TO BE ARGUED BY:
DARRYL M. VERNON, ESQ.
TIME REQUESTED: 15 MINUTES

NO. APL 2018-0022

State of New York
Court of Appeals

Action No. 1

In the Matter of the Application of
REGINA METROPOLITAN CO., LLC,
Petitioner-Respondent,

v.

NEW YORK STATE DIVISION OF
HOUSING AND COMMUNITY RENEWAL,
Respondent-Appellant,

LESLIE E. CARR and HARRY A. LEVY,
Intervenors-Respondents.

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

(Caption continues inside front cover)

BRIEF FOR INTERVENOR-RESPONDENT

VERNON & GINSBURG, LLP
Attorneys for Intervenor-Respondent
Leslie E. Carr
261 Madison Avenue, 26th Floor
New York, New York 10016
(212) 949-7300
ysilagy@vgllp.com

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Action No. 2

In the Matter of the Application of
LESLIE E. CARR and HARRY A. LEVY,
Petitioners,

v.

NEW YORK STATE DIVISION OF
HOUSING AND COMMUNITY RENEWAL,
Respondent,

REGINA METROPOLITAN CO., LLC,
Intervenor-Respondent.

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

STATUS OF RELATED LITIGATION

There is no related litigation pending between the parties as of the date of this brief.

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PRELIMINARY STATEMENT

Harry A. Levy and Leslie E. Carr ("Tenants"), as tenants in the proceedings below and on appeal, respectfully submit this brief. In sum, the Tenants agree with the arguments made by the New York State Division of Housing and Community Renewal (the "DHCR") for the paramount point on appeal, to wit, that a landlord may not benefit by getting to use the rent from an unlawfully deregulated lease – a lease that as such must be considered void – to establish a proper stabilized rent. This is so whether or not the Court looks back more than four years from the date that an overcharge complaint is filed. The DHCR's administrative decision below to not allow a landlord to benefit from its wrongdoing – specifically, improperly deregulating an apartment while gaining tax benefits at the expense of the government and the public – was not remotely close to being arbitrary and capricious.

As such, given the standard of review for administrative determinations, this Court should uphold the DHCR determination in this case that the Landlord is not permitted to use an illegal deregulated rent in establishing the legal rent stabilized rent for the Tenants' apartment. Any ruling to the contrary would render virtually meaningless this Court's ruling in Roberts v. Tishman Speyer Properties, L.P., 13 N.Y.3d. 270 (2009), since it would permit the landlord to charge essentially a deregulated rent for a rent stabilized apartment. Indeed, both this Court as well as

the DHCR have held that an illegal deregulated rent cannot be used as the basis for establishing a legal rent for a rent regulated apartment. As it is, landlords often get to keep substantial overcharges that they managed to collect more than four years before a tenant files a complaint.

Where all the parties (the Landlord, DHCR and Tenants) part ways is the formula for determining a proper and lawful base rent, and the resulting overcharges for the Tenants' home, which indisputably was improperly deregulated during the Landlord's receipt of J-51 tax benefits for the building. In this brief we will provide, with precedential support, proper formulas to determine a lawful rent for an unlawfully deregulated apartment. In fact, one of those formulas, that did not require looking back beyond the four year base date, came from this Court in Thornton v Baron, 5 N.Y.3d 175 (2005), as well as its progeny in Matter of Grimm v. State Division of Housing and Community Renewal, 15 N.Y.3d 358 (2010). Both will be addressed.

QUESTIONS PRESENTED

1. Whether a Landlord should be permitted to benefit from a base rent simply lifted from an illegally deregulated lease for a rent stabilized apartment that was improperly deregulated while the Landlord received J-51 tax benefits for the building?

STATEMENT OF FACTS

A. Chronology of Events

The following is a chronology of the Landlord's overcharges and improper deregulation of the apartment, as well as the administrative and judicial decisions in the instant proceeding:

- July 1, 1999 – June 30, 2013: The Landlord participates in New York City's J-51 program, which is the tax incentives program authorized by Real Property Tax Law §489, designed to encourage the rehabilitation and improvement of buildings, and permits owners who qualify to receive tax exemptions and/or abatements for a period of at least 14 years. (DHCR Record Return: A-5).

