

Court Finds Tenants Safe From Eviction

Occupied Apartments, When State Approved Condo Plan

BY DANIEL WISE

MARKET-RENT tenants in buildings being converted into condominiums are protected against eviction—even though their landlords have filed cases seeking their ouster—as long as they remain in their apartments when the Attorney General's Office approves their landlord's conversion plan, a judge ruled Monday.

The ruling from Housing Court Judge David B. Cohen in 322 W. 57th Owner v. Penhurst Productions, 63319/06, prevents the eviction of 23 tenants in the Sheffield, 845-unit building on West 57th Street.

The Sheffield had begun eviction proceedings against the 23 tenants because their leases had expired during the year-long period prior to the attorney general's approval on June 22, 2006 of the building's non-eviction conversion plan.

According to the tenants, 75 percent of the apartments at the Sheffield became vacant during the year the plan was pending before the attorney general.

Kent M. Swig, whose company is the principal owner of the Sheffield, said, "we will immediately file an appeal of this decision, and we expect to prevail."

Because many of the tenants' leases expired over one year before the Attorney General's Office approved the conversion plan, Mr. Swig added,

The decision will be published Tuesday.

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322 West 57th Street

"the decision grants a squatter or trespasser" without a lease "the right to continue to occupy property owned by another party."

The key question in determining the tenants' rights, Judge Cohen wrote, was whether the expiration of the tenants leases and the ensuing eviction cases in Manhattan Housing

Court deprived them of their status as tenants in occupancy at the time the plan was approved last summer.

Judge Cohen ruled that they remained as tenants in occupancy because the pending eviction pro-

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ceedings had not yet resulted in final judgments and warrants for eviction.

That holding, he wrote, is consistent with the legislative history of the state Martin Act, which governs the conversion of rental buildings to cooperatives and condominiums, General Business Law §352-eeee et seq.

The legislative finding, accompanying the adoption of the Martin Act provisions in 1982, described the statute as being designed to prevent "uncertainty, hardship and dislocation in connection with the conversion process."

A non-eviction plan requires the approval of 15 percent of the apartments in a building, whether they are occupied by tenants or have been purchased by new owners who intend to occupy them.



Judge Cohen

A non-eviction plan also prohibits the eviction of tenants in occupancy once 15 percent of the apartments in a building have signed onto the conversion plan.

It also gives tenants in occupancy the right to purchase their apartments at the price outlined in the plan.

And, most importantly, for the tenants at the Sheffield, who were market-rent tenants—without the protections of the rent-stabilization law—the Martin Act requires that they be given renewal leases that do not subject them to "unconscionable rent increases."

One of the objectives of the Martin Act protections, Judge Cohen wrote, is to prevent owners from

warehousing apartments so they can be sold at market rates rather than at "insider prices" negotiated with their tenants.

Kevin McConnell, one of the tenants' lawyers, added that "owners have a financial incentive to remove tenants because vacant apartments can command far higher prices."

The Sheffield was represented by Paul Pollack of Pollack & Sharan.

Mr. McConnell and Janet Ray Kalson, of Himmelstein McConnell Gribben Donoghue & Joseph, represented the tenants.

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