MITCHELL-LAMA RESIDENTS COALITION

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WEBSITE: www.mitchell-lama.org

Landlord asking Supreme Court to undo rent laws

In a case that could have severe consequences for any and all forms of rent regulation in New York City--including rent stabilization and rent control--a landlord on Manhattan's upper west side has succeeded in getting the U.S. Supreme Court to order the city and state to respond to his allegations that rent stabilization deprives him of his Constitutional rights because it amounts to a "taking" of his property without due compensation. (The issue does not affect Mitchell-Lama rentals or cooperatives.)

Previously the owner, James Harmon, had seen his case summarily dismissed twice, once by the federal district court for the southern district of New York, and again by the second circuit court of appeals. So Harmon petitioned the US Supreme Court to override the lower courts' decisions. In legal terms, he filed a petition for a writ of certiorari.

In such cases, the respondents are entitled to ask the Court to deny the petition. But because both the city and the state considered the owner's arguments so lacking in legal merit, and so much in contradiction to decades of case law, neither the city nor the State bothered to send in a response to the Supreme Court, arguing against the petition. They've now done so.

Unsurprisingly, Harmon is supported by several far right conservative, libertarian and real estate groups, including the Pacific Legal Foundation, the Atlantic Legal Foundation, the Cato Institute and the Rent Stabilization Association, a landlord lobbying body.

Harmon's essential argument is that rent stabilization, and by extension any form of rent regulation, is a subsidy paid to tenants by landlords. Conservative ideologues and libertarians also argue that rent protections amount to discrimination against other tenants who pay market rents.

In fact, rent regulation does not entail any subsidy or discrimination at all. Neither landlords nor market-rate tenants provide any funds, directly or indirectly, to regulated tenants. Instead, regulations are imposed essentially to counter landlord profiteering during a shortage of affordable housing. Regulations also insure that tenants receive sufficient services, and that they may not be evicted for paying less than free market rents.

Specifically, Harmon claims that the three rent-regulated tenants in his six-unit building pay 59 percent less than the

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MLRC sets neighborhood lobbying for spring 2012

The Mitchell-Lama Residents Coalition will again lobby our state and city elected legislators on our housing concerns this spring.

This will give all of us an opportunity to visit with our elected officials to remind them of our housing needs and ways that they can further our agenda to maintain and increase affordable housing in our communities.

Our efforts to save our homes will be more successful, if we have personal relationships in the political arena. Please review our political platform and participate in this important initiative. We support the following legislative proposals and have sent our 2012 Lobby Agenda to all our Federal, State, and City elected officials. We are counting on your help to review these requests with your own local officials.

Extending rent stabilization protections to all former Mitchell-Lama buildings, including those already taken out of the program regardless of their year built, without rent increases based on unique or peculiar circumstances.

Strengthening the rent stabilization and co-op laws.

Repealing high rent vacancy destabilization.

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Strengthen MLRC
Join today (use form on page 2)

GENERAL MEMBERSHIP MEETING
SATURDAY, March 24, 2012

Time: 10:00 a.m. – 12 noon

(Refreshments at 10:00 a.m.)

CONTACT: information@mitchell-lama.org
PLACE: Musicians Union Local 802
322 West 48th Street (near 8th Avenue) Ground Floor, "Club Room"

Mitchell-Lama Residents Coalition
P.O. Box 20414
Park West Station
New York, New York 10025

‘Business judgment rule’ no defense against co-operator’s health needs

An elderly couple in a private co-operative in Whitestone, Queens, won the right to install an air conditioner for health reasons, even though the co-op’s regulations prohibit such units. The co-op has central air cooling, which, however, does not purify the air.

Upon learning of the installation, the management of the co-op, Cryder House, ordered the cooperator--the couple’s son, who had purchased the units for his parents--to remove it within five days or lose his ownership. That would have resulted in the eviction of his parents.

The owner sued, alleging discrimination based on age, a violation of federal, state and city laws. He argued that his elderly mother had severe allergies and asthma, and needed air conditioning to engage in “activities of daily living,” which all other cooperators enjoyed.

At a judicial hearing, the officer found no evidence that the unit caused damage to the co-op or to other residents. The unit was neither visible nor noisy. He also found that his own data, plus the testimoney of an expert witness, showed that the absence of purified air in the co-op caused the mother to have severe headaches, sneezing, breathing difficulty, nausea and other serious health consequences.

The cooperator also argued that any violation of the co-op’s rules was minor, and could not override medical needs and legal rights.

Defendants argued that they had the legal right to order the air conditioning unit removed, under the business judgment rule. That rule grants directors and managers nearly unlimited authority to enforce their buildings’ rules and transactions, so long as they are made in good faith. In this case, however, the officer found that the rule does not permit co-op boards to discriminate against residents who have special medical needs.

