

RSA Reporter

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Constitutional Lawsuit Takes Major Step at U.S. Second Circuit Court of Appeals

Legal Team Makes Strong Arguments for Groundbreaking Case

Just over two and a half years after RSA and the Community Housing Improvement Program (CHIP) filed a federal lawsuit challenging the constitutionality of the State's Rent Stabilization Laws (RSL), our efforts reached a critical juncture after our legal team provided oral arguments before the U.S. Second Circuit Court of Appeals.

On February 16th, attorney Andrew Pincus of Mayer Brown LLP argued in support of our constitutional challenge before a three-judge panel comprised of Judges Guido Calabresi, Barrington Parker, and Susan Carney. RSA and CHIP had appealed the dismissal of its lawsuit by Judge Eric Komitee of the U.S. District Court for the Eastern District of New York in September 2020. After a year and a half of filing appellate briefs and waiting for an argument date, the Second Circuit finally heard arguments in support of property owners' arguments that New York's rent regulatory scheme in its present form arises to an unconstitutional infringement of property rights.

Mr. Pincus argued that recent U.S. Supreme Court (SCOTUS) rulings, such as the one in *Cedar Point Nursery v. Hassid* (a case where SCOTUS held that a California regulation requiring farm owners to provide physical access to union organizers was a taking), coupled with the parameters set forth by SCOTUS in *Yee v. City of Escondido*, support our position that the requirement to offer perpetual lease renewals for the life of the tenant and successors amounts to a physical taking.

Mr. Pincus also pointed out numerous times that property owners are forced to continue operating in the rental market, as virtually no exit ramps from regulation exist for these building owners who no longer want to use their property for residential rental. The State

and City respondents argued in opposition that the law surrounding rent regulation is well-settled and that the ruling in *Cedar Point* should not influence the panel's decision in this case, especially given the millions of apartments that could be affected by the ruling. Mr. Pincus countered that argument by stating that a public benefit is being placed upon a small group of property owners to bear the cost and that should we prevail in our lawsuit, it would be up to the New York State Legislature to enact provisions that will comply with the U.S. Constitution.

The panel was extremely receptive to the argument in our case, which was heard together with a companion lawsuit filed by certain individual property owners against the State which also challenged rent regulation and was also dismissed by Judge Komitee in 2020. The Court allotted double the amount of time normally permitted for argument, allowing the parties to argue for 90 minutes. One of the judges in particular, Judge Calabresi, appeared to express reservations with some of the provisions of rent regulation. Judge Parker even went on to make an interesting remark, noting that our case "*cries out for a legislative fix.*" Despite our optimism at the conclusion of the hearing, one of the main questions to be answered from our oral arguments is whether the Second Circuit may issue a ruling that drastically departs from its previous rulings on rent regulation in New York given new guidance from SCOTUS on property rights issues in the past year, or if it would be more appropriate to posit the question to the Supreme Court itself.

We will now wait for the Second Circuit panel to issue a decision, which could happen in the next three-to-six months. We will keep you apprised of all upcoming developments. ■

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PRESIDENT'S MESSAGE



Joseph Strasburg

All Eyes Turn to Good Cause Eviction

Although the bill itself has not received the positive momentum that tenant advocates had hoped for at this point through the year, Good Cause Eviction remains the highest priority for New York's progressive lawmakers.

As we announced in last month's issue of the *RSA Reporter*, RSA and other advocacy groups throughout the State have officially launched Homeowners for an Affordable New York (HFAANY), a major public relations campaign with the goal of educating the public about the negative implications that a Good Cause Eviction law would have. That campaign is well underway and has generated positive momentum up to this point (*see page 5*).

Because this is currently the most progressive and anti-owner legislation being considered at the State level, this bill has become a hot topic during an election year and could play a pivotal role during Democratic primary races. Many moderate Democrats have either already voiced their opposition to the bill, or are still undecided about supporting it. For many reasons, a number of these moderate elected officials are facing primary challengers that are extremely progressive and anti-owner. These challengers are not only vocal supporters of Good Cause Eviction, but would undoubtedly support all future anti-owner proposals if they were elected. The primary election date is June 28th.

As Senate Majority Leader Andrea Stewart-Cousins said on record last month, one of the biggest priorities for the Democrats in the Legislature is to increase tenant protections. Although Good Cause Eviction lacks the support it needs right now, negotiations behind the scenes means that an amended bill could surface at any time in the next four months. Even if our coalition is successful in stopping Good Cause Eviction from passing before the end of the Legislative session in early June, complacency would be our biggest mistake. Regardless of who wins in the primary election or in the general election in November, the Democrats will continue to hold the majority of seats in the Senate and Assembly for the foreseeable future. As a result, the concept of Good Cause Eviction is not going away any time soon. Our job is to ensure that it never passes.

