ILLEGALLY DEREGULATED RENT STABILIZED APARTMENTS IN NEW YORK CITY

Identification, Risk Analysis, and Solutions

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I. INTRODUCTION

Whether it's the *Roberts* case and J-51, the *Altman-Smith* cases and the High Rent Vacancy Deregulation threshold, or DHCR Operational Bulletin 2016-1 and the heightened scrutiny on Individual Apartment Improvement Increases – these days it's tough to know whether an apartment was properly taken out of Rent Stabilization.

Whether or not an apartment is subject to Rent Stabilization is often of existential importance to that unit's landlord and its tenant.

To the landlord, it could mean the difference between the success or the failure of the building. Most multifamily buildings in NYC are owned by small businesses. Many of the landlords that I work for are new businesses run by millennials, New York City's next generation of landlords, hungry for information and learning as they go along. Many of my clients are multi-generational family businesses, run by people who have known every tenant's first name for the last thirty years. New to the game or in it for decades – my overwhelming experience with landlords in over twenty years in this industry is that most want to do the right thing. Yet they are often making decisions with the bad or partial information that is all they can get their hands on. On top of which, many of these owners are barely making it these days under the burden of taxes, bank fees, and expenses. If an apartment that an owner reasonably thought was free market manifests as Rent Stabilized and comes along with a bunch of litigation and an overcharge, it can be devastating.

To a tenant, whether her apartment is Rent Stabilized or not could be the difference between being able to remain in New York City and having to leave a job, family, and all that is familiar and well-loved behind. I had three friends, women my age and their families, simply priced out of NYC in the last two years. They earned too much money to qualify for subsidized housing, yet they did not make enough to pay free market rents, and they never found themselves Rent Stabilized apartments. It was the price of housing that drove them to Virginia, Connecticut, and back to Ireland. New York City is a lesser place for their absence. In a very real sense, every apartment that gets deregulated illegally is a blow to New York City's middle class.

And how is anyone, landlord or tenant, supposed to know if a particular apartment is subject to Rent Stabilization? Rent Stabilization is a complicated area and there are not a lot of resources available on the topic.

This article's aim is to explain in very clear language, and with reference to the relevant statues, regulations, and case law, to *both* landlords and tenants, how to tell (as of this writing) if a free-market apartment is actually subject to the Rent Stabilization Law. I hate articles by lawyers that conclude only by telling you the problem, and leaving you with a "call to action" to *"call an experienced attorney (this is legal advertising)"*. Yeah, this may be legal advertising, but I always try to leave you with something that is, in and of itself, *valuable* – that sheds some light in the darkness. What I believe is of intrinsic value here is that this article is structured to take your through the methodical analysis I have developed for determining an apartment's rent regulatory status.

I warn you of two caveats. First, no section of this article will be an exhaustive treatment of the particular section's topic. I have a 30-page article, for example, elsewhere on my website, on J-51 and Rent Stabilization, and that piece is not nearly everything one could say on the topic. Obviously, I am not copying that herein. Here, I am giving you an overview of J-51 and showing you how I do a rent regulatory analysis with respect to J-51. Second, in some cases, I am going to tell you that the authority we need is in flux; for example, when I cover the *Altman* piece. But make NO mistake – just because the law is unsettled does not mean that you can ignore the implications of *Altman*. When the dust settles on *Altman*, someone is going to be wrong. I will explore below that there are better and worse ways to be wrong.

Whether you ever call or email me, whether you take this article to your own lawyer for their reference or whether it merely opens your eyes, whether you are landlord or tenant, whether you are a young legal aid lawyer reading this because you wish you had more training or my staunchest competitor in private practice who reads my stuff and rolls your eyes (*you know who you are*) – please accept that if I fail to make this occluded topic perfectly clear, at least I am out here trying. And, hey, you can't blame a girl for trying.

II. BACKGROUND AND BASICS – WHAT RENT STABILIZATION IS AND HOW HIGH RENT VACANCY DEREGULATION WORKS

If you already understand Rent Stabilization and High Rent Vacancy Deregulation, you can skip this section and go to § III.

Rent Stabilization applies to many residential tenancies in New York City, some estimates say as many as one million apartments Rent Stabilization limits the rent an owner may charge for an apartment, restricts the right of an owner to evict tenants, and imposes other requirements on landlords and tenants – such as a great deal of paperwork. Rent Stabilization is overseen by the New York State Division of Housing and Community Renewal ("DHCR").

Rent Stabilized tenants are entitled to leases and automatic one- or two-year lease renewals, at the tenant's choice. 9 New York Codes, Rules, and Regulations ("NYCRR") § 2523.5(a). There is also a required 11-page Rent Stabilized lease rider.

Family members residing in a Rent Stabilization apartment often have succession rights to the leases. 9 NYCRR § 2523.5 (b)(1); 9 NYCRR § 2520.6 (o). Thus, you often get multigenerational Rent Stabilized tenancies that last for decades.

Rent increases for Rent Stabilized tenants are controlled by the New York City Rent Guidelines Boards, which sets maximum rates for rent increases once a year that are effective for leases beginning on or after October 1st of each year. Landlords usually feel that these rates are too low. Tenants usually feel the rates are too high.

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.

In New York City, the New York City Rent Stabilization Law governs Rent Stabilized tenancies, and is codified in the New York City Administrative Code ("NYC Admin. Code") §§ 26-501 *et seq.* The DHCR has promulgated a set of regulations that also govern Rent Stabilized tenants in New York City known as the Rent Stabilization Code ("RSC"), codified at 9 NYCRR §§ 2520.1 *et seq.* These statutes appear in the Unconsolidated Laws of the State of New York.

There is no official list somewhere that definitively tells the world, which apartments are subject to Rent Stabilization and which are not. The records the DHCR maintains contain information that is largely self-reported by landlords and is, therefore, not controlling with regard to an apartment's Rent Stabilization status. Year after year a landlord can report to the DHCR that an apartment is "permanently exempt", but that does not make it so.

Moreover, a current or former tenant may have signed a document acknowledging that an apartment is not subject to Rent Stabilization. But this, also, does not make it so. Parties may not contract in or out of Rent Stabilization coverage. *Thornton v. Baron*, 5 N.Y.3d 175 (2005).

How do you ever get a definitive answer on an apartment's Rent Stabilization status? With some exceptions, the last word on whether or not an apartment is Rent Stabilized is in the hands of the courts (or the DHCR). Until a judge is satisfied that an apartment is not Rent Stabilized, the matter is always, in some measure, unsettled.

