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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF RAM I LLC,

Appellant,

-against-

No. 202

NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,

Respondent.

20 Eagle Street
Albany, New York 12207
November 18, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM (By Video)
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY

Appearances:

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Karen Schiffmiller
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: The last case, RAM -
2 - - RAM I LLC v. New York State Division of Housing
3 and Community Renewal.

4 Counsel, do you want any rebuttal time?

5 MR. BERNFELD: Yes, Your Honor. Two
6 minutes, please.

7 CHIEF JUDGE LIPPMAN: Two minutes for
8 rebuttal, you're on. Go ahead.

9 MR. BERNFELD: May it please the court,
10 Lawrence Bernfeld and Peter Schwartz of Graubard
11 Miller. We are counsel for appellant-petitioner RAM
12 I LLC. If it may - - -

13 CHIEF JUDGE LIPPMAN: Counsel, how does
14 Roberts-Tishman fit into this case? And is - - - is
15 it dispositive of your arguments?

16 MR. BERNFELD: Not at all, Your Honor.

17 CHIEF JUDGE LIPPMAN: Why not?

18 MR. BERNFELD: Roberts dealt with a rent-
19 stabilized apartment. It dealt with a situation
20 during the pendency of J-51 benefits. It did not
21 answer any of the following questions: What happens
22 when J-51 benefits expire? What happens when an
23 apartment is located in a cooperative or a
24 condominium as a result of General Business Law eeee
25 and the J-51 law? And for those reasons, we

1 respectfully submit Roberts is a starting point, not
2 an end point.

3 JUDGE STEIN: What - - - what - - - why is
4 there a difference between rent-controlled and rent-
5 stabilized apartments for - - - for the purposes of
6 this action?

7 MR. BERNFELD: Local Law 60 of 1975
8 eliminated what I would respectfully submit is a
9 jurisdictional predicate that would subject rent-
10 controlled apartments to a rent-control for a second
11 time upon receipt of J-51 benefits. Indeed, Local
12 Law 60 of 1975 - - -

13 CHIEF JUDGE LIPPMAN: Isn't there a quid
14 pro quo when you get J-51 benefits? What's - - -
15 what's the - - - what happens when you get it?
16 What's the corresponding obligation that you have?

17 MR. BERNFELD: When you receive J-51
18 benefits, an apartment - - -

19 CHIEF JUDGE LIPPMAN: Is there a quid pro
20 quo?

21 MR. BERNFELD: I don't know that I would
22 call it a quid pro quo, there is - - -

23 CHIEF JUDGE LIPPMAN: But - - - okay. So
24 what's the effect of - - -

25 MR. BERNFELD: There is - - - there is a

1 condition of eligibility.

2 CHIEF JUDGE LIPPMAN: Go ahead.

3 MR. BERNFELD: The condition of eligibility
4 is that the apartment is subject to one of five forms
5 of reg - - - regulation, two of which are rent-
6 stabilization or rent-control. Both the Appellate
7 Division and DHCR confuses a condition of eligibility
8 with a jurisdictional predicate. 26-504, the Rent
9 Stabilization Law, has a jurisdictional predicate
10 requiring an apartment to be subject to rent
11 stabilization for a second time. The Rent Control
12 Law eliminated that jurisdictional predicate in 1975.

13 I'd also like, at this point, to reflect on
14 the question of fairness that was mentioned a few
15 minutes ago.

16 CHIEF JUDGE LIPPMAN: Wait, but let's talk
17 about fairness.

18 MR. BERNFELD: Yes.

19 CHIEF JUDGE LIPPMAN: Rent control and rent
20 stabilization really deals with two different
21 populations, right?

22 MR. BERNFELD: Not really, Your Honor.

23 CHIEF JUDGE LIPPMAN: No? They're the same
24 - - - in terms of the purpose of it?

25 MR. BERNFELD: Yes, Your Honor. Rent

1 control may be a little bit more restrictive in
2 certain regards, but rent control has been around for
3 a very, very long time. This apartment was made rent
4 controlled in the 1950s. The population of rent-
5 controlled apartments has not materially advanced in
6 age, even though the rent-control population
7 ostensibly has increased in age.

