

Court of Appeals

STATE OF NEW YORK



In the Matter of the Application of
160 EAST 84TH STREET ASSOCIATES LLC,

Petitioner-Appellant,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

against

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent-Respondent.

**AFFIRMATION IN OPPOSITION TO
MOTION FOR LEAVE TO APPEAL TO
THE NEW YORK STATE COURT OF APPEALS**

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Date Completed: May 11, 2023

COURT OF APPEALS
STATE OF NEW YORK

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In the Matter of the Application of
160 EAST 84th STREET ASSOCIATES LLC,

AFFIRMATION IN
OPPOSITION FOR
LEAVE TO APPEAL

Petitioner-Appellant,

App. Div. First Dept.
Docket No.

For a Judgment pursuant to Article 78 of
the Civil Practice Law and Rules

2021-00718

-against-

NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,

Supreme Court NY County
Index No.
157576/2020

Respondent-Respondent.

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SANDRA A. JOSEPH, an attorney duly admitted to the
practice of law in the state of New York, affirms pursuant
to CPLR §2106 that:

1. I am an attorney in the Office of Mark F.
Palomino, Counsel to the Respondent-Respondent, the New
York State Division of Housing and Community Renewal
("DHCR") and I am familiar with the facts and circumstances
of this proceeding.

2. This affirmation is submitted in opposition to the
Owner-Appellant's ("Motion") motion for leave to appeal to
the Court of Appeals from the Appellate Division First
Department's Decision and Order entered February 24, 2022

that affirmed the Decision and Order of the Supreme Court New York County (Hon. Carol R. Edmead, J.) entered on January 19, 2021.

3. The First Department unanimously affirmed the Decision and Order of the Supreme Court, New York County which denied and dismissed the Owner-Appellant's Article 78 petition and affirmed DHCR's Order which found that DHCR's Orders concerning the Explanatory Addenda which explained the effect of HSPTA on prior deregulation orders was not arbitrary and capricious, nor were affected by an error of law.

4. The First Department found that as the lease in effect when the deregulation order was issued expired on June 30, 2019, the subject apartment was not lawfully deregulated prior to the enactment of HSTPA on June 14, 2019.

5. The grounds set forth by the Owner-Appellant in its Affirmation in Support of Motion for Leave to Appeal, were fully addressed by the Appellate Division, First Department in its February 24, 2022 Decision and Order and no further review is necessary. (Motion: Exh. A).

6. The First Department denied the Owner-Appellant's motion for reargument or in the alternative for leave to appeal on July 5, 2022. (Motion: Exh. C).

7. The Owner-Appellant has failed to present any issue which warrants granting leave to appeal. Owner-Appellant has not raised any novel legal issue of great public importance that should be reviewed by the Court of Appeals and has not presented any conflict of law between the Appellate Divisions. Owner-Appellant's claims do not satisfy the standard for leave to appeal to the Court of Appeals set forth in 22 N.Y.C.R.R. 500.22(b)(4).

8. The Owner-Appellant merely rehashes the same arguments that the Supreme Courts and the First Department denied and dismissed.

9. In addition to the Article 78 at bar here, the Supreme Courts and the First Department denied and dismissed the following Article 78s concerning the effect of HSTPA on Deregulation Orders that were issued prior to the June 14, 2019 enactment.

<u>NY Index</u>	<u>Justice</u>	<u>Appellate Dkt.</u>	<u>Petitioner Appellant</u>
157558/20	Hon. Eileen Rakower	2021-02603	160 East 84 th ST
157560/20	Hon. Eileen Rakower	2021-02604	160 East 84 th ST
157579/20	Hon. Eileen Rakower	2021-02605	160 East 84 th ST
157582/20	Hon. Eileen Rakower	2021-02606	160 East 84 th ST
153992/20	Hon. Eileen Rakower	2021-02679	87 th Sherry
153997/20	Hon. Eileen Rakower	2012-02680	87 th Sherry
153995/20	Hon. Carol R. Edmead	2021-00655	160 East 84 th St
153999/20	Hon. Carol R. Edmead	2021-00644	160 East 84 th St
154002/20	Hon. Eileen Rakower	2021-02681	87 th Sherry
154005/20	Hon. Eileen Rakower	2021-02678	87 th Sherry
157557/20	Hon. Arthur F. Engron	2021-02556	160 East 84 th st
157563/20	Hon. Arthur F. Engron	2021-02599	160 East 84 th St
157573/20	Hon. Arthur F. Engron	2021-02600	160 East 84 th St

