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Gluck catches break after years long rent case

By AL BARBARINO

A New York State appeals court ruled this week that real estate developer Laurence Gluck lawfully destabilized Tribeca's Independence Plaza North in 2004.

The ruling reversed a 2010 judgment in favor of tenants who claimed the developer should not have been able to deregulate the 1,328-unit Tribeca building because management continued to receive tax breaks after withdrawing from the city's Mitchel-Lama affordable housing program.

But Gluck legally withdrew from Mitchel-Lama in 2004, and the continuation of the J-51 tax abatements

was merely a blunder on the part of the Department of Finance, the appeals court ruled.

"IPN's continued receipt of J-51 benefits after it exited the Mitchell-Lama program was merely the erroneous result of DOF's failure to adjust IPN's tax liability," the court papers state. "That error did not create rent stabilized status for a development that was not otherwise subject to the Rent Stabilization Law."

Through the Mitchel-Lama program, the city provides tax incentives and low-interest mortgage loans to developers of affordable housing when landlords agree to

regulation of rents and profits. But after 20 years, owners are allowed to withdraw by paying back their subsidized mortgage.

On June 28, 2004, building management, a.k.a. Independent Plaza Associates, notified DOF of its withdrawal from the program and returned to a standard taxpaying structure, according to the court papers. In addition, following an inquiry by the developer into the erroneous payments, all J-51 benefits received were repaid, plus interest.

Despite the clear mix-up, tenants have become emboldened by prior decisions involving J-51 payments, believing that a mere mention of

the J-51 automatically proves that the building is stabilized, said Jeff Turkel, a partner at Manhattan real estate law firm Rosenberg & Estis.

The attorney was an amicus curiae, or "friend of the court," in *Roberts v. Tishman Speyer*, a 2009 ruling that said developer Tishman Speyer had illegally deregulated rents in the Stuyvesant Town/Peter Cooper Village housing complex because the landlord continued to receive J-51 benefits.

Turkel said the appeals court ruling in the Independence Plaza North case shows that each case needs to be looked at on a case-by-case basis.

"The tenants were basically grasping at straws here and were trying to turn an administrative error into a permanent stabilized regime,"

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LARRY GLUCK

Gluck

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he said. "The takeaway for landlords is that if your benefits are supposed to expire as a matter of law, make sure that HPD terminates them because if they don't, tenants will seize on that as an excuse to say that they are rent stabilized."

Real estate industry groups that represent the interests of owners and managers of rent regulated properties reveled in the judgment, but it was a bittersweet celebration.

"My clients were obviously gratified by the well-reasoned decision of the appellate court, but at the same time they were somewhat troubled by the tremendous cost incurred to reach a result," said Magda Cruz, an attorney with the law firm Belkin, Burden, Wenig & Golman.

Cruz co-authored an amicus curiae brief on behalf of the Rent Stabilization Association of New York City and the Community Housing Improvement Program.

"Eight years of litigation costs a lot of time and money," she said.