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COURT OF APPEALS

STATE OF NEW YORK

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RICHARD ALTMAN,

Respondent,

-against-

NO. 44

285 WEST FOURTH LLC,

Appellant.

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20 Eagle Street  
Albany, New York  
March 22, 2018

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Appeal number 44, Altman v.  
2 285 West Fourth LLC.

3 MR. TURKEL: Good after - - - oh.

4 CHIEF JUDGE DIFIORE: Good afternoon, Counsel.

5 MR. TURKEL: Good afternoon. May it please the  
6 court, Jeffrey Turkel for the appellant. This court on two  
7 prior - - -

8 CHIEF JUDGE DIFIORE: Counsel, would you care to  
9 reserve any rebuttal time?

10 MR. TURKEL: Oh, I'm sorry, yes, one minute.  
11 Thank you.

12 This court on two prior occasions had the  
13 opportunity to address the meaning of what I describe in my  
14 brief as the second clause of the statute in question. In  
15 Jemrock v. Krugman, the last rent stabilized rent was 920;  
16 the vacancy and longevity increases brought that rent to 2  
17 - - - 1,247. And then there were individual apartment  
18 improvements beyond that.

19 This court, in 2010, remanded the matter to the  
20 First Department to factually determine, and I'm quoting  
21 now, "Whether the landlord's expenditures for improvements  
22 were at least equal to the amount (approximately 30,000  
23 dollars) necessary to bring the rent above the luxury  
24 deregulation threshold." On remand the Appellate Division  
25 found that the landlord's expenditures for improvements



1 were sufficient to bring the legal rent for the unit above  
2 the luxury deregulation threshold. That finding, the Court  
3 of Appeals' statement, the remand, the Appellate - - -  
4 Altman I cannot be reconciled with this court's ruling in  
5 Jemrock.

6 In Roberts - - - in the Roberts case of 2009, the  
7 court - - - this court was recounting the history of the  
8 luxury deregulation statute, and in particular, what  
9 happened in 1997, the Rent Regulation Reform Act of 1997.  
10 And the court said about that statute, which added the  
11 language in the clause that we're all here today - - - said  
12 "The legislature subsequently expanded the scope of luxury  
13 decontrol by allowing post-vacancy improvements to count  
14 toward the 2,000 per month rent threshold." That is  
15 correct. That is a correct statement of the law in my  
16 impression. Altman I cannot possibly be reconciled with  
17 that statement.

18 The current statute talks about decontrol as long  
19 as the apartment is or becomes vacant with a rent of 2,000  
20 dollars or more per month.

21 JUDGE FEINMAN: When you say the "current," you  
22 don't mean the 2015 amendment?

23 MR. TURKEL: As the - - - as it stands right now  
24 - - - the - - - the language in the second clause has not  
25 changed substantively since 1997. So as it - - - as things



1 stand now, it says that the deregulation occurs when there  
2 is a vacancy between 1997 and 2011, where - - - with - - -  
3 and the apartment - - - with a - - - a rent of 2,000  
4 dollars or more per month.

5 JUDGE RIVERA: So if he never physically left,  
6 why is there a vacancy? Is there some definition in the  
7 law that you can point to for vacancy?

8 MR. TURKEL: Yes, I can. Section 2520.6(g) of  
9 the Rent Stabilization Code defines a vacancy lease as "The  
10 first lease or rental agreement in a housing accommodation  
11 that is entered into between a tenant and an owner." This  
12 was under that definition, unquestionably a vacancy lease.

13 Mr. Altman was a subtenant of the former tenant  
14 Mr. Rider. He was not a family member of Mr. Rider. He  
15 was not a nontraditional family member. He was not named  
16 in the lease, and he had no privity with the landlord.  
17 This is a vacancy. No court in this case has found to the  
18 contrary, and the case law, I cite the tenant case - - -

19 JUDGE FAHEY: Well - - -

20 MR. TURKEL: - - - and I cite the - - -

21 JUDGE RIVERA: Does the title of the lease define  
22 whether or not there's a vacancy within the meaning of the  
23 law?

