

H O U S I N G I N S I G H T S

The Voice of the Small Property Owners of New York

OCTOBER 2008 - DECEMBER 2008

OBSERVATIONS ON POLITICS

By Roberta Bernstein

This editor is deeply and gravely troubled by national political events. Over the many years SPONY has published its newsletter, we have expressed (and, I hope, illustrated) our concerns about the negative social and economic results of big government that taxes wildly, and then spends those tax dollars on programs subject to malfeasance and corruption. We have concerns about a government that puts such programs in place but doesn't adequately screen recipients of tax dollars or monitor them for fraud.

We want government to enable, then step back. There is no question that it is society's obligation to help those truly in need, but we don't want to see a large government that has huge control of our lives and expands "give-away" programs that historically have inspired deception, malfeasance and theft. Doling out welfare to the same families for four or more generations creates an inter-generational transfer of poverty, and perpetuates rather than cures the problem. Bailing out Wall Street without a payback program in place would have been unfair and unjust to the people. As Thomas Jefferson said, "A government large enough to give you everything you want is strong enough to take everything you have." And the government will take and take if we allow it.

It has long been known that hard times and crises are close friends of big government and socialism. Since we are experiencing both hard times and crises at the present time, many people will be swayed by political arguments that offer a "fix" to our problems and a "better way." But beware! The promised fixes may not be compatible with our democratic/capitalistic system and will definitely result in the middle class/working force footing the bill - we (who have worked so hard and for so long to earn our money) are the ones from whom the taking will be made. If certain proposed policies were implemented after the election, those who own stocks and/or real property would be considered rich and their profits would be more heavily taxed. If you want to leave your property to one of your children or grandchildren, a dramatically increased inheritance tax may prohibit that from happening. Do you think you might want to sell and preserve your profit through a 1031 exchange? That might no longer be an option. Is it really the American way to re-distribute wealth? Make no mistake, if you own even a single small building, you are considered wealthy by the "poverty-pimps" that are promising to save America.

We are seeing some of the ridiculously unfair effects of socialistic, big-government ideology in New York City (see the Section 8 article). Can you imagine if legislators with this mentality ran our entire country? The recent economic crises resulted in large part from mortgages being given to people who couldn't afford to pay them. Many Democrats in Washington

believe that one of the solutions would be rent-controlled housing, thus illustrating their total lack understanding of the negative impact of rent regulation. They have no problem with individual subsidizing other individuals, which is merely another way of re-distributing wealth.

As far as the experience of our current presidential candidates is concerned, I would like to ask one thing. What is a community organizer? Part of that job is to target buildings, organize them, and create a rent strike to force the owner out (admittedly, some cases are justified but many are not). Our present allegedly conservative Supreme Court sees nothing wrong with rent-control (they refused to consider it an improper regulatory taking and therefore against our constitution). I can only imagine the liberties an even more liberal Supreme Court would take with our rights under the constitution.

I am amazed that the political spin given by certain television stations and newspapers are unquestioningly accepted at face value by many people. Although I am not a fan of President Bush, it was not his policies that created the current mortgage fiasco...that program was started by President Clinton. I am ashamed of any party that snubs its nose at voters by creating a "super delegate" forum that makes the final decision on its presidential candidate, thus ignoring actual votes of the people who are members of that party. I find it deplorable and shameful that (often illogical, reprehensible and erroneous) personal attacks, not real issues, have become campaign policy.

I believe that our present democratic/capitalistic system (with minimal "as required" government intervention) does more to allow the individual to prosper and reach self-fulfillment than any other system. Sure, there are flaws and problems with our system, but the other options aren't acceptable for the growth of human potential and personal responsibility. Subsidy programs that are meant to help people often create a mentality of dependency and stagnation in the recipients and often lead to generational inheritance of those traits.

Lastly, I leave you with one thing to consider and remember: a balance of power is essential. It is unhealthy to have solely Democratic or Republican control of the Presidency, House of Representatives and Senate in Washington or, on a state level, the Governorship, Senate and Assembly. The Democrats presently control both the House of Representatives and the Senate in Washington. If a Democratic president were elected, we would have a one-party system with dangerous power. (Please be assured that I would feel the same way if all were controlled by the Republicans.) The last thing we need is a Federal Government that looks and sounds like our New York City Council. For the sake of our country, we need that balance of power.

The DHCR has issued a revised renewal lease form (RTP-8 7/08) that includes instructions for the special rent increases applicable to low rent lease renewals included in the most recent Rent Guidelines Order #40. We have placed a copy on our website – just go to www.spony.org, look on the center bottom and click on “new renewal form.” You will see the DHCR’s comments and the form, which you can download and print for immediate use.