In just a few weeks, the Legislature is expected to pass the State budget for Fiscal Year (FY) 2023. Fortunately, Governor Kathy Hochul has not signaled any level of support for Good Cause Eviction in her proposed budget. This is significant because if the bill continues to lack support throughout the Legislature before the budget is approved, that would mean that the legislation would have to pass as a standalone bill before the end of session.

This buys our coalition additional time to continue pushing our educational campaign throughout the State to ensure that constituents put pressure on their Senators and Assembly Members to not support Good Cause Eviction. Our campaign is ever-growing and we will continue to call on our members over the upcoming weeks and months to aid our efforts. Stay tuned for more information!

Value of RSA Membership

In March, you will be receiving a second reminder for your membership dues and balances for 2022. If you paid your dues in full after receiving the first billing statement after the holidays, thank you for your payments and please disregard the second notice.

The COVID-19 pandemic, as well as the latest regulations enacted by the State and City, have undeniably made running your businesses a daunting task. That is why your continued membership at RSA is as important as it's ever been in 2022. As stated in the past, if dues are not paid, you will not be able to take advantage of RSA's in-house programs and services and you will not be able to receive the *RSA Reporter* and RSA email blasts. In addition to our fight against Good Cause Eviction, RSA will be seeking the highest rent guideline increases in eight years as we engage in the first Rent Guidelines Board (RGB) deliberations under Mayor Eric Adams. The next five months alone will be filled with important news and updates and RSA will be at the forefront. Your continued membership will allow you to stay on top of all of RSA's advocacy efforts.

I promise you that your continued membership is worthwhile and that RSA's programs and services are unmatched in the rental housing industry. I encourage you to pay your dues promptly as we continue to fight for the best interests of our members. ■

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OTDA Announces Major Changes to ERAP Portal

State Remains Optimistic That More Money Will Be Provided

As New York State patiently waited for a response from the U.S. Treasury Department as to whether or not additional rent relief funds would be provided, the State Office of Temporary and Disability Assistance (OTDA) continued to implement various changes to the Emergency Rent Relief Program (ERAP).

As we reported last month, an early-January State Supreme Court decision forced OTDA to reopen the ERAP portal despite all \$2.7 billion in rent relief funds either already sent to property owners or obligated for approved tenant applications. Tenant advocates hailed the court order as a tremendous victory and subsequently encouraged tenants to apply for ERAP simply so that they could obtain eviction protections with no guarantees that rental arrears would be covered.

Within a week of the ERAP portal reopening, RSA was instrumental in a major decision that would prevent unqualified tenants from receiving eviction protections. RSA President Joseph Strasburg wrote a letter to OTDA Acting Commissioner Daniel Tietz soon after the portal reopened, suggesting that the agency should immediately review all new applications and weed out any applicants who are not qualified for ERAP. OTDA ultimately accepted RSA's recommendation and by the first week of February, the State began implementing the change on the ERAP portal.

Additionally, we continued to have great success with the data sharing agreement between RSA and OTDA. By way of background, the agreement reached in mid-December allowed RSA to link any of our members with tenant applications that were approved but waiting verification from their property owner. Over the last two months, emails were sent out to over 2,000 RSA members that notified them about millions of dollars in pending rent relief money. By February 11th, the number of tenant applications waiting for property owner approval dropped to **42,524**, down from **73,884** on December 8th. Approximately \$393 million in rent relief funds were distributed to these building owners during this eight-week period.

Although RSA applauded the progress made with OTDA, the agency ultimately issued a somewhat alarming update in the middle of February. According to OTDA, although the ERAP portal initially closed due to depleted funding in the middle of November 2021, the agency announced that any applications that were submitted after **September 21, 2021** will not be eligible for any rent relief money allocated in the original pot. Additionally, no subsidized housing applications, including Section 8, will be paid out.

As a result, the \$2.7 billion in rent relief funds that were allocated for New York were only able to satisfy applications of qualified tenants for the first three months that the portal was open. Despite this, OTDA continued to accept applications without sufficient funding for two additional months until the portal initially shut down in mid-November. If the State is able to obtain additional funding from the U.S. Treasury Department, OTDA will then begin to process ERAP applications received after September 21, 2021, which is already over five months ago at this juncture.

According to OTDA data provided on February 11th, 307,957 total ERAP applications were received with 116,968 paid out and 42,524 pending property owner verification, which could mean that there are 148,465 pending applications with no money available at all. As we went to press, RSA was inquiring as to whether or not this number also included applications that were denied due to ineligibility.

However, OTDA also issued an update that will be extremely beneficial to property owners. According to the ERAP landing page, as of February 14th, any unspent funding that was originally set-aside for tenants with income over 80 percent and up to 120 percent of the area median income (AMI) will be moved from the ERAP portal to support existing applications received for the Landlord Rental Assistance Program (LRAP). As a reminder, LRAP is a state-funded program that provides building owners with up to 12 months of past-due rent for tenants who either declined to complete an application for ERAP, or vacated their apartment during the pandemic with rental arrears. By the end of February, the LRAP portal was not updated to reflect this language. If you submitted an LRAP application and were approved but still have not received funds, please visit the LRAP page for more information at <https://on.ny.gov/3lhWifj>.

