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RENT SUCCESSION REGULATIONS CAN BE APPLIED RETROACTIVELY [FNa]

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NEW REGULATIONS governing a family member's right to succeed to an apartment lease are to be applied retroactively in cases where they will benefit a tenant, but only prospectively if they impose new burdens on the tenant, a Civil Court judge in Manhattan has ruled.

Judge Stuart C. Cohen's ruling in *Coleman v. Sillman*, filed last week in Civil Court, New York County, Part 18, makes the new regulations promulgated by the State Division of Housing and Community Renewal (DHCR) retroactive to their scheduled effective date of April 4, 1990, for tenants who seek to take advantage of the rule's expanded definition of family. That definition includes adult lifetime partners such as those in homosexual or unmarried heterosexual couples.

Later Date

But where the new regulations would restrict the rights of tenants or impose additional burdens on their right to continued occupancy -- such as for those who live in rent-controlled apartments -- the rules should be applied from a date eight months later, Dec. 4, 1990, when the Appellate Division, First Department, lifted an injunction on the implementation of the rules while a landlord group's legal challenge is pending before Justice Irma V. Santaella in Supreme Court, New York County, the judge said.

The regulations were drafted to conform to a 1989 landmark Court of Appeals ruling, *Braschi v. Stahl Associates Co.*, 74 NY2d 201, that applied to situations where the tenant named on the lease died or left the home and other family members sought to continue living in the rent-controlled or rent-stabilized apartment.

The *Braschi* Court expanded the pool of those entitled to lease-succession rights to include people who lived with the tenant of record and "whose relationship is long-term and characterized by an emotional and financial commitment and interdependence."

2 Year/1 Year Rule

When codifying the court's ruling, the DHCR provided that the family member must have been living with the tenant of record for two years (or one year in the case

3/6/91 N.Y.L.J. 2, (col. 1)

of a senior citizen or disabled person) to be protected from eviction, a standard that had been provided in previous regulations for rent-stabilized premises.

However, that standard was stricter than the prior case law that had governed rent-controlled units. In those cases, no particular time limit was placed on the duration of the relationship with the tenant of record, but proof had to be shown of an arrangement "bearing some indicia of permanence or continuity," Judge Cohen noted.

Mary Sillman argued that she gave up her own apartment and moved into her mother's rent-controlled apartment at 141 East 88th Street in Manhattan to care for her after the mother was diagnosed as suffering from amyotrophic lateral sclerosis. Five weeks later Ms. Sillman's mother died.

The next month the landlord, Lucille Gordon Coleman, sought Ms. Sillman's eviction, alleging that her five-week occupancy was not sufficient to give her any right to continued occupancy.

Judge Cohen said that because the DHCR's rules were enjoined by court order, they were not in effect when the landlord brought its action in May 1990.

The judge acknowledged that the law was intended to be remedial and generally should be given retroactive application to "spread its beneficial effects as widely as possible." But he said that parts of the law may be analyzed separately to give broadest protection to tenants.

The two-year/one-year requirement of the new regulations would deprive Ms. Sillman of rights that she had under the old law and directly subject her to eviction, Judge Cohen observed.

"It would be anomalous to retroactively apply a rule amended to protect family members from eviction when the direct consequence and only purpose of such retroactive application would be to cause the eviction of a qualified family member. Therefore, the two-year residency requirement is prospective only and it is not to be applied to respondent," he wrote.

The landlord intends to appeal Judge Cohen's decision, said Jay Zinns, counsel for the landlord.

Ms. Sillman was represented by Samuel J. **Himmelstein** of **Himmelstein & McConnell**. Jacobs and Zinns appeared for the landlord.

FNa The decision is on page 22, column 6.

3/6/91 NYLJ 2, (col. 1)

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