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June 22, 1995

STATE OF NEW YORK
DIV. OF HOUSING & COMM. RENEWAL
RENT ADMINISTRATION
RECEIVED
JUN 22 1995
GENTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, QUEENS, NY 11433
PLEASE RE-ORDER

Nathaniel Geller, Esq.
New York State Division of Housing
and Community Renewal
Office of Rent Administration
92-31 Union Hall Street
Jamaica, New York 11433

Re: **REQUEST FOR ADVISORY OPINION**

Dear Mr. Geller:

I am writing to you seeking an Advisory Opinion regarding high rent/high income decontrol and J-51 tax abatement benefits.

1. With regard to buildings that are, in the first instance, subject to Rent Regulation pursuant to the Rent Stabilization Law or the Emergency Tenant Protection Act, and an owner then files and obtains J-51 tax abatement benefits, would an owner have the right to subsequently decontrol housing accommodations pursuant to the high rent/high income decontrol provisions of Chapter 253, Laws of 1993?

In my opinion, in these situations, an owner would be permitted to decontrol apartments after obtaining J-51 benefits. The Rent Regulation Reform Act of 1993 provides that the high rent/high income decontrol exclusion "shall not apply to housing accommodations which became or becomes subject to this law by virtue of receiving tax benefits pursuant to § 489 of the Real Property Tax Law". My recollection of the legislative history, as well as a review of the statute indicates that the Legislature intended that buildings which became subject to Rent Regulation **by virtue** of receiving J-51 tax benefits, could not take advantage of the high rent/high income decontrol provisions. However, with respect to those buildings which were **already** subject to rent regulation prior to obtaining J-51 benefits, the high rent/high income decontrol provisions would apply.

...continued

2. In addition, in the event an owner has received orders of decontrol pursuant to the high rent/high income decontrol provisions of Chapter 253, Laws of 1993, or have deregulated high rent housing accommodations after vacancy, what is DHCR's position with respect to an owner who subsequently applies for and receives J-51 tax abatement benefits? Again, with respect to buildings that have already been subject to rent regulation, for the reasons set forth above, in my opinion, an owner would be permitted to obtain both high rent/high income decontrol orders as well as subsequent J-51 benefits.

Your prompt response would be deeply appreciated.

Very truly yours,

Martin J. Heistein

cc: Gary Turk, Esq.

JUN 22 1995

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NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA / 92-31 UNION HALL ST.
JAMAICA, NY 11433

GEORGE E. PATAKI, GOVERNOR
JOSEPH H. HOLLAND, COMMISSIONER

September 28, 1995

Martin J. Heistein, Esq.
Belkin Burden
342 Madison Ave.
New York, NY 10173-0035

Dear Mr. Heistein:

Your letter of June 22 to Nathaniel Geller, Esq. (with copy to Gary Turk, Esq.), has been referred to this office for reply. You raised two questions with regard to provisions of the Rent Regulation Reform Act of 1993 (RRRA) on high-income and high-rent decontrol. The answers will be given in terms of the Rent Stabilization Law (RSL); parallel answers would be applicable to the other rent regulatory systems.

First, you asked whether the exclusion from high-income/high-rent decontrol under the RRRA of housing accommodations which "became or become subject to" rent stabilization by virtue of Section 489 of the Real Property Tax Law, under the authority of which Section 11-243 of the New York City Administrative Code (formerly Section J51-2.5) was enacted, includes units receiving "J-51" tax benefits prior to the enactment of the RRRA. In our opinion, the word "became" makes it clear that the ineligibility <u>does</u> apply to units <u>already</u> receiving benefits. Please note that such ineligibility applies whether or not the J-51 benefits constitute the sole ground for rent regulatory jurisdiction.

This ineligibility is also consistent with the J-51 law, i.e., Section 11-243 of the Administrative Code of the City of New York, which states that its benefits shall not apply to any existing dwelling which is not subject to rent stabilization or rent control. The requirement of rent regulatory coverage as a prerequisite to J-51 tax abatement was illustrated in <u>143-145 West 81st Corp. v. Troncelliti</u>, Cal. 84-657, App. T., 1st Dept. (copy attached), in which it was noted (at p. iii): "[T]o the extent a landlord moves to decontrol units in a building rehabilitated pursuant to section J51, he forfeits the tax benefits afforded by that section."

