

## NEW YORK STATE LEGISLATURE NEW YORK CITY COUNCIL

### Via Facsimile and U.S. Mail

March 29, 2010

Governor David A. Paterson  
State Capitol  
Albany, NY 12224

Brian Lawlor  
Acting Commissioner  
New York State Division of Housing and Community Renewal  
Hampton Plaza  
38-40 State Street  
Albany NY 12207

Dear Governor Paterson and Mr. Lawlor:

As members of the DHCR Policy and Practice Reform Group, we write today regarding the implications of the October 22, 2009 decision by the New York State Court of Appeals in the matter of *Roberts v. Tishman Speyer Properties, L.P.* (“*Roberts*”) and the need for the New York State Division of Housing and Community Renewal (“DHCR”) to take immediate action for the protection of tenants at properties throughout New York City whose apartments are effectively rent regulated as a result of this decision.

As you know, the Court of Appeals affirmed the order of the First Department of the Supreme Court’s Appellate Division in favor of the plaintiff’s claim that all apartments in buildings receiving J-51 tax benefits (“J-51 buildings”) are protected from high rent vacancy and high rent/high income deregulation. In doing so, it affirmed that tenants in these apartments are due the rights and protections offered by rent stabilization in New York State Law and regulation.

Nearly five months have passed since the highest court in New York State conclusively ruled on this matter. We strongly believe that the DHCR must move as quickly as possible to formally recognize apartments in J-51 buildings as rent stabilized and to grant

these tenants those rights and protections afforded them under the law. In addition, the DHCR must provide up-to-date, easily-accessible information on its website regarding this case, as the statement was last updated March 12, 2009 following the Appellate Division's decision.<sup>1</sup>

We recognize that the Court of Appeals' decision for the plaintiffs in the *Roberts* case made reference to "issues yet to be decided, including retroactivity, class certification, the statute of limitations, and other defenses that may be applicable to particular tenants."<sup>2</sup> These aspects of the case were remanded to the New York State Supreme Court, where negotiations between the litigants on these matters are ongoing. However, the Court of Appeals' decision clearly establishes the rent stabilization status of all apartments in J-51 buildings and necessitates the DHCR's action.

It should be noted that most of the core characteristics that make rent stabilization so important for New York City tenants are not subject to negotiation between the parties in *Roberts*. The DHCR's own fact sheet<sup>3</sup> on rent stabilization clearly delineates a number of these protections, which include, but are certainly not limited to, tenants' right to required services, lease renewal, succession guarantees and protection from arbitrary evictions. The DHCR's only appropriate response to the Court of Appeals' decision can be to declare that J-51 tenants are due all these rights.

In our ongoing effort to inform J-51 building tenants of *Roberts*' impact on their rights as renters, a positive declaration from the DHCR that they are protected, especially from retributive evictions, would greatly and appropriately ease their minds as they move forward with asserting their rights. Every day, more tenants, who are either ignorant of their rights or afraid to exercise them, are evicted from their homes or subject to other unlawful violations of their rent stabilized status.

In our April 1, 2009 letter to the DHCR (see attached), we asked the agency to recognize the Appellate Division's decision with respect to the stabilization status of apartments in J-51 buildings. Instead, the DHCR stood by its position, published in its March 12, 2009 statement, that it would wait to rule on the stabilization status of apartments in J-51 buildings until final resolution of *Roberts*. Resolution has now long since arrived. The DHCR must immediately affirm that all apartments in J-51 buildings are subject to rent stabilization and assert that tenants are entitled to all the rights and protections that it provides. Given the complexity of this issue, the DHCR must also directly notify all affected tenants and building owners, as well as post on its website in an updated statement, of these apartments' stabilized status.

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<sup>1</sup> See UPDATED: *Roberts V. Tishman Speyer Properties, L.P.* available at <http://www.dhcr.state.ny.us/PressRoom/news090312.htm> (accessed March 26, 2010).

<sup>2</sup> See Part IV of October 22, 2009 NEW YORK STATE COURT OF APPEALS decision re: *Roberts V. Tishman Speyer Properties, L.P.*, available at <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202434866672&slreturn=1&hbxlogin=1> (accessed March 26, 2010).

