LANDLORD SELF-REGULATION: NEW YORK CITY'S RENT STABILIZATION SYSTEM 1969-1985

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I. INTRODUCTION

New York City has long pioneered innovative responses to urban housing problems. In 1969 New York City created a unique system of landlord self-regulation as an alternative to the extended application of

the city's existing rent control law to post-1947 rental housing.[1] The experiment ended in 1984-85 with the transfer of administrative authority back to the State of New York.[2] The transfer effectively marked the termination of this unusual version of rent regulation.

The history of New York's Rent Stabilization system involves three distinct eras:

1) 1969-1974: This period involved the initial stated life of the system, in which courts upheld its constitutionality and allowed for its implementation. Landlords and tenants generally accepted its existence and structure.
2) 1974-1978: This period marked the point when the rent stabilization system became increasingly complex and controversial as conflict grew between landlords and tenants over its structure and administration.
3) 1978-1985: This period involved turbulent landlord-tenant conflict, legal challenges to the legitimacy of the system, and finally, a legislative compromise resulting in the termination of landlord self-regulation.

In an era in which deregulation of governmental programs and self-regulation by market forces have become politically popular policies, it is instructive to examine the history of this particular experiment. An analysis of its rise and fall offers lessons that are noteworthy in the debate over the desirability and utility of these laissez-faire policies, both in housing and in other areas.

Producers see self-regulation as a more palatable version of price regulation. Self-regulation limits governmental market intervention to oversight of a self-regulatory producer association. This, in turn, may mean much greater freedom of action for producers, but far less public disclosure of information is likely. Unless consumers are well organized and have access to the administrative system, there will be less

1. New York City Rent Stabilization Law, New York, N.Y., Local Law 16 (May 6, 1969), *codified* in N.Y. ADMIN. CODE §§ YY51-1.0 to -7.0, N.Y. UNCONSOL. LAW §§ Y51-1.0 to -7.0 (McKinney 1974 & Supp. 1987) [hereinafter RSL]. *See* Comment, *The New York Rent Stabilization Law of 1969*, 70 COLUM. L. REV. 156 (1970). For analyses of the first decade of rent stabilization, see W.D. Keating, Landlord Self-Regulation: New York City's Rent Stabilization System 1968-1978 (1979) (Ph.D. Dissertation) and Note, *Emergency Tenant Protection in New York: Ten Years of Rent Stabilization*, 7 FORDHAM URB. L.J. 305 (1979).

2. N.Y. UNCONSOL. LAW §§ 8582, 8584, 8591, 8592 (McKinney 1974 & Supp. 1987) (originally enacted as 1983 N.Y. Laws ch. 403). The Omnibus Housing Act (OHA) mandated the state takeover as of April 1, 1984.

consumer pressure and fewer complaints.[3]

In contrast, price regulation by a public agency promises greater public disclosure of producer information, more public intervention, increased consumer pressure and complaints, and more effective sanctions. While producers prefer no regulation or voluntary mediation, they prefer self-regulation to full-fledged governmental regulation,[4] especially if the government strictly enforces this regulation.

The best example of government-supervised self-regulation is the National Recovery Administration (NRA) established during the New Deal. The NRA negotiated the adoption of 546 national industrial codes of fair competition to regulate wages and prices. Critics of the NRA attacked these codes as a legitimation of anti-trust law evasion, which enabled big business to form cartels through price-fixing.[5] In *A.L.A. Schechter Poultry Corp. v. United States*[6] the Supreme Court held that the National Industrial Recovery Act (NIRA) was an unconstitutional delegation of Congress' legislative authority because it empowered private code-making agencies to act without adequate standards.

Though the NRA dissolved after the failure of self-regulation, the Securities and Exchange Commission (SEC) emerged in 1934 as the governmental regulator of the private securities market.[7] In 1938 the

3. *See generally* Levin, *The Limits of Self-Regulation*, 67 COLUM. L. REV. 603 (1967).

4. *See, e.g.*, Blakeney & Barnes, *Industry Self-Regulation: An Alternative to Deregulation? Advertising—A Case Study*, 5 U. NEW S. WALES L.J. 133 (1982). The authors argue that the advertising industry sees self-regulation as acceptable only as an alternative to governmental regulation. They conclude that self-regulation by the Australian advertising industry lacks responsibility and credibility.

5. *See generally* B. BELLUSH, THE FAILURE OF THE NRA (1975).

6. 295 U.S. 495 (1935). The United States Supreme Court also invalidated the Bituminous Coal Conservation Act of 1935. *See* Carter v. Carter Coal Co., 298 U.S. 238 (1936). A reconstituted Court, however, found no delegation of legislative power in the 1937 Bituminous Coal Act. This Act empowered a National Bituminous Coal Commission in the United States Department of the Interior to set coal prices based upon proposals submitted by district boards representing producers. *See* Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1940). *See also* Opp Cotton Mills, Inc. v. Administrator of the Wage & Hour Div., 302 U.S. 126 (1941) (upholding under the 1938 Fair Labor Standards Act, which established advisory committees, a textile committee that consisted of members divided equally among representatives of employers, employees, and the public). *See generally* Jaffe, *Law Making by Private Groups*, 51 HARV. L. REV. 201 (1937) and Note, *Delegation of Power to Private Parties*, 37 COLUM. L. REV. 447 (1937).

7. *See generally* M. PARRISH, SECURITIES REGULATION AND THE NEW DEAL (1970).

SEC fostered the creation of a self-regulatory system for over-the-counter securities brokers and dealers that served as the model for New York City's rent stabilization system.

This article argues that New York City's landlord self-regulation system failed. Its ultimate demise is attributable to several factors:

—the attempted insulation of decisionmaking from public influence;
—the attempted exclusion of tenants from the decisionmaking structure;
—landlord domination of regulatory bodies and policies;
—widespread patterns of landlord violations of the rent stabilization code;
—the failure of regulatory bodies to adequately enforce available sanctions for code violations; and
—the emergence of countervailing tenant opposition, the subsequent politicization of critical issues and decisions, and the eventual delegitimation of the system's structure.

II. ENACTMENT AND IMPLEMENTATION 1969-1974

A. *The Enactment of Rent Stabilization*

When New York State and New York City extended federal residential rent controls originally enacted in 1943, they exempted post-1947 newly-constructed housing to stimulate new construction.[8] In the next two decades much new private rental housing was constructed. By the early 1960s developers had overbuilt, partly to escape downzoning. To fill empty new apartments, the developers had to resort to concession rents to attract tenants. By 1968, however, the city's rental vacancy rate had dropped to its lowest point since the Korean war.[9] In the non-controlled sector of 395,000 units, the vacancy rate was less than one percent.[10]

The debate over rent control broadened in 1968. While landlord groups argued for decontrol of the regulated rental stock, the largely middle class tenants of the non-controlled stock demanded protection from massive rent increases threatened in this tight market. In the mayoral election year of 1969, a major evaluation of the rent control

8. N.Y. UNCONSOL. LAW § 8582(2)(g) (McKinney 1974 & Supp. 1987).

9. Shiplee, *Apartment Vacancies at 18 Year Low*, N.Y. Times, Jan. 5, 1969, § 8, at 1, col. 1.

10. P. NIEBANCK, RENT CONTROL AND THE RESIDENTIAL HOUSING MARKET 13, Table II—1 (1969).

system began. Mayor John Lindsay appointed an advisory committee to consider rent control reforms. In early 1969 a mayoral task force report on rent increases in the non-controlled sector concluded that median rent increases of 26.5 percent constituted a serious problem.[11]

The embattled Lindsay administration, under tenant pressure for protection, recommended landlord self-regulation rather than rent control. Another mayoral advisory committee, in response to the proposal of a real estate industry committee, formulated what became the rent stabilization law adopted in May, 1969. Landlords attacked this compromise law as too stringent and tenants attacked it as too weak. The city government designed the rent stabilization system to defuse this volatile landlord-tenant conflict.

B. *The Structure of Landlord Self-Regulation*

Landlords criticized New York City's longstanding rent control system as overly restrictive. They blamed the system for conditions such as the undermaintenance and abandonment of rental housing.[12] The owners of post-1947 rental housing preferred self-regulation to the extension of rent control to their apartments, regardless of the problems that might result.

In 1938 Congress authorized self-regulation of over-the-counter securities brokers and dealers by the National Association of Securities Dealers (NASD).[13] The NASD, overseen by the Securities and Exchange Commission (SEC), promulgates Rules of Fair Practice. If

11. *See* Affidavit of Jason R. Nathan, Administrator of the Housing and Development Administration (HDA), 8200 Realty Corp. v. Lindsay, 27 N.Y.2d 124, 136-37, 261 N.E.2d 647, 654, 313 N.Y.S.2d 733, 742-43, *appeal dismissed*, 400 U.S. 962 (1970).

12. *See, e.g.*, Comment, *Residential Rent Control in New York City*, 3 COLUM. J.L. & SOC. PROBS. 30 (1967). Federal courts rejected legal challenges to the constitutionality of rent control previously dismissed by the New York Court of Appeals. *See* Israel v. City Rent & Rehabilitation Admin., 285 F. Supp. 908 (S.D.N.Y. 1968). *See also* Eisen v. Eastman, 421 F.2d 560 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970).

13. For the origin and evolution of the NASD, *see* Cary, *Self Regulation in the Securities Industry*, 49 A.B.A. J. 244 (1963); Cherrington, *National Association of Securities Dealers*, 27 HARV. BUS. REV. 741 (1949); Grant, *The National Association of Securities Dealers: Its Origin and Operations*, 1942 WIS. L. REV. 597; Rutter, *The National Association of Securities Dealers: Continuing Government-Industry Cooperative Regulation in the Over-the-Counter Securities Industry*, 7 VILL. L. REV. 611 (1962); Westwood & Howard, *Self-Government in the Securities Business*, 17 LAW & CONTEMP. PROBS. 518 (1952); White, *National Association of Securities Dealers, Inc.*, 28 GEO. WASH. L. REV. 250 (1959); Note, *Over the Counter Trading and the Maloney Act*, 48 YALE L.J. 633 (1939).

complaints of violations of these rules are brought against members, the NASD has self-regulatory disciplinary powers, subject to review by the SEC and the courts. The NASD's disciplinary powers include the censure, firing, suspension, and expulsion of members.[14] The NASD is self-financed through membership dues and fees.

In 1952 the Second Circuit upheld the constitutionality of NASD self-regulation due to the SEC's active supervisory review of the NASD.[15] In 1975 the Supreme Court found the NASD immune from anti-trust action under the Sherman Act.[16] Amendments in 1975 expanded the SEC's role in NASD rulemaking. The amendments created an affirmative duty on the NASD to comply with and enforce both its rules and the SEC's rules. They also explicitly expanded the SEC's authority to compel the NASD to enforce membership compliance and sanction the NASD for failure to enforce its rules.[17]

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14. *See* Pickard & Djinis, *NASD Disciplinary Proceedings: Practice and Procedure*, 27 BUS. LAW 1213 (1982); Note, *Governmental Action and the National Association of Securities Dealers*, 47 FORDHAM L. REV. 585 (1979). In 1984 NASD disciplinary action resulted in the expulsion of ten firms and 58 individuals, and the suspension of three firms and 54 individuals. NASD's 1984 membership consisted of 5,726 firms and nearly 330,000 individuals. NATIONAL ASS'N OF SECURITIES DEALERS, ANNUAL REPORT (1984) [hereinafter NASD ANN. REP.].

15. R.H. Johnson & Co. v. SEC, 198 F.2d 690 (2d Cir. 1952), *cert. denied*, 344 U.S. 855 (1952).

16. United States v. NASD, 422 U.S. 694 (1975). *See* Note, *S.E.C. Regulation as a Pervasive Regulatory Scheme—Implied Repeal of the Antitrust Laws with Respect to National Securities Exchanges and the NASD*, 44 FORDHAM L. REV. 355 (1975). Tenants have not challenged landlord self-regulation under New York's rent stabilization system as violative of antitrust laws. Landlords do not actually set rents. Rents are set by an independent Rent Guidelines Board (RGB). The courts held that New York City's rent control system did not violate antitrust laws under the state action doctrine. *See* Brontel, Ltd. v. City of New York, 571 F. Supp. 1065, 1070-72 (S.D.N.Y. 1983) *aff'd* 742 F.2d 1439, *cert. denied*, 105 S. Ct. 248 (1984). The court held that New York City's local rent control regulations were exempt from federal antitrust laws because they were "in furtherance of implementation of clearly articulated and affirmatively expressed state policy." *Id.* at 1071 (quoting Community Communications Co. v. Boulder, 455 U.S. 40, 52 (1982)). The court also found that active state supervision was present. *Id.* at 1072 n.31. Subsequently, the State of New York assumed responsibility for administering New York City's local rent controls. *See* Fisher v. City of Berkeley, 37 Cal. 3d 644, 693 P.2d 261, 209 Cal. Rptr. 682 (1984), *aff'd*, 106 S. Ct. 1045 (1986). *See* Churchwell, *The Federal Anti-trust Implications of Local Rent Control: A Plaintiff's Primer*, 12 PEPPERDINE L. REV. 919 (1985).

17. *See* Moylan, *The Place of Self-Regulation in the Securities Industry*, 6 SEC. REG. L.J. 49 (1978). For an analysis of the SEC's role previously, see Jennings, *Self-Regulation in the Securities Industry: The Role of the Securities and Exchange Commission*, 29 LAW & CONTEMP. PROBS. 663 (1964).

While NASD self-regulation has not prevented numerous and continued violations of the Code of Fair Practice over its forty-eight year life, commentators have concluded that the enforcement policies of the NASD and SEC have been successful.[18] Notable features of this self-regulatory system are its public anonymity and the infrequency of consumer complaints.[19]

These attributes undoubtedly appealed to the drafters of the Rent Stabilization Law (RSL). The RSL, however, differed significantly from the NASD-SEC model. The RSL created a four-tiered administrative structure. First, the RSL required rent-stabilized landlords to join a Rent Stabilization Association (RSA).[20] The RSA had the primary responsibility for administering a self-governing code.[21]

Second, a Conciliation and Appeals Board (CAB) established by the RSA reviewed unresolved disputes between rent-stabilized landlords and tenants.[22] The RSA created a nine-member CAB consisting of four representatives of the real estate industry, four representatives of the public, and an impartial chairperson appointed by the Mayor and City Council. The RSA felt that direct real estate industry representation was necessary to gain the cooperation of landlords in the implementation of rent stabilization. They also feared, however, that direct tenant representation on the CAB would antagonize landlords.[23]

Third, a Rent Guidelines Board (RGB) annually determined rent adjustment guidelines.[24] In establishing fair rent guidelines, the RGB was required to consider the economic condition of New York City's

18. *See* SEC, REPORT OF THE SPECIAL STUDY OF SECURITIES MARKETS, H.R. DOC. NO. 95, 88th Cong., 1st Sess. 3 (1963).

19. Until the 1975 legislation, there was no statutory requirement for public representation on NASD's governing board. Now, at least one public director must be appointed. *See* Moylan, *supra* note 17, at 54-55. In 1984 the NASD reported that it reviewed 3,087 customer complaints. NASD ANN. REP., *supra* note 14, at 12.

20. RSL § YY51-6.0. The RSL regulated only the owners of buildings constructed between February 1, 1947 and March 10, 1969 and containing six or more units. In addition, the RSL applied to a limited class of hotel units. *Id.* at § YY51-3.1. Approximately 20,000 hotel units were subject to the RSL. Rent-stabilized hotel owners organized a separate Metropolitan Hotel Industry Association (MHIA). *Id.* at § YY51-6.1. This article does not address the application of landlord self-regulation to hotels.

21. RSL § YY51-6.0(b).

22. *Id.* § YY51-6.0(b)(3).

23. The RSA is funded by the CAB. *See* Code of the Real Estate Industry Stabilization Association of New York City, Inc. § 32 in N.Y. UNCONSOL. LAW § YY51-6.0 (McKinney 1974 & Supp. 1987) [hereinafter RSA Code].

