



## Court Rules Stuyvesant Town Owners Can Exempt Apartments from Rent Stabilization Despite J-51 Tax Benefits



Justice Richard B. Lowe III

### Citizens Housing & Planning Council

Founded in 1937, CHPC is a non-profit policy research organization dedicated to improving housing and neighborhood conditions through cooperative efforts of the public and private sectors.

After Stuyvesant Town and Peter Cooper Village (STPCV) were sold, a group of tenants brought legal action to challenge the new owners' ability to take apartments out of Rent Stabilization through the "luxury decontrol" rules which came into effect in 1994. Under that provision of the law, when rents exceed \$2,000 on vacancy or when an existing tenant's income exceeds \$175,000 and the rent for their apartment exceeds \$2,000 the owner could apply to DHCR to remove that apartment from Rent Stabilization. Since the law went into effect more than 64,599 apartments have been removed from Rent Stabilization under those provisions.

#### J-51 for Stuyvesant Town and Peter Cooper

The tenants based their claim on the fact that the buildings had received tax benefits under the J-51 program which requires that eligible buildings must be subject to Rent Stabilization. If they are not subject to rent stabilization at the time of application for J-51 they must enter the program in order to receive benefits. STPCV were rent stabilized buildings prior to getting J-51 benefits in 1992 based on their construction date of 1947.

On August 16, 2007 Judge Richard B. Lowe III of the New York State Supreme Court, in a case entitled *Roberts v. Tishman Speyer Properties*, ruled that the owners of Stuyvesant Town and Peter Cooper Village could continue to exempt apartments from rent stabilization under the "luxury decontrol" provisions of the Rent Regulatory Reform Acts of 1993 and 1997. The judge's ruling confirmed what many policy makers had believed: receiving tax benefits under J-51 would not necessarily eliminate the owner's right to pursue luxury decontrol. In his decision Judge Lowe tackled the question of whether or not the receipt of J-51 tax benefits (now §11-243 of the NYC Administrative Code) prevented the owner of the prop-

erty from removing units from rent stabilization.

#### J-51 Limited to Stabilized Units

The question is difficult since J-51 benefits are prohibited "to any existing dwelling which is not subject to the provisions of ... the city rent stabilization law or to the private housing finance law." This provision requires that if the properties are not otherwise subject to Rent Stabilization at the time of application for tax benefits, they become subject to those rules in order to receive the J-51 benefits.

Once in Rent Stabilization, just how much of the statute would apply in such cases? In the Rent Regulatory Reform Act of 1993 the New York State Legislature amended the Rent Stabilization statutes to permit the "luxury decontrol" of units from rent stabilization when 1) the apartment became vacant and the legal rent exceeded \$2,000 or 2) when the rent exceeded \$2,000 and the tenant's income exceeded \$250,000 (later reduced to \$175,000). However the amendments stated that this exemption would not be available to dwelling units which "...became or become subject to [rent stabilization] ... *by virtue of* receiving tax benefits..." under J-51. (emphasis added)

#### By Virtue Of

The question before the court then became what did the phrase "by virtue of" actually mean? There are two possibilities:

1. A building owner cannot use the luxury decontrol provisions if the building is receiving J 51 benefits; or
2. A building owner cannot use the luxury decontrol provisions if the building is receiving J-51 benefits *and* the only reason the building is in rent stabilization is to receive J-51 benefits.



Buildings in the first case would be those that are rent stabilized and then receive J-51 benefits, for example standard New York City multiple dwellings built before 1974. Buildings in the second case would be buildings that were not rent stabilized, but entered Rent Stabilization solely for the purpose of qualifying for J-51 benefits, for example buildings built since 1974.

**DHCR’s Opinion**

The New York State Division of Housing and Community Renewal (DHCR) had already declared in favor of the second case. In 2000 they amended the Rent Stabilization Code to state that the luxury decontrol provisions were not available to buildings receiving J-51 if J-51 was the “sole” reason for being in Rent Stabilization.

**The Court’s Opinion**

After parsing the language and pointing to the Legislature’s failure to change DHCR’s interpretation in 2003 during the last renewal of Rent Stabilization, Judge Lowe agreed with DHCR that luxury decontrol is available to J-51 recipients if there was any other reason for the building to be regulated. Since Stuyvesant Town and Peter Cooper Village were pre-1974 buildings that had already been in rent stabilization, J-51 was not the “sole” reason for being in Rent Stabilization. Thus the luxury decontrol provisions are available to them.

**Loan Programs Affected**

Among the “other reasons” that a property might be rent stabilized, the court noted, was being rent

stabilized as the result of having participated in a program under the Private Housing Finance Law (PHFL). These are typically loan programs administered by the Department of Housing Preservation and Development within the City of New York and the Division of Housing and Community Renewal in the rest of New York State.

To the extent that such loan programs have no prohibition on using the “luxury decontrol” provisions of the rent stabilization law, it would be available to such buildings. Some programs do prohibit the use of the “luxury decontrol” provisions, while others do not.

According to news reports, the plaintiffs have not yet decided on whether or not to appeal.

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This article is based on the court decision and included discussions with agency staff. Data on addition and loss of units to Rent Stabilization comes from *Changes to the Rent Stabilized Housing Stock in New York City in 2006*, a report of the New York City Rent Guidelines Board.

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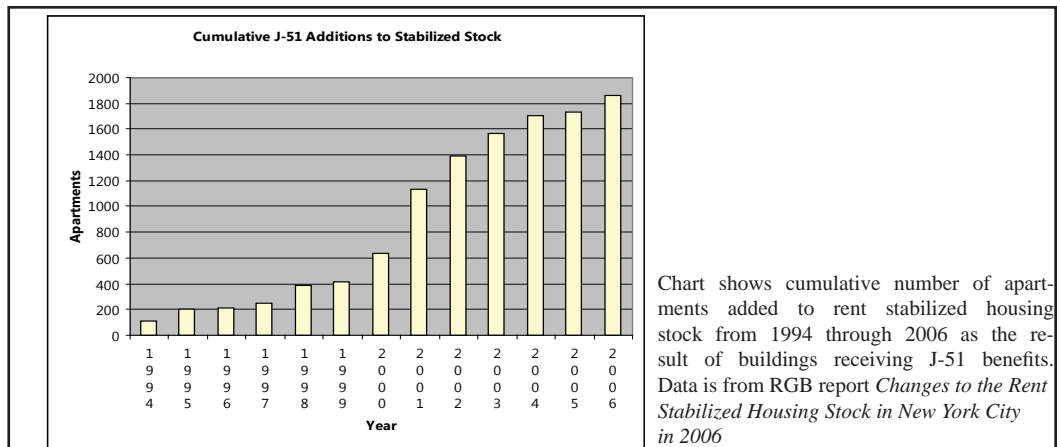


Chart shows cumulative number of apartments added to rent stabilized housing stock from 1994 through 2006 as the result of buildings receiving J-51 benefits. Data is from RGB report *Changes to the Rent Stabilized Housing Stock in New York City in 2006*