Bronx tenant wins $33,000 in rent overcharge case

It may not be as momentous as the Stuyvesant Town /Peter Cooper Village decision, but for Vega Ortiz and her daughters, it’s wonderful: the Bronx tenant recently won a decision from the state’s Housing and Community Renewal that may net her $33,000 in rent overcharges.

Her landlord, Urban American Management, a sub-unit for an investment bank (Cowen and Company, LLC), has said it would appeal the decision.

Ms. Vega-Ortiz and her family have been tenants in the building, 320 Perry Avenue, since December 2008.

She told reporters about leaks, mold, clogged pipes--factors familiar to many New Yorkers.

She filed a rent overcharge in March 2009. A later fire in the building damaged the unit even further.

According to HCR, she was supposed to be paying $554.75 per month for her apartment; instead, she was charged $975.

HCR’s ordered the owner to pay her more than $10,000 in overcharges, and almost $22,000 in punitive charges.

JOIN THE MITCHELL-LAMA RESIDENTS COALITION
2012
INDIVIDUAL $15.00 per year and DEVELOPMENT 25 cents per apartment
($30 Minimum; $125 Maximum)

Name_____

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City_____**State**_____**Zip Code**_____

Evening Phone_____ **Day Phone**_____

Fax_____ **E-mail** _____

Current ML: Co-op_____ **Rental** _____

Former ML: Co-op_____ **Rental** _____

Development_____ **Renewal**____**New Member**____

President’s Name: _____

Donations *in addition to dues* are welcome.

NOTE: Checks are deposited once a month.
Mail to: MLRC, PO Box 20414, Park West Finance Station, New York, N.Y. 10025

MLRC fights for you and your right to affordable housing!

UPCOMING EVENTS

GENERAL MEMBERSHIP

Saturday, March 24, 2012

10:00 a.m. - Noon

Musicians Union, 322 W. 48 St., between 8th & 9th Aves

For more information, e-mail:
information@mitchell-lama.org

Mitchell-Lama Residents Coalition, Inc.

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New senate bill: a vast public gift to landlords who have broken the law--at tenants' expense

By Seth A. Miller

The Mitchell Lama Residents Coalition opposes the most recent version of S 5763, a bill that, like its predecessors (S4117 and S4117A), is nothing more than a vast gift of public funds to landlords who have broken the law, at the expense of literally hundreds of thousands of innocent, vulnerable working class tenants.

The bill advertises itself as providing "relief" to landlords who deregulated apartments in buildings that received J-51 benefits unlawfully but in good faith. Its main beneficiaries, though, are landlords who have overcharged tenants in a way that would have been illegal even if the Roberts case had never been decided, and the current and future landlords of the approximately 500,000 apartments, nearly all occupied by poor and working class families, that are now exempt from eventual deregulation because of the J-51 program, upon whom this bill confers a license to deregulate apartments that under current law are required to remain affordable.

This bill rewards lawbreaking, encourages landlords to engage in ever riskier and ever less justifiable evasions of the rent regulatory laws, encourages the

> ***'Its main beneficiaries are landlords who have overcharged tenants illegally'***

public to view the requirements of the rent regulatory laws as having less force than other kinds of laws, creates uncertainty about whether landlords will be relieved from other clear legal obligations that are imposed by current law, deprives the public of the rent regulated housing that has been the quid pro quo for receipt of J-51 benefits since the 1950s, allows public funds to be used to subsidize the loss of affordable housing, and threatens the deregulation of literally hundreds of thousands of presently rent regulated affordable housing units, rendering them permanently unaffordable to ordinary New Yorkers.

Although the bill's sponsors describe the bill as aimed at providing landlords with "relief" from allegedly unexpected consequences arising from the Court of Appeals' decision in Roberts v. Tishman Speyer Properties, L.P., (2009), the bill's chief impact would be (a) to immunize landlords from any overcharge penalties in buildings receiving J-51 benefits prior to October, 2009, even if the overcharges had nothing to do with the deregulation of units that were reregulated by virtue of the Roberts decision; and (b) to permit landlords to resume the deregulation of the hundreds of thousands of apartments now occupied by poor and working class tenants, whose apartments cannot under current law be deregulated because they are in buildings receiving J-51 benefits.

This poorly drafted bill has little prospect of achieving what

> ***'the bill would create only confustion'***

it claims to do. It is advertised as providing certainty in the calculation of rents for illegally-deregulated apartments in buildings that received J-51 benefits, but it would create only confusion. There is simply no bright line that can be drawn to divide apartments regulated "as a result of" the Roberts decision from apartments with rents that would be subject to challenge even without Roberts. Setting the rent for any class of apartments at the rent charged in October, 2005, or October, 2009, will whitewash overcharges with a four-year base date falling earlier than those dates, and provide a windfall in cases where the base date would otherwise be later.