- June 30, 2005: The Landlord gives the Tenants a deregulated lease at a monthly rent of $5,195 for the period of August 1, 2005 to August 1, 2007, asserting prominently (all capital letters) in two places on the lease that the apartment is not rent regulated. (R:304-307). The lease does not contain a rider advising the Tenants of (a) the date of expiration of the J-51 tax benefits; and (b) that the apartment shall become deregulated after expiration of the J-51 tax benefits, as required by Rent Stabilization Code §2520.11(o)(2), if a landlord wishes to deregulate an apartment with a tenant still in occupancy after expiration of the J-51 tax benefits.
- June 2007 – June 2008: The Landlord offers the Tenants only deregulated, one-year leases (when the Tenants would have preferred two-year lease renewals), again without the required J-51 rider. (R:308-309).
- July 26, 2007: The Landlord updates the DHCR registration for 2004, continuing the apartment registration as rent stabilized, yet offers Tenants only one-year, deregulated lease renewals in June 2007 and June 2008. (R:117-121).

- June 2009: The Landlord refuses, unlawfully, to provide theTenants with a written renewal lease for the period beginning August 1, 2009 stating "we prefer it that way." (R:277).
- October 31, 2009: The Tenants file their overcharge complaint. (DHCR Record Return: A-1).
- November 13, 2009: The Landlord responds to the overcharge complaint, denies there is any overcharge, asserts they are entitled to two Major Capital Improvements that would permit a rent increase to which they are not entitled, and claims that the rent should be even higher than what they had been charging. (DHCR Record Return: A-3).
- December 2009: The Tenants pay the December "oral rent" (since the Landlord refused to proffer a written lease) and the Landlord deposits the check. The Landlord, after filing its initial response to the overcharge complaint with the DHCR, now unilaterally raises the "oral rent" agreed upon with the Tenants by $121.64 per month, sends a new December 2009 rent invoice and demands this balance retroactively for December, and subsequently claims it as "arrears" on the January 2010 rent invoice. The Tenants pay this December 2009 "arrears" in January and the new rent going forward under protest. (R:278).

- December 2009 – January 2010: The Landlord offers several written renewal leases, though at illegal rents and containing several significant false statements in the "J-51 rider," one of which the Tenants eventually sign under protest. (R:278).
- November 2013: The DHCR notifies the Landlord that it is considering an award of legal fees and treble damages to the Tenants and gives the Landlord 20 days to provide a response. (DHCR Record Return: A-23). The DHCR concurrently advises the Tenants what they needed to do to get their legal fees (which was to document the legal fees and the Tenants thoroughly did so). As the DHCR said exactly "In order for the tenants to receive reimbursement of legal fees the tenants attorney must submit the following." (DHCR Record Return: A-24).
- December 2013: The Landlord offers the Tenants a *de minimus* overcharge refund and does not, as required, modify the rent charged. The Tenants reject the overcharge refund. (R:236. 237).

- February 26, 2014: After multiple submissions by the Tenants, their attorneys and the Landlord's attorneys, including several submissions addressing complex legal issues, as well as the DHCR's request for extensive details of the substantial attorneys' fees incurred, the DHCR awards to the Tenants an overcharge, establishes the new rent for the apartment at a rent stabilized monthly amount of $4,136.32, but denies the Tenants' claim for legal fees, based *solely* on the unprecedented rationale that the Tenants could have – and therefore should have – handled this instant case by themselves without legal counsel, a case that has now, nearly ten years later, reached the highest court of New York State. The DHCR additionally denies treble damages. (R:53-58).
- May 13, 2015: The DHCR denies both the Landlord's and the Tenants' Petitions for Administrative Review. (R:34-52). Notably, the Tenants showed with photographs and model numbers, that the Landlord had, in its PAR, submitted untimely and false documentation, no less, for Individual Apartment Improvements. Also, the purported electrical work was refuted

by a Department of Buildings violation for electrical work that the Landlord claimed was improved. (R:284,5).