BEDBUGS

A recent decision by the DHCR states that if a bedbug problem exists in only one tenant’s apartment, in his personal belongings, the owner is not responsible. We caution all owners to continue monthly extermination and to pay particular attention to adjoining apartments, including those under and above the infected one, since these critters spread like wildfire. *Continued on page 4*

PROTECTING YOUR FOUR YEAR RIGHTS

If a tenant files an unfounded overcharge complaint and you have dutifully filed all your yearly registrations, you may still be liable for treble damages. The base date must be proved. There are only certain documents that the DHCR will accept. In addition, we recommend that you keep the original vacancy lease and related documents as long as possible, since the courts have directed the DHCR to go beyond the four year statute of limitations in apartment status cases. In short, keep in mind that you should keep copies of the following for all apartments for an indeterminate period of time. *Continued on page 4*

Correction to “Our Boilers, May They Consume Less” in our April issue.
Heat should reach the furthest corner of the building in 30 minutes, not 3 minutes.

STOPPING ORDERS TO SHOW CAUSE

Over the years, many members have called us in frustration over evictions that don't occur. At the 11th hour, the tenant gets an “Order to Show Cause.” It stops the eviction and another court date is scheduled by the judge. Not only have we seen multiple orders submitted by the tenant in the same case, but also we have seen silly and ridiculous reasons written on these orders. Certain judges don't even bother to review the tenant’s reason or the number of times orders have been submitted on the same case, and proceed to schedule the next court date over a month or more away, to the owner’s detriment.

These are blatant abuses of the court system, but there is something you can do. Section 5704 (b) of the state's Civil Practice Law and Rules (CPLR) gives you the right to go to the Appeals Court and ask it to vacate an order. You don't have to give the tenant notice that you are going to do this.

THAT FOUR YEAR RULE AGAIN

We recently reported that the courts instructed the DHCR to pierce the 4 year statute of limitations so that the status of an apartment could be determined (in this case) for the tenant’s benefit. (The DHCR originally refused to go beyond the statutory 4 years.) Apparently, although DHCR seems to be upholding the law, housing court has decided that it can ignore it. In a recent case, Adm. Rev. Dckt. No. VK410013RO 4/1/08, the DHCR again properly refused to pierce the 4 year statute of limitations to establish the apartment status (this time, it would have been for the owners’ benefit). We wonder how the pro-tenant housing court judge would rule in this case.

HPD AND TENANT COMPLAINTS

In the past, when a tenant made a complaint, you would receive a “confirmation of receipt” in the mail from the Department of Housing Preservation and Development (HPD). As of July 1, 2008, you will need to monitor this yourself using the internet. Go to www.nyc.gov/hpd and enter the building address under the section called “Complaints, Violations and Registration Information.” We suppose the city is economizing by saving money on postage, paper and printing, but the bottom line is that unless we are diligent in checking things ourselves, we will have no knowledge of important complaints regarding our properties. Another owner group, the Community Housing Improvement Program (CHIP) has requested of HPD that they e-mail the complaint to owners, and they have agreed to explore this possibility. *Continued on page 4*

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As we reported to you in our April-June 2008 issue, it is now mandatory that you accept tenants who receive Section 8 rent vouchers. But what happens when that tenant is dropped from the Section 8 program because of fraud, misrepresentation, and theft? Does that tenant have to pay the full rent once he loses the subsidy, or does he have to pay only the portion for which he is responsible? In *Douglas v Nola* 7/28/08, the tenant lied in order to receive a higher Section 8 subsidy, claiming that family members lived with her when, in fact, they lived elsewhere and were receiving their own Section 8 subsidy. The owner started a non-payment case but lost. The court, citing case law, said "...a Section 8 tenant does not become liable for the Section 8 share of rent ...even after termination of the subsidy."

The court is basically saying that in the Section 8 lease, the tenant has agreed to only pay his share of the rent, not the whole rent, thus he is not responsible for the balance due. It doesn't matter to the court that Section 8 may have legitimately terminated

the benefits to the tenant and that the lease was entered into with bad faith and fraud by the tenant (and should therefore be declared null and void). It doesn't matter that the owner may be only receiving \$50.00 of an \$850.00 rent, and may be put in jail because he hasn't been able to pay his fuel bill and therefore can't properly heat his building.

We strongly advise all our members who are either willingly or unwillingly renting to tenants with Section 8 vouchers that they add a rider to the Section 8 lease. This can only be done in the vacancy lease as you can't change lease terms in a lease renewal. That rider should state in clear language that the tenant agrees to pay the full rent should, for any reason whatsoever, he/she loses the right to receive Section 8 rent vouchers. That will negate the court's argument. Be prepared, however, to get some negative feedback from Section 8 administrators... but they have no legal reason to refuse to accept a lease with this rider.

(Editor's note: Always check with your attorney!)

A VICTORY FOR OWNER OCCUPANCY

We have been following a specific owner occupancy case since it started many years ago, and the name may be familiar to you, Economakis. A husband and wife purchased a multi-family dwelling with 15 rent stabilized apartments and proceeded to start eviction proceedings against them in order to use the entire building for themselves, their children, and their extended family. The Division of Housing and Community Renewal (DHCR) doesn't have to grant permission for the proceedings pursuant to Section 2524.4 of the Rent Stabilization Code. Furthermore, the code allows an owner to recover as many apartments as he needs for personal use and occupancy.

Despite clear language in the code, the tenants filed a lawsuit and won. The lower court agreed with the tenants, who claimed that the owners had to notify the DHCR and get its approval because Section 2524.5 applied. This section applies to owners who want to remove the entire building from the rental market for either of two reasons: first, the property would be used for the owner's business; or second, if the existing violations were so extensive that the cost of curing them would exceed the value of the building.