24. *Id.* § YY51-5.0.

residential real estate industry, current and projected cost-of-living indices for New York, and other relevant data from the CAB and other New York City agencies.[25] RGB orders would cover one-, two-, and three-year lease renewals. The RGB was to consist of nine members appointed by the Mayor. Six members must have had five years experience either in finance, economics, or housing. No one could be appointed who owned real estate covered by the RSL or who was an officer of any tenants' organization.[26] In contrast to the CAB, the RGB would have no guaranteed tenant representatives and no appointed landlords. RGB members were to be paid for only two weeks work annually and had no staff independent of the city.[27]

By design, including the exclusion of landlord and official tenant representatives, the RGB was to serve the role of impartial expert determining "fair" rents. Its decisions were not subject to review by the city. There was no legal requirement that the RGB hold public hearings or explain its decisions. The city deliberately structured the RGB to depoliticize the process of increasing rents in stabilized apartments.

Fourth, the city had a regulatory role in enforcing the RSL. The Housing and Development Administration (HDA) was to oversee the RSA. The RSL empowered the HDA to register the RSA and approve its code.[28] The HDA could suspend the RSA and discipline individual landlord members of the RSA that were not in "good-standing" by imposing rent control on their apartments.[29] The HDA also provided staff assistance to the RGB.[30] The HDA had no statutory authority to oversee the CAB, which was to operate independently.

C. *The Adoption of the RSA Code*

The early implementation of the rent stabilization law was controversial. Presaging later conflicts, the most important issue that arose in 1969 concerned the newly-formed RSA's proposed code. Mayor Lindsay, the City Council President, and tenant organizations, led by the Metropolitan Council on Housing (MCH), criticized the code.[31] After

25. *Id.* § YY51-5.0(d).
26. *Id.* § YY51-5.0(b).
27. *Id.* § YY51-5.0(c).
28. *Id.* § YY51-6.0.
29. *Id.* § YY51-4.0, -6.2.
30. *Id.* § YY51-5.0(c).
31. N.Y. Times, July 9, 1969, at 1, col. 2.

public hearings the HDA rejected the draft code.[32] Among the many disputed Code provisions, the most important indicators of future conflict were rent increases for vacancy leases and sanctions for RSA members who violated the code.

The RSA proposed automatic rent increases up to the maximum allowed during the phase-in period.[33] This interpretation would have created a strong incentive for landlords to maximize rapid tenant turnover: "The [RSA]'s resolution of this critical issue illustrates . . . the inherent weakness of a scheme in which the interests of those [landlords] charged with administering a law are opposed to those of the [tenant] groups which the law is designed to protect."[34]

The city then implemented a RSA-HDA code compromise and allowed for automatic increases in vacancy (and renewal) leases, provided that landlords show tenants copies of all prior leases that they were required to retain from the law's base date (May 31, 1968).[35] All landlords were required to attach riders to leases informing tenants of their right to examine prior leases, and to provide prior rent rates and the name of the previous tenant.[36]

This compromise is critical because unlike rent control, the law did not provide for registration of rent-stabilized apartments by the HDA. The landlords themselves were the sole source of information on rent histories. If tenants were ignorant of their right to inspect the terms of prior leases or landlords did not retain the leases, then the possibility of rent overcharges loomed large. The extent to which the RSA, CAB, and HDA required compliance with this key provision later became a cause of great controversy when tenant complaints of illegal overcharges mounted. The two major enforcement problems were tenants' ignorance of their right to this information and landlords' failure either to retain this information or to provide it to tenants.

The RSA Code draft proposed that member landlords could jeopardize their good standing only if they willfully exceeded fair rent levels. Drafters challenged the introduction of an intentional misconduct standard. In the final version the Code established a rebuttable

32. *Id.*

33. The RSL allowed landlords to add 5% for a two-year lease and 10% for a three-year lease, above the interim RGB guidelines for vacated units prior to July 1, 1970. RSL § YY51-5.0(e).

34. Comment, *supra* note 1, at 170.

35. RSA Code § 42(a).

36. *Id.*

presumption that overcharges were willfull unless proven otherwise.[37]

The battle over the RSA Code was brief but bitter. The HDA demanded approximately seventy changes. Mayor Lindsay's HDA Commissioner stated that the Code was not consistent with the Rent Stabilization Law.[38] After lengthy secret negotiations between the HDA and the RSA, the RSA submitted, under protest, a revised code that the HDA promptly accepted. The RSA's attempt to adopt a code overtly biased to favor landlords illustrated an inherent flaw in landlord self-regulation, which required intervention by the HDA as the public agency charged with review and approval of this code.

D. *Constitutionality of Landlord Self-Regulation*

While the RSA continued to enroll landlords and the CAB was formed, attention shifted to the courts. The battle over the Code climaxed in July 1969, when a state court judge ruled that the law was unconstitutional.[39] In April 1970, an appellate court declared that the rent stabilization law was an unconstitutional delegation of the city's legislative and taxing authority,[40] as well as a violation of the equal protection clause. The New York State Court of Appeals quickly reversed in a six to one decision.[41] The plaintiff's primary argument was that the rent stabilization law unconstitutionally delegated governmental authority to a private association such as the RSA. The City of New York defended the constitutionality of the RSL on the ground that there was no invalid delegation of power to the RSA because the HDA retained disciplinary authority over the RSA. The city cited the National Association of Securities Dealers as the model for the RSA.

The court of appeals majority rejected the landlords' main argument, relying upon federal precedents sustaining the constitutionality of the NASD.[42] The court distinguished New York precedent that invalidated the delegation of power to issue licenses to private clubs.[43] The majority did not find the RSA payment, through membership dues, of

37. RSA Code § 7(a).

38. N.Y. Times, July 9, 1969, at 1, col. 2.

39. Fifty Central Park West Corp. v. Bastien, 60 Misc. 2d 195, 302 N.Y.S.2d 267 (1969), *aff'd*, 64 Misc. 2d 911, 316 N.Y.S.2d 503 (1970).

40. 8200 Realty Corp. v. Lindsay, 34 A.D.2d 79, 309 N.Y.S.2d 443 (1970).

41. 8200 Realty Corp. v. Lindsay, 27 N.Y.2d 124, 261 N.E.2d 647, 313 N.Y.S.2d 733 (1970), *appeal dismissed*, 400 U.S. 962 (1970).

42. *Id.* at 133, 261 N.E.2d at 651, 652, 313 N.Y.S.2d at 739.

43. *Id.* at 133, 261 N.E.2d at 652, 313 N.Y.S.2d at 740.

CAB and HDA expenses incurred in administering the law constituted an invalid delegation of the city's taxing authority.[44] The court found no violation of the authority delegated from the state to the city in 1962 that enabled the city to continue local rent control.[45]

Finally, the court rejected the argument that the RSL violated the equal protection clause of the Constitution because the Rent Stabilization Law denied owners of rental housing constructed prior to 1947 more favorable treatment regarding maximum rent ceilings. The court upheld this discriminatory differentiation in regulatory treatment under the "rational basis" test, relying upon the stated purpose of the legislation and previous rent control judicial precedents.[46] The court accepted the need to encourage new construction as a primary rationale for the difference in regulatory systems.[47]

E. *Determination of Annual Rent Adjustment Guidelines*

With the constitutionality of the rent stabilization law upheld, attention turned to the process for the RGB's determination of annual rent adjustment guidelines. The RGB made the initial decision as to how it would determine changes in landlords' operating costs. The RGB commissioned the U.S. Bureau of Labor Statistics (BLS) to develop an operating cost index for rent-stabilized buildings. The BLS developed an index measuring changes in eight categories.[48] The BLS then surveyed a sample of rent-stabilized buildings owned by RSA members to weight these cost categories, using April 1967 as the base date for changes in the price of the goods and services include in the index. Beginning in 1970, the RGB relied heavily, but not exclusively, on the BLS operating cost price index for its determination of rent increases.

Initially, the absence of tenant representation on the RGB, the use of the operating cost price index, the RGB's secrecy, and its consideration of additional factors to justify rent increases occasioned little controversy. These issues, however, would later become much debated in a public forum. During this early era, the RGB convened annually, held no public hearings, and quietly issued annual rent increase orders.

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44. *Id.* at 134-35, 261 N.E.2d at 652-53, 313 N.Y.S.2d at 740-41.

45. *Id.* at 135, 261 N.E.2d 653, 331 N.Y.S.2d at 741.

46. *Id.* at 135-37, 261 N.E.2d at 653-54, 331 N.Y.S.2d at 741-43.

47. *Id.* at 138, 261 N.E.2d at 655, 331 N.Y.S.2d at 744.

48. From 1970 to 1981 the Bureau of Labor Statistics submitted an annual survey entitled "Price Index of Operating Costs for Rent-Stabilized Apartment Houses in New York City" to the RGB. The RSA usually underwrote the cost of the BLS surveys.

F. *CAB Resolution of Landlord-Tenant Disputes*

The RSA established the CAB as a quasi-judicial body to resolve landlord-tenant disputes. The CAB was to review both tenant complaints of landlord violations of the RSL or RSA Code and landlord appeals for hardship rent increases. In providing for landlord hardship applications, the RSL guaranteed landlords the same average operating cost-to-gross rent ratio that they had during the preceding five-year period.[49] In contrast to New York City's rent control statute, the RSL had no explicit guarantee of a fair return.[50] In August of 1969 Mayor Lindsay named the first CAB.[51] The CAB proceeded to hire a staff, adopt rules and regulations, and hear and resolve tenant and landlord petitions.

G. *RSA Certification*

The RSA registered approximately 358,000 apartments in 6,000 buildings by the statutory deadline in August 1969. The HDA certified the RSA as the sole self-regulatory landlord association. RSA membership dues paid for the operation of the CAB.

H. *Initial Acceptance*

From its inception in 1969 through the end of its initial term in 1974, the rent stabilization system functioned without serious problems. In contrast to landlord discontent over the 1970 reform of rent control,[52] landlords accepted rent stabilization as a preferable alternative. The CAB, with a staff of twenty-two by 1973, handled 9,307

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49. RSL § YY51-6.0(c)(6)(a). According to the RGB, the average operating and maintenance cost-to-gross rent ratio increased from 55% to 69% between 1970 and 1984. Rent Guidelines Board, Statement of Clarification of Order No. 16, at 17, Table 14 (July, 1984).

50. Under New York City's rent control system, the city guarantees landlords a 6% return on assessed value plus a 2% allowance for depreciation. New York City Rent and Rehabilitation Law, § Y51-5.0(g).

51. N.Y. Times, Aug. 21, 1969, at 44, col. 1.

52. Following studies conducted by George Sternlieb and the Rand Corporation, New York City's rent control system was reformed by the Maximum Base Rent (hereinafter MBR) program, which tied rent increases to cost increases and code compliance. The problems in implementing this reform are discussed in Note, *The ABCs of MBR: How to Spell Trouble in Landlord/Tenant Relations (Up Against the Crumbling Walls)*, 10 COLUM. J.L. & SOC. PROBS. 113 (1974). Since 1974 all rent-controlled units vacated after July 1971 have been transferred to the rent stabilization system. In 1968 there were 1,276,000 rent-controlled apartments in New York City. P. NIEBANCK, RENT CONTROL AND THE RESIDENTIAL HOUSING MARKET: NEW YORK CITY 1968 (1970).

cases between 1969 and 1973. The CAB issued 1,814 opinions, only three of which were overturned by the courts. The backlog of tenant and landlord petitions in 1973 totalled 1,042.[53]

The cumulative increase in rent-stabilized landlords' costs reported during 1969-1973 was 39.4 percent.[54] The RGB estimated that the average operating and maintenance cost to gross rent roll ratio in rent-stabilized buildings increased from approximately 51 percent in 1969 to 56 percent in 1973.[55] The RGB concluded that in order to cover increased operating and maintenance costs during this period, a cumulative rent increase of only 21.6 percent would have been required.[56]

This difference of 17.8 percent between the cumulative rent increases granted and landlords' increased costs is explained largely by the RGB's policy of including bonus rent increases for vacated apartments.[57] This vacancy bonus allowance ranged from 7½ percent to 10 percent. In addition, the RGB authorized a ½ percent to 1 percent "stabilizer" rent increase for all landlords to account for increased debt financing costs that might affect landlords' rate of return on investment. The vacancy bonus and the profit stabilizer policies later caused considerable controversy. Only twenty-five rent-stabilized landlords applied for comparative hardship rent increases between 1969 and 1974.[58] This suggests that rent stabilization did not significantly reduce most rent-stabilized landlords' rate of return.

I. *Rent-Stabilized Landlords and Tenants*

The RSA did not publish a profile of its members. Its Board of Directors, however, included some of New York's largest landlords. In 1973 the median size of rent-stabilized buildings was fifty or more units, compared to only twenty-five units for rent-controlled build-

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By 1984 only 218,000 rent-controlled apartments remained. M. STEGMAN, HOUSING IN NEW YORK: STUDY OF A CITY 1984, at 44, Table 2-15 (1985).

53. NEW YORK CITY CONCILIATION AND APPEALS BOARD, 1976 YEAR END REPORT app. V (January 1977) [hereinafter 1976 CAB REPORT].

54. U.S. BUREAU OF LABOR STATISTICS, REGIONAL REPORT 33-1973, 1973 PRICE INDEX FOR OPERATING COSTS FOR RENT STABILIZED APARTMENT HOUSING IN NEW YORK CITY 5 (July 1973).

55. Rent Guidelines Board, Explanatory Statement and Findings 12-15 (July 1975).

56. *Id.* at 10, Table IV.

57. The RGB was authorized to establish different rent guidelines for new leases for vacant units. RSL § YY51-5.0(e).

58. 1976 CAB REPORT, *supra* note 53, at app. N.

ings.[59] Rent-stabilized buildings constructed between 1947 and 1969 were not only newer and larger than the pre-World War II rent-controlled housing stock, but they were also more expensive. The median rent was almost twice as high as the median rent of rent-controlled apartments.[60]

From the perspective of rent-stabilized landlords, self-regulation seemed to be an attractive alternative to rent control. First, the RGB's rent increases were exceedingly generous. Second, the RSA annual fee, used to fund the CAB and pay for the annual BLS price survey, was only three dollars per unit. Third, the operations of the RSA were private and the RGB operated in virtual secrecy, shielded from public scrutiny. Fourth, HDA's oversight of the RSA was minimal. The CAB referred only 209 landlords, owning 293 buildings containing 4,221 rent-stabilized units, to the HDA for disciplinary action during this period. The HDA's disciplinary actions were not made public.[61] Though the RSA did receive tenant complaints, the CAB acted as the primary mediator and arbitrator of landlord-tenant disputes. Finally, the passage of state vacancy decontrol legislation in 1971 lessened the impact likely to occur if the RSL was renewed in 1974.[62] This legislation permanently deregulated all vacated apartments, both rent-stabilized and rent-controlled. Between its effective dates of July 1971 and January 1973 (when temporary federal rent stabilization regulations expired), nine percent of the rent stabilized housing stock was deregulated through turnover.[63]

Rent-stabilized tenants did not seem to object to the operation of the rent stabilization system, including the rent increases authorized by the RGB. This may be due to the fact that rent-stabilized tenants generally had a much higher income than rent-controlled tenants.[64] The median gross rent-to-income ratio of rent-stabilized tenants was twenty-two percent,[65] below the federal standard of twenty-five percent. Thus, tenants seemingly could afford to pay the rent increases

59. G. STERNLIEB, HOUSING AND PEOPLE IN NEW YORK CITY 51-52 (1973).

60. *Id.* at 54.

61. Grant, *After Four Years, Rent Stabilization Finds the Critics Have Mellowed*, N.Y. Times, Mar. 18, 1973, § 8, at 1, col. 5.

