

**Matter of 250 Mercer Apts., LLC v New York
State Div. of Hous. & Community Renewal**

2008 NY Slip Op 31653(U)

June 13, 2008

Supreme Court, New York County

Docket Number: 0116609/2007

Judge: Jane S. Solomon

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PRESENT: JANE S. SOLOMON
Justice

PART 85

Index Number : 116609/2007
250 MERCER APARTMENTS LLC
vs.
N.Y.S.D.H.C.R
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 4/7/08
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

This motion to/for _____

PAPERS NUMBERED

1-3
4-5
6

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered ^{and adjudge} that this ~~motion~~ petition is decided
in accordance with the annexed memorandum
decision order and judgment.

FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representatives must
appear in person at the Judgment Clerk's Desk (Room
1-979).

Dated: 6/18/08

J.S.
JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55

Matter of the Application of
250 MERCER APARTMENTS, LLC,

INDEX No. 116609/07

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

ORDER and JUDGMENT

NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,

Respondent,

NOTICE OF ENTRY
The date of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1240).

JANE S. SOLOMON, J:

Petitioner 250 Mercer Apartments LLC (Mercer) brings this Article 78 proceeding to annul an October 18, 2007 order by the Deputy Commissioner of respondent New York State Division of Housing and Community Renewal (DHCR) denying Mercer's petition for administrative review (PAR) of a June 6, 2007 order by the DHCR Rent Administrator, which denied Mercer's Petition for High Income Deregulation (Petition). Pursuant to the Rent Regulation Reform Act of 1997 (RRRA), generally, a rent-stabilized apartment becomes exempt from rent regulation at such time that the legal rent on the apartment exceeds \$2,000 per month and the occupants of the apartment (other than subtenants and employees of the tenants) have a total annual income in excess of \$175,000 for two consecutive years. When the legal rent reaches the \$2,000 threshold, the landlord may serve upon the tenants of such apartment a form on which they must disclose whether their

aggregate income in each of the two preceding years meets the \$175,000 threshold. If the tenants fail to fill out the form, the landlord may file a Petition for High Income Rent Deregulation, which, in substance, is a request that DHCR verify the tenants' income. See Rent Stabilization Law (RSL), McKinney's Uncons Laws of NY § 26-504.3. In its Petition, Mercer claimed that the legal rent on apartment C314 (Apartment) in the building located at 250 Mercer Street in Manhattan (Building) exceeded \$2,000 per month.

The Rent Administrator denied the Petition on the ground that the Apartment became subject to the RSL by virtue of receipt of tax benefits under the J-51 program, Administrative Code of City of NY § 11-243 (formerly J51-2.5), and that, therefore, pursuant to RSL 26-504.1, the RRRA is not applicable to it. The Deputy Commissioner denied petitioner's PAR on the ground that, pursuant to the Rent Stabilization Code (RSC), McKinney's Uncons Laws of NY § 2520.11 (s), apartments which, like the Apartment, became subject to the RSL solely by virtue of receipt of J-51 tax benefits are not eligible for high income decontrol, even after such benefits have expired.

It is undisputed that the Apartment became subject to rent regulation solely because the Building received J-51 tax benefits; that those benefits expired as of June 30, 1996; and that, prior to June 30, 1996, the tenant of the Apartment did not receive a lease rider notifying him of that expiration date.

RSC 2520.11 (s) (2) provides that exemption from rent

[*4]

regulation, pursuant to the RRRRA, is inapplicable to housing accommodations that, like the Apartment, "became or become subject to the RSL and this Code ... solely by virtue of the receipt of tax benefits pursuant to ... section 11-243 (formerly J51-2.5) ... of the Administrative Code of the City of New York" RSL § 26-504 (c) provides that the RSL applies to dwelling units in a building receiving section 11-243 benefits, and that, upon the expiration of such benefits,

any such dwelling unit shall be subject to this chapter until the occurrence of the first vacancy of such unit after such benefits are no longer being received or if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefit period has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of such tax benefit period

It is undisputed that the tenant of the Apartment was the tenant in residence at the time that the Building's J-51 tax benefit period expired, and that he was not given the statutorily required lease rider. RSL § 26-504 (c) contains no exception for high income decontrol. Accordingly, pursuant to RSL § 26-504 (c), the Apartment is now rent stabilized, and it will remain so until the current tenant vacates it. See Matter of Lomagno v Division of Hous. and Community Renewal, 38 AD3d 897 (2d Dept 2007); East W. Renovating Co. v New York State Div. of Hous. and Community Renewal, 16 AD3d 166 (1st Dept 2005).

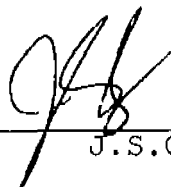
Petitioner contends that, in a different matter that came before it (Matter of Samuel & Marilyn Grosfeld, docket no.

JJ410148RT, issued June 20, 1996), DHCR found that an apartment that became rent stabilized solely by virtue of receiving a tax benefit, pursuant to Real Property Tax Law (RPTL) § 421-a, became eligible for luxury decontrol upon the expiration of the tax benefit period. Notably, while RSL § 26-504.1 provides that high income exclusion from rent stabilization shall not apply to housing accommodations that became subject to rent stabilization by virtue of receiving tax benefits pursuant to RPTL § 421-a, except as otherwise provided by RPTL § 421-a (2) (f) (i), neither the Rent Regulation Reform Act of 1993, nor the RRRRA, provides for high income deregulation of apartments that received J-51 tax benefits. It was hardly irrational for DHCR not to have extended the Legislature's provision for high income decontrol of apartments that once received RPTL § 421-a tax benefits to apartments that once received J-51 tax benefits. Had the Legislature intended that high income decontrol apply to such apartments, it could have provided for such decontrol in RSL § 26-504.1. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: June 13, 2008

ENTER:



J.S.C.

JANE S. SOLOMON

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1412).