Why is this so complicated? Because it is. There are many statutes and mountains of case law that, stretching back to the 1970's, that, when woven together, make up the rent regulatory scheme in New York City. There are rules, and exceptions to the rules, and exceptions to the exceptions to the rules.

In general, if a Building was built before 1974 and contains six or more units, then the apartments therein are Rent Stabilized (NYC Admin. Code 26-505) unless certain exceptions apply. One of the few exceptions that would take an apartment in a building, which was built before 1974 and has more than six units, out of Rent Stabilization is **High Rent Vacancy Deregulation**.

High Rent Vacancy Deregulation means that, in conjunction with a vacancy, an apartment achieved a ***legal* regulated rent** of a certain threshold. NYC Admin. Code § 26-504.2(a). In general, the High Rent Vacancy Deregulation threshold from 1993 forward was $2,000.00, then after January 23, 2011 the threshold was $2,500.00, then after July 1, 2015 the threshold became $2,700.00 and it rises each January 1 by the same percentage as the most recent one year renewal adjustment adopted by the relevant rent guidelines board.

One way to hasten getting to the deregulation threshold is to do Individual Apartment Improvements ("IAIs"). A landlord may secure a rent increase based on a substantial modification or enlargement of dwelling space and/or upon provision of additional services, improvements, equipment, furniture, or furnishings to a Rent Stabilized unit. NYC Admin. Code § 26-511(c)(13); 9 NYCRR § 2522.4(a)(1). No tenant consent is required when the IAI is made during a vacancy. ***Id***. DHCR distinguishes between "improvements" and "repairs" or "maintenance" in determining whether the work qualifies for the increase. *Rockaway One Co., LLC v. Wiggins*, 9 Misc. 3d 12 (App. Term 2004), *order rev'd on other grounds*, 35 A.D.3d 36

(2d Dep't 2006). In a building with 35 or fewer apartments, a landlord may add to a Rent Stabilized tenant's rent the equivalent of one-fortieth (1/40) of the cost of the new service or equipment, including installation costs, but not finance charges. NYC Admin. Code § 26-511(c)(13); 9 NYCRR § 2522.4(a)(4). For example, if a new refrigerator is installed in an apartment and the landlord's expense is $400.00, then the tenant's monthly rent may be increased by $10.00 (1/40 x $400). This kind of IAI often juices the rent to the High Rent Vacancy Deregulation threshold. DHCR recently issued Operational Bulletin 2016-1 "Individual Apartment Improvements", and it contains a great deal of guidance on this topic (we will examine it in detail below).

III. CHECKLIST FOR TESTING THE EFFICACY OF THE DEREGULATION OF A RENT STABILIZED APARTMENT

When I am asked to determine if a free-market apartment was improperly deregulated and thus if such apartment is still subject to Rent Stabilization, this is the protocol I have developed. I will explain each part of this analysis in detail in the following sections.

First, I gather information. If there is a judicial or final DHCR ruling on the deregulation, there may be no need to look any further.

Second, I check to see if High Rent Vacancy Deregulation happened during J-51. I look early on at J-51 because the law is relatively well settled and the documentation I need to find is relatively easy to put my hands on, although there are a few subtleties of which you should be aware.

Third, I look at the alleged Individual Apartment Improvements. This is a murkier area as records can be harder to come by, especially if the alleged deregulation happened a long time ago. Then again, if the deregulation happened a long-time ago, there is less chance of an IAI being a vulnerability. This item is complicated and I spend some time on the law and the practicality of IAI's as they relate to a rent regulatory analysis.

Fourth, I look at the *Altman-Smith* stuff. This is the last stop on my analysis train because the law is in flux. But make NO mistake – just because the law is unsettled does not mean that you can ignore the implications of *Altman*. When the dust settles on the *Altman* piece,

someone is going to be wrong. I will explore below how there are better and worse ways to be wrong.

Fifth, I assign a numerical percentage to my rent regulatory conclusion. This is a Legal Project Management technique for communicating clearly with my clients. The essence of a rent regulatory analysis is risk analysis and mitigation, something I am always urging on my clients and my readers.

IV. CHECK FOR A PRIOR ADJUDICATION OF THE APARTMENT'S RENT REGULATORY STATUS

The first step in the rent regulatory analysis of an apartment is to check for a prior adjudication of the apartment's rent regulatory status.

As an initial matter, I always ask a landlord-client for the DHCR "Cases By Building" report or I ask a tenant-client to do a DHCR requisition for everything regarding the apartment.

> TIP: Never do a Freedom of Information Law Request (FOIL) request at DHCR on a building that landlord has just purchased or that tenant lives in. If you have an existing association with a building as either landlord or tenant, the quickest way to get information from DHCR is a "Requisition" (different from a FOIL).

I then run my own "litigation search" on E-Courts, the New York State Court System's free online database. But this typically only shows recent, active cases.

I also run the address and the previous owners and current owner of the building back to 1984 using standard research databases typically only available to lawyers.

What you are looking for is any evidence that the question you are attempting to answer was already answered by a court of by DHCR and that you are, therefore, collaterally estopped from re-litigating such. *See Gersten v. 56 7th Avenue LLC,*

88 A.D.3d 189 (1st Dep't 2013) (Preclusive effect must be given to earlier DHCR deregulation orders under administrative finality principles.)

It should not surprise you that your question about an apartment's status has been raised by others before and has even been settled, for better or worse.

V. J-51 AND HIGH RENT VACANCY DEREGULATION – THE LOW HANGING FRUIT OF A DEREGULATION ANALYSIS

Next, I check to see if High Rent Vacancy Deregulation happened during J-51. The low-hanging-fruit of improperly deregulated apartment detection is brought to us by the J-51 cases. If an apartment was High Rent Vacancy Deregulated during J-51, even if that happened many years ago, the unit is still Rent Stabilized. The implications of re-registration, what the rent should be, and overcharges may still be unsettled, but the issue of regulatory status is actually quite clear.

A. J-51 and High Rent Vacancy Deregulation – The Law

New York City's J-51 program was a tax exemption and/or abatement program for multi-family property owners. Real Property Tax Law § 489. Rental units in buildings receiving J-51 must be registered with the DHCR and are generally subject to Rent Stabilization for at least as long as the J-51 benefits are in force. 28 RCNY 5-03 [f].

In 2009, in *Roberts v. Tishman Speyer,* 13 N.Y.3d 270 (2009), 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. This was a huge deal because landlords had spent years deregulating thousands of Rent Stabilized apartments in buildings receiving J-51 benefits.