License to Collect Overcharges

Although the bill purports to provide a mechanism for setting the rent for apartments that, but for the Roberts decision, would lawfully have been deregulated, that mechanism would apply by its terms so as to legalize the most blatant and fraudulent overcharges in buildings that received J-51 benefits as of October, 2009.

Section 3 of the bill defines every apartment that was rent stabilized or rent controlled prior to receiving J-51 benefits as an apartment that is "subject to the ruling of the State Court of Appeals in Roberts v. Tishman Speyer." It goes on to set the legal rent for all such apartments at the rent actually paid as of October 22, 2005 if benefits are not repaid to the City of New York, or October 22, 2009 if they are repaid. That means that an apartment with an overcharge complaint having nothing to do with Roberts is nevertheless subject to the rent setting mechanism of the bill.

For example, if a landlord illegally deregulated an apartment that rented for $1,000.00 in June, 2008, charging $3,000.00 per month beginning July, 2008 without performing any renovations, a tenant would under current law be able to complain about the jump in the rent. Under current law, the complaint would be decided based on the rent four years before the complaint. A complaint in August, 2008 would mean the rent is determined by using the rent from August, 2004 as a base. A complaint today would mean using the February, 2006 rent as a base.

Under the proposed bill, if the building got a J-51 tax abatement then the apartment would be one that is regulated "as a result" of the Roberts decision. The base rent would either be October, 2005, or October, 2009, regardless of the date when any complaint was made. Using the October, 2009 date would mean whitewashing even the most blatant overcharges. Using the October 2005 date would mean either exempting the tenant from the four year rule or imposing a much later base date than what would apply in every other case.

This bill would therefore provide every landlord who received any J-51 benefits prior to October, 2009 with a license to overcharge tenants, since it sets a base rent of October, 2005 or October, 2009, even in cases where both the October, 2005 rent and the October, 2009 rent is the product of fraud.

Eliminating Protection Against Deregulation

Although the bill purports to provide a mechanism for setting the issue of the regulatory status of apartments that, but for the Roberts decision, would lawfully have been deregulated, that mechanism would apply by its terms so as to deregulate apartments where the rent has not gone over the $2,500.00 threshold. Section 11(e) of the bill forecloses any "claims relating to the deregulation of housing accommodations which were subject to rent regulation immediately prior to the receipt of tax benefits." By its terms, this includes apartments where the rent has not legally gone over the $2,500.00 threshold, so long as the landlord has illegally deregulated the apartment, received J-51 benefits, and has paid back the pre-October, 2009 portion of the benefits.

This provision rewards and even incentivizes blatant fraud. More broadly, the bill unjustifiably permits landlords to resume deregulating vacant apartments in buildings receiving J-51 benefits. The sponsor's memorandum offers no justification for doing so. Right now, in buildings that received J-51 benefits on or before October, 2009 tenants of modest means living in ordinary stabilized apartments at rents well below $2,500 per month can take comfort in knowing that their apartments cannot be deregulated, and that neither the landlord nor any speculators have an incentive to try to push them into the streets. This exemption from deregulation costs landlords nothing. It protects literally hundreds of thousands of tenants.

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Harlem tenant wins right to keep rent-regulated apartment in J-51 case

Another tenant won a victory related to the J-51 scandal, this time under a court order allowing him to keep his rent-regulated apartment in a Harlem complex because his landlord had been receiving tax benefits under the J-51 program. The program requires benefit recipients to maintain rent-stabilized rents, even if the apartments were initally market rent. Over the past few years, owners of several large complexes had been illegally charging market rents while still receiving the benefits.

In the current case, the tenant had moved into the apartment in 2005 under a market-rate rent, but the owner, Second Lenox Terrace Association, began receiving J-51 tax benefits almost a decade earlier. SLTA sought to remove the tenant in a "holdover" proceeding--essentially an eviction effort--because the lease on the apartment had expired and the tenant did not sign a renewal.

Citing the case of *Roberts v. Tishman-Speyer*, Acting Supreme Court Justice Ruben A. Martino ruled that "apartments in buildings receiving J-51 benefits are not subject to vacancy or high income deregulation." The landlord acknowledged that the tenant had been rent stabilized because of the benefits.

As additional good news for the tenant, the court ruled that he is entitled to receive attorney's fees.

Broadway Triangle project in Brooklyn halted on grounds of discrimination

A long-planned housing development in Brooklyn, which pit members of the Hasidic community against those of black and Hispanic communities, was halted recently by Supreme Court Justice Emily Jane Goodman.

