



NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA / 92-31 UNION HALL ST.
JAMAICA, NY 11433

GEORGE E. PATAKI, GOVERNOR
JOSEPH H. HOLLAND, COMMISSIONER

May 9, 1996

Attention:

Re: Request for Opinion Letter:
Effect of Erroneous Registrations
and Erroneously Issued Stabilization
Leases on Apartment's Exempt Status

Dear _____

Your letter, dated February 27, 1996 and addressed to Marcia Hirsch, Deputy Counsel, ORA, has been referred to me for reply. You request an Opinion Letter concerning the above-referenced matter.

Your letter and the enclosed certificate of occupancy, dated June 30, 1958, indicate that the building contained five housing accommodations on the applicable "base date", i.e., May 29, 1974. The subject apartment was registered as Rent Controlled in April, 1984 and subsequently became vacant. Since the building contained fewer than six housing accommodations on the applicable "base date", none of the housing accommodations would become subject to Rent Stabilization coverage (Sec. 2520.11(d) RSC).

However, you state that the previous owner mistakenly registered the subject apartment as Rent Stabilized in 1986, and in 1992 the current tenant was mistakenly given a rent stabilized lease and then offered a rent stabilized renewal lease.

You seek an Opinion Letter as to the effect on the rent regulatory status of the subject apartment, of the owner erroneously registering the subject housing accommodation and giving the tenant Stabilized leases.

This Agency's position is that rent regulatory jurisdiction is a matter of statutory right and not a matter of agreement between the parties. In addition to the PAR Order No. ART-13201-L and the DHCR Opinion Letter, dated October 13, 1993, cited in your letter, in support of this proposition, I am now enclosing DHCR's Opinion

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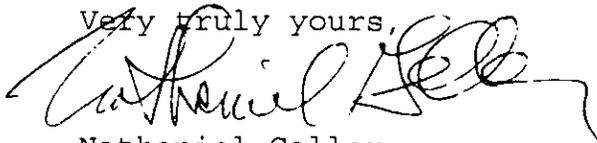
Letter of May 24, 1995, reiterating its previous position and citing to the Appellate Term's decision in Mayflower Associates v. Gray, wherein the court ruled that stabilization coverage cannot be achieved by agreement between the owner and tenant or by estoppel where statutory criteria are absent.

Consequently, under the circumstances referred to in your letter, the subject apartment would retain its exempt status despite the owner's filing registrations with DHCR and mistakenly offering rent stabilized leases to the tenant. Obviously, any lease in effect would first have to expire before a new rental arrangement could be negotiated between the owner and tenant.

I trust that I have responded fully to your inquiry.

Please be advised that this Opinion Letter is not a substitute for a formal agency order issued upon prior notice to all parties and having afforded all parties an opportunity to be heard.

Very truly yours,



Nathaniel Geller
Principal Attorney

NG:adh
Enclosure

cc: Darryl Seavey
Asst. Comm.
Marcia P. Hirsch
Deputy Counsel
Log #M-5611 (5494)

COL-9030