Chavez, someone who doesn't have a job, who
15 coincidentally stops paying his rent as soon
16 as the rent is due -- who is saying that he
17 has a mouse problem since December. He has
18 seen mice, roaches and bedbugs everyday since
19 1999. I don't think that's believable. And
20 when I challenged him on that he came up with
21 five or six different stories. I don't know
22 whether you remember it. I remember it, but
23 the story kept changing. The only evidence
24 you have of any mice in his room is his
25 testimony. The only evidence of any bedbugs

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1 is his testimony. And the only evidence you
2 have of any roaches, which is the
3 exterminator's testimony and his testimony.

4 Well, I have had many cases in Housing
5 Court and the courts where they take
6 pictures, they set traps. He admitted that
7 he set a trap, poison. What happens with the
8 poison, you would actually get a -- the mouse
9 doesn't exactly leave once it dies in your
10 apartment, so you can take a picture. We
11 have no pictures.

12 What else don't we have? He said he
13 had to go to the hospital because of a
14 roach. Where is his bill? Where is the
15 hospital bill? Where is the report? He says
16 he had bedbugs, and he had to throw away the
17 clothes. What about the receipts that he
18 could have kept? He had attorneys to help
19 him prepare. What about receipts that he
20 could have kept? Anything that you guys
21 could imagine that he could bring as proof,

22 he didn't have proof. The only thing he has
23 is his testimony versus all our witnesses;
24 the exterminators, employees, manager of the
25 building and their witnesses, the tenant

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1 organizer and another tenant in the building.
2 There's no proof she said she's never been on
3 the seventh floor. She has been on the
4 seventh floor, but not in his room. So she
5 doesn't know if she saw mice, bedbugs or
6 roaches in the building.

7 We admit that there have been mice in
8 the building. It happens a couple of times a
9 month. We didn't find them. He does not
10 have any proof besides his testimony. No
11 proof was put into evidence. In fact, you
12 saw pictures. You saw our pictures, which,
13 of course, if you think that we cleaned up
14 before -- I don't think so -- there's no
15 testimony to that fact, but these are the
16 pictures as they are taken. They are in
17 evidence.

18 But if see their pictures they're
19 close-ups of dirt, but there's no pictures of
20 mice, bedbugs or roaches. I'm not sure what
21 this photo really means. I don't know what
22 they're trying to prove. Cracks? I don't
23 see any holes. I don't see any cracks.
24 Yes, this is a partial door opening, yes. Is
25 this apartment really dirty? Extremely

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1 dirty, absolutely. Everybody has testified
2 to that.

3 You heard the exterminator testify that

3 you heard the exterminator testify that
4 he had walked in, there was left-overs on
5 the floor. Well, obviously, if you have
6 left-overs on the floor bedbugs, mice,
7 roaches are going to come in. But as you'll
8 learn from what the Judge tells you it
9 doesn't mean that we're responsible for that.

10 Now, this is a very important case,
11 not just for this case, you're sending a
12 message, should we be here for jury trials
13 for cases like this --

14 MR. WEINSTEIN: Objection.

15 THE COURT: Sustained.

16 The jury is instructed that they are
17 to decide the case on the facts and the law,
18 as I give it to them and not concern
19 themselves as to sending any messages.

20 MR. BAILEY: If you look at any
21 pictures, I don't believe anything they said;
22 the mice, roaches, bedbugs come up in any of
23 these pictures, if any, they just show that
24 the apartment was dirty. It doesn't show any
25 evidence of any mice, roaches or residue of

1 droppings.

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2 They have put no evidence in, and the
3 only person you have to believe is the
4 tenant, himself. And, obviously, he has an
5 alibi because he doesn't want to have to pay
6 the money. And you have the counter-evidence
7 in our part, which shows that if you have a
8 problem you talk to us, it gets done, and
9 that's not disputed.

10 I really thank you for your time. I
11 understand this is not an easy case to sit

