

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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In the Matter of the Application of  
NEW YORK CITY COALITION TO END LEAD  
POISONING, INC., et. al.

Plaintiffs-Respondents

For a Judgment pursuant to Article 78 and Sec. 3001 of  
The Civil Practice Law and Rules

-against-

Petitioners,

PETER VALLONE, as Speaker of the New York City  
Council, et, al.

Defendants-Appellants.  
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Index No.: 120911/99

AFFIDAVIT IN SUPPORT  
Of MOTION TO CONFIRM  
STAY

Joseph Strasburg, being duly sworn, deposes and says:

1. I am the President of the Rent Stabilization Association of NYC, Inc. ("RSA") the largest trade association of residential property owners and managers in the City of New York. RSA represents approximately 25,000 owners and managers of residential properties who own or manage over one million regulated and unregulated rental units, as well as cooperatives and condominiums. RSA's members range from small property owners, such as "mom and pop" owners who own only one or two buildings, to highly sophisticated, experienced and capable owners of more extensive holdings. The vast majority of RSA's members (as well as the vast majority of New York City property owners) are in the former, as opposed to the latter, grouping.

2. RSA undertakes to provide numerous activities on behalf of residential property owners and managers in general and its membership in particular. These activities include: legislative advocacy at the New York State Legislature and New York City Council, the presentation of educational and informational programs and seminars, providing guidance in complying with the

multitude of diverse State and local laws and regulations, including but not limited to areas such as rent control and rent stabilization, landlord-tenant law, the New York State Multiple Dwelling Law, the New York City Health, Building and Housing Maintenance Codes and, most relevantly, compliance with Local law 38, the New York City Lead Paint Law.

3. I submit this affidavit in support of the application to confirm the statutory stay of the Order of Justice Louis York, or in the alternative, to grant a stay pursuant to CPLR 5519 ( c ) during the pendency of this appeal. As will be set forth below, we contend that substantial benefits inure from the stay of enforcement of Justice York's order, pending the appeal of the City of New York and that substantial and irreparable harm to property owners and managers, and in particular to the children of the City of New York, will result in the event the former law, Local Law 1, is reinstated.

4. Since it took effect in November 1999, it is evident that Local Law 38 has been exceedingly effective in reducing lead based paint poisoning (See New York City Department of Health press release January, 2001 annexed as Exhibit "A"). At the same time that New York City property owners and managers have been practicing the interim controls and lead safe housing mandated under Local Law 38, as well as complying with the Notice, Inspection and other requirements of Local Law 38, more blood screenings are being conducted than ever before. The findings, published in January 2001, show that since January 2000, the number of new cases of elevated blood levels have declined dramatically. Local Law 38 is working for the children of the City of New York and for property owners and managers. While the appellate courts will determine the correctness of the conclusions of law by Justice York, on the question of whether the New York City Council complied with the environmental laws of the State and City of New York when it enacted Local Law 38, it is evident that the children of the city of New York have benefited from its enactment and that property owners and managers are

effectively implementing Local Law 38. The status quo should therefore be maintained during the pendency of the appeal.

5. Ever since the legislation which created Local Law 38 was signed into law in July 1999, RSA has worked tirelessly to inform not only its membership, but to inform the New York City real estate community as a whole of their new obligations and duties under the new Local Law 38. The obligations are numerous but in contrast to Local Law 1, are clearly set forth in extraordinary detail and thereby reduce significantly the confusion which existed previously under a vague and judicially-interpreted Local Law 1. Local Law 38 has also been supplemented by detailed regulations issued by the City's Department of Housing Preservation and Development.

6. For most of the 17 years in which Local Law 1 governed the obligations of property owners and managers with regard to lead based paint, it was the subject of litigation attributable to its vague and uncertain requirements. The residential real estate community struggled to determine just what their obligations were and confusion was rampant. Then, as now, owners awaited the outcome of the litigation and appellate process pertaining to a law which addressed conditions of painted surfaces in multiple dwellings located within the City of New York and which presumed the presence of lead based paint if the paint within an apartment was peeling and the building was constructed prior to 1960. Then as now, property owners and managers were obliged to also comply with New York City's Health code and regulations applicable to circumstances in which children have actual elevated blood lead levels. New requirements also apply to the real estate industry - regulations of the United States Environmental Protection Agency and the United States Department of Housing and Urban Development have been promulgated in recent years which have created additional significant duties and obligations for property owners with regard to lead based paint. With the adoption of Local Law 38 and its

implementing regulations by the City's Housing Preservation and Development, property owners and managers have been better able to do that which is required better than ever before. The statistics recently issued by the City's Department of Health is proof positive of their success.

7. The fundamental difference between Local Law 38 and its predecessor, Local Law 1, is the difference between "lead free" housing (under Local Law 1) and "lead safe" housing (under Local Law 38). "Lead free" as mandated under the former law and as interpreted by the courts required property owners and managers to abate all lead based paint, even when intact. Experts all agree, even those opposed to Local Law 38, that abating intact lead based paint creates hazards which are detrimental to the health of children even when undertaken under the most stringent abatement protocols. Further, the substantial costs incurred by property owners and managers to comply with a lead-free standard (assuming owners could even afford to incur those costs) is all the more wasteful when experts agree that maintaining residential apartments "lead safe" with the interim controls, as set forth in the Local Law 38, is vastly more cost effective and safer.

8. Reinstating Local Law 1, as interpreted by Judge York, would require owners to make their buildings lead free. As stated above, this would result in unnecessary and hazardous abatement work posing a threat to children. During the course of protracted litigation, absent a stay, the progress we have made in reducing lead paint poisoning could be reversed.

