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## Property—Basis for Maximum Controlled Rent

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ministrator. The landlord then brought a proceeding to review and annul the order. The Supreme Court confirmed the order,<sup>5</sup> and on appeal the confirmation was affirmed by the Appellate Division and the Court of Appeals.<sup>6</sup>

The State Rent Administrator has very broad powers and may, under appropriate circumstances, change his determination.<sup>7</sup> Section 33 gives the Administrator the power, at any time where the necessity for an adjustment granted no longer exists in whole or in part, to modify or revoke the same.<sup>8</sup> Where there has been a substantial change in the basis upon which rent adjustments were granted,<sup>9</sup> the Administrator is under an obligation to modify such rent adjustments.<sup>10</sup>

In view of the fact that appellant was previously granted rent increases based upon the then existing taxes as part of operating expenses, the application and the gaining of a tax abatement substantially changed the basis upon which the Administrator's rent adjustments had been granted.<sup>11</sup> As a result, the Rent Administrator was correct in reducing the rents received by the appellant. Thus, the decision of the Court properly carried out the purpose of Section 33 of Rent and Eviction Regulations.

#### BASIS FOR MAXIMUM CONTROLLED RENT

The Residential Rent Law permits an increase in rent to a maximum of six percent of the investment in the property as determined by the assessed value or by recent sales of the property if there are any.<sup>12</sup> When the property is leased by the owner to a realty management firm, and the latter seeks an increase in rent, the problem arises as to whose investment is entitled to earn six percent, the owner's or the lessee's. In *Ackerman v. Weaver* the owner of property subject to the Rent Law leased it for fifteen years to a realty manage-

5. *225 East 70th Street Corp. v. Weaver*, 7 A.D.2d 900, 182 N.Y.S.2d 334 (1st Dep't 1959), *aff'd* 6 N.Y.2d 197, 189 N.Y.S.2d 153 (1959).

6. *Almac Estates, Inc. v. McGoldrick*, 2 N.Y.2d 87, 156 N.Y.S.2d 853 (1956); *Cupo v. McGoldrick*, 278 App. Div. 108, 103 N.Y.S.2d 633 (1st Dep't 1951); *Yasser v. McGoldrick*, 306 N.Y. 924, 119 N.E.2d 605 (1954).

7. *Supra* note 2.

8. When determining the amount of rent to be charged, the Rent Administrator takes into account the amount of capital invested plus operating expenses. The amount of rent to be charged is that which will give a landlord a return of 6% based on the combination of these two factors. A change in either one of these factors used to determine the basis, automatically necessitates an adjustment in rent. RENT AND EVICTION REGULATIONS § 33.

9. *Hiltzik v. Weaver*, 16 Misc. 2d 629, 183 N.Y.S.2d 396 (Sup. Ct. 1958).

10. *Aronson v. Temporary State Housing Rent Comm.*, 17 Misc. 2d 71, 188 N.Y.S.2d 1032 (Sup. Ct. 1958). Receipt of a tax abatement substantially changes the basis upon which rent adjustments have been made. In re *Sherman Taylor Corp.*, 15 Misc. 2d 646, 183 N.Y.S.2d 395 (Sup. Ct. 1958).

11. *Rochester Transit Corp. v. Public Service Comm.*, 271 App. Div. 406, 66 N.Y.S.2d 593 (3rd Dep't 1946), *Building Reality and Securities Corp. v. McGoldrick*, — Misc. —, 137 N.Y.S.2d 707 (Sup. Ct. 1954).

12. N.Y. UNCONSOL. LAWS §§ 8584 (4)(a)(1):

Provision shall be made pursuant to regulations prescribed by the commission, for individual adjustment of maximum rents where (1) the rental income from a property yields a net annual return of less than six per centum of the valuation of the property. Such valuation shall be the current assessed valuation established by a city . . . ; except where there has been a *bona fide* sale. . . .

ment firm for a fixed sum.<sup>13</sup> The owner sold the property in 1953 subject to the lease. The lessee sought a rent increase based on the new owner's purchase cost which was higher than the assessed value,<sup>14</sup> but the State Rent Administrator denied the application and refused a hearing. Special Term of New York County Court reviewed the administrator's order and held the lessee was entitled to the increase and ordered a rehearing.<sup>15</sup> Following the court's order, the administrator increased the rent retroactively to the date of the original petition.<sup>16</sup> The tenants appealed a denial of a petition to annul the increase on the ground that the lessee, having no capital invested, was only a manager and agent of the owner and therefore not entitled to an increase based on the new owner's higher investment. The Appellate Division sustained the tenant's contention and refused the increase.<sup>17</sup> The administrator appealed, and the Court of Appeals reversed and reinstated the order of the Special Term in a 4-2 decision.<sup>18</sup> The Court held that the property itself is entitled to earn six percent regardless of whether or not the owner derives more or less than the six percent. Judge Desmond's dissenting opinion argues that the statute has the purpose of providing ". . . to the property owner a net 6% return on the fair value of his ownership interest,"<sup>19</sup> and, because the owner is getting more than six percent, the increase should have been denied.

The statutory formula for determining the property value on which the maximum six percent earnings is given does not require a consideration of who has the investment in the property. It is stated merely in terms of recent sales, assessment and equalization rates. A failure to consider "questions of investment" results in no injustice to the tenants under a uniform statutory ap-

13. *Ackerman v. Weaver*, 6 N.Y.2d 283, 189 N.Y.S.2d 646 (1959).