Second, you asked whether units that are decontrolled under the RRRA by virtue of high income or high rent, and thereafter receive J-51 benefits, would be subject to stabilization. The J-51 assisted housing accommodation, although previously high-income or high-rent decontrolled, would again become subject to stabilization. This conclusion would apply whether the J-51 benefits constituted the only ground for rent regulatory jurisdiction or the units had been otherwise regulated, and is consistent with the above discussion of N.Y.C. Admin. Code Section 11-243.

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties and with all parties having been afforded an opportunity to be heard.

CHARLES GOLDSTEIN
Associate Counsel

Erik Strangeways

by: Erik Strangeways
Senior Attorney

CG:ES

cc: Nathaniel Geller
(COL-30)

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October 13, 1995

Marcia Hirsch, Esq.
Deputy Counsel for Rent Administration
New York State Division of Housing
and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, New York 11433

Re: Request for Reconsideration
Luxury Decontrol

Dear Ms. Hirsch:

I am writing to you seeking reconsideration of an opinion letter issued by DHCR on September 28, 1995, which was sent in response to our Request for an Advisory Opinion dated June 22, 1992 (a copy of the June 22nd and September 28th letters are annexed hereto as Exhibit A).

I believe there is a misunderstanding with respect to the first question posed in my June 22, 1995 letter. In the June 22nd Request for an Advisory Opinion, I posed the question as to whether buildings that were previously subject to rent regulation (either the Rent Stabilization Law or the Emergency Tenant Protection Act), and where an owner subsequently obtains a J-51 tax abatement benefit, whether said owner would have the right at yet a later date to decontrol apartments pursuant to the high rent/high income decontrol provisions of Chapter 253, Laws of 1993. A hypothetical example might include a large multi-family building containing rent stabilized units which received a J-51 tax abatement in 1985 and the benefits will expire in 1997. The building did <u>not</u> become subject to rent stabilization by virtue of Section 489 of the Real Property Tax Law but <u>was previously subject to rent stabilization</u>. In such a scenario, would an owner be permitted to decontrol apartments pursuant to the high rent/high income decontrol provisions?

The September 28, 1995 response from DHCR, I believe, seems to misconstrue the question posed, by asking whether the Rent Regulation Reform Act excludes apartments from

decontrol in buildings which "became or become subject to" rent stabilization **by virtue of Section 489 of the Real Property Tax Law**. Again, my question deals with the larger universe of buildings which were **previously** rent stabilized or rent controlled and **subsequently** received J-51 tax benefits. The filing and receipt of J-51 tax benefits has no effect on the rent stabilization status of the building since the building was **previously** subject to rent stabilization.

The Rent Regulation Reform Act provides that the high rent/high income decontrol exclusion "shall not apply to housing accommodations which became or become subject to this law by virtue of receiving tax benefits pursuant to Section 489 of the Real Property Tax Law." However, the Rent Regulation Reform Act exclusion does not apply with respect to those buildings which were **already** subject to rent regulation **prior** to obtaining J-51 benefits.

A similar question arose at the Conciliation and Appeals Board as to whether an owner of a building which was receiving J-51 tax abatement benefits would be permitted to apply to the Conciliation and Appeals Board pursuant to Section 54(e) of the former Rent Stabilization Code for permission to refuse to offer a renewal lease to a tenant on non-primary residence grounds. An argument was raised by a tenant that an owner who received tax benefits, and subjected the apartment to rent regulated status, would be unjustly enriched by being allowed to refuse to offer a renewal lease on the basis of non-primary residence. In the *Matter of Patton Industries, Ltd. v. New York Conciliation and Appeals Board*, Sup. Ct. N.Y. Co., 1983 (a copy attached as Exhibit B), the court held that "this argument fails to recognize the fact that the owner has the statutory right to challenge the primary residence status of a tenant at any time."

Likewise, I believe that the Legislature intended that owners of rent regulated buildings would have the statutory right to decontrol apartments on the basis of high rent/high income decontrol, notwithstanding the subsequent receipt of J-51 tax benefits.

I respectfully request that you review the September 28, 1995 letter and await your response.

Very truly yours,

Martin J. Heistein

cc: Hon. Paul Roldan
Joseph Strasburg
Dan Margulies
Nathaniel Geller, Esq.

NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA / 92-31 UNION HALL ST.
JAMAICA, NY 11433

Not Reviewed

GEORGE E. PATAKI, GOVERNOR
JOSEPH H. HOLLAND, COMMISSIONER

October 19, 1995

Belkin Burden Wenig & Goldman, LLP
342 Madison Avenue
New York, N.Y. 10173-0036

Attention: Martin J. Heistein, Esq.

