SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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| AMY L. ROBERTS, THOMAS I. SHAMY, DAVID AND ANNMARIE HUNTER, MARGARET CARROLL, KELLEY AND TONI LANNI, EVAN HORISK, and BETH ROSNER GIOKAS, on behalf of themselves and all others similarly situated,<br><br>Plaintiffs-Appellants,<br><br>-against-<br><br>TISHMAN SPEYER PROPERTIES, PCV ST OWNER LP, METROPOLITAN INSURANCE AND ANNUITY COMPANY, and METROPOLITAN TOWER LIFE INSURANCE COMPANY,<br><br>Defendants-Respondents. | : | Index No. 100956/07<br><br>**AFFIDAVIT IN SUPPORT** |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

JOSEPH STRASBURG, being duly sworn, deposes and says:

1. I am the President of the Rent Stabilization Association of New York City, Inc. ("RSA"). I am fully familiar with the facts and circumstances set forth below.

2. I submit this affidavit in support of the motion of defendants-respondents Tishman Speyer Properties, et al. (the "Owner") for an order (a) granting the Owner leave to appeal to the Court of Appeals from this Court's order of March 5, 2009 (the "Order"), and (b) staying the effect of the Order pending this Court's determination of the Owner's motion for leave to appeal.

3. I respectfully submit that leave to appeal should be granted. In my 31 years' experience in New York City real estate, including my time in City government, I can think of no other Appellate Division determination which so altered the long-term understanding of

landlords, tenants and the New York State Division of Housing and Community Renewal ("DHCR") as to vital provisions of the Rent Stabilization Law. Nor can I think of an Appellate Division determination that has more jeopardized the financial well-being of (a) thousands of landlords, (b) lenders, and (c) the City of New York, which is largely dependent on real estate tax collections for revenue.

4. This Court's determination represents a seismic and unprecedented shift in the New York rent regulatory landscape. The Court of Appeals may endorse this Court's view, or it may reverse and return matters to the 15-year status quo. Either way, the stakes are so high that the Court of Appeals should hear this appeal.

5. I also respectfully submit that unless a stay is granted, landlords, tenants, Civil Court, Supreme Court and DHCR will be overwhelmed by the substantive and procedural uncertainties occasioned by this Court's determination.

## INTRODUCTION

6. RSA is a trade association of residential property owners, consisting of approximately 25,000 owners and agents who own or manage more than one million apartments throughout New York City. RSA's members range from small owners with a single building to owners and managers of thousands of apartments, such as the Owner herein.

7. Many of RSA's members own buildings that are directly implicated by this Court's order, i.e., buildings that (a) are subject to the Rent Stabilization Law ("RSL") or the Emergency Tenant Protection Act ("ETPA") irrespective of receiving J-51 tax benefits; (b) thereafter received such benefits, and (c) contain dwelling units that were previously deregulated through high income luxury deregulation or vacancy luxury deregulation, and/or dwelling units that will soon be eligible for luxury deregulation.

8. As such, many of RSA's members have been directly -- and adversely -- impacted by this Court's ruling. Indeed, I have spoken to many such members since this Court issued its Order on March 5th.

## LEAVE TO APPEAL SHOULD BE GRANTED

9. I respectfully submit that unless leave is granted, this Court's Order will have a devastating financial impact on thousands of owners throughout New York City. That impact will spread to lenders who loaned monies on affected buildings, believing their rent rolls to be secure, and to the City of New York, whose real estate tax collections will decrease as rent rolls throughout the City decrease.

10. As this Court is aware, high income luxury deregulation and vacancy luxury deregulation were added to the Rent Stabilization Law pursuant to the Rent Regulation Reform Act of 1993 (L. 1993, ch. 253).

11. It was widely, if not universally, believed at that time that luxury deregulation was available in buildings, as here, that were otherwise subject to rent stabilization, but received J-51 benefits thereafter (hereinafter, "affected buildings").

12. To put the issue into a citywide perspective, according to the New York City Rent Guidelines Board's June 3, 2008 report entitled "Changes to the Rent Stabilized Housing Stock in New York City in 2007," between 1994 and 2007, 4,223 stabilized units were deregulated by virtue of high income luxury deregulation, and 71,027 by virtue of vacancy luxury deregulation. See, www.housingnyc.com/downloads/research/pdf_report/changes2008.pdf. The vacancy luxury deregulation figure, which was based on the number of units registered with DHCR as vacancy decontrolled, is an undercount, at least to the extent that registrations for apartments exiting the system were not required until 1997.

13. According to the Rent Guidelines Board's June 3, 2008 "2008 Housing Supply Report," some 700,000 rental units were located in buildings receiving J-51 benefits in fiscal year 2007. See www.housingnyc.com/downloads/research/pdf_reports/08hsr.pdf. J-51 is a widely used program throughout the City of New York, and many of those 700,000 units were subject to rent stabilization. Thus, it is safe to assume that tens of thousands of apartments vacated through luxury deregulation over the years were receiving J-51 benefits at the time of their deregulation, and thus, like the apartments herein, have been adversely affected by this Court's determination.

14. In the 15 years since luxury deregulation became into being, all of the following has occurred throughout hundreds of affected buildings, involving thousands of affected apartments:

- DHCR, on application from owners in affected buildings, deregulated hundreds, if not thousands, of apartments based on high income luxury deregulation.
- Thousands of apartments in affected buildings became vacant, and were vacancy deregulated based on the law as it was generally understood.
- Owners entered into thousands of deregulated leases with tenants at free market rents.
- Tenants paid, and owners collected, those rents.
- Some owners refinanced their buildings, with lenders advancing funds based on (a) the building's current rent roll, which included deregulated rents, and (b) the expectation that absent legislative amendment, luxury deregulation would continue to be available in affected buildings.
- In some instances, loans on such buildings were sold to third parties.
- Some affected buildings were sold, with purchase prices reflecting deregulated rents.
- In some instances, the sellers of affected buildings certified the legality of their rent roll to the purchasers.