8 CHIEF JUDGE LIPPMAN: Supposedly they age
9 out and - - -

10 MR. BERNFELD: No, not because they age
11 out, because these are legacy apartments. And in a
12 six-room apartment in Southgate, which is what we're
13 dealing with here - - -

14 CHIEF JUDGE LIPPMAN: So your argument is
15 perpetually they stay in rent-control?

16 MR. BERNFELD: They can, as long as a
17 legacy tenant - - - a child, a grandchild - - - lives
18 for an appropriate period of time in the apartment.
19 Functionally, therefore, there's not a material
20 difference between a wealthy rent-control tenant and
21 wealthy rent-stabilized tenant. In both of those
22 situations, they should, under the public policy that
23 the legislature implemented with the 1993 Rent Reform
24 Act - - -

25 CHIEF JUDGE LIPPMAN: There's no difference

1 in public policy between rent control and rent
2 stabilization?

3 MR. BERNFELD: For purposes of the 1993
4 Act, there's no difference. The 1993 Act was a
5 unified act that put rent - - - that - - - excuse me
6 - - - the 1993 Rent Regulation Reform Act was a
7 unified act that created high-rent, high-income,
8 luxury deregulation. They distributed that language
9 into two statutes, the Rent Control Law and the Rent
10 Stabilization Law.

11 When they did that, the magic language is
12 the word "this". They said when - - - that something
13 can become a rent-controlled or rent-stabilized
14 apartment under "this" statute when benefits are
15 received pursuant to RPTL 489. Something that DHCR
16 has overlooked, and frankly the Appellate Division
17 overlooked it as well, is what happened in 1985.

18 In 1985, the rent - - - Real Property Tax
19 Law changed to prevent what they thought was going to
20 be a housing emergency, when many tenants were about
21 to lose rent stabilization without notice. What they
22 did is they said, from June 18, 1985 forward - - -
23 and this had nothing to do with income; this had to
24 do with deregulation - - - from 1985 forward, there
25 will be no more automatic deregulation of apartments

1 upon receipt of J-51 benefits. What happened here is
2 that the benefits were not received until 1993.

3 Another thing DHCR and the Appellate
4 Division overlooked is the interaction between 26-
5 504(c) and 26-504.1. My adversary has conflated
6 those two provisions. He'd like to say that they
7 became - - - they be - - - the became language and
8 the continuation language has something to do
9 directly with high-rent, high-income deregulation.
10 It doesn't. That language was in place in 1985,
11 eight years prior.

12 CHIEF JUDGE LIPPMAN: So what happens when
13 the benefits expire?

14 MR. BERNFELD: When the ben - - -

15 CHIEF JUDGE LIPPMAN: In this particular
16 case?

17 MR. BERNFELD: In this particular case,
18 when the benefits expire, because there is no
19 possibility of rent control being imposed - - - since
20 Local Law 60 of 1975 - - - for a second time, when
21 benefits expire, the apartment can be subject, under
22 the 1993 Act, to high-rent, high-income deregulation.

23 CHIEF JUDGE LIPPMAN: And what did - - -
24 what did - - - what does Roberts-Tishman tells us
25 about what you're saying?

1 MR. BERNFELD: Roberts-Tishman doesn't tell
2 us anything about what happens afterwards. It tells
3 us what happens during. Roberts-Tishman said that
4 during the pendency of J-51 benefits, there shall not
5 be luxury deregulation.