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. *Roberts v. Tishman Speyer Properties*, 89 A.D.3d 444 (1st Dept't 2011). *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.

Then *Gersten v. 56 7th Avenue LLC,* 88 A.D.3d 189 (1st Dep't 2013), was a dispute 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 High Rent Vacancy Deregulation order. Tenants commenced the action seeking a declaration that the 1999 High Rent Vacancy Deregulation order was void *ab initio* (from the beginning) pursuant to *Roberts*. Among other things, 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 change in an apartment's status from Rent Stabilized to unregulated even beyond the four-year statute of limitations for rent overcharge claims. *Id.*

In *72A Realty Assoc. v. Lucas, 101 A.D.3d 401 (1st Dep't 2012)* 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. Therefore, if a Rent Stabilized apartment was improperly deregulated under J-51, and J-51 has since expired, the landlord needs to give the occupant of the apartment a Rent Stabilized lease and re-register the apartment.

B. J–51 and High Rent Vacancy Deregulation – How to Figure it Out

To check if a building was receiving J-51 tax benefits during a High Rent Vacancy deregulation you must first isolate the time of the deregulation using the DHCR Registration Rent Roll for the apartment. Then you have to go online and fumble with these NYC Department of Finance websites and charts[1] and get an idea of whether or not J-51 was in the Building at that time.

If it seems like J-51 was burning off just as the new tenancy was beginning, you need to drill down the actual tax bills for the fiscal quarter encompassing the deregulation. J-51

[1] http://webapps.nyc.gov:8084/cics/cwba/dfhwbtta/abhq; http://www1.nyc.gov/site/finance/benefits/benefits-j51.page.

does not stop suddenly, it winds down, becoming a smaller and smaller benefit as time goes on. I have seen landlords assume that J-51 was over before it actually was, and thus, prematurely deregulate.

VI. INDIVIDUAL APARTMENT IMPROVEMENT INCREASES AND HOW THEY FIT INTO A RENT REGULATORY ANALYSIS

Analyzing an apartment's rent regulatory status vis-à-vis its Individual Apartment Improvement history is the meatiest part of this article. Unlike the J-51 piece, it isn't so simple. Unlike the *Altman* piece, it isn't so nebulous. There is a lot of law surrounding the IAI piece and as many practical considerations. So, let's get down to business.

A. A claim for improper rent deregulation .has no statute of limitations.

We first need to note that a court or the DHCR can look back as far as they want to determine whether an apartment is subject to Rent Stabilization. **While a rent overcharge claim is subject to a four-year look back period, a claim for improper destabilization is not**. *72A Realty Associates v. Lucas*, 28 Misc.3d 585 (N.Y.City Civ.Ct., 2010), *affirmed as modified by 72A Realty Associates v. Lucas* 32 Misc.3d 47, (A.T.1st 2011), *affirmed as modified by 72A Realty Associates v. Lucas*, 101 A.D.3d 401, (1st Dep't 2012); *Gersten v. 56 7th Avenue LLC,* 88 A.D.3d 189 (1st Dep't 2013).

As a practical matter, however, when divorced from the possibility of an overcharge award, many tenants lack the resources or the desire to litigate with their landlords over an apartment's rent regulatory status. I include an example below, modified from a recent inquiry I actually received.

Example

Tenant thinks he has a possible rent overcharge case. The dates and the math come down to this – the rent jumped in 2006 in such a way that the landlord would have had to have spent $6k in IAI's on the apartment. The present owner owned the building in 2006 and has receipts and cancelled checks for the $6k. The documentation is not perfect, but it exists. Tenant moved in five years ago, in 2011. Tenant reports that, when he moved in,

> the apartment was obviously not newly renovated, but neither was it dilapidated. The tenant does not have any pictures from 2011 nor any record of complaints until the present day when the overcharge idea popped into his head. The tenant doesn't have much, if anything, to say to counter the allegations that the work was done. The rent is now $2,900.00 per month. Four years ago, it was only $2,800.00 per month. In fact, with the soft rental market, it is unlikely that landlord would raise the rent much next year anyway.
>
> Even if tenant could somehow prove that the $6k in IAI's did not happen 10 years ago and that, therefore, tenant is entitled to a Rent Stabilized lease, what is the real upside of all that litigation for the tenant? The four-year statute of limitations (as we will see below) likely insulates the landlord from any overcharge. All tenant would be litigating for is the right to stay, at the current rent (which is already market for the unit), which would then be limited by Rent Guidelines Board increases. There is some upside for tenant and some downside for landlord, but not a lot, and that only comes after a protracted fight without a high likelihood of tenant prevailing, as per the fact pattern I laid out here.

Then again, **some tenants pursue these cases anyway**, **even if there is not a pot of gold overcharge at the end of the rainbow**. *557-559 Wilson Avenue Realty v. Murdough*, 66636/2014, NYLJ 1202720127221 (Civ. Ct. L&T Kings Cty. 2016) I thought to be of particular interest. Tenant moved into the subject premises in April 2010 with a monthly rent of $1,200.00. Tenant alleged that the apartment "looked nice" when she moved it, but that the bathroom fixtures and files had not been replaced in years, the kitchen cabinets, counter tops, and appliances also looked more than five years old, and the windows were "old timey". Tenant disputed landlord's claim that the apartment was exempt from Rent Stabilization, and argued that in order for the landlord to have deregulated the subject premises, he would have had to have spent $47,070.00 in IAIs. Tenant annexed the DHCR apartment registration history, indicating a rent of $450.00 per month in 2003, and an increase to $1,724.85 one year later. The 2004 registration indicated "pref rent vac/leas imprvmt", and the registration in 2005 indicated "high rent vacancy exempt". Tenant argued that landlord improperly increased the rent and deregulated the apartment.

Landlord opposed tenant, citing *In the Matter of Grimm v. DHCR*, 15 NY3d 358 (2010), arguing that although the Court of Appeals provides an exception to the four-year "look back" rule, the exception is only triggered if the tenant can clearly establish the landlord's fraudulent deregulation scheme. Landlord argued that tenant failed to establish such fraud.

Tenant argued that the premises was not properly deregulated and her request to look beyond the four-year statute of limitation was solely to determine whether the subject premises was subject to Rent Stabilization. The court acknowledged the *Grimm* line of cases, but noted that tenant was not seeking an overcharge, but only a finding that the premises were properly deregulated. *East West Renovating Co. v. DHCR*, 16 AD3d 166 (1st Dept,2005) ("DHCR's consideration of events beyond the four-year period is permissible if done not for the purpose of calculating an overcharge but rather to determine whether an apartment is regulated.")

