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RENT STABILIZATION

HSTPA and Luxury Deregulation


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The HSTPA, effective June 14, 2019, was a watershed event in New York City rent regulation. Among its most consequential provisions was Part D, which repealed high-rent and high-income luxury deregulation. L. 2019, ch 36, pt. D, §4. Luxury deregulation had been a prominent feature of the RSL since 1993.

Several days later, the Legislature enacted an HSTPA "cleanup" bill to address various ambiguities and omissions in the HSTPA. L. 2019, ch 39, pt. Q, §8 amended the luxury deregulation repeal language to provide that:

> This act shall take effect immediately, provided however, that (i) any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated…

DHCR high-income deregulation orders had always been made effective on the expiration date of the stabilized lease in effect at the time the order was issued. Thus, for example, an order of deregulation may have been issued in 2018, but would not become effective upon the expiration of the lease in 2020. The question thus arose as to whether an apartment is deemed "lawfully deregulated" on the date of the deregulation order, or on the later expiration date of the lease in effect.

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Some Background

When the HSTPA was enacted, thousands of rent regulation cases were pending before DHCR and the courts. As such, the issue of whether the HSTPA could be retroactively applied naturally came to the fore.

In *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332 (2020), various landlords argued that it would be unconstitutional to retroactively apply Part F of the HSTPA (relating to rent overcharges) to pending cases. By a 4-3 margin, the Court of Appeals agreed:

> The Legislature is entitled to impose new burdens and grant new rights in order to address societal issues and, in enacting the HSTPA, it sought to alleviate a pressing affordable housing shortage that it rationally deemed warranted action. But there is a critical distinction for purposes of a due process analysis between prospective and

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> retroactive legislation. As the Supreme Court has observed, retroactive legislation that reaches particularly far into the past and that imposes liability of a high magnitude relative to the impacted parties' conduct raises substantial questions of fairness. In the retroactivity context, a rational justification is one commensurate with the degree of disruption to settled, substantial rights and, in this instance, that standard has not been met. Thus the overcharge calculation and treble damages provisions in Part F may not be applied retroactively, and these appeals must be resolved under the law in effect at the time the overcharges occurred. (internal citation and quotation marks omitted).
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> 35 NY3d at 385-86.

Although Part F could not be applied retroactively, Part D proved to be another matter.

DHCR Proceedings

In *160 E. 84th St. Assoc.*, the First Department decided three separate article 78 proceedings, with the other two cases concerning apartments at 125 East 85th Street. Because the facts of all three cases are essentially similar, this article will recite the facts involving 160 East 84th Street.

On June 29, 2018, almost a year before the HSTPA became law, the landlord filed with DHCR a petition to deregulate apartment 12G based on high income. On Jan. 7, 2019, DHCR's Rent Administrator issued an order of deregulation based upon the tenants' admission that their household income exceeded the luxury deregulation threshold. Notably, the order of deregulation provided that "the subject housing accommodation is deregulated effective upon the expiration of the existing lease." That lease would expire on June 30, 2019.

On Sept. 6, 2019, after the HSTPA was enacted and after the tenants' lease had expired, DHCR issued an "Explanatory Addenda to Order" (EA) which it served upon the landlord and the tenants. The EA stated that based on DHCR's reading of the HSTPA and the relevant language in the "cleanup" bill, any deregulation order concerning an apartment whose lease expired *after* June 14, 2019 would remain subject to rent stabilization. Thus, according to DHCR, its Jan. 7, 2019 order was rendered a nullity by the HSTPA.

The landlord then filed a Petition for Administrative Review from the Sept. 6, 2019 EA, arguing that DHCR could not use the HSTPA to vitiate a final and binding order of deregulation that was premised on the tenants' own admission that their income was above the statutory threshold for deregulation.

DHCR denied the landlord's PAR on July 23, 2020. DHCR wrote in relevant part:

> The Commissioner…rejects the owner's contentions that DHCR erred by applying HSTPA's repeal of…High Income/High Rent retroactively and that DHCR incorrectly applied HSTPA to a previously issued final order of deregulation. The January 7, 2019 order specifically conditioned deregulation upon 'the expiration of an existing lease.' In other words, the order did not say that the subject unit was immediately deregulated. On June 14, 2019, HSTPA repealed the high rent/high income deregulation provisions under which the above order was issued.
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> The application of the HSTPA to this matter is not based upon the independent judgment of the rent agency, but, rather, it is pursuant to the plain text in HSTPA, and the rent agency is statutorily obliged to apply HSTPA to all cases where the lease expires on or after June 14, 2019. The fact that the 2018 petition is determined based on tenant income in 2016-2017, events that occurred before the passage of the HSTPA, is of no matter. The order of deregulation was conditioned on the expiration of a lease which, if it did not occur before June 14, 2019, precludes deregulation.

The Article 78 Proceeding

The landlord in *160 E. 84th St. Assoc.* thereafter commenced an article 78 proceeding. 2022

WL 196445 (Sup Ct, NY County 2021). Justice Carol R. Edmead denied the landlord's petition and affirmed DHCR's EA. The court cited RSC §2531.3, which states that where (as here) the New York State Department of Taxation and Finance certifies that the tenant's income is above the deregulation threshold, DHCR shall issue "an order providing that such housing accommodation shall not be subject to the provisions of the RSL upon the expiration of the existing lease."

Thus, under DHCR's own regulation, it was proper for the Rent Administrator to determine that deregulation would not become effective until June 30, 2019, when the tenants' lease expired. Citing *Matter of Classic Realty v New York State Div. of Hous. & Community Renewal*, 2 NY3d 142 (2004), Supreme Court noted that "New York courts routinely acknowledged" that high rent deregulation orders "would take effect after the expiration of an existing rent-stabilized lease term."

Curiously, Supreme Court did not mention former RSL §26-504.3(c)(2), cited in *Classic Realty*, which provided that after both landlord and tenant were given an opportunity to comment on a preliminary finding as to the tenant's income, "thedivision shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of this law upon the expiration of the existing lease."

Lastly, Supreme Court, distinguishing *Regina*, held that DHCR did not err by applying HSTPA Part D retroactively.

The First Department Affirms

On Feb. 24, 2022, the First Department affirmed Supreme Court in all respects. Addressing the issue of retroactivity, the court held:

> When the HSTPA was enacted, thousands of rent regulation cases were pending before DHCR and the courts. As such, the issue of whether the HSTPA could be retroactively applied naturally came to the fore.

The article 78 court correctly rejected petitioners' argument that DHCR's September 2019 addenda explaining the effect of HSTPA part D on the deregulation orders improperly gave retroactive effect to the statute. Part D repealed certain rent deregulation provisions of the Rent Stabilization Law, effective June 14, 2019, the date of enactment. Later in June 2019, Part D was amended to state, in pertinent part: 'This act shall take effect immediately; provided, however that (i) any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated.' That exception did not apply to the instant case, in which the three subject leases expired on June 30, 2019. DHCR's deregulation orders, issued in January, February and April 2019, stated prospectively that the subject apartment units would become deregulated '[u]pon the expiration of the existing lease[s].' (internal citations omitted).

The First Department continued: DHCR's addenda explained that the effect of HSTPA part D was to prohibit the deregulation of units with leases expiring after June 14, 2019. That is, they simply noted the prospective effect of the June 14, 2019 statute on subsequently expiring leases. Thus, in this case, the statute 'affect[ed] only the propriety of prospective relief…[and] ha[d] no potentially problematic retroactive effect.'