

Court Ruling: Thousands of NYC Tenants Now at Risk

IPNTA fact sheet for media on recent IPN ruling by Appellate Division

1) On April 3, 2012, the Appellate Division of the NY State Supreme Court ruled that if a landlord receiving J-51 benefits decides to “retroactively” terminate and repay the benefits, the apartments will no longer be rent-stabilized, even though the J-51 program mandates rent regulation for the full term in exchange for a tax break. Here’s the provision:

“A rental unit which receives exemption and/or abatement status must be registered with the Division of Housing and Community Renewal and subject to rent stabilization for the full term of the J-51 benefits, regardless of whether the rental unit would otherwise be subject to the Rent Stabilization Law.” (Source: <http://www.nyc.gov/html/hpd/downloads/pdf/j51-gb-2004.pdf>)

The law makes no mention of retroactive termination of benefits; once an owner applies for J-51, or continues to accept the benefits, his or her building becomes rent-stabilized, if it hadn’t already been so (as in a Mitchell-Lama development, which has its own rent regulations).

2) As a result of the AD’s ruling, tens of thousands of NYC tenants in buildings receiving J-51 benefits are now at risk of losing their homes, if owners decide to refuse further benefits and to repay those they already received. The ruling allows landlords who opt out of affordability programs to charge tenants astronomical free market rents, since the only protection otherwise would be J-51. Additional thousands receiving federal rent vouchers are also now at risk, if they are fortunate to finally land a job (which means that their rent, which is tied to income, will soar), because they will be not be able to reject the voucher and still be protected under rent stabilization. And many thousands more who need to apply for SCRIE and/or DRIE (rent increase exemptions for seniors and disabled) will not be allowed to do so if their apartments are not stabilized.

3) The AD ruling makes rent regulation optional rather than mandatory in exactly those situations—where a landlord wants to deregulate entire developments full of low-, moderate- and middle-income tenants—that J-51 is designed to provide protection.

4) Although the owner always knew he was receiving the tax benefits for two years after withdrawing from Mitchell-Lama, he claimed—and the AD agreed—that his failure to terminate was merely the “mistake” of a City agency, the Department of Finance. There was no mistake; the benefits were supposed to continue until exhausted.

5) The IPN owner, Laurence Gluck of Stellar Management, was obliged to inform the tenants that he was receiving J-51 benefits before he exited Mitchell-Lama. Gluck never informed the tenants, who discovered the J-51 status on their own.

Legal Background

6) The NY State Supreme Court Appellate Division, an intermediate appellate court, unanimously ruled on April 3, 2012, that apartments at Independence Plaza North, a former Mitchell-Lama complex with over 1,300 apartments, are not rent stabilized. Its ruling was made despite the development owner’s receipt of J-51 tax benefits; J-51 mandates that apartments receiving such tax abatements be rent-regulated during and after receipt of the benefits. To date, the City has foregone about \$500 million in J-51 tax exemptions.

7) The decision reversed an August 10, 2010 N.Y. Supreme Court ruling that rents in a complex receiving J-51 benefits must be rent-regulated or stabilized (excluding co-ops and condos)—in this case following exit from the Mitchell Lama program. The decision also directly counters the final ruling in *Roberts v. Tishman Speyer*, the case involving J-51 benefits at Stuyvesant Town and Peter Cooper Village. IPN tenants plan to appeal. (The Supreme Court and Appellate Division rulings are available for download at <http://www.ipnta.org>.)