24 MR. TURKEL: No, Your Honor. What - - -

25 JUDGE RIVERA: You could call it something else.



1 MR. TURKEL: Well, the - - - the - - - what - - -

2 JUDGE RIVERA: You're not defining vacancy in  
3 that - - - is my problem with that.

4 MR. TURKEL: It's the closest I can find to a  
5 definition of vacancy in the statute.

6 JUDGE RIVERA: Maybe that's what I wanted. This  
7 is as - - -

8 MR. TURKEL: Right.

9 JUDGE RIVERA: - - - good as it gets for you in  
10 that argument, right?

11 MR. TURKEL: Yes. But there is - - -

12 JUDGE RIVERA: There's not somewhere else I can  
13 look for this - - -

14 MR. TURKEL: Well, there - - - there is - - -

15 JUDGE RIVERA: - - - definition.

16 MR. TURKEL: - - - there - - - the ca - - - what  
17 the case law says is if the tenant of record, as here,  
18 vacates. And the subtenant in possession then signs a  
19 lease, that is a vacancy for purposes of luxury  
20 deregulation. There is case law to that. There is no  
21 countervailing case law.

22 JUDGE FAHEY: Let me - - - let me just take you  
23 back a step. Are - - - are you arguing that Roberts - - -  
24 we're talking about Roberts v. Tishman Speyer, right - - -  
25 did that support your position?



1 MR. TURKEL: Yes, because the court - - - the - -  
2 - that's - - - that case was about J-51. In the course of  
3 - - -

4 JUDGE FAHEY: Right.

5 MR. TURKEL: - - - recounting the history of the  
6 luxury deregulation statute, they had - - - the court had  
7 occasion to comment on the 1997 New York State legislature,  
8 thereafter - - - the Rent Regulation Reform Act of 1997 - -  
9 - and the court described that as the legislature expanding  
10 the scope of luxury deregulation by "allowing post-vacancy  
11 improvements to count toward the 2,000 dollar per month  
12 rent threshold." What that is saying - - -

13 JUDGE FAHEY: Well, I'm - - - I'm looking at the  
14 First Department opinion. And the First Department opinion  
15 says, talking about high rent or the luxury deregulation,  
16 which is what we're talking about here, and it says in - -  
17 - in - - - in specifically, talking about 26-504.1, is "Or  
18 the tenant vacates the apartment and the legal rent, plus  
19 vacancy increases," which is the twenty percent allowances,  
20 "and increases permitted for the landlords is 2,000 dollars  
21 or more," so the vacancy increase allowed there.

22 In the Court of Appeals we said, "if the  
23 legislature expanded the scope of luxury decontrol by  
24 lowering the income threshold for defining high-income  
25 households to 175," and then emphasizing, "and allowing



1 post-vacancy improvements to count toward the more than  
2 2,000 dollars per month rent threshold."

3 And here I understand - - - you know, I'm from  
4 Buffalo. We don't - - - we don't have a lot - - - we don't  
5 have the Rent Stabilization Laws, so this is always an  
6 adventure when I read these cases. I always - - - I always  
7 feel I learn a lot, but it - - - it still seems to me that  
8 here we're talking about one of two things, either  
9 individual apartment improvements or the post-vacancy rate  
10 increase of the twenty percent. And - - - and this case  
11 doesn't seem to say what you're saying it says.

12 MR. TURKEL: Well, Roberts, it's true; it talks  
13 about post-vacancy improvements. But the case that I  
14 believe is much more directly on point, because, again,  
15 Roberts was about J-51. And the ultimate ruling was that  
16 if there was a J-51 - - -

17 JUDGE FAHEY: But you would agree with me that  
18 that language does not support your point.

19 MR. TURKEL: I do believe that it does support my  
20 point, because in Altman I, the court said, no post-vacancy  
21 improvements, whether they're vacancy increases or  
22 individual apartment improvements. So to the extent that  
23 they said that the rent had to be 2,000 dollars at the time  
24 - - -

25 JUDGE FAHEY: Yeah, Altman I went the - - - the



1 Court of Appeals says "Allowing post-vacancy improvements  
2 to count toward the 2,000 dollars per month rent  
3 threshold."

4 MR. TURKEL: Yes, I - - - I un - - - I understand  
5 that, Your Honor.

6 JUDGE FAHEY: Okay.

7 MR. TURKEL: Certainly to the extent that this  
8 court opined in that case that post-vacancy improvements  
9 could be used, that's contrary to Altman. Altman said it  
10 had to be 2,000 at the time.

11 I think the case that's more relevant is the  
12 Jemrock v. Krugman case, where this was absolutely at  
13 issue. That was a deregulation case. And the court said,  
14 you have the 920-dollar rent; you have the longevity and  
15 vacancy increases that bring you up to 1,247; we're sending  
16 it back to the Appellate Division to see whether the  
17 individual apartment improvements, when added to the  
18 original rent, and the longevity and vacancy increases, get  
19 you over the 2,000-dollar threshold. That directive would  
20 not make any sense if Altman were correct.

