MITCHELL-LAMA RESIDENTS COALITION

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WEBSITE: www.mitchell-lama.org

Tenants win final victory to keep rents regulated in former ML buildings

Almost 18,000 tenants in former and current Mitchell-Lama buildings, who had been facing the loss of rent protections, and therefore the threat of mass evictions, won the final battle in their struggle to keep their rents at regulated levels on July 27.

That date was the deadline for the owner of 95 West 95th Street--the last landlord to continue a years-long fight--to appeal the latest in a series of court rulings against them. According to media reports, the attorney for the owner, Steve Witkoff, said the company planned no further legal action.

The legal battles began in the late 1990s, when owners removing M-L buildings constructed before 1974 sought to evade state requirements that the rents in such buildings were subject to rent regulations. The landlords had hoped to use a loophole known as the "unique or peculiar circumstances" in the law, which allows them in effect to charge market rents.

Essentially, the owners argued that by removing buildings from the Mitchell-Lama program, they lost their tax abatement and therefore were confronted with a unique or peculiar (U or P) circumstance.

When Eliot Spitzer was governor, the state's housing agency had issued a ruling that the mere act of exiting the ML program was not in itself a U or P situation. Owners sued, but lost when the State Supreme Court ruled that the regulation was valid. In December 2010, the Appellate Division unanimously affirmed the lower court's ruling.

Sue Susman, an active member of MLRC, noted that after the ruling, "landlords were dropping out of the case like rats leaving a sinking ship. When It came time to appeal, only Steve Witkoff (owner of 95 West 95th Street. . .) was left."

Aside from the relief experienced by the immediately affected tenants, the victory means that owners of all buildings removed from the ML program "cannot retroactively raise the first stabilized rent that tenants paid in those buildings. And in the buildings still in Mitchell-Lama, landlords may have less of an incentive to leave the program," Ms. Susman said.

Ms. Susman is a member of the ML PIE campaign, which stands for protection of ML tenants, incentives to keep owners in the program, and enforcement of the law.

Draft U.S. housing budget slashes some programs, retains others

The nation's public housing capital fund, which constructs the developments, and the public housing operating fund, which manages them, will be cut in fiscal year 2012, if the budget released by the House subcommittee in charge of appropriations becomes law. At the same time, both tenant-based and project-based rental assistance will benefit from slight increases.

On September 7th, the subcommittee on transportation, housing, and related agencies released its proposed budget, reflecting recommended changes from the previous year. The proposed alterations were greeted with mixed reactions from tenant activists.

"Public housing is the backbone of housing assistance for extremely low income Americans," said Sheila Crowley, President and chief executive officer of the National Low Income Housing Coalition, in a release. "If these cuts stand, it won't just mean public housing agencies will have to do more with less. It will mean thousands more public housing units will be lost, and thousands more households will be put at risk of homelessness."

Some programs will be eliminated completely. Among them is Hope VI, designed to aid public housing units

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Strengthen MLRC
Join today (use form on page 2)

GENERAL MEMBERSHIP MEETING
SATURDAY, October 15, 2011

Time: 10:00 a.m. – 12 noon
(Refreshments at 10:00 a.m.)

PLACE: Musicians Union Local 802
322 West 48th Street (near 8th Avenue) Ground Floor, "Club Room"
TRAINS: No. 1, train to 50th St. and 7th Ave.; Q,W trains to 49th St. and Broadway; E train to 50th St. and 8th Ave.

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

Grandmother in public housing wins right to keep her grandson at home

In a case that pit a public housing tenant whose live-in grandson had pleaded guilty to a crime, against the New York City Housing Authority, the New York State Supreme Court's appellate division ruled in June that the Authority cannot require the tenant to oust her grandson as a condition of remaining in her apartment.

The tenant's grandson, 18 years old at the time, had been arrested with several other youths and charged with possession of a loaded gun. He pleaded guilty to criminal possession of a weapon in the second degree on February 20, 2009 and, according to the court record, "was promised youthful offender treatment plus a sentence of probation of one year upon conditions that included the completion of a program under the auspices of the Center for Alternative Sentencing and Employment Services (CASES)."

