

## MEMO

Fr: Matthew Chachère

To: Ambrosia Kauai

cc: Rodrigo Sanchez-Camus, Evan Hess, Maria Lizardo, Ramona Then, Diogenes Abreau

Da: 2/6/18

Re: Settlement of group representation case for 550 & 552 West 174<sup>th</sup> Street (12 tenants)

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This memo summarizes the outcome of the above group representation (as the group case chart does not permit this amount of detail), which was settled today.

This case originated as 12 individual non-payment cases commenced in 2012 and 2013 that were consolidated for joint trial (originally 13, but one tenant passed away).

NMIC filed answers asserting counterclaims for rent overcharges arising from a rent reduction order issued in 1993 by the NYS Division of Housing and Community Renewal (“DHCR”) which froze rents as a result of adverse conditions in the building. Landlord argued in opposition that a rehabilitation loan issued by HPD in 1994 under article 8A of the Private Housing Finance Law had the effect of nullifying the DHCR rent reduction order. In 2013, however, the Housing Court agreed with NMIC’s position in a published decision (Atsiki Realty LLC v. Muñoz et al., 42 Misc. 3d 714) (I should note that up to this point no court had ever addressed this issue before, so the decision made new case law).

The Landlord then took an appeal to the Appellate Term, which in 2015 affirmed the Housing Court, and pointedly rejected another argument of the landlord – that a landlord could disregard a DHCR rent reduction order based on a good faith belief that the underlying conditions had been corrected, (Atsiki Realty LLC v. Muñoz et al., 48 Misc. 3d 33), holding that DHCR’s “determinations are binding on the parties and the courts until either vacated by [DHCR] or set aside upon judicial review.” (The decision has now been cited in at least 3 other published decisions for this principle, so we created some additional positive new case law here.)

The Landlord then made two attempts to take a further appeal to the Appellate Division, both of which were denied. Atsiki Realty LLC v. Muñoz et al., 2015 NY Slip Op 80430(U), Atsiki Realty LLC v. Muñoz et al., 2015 NY Slip Op 90888(U).

Subsequently, NMIC embarked on lengthy negotiations with the Landlord to reach a settlement, which was signed today. The terms of the settlement gave each of the tenants approximately double the amount of the rent overcharges, in the form of credits against claimed rent arrears and future rent.

The total value to the tenants of the settlement is over ½ million dollars (i.e, \$500,000). In addition, the tenants got repairs of their apartments, and NMIC received \$20,000 in settlement of attorney fee claims.

(Achieving this outcome was a collaborative product of the diligent and persevering efforts of my colleagues in the Community Organizing Department – particularly their tremendous amount of work involved in record compilation and number crunching analysis– as well as the tenant association.)