21 To date, we haven't talked about the language of  
22 the statute, which I'd like to ask the court to look at, as  
23 well as its legislative history. What the second clause  
24 says, as amended in 1997, is that the deregulation or  
25 housing accommodation is not defined as an apartment that



1           become vacant between '97 and 2011, with a rent of 2,000  
2           dollars or more per month. I would not claim that the word  
3           "with" is the most exacting or precise word.

4                       Because the word "with" is somewhat vague, and  
5           allows for some degree of interpretation, then I think we  
6           go to the legislative history, because the cardinal rule of  
7           statutory interpretation is that the court is supposed to  
8           further the will of the legislature. What's striking about  
9           this case is how clear the legislative history is. Often  
10          legislative history - - -

11                      JUDGE STEIN: The Amendment was for the very  
12          purpose that you're talking - - -

13                      MR. TURKEL: I can't say it any better than that,  
14          Your Honor. Sometimes reading legislative history is like  
15          reading tea leaves. Here it is strikingly clear. I mean,  
16          I don't see how it could be more clear. The Senate  
17          introduces memo, says "Decontrol shall be allowed at any  
18          time the vacant apartment has a maximum rent of 2,000 or  
19          more. The bill eliminates restrictions imposed by the City  
20          Council, which currently prevent vacancy bonuses and owner  
21          improvements both from being considered in reaching the  
22          2,000-dollar threshold."

23                      The Governor in his approval memorandum said the  
24          same thing. I won't read the language. Even more clear is  
25          that, you know, there was kind of a revolution and then a



1 counter-revolution. In 1997, the City Council stepped in  
2 and said, no, we absolutely have to have a rent of 2,000  
3 dollars at the time the prior tenant vacates. And they  
4 wrote it into the statute in very, very, very exacting  
5 language.

6 And then two months later, the legislature said  
7 no. This is not going to stand; we're not going to do  
8 that. I think that if we look at the Court of Appeals  
9 history, the legislative history, and the language of the  
10 statute, I think Altman I has to be overturned.

11 CHIEF JUDGE DIFIORE: Counsel, do you want to  
12 take a moment and cover all bases and address the rent  
13 calculation?

14 MR. TURKEL: Altman II, you mean?

15 CHIEF JUDGE DIFIORE: Yeah.

16 MR. TURKEL: Well, Altman II is only relevant if  
17 Altman I - - -

18 CHIEF JUDGE DIFIORE: Correct.

19 MR. TURKEL: - - - is affirmed. I - - - I think  
20 that Altman II is just unduly and unusually punitive. I  
21 think that we can all agree that the state of the law prior  
22 to Altman I, there's a lot of cases, there's a DHCR  
23 regulation that was promulgated in 2000, renumbered in  
24 2014, that says, take the old rent, add the vacancy, add  
25 the individual apartment improvements. If it's over 2,000,



1 it's deregulated. If it's under 2,000, it's not  
2 deregulated.

3 All the landlord did in this particular case is  
4 follow the law. And in fact, we know that, because next to  
5 the deregulated lease, at page 50 of the record, we have a  
6 notice that was provided, pursuant to the statute, which  
7 says to the tenant, this is a deregulated lease, and it is  
8 deregulated because, and the landlord checked off the old  
9 rent was 1,829, and with the vacancy increase and any other  
10 allowable increases, the rent is now over 2,000 dollars,  
11 therefore it is deregulated. And the tenant, Mr. Altman,  
12 signed that at the bottom, received.

13 I don't think there's any question that the  
14 landlord's only crime here was following the law at the  
15 time. Thank you.

16 CHIEF JUDGE DIFIORE: Thank you.

17 Counsel?

18 MR. RADER: Thank you, Your Honor. And if it  
19 pleases the court, my name is Lawrence Rader, and I  
20 represent the respondent, Richard Altman.

21 Two unanimous panels of the Appellate Division  
22 were crystal clear in interpreting the statutory provision,  
23 which had not come before them before.

24 JUDGE STEIN: Well, what was the purpose of  
25 adding the second provision? What was - - - what was the



1 purpose?

