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BUYER FIXES DAMAGED BUILDING, BUT RENT STABILIZATION CONTINUES

By Michael A. Riccardi

AN APARTMENT building that has been rehabilitated by its new owner after intentional destruction had been wrought by the previous landlord is still subject to the New York City rent stabilization laws, a Manhattan Housing Court judge has decided in a case of first impression.

The buyer who rebuilds the property steps into the shoes of the previous owner, even if the predecessor is responsible for abusing the building, said Judge Douglas E. Hoffman.

[Click here for the opinion.](#)

At issue in 446 Realty Company v. Higbie, L&T 105874/98 was 2520.11(e) of the Rent Stabilization Code, which exempts from rent stabilization coverage buildings that have been "substantially rehabilitated."

Judge Hoffman observed that neither the Rent Stabilization Code nor the Rent Stabilization Law expressly define what work qualifies as substantial rehabilitation.

But even if the buyer repairs extensive and deliberate destruction, it is not entitled to withdraw the property from rent stabilization laws, the court ruled.

Exemptions from the rent stabilization laws are designed to encourage the upgrading of building conditions, Judge Hoffman said. But granting such exemptions to the new landlord would carry a perverse economic effect, the court reasoned.

If rehabilitation work would result in the lifting of rent stabilization laws, the price of a seriously run-down property could reflect the possibility of higher rents. Such an inflation of the purchase price would create a windfall for sellers who have committed destructive acts against their own building, the court pointed out.

In 446 Realty, the petitioner purchased an apartment building at 446 West 19th Street in Manhattan. The property had been the scene of a campaign by its former owner to drive out his tenants, who were protected by rent stabilization.

From 1981 to 1983, the former landlord, Thomas Lydon, hired unsavory characters

11/17/2000 N.Y.L.J. 1, (col. 1)

to harass tenants, set fires, burglarize apartments and destroy major building systems. The campaign ultimately led to Mr. Lydon's conviction for criminal conspiracy.

The present owner, 446 Realty Company, bought the building from Mr. Lydon and his partners in 1986. Significant repairs were needed to make the building habitable.

Among the repairs was the addition of a fifth floor, which created two new duplex apartments. The landlord argued that the overhaul removed the building from its rent-stabilized status.

This litigation was touched off when the resident who occupied the fourth floor unit, Apartment 4A, found herself the occupant of one of the new duplex units. The landlord charged her a first rent of \$1,495 per month. The tenant, Janet Higbie, previously paid a stabilized rent of \$138.36 per month. She agreed to pay \$1,400 per month for the new duplex, which she did for one year.

#### Renewal Lease

The landlord then presented the tenant with a renewal lease of \$1,675 per month, which Ms. Higbie refused to pay, claiming the amount of the hike violated the rent stabilization laws. The landlord went to court to obtain a judgment that the unit's rent was no longer regulated by those laws.

The landlord said it had substantially rehabilitated the property and was entitled to an exemption from rent stabilization. Moreover, it argued that the rehabilitation remedied criminal conduct by the previous landlord.

"The exemption from rent stabilization was to provide the financial incentive for such work," Judge Hoffman said. "If a landlord could eliminate rent regulation through criminal conduct and wanton destruction of building systems designed expressly to empty the building of regulated tenants to take advantage of the real estate market and then claim exemption from rent regulation when the destroyed systems are repaired ... the beneficent purpose of this exemption would be turned on its head."

Even though 446 Realty is not Mr. Lydon, who is liable for the criminal destruction of the building, it is bound by the conduct of its predecessor, the court said.

"[446 Realty] purchased the building with full actual and constructive knowledge of the conduct of its immediate predecessor in interest ... ," Judge Hoffman said.

#### Possible Windfall

If it were freed from rent stabilization, the building's value would grow. The anticipation of such growth could inflate the purchase price and result in a windfall to the predecessor who carried out the destruction, he said.

"The statute, designed to create affordable, decent housing in this city, was not created to embrace a windfall to the old or present landlord based upon

11/17/2000 N.Y.L.J. 1, (col. 1)

intentional criminal destruction of basic systems in the building," Judge Hoffman said.

The court went on to reject 446 Realty's position that it had substantially rehabilitated the building, noting that much of the work it performed on the property was done without a proper permit.

Finally, the court ruled that under the rent stabilization laws, the rent increase from \$1,400 to \$1,695 was not allowed, and that the tenant was entitled to reimbursement for charges above the allowable annual increase under the rent stabilization laws.

The landlord was represented by Charles J. Seigel, of Amsterdam & Lewinter. The tenant's lawyer was William J. Gribben, of **Himmelstein**, McConnell, Gribben & Donoghue.

11/17/2000 NYLJ 1, (col. 1)

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