In *Matter of Duryea v New York City Housing Authority*, the court noted that a hearing officer had concluded that after enrolling in the program, the youth "significantly" improved his classroom attendance, and was no longer associating with the people with whom he had been arrested.

"In light of the unchallenged evidence of the grandson's progress in the CASES program," the court ruled, "respondent's finding that his misconduct was likely to be repeated or that he has not been rehabilitated is not supported by substantial evidence."

The court said the penalty "shocks our sense of fairness to the extent that it requires the exclusion of petitioner's grandson from her public housing unit."

Tenants fear soaring electric expenses after landord wins right to install sub-meters

Sharply higher bills for electricity use may well be a new fact of life for tenants at Roosevelt Landings, a former Mitchell-Lama complex on Roosevelt Island, and in numbers of buildings in Harlem, after the landlord implements changes to require the tenants to pay separately for electricity use. Until now, electric bills were included in the rent.

In August, after years of political wrangling between the owner and tenants, New York State's Public Service Commission approved Urban American Management Corp.'s plan to install submeters. Some 2,900 apartments may face the change.

Tenants, many of whom are elderly and/or disabled, fear that their electric bills will soar to the point where they will have difficulty in paying rent, which could lead to their eviction. The owner, however, has argued that tenants will voluntarily cut down on their electric use precisely because they will see how much they have to pay.

Before the process starts, however, the firm reportedly has to install thermostats and energy-efficient refrigerators. An independent company will monitor Urban American's compliance.

JOIN THE MITCHELL-LAMA RESIDENTS COALITION
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INDIVIDUAL $15.00 per year and DEVELOPMENT 25 cents per apartment
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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, October 15, 2011

10:00 a.m. - Noon

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

A 50/50 raffle will be held as part of our membership drive.

EXECUTIVE BOARD Meetings, 2011

10 a.m. to Noon

September 24
October 1
November 5
December 13

The Executive Board meetings will be held at 563 Columbus Ave., NYC (corner of 87th Street).

Please call the voice mail to confirm (212) 465-2619.

Mitchell-Lama Residents Coalition, Inc.

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Bill S5763: A reward to landlords for breaking the law

By Seth Miller

Testimony before NYS Senate and Assembly, June 16. 2011.
The bill was not passed at the last session of the legislature.

The Mitchell Lama Residents Coalition opposes 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 receivedJ-51 benefits unlawfully but in good faith. Its main beneficiaries, though, are landlords like the owner of Independence Plaza North, who deregulated over 1,300 apartments in the J-51 program without having the slightest basis for believing it was lawful to do so, 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 overcharge tenants, regardless of whether or not they had any basis for believing the overcharges were legal.

Rewards lawbreaking

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

> ***'The bill proposes to let [Gluck] keep all of the overcharges he collected in violation of that clear legal obligation'***

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* (2009), the bill's chief impact would be (a) to grant a single landlord a private and unconstitutional exemption from the rent regulatory laws that every other landlord in New York has to follow, so as to permit the landlord of

> ***'He immediately broke his promise to limit the rents charged to the tenants who were denied vouchers'***

Independence Plaza North to keep the overcharges it collected during the last seven years, during which it falsely claimed that the development was exempt from regulation; (b) to immunize landlords from any overcharge penalties in buildings receiving J-51 benefits prior to October, 2009, even if the overcharges had nothingto do with the deregulation of units that were re-regulated by virtue of the *Roberts* decision; and (c) 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.

Loud and obnoxious message

This bill sends a loud and obnoxious message, that money talks in Albany, and that it speaks louder than the law. There are few landlords in the world who are less deserving of special treatment than Laurence Gluck and Stellar Management, the owners of Independence Plaza North.

The Supreme Court has found that Gluck violated the Rent Stabilization Law by claiming that IPN was unregulated despite the receipt of J-51 benefits, and specifically rejected, based on an exhaustive review of the facts, the claim that the violation was innocent. In the court's words: "The court is unpersuaded by defendants' argument that they could not have anticipated the applicability of the vacancy destabilization provisions and, hence, could not have included notices in their tenants' leases that rent stabilization would terminate upon the expiration of the J-51 benefits."