2 MR. RADER: Pardon me, Your Honor?

3 JUDGE STEIN: What the purpose of adding the  
4 second clause to this - - - to this statute?

5 MR. RADER: It's an interesting question, Your  
6 Honor, but - - -

7 JUDGE STEIN: Well, there has to be a purpose,  
8 right?

9 MR. RADER: Both sides would and have conceded,  
10 as have the various briefs that have been submitted, that  
11 this statute has been put together through a variety of  
12 amendments and additions, and it does appear as though the  
13 second clause was inartfully added to the first clause.  
14 However - - -

15 JUDGE STEIN: But - - - but doesn't the  
16 legislative history indicate what the purpose was, so are  
17 you just saying that they didn't do what they intended to  
18 do?

19 MR. RADER: Not in this case. I'm not saying  
20 that at all, Your Honor.

21 JUDGE STEIN: So what - - - so what is your  
22 argument?

23 MR. RADER: What the second provision said is, in  
24 fact, consistent with the first provision in that it said,  
25 "Is or becomes vacant with a rent of 2,000 dollars." And



1           neither of those things happened here.

2                   JUDGE STEIN: But if it didn't change the first  
3 provision, what did it do?

4                   MR. RADER: It - - -

5                   JUDGE STEIN: And why - - - and what is - - - why  
6 does the legislative history tells us - - - tell us  
7 something different?

8                   MR. RADER: The interesting thing about the  
9 legislative history, as I have looked into it, is that this  
10 law was actually allowed to expire for a few minutes at  
11 midnight while the Democrats and Republicans fought it out  
12 over whether this would go in the way this is.

13                   Now, what you've got is the landlords hanging  
14 really their entire case on the Governor's memorandum. But  
15 the Governor lost that battle, and the legislature chose  
16 its language carefully. And if the word "or" is meant to  
17 suggest that it meant something different, then they easily  
18 could have said so. They - - - they negotiated with one  
19 another, as a legislature does, and they voted this statute  
20 into place, and even the second sentence supports Altman's  
21 position.

22                   What I find interesting about the landlord's  
23 position is that it ignores years of precedent from this  
24 court, including in cases which concern rent stabilization  
25 and deregulation, that if the landlords aren't happy, they



1 can go back to the legislature. There's a tremendous irony  
2 here in the landlord's counsel bringing up Roberts.

3 JUDGE RIVERA: But doesn't Jemrock support their  
4 position?

5 MR. RADER: Jemrock doesn't support their  
6 position - - -

7 JUDGE RIVERA: Why - - - why not?

8 MR. RADER: Because - - -

9 JUDGE RIVERA: Why not?

10 MR. RADER: Because like all of their cases, and  
11 again, Your Honor, most of their argument is the word "or"  
12 and the Governor's memorandum. All of their cases are  
13 about improvements and not - - - well, and improvements did  
14 not take place in this case. So as we say in our brief,  
15 the landlords are arguing many different things in many  
16 different cases, but the case before this court - - -

17 JUDGE RIVERA: But in general - - -

18 MR. RADER: - - - had no improvements.

19 JUDGE RIVERA: - - - I thought you already have  
20 the vacancy allowance being added?

21 MR. RADER: There was a vacancy allowance, but it  
22 didn't bring it over 2,000 dollars. So again - - -

23 JUDGE RIVERA: Right, and so then that was the  
24 point of Jemrock sending it back to see if, indeed, the  
25 improvements might bring it over 2,000.



1 MR. RADER: And the Appellate Division, when it  
2 got it back, said that it brings it over 2,000, but did not  
3 definitively determine that that would cause the statute to  
4 be read as the Appellate Division very clearly determined  
5 in Altman I.

6 JUDGE RIVERA: Would it have been over 2,000  
7 without the vacancy allowance?

8 MR. RADER: No, it - - - without the vacancy  
9 allowance?

10 JUDGE RIVERA: In Jemrock?

11 MR. RADER: I don't believe it would have been  
12 over 2,000 dollars without the vacancy or without the  
13 improvements.

14 JUDGE RIVERA: Then what would have been the  
15 point of the remand?

16 MR. RADER: The point of the remand was to  
17 consider all things considered, all things that were part  
18 of the record, including improvements, as is all of these  
19 cases, which the landlord points to - - - as are all of the  
20 cases, which the landlord points to, which, supposedly in  
21 the last few months represent the Appellate Division  
22 reversing itself, despite the fact that the Appellate  
23 Division never once says, today we reverse ourselves.  
24 They're all about improvements or different issues. One is  
25 about an apartment which had previously been rent



1 controlled - - -

2 JUDGE RIVERA: Is there any - - - any - - - any  
3 place in a statute or regulation or in a case law, that you  
4 can point me to that defines a vacancy as in the actual  
5 physical departure? No one is in physical possession of  
6 the apartment?