In her ruling, Justice Goodman found that the Bloomberg-sponsored project, Broadway Triangle, discriminated against blacks and Hispanics, and in favor of Hasids. The planned project, she noted, consisted of three low-rise buildings with very large apartments, units typically sought by Hasids who tend to have especially large families. According to Lance Freeman, a demographics expert from Columbia University, some 90,000 blacks and Hispanics needed small apartments, but only 9,000 whites/Yiddish speakers needed large apartments.

In her ruling, Justice Goodman said the project will perpetuate segregation.

"The need for large apartments (and a great need for small apartments)," she said, "cannot justify construction of very commodious spaces, when such apartments are proposed only where the white/Yiddish speakers are the sole demographic group for whom the need for large apartments is greater."

The City and sponsors are likely to appeal.

MLRC to host raffle at next general meeting

At its next general meeting on March 24 th, MLRC will host a raffle "as part of our effort to keep fund raising a fun activity," according to Co-Chair Margo Tunstall Brown.

Prizes will include an HP Photosmart printer (which prints, scans and copies), a basket of Wen hair products, and wine.

The cost will continue at $2.00 per chance. If the effort is successful, the following general meeting will host a 50/50 raffle.

Co-op City activists keep open key post office

As the United States Postal Service prepares to shutter hundreds of post offices throughout the country in a bid to cut costs, a group of residents in Co-op City, a Mitchell-Lama complex in the Bronx, were able to keep at least one of their offices open.

Residents, many of whom are retired, had joined rallies by the American Postal Workers Union, which resulted in the USPS agreeing to keep open the office near the Hutchinson River Parkway. A second office will close.

The victory reflected a history of activism among the residents, many of whom are elderly. In previous years, for example, they organized a year-long rent strike against a rapid hike in maintenance fees. They also mobilized against the MTA's plan to severly cut back bus service to the complex; the result was that buses continued to operate within the complex, rather than stopping at the edge.

Throughout the country, and especially in rural or semi-rural areas, thousands of small businesses now face the loss of their jobs and enterprises in light of the USPS's plan to close offices and slow deliveries. Many rely for their income on the USPS's rental of the small buildings they own. Others depend on rapid delivery of the goods they sell, including medications.

Suggestions to improve the finances of the USPS have included competing with private banks by offering banking services to lower income workers, thereby amassing funds to invest at a profit; and revising the law requiring the USPS to pre-fund its future health care benefit payments to retirees for the next 75 years.

Developments dues paid from 2010-2011

MLRC strength comes from you, the membership. Support the Coalition's educational, advocacy and outreach programs with your membership dollars.

Individual Membership: $15 per year
Development: 25 cents per apt. ($30 minimum; $125 maximum)
Donations above the membership dues are welcome.

These developments are dues-paid members of the Mitchell-Lama Residents Coalition through Dec. 31, 2011

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Castleton Park
Central Park Gardens
Clayton Apartments
Coalition to Save Affordable Housing of Co-op City
Concourse Village
Dennis Lane Apartments
1199 Housing
Esplanade Gardens
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Lincoln Amsterdam House
Lindville Housing
Manhattan Plaza
Masaryk Towers Tenant Association
Meadow Manor
Michangelo Apartments
109th St. Senior Citizen Plaza
158th St. & Riverside Dr. Housing Co
Parkside Development
Pratt Towers
Promenade Apartments
RNA House
Riverbend Housing
River Terrace
River View Towers
Ryerson Towers
Concerned Tenants of Sea Park East
Starrett City Tenants Association
St. James Towers
Strykers Bay Co-op
Tivoli Towers
Tower West
Village East Towers
Washington Park SE Apartments
Washington Square SE Apartments
West View Neighbors Association
West Village Houses
Woodstock Terrace Mutual Housing

If your development has not received an invoice, please call the MLRC Voice Mail: (212) 465-2619. Leave the name and address of the President of your Tenants Association, Board of Directors, or Treasurer and an invoice will be mailed.

The great recession in black wealth: the role of the housing crisis

By Jeannette Wicks-Lim

This article originally appeared in Dollars & Sense (http://www.dollarsandsense.org/archives/2012/0112wicks-lim.html). It is reprinted with permission.

The Great Recession produced the largest setback in racial wealth equality in the United States over the last quarter century. In 2009 the average white household's wealth was twenty times that of the average black household, nearly double that in previous years, according to a 2011 report by the Pew Research Center. ("*Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics")*

Driving this surge in inequality is a devastating drop in black wealth. The typical black household in 2009 was left with less wealth than at any time since 1984, after correcting for inflation.