- October 13, 2016: The Hon. Alice Schlesinger, in an Article 78 ruling dated October 13, 2016, denies both the Landlord's and Tenants' PARs and upholds the DHCR rulings. Justice Schlesinger expressly writes that the court had "misgivings" and "problems with [the] rationale" that denied the Tenants reimbursement of their legal fees but has no choice but to defer to the DHCR's discretion. (R:7-16).
- August 16, 2018: The Appellate Division, in a 3-2 ruling, rejects the DHCR method for calculating the overcharge, ruling that the DHCR could not go back more than four years from the date of the filing of the overcharge complaint in examining what the legal rent should be for the apartment. The majority ruling leaves it to the discretion of the DHCR to employ the "sampling" method in determining the legal regulated rent, which will be discussed further below. (R:358-396). With the two-Justice dissent, the Tenants and the DHCR had the right to file their appeal directly to this Court. The Tenants did so and this Court ruled that the Appellate Division ruling was not final.

In essence, the Court ruled that the Tenants should first see what the DHCR does to determine the proper and legal base rent. However, the Appellate Division subsequently grants leave to the DHCR to appeal to this Court and certifies the question of whether their order was properly made.[1]

B. The Tenants' Apartment Was Unlawfully Deregulated and the Landlord Unlawfully Set the Tenants' Rent

1. The Statutory Background of Luxury Decontrol and Rent Stabilization

In 1993, the New York State Legislature enacted certain amendments to the Rent Stabilization Laws and the Rent Control Laws, which are often referred to collectively as "luxury decontrol." One form of such luxury decontrol – called "high rent/vacancy deregulation" – provided that certain units could be deregulated

[1] Thus, and according to this Court's case summary for this appeal and the companion appeal of Raden (cited below), the issues on appeal are as follows:

> "REGINA METROPOLITAN CO., LLC, MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL:
> Landlord and Tenant--Rent--Whether method used by respondent New York State Division of Housing and Community Renewal (DHCR) to calculate rent overcharge for apartment, which looked beyond the four-year limitations period to determine base date rent, was arbitrary and capricious; landlord improperly deregulated apartment while receiving J-51 tax benefits; whether tenants were entitled to treble damages and attorneys' fees."

> "RADEN, et al. v W 7879, LLC, et al.:
> Landlord and Tenant--Rent--Whether look-back period for rent overcharge claim is limited to four years before overcharge complaint is filed; whether defendants engaged in fraud in deregulating apartment and whether deviation from rent stabilization was willful; whether plaintiffs are entitled to treble damages or attorneys' fees."

if they became vacant and the legal regulated rent or the legal maximum rent exceeded $2,000 per month. N.Y.C. Admin. Code §§ 26-403(k), 26-504.2(a); L. 1993, Ch. 253, §§ 4, 6, effective July 7, 1993. Another form, referred to as "high rent/high income deregulation," provided that the Division of Housing and Community Renewal ("DHCR") could order deregulation of existing rent stabilized and rent controlled units if the legal regulated rent or the legal maximum rent exceeded $2,000 per month and the tenant's household income exceeded a preset annual limit for two years.[2] N.Y.C. Admin. Code §§ 26-403(j), 26-504.1; L. 1993, Ch. 253, §§ 4, 6, effective July 7, 1993.