Finally, the *Murdough* court gave the tenant a deposition so she could look into the IAI's from twelve (12) years ago. How many landlords would have those records twelve (12) years later? Especially if the building has changed hands two or three times since then?

B. The Somewhat Erratic and Evolving Jurisprudence Involving Rent Overcharges and The Four-Year Statute of Limitations

My supposition being that overcharges drive IAI disputes, we must consider the somewhat erratic and evolving jurisprudence involving rent overcharges and the four-year statute of limitations.

1. *The Four-Year Look Back Period on an Overcharge Claim*

CPLR § 213-a provides a four-year look-back period for rent overcharge claims and states in pertinent part that:

> An action on a residential rent overcharge shall be commenced within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of

> the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action.

Furthermore, the Rent Stabilization Law at § 26–516(a)(2), as amended by the Rent Regulation Reform Act of 1997 (RRRA) states:

> [A] complaint under this subdivision shall be filed with [DHCR] within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed ... This paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this subdivision".

The RRRA "clarified and reinforced the four-year statute of limitations applicable to rent overcharge claims ... by limiting examination of the rental history of housing accommodations prior to the four-year period preceding the filing of an overcharge complaint" *Thornton v. Baron,* 5 N.Y.3d at 175 (2005); *Matter of Cintron v. Calogero,* 15 N.Y.3d 347, (2010).

To effectuate the purpose of the four-year limitations period in rent overcharge cases, DHCR regulations set the "legal regulated rent" as the rent charged on the "base date," which is the "date four years prior to the date of the filing of [the overcharge] complaint" plus any subsequent lawful increases. 9 NYCRR 2520.6[e], [f][1]; 2526.1[a][3][i].

2. ***The Colorable Claim of Fraud Exception to the Four-Year Look Back Period on an Overcharge Claim***

An exception to the four-year look-back period occurs when there is a "colorable claim of fraud." The leading case excepting the four-year statute of limitations is *Matter of Grimm v. DHCR*, 15 N.Y.3d 358 (2010). In *Grimm*, the DHCR expressed a fear that "any 'bump' in an apartment's rent, even those authorized without prior DHCR approval, such as rent increases upon installation of improvements to an apartment [would] establish a colorable claim of fraud requiring DHCR investigation."

From *Grimm* we learn that:

> [g]enerally, an increase in the rent alone will not be sufficient to establish a 'colorable claim of fraud,' and a mere allegation of fraud alone, without more, will not be sufficient to require DHCR to inquire further. What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization.

Grimm has numerous progeny, each contributing to and shaping the evolving requirement for what a tenant needs to do to demonstrate a "colorable claim of fraud." As of this writing, on Westlaw there are 29 citing references to *Grimm* in case law and 34 citing references to *Grimm* in trial court orders. Some of those cases and trial court orders are devoid of fact patterns and only contain holdings. If one reads all 63 cases, guidance emerges about when there is a colorable claim of fraud and when there is not.

3. ***In order for there to be a finding of fraud, there has to be a game of some kind, often building-wide, being perpetrated by the landlord.***

First, let us consider the cases where the courts did find fraud. The court will find fraud where the Landlord is engaged in a "stratagem devised … to remove tenants' apartment from the protections of rent stabilization…", such as the complex illusory tenancy scheme in *Conason v. Megan Holding*, LLC, 25 N.Y.3d 1 (2015), or where landlord forced tenants into agreeing not to use their apartments as their primary residences, in contravention of public policy, as in *Pehrson v. DHCR*, 34 Misc.3d 1220(A) (Sup. Ct. NY Cty. 2011).

The court will also find fraud where a bogus preferential rent was offered and then suddenly revoked, as in *1290 Ocean Realty LLC v. Massena*, 46 Misc.3d 1223(A) (NYC Civ. Ct. NY Cty. 2015), where: the IAI's would have needed to be $18,000, DHCR's rent registration history made no mention of the increase; landlord's own spreadsheet of expenditures for the apartment did not justify the $18k increase; landlord failed to give tenant a Rent Stabilization rider for his vacancy lease; landlord charged tenant a "preferential rent" until it thought the four-year statute of limitations had run. In *DL Major Const. Co. Group LLC v. Carchi*, 43 Misc.3d 1219(A) (Civ. Ct. Kings 2014), the court found a colorable enough claim of fraud had been raised where there was a suspicious preferential rent agreement, bad conditions existed in the apartment, and there were many building-wide HPD violations, and 13 HPD violations for the subject premises.

In *Bogatin v. Windermere*, 98 A.D.3d 869 (1st Dep't 2012), tenant raised a colorable issue of fraud when he included a contractor's estimate as part of his extensive proof that IAI's had not taken place.

Most recently, in the famous *Altman* case, the complicated facts of which demonstrate the very essence of a scheme to deregulate, the Appellate Division held that there was fraud sufficient to overcome the four-year look back period. *Altman v. 285 West Fourth LLC*, 38 N.Y.S.3d 173 (A.D. 1st 2016).

In other words, in order for there to be a finding of fraud, there has to be a game of some kind, often building-wide, being perpetrated by the landlord.

Moreover, the elements of fraud need to be found. In general, the essential elements required to sustain a cause of action for fraud and deceit based on misrepresentation are that a representation was made as a statement of a material, existing or preexisting fact, which was untrue and known to be untrue by the party making it; that it was made with the intent to deceive and for the purpose of inducing the other party to act upon it; and that the other party did in fact justifiably rely on it and was thereby induced to act or refrain from acting, to his or her injury or damage. *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173 (2011); *Ross v. Louise Wise Services, Inc.*, 8 N.Y.3d 478 (2007). Thus, the court held in *Antollino v. Wright*, 2015 WL 5096025 (NY Cty. Sup. Ct. 2015) that:

> To establish fraud on the part of defendants, so as to enable Wright to search the rental history beyond the four-year period, there must be evidence of a misrepresentation or an omission of a material fact made by 620 LLC, knowing it to be false, that was relied upon by Wright to her detriment (*Mandarin Trading Ltd. v Wildenstein*, 16 N.Y.3d 173, 178 [2013]; *Grimm*, 15 N.Y.3d at 367 ["What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization"]). Consequently, in order to establish fraud on the part of 620 LLC, there must be sufficient proof that they either knew that Apartment 31 was not subject to rent deregulation ...

