Eric Tavel

Subject: FYI: Court of Appeals shoots down 4 year rule
Attachments: Scan-012.PDF; Scan-013.PDF

The Court of Appeals, New York's highest court has just issued two decisions substantially weakening the four year statute of limitations on overcharge cases.

In the matter Grimm v DHCR, the court found that a credible allegation of fraud is sufficient basis for the DHCR to pierce the four year rule to determine if fraud had been committed and to set the rent accordingly. This removes a major protection of the 1997 reforms to the rent laws wherein the legislature created a strictly limited four year look back period, and explicitly provided that a base date rent (the rent in effect four years prior to an overcharge complaint) was not subject to challenge. The court said "where the overcharge complaint alleges fraud . . . DHCR has an obligation to ascertain whether the rent on the base date is a lawful rent." However, the court did place a small limitation on the applicability of its finding saying that "DHCR acted arbitrarily and capriciously in failing to meet that obligation where there exist substantial indicia of fraud on the record." The court went further, saying that "Generally, an increase in the rent alone will not be sufficient to establish a 'colorable claim of fraud," and a mere allegation of fraud alone, without more, will not be sufficient to require DHCR to inquire further."

Notwithstanding these limitations, the decision is highly problematic in that it gives DHCR broad authority to go beyond the four year period to consider whether base date rents were arrived at properly. Essentially rent histories can go back for an unspecified period of time.

The decision was four to three.

In the matter of Cintron v Calogero the court further weakened the four year rule. The case involved an overcharge complaint in which two rent reduction orders filed before the base date were treated by DHCR's standard formula - freeze the rent on the base date but don't pierce the base date to determine the rent at the time of the rent reduction order. Here the court found that DHCR must go back to the rent reduction order, though it is before the base date, and freeze the rent from that earlier time.

The decision was six to one.

Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.

2010 NY Slip Op 07379

Decided on October 19, 2010

Court of Appeals

Ciparick, J.

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Decided on October 19, 2010

No. 171

[*1]In the Matter of Sylvie Grimm, Respondent,

v

State of New York Division of Housing and Community Renewal Office of Rent Administration, Appellant, 151 Owners Corp., Intervenor-Appellant.

Martin B. Schneider, for appellant.
Magda L. Cruz, for intervenor-appellant.
Edward J. Josephson, for respondent.
Rent Stabilization Association of NYC, Inc.;
Community Housing Improvement Program of New York, Inc., amici curiae.

CIPARICK, J.:

On this appeal, we are asked to determine whether the rationale employed in *Thornton*

v Baron (5 NY3d 175 [2005]), which allowed the parties to look back farther than four years, applies in a situation where it is alleged that the standard base date rent is tainted by [*2]fraudulent conduct on the part of a landlord. We conclude that it does, and that such base date rent may not be used as a basis for calculating subsequent regulated rent if fraud is indeed present.

I.

In 1999, prior to the tenancy of petitioner Sylvie Grimm, the rent-stabilized apartment at issue here was registered with the Department of Housing and Community Renewal ("DHCR") at a monthly rent of $587.86. In 2000, upon a vacancy in the apartment, rather than using the required rent-setting formula to determine the rent that it could legally charge the next tenants of the apartment, the owner notified prospective tenants that the rent for the subject apartment was $2,000 per month. However, the owner informed the prospective tenants that, if they agreed to make certain repairs and improvements to the apartment at their own expense, the rent would be reduced to $1,450. Both sums were unlawful because of the rent-stablized status of the apartment. The tenants accepted the offer, and signed a written lease agreement without a rent stabilized lease rider. The owner apparently did not provide those tenants with a statement showing the apartment was registered with DHCR.

In 2004, petitioner moved into the apartment, agreeing to the rental rate of $1,450. Her initial lease did not specify that the apartment was rent stabilized. Thereafter, in July 2005, petitioner filed a rent overcharge complaint with DHCR. The landlord, intervenor 151 Owners Corp., soon after receiving the overcharge complaint, sent petitioner revised versions of her 2004 and 2005 leases which advised that the apartment was subject to rent stabilization. In its answer to the overcharge complaint, 151 Owners Corp. admitted that the apartment had not been registered with DHCR since 1999. At the same time it filed the answer to the overcharge complaint, 151 Owner's Corp. filed registration statements with DHCR for the years 2001 through 2005.