The amendments to the RSL and RCL provided, however, that these deregulation provisions did not apply to owners who received benefits pursuant to Real Property Tax Law (RPTL) §489. RPTL §489, enacted in 1955, was an enabling statute, authorizing cities to promulgate local laws that would provide multiple dwelling owners with tax incentives to rehabilitate their properties or convert them to residential use. In 1960, pursuant to RPTL §489, New York City adopted the J-51 program, now codified at §11-243 of the Administrative Code of the City of New York. The enabling law specifically provided that J-51 benefits

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[2] When the legislation was initially passed, the household income level was set at $250,000 per year for the two-year period. L. 1993, Ch. 253 §§ 4, 6; Compl. ¶ 24. In 1997, the statute was amended to lower the level to $175,000 per year and then later increased to $200,000 as of July 1, 2011, and the legal maximum rent was raised from $2,000 to $2500 as of July 1, 2011. L. 1997, Ch. 116, §§ 12, 14, effective Jan. 1, 1997; N.Y.C. Admin. Code §§ 26-403.1, 26-504.1. Pursuant to the Rent Act of 2015 (L. 2015, ch 20), the legal maximum rent has been raised as of June 2015 from $2500 to $2700 with guideline increases thereafter.

were only available to dwellings that were subject to rent control or rent stabilization.

The 1993 "luxury decontrol" amendments to the law further authorized cities to impose rent regulation on building owners as a *quid pro quo* for receiving tax benefits. Indeed, the leaders in the Legislature who shepherded the "luxury decontrol" bill, Assemblyman Pete Grannis and State Senator J. Kemp Hannon, declared at the end of debate:

> MR. GRANNIS: There are twelve thousand
> apartments in the city that rent for over $2,000. Some
> of those are in buildings that are excluded under this,
> that are in J-51 and 421. [N.Y. Assembly Debate Transcripts 1993 Chapter 253, July 7, 1993 at p.213]
>
> MR. HANNON: Well, in answer
> 2 to your question, Senator, which is an excellent
> 3 one, we have provided that, because some
> 4 buildings are enjoying another system of general
> 5. public assistance, namely the tax exemptions,
> 6 that to the extent the building is currently
> 7 receiving a 421 tax exemption, it is not subject
> 8 to the decontrol provisions here. Should those
> 9 exemptions end or should the exemptions
> 10 contained in section 489 end, that's -- those
> 11 J.51s and 489s end, then they would be subject
> 12 so that at no point do you have the decontrol
> 13 provisions applying to the buildings which have
> 14 received the tax exemptions that I just
> 15 mentioned. [N.Y. Senate Transcripts 1993 Chapter 253, at p.8214].

2. The <u>Roberts</u> Holding and Its Retroactive Application to the Apartment

As confirmed by the Court of Appeals in <u>Roberts v. Tishman Speyer Properties, L.P.</u>, 13 N.Y.3d. 270 (2009), the option to take advantage of the luxury

decontrol amendments expressly does not apply to owners who receive benefits under RPTL §489 or its enabling local laws, including J-51. In Roberts, the Court affirmed "that building owners who receive J-51 benefits forfeit their rights under the luxury decontrol provisions even if their buildings were already subject to the RSL." 13 N.Y.3d at 283. The Roberts Court rejected the defendant-landlord's argument that, because its building was subject to rent stabilization before the J-51 benefits began, it should be able to use luxury deregulation provisions. Id. at 286. Rather, the Court held that the "most natural reading of the statute's language" was that it prohibits luxury decontrol whenever the apartment is receiving J-51 benefits, regardless of whether the apartment was previously rent stabilized. See id.

Because the Court's decision in Roberts "was not unforeseen," it applies retroactively. Roberts v. Tishman Speyer Properties, L.P., 89 A.D.3d 444, 445-46, (1st Dep't 2011) (internal quotation omitted); see also Gersten v. 56 7th Avenue LLC, 88 A.D.3d 189, 198 (1st Dep't 2011).