It's important to remember wealth's special role in supporting a household's economic well-being. Even though income forms the stream of money that collects into a household's pool of wealth, wealth and income are crucially different. Income pays for everyday living expenses--the groceries, clothes, and gas. A family's wealth, or net worth, includes all the assets they've built up over time (e.g., savings account, retirement fund, home, car) minus any money they owe (e.g., school loans, credit-card debt, mortgage). Access to such wealth determines whether a layoff or medical crisis creates a bump in the road, or pushes a household off a financial cliff. Wealth can also provide families with financial stepping-stones to advance up the economic ladder--such as money for college tuition, or a down payment on a house.

Racial wealth inequality in the United States has always been severe. In 2004, for example, the typical black household had just one dollar in net worth for every eleven dollars of a typical white household. This is because families slowly accumulate wealth over their lifetime and across generations. Wealth, consequently, ties the economic fortunes of today's households to the explicitly racist economic institutions in America's past--especially those that existed during key phases of wealth redistribution. For example, the Homesteading Act of 1862 directed the large-scale transfer of government-owned land nearly exclusively to white households. Also, starting in the 1930s, the Federal Housing Authority made a major push to subsidize home mortgages --for primarily white neighborhoods. On top of that, efforts by black communities to generate their own wealth by starting their own businesses were crushed by racial violence, or severely curtailed by Jim Crow Laws in effect until the mid-1960s.

'Efforts by black communities to generate their own wealth by starting their own businesses were crushed by racial violence, or severely curtailed by Jim Crow'

The crisis in the housing market and the Great Recession made racial wealth inequality yet worse for two reasons. First, the wealth of blacks is more concentrated in their homes than the wealth of their white counterparts. Even though homes are typically the largest asset of most households, regardless of race, homes of black families make up 59 percent of their net worth compared to 44 percent among white families. White households typically hold more of other types of assets like stocks and IRA accounts. So when the housing crisis hit, driving down the value of homes and pushing up foreclosure rates, black households lost a far greater share of their wealth than did white households.

'Interest-bearing trusts should be given to newborns of asset-poor families'

Second, mortgage brokers and lenders marketed subprime mortgages specifically to black households. Subprime mortgages are high-interest loans that are supposed to increase access to home financing for risky borrowers--those with a shaky credit history or low income. But these high-cost loans were disproportionately peddled to black households, even to those that could qualify for conventional loans. One study estimated that in 2007 nearly double the share of upper-income black households (54 percent) had high-cost mortgages compared to low-income white households (28 percent).

Subprime mortgages drain away wealth through high fees and interest payments. Worse, predatory lending practices disguise the high-cost of these loans with a "honeymoon" period of low payments. Payments then shoot up, often to unmanageable levels that lead to default and foreclosure, wiping out a family's home-equity wealth. In 2006, Mike Calhoun, president of the Center for Responsible Lending, predicted that the surge of subprime lending within the black community would "...likely be the largest loss of African-American wealth that we have ever seen, wiping out a generation of home wealth building." We now know how prescient his prediction was.

To reverse the rise in racial wealth inequality, we need policies that specifically build wealth among black households. Economists William Darity of Duke University and Darrick Hamilton of The New School propose one possible--and politically viable--strategy: a wealth-means-tested "baby bonds" program.

This policy stops short of being a reparations policy, but still disproportionately transfers wealth to black communities. Federally-managed, interest- bearing trusts would be given to the newborns of asset-poor families, and could be as large as $50,000 to $60,000 for the child of the most asset-poor families. When these children reach age 18, they would be able to use the funds for a down payment on a house, to pay tuition, or to start a business. Darity and Hamilton estimate such a program would cost roughly sixty billion dollars per year. Letting the Bush-era tax cuts expire for the top one percent of income earners would more than cover this cost.

Moving? Don't forget to notify Board of Elections

Reminder: Residents moving to a new address must notify the Board of Elections of the move, and request a registration form, in order to prevent any problems at the voting booth. The registration deadline for this year's Presidential primary elections is March 30th. The primary itself is set for April 24th.

The deadline for participation in the New York State primaries, which go a long way in deciding local representatives in Congress, the State Senate and Assembly and the City Council, is August 17th. The primaries for those offices are September 11th. For the general Presidential election, the registration deadline is October 12th. The General election will be held November 6th.

Feds more willing to back Co-op City loan as result of city, state promise

Coop-City, the giant Mitchell-Lama complex in the Bronx, moved a step closer in January to receiving federal insurance for a low-interest mortgage loan, thanks to a "top loss guarantee" of $70 million promised by New York's city and state governments. If all other obstacles are cleared, the loan will be provided by Wells Fargo.

