

# J-51 TAX BREAKS AND RENT STABILIZATION

The latest way-too-complicated  
issue facing landlords and  
tenants...

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Itkowitz PLLC  
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**J-51 TAX BREAKS AND RENT STABILIZATION EXPLAINED!**

***The latest way-too-complicated issue facing landlords and tenants...***

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## **J-51 TAX BREAKS AND RENT STABILIZATION**

*The latest way-too-complicated issue facing landlords and tenants...*

By Michelle Maratto Itkowitz

Confused about all this stuff you are hearing about J-51 tax benefits and Rent Stabilization? Are you a landlord who got a letter from DHCR about the *Roberts v. Tishman Speyer* Case, J-51, and re-registering your building? Are you a tenant reading about all this in the papers and wondering – “*Could all this maybe mean that my free-market apartment is really Rent Stabilized?*”

I am not promising that this article has all the definitive answers, but once you are done reading it, ***you will understand what’s going on a lot better*** – be you landlord OR tenant – and you will have a better idea of what to do next.

- Part I of the article is going to explain the background of Rent Stabilization and J-51 for those who don’t know it.
- Part II will examine the case law from *Roberts v. Tishman Speyer* until today.
- Part III will address the infamous letter about J-51 and Rent Stabilization that DHCR just sent to the owners of 4,149 buildings.
- Part IV will be *takeaways*, and offer some practical, actionable advice to landlords and tenants.

### **I. BRIEF BACKGROUND -- WHAT IS J-51? WHAT IS RENT STABILIZATION? WHAT IS LUXURY DEREGULATION?**

**New York City’s J-51 program** is a tax exemption and/or abatement program for multi-family property owners.<sup>1</sup> Projects eligible for J-51 include moderate and gut rehabilitations, major capital improvements (for example, asbestos abatement or boiler replacement), and conversions of lofts and other nonresidential buildings into multiple dwellings. Rental units in buildings receiving J-51 must be registered with the New York State Division of Housing and Community Renewal, and are generally subject to Rent Stabilization for at least as long as the J-51 benefits are in force.<sup>2</sup>

**Rent Stabilization** is a statutory scheme that applies to many residential tenancies in New York City. Rent Stabilization limits the rent an owner may charge for

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<sup>1</sup> Real Property Tax Law § 489.

<sup>2</sup> 28 RCNY 5-03 [f].

an apartment, restricts the right of an owner to evict tenants, and imposes other requirements on landlords and tenants. Rent Stabilization is overseen by the New York State Division of Housing and Community Renewal (“DHCR”).<sup>3</sup>

Rent Stabilized tenants are entitled to automatic lease renewals.<sup>4</sup> Under Rent Stabilization, leases must be entered into and renewed for one or two year terms, at the tenant's choice. Family members residing in the premises often have succession rights to the leases.<sup>5</sup> Rent increases for Rent Stabilized tenants are controlled by the New York City Rent Guidelines Board, which promulgates maximum rates for rent increases once a year. Owners are required to register all Rent Stabilized apartments initially and then annually with the DHCR and to provide tenants with a copy of the annual registration.

**Luxury Deregulation** refers to a method of taking an apartment out of Rent Stabilization. In 1993, the Legislature enacted the Rent Regulation Reform Act (“RRRA”), which provided for the luxury deregulation of certain Rent Stabilized apartments. The RRRA identified two circumstances in which deregulation was warranted:

- (1) in vacant apartments where the legal regulated rent was \$2,000 per month or more (**“Vacancy Luxury Deregulation”**); and
- (2) in occupied apartments where the legal regulated rent was \$2,000 per month or more and the combined annual income of all occupants exceeded \$250,000 per year (**“High Income Luxury Deregulation”**).<sup>6</sup>

The Legislature subsequently expanded the scope of Luxury Deregulation by lowering the income threshold for defining high-income households to \$175,000 and allowing post-vacancy improvements to count toward the \$2,000 per month rent threshold, and permitting deregulated units to remain deregulated even if an owner subsequently charges less than the \$2,000 per month threshold.<sup>7</sup>

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<sup>3</sup> Omnibus Housing Act § 3 (L. 1983, c. 403).

<sup>4</sup> 9 NYCRR § 2523.5(a).

<sup>5</sup> 9 NYCRR § 2523.5 (b)(1); 9 NYCRR § 2520.6 (o).

