Rent Stabilization

Court Strikes Down Unlawful Stipulation
Warren A. Estis, a founding partner at Rosenberg & Estis, and Jeffrey Turkel, a partner at the firm, write that the Court of Appeals' recent decision in *Riverside Syndicate Inc. v. Munroe* answers a question that has puzzled trial and appellate courts alike: Under what conditions may a rent stabilized tenant, or landlord, waive rights under the Rent Stabilization Law?

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In *Riverside Syndicate Inc. v. Victoria Munroe*, (NYLJ, Feb. 8, page 28, col. 3,) the New York Court of Appeals struck down on public policy grounds a 1996 "so-ordered" stipulation between a landlord and two rent stabilized tenants. In the stipulation, the tenants agreed to pay a substantial rent overcharge in exchange for the landlord's promise to forego seeking to evict them based on non-primary residence.

The *Riverside* decision answers a question that has puzzled trial and appellate courts alike: Under what conditions may a rent stabilized tenant, or landlord, waive rights under the Rent Stabilization Law?

In the interest of full disclosure, the authors note that the prevailing owner in *Riverside* was represented by Rosenberg & Estis.

Section 2520.13

As a general matter, tenants cannot waive their rights under the Rent Stabilization Law. If they could, landlords, especially when negotiating with incoming tenants, could condition the initial lease on the tenant's waiver of any number of critical stabilization protections. Thus, §2520.13 of the Rent Stabilization Code, captioned "Waiver of Benefit Void," states in part that "[a]n agreement by the tenant to waive the benefit of any provision of the RSL or this Code is void."

The Code drafters, however, understood that given the realities of landlord-tenant disputes, and the need to settle those disputes, the "no waiver" rule could not be totally inflexible. Thus, §2520.13 goes on to provide a safe harbor wherein tenants can waive stabilization rights under appropriate circumstances:

> . . . provided, however, that based upon a negotiated settlement between the parties and with the approval of the DHCR, or a court of competent jurisdiction, or where a tenant is represented by counsel, a tenant may withdraw, with prejudice, any complaint pending before the DHCR.

The question of permissible waivers under rent stabilization came to a head in *Drucker v. Mauro*, 30 AD3d 37, 814 NYS2d 43 (1st Dept. 2006). *Drucker* concerned the validity of an agreement that settled a landlord-tenant dispute by giving the tenants perpetual two-year renewal leases at increases in accordance with Rent Guidelines Board percentages, but allowed the landlord to raise the rent above stabilization levels. The majority, in an opinion by Justice Peter Tom, wrote that the agreement violated §2520.13, even though the agreement was largely to the tenant's benefit. Justice Tom wrote: "Here the tenants waived the protection afforded by the lawful stabilized rent established for their apartment and their right

to timely renewal of their lease, a sufficient basis for voiding the agreement."[1] The dissent, by Justice Richard T. Andrias, wrote that the settlement was a lawful resolution of a contested landlord-tenant dispute. The Court of Appeals thereafter declined to hear the appeal.

Riverside

In *Riverside*, Victoria Munroe, and her husband, Eric Saltzman, rented stabilized apartments 10B and 10F at 155 Riverside Drive in Manhattan. They also sublet apartment 10A. When the landlord tried to evict them from 10A in 1995, the parties entered into a stipulation, so-ordered by Judge Sara Lee Evans, whereby the landlord agreed to give Munroe and Saltzman a stabilized lease for 10A in their own names. The stipulation further provided that the legal rent for 10A, which had not been at issue in the illegal sublet proceeding, would be raised by almost 70 percent, from $1,178.43 per month to $2,000 per month. The tenants also agreed not to challenge the legality of the $2,000 rent before DHCR.

In exchange for paying an unlawful rent, the tenants required the owner to refrain from seeking to evict them based on non-primary residence. Thus, paragraph 8 of the so-ordered stipulation provided:

> Regardless of respondents' primary residence respondents may remain as the rent stabilized tenants of apartments 10A, B and F.

In 2004, the landlord commenced an action in Supreme Court, seeking a declaration that the so-ordered stipulation was void and unenforceable as against public policy. The landlord argued that allowing a non-primary resident tenant to remain in occupancy of a below-market stabilized apartment was contrary to the spirit of the Rent Stabilization Law and the rent stabilization system as a whole. Supreme Court Justice Judith J. Gische ruled in the tenants' favor, holding that public policy was not violated because "Landlords are not compelled under the rent stabilization laws to bring non-primary residence holdover proceedings against tenants."

