

MALLIN & CHA, P.C.

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Jiyoung Cha successfully vacates three judgments against an HDFC in Article 78 Proceeding in New York Supreme Court

When faced with fines for alleged Building violations, many HDFCs struggle to deal with the heavily bureaucratic process of correcting or disputing violations issued by the Department of Buildings (DOB). In the case of 985 Amsterdam Avenue HDFC, the process also proved to be overdrawn and complicated. The DOB issued three default judgments against the HDFC for violations that it had corrected. Nonetheless, DOB issued three default judgments in amounts exceeding \$15,000 because the

HDFC failed to appear at a hearing to resolve the violations which it had already corrected. The DOB also failed to send any notices to the HDFC regarding the default judgments. For these reasons, the HDFC filed a "Request for a New Hearing After a Failure to Appear" which also went unanswered by DOB. Subsequently, the HDFC filed another Request explaining the reasons for why it failed to appear at the originally scheduled hearing and that it had previously corrected the violations. The DOB once again failed to respond to this Request in writing. Frustrated by the lengthy process and lack of answers, the HDFC retained Mallin & Cha, P.C. to file a petition in Supreme Court to vacate the three default judgments.

After oral argument, in siding with the HDFC, the Supreme Court ruled that DOB had overstepped its authority by denying the HDFC an opportunity to request a new

TENANCY BY THE ENTIRETY AND COOPERATIVES

In New York, the method by which married couples take title to a property has major financial repercussions for the couple.

As tenants in entirety, married couples enjoy rights of survivorship and can prevent creditors of one spouse from reaching the joint property owned by the couple as tenants in entirety.

As of January 1, 1996, spouses taking title to cooperative apartments can now take title as tenants in entirety even when the type of tenancy is not specified in the stock certificate and enjoy the same benefits and protections of this form of ownership as married couples owning private residences, condominiums or other parcels of land.

For more information, please contact our office at 212-285-1200.

AFTER ORAL ARGUMENT, IN SIDING WITH THE HDFC, THE SUPREME COURT RULED THAT DOB HAD OVERSTEPPED ITS AUTHORITY BY DENYING THE HDFC AN OPPORTUNITY TO REQUEST A NEW HEARING WITHOUT ANY EXCUSE.

hearing without any excuse. The Court admonished DOB for failing to provide the HDFC with notice of the default order or with notice of the deadline for freely reopening the default judgments. The Court further reasoned that it

was DOB's own doing that had led to the default orders because while the HDFC was in the process of correcting the alleged violations, DOB nonetheless processed the default orders for nonappearance without giving

notice to the HDFC of the orders or for the deadline for reopening the administrative proceeding.

For a full copy of the court's decision, e-mail us at fhayes@mallinlaw.com.

HURRICANE SANDY AND RENT ABATEMENT

Why courts should consider efforts made by landlords to mitigate harm caused by natural disasters

In the wake of the unprecedented storm, many residential tenants have opted to sue their landlords for rent abatement based on damages caused to their residence.

New York courts are now faced with the issue of whether residential tenants who lost utility services such as electricity, heating, water supply are now entitled to rent abatement.

Residential tenants have argued that the loss of services constitutes a breach of the warranty of habitability which is an implied warranty in every residential lease in New York. The warranty of habitability requires that residential premises are reasonably fit for habitation and that the occupants are not subject to conditions that are dangerous, hazardous, or unsafe.

The standard governing the warranty of habitability requires courts to make a fact-intensive inquiry into whether the warranty has been breached.

When making this fact-intensive inquiry, landlord advocates have argued that the court should take into account efforts made by landlords to mitigate the damages caused by circumstances outside the landlord's control.

Landlord advocates have further argued that it is not reasonably prudent to punish landlords who have taken actions such as furnishing appliances, food, water, shelters, clothing, flashlights etc. to mitigate the detrimental impact caused by interruption of vital utility services such as electricity, heat, and water due to the storm.

By taking into account the efforts made by landlords to ameliorate damages caused by natural disasters, the law will provide incentives for landlords to provide assistance to their tenants when such natural disasters strike. For example, such rulings will encourage landlords to provide water to their tenants without running and flashlights to those that are without electricity.

It remains to be seen whether courts in New York will apply this equitable approach to rent abatement hearings by taking into account whether landlords acted expeditiously in mitigating the harm caused by natural disasters that are outside of their control. For more information, please contact our office at 212-285-1200.