<sup>6</sup> RSL Administrative Code §§ 26-504.1, 26-504.2.

<sup>7</sup> *Roberts v Tishman Speyer Props., L.P.*, 13 N.Y.3d 270 (2009). The current threshold as of the Rent Laws of 2015 is at least \$2,700.00 per month, but it can be more; the new High Income Deregulation laws are an article for another day.

## II. **ROBERTS V. TISHMAN SPEYER AND ITS PROGENY, WHY THIS IS A HUGE DEAL FOR THE REAL ESTATE WORLD**

### A. **2009: *Roberts v. Tishman Speyer*, 13 NY3d 270 (2009) – No Luxury Deregulation in J-51 Buildings**

In 2009, in *Roberts v. Tishman Speyer*, New York State's highest court (the Court of Appeals), held that a Rent Stabilized apartment in a building for which the owner receives J-51 tax benefits is NOT subject to the Luxury Deregulation provisions of the Rent Stabilization Law until the tax benefit expires or, if the lease contained a notice that the unit would be deregulated upon expiration of the tax benefit, until the apartment becomes vacant after expiration of the tax benefit.<sup>8</sup> The Court looked closely at legislative history when arriving at its decision, and decided that this is the way that Albany had always intended it to be.

The decision represented a rejection of the construction of the Rent Stabilization Law followed up to that time by DHCR. Under DHCR's pre-*Roberts* practice, luxury decontrol was deemed applicable to a building enjoying J-51 tax benefits so long as units in the property had not become subject to Rent Stabilization solely by virtue of the building's participation in the J-51 program.<sup>9</sup>

Why was this such a big deal? It was a huge deal because landlords had spent years deregulating thousands of Rent Stabilized apartments in buildings receiving J-51 benefits. And who could blame them – the DHCR said they could do so! In 1996, DHCR issued an advisory opinion, which stated that participation in the J-51 program only precluded luxury decontrol "where the receipt of such benefits is the *sole reason* for the accommodation being subject to rent regulation".<sup>10</sup> Now the highest court in the land was finding the practice wrong.

The Defendant-Landlord in *Roberts* predicted dire financial consequences from the ruling, for themselves and the New York City real estate industry generally.<sup>11</sup> They were right. Check out this book about the case -- *Other People's Money: Inside the Housing Crisis and the Demise of the Greatest Real Estate Deal Ever Made* by Charles V. Bagli<sup>12</sup>.

The *Roberts* case created more questions than it answered. Would the application of the ruling be retroactive and apply to apartments already wrongly

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<sup>8</sup> *Roberts v. Tishman Speyer*, 13 NY3d 270 (2009).

<sup>9</sup> *Roberts v. Tishman Speyer*, 13 NY3d 270 (2009).

<sup>10</sup> *Roberts v. Tishman Speyer*, 13 NY3d 270 (2009).

<sup>11</sup> *Roberts v. Tishman Speyer*, 13 NY3d 270 (2009).

<sup>12</sup> <http://www.amazon.com/Other-Peoples-Money-Housing-Greatest/dp/0142180718>; Penguin Random House 2014.

deregulated? Could there be class actions? Would statutes of limitation be a defense? The cases that follow answered those questions and pieced together the law as it exists today.

**B. 2011: *Roberts v. Tishman Speyer Properties*, 89 A.D.3d 444 (1<sup>st</sup> Dept. 2011) – The *Roberts* case IS retroactive.**

In 2011, the Supreme Court, Appellate Division First Department, held (in another case with the same name as the first *Roberts* case; so we will call this case “*Roberts 2*”) that the Court of Appeals decision in *Roberts* could have retrospective effect.<sup>13</sup>

Why? Because the *Roberts* case ruling did not constitute creation of new legal principle. Basically, the Appellate Division suggested that landlords should have known better, because the statutory language was clear.

*Roberts 2* was actually more devastating than the first *Roberts* case, because it made every apartment ever wrongly deregulated under J-51 a potential litigation. There were still, however, so many unanswered questions – like would a statute of limitations help shield a landlord who had wrongly Luxury Deregulated under J-51? And was every case ever decided by DHCR or the Courts subject to being re-opened? Keep reading as the story unfolds!

