CHPC

J-51 and Gentrification

by Harold Shultz

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The J-51* tax incentive program, the most successful housing rehabilitation program in New York City history, expired on December 31, 2011.

It will be up to the New York State legislature to decide to renew the program and under what terms. However one likely argument that will be made, that J-51 somehow contributes to gentrification of neighborhoods, seems to have been already addressed by the Court of Appeals.

J-51

In the 1950's New York City still had a substantial inventory of Old Law tenements which did not have central heating, central hot water, or, in some cases, indoor plumbing. When the City required the installation of these improvements, many owners objected that they could not pay for the costs of the improvements from their existing rent rolls, which were limited by the rent control system.

The J-51 program was enacted to enable owners to recover approximately 75% of the cost of improvements through tax abatements. The program was largely successful—from inception through 1977, over 675,000 units of housing were renovated using J-51 tax incentives. Through the 1980's and 1990's J-51 was an important piece of rehabilitating New York City's housing stock. As of 2011, nearly 600,000 units were still receiving J-51 benefits.

Gentrification

One claim being made against J-51 today is that it fosters the "gentrification" of neighborhoods. Gentrification, in this context, presumably means encouraging the upgrading of buildings to appeal to higher income tenants.

In 2009, in the case of *Roberts vs Tishman,* the New York State Court of Appeals spoke to the issue of rent regulation and J-51.That decision held that buildings that had received J-51 tax incentives were ineligible to apply the luxury decontrol provisions of the rent stabilization law. Thus buildings with high income tenants capable of paying market rents are unable to charge market rents if they are receiving J-51. One result of this decision has been to cause massive confusion as to how to adjust rents for tenants who were subject to the rent regulation decontrol provisions. Continuing litigation has only partially addressed the issue, and additional litigation is likely unless the Legislature acts and clarifies this matter.

At the same time *Roberts* is a useful tool in directing J-51 toward buildings in actual need. Clearly, today, owners in buildings that expect improvement in their rental market will choose to forego J-51 tax abatement in order to have luxury decontrol available to them. For those in areas where market rates are close to or below rent stabilized rents, J-51 is a useful incentive to upgrade their buildings.

Thus, thanks to the Court of Appeals, we now have a market mechanism which strongly discourages the use of J-51 in buildings able to command higher rents. Confirmation of that can be seen in the spate of lawsuits currently in the courts brought by building owners trying to achieve an early exit from J-51.

The legislature need no longer worry about J-51 as a contributor to gentrification. They should be far more concerned about how to clean up the confusion that *Roberts* created around the liability for past rents that were incorrectly decontrolled. And they should also insure that J-51 is extended so that it can continue to perform its critical function of funneling capital funds to buildings in need of rehabilitation.

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* The "J-51" program is §11-243 of the NYC Administrative Code, which is authorized by §489 of the New York State Real Property Law.

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