MAROTTA & GARVEY
Attorneys at Law

Neil D. Marotta, Esq.
Kathleen P. Garvey, Esq.

3916 Bergenline Avenue,
Suite 2200
Union City, New Jersey 07087

(201)552-9200
Fax (201)552-9204
e-mail Mgclawyers@aol.com

January 6, 2022

Via Email and Regular Mail

Derek Reed, Esq.
Ehrlich, Petriello, Gudin Plaza & Reed P.C.
Attorneys at Law
60 Park Place, Suite 1016
Newark, NJ 07102

Christina M. Rivera, Esq.
Office of the Tenant Advocate
City of Union City
3715 Palisade Ave.
Union City, NJ 07087

Re: 3401 Park Avenue, Apt. 10
Union City, NJ
Findings of Fact Resolution

Dear Counsel:

Enclosed please find the Resolution of the Union City Rent Stabilization Board setting forth its decision in the above matter.

Should you have any questions, please feel free to contact me. Thank you.

Very truly yours,

Neil Marotta

NDM:n
Enc.
Cc: Kennedy Ng, Administrator

FINDING OF FACT RESOLUTION

UNION CITY RENT LEVELING BOARD

4616 Bergenline Avenue, Apt. 2
3401 Park Avenue, Apt. 10
419-33rd Street, Apt. 3
Union City, New Jersey
Legal Rent Determination Appeal
Vacancy Decontrol Matter

WHEREAS, the Union City Rent Board Secretary, issued legal rent determinations on the following units: 4616 Bergenline Avenue, Apt. 2 (Owner: 4614 Bergenline, LLC); 3401 Park Avenue, Apt. 10 (Owner: Stella on Park, LLC); and 419-33rd Street, Apt. 3 (Owner:417-419 33rd St HCPVI LLC); and

WHEREAS, the respective property owners filed appeals of the Legal Rent Determinations and the matters were scheduled for a Hearing before the Rent Leveling Board (hereinafter "Board") on September 13, 2021; and

WHEREAS, the Tenants were represented by the Tenant Advocate, Christine M. Rivera, Esq. and the property owners of 4616 Bergenline Avenue, Apt. 2 and 419-33rd Street, Apt. 3 were represented by Adrienne C. LePore, Esq. and the owner of 3401 Park Avenue, Apt. 3 was represented by Derek Reed, Esq.; and

WHEREAS, an argument was raised by both counsel for the property owners, that in 1996 the Union City Rent Leveling Ordinance was amended to provide for vacancy decontrol, specifically that "As to those units vacant at the time of the adoption of this chapter or which subsequently become vacant under the terms of this chapter, the rent agreed to by the landlord and tenant shall become the new base rent by which the permitted increases under this chapter shall determined"; and

WHEREAS, the property owners argued that the aforementioned ordinance was in effect from 1996 to 2013 and presented lease agreements entered into by tenants of the units during said time frame arguing that the rents set forth in the leases established a new base rent, from which future rents were to be calculated; and

WHEREAS, Counsel for the Rent Stabilization Board noted that in 2005 the Rent Leveling Ordinance was amended to establish a Rental Unit Renovation Allowance (hereinafter RURA), which provided a mechanism wherein upon vacancy of a unit, the property owner could increase the base rent of the unit upon investment of a certain sum of monies to renovate the unit, in which case the unit would receive an increase in the base rent based upon the sum of money expended. The Ordinance provided that if the base rent was under $500.00 per month, the unit would receive an increase in the base rent, of $50.00 for every $1,000.00 expended and if the base rent was over $500.00, the unit would receive an increase of $30.00 for every $1,000.00 expended. A minimum of $2,500.00 was required to be spent on the renovations; and

WHEREAS, counsel for the Board requested that counsel for the parties brief the issue whether the 2005 ordinance repealed the 1996 ordinance by implication, since the two ordinances appeared to be inconsistent, being that under the 1996 ordinance, the property owner was not required to perform any renovations to effectuate an increase in base rent, while the RURA required that the property owner expend certain sums of money to renovate the unit to obtain an increase in the base rent if the unit became vacant; and

WHEREAS, counsel submitted briefs on October 1, 2021, with reply briefs submitted on October 14, 2021; and

WHEREAS, the matter was listed before the Board for argument on November 15, 2021; and

WHEREAS, although the parties had additional issues concerning the matters, the sole issue before the Board was whether unconditional vacancy decontrol set forth in Section 14-2C of the 1996 Ordinance was in effect from 1996 to 2013. Any additional issues were not addressed at this time, nor were same waived; and