The ERAP saga continues to be everchanging, especially since Governor Kathy Hochul announced in late January that the State plans on setting aside \$2 billion in State funds in the upcoming State budget for "pandemic recovery initiatives," which may or may not include money for ERAP. It is anticipated that the Governor is waiting to see whether or not the U.S. Treasury Department provides additional federal funds before a final decision is made.

Please be on the lookout for regular updates with regard to ERAP via RSA email blasts and the monthly *Reporter*. ■

RSA MEMBERSHIP MEETING ONLINE VIA ZOOM

Wednesday, March 23, 2022 | 2:15PM-4:00PM

Join us for our next virtual membership meeting! The Membership Meeting is an opportunity for owners to learn about political, legal and regulatory updates as well as to raise questions and concerns. All paid RSA members are welcome to attend. Please call **212-214-9243** or via email at mrodriguez@rsanyc.org to register. Once you have registered with your RSA member number, the Zoom meeting ID and password will be sent to you via email. Please be advised that this is a private meeting for RSA members **ONLY**.

Do not share meeting credentials with anyone else.

IBO Report Sheds Light on NYC COVID Relief Spending

After receiving an abundance of COVID financial relief from the federal government over the last two years, the City's Independent Budget Office (IBO) has released a portal that shows how funds were distributed to various New York City agencies.

Through the American Rescue Plan Act of 2021 (ARPA) and the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) enacted by Congress, New York City received approximately \$13 billion in federal aid. Though various relevant City agencies received a large surplus of money, such as the City Department of Buildings (DOB) and Department of Housing Preservation and Development (HPD), the agencies of note to RSA were actually the Department of Social Services (DSS) and Department of Homeless Services (DHS).

Throughout the pandemic, particularly now that the eviction moratorium has expired after having been in place for nearly two years, the City has prioritized investments into various tenant protections through DSS and DHS. This includes free legal representation in Housing Court and emergency rental assistance through one-shot deals.

IBO has been tracking the \$13 billion that has been distributed to approximately two-dozen City agencies. According to their analysis, DSS and DHS have received a total of approximately \$704 million combined. DSS, who received \$525 million, invested approximately \$425 million of that money into tenant-related programs. So far, around \$273.4 million was already spent on rental assistance for City tenants while another \$88.7 has been allocated, but unspent. Furthermore, there has been a total of \$62.4 million allocated for free eviction counsel access for tenants and none of that money has been spent yet. This could very well change now that the moratorium has expired.

All of this information is important because as the State continues to wait on whether or not the U.S. Treasury Department will

redistribute additional rent relief money to New York, eligible tenants continue to submit applications to the Emergency Rent Relief Program (ERAP) despite the depletion of previously available funding (*see page 3*). RSA is advocating that in the interim, the State and City should be focusing on investing local resources into the one-shot rental assistance program so that some level of rental arrears can be satisfied for both tenants and building owners.

Furthermore, as tenant advocates continue to fear-monger by creating the false narrative that the eviction of pandemic-impacted tenants is inevitable, a total of \$177.2 million was allocated for DHS. According to the IBO analysis, these funds will be dedicated towards homeless shelter services and street outreach to those already out of their homes. Although the goal is to ensure that existing tenants are not removed from their homes, DHS has been provided with a substantial amount of funding to ensure that the existing homeless population is removed from the streets and placed into shelters. In fact, DHS still has just over \$150 million of its allocation still unspent.

There is currently no timetable or guarantees that the U.S. Treasury Department will accept requests from federal and local leaders from New York State to redistribute a much larger pot of rent relief funds. Until a decision is made, the State Office of Temporary and Disability (OTDA) continues to accept applications from eligible tenants who will only receive money for rental arrears if additional money becomes available. In the meantime, RSA will continue to advocate for existing City funds and prospective funds through the upcoming City budget to be used to cover rental arrears accrued by pandemic-impacted tenants throughout the five boroughs.

To view IBO's Federal COVID Relief Spending analysis and a breakdown of money received by each City agency, visit <https://bit.ly/33tLrQ9>. ■

Assembly Quietly Introduces "Clean Hands Bill"

Legislation Would Prevent Eviction Proceedings if Apartment Has Violations

With the housing industry's undivided attention focused on Good Cause Eviction, one of the most notorious anti-owner lawmakers in the Legislature has proposed an extremely alarming bill.

Manhattan Assemblywoman Linda Rosenthal, a vocal opponent of RSA and our advocacy efforts, introduced Assembly Bill **A490A**, which would prevent property owners from seeking an eviction proceeding on any tenant if there are any active open violations issued from any State or City agency on the apartment in which they live in, or any existing condition in the apartment that breaches the statutory-imposed warranty of habitability. The proposal, dubbed as the "Clean Hands Bill," would prevent all eviction proceedings in these instances, including non-payment.