Re: Request for Reconsideration of Opinion Letter Issued Sept. 28, 1995: Luxury Decontrol and Receipt of "J-51" Benefits

Dear Mr. Heistien:

Your letter, dated October 13, 1995 and addressed to Marcia Hirsch, Esq., Deputy Counsel for the Office of Rent Administration, has been referred to me for reply.

I would call to your attention that Requests for Reconsideration are applicable to DHCR Orders. (Please see Sections 2527.8 and 2529.9 RSC entitled "modification or revocation of Orders." Similarly, Sections 2207.8 and 2208.13 of the City Rent and Eviction Regulations.) An Opinion Letter is not an order and specifically states that it does not take the place of an official DHCR Order.

It is my belief that the Opinion Letter as issued is correct. Section 11-243 of the NYC Administrative Code specifically provides that "J-51" benefits may not be granted to housing accommodations which are not either Rent Controlled or Rent Stabilized.

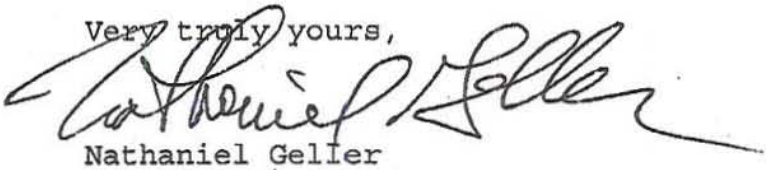
Finally, Patton Industries v. NYC Conciliation and Appeals Board is inappropriate. As you know, Section 54E of the RSA Code (copy enclosed) was not an exemption/decontrol provision. It was an "eviction" section and it provided that the owner could apply to the CAB for permission to refuse to renew the tenant's lease based upon the tenant's non-primary residence. As is disclosed by the CAB Opinion, itself (copy enclosed), the only issue before the CAB was whether the president of the corporate tenant resided in the apartment as his primary residence. Finding that the evidence submitted did not warrant a finding of primary residence by the

president, the CAB granted the owner's application to evict the tenant. The CAB expressly noted that it was not exempting/decontrolling the apartment. See last paragraph, page 5 of CAB Opinion.

As a matter of fact, the issue of "J-51" benefits was never raised in the proceeding before the Board and it was not the "J-51" issue which was ruled on by the Supreme Court, New York County or the Appellate Division. Justice Schwartz' decision determining the Article 78 proceeding unanimously affirmed by the App. Division held, "On the basis of the evidence submitted at the CAB hearing, respondent CAB appropriately fulfilled the mandate of Section 54 (e) of the Rent Stabilization Code." A copy of the court decision is also attached.

I trust that I have responded fully to your inquiry.

Very truly yours,



Nathaniel Geller
Principal Attorney

NG:adh
Attachments
cc: Marcia Hirsch, Deputy Counsel
Log #M-5248

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December 14, 1995

Nathaniel Geller, Esq.
First Assistant Deputy Counsel
New York State Division of Housing
and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, New York 11433

RE: Advisory Opinion concerning Luxury
Decontrol and Receipt of "J-51" Benefits

Dear Mr. Geller:

I am respectfully submitting this letter as a follow-up to this firm's prior request for an Advisory Opinion and in reply to your October 19, 1995 response. (For your ready reference, the initial request for an Advisory Opinion, the Advisory Opinion issued by Erik Strangeways, the letter in response to Mr. Strangeways' opinion and your October 19, 1995 letter are annexed hereto as Exhibits A, B, C and D, respectively.)

NATURE OF ADVISORY OPINION

At the outset, you take issue with our firm having sought reconsideration of the original Advisory Opinion, by reminding us that an Advisory Opinion is not an Order of DHCR. It is conceded that an Advisory Opinion is not a formal order of the agency and does not take the place of an official DHCR order. However, a DHCR Advisory Opinion regarding the applicability of a statute and the relationship between statutes has great interpretive value and is indicative of the agency's position of a particular issue. Therefore, because of the importance of the issue that our

correspondence pertains to, not only for our firm's clients, but for the entire real estate industry, I believe that it is imperative that DHCR carefully examined all factual, legal and statutory issues pertaining to this Advisory Opinion.