62. N.Y. UNCONSOL. LAW §§ 8581-82 (McKinney 1974 & Supp. 1987). *See* Note, *supra* note 1, at 312-13.

63. Grant, *supra* note 61.

64. G. STERNLIEB, *supra* note 59, at 104.

65. *Id.* at 122.

authorized by the RGB and submitted few complaints to the CAB about rent overcharges or reduction of services. In addition, many tenants may have been only marginally affected by rent stabilization or they may have felt well-protected. Tenants with two- and three-year leases did not face a second rent increase until either July 1972 or July 1973. Meanwhile, the federal temporary rent stabilization program between August 1971 and January 1973 could have been seen as effective protection for rent-stabilized tenants against both unreasonable rent increases and the immediate impact of the vacancy decontrol legislation enacted in New York in 1971.

The only controversy during this period resulted from a CAB opinion interpreting section 20A of the RSA Code.[66] The CAB ruled that section 20A allowed landlords to extend certain tenant leases for three years, rather than two. The HDA disputed this interpretation. MCH, the major citywide tenant organization, supported an appeal of the CAB's opinion, which the courts subsequently overruled.[67] The RGB presumed the general distribution of lease terms of rent-stabilized tenants to be:

one year:	25%
two years:	20%
three years:	55%[68]

With the exception of this issue, rent-stabilized tenants were not well-organized and did not participate actively within the system.

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66. New York City Conciliation & Appeals Board, CAB Opinion No. 31 (1970). N.Y. Times, Feb. 22, 1970, at 88, col. 6.

67. Klein v. Conciliation & Appeals Bd., 64 Misc. 2d 329, 314 N.Y.S.2d 729 (Sup. Ct. 1970), *aff'd*, 36 A.D.2d 1023, 322 N.Y.S.2d 974 (mem.), *appeal denied*, 29 N.Y.2d 485, 274 N.E.2d 753, 325 N.Y.S.2d 1025 (1971).

68. This was the pattern discovered in a 1975 RGB sample survey. Rent Guidelines Board, Explanatory Statement and Findings (July 1975). The RSA challenged the RGB's subsequent reliance upon this study. A 1981 study revealed a different pattern:

Lease term (years)	Pre-1947 Units	Post-1947 Units	Total Rent-Stabilized Units
1	23%	13%	19%
2	47%	24%	39%
3	30%	63%	42%

M. STEGMAN, THE DYNAMICS OF RENTAL HOUSING IN NEW YORK CITY 42-43 (1981). Stegman notes that landlords rented 13% of rent-stabilized units without written leases. *Id.* at 43.

If the impact of landlord self-regulation in New York City was to be judged only for this initial period, then it must be considered successful from virtually all perspectives. The administrative system functioned relatively efficiently and inexpensively. There were few legal challenges after courts established the RSL's constitutionality, and there was little controversy or landlord-tenant conflict. From the landlord perspective, self-regulation on these terms meant that rent increases were not subject to politicization by tenants and profits were protected. In addition, vacancy decontrol provided an assured attrition from regulation, and landlords avoided stricter regulation under rent control.

III. THE TRANSFORMATION OF THE RENT STABILIZATION SYSTEM 1974-1978

A. *ETPA and the Termination of Vacancy Decontrol 1974*

In March 1974 the New York City Council extended the RSL for a second five-year term.[69] Neither the RSA nor rent-stabilized landlords publicly opposed this renewal. More importantly, New York City's tenant groups were lobbying for a repeal of the state vacancy decontrol statute enacted in 1971. Some suburban tenant groups also demanded rent regulation. This campaign culminated in the passage of the Emergency Tenant Protection Act (ETPA) in May 1974.[70]

The ETPA greatly influenced the eventual fate of New York City's rent stabilization system. First, the act repealed vacancy destabilization. The estimated 110,000 rent-stabilized apartments vacated and deregulated since 1971 were again subject to rent stabilization. Second, in order to establish a base rent for these units, the ETPA established an initial legal regulated rent (ILRR), appealable by tenants to the CAB.[71] Third, the Act regulated all newly-constructed units exempted from the 1969 RSL.[72] Fourth, the ETPA incorporated approximately 400,000 rent-controlled units decontrolled since 1971 into the rent stabilization system rather than regulating them again under New York City's reformed rent control system.[73] Fifth, the Act required that both the CAB and RGB have tenant representatives.[74]

69. N.Y. Times, Mar. 13, 1974, at 45, col. 4.
70. N.Y. UNCONSOL. LAW §§ 8621-34 (McKinney Supp. 1987).
71. *Id.* § 8626(c). *See* RSL §§ YY51-6.0.1 to 6.0.2.
72. RSL § YY51-3.0(a)(1).
73. *Id.* § YY51-3.0(a)(2).
74. N.Y. UNCONSOL. LAW § 8624(a), (c) (McKinney Supp. 1987).

In addition, the ETPA extended rent stabilization to three counties outside New York City where local legislative bodies had declared housing emergencies.[75] In contrast to New York City, these counties did not adopt landlord self-regulation. Instead, they designated the State of New York's Division of Housing and Community Renewal (DHCR) to administer the ETPA.[76] Between federal decontrol in 1950 and 1962, the State of New York had administered local rent controls, including New York City's system.[77]

The transformation of the rent stabilization system resulting from the ETPA would eventually lead to the demise of the system. The repeal of vacancy destabilization meant that the vacancy bonus allowance authorized by the RGB became an issue as landlords argued for its continuance and tenants opposed it.

The addition of hundreds of thousands of formerly rent-controlled units to the rent stabilization system introduced several major problems. First, the profile, condition, and ownership of pre-1947 units were much different than the post-World War II housing stock first regulated in 1969. Rent-controlled buildings were older, smaller, in worse condition, had a poorer tenantry and lower rents, and were owned and managed by landlords whose holdings and income differed from the original RSA membership.[78]

Second, the different type, age, and quality of this formerly rent-controlled housing stock required a separate basis for determining operating and maintenance cost changes. The RGB nevertheless decided to continue to promulgate uniform rent adjustment guidelines. This required combining two separate cost indices to determine uniform guidelines for pre- and post-1947 housing.

Third, the addition of several hundred thousand units caused severe

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75. N.Y. UNCONSOL. LAW § 8623 (McKinney Supp. 1987). The courts upheld the constitutionality of the ETPA in Freeport Randall Co. v. Herman, 56 N.Y.2d 832, 438 N.E.2d 99, 452 N.Y.S.2d 566 (1982) and People *ex. rel.* Office of Rent Admin. v. Berry Estates, Inc., 58 N.Y.2d 701, 444 N.E.2d 1324, 458 N.Y.S.2d 905 (1982).

76. N.Y. UNCONSOL. LAW § 8628 (McKinney Supp. 1987). The counties established local rent guideline boards to determine annual rent adjustment guidelines. N.Y. UNCONSOL. LAW § 8624 (McKinney Supp. 1987).

77. The State of New York's administration of New York City's rent control system ended in 1962. N.Y. UNCONSOL. LAW §§ 8601-17 (McKinney Supp. 1986). New York City then continued local option rent control by periodically recognizing the continued existence of a local rental housing emergency.

78. *See* P. MARCUSE, RENTAL HOUSING IN NEW YORK CITY: SUPPLY AND CONDITION IN 1975-1978 (1979).

administrative problems. The RSA had difficulty with initial enrollment.[79] Landlords were either confused or simply refused to register. The CAB and the city's Housing and Preservation Department (HPD), successor to the HDA, could not easily enforce RSA registration requirements. Because buildings became increasingly hybrid, with a mix of both rent-stabilized and rent-controlled units depending upon turnover patterns, confusion abounded regarding the legal status of regulated housing.

Fourth, the CAB's caseload mounted. Tenants challenged many of the ILRRs proposed by landlords of units deregulated between 1971-1974, claiming that they exceeded fair market rents.[80] More landlords claimed hardship.[81] Disputes about reduction in services increased. This increased administrative caseload is attributable to both the re-regulation of the previously deregulated rent-stabilized units and the addition of the formerly rent-controlled units.

B. *The Politicization of the RGB*

While the RSA and the CAB sought to deal with these problems, the RGB became engulfed in its first major controversy. The fuel crisis of 1973-74 resulted in a 1974 BLS index increase of 19.2 percent, more than double the increase of 1973 and much greater than the previous high of 13.4 percent in 1970-71.[82]

In its first EPTA-era guideline, the RGB in July 1974 issued the highest increase in its history—8.5 percent, 10.5 percent, and 12 percent respectively for one-, two-, and three-year lease renewals.[83] The RGB order antagonized landlords as well as tenants by not including either the stabilizer increase or a vacancy bonus.[84]

For the first time in its history the Chair of the RSA publicly castigated the RGB.[85] Rent-stabilized landlords, represented by two

79. A city survey indicated that more than 100,000 deregulated units were not enrolled in the RSA as required by the ETPA. N.Y. Times, Jan. 16, 1976, at 1, cols. 5-6.

80. *See infra* text accompanying notes 174-81.

81. *See infra* text accompanying notes 182-90.

82. U.S. BUREAU OF LABOR STATISTICS, REGIONAL REPORT 38-1974, 1974 PRICE INDEX FOR OPERATING COSTS FOR RENT STABILIZED APARTMENT HOUSES IN NEW YORK CITY (July 1974).

83. Rent Guidelines Board, Order No. 6 (July 1974). *See* N.Y. Times, June 28, 1974, at 1, col. 1.

84. *See* Rent Guidelines Board, Explanatory Statement Upon Issuance of Order No. 6 (July 1974).

85. REAL ESTATE WEEKLY, Oct. 31, 1974, at 1.

groups—the Community Housing Improvement Program (CHIP) and the Associated Builders and Owners of New York (ABONY)—then sued to invalidate the RGB's order.[86] The plaintiff landlords based their challenge on the RGB's failure to provide a rent increase sufficient to cover increased fuel and mortgage refinancing costs, its rejection of the stabilizer and vacancy bonus allowances, and its failure to adequately explain its methodology. CHIP claimed to represent small rent-controlled landlords and had in the past aggressively and publicly attacked the city's rent control program. For example, CHIP successfully lobbied in 1974-75 for a special fuel pass-along rent increase for rent-controlled landlords.[87]

In August 1974 the RGB published a separate guideline applicable to ILRRs, which included a special pass-along for utilities.[88] This prompted criticism of the RGB by tenant representatives and a lawsuit by the legislator who chaired the New York Temporary State Commission that had recommended repeal of vacancy decontrol.[89]

In response to the chorus of criticism and litigation by the RSA, CHIP, and tenant representatives, the RGB issued yet another supplemental guideline to substitute for its previous special guideline.[90] This guideline confused and antagonized both sides of a growing conflict. The RGB's original order was subsequently invalidated on the procedural ground that the RGB failed to adequately explain the factual basis for its original 1974 order.[91] In February 1975 the RGB issued revised 1974 guidelines and for the first time issued an explanatory statement detailing its methodology.[92]

The protracted and acrimonious public conflict, in which the RGB's

86. Associated Builders & Owners of Greater New York, Inc. v. Rent Guidelines Bd., 51 A.D.2d 906, 281 N.Y.S.2d 221 (1976) (mem.). *See* N.Y. Times, Aug. 8, 1974, at 30, col. 7.

87. The court upheld this increase in Colosi v. Starr, 85 Misc. 2d 797, 381 N.Y.S.2d 389 (Sup. Ct. 1976).

88. Rent Guidelines Board, Order No. 6a (August 1974). *See* N.Y. Times, Sep. 28, 1974, at 33, col. 1.

89. *See* N.Y. Times, Aug. 30, 1974, at 33, col. 3; N.Y. Times, Sept. 6, 1974, at 65, col. 6.

90. Rent Guidelines Board, Supplemental Order No. 6a (October 1974).

91. *See* N.Y. Times, Nov. 27, 1974, at 29, col. 1; Fried, *Dispute Over Rents*, N.Y. Times, Nov. 28, 1974, at 37, col. 6.

92. Rent Guidelines Board, Order No. 6c (February 1975). *See* Rent Guidelines Board, Explanatory Statement and Findings of the RGB in Relation to 1974 Lease Increase Allowances for Apartments under the Jurisdiction of the Rent Stabilization Law (1975). *See also* N.Y. Times, Feb. 8, 1975, at 29, col. 1.

credibility, conclusions, and procedures were politically and legally challenged, was a turning point in the history of the rent stabilization system. No longer would the rent-adjustment process under self-regulation be shielded from public scrutiny as had been the custom during the initial term of the RSL. Henceforth, the RSA and tenant groups would become increasingly combative, precisely the situation that self-regulation was designed to avoid.

The pattern of conflict became evident in subsequent years. In 1975 the RSA commissioned its own study to support its formal recommendations to the RGB.[93] In addition, several of the major figures on the RSA Board of Directors led the formation of the Coalition to Save New York, which commissioned a study critical of rent stabilization.[94] The RSA argued that rent-stabilized landlords' net operating income was declining. Tenant groups countered by arguing that tenants' real income was declining. The city's own housing study found that the combination of tenants' declining income and rising rents had increased tenants' rent-to-income ratio.[95]

In the face of these conflicting views and data, the RGB re-instituted the vacancy bonus (limited to 5 percent), added a stabilizer adjustment of 1.5 percent for one-year leases, and retained and increased the special utility allowance.[96] The landlords did not challenge this order.

The 1976 RGB order was similar to that of 1975. The RSA supported a landlord challenge to the legality of this order. The suit challenged the validity of the BLS operating cost index, the RGB's methodology, and the limitations on the special allowances for the stabilizer, utilities, and vacancies.[97] The RSA also submitted its own study attempting to prove that the RGB had failed to recognize rent-stabilized landlords' reduced cash flow and net income.[98] An RGB critique of the RSA study rejected its methodology and conclusions.[99]

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93. F. JAMES & M. LETT, THE ECONOMICS OF RENTAL HOUSING IN NEW YORK: THE EFFECTS OF RENT STABILIZATION (1976).

94. REAL ESTATE RESEARCH CORP., A POLICY REVIEW OF RENTAL HOUSING IN NEW YORK CITY (1975).

95. L. BLOOMBERG, THE RENTAL HOUSING SITUATION IN NEW YORK CITY 1975 (1975).

96. Rent Guidelines Board, Order No. 7 (1975). *See* N.Y. Times, July 1, 1975, at 1.

97. East River Management Corp. v. City of New York Rent Guidelines Bd. *See* REAL ESTATE WEEKLY, Nov. 15, 1976, at 1.

98. F. JAMES & M. LETT, *supra* note 93, at 1.

99. B. ELSTEIN, CRITIQUE OF "THE ECONOMICS OF RENTAL HOUSING IN NEW YORK CITY: THE EFFECTS OF RENT STABILIZATION" (1976).

The court dismissed the lawsuit in an unreported decision.

In 1977 the RGB met in public for the first time, because it was now subject to New York's new Open Meetings law.[100] In 1978 the RSA sued the RGB for the first time, seeking to invalidate the RGB order. Protesting much reduced rent increases, the RSA challenged the RGB's voting procedures, methodology and conclusions. The trial judge ruled that the RGB had the necessary quorum and majority vote of five members to sustain the increases.[101] The judge refused to rule that the RGB's economic data and methodology violated statutory requirements.[102] He did, however, suspend the order pending RGB reconsideration because its preliminary meetings were conducted secretly in violation of the Open Meetings statute.[103]

For the first time, the RSA had successfully challenged the RGB's process, if not its decisions. The RGB subsequently met and readopted its order to apply retroactively. This resulted in the first tenant challenge to the RGB. Numerous tenant groups sued on both procedural and substantive grounds to invalidate the RGB's supplementary orders. The same trial judge dismissed the tenant complaints.[104]

Thus, during this second era the role and status of the RGB changed dramatically. No longer did RGB legitimacy go unchallenged. To the contrary, landlords, tenants, and the RSA attacked RGB procedures, methodology, data, and conclusions. The RSA challenged the reliability and application of BLS data, on which the RGB relied heavily, even

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100. N.Y. PUB. OFF. LAW §§ 100-06 (McKinney Supp. 1987).

101. Rent Stabilization Ass'n of N.Y.C., Inc. v. Rent Guidelines Bd., 98 Misc.2d 312, 413 N.Y.S.2d 950 (Sup. Ct. 1978).

102. *Id.* at 321, 413 N.Y.S.2d at 956.