The timing of this proposal, which at a minimum will receive legitimate consideration in the Democratic-controlled Legislature,

could not be worse. In addition to the potential strict limitations that are outlined in Senator Julia Salazar's proposed Good Cause Eviction bill (S3082), as well as those already in place as a result of the draconian Housing Stability and Tenant Protection Act (HSTPA) of 2019, this proposal would place an unreasonable standard of perfection on property owners who are constantly struggling with burdensome compliance requirements.

The COVID-19 pandemic has further exacerbated these compliance requirements for building owners as a result of financial losses and property inspection delays caused by staffing shortages on the State and City level. If a building owner is not able to have inspectors visit their buildings to determine if a violation has been remedied in a particular apartment, it will prohibit the owner from correcting the violation and removing the open violation from

(Continued on Next Page...)

Good Cause Eviction: Public Relations Campaign Heats Up

Senate Majority Leader Not Optimistic About Current Bill

Despite immense pressure from progressive, anti-owner elected officials, Good Cause Eviction has received a lukewarm reception throughout the State as of now.

Heading into 2022, RSA knew that our biggest legislative battle would be to stop Senator Julia Salazar's radical Good Cause Eviction bill from passing. In fact, Senator Salazar attempted to expedite the bill's passage shortly after the new year and pushed it as a solution to combat a predicted wave of evictions that would occur following the expiration of the statewide eviction moratorium. Fortunately, Republican and Moderate Democratic members of the Legislature did not feel the same sense of urgency and ultimately the wave of evictions never came into fruition. Despite this shortcoming, Good Cause Eviction continues to be at the top of the wish list for progressive lawmakers and they will continue to put pressure on their colleagues in the Legislature to either pass this as part of the State budget in April or at the end of the legislative session in early June.

As we announced in last month's issue of the *RSA Reporter*, RSA and other housing advocacy groups throughout the State officially launched our public relations coalition known as **Homeowners for An Affordable New York (HFAANY)** to fight Good Cause Eviction. After having been in place for a month, our efforts are in full force with digital and radio ads airing, educational mailers sent to homeowners and voters that discuss the negative implications of the bill, and daily patch-through live calls that connect constituents with their Senate and Assembly representatives. All components of the campaign have been strategically designed with specific messaging to target residents of major New York State regions such as the five boroughs, Long Island, the Hudson Valley, Albany, and Western New York. As we went to press, the coalition was gearing up for the second phase of our campaign, which, for the time-being, will extend our efforts through the end of March.

By the middle of February, tenant advocates attempted to throw cold water on our public relations campaign by exposing RSA as the face of the HFAANY efforts without realizing that over a dozen homeowner advocacy groups throughout the entire State had joined the effort to thwart Good Cause Eviction. Senator Salazar led an underwhelming rally in Albany to oppose HFAANY and attempted to bring more positive light to the legislation. Ultimately, the rally fell short of gaining any real attention or moving the needle in favor of the radical legislation.

In fact, during an interview with WNYC in mid-February, Senate Majority Leader Andrea Stewart-Cousins did not seem optimistic at all about Good Cause Eviction at this juncture. According to Stewart-Cousins, she does not believe the bill has enough support to pass the Legislature as it is currently written. This does not by any means imply that the legislation is dead. However, this means that the HFAANY efforts, as well as RSA's additional advocacy, have brought enough attention to the poorly drafted legislation that major concerns have been raised by some lawmakers and their constituents.

Stewart-Cousins acknowledged that creating additional tenant protections continues to be a priority for the Democratic-majority in the Legislature and that conversations were taking place *"to figure out what we can do that will keep people in their homes while we try and continue to grow affordable housing."* It is unknown if any real discussions have taken place to amend the current language of the Good Cause Eviction bill. However, because the legislation currently seems to be in limbo, we are now optimistic that any attempts of passing the bill as part of the State budget in early April seems extremely unlikely.

This current timetable allows HFAANY to extend our public relations campaign through the end of the legislative session. Through digital and radio ads, mail, telephone calls, social media, and VoterVoice, our educational efforts will expand to additional Senate and Assembly districts and target various elected officials whose constituents would be greatly-impacted if Good Cause Eviction were enacted.

In the meantime, we continue to urge you to familiarize yourself with your Senate and Assembly representatives. Although RSA and HFAANY's public relations efforts are vital to our fight against Good Cause Eviction, it is incumbent upon constituents to contact their elected officials and voice their opposition against this bill as well. You can determine who your Senator and Assembly Member are, as well as locate their contact information, by visiting www.HFAANY.com.