9. It is respectfully submitted that the New York City property owners and managers would be cast into a new era of extreme confusion over their obligations with regard to lead paint in the event Local Law 1 is reinstated during the pendency of this appeal. For example, what would be the obligation of a landlord who is issued a violation under Local Law 38 who has not yet corrected the condition before the implementation of Justice York's decision and order? Must

the NYC Housing Preservation and Development re-inspect the unit to determine whether any other surface, including "intact" surfaces, may contain lead paint, and if so, issue a revised Notice to Abate? What would be the obligation of an owner who received a violation under Local Law 38 and who has already corrected it? Would the correction no longer be valid? The extensive protective measures and mechanisms under Local Law 38 would fall away but the administrative agency's responsible for the implementation of Local Law 1 would be at a loss to adequately and properly inform both owners and tenants alike of their respective duties and obligations, as well as of their potential liabilities. Must the NYC Housing Preservation and Development revisit the unit to determine whether the "lead safe" surfaces may contain lead paint underneath and then issue a revised Order to Abate? Since Judge York's Judgment, RSA has been contacted by countless property owners and managers who are uncertain whether their obligations have changed, and if so, how.

10. To revert to Local Law 1 during the pendency of the appeal would cause further confusion, the full and complete extent of which cannot be fully appreciated at this juncture. The testimony offered during the extensive public hearing process associated with the enactment of Local Law 38 demonstrated that whatever issues some may have with Local Law 38, Local Law 1 is unworkable, unsatisfactory and creates a greater likelihood of harm to children than Local Law 38. To make matters worse, if Local Law 1 were to be reinstated, property owners and managers would be forced to comply with rules, which at best, may be only temporary. Property owners and managers would be compelled to comply with Local Law 1 during the duration of the appeal, but, in the event of a successful appeal by the City of New York, would then revert to Local Law 38 standards subsequently. The confusion, as well as the potential harm to the children whom these laws are intended to protect, is apparent. It is important to understand the nature and extent of the efforts to inform owners and managers of the

requirements of Local Law 38, as well as other lead related laws to appreciate the magnitude of the efforts that would be needed owners and managers of their obligations in the event the stay is not confirmed and Local Law 1 is held to apply.

11. For Example, RSA regularly published articles on compliance with Local Law 38 and other lead paint laws and regulations (as well as a myriad of other laws and regulations on other subjects) in its monthly newsletter, THE RSA REPORTER, which is distributed to each RSA member. After the enactment of Local Law 38, RSA dedicated an entire special edition, July-August 1999, exclusively to the new lead paint legislation. This edition (Annexed as Exhibit "B") included a summary of the law, a step-by-step instruction guide on how to correct lead paint hazards, among several other relevant articles.

12. In addition, RSA conducted a major initiative to educate and inform the New York City real estate community in a seminar on November 16, 1999 at the Sheraton Plaza. Panelists included commissioner Richard T. Roberts and other senior representatives of the New York City Department of Housing Preservation and Development, Alizabeth J. Olhasso, M.E., Inspector and Environmental Engineer of the Division of Enforcement and Compliance Assistance from the United States Environmental Protection Agency, and Dr. Jessica Leighton, Acting Assistant Commissioner of the Bureau of Risk Assessment and Communication of the New York City Department of Health. The seminar handouts (annexed as Exhibit "C") comprehensively explored Local Law 38 and the implementing regulations promulgated by City's Housing Preservation and Development, the requirements of the Department of Health and its regulations including safe work practices for abatement, and the requirements applicable to federally-owned and federally-assisted housing. More than 400 New York property owners, managers and other real estate professionals, attended this seminar.

13. In addition to the above, RSA also employs a legal and intergovernmental staff who regularly advise members on important developments, including lead-based paint laws and regulations.


14. Furthermore, RSA has a telephone support line staffed with six (6) counselors who respond to questions raised by the members relating to any topic relevant, including compliance with the lead paint laws and regulations. A significant percentage of calls routinely seek guidance on the obligations and duties regarding lead paint.

15. Clearly, the efforts, which have been made to disseminate the details of the laws applicable to this population of responsible and affected parties, are extraordinary and require substantial time and effort to effectuate. By enforcing and/or confirming a stay, the real estate community will continue to act under Local Law 38. It is not conceivable that property owners will be able to act under Local Law 1 in the absence of a stay.

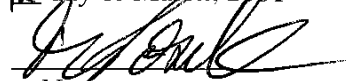
16. With the extensive time, effort and commitment which has gone in to educating the New York City real estate community of their duties and responsibilities under Local Law 38, vast confusion will result if that law is suddenly removed and no longer held to be the standard. We have begun to see indicators of this confusion since the issuance of Justice York's decision. RSA has been contacted by countless property owners and managers uncertain if their obligations have changed because of the decision.

17. On behalf of the membership of RSA, we respectfully submit that substantial benefits will be gained by staying the Judgment of Justice York. Once a final determination is made on the merits of the appeal, property owners and managers will continue to comply with Local Law 38 assuming Justice York's decision is reversed, or in the worst case, they will have been given the time and opportunity to adapt to whatever their obligations may be in the event Justice York's decision is affirmed. During the pendency of the appeal, the children of the city

of New York, as well as property owners and managers, should continue to benefit from the applicability of Local Law 38.

  
JOSEPH STRASBURG  
RENT STABILIZATION ASSOCIATION, Inc.  
123 Williams Street  
New York, NY 10038

Sworn to before me this  
12 day of March, 2001

  
Notary

MITCHELL L. POSILKIN  
Notary Public, State of New York  
No. 02P05074814  
Qualified in Bronx County  
Commission Expires March 24, 2001