103. *Id.* at 319, 413 N.Y.S.2d at 955. The court stated:

> The convening of the Board for the consideration of the very data which was to result in the final vote was required to be public, so that the public, landlords and tenants alike, could not only know its fate, but how it was to be arrived at. Such secrecy violated the [Open Meetings] statute. It is no answer for the defendants to say that in past years tenant and landlord groups each provided them with unsolicited data. A public body which by law is obligated to consider such data has an obligation to provide the means for its presentation and an opportunity for interested persons to determine whether or not it has been considered. For better or worse, the legislature has decreed that the day of administrative secrecy is at an end in this state.

Id.

104. Coalition Against Rent Increase Passalongs v. Rent Guidelines Bd., 104 Misc. 2d 101, 427 N.Y.S.2d 660 (Sup. Ct. 1979).

though the RSA had paid for the BLS studies. No longer were RGB votes unanimous. For the first time, constituent organs of the self-regulatory system—RGB and the RSA—were involved in public conflict. The RGB was forced to conduct all of its meetings in public and to explain its orders. These changes meant that the consensus over the fairness of the rent-setting process had vanished and had been replaced by acrimony. Henceforth, the RGB would have to consider publicly formal position papers of landlord and tenant groups with very different views as to how rents should be set.

C. *Landlords and Tenants*

1. Landlords

The 1978 RSA lawsuit against the RGB reflects the victory of a dissident landlord faction within the RSA. Led by CHIP, the owners of the pre-1947 housing subjected to rent stabilization in 1974 pressured the RSA leadership to take more aggressive public positions to promote landlords' interests.

In 1977 tenant groups accused the RSA of violating its own Code by cooperating with a private landlord group lobbying the state legislature for repeal of the ETPA. They demanded that the HDA, in its overseer capacity, suspend the RSA's officers.[105] The HDA investigated and censured the RSA for supporting the lobbying activities of its members who sought to repeal the very law the RSA was created to administer.[106] The HDA, however, undertook no disciplinary action against the RSA or its officers.

In 1978 the RSA became embroiled in its first internal conflict. A dissident slate formed by CHIP, representing the interests of the owners of the smaller and older buildings, won a majority of the twenty-four seats on the RSA's Board of Directors.[107] CHIP had previously waged proxy campaigns to elect RSA Directors, but won only a few seats.

CHIP could have formed a separate organization representing only the owners of pre-1947 rent-stabilized housing, but instead it chose to challenge the leadership of the RSA. Despite CHIP's victory, large

105. Tumolillo, *Industry Mis-Regulation*, NETWORK, June 1977, at 44.

106. Letter from HDA Administrator Appleby to RSA President Liebman (June 7, 1977).

107. Note, *supra* note 1, at 320-22.

landlords still owned a majority of the rent-stabilized housing stock.[108] The victory, however, signalled the end of the era in which the RSA maintained a low profile. Henceforth, the RSA assumed a combative stance in a determined effort to end or amend the rent stabilization system. The 1978 RSA challenge to the RGB's order is indicative of this change. This meant that the RSA's future activities would be subject to increased public scrutiny as well as challenged by rent-stabilized tenants.

These events stand in sharp contrast to the first period of rent stabilization. Between 1969 and 1974 the RSA provided the owners of post-1947 housing with a single representative organization that enabled them to formulate and present their viewpoint effectively to the CAB, RGB, and HDA. Publicly, the RSA's activities and policy positions represented a consensus of its membership. After their initial protestations to the HDA's revisions to the RSA Code, real estate industry leaders publicly praised the RSA because it allowed them to pursue their interests under the protection of the law.[109]

2. Tenants

Like their landlord counterparts, tenants organized and mobilized during this period. MCH, which had originally represented the interests of rent-stabilized tenants, was primarily concerned with rent control, concentrating on the 1970 reform of the rent control system. In 1973-74 a new group emerged, separate from MCH, known as the New York State Tenant and Neighborhood Coalition (NYSTNC). NYSTNC focused more on legislative lobbying rather than the direct tenant organizing MCH had conducted. During the 1974 campaign to repeal vacancy decontrol, which led to passage of the ETPA, MCH and NYSTNC joined forces. Subsequently, NYSTNC emerged as the

108. A 1985 RSA Study revealed that only 975 landlord members (4.75%) owned 56% of rent-stabilized housing. A.D. LITTLE, NEW YORK: HOW WELL IS IT HOUSED (1985). *See* Wald, *Rent Laws Benefit Affluent, Owners Say*, N.Y. Times, May 12, 1985, § 8, at 7, col. 1.

109. This reaction by real estate interests conforms to a standard pattern found in the business community:

> (I)t is not surprising that defense of regulation comes from the business community which was initially hostile. Under a system which permits business in its more organized aspects to pursue its interests under protection of legal sanction, it would be economically unsound to do anything but defend a regulatory agency against demands that its functions be abolished or transferred.

H. ZIEGLER, INTEREST GROUPS IN AMERICAN SOCIETY 120 (1964).

leading representative of the interests of rent-stabilized tenants. NYSTNC, representing tenants petitioning the CAB, lobbied the city and state for pro-tenant reforms of the rent stabilization system and worked with suburban and upstate tenant groups. The state legislature extended and amended the ETPA in 1975, 1976, and 1977.

The emergence of a countervailing tenant organization contesting the legitimacy and legality of landlord self-regulation marked a major change. This change was characterized by five issues around which NYSTNC organized: (1) the impropriety and illegality of RSA lobbying activities against extension of the ETPA;[110] (2) overly high RGB rent increases; (3) the need for legitimate tenant representation on the CAB and RGB; (4) the failure of the CAB to protect tenant rights; and (5) challenges to landlord practices brought by tenants of large rent-stabilized projects. The need for legitimate tenant representation on the CAB and RGB aptly illustrates the landlord-tenant conflict that replaced the apparent earlier consensus acceptance of landlord self-regulation. NYSTNC successfully lobbied for the ETPA provision that required tenant as well as landlord and public representation on the CAB and RGB.[111] The tenant representatives appointed to these boards by the Mayor of New York City were not nominated, screened, or supported by NYSTNC.

In 1978, three tenant groups—NYSTNC, MCH, and a New York City Stabilized Tenants Coalition—challenged Mayor Koch's renomination of two of the four tenant representatives on the CAB. Arguing that the two representatives were not active members of any tenant organization, these groups advocated the appointment of nominees affiliated with tenant groups. In August 1978 the New York City Council did not initially confirm the reappointment of the two contested nominees, but in October 1978 the Council finally confirmed their reappointment.[112]

In 1977 the RSA unsuccessfully opposed the re-appointment of the only CAB tenant representative affiliated with a tenant organization.[113] While both of these initial landlord and tenant efforts were unsuccess-

110. *See supra* notes 105-06.

111. Neither tenant nor landlord representatives on the RGB could be officers of any tenant or landlord organization. RSL § YY51-5.0(a).

112. *See* Village Voice, Aug. 21, 1978, at 4; Village Voice, Aug. 28, 1978, at 3, Village Voice, Oct. 23, 1978, at 5.

113. Moreover, the RSA demanded the right to veto the appointments of landlord representatives. REAL ESTATE WEEKLY, Mar. 7, 1977, at 10.

ful, they signalled the beginning of the delegitimization of the CAB as a neutral and impartial arbitrator and mediator of landlord-tenant disputes. Tenants opposed CAB tenant appointments, which in turn meant that they would likely challenge its decisions and policies. This contrasts with the NASD and its predecessor NRA, in which consumer interests were not organized and, therefore, not well-represented.[114]

D. *Conciliation and Appeals Board*

The major impact of the ETPA on the CAB was a vastly increased caseload. As of 1978, the CAB had jurisdiction over 872,000 stabilized units, compared to only 265,000 units prior to the enactment of the ETPA.[115] From September 1969 through June 1974, the CAB's cumulative caseload of tenant and landlord petitions totalled 10,070.[116] In June 1974 the CAB's backlog consisted of 1,224 cases.[117] Between July 1974 and December 1978 the CAB received 38,235 additional petitions and the December 1978 docket of pending cases had grown to 7,387.[118] This increased docket largely reflected increases in two categories: tenant fair market rent appeals and tenant complaints regarding decreased services and illegal rent charges. The former category represents landlord-tenant disagreement over the base rent for those units deregulated between 1971 and 1974. The latter category indicates growing tenant discontent and the concurrent increased organizing and lobbying activities of tenant groups. In addition to its existing duties, the CAB also had to administer Senior Citizen Rent Increase Exemption applications.[119]

The CAB, rather than the RSA, resolved most disputes. Of the

114. The NRA had a Consumers' Advisory Board, but this board had little influence. *See* E. HAWLEY, THE NEW DEAL AND THE PROBLEM OF MONOPOLY (1966). The Maloney Act that created the NASD did not require any representation of consumers.

115. NEW YORK CITY CONCILIATION AND APPEALS BOARD, 1978 YEAR END REPORT 2-3 (1979) [hereinafter 1978 CAB REPORT].

116. 1976 CAB REPORT, *supra* note 53, app. J.

117. *Id.*

118. 1978 CAB REPORT, *supra* note 115, app. H.

119. The Senior Citizen Rent Increase Exemption legislation exempted certain tenants 62 years or older with limited income from all or part of RGB-authorized rent increases. The city then provided the owner with an equivalent tax abatement. As of 1975 the CAB had to certify eligible tenants and landlords. RSL § YY51-4.1. By 1978 the CAB had reviewed 21,424 Senior Citizen applications and certified 16,106 tenants and landlords as eligible. 1978 CAB REPORT, *supra* note 115, at 9. In 1980 this pro-

49,976 petitions cumulatively received by the end of 1978, the RSA resolved only 1,671 (three percent).[120] The CAB attempted to resolve disputes without having to issue formal opinions, and in doing so settled a majority (fifty-five percent) of its cumulative caseload. The remaining disputes were resolved by opinion, resulting in the issuance of 11,846 CAB opinions.[121] The CAB's litigation workload increased. Though only 434 of its formal opinions were challenged (341 by landlords and 93 by tenants),[122] litigation increased after the passage of the ETPA, indicating increasing dissatisfaction with CAB procedures and decisions. Further complicating its administrative problems, the CAB had to adopt an austerity budget in 1977 because the RSA failed to collect dues from all of its enrolled members.[123]

If rent-stabilized landlords and tenants did not accept the CAB as an impartial arbitrator, then a key element of the self-regulatory system would lose its acceptance. The HDA might be forced to become a more active participant in the administration of this system if tenant pressure existed. Without tenant acceptance of the legitimacy and legality of the actions of the CAB, self-regulation could not work.

Increasingly, tenant dissatisfaction with the CAB and its tenant members reflected criticism of CAB policies by tenant organizations. Tenant groups encouraged tenants to file complaints about these policies with the CAB. The complaints focused on two major issues: illegal rents and decreased services.

Tenant groups argued that many landlords were charging illegally high rents in excess of RGB guidelines. They alleged that the CAB was not enforcing the RSA Code provision that required landlords to provide tenants with prior leases from the base date.[124] Because the CAB did not require rent registration, tenant complaints to the CAB were the primary enforcement mechanism. In 1977 thirty-five percent of the CAB's intake consisted of tenant rent complaints.[125] Tenant groups complained that the CAB's forms and appeal procedures were

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gram was transferred to the HPD. NEW YORK CONCILIATION AND APPEALS BOARD, 1980 YEAR END REPORT 3 (1981) [hereinafter 1980 CAB REPORT].

120. 1978 CAB REPORT, *supra* note 115, app. H.

121. *Id.*

122. 1978 CAB REPORT, *supra* note 115, app. K.

123. Note, *supra* note 1, at 319, n.114.

124. RSA Code § 42(A)(1). *See* Note, *supra* note 1, at 328, n.165.

125. 1978 CAB REPORT, *supra* note 115, app. L, at 4.

too cumbersome. Landlords often claimed to have incomplete rental histories dating back to either 1968 or 1974.

With the addition of the older, pre-1947 housing stock, tenant complaints about the level of maintenance and reduced services predictably grew. In 1977 forty percent of the CAB's complaints involved tenant complaints about reduced services, either building-wide or in individual apartments.[126] Resolution of these disputes often hinged upon the availability of prior leases, indicating what services the landlord had provided from the base year. If this information was not available, the CAB's task became difficult or impossible.

An additional tenant complaint concerned ineffective CAB enforcement of its orders. An estimated 100,000 units subject to rent stabilization were never enrolled with the RSA after 1974.[127] Moreover, the CAB admitted in 1978 that landlords either ignored or failed to comply with more than twenty percent of its orders.[128] Tenant groups argued that HDA's oversight was inadequate because the CAB neither expelled landlords who violated the RSA Code from the RSA nor placed their units under rent control.[129] The tenant groups criticized penalties for overcharging as inadequate. Under the RSA Code, as enforced by the CAB, landlords found guilty of overcharging either intentionally or by mistake simply had to refund the overcharge.[130] The CAB did not require landlords to make interest payments and did not mandate further disciplinary action.

Thus, in a short period, the CAB found its workload greatly increased and much more complex; its backlog growing; its budget limited; litigation of its opinions increasing; and tenant dissatisfaction with its procedures, decisions, enforcement, and tenant representatives' credentials growing. In his January 1979 testimony before the Temporary New York State Commission on Rental Housing, the retiring CAB Chair noted the mounting problems confronting the CAB under these changed circumstances.[131] He recommended the following basic reforms: (1) funding of the CAB through state assessment of rent-stabilized landlords; (2) institution of landlord registration with an updated

126. *Id.*

127. N.Y. Times, Jan. 16, 1976 at 1, cols. 5-6.

128. Note, *supra*, note 1, at 317, n.102.

129. *Id.* at 318, n.104.

130. RSL § YY51-6.0(c)(3); RSA Code § 10(b). Tenants may also abate their rent to recover the overcharge.

131. 1980 CAB REPORT, *supra* note 119, app. M.

base date and a two-year statute of limitations on rent overcharges; and (3) establishment of dual regulatory systems for pre- and post-1947 housing.[132] Though he did not recommend the termination of self-regulation, the chairman's first two recommendations involved expanded governmental regulation of rent-stabilized landlords and reduced influence for the RSA. As the third act of this drama unfolded, the very continuation of landlord self-regulation became the central issue.

IV. THE TERMINATION OF LANDLORD SELF-REGULATION 1978-1983

A. *Prelude to Stalemate*

The ETPA was scheduled for renewal in 1981. As landlords and tenants prepared to do battle again in Albany over the future of rent stabilization, several events underscored the deepening conflict between them.

First, the 1977 election of Congressman Edward Koch as Mayor introduced a period of increased tension as tenant groups contested Koch's housing policies. Koch had sponsored the original rent stabilization legislation in 1969 as a member of the New York City Council.

Second, a Temporary New York State Commission on Rental Housing was created in 1978 to review rental housing programs and regulatory policies. Landlord and tenant groups, which were represented on the Commission, lobbied respectively for recommendations weakening and strengthening rent stabilization. In its 1980 report to the legislature, the Commission did recommend changes, but it satisfied neither side and did not influence the 1981 debate in Albany.[133]

Third, in *Benson Realty Corp. v. Beame*[134] the New York Court of Appeals in 1980 again rejected a landlord challenge to the constitutionality of the city's rent control system. The court dismissed claims that there was no longer a housing emergency to justify regulation, that rent control constituted a "taking", and that maladministration denied landlords due process.[135] With this decision, the court served notice

132. *Id.*

133. *See* NEW YORK STATE TEMPORARY COMMISSION ON RENTAL HOUSING, REPORT (1980).

134. 50 N.Y.2d 994, 409 N.E.2d 948, 431 N.Y.S.2d 475 (1980), *appeal dismissed*, 449 U.S. 1119 (1981).

135. *Id.* at 996, 409 N.E.2d at 949, 431 N.Y.S.2d at 477. In dismissing this last theory, the court noted:

that no judicial forum would be available for the termination of rent stabilization based upon similar theories.

