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## Landlords' Lawsuit Against Tenant Protection Unit Dismissed

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On May 31, state Supreme Court Justice Richard Velasquez dismissed a lawsuit brought by landlords challenging the legality of the state's Tenant Protection Unit, which was created in 2012 to beef up the weak enforcement of protections against rent overcharges and improper deregulation.

The case, *Portofino v. DHCR*, was filed in 2014 by individual owners backed by real-estate groups including the Rent Stabilization Association, after the state Division of Housing and Community Renewal modified its rules to enhance the TPU's ability to protect tenants against fraud and abuse. Make the Road New York, New York State Tenants and Neighbors, and the Association for Neighborhood Housing and Development intervened to defend the TPU.

The landlords argued that the TPU was illegal. They claimed its procedures deprived them of due process, and that the DHCR had violated the separation-of-powers doctrine by making policy decisions reserved for the legislature.

Judge Velasquez rejected all those claims. He pointed out that the legislature had created the DHCR in the rent-stabilization law, as an agency to "protect tenants and the public interest" by providing "safeguards against unreasonably high rent increases." The law gives it "broad authority to enforce rent stabilization" and to "take action on its own initiative to penalize owners" who overcharge.

The landlords also claimed that the TPU's procedures for forcing owners to pay treble damages to illegally overcharged tenants violated their due-process rights. The state rent-stabilization law provides that penalty, unless the owner can prove that the overcharge was unintentional. (Landlords are presumed to know the law's requirements, so they can't claim ignorance.)

The DHCR, which investigates overcharges only after a tenant files a complaint, has long had a policy called "Safe Haven," which lets owners avoid paying treble damages if they acknowledge the overcharge and refund the tenant's overpayment before the agency makes a decision on the case. The 2014 changes allow the TPU to initiate its own overcharge complaints, after a lengthy process in which it identifies an apartment with a questionable increase and gives the owner multiple opportunities to either justify the increase or refund the overpayment.

If the landlord fails to do either of these, the TPU refers the case to the Office of Rent Administration, which makes its own determination of whether there was an intentional overcharge. Under the 2014 DHCR amendments, once the TPU refers the complaint, the owner loses the option of avoiding treble damages by making a voluntary refund.

The *Portofino* suit claimed that this deprives owners of due process. Justice Velasquez rejected this argument, holding that there is no due-process right to avoid the law's treble-damages provision. Even after the case has been referred to the ORA, he added, the owner still has the opportunity to show that either there was no overcharge or that it was not intentional.

Gov. Andrew Cuomo created the TPU in 2012 after state legislators from New York City complained to him personally about his failure to support strengthening rent and eviction protections when they came up for renewal in 2011. The governor's office claims that the unit has brought 60,000 improperly deregulated apartments back under regulation. This figure, however, includes apartments that were still being treated as rent-stabilized by their owners but just had not been registered with DHCR.

Tenant advocates have long maintained that while the TPU does some good work, the DHCR could do far more if it had sufficient resources and the will to go after rent fraud more thoroughly. Landlords can easily get away with registering whatever rent they want as the "lawful rent," unless it comes to the TPU's attention or the tenant takes the initiative to file a challenge. They know that the penalties for getting caught are far less than the profits they'll make from illegal increases.

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