**C. 2012: *London Terrace Gardens v. NYC*, 101AD3d 27 (1<sup>st</sup> Dept. 2012) “Do over! Please take these J-51 benefits back!”**

In *London Terrace Gardens v. NYC*, 101AD3d 27 (1<sup>st</sup> Dept. 2012), the Appellate Division First Department held that a landlord of Rent Stabilized apartments was not entitled to rescind its participation in the J-51 program after it was determined that such participation made it ineligible for the luxury decontrol provisions of the Rent Stabilization Law. I guess the landlord did the math and decided that being able to Luxury Deregulate was more lucrative than the tax breaks. The Court found that the J-51 program was a tax program, not a contract that could be rescinded. Nice try.

**D. 2013: *Gersten v. 56 7<sup>th</sup> Avenue LLC*, 88AD3d 189 (1<sup>st</sup> Dept. 2013) – No statute of limitations defense available to shield landlords who wrongly deregulated under J-51, but res judicata/administrative finality would shield the landlord.**

With *Gersten v. 56 7<sup>th</sup> Avenue LLC*<sup>14</sup>, another case that came before the Appellate Division First Department, we start to get an example of how devastating *Roberts* just may be for the real estate industry.

<sup>13</sup> *Roberts v. Tishman Speyer Properties*, 89 A.D.3d 444 (1<sup>st</sup> Dept. 2011).

<sup>14</sup> 88AD3d 189 (1<sup>st</sup> Dept. 2013).

This dispute in *Gersten* was between tenants and a new building owner. The owner took over the subject property in 2009, **a decade** after the former owner had deregulated the apartment pursuant to a 1999 DHCR luxury decontrol order. Tenants commenced the action seeking a declaration that the 1999 DHCR luxury decontrol order was void *ab initio* (from the beginning) pursuant to *Roberts*. Imagine buying a building that you think is filled with free-market tenants, only to have them all sue you, claiming they are Rent Stabilized? An owner does not need to be buying Stuy Town to have that be a disastrous event.

The *Gersten* Court determined that the answer depended on whether the defense of statute of limitations or administrative finality may be invoked to give preclusive effect to the 1999 DHCR luxury decontrol order.

**MICHELLE'S BORING LAW ALERT:** I did not want to barrage you with too much detail in this article, but sometimes I cannot help myself and this section of the case law is *fascinating and very important*, so just stick with me **(or just skip to the next section if you hate the law-detail)**.

First, the *Gersten* Court examined the retroactivity issue a little more closely. The Court looked at a test adopted by the Court of Appeals from the U.S. Supreme Court.<sup>15</sup> The test asked whether the decision establishes a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed. The Court decided that the facts of *Roberts* did not satisfy the test because courts have consistently held that judicial statutory construction does not create a new principle of law. *Roberts* did not establish a new legal principle, but rather, “*merely construed a statute that had been in effect for a number of years*”. Since no “new rule” was pronounced in *Roberts*, it must be applied retroactively.

Second, the Court was unpersuaded by the equitable (fairness) argument, that *Roberts* applied retroactively would devastate landlords. The impact of retroactive application of *Roberts*, reasoned the Court, would be to protect tenants from rent increases in excess of those allowed by the Rent Stabilization Law; a contrary ruling would essentially allow landlords throughout the City to collect rents in excess of those allowed by the Rent Stabilization Law.<sup>16</sup>

Third, the *Gersten* Court totally rejected the statute of limitations defense for landlords where an apartment was improperly deregulated during J-51, even if it happened many years ago. Courts have uniformly held that landlords must prove the

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<sup>15</sup> *Chevron Oil Co. v Huson*, 404 US 97 (1971); *Gurnee v Aetna Life & Cas. Co.*, 55 NY2d 184, 192 (1982).

<sup>16</sup> *Gersten v. 56 7<sup>th</sup> Avenue LLC*, 88AD3d 189 (1<sup>st</sup> Dept. 2013).

change in an apartment's status from Rent Stabilized to unregulated even beyond the four-year statute of limitations for rent overcharge claims.<sup>17</sup>

Finally, the *Gersten* Court did, however, embrace the argument that preclusive effect must be given to earlier DHCR deregulation orders under administrative finality principles. In other words, if the issue of Luxury Deregulation during J-51 came up in front of DHCR or a court, and the DHCR or the court ruled that the deregulation was lawful, then such decision could never be challenged if the applicable appeals period had run.