157776/20 Hon. Arthur F. Engron 2021-03069 Clermont York
 157580/20 Hon. Arthur F. Engron 2021-02601 160 East 84th St
 157893/20 Hon. Carol R. Edmead 2021-03068 1700 York

10. The Supreme Courts in the following Article 78s affirmed DHCR's Order finding that deregulated status occurred at the expiration of the lease in effect at the time the deregulation order issued and as the lease in effect did not expire prior to the enactment of HSTPA on June 14, 2019 the subject apartments will remain regulated.¹

<u>NY County Index</u>	<u>Justice</u>	<u>Petitioner</u>	<u>Entry Date</u>
153536/21	Hon. Debra A. James	400 E57 Fee Owner	04/20/23
153538/21	Hon. Debra A James	400 E57 Fee Owner	04/20/23
150239/23	Hon. Nancy Bannon	Woodfin Corp.	04/10/23
160089/22	Hon. Sabrina Kraus	Riverside Syndicate	03/13/23
156544/21	Hon. W. Franc Perry	440 West 34 th	10/13/22
158007/21	Hon. Laurence L. Love	CF E 88LLC	04/14/22
153454/21	Hon. Lynn Kotler	CS 108 West 15 th	01/03/22
153540/21	Hon. Laurence L. Love	SP 364 W 18 LLC	10/10/21
150118/21	Hon. Eileen Rakower	400 East 58 th	07/06/21
159716/20	Hon. Arthur F. Engron	215 East 68 th	06/30/21
158833/20	Hon. Carol R. Edmead	West 79 th	05/29/21
159718/20	Hon. Carol R. Edmead	215 East 68 th	05/20/21
159719/20	Hon. Eileen Rakower	215 East 68 th	05/19/21
160537/20	Hon. Carol R. Edmead	Rudin E. 55 th	05/10/21

11. The Owner-Appellant argues that DHCR employed the prospective change in the law to rescind final orders of luxury deregulation. (Motion: #9).

12. The Owner-Appellant claims that the First Department and the Supreme courts, similar to DHCR, inserted language into HSTPA that the legislature did not

¹ The Petitioner has not perfected an appeal.

include, that if the lease in effect expired after the June 14, 2019 that apartment was not deregulated. (Motion: ¶¶40;47;52-55).

The Housing Stability and Tenant Protect Act of 2019

13. The Housing Stability and Tenant Protect Act of 2019² ("HSTPA") repealed Rent Stabilization Law §§26-504.1, 26-504.2 and 26-504.3 which provided for vacancy and high income deregulation. Section 8 of HSTPA provided that housing accommodations that were lawfully deregulated prior to June 14, 2019 shall remain deregulated.

14. The "clean up" bill amending HSTPA provided a simple "yes" or "no" question - was the apartment deregulated as of June 14, 2019? If the apartment was deregulated on the June 14, 2019, the apartment would remain deregulated.

The Explanatory Addenda

15. On September 6, 2019 the Rent Administrator mailed to both Tenants and the Owners an Explanatory Addenda to Order of Deregulation. ("Addenda").

16. The Addenda explained its purpose was to explain the impact of HSTPA upon Deregulation Orders issued by the Rent Administrator prior to the enactment of HSTPA.

17. The Addenda explained that the deregulation of

² Ch. 36 of the Laws of N.Y. 2019

the housing accommodation as stated in a deregulation order is contingent upon the expiration of the lease in effect on the day the Rent Administrator's deregulation order was issued pursuant to applicable provisions in ETPA and the Rent Stabilization Law. (Motion: ¶10).

18. The Addenda made no findings as to whether the apartment was deregulated or regulated pursuant to the expiration of the Tenant's lease.

19. All prior Orders of Deregulation stated pursuant to the Rent Stabilization Law:

ORDERED that the subject housing accommodation is **deregulated, effective upon the expiration of the existing lease.**

20. The Owner-Appellant's arguments before the Supreme Court, the First Department and in its Motion here hinge on the erroneous premise that an apartment became deregulated upon the issuance of the deregulation order.

21. However, as RSL §26-504.3(b); RSL §26-504.3(c)2; and RSL §26-504.3 (c)3 provided, DHCR shall "issue an order that such housing accommodation shall not be subject to the provisions of this act upon the expiration of the existing lease".

22. The apartment was not deregulated as former RSL §26-504.3 and the deregulation order dated January 7, 2019 provided that the apartment was to be deregulated upon

expiration of the existing lease which expired June 30, 2019.