Fourth, numerous tenant groups, led by NYSTNC, petitioned the New York State Attorney General in fall 1980 to suspend certification of the RSA. The tenant groups charged that the RSA was violating the letter and spirit of its own code. Problems they cited included misuse of RSA funding for anti-rent stabilization lobbying at the local, state and federal levels; legal intervention on behalf of rent-stabilized landlords; refusal to fund the CAB adequately; and refusal to enforce the provisions of its own code.[136] The tenants directed their petition to the Attorney General because they alleged that the HPD had abrogated its oversight authority and failed to exercise its intended statutory role (modeled after the SEC's supervision of NASD). Though the Attorney General did not suspend the RSA, he actively intervened in the administration of rent stabilization.

Fifth, the election of Ronald Reagan as President in November 1980 served notice to New York City's tenants that future federal policy would be hostile to rent regulation. In 1982 the President's Commission on Housing supported federal pre-emption of state and local rent regulation.[137]

B. *Rent Stabilization Controversies*

Several major controversies arose during the last decade of the rent stabilization system that illustrate its major flaws, some inherent in

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We know of no authority recognizing any proposition that proof of maladministration or nonadministration of a statute may serve as the predicate for a judicial declaration that the statute is unconstitutional. The role of the judiciary is constitutional. The role of the judiciary is to enforce statutes and to rule on challenges to their constitutionality either on their face or as applied in accordance with their provisions. Any problems that result from pervasive nonenforcement are political questions for the solution of which recourse would have to be had to the legislative or executive branches; the judiciary has neither the authority nor the capabilities for their resolution.

Id.

136. Letter from NYSTNC to New York State Attorney General (Nov. 9, 1980).

137. *See* PRESIDENT'S COMMISSION ON HOUSING, FINAL REPORT (1982). Initially, federally-insured rental housing was not necessarily exempt from rent stabilization. *See, e.g.*, Stoneridge Apartments, Co., v. Lindsay, 303 F. Supp. 677 (S.D.N.Y. 1969). Subsequent federal regulatory policies reversed this status. *See, e.g.*, Pleasant East Assocs. v. Cabrera, 125 Misc. 2d 877, 480 N.Y.S.2d 693 (Civ. Ct. 1984). *See generally* Note, *Pre-Emption of Local Rent Control Laws by HUD Regulation*, 45 FORDHAM L. REV. 651 (1976).

landlord self-regulation and others peculiar to New York City's particular experimental system.

1. Housing Quality

The RSL established a standard that required rent-stabilized landlords to maintain "required services," defined as those services provided on the base date of May 31, 1968.[138]

The basic problem with this requirement is that without registration of services provided on the base date, new tenants were dependent upon landlords to show them base date leases with accurate and complete information on services provided at that time. This presumes landlord compliance with section 42(A) of the RSA Code, which required landlords to provide information, including lease riders, to tenants concerning prior services.[139] Without this vital information, tenants would not know what services were originally provided and, therefore, could not easily complain to the RSA or the CAB about reductions in services.

If the base date services were known and the landlord had eliminated these services, then the tenant remedy was clearly a CAB order or settlement requiring restoration of the service involved. The ETPA further authorized the CAB to reduce rents to compensate tenants for service reductions.[140] A landlord found in violation of this provision could not be considered a "member in good standing" of the RSA and, therefore, was subject to disciplinary action by the RSA, the CAB, and the HPD.[141] This would be especially true if the CAB found that a landlord reduced required services in order to harass a tenant into vacating.[142] Landlords used this illegal harassment to obtain a vacancy bonus allowance or an illegal market rent from a new tenant.

The CAB's handling of tenant complaints suffered from two defects. First, the CAB did not necessarily ensure that violators obey its restoration orders by inspecting the premises or contacting the complainant. Therefore, as the CAB admitted in 1978, it could not be sure of land-

138. RSL §§ YY51-6.0(c)(8).

139. This section required owners to retain all leases in effect from the lease date. RSA Code § 42(A)(2).

140. N.Y. UNCONSOL. LAW § 8627(a). (McKinney Supp. 1987); RSL § YY51-6.0(c)(3).

141. RSA Code §§ 2(k), 6, 8.

142. *Id.* § 7(c).

lord compliance with such orders.[143] The CAB relied primarily upon the New York City Office of Code Enforcement for actual inspections involving alleged landlord violations of the Housing Maintenance Code. Second, neither the CAB nor the HPD seriously disciplined landlords through fines, suspension, or expulsion from the RSA.[144]

Other issues arose with respect to maintenance of housing quality. Tenants complained of substituted services. Owners of luxury apartments, for example, often attempted to replace elevator operators with automated elevators. The CAB ordered that this constituted an illegal reduction of required services, and the court of appeals upheld its interpretation and order.[145] When the CAB ruled that this constituted "equivalent substituted" services, its orders were subject to judicial override.[146] Despite this override, in a case in which a landlord reduced the janitorial workforce but still provided the same level of services furnished at the base date, the New York Court of Appeals upheld the CAB's opinion that the reduction did not constitute a diminution of required services.[147]

After 1974 the CAB faced a more complex issue. In a building with both rent-controlled and rent-stabilized apartments, the CAB could apply two different rent control standards. Under New York City's system landlords were required to provide "essential" services.[148] Essential services might not be strictly interpreted to mean all of the services actually provided on the base date. In so-called "hybrid" building cases, the CAB would typically apply the rule applicable to the majority of regulated units. The court upheld CAB application of the adequate substitution test, even after the CAB applied the less strict rent control standard when it found a preponderance of rent-stabilized

143. N.Y. Times, Apr. 2, 1978, § 8, at 8, col. 4.

144. *But see* Louie v. Hemmerdinger, 101 A.D.2d 792, 476 N.Y.S.2d 547 (1984) (CAB expulsion of landlord's eleven apartments from RSA upheld when CAB inspection revealed that landlords had not made ordered repairs).

145. Korein v. Conciliation & Appeals Bd., 57 N.Y.2d 938, 443 N.E.2d 473, 457 N.Y.S.2d 225 (1982).

146. *See, e.g.*, Smith v. Popolizio, 108 Misc.2d 558, 438 N.Y.S.2d 62 (Sup. Ct. 1981), *aff'd*, 88 A.D.2d 944, 454 N.Y.S.2d 435 (1982), *appeal denied*, 58 N.Y.2d 607, 447 N.E.2d 87, 460 N.Y.S.2d 1027 (1983).

147. Howard-Carol Tenants' Ass'n v. New York City Conciliation & Appeals Bd., 48 N.Y.2d 768, 399 N.E.2d 942, 423 N.Y.S.2d 911 (1979).

148. Rent and Eviction Regulations, § 22 in N.Y. UNCONSOL. LAW (McKinney 1974).

tenants at the date of its order.[149]

The Fresh Meadows dispute reveals the extent to which the earlier landlord-tenant consensus had evaporated. Fresh Meadows is a large project owned by one of New York City's major landlords, Harry Helmsley.[150]

The Fresh Meadows Tenants Association (FMTA) was formed soon after Helmsley's purchase to oppose his proposed expansion of the site and conversion of the rental project to condominiums. The FMTA filed several CAB complaints, charging Helmsley with violations of the RSA Code. One complaint claimed a diminution of required services that resulted in Helmsley's violation of New York's statutory warranty of habitability obligation.[151]

The CAB ruled against Helmsley and ordered the restoration of maintenance services that inspection indicated he did not provide. The court revised this CAB order on two grounds.[152] First, Helmsley did not provide records sufficiently establishing the base date services provided by the previous owner. The court ordered the CAB to require the new owner to obtain this information and provide it to the CAB. If the owner did not provide this information and it was shown to be available, then the proper remedy was disciplinary action against the owner. The court also ruled that the CAB lacked the necessary authority to order that landlords provide services after only a general finding that they were not providing adequate maintenance.

This ruling illustrates a fundamental flaw in the self-regulatory sys-

149. Vento v. Prince, 73 A.D.2d 884, 424 N.Y.S.2d 206 (1980), *aff'd*, 51 N.Y.2d 899, 415 N.E.2d 979, 434 N.Y.S.2d 991 (1980) (mem.). At the time of the landlord's application for conversion of manually-operated elevators to automatic operation, the city had 150 rent-controlled units and 113 rent-stabilized units. After tenant litigation challenging the approval order of the Office of Rent Control, the CAB applied the rent control standard. At this later date the rent-stabilized units numbered 154 compared to only 113 rent-controlled units.

150. In 1972 Harry Helmsley's Helmsley-Spear company purchased this project from the life insurance company that originally developed it. Helmsley is one of New York City's largest landlords and developers and was a prominent member of the RSA Board of Directors. Helmsley intended to convert Fresh Meadows into condominiums. The RSL authorizes condominium conversions. *See* RSL § YY51-6.0(c)(9).

151. New York adopted a statutory warranty of habitability in 1975. N.Y. REAL PROP. LAW § 235(b) (McKinney 1975). *See also* Note, *New York's Search for an Effective Implied Warranty of Habitability in Residential Leases*, 43 ALBANY L. REV. 661 (1979).

152. Fresh Meadows Assocs. v. New York City Conciliation & Appeals Bd., 64 A.D.2d 548, 407 N.Y.S.2d 850 (1978).

tem. If a major professional developer-landlord claimed to be unable or was unwilling to produce documentation of services under a previous owner who was the original developer, and the CAB was unable to order that the second owner provide adequate maintenance, virtually all second owners, especially non-professional and smaller-scale purchasers, were invited to non-comply. Furthermore, if the RSA, CAB, and HDA did not discipline landlords for failure to provide this documentation, then the remedies of either restoration of services or rent reduction or both would be unavailable. This result occurs because the CAB would be unable to establish exactly what diminution occurred for lack of the necessary information available from the previous and, possibly, the current landlord. Obviously, if the CAB had originally required registration of base date services, like New York City's rent control system, it would have avoided this problem.

The FMTA suit also sought relief, including damages, from Helmsley under New York's warranty of habitability statute. Initially, the court dismissed FMTA's suit on the theory that FMTA's relief was limited to administrative remedies under the RSL and that independent statutory relief was not available through the courts.[153] Helmsley also raised the issue of whether the 1975 statute applied retroactively to prior leases. The court, however, upheld FMTA's right to pursue this remedy.[154] The decision made self-help enforcement an available remedy for rent-stabilized tenants when the CAB was unable or unwilling to act against non-complying landlords.[155] The Fresh Meadows case was especially significant for occupants of the older, pre-1947 rent-stabilized housing stock that was more likely to have substantial housing and health code violations.

Tenants criticized the CAB for non-enforcement of a requirement added in 1974. Section 62(B) of the amended RSA Code required landlords re-renting vacated apartments to file a written certification with the CAB that they were maintaining services.[156] The penalty for non-compliance was the invalidation of future rents and rent increases.[157] No evidence of any systematic enforcement of this require-

153. Committee for the Preservation of Fresh Meadows, Inc. v. Fresh Meadows Assocs., 93 Misc. 2d 529, 532, 403 N.Y.S.2d 839, 842 (Sup. Ct. 1978).

154. Committee for the Preservation of Fresh Meadows, Inc. v. Fresh Meadows Assocs., 71 A.D.2d 664, 419 N.Y.S.2d 9 (1979).

155. *See, e.g.*, Bartley v. Walentas, 78 A.D.2d 310, 434 N.Y.S.2d 379 (1980).

156. RSA Code § 62(B).

157. *Id.* § 62(C).

ment by either the CAB or the HPD appeared until 1979.

An extraordinary suit brought against the CAB by the Attorney General of New York State demonstrated the extent of tenant dissatisfaction with CAB policy on housing quality. The Attorney General sued the CAB on behalf of rent-stabilized tenants, claiming standing under a *parens patriae* theory.[158] The Attorney General claimed that the CAB was violating the RSL, as amended in 1983, by failing to advise tenants of their right to seek rent reductions for diminution of services. The Attorney General sought an order requiring the CAB to revise its forms, to order rent abatements when appropriate regardless of whether the tenant requested this remedy, and to apply this order retroactively.[159] The court dismissed the Attorney General's complaint on the grounds that he lacked standing and that affected tenants had the right to bring such a suit themselves.[160] The most significant feature of this litigation was not the result but the fact that the Attorney General felt that it was appropriate and necessary to sue the CAB to compel enforcement of the RSL.

2. Rent Overcharges

New York's Attorney General did not intervene in housing quality issues alone. The Attorney General instituted litigation against landlords with multiple holdings and a pattern of rent overcharging in order to recover refunds for tenants.[161] This intervention dramatized another inherent flaw in landlord self-regulation.

The RSL assumed that rent-stabilized landlords would charge a legal rent—the 1968 base rent plus future increases authorized by the RGB. Landlords did not register base rents because they successfully opposed registration. The RSL required the refund of any illegal charges.[162] Landlords, however, were not subject to damages and did not have to pay interest on illegally collected overcharges. The only

158. State v. New York City Conciliation & Appeals Bd., 123 Misc. 2d 47, 472 N.Y.S.2d 839 (Sup. Ct. 1984).

159. *Id.* at 48, 472 N.Y.S.2d at 840-41.

160. *Id.* at 49-50, 472 N.Y.S.2d at 842.

161. *See* Note, *Rent Stabilization: New C.A.B. Rent Overcharge Procedures*, 11 FORDHAM URB. L.J. 693, 694 n.12 (1983).

162. RSL § YY51-6.0(c)(3); RSA Code § 10(b). In Meyer & Steffens, Inc. v. Popolizzio, 124 Misc. 2d 159, 475 N.Y.S.2d 991 (Sup. Ct. 1984), the court upheld the CAB's authority to investigate rent overcharges from non-complaining tenants as long as the CAB notified the landlord of such an investigation.

possible penalty for rent overcharges was suspension or expulsion from the RSA for violation of its Code.[163]

The critical problem with this system was that it presumed that landlords would comply with section 42(a) of the RSA Code and maintain complete rental histories, which the landlords would make available to tenants. Without landlord compliance and tenant knowledge of the availability and access to this information, tenant ability to discover rent overcharges and seek refunds would be be virtually non-existent.

The re-regulation of approximately 400,000 housing units in 1974 invited confusion over what constituted a legal rent. The increasing complexity of the RGB's orders further compounded the problem, causing confusion and mistaken rent increases. The CAB's time-consuming attempts to reconstruct past rental histories and its burgeoning caseload of overcharge complaints led to a situation of "crisis proportions" by 1979.[164]

Until December 1978 the CAB had never enforced RSA Code Section 42(a).[165] Landlords had little fear of ever being caught for illegal overcharges until the CAB finally recognized that landlord non-compliance with this requirement was a serious Code violation.[166] Initially, the only remedy the CAB invoked was a rent reduction.[167]

In July 1980 the CAB first threatened to expel a landlord accused of rent overcharges from the RSA.[168] The CAB issued its first expulsion order for an owner's failure to furnish the Board with a rental history in October 1980.[169] Courts have subsequently upheld the CAB's right to order expulsion on this ground, even when a new owner claimed that previous owners had not provided this information.[170] The CAB,

163. RSA Code § 7(a).

164. 1980 CAB REPORT, *supra* note 119, at 3.

165. Note, *supra* note 161, at 707.

166. Margolies v. Trump Management, CAB Opinion No. 9127 (Dec. 14, 1978).

167. *Id.* at 2.

168. Stemp v. 38 West 87th St. Corp., CAB Opinion No. 13,400, at 4 (July 31, 1978).

169. Moses v. Guior, CAB Expulsion Order No. 388 (Feb. 5, 1981), CAB Opinion No. 13,811 (Sept. 18, 1980).

170. Endeavor Property Holdings, N.V. v. Conciliation & Appeals Bd., 116 Misc. 2d 541, 455 N.Y.S.2d 697 (Sup. Ct. 1982). *See* Note, *supra* note 161, at 709-10. *See also* General Realty Assocs. of 12th St. v. New York City Conciliation & Appeals Bd., 125 Misc. 2d 173, 479 N.Y.S.2d 120 (Sup. Ct. 1984) (landlord has a clear, unequivocal duty to provide a full rent history). Moreover, the current owner could be held responsible for overcharges imposed by a prior landlord. *See* Charles H. Greenthal Co. v.

however, did not automatically suspend or expel landlords who overcharged from the RSA.[171]

In early 1981 the CAB modified its procedures for investigating rent overcharge complaints, but the changes made no difference in its handling of an increasing case load. By September 1982 the CAB had a backlog of 7,000 rent overcharge cases.[172] The previous month, the CAB had adopted new procedures aimed at avoiding the expulsion of owners from the RSA and accelerating the processing of this backlog.[173] The CAB's inability to prevent landlords from overcharging and to effectively punish those who did played a critical role in the demise of the landlord self-regulation.