WHEREAS, counsel for 4616 Bergenline Avenue, Apt. 2 and 419-33rd Street, Apt. 3 argued that, in 1996, the ordinance was amended so that on its face it provided for blanket vacancy decontrol, the purpose of which was to increase property tax revenue. Counsel further argued that the RURA ordinance was to incentivize landlords to renovate apartments, but that the vacancy decontrol provision, in Section 14-2C was not removed or repealed from the ordinance and for it to have been repealed, it would have had to have been expressly repealed. Counsel further argued that the two ordinances could be read together. Counsel stated that under the vacancy decontrol provision, the property owner could only raise the rent to what the property owner and tenant agreed to, while pursuant to the RURA, it is counsel's position that the property owner could increase the base rent as high as the formula set forth in the RURA ordinance permitted even though the rent agreed to by the property owner and tenant may be less. Also, counsel argues that during the 3 years when an additional RURA would not be permitted, the vacancy decontrol provision would take effect; and

WHEREAS, counsel for 3401 Park Avenue, Apt. 10, argued that the language in the vacancy decontrol provision, Section 14-2C, is clear and unambiguous and therefore controlling. Counsel further argued that repeal by implication requires a high standard and that that was not the intent here. The ordinance had been amended several times and the language in Section 14-2C was not repealed. If the governing body had meant to repeal the section it would have done so. If the statutory language is clear and unambiguous on its face, the unambiguous language must be applied. Counsel also argued that in the absence of language that the vacancy decontrol provision is subject to another section, it must be applied. Counsel further argues that the City acknowledged the existence of vacancy decontrol based on a prior interpretation by counsel for the Board in another matter. Finally, counsel argued that if the Board finds that the vacancy decontrol ordinance and the RUPA and RURA ordinance are interrelated, the ordinance is constitutionally void for vagueness; and

WHEREAS, the Tenant Advocate argued that Section 14-2C provides that as to those units vacant at the time of the adoption of this chapter or which subsequently become vacant, under the terms of this chapter, requires that the rent agreed to by the landlord and tenant shall become the new base rent by which the permitted increases under this chapter shall be permitted. The term "under this chapter" encompasses the whole of Chapter 14 and therefore Section 14-2C must be read together with the RUPA ordinance in Section 14-11.1 and as amended by the RURA provision which require that any increases be based on renovations to the unit. Further, it could not have been the governing body's intent to have this unqualified non-review of a blanket increase simply created by the vacancy of a unit without looking to the RUPA, which if read together, you had to register, you had to pay a fee and make upgrades to the property. Further it could not have been the legislator's intent to create this blanket unbridled increase in rent just by a mere vacancy. Statutory construction negates the possibility that the reading of 14-2C is not subservient or part of the larger chapter. It could not operate independently and not be subject to the terms of the entire chapter. Counsel opined that to have vacancy decontrol, by itself, with the RURA, would render the whole RURA section meaningless. With the vacancy decontrol provision, the rent could be whatever the landlord and tenant agreed to. The RUPA and RURA required that the landlord make improvements to the unit. Further, all sections required a mutual agreement between the tenant and the landlord as to a rent. To have vacancy decontrol and the RUPA and RURA stand alone is counterintuitive to what the legislative body intended. The sections must be read in pari materia; and

WHEREAS, counsel for the Board stated that the question before the Board is whether the vacancy decontrol provision is a valid standalone ordinance, or whether it must be read together with the RUPA and RURA ordinances. Additionally, counsel advised that if you had an older statute and then a more recent statute was adopted that were about the same topic and in conflict, first you had to try to read them together to come to an understanding where both could function. If that could not be done, the ordinance that is more recent in time would prevail; and

WHEREAS, the Board moved to close testimony and to deliberate, and found that the vacancy decontrol clause was not deleted or subordinated with another clause,

NOW THEREFORE BE IT RESOLVED, AS FOLLOWS:

The Board found that subject to the review by the Board on a case-by-case basis to determine whether a new base rent was established by a lease agreement, the rent control ordinance provided vacancy decontrol from 1996 until May 21, 2013.

Resolution approved: Vote 3 to 0 on November 15, 2021.

Memorialization Resolution approved: Vote 2 to 0 on December 20, 2021.

UNION CITY RENT LEVELING BOARD

Kennedy Ng
Rent Board Administrator