The case was appealed by the owner in Appeals Court, and he won. The remaining six tenants then appealed to the Court of

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ILLEGAL APARTMENTS ARE CONSIDERED RENT REGULATED!

If your building is rent stabilized and you have an illegal apartment in the basement or elsewhere, it is considered rent stabilized, even though it may never have been registered with the DHCR! In addition, the illegal status isn't considered cause to terminate a tenancy. The only reason the tenant may be forced to move is if the apartment cannot be legalized, otherwise, the owner must obtain all permits and complete all filings for the illegal apartment. The case of *C&E Associates LLC v. Hernandez* (the basis for this advice) was decided this past May and involved an illegal basement apartment that the owner wanted to reclaim.

However, newly created apartments built after 1974* are not subject to regulation, so if the basement apartment was built after 1974, the owner might have grounds for claiming deregulated status. We don't know if the date of construction was brought up at trial, but if it was, in fact, built after that date, the owner would be well advised to seek an appeal or start a new action for eviction. An opinion letter from the DHCR would also be helpful in court.

(Units built after 1974 refer to either new construction or the addition of an apartment to an existing building. The addition may be the creation of two smaller apartments from one larger apartment. In this case, one of the apartments would remain stabilized and the other would be free market.)*

A TRIBUTE TO CAROLE GERST-KATZ, SPONY'S ADMINISTRATIVE ASSISTANT

By Ira Greene, Esq.

Carole passed away on July 28, 2008. Today would have been her birthday. Carole was an accomplished artist and Administrative Assistant at Small Property Owners of New York (S.P.O.N.Y.). Although Carole's special gifts of color and design grace countless homes and offices, her art is but a small portion of her legacy. Though blessed with beauty, talent and style, she was never filled with herself. Polite, considerate, devoted to family and fiercely loyal, she would never gossip or betray a confidence. One could not have a better or more thoughtful friend. And yet, Carole was playful, with keen sense of humor, marvelous laugh and beguiling charm. She was also strong, with a determination and courage that let a younger Carole overcome obstacles that most young mothers



would have found insurmountable. Raising two little girls on her own, she built a career as an artist that provided the secure home her children needed to become successful and independent adults. Because Carole never dwelt in the past, her friends of later years had no inkling of how hard she had battled. And that was the way Carole wanted it. She was always positive, looking forward, never back. Carole always intended the world to see her at her best, and succeeded, even to the very end when cancer began to overpower her. Deeply loved by family and friends, Carole had all the virtues and more. She will remain treasured in our hearts forever. *(The above article appeared in the New York Times on September 10, 2008, and has been reprinted with the writer's permission.)*

- ?? Annual DHCR filings (with corresponding DHCR Letters of Confirmation),
- ?? All leases concerning the relevant apartment, both stabilized and free market,
- ?? Rent ledgers,
- ?? All bills confirming major capital improvement work which was conducted,
- ?? Copies of all DOB permits which may have been required.

Most importantly, if you do receive any form of complaint, be it rent overcharge, lack of services or harassment, make sure that you prepare your response with all supporting documents and then have your attorney review it. The costs involved will be significantly less than risking a DHCR decision favoring the tenant.

One of our SPONY members was able to counter an assault of complaints from the same tenant, including rent overcharge, harassment and lack of service. She kept copies of all leases, all DHCR filings and confirmations and various notes the tenant had sent over the years which thanked the owner for making repairs, confirming (or rejecting paint schedules) and maintaining the building. Do not underestimate the importance of handwritten notes, cards and post-its – they carry enormous weight with a hearing officer. Do not underestimate the value of sending a letter on a quarterly basis scheduling the required tri-annual painting or asking the tenant to report leaks or other problems. Most times, the tenant in question will reject the scheduled painting or inform you there are no problems in the apartment. You, however, will have complied with the law and cannot be accused of refusing to render required services.

BEDBUGS Continued from page 2

If possible, get the exterminator to complete a checklist for any bedbug-infested apartment at the time it is treated. Such a checklist should include confirmation of whether the tenant (or representative) was present, whether they received any written information about containing the spread of bedbugs, whether they verbally expressed understanding of the necessary methods of control (i.e. laundering and vacuuming) and most importantly, of whether the exterminator noted the presence of bedbugs in the premises (i.e. bedding, furniture etc.) or whether it was merely a baseless complaint. Such a record can be invaluable if the tenant attempts to file a complaint or break the lease.

OWNER OCCUPANCY Continued from page 3

Appeals, the state's highest court. We are delighted to report that the court decided in the owner's favor. This landmark case is finally over and after a long and tedious battle, at least some property owner's rights have been affirmed.

HPD Continued from page 2

Please remember that your tenants can file DOB complaints whether or not you have a permit for work in the building and whether or not you are conducting any work at the building. We suggest that you schedule a monthly time to go on the nyc.gov website and check both the HPD and DOB websites to ensure that you are aware of any complaints.

HOUSING INSIGHTS

SPONY

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