6 JUDGE RIVERA: What about vacancy - - -

7 JUDGE FAHEY: Can I ask is there - - -

8 JUDGE RIVERA: What about vacancy
9 deregulation?

10 MR. BERNFELD: Which one should I answer?

11 JUDGE RIVERA: Sorry. What about vacancy
12 dereg - - -

13 CHIEF JUDGE LIPPMAN: Judge Rivera, first,
14 and then - - -

15 MR. BERNFELD: Okay, Judge Rivera, what - -
16 -

17 CHIEF JUDGE LIPPMAN: - - - Judge Fahey
18 next.

19 MR. BERNFELD: What's the question?

20 JUDGE RIVERA: How about vacancy de - - -
21 deregs?

22 MR. BERNFELD: I'm sorry. Say it again,
23 please?

24 JUDGE RIVERA: What about vacancy
25 deregulation? It has no application in this case at

1 all?

2 MR. BERNFELD: Vacancy deregulation does
3 not come about on our facts. On our facts, we're
4 dealing with an apartment that was occupied, that the
5 tenant received more than 175,000 dollars per year in
6 income two consecutive years, and where the apartment
7 rent was in excess of 2,000 dollars per - - - per
8 month. By the way, that has ratcheted up under the
9 statutes, but that still is the law.

10 CHIEF JUDGE LIPPMAN: Okay, Judge Fahey?

11 MR. BERNFELD: Fahey - - -

12 JUDGE FAHEY: I'm just - - -

13 MR. BERNFELD: Judge Fahey?

14 JUDGE FAHEY: I'm just wondering, is - - -
15 is the original petitioner, Berk, she - - - she was
16 settled out by stipulation?

17 MR. BERNFELD: The original petition in
18 Berk was settled out with the tenant, but not with
19 DHCR.

20 JUDGE FAHEY: So - - - so - - -

21 JUDGE STEIN: So did she actually move?

22 JUDGE FAHEY: - - - so isn't it then moot?

23 MR. BERNFELD: No, Your Honor, it is not
24 moot.

25 JUDGE FAHEY: Okay, why - - - why is that?

1 MR. BERNFELD: Well, it's not moot for
2 several reasons. First, DHCR, in opposing a mootness
3 argument that a predecessor raised - - - a
4 predecessor counsel raised, pointed out numerous
5 cases, which I - - - upon reflection, I've - - - I've
6 agreed with, that says that they have a stake as the
7 enforcer of legislation to clarify matters. Secondly
8 - - -

9 JUDGE FAHEY: But that would be asking us
10 for an advisory opinion, so - - -

11 MR. BERNFELD: No, it's more than an
12 advisory opinion - - -

13 JUDGE FAHEY: Okay.

14 MR. BERNFELD: - - - Your Honor.
15 Littlefield 1 is a key case that came down on April
16 27th, 2015. In Littlefield 1, the agency itself
17 acknowledged that in a co-op apartment, the rent-
18 regulation rules do not preclude luxury deregulation
19 once J-51 benefits expire.

20 Only after that case came down, and we cite
21 it in our reply brief, did DHCR come up with
22 Littlefield 2. They went to - - - I'm guessing they
23 went to the - - - to the commissioner. The
24 commissioner wrote something of a mea culpa. He
25 said, I made an error in law. Why? Not because any

1 of my reasoning is wrong, but because the statute - -
2 - excuse me - - - not because my reasoning is wrong,
3 but because I'm bound by the Appellate Division
4 decision.

5 Therefore, once that Appellate Division
6 decision is reversed, if indeed it is reversed, all
7 of the reasoning, and I urge you to read that six-
8 page decision of the commissioner, comes into play.
9 So we respectfully submit that if you don't decide
10 this now, there are already four Article 78
11 proceedings on the same facts - - -

12 CHIEF JUDGE LIPPMAN: Okay.

13 MR. BERNFELD: - - - that are going to come
14 right back up to you.

15 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
16 you.

17 Counsel?

18 You'll have your rebuttal time, counsel.

19 Counsel?

20 MR. SCHNEIDER: Thank you, Your Honor.

21 Good afternoon, my name is Martin Schneider for the
22 New York State Division of Housing and Community
23 Renewal.

24 CHIEF JUDGE LIPPMAN: Let me ask you the
25 same question. How does Roberts-Tishman affect any

1 of this?