In an order dated June 21, 2006, the DHCR Rent Administrator denied petitioner's overcharge complaint on the ground that the rent on the "base date" — i.e., the date four years prior to the filing of the complaint — was $1,450, and the rent adjustments subsequent to the base date had been lawful. The Rent Administrator did not address the issue whether the registration statement in effect on the base date was reliable or set forth a lawful rent.

DHCR denied petitioner's request for administrative review of the Rent Administrator's determination, and denied her request for reconsideration.

Petitioner thereafter commenced this CPLR article 78 proceeding challenging DHCR's determination denying administrative review. The petition sought (1) a declaration that she was the legal rent-stabilized tenant of the apartment and (2) remand to DHCR "with the direction that the rent for the subject apartment should be frozen at the 1999 amount, because [*3]owner failed to register the subject apartment for 2000, and computing the rent overcharge amount."

Supreme Court granted the petition, vacated DHCR's determination and "remanded the matter for reconsideration in accordance with [the court's] decision." Supreme Court noted that DHCR's determination simply calculated the rent by assuming, without actually determining, that the registration in effect on the base date was reliable. The court also noted that DHCR did not specifically reject petitioner's allegations of fraud. The court reasoned, under *Thornton v Baron* (5 NY3d 175, 181 [2005]), that DHCR's failure to consider petitioner's allegations of fraud and the reliability of the rent charged on the base date warranted remand to the agency for de novo review of the overcharge complaint.

DHCR and 151 Owners Corp. separately appealed. The Appellate Division affirmed, with two Justices dissenting (*Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 68 AD3d 29 [1st Dept 2009]). The court reasoned: "Given the specific facts of this case, DHCR should not be allowed to turn a blind eye to what could be fraud and an attempt by the landlord to circumvent the Rent Stabilization Law . . . [W]here, as here, there is an indication of possible fraud that would render the rent records unreliable, it is an abuse of discretion for DHCR not to investigate it" (*id.* at 33). The two dissenting Justices voted to reverse and "would [have found] that [DHCR] acted rationally in complying with the legislative intent expressed in the statute of limitations set forth in CPLR 213-a and [the] Rent Stabilization Law" (*id.* at 34 [Buckley, J., dissenting]).

DHCR and 151 Owners Corp. appealed by permission of the Appellate Division, which certified the following question: "Was the order of Supreme Court, as affirmed by this Court, properly made?" We now affirm and answer the certified question in the affirmative.

II.

As we have previously explained, rent overcharge claims are generally subject to a four-year statute of limitations. Specifically, Rent Stabilization Law of 1969 (Administrative Code of City NY) § 26-516 (hereinafter "Rent Stabilization Law"), as amended by the Rent Regulation Reform Act ("RRRA") of 1997, states:"[A] complaint under this subdivision shall be filed with [DHCR] within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed . . . [t]his paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this subdivision" (Rent Stabilization Act § 26-516 [a]; *see also* CPLR 213-a). [*4]

The RRRA "clarified and reinforced the four-year statute of limitations applicable to rent overcharge claims . . . by limiting examination of the rental history of housing accommodations prior to the four-year period preceding the filing of an overcharge complaint" (*Thornton*, 5 NY3d at 180, citing *Matter of Gilman v New York State Div. of Hous. & Community Renewal*, 99 NY2d 144, 149 [2002]; *see also Matter of Cintron v Calogero*, __ NY3d __ [decided today]; Governor's Approval Mem, L 1997, ch 116). To effectuate the purpose of the four-year limitations period, in rent overcharge cases DHCR regulations, as relevant here, set the "legal regulated rent" as the rent charged on the "base date," which is the "date four years prior to the date of the filing of [the overcharge] complaint" plus any subsequent lawful increases (9 NYCRR 2520.6 [e], [f]; 9 NYCRR 2526.1 [a] [3] [I]).