- The City of New York assessed affected buildings based on their rent rolls, and taxed them accordingly. Owners paid those taxes.

15. The assumptions underlying these actions were not mere wishful thinking. As early as January 16, 1996, DHCR -- the expert administrative agency with respect to rent stabilization -- opined in writing that owners of affected buildings could avail themselves of luxury deregulation.

16. In addition, the New York City Department of Housing Preservation and Development ("HPD") concurred with DHCR's analysis, granting J-51 benefits in affected buildings, but proportionately reducing benefits based on deregulated units.

17. As the President of RSA, I speak to owners, large and small, on an almost daily basis. Since this Court's determination was rendered, I have spoken to many affected owners who fear that they will be unable to pay the debt service on their loans, or will be unable to refinance or sell their buildings.

18. I have also heard concerns from the lending community, which fears defaults on apartment building loans that were previously deemed safe based on rent rolls reflecting market rents. At this time of economic crisis, the lending community does not need more uncollectible loans.

19. I am also concerned about the City's finances, which are very much dependent upon real estate tax collections. If rent rolls decrease -- and they will as a result of this Court's determination -- then tax assessments and tax collections must decrease as well. The City, already struggling with budget gaps and service cuts, cannot afford to lose tens of millions of dollars in tax revenues.

20. In short, if these extraordinary results are to stand, it must be because the Court of Appeals, rather than a single Appellate Division Department, has so ruled.

21. As this Court observed, this case involves a pure question of law. Given (a) the gravity of the consequences occasioned by this Court's decision; (b) the disruption of the 15 year status quo; (c) the impact on the real estate industry, the financial community, and the City of New York; and (d) the impact of this decision on the financial health of the City and State, it is respectfully requested that leave to appeal should be granted.

## SUBSTANTIAL UNCERTAINTY AND CONFUSION WILL RESULT THROUGHOUT NEW YORK CITY UNLESS THE EFECT OF THIS COURT'S ORDER IS STAYED

22. The Owner, in its motion for leave to appeal and for related relief, argues that this Court's interpretation of the various statutes was in error. For purposes of this motion, however, it is sufficient to observe that this Court's determination, rightly or wrongly, altered almost everyone's understanding of the law for the past 15 years.

23. This dramatic change in the status quo has created enormous uncertainty for RSA's members.

24. Assume, for example, that a landlord owns a building that was rent stabilized and thereafter received J-51 benefits. Further assume that during the past 15 years, the owner deregulated 5 apartments through high income deregulation, and 15 apartments through vacancy deregulation, and has since rented those apartments at free market rates. Thus, the owner now has 20 apartments that have suddenly changed from deregulated to rent stabilized.

25. That owner, and many of RSA's members, has a business to run and needs immediate and accurate answers to the following questions concerning the effect of this Court's determination:

- May I accept March, 2009 rent checks from the putatively "free market" tenants? Should I return those checks?
- If I accept those checks following the issuance of the Appellate Division's order, am I guilty of a willful overcharge?

- Should I terminate the existing leases and offer the "free market" tenants rent stabilized leases?

- Must I immediately reduce rents and offer refunds?

- If I have a vacant apartment, should I rent the apartment or leave it vacant until there is a final ruling?

- Are former tenants who were "wrongfully" deregulated entitled to be restored to possession?

- Are my landlord-tenant proceedings going to be dismissed because I have misstated the regulatory status of an apartment that I believed was not rent regulated?

- How do I register rents and services with DHCR for calendar year 2009?

- Should I challenge the 2009-2010 real estate tax assessment on my building now that the rent roll has been significantly reduced?

26. While owners are trying to answer these questions, current and former tenants who rely upon this Court's order will file hundreds, if not thousands, of complaints with DHCR; others will proceed in Civil or Supreme Court. DHCR and the Courts will be overwhelmed with new cases, all of which will become moot if leave is granted and the Court of Appeals reverses.

27. Just to put the foregoing into some kind of financial perspective, imagine that the owner in our example (with 20 newly stabilized units) has typically rented these "deregulated" units for $4,100 per month, whereas these rents will be rolled back to approximately $2,100 per month under rent stabilization pursuant to this Court's Order. The refund for this owner alone, over a four year period, would be almost $2,000,000, <u>without</u> treble damages ($2,000 overcharge per month x 48 months x 20 apartments = $1,920,000).

28. In addition, the owner would lose approximately $48,000 in rent per month going forward.

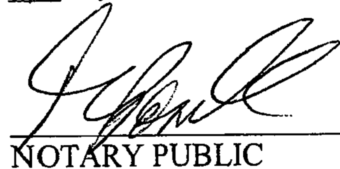
29. Similar scenarios will be repeated thousands of times through the City. Absent a stay, and leave being granted, the finances of numerous buildings will be put into immediate jeopardy, their mortgages possibly in default, with foreclosure and bankruptcy looming.

30. This Court's Order will result in an enormous redistribution of wealth, ironically, from owners to wealthy tenants living in market rate apartments. Rather than transfer such wealth now, it is respectfully submitted that the better course of action would be to stay the effect of the Court's Order pending its determination of Tishman's motion for leave.

31. I respectfully submit that given the change in the status quo and the uncertainty that will follow, including the commencement of hundreds or thousands of administrative and judicial proceedings, this Court should stay the effect of its March 5, 2009 order herein until such time as this Court determines the Owner's motion for leave to appeal to the Court of Appeals.

JOSEPH STRASBURG

Sworn to before me this
11th day of March, 2009



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