Be on the lookout for more updates on Good Cause Eviction and our public relations efforts in the weeks to come via email blasts and subsequent issues of the *RSA Reporter*. ■

Assembly Quietly Introduces "Clean Hands Bill" *(Continued From Previous Page...)*

building records. Furthermore, this proposed bill would remove the discretion of Housing Court in determining the proportional remedy for certain habitable conditions within the apartment, which would undoubtedly result in false claims by tenants about conditions they believe are *"dangerous to life, health, or safety."*

The bill has been referred to the Assembly Committee on Housing, but has not yet received a hearing date. At a minimum, RSA will testify and adamantly oppose A490A for numerous reasons. Although the legislation is well-intentioned to prevent "slumlords"

who have allowed their apartments to fall into disrepair from commencing eviction proceedings, the vast majority of property owners correct and remedy any violations or "dangerous" conditions in a timely manner regardless of whether or not they seek an eviction proceeding.

We will keep you apprised of all upcoming developments with regard to this proposed legislation, as well as if and when it receives a hearing date. ■

IN THE NEWS

Throughout the year, the RSA responds to the press on behalf of property owners about the issues that affect owners in NYC.



Joseph Strasburg

RSA President Joe Strasburg was interviewed on **ABC 7 New York** as tenant advocates began publicly predicting that a “tsunami” of evictions was inevitable after the statewide eviction moratorium expired in mid-January. Mr. Strasburg said that additional rent relief funds from the federal government continues to be the ultimate resource that will enable tenants who are still financially-impacted by the pandemic to remain in their homes. However, he also noted that despite the expiration of the moratorium and fear-mongering by tenant advocates, these tenants will continue to have protections from eviction. “I think there’s been a misunderstanding that has been pushed by the advocates on this. They’ve argued there’s a tsunami, there will be a tsunami of evictions. All it means is that owners are able to submit petitions for the first time for non-payment that they were precluded from doing so in the last 22 months.” (*New Calls to Help Most Vulnerable After New York Eviction Moratorium Ends* by Darla Miles, ABC 7 New York, January 18, 2022)

Mr. Strasburg was also quoted in the **The Real Deal** after Mayor Eric Adams stated that he would support a rent freeze through the City Rent Guidelines Board (RGB) if the data released by the Board this year supported it. Mayor Adams was asked the question while he provided testimony during a virtual hearing held by the State Senate Finance and Assembly Ways and Means Committees. Although this is a more sensible approach than his predecessor has had in terms of their opinions on what the RGB should do, Mr. Strasburg said that we expect RGB data to support reasonable rent increases this year as a result of rising operating expenses for building owners. “We anticipate that this year’s RGB data, which board members must take into consideration, will support reasonable rent increases. The RGB cannot pick and choose by only using the data when it benefits tenants. The needs of owners must be reflected in what the data indicates.” (*Adams Backs Rent Freeze, If Analysis Supports It* by Kathryn Brenzel, *The Real Deal*, February 9, 2022)



Frank Ricci

RSA Executive Vice President Frank Ricci was interviewed by **Bisnow** after the eviction moratorium expired and discussed how a two-year-long moratorium, as well an exhausted rent relief program, has building owners struggling to make ends meet as building operating expenses continue to rise.

Mr. Ricci argued that going to court is always the last resort for a property owner. However, a fully operating Housing Court is a critical resource for both building owners and tenants and going before a judge is how people who are truly in need are separated from those who are trying to game the system. “The reality is that that Housing Court is where problems are solved, so if a tenant is on hard times, that’s where they can be hooked up with some kind of social program.” (*The Moratorium is Over, but ‘Eviction Blockades,’ Exhausted Rent Relief, Have Landlords at Wit’s End* by Miriam Hall, *Bisnow*, February 3, 2022)



Olga Someras

RSA General Counsel Olga Someras was interviewed by **Crain’s New York Business** to discuss why the predicted wave of evictions had not occurred soon after the statewide moratorium had expired. According to data provided by the State Office of Court Administration (OCA), only 117 eviction cases had been filed in the first week since the moratorium had been lifted. In comparison, 3,408 cases were filed during the same week period in 2020. Ms. Someras said the low number of cases filed was not only a direct result of ongoing protections that remain in place for tenants impacted by the pandemic, but also because building owners are more focused on getting paid on rent owed rather than evicting their tenants. Going to Housing Court, even before the pandemic started, has always been a last resort for building owners. “Even with the lifting of the moratorium, they’re still not really getting anywhere in terms of getting their arrears paid. They’re really struggling.” (*Eviction Moratorium’s End Has Not Led to a Rush of Case Filings* by Eddie Small, *Crain’s New York Business*, January 27, 2022) ■

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City Council Holds Hearing to Discuss Moratorium Aftermath

City Council Holds Hearing to Discuss Moratorium Aftermath

Although the City Council has been relatively quiet with regard to housing policy, a hearing was held at the end of February to discuss the current state of the City's housing industry six weeks after the expiration of the eviction moratorium.