14. If a *bona fide* recent sale exists, it will be used as mandated because the legislature was ". . . not concerned with questions of investment, but simply recognized that such price provided 'a more accurate reflection of value.'" *Supra* note 13 at 287; N.Y. LEGIS. ANNUAL 265 (1957). "One such amendment will require the use of recent *bona fide* sales prices as a more accurate reflection of value in fair return applications and which will, through the two year provision, provide the Administrator with authority to curb any cycle of successive sales followed by applications for adjustments"; N.Y. LEGIS. ANNUAL 264 (1957). The recommended and adopted legislation follows a decision in 340 East 57th St. Corp. v. Weaver, 3 Misc. 2d 356, 153 N.Y.S.2d 851 (Sup. Ct. 1956), *aff'd* 2 A.D.2d 678, 153 N.Y.S.2d 563 (1st Dep't 1956), *aff'd* 2 N.Y.2d 799, 140 N.E.2d 550 (1957). The amendment was adopted by N.Y. SESS. LAW 1957 ch. 755.

15. *Realty Management, Inc. v. Weaver*, 7 Misc. 2d 98, 162 N.Y.S.2d 1005 (Sup. Ct. 1957).

16. The Rent Administrator may grant increase as of date of local administrator's erroneous order. He has the discretion where essential services were being provided and were not seriously deficient; *Neulist v. Weaver*, 2 A.D.2d 530, 157 N.Y.S.2d 192 (1st Dep't 1956), *aff'd* 2 N.Y.2d 889, 161 N.Y.S.2d 144 (1957). Also N.Y. UNCONSOL. LAWS § 8584(4)(d): "No landlord shall be entitled to any increase in the maximum rent unless he certifies that he is maintaining all essential services furnished or required. . . ."

17. *Realty Management, Inc. v. Weaver*, 7 A.D.2d 97, 180 N.Y.S.2d 669 (1st Dep't 1958).

18. *Supra* note 13.

19. *Supra* note 13 at 287. A six percent limit is constitutional and is not a denial of equal protection. *Four Maple Drive Realty Corp. v. Abrams*, 2 A.D.2d 753, 153 N.Y.S.2d 747 (2d Dep't 1956), *appeal denied* 2 A.D.2d 781, 154 N.Y.S.2d 842 (2d Dep't 1956), *appeal dismissed* 2 N.Y.2d 837, 140 N.E.2d 870 (1957), *appeal dismissed* 355 U.S. 14 (1957).

praisal formula, for tenants will pay the same rent regardless of whether it is collected by the owner or the lessee-manager.

The right to a specific return on the investment has not previously been predicated on ownership alone, but on the right of a landlord to a fair return. When the state government took over rent control from the Federal Government in 1950, its Rent and Eviction Regulations were copied almost word for word from the existing federal regulations, and the state adopted this definition of landlord: "An owner, lessor, sublessor, assignee, proprietary lessee of a housing accommodation . . . or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodation or an agent of any of the foregoing."<sup>20</sup> Since it is the person in possession and control who is entitled to the rents, and since New York speaks of the right of a landlord to rents without setting up a hierarchy among owners, lessees and others considered landlords, the majority opinion is in keeping with precedent. It does not couple a maximum six percent return to a particular estate's investment in the property, but makes it depend solely on the right of a statutory landlord to a six percent return on the value of the property standing apart from the fortuitous or non-fortuitous investment of owner or lessee.

#### APPLICATION OF DECONTROLLING PROVISIONS OF RESIDENTIAL RENT LAW

The New York State Residential Rent Law<sup>21</sup> provides in part; "housing accommodations which are rented after April first, nineteen hundred fifty-three and have been continuously occupied by the owner thereof for a period of one year prior to the date of renting" are not subject to control. In *Capone v. Weaver*,<sup>22</sup> the landlord petitioner, sought to annul a determination by the Rent Administrator that his apartment was not decontrolled under the above statute. Petitioner owned several apartments, one of which was occupied by tenant, who had intervened in the instant case, and one by himself.

In 1954, petitioner, because of a family situation causing hardship, sought to exchange apartments with the tenant, but the tenant refused, as he had tenure under the above statute and controlled rents. Upon the tenants refusal, petitioner obtained an eviction of this tenant on the conditions, imposed by the Rent Administrator, that he offer to exchange apartments with the tenant and offer him a two year lease at the then present rent. Upon the lease's expiration, petitioner informed the tenant that he could continue to occupy the premises on a month-to-month basis, at double the rent. The tenant claimed a violation

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20. N.Y. Rent and Eviction Regulations § 2(6) N.Y. UNCONSOL. LAWS (McKinney Supp. 1959); means person in possession and control in *People v. S. A. Schwartz Co.*, 7 Misc. 2d 635, 165 N.Y.S.2d 1008 (Sup. Ct. 1957). For Federal definition, see, Rent Regulation for Housing in New York City Defense Rental Area, § 13(a)(8): "Landlord' includes an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodations, or an agent of any of the foregoing." Cited in *Woods v. William A. White & Sons.*, 172 F.2d 356 (2d Cir. 1949).

21. N.Y. SESS. LAWS 1946, c. 27, § 2(h).

22. 6 N.Y.2d 307, 189 N.Y.S.2d 833 (1959).