4. ***In most cases, the court does not find a colorable claim of fraud exception to the four-year look back period on an overcharge claim.***

In most cases I surveyed, the court did not find a colorable claim of fraud that justified looking back beyond four years. In *Boyd v. DHCR*, 110 A.D.3d 594 (1st Dep't 2013) *revsd.* 23 N.Y.3d 999 (2014), a case where the tenant did not raise a colorable claim of fraud, the tenant had only one bit of evidence of the alleged fraud, and that was her own opinion after looking around her apartment and then going to Home Depot. Yet in *Boyd* the rent increased from $572 to $1,750 in three months and the owner never submitted any evidence showing it actually made $39,000 in alleged improvements. Still the court in *Boyd* did not find a colorable claim of fraud and the statute of limitations remained a bar.

Most of the Illegal-High-Rent-Vacancy-J-51 cases find no colorable claim of fraud to justify overcoming the four-year look back period. *72A Realty Associates v. Lucas*, 32 Misc.3d 47 (A.T. 1st 2011). In these cases the court is saying that just because the landlords were totally wrong about the deregulations, does not mean that the deregulations were part of a fraudulent scheme. These deregulations were just mistakes. *See also Fox v. 12 East 88th LLC*, 2016 WL 6070824 (Sup. Ct. NY Cty. 2016) and *Gomez v. Rossrock LLC*, 2016 WL 3256977 (Sup. Ct. NY Cty. 2016).

Irregularities in the rent roll do not necessarily mean fraud. *White v. DHCR*, 2013 WL 753516 (Sup. Ct. NY Cty. 2013). Neither does improperly calculated rent. *Lexington House LLC v. DHCR*, 31 Misc.3d 1215(A) (Sup. Ct. NY Cty 2011). Nor is there fraud when the discrepancy between the rent charged and the legal rent is minor and there is no attempt to remove the apartment from rent regulation. *B-U Realty Corp. v. Kiebert-Boss*, 50 Misc.3d 1220(A) (NYC Civ. Ct. NY Cty, 2016).

Generally, an increase in the rent alone will not be sufficient to establish a colorable claim of fraud. *IWC 879 Dekalb, LLC v. Walsh*, 46 Misc.3d 1227(A) (NYC Civil Ct. Kings Cty. 2015).

5. ***Whether there is a colorable claim of fraud is, inherently, a fact issue, not an issue of law. Therefore, the fraud exception to the four-year look back period on an overcharge claim is not an issue that is susceptible to summary judgment.***

In any event, whether there is a colorable claim of fraud is, inherently, a fact issue, not an issue of law. Therefore, the fraud exception to the four-year look back period on an overcharge claim is not an issue that is susceptible to summary judgment. *See Meyers v. Four Thirty Realty*, 127 A.D.3d 501 (1ST Dep't 2015); *Meyers v. Four Thirty Realty,* LLC, 2013 WL 5706827 (Sup. Ct. NY Cty. 2013) ("…there is no bright-line rule regarding the application of the four-year limitations period on overcharge claims. Rather, the Court must make a fact-specific inquiry as to the application of the four-year rule."); *East 17th LLC v. McCusker*, 51 Misc.3d 142(A) (A.T. 1st 2016); *Antollino v. Wright*, 2015 WL 5096025 (NY Cty. Sup. Ct. 2015); *Zheng v. Mak*, 2012 WL 978592 (Sup. Ct. NY Cty. 2012); *Morton v. 338 West 46th Street Realty, LLC*, 45 Misc.3d 544 (NYC Civ. Ct. NY Cty. 2014) ("… The burden was not on defendant to show that a four-year statute of limitations applies, but rather, the burden is on plaintiffs to show that the Court should look back beyond the applicable four-year rent history to determine base rent."); *Davidson v. 730 Riverside Drive, LLC*, 2015 WL 5171072 (NY Cty. Sup. Ct. 2015).

C. The Heightened Scrutiny that IAI's are Receiving

Next, we must consider that IAI's are receiving heightened scrutiny. The new DHCR Operational Bulletin 2016-1 lists the proof that an owner can use to establish IAI's as follows:

> Claimed individual apartment improvements are required to be supported by adequate and specific documentation, which should include:
>
> **1. Cancelled check(s) (front and back) contemporaneous with the completion of the work or proof of electronic payment;**
>
> **2. Invoice receipt marked paid in full contemporaneous with the completion of the work;**
>
> **3. Signed contract agreement; and**

> **4. Contractor's affidavit indicating that the installation was completed and paid in full.**
>
> This documentation requirement calls for a higher standard of proof than that found in Policy Statement 90-10 which provided that only one of the above forms of proof was necessary unless DHCR requested additional proof. However, actual processing has shown that more than one type of proof is the norm rather than the exception. Therefore, **an owner should submit as many of the four listed forms of proof as the owner is able to provide with the initial submission/answer**. DHCR's consideration may not be limited to these four items as its review of IAIs is fact intensive and an individualized process regardless of whether it is part of an administrative proceeding or the subject of an independent investigation.
>
> Additionally, IAI review involves DHCR's assessment of the evidence offered so that there is no guarantee that any particular piece of proof will be dispositive. For example, **an invoice or contract with less than complete specificity may not be sufficient**. DHCR, in every case, has the authority to request information it believes is necessary to reach a proper determination including requests for additional evidence indicating the installation was completed, paid in full and otherwise appropriate to support a rent increase. Additional documentation should at all times be provided if possible, and it should be provided as requested to avoid a more protracted administrative or investigative proceeding. If an owner is unable to provide these items or any item requested, then an explanation must be provided and DHCR will determine whether the proof given is sufficient.

[Emphasis supplied; End of DHCR Op-Bull. Quote.]

It is rare that a landlord actually has their act together to the extent I would like to see with respect to an IAI. Here are some examples of what I see frequently:

- The cancelled checks do not indicate what invoices were being paid.

- There are no invoices marked "paid".
- The amounts of certain expenditures do not match up with the invoices.
- The invoices are chronologically discordant with the alleged work.
- Landlord does not provide signed contracts; they have paper, but not contracts.
- Landlord does not provide contractors' affidavits.
- Landlord does not provide before and after pictures of the apartment.

TIP: A simple technique that I always instruct my landlord-clients to engage in is to take before and after pictures of the work in an apartment, a picture being worth a thousand words (or a thousand invoices, cancelled checks, and contractor's affidavits).

D. List of Factors for a Tenant to Consider When Deciding Whether to Challenge an Apartment's Deregulated Status Based Upon an Allegation of Insufficient IAI's

In light of the foregoing, I have compiled a list of factors for a tenant to consider when deciding whether or not to challenge an apartment's deregulated status based upon an allegation of insufficient IAI's:

(1) If the IAI's were within four-years, then the case is stronger because there is an overcharge possibility. Next, of course, one must consider how big the overcharge liability would be.

