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RENT STABILIZATION

The Impact of 'Altman,' Two Years Later

By **Warren A. Estis**

And **Jeffrey Turkel**

On April 26, 2018, the New York State Court of Appeals issued its landmark ruling in *Altman v. 285 W. Fourth LLC*, 31 NY3d 178 (2018). This article will explore the vitality of *Altman* two years later. In the interest of full disclosure, author Jeffrey Turkel represented the prevailing Owner in *Altman*.

'Altman'

Altman concerned a subtenant, Richard Altman, who took occupancy of an apartment in 2005 immediately upon the vacatur of the prime tenant. The legal rent of the apartment when the prime tenant vacated was $1,829.49 per month. The landlord asserted that the apartment became luxury deregulated pursuant to RSL §26-504.2(a) upon the prime tenant's vacatur because the lawful rent, plus the 20% statutory vacancy increase, brought the rent above the $2,000 deregulation threshold.

Altman then brought a declaratory judgment action. He lost in Supreme Court, but prevailed on appeal. The First Department ruled that pursuant to the version of RSL §26-504.2(a) in effect in 2005, an apartment would only be luxury deregulated where the rent was already $2,000 or more when the outgoing tenant vacated. In *Altman*, the rent was $1,829.49 at that time, and did not exceed the deregulation threshold until the 20% vacancy increase was added thereafter. 127 AD3d 654 (1st Dept 2015) (*Altman I*).

> In three recent decisions, the Appellate Term, First Department has confirmed that in view of the clean-up bill, apartments that were lawfully deregulated under the 1997, 2011, or 2015 statutes remain deregulated to this day.

An odd thing then happened: The Appellate Term, First Department declined to follow *Altman I*. *See*, *e.g.*, *233 E. 5th St. LLC v. Smith*, 54 Misc 3d 79, 80 (App Term, 1st Dept 2016); *Aimco 322 E. 61st St., LLC v. Brosius*, 50 Misc 3d 10 (App Term, 1st Dept 2015). So too did lower courts. *See*, *e.g.*, *Smith v. Acquisition America VIII, LLC*, 2017 WL 2813048 (Sup Ct, NY County 2017).

By 2017, the Appellate Division, First Department itself began issuing decisions that were irreconcilable with, but did not mention, *Altman I*. *See Matter of 18 St. Marks Place Trident LLC v. New York State Div. of Hous. & Community Renewal*, 149 AD3d 574 (1st Dept 2017); *Dixon v. 105 W. 75th St. LLC*, 148 AD3d 623 (1st Dept 2017).

The Court of Appeals granted leave to appeal in *Altman* in 2017 and issued its decision the next year. The court observed that in

WARREN A. ESTIS *is a founding member of Rosenberg & Estis.* JEFFREY TURKEL *is a member of the firm.*

1997, the New York City Council had amended RSL §26-504.2(a) to provide that luxury deregulation would only occur "where at the time the tenant vacated such housing accommodation the legal rent was $2,000 or more per month." Months later, the New York State Legislature added a second clause that provided for deregulation where the housing accommodation "is or becomes vacant on or after the effective date of the Rent Regulation Reform Act of 1997 with a legal regulated rent of $2,000 or more per month." The Court of Appeals concluded:

> The Appellate Division relied on the first clause, which plainly states that the relevant consideration for deregulation purposes is the legal regulated rent 'at the time the tenant vacated' the apartment. By contrast, the second clause provides that the key consideration when there is a vacancy is the legal regulated rent, without reference to the rent at the time of the tenant's vacatur. Given that the second clause is an alternative to the first (preceded by 'or'), it must mean something different from the first clause – i.e., something other than the legal regulated rent at the time the tenant vacated the apartment. Thus, it is reasonable to read the plain language of the second clause to refer to the legal rent regulated rent (including the available statutory increases) applicable to the apartment *after* the tenant's vacancy.

31 NY3d at 185.

Immediate Effect

Once the Court of Appeals reversed *Altman I* in April 2018, landlords began to routinely prevail in cases involving similar fact patterns. *See Matter of Trainer v. New York State Div. of Hous. & Community Renewal*, 162 AD3d 461 (1st Dept 2018); *Matter of Lowinger v. New York State Div. of Hous. & Community Renewal*, 161 AD3d 550 (1st Dept 2018). Dozens of other cases were discontinued or settled.