Gluck should have known from the time he purchased IPN that it was rent stabilized. The bill proposes to let him keep all of the overcharges he collected in violation of that clear legal obligation, and to continue forever to overcharge tenants and the Federal taxpayer (who is subsidizing the "market" rents Gluck collects for the approximately half of the development that receives federal Section 8 vouchers). In fact, rather than attempt to square the overcharges at IPN with any known legal principle, the bill instead just uses Gluck's unreliable invoices, which are the subject of ongoing litigation, as the measure of what the legal rent is at IPN.

Gluck purchased IPN in 2003, and immediately set about removing it from the Mitchell Lama program. IPN was, at the time, an income-qualified development, home to 1,331 families, and one of the few places left in Lower Manhattan that was still affordable. At the time, the recorded mortgage debt at IPN was approximately $65 million. When he purchased IPN, Gluck was given actual notice of the J-51 benefits in place. They were specifically mentioned in the title report. During

> ***'Gluck successfully incited a year of panic and alarm at IPN by announcing in 2003 that the development was soon to be privatized'***

the time when IPN was a Mitchell Lama development, it obtained a J-51 subsidy for major roof work. It is doubtful the work would have taken place but for the J-51 benefits.

As part of the privatization process, Gluck was required to notify both HPD and the tenants of the J-51 benefits. He did neither. He was required to include notice of the benefits in each tenant's lease. He failed to do so. Instead, the receipt of J-51 benefits was a secret known only to Gluck. Gluck successfully incited a year of panic and alarm at IPN by announcing in 2003 that the development was soon to be privatized as unregulated luxury housing. In order to maximize the federal subsidies he could receive, he offered to limit rent increases for tenants whose voucher applications were denied to slightly above what they would be under rent stabilization, but only if the Tenants' Association made an effort to persuade "each and every tenant" to apply for vouchers, and did not sue to prevent IPN from exiting the Mitchell-Lama program.

Not knowing that the development was receiving J-51 benefits, and that Gluck had misrepresented the facts, the Tenants' Association reluctantly agreed.

Gluck privatized IPN at the end of June, 2004. He immediately broke his promise to limit the rents charged to the tenants who were denied vouchers, instead imposing an immediate retroactive rent increase of about 30% on 200 families. It is only because some of them stood up to Gluck's bullying,

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Tenant advocates relieved, but remain critical, of new rent law

Tenants in New York State expressed both relief and disappointment in the June 2011 extension and modification of rent regulation laws.

The relief was based on provisions that:

¶ Limit vacancy increases to no more than one per year;

¶ Raise the rent threshold when an apartment can be deregulated from $2,000 per month to $2,500 per month, if household income reaches $200,000 for the past two years (up from $175,000);

¶ Lower the amount by which landlords can permanently increase rents in a building of more than thirty-five apartments by 1/60th the cost of the improvements, down from 1/40th under the previous law. (For buildings of thirty-five units or less, landlords may still pass along 1/40th the cost of capital improvements).

¶ Extend the new regulations for four years.

But the frustration was reflected in the fact that the new law did not eliminate vacancy decontrol and luxury decontrol altogether; that the increases in threshold rent and household income--the points at which decontrol takes effect--should be much higher; and that a four-year respite is insufficient.

In addition, tenants noted that even after an owner recoups his or her expenses by increasing the rent, the new rent stays in effect permanently, rather than resorting to the original lower rent.

A statement by Metropolitan Council on Housing, a tenant advocacy group, noted that "The pro-tenant amendments are mostly superficial and certainly inadquate, and most of the weakening provisions enacted under [Gov.] Cuomo's Reublican predecessor, George Pataki, remain in place.

It became clear earlier this spring that Cuomo didn't plan to go to bat for tenants. He called for 'stronger' rent laws, but refused to explain what he meant; apparently, he made such vague statements to set the bar low."

Maggie Russell-Ciardi, executive director of the New York State Tenants & Neighbors Coalition, said in a statement that while the new rent act "is a step in the right direction," in large measure because it requires the New York State Homes and Community Renewal agency to enforce rent laws, it does "not go anywhere near far enough, and at best represents a short term, partial solution to the hemorrhaging of rent stabilized units from the system that we are seeing."