(2) If the IAI's were outside of the four-year look back period, you must then evaluate how strong the fraud claim is that will potentially get you beyond the four-years.

(3) In general, the closer to the present the IAI'a occurred, the stronger the challenge will be because the tenant will have more personal knowledge of the condition of the apartment. Although the closer to the present the IAI's occurred, the more likely landlord is to have the proper records.

(4) If the IAI's were done by a previous owner, the challenge to the IAI's will be stronger than if the current landlord was the one who did made the IAI's. This is true because many landlords do not have a complete copy of a previous owner's records.

(5) If the tenant has specific and documented complaints about the apartment that tend to support that the IAI's did not happen, the challenge to the IAI's will be stronger. This should be more than just a tenant's opinion. Here, an expert witness, such as an architect or contractor, is helpful.

(6) The larger the dollar amount of the alleged IAI's, the stronger the challenge will be. This is true because the landlord will have more to prove.

VII. *ALTMAN* AND *SMITH* – IT AINT OVER 'TIL IT'S OVER

Altman and *Smith* is the last stop on my analysis train because the law is in flux. **But make NO mistake – just because the law is unsettled does not mean that you can ignore the implications of *Altman v. West Fourth*, 127 A.D.3d 654 (1st Dep't 2015). When the dust settles on the *Altman* piece, someone is going to be wrong. I will explore below that there are better and worse ways to be wrong, and what you can do in the meantime.**

Let's try to keep this simple. *Altman* stands for the proposition that the Rent Stabilized tenant who was vacating had to have been actually paying the threshold rent. Unless and until the Court of Appeals agrees to hear an appeal of *Altman* and reverse it, *Altman* is the law if the land.

But what about the unanimous *233 E. 5th St. LLC v Smith*, (AT 1st 12/8/2016) 2016 NY Slip Op 26404?!?! Here's the full text:

> Landlord appeals from an order of the Civil Court of the City of New York, New York County (Jack Stoller, J.), dated April 5, 2016, which denied its motion for summary judgment and granted tenants' cross motion for summary judgment dismissing the petition in a holdover summary proceeding.
>
> Per Curiam.
>
> Order (Jack Stoller, J.) dated April 5, 2016, reversed, with $10 costs, tenants' cross motion denied, petition reinstated and landlord's motion for summary judgment of possession granted. Issuance of the warrant of eviction shall be stayed for 30 days after service of a copy of this order with notice of entry.
>
> Landlord established, prima facie, that the subject apartment was deregulated before tenant took occupancy in November 2003. Landlord's evidentiary submissions demonstrated that tenants' predecessor, one James Henderson, occupied the apartment as a rent stabilized tenant from October 1995 through the time of his vacancy in late 2003; and that the legal rent at

the time of Henderson's vacancy, $1,836.20 per month, plus the 20% vacancy increase allowance (*see* Rent Stabilization Law [RSL] [Administrative Code of City of NY] § 26-511[c][5-a]) brought the legal rent above the $2,000 luxury decontrol threshold then in effect (*see* RSL §§ 26—504.2[a]; *Jemrock Realty Co., LLC v Krugman*, 13 N.Y.3d 924, 926 [2010]; *Roberts v Tishman Speyer Props., L.P.*, 62 A.D.3d 71, 78 [2009], *affd* 13 N.Y.3d 270, 281 [2009]).

Civil Court erred in concluding that the apartment remained rent stabilized on the ground that Henderson's rent at the time of his 2003 vacatur was less than $2,000. RSL 26-504.2(a) expressly provides for deregulation if the housing accommodation "is or becomes vacant ... with a legal regulated rent of two thousand dollars or more per month." In addition, RSL § 26-511(c)(5-a) provides that the legal rent for any vacancy lease "shall be ... [t]he previous legal regulated rent ... increased by ... (i) if the vacancy lease is for a term of two years, twenty percent of the previous legal regulated rent" (*see also* Rent Stabilization Code [RSC] [9 NYCRR] 2522.8[a][1]). Thus, when subsequent to a vacancy, the legal rent, as increased by the vacancy increase allowance, as well as any increases permitted for postvacancy improvements, is $2,000 or more, the apartment is deregulated pursuant to RSL 26-504.2(a) (*see* RSC §§ 2520.11[r][4], [*2][10][i] [if during vacancy, rent is increased by vacancy increase allowance and increases for improvements to a level of $2,000 or more, the apartment qualifies for exemption]). This intent to consider postvacancy increases in rent when determining whether the deregulation threshold was reached was emphasized in the Executive Memorandum of the Governor, upon the signing of the Rent Regulatory Reform Act of 1997, which states:

"Also repealed is a provision recently added by the NY City Council that only allows consideration of the apartment's rent level at the time of the vacancy. The City Council's amendment had the effect of preventing rent increases that ordinarily take place after a vacancy - such as vacancy allowances and increases attributable to apartment improvements - from being considered in determining whether the $2,000 threshold was reached" (Governor's Bill Jacket, 1997 NY Laws, ch 116).

> Consideration of postvacancy increases in rent is also firmly established in case law interpreting the aforementioned provisions of the RSL and RSC (*see Roberts v Tishman Speyer Props., L.P.*, 62 AD3d at 78 [2009] [high rent deregulation when "the tenant vacates the apartment and the legal rent, plus vacancy increase allowances and increases permitted for landlord improvements, is $2,000 or more"], *affd* 13 NY3d 270, 281 [2009] ["postvacancy improvements [ ] count toward the $2,000 per month rent threshold [L. 97, ch. 116]" for high rent deregulation]; *see also Jemrock Realty Co., LLC v. Krugman*, 13 NY3d at 926; *Aimco 322 E. 61st St., LLC v Brosius*, 50 Misc 3d 10 [2015]). **In this regard**, **we do not interpret the contents of a single sentence in the decision in *Altman v 285 W. Fourth, LLC*, 127 A.D.3d 654 (2015) so broadly as to effectuate a sea change in nearly two decades of settled statutory and decisional law – that allowed an owner to deregulate an apartment after a vacancy**, **if the legal rent plus any lawful increases and adjustments to the rent**, **such as the vacancy allowance**, **exceeded $2,000** (*see Aimco 322 E. 61st St., LLC v Brosius*, 50 Misc 3d at 11-12) - particularly given the absence of any expressed intention by the *Altman* Court to do so.
>
> [Emphasis supplied.]