2 MR. SCHNEIDER: Affect what, Your Honor?

3 CHIEF JUDGE LIPPMAN: Affect any of this
4 case that we have before us?

5 MR. SCHNEIDER: Well, in Roberts, it was -
6 - - it was determined that the legislature intended
7 that - - - legis - - - that the legislature intended
8 to preclude the apartments located in buildings
9 receiving J-51 benefits from - - - from being
10 deregulated under the luxury decontrol deregulations.

11 CHIEF JUDGE LIPPMAN: Is there a quid pro
12 quo when you get J-51 benefits?

13 MR. SCHNEIDER: There's absolutely a quid
14 pro quo.

15 CHIEF JUDGE LIPPMAN: What's the quid pro
16 quo?

17 MR. SCHNEIDER: The quid pro quo is that
18 under RPTL 489, and the J-51 Law and the J-51
19 regulations, the rent regulations, rent control in
20 this case, was extended to this apartment for a
21 second time. This is not a case of first time - - -

22 JUDGE STEIN: Well, Tishman referred to
23 rent-stabilized apartments.

24 MR. SCHNEIDER: No, with this - - - this is
25 a case of rent control.

1 JUDGE STEIN: Yeah, this - - - this case is
2 a rent control.

3 MR. SCHNEIDER: And the - - - those - - -
4 the 489, J-51 and the regulations, when this building
5 took J-51 money, the apartment was rent controlled
6 for a second time.

7 JUDGE STEIN: Well, how could that be?
8 Because there - - - there was no - - - any reg - - -
9 regulated apartments became subject to rent
10 stabilization - - -

11 MR. SCHNEIDER: That - - - no that - - -

12 JUDGE STEIN: - - - at that time.

13 MR. SCHNEIDER: - - - law applies to first
14 time regulation. First time re - - - rent control
15 regulation is not an issue in this case, and nobody
16 is advocating that anybody is going to be first time
17 rent controlled.

18 JUDGE STEIN: But - - - but this - - - but
19 this - - -

20 MR. SCHNEIDER: But without - - - without
21 second time rent co - - -

22 JUDGE RIVERA: It's the prior status of
23 this apartment that you're focused on.

24 MR. SCHNEIDER: The status of this
25 apartment was always rent controlled. It's been rent

1 controlled at least - - -

2 JUDGE STEIN: The question is - - -

3 MR. SCHNEIDER: - - - since the 1950's.

4 JUDGE STEIN: - - - how then did it become
5 rent controlled the second time?

6 MR. SCHNEIDER: By taking - - -

7 JUDGE RIVERA: Wait.

8 MR. SCHNEIDER: - - - J-51 money. By - - -
9 by the building accepting J-51 tax benefits.

10 CHIEF JUDGE LIPPMAN: So it doesn't matter
11 whether it's the first time, the second - - - it's
12 only because of J-51?

13 MR. SCHNEIDER: It doesn't - - - we don't
14 have to deal with first-time regulation. Nobody's
15 going to be first time rent controlled anymore. This
16 is a - - - the - - - the purpose of - - - of the tax
17 laws was to confer second time regulations. It says
18 expressly in the city regulations. And the Appellate
19 Division in Roberts also said expressly that the city
20 regulation confers rent regulation upon the
21 recipients of - - -

22 CHIEF JUDGE LIPPMAN: Does it - - -

23 MR. SCHNEIDER: - - - of J-51 tax benefits.

24 CHIEF JUDGE LIPPMAN: Does it matter
25 whether it's rent stabilization or rent control in

1 this context?

2 MR. SCHNEIDER: It does matter, Your Honor,
3 because the - - - it matters with regard to the
4 expiration of the benefit. The first part of our
5 case is that the second regulation or second layer of
6 rent control was applied to this case through the tax
7 law.

