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LANDLORD-TENANT

Rulings Hand Big Victory To Conversion Sponsors

By **Warren A. Estis** And **Jeffrey Turkel**

In two recent decisions, the Appellate Term, First Department, ruled that unregulated tenants were not entitled to purchase their units, or remain in occupancy, where the sponsor/landlord had already commenced lease expiration holdover proceedings against them prior to the date the attorney general had accepted condominium offering plans for filing. The two decisions, *MH Residential 1, LLC v. Barrett*[1] and *322 West 57th Owner, LLC v. Penhurst Prods. Inc.*,[2] represent a major victory for cooperative and condominium sponsors.

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'Penhurst'

The sponsor/landlord in *Penhurst* (hereinafter, the "sponsor") submitted a non-eviction condominium offering plan to the attorney general in June of 2005 in connection with its efforts to convert The Sheffield, a luxury apartment building located on West 57th Street in Manhattan. The attorney general accepted the plan for filing on June 22, 2006.

Between March 2006 and the date of acceptance, the sponsor commenced 23 so-called "no cause" holdover proceedings against residential tenants at The Sheffield (hereinafter, the "respondents") whose unregulated leases had expired. The sponsor asserted that once leases ended, the respondents (who had no option to renew) had to vacate.

The respondents, in turn, moved to dismiss the holdovers on the ground that the respondents were protected against eviction, and were eligible to purchase their units, under General Business Law ("GBL") §352-eeee, known as the Martin Act. GBL §352-eeee(2)(ii) provides that other than for cause, "[n]o eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy." In addition, GBL §352-eeee(2)(i) allows "tenants in occupancy" to purchase their apartments. The right to purchase vests as of the date the attorney general accepts the plan for filing.

On the vesting date, the 23 respondents in *Penhurst* were certainly in occupancy, but their leases had expired and holdover proceedings had been commenced. The question thus arose as to whether the respondents qualified as "tenants in occupancy" under the Martin Act and thus had the right to purchase.

In March of 2007, New York City Housing Court Judge David B. Cohen ruled that the respondents were indeed protected by the Martin Act, and dismissed all 23 holdover proceedings.[3] Judge Cohen wrote:

> The fact that a holdover proceeding has been commenced against an individual to recover possession does not prevent the occupant from being accorded the status of 'tenant in occupancy' and hence entitled to purchase the shares allocated to the premises under a conversion plan.
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> [T]he critical factor in determining the status of the respondents herein as of the date of acceptance of the plan by the attorney general, is *whether a final judgment and warrant of eviction has been issued, since 'as a matter of law, the landlord-tenant relationship [is] not extinguished until the issuance of the warrant.'* In the absence of a judicial determination of the propriety of the landlord's rejection of the tenancy or subtenancy, the legality of the tenancy in question 'must be presumed.'
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> Here, all respondents were bona fide tenants with existing leases at the time the proposed offering plan was submitted to the Attorney General and distributed to the tenants in June 2005, and at no time was it alleged that respondents had breached the obligations under their leaseholds. Subsequent to the submission, and prior to the acceptance of, the plan by the Attorney General, the petitioner notified respondents that it would not be renewing their leases, and commenced these summary holdover proceedings to recover possession of the subject apartments. During the pendency of these proceedings, on June 22, 2006, the Attorney General accepted the offering plan. There has been neither the surrender of the premises by the respondents, nor has a final judgment of possession or warrant of eviction been issued.
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> Accordingly, respondents herein are 'tenants in occupancy' of the premises and are entitled to the protections of the Martin Act (internal citations omitted).[4]

Judge Cohen asserted that his interpretation of the Martin Act was not only consistent with its literal language, but with the intent of the Act itself:

> The interests of owner and tenant in a cooperative conversion are often divergent. The owner often has a financial incentive to 'warehouse' apartments and to evict existing tenants in pursuit of the greater profits to be realized by selling units at prevailing market rates instead of selling to tenants at insider prices, while tenants, facing the prospect of dispossession and relocation, are often in a position of relatively little bargaining power. It is against this financial incentive to

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displace the nonpurchasing tenant that the Legislature sought to protect. Further, there is a public interest in avoiding such dislocations, and statutes promoting a public interest are to be liberally construed (internal citations omitted).