I know landlords everywhere are popping champagne bottles open over the *Smith* case, and I hate to be the proverbial bubble-burster. But the last time I checked the Division trumps the Term. And the Division in *Altman* simply did not make the distinction that the *Smith* court says it did. In fact, quite the opposite – the Division cites § 26–504.2[a] in a monolithic way – not the bifurcated way that the Term does. The Division doesn't hack the statute up. *The words that the Term are seeing implied are simply not there*. I feel sort of like the little kid pointing out that the emperor has no clothes on at the parade…but those words are just NOT there. Hey - the Division also heard the argument about the all-important "Governor's Bill Jacket". And it still, unanimously has stuck, in *Altman,* with this:

> The motion court erred in dismissing plaintiff's [tenant's] complaint, and declaring that the apartment is not subject to the Rent Stabilization Law (*see* Administrative Code of City of N.Y. § **26–504.2[a]**). Although defendant

> [landlord] was entitled to a vacancy increase of 20% following the departure of the tenant of record, **the increase could not effectuate a deregulation of the apartment since the rent at the time of the tenant's vacatur did not exceed $2,000** (*see* Rent Stabilization Code [9 NYCRR] §§ 26–504.2, 26–511[c][5–a]; *Roberts v. Tishman Speyer Props., L.P.,* 62 A.D.3d 71, 77, 874 N.Y.S.2d 97 [1st Dept.2009], *affd.* 13 N.Y.3d 270, 280, 890 N.Y.S.2d 388, 918 N.E.2d 900 [2009]).
>
> [Emphasis supplied.]

On September 8, 2015, the Appellate Division denied the motion of the landlord in *Altman* to reargue.[2] Later, the Division affirmed the lower court's calculation of an overcharge award upon remand after the first appeal, including treble damages and pre-judgment interest. *Altman v. 285 West Fourth LLC*, 143 A.D.3d 415 (A.D. 1st 2016).

I am not saying that the *Altman* case will not someday go down in flames. I am just saying that it has not yet. It is much too early for landlords to celebrate.

The *Altman* landlord's motion for leave of the Appellate Division to appeal to the Court of Appeals (New York's highest court) was made in late October and has been pending for the last month or so. The decision could come down at any moment. Perhaps the Court will agree to hear the case (the appeal is not of right); perhaps it will not. If the Court takes the case, perhaps it will give us all clarity, or perhaps it will leave us with as many questions as it did answers, as it did with *Roberts*. Perhaps *Smith* will go to the Division and the Division will embrace the Term's interpretation of the Rent Stabilization Law in *Smith*. Maybe there is another case out there that will go the distance and provide the much needed answers. My crystal ball is broken. So let us focus on what we can do with all this.

Eventually there will be an answer. In the meantime, landlords have to ask themselves this simple question on a case-by-case basis – *how would it be worse to be wrong?* Would it be worse to resist a tenant clamoring for re-regulation and then later be found to be wrong? Or would it be worse to give a tenant clamoring for re-regulation his or her Rent

[2] http://www.courts.state.ny.us/courts/AD1/calendar/appsmots/2015/September/2015_09_08_mot.pdf.

Stabilized lease and then wait and see? **Different scenarios will lend themselves to different conclusions**. A big factor will be the overcharge exposure attached to the re-regulation.

I have landlord-clients who have resolved *Altman* re-regulation scenarios as follows. Landlord gives tenant a Rent Stabilized lease. *The lease is given without respect to a so-order stipulation containing a collaterally estopping finding that the tenancy is subject to Rent Stabilization -- **this is hugely important**.* What will happen if *Altman* goes away? If *Altman* goes away, the landlord can simply refuse to renew the lease upon its expiration. Coverage under Rent Stabilization is governed by statute and cannot be created by waiver or estoppel where the premises are exempted from regulation. *Mayflower Associates v. Gray,* NYLJ 3/1/94 page 21, col.1). In *Mayflower Associates,* a landlord who consistently treated the tenant as a rent stabilized tenant through the use of preprinted rent stabilization forms, brought a holdover proceeding at the expiration of the tenant's lease. The landlord contended there was no right to renew since the premises were not subject to Rent Stabilization because the building did not contain six or more dwelling units. The *Mayflower* court held that, "[c]overage under a rent regulatory scheme is governed by statute and ... cannot be created by waiver or equitable estoppel where the premises are exempt from regulation.... Thus, the fact that a landlord and/or prior owners previously treated tenant's apartment as rent stabilized does not preclude the subsequent maintenance of holdover proceedings where it is demonstrated that one of the fundamental requisites for coverage never attached." *See also Carrano v. Castro*, 8 Misc.3d 1007(A) (NYC Civ. Ct. King Cty. 2015) ("In the case at bar, landlord should not be precluded from commencing a proceeding to terminate the tenancy, since the premises were never subject to rent stabilization. The tenants merely obtained benefits styled upon rent stabilization by their contract with the landlord's predecessor-in-interest.")

Again, every scenario is different and has to be analyzed independently.

A Brief Word About Richard Altman – the Man, not the Case

I had the pleasure of meeting Richard Altman, the tenant in the eponymous *Altman* case. Mr. Altman is an accomplished attorney, practicing intellectual property litigation and art law. Mr. Altman is also a gentleman and a very nice person. My sense is that he has not savored the attention that this case has garnered him. Yet he has carried the mantle of it with dignity.

> I take a detour to mention Mr. Altman to point out that what is most fascinating about him, in the context of this litigation, is what he is NOT. Mr. Altman is *not* a landlord and tenant attorney, he is not a housing activist, and before his landlord attempted to evict him from his long-term home, he was not someone who thought a lot about High Rent Vacancy Deregulation. Mr. Altman is a simply this – a man who wishes to protect his home.
>
> Mr. Altman and his lawyer, Lawrence W. Rader, read the Rent Stabilization Law and posited their argument…and changed the landscape of New York City landlord and tenant law radically. How deep and lasting their impact will be, remains to be seen.
>
> In law school, they taught us that the most powerful agent for change in the law is a human with a legal problem. Richard Altman reminds us of that poignantly.
>
> I have no professional relationship with Mr. Altman, I just thought this was worth mentioning.

VIII. ANALYSIS AND RISK MITIGATION

A rent regulatory analysis needs to be expressed in terms of numerical percentages in order to be useful as a risk analysis and mitigation tool. Thus, upon completion of my rent regulatory analysis of an apartment, I assign numerical percentages to my findings. This is a Legal Project Management[3] technique for communicating clearly with my clients. For example, I will conclude with something like:

> In my opinion, given the information that I have to work with, there is a Sixty-Five Percent (65%) chance that, if tenant challenges the regulatory status of the apartment, then a court or DHCR will find that the apartment is still subject to Rent Stabilization, based upon landlord's inability to support the IAI's. If that happens, then there is a Ninety Percent (90%)

[3] http://itkowitzlegalprojectmanagement.itkowitz.com.