8 The second part of our case is when does
9 that regulation ex - - - when does that prohibition
10 on the luxury deregulation remedy - - - when does
11 that prohibition expire? Our argument is that it
12 expires when the vacancy decontrol law would
13 otherwise decontrol this build - - - this apartment.

14 There is no ex - - - there is no - - -
15 appellant has cited no language in the statute
16 whatsoever that identifies any date when this
17 prohibition on luxury deregulation would expire,
18 short of the vacancy decontrol law.

19 JUDGE STEIN: But that - - - that
20 conclusion depends, though, on your first theory that
21 it was - - - became rent controlled for a second
22 time, doesn't it?

23 MR. SCHNEIDER: If it did not become rent
24 controlled for a second time, then this - - - then
25 Roberts would be contravened. The rent - - - the

1 rent control - - -

2 JUDGE STEIN: But Roberts doesn't talk
3 about rent control?

4 MR. SCHNEIDER: No, but it does talk about
5 that you can't - - - you can't be accepting J-51
6 benefits and - - - and be deregulating the tenant at
7 the same time. And that is exactly what will happen
8 if there's no second control.

9 JUDGE STEIN: But what if you were already
10 rent controlled? You weren't deregulating the tenant
11 at the same time while you were receiving J-51
12 benefits.

13 MR. SCHNEIDER: But that's what will happen
14 in other cases, Your Honor. If there's no second reg
15 - - - if there's no second regulation in this case,
16 it - - - in a rent controlled case, then how will the
17 prohibition against luxury deregulation attach?

18 CHIEF JUDGE LIPPMAN: So - - -

19 JUDGE RIVERA: Is your - - - is your point
20 - - -

21 CHIEF JUDGE LIPPMAN: Go ahead.

22 JUDGE RIVERA: I'm sorry. Is your point
23 that the - - - that second regulation has to be the
24 same regulation that the apartment was subject to?
25 It can't be some other kind of regulation?

1 MR. SCHNEIDER: I - - -

2 JUDGE RIVERA: Because this was rent
3 controlled, the - - -

4 MR. SCHNEIDER: In this - - -

5 JUDGE RIVERA: - - - second regulation is
6 rent controlled?

7 MR. SCHNEIDER: In this case, we're only
8 dealing with the rent-control apartment. There is no
9 other type of regulation that can possibly legally
10 apply to this apartment. And so the taking of - - -
11 of J-51 tax benefits would confer a second
12 regulation.

13 CHIEF JUDGE LIPPMAN: So - - - so Roberts
14 controls whether it's rent stabilization or rent
15 control, because there's a quid pro quo - - -

16 MR. SCHNEIDER: Yes, Your Honor, because -
17 - -

18 CHIEF JUDGE LIPPMAN: - - - when you take
19 the J-51 tax benefits?

20 MR. SCHNEIDER: And without - - -

21 CHIEF JUDGE LIPPMAN: Is that the nut - - -

22 MR. SCHNEIDER: That was the quid pro quo
23 and the appellant conceded that on page 206 of the
24 record on appeal.

25 And what's more, if there is no second

1 regulation, then how will the luxury decontrol
2 prohibition attach to a rent-controlled apartment
3 when J-51 benefits are conferred? You - - - you
4 would have situations where the rent controlled
5 tenants will be served with decontrol petitions and
6 they will be unprotected.

7 And so for - - - that situation would
8 contravene Roberts and you would have two different
9 universes which I do not believe that was the
10 legislature's intent when it passed the regulation
11 format.

12 CHIEF JUDGE LIPPMAN: There are - - - there
13 are two different populations, though, right?

14 MR. SCHNEIDER: They are different
15 populations; let me address that for a moment. I
16 cited in my brief the 2011 Vacancy - - - Housing
17 Vacancy Survey, which showed there were 38,000 - - -

18 JUDGE STEIN: Yeah, but we're talking about
19 legacy - - -

20 MR. SCHNEIDER: I'm getting to the legacy -
21 - -

22 JUDGE STEIN: - - - tenants here too,
23 right?

24 MR. SCHNEIDER: This - - - this - - -

25 JUDGE STEIN: I mean, you just can't talk

1 the age of the tenants.

