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Legal Alert: First Department Affirms DHCR's Application of HSTPA to Previously Issued Luxury Deregulation Orders

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The Housing Stability and Tenant Protection Act of 2019 ("the HSTPA") repealed high rent/high income (luxury) deregulation. As a result of this repeal, the New York State Division of Housing and Community Renewal ("DHCR") issued an "Explanatory Addenda" ("EA") with respect to previously issued orders of luxury deregulation. The EA advised that if the rent stabilized lease in effect on the day the Rent Administrator's deregulation order was issued expired on or after June 14, 2019 (the effective date of the HSTPA), the apartment will remain rent regulated. The EA effectively nullified previously issued, and in numerous instances, final orders of luxury deregulation.

The Appellate Division First Department decided three Article 78 proceedings appealed by this firm, which challenged DHCR's erroneous retroactive application of the HSTPA through means of the EA. On February 24, 2022, the First Department affirmed the Supreme Court's decisions and orders that denied the owners' respective Article 78 petitions, finding DHCR has not applied Part D of the HSTPA retroactively, and that the lease(s) having expired subsequent to June 14, 2019, required the apartment(s) to remain subject to rent regulation.

There is no language in Part D of the HSTPA that remotely suggests that such repeal could vitiate or impact a previously issued, final luxury deregulation order. Rather, the repeal by the Legislature provides that deregulation may no longer be applied for based upon high rent/high income. It is our position that there exists no basis or right for DHCR to have inserted language into the HSTPA that was not explicitly included by the Legislature.

The EA was also issued in spite of language in the Clean Up Bill, issued several days after the enactment of the HSTPA, which provides that any apartment that was deregulated prior the enactment of the HSTPA will remain deregulated. Accordingly, where an apartment was lawfully deregulated before June 14, 2019 – that is, the deregulation order was no longer subject to challenge, with only the implementation date being postponed to the expiration date of the lease in effect at the time of the issuance of the order, the apartment is and was intended to remain deregulated.

This firm is actively engaged in the preparation of three respective motions to reargue the Appellate Division's decision, or, in the alternative for leave to appeal to the Court of Appeals, as this legal issue is of substantial public importance and is not limited to the parties in those matters.

We will continue to keep you informed of any and all new developments with respect to these proceedings as they arise.