3. The Undisputed Overcharge of the Tenants in the Instant Proceeding

Here, there is no dispute that the Landlord was receiving J-51 benefits for the Apartment in 2003 when it asserted wrongfully on the lease to prior tenants that the apartment was not subject to rent regulation based on high rent/vacancy deregulation. (R:152-155). Nor is it disputed that the J-51 tax benefits were in effect when the Tenants took occupancy of the Apartment on or about August 1,

2005, when the Landlord had them sign a similar lease with the same notice regarding deregulation at a deregulated monthly rent of $5,195.00. Pursuant to Roberts and its progeny, therefore, the Apartment could not be deregulated pursuant to "high rent/vacancy deregulation," and the Landlord's fixing of a deregulated rent for the Apartment in August 2005 and use of prior deregulated rents to establish the Tenants' rent was therefore unlawful**.**

It is uncontested that on July 26, 2007, more than two years before the Court of Appeals decided Roberts, and more than two years before the Tenants filed the underlying complaint, the Landlord filed a late registration for the apartment (for the prior tenants of the apartment) registering its status as rent stabilized at a time when they were affirmatively misrepresenting to the instant Tenants that it was deregulated and charging them non-stabilized rents. (R:117-121). No rent or lease term were registered on July 26, 2007 – just the stabilized status. By itself, this late rent stabilized registration was evidence of fraudulent and deceptive intent by the Landlord.

The Landlord throughout this legal action has never disputed that the Apartment should be rent stabilized due to the building's receipt of J-51 benefits. Indeed, in the seven years from 2003 to 2010, between the Landlord's declaration (to two successive tenants) that the instant Apartment was "deregulated" up until the months following the filing of the overcharge complaint by the Tenants, the

Landlord made no effort whatsoever to change the annual DHCR registrations from 'rent stabilized' to 'exempt' because of 'high rent vacancy,' as the very same officers of the Landlord had done elsewhere, contemporaneously, for similarly situated apartments they deregulated. In two cases cited by the Landlord in their submissions before the DHCR – Gordon v. 305 Riverside Corp., 93 A.D.3d 590, 941 N.Y.S.2d 93 (1st Dept. 2012) and Rosenzweig v. 305 Riverside Corp., 954 N.Y.S.2d 761, 35 Misc.3d 1241(A) (S.Ct. N.Y. Co. 2012) – the very same officers and/or agent of the Landlord, as in the case at bar, changed the DHCR rent registrations from rent stabilized to exempt because of high rent vacancy at the earliest vacancy opportunity.[3] (DHCR Record Return: C-5, Exhibit B).

[3] Both Regina Metropolitan Co. LLC. and 305 Riverside Corp., have the same corporate mailing address as registered with the New York State for service of process, and the same head officer (Morris Schreiber), officer (Richard Eisenberg), and managing agent (RCR Management LLC, by Ari Paul). See NYS Department of State Division of Corporations and HPD websites:

- www1.nyc.gov/site/hpd/about/hpdonline.page
- www.dos.ny.gov/corps/bus_entity-search.html

ARGUMENT

I. <u>THE OVERCHARGE AND NEW RENT SHOULD BE ESTABLISHED USING THE DHCR SAMPLING METHOD OR THE *THORNTON* DEFAULT FORMULA IF THIS COURT RULES THAT THE FOUR YEAR RULE APPLIES. ALTERNATIVELY, IF THE COURT PERMITS EXAMINATION OF RENT RECORDS BEYOND FOUR YEARS, THEN THE DHCR METHOD USED IN THE CASE AT BAR, OR THE LOWEST RENT FOR A COMPARABLE APARTMENT WHEN THE TENANTS FIRST OCCUPIED THE APARTMENT, ARE APPROPRIATE RENT FORMULAS</u>

As the DHCR ruled in its orders, and as it states in its Court of Appeals Brief ("DHCR Brief"), an illegal deregulated rent charged on the "base date" cannot be used as a basis for calculating an overcharge and establishing the correct base rent for an apartment, and in that event, the entire rental history of the apartment must be examined. The cases cited by the DHCR in support of this fact, such as <u>Thornton v. Baron</u>, 5 N.Y.3d 175 (2005) and <u>Matter of Grimm v. State of New York Division of Housing and Community Renewal</u>, 15 N.Y.3d 358 (2010) and their progeny are controlling, and Tenants respectfully refer this Court to the DHCR Brief.