If and when the federal guarantee is finalized, the complex could save an estimated $4 million a year at present rates of under 4.5 percent on a self amortizing, 35-year loan. And starting next year, the guarantee could result in savings of $6 million, when the loan rate rises.

The guarantee would represent the first time HUD offered to back a New York cooperative.

In January, Marie D. Head, HUD's deputy assistant secretary for multifamily housing, wrote to Wells Fargo that the federal agency "recognizes the significant savings to the shareholders inherent in the HUD transaction, with a total savings to the cooperative of approximately $111 Million ($7,000 per member) in reduced principal and interest payments over the 15 year term of the existing loan. We also understand the enormous benefits provided by HUD's 35 year self-amortizing loan, which would totally eliminate the refinancing risk in the 15th year that they face under the current loan."

To secure the guarantee, Co-op City still needs to pass an inspection by HUD's real estate assessment center, which may pose a problem, given the development's size. The board is now discussing with HUD the option of modifying the inspection and enforcement criteria.

Co-op City consists of 15,372 units in 35 high rise buildings and seven townhouse clusters.

The faces of Mitchell-Lama

The residents of Mitchell-Lama housing complexes are the faces of New York City. We are low- and moderate-income New Yorkers who have worked hard to contribute to our neighborhoods and our city. We are working to raise our families and preserve our homes. These are some of the people who live in Mitchell-Lama apartments.

White to head HCR's new tenant protection unit

Richard R. White, an attorney in a law firm specializing in corporate compliance and real estate litigation, will head a new tenant protection division at Homes and Community Renewal, the state's housing agency.

The appointment was announced by Gov. Andrew M. Como in February.

In making the announcement, Cuomo said "Our new Tenant Protection Unit will proactively prevent problems and root out fraud that can wreak havoc in the lives of rent-regulated residents."

White is "of counsel" at the law firm of Cyruli Shanks Hart & Zizmore LLP. The term refers to a status in between those of partner and associate.

He previously served as deputy commissioner for investigation, trials and litigation at the city's Department of Probation. Before that he served as a homicide and senior trial attorney in the Manhattan district attorney's office under Robert M. Morganthau.

White is a member of the Bar Association of New York City, the National Association of Inspectors General, and the National Black Prosecutors Association.

Republicans lose another round in prisoner-counting redistricting issue

Supporters of a New York State redistricting law that counts prisoners at their last known address, instead of where the prison happens to be located, won a victory in Februrary, when the state's highest court refused to bypass a lower court to rule on the issue.

Opponents of the law, primarily Republicans, argue that the law is unconstitutional. After filing a suit, they tried to bypass the Appellate Division, and to have New York's highest court rule on the matter directly. But the Court refused.

The lawsuit itself has been withdrawn. Democrats support the law, because most prisoners come from downstate, especially New York City. Republicans tend to represent upstate areas where the prisons are located.

New senate bill: a vast public gift to landlords who have broken the law--at tenants' expense

(Continued from page 3)

Its elimination is not justified by any of the rhetoric accompanying the bill.

Under the bill, a landlord wishing to deregulate apartments that are now exempt from deregulation can simply pay back the pre-October, 2009 J-51 tax benefits received from the City of New York, and then resume deregulating apartments by obtaining vacancies, including by targeting those apartments now occupied by tenants paying below-market rents. The landlord need not pay interest on the benefits, and can keep the post-October, 2009 benefits received at the building. These benefits were and are designed to subsidize improvements to affordable housing. The bill would instead allow landlords to spend public money to subsidize the deregulation of affordable apartments, by using J-51 benefits to finance improvements, leading to rent increases, without requiring that the buildings receiving benefits remain rent regulated.

Program's core purpose: affordability

Ever since its enactment in 1955, the J-51 program has had, as its core purpose, the use of public subsidies to fund improvements to degulated apartments, in exchange for a commitment that such apartments remain affordable. According to the 1955 Legislative Annual, the original purpose of the program was as follows: it is believed that, in as much as new housing is not being produced at a fast enough pace to provide decent, safe and sanitary homes for lower income families, some provisions must be made to encourage owners to alter and improve salvageable buildings.

From the earliest days of the program, owners who sought to use J-51 benefits to fund work that would result in deregulation were held to be ineligible for benefits. The focus of the program has always remained upon the same basic purpose: "to increase the supply of moderate rental housing with satisfactory standards." For this reason, the J-51 Ordinance contains numerous rules that are designed, with varying degrees of success, to eliminate the incentive for owners to use J-51 benefits for luxury housing: for example, the limitation on the amount of the total assessed valuation of the building that will receive an exemption; and the geographic limitations applying special requirements to certain areas in Manhattan such as a "minimum tax zone" and a "tax abatement exclusion zone."