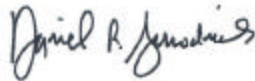
<sup>3</sup> See Fact Sheet #1 – Rent Stabilization and Rent Control available at <http://www.dhcr.state.ny.us/Rent/FactSheets/orafac1.htm> (accessed March 26, 2010).

Thank you for your attention to these concerns. Please contact Colin Casey in the office of Senator Tom Duane at 212-633-8052 or [colin@tomduane.com](mailto:colin@tomduane.com); Justine Almada in the office of Council Member Garodnick at 212-818-0580 or [jxalmada@gmail.com](mailto:jxalmada@gmail.com); or Cameron Peterson in the office of Assembly Member Kavanagh at 212-979-9696 or [cameron.ad74@gmail.com](mailto:cameron.ad74@gmail.com) should you have any questions.

Sincerely,



Thomas K. Duane  
State Senator



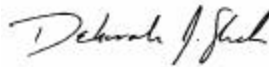
Daniel R. Garodnick  
Council Member



Brian Kavanagh  
Assembly Member



Liz Krueger  
State Senator



Deborah J. Glick  
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Scott M. Stringer  
Manhattan Borough President



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Micah Kellner  
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Daniel O'Donnell  
Assembly Member



Linda B. Rosenthal  
Assembly Member



Gale A. Brewer  
Council Member



Rosie Mendez  
Council Member

Cc: Peter Kiernan, Counsel to the Governor  
Larry Schwartz, Secretary to the Governor



## NEW YORK STATE LEGISLATURE NEW YORK CITY COUNCIL

### Via Facsimile and U.S. Mail

March 29, 2010

Hon. Fern A. Fisher  
Deputy Chief Administrative Judge  
New York City Courts  
111 Centre Street  
New York, NY 10013

Dear Judge Fisher:

As members of the DHCR Policy and Practice Reform Group, we are writing to inquire whether the Unified Court System (UCS) has implemented any procedures to ensure that litigants in Housing Court are aware of the decision by the Court of Appeals in *Roberts v. Tishman Speyer*. We believe that creating and implementing such procedures would further the Court's mission in providing justice for all litigants.

It has been estimated that 80,000 units might be affected by the *Roberts* decision. Some of these units may become the subject of a landlord-tenant case. Landlords may not be aware that the units are rent stabilized and may not properly plead the ir rent stabilization status in a petition. Conversely, tenants may not know that they have defenses to holdover or non-payment proceedings. Given the number of the units potentially involved, we feel strongly that the Court should respond pro-actively to this decision. Specifically, we request the Court consider the following suggestions:

- Promulgate a directive to judges on the *Roberts* decision.
- Distribute an information sheet about the decision and its implications at the Help Centers.
- Distribute information on obtaining necessary documentation to prove J-51 status.

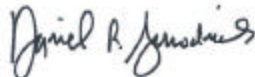
- Train judges, court attorneys and Help Center staff on this topic.
- In cases where the petition alleges that the building is not subject to rent stabilization and does not indicate that the reason for unregulated status is due to participation in a federal or state housing program, direct the clerk, or other court personnel to:
  - Check to see if there is, or was, a J-51 tax credit on the building and indicate this on the file;
  - Look up J-51 status on the Department of Finance web site before ordering stipulations, issuing default judgments, or issuing judgment after trial;
  - Accept the J-51 information as presumptively accurate;
  - Adjourn or dismiss the case and refer the tenant to the Help Center for further information if the building is subject to rent stabilization.

We understand that an increased caseload and budget cuts have burdened the Court, but taking the actions recommended above will prevent New Yorkers from unnecessarily and unlawfully losing their homes. We look forward to working with you on this important issue.

Sincerely,



Thomas K. Duane  
State Senator



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Council Member



Brian Kavanagh  
Assembly Member



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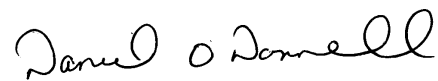
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