As the DHCR correctly notes in its brief, the $5,195 market rent that the Landlord asks this Court to uphold as the base date rent would lock in a rent for the Tenants and future tenants that is clearly unlawful under this Court's ruling in <u>Roberts</u>, and would render this Court's ruling in <u>Roberts</u> as "toothless" and largely meaningless.

It follows that the Landlord has no legal basis to challenge the administrative decision of the DHCR. There is little doubt that the DHCR has made compelling points supporting the DHCR's finding that the base date rent cannot be set simply by transposing the rent from an unlawfully deregulated lease onto a regulated lease. Therefore, there is no question that, at a minimum, this DHCR finding is not arbitrary and capricious and therefore is entitled to deference. Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v. State of New York Division of Housing and Community Renewal, 46 A.D. 3d 425, 428 (1st Dept. 2007), *aff'd* 11 N.Y.3d 859 (2008).

The issue to be resolved is which rent formula to use in establishing a lawful base date rent for the Tenants. The following examines the several legal options that can be used in making such calculations.

A. If This Court Chooses Not to Go Back More than Four years from the Date of the Filing of the Overcharge Complaint in Calculating the Base Date Rent, then the Sampling Method Suggested by the Appellate Division Majority in the Case at Bar or Alternatively the *Thornton* Formula Should be Applied.

If this Court rules that the DHCR's method of determining a lawful base rent violates the Four Year Rule, then this Court should choose an option that does not simply let the Landlord get all of the monetary benefits of simply lifting the rent that it received on the open market from an unlawfully deregulated lease. The

reasons have been detailed above as to why the DHCR's decision on this issue is nothing close to arbitrary and capricious.

The formula this Court should then follow is the option provided by the Appellate Division majority in the case at bar, the DHCR "sampling" method, which as the DHCR states in its DHCR Brief looks to the average stabilized rents for comparable apartments in the same building as of the base date. See Matter of 160 E. 84th St. Assoc. LLC v. New York State Division of Housing and Community Renewal, 160 A.D.3d 474, 75 N.Y.S.3d 141 (1st Dept. 2018). As the court held in that case, the DHCR's use of the sampling method for an apartment improperly deregulated during receipt of J-51 benefits was not arbitrary and capricious:

> The market rent of $2,200 per month, established by lease, in effect on the "base date" (RSC §2520.6(f)(1) was the result of improper deregulation by the petitioner and thus may not be adopted as the proper base date rent (see *72A Realty Assoc. v. Lucas*, 101 AD3d 401 (1st Dept. 2012); *Gordon v. 305 Riverside Corp.,* 93 AD3d 590, 592 (1st Dept**.** 2012**).**
> 160 A.D.3d 474, 475.

This "sampling" formula is set forth in Rent Stabilization Code §§2522.6(b)(2) and 2522.6(b)(3)(iv):

Rent Stabilization Code §§2522.6(b)(2) states:

> Where either (i) the rent charged on the base date cannot be determined, or (ii) a full rental history from the base date is not provided or (iii) the base date rent is the product of a fraudulent

scheme to deregulate the apartment, or (iv) a rental practice proscribed under section 2525.3 (b), (c) and (d) has been committed, the rent shall be established at the lowest of the following amounts set forth in paragraph (3).

Rent Stabilization Code §2522.6(b)(3) states:

(3) These amounts are:

(i) the lowest rent registered pursuant to section 2528.3 of this Code for a comparable apartment in the building in effect on the date the complaining tenant first occupied the apartment; or

(ii) the complaining tenant's initial rent reduced by the percentage adjustment authorized by section 2522.8 of this Code; or

(iii) the last registered rent paid by the prior tenant (if within the four-year period of review); or

(iv) if the documentation set forth in (i) through (iii) of this paragraph is not available or is inappropriate, an amount based on data compiled by the DHCR, **using sampling methods determined by the DHCR, for regulated housing accommodations**. [Emphasis Added].