The four-year limitations period was explained in our decision in *Thornton* (5 NY3d 175), where we held that a lease provision purporting to exempt an apartment from the Rent Stabilization Law in exchange for an agreement not to use the apartment as a primary residence was void as against public policy (*see id.* at 179-180). Our ruling was made in connection with a scheme between a landlord and an illusory tenant to agree that an apartment would not be used as the named tenant's primary residence, resulting in the elimination of the rent stabilized status of the apartment. Acknowledging that the apartment's prior rental history could not be examined, and that the stabilized rent before the fraudulent scheme was of no relevance, we nonetheless rejected the owner's contention that "the legal regulated rent should be established by simple reference to the rental history" on the date four years prior to the commencement of the overcharge action (*id.* at 180-181). We

explained that the lease was "void at its inception" because its "circumvent[ion of] the Rent Stabilization Law" violated public policy (*id.* at 181). As a result, the rent registration statement in effect on the base date "listing the illegal rent was also a nullity" (*id.*). Rather than using the registration statement to ascertain the rent on the base date, we instructed DHCR to use the so-called default formula to calculate the rent on the base date, as it does when no reliable records are available (*see id.*; *see also Levinson v 390 W. End Assocs., LLC*, 22 AD3d 397, 400-401 [1st Dept 2005])[FN1].

DHCR contends that our holding in *Thornton* should be constrained to the narrow set of circumstances described in that case and that we should limit its application to cases involving illusory tenancies. We disagree and conclude that, where the overcharge complaint alleges fraud, as here, DHCR has an obligation to ascertain whether the rent on the base date is a [*5]lawful rent. Accordingly, here, as the Appellate Division concluded, DHCR acted arbitrarily and capriciously in failing to meet that obligation where there existed substantial indicia of fraud on the record.

In particular, here it is alleged that the tenants immediately preceding petitioner paid significantly more than the previously registered rent, and were not given a rent stabilized lease rider [FN2]. Moreover those tenants were informed that their rent would be higher, but for their performance of upgrades and improvements at their own expense. Almost simultaneously with the substantial increase in the rent for the affected unit, the owner ceased filing annual registration statements (*see* Rent Stabilization Code [9 NYCRR] 2528.3 [a] [requiring annual registration statements be filed with DHCR]) and later filed several years' registration statements retroactively after receiving petitioner's overcharge complaint. Finally, petitioner's initial lease did not contain a rent stabilized rider. The combination of these factors should have led DHCR to investigate the legality of the base date rent, rather than blindly using the rent charged on the date four years prior to the filing of the rent overcharge claim.

Our holding should not be construed as concluding that fraud exists, or that the default formula should be used in this case. Rather, we merely conclude that DHCR acted arbitrarily in disregarding the nature of petitioner's allegations and in using a base date without, at a minimum, examining its own records to ascertain the reliability and the legality of the rent charged on that date.

DHCR also argues that, under the Appellate Division's holding, any "bump" in an apartment's rent — even those authorized without prior DHCR approval, such as rent increases upon installation of improvements to an apartment (*see* Rent Stabilization Law § 26-511 [c] [13]) — will establish a colorable claim of fraud requiring DHCR investigation. Again, we disagree. Generally, an increase in the rent alone will not be sufficient to establish a "colorable claim of fraud," and a mere allegation of fraud alone, without more, will not be sufficient to require DHCR to inquire further. What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization. As in *Thornton*, the rental history may be examined for the limited purpose of determining whether a fraudulent scheme to destabilize the apartment tainted the reliability of the rent on the base date. [*6]

In sum, the Appellate Division correctly applied *Thornton* to this rent overcharge proceeding and properly concluded that DHCR has an obligation to ascertain whether petitioner's allegations of fraud warrant the use of the default formula when calculating any rent overcharge that may have occurred. Accordingly, the order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

SMITH, J. (dissenting):

In *Thornton v Baron* (5 NY3d 175 [2005]) and *Matter of Cintron v Calogero* (decided today), the Court carved out exceptions to the command of the Rent Regulation Reform Act of 1997 that a rent charged more than four years before a tenant complains may not be considered in deciding an overcharge claim. But in this case, the majority goes far beyond making an exception. The majority has, in substance, largely repealed the statute — or, perhaps, has turned it into a source of endlessly complex litigation. I am not sure which it has done, and I am not sure which is worse.

