

NEW YORK STATE LEGISLATURE NEW YORK CITY COUNCIL

Via Facsimile and U.S. Mail

April 1, 2009

Deborah VanAmerongen
Commissioner
New York State Division of Housing and Community Renewal
Hampton Plaza
38-40 State Street
Albany NY 12207

Dear Commissioner VanAmerongen:

As members of the DHCR Policy and Practice Reform Group, we write today regarding the implications of the *Roberts v. Tishman Speyer Properties, L.P.* March 5, 2009 decision and the need for the New York State Division of Housing and Community Renewal (DHCR) to take immediate action in protection of tenants.

As you know, the First Department of the Supreme Court, Appellate Division, ruled unanimously that all apartments in buildings receiving J-51 tax benefits (“J-51 buildings”) are protected from high rent vacancy and high rent/high income deregulation. Nevertheless, it has come to our attention that the DHCR continues to send notices threatening deregulation to tenants in those buildings with rents over \$2,000. In fact, as recently as March 20, 2009, DHCR representatives were advising the public that apartments will continue to be deregulated until there is a “final decision.” At the same time, the statement on your website advises that rent overcharge claims by tenants “will be held pending a final outcome in the Roberts case.”¹

We fail to understand why rent overcharge claims by tenants are being stalled by the DHCR while deregulation claims by landlords are proceeding unabated. This is especially disturbing given that in response to State Senator Duane’s letter of February 13, 2008 asking the DHCR to

¹ See NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, “Roberts v. Tishman Speyer Properties” available at <http://www.dhcr.state.ny.us/PressRoom/news090312.htm> (accessed March 30, 2009).

hold over the eviction of tenants in J-51 buildings until *Roberts* was decided, the DHCR declined, stating that its actions in such matters would be guided by the New York State Supreme Court ruling already under appeal. As a result, many tenants lost their homes through evictions that were, if the Appellate Division's decision is upheld, illegal. The DHCR should hold all claims pending a final outcome of the *Roberts* case, and, as explained below, should go much further to protect the rights of tenants.

1. The DHCR Should Inform All Tenants in J-51 Buildings of this Decision and the Implications for their Tenancies

The *Roberts* case will potentially change the status of thousands of tenancies throughout New York City, and the DHCR should promptly assess the number of apartments affected. In response to a question from Council Member Garodnick at the March 16, 2009 City Council hearing on rent regulation, the New York City Department of Housing, Preservation and Development said that DHCR is in the best position to undertake such an analysis, and we agree. We ask DHCR to (1) investigate and catalogue how many apartments were deregulated while buildings received J-51 tax benefits; (2) advise us of the results of your investigation; and (3) notify directly all tenants in J-51 buildings of the recent *Roberts* decision and its potential significance to their tenancies.

The DHCR should also explain publicly that all residential tenants in J-51 buildings are effectively rent regulated according to the *Roberts* decision. Your agency should clarify that one of the legal effects of the case is that landlords must offer lease renewals at regulated rates until their J-51 benefits period expires. In addition, the DHCR must develop a policy to address the evictions of tenants in J-51 buildings that were allowed to proceed without the due process required by law for rent stabilized units.

2. DHCR Should Hold All Applications to Deregulate Apartments Receiving J-51 Tax Benefits

The DHCR has declared that it “must await the final resolution of this case [*Roberts*] by the New York Courts for direction on how it should handle all cases and matters before it concerning New York buildings that have benefited from J-51 tax abatements.”² While the DHCR's online statement explicitly states that tenant overcharge complaints “will be held pending a final outcome in the *Roberts* case,”³ the DHCR must also immediately put on hold applications to deregulate units in buildings receiving J-51 benefits awaiting the resolution of *Roberts* in all cases and matters. This should include suspending the issuance of high income/high rent verification forms for tenants in J-51 buildings.

3. DHCR Must Explain the Risks of Filing Rent Overcharges

Finally, the DHCR needs to explain to tenants the potential consequences of filing rent overcharge complaints with your Agency. A market rate tenant who files a rent overcharge complaint before the final *Roberts* decision could face a nonrenewal of his/her lease or other legal action, and should be aware of that risk. The DHCR should also note the countervailing

² *Id.*

³ *Id.*

risk that if a tenant does not file, the statute of limitations is only four years and the tenant who waits to file may potentially lose the ability to recover some past rent overcharges.

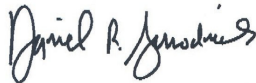
The DHCR must also alert Stuyvesant Town and Peter Cooper Village residents that their participation in this case puts them in a different position than other tenants in buildings receiving J-51 tax benefits because they are members of a class in a pending class action lawsuit and will directly benefit from that lawsuit if the class is officially “certified” as such by the court. We ask that the DHCR explain clearly to tenants at Stuyvesant Town and Peter Cooper Village or parties in similar class actions that they should contact their lawyers or Tenants Association about the potential negative effect of filing a rent overcharge complaint. Due to the potential consequences of filing a rent overcharge complaint in these cases, we ask you to confirm that tenants may withdraw a complaint if the DHCR has yet to issue a decision in their case.

Thank you for your attention to these concerns. Please contact Colin Casey in the office of Senator Tom Duane at 212-633-8052 or colin@tomduane.com or Justine Almada in the office of Council Member Garodnick at 212-818-0580 or jxalmada@gmail.com should you have any questions.

Sincerely,



Thomas K. Duane
State Senator



Daniel R. Garodnick
Council Member



Brian Kavanagh
Assembly Member



Scott M. Stringer
Borough President



Deborah J. Glick
Assembly Member



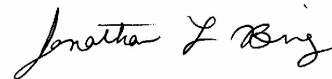
Liz Krueger
State Senator



Rosie Mendez
Council Member



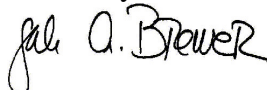
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State Senator



Micah Z. Kellner
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