In an analysis on Remapping Debate, a website critical of mainstream media coverage of contemporary events, Craig Gurian noted that, regarding the increase in the rent threshold from $2,000 to $2,500, "it turns out that 1997's $2,000 would be $2,815 in 2011 dollars. The Cuomo solve, in other words, is 12 percent better for landlords than Pataki's original scheme."

Likewise, regarding the new household income limit when an apartment may be deregulated--from $175,000 to $200,000--Gurian wrote that the "$175,000 is actually $246,378 in 2011 dollars. So this bit of progress means luxury decontrol 23 percent better for landlords than Pataki's original framework."

Three win MLRC fundraising raffle

Raffle winners for the MLRC fundraiser held in August were: Katy Bordonaro, first prize, $300; Elsbeth Reimann, second prize, 2nd prize, $200 (which she donated back to the coalition); Near Bank, third prize, $100. MLRC thanks all who sold tickets.

Darrell Towns, NYS housing chief expected to plead guilty to DUI

Darrell Towns, commisioner of New York State Homes and Community Renewal, is expected to plead guilty to driving while under the influence of alcohol, after crashing his car during the July 4th holiday weekend.

The accident occurred in Westchester County, near an intersection of the Hutchinson River Parkway and the Cross County Parkway, at around 1:40 a.m., according to media reports.

Towns, a former assemblyman from Brooklyn, who comes from a politically influential family, was appointed head of the state housing agency last April by Gov. Andrew Cuomo. He replaced Brian Lawlor, who had been appointed by former Governor David Paterson.

Prior to his appointment, Towns was an assemblyman for eighteen years. He chaired the Banking Committee and served on committees overseeing education, health, rules, and economic development.

He also served as Chairman of the Subcommittee on Mass Transit. In 2007 he was elected chair of the State Legislature's Black, Puerto Rican, Hispanic & Asian Legislative Caucus.

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

Bethune Towers
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
Jefferson Towers
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.

City allowed to terminate rent support for previously homeless tenants

Thousands of New York City's tenants who had previously been homeless may find themselves once again without shelter shortly, after a Supreme Court justice held in September that the administration was not legally obligated to continue a program that provided rent subsidies to them. The tenants are living in privately owned housing.

Justice Judith J. Gische ruled that the program under which the subsidies had been allocated, known as Advantage, was not a case of contractural arrangements, as legal advocates for the homeless had argued, but simply a "social benefits program, which the defendants [various city agencies] had the right to terminate, based upon the lack of funding available for its continuation."

The program had received both state and federal funding, but New York State withdrew its financing earlier in the year, which triggered a consequent withdrawal from Washington.

Advantage, which began in 2007, had been slated for termination by April 1. But the Legal Aid Society sued, arguing that the City was contractually obliged to continue its payments, and that the withdrawal of funding amounted to "deprivation of property." In legal terms, plaintiffs argued that the Advantage documents under which the subsidies were given amounted to "enforceable contracts" between the City and the tenants/landlords.

In explaining her decision, Justice Gische noted that "None of the program documents use traditional contract phrases like 'the parties agree' or 'the parties covenant.' Throuout, they refer to Advantage as a program."

In spite of the ruling, the City is still required to make payments for September, under a previous Appellate ruling, unless the government moves to vacate that order.

Draft housing budget slashes some programs, retains others

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that were designated as severely distressed. The program had been developed upon recommendations by the National Commission on Severely Distressed Public Housing.

Housing block grants for native Hawaiians were eliminated, but those for Native Americans and for people with aids were kept. The home investment partnership program was slashed, as was the self-help homeownership opportunity progam, but grants for homeless assistance and housing for the elderly (known as Section 202) were saved. In fact, the elderly program was increased by fifty percent, from about $400 million to $600 million. Housing for people with disabilities was also increased, but by a lesser amount.

Although the overall community development fund was retained, one of its key projects, the sustainable communities initiative, was eliminated.

The healthy homes and lead hazard control program was retained at its current level, but funding for fair housing and equal opportunity was reduced by over 30 percent.

According to Ms. Crowley, the bill "eliminates funding for the U.S. Interagency Council on Homelessness, the office coordinating the federal government's strategy to end homelessness. The housing counseling program, which was eliminated in the final continuing resolution on the budget for FY11, is not restored in the House draft bill."