The statute, and the regulations implementing it, are unequivocal. "[N]o determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed . . . . This paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint

pursuant to this subdivision" (Rent Stabilization Law [RSL] of 1969 [Administrative Code of the City of NY] § 26-516 [a] [2]; *see also id.*, § 26-516 [a] ["Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter"]; Rent Stabilization Code [9 NYCRR] § 2526.1 [a] [2]).

Thornton and *Cintron* presented special situations in which, for understandable reasons, a majority of the Court decided that this language should not be taken literally. *Thornton* involved an elaborate fraudulent scheme, in which illusory leases containing false representations were created, collusive lawsuits brought and a court misled into entering orders that made it possible to collect illegal rents; the Court held that such an extreme form of misconduct should not be protected by the four-year time bar. *Cintron* presented the problem of how to reconcile the four-year limitation with another section of the statute providing for rent reduction orders of indefinite duration.

But this is a garden-variety overcharge case — perhaps the paradigm of the situation for which the four-year limitation was intended. The landlord charged an illegal rent, and the illegality went undetected for more than four years. The statute says plainly that in such a [*7]case, the rent charged four years previously "shall not be subject to challenge." But the majority holds that a challenge is allowed.

The majority's justification for this result is that "the overcharge complaint alleges fraud" and that there are "indicia of fraud" — consisting essentially of allegations that the landlord lied to previous tenants about what the legal maximum rent was (majority op at 7-8). In other words, the majority seems to equate "fraud" with a wilful overcharge — as though the four year limit were applicable only to landlords who overcharge by mistake. In fact, the statute contains its own remedy for wilful overcharges: treble damages (RSL § 26-516 [a]). It does not make the four-year limitation inapplicable in wilful overcharge cases — cases which, as the Legislature certainly knew, are a large number of the cases to which the limitation on its face applies.

The majority seemingly tries to temper its holding by saying that "an increase in the rent alone will not be sufficient to establish a 'colorable claim of fraud'" and that "a mere

allegation of fraud alone, without more, will not be sufficient to require DHCR to inquire further" (majority op at 9). But obviously it does not take much "more" than an allegation of fraud — there is practically nothing more in this case. The majority adds that what DHCR is supposed to "inquire" about is whether there was a "fraudulent scheme to destabilize the apartment" (*id.*). It does not say what it takes to prove such a "fraudulent scheme." Simply a wilful overcharge? A wilful overcharge coupled with the hope that the overcharge will eventually result in the apartment's escape from rent stabilization?

If the majority opinion does not simply nullify the four-year limit in every case where the overcharge was not a good-faith error, it requires DHCR to undertake an inquiry that the majority leaves wholly undefined. And what if DHCR's inquiry shows that, though there was a wilful overcharge, there was no "fraudulent scheme"? Does this mean that, if the landlord has been charging an illegal rent for more than four years, it may continue to do so?

The majority opinion can be read to mean either that the four-year limitation has largely ceased to exist, or that any case to which the limit applies on its face must lead to a mini-litigation, in which DHCR tries to figure out whether the overcharge was "fraudulent" enough to escape the time limit. If the former, the majority has simply tossed aside the Legislature's command. If the latter, I do not envy DHCR its task.

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Order affirmed, with costs, and certified question answered in the affirmative. Opinion by Judge Ciparick. Chief Judge Lippman and Judges Pigott and Jones concur. Judge Smith dissents in an opinion in which Judges Graffeo and Read concur. [*8]

Decided October 19, 2010

Footnotes

Footnote 1: The default formula "uses the lowest rent charged for a rent-stabilized apartment with the same number of rooms in the same building on the relevant base date" (*Thornton*, 5 NY3d at 180 n 1; *Levinson*, 22 AD3d at 400-401).

Footnote 2: The Rent Stabilization Code requires that, for each vacancy or renewal lease for premises subject to the Rent Stabilization Law, the landlord "shall furnish to each tenant signing a vacancy or renewal lease, a rider in a form promulgated or approved by the DHCR, in larger type than the lease, describing the rights and duties of owners and tenants as provided for under" the Rent Stabilization Law (Rent Stabilization Code [9 NYCRR] 2522.5 [c] [1]).

No. 150

In the Matter of Oscar Cintron,
Appellant,
v.
Judith A. Calogero, as Commissioner of the Division of Housing and Community Renewal of the State of New York,
Respondent.