2 MR. SCHNEIDER: I will - - - I will - - - I
3 will demonstrate that the - - - the legacy is
4 disappearing. The 2011 Vacancy Survey showed - - -
5 showed - - -

6 JUDGE STEIN: Well, the number of rent
7 control apartment are dis - - - is - - - is
8 dwindling, no matter what you think - - -

9 MR. SCHNEIDER: In 2011, there were 38,000.
10 This court can take judicial notice of the 2014
11 report which showed that within three years, that had
12 reduced to 28,000. Twenty-five percent of the rent-
13 controlled apartments in the city disappeared within
14 three years. And they are - - - one would see
15 rapidly dwindling to - - - to a low ebb.

16 JUDGE STEIN: Speaking of - - - of vacancy
17 of those, is - - - did this tenant actually move out?
18 Do we - - - do we know?

19 MR. SCHNEIDER: I do not know whether the
20 tenant is still in residence. I - - -

21 JUDGE STEIN: Is that relevant to our
22 mootness issue?

23 MR. SCHNEIDER: I don't believe that the
24 mootness issue should be found, because the - - -
25 when the Appellate Division case began, we put an

1 embargo on the issuance of any rent control orders
2 and now we have hundreds of them piled up, waiting
3 for the decision of this court.

4 JUDGE STEIN: But - - - well, why would
5 they evade review? Why wouldn't a real controversy
6 and issue come before us, rather than us giving an
7 advisory opinion?

8 MR. SCHNEIDER: I don't believe it's an
9 advisory opinion. I don't know whether the tenant is
10 still in oc - - - in residence or not, and the people
11 of the city, landlords and tenants, deserve to know
12 what their status is.

13 JUDGE RIVERA: Is there an exception to
14 mootness? Is it an exception to the mootness
15 doctrine?

16 MR. SCHNEIDER: I believe it's conceded by
17 the appellant that it's not moot. They withdrew
18 their motion to dismiss our appeal in the Appellate
19 Division for mootness. And the Appellate Division
20 did not find it to be moot, and I would hope that
21 this court would affirm Appellate Division decision
22 in all respects.

23 CHIEF JUDGE LIPPMAN: Okay, counselor.
24 Anything else, counselor?

25 MR. SCHNEIDER: I'd like to address the

1 significance of the 1985 law and the - - - and the
2 1985 law's effective date. I would postulate that
3 that's a red herring. I don't see how the 1985 law,
4 which appellant had just conceded was there to
5 protect tenants who did not get noticed that they
6 were going to be deregulated by operation of law,
7 having nothing to do with luxury deregulation, how
8 does the fact that the - - - that the statute
9 protected them by first vacancy regulation, how does
10 that affect luxury regulation?

11 There's no - - - there's no nexus there.
12 We have luxury deregulation and we have a prohibition
13 against application of luxury deregulation. That is
14 not affected by a first vacancy remedy that was
15 extended to tenants who didn't get due process notice
16 in 1985 that they might be automatically deregulated
17 without an application. So - - -

18 JUDGE STEIN: Rent-control tenants don't
19 have leases, do they?

20 MR. SCHNEIDER: Some do. Generally they
21 don't. Generally they don't have leases.

22 JUDGE RIVERA: Does it matter that it's a
23 co-op or condo?

24 MR. SCHNEIDER: I will address the co-op
25 argument - - -

1 JUDGE RIVERA: Your - - - your light is red
2 so you have to get to that - - -

3 MR. SCHNEIDER: Okay.

4 JUDGE RIVERA: - - - quickly.

5 MR. SCHNEIDER: The - - - this is entirely
6 a specious argument because in the city regulation
7 that exempted cooperatively-owned units, it says
8 expressly that - - - that - - - which - - - co-ops
9 and condos which are not regulated pursuant to any
10 such laws, and shall not be required to be subject to
11 rent regulation. "Not regulated pursuant to any such
12 laws" is referring to the rent regulation laws.