Since well before the nearly two-year-long statewide moratorium expired on January 15th, tenant advocates and anti-owner elected officials created the false narrative that a wave of evictions would immediately follow. Despite the fear-mongering by State and City lawmakers, this so-called wave has not become a reality as a result of extensive tenant protections that continue to be in place for tenants who remain financially-impacted by the COVID-19 pandemic.

Although the eviction levels have remained stagnant, the Council Committee on General Welfare held a hearing on February 28th to discuss the impact of the expiration of the eviction moratorium. RSA testified at the hearing to discuss various matters, particularly the ongoing negative impact of the moratorium on rental property owners.

RSA argued that since the start of the pandemic in March 2020, government on all levels required property owners to bear the burden of the unfortunate housing crisis caused by COVID-19 and allowed renters to defer rent payments by merely declaring hardship without proof of hardship. Although a federally-funded \$2.7 billion rent relief program was ultimately put in place by the State, owners faced 18 months of non-payment of rent and zero building operating expense relief until payments were finally issued by the Office of Temporary and Disability Assistance (OTDA) in September 2021.

While the moratorium has since expired, the financial crisis continues for property owners as avenues to collect rent are extremely limited. While Housing Court has technically reopened, a quasi-moratorium still exists. Hardship declarations filed nearly two years ago still control because they now serve as a basis under the Tenant Safe Harbor Act to potentially foreclose an owner's ability to evict for any pandemic-related arrears. Furthermore, applications for Emergency Rental Assistance (ERAP), despite depleted funding and poor prospects of additional funding from the U.S. Treasury Department, indefinitely discontinue all rent collection efforts with immediate eviction protections provided

once an eligible tenant submits an application.

Though the State-imposed moratorium is no longer in effect, tenants who have been approved for and received ERAP funds are protected from eviction for an additional 12 months following the owner's receipt of the rent relief money. Tenants who have applied for ERAP following the court order that required OTDA to reopen the portal will receive indefinite eviction protections as long they qualify for rent relief and have not already received 12 months of ERAP assistance.

RSA believes that it is incumbent upon the State and City to take additional actions to address this ongoing housing crisis, rather than sit and wait to see if the federal government will ever provide New York with additional and adequate rent relief. This includes, but is not limited to, greater access to Housing Court. Through the Court, evictions are avoided by connecting tenants to a bevy of available options such as right to counsel, as well as access to other funding sources, such as emergency one-time rental assistance (One Shot Deal), CityFHEPS, and State FHEPS. RSA also suggests that Housing Court needs to be able to directly communicate with the OTDA application system so that when an eviction proceeding is commenced, they can determine who has applied for ERAP, determine the status of applications, and determine whether or not the tenant qualifies for ERAP so that the Court could direct them to other helpful resources.

RSA also strongly suggested that the \$2 billion that Governor Kathy Hochul has set aside in the proposed State budget for pandemic-related assistance should be allocated specifically for rent assistance programs so that the rent arrears of thousands of tenants are satisfied and that building owners could receive the funding they need to continue operating their buildings.

Lastly, RSA recommended that the City should focus on limited-duration tax credit programs for small property owners to help offset the losses in rental income caused by the eviction moratorium and ongoing delays in ERAP payments.

You can view RSA's full testimony on our website by visiting www.rsanyc.org. It is located in the "Testimony" section under Resources. ■

ASK THE ADMINISTRATOR

The litigation and potential criminal cases that will and are coming out of the major Bronx fire that occurred just weeks ago will continue to make headlines for years. I write this column with a heavy heart and soul. I grieve for the families whose lives will never be the same and for my fellow firefighters who fought the deadly blaze and were also called upon to rescue and unfortunately apply life saving techniques for residents', young and old.

Fire safety is the responsibility of everyone, tenants and building owners alike. It is not singularly the owner's responsibility. However, as we all know, the City and State place primary responsibility on owners for pretty much all problems that exist in a building or property whether caused by the owner or not. This column is not here to debate that fact but rather here to provide reminders of what you can do to improve fire safety. Steps you take now are crucial in protecting residents in the event of a fire.

If you are not sure of what you need to do to be fire safety compliant, immediately contact one of the excellent RSA Counselors for guidance. No better time than today to do that. What follows below is crucial guidance that all owners need to follow.

