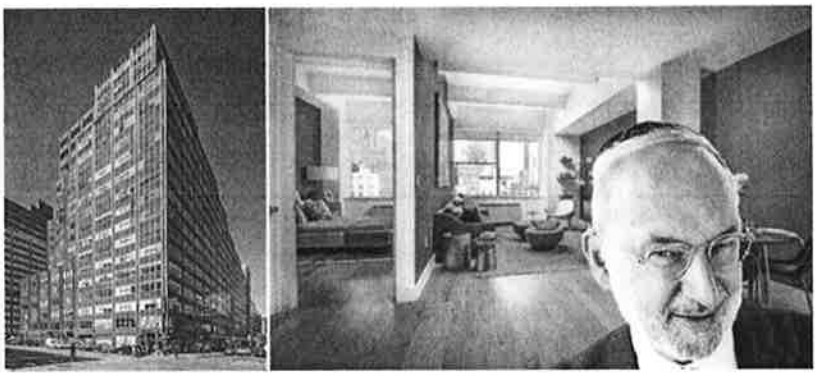
Sections THE REAL DEAL NEW YORK REAL ESTATE NEWS

Tenants defeat Clipper Equity in rent-stabilization suit

Judge rules David Bistricer's company unlawfully deregulated 421g units at 50 Murray; landlord will appeal

By Will Parker | July 05, 2017 02:05PM



David Bistricer and 50 Murray Street (Credit: CityRealty)

Over 40 tenants at a downtown luxury building won a suit against Clipper Equity, successfully arguing the landlord overcharged them on rent while also receiving millions in city tax breaks, a decision issued Monday in New York's State Supreme Court shows.

Early last year, *The Real Deal* reported that residents at 50 Murray Street were mulling legal action after learning that the steep rent increases charged by their landlord might not be legal, due to the rules of a somewhat obscure tax exemption the landlord received called 421g. The tenants later filed a court complaint in June of that year.

In 1995, legislators signed 421g into law in order to spur the conversion of lower Manhattan commercial buildings into residences. As with other tax incentives such as 421a and J-51, the benefit requires landlords to keep apartment rent increases capped at levels set annually by the Rent Guidelines Board. The question as to how long landlords must do this, however, has been the subject of mounting litigation in New York's courts.

In the 50 Murray Street case, Judge Carol Edmead ruled that conventional landlord arguments for why 421g apartments are not subject to regulation once their rent eclipses the so-called luxury threshold (currently $2,700) do not hold up. The tax abatement, Edmead wrote, "imposes rent regulation on the apartments to which it applies, including those that, otherwise, would be subject to luxury decontrol."

Edmead, like tenant attorneys and activists, points to a line in the 421g law that states that apartments must remain in stabilization "notwithstanding the provisions of any local law for the stabilization of rents..." In this case, she ruled, "provisions" is taken to mean things like luxury decontrol — allowed for most other rent stabilized apartments in the city, but not with 421g.

In other words, the decision is exactly opposite from how Judge Shlomo Hagler concluded in a similar case this past May, regarding two 421g tenants at 85 John Street who complained of a more than $2,000 spike in their monthly rent. That judge cited the attempts of politicians like Rudolph Giuliani to have a pro-decontrol interpretation included in the legislative record, as well as a favorable advisory interpretation issued by the state's Division of Homes and Community Renewal in 1997.

At 50 Murray Street, Edmead made an explicit point to not follow the arguments of the 85 John Street ruling.

The tenants' attorney, Serge Joseph, called the decision "by far the most comprehensive on the 421g issue."

But Bistricer, who has vowed to appeal, contends that for a program designed to incentivize major capital investments in underused buildings, tight rent stabilization rules don't make any sense.

"Hundreds of millions of dollars are put into these buildings," he said. "No one would do it if they were going to be subject to low rent increases."

His attorney, Sherwin Belkin, said he believes Edmead "overlooked substantial evidence and the clear legislative history in reaching her decision." Belkin also represented the landlord in the 85 John Street case, Kibel Companies.

If the appellate court agrees to hear the case, it will be the first 421g matter to make it to that level in the court system. A decision there would set a badly needed legal precedent for the industry at a time that judges are taking decisions in separate directions.

As of Wednesday, a two-bedroom apartment at 50 Murray Street was still on the market for $8,400 on listings website StreetEasy. It listed for $6,895 just five years prior.

Tags: Clipper Equity, david bistricer, Residential Real Estate