7 MR. RADER: Well, we cited the dictionary,  
8 because when something is vacant, it has nothing and nobody  
9 in it. And as Your Honor asked counsel, and I don't  
10 believe there was much of an answer, it appears clear that  
11 there is not a vacancy in these circumstances. Jazilek  
12 does, in fact, say exactly that.

13 JUDGE RIVERA: Well, it could be vacant because  
14 you don't have a lawful tenant in possession, right?

15 MR. RADER: There's no tenant in possession.

16 JUDGE RIVERA: I mean, I - - -

17 MR. RADER: The apartment has nobody in it.

18 JUDGE RIVERA: - - - I could be a lawful - - -  
19 correct. But I don't think you're arguing your client was  
20 a trespasser at the time they were in the apartment between  
21 the surrender date and the first day of the new lease,  
22 correct?

23 MR. RADER: No, my client - - -

24 JUDGE RIVERA: Okay.

25 MR. RADER: - - - was a subtenant.



1 JUDGE RIVERA: All right. So - - - but let's say  
2 I'm renting an apartment that happens to be regulated, a  
3 stabilized apartment, and I'm on vacation. You're not  
4 arguing that the apartment is vacant in the way you're  
5 arguing it here, simply because I'm on vacation; I'm not in  
6 physical possession, correct?

7 MR. RADER: No, it is not vacated.

8 JUDGE RIVERA: Right, I'm still a tenant. I  
9 still have rights over this apartment, correct? So the - -  
10 -

11 MR. RADER: On vacation? You - - - you vacated  
12 your apartment for a couple of weeks to go on vacation?

13 JUDGE RIVERA: Right, you - - -

14 MR. RADER: No - - -

15 JUDGE RIVERA: - - - you're not arguing that's  
16 vacating, that the apartment is vacant, right - - -

17 MR. RADER: I'm not arguing - - -

18 JUDGE RIVERA: - - - in that sense, right?

19 MR. RADER: I'm not arguing that, no.

20 JUDGE RIVERA: I've still got rights over  
21 possession and so forth, right?

22 MR. RADER: Nor am I arguing - - -

23 JUDGE RIVERA: Correct.

24 MR. RADER: - - - or would I argue - - -

25 JUDGE RIVERA: Correct.



1 MR. RADER: - - - or I think would - - -

2 JUDGE RIVERA: Correct.

3 MR. RADER: - - - even the landlord argue - - -

4 JUDGE RIVERA: So when the prime tenant here - -

5 -

6 MR. RADER: - - - that that would create a - - -

7 JUDGE RIVERA: Yes, so when the prime tenant here  
8 is properly still in tenancy, but then surrenders the  
9 tenancy, isn't the landlord the one who has rights of this  
10 physical possession?

11 MR. RADER: Not in this case, because they were  
12 done simultaneously, and not in the Jazilek case, and no, I  
13 don't believe that's the case.

14 JUDGE RIVERA: But - - - but doesn't the new  
15 lease start the next day or am I wrong?

16 MR. RADER: No, I think it starts - - - it's

17 JUDGE RIVERA: Is there overlap? Do they start  
18 at the exact same day?

19 MR. RADER: I think they started simultaneously.

20 JUDGE RIVERA: They're both tenants the same day.

21 MR. RADER: They drew an agreement that said one  
22 surrenders and one gets a lease. But Your Honor, I would  
23 also point out that vacancy is not the only threshold, by  
24 which Altman I is correct. Clearly there is the issue of  
25 whether they were entitled to the increase and to use that

1 increase in order to deregulate the apartment.

2 So while we argue vacancy and I think it's an  
3 interesting semantic point, whether that word kicks in at  
4 the moment that somebody moves out, or instead at the  
5 moment that a lease changes hands, the court can very  
6 easily find, as the Appellate Division did, that the - - -

7 JUDGE FAHEY: Vacancy - - -

8 MR. RADER: - - - 2,000-dollar threshold is still  
9 not met.

10 JUDGE FAHEY: All right. Let - - - let's go back  
11 a second, because I was pushing counsel on Roberts, and,  
12 you know, he made some good points, and that - - - that it  
13 supported the defendant's position, and the language that -  
14 - - that I quoted to him talked about the - - - the tenant  
15 - - - or - - - your "or" - - - "the tenant vacates the  
16 apartment and - - - and the legal rent plus vacancy  
17 increases and increases permitted the landlords is 2,000  
18 dollars or more."