I. THE ADVISORY OPINION IS ERRONEOUS

A. Statutory Construction

With all due respect, I believe that the Advisory Opinion that DHCR has issued is substantively erroneous. Accordingly, I am writing in yet a further attempt to have DHCR fully examine this matter so that DHCR does not issue an Advisory Opinion that erroneously impacts upon a vast segment of the real estate industry.

Chapter 253, Laws of 1993 (Rent Regulation Reform Act of 1993, hereinafter "RRRA") specifically states that the exclusion for applicability of Luxury Decontrol:

> Shall not apply to housing accommodations which became or become subject to this law by virtue of receiving tax benefits pursuant to Section 489 of the Real Property Tax Law.

It is a cardinal rule of statutory interpretation that one may not presume legislative neglect or oversight. Therefore, those interpreting the statute must resort, in the first instance, to the plain words enacted by the Legislature. McKinney's Statutes, § 73. In this instances, I believe that DHCR's Advisory Opinion does not adhere to this basic principle of statutory construction.

Specifically, DHCR seems to be offering the opinion that any building that is a J-51 recipient would not be able to make use of the Luxury Decontrol provisions. In his September 28, 1995 letter, Mr. Strangeways specifically states that:

> Please note that such ineligibility [to use luxury decontrol] applies whether or not the J-51 benefits constitute the sole ground for rent regulatory jurisdiction. (Emphasis added).

In his analysis, Mr. Strangeways focuses upon the word "became" as providing the rationale for his interpretation. However, Mr. Strangeways' analysis seems to take words out of context, rather than reading the entire phrase; that is, "became or become subject to this law **by virtue of receiving tax benefits.**" There is simply no analysis provided as to the meaning of the words "by virtue of receiving tax benefits." However, Mr. Strangeways' conclusion that the ineligibility would apply whether or not J-51 benefits constituted the sole ground for rent regulatory jurisdiction cannot be reconciled with the plain language of the statute.

In order for Mr. Strangeways' opinion to have any internal consistency and inherent logic, the words of the statute would need to be re-written to provide:

> Shall not apply to housing accommodations receiving tax benefits pursuant to Section 489 of the Real Property Tax Law.

Thus, as hypothetically re-written, the framers would be stating that any Owner receiving J-51 benefits could not also claim an entitlement to act upon Luxury Decontrol. However, that is simply not what the statute says.

The legislation was carefully drafted to specifically limit the Luxury Decontrol exclusion to those buildings which would not be subject to Rent Regulation but for the property receiving tax benefits.

Simply stated, Mr. Strangeways' Advisory Opinion and your subsequent letter effectively require that the words "by virtue of receiving tax benefits" be deleted from the statute. However, as is described above, proper statutory construction does not permit an interpretation which deletes, modifies or amends plain statutory language.

The intent or purpose of a statute must be derived from the plain meaning of the words and may not be declared by any other construction where the language of the statute is clear and unambiguous. *See VanAmerogin v. Donnini*, 156 A.D.2d 102, 105-106 (3rd Dep't 1990) citing *Doctor's Council v. New York City Employees' Retirement System*, 71 N.Y.2d 669, 674-75 (1988). Accordingly, in interpreting the meaning of an unambiguous statute, legislative intent need not be scrutinized. *VanAmerogin, supra* at 105-106; *see* McKinney's Statutes, §76.

As is described above, the words of the pertinent section of the RRRA are clear and unambiguous insofar as the limitation on luxury decontrol only pertains to buildings that became rent stabilized by virtue of their receiving tax benefits. It is only via a complete distortion (and the actual deletion) of the words found in the statute that the Advisory Opinion offered by DHCR could pass muster.

Inasmuch as neither Mr. Strangeways' Advisory Opinion nor your letter truly focuses upon this issue, we would appreciate your further analysis.

B. Nature of Decontrol

i. *Patton Industries v. CAB*

On another issue raised in your October 19, 1995 letter, you analyze *Patton Industries v. CAB*. Your analysis begins with reference to Section 54(e) of the then applicable Code which you assert "was not an exemption/decontrol provision. It was an eviction Section . . ." In fact, Section 54(e) was not an eviction Section, but was the basis for an Owner's refusal to renew a non-primary resident tenant's lease. However, in order to fully understand the nature of Section 54(e), one must examine its genesis. Section 54(e) was promulgated as a result of Chapter 373, Laws of 1971. This was part of then Governor Nelson Rockefeller's "decontrol package." (*e.g.* Chapter 371 was "Vacancy Decontrol." Chapter 373 was "Non-Primary Residence Decontrol.)