This, in my opinion, gives rise to a curious dichotomy. High Income Luxury Deregulation is only effectuated by a landlord initiating a proceeding before DHCR. Therefore, any High Income Luxury Deregulation case will have an adjudication attached to it, and therefore, apparently pursuant to *Gersten*, would have been adjudicated, and therefore, would solidify even an improperly deregulated apartment. Vacancy Luxury Deregulation, however, typically did not require a ruling by DHCR or a court. Therefore, the retroactive effect of *Roberts* mostly impacts Vacancy Luxury Deregulations that happened during J-51.

A case that seems to support my theory is *Gordon v. 305 Riverside Corp.*, 93 AD3d 590 (1<sup>st</sup> Dept. 2012). In that case, from 1988 through 2005 the apartment was Rent Stabilized. The rent in 2005 was \$1,418.42. After the tenant left in 2005, the apartment was vacant for a period of time. In February 2006, landlord and a new tenant entered into a lease that said tenancy was free market because, "the monthly rent was at least \$2,000.00 which classifies the unit as a luxury deregulated apartment." In 2006, the owner registered the unit as "high rent vacancy". At the time of the deregulation, the building was receiving J-51 benefits. In this case, landlord acknowledged that the building was improperly deregulated and that the new tenant was entitled to a Rent Stabilized lease. The issue in *Gordon* was merely about how to properly calculate the base date for overcharge purposes.

**E. Back to 2012: 72A Realty Assoc. v. Lucas, 101 AD3d 401 (1<sup>st</sup> Dept. 2012) – What happens when an apartment was improperly deregulated under J-51, but now J-51 has expired?**

Let's double back for a minute to this case, which comes before the *Gersten* case, but which I think makes more sense to read after *Gersten*. In *Lucas*, the landlord raised the issue – What happens when an apartment was improperly deregulated under J-51, but now J-51 has expired? Is a landlord expected to re-register such units as Rent Stabilized? Even though J-51 is long-gone now? The Court answered the question in the affirmative -- that the J-51 benefits subsequently expired does not support a landlord's claim that the apartment must be denied ongoing regulated status.

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<sup>17</sup> *Gersten v. 56 7<sup>th</sup> Avenue LLC*, 88AD3d 189 (1<sup>st</sup> Dept. 2013).

Therefore, if a Rent Stabilized apartment was improperly deregulated under J-51, and J-51 has since expired, landlord needs to give the occupant of the apartment a Rent Stabilized lease and re-register the apartment.

This case, more than any other, in my opinion, raises way more questions than it answers...which *almost* brings us to the J-51 letters that landlords all over the city just received.

**F. 2014: *Borden v. 400 E. 55<sup>th</sup> St. Assoc.*, 24 NY3d 382 (2014) – Tenants in buildings affected by *Roberts* can bring class actions against their landlords.**

New York State's highest court decided in *Borden v. 400 E. 55<sup>th</sup> St. Assoc.*, 24 NY3d 382 (2014), that tenants in buildings affected by the *Roberts* decision are allowed to pursue class actions because allowing such, "does not contravene the letter or the spirit of the CPLR or Rent Stabilization Law."

**G. 2016: *Altschuler v. Jobman* (1st Dept. 2016) 1/7/2016 – "a \$2.5 million pad with Central Park views for under \$800-a-month!"**

A tenant does not, however, need to bring a class action to get relief under *Roberts*. In this recent case of *Altschuler v. Jobman*<sup>18</sup>, the Appellate Division First Department held that the trial court correctly found that a landlord improperly deregulated the Rent Stabilized apartment while it was receiving J-51 tax benefits, entitling plaintiff to Rent Stabilized status for the duration of his tenancy and to collect any overcharges.

The *Altschuler* case was the subject of a January 7, 2016 New York Post Article, "*Guy gets insane rent deal on swanky pad after landlord scammed him*".<sup>19</sup> The Post writes:

An Upper West Side man just landed the sweetest apartment rental in the city—a \$2.5 million pad with Central Park views for under \$800-a-month! That's because an appeals court found that Lane Altschuler's landlord illegally over-charged him by nearly \$3,000-a-month while receiving city tax credits for maintaining rent-stabilized units. And, as if that deal wasn't tasty enough, Altschuler gets an \$876,619.10 refund.

See what I mean...*Roberts* was tough for landlords. And it ain't over yet. It might just be getting started...Keep reading!