1. Are your doors self-closing? While the law says all multiple dwellings should have self-closing doors for any door that opens into a stairwell or corridor, I would recommend you do it for any size building, even one- or two-family dwellings. You and/or your managing agent should visit every apartment you own or manage and check for yourselves. This is part of good building management. Establish a dialogue with your tenants and use the time to also possibly inspect apartments to see if any work needs to be done to that apartment. Leaking faucets? Broken windows? Peeling paint? Missing Window Guards? The list is long. Just do it, please.
2. Have you posted and taken a picture of the posting of **Close the Door Notice** on each Stairwell door? That Notice is required on the hallway corridor side of each stairwell door in the building. You are responsible for replacing them should they be removed or vandalized. You can purchase this notice in the form of a sticker directly from RSA.
3. For each apartment, a Fire Safety Notice should be affixed to the inside of the main apartment door. The Notice advises tenants what to do in case of a fire. There are separate Notices for Combustible and Non-Combustible Buildings. Starting this year, residents must certify that the Notice is affixed to the inside of their apartment door. If you do not receive a resident certification, you must conduct a visual inspection to verify its presence. If it is missing or damaged, you are responsible for replacing this Notice.
4. Have you replaced any old smoke detectors with smoke and CO detectors? Inspect apartments! Often tenants remove them or break them and do not tell the property owner. If the law says install one, I humbly suggest you install two.
5. Have you distributed the 2021 Fire Department Emergency

Preparedness Guide, Building Information Form and the Individual Emergency Preparedness/Evacuation Planning Checklist? The Guide and Checklist must be distributed every three years, and this is a year you are required to do so.

6. Have you sent out the Stove Knob Cover Notice and provided Stove Knob Covers if requested by the tenant?

Once you are in compliance with the above, make sure you keep records of having done so as you may be audited and fined if you fail to produce proof upon request.

Like mine and many fire departments, we visit schools to teach the students the importance of fire safety because education starts and continues with the young. You should ask your local Fire Department or hire an outsider to give your tenants pointers on fire safety and make sure to stay on top of the notices all the time. ■



Article provided by Howard Stern, Esq., Administrator of the RSA Legal Plan for small property owners, whose is solely responsible for its content. He is a volunteer firefighter and a Fire Commissioner in the town he resides in and member of the Westchester County Board of Fire Advisors to the Westchester County Executive.

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To join **RSA's Legal Plan Program** or for more information, call **Howard Stern, Esq., Plan Administrator** at
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or email **hsternesq@aol.com**.

2 William Street, Suite 304 | White Plains, New York 10601

Recent Noteworthy Housing Court Decisions

Aurora Associates LLC v. Locatelli

On February 15, 2022 the New York State Court of Appeals (the highest court in the State), ruled in favor of a loft owner and held that illegal loft conversions are not covered by Rent Stabilization and that a unit covered by the Loft Law, exempted from that statute's rent regulation regime by operation of a sale of a prior tenant's rights and improvements, is not subject to Rent Stabilization. In *Aurora Associates v. Locatelli*, 2022 NY Slip Op 00958, the building was registered as an interim multiple dwelling (IMD) and the owner purchased the improvements and rights pursuant to MDL §§286 (6) and (12) from the tenants then in occupancy and thereafter rented the unit at a fair market unregulated price.

When the lease expired and the tenant refused to vacate, the owner brought a holdover proceeding and the tenant counterclaimed that the unit was subject to Rent Stabilization. The Civil Court dismissed the holdover finding that the unit was subject to Rent Stabilization, with the Appellate Term and Appellate Division affirming. The Court of Appeals reversed finding that the unit was not subject to Rent Stabilization and holding that neither illegal conversions nor units exempted from Loft Law pursuant to MDL §§286 (6) and (12) fall within the ambit of Rent Stabilization.

The importance cannot be overstated. Loft owners, tenants, purchasers, and lenders have been plagued by uncertainty for over 15 years. This decision finally resolves the issue and gives certainty to Loft Law buyouts as deregulatory regardless of the number of units in the building or the zoning. The owner was represented by Joseph Goldsmith, a partner with Kucker Marino Winiarsky & Bittens, LLP. Mr. Goldsmith said, "I am incredibly happy with the decision. It is a testament to the Court of Appeal of the Court's willingness and ability to understand and resolve complex Loft Law and Rent Stabilization issues rationally and fairly."

Aurora Assocs LLC v. Locatelli, 2022 NY Slip Op 00958 (Court of Appeals)

300 Wadsworth LLC v. DHCR

When the Housing Stability and Tenant Protection Act (HSTPA) passed in June 2019, one of its most burdensome effects on property owners was to limit the amount owners may recoup from individual apartment improvements (IAI). The law now states that in buildings with 35 units or less, owners may increase the legal regulated rent by 1/168th of IAI costs, and in building with more than 35 units, owners may increase the legal regulated rent by 1/180th of IAI costs.

The property owner in this case had decided to undertake renovation work in an apartment on May 1, 2019 and applied for a work permit that the City Department of Buildings (DOB) issued on May 15, 2019. While the work was underway, the HSTPA passed. The owner filed suit to challenge HCR's interpretation of the statute that, when applied to the owner's situation, would result in utilizing post-HSTPA calculations in calculating any IAI rent increase since the work was still underway when the HSTPA went into effect. The owner argued that this would be patently unfair since the work was already underway and the owner had decided to undertake this work based on the pre-HSTPA calculations for IAI rent increases (which were 1/40th of the costs of improvements in buildings with 35 or fewer units, and 1/60th of the cost in buildings with more than 35 units).

