

**Legal Alert: Update on Calculating Rent in the Wake of the *Roberts v. Tishman Speyer* Ruling**  
**January 9, 2020**

As you may be aware, as a consequence of the 2009 Court of Appeals ruling in the above matter, deregulation was held to be impermissible during the receipt of J-51 tax benefits. However, the Court did not address how rents were to be calculated where apartments were erroneously treated as deregulated.

On January 7, 2020 the Court of Appeals heard argument on this issue. Niles C. Welikson, Esq. of this office represented the owner in the first of the five related cases that were heard by the Court on that date, that being *Regina Metropolitan v. DHCR*. Previously in that matter, the Appellate Division, First Department reversed DHCR and ruled in favor of the owner. The Appellate Division held that DHCR could not go beyond four years from the filing of the complaint to calculate the legal rent. DHCR was then granted leave to appeal to the Court of Appeals.

A decision is expected by no later than mid-March, 2020. Based on the questions posed by the seven-judge panel the main issue being addressed was whether the Housing Stability and Tenant Protection Act ("HSTPA") that was enacted June 14, 2019 could be applied to pending cases such as these matters. It appeared that the appellate panel was split on this issue. We are therefore hopeful the majority will rule in favor of owners on the issue of whether applying the HSTPA retroactively is unconstitutional.

We will continue to keep you apprised of significant developments in this area as they arise.

If you have any questions, please contact us.