Moreover, Section 5(a)(11) of Chapter 576, Laws of 1974, specifically enumerates non-primary residence as one of the bases under which an apartment would fall outside of Rent Regulatory jurisdiction; that is, it would be decontrolled. Thus, §54(e) (the non-renewal of a non-primary tenant's lease) was the result of the apartment being decontrolled. This is further clarified by virtue of the type of order that was issued by the Office of Rent Control upon a finding of non-primary residence; that is, the ORC did not issue a Certificate of Eviction; rather, ORC issued an Order of Decontrol. The result was that so long as the primary resident tenant remained in occupancy, the apartment would be decontrolled, with the Owner being entitled to keep the non-primary resident tenant in occupancy at a free market rent. Simply stated, eviction was not the necessary result.

Therefore, the regulatory interpretation that you offer for explaining *Patton v. CAB* is in error. Moreover, your statement as to the "J-51 issue" not truly being at issue is erroneous. I personally handled the administrative proceedings before the CAB, the Article 78 proceeding before Judge Hilda Schwartz, and the appeal before the Appellate Division. Peter Herman was the opposing attorney. Mr. Herman specifically argued that because the Owner of the building at issue (425 East 58th Street a/k/a The Sovereign) had been the recipient of tax benefits (pursuant to RPTL § 421, not J-51), such Owner could not also claim the benefits of non-primary residence decontrol. Contrary to your letter, Judge Schwartz specifically addressed this issue at pages 3 and 4 of her decision, finding no conflict between the Owner having been the recipient of tax benefits and its pursuit of non-primary residence decontrol; to reiterate, the genesis of a non-primary residence decontrol provision is pursuant to Chapter 373, Laws of 1971.

Parenthetically, that non-primary residence is a basis of decontrol and exemption of rent stabilization (and not merely a predicate for non-renewal of lease or eviction) is clearly reflected at page 4 of the *Patton v. CAB* administrative opinion; specifically, the CAB noted that:

> Section 8605 of McKinney's Unconsolidated Laws, as amended by Section 2 of Chapter 373 of the Laws of 1971, effective

> May 1, 1972, provides that no local law or ordinance shall subject to rent regulation and control any housing accommodation which is not occupied by the tenant in possession as his primary residence. The law further provides that any such apartment shall continue to be subject to such regulation and control unless the owner files an application and establishes before the appropriate agency that the tenant maintains his primary residence at some place other than the apartment in question.

The CAB opinion goes on to note that Section 54 was promulgated to provide various grounds for refusal to renew lease, with Subsection 54(e) specifically dealing with non-primary residence. However, the reference to 8605 as amended by Chapter 373, Laws of 1971 could not make it clearer that non-primary residence [like the luxury decontrol that is at issue] is a basis for decontrol and exemption from jurisdiction, not merely eviction.

The CAB opinion in *Patton* accurately reflects the statutory and regulatory history of non-primary residence as relating to decontrol and exclusion from subject matter jurisdiction. Neither your letter nor Mr. Strangeways' letter accurately reflects the CAB's own analysis.

ii. *Tower 53 Associate v. Bennett*

This same analysis applies to the interrelationship between a non-eviction plan under the General Business Law (Section 352-eeee) and non-primary residence.[1] In *Tower 53 Associates v. Bennett*, 127 Misc. 2d 666, 487 N.Y.S.2d 299, reversed on other grounds, 133 Misc. 2d 801, 509 N.Y.S.2d 695, the Court noted that:

> A tenant should not have a perpetual right to continued occupancy where it can be demonstrated that he does not occupy the apartment as his primary residence. Indeed, there is no greater reason to afford additional rights to continued occupancy to a non-primary resident who happens to occupy a cooperative apartment pursuant to a non-eviction plan then there is to afford that protection to an ordinary rental tenant who has failed to occupy the apartment as a primary resident.

---

1 Notably, this was also specifically argued (by tenant's counsel, Peter Herman) before the CAB, the Supreme Court and the Appellate Division in the *Patton* matter.

iii. Intended Beneficiary

Where the Legislature has intended that a certain class of persons are not the intended beneficiaries of rent regulatory protection, should the agency strain to create an interpretation that affords such persons a windfall? Clearly, the answer should be: No!