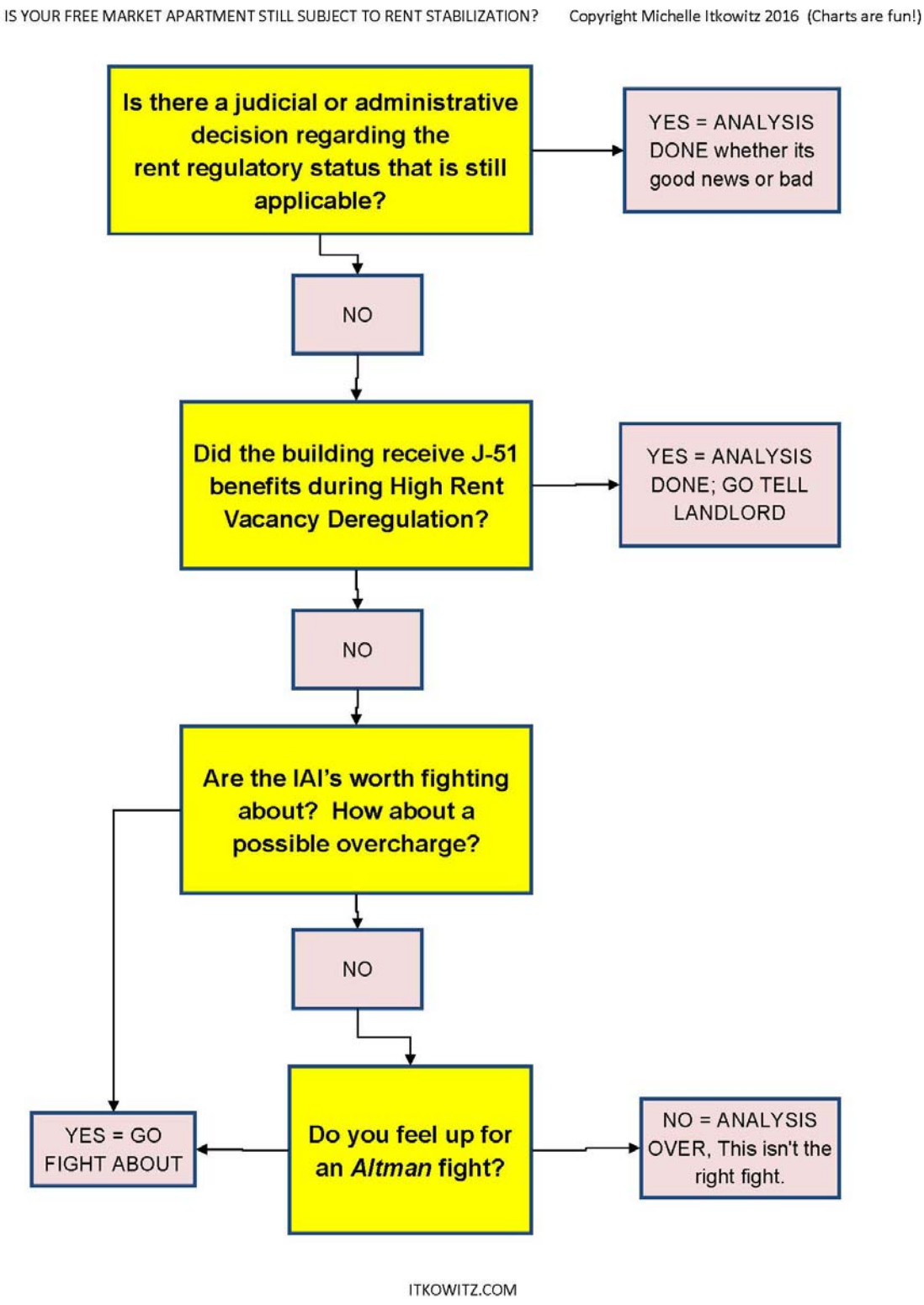
chance that an overcharge will be assessed. The overcharge could be between $10k and $30k; if trebled, between $30k and $90k. I give it a an Eighty Percent (80%) chance that the overcharge will be trebled.

IX. A CHART AND A CONCLUSION

Ok now you are in for some real fun – *I MADE YOU A CHART!* See next page. And you thought this article couldn't get any better, right?

The following chart is tenant-centric. I could have done it either way, and decided that this way was simpler and easier to follow, and the last section was landlord-centric, so I wanted to end on a balanced note.

In conclusion, I estimate that between J-51, faulty IAI's, and *Altman*, there are probably a quarter million improperly deregulated apartments out there. I, the purveyor of one woman-owned, small, private law firm, do not portend to have the ultimate answer to this crisis. And it is a crisis. It is likely, however, that most of us cannot wait for the Legislature, the courts, the DHCR, the landlord advocacy organizations, or tenancy advocacy organizations to fix it. How's any of that working out for you so far? Therefore, each person, be they landlord or tenant, needs to take responsibility for seeking understanding about the rent regulatory status of the apartments they own or live in. I know only this – there can be no solutions without understanding.


IS YOUR FREE MARKET APARTMENT STILL SUBJECT TO RENT STABILIZATION?
Copyright Michelle Itkowitz 2016 (Charts are fun!)
Is there a judicial or administrative decision regarding the rent regulatory status that is still applicable?
YES = ANALYSIS DONE whether its good news or bad
NO
Did the building receive J-51 benefits during High Rent Vacancy Deregulation?
YES = ANALYSIS DONE; GO TELL LANDLORD
NO
Are the IAI's worth fighting about? How about a possible overcharge?
NO
Do you feel up for an *Altman* fight?
YES = GO FIGHT ABOUT
NO = ANALYSIS OVER, This isn't the right fight.
ITKOWITZ.COM

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 represents BOTH landlords and tenants and her core competencies include: Rent Stabilization and Rent Control, the Loft Law, Short-Term Leasing cases, 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.

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; Rossdale CLE, 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; BisNow; and SubletSpy.

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.

Michelle is an adjunct professor of Legal Project Management at NYU's School of Professional Studies.

Michelle is immensely proud that Itkowitz PLLC was recently awarded its NYS Women Business Enterprise Certification by the Empire State Development Corp.

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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