The principal means by which the J-51 program has prevented the use of public funds to subsidize unregulated luxury housing and the displacement that goes with it, has been the mandate, unchanged before and after the advent of "luxury" deregulation, that every single apartment in a building receiving J-51 assistance remain rent regulated at least throughout the tax benefit period and, if the tenants are not notified of the receipt of J-51 benefits, that they remain regulated until they vacate.

Laws were long on the books

These laws and regulations were on the books before 1993 and they remain on the books today. They were the law throughout the time when landlords were heedlessly deregulating apartments in J-51-assisted buildings. They include the Rent Stabilization Law, which required at the time and still requires that *all* of the "dwelling units in a building or structure receiving benefits" be made rent stabilized; NYC Admin. Code, which required and still requires that "the benefits of this section shall not apply . . . to any existing dwelling [defined as 'a class A multiple dwelling or a building'] which is not subject to the provisions of the . . . city rent stabilization law;" and HPD's regulations which required and still requires that "for at least so long as a building is receiving the benefits of the Act . . . all dwelling units in buildings or structures converted, altered or improved shall be subject to rent regulation pursuant to . . . the Rent Stabilization Law of 1969."

Under these laws, the public has spent billions of dollars and under current law is entitled, in exchange, to insist that hundreds of thousands of apartments remain rent regulated. Specifically, according to the "Annual Report on Tax Expenditures" prepared by the New York City Department of Finance for fiscal year 2011, "[i]n FY 2011, the J-51 program provided 20,758 exemptions and 151,957 abatements to approximately 750,000 apartments. The exempt assessed value of these properties was $1,208.4 million." According to the same report for fiscal year 2010, "In FY 2010, the J-51 program provided 19,981 exemptions and 141,890 abatements to 724,971 apartments. The exempt assessed value of these properties was $1,192.7 million." The report for fiscal year 2009 states: "[i]n FY 2009, the J-51 program provided 15,093 exemptions and 137,386 abatements to 723,811 apartments. The exempt value of these properties was $1,156.8 million." Similar numbers have been reported for prior years. The bill would permit the owner of every apartment that received J-51 benefits prior to October, 2009 and is now exempt from deregulation because of the J-51 program to waive J-51 benefits and thereby target the apartment for deregulation.

This windfall goes far beyond limiting landlords' potential liability for overcharges under *Roberts*. By holding that apartments in J-51 assisted buildings cannot be deregulated *Roberts* extended a shield of protection around hundreds of thousands of working-class tenants who now pay affordable rents and who would otherwise be targeted for harassment, threats and baseless eviction proceedings. *Roberts* took away a significant part of the incentive that has driven owners to resort to illegal tactics to obtain vacancies. The elimination of that incentive did not, by itself, cost any landlord any money. Nevertheless, the bill's sponsors now wish to paint a fresh target on the backs of these tenants.

The stated rationale of the bill does not apply to this category of housing. There is no legal uncertainty about which apartments are now exempt from deregulation. The exemption costs landlords nothing. Eliminating it would do nothing more than provide landlords with an unearned windfall.

Undermining the rule of law

Even if the bill were one that fit within its stated rationale, it would still be an insult to the American ideal of the rule of law. The *Roberts* case was decided more than two years ago, and, notwithstanding the predictions of the real estate industry, the world has not come to an end. The same landlords who have asked the legislature to relieve them from overcharge liabilities have claimed, in court proceedings that are ongoing, that they have no liability to worry about. They have come to court armed with all of the protection they might reasonably want, since existing law already places enormous obstacles in the path of tenants seeking to recover overcharges.

If there were any truth to their claims of having relied on DHCR regulations as a basis for deregulation, then they would be able to use that argument to avoid having to pay treble damages. As numerous owners have pointed out in their court filings, they are presumptively entitled to charge rents based on the inflated and often illegally deregulated rents they were charging four years before they were sued. This presumption is overcome only when there has been a showing of fraud.

Surely the legislature does not wish to give its imprimatur to fraud.

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New senate bill: a vast public gift to landlords who have broken the law--at tenants' expense

(Continued from page 7)

The rationale of the bill is based upon a myth. It was never legal to deregulate apartments in J-51 assisted buildings. As noted above, the pre-1993 law that required that "all" apartments in J-51 assisted buildings remain regulated was never changed. As the Court of Appeals said in Roberts, the plain meaning of the statutory language indicates that J-51 assisted apartments are exempt from deregulation, an obvious conclusion when the deregulation statute is read together with the laws and regulations governing the J-51 program. DHCR's initial reaction to the 1993 deregulation statute was to hold that all assisted apartments were required to remain regulated.

