

# "UNIQUE or PECULIAR" – CASES BROUGHT BY LANDLORDS AGAINST DHCR, as of August 2, 2011

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**KSLM ("Westgate") case, interpreting whether the** Emerg. Ten. Protection Act ("ETPA") applies to pre-1969 buildings leaving Mitchell-Lama

**2004 – Appellate Division** (mid-level state court) says yes, and adds comment that 1995 DHCR Comm'r letters say landlords can apply, and court's own comment that landlords deserve increase.

**2005 – Court of Appeals** (highest state court) says in pre-69 buildings, ETPA applies only to apts. vacated after July 1, 1971, and sends case back to DHCR to determine. Landlord & Westgate tenants settle, so no DHCR determination.

**Gluck files 1st suit in Manhattan for its former MLs:**

DHCR should determine its U or P Applications as consistent with Appellate Division statement w/o delay. (Bronx cases sent to Bronx court – no action taken there.) Court says DHCR should decide as it sees fit, in its own time.

Case for Bronx buildings sent to Bronx court. No resolution (case abandoned)

*DHCR issues new regs: just leaving ML is not a U or P circumstance.* →

**Gluck files 2nd suit in Manhattan, "Highbridge House" case: Says DHCR regs illegal.** Gluck amends complaint to match Witkoff's.

Gluck asks to join his case with Columbus 95 →

State Supreme Court (lowest court of general jurisdiction) - Landlords ask Justice Schlesinger for "declaratory judgment" that DHCR's Nov. 07 regs are invalid. **Nov. 25, 2009 - Court upholds validity of DHCR regulations and orders DHCR to determine all pending U or P applications within 150 days. January 2010 - Landlords file notice of appeal.**



Only Witkoff "perfects" appeal. Appellate Division (mid-level state ct.) issues stay of (halt to) all proceedings on pending U or P applications. **Dec. 28, 2010, Appellate Division rules unanimously that DHCR regulation is valid.** Witkoff lost his request for leave to appeal to Court of Appeals and did not pursue it further by the July 25, 2011 deadline.

**Witkoff files Columbus 95 case,** which ends up before Justice Lewis Stone.

Landlord asks court to order DHCR to decide U or P application faster.

Columbus House tenants intervene as party.

Landlord asks court to **stop** DHCR from deciding U or P application, and claims new regs are invalid because they

- Incorrectly apply ETPA statute (conflict w/ App. Div.)
- Are unconstitutional (take landlord's right to make \$\$\$)
- Were not enacted correctly.

Justice Stone stayed DHCR from deciding U or P. Stipulation applies this to Gluck case buildings. **Judge joined cases & recused self** w/o deciding DHCR's & Col. House tenants' motions to dismiss or motion to intervene for 3 tenant associations. More tenant associations intervene.

Cases assigned to Justice Schlesinger.



→ **TENANTS WON!**