

Legal Alert: Court of Appeals Rules Housing Stability and Tenant Protection Act of 2019 ("HSTPA") Rent Overcharge Provisions are not to be applied retroactively

April 2, 2020

We are extremely pleased to advise you that on this date the New York Court of Appeals, in *Matter of Regina Metropolitan Co., LLC v. New York State Division of Housing and Community Renewal*, ruled that the rent overcharge provisions of the HSTPA may not be applied retroactively, as to do so would violate an owner's right to due process. The decision affirmed a ruling by the Appellate Division, First Department, that held that in a *Roberts* overcharge case (i.e., apartment erroneously treated as deregulated during receipt of J-51 tax benefits), DHCR could not go beyond four years prior to the filing of the tenants' complaint to calculate the legal regulated rent. Niles C. Welikson, Esq. of this office successfully argued both appeals on behalf of the owner.

It is apparent that the decision impacts all overcharge complaints filed both before and after the enactment of the HSTPA on June 14, 2019. The Court's decision states, at page 4 thereof, that "a limited suite of enforcement provisions may not be applied retroactively", that the overcharge calculation and treble damages provisions of Part F of the HSTPA may not be applied retroactively, and that the appeal was required to be resolved under the law in effect at the time the overcharges occurred. *Id.* at 54.

The decision also states, at page 35, that the HSTPA does not revive claims that were time barred at the time of its enactment. It holds that there is no indication the Legislature intended to extend the statute of limitations to permit recovery of two annual overcharge claims that were time barred under prior law. This is significant since the HSTPA provides for a six-year statute of limitations on the recovery of overcharges, while the prior limit was four years.

It is our opinion in interpreting the ruling that, as to any overcharge claim pertaining to the period prior to the June 14, 2019 effective date of the HSTPA, the law in effect at that time must be utilized, even if the complaint was filed after that date. However, any overcharge that is found to have occurred after that date would be governed by the new law.

If you have any questions regarding the impact of this ruling please do not hesitate to contact us.