13 To find that this nonpurchasing rent-
14 controlled tenant in this co-op is going to lose the
15 protection of the - - - of the luxury decontrol
16 prohibition would go against 352 eeee and the - - -

17 CHIEF JUDGE LIPPMAN: Okay, counsel.

18 MR. SCHNEIDER: - - - in the - - - in the
19 appellant's - - - Appellate Division brief, they
20 conceded that.

21 CHIEF JUDGE LIPPMAN: Thank you, counsel.

22 Okay, rebuttal.

23 MR. BERNFELD: All right. 1985 law,
24 misconstrued. What we said, we rely on our brief.
25 If this were to be deemed to be moot before this

1 court, then the Appellate Division decision,
2 similarly, would have to be moot, and I respectfully
3 submit you would have to reimpose the IAS court
4 order, and you'd be burdening this court with
5 enumerable appeals; we'll be right back up here.
6 Thirdly - - -

7 JUDGE STEIN: Well, can you just answer - -
8 - do you know if the tenant has moved out or not?

9 MR. BERNFELD: The tenant - - - the tenant,
10 I believe, has moved out, but did not move out until,
11 you know, fairly recently. But - - -

12 JUDGE STEIN: But the stipulation has been
13 complied with here.

14 MR. BERNFELD: The stipulation's been
15 complied with.

16 Third, only wealthy tenants are affected
17 here. We're not dealing with a general population of
18 impoverished people. People have to make - - - now,
19 it's even more, but back then in 2006 and 2007, it
20 was 175,000 a year. It's now up to 250,000 a year.

21 Next, if a rent controlled tenant were to
22 be deregulated during the pendency of J-51 benefits,
23 the benefits themselves would be at risk. So there's
24 no way that a landlord in a rent-controlled building,
25 or a building that has rent controlled or rent-

1 stabilized tenants is going to seek to do something
2 that's going to jeopardize the entire benefit
3 structure.

4 No law makes an apartment - - - a rent
5 controlled apartment upon receipt of J-51 benefits;
6 not the rent control law, not the J-51 law, not the
7 RPTL. In the legislative history, Senator Kemp
8 Hannon, who sponsored the legislation, responded to
9 Senator Olga Mendez, who said, what happens when J-51
10 ends? And Senator Hannon in an uncontradicted piece
11 of legislative history, said, at that time, the
12 luxury decontrol goes back into effect.

13 JUDGE STEIN: What about the - - - the
14 status as a - - - as a cooperative? How - - - what -
15 - -

16 MR. BERNFELD: The sta - - -

17 JUDGE STEIN: - - - why is that relevant?

18 MR. BERNFELD: The status of a cooperative
19 is particular relevant because 352 eeee says, you
20 shall not abrogate the rights of owners or the rights
21 of tenants at the time that the building seeks J-51
22 benefits. You don't include the J-51 benefits. You
23 look prior.

24 Prior to that time, luxury deregulation was
25 available, and there's a good reason for it. Because

1 in a co-op, we have a client here that owned a very
2 small number of shares in a 500-unit co-op. He
3 didn't receive, as the Appellate Division said, 8,000
4 dollars worth of benefits. He received thirty-five
5 dollars a year that he never saw it for ten years.
6 Since an owner has no ability to seek J-51 benefits
7 in a cooperative, an owner of an individual unit, he
8 shouldn't be penalized for the fact that the co-op
9 seeks it.

10 CHIEF JUDGE LIPPMAN: Okay, counsel.

11 MR. BERNFELD: Thank you.

12 CHIEF JUDGE LIPPMAN: Thank you. Thank you
13 both. Appreciate it.


14 (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 Matter of RAM I LLC v. New York State Division of Housing and Community Renewal, No. 202, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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Date: November 25, 2015