3. Initial Legal Regulated Rents

Another criticism of the CAB was its inability to resolve tenant challenges to initial legal regulated rents (ILRRs) claimed by landlords for units re-regulated after passage of the ETPA. After enactment of the ETPA, drafters amended the RSA Code to provide for tenant challenges to ILRRs.[174] The CAB had the power to adjust a landlord's ILRR for unconscionability if he or she had increased rents immediately prior to passage of the ETPA.[175]

Given the absence of prior rent registration, the inability or unwillingness of many landlords to provide the CAB with complete rental histories, and landlord-tenant disputes over what constituted comparable rents generally prevailing in the same area, the CAB developed a large case load of ILRRs. Between July 1974 and December 1980 tenants filed 8,595 appeals of fair market rents, of which 2,375 remained unresolved by the end of 1980.[176]

State Div. of Hous. & Community Renewal, 126 Misc. 2d 795, 484 N.Y.S.2d 445 (Sup. Ct. 1984).

171. *See, e.g.*, Chessin v. New York City Conciliation & Appeals Bd., 100 A.D.2d 297, 474 N.Y.S.2d 293 (1984). The court upheld the CAB's refusal to suspend or expel a landlord from the RSA on the ground that there was a rational basis for the CAB's decision, including the minimum nature of the overcharge.

172. Note, *supra* note 161, at 695 n.19.

173. *Id.* at 712-15.

174. RSA Code §§ 24-26, 35(B).

175. *Id.* § 35(B). The standard for "unconscionability" is not defined. In Parkchester Management Corp. v. New York City Conciliation & Appeals Bd., 81 A.D.2d 796, 439 N.Y.S.2d 123 (1981), the court held that graduated rent increases were not unconscionable.

176. 1980 CAB REPORT, *supra* note 119, app. E.

Faced with this additional caseload, the CAB attempted to simplify its review process. Instead of reviewing prevailing comparable rents in each individual case, the CAB proposed using citywide prevailing rents during the period of vacancy decontrol (1971-1974). In response to a landlord challenge, the appellate court held that this procedure violated the ETPA. The court ordered the CAB to consider individualized comparable rents on a case-by-case basis.[177]

After this ruling the CAB unsuccessfully recommended a statutory amendment to allow it to use citywide comparable rents. The CAB then required landlords to provide complete rental histories and comparable rents of similar apartments in the same area. The courts upheld the CAB's right to require landlords to provide rental histories in order to qualify for CAB review, because the RSL and RSA Code already required a landlord to maintain and provide this information.[178] If a landlord failed to submit adequate information on prevailing comparable rents, the CAB applied the relevant RGB-ordered rent increases in lieu of this benchmark data. The courts upheld this policy.[179]

In considering comparable rents, the CAB decided to exclude all deregulated rents and renewal rents in the six months preceding the adoption of the ETPA because they might have been exorbitantly high in anticipation of the announced repeal of vacancy decontrol. The courts held this to be an unauthorized interpretation of the ETPA and ordered the CAB to consider those rents as well.[180] In considering comparable rents submitted by landlords and applicable RGB guidelines, however, the court found the CAB's policy of averaging the rents

177. Bradcord Assocs. v. Conciliation & Appeals Bd., 52 A.D.2d 569, 384 N.Y.S.2d 388 (1976) (mem.). The court advised the CAB: "[T]he predicament of the Board might warrant the attention of the Legislature with a view to relief from or modification of this stringent statutory requirement."

178. *Id.* at 569, 384 N.Y.S.2d at 388. *See, e.g.*, Century Operating Corp. v. Prince, 75 A.D.2d 536, 426 N.Y.S.2d 784 (1980); J.R.D. Management Corp. v. New York City Conciliation & Appeals Bd., 117 Misc. 2d 459, 459 N.Y.S.2d 953 (Sup. Ct. 1983).

179. A.J. Clarke Management Corp. v. Conciliation & Appeals Bd., 58 N.Y.2d 1108, 449 N.E.2d 742, 462 N.Y.S.2d 848 (1983). *See also* Axelrod Management Co. v. Conciliation & Appeals Bd., 95 A.D.2d 691, 464 N.Y.S.2d 1 (1983); 25 Monroe Place Management Co. v. Conciliation & Appeals Bd., 97 A.D.2d 12, 468 N.Y.S.2d 612 (1983); Ullman Estates v. New York City Conciliation & Appeals Bd., 97 A.D.2d 296, 469 N.Y.S.2d 366 (1983), *aff'd*, 22 N.Y.2d 758, 476 N.Y.S.2d 834 (1984).

180. Fresh Meadows Assocs. v. New York City Conciliation & Appeals Bd., 92 Misc. 2d 519, 400 N.Y.S.2d 976 (Sup. Ct. 1977), *aff'd*, 63 A.D.2d 943, 407 N.Y.S.2d 436 (1978) (mem.).

resulting from these two criteria to be reasonable.[181]

The CAB's problems in resolving fair market base rents after the repeal of vacancy decontrol stem from three sources: lack of original rent registration, strict judicial interpretation of the ETPA's criteria for establishing ILRRs, and landlords' inability or unwillingness to supply either adequate rental histories or comparable rent data. Tenants objected to the CAB's policies and practices because the CAB failed to adequately notify tenants of their right to appeal ILRRs. In addition, tenants paid contested rents throughout protracted appeals. Finally, tenants felt that fair market rents favored landlords because the CAB based them on the combination of deregulated rents and excessive RGB guidelines.

4. Hardship

The original RSL contained a hardship formula under which rent-stabilized landlords could petition for necessary rent increases. The RSL authorized landlords to maintain the same operating cost-gross rent ratio that prevailed over the immediately preceding five-year period.[182] A 1975 RSL amendment additionally provided that comparative hardship rent increases could not exceed six percent annually.[183] The RSL assumed that RGB orders, which generally covered average increased operating costs, would make comparative hardship applications a rare remedy.

As noted previously, landlords filed only a handful of hardship applications through 1973. After the repeal of vacancy decontrol, however, the CAB received what it termed a "flood" of applications.[184] Before the CAB had a chance to review these applications, the city amended the RSL. The amended formula substituted a period of the three most recent years prior to a landlord's application, and compared it to a three year base period of 1968-1970.[185] In two companion cases, courts ruled that if landlords could prove that the CAB deliberately delayed the processing of pending cases initiated before this change, then the CAB had to review landlords' pre-1975 applications under the

181. *Id.*

182. "Operating costs" are defined to include taxes and labor costs, but not debt service, financing costs, and management fees. RSL § YY51-6.0(c)(6)(a).

183. *Id.* § YY51-6.0(c)(6).

184. 1976 CAB REPORT, *supra* note 53, at 27. The CAB reported receiving 157 applications affecting 771 buildings from fall 1974 to spring 1975. *Id.*

185. RSL § YY51-6.0(c)(6)(a).

original formula rather than the post-1975 formula.[186]

The primary objection of landlords to both formulas was that they had to provide the CAB with a great deal of information at considerable expense for a six year period in order to obtain hardship rent increases. The landlords argued that the amount of information and the expense of its compilation, combined with the six percent annual ceiling on hardship increases, made it too difficult and expensive for most landlords to file applications.

In the case of Windsor Park, tenants raised a different objection. In March 1975 the owner of this twenty building complex, containing 1,828 units, filed a hardship application for a 20.77 percent rent increase.[187] The CAB approved a 6.31 percent increase in October 1976. The Windsor Park Tenants' Association (WPTA) objected to the CAB's review process and decision. They demanded that they be allowed to conduct an audit of the landlord's records instead of relying solely upon the landlord's accountants. The landlord refused the tenants access to its records, and the CAB ruled that tenants had no right to conduct an audit. The court, in *Windsor Park Tenants' Association v. New York City Conciliation and Appeals Board*, amended the CAB decision and permitted tenants to audit the landlord's records.[188] The concurring opinion noted that tenants under self-regulation had reason to distrust landlord-controlled data that the CAB did not audit because the city did not effectively oversee the process.[189]

Because relatively few landlords sought hardship increases, and

186. *See* Vanderbilt 77th Assocs. v. Conciliation & Appeals Bd., 51 A.D.2d 946, 381 N.Y.S.2d 234 (1976), *appeal denied*, 39 N.Y.2d 707, 351 N.E.2d 438, 385 N.Y.S.2d 1026 (1976); 2 Fifth Ave. Co. v. New York City Conciliation & Appeals Bd., 57 A.D.2d 106, 393 N.Y.S.2d 409 (1977).

187. In January 1976 the owner re-submitted the application based on the amended formula and requested an increase of only 8.49%. Windsor Park Tenants' Ass'n v. New York City Conciliation & Appeals Bd., 59 A.D.2d 121, 130, 397 N.Y.S.2d 828, 834 (1977) *appeal denied*, 43 N.Y.2d 644, 373 N.E.2d 292, 402 N.Y.S.2d 1025 (1977).

188. *Id.* at 137 n.2, 397 N.Y.S.2d at 838 n.2. WPTA's accountants had 15 days to conduct the audit of the landlord's records.

189. *Id.* at 147, 397 N.Y.S.2d at 845. The court stated:

> The statute provides for virtual self-regulation by the industry, and without any real intervention or supervision by an effective, functioning and adequately staffed independent governmental agency. Indeed, and despite the tripartite facade of the CAB, the industry appears to be acting as both judge and jury. One recalls the venerable maxim of Pascal: "No one should be Judge in his own cause." Phrased less elegantly, in the vernacular, it is akin to having the fox guard the henhouse.

Id.

those granted were subject to the six percent annual ceiling, the hardship formula never became a major issue. Instead, landlords claimed repeatedly that under rent stabilization their net income declined steadily because RGB-ordered increases were too low.[190] Tenants countered by arguing that the CAB should require landlords to open their books and disclose their actual profits.

5. Capital Improvements

Rent-stabilized landlords could also seek rent increases based on building-wide major capital improvements (MCI). The RSL allowed landlords to amortize MCI costs over five years.[191] MCI increases were also subject to the six percent ceiling enacted in 1975.[192]

Tenants complained that the CAB systematically failed to comply with these provisions by granting rent increases in excess of the ceiling and failing to limit these rent increases to the statutory amortization period of five years. These policies gave many landlords a permanent windfall.

In 1983 tenants subject to MCI increases filed a class action suit against individual landlords who had received MCIs, the RSA, CAB, and HPD, claiming that MCI increases in excess of the statutory period and ceilings were illegal. This complaint was not resolved until after the termination of landlord self-regulation.[193]

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190. Stegman's 1981 study, relying upon RGB data, noted:

> The 11-year increase in O & M costs means that, holding constant the quality of building operations, the proportion of the rent dollar available to cover vacancy losses, pay debt service and return a profit has declined from 45% to just 30%. In assessing the significance of this steady rise in the O & M burden, the Board noted in 1980 that as long as the rent increases it grants generally reflect the magnitude of actual increases in O & M costs, owners' net incomes will remain constant while their O & M ratios will rise. While it is true that a pass-through of all O & M cost increases will maintain a constant cash flow, the profitability of a building will decline in real terms with a continued rise in the O & M ratio, because the owner's returns to equity are not being adjusted for inflation and the shrinking value of the dollar.

M. STEGMAN, *supra* note 68, at 40. In contrast, a 1985 study commissioned by the RSA reported that during the 1980-1985 period, 41.6% of rent stabilized owners surveyed reported an increase in profitability, 31.4% reported no change, and only 11.3% reported greatly decreased profitability. A.D. LITTLE, THE OWNERS OF NEW YORK'S RENTAL HOUSING: A PROFILE 15 (1985).

191. RSL § YY51-6.0(c)(6)(b).

192. RSA Code § 43(a).

193. *See* Brower, *The Fail-Safe Business of Rehab*, 9 CITY LIMITS, Feb.-Mar. 1984, at 18. *See infra* text accompanying notes 257-61.

6. CAB/HPD Oversight of the RSA

Tenant groups regularly complained that the RSA, CAB, and HPD were not invoking the sanction of expulsion from the RSA for violation of the RSA Code. The HPD regulations provided that the RSA could not expel members without a CAB order.[194] After the enactment of the ETPA, the HPD amended its regulations to authorize the RSA to expel members for non-payment of dues.[195] The regulations required the RSA to simply notify the HPD in writing of the expulsion. Landlords whom the RSA expelled on this basis could be reinstated after they obtained written approval of the HPD.[196] The regulations specified several other grounds for reinstatement.[197]

The RSA never publicly revealed the extent to which the HDA and its successor, the HPD, actually implemented CAB expulsion orders by placing rent-stabilized landlords and their buildings under rent control. Unlike the NASD, the RSA did not publish annual reports that publicly disclosed this information. Without the imposition of this sanction, CAB and RSA disciplinary action held little threat to landlords unless they sought to evict a tenant. Only rent-stabilized landlords who had enrolled in the RSA and were members in good standing could properly evict their tenants.[198] Similarly, the CAB could not establish an ILRR unless the landlord had properly enrolled in the RSA. Even if the RSA, CAB, and HPD did order expulsion, a landlord could challenge the order on equitable grounds.[199]

Assuming that widespread landlord overcharging occurred over a

194. HDA Regulations § 5.

195. *Id.* § 5(b).

196. *Id.* § 5(c).

197. Seven grounds were specified, including the failure of the RSA to adequately notify the owner of a dues arrearage. *Id.* § 5(c)(1). The CAB must determine whether the landlord received proper notice. In Phelps Management Co. v. Gliedman, 86 A.D.2d 540, 446 N.Y.S.2d 72 (1982), the court upheld the CAB's expulsion order when the landlord claimed he had not received notice of a dues arrearage.

198. *See, e.g.*, 350 Ocean Parkway Ass'n v. Stein, 55 N.Y.2d 650, 430 N.E.2d 1312, 446 N.Y.S.2d 259 (1981); Melevoi v. Yang, 120 Misc. 2d 982, 467 N.Y.S.2d 20 (Civ. Ct. 1983); Lyddy v. Ayling, 111 Misc. 2d 449, 444 N.Y.S.2d 823 (Civ. Ct. 1981).

199. In Fein v. Rent Stabilization Ass'n, 101 Misc. 2d 216, 420 N.Y.S.2d 826 (Sup. Ct. 1979), the court overturned an HPD expulsion order on equitable grounds. The owner, who took ownership by foreclosure of two buildings in the process of abandonment, never received RSA notices of dues default and expulsion sent to the former owner. The new owner proceeded to rehabilitate the buildings with tenant support. The court based its reversal on the necessity of encouraging tenant-supported rehabilitation. *Id.* at 225, 420 N.Y.S.2d at 832.

long period, as tenants alleged, and that the RSA, CAB, and HPD failed to investigate and expel violators systematically, the absence of effective enforcement illustrates the inherent weakness of landlord self-regulation. If landlords cannot be trusted to obey laws and a code of conduct that they themselves designed, and the governmental agency entrusted with the responsibility of oversight neither actively supervises the self-regulatory body nor punishes those who violate the rules of conduct, then self-regulation must fail. The HPD's passive and ineffective role as the overseer of landlord self-regulation was a major defect in the system, both in design and practice.

7. CAB Tenant Representation

Tenant criticism of the CAB's role in resolving tenant complaints partially stemmed from dissatisfaction with Mayor Koch's appointment of four tenant representatives in 1974. In 1981 the NYSTNC lobbied against reappointment of CAB tenant representatives whose terms were expiring. It nominated tenant leaders to the Mayor, who in 1982 appointed the first CAB member who was an active member of a tenant group affiliated with the NYSTNC.