23. Even if DHCR did not send the Owners and Tenants the Addenda, the housing accommodation would not be deregulated because as RSL §26-504.3(b), RSL §26-504.3(c)2 and RSL §26-504.3 (c)3 and the Deregulation Order provided “the subject housing accommodation is deregulated effective upon the expiration of the existing lease.” As the Tenant’s lease did not expire as noted above until after June 14, 2019 the housing accommodation was not deregulated prior to June 14, 2019 and pursuant to HSTPA the housing accommodation shall remain regulated.

HSTPA Part D is Prospective

24. The Owner-Appellant claims the basis for its Motion is that First Department overlooked the fact that there is no language in the repeal of RSL §26-504.3 or the “Clean Up” Bill (L 2019, Ch 39, Part Q, §8) that suggests the repeal was in any way intended to vitiate or impact a previously issued deregulation order and the retroactive effect of employing of HSTPA’s enactment date as a “cut-off” for luxury deregulation. (Motion: ¶57;¶60)

25. This Court in Regina Metro v. N.Y. State Div. of Hous. & Comm. Renewal, 35 N.Y.3d 332, 130 N.Y.S.3d 759 (2020) specifically noted HSTPA Part F is the only portion

of HSTPA which had a retroactive effective date, which would have an effect of reviving dead "claims".

26. This is a major difference from the subject of Part D, the repeal of deregulation. Part D concerns the actual jurisdiction of the Rent Stabilization Law and whether the law applies to the subject apartment.

27. Part D is prospective in nature as anything lawfully deregulated remains deregulated. HSTPA neither impairs a right that the Owner had in the past as it did not yet have the "right" of deregulation; it does not increase the owner's "liability" for past conduct as with overcharges; nor did it impose new duties on a completed transaction.

28. HSTPA simply recognizes the duty of the owner that has always been in effect with respect to deregulation, that deregulation was only effective upon expiration of the current lease.

29. The subject apartment was not deregulated at the time of HSTPA's enactment. The Legislature, not the Addenda revoked the statutory exemption which permitted the subject apartment's deregulation.

30. The Appellate Division, First Department and the Supreme court properly found that the apartment was not lawfully deregulated prior to HSTPA's enactment June 14,

2019 as the lease expired and June 30, 2019. (Motion: Exh. A, p.2).

The Owner-Appellant's Motion for Leave to Appeal should be dismissed.

31. The Owner-Appellant's motion seeking leave to appeal to the Court of Appeals pursuant to CPLR §5602(a)(1)(i) should be dismissed. As this Court makes clear in its Rules of Practice, leave worthy cases are ones in which the issues are novel or of public importance or present a conflict among the Appellate Division departments. See; 22 NYCRR §500.22(b)(4); Matter of City of New York v. 2305-07 Third Ave., LLC, 142 A.D.3d 69, 35 N.Y.S. 3d 69 (1st Dept. 2016) lv. dnd. 28 N.Y. 3d 912, 51 N.Y.S.3d 17 (2017).

32. Clearly, this case does not present any issue which must be addressed by the highest Court of the State in order to achieve a correct result.

33. The Owner-Appellant failed to show any error on the part of the Appellate Division, First Department or any reason to grant the extraordinary relief of leave to appeal to the Court of Appeals.

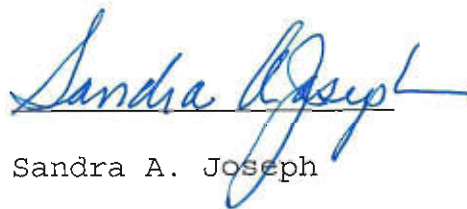
34. Moreover, the Owner-Appellant's substantive arguments in this leave for appeal motion are essentially a restatement of prior arguments and contentions concerning

the issues litigated in this proceeding before DHCR, the Supreme Court and appealed to the Appellate Division, First Department.

35. The Appellate Division, First Department arrived at an entirely logical and scholarly decision that both DHCR and the Supreme Court properly concluded that the deregulation orders stated prospectively that the subject apartment would become deregulated upon the expiration of the existing lease and as subject lease did not expire prior to June 14, 2019, the subject housing accommodation was not lawfully deregulated prior to the enactment of HSTPA.

WHEREFORE, for the foregoing reasons, it is respectfully requested that this court deny the motion for leave to appeal to the Court of Appeals in its entirety.

Dated: New York, New York
May 11, 2023


Sandra A. Joseph