Alternatively, the Court should choose the default formula it used in Thornton v. Baron, 5 N.Y.3d 175(2005), when it rejected the landlord's attempt to use an unlawfully deregulated lease and unlawful rent to set the rent for the apartment because that would effectively "transform an illegal rent into a lawful assessment that would form the basis for all future rent increases." 5 N.Y.3d 175, 181 (2005). Instead, the Court held that the rent should be set by using "the lowest rent charged for a rent-stabilized apartment with the same number of rooms in the

same building on the relevant base date." *Id.* at 180, n.1. Also see Wasserman v. Gordon, 24 A.D.3d 201, 806 N.Y.S.2d 49 (1st Dept. 2005).

B. If This Court Allows Examination of Rent Records for the Period of More than Four Years Prior to the Filing of the Overcharge Complaint, Then It Should Adopt the DHCR Method Used Here or Alternatively Take the Rent of a Comparable Apartment at the Time the Tenants Moved into their Apartment in 2005.

If this Court permits a review of the rental history more than four years from the date of the filing of the overcharge complaint, then this Court should affirm the DHCR method used in the case at bar, which was to go back to the last legal registered rent stabilized rent for the apartment. However, the DHCR should not have permitted guideline increases from the last legal registered rent to date, since pursuant to Rent Stabilization Law §26-517(e) and Rent Stabilization Code §2528.4(a), a landlord's failure to file a "proper and timely" annual rent registration statement results in the rent being frozen at the level of the "legal regulated rent in effect on the date of the last preceding registration statement." Jazilek v. Abart Holdings, LLC, 899 N.Y.S.2d 198, 72 A.D.3d 529 (1st Dept. 2010).[4] See also Altschuler v. Jobman 478/480, LLC, 135 A.D.3d 439, 22 N.Y.S.3d 427 (1st Dept. 2016)[Supreme Court properly imposed a rent freeze on the apartment, since defendant, upon improperly deregulating a rent regulated

[4] Moreover, although not directly relevant, even if the Landlord here had filed proper amended registrations (which it did not do), the filing of late amended registrations in 2010 would still bar the Landlord under RSL §26-517(e) from collecting any rent increases prior to the 2010 filings. See BN Realty Associates v. State Division of Housing and Community Renewal, 254 A.D.2d 7, 677 N.Y.S.2d 791 (1st Dept. 1998).

apartment, collected, as in the instant case, the unlawful rent overcharges before filing late rent registrations]; 215 W 88th Street Holdings LLC v. New York State Division of Housing and Community Renewal, 143 A.D.3d 652, 40 N.Y.S.3d 92 (1st Dept. 2016)[Rent freeze in calculating rent using the Thornton formula is required when owner filed improper rent registrations]; Matter of Hargrove v. Division of Housing. & Community Renewal, 244 A.D.2d 241, 664 N.Y.S.2d 767 (1st Dept. 1997).

Alternatively, pursuant to Rent Stabilization Code §2522.6(b)(3) as quoted earlier on page 18 of this brief, the Court can adopt the method of examining the lowest rent charged for a comparable apartment at the time the Tenants first occupied the apartment.

CONCLUSION

For the foregoing reasons, the rent overcharge should be calculated using the DHCR sampling method or one of the other formulas presented here, and the court should award to the tenants any other relief as is proper.

Dated: New York, New York
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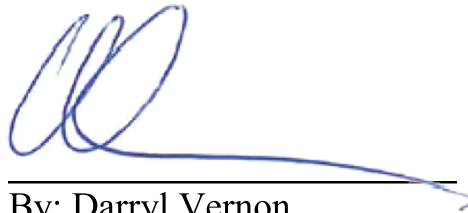
VERNON & GINSBURG, LLP
Attorneys for Tenants
261 Madison Avenue
New York, New York 10016
(212) 949-7300



By: Darryl Vernon

Yoram Silagy
Darryl M. Vernon
Vernon & Ginsburg, LLP

CERTIFICATE OF COMPLIANCE

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