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<sup>18</sup> (1st Dept. 2016) 1/7/2016.

<sup>19</sup> <http://nypost.com/2016/01/07/guy-gets-insane-rent-deal-on-swanky-pad-after-landlord-scammed-him/>.

### III. THE JANUARY 2016 DHCR LETTER

#### A. The January 6, 2016 DHCR Letter

On January 6, 2016, the DHCR sent the following letter (“the DHCR Letter”) out to the owners of 4,149 buildings<sup>20</sup>:

As you may know, New York courts have determined that any apartment that was subject to Rent Stabilization at the date of the receipt of the J-51 benefits must register those units as rent stabilized with DHCR. Specifically, buildings and units receiving a J-51 tax benefit for a residential rehabilitation must be registered as rent regulated. This includes all units that have been treated by the owner as exempt due to a high-rent vacancy during the period of receipt of J-51 benefits. See, *Roberts v. Tishman Speyer Props., L.P.*, 13 N.Y.3d 270 (2009), and progeny, e.g., *Roberts v. Tishman*, 89 A.D.3d 444 (2012); *Borden v. 400 East 59<sup>th</sup> Street*, 24 N.Y.3d 382 (2014). Accordingly, any buildings receiving J-51 tax benefits must be registered.

According to our records, the above-referenced building received a J-51 tax benefit. Our records further indicate that you have registered one or more apartments as being exempt from rent stabilization. The court rulings require you to do two things:

**(1) If you are currently receiving J-51 benefits and have been treating such a tenant as deregulated due to high rent vacancy, you must provide notice to the tenant indicating that the apartment is rent stabilized and prior to the expiration of the current lease provide the tenant with a lease renewal offer accompanied by required supporting documents.**

**(2) You are also required to register the apartments in any building receiving J-51 benefits with DHCR.** You may register in the upcoming 2016 annual registration cycle using our online filing system, Owner Rent Regulation Applications ... and should include the new count of rent stabilized apartments in the Registration Summary Form. The legal rent to be registered cannot exceed the rent actually being paid by the tenant.

[Emphasis supplied.]

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<sup>20</sup> <http://therealdeal.com/2016/01/06/cuomo-to-order-landlords-to-re-register-50k-apartments-for-rent-protection/>.

## **B. Questions Raised By the Letter**

Say *What?*

Landlords are, understandably, having a hard time understanding what this letter really wants from them.

The DHCR Letter directs landlords that, *“If you are currently receiving J-51 benefits and have been treating such a tenant as deregulated due to high rent vacancy, you must provide notice to the tenant indicating that the apartment is rent stabilized and prior to the expiration of the current lease provide the tenant with a lease renewal offer accompanied by required supporting documents.”* **Um...why now?** That was true in 2009 as soon as *Roberts* came down, and it was even truer in 2011 when *Roberts* was found to be retroactive.

This leads some to believe that the DHCR letter is misworded and really means to instruct landlords to go back and re-register apartments that were improperly Luxury Deregulated during J-51 *even if the building is no longer receiving J-51...which is, after all, the law.* Although the letter does NOT instruct such.

The letter also does not give landlords a clue about how the legal rent should be calculated.

And what *OH WHAT* does this all mean to tenants? *Why didn't the Governor send these letters to the tenants of these 4,149 buildings? Or at least cc them?* It is interesting. From the press releases put out by Governor Cuomo regarding this letter<sup>21</sup> one would think that the State is aggressively coming after these 4,149 landlords. Is the State really going to devote resources to untangling this mess for 4,149 properties? If so, it has been pretty quiet about this “major initiative” for the six weeks since the press release and the letters.

Unless I see something that is way different than what I have seen in my first twenty years working in this area of the law, my instinct tells me that the only way that the law will be enforced beyond the handful of cases I cited above is for tenants to hire experienced landlord and tenant lawyers and seek to enforce their rights. The State isn't going to do anything but send a letter. And where are the legal services organizations? [Insert the sound of crickets chirping...] Sorry, I have to call it like I see it.

In any event, folks, that's what we have to work with, and here are my conclusions and recommendations.

