

Legal Alert: DHCR's Position on Major Capital Improvements and Individual Apartment Improvement Increases

July 23, 2020

As we previously advised, the Court of Appeals, in deciding *Matter of Regina Metropolitan Co., LLC v New York State Division of Housing and Community Renewal*, ___N.Y.3d___, 2020 Slip Op 02127 (2020), held that the rent overcharge calculation provisions and rent history review procedures of Part F of the Housing Stability and Tenant Protection Act ("the HSTPA"), cannot be applied retroactively.

The Division of Housing and Community Renewal (DHCR) has affirmatively elected to apply the HSTPA retroactively when determining Major Capital Improvement (MCI) Applications filed prior to the enactment of the HSTPA, as well as in calculating Individual Apartment Improvement (IAI) rent increases on work started prior to the enactment of the HSTPA.

The language in the *Regina Metropolitan* decision suggests DHCR should be applying the law in effect pre-HSTPA to those situations described above, where the landlord acted in reliance upon the law in effect at the time and the work was performed pursuant to pre-HSTPA criteria. Accordingly, there exists a strong legal argument that application of the HSTPA in the foregoing circumstances is inappropriate and should be challenged.

If you have questions concerning the application of the HSTPA to MCI Proceedings or IAI work started prior to the enactment of the HSTPA and would like to discuss the particular details thereof, including how this office may assist you in challenging DHCR's processing of your proceeding, please feel free to contact Randi B. Gilbert or Jillian N. Bittner of the Administrative Law Department.