

ROSENBERG & ESTIS, P.C.

733 THIRD AVENUE NEW YORK, NY 10017

PRESS CONTACT: Shea Communications, LLC
George Shea, Mark Faris (212) 627-5766

FOR IMMEDIATE RELEASE:

ROSENBERG & ESTIS, P.C. SUCCESSFULLY DEFEATS CLAIM FOR RENT OVERCHARGE MADE BY TENANTS BEYOND THE FOUR YEAR STATUTE OF LIMITATIONS AND “FOUR-YEAR LOOK-BACK PERIOD”

Rosenberg & Estis, P.C., a premier New York City real estate law firm with an award-winning Litigation Department, successfully obtained the dismissal of a claim for rent overcharges, and successfully opposed a motion for summary judgment brought by tenants alleging the owners’ failure to charge proper rent-stabilized rents while receiving J-51 tax benefits.

On January 15, 2019, the Appellate Division, First Department (Renwick, J.P., Gische, Kahn, Kern, Moulton, JJ.) issued a decision and order unanimously affirming the decision of the Supreme Court, New York County (Arlene P. Bluth, J.), which granted the owner’s motion to dismiss the tenants’ rent overcharge claim, strictly applied the four-year statute of limitations and denied the tenants’ cross-motion for summary judgment.

Deborah E. Riegel, member, and Ethan R. Cohen, associate, of Rosenberg & Estis, P.C. represented the owners before the Supreme Court and on appeal at the Appellate Division.

In this case, the proactive owner promptly took all steps necessary to comply with the Court of Appeals decision which clarified the law in 2009, and therefore, the owner was properly afforded the protection of the applicable statute of limitations for rent overcharge claims. Promptly after the Court of Appeals’ decision in *Roberts v Tishman Speyer Properties, LP*, 13 NY3d 270 (2009) (“*Roberts*”), the owner registered the tenants’ apartment and rent as rent-stabilized with the New York State Division of Housing and Community Renewal (“DHCR”) and gave the tenants a rent-stabilized lease. The owner also directly advised the tenants of the *Roberts* decision by including a rider to their lease. Since that time, the owner continued to issue rent-stabilized renewal leases with lawful rent increases and registered the apartment and rent with DHCR.

The tenants did not assert a claim of rent overcharge until 2016, more than six years after the owner registered the rent with DHCR and advised the tenants of the *Roberts* decision in 2010. Accordingly, R&E moved to dismiss the tenants’ rent overcharge claim, arguing that it was barred by the applicable statute of limitations and “Four Year Rule.”

When they commenced an action in Supreme Court, Supreme Court accepted R&E’s arguments in full and dismissed the tenants’ rent overcharge claim, finding no reason to permit a longer look

back period or to disregard the four year statute of limitations, since there was no indication of fraud by the owner and the tenants were indisputably on notice of the *Roberts* decision and its impact on their tenancy for more than four years. Having dismissed the overcharge claim, Supreme Court also denied the tenants' cross-motion for summary judgment.

The tenants appealed the decision of the Supreme Court to the Appellate Division, First Department. R&E successfully opposed the appeal. The Appellate Division, First Department agreed with R&E's arguments and unanimously affirmed the decision of the Supreme Court.

"This decision by the Appellate Division reaffirms that the 'Four Year Rule' will be applied where tenants opportunistically seek to assert claims that are long since time barred," Riegel said. "Those owners who acted in good faith to comply with the law have previously been subjected to extensive litigation based specious claims of fraud fabricated solely as a means of evading the 'Four Year Rule' and statute of limitations. The Appellate Division has made it clear that failure to act will not be excused, nor will the Statute of Limitations be extended."

About Rosenberg & Estis, P.C.

Founded in 1975, Rosenberg & Estis, P.C. is widely recognized as one of New York City's pre-eminent real estate law firms. Rosenberg & Estis, P.C. provides full service representation and advice in every aspect of real estate, from performing due diligence and evaluating financing, to handling joint ventures, acquisitions and leasing, construction and design team agreements, land use and zoning matters, co-op and condo offering plan filings, as well as the litigations and negotiations which sometimes ensue when deal making. Rosenberg & Estis' wealth of experience in New York real estate makes it the ideal thought partner for owners, developers, not-for-profit corporations, educational institutions, sponsors, equity investors and lenders in both real estate transactions and in all court venues.

###