Supreme Court Judge Paul Goetz dismissed the owner's case against HCR, holding that changes to the formula for calculating IAI rent increase were "to be expected as the inevitable consequence of doing business in the New York City rental market and landlords do not have a protected interest in a right to collect a rent increase for IAIs pursuant to one formula as opposed to another."

300 Wadsworth LLC v. NYS Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 30095(U) (Sup. Ct NY County, Jan. 14, 2022)

Tell v. FirstService Residential NY Inc.

A rent-stabilized tenant sued their property owner, claiming that the removal of an air conditioning window unit amounted to a reduction in services, and therefore the tenant was entitled to an order requiring the owner to reinstall the air conditioner, as well as an award for damages and attorneys' fees. The tenant claimed that the air conditioner was removed without her consent after it had been in place from the beginning of her tenancy in 1980 until 2016 when it was removed. The defendants contend that in August 2015, they had made the decision to replace the existing air conditioning units with brand new, portable units that provide cool air and dehumidifies/purifies the air. However, the tenant refused to permit installation of this new unit and while she was absent for an extended period of time from her apartment for unrelated reasons, the owner removed her old air conditioner unit.

The Court held that while air conditioning is a required service, the switch from a window air conditioner to a portable air conditioner does not constitute a reduction in services in this instance. The tenant has refused the installation of the portable air conditioner, which would provide the same air conditioning service as her old

(Continued on Page 10...)

Recent Noteworthy Housing Court Decisions

(Continued From Page 9...)

air conditioning unit, and the Court found that this refusal is the cause of tenant's lack of air conditioning service. Moreover, because the tenant chose to bring the Supreme Court action, she waived her right to have HCR adjudicate her claim, as she has chosen her forum. Therefore, the tenant's case was dismissed.

Actie v. Gregory

The property owner had commenced a holdover proceeding against a fair market apartment and the tenant applied for emergency rental assistance (ERAP), resulting in an automatic stay. The property owner then moved to vacate the stay because the tenant who had initially filed for ERAP had already vacated the premises and left behind an occupant that had no owner-tenant relationship. The property owner made it clear that they did not want to keep the occupant on as a tenant. The occupant opposed the motion, claiming that the ERAP stay is absolute and cannot be challenged.

The owner countered that pursuant to the U.S. Supreme Court

(SCOTUS) decision in *Chrysafis v. Marks*, it would be a violation of the owner's due process rights to not permit him to challenge the ERAP stay in this circumstance, when the facts clearly dictate that the occupant should not be entitled to the stay. By way of background, *Chrysafis v. Marks* was RSA's challenge to the State's eviction moratorium where SCOTUS held in July 2021 that the residential eviction moratorium under the COVID-19 Emergency Eviction and Foreclosure Prevention Act (CEEFPFA) was unconstitutional.

The Court granted the owner's motion to vacate the ERAP stay, holding that even if the tenant's ERAP application was approved and the owner accepted the monies, payment through ERAP would not reinstate the owner-tenant relationship and therefore continuing the stay would be an exercise in futility and prejudicial to the owner.

Actie v. Gregory, 2022 NY Slip Op 50117(U) (Civ. Ct Kings County, Feb. 18, 2022) ■



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CALENDAR OF EVENTS

March 1

NYC Tax Protest Deadline

For filing Tax Commission applications for correction of tentative assessed valuation for Class 2, 3 and 4 properties.

Taxable Status Date

Assessed value for the following City fiscal year is based on ownership, condition and value as of this date.

March 15

NYC Assessment Correction Application

Last day for filing Tax Commission applications for correction of **2020-2021** tentative assessed valuation for Class 1 properties.

File Corporate Income Tax

Last day to file for calendar year ending **Dec. 31, 2021**, unless you file for an extension. All other corporations must file within two and a half months after the closing of their fiscal year unless you file for an extension.

NYC Real Property Tax Assessment Protest Class 2 & Class 4 Properties

Today is the last day to apply to the Property Division of the Dept. of Finance (DOF) for a reduction of the **2021-2022** assessment for Class 2 & Class 4 properties.

March 23

RSA Membership Meeting

2:30PM-4:00PM via Zoom. Register by calling **(212) 214-9243** or via email at **mrodriguez@rsanyc.org**. See page 3 for details.

April 1

Rent Registration Begins

Between **April 1 and July 31** you must file Annual Apartment Registration (form RR-2A) and Annual Registration Summary (form RR-2S) with DHCR for all rent stabilized apartments, with copies of registrations served on tenants.

Pay NYC Property Tax

For properties assessed at \$250,000 or less, your last quarterly payment is due to N.Y.C. Dept. of Finance. Late payment penalties apply after **April 15**.

NY State Fiscal Year Begins

New budget for **2022-2023** is scheduled to be in place.

April 18

Income Tax Returns

Last day for individuals and partnerships to file Federal, State and City income tax returns for year **2021** unless you file for an extension.