

Legal Alert: NY Court of Appeals Reaffirms Holding of *Regina Metropolitan in Casey v. Whitehouse Estates*

March 17, 2023

On March 16, 2023, the NY Court of Appeals reaffirmed our office’s landmark appeal in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* (“*Regina*”) when it reversed the Appellate Division, First Department, in *Casey v. Whitehouse Estates* (“*Casey*”).

In reversing the Appellate Division First Department, the NY Court of Appeals reiterated that in *Regina*, “this Court made clear that, under the pre-Housing Stability and Tenant Protection Act of 2019 law applicable here, ‘review of rental history outside the four-year lookback period [i]s permitted only in the limited category of cases where the tenant produced evidence of a fraudulent scheme to deregulate and, even then, solely to ascertain whether fraud occurred—not to furnish evidence for calculation of the base date rent or permit recovery for years of overcharges barred by the statute of limitations’ (id. at 335 [internal citations omitted]).” * * * *Regina* also held that “deregulation of [] apartments during receipt of J-51 benefits was not based on a fraudulent misstatement of fact but on a misinterpretation of the law [and so] a finding of willfulness is generally not applicable to cases arising in the aftermath of Roberts [and] [b]ecause conduct cannot be fraudulent without being willful, it follows that the fraud exception to the lookback rule is generally inapplicable to Roberts overcharge claims.”

The Court of Appeals further applied *Regina* in holding that “For purposes of calculating overcharges, where it is possible to determine the rent ‘actually charged on the base date’—here October 14, 2007—that amount should be used and rent increases legally available to defendants pursuant to the RSL [Rent Stabilization Law] during the four-year period should be added.”

By reaffirming its holding in *Regina*, the Court of Appeals reiterated that *Regina* was not limited in scope and was meant to be applied to all pre-Housing Stability and Tenant Protection Act of 2019 (HSTPA) rent overcharge cases.