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<sup>21</sup> <http://newyork.realestaterama.com/2016/01/26/governor-cuomo-launches-initiative-to-return-thousands-of-new-york-city-apartments-to-rent-regulation-ID04004.html>

**C. The March 2016 DHCR “J-51 Rent Regulation Initiative FAQ” Sheet**

In early March 2016, DHCR issued a publication called “J-51 Rent Regulation Initiative FAQ” (“the FAQ’s”). Did it answer any of the above questions?

The FAQ’s begin with a disclaimer that it is not a, “*comprehensive guide with respect to rent regulation in light of J-51 benefits*”.

The FAQ’s clarify that DHCR is ONLY asking owners to re-register in two situations:

- (1) In buildings CURRENTLY receiving J-51 benefits where apartments were de-regulated based on Vacancy Deregulation (FAQ #1); and
- (2) In buildings no longer receiving J-51 benefits where apartments were de-regulated based on Vacancy Deregulation IF, “*the tenant in place at the time the J-51 benefits have expired, or their legal successor, remains the current tenant.*” (FAQ #1)

The FAQ’s do NOT address the situation where the building is no longer receiving J-51 benefits and the apartment was improperly Vacancy Deregulated during J-51 and there was NO adjudication giving rise to res judicata (like there would be in High Income Deregulation). DHCR still does not say what to do in that situation! Although in FAQ #3 it says, “*There may be other instances that require continued rent stabilization coverage, but they are not part of this initiative.*”

Some other things that the FAQ’s clarify that I think are important:

- If Owners have an improperly deregulated unit on their hands, they are not required to file amended registrations (FAQ#6). In fact, DHCR will not even accept amended registrations (FAQ # 7).
- If Owners have an improperly deregulated unit on their hands that they bring back in to Rent Stabilization, then the unit is only Rent Stabilized unit that tenant vacates (FAQ # 9).

Oddly enough, DHCR punts (just as I do in this article) on the topic of how to calculate the rent for an apartment that needs to be re-regulated! It says that, “*The law in this area is continuing to evolve.*” (FAQ #10) Indeed.

As predicted, there are no real answers in the FAQ’s for tenants, other than for them to send an email to DHCR or stop in. (FAQ #14)

#### IV. TAKEAWAYS

Takeaways...

- (1) A landlord cannot Luxury Deregulate in a building currently receiving J-51 benefits. If you are a landlord and your building is *currently receiving* J-51 benefits, you need to register all the apartments as Rent Stabilized. If you are re-registering, it probably means that you also have to issue tenant a Rent Stabilized lease rider to each tenant. What is the legal rent and is there an overcharge? I have no clue as of this writing. In any event, overcharge liability depends on many factors that need to be looked at on a case by case basis.
- (2) Buildings no longer receiving J-51 benefits where apartments were deregulated based on Vacancy Deregulation must re-registered those apartments as Rent Stabilized if the tenant who was in place at the time the J-51 benefits expired, or their legal successor, remains the current tenant. In this case, the apartment will only remain Rent Stabilized until the tenant leaves.
- (3) If a landlord formerly Luxury Deregulated an apartment in a building when the building was receiving J-51, and the building is no longer receiving J-51, then the following question must be asked – Was such deregulation attached to a DHCR or Court adjudication, the time to which appeal from has expired? If yes, then the deregulation stands. If no, then the deregulation was improper.
- (4A) If a landlord *improperly* Luxury Deregulated during J-51 and now J-51 has expired, then that unit is still subject to Rent Stabilization. My belief is that an improperly deregulated apartment is a liability for the building that will not go away no matter how long you wait. In fact, the longer you wait the worse it could potentially be for a landlord – it is arguably better to get such a unit back into Rent Stabilization. Then when that tenant leaves, presumably, so does the Rent Stabilized status.
- (4B) *Then again:* (a) the DHCR letter does not instruct landlords to re-register units in buildings where the J-51 benefits have expired, and (b) re-read the part above about the fact that I suspect that this letter was the last most of us will hear of the issue. There is an argument for landlords with improperly deregulated units to sit tight and wait to see what comes next before re-registering. Let someone else play the next chapter out in the courts or at DHCR before you go re-registering long-deregulated units.

*THIS is a choice that every landlord needs to make in conjunction with their counsel.*

(5) If you are one of my many tenant followers out there reading this article, again, I need to look at the circumstances of your situation before I can specifically advise you if your free-market apartment is actually Rent Stabilized. But here's what you can do in the meantime:

- (a) Get a copy of the DHCR rental history for the apartment<sup>ii</sup>; and
- (b) Check online to see if the building ever received J-51 benefits<sup>iii</sup>.

