



Analysis

As of: Dec 05, 2012

**In the Matter of Forest Hills Tenants Association, Appellant, v. Daniel W. Joy, as  
Commissioner of the Office of Rent Control of the City of New York, Respondent,  
and Falk Associates, Intervenor-Respondent**

[NO NUMBER IN ORIGINAL]

**Court of Appeals of New York**

*59 N.Y.2d 1007; 453 N.E.2d 1244; 466 N.Y.S.2d 955; 1983 N.Y. LEXIS 3279*

**July 7, 1983, Decided**

**PRIOR HISTORY:** Appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered January 11, 1983, which (1) reversed, on the law, a judgment of the Supreme Court at Special Term (Martin B. Stecher, J.), entered in New York County in a proceeding pursuant to *CPLR article 78, inter alia*, granting a petition to reverse a determination of respondent Commissioner of the Office of Rent Control of the City of New York which approved labor cost rental increases for the landlord intervenor's rent-controlled apartments, (2) dismissed the petition, and (3) confirmed and reinstated the commissioner's determination. Intervenor Falk Associates was the landlord of five separate buildings which were acquired in a single transaction and have been treated as one entity or apartment complex in terms of bookkeeping and delivery of services; one of the buildings had an attended parking garage with spaces used by tenants and management. A transient parking service was operated out of the garage; three garagemen were employed in connection with the garage, were assigned specifically to that building, and were called upon to provide services in other buildings when the need arose. Over the objections

of petitioner tenants' association, the district rent director granted the landlord's application for rental increases based, in part, upon increased labor costs in connection with the three garagemen. Petitioner association commenced the instant proceeding to exclude the afore-mentioned labor costs in calculating rents and to examine the landlord's books. After the commissioner completed his own audit, he rejected the association's protests concluding that the labor cost attributable to the three garagemen was properly included in the adjustment to the maximum base rent, since they provided services to all buildings and performed various duties as required. Special Term concluded that the commissioner improperly treated the five buildings as one entity for purposes of allocating labor costs; that the garagemen's salaries must be excluded from the computation of increased labor costs since those employees were not engaged in the provision of services to all tenants, and that the commissioner had failed to justify his rejection of the tenants' request to obtain access to the landlord's books. The Appellate Division concluded that Special Term erroneously annulled the determination in light of the court's limited powers of review since there was a

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466 N.Y.S.2d 955, \*\*\*; 1983 N.Y. LEXIS 3279

rational basis in the record as to each of the issues raised at the administrative level.

*Matter of Forest Hills Tenants Assn. v Joy*, 91 AD2d 912.

**DISPOSITION:** On review of submissions pursuant to rule 500.2 (b) of the Rules of the Court of Appeals ( 22 NYCRR 500.2 [g]), order affirmed, with costs, in a memorandum.

**CORE TERMS:** tenants, landlord's, rent, apartment complex, maximum rents, rational basis, capricious, adjusting, thorough, salaries, audit, garagemen

## HEADNOTES

### Landlord and Tenant -- Rent Control

In a proceeding to annul a determination of the Commissioner of the Office of Rent Control of the City of New York granting a landlord's application for rent increases based on increased labor costs involving three garagemen, an order of the Appellate Division, which reversed a judgment annulling the determination, is affirmed since the determination to include the salaries of the garagemen, who rendered services to tenants throughout the apartment complex, in labor costs for the purpose of adjusting maximum rents did not lack a rational basis. Moreover, the commissioner's refusal to permit the tenants to examine the landlord's records was not arbitrary or capricious in view of his own thorough audit of the landlord's expenses, the results of which were made available to the tenants.

**COUNSEL:** *Thomas C. Lambert* for appellant.

*Harry Michelson* and *Stephen H. Deutschmeister* for respondent.

*Gary M. Rosenberg* and *Blaine Z. Schwadel* for intervenor-respondent.

**JUDGES:** Chief Judge Cooke and Judges Jasen, Jones, Wachtler, Meyer and Simons concur.

## OPINION

[\*1009] [\*\*1244] [\*\*\*955] **OPINION OF THE COURT**

Memorandum.

The order of the Appellate Division should be affirmed, with costs.

[\*\*1245] [\*\*\*956] The determination of the rent commissioner to include the salaries of three garage employees who rendered services to tenants throughout the apartment complex in labor costs for the purpose of adjusting maximum rents does not lack a rational basis. Moreover, the commissioner's refusal to permit the tenants to examine the landlord's records was not arbitrary or capricious, in view of his own thorough audit of the landlord's expenses, the results of which were made available to the tenants (see *Matter of Windsor Park Tenants' Assn. v New York City Conciliation & Appeals Bd.*, 59 AD2d 121; *Matter of Jaffin v Weaver*, 3 AD2d 196).