A chart of the draft proposals, prepared by the National Low Income Housing Coalition, is available at *http://www.nlihc.org/doc/FY11_12_Budget_Chart_HUD.pdf*

Pinnacle, tenants settle harrasment suit with $2.5 million deal

Tenants in buildings owned by mega-landlord the Pinnacle Group reached a deal with the landlord worth $2.5 million to settle a harrasment and racketeering suit. The funds will enable both current and former tenants to receive damages.

The deal includes a court-appointed claims manager who will decide on compensation issues. The owner will also set up a help line and adhere to guidelines on rent increase and eviction notices.

In their lawsuit, tenants in Pinnacle's rent-regulated units voiced a complaint common among city residents that they were subject to the landlord's intimidation methods to get them to leave so that the dwellings, no longer subject to regulations, would attract a much wealthier clientele.

The owner denied the allegations. On its website, Pinnacle says that it is "dedicated to affording its residents quality services in a safe and secure environment. Pinnacle endeavors to be both responsive to tenant concerns and receptive to tenant suggestions for improvement."

In 2006, Pinnacle paid $1 million in rent overcharges to some three hundred tenants, after reaching an agreement with the state attorney general.

CU4ML urges changes to HPD rule proposals

In recent testimony commending HPD on its proposals to revise rules governing Mitchell-Lama projects, Cooperators United for Mitchell Lama recommended that under the new rule relating to feasibility studies, the agency should insure that information in the study "not be stale when distributed to shareholders."

Joan Meyler, who submitted the testimony in September on behalf of CU4ML, added that "The feasibility study should include a statement of current mortgage debt and loans and whether these would have to be repaid and new financing sought if the company privatized."

She also suggested that the "study should include a summary of the increases in operating costs from all sources should the company privatize."

Under a separate provision of the proposed rule changes, Mayler urged that the requirement for a physical condition survey be undertaken every five years or some other definite period rather than "periodically." She also called for requiring inspection of vacant and estate-held apartments as a part of the physical condition survey, and that the survey results be made available in the management office for tenants to copy at a reasonable cost.

Bill S5763: A reward to landlords for breaking the law

(Continued from page 3)

and sued, that they learned of the J-51 benefits that Gluck had illegally concealed from them.

In July, 2005 Gluck found out that the J-51 benefits at IPN were no longer a secret. He immediately set up a series of private meetings with high officials at HPD, including three in-person meetings with the Commissioner, in an effort to get permission to waive the J-51 benefits that were now a matter of public knowledge.

These improper meetings were evidence of Gluck's knowledge that the benefits required IPN to be regulated. He wanted to cover up that fact. He sent the City of New York a check for the J-51 benefits received after IPN left Mitchell Lama and then, ever since, has falsely denied that they were ever received in the first place. As the Supreme

'This bill seeks to take away tenants' day in court'

Court stated: "the court categorically rejects defendants' contention that IPN never received J-51 benefits after it exited the Mitchell Lama program."

The tenants of IPN could not get private meetings with the Commissioner of HPD. They cannot get the Chairwoman of the Senate Housing Committee to write a private bill for their benefit. The only place where they can stand on an equal footing with Mr. Gluck is in a court of law.

This bill seeks to take away their day in court, leaving them, and the public, with no benefit in exchange. Gluck intentionally violated the law by treating IPN as a deregulated development for the seven years that have passed since it left Mitchell Lama. He multiplied the debt load by a factor of eight, increasing it unsustainably and irresponsibly from $65 million to $575 million. (This, and not the J-51 program, is what has created "market uncertainty" at IPN).

Despite pending lawsuits, Gluck took no steps to prepare for the day when IPN would be returned to rent stabilization. His companies have received tens of millions of dollars in excessive federal subsidies on the basis of the illegal market rents set at IPN. Gluck expects the Federal taxpayer to subsidize the looting of IPN, and for the legislature to consent. No landlord in New York is less deserving of a bailout. Section 11 of the bill proposes to accept whatever rent Gluck "billed on August Thirtieth, Two Thousand Ten" (the date of the Supreme Court decision finding IPN to be rent stabilized), as the legal rent. The bill makes no pretense of setting rents based on any principle of law or fairness, not even one favorable to Gluck.