The Rent Act of 2011

The Rent Act of 2011 (L 2011, ch 97, Part B) amended RSL §26-504.2(a) by increasing the deregulation threshold from $2,000 to $2,500. The amended statute retained, but amended, the two clauses in effect since 1997. The first clause, as amended, provided that for any housing accommodation that became vacant between April 1, 1997 and June 24, 2011 (the effective date of the Rent Act of 2011), vacancy deregulation would only be effective where, at the time the outgoing tenant vacated, "the legal regulated rent was $2,000 or more per month."

The second clause, as amended, governed vacancies between "the effective date of the Rent Regulation Reform Act of 1997" (June 19, 1997) and June 24, 2011. The amendment continued the existing rule that vacancy deregulation would be effectuated where an apartment "is or becomes vacant…with a legal regulated rent of $2,000 or more per month." *Altman* did not address the 2011 amendments, as the vacancy therein occurred in 2005.

In *Mautner-Glick Corp. v. Higgins*, 64 Misc 3d 16 (App Term, 1st Dept 2019), it was unclear when the vacancy in question occurred. Although the court did not directly address the issue, it implied that the 2011 Act did not alter the prior rule that deregulation is effectuated where the rent has increased above the deregulation threshold by the time the new tenant moves in. Denying summary judgment, the court wrote:

> Landlord failed to establish that the apartment was or became vacant on or before June 23, 2011, when the deregulation threshold was $2,000, rather than after June 24, 2011, when the threshold was $2,500, and that the legal rent (including the available statutory increases) applicable to the apartment after Sonner's vacancy exceeded the applicable threshold. (internal citations omitted)

In *1650 Realty Assoc. LLC v.*

Ovadiah, 65 Misc 3d 24 (App Term, 2d Dept 2019), the Appellate Term, Second Department definitively held that the *Altman* rule applied under the 2011 Act:

> Since there is no material difference between the statutory language construed in *Altman* and the language applicable to this proceeding, we follow *Altman's* interpretation of the language and hold that RSL §26-504.2(a) excludes from rent stabilization apartments that became vacant between the effective dates of the Rent Acts of 2011 and 2015 for which the legal rent was $2,500 or more per month as a result of statutory increases that are applied after the vacancies.

Three months later, in *191 Realty Assoc., L.P. v. Tejeda*, 65 Misc 3d 150(A) (App Term, 1st Dept 2019), the Appellate Term, First Department, citing *1650 Realty Assoc., LLC* expressly held that the *Altman* rule applied to vacancies occurring between the effective dates of the Rent Acts of 2011 and 2015.

The Rent Act of 2015

The Rent Act of 2015 (L 2015, ch 20, Part A) amended RSL §26-504.2(a) to increase the deregulation threshold to $2,700 per month, plus applicable one-year guideline increases. The 2015 Act eliminated the two distinct clauses first enacted in 1997, and luxury deregulated "any housing accommodation that becomes vacant on or after the effective date of the rent act of 2015, where such legal regulated rent was $2,700 or more, as further adjusted by this section." Notably, in *Altman*, the Court of Appeals stated that "we do not address the effect of the 2015 amendments to the statute."

In *People's Home Improvement LLC v. Kindig*, 65 Misc 3d 1016 (Civ Ct, NY County 2019), the Court (Barany, J.) held that the *Altman* rule did not apply to vacancies occurring after the effective date of the 2015 Act:

> There is no gainsaying the fact that the Rent Act of 2015, under which petitioner deregulated the subject premises, fails to contain the *two* different clauses referred to in *Altman*.
>
> * * *
>
> It follows, therefore, and this court holds, that petitioner did not deregulate the vacant subject premises in 2017 by raising the rent above the threshold through a vacancy increase and IAI's.

Effect of the HSTPA

The HSTPA (L 2019, ch 36) eliminated luxury deregulation outright. The statute, however, was unclear as to whether it "re-regulated "previously deregulated apartments. A so-called "cleanup bill" (L 2019, ch 39, Part Q), enacted several days later, clarified that "…any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated."

In three recent decisions, the Appellate Term, First Department has confirmed that in view of the clean-up bill, apartments that were lawfully deregulated under the 1997, 2011, or 2015 statutes remain deregulated to this day. *See B.G.R. Realty LLC v. Stein*, 66 Misc 3d 135(A) (App Term, 1st Dept 2020); *Widsam Realty Corp. v. Joyner*, 66 Misc 3d 132(A) (App Term, 1st Dept 2019); *191 Realty Assoc., L.P. v. Tejeda*, *supra*.