In an April 5, 2007 order, the Appellate Division, First Department, unanimously reversed, holding:

> Because the consent judgment violates public policy by waiving benefits of the Rent Stabilization Law (notwithstanding that it does so to the tenants' benefit in this instance), it is unenforceable (see *Drucker v. Mauro*, 30 AD3d 37 [2006], appeal dismissed 7 N.Y.3d 844 [2006]). Since the consent judgment's main objective was illegal, it is void in its entirety (see *Rose v. Elias,* 177 AD2d 415, 416 [1991]). Further, given that the landlord and the tenants are in pari delicto, and the tenants (who seek to keep the consent judgment in force) have already reaped substantial benefits from it (including more than a decade of enjoyment of their renovations to the apartment), we leave the parties as we find them, and do not place any conditions on our invalidation of the consent judgment (see *Abright v. Shapiro,* 214 AD2d 496 [1995]) (R. 334-35).

Court of Appeals

On Feb. 7, the Court of Appeals affirmed the First Department in a unanimous opinion by Judge Robert S. Smith. Citing section 2520.13, the Court ruled:

> The application of this regulation to this case seems uncomplicated. The agreement is, on its face, one to 'waive the benefit' of rent stabilization, and is therefore void. It is not an agreement to withdraw a 'complaint pending before the DHCR,' and therefore the exception in the regulation does not apply.

The Court then addressed the landlord's half of the bargain, i.e., its waiver of the right to commence a non-primary residence proceeding against the tenants. The tenants had argued before the Court that the waiver did not offend public policy, because if the tenants were evicted for non-primary residence, the apartments would no doubt be luxury deregulated and lost to stabilization forever. The Court disagreed, writing:

> In exchange for an illegal rent, the landlord agreed, among other things, not to enforce its rights under RSC §2524.4(c) to 'recover possession' of a 'housing accommodation . . . not occupied by the tenant . . . as his or her primary residence.' As the Appellate Division has repeatedly held, an agreement of this kind is not enforceable by the tenant (*Park Towers S. Co. v. Universal Attractions*, 274 A.D.2d 312, 710 N.Y.S.2d 571 [1st Dept 2000]; *Rima 106 v. Alvarez*, 256 A.D.2d 201, 690 N.Y.S.2d 40 [1st Dept 1999]). Such an agreement allows a tenant who already has one home and who is able to pay more than the legal rent for a second one, to use the law as a means of getting that second home in perpetuity at a bargain price. As Justice Wallach said in *Rima*, to countenance such an agreement 'would violate the fundamental policies and purposes of the statutory rent regulation scheme' [citations omitted].

The Court also rejected the tenants' argument that the overcharge they agreed to pay, in exchange for the landlord's primary residence waiver, did not violate the Rent Stabilization Law. In language that landlord's attorneys will not doubt

frequently quote in the future, the Court wrote:

> It is the policy of the rent stabilization laws that apartments should either be rented at no more than the legal maximum or deregulated. Deregulation, when the conditions for it are met, serves public policy by increasing the availability of housing on the open market. Agreements like the one at issue here distort the market without benefiting the people the rent stabilization laws were designed to protect.

Finally, the Court rejected the tenants' argument that §2520.13 protected the stipulation herein, even though the tenants did not engage in the "useless formality" of filing an overcharge complaint and then withdrawing it as part of the settlement:

> We find the agreement to be within neither the letter nor the spirit of the law, because it was not a bona fide settlement of the parties' dispute. The argument for upholding the agreement would be stronger if, in 1996, the parties had had a dispute about the amount of the legal maximum rent, and had compromised at a figure above the tenants' and below the landlord's. But the 'compromise' in this case puts the rent roughly 50 percent higher than the highest rent the landlord could have demanded. The obvious purpose of the settlement was not to resolve a dispute about what the law permitted, but to achieve something that the law undisputedly did not and does not permit.

What then, does *Riverside* say about §2520.13? The Court of Appeals held that an agreement whereby a tenant purports to waive stabilization rights must not only involve the withdrawal of a complaint concerning a legitimately contested issue, but must not in other respects violate the letter or spirit of the Rent Stabilization Law.

Suppose a tenant files a legitimate overcharge complaint with DHCR. If the tenant agreed to drop the overcharge complaint in exchange for the landlord painting his apartment every two years, as opposed to every three years as provided by law, the agreement would be permitted under §2520.13, because it is consistent with the letter and spirit of the law.

If, as here, the consideration for withdrawing the complaint violates public policy, such as allowing a non-occupying tenant to commandeer a stabilized unit at a below market rent, the stipulation will not stand.

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Endnotes:

1. 30 AD3d at 45.