In conclusion, allow me a personal note. If you cannot tell from this article (or any of my articles) whose side I am on – landlord's or tenant's – it is because I do not declare a side. I work for whoever I can provide value to, who pays me, and who does not ask me to do anything remotely unethical. I am a better landlord's lawyer because I also represent tenants, and I am a better tenant's lawyer because I also represent landlords. I am on the side of truth and on the side of the law. Unfortunately, in this area of landlord and tenant jurisprudence, those concepts are fluid and ever-changing.

Is it just my imagination, or is this stuff getting harder all the time? I welcome your questions and comments.

## **ABOUT THE AUTHOR**

Michelle Maratto Itkowitz is the owner of Itkowitz PLLC. She practices real estate litigation. Michelle has over twenty years of experience, and is best known for her work in the area of commercial and complex-residential landlord and tenant law in the City of New York. Michelle's core competencies include: Rent Stabilization and Rent Control, the Loft Law, SRO Law, Yellowstone injunctions, tenant buyouts, clearing buildings so that construction projects can go forward, and Rent Stabilization Due Diligence. She also is very experienced in general commercial litigation. See our Accomplishments section of Itkowitz.com to get an idea of the breadth of Michelle's work.

Michelle publishes and speaks frequently on legal issues in real estate. The groups that Michelle has written for and/or presented to include: Lawline.com; The Columbia Society of Real Estate Appraisers; LandlordsNY; Lorman Education Services; The Association of the Bar of the City of New York; The New York State Bar Association, Real Property Section, Commercial Leasing Committee; Thompson Reuters; The Cooperator; The New York State Bar Association CLE Publications; The TerraCRG Brooklyn Real Estate Summits; The Association of the Bar of the City of New York; and BisNow

Michelle regularly creates and shares original and useful content on real estate and law, including booklets, videos, and articles. She is frequently quoted in the press on a variety of real estate and legal issues. As the "Legal Expert" for LandlordsNY.com, the first social platform exclusively for landlords and property managers, Michelle answers member's questions, guest blogs, and teaches. Michelle recently developed a seven-part, eight-hour continuing legal education curriculum for Lawline.com entitled "New York Landlord and Tenant Litigation". Over 16,000 lawyers have purchased Michelle and Jay Itkowitz's earlier CLE classes from Lawline.com, and the programs have met with the highest reviews. Jay and Michelle are currently co-authoring a chapter on lease remedy clauses and guaranties for the New York State Bar Association, Real Property Section, Commercial Leasing Committee.

Michelle is immensely proud that Itkowitz PLLC was recently awarded its NYS Women Business Enterprise Certification by the Empire State Development Corp. We note that we are in the top dozen such law firms, by revenue, in New York City. Women owned law firms rock!

Michelle is admitted to practice in New York State and the United States District Court for the Southern District of New York. She received a Bachelor of Arts in Political Science in 1989 from Union College and a Juris Doctor in 1992 from Brooklyn Law School. She began her legal career at Cullen & Dykman.

There are many ways to keep up with Michelle. When Michelle tweets, which is not an obnoxious amount, she does so in an easy to understand manner about useful stuff regarding real estate, business, the legal industry, and organic herb gardening. Feel free to contact Michelle; she would be happy to speak to you.



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See good tweets right...!?



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<sup>i</sup> <http://rsanyc.net/j-51-initiative-faq-sheet.pdf>

<sup>ii</sup> <http://www.nyshcr.org/Rent/tenantresources.htm>

<sup>iii</sup>

[http://webapps.nyc.gov:8084/cics/cwba/dfhwbttta/abhq?utm\\_source=Copy+of+010516+A+Reminder+for+the+2016+RSA+Annual+Safety+Notice+Service%21&utm\\_campaign=UPDATE%3A+Governor+Cuomo%27s+J-51+Rent+Registration+Initiative&utm\\_medium=email](http://webapps.nyc.gov:8084/cics/cwba/dfhwbttta/abhq?utm_source=Copy+of+010516+A+Reminder+for+the+2016+RSA+Annual+Safety+Notice+Service%21&utm_campaign=UPDATE%3A+Governor+Cuomo%27s+J-51+Rent+Registration+Initiative&utm_medium=email)