Randolph Petsche, for appellant.
Martin B. Schneider, for respondent.
Fifth Avenue Committee; Met Council, Inc., amici curiae.

CIPARICK, J.:

On this appeal, we are asked to interpret the Rent Stabilization Law to ascertain the consequences on a current rent overcharge claim of two rent reduction orders issued prior to, but in effect during, the four-year period preceding the filing of an overcharge claim. We conclude that the Division of Housing

and Community Renewal ("DHCR") should, in calculating any rent overcharge, honor rent reduction orders that, while issued prior to the four-year limitations period, remained in effect during that period.

I.

In 1986, petitioner Oscar Cintron became a tenant of 2975 Decatur Avenue, Apartment 5C, in the Bronx, at an initial stabilized rent of $348.91 per month. The following year, petitioner filed a complaint with DHCR against the building's then owner, alleging a decrease in services related to, among other things, the apartment's refrigerator, door lock and fire escape window. As a result of the complaint, DHCR issued an order reducing petitioner's rent "by the percentage of the most recent guidelines adjustment for the tenant's lease which commenced before the effective date of the rent reduction order," and providing that the owner could not collect any rent increase until a rent restoration order was issued. The rent reduction order did not set a particular level of rent. According to petitioner, the 1987 rent reduction order should have resulted in a reduction of his rent to $326.23 per month.

In 1989, petitioner filed another complaint with DHCR, alleging a roach infestation of the apartment's stove. DHCR issued another rent reduction order. Despite the 1987 and 1989 rent reduction orders, however, the owner failed to make any repairs and continued to charge petitioner the unreduced rent.

In 1991, when the current owner purchased the building, petitioner allegedly advised him of the rent reduction orders. Although the current owner apparently also failed to make any repairs, petitioner continued to pay the unreduced rent and entered into a series of leases requiring him to pay greater rents.

On December 11, 2003, petitioner filed a complaint alleging that the rent of $579.99 charged in the lease then in effect constituted an overcharge based on the current and prior owners' failure to comply with the 1987 and 1989 rent reduction orders. A DHCR Rent Administrator determined that the base date to be used was the date four years prior to the filing of the overcharge complaint -- December 11, 1999 -- and established that the legal regulated rent on the base date was $508.99, which was the rent charged by the current owner and paid by petitioner on that date. Although taking notice of the 1987 and 1989 rent reduction orders, the Rent Administrator in establishing the legal stabilized rent calculated the overcharge using the base date of December 11, 1999. The Rent Administrator awarded petitioner a rent refund of $1,008.77, which included interest but did not include treble damages, and prospectively froze the rent at the base date level from December 11, 1999 until February 1, 2004. Effective February 1, 2004, the Rent Administrator removed the 1987 and 1989 rent reduction orders and restored the rent to the full amount of $579.99, which included rent

increases.

Petitioner sought administrative review of the Rent Administrator's order. DHCR granted the petition for administrative review to the extent of modifying the order by (1) reversing the portion of the order that denied treble damages and (2) awarding treble damages beginning two years prior to the filing of the overcharge complaint. DHCR denied the remainder of petitioner's challenges, concluding that the Rent Administrator properly limited recovery to the four years preceding the overcharge complaint and correctly used the base date rent -- $508.99 as of December 11, 1999 -- rather than the rent established by the 1987 and 1989 rent reduction orders in calculating the overcharge.

Petitioner commenced this CPLR article 78 proceeding seeking to annul DHCR's order. Supreme Court denied the petition and dismissed the proceeding, concluding that DHCR's determination was not arbitrary or capricious and had a rational basis.

On petitioner's appeal, the Appellate Division affirmed, holding:

> "The order, finding the base rent date to be December 11, 1999 (four years prior to the filing of the overcharge complaint), establishing the legal base rent as the amount paid on that date, freezing that rent until February 1, 2004, during which time rent reduction orders were extant, and directing the owner to refund overcharges collected from the base rent date inclusive of treble damages, was not arbitrary and

capricious, and had a rational basis" (Matter of Cintron v Calogero, 59 AD3d 345, 346 [1st Dept 2009] [citations omitted]).[1]

Petitioner appealed to this Court by permission of the Appellate Division, which certified the following question: "Was the order of this Court, which affirmed the order of the Supreme Court, properly made?" Because the Appellate Division order is final, we need not answer the certified question.