The Legislature has determined that persons occupying apartments renting for more than $2,000.00 whose aggregate income exceeds $250,000.00 are no longer the intended beneficiaries of rent regulatory protection. This basis of decontrol must be given full force and effect.

A high rent/high income tenant occupying a building that had been or would be subject to rent stabilization absent the receipt of a tax abatement should not become immunized from Luxury Decontrol because the Owner receives tax benefits. Whereas such a result (immunity from luxury decontrol) might have some logic if the building was made subject to rent stabilization solely as the *quid pro quo* for the receipt of tax benefits (such that the Owner's loss of Luxury Decontrol might be part of the bargain), a building that is otherwise subject to rent regulation, irrespective of tax benefits or not, should not have its high rent/high income tenants conferred extraordinary benefits and an immunity from a legislative enactment as a result of tax benefits that are not determinative of the building's regulated status or the tenant's rights.

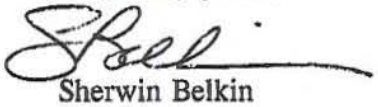
CONCLUSION

I recognize that the dialogue concerning this issue has been an ongoing process. However, it is an issue that is of the utmost importance. I believe that the Advisory Opinion previously promulgated by DHCR is predicated upon a misinterpretation of the applicable statutes and a misunderstanding of the regulatory, statutory and case history that we have previously brought to your attention.

I would greatly appreciate your further analysis on this issue. If you believe that my meeting with you or any of your colleagues would be helpful, I would make myself available at your convenience.

Thank you for your kind attention.

Very truly yours,



Sherwin Belkin

cc: Marcia Hirsch, Esq.

NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA / 92-31 UNION HALL ST.
JAMAICA, NY 11433

GEORGE E. PATAKI, GOVERNOR
JOSEPH H. HOLLAND, COMMISSIONER

January 16, 1996

Sherwin Belkin, Esq.
Belkin Burden Wenig & Goldman, LLP
342 Madison Avenue
New York, N.Y. 10173-0035

Dear Mr. Belkin:

I am responding to your follow-up letter of December 14, 1995 to Nathaniel Geller submitted with regard to your firm's prior request for an Advisory Opinion and our October 19, 1995 response thereto.

We have reconsidered our earlier opinion in view of the arguments set forth in your submission. Your interpretation of the Rent Regulation Reform Act (RRRA) provisions excluding housing accommodations receiving "J-51" tax abatement benefits from high rent and high income decontrol (Luxury Decontrol) offers a feasible alternative.

The relevant provisions of the RRRA, found at Sections 4, 6 and 8 thereof, amending City Rent and Rehabilitation Law Section 26-403, adding Rent Stabilization Law Sections 26-504.1 and 26-504.2, and amending Emergency Tenant Protection Act Section 5, respectively, provide that Luxury Decontrol is not applicable to housing accommodations which became or become subject to the specific rent regulation law "by virtue of" receiving tax benefits under Real Property Tax Law (RPTL) Section 489 (which covers the "J-51" Program, in New York City, Sections 11-243 and 11-244 of the Administrative Code).

In reviewing our interpretation of that language, we have determined that the Introducer's Memorandum In Support of the RRRA is silent on the issue. As that document fails to give us guidance as to the extent to which the Legislature intended to exclude buildings receiving "J-51" benefits from the applicability of Luxury Decontrol, we will construe "by virtue of" literally, in accordance with the ordinary meaning thereof. Therefore, applying a lexicographical definition to those words, as for example is enunciated in Webster's College Dictionary, it is our opinion that their apparent meaning is synonymous to "by reason of" or "because of," and that an owner is precluded from

seeking Luxury Decontrol of a housing accommodation receiving "J-51" tax abatement benefits only where the receipt of such benefits is the sole reason for the accommodation being subject to rent regulation.

However, it should be noted that where Luxury Decontrol is applied before the "J-51" tax benefit period has expired, the abatement should be reduced proportionately. That the Legislature recognized the inherent inequity of an owner's continuing to enjoy tax benefits after decontrol is apparent from RPTL Section 489 7(b)(1), which provides that as to ".. any multiple dwelling, building or structure which is decontrolled subsequent to the granting of such benefits, the local legislative body or other governing agency may withdraw such benefits from such dwelling."

I trust that I have fully responded to your inquiry.

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties and after having afforded all parties an opportunity to be heard.

Very truly yours,

Darryl J. Scavoy
Assistant Commissioner

DJS:lp