

# THE REAL DEAL

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## Tenant victory against 845 West End Avenue overturned

By David Jones

A New York state appeals court handed down a victory to investment partners Atlas Capital and Fred Wilpon's Sterling American Properties, who challenged a lower court ruling that blocked an eviction at their 845 West End Avenue condominium conversion based on the landmark class action victory by tenants at Stuyvesant Town and Peter Cooper Village.

Jeffrey Turkel, a partner at Rosenberg & Estis, representing 845 West End, said that the decision represents the first time that the state appellate term has reviewed a case involving tenants trying to get out of a stipulation agreement based on the Stuy Town case, which was owned by Tishman Speyer. In the Stuy Town case, the landlord was found to have illegally deregulated apartments and overcharged tenants.

Turkel said that the tenants agreed to vacate 845 West End Avenue, near 83rd Street, after consulting with lawyers, fully aware that the Stuy Town case was on appeal.

The 845 West End case involved a couple named Ronald and Gwen Jannelli, who were paying \$5,000 a month for a market-rate apartment until their lease ended in January 2008, when they became month-to-month tenants. Atlas and Sterling bought the building in July 2008, with initial plans to convert the building into a condo, and notified the tenants in early February 2009, that they would not renew the couple's lease.

The Jannellis reached an agreement to vacate the apartment by December 2009 and pay \$5,200 a month from the expiration of their previous lease in so-called use-and-occupancy costs, in lieu of formal rent. But, the Stuy Town ruling was issued in March 2009, and weeks before they were scheduled to leave, the Jannellis filed suit to get out of their stipulation agreement, saying that their apartment should have been rent-stabilized. They tried to use the same argument successfully employed by thousands of tenants in the Stuy Town ruling.

The lower court ruled in favor of the Jannelli family, noting that the building had received J-51 tax benefits and therefore the apartments should have been subject to rent stabilization. The appeals court ruled, however, that the tenants presented no evidence that the new landlord committed fraud or that they entered into the stipulation deal based on some kind of mistake.

Himmelstein McConnell partner William Gribben, who represented the Jannellis in the case, was not immediately available for comment and the couple could not immediately be reached for comment.