II.

Regardless of the forum in which it is commenced, a rent overcharge claim is subject to a four-year statute of limitations (see Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-516 [a] [2] [hereinafter "Rent Stabilization Law"]; CPLR 213-a).[2] The Rent Regulation Reform

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[1] The Appellate Division further held that "DHCR appropriately limited the amount of rent overcharges recoverable to the four years prior to the filing of the overcharge complaint" (59 AD3d at 346). This is not an issue on this appeal as petitioner has abandoned his claim for rent overcharges in excess of four years prior to the filing of his rent overcharge claim with DHCR. Petitioner is merely seeking to have the base rent date set at an earlier time.

[2] Rent Stabilization Law § 26-516 (a) (2) states: "[A] complaint under this subdivision shall be filed with [DHCR] within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed . . . [t]his paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this subdivision," and

CPLR 213-a states: "An action on a residential rent overcharge shall be commenced within four years of the first

Act of 1997 ("RRRA") "clarified and reinforced the four-year statute of limitations applicable to rent overcharge claims . . . by limiting examination of the rental history of housing accommodations prior to the four-year period preceding the filing of an overcharge complaint" (Thornton v Baron, 5 NY3d 175, 180 [2005], citing Matter of Gilman v New York State Div. of Hous. & Community Renewal, 99 NY2d 144, 149 [2002]; see also Matter of Grimm v New York State Div. of Hous. and Community Renewal, __ NY3d __ [decided today]). Notably, the term "rental history" is not defined in the relevant statutes or in DHCR regulations and we need not attempt to define it here. As we have previously explained, the purpose of the four-year limitations or look-back period is to "alleviate the burden on honest landlords to retain rent records indefinitely" (Thornton, 5 NY3d at 181, citing Matter of Gilman, 99 NY2d at 149; see also Jenkins v Fieldbridge Assoc., LLC, 65 AD3d 169, 174 [2d Dept 2009], appeal dismissed 13 NY3d 855 [2009]).

Moreover, Rent Stabilization Law § 26-514, which addresses rent reduction orders, states:

"[A]ny tenant may apply to [DHCR] for a

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overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action."

> reduction in the rent to the level in effect prior to its most recent adjustment and for an order requiring services to be maintained as provided in this section, and [DHCR] shall so reduce the rent if it is found that the owner has failed to maintain such services. The owner shall also be barred from applying for or collecting any further rent increases. The restoration of such services shall result in the prospective elimination of such sanctions" (emphasis added).

Rent reduction orders thus place a "continuing obligation" upon an owner to reduce rent until the required services are restored or repairs are made (Thelma Realty Co. v Harvey, 190 Misc 2d 303, 305-306 [App Term, 2d Dept 2001]; see also Matter of Condo Units v New York State Div. of Hous. & Community Renewal, 4 AD3d 424, 425 [2d Dept 2004], lv denied 5 NY3d 705 [2005]; Crimmins v Handler & Co., 249 AD2d 89, 91 [1st Dept 1998]). Here, it is alleged that the landlord failed to fulfill his continuing obligation by willfully flouting DHCR rent reduction orders.

The Rent Stabilization Law and Code are unfortunately silent as to the effect that a rent reduction order, issued prior to the four-year limitations period but still in effect during that period, as is the case here, has on a subsequent overcharge complaint based on that order. Petitioner argues that DHCR rent reduction orders must be considered by DHCR in establishing the legal stabilized rent for an apartment for the purposes of an overcharge complaint and that, because the rent reduction orders here remained in effect -- and imposed a continuing duty on the landlord to reduce rent -- during the relevant four-year period,

the four-year look-back rule is no bar to considering those orders for the purposes of calculating the amount by which petitioner was overcharged (see Thornton, 5 NY3d at 180; see also Matter of 508 Realty Assocs., LLC v New York State Dept. of Hous. and Community Renewal, 61 AD3d 753, 755-756 [2d Dept 2009]; Jenkins, 65 AD3d at 173). DHCR, on the other hand, argues that its determination is supported by a rational basis and is consistent with the statute as the legislature intended the four-year limitations/look-back period to be absolute, prohibiting the consideration of earlier rent records for the purpose of calculating a rent overcharge.

