

## Tenants win in Stuy Town J-51 case

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### **Tishman Speyer's record breaking purchase of 11,000 unit complex appears doomed**

The New York State Court of Appeals supported a previous ruling this morning that the owners of Stuyvesant Town and Peter Cooper Village had deregulated rent-stabilized apartments while receiving tax credits that should have precluded charging market rents for the units.

The suit was brought by a group of tenants in January of 2007, nine months after the 11,000-unit complex was purchased by the real estate firm Tishman Speyer from MetLife for a record \$5.4 billion.

Months later the case was dismissed, but over the summer, the state's Appellate Court overturned that previous decision.

Today's ruling cements the reversal, which found that MetLife's participation in a program granting owners tax breaks if they make certain capital improvements on their property should have prevented it from converting rent regulated units at Stuyvesant Town and Peter Cooper Village.

The decision, which holds widespread implications for owners across the city who took part in the program, upends a widely held interpretation of what limitations the incentives, known as J-51 tax credits, put on a landlord's ability to deregulate apartments.

It was previously thought that the J-51 program only required building owners to submit their market rate apartments to a schedule of modest rental increases outlined by the city's Rent Guidelines Board.

Apartments that had previously been rent stabilized however were thought to be fair game for conversions as long as they met the existing criteria for decontrol; rents that had risen above \$2,000 per month or a resident that earned more than \$175,000 per year in income.

Even the New York State Division of Housing and Community Renewal, whose opinions are usually interpreted as law, issued statements confirming a landlord's right to convert rent stabilized apartments as long the units were previously rent controlled and hadn't become stabilized as a result of the J-51 program.

A portion of the inappropriately made conversions at Stuyvesant Town and Peter Cooper Village appear to have been accomplished during MetLife's ownership.

In the original suit, the plaintiffs in the case, nine residents who live in seven of the complex's apartments, were seeking \$215 million in compensation for rental overcharges that were netted as a result of the improper deregulations. The ruling didn't make clear whether that compensation would be granted and it appears that more litigation will be necessary to hash out the full financial consequences at the complex.

The decision appears to deal a severe blow to the complex's current owner, Tishman Speyer. The firm purchased Stuyvesant Town and Peter Cooper Village at the height of the real estate market based on assumptions that it could sweep away many of the complex's rent stabilized tenants and clear the way for an influx of new residents willing to pay top dollar rents.

That plan already appeared to be in serious jeopardy as the recession has brought down the rental market. Tishman has also struggled to convert as many units as it had hoped. Recent written reports have indicated that the real estate firm, headed by the father and son team of Jerry and Rob Speyer, is near default on the complex, having nearly exhausted interest reserves it had been using to supplement payments on its huge debt load.

Many real estate experts agree that the decision against Tishman in the J-51 case doom any remaining hope for a turnaround. Not only could the firm have to reimburse tenants for rental overcharges, it appears now to be blocked from converting anymore of the building's units to market rate, what appeared to be its only chance to begin boosting the revenues in a manner sufficient enough to carry its debt.

"While we respect the Court's decision, we view this as an unfortunate outcome for New York," Tishman Speyer issued today in a company statement. "The ruling, which reverses 15 years of government practice, raises a number of difficult issues that will need to be resolved by the courts and various government agencies in the coming months and years."

The outcome of the case appears to thrust new tumult on a real estate industry that has already been battered by the recession and the credit crunch. The J-51 program was popular around the city and numerous landlords who had tapped its incentives in order to complete improvements on their buildings may now find themselves in a financial bind some real estate experts say.

"When an investor purchases a rent controlled property, they usually do so with the expectation that they'll be able to convert a portion of the units to market rents," said Paul Massey, an executive at the real estate firm Massey Knakal, a firm that specializes in selling apartment buildings and commercial property in the city.

"Now those expectations have been challenged," Massey said. "For a lot of landlords, this case just eliminated their upside."

Massey, whose firm keeps detailed data on the city real estate market, estimated that there are close to 200,000 apartments in Manhattan that are inside buildings that participate in the J-51 program.

Although that's just a fraction of the market, Massey said that the decision could nonetheless have a wide reaching impact. It is possible that many landlords for instance will now avoid the J-51 program in the future he said, discouraging many from making capital investments in their properties, a trend that could bring down the quality of the city's housing stock.

Adam Leitman Bailey, a lawyer who handles litigation on behalf of residential landlords as well as tenants, said that the decision greatly added to an existing impression that the city's rental regulations are difficult to decipher and prone to sometimes unpredictable interpretation.

"The rest of the country turns their eyes to New York City and says they're not going to buy here because it's anti-free market, it's communism or socialism, it's too hard to understand the laws they pass and this case makes them look like they're right," Bailey said. "You have the DHCR give an opinion saying that it's okay to deregulate in writing and then the Court of Appeals goes against them anyway. Well if I can't trust a government agency, who can I trust?"