The sponsors' contention that landlords began deregulating apartments in J-51 buildings in reliance upon binding DHCR rulings, is also a myth. Prior versions of this bill were accompanied by memos in which the sponsors admit that "the deregulation of those apartments occurred since 1993." It was not until 1996 that DHCR issued a private, non-binding opinion letter approving of the deregulation of any J-51 assisted units, and there is no evidence that anyone but a few insiders knew about it. At the same time, DHCR continued to distribute a fact sheet to the public that indicated that deregulation was illegal. It was not until December 2000 that DHCR adopted regulations that would explicitly permit deregulation in J-51 assisted buildings, and they were described at the time as a change in the law. After their adoption there were still two contradictory sets of regulations on the books, those of HPD (requiring that "all" apartments remain regulated) and those of DHCR.

In the face of what was still an uncertain legal picture, owners plunged heedlessly into deregulation, without ever seeking a court ruling on the issue. As the sponsors admit, they began deregulating apartments before there was ever any legal authority supporting it. Now the owners who took that risk are seeking a legislative bailout. Their request should be denied. If they get a bailout they will expect, based on experience, to be relieved of the consequences of ever more risky challenges to the obligations imposed by the rent laws. They should not be rewarded for having disregarded their clear legal obligations.

The above testimony was presented to members of the New York State Senate and Assembly on January 30, 2012

Landlord asking Supreme Court to undo rent laws

(Continued from page 1)

market rate tenants (hence the subsidy argument), and that therefore this "loss" amounts to a "taking" of his property. The U.S. Constitution's fifth amendment prevents taking private property without just compensation.

Harmon, however, does not seem to object to other forms of government involvement, which have the effect of raising the value of his property. As noted by tenant attorney Timothy L. Collins, Harmon "fails to recognize that if it were not for other legal constructs in New York City--such as zoning, building codes, landmarks, and the preservation of public spaces--which protect and foster the city's quality of life, but also promote housing scarcity, his neighborhood would be in shambles, and his building would be worth bupkis.

"He also neglects that massive infusions of taxpayer dollars for public transportation and infrastructure, such as the subways and water-supply systems, have greatly enhanced the value of existing properties. Indeed, much of the development of rental housing in New York followed the expansion of the city's subway system.

In sum, Harmon has greatly benefited from other laws that limit the supply of new housing and from public programs that greatly enhance the value of his property. If he wants truly neutral treatment, he should probably consider giving refunds to his tenants."

New York City today has an acute shortage of affordable housing. According to the latest federal Housing and Vacancy Survey (2008), even unregulated apartments have a vacancy rate of 4.7 percent, and stabilized units have a vacancy rate of 2.14 percent.

In spite of a spate of new construction, rental prices have not fallen; on the contrary, because newly constructed units are not subject to stabilization or rent control, landlords can charge market rates. Thus, the argument by conservative groups, including the Citizens Budget Commission, that deregulation would actually lower rents (by forcing tens of thousands of tenants out of the city, thereby decreasing demand), is demonstrably false--not to mention draconian!

Further, as Collins notes, deregulation "would force formerly regulated tenants displaced by large rent hikes to look for unregulated apartments and thus inflate rents in that market.

There is thus no good reason to assume, as the CBC did, that rents in the unregulated sector would fall if rents are deregulated elsewhere. Six years after Boston was forced to deregulate rents in 1995, average rents for two bedroom apartments advertised in the Boston Globe had risen from $740 to 1,700. Why would the New York experience be so different?"

The good news is that Harmon is not likely to succeed, given numerous Supreme Court decisions. For example, in 1955, in *Williamson v. Lee Optical Company*, the Court held that economic challenges based on due process arguments were invalid. "The day is gone," the Court held, "when this Court uses the Due Process clause of the 14th Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."

This article was based partly on an analysis by Timothy L. Collins, an attorney at Collins, Dobkin, & Miller. His full argument against the Harmon case can be accessed at http://save-ml.org/files/Harmon%20case%20Tim%20Collins%20Tenant%20Inquilino%20Dec%202011.pdf

MLRC sets neighborhood lobbying for spring 2012

(Continued from page 1)

Preventing the privatization of Mitchell-Lama Co-ops until their eligibility for municipal tax exemptions have expired. This expiration will occur fifty years from now.

Prohibiting the use of New York City or New York State pension funds for the financing of Mitchell-Lama buy-outs.

We will sponsor a 'meet and greet' May 5th at the NYS Office Building, 163 West 125th Street, Manhattan, so that you may follow up with your legislators. Organize a group of your neighbors! Meet with your elected officials and exercise your democratic right to have a voice in your neighborhood. We are counting on you.