In this matter of statutory construction, where deference to an agency's interpretation is not required (see e.g. Roberts v Tishman Speyer Props., L.P., 13 NY3d 270, 285 [2009]), we find petitioner's argument more persuasive as it best reconciles and harmonizes the legislative aims of both the four-year limitations/look-back period as set forth in Rent Stabilization Law § 26-516 (a) (2) and CPLR 213-a and the "continuing obligation" of a landlord to reduce rent and make repairs as per Rent Stabilization Law § 26-514 (see McKinney's Cons Laws of NY, Book 1, Statutes §§ 95, 96 [in interpreting statutes, the goal is to further the intent, spirit and purpose of a statute, to harmonize all parts of a statute to give effect and meaning to every part]).

Certainly, DHCR can take notice of its own orders and

the rent registrations it maintains to ascertain the rent established by a rent reduction order without imposing onerous obligations on landlords. Moreover, refusing to give effect to a rent reduction order's direction to roll back rent in cases where the order remained in effect during the statutory four-year period would countenance the landlord's failure to restore required services and thwart the goals of the Legislature in enacting Rent Stabilization Law § 26-514, namely, to "motivate owners of rent-stabilized housing accommodations to provide required services, compensate tenants deprived of those services, and preserve and maintain the housing stock in New York City" (Jenkins, 65 AD3d at 173, citing Matter of Hyde Park Assoc. v Higgins, 191 AD2d 440, 442 [1st Dept 1993]). In short, rent reduction orders impose a continuing obligation on a landlord and, if still in effect during the four-year period, are in fact part of the rental history which DHCR must consider.

We conclude that the purposes of the relevant statutes are best served here if DHCR calculates the amount of rent overcharge by reference to the 1987 and 1989 rent reduction orders, which remained in effect during the four-year limitations period and, accordingly, were part of the rental history that the Rent Stabilization Law permits DHCR to consider.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the case remitted to Supreme Court with directions to remand to respondent DHCR for further

proceedings in accordance with this opinion. The certified question should not be answered upon the ground that it is unnecessary.

Matter of Oscar Cintron v Judith A. Calogero, as Commissioner

No. 150

SMITH, J. (dissenting):

The relevant provisions of the Rent Regulation Reform Act of 1997 seem as clear to me as they did when I dissented in Thornton v Baron (5 NY3d 175 [2005]). "[N]o determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed . . . . This paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this subdivision" (Rent Stabilization Law [RSL] of 1969 [Administrative Code of the City of NY] § 26-516 [a] [2]; see also id., § 26-516 [a] ["Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter"]; Rent Stabilization Code [9 NYCRR] § 2526.1 [a] [2]). In Thornton, this Court, unjustifiably I thought, wrote an exception into the statute, and in this case it writes another one, which I also think unjustified.

I grant that there is some tension between the command of the 1997 Reform Act that rental history going back more than four years may not be considered and the provision of RSL § 26-514 that rent reduction orders based on a failure to provide required services remain in effect until the deficiency in services is cured. There is not such a stark conflict, however, as to justify the majority's choice to let one statute nullify the other. DHCR has, it seems to me, found a fair solution by ordering that, where the non-compliance goes on for more than four years, the rent is in effect frozen for a rolling four-year period -- so that the tenant cannot get the advantage of a rent level more than four years old, but the landlord is never free from the reduction order's effect. This works no undue hardship on the tenant, who need only file a complaint within four years of being overcharged to avoid any time bar.

It is thus unnecessary to resort to the fiction embraced by the majority that a rent level existing more than four years earlier is transformed by the rent reduction order into a "part of the [more recent] rental history which DHCR must consider" (majority op at 9). I would affirm the order of the Appellate Division.

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Order reversed, with costs, and case remitted to Supreme Court, Bronx County, with directions to remand to respondent for further proceedings in accordance with the opinion herein. Certified question not answered upon the ground that it is unnecessary. Opinion by Judge Ciparick. Chief Judge Lippman and Judges Graffeo, Read, Pigott and Jones concur. Judge Smith dissents and votes to affirm in an opinion.

Decided October 19, 2010