The difference this appointment made is illustrated by the subsequent pattern of dissenting votes that this member cast, and an accusation by the other eight CAB members that she violated city and state standards of ethics.[200] While the Mayor could have removed CAB members for cause,[201] no action resulted from this accusation due to the dissolution of the CAB shortly thereafter.

This episode suggests that if the CAB had equal representation of landlord and tenant representatives, or if the tenant representatives were unified in their opposition to CAB majority policies, then the prevailing CAB consensus would have crumbled. Because landlords had regularly overridden tenant votes, tenants did not consider the CAB to be a credible organization.[202]

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200. The dissenting member was accused of joining in a tenant suit challenging a CAB opinion to which she dissented, and providing the NYSTNC with a CAB memorandum. CAB COMMITTEE OF THE WHOLE, REPORT AND FINDINGS BY THE COMMITTEE OF THE WHOLE ON ETHICS OF THE NEW YORK CITY CONCILIATION AND APPEALS BOARD (1983).

201. RSL § YY51-6.0(b)(3)(a).

202. In contrast, landlords have objected vehemently to the policies of the elected rent control boards in Berkeley and Santa Monica, California, because tenant-supported slates elected the majority of those boards' membership. Tenant initiatives created both

8. RGB Guidelines

The RGB voting consensus disintegrated. The NYSTNC supported the two tenant representatives appointed to the RGB by Mayor Koch as opposed to their CAB counterparts. These tenant representatives vigorously opposed many features of the RGB's orders after their appointment.

The RGB's annual series of hearings, now open to the public, became a well-publicized battleground between organized and vocal landlords and tenants. Both sides submitted well-developed position papers to the RGB in advance of the public hearings, and then had numerous speakers present these positions.

The RGB hearings developed into raucus demonstrations staged by competing landlord and tenant organizations, in vivid contrast to the early RGB that met privately. A landlord challenged the RGB's 1982 order, claiming that it was invalid in part because "reasoned" decision-making was impossible in the "circus atmosphere of the hearings."[203] The trial judge rejected this claim, stating that the decision was supported by abundant evidence and clearly was not arbitrary, capricious, or contrary to law.[204]

The more substantial due process claims concerned the RGB majority's refusal to approve a vacancy allowance and to provide a special allowance for mortgage refinancing.[205] The court summarily rejected these claims.

This suit also unsuccessfully challenged the Board's consideration, for the first time, of tenants' ability to pay as a factor in setting rents. The Board based this consideration on the 1981 trienniel city housing

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of these California ordinances. W.D. KEATING, RENT CONTROL IN CALIFORNIA: RESPONDING TO THE HOUSING CRISIS 7 (1983).

203. Muriel Towers Co. v. City of New York Rent Guidelines Bd., 117 Misc. 2d 837, 459 N.Y.S.2d 390 (Sup. Ct. 1983).

204. *Id.* at 840, 459 N.Y.S.2d at 391. The court stated: "A vocal citizenry, exercising its constitutionally protected rights of assembly and free speech at a statutorily open meeting, cannot serve as a basis upon which to set aside a duly constituted Board's publicly pronounced determination . . . ." *Id.*

In addition, the trial judge added:

> [I]t is apparent that petitioners are seeking to invalidate the will of the majority of the Board upon a mere pretext, and that even two members of the Board, who had originally voted with petitioners in contesting the Order in question, now oppose petitioners' efforts to achieve in a judicial forum that which they were unable to win on June 25th.

Id. at 839-40, 459 N.Y.S.2d at 391.

205. *Id.*

study. The study found that between 1969 and 1980, the cost-of-living increase more than doubled the increase in tenant income in New York City.[206] In 1981 rent-stabilized tenants in post-1947 housing had a gross rent-to-income ratio of 25.4 percent, compared to 31.7 percent for those living in pre-1947 housing.[207] By 1984 these ratios had increased to 27.1 percent and 32.8 percent, respectively.[208]

The increased gross rent-to-income ratio paid by rent-stabilized tenants reflects the 167.7 percent increase in rents granted cumulatively by the Board between 1969 and 1983.[209] This compares to a 239 percent increase in landlords' operating and maintenance costs, according to the BLS index.[210] Even with an increase in landlords' operating and maintenance expense-to-gross rent ratio of fifty-five percent to sixty-nine percent,[211] rent increases of 164.9 percent would have been sufficient to cover landlords' cost increases. Therefore, rent-stabilized tenants experienced declining real income as landlord's rent increases slightly exceeded cost increases.

In 1983 the RGB again considered the landlords' argument that a special provision should be made for landlords' increased debt service costs for mortgage refinancing. The RGB had to consider the "costs and availability of financing (including effective rates of interest)."[212] The Operating Cost Price Index does not measure changes in rent-stabilized landlords' debt service costs.

Much earlier, the RGB had granted a special stabilizer to cover increased debt service costs. This stabilizer was applicable to all landlords, regardless of whether their debt service costs changed. The RGB discontinued this practice in 1974, but later reinstated it. A 1976 RSA study claimed that future increased mortgage refinancing costs would reduce net operating income, possibly cause defaults, and deter investment.[213] In 1983 the RGB commissioned its own study of mortgage financing and refinancing.[214] After reviewing the findings, the

206. M. STEGMAN, *supra* note 68, at 139.

207. *Id.* at 164, Table 8-27.

208. M. STEGMAN, *supra* note 52, at 148, Table 5-21.

209. Rent Guidelines Board, *supra* note 49, at 13.

210. *Id.*

211. *Id.* at 17, Table 14.

212. RSL § YY51-6.0(c)(6)(a).

213. F. JAMES & M. LETT, *supra* note 93.

214. URBAN SYSTEMS RESEARCH & ENGINEERING, A STUDY OF MORTGAGE FINANCING AND REFINANCING (1983).

RGB refused to institute a special allowance for those landlords whose debt service costs increased because of mortgage refinancing.[215]

In 1984 the NYSTNC demanded a rent freeze for the first time. In October 1983 the Westchester County RGB had approved a zero increase in its 1983-84 guideline.[216] The NYSTNC argued that the price index, which showed a six percent increase in 1983-84, was inaccurate and unreliable. First, the index did not measure actual increases in landlords' operating costs, only the prices the RGB assumed they paid. Second, the index based weighted expenditures on an unaudited sample of landlords' expenses. Third, the index did not examine landlords' net income. In 1982 after a private consultant replaced the BLS to update expenditure weights, the NYSTNC unsuccessfully requested an independent audit of the landlord sample used for this purpose.

To summarize, by 1983 landlords and tenants were regularly challenging and criticizing both the entire structure and the operation and policies of all of the component organs of the rent stabilization system. The model of impartial bodies, like the RGB and CAB, setting rents and resolving landlord-tenant disputes efficiently and without public controversy, had disintegrated.

C. *The 1981 Legislative Stalemate*

The ETPA expired in 1981, setting the stage for another landlord-tenant clash because the fate of rent stabilization had become legislative intertwined with that of the ETPA. The RSA fired the opening salvo in this battle by presenting a comprehensive program of reform for rent stabilization. Their recommendations included:

1. Deregulation: the deregulation of buildings with twelve or fewer units and luxury units (those renting for 600 dollars or more monthly);
2. Vacancy Market Rents: the setting of vacancy rents by landlords without restriction;
3. Hardship: the substitution of the fair return formula under rent control for the rent stabilization formula;
4. Rent Guidelines: the substitution of the BLS Cost of Living Index for the Operating Cost Price Index so that rents reflected inflation;

215. Rent Guidelines Board, Explanatory Statement and Findings for Order No. 15, at 27 (1983).

216. NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, TENANT PROTECTION BULLETIN NO. 39 (1983).

5. Leases: the elimination of three-year lease renewals; and
6. Tenant Complaints: the imposition of a two-year limitation period on the filing of tenant complaints.[217]

Without these reforms, the RSA opposed extension of the ETPA.

Tenant groups lobbied separately for two different approaches. The first included legislation designed to eliminate rent stabilization and place all rental housing under a much stricter version of rent control.[218] The second consisted of legislation to reform rent stabilization through changes such as replacement of the New York City CAB and RGB by the state of New York, rent registration for all rent-stabilized housing, and the imposition of a two-year statute of limitations on rent overcharge complaints while allowing treble damages for willful overcharges.[219]

The legislature did not adopt any of these proposals. Instead, the legislature simply renewed the ETPA for another two years, giving landlord self-regulation two more years of tenuous existence.[220]

D. *The Beginning of the End of Landlord Self-Regulation: The 1983 ETPA*

The 1983 legislative session was a repeat performance of 1981, but with a far different final act. The 1983 renewal of the ETPA was the beginning of the end of landlord self-regulation.

Tenants were moderately successful in obtaining proposed reforms of rent stabilization. The Omnibus Housing Act (OHA) of 1983,[221] which extended the ETPA until 1985, made the following major changes in the rent stabilization system:

1. State Administration: effective April 1, 1984, the New York State Division of Housing and Community Renewal (DHCR) would assume administrative responsibility, replacing the CAB and HPD, and the state would pay part of the administrative costs;[222]

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217. RENT STABILIZATION ASSOCIATION OF NEW YORK CITY, A RATIONAL APPROACH TO HOUSING IN THE 1980'S: PRESERVING NEW YORK CITY'S RENTAL APARTMENTS (1980).

218. Baldwin, *New York Rental Housing Regulations Are Up for Another Look*, 6 CITY LIMITS, May 1981, at 4-9.

219. *Id.*

220. Act of June 30, 1981, ch. 383, 1981 N.Y. Laws 650.

221. *See supra* note 2. The state amended the OHA in 1984. *See* Act of Apr. 24, 1984, ch. 102, 1984 N.Y. Laws 179.

222. *Id.* §§ 1, 2(c). The Act imposed a ceiling of $10 per unit for landlord fees.

2. Registration: beginning July 1, 1983, all rent-stabilized landlords would have to register rents and services annually with the DHCR;[223]
3. Overcharges: beginning April 1, 1984, tenants could file overcharge complaints for the four years prior to landlord registration; for complaints concerning post-April 1, 1984 overcharges, tenants could collect treble damages, but the Act limited this to a two-year period;[224]
4. Hardship: the Act created an alternative hardship formula that guaranteed landlords an annual gross rent income exceeding annual operating expenses by five percent;[225] and
5. Lease Renewals: the Act limited lease renewals to either one- or two-year terms, eliminating three-year lease renewals.[226]

Tenants failed to achieve all of their reform objectives. First and foremost, the RSA still retained a role in rent stabilization. The RSA remained in existence, but the CAB did not.[227] The RSA Code, though amended by this legislation, remained in effect. The legislature agreed that the RSA Code should conform to these legislative changes, and the state, over vociferous tenant objections, appropriated 100,000 dollars to pay the RSA to amend the Code.[228] The HPD, however, still had to approve RSA Code amendments.[229] Second, there were no changes in the rent-adjustment process; the RGB remained the rent-setting body. The RGB, however, was not allowed to adjust any future guidelines through surcharges or supplementary adjustments.[230] On the other hand, the RSA lost its autonomy in funding the CAB. Whether the RSA retained its former influence depended in part upon its success in gaining HPD approval of its Code amendments.

223. *Id.* §§ 5, 15.

224. *Id.* §§ 4, 14. Tenants had to file complaints concerning prior overcharges based upon landlords' initial registration statements within 90 days after mailing of the notice of registration statement filing. *Id.* § 4(b)(iii). Landlords had to file their registration statements by July 1, 1984. *Id.* § 5(a).

225. *Id.* § 49. "Operating expenses" were defined as: "[T]he actual, reasonable costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest." *Id.*

226. *Id.* § 48. The tenant retained the option of choosing the lease term. The RGB orders would prospectively cover only lease renewals for one and two years.

227. *Id.* § 8(a).

228. *Id.* § 62.

229. *Id.* § 8(c).

230. *Id.* § 47.

A transition period of nine months existed prior to the April 1984 DHCR assumption of administrative responsibility. During this transition period, the NYSTNC continued its criticism of the CAB, arguing that it systematically ignored tenant complaints.[231] The NYSTNC also accused the CAB of violating the Open Meetings Law by conducting much of its business in secret.[232] Though the CAB's life ended, underlying tenant criticism of its pro-landlord policies did not die.

V. TERMINATION OF LANDLORD SELF-REGULATION 1984-1985

A. *State Administration*

On April 1, 1984 New York State resumed the responsibility for the administration of New York City's rent regulation system that it had relinquished in 1962. Predictably, many administrative problems arose. The state's first major organizational task was the registration of previously unregistered rent-stabilized units. By June 1985, 968,333 formerly rent-stabilized and rent-controlled apartments had registered with the DHCR.[233]

The DHCR inherited a backlog of 32,572 cases from the CAB, of which 21,150 were tenant rent overcharge complaints.[234] The CAB overcharge backlog was due in part to a special NYSTNC campaign encouraging the filing of rent overcharge complaints prior to the deadline imposed by the OHA. The DCHR also assumed an HPD rent control backlog of 71,864 cases.[235] Tenants filed 55,757 new complaints, challenging landlords' registration statements in DHCR's first year of operation.[236] There were an additional 54,975 new cases filed during this period.[237] The DHCR claimed to have resolved only 4,876 (fifteen percent) of its CAB backlog by March 31, 1985.[238] Of its new

231. N.Y. Times, Jan. 15, 1984, at L26, col. 1.

232. Letter from William Rowen, Chair, NYSTNC, to Robert Freeman, Executive Director, State of New York, Department of State, Committee on Open Government (Oct. 11, 1983).

233. NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, REPORT TO THE LEGISLATURE ON THE OFFICE OF RENT ADMINISTRATION 60 (1985) [hereinafter 1985 DHCR REPORT].

234. *Id.* at 39.

235. *Id.*

236. *Id.* at 4.

237. *Id.* at 5.

238. *Id.* at 39.

caseload, 87,773 cases were still pending as of that date.[239]

This staggering caseload indicates the seriousness of the defects in landlord self-regulation. The complaints generated by code violations and lax enforcement, especially regarding overcharging, were particularly indicative of the problems. The DHCR attempted to streamline its procedures to reduce this vast backlog by seeking supplemental budgetary appropriations to increase its staff.[240] Though the NYSTNC supported increased appropriations for the DHCR, it criticized many DHCR policies. The NYSTNC claimed that the DHCR did not adequately inform tenants about their rights, denied tenants who filed complaints prompt and adequate remedies, attempted to reduce its backlog by arbitrarily closing cases, and too readily granted landlords ILRR, MCI, and hardship rent increases.[241] Landlord representatives also criticized the DHCR for responding inadequately to landlord requests for information and petitions.[242]

B. *RSA Code*

The DHCR was handicapped in its attempt to deal with both its new caseload and its inherited backlog because it functioned without an effective regulatory code. The OHA had authorized and subsidized the RSA to provide the DHCR with an amended RSA Code.[243] On December 30, 1983 the RSA produced a massive revision of its Code, which required the approval of the HPD. In a repetition of the 1969 controversy that surrounded the original RSA Code,[244] the RSA proposal led to another major conflict. Tenant groups, led by the NYSTNC, denounced the proposed Code as an RSA attempt to rewrite the amended ETPA to their advantage. These groups urged the HPD to reject the amended Code.[245] New York State's Attorney General joined the tenants in criticizing the proposed Code at a public meeting. The Attorney General stated that the Code was deliberately

239. *Id.*

240. DHCR's initial budget for administration of rent regulation was $26 million. N.Y. Times, Oct. 21, 1984, § 8, at 1, col. 1. In 1985 the state appropriated an additional $2 million earmarked for elimination of the backlog.

241. Rowen, *State Rates "F" as Rent Regulator*, 11 CITY LIMITS 25-27 (1986).

242. N.Y. Times, Oct. 21, 1984, § 8, at 1, col. 1.

243. OHA, *supra* note 2, at § 62.

244. *See supra* text accompanying notes 31-38.

