



ROSENBERG & ESTIS, P.C.

Last year we reported on the Appellate Division, First Department's decision in Altman v 285 W. Fourth LLC. In that case, the AD held, for the first time that, in order for a rent stabilized apartment to have been high rent vacancy deregulated in 2005, the last legal rent of the vacating tenant had to have exceeded the then applicable \$2,000 luxury deregulation threshold. This was a sudden and dramatic change from prior precedent and the DHCR regulations which permitted deregulation when a vacancy allowance and other lawful increases brought the new legal rent over the threshold. The AD denied leave to appeal and, because the case was not then final, no application could be made to Court of Appeals.

Yesterday, the AD issued a follow up ruling in Altman. Not surprisingly, the AD affirmed a lower court ruling holding that, because the apartment had been "illegally removed from rent stabilization" the tenant had been overcharged. However, the Court also held that the imposition of treble damages on the overcharge was proper, that the tenant was entitled to prejudgment interest and, that the collectible rent should be set at the last registered rent stabilized rent until the tenant is provided with a RS Lease and the apartment is properly registered with DHCR. Thus, it is now likely that future decisions will penalize owners for failing to anticipate the changed interpretation of the Luxury Deregulation Law which was not articulated by the AD until last year.

We expect that, because this is now a final decision on this case, the owner will seek to have an appeal heard by the Court of Appeals.

We previously suggested that you identify the apartments put at risk of improper deregulation based on the earlier AD decision. In light of this recent holding, we again recommend that you review your portfolio and possible exposure with us.

-Rosenberg & Estis, P.C.