'MH Residential 1'

Judge Cohen ruled to the same effect in *MH Residential 1*, a case involving 200 E. 66th St. in Manhattan, also known as "Manhattan House." There, the sponsor commenced holdover proceedings against 29 unregulated tenants (the "respondents") whose leases had expired. While those proceedings were pending, the attorney general accepted the condominium conversion plan for filing.

Judge Cohen, citing *Penhurst*, held that the respondents were entitled to Martin Act protections, and dismissed the holdover proceedings.

Appellate Term Decisions

On Nov. 26, 2006, the Appellate Term, First Department (McKeon, P.J., Davis, Schoenfeld, JJ.), issued orders unanimously reversing both *Penhurst* and *MH Residential 1*. In both cases, the Court awarded the sponsor final judgments of possession. The court's rationale was set forth in the *MH Residential 1* decision, which is discussed below.

The Appellate Term began its analysis, as did Judge Cohen, by looking to the 1987 decision of the Court of Appeals in *DeKovessey v. Coronet Properties Co.*[5] for an interpretation of the term "tenant in occupancy" as used in the Martin Act. There, the Court of Appeals held that the "critical component to establishing an entitlement to exercise the insider rights of a 'tenant in occupancy' is a landlord-tenant relationship coupled with actual use and possession at the time the plan is accepted for filing."[6]

The Appellate Term acknowledged that all the respondents were indeed in occupancy, and focused its attention on whether the sponsor and the respondents still maintained a "landlord-tenant relationship:"

> The relationship of landlord and tenant is created by a contract expressed or implied which defines the rights and obligations of the parties. 'When the time specified in a [written] lease for the end of the term arrives, the lease expires and the relationship of landlord and tenant comes to an end.' Upon the expiration of a lease agreement, it is the obligation of a tenant to vacate from the demised premises, inasmuch as his or her rights to continue in possession thereof have expired. Where the tenant holds over after the expiration of the lease term, the landlord is not required to allege or prove any basis for eviction other than the expiration of the lease (internal citations omitted).

The Appellate Term then ruled that the respondents did not qualify as "tenants in occupancy" for purposes of the Martin Act:

> Applying these settled principles to the situation at bar, and given that respondents' unregulated, market-rate leases contained no right of renewal and expired prior to the date upon which the offering plan was accepted for filing, we conclude that no landlord-tenant relationship existed as of the filing date. Respondents did not retain the legal right to continued occupancy of their apartments and thus the prong of *DeKovessey's* conjunctive qualifying definition that a party be a 'tenants' at the time the conversion plan is accepted for filing was not satisfied herein.

The Appellate Term continued: "The purpose of General Business Law §352-eeee is to protect tenancies extant during the cooperative or condominium conversion process. By the statute's own language, nonpurchasing tenant status is conferred only on a tenant who is entitled to possession at the time the plan is declared effective (see *Park West Village Assoc. v Nishoika*, 187 Misc 2d 243 [2000]). Inasmuch as respondents' leaseholds had expired prior to the date the plan was accepted for filing, they are not 'tenants' entitled to protection from eviction under the Martin Act.

The Appellate Term's reference to its earlier decision in *Park West Village* is significant, and may explain why the Court rejected Judge Cohen's analysis. Judge Cohen viewed the Martin Act as a broad, tenant protection statute. In *Park West Village*, a market-rate tenant who moved into a condominium unit long after the building had converted claimed that she could not be evicted, citing Martin Act protections. The Appellate Term therein rejected a broad interpretation of the Martin Act:

> Giving effect to the overarching purpose of General Business Law §352-eeee to protect tenancies extant during the cooperative or condominium conversion process, we conclude that the tenant's post-conversion leasehold does not fall within the statutes reach. As one commentator aptly noted, 'It is difficult to understand why GBL §352-eeee, a statute designed to regulate conversions, should be twisted to afford post conversion tenants, strangers to the conversion transaction, a windfall benefit at the expense of the seller and purchaser principals' (internal citations omitted).

It remains to be seen whether the respondents will be granted leave to appeal to the Appellate Division.

1. NYLJ, Dec. 8, 2008, at 28, col. 1.
2. NYLJ, Dec. 8, 2008, at 28, col. 2.
3. The parties stipulated that the decision in the *Penhurst* holdover proceeding would be binding in the 22 remaining holdovers.
4. NYLJ, March 27, 2007, at 22, col. 1.
5. 69 N.Y.2d 448, 515 N.Y.S.2d 740 (1987).
6. 69 N.Y.2d at 457.