245. *The Landlord's End Run*, 9 CITY LIMITS, Feb.-Mar. 1984, at 16.

biased in favor the landlords.[246] Although the DHCR was critical of much of the Code, it did not recommend its rejection.

Nevertheless, the HPD rejected the Code in March 1984.[247] HPD's Commissioner stated: "[The Mayor and I] believe it should be a government code, not an industry code."[248] Pending state legislation to resolve the issue, the DHCR announced that it would interpret the legislation itself, aided by relevant CAB and judicial precedents.

In June 1984 the legislature amended the statute, eliminating the RSA's role in amending the Code.[249] Instead, the DHCR was given this responsibility and the HPD was given veto power over the amendments. The legislative amendments led to a gubernatorial veto in August 1984 on the ground that the city should not be empowered to approve state rental regulatory policy.[250] In 1985 the legislature approved compromise legislation.[251] This legislation empowers the DHCR to promulgate an amended Code after first providing the HPD prior opportunity to submit comments, and then conducting a public hearing. This enactment effectively terminated the RSA's official role in the rent stabilization system. Henceforth, their role paralleled that of a private lobbying group. As of early 1987, the DHCR has not adopted a proposed Code.

C. *Rent Overcharges*

The worst legacy of landlord self-regulation bequeathed to DHCR was the issue of rent overcharges. To dispose of its pending CAB backlog as of June 1985, a proposed tripling of the DHCR's staff would not

246. N.Y. Times, Feb. 16, 1984, at 1, col. 3. The Attorney General Stated:

> [The RSA] produced a heavy-handed document which bears the imprimatur of its landlord members in virtually every sentence. In some cases it invented new rules, and in other cases it enshrined landlord-oriented rulings of a CAB whose purse strings it controlled. On all issues it took the landlord position, never a balanced position. It should be clear to all that no government regulatory system can abide a body of regulations which is deliberately biased in favor of one regulated segment to the detriment of another. Such a one-sided system cannot meet minimum requirements of due process nor withstand a court test.

Id.

247. N.Y. Times, Mar. 17, 1984, at 1, col. 3.

248. *Id.*

249. Senate Bill 8805-B.

250. Governor's Veto No. 94 (Aug. 6, 1984).

251. Act of June 2, 1985, ch. 888, 1985 N.Y. Laws 2348.

enable it to dispose of these 18,700 cases until March 1987.[252] In addition, the DHCR had pending as of June 1985 an additional 8,624 cases filed since April 1984, having resolved only 2,714 as of that date.[253]

The DHCR has two classes of rent overcharge complaints to resolve. First, complaints filed prior to April 1, 1984 are not subject to a statute of limitations, but require only landlord refunds of proven overcharges. The second class consists of those filed since April 1, 1984. These complaints are subject to the statutory four-year limitation. Landlords, however, must pay tenants interest and treble damages if the DHCR finds overcharges to be willful.[254]

In the first judicial interpretation of this provision, a tenant-plaintiff, in an action filed in March 1984, sought to recover overcharges from January 1980 through January 1984. The tenant also sought interest, treble damages, and attorney's fees. Though the court disallowed treble damages as statutorily unauthorized prior to April 1, 1984, the court allowed the tenant to recover interest on the overcharges (amounting to 5,692 dollars) and attorney's fees.[255]

In *State v. Solil Management Corp.*[256] the trial judge had to determine the authority of the State Attorney General to compel a landlord to continue providing rent overcharge refunds under an agreement reached prior to April 1, 1984. In May 1983 the defendant landlord agreed to refund overcharges to tenants in its seventy-seven buildings and had made restitution in excess of three million dollars prior to the OHA's effective date. The landlord claimed that after that date the DHCR had exclusive jurisdiction over all rent overcharge complaints, including those covered by this pre-existing agreement.

The trial judge ruled that the Attorney General had independent

252. 1985 DHCR REPORT, *supra* note 233, at 31-41. DHCR reported in late 1986 that it had resolved most of its backlog of 104,000 tenant complaints pending since 1984. These decisions resulted in overcharge orders refunding over $30 million to tenants. 1986 DHCR UPDATE (Nov. 1986) at 1-2.

253. 1985 DHCR REPORT, *supra* note 233, at 31-41.

254. *See* OHA, *supra* note 2, §§ 4, 14.

255. Blodgette v. Melohn, 124 Misc. 2d 736, 477 N.Y.S.2d 587 (Civ. Ct. 1984). The ETPA, however, empowered the DHCR to impose treble damage penalties on landlords who overcharge tenants in the suburban rent-stabilized housing regulated by the state since 1974. *See* Metz v. Division of Hous. & Community Renewal, 113 A.D.2d 758, 493 N.Y.S.2d 351 (1985).

256. 128 Misc. 2d 767, 491 N.Y.S.2d 243 (Sup. Ct.), *aff'd without opinion*, 114 A.D.2d 1057, 495 N.Y.S.2d 161 (1985). *See also* State v. Winter, 503 N.Y.S.2d 384 (App. Div. 1986).

legal authority to seek restitution for consumer fraud, and that the landlord was bound by equitable estoppel to perform restitution as agreed. The trial judge further ruled that the Attorney General could not seek treble damages. Only injured tenants could seek this remedy for violations, subject to the four year statute of limitations for complaints filed after April 1, 1984. Therefore, the DHCR is not the sole agency involved in resolving rent overcharges, since the Attorney General can continue to provide independent relief.

D. *Major Capital Improvements*

As noted previously,[257] tenants sued to change CAB policy of major capital improvements (MCIs). The OHA extended ETPA limits on MCIs. In July 1985 the DHCR announced that it intended to impose a six percent annual limit on MCI increases over the statutory five-year amortization period.[258] The CAB caseload inherited by the DHCR included 1,733 MCI applications.[259] In its first year, the DHCR received 2,238 MCI applications.[260] The DHCR announcement followed an unsuccessful attempt by the NYSTNC to amend the OHA and thereby force DHCR adoption of this and other related changes.[261]

E. *DHCR Landlord-Tenant Advisory Panels*

In the face of criticism from both landlords and tenants concerning its policies and procedures the DHCR announced the appointment of separate landlord and tenant advisory committees in December 1984.[262] The fifteen member landlord committee included representatives of the RSA and CHIP. The nineteen-member tenant panel included representatives of the NYSTNC and MCH. An executive committee composed of representatives from both committees meets with the DHCR's Commissioner to provide joint advice.

This structure contrasts sharply with that of landlord self-regulation. In the initial period of rent stabilization there was no tenant represen-

257. *See supra* text accompanying note 193.

258. N.Y. Times, July 23, 1985, at B3, col. 3.

259. 1985 DHCR REPORT, *supra* note 233, at 39.

260. *Id.* at 27.

261. *See* Friedheim, *Albany Bill Seeks Rent Curb on Rehabs*, 9 CITY LIMITS, June-July 1984, at 28.

262. N.Y. Times, Dec. 23, 1984, § 8, at 7, col. 5.

tation on either the CAB or the RGB, whereas landlords were represented on the CAB. In its later period, tenant groups argued that their representatives were either non-representative or consistently outvoted by landlord and public representatives on these two boards. Under the present arrangement, tenant groups have more equalized access to information through these committees, which must meet publicly.[263] These advisory committees, however, have no authority to influence policy.

F. *Rent Guidelines Board*

The OHA did not change the role of the RGB. Thus, the controversy over the RGB's orders continued in 1984 and 1985, although landlords and tenants did not legally challenge the RGB's guidelines.

By 1985 the RGB's 1984-85 Operating Price Index increased by 5.4 percent.[264] The RSA criticized the index as inadequately reflecting landlords' increased operating costs. The RSA proposed increases of 12 percent and 18-22 percent for one- and two-year lease renewals, respectively, and the setting of vacancy rents at market levels. In contrast, the NYSTNC attacked the price index as too high, inaccurate, and unreflective of landlords' actual operating costs. They called for a study of an audited representative sample of landlords' records, including income, as a substitute for the price index. The NYSTNC opposed any vacancy allowance. Based upon the arguments that past RGB increases were unjustifiably high and landlords' cost increases were less than those indicated by the price index, the NYSTNC called for rent rollbacks, including rent decreases of 10 percent and 8 percent respectively for one- and two-year lease renewals.

By a five to four vote, the RBG voted for increases of 4 percent and 6.5 percent for one- and two-year lease renewals, a 7.5 percent vacancy allowance, and a special fifteen dollars monthly surcharge for those apartments renting at less than 300 dollars monthly.[265] The two RGB

263. Letter from Robert Freeman, Executive Director, State of New York, Department of State, Committee on Open Government to William Rowen, Chair, NYSTNC (Apr. 3, 1985) (advisory opinion).

264. URBAN SYSTEMS RESEARCH & ENGINEERING, 1985 PRICE INDEX OF OPERATING COSTS FOR RENT STABILIZED APARTMENT HOUSES IN NEW YORK CITY (1985). *See* N.Y. Times, May 17, 1985, at B3, col. 1.

265. Rent Guidelines Board, Order No. 17 (1983). *See* N.Y. Times, June 26, 1985, at 1, col. 1. The NYSTNC objected particularly to the surcharge affecting 316,181 low-rent units. *See* Rent Guidelines Board, Explanatory Statement for Order No. 17, Table 14(a) (1985).

tenant representatives voted against this order.

G. *Tenant Political Action Committee (TenPAC)*

Decisions of the mayoral appointees to the RGB and the CAB, coupled with landlord financial support for incumbent Mayor Koch, inspired tenant groups like the NYSTNC to form a tenant political action committee—TenPAC. TenPAC funded tenant political support for local, state, and federal candidates. In August 1985 TenPAC endorsed the unsuccessful mayoral candidacy of the President of the New York City Council based on her opposition to Mayor Koch's housing policies. These policies included his nominations to the RGB and CAB, the policies of those boards, and the HPD's failure to adequately police the rent stabilization system.[266] TenPAC's endorsement parallels longstanding support of political candidates by real estate PACs, including those supported by rent-stabilized landlords.[267]

The success of landlord and tenant groups in electing sympathetic governors, mayors, and members of the New York state legislature and New York City Council will greatly influence both future legislation and DHCR and RGB appointments and policies. In the struggle to repeal vacancy decontrol and reform the rent stabilization system, a more politicized and better organized tenant movement emerged in New York City through a continuing effort to counter landlord political influence.

H. *1985 ETPA Extension*

The ETPA, as amended by the 1983 OHA, required renewal in 1985. Landlords, represented by the RSA, sought the reinstatement of vancacy decontrol. The NYSTNC legislative program included numerous reforms in rent stabilization as administered by the DHCR. The NYSTNC reforms included: 1) making rent stabilization permanent; 2) extending its coverage to smaller buildings with three to five units; 3) eliminating entirely the RSA's role in revising the RSA Code; 4) tying RGB rent increases to landlords' actual operating cost increases, based on audited data; and 5) instituting MCI limits of six percent annually for five years only.

The melodramatic legislative session featured a temporary extension

266. *See* Rowen, *The Big Rent Fix*, 10 CITY LIMITS, Aug.-Sept. 1985, at 18-19.

267. *See* J. NEWFIELD & P. DUBRUL, THE ABUSE OF POWER: THE PERMANENT GOVERNMENT AND THE FALL OF NEW YORK (1977).

of the ETPA in May 1985 to allow a final vote in June, a shutdown of the state assembly by demonstrating landlords, the passage by a narrow margin of the NYSTNC reform package by the assembly, and finally, the anti-climactic extension of the ETPA for another two years with no changes.[268] Therefore, the next major legislative battle over rent stabilization will occur in 1987.

VI. CONCLUSION

The general debate over whether rent control is a viable housing policy continues to rage.[269] The debate over whether New York City should maintain its rental regulatory system that dates from World War II also continues.[270] This article does not address these debates. Instead, it argues that as long as the State and City of New York and other states and municipalities regulate rents, landlord self-regulation should not be the regulatory model.

New York City's experience over sixteen years proves that a system of landlord self-regulation dominated by landlords with minimal public oversight will fail. The economic incentives for landlord abuses in setting rent ceilings, maintaining housing quality, informing tenants of their rights, and resolving tenant complaints are overwhelming in a housing market like New York City. This is particularly true where gentrification indicates a strong demand that threatens the displacement of tenants unable to pay market rents.[271]

An effective system of rent regulation that protects tenants against exorbitant rent increases and displacement, maintains housing quality, and provides landlords with a fair return on investment demands active intervention by public agencies. Rent regulatory agencies must have detailed and accurate data, both current and historical, on rents and

268. *See* Act June 19, 1985, ch. 248, 1985 N.Y. Laws 618; N.Y. Times, Jan. 13 1985, at R7, col. 1; N.Y. Times, Feb. 3, 1985, at 34, col. 1; N.Y. Times, May 15, 1985, at B4, col. 1; N.Y. Times, May 20, 1985, at B4, col. 1; N.Y. Times, June 6, 1985, at B3, col. 3; N.Y. Times, June 20, 1985, at B3, col. 1; N.Y. Times, June 21, 1985, at B2, col. 5; N.Y. Times, June 30, 1985, at E7, col. 1.

269. *See, e.g.*, Symposium, *Redistribution of Income through Regulation in Housing*, 32 EMORY L.J. 691 (1983); P. NIEBANCK, THE RENT CONTROL DEBATE (1985).

270. In the 1985 legislative session, the New York State Assembly passed legislation making rent stabilization permanent, but the New York State Senate defeated this. *See* N.Y. Times, June 20, 1985, at B3, col. 1.

271. See, e.g., Marcuse, *To Control Gentrification: Anti-Displacement Zoning and Planning for Stable Residential Districts*, 13 N.Y.U. REV. L. & SOC. CHANGE 931 (1984-85).

services. If rent increases are to generally cover landlords' increased operating and maintenance costs, agencies must have access to landlords' actual operating and maintenance costs. This requires regulation of landlords by public bodies like New York State's DHCR or New York City's HPD. Though each have had serious problems administering rent regulation, these problems are not insurmountable.[272]

To be effective, rent regulation must be administered efficiently and fairly. If either landlords or tenants perceive that the other group is dominating the system is a manner detrimental to their interests and react by obstructing the implementation of the regulatory system, then regulation is likely to be ineffective. New York City's rent control system is a case in point. A long history of landlord and tenant conflicts clouds its operation.[273] This conflict, however, has taken place in a public arena in which both groups have used political and legal tactics in order to either reform rent control to their benefit, or terminate it altogether.

In contrast, landlord self-regulation initially was a closed system, dominated by landlords and excluding tenants. This could work in the long run only if tenants did not organize or protest for reform and if landlords maintained a unified front, neither of which happened. Within the context of the long history of well-organized landlord-tenant conflict in New York City, this turn of events was quite predictable. With the addition of factors influencing rental housing prices such as inflation, the 1970s energy crisis, the passage and repeal of vacancy decontrol in 1971 and 1974, New York City's continuing housing crisis, and housing construction and rehabilitation mostly limited to luxury housing or subsidized housing, the eventual disintegration of the initial consensus in which tenants temporarily accepted landlord self-regulation is understandable.

New York City's experimental system of landlord self-regulation might have worked better if the HPD had intervened much more actively to discipline the RSA, or if the CAB and the RGB had been more receptive to tenant criticism. In addition, the system may have lasted longer if the deregulated rent-controlled housing stock had not been integrated into the rent stabilization system after the repeal of vacancy decontrol in 1974, or if the RSA had not been taken over by

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272. *See generally* Baar, *Guidelines for Drafting Rent Control Laws: Lessons of a Decade*, 35 RUTGERS L. REV. 723 (1983).

273. This can be traced to the beginning of rent control in New York City. *See* LAWSON, THE TENANT MOVEMENT IN NEW YORK CITY, 1904-1984 (1986).

CHIP in 1977. Inherent flaws, however, would still have existed. Sooner or later, these flaws would have led to the same rejection of landlord self-regulation that occurred beginning in 1983. In retrospect, the lasting lesson of this longstanding and exceedingly complex drama is that landlord self-regulation is not a desirable or viable regulatory policy.

HOMELESS SYMPOSIUM