The legislature has not audited the rent invoices at IPN, and has no basis for taking Gluck's side in the numerous disputes, both large (disputes over whether Gluck is charging the rent he agreed to charge) and small (disputes over improper late fees, rent paid but not credited, and clerical errors) that are now pending concerning those invoices.

Section 11 would also impose vacancy decontrol on IPN beginning April 2, 2006, the date when Gluck paid back the post-Mitchell Lama J-51 benefits at IPN. This provision is designed to deprive the tenants at IPN who took occupancy after that date of their day in court. They have sued to establish that they are rent stabilized, since the J-51 benefits at IPN were for a period of up to 20 years and have never been exhausted.

Section 12(e) of the bill precludes any challenge relating to "the regulation of rents" of former Mitchell Lama developments that received J-51 benefits, where the owner has returned those benefits. At IPN this means that every overcharge collected from tenants and from the Federal government, as well as every mistaken charge contained in every rent invoice, would be immunized from independent review. The courthouse door would be slammed shut forever.

Sections 9, 10 and 11 of this bill would violate Article 3 §17 of the New York State Constitution. They are tailored to benefit only Gluck. This is true notwithstanding the clever mechanism whereby Sections 9 and 10 purport to allow "all" post-1973 former Mitchell Lama developments to waive J-51 benefits and become totally deregulated, while Section 11 purports merely to "re-regulate" IPN on terms favorable to Gluck. IPN is the only Mitchell Lama development that has been found to be rent stabilized solely on the basis of receiving J-51 benefits. It is therefore the only development where the deregulation contemplated by Sections 9 and 10 would have any practical effect.

Bill is unconstitutional

As for Section 11, it is blatantly tailored to fit only IPN, the only post-1973 former Mitchell Lama that was privatized after January 1, 2004 while receiving Mitchell Lama benefits. The rent-setting date is the date of the Supreme Court decision finding IPN to be rent stabilized. The vacancy decontrol date is the date of Gluck's waiver of J-51 benefits. *Because the bill is only for the benefit of IPN, it is unconstitutional.* As Justice Cardozo put it in a case invalidating a bill providing for the compensation of a private landowner, when he was Chief Judge of the New York State Court of Appeals: An act is not general when the class established by its provisions is at once so narrow and so arbitrary that duplication of its content is to be ranked as an unexpected freak of chance, a turn of the wheel of fortune defying probabilities.

Because it is an unconstitutional private bill, S 5763 will not do what it claims to do. It will not "create market certainty going forward." It will lead to more litigation, discourage Gluck from ever implementing the affordable rents at IPN that the law (and his own agreement) requires, and lead to further delays in the final resolution of the status of IPN.

The 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

'The courthouse door would be slammed shut forever'

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. 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, a tenant who filed an overcharge complaint in January, 2009, for having been charged a deregulated rent in February, 2005 in an apartment where no renovations were performed, would have that complaint determined according to the rent actually paid in October, 2005, even if the building did not get any J-51 benefits until after the rent at issue began to be charged.

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 to deregulate apartments that are now exempt from 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.

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Urban areas and Dems to benefit from new prisoner redistricting law

Democrats and downstate areas like New York City are likely to benefit from a state law that requires those who draw new electoral districts to count prisoners where their last known homes were, rather than where the prisons are located.

All legislative and congressional districts will be redrawn for the 2012 elections based on new Census Bureau population statistics. The Bureau has announced that it would now identify census blocks that contain correctional facilities, leaving it to the states to decide how to utilize that information for their redistricting efforts.

New York's law, passed in August 2010, mandates that assembly and senate districts be drawn to reflect "incarcerated populations at their respective residential addresses prior to incarceration rather than at the addresses of such correctional facilities."

Before the law was passed, prisoners were counted as part of the upstate geographic areas that housed the jails, even though most of the prisoners never lived in those areas.

Most inmates in New York State came from urban localities, which historically tend to vote Democratic. By contrast, most of the prisons themselves are in upstate rural areas, which tend to be politically dominated by Republicans.

