



8/16/2018

MAJOR VICTORY FOR OWNERS

On August 16, 2018 the Appellate Division of the Supreme Court for the First Department issued its decision in *Regina Metropolitan Co., LLC v. New York State Division of Housing and Community Renewal (DHCR)*. CHIP filed an amicus in support of the owner.

The issue addressed by the Court was the method of calculating rents where an apartment was erroneously deregulated during the receipt of J-51 tax benefits. DHCR held that the rent must be calculated from the date the apartment was first erroneously treated as deregulated. Subsequent to DHCR's decision in *Regina*, the Appellate Division, in *Taylor v. 72A Realty*, ruled similarly, that being the methodology to be utilized was to calculate the rent from the date the apartment was first and properly treated as deregulated. The *Taylor* decision was contrary to several previous decisions by the Appellate Division that held that in the absence of proof of fraud, rent was to be calculated from the base date four years prior to the filing of the complaint. Even though *Taylor* was contrary to those earlier decisions, it was widely viewed as binding

since it was the latest determination on this issue. The Appellate Division in *Regina* held that the matter was required to be remanded to DHCR to recalculate the overcharge and proper rent using a **base date rent of four years before the filing of the overcharge** complaint, thus effectively overruling *Taylor*. In addition, there is language in the decision that rejects the Court's 2012 72A *Realty Assoc. v. Lucas* J-51 holding, which required that the owner first show the apartment reached the then \$2,000 deregulation threshold prior to being able to rely on the rent in effect on the base date.

Niles C. Welikson, Esq. of Horing Welikson & Rosen, P.C. represented Regina and argued the appeal on behalf of the owner. CHIP, represented by Peter A. Schwartz, Esq. of Graubard Miller, appeared in the case as amicus curiae and submitted a brief in support of the owner's position.



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