19 Here, the vacancy rent increase, if applied,  
20 would take you over the 2,000-dollar threshold, right?  
21 Yes?

22 MR. RADER: Yes.

23 JUDGE FAHEY: Yeah, yeah, okay. So that being  
24 the case, and this being the language in Roberts that  
25 they're relying on, why is that incorrect? Why doesn't it



1 apply here? What am I missing?

2 MR. RADER: Roberts did not say that that would  
3 therefore entitle the landlord to deregulation. Roberts  
4 sent the case back with respect to a novel situation with  
5 J-51, followed by a massive improvement project.

6 JUDGE FAHEY: No, I - - - I understand it was - -  
7 - it was a J-51 case, but - - - and we're not talking about  
8 that particular issue. But it - - - it did talk about the  
9 scope of the RSL and whether the legal regulate rent - - -  
10 legally regulated rent is 2,000 dollars or more and how you  
11 get there. And it - - - and it was really the first time  
12 the Court of Appeals thoroughly analyzed it, so it's  
13 important to us.

14 MR. RADER: And I think the court got it right  
15 that it would kick it over the 2,000 dollars, but I still  
16 believe that only the next tenant after the tenant who  
17 kicked it over 2,000 dollars, would be the one to get a  
18 destabilized lease. And that was cleared up in Altman I,  
19 and I believe this court is, in affirming Altman I, would  
20 not be doing anything inconsistent with Roberts.

21 JUDGE FEINMAN: So - - - so what do you do with  
22 the Park case that came after in the Appellate Division?

23 MR. RADER: Well, Park's an interesting case,  
24 Your Honor. First of all, it involved a rent-controlled  
25 lease which converted into a rent-stabilized lease, so it



1 had a different standard for increases. It also was an  
2 apartment occupied by a famous actress, who was - - -

3 JUDGE FEINMAN: I'm familiar with the facts. I -  
4 - -

5 MR. RADER: What's interesting about that is that  
6 we frequently hear about rent-controlled tenants who are  
7 the least people in the world who should have rent-  
8 controlled apartments. This, I believe, six-bedroom,  
9 eight-bathroom apartment, which by any measure, qualifies  
10 as luxury - - - as a luxury apartment, is what the  
11 legislature intended, I believe, when the legislature  
12 passed laws to protect tenants.

13 But every other apartment, which we cite, or  
14 virtually every other apartment which we cite, goes to an  
15 entirely different thing, which is that this statute  
16 protects affordable housing and tenants. And a 2,000-  
17 dollar apartment in the City of New York, or today a 2,700-  
18 dollar apartment in the City of New York, is by no means a  
19 luxury apartment, and as has been argued in the various  
20 briefs, pe - - - gentrification and removal from  
21 neighborhoods of people's housing is what's affecting - - -

22 JUDGE FEINMAN: But I want to get to the - - -

23 MR. RADER: One other thing, Your Honor, on - - -

24 JUDGE FEINMAN: - - - the specific language in  
25 Park, which I - - - I think seems to imply that, if you put



1           aside the, you know, vacancy, the post-vacancy  
2           improvements, that it still would have been entitled to an  
3           increase because of the vacancy allowance.

4                       MR. RADER:  And I don't believe Park says that,  
5           Your Honor.  I think it very specifically speaks to the  
6           improvements, which were massive improvements, which turned  
7           it into an incredibly luxury-styled apartment.

8                       JUDGE FEINMAN:  Well, "The 2005 vacancy allowance  
9           alone brought the rent for the apartment to 2,322.72, an  
10          amount that was over the threshold."

11                      MR. RADER:  Which is true, but that does not  
12          again state whether they could have destabilized on the  
13          basis of that.  Just as Mr. Altman's apartment with twenty  
14          percent added brought it above 2,000 dollars.  This is the  
15          issue which the Appellate Division decided and which is  
16          before this court.  The improvements in Park changed things  
17          quite a bit, and they are clearly provided for in the  
18          decision.  But I would still ask this court to consider why  
19          would the Appellate Division overturn its own decision  
20          without ever mentioning it?

21                      CHIEF JUDGE DIFIORE:  Thank you, Counsel.

22                      MR. RADER:  Thank you, Your Honor.

23                      CHIEF JUDGE DIFIORE:  Counsel?

24                      MR. TURKEL:  I'll waive rebuttal unless the court  
25          has any questions certainly.



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CHIEF JUDGE DIFIORE: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of Richard Altman v. 285 West Fourth LLC, No. 44 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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