Media reports say that twelve Republican Senate districts, and one Democratic district, stand to lose around a thousand people each, once prisoners are no longer counted there.

Republicans have threatened to challenge the law as unconstitutional. According to Capital Tonight, an online news site for upstate communities, Sen. Betty Little, Republican from Queensbury, is leading that effort. Under the new law, she stands to lose 11,610 residents.

Twelve other states are reportedly considering legislation similar to the New York law.

NYU project seeks to promote wide access to affordable housing data

A new project designed to enable tenant groups, housing agencies and others to secure information they need to advance the preservation of affordable housing was announced recently by New York University's Furman Center for Real Estate and Urban Policy.

The project, called SHIP (for subsidized housing information project), is essentially a huge database of around 235,000 units of privately owned, subsidized rental housing in the city. The data is accessible through a website search tool, which the Center defines as user-friendly and interactive.

According to the center, visitors to the website [http://furmancenter.org/data/search/] "can select from a range of variables to create customized maps, downloadable tables, and track trends over time."

Data include "a broad array of community indicators, including data on demographics, neighborhood conditions, transportation, housing stock and other aspects of the local real estate market. Users are able to overlay never-before available detailed data on privately-owned, publicly-subsidized affordable housing programs. . . ."

In its announcement, the Center said its institute for affordable housing policy has also released a report on the state of the city's subsidized housing, and a directory of affordable housing programs that summarize efforts to develop such shelter since the 1930s.

Support for SHIP came from housing agencies in the city, state and federal goverment, as well as from private foundations and individuals.

Progressive groups ask politicians to pledge support for 'whole' Constitution

A coalition of liberal and progressive groups is requesting politicians to sign a pledge upholding "the whole Constitution," including all amendments, as a counter to Tea Party movement activists who argue that the federal government has exceeded the limits of the U.S. Constition.

The Constitutional Accountability Center, which is leading the effort, said in September that Tea Party and other conservatives "wish to build a bridge back to the Colonial era."

The pledge has been signed by around 12,000 people. Other supporting groups include the Center for American Progress and People for the American Way Foundation.

The full pledge can be read at the website ConstitutionalProgressives.org.

Companies must now inform workers of right to organize

Employees in most work places must soon be informed by management that they have a right to join a union or otherwise take collective action in pursuit of improving their situation, whether or not management supports that right.

In a ruling at the end of August, the National Labor Relations Board held that companies covered by the National Labor Relations Act must post notices "that spell out employee rights to organize," according to an article in the New York Law Journal.

For years, most employers have had to post, in communal areas of the workplace, information on such issues as wages, medical leave and health and safety. Within a few months, those notices will have to accompany a new one announcing workers' right to bargain collectively, as well as their right to refrain from such activities. The US Postal Service, however, is not covered. Nor are airlines and railways, which are covered by a different law.

The NLRB decision was handed down eighteen years after a professor at Southern Methodist University filed a petition with the agency.

"It took a long time," the professor, Charles J. Morris, was quoted as saying.

Predictably, organizations supporting corporate and small enterprise interests, such as the U.S. Chamber of Commerce and the National Federation of Independent Business, strongly opposed the new ruling, arguing that it will ultimately counter workers' interests by "showing its spite for job creators" and "setting up a trap for millions of businesses."

Fact sheets on housing now in five languages

Fact sheets on a multitude of housing issues are now available in five languages from Homes and Community Renewal, the state's housing agency. The languages include, besides English, Spanish, Chinese, French, Russian and Polish.

The forty-three fact sheets address such issues as rent stabilization, lease renewals, evictions, rights of disabled tenants, and rehabilitation, among others.

They can be accessed at http://nysdhcr.gov/Rent/FactSheets/

Bill S5763: A reward to landlords for breaking the law

(Continued from page 6)

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.

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 regulated 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."

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. 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 Rent Stabilization Law §26-504 (c), 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 §11-243 (i) (1), 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 at 28 RCNY §5-03(f) (1), 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. But 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 one and a half years ago, and, notwithstanding the predictions of the real estate industry, the world has not come to an end. The IPNTA case was decided nine months ago. 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.

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. 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.