

Independence Plaza Tenants Association Statement
J-51 Lawsuit
November 12, 2012

On October 30th, New York's highest court, the Court of Appeals, refused IPN tenants' motion to appeal the lower court's J-51 decision. We learned about this decision after power was restored at IPN on Saturday, November 3. Thus, we have lost the case that so many of us have struggled for so long to win.

The case sought to maintain rent regulation at Independence Plaza because the owner received a J-51 tax abatement. The decision that was being appealed allows landlords at former Mitchell-Lama developments (like IPN) who received J-51 tax breaks to opt out by paying the amount abated, after receiving breaks for years. Thus, the court ignored the intent of J-51 – which provides city tax breaks to landlords in exchange for their promise to provide well maintained affordable rental housing. With this decision landlords like IPN's owner give the public nothing more than they would have if they had never received the tax benefit.

Here is a brief history of the IPN tenants' J-51 case. IPN was a Mitchell-Lama (rent regulated) complex until 2004. Tenants learned in 2006 that IPN's owners received a J-51 tax abatement beginning in 1998. After IPNTA made this information public, the owner paid the abated taxes for 2004 to 2006 in a behind the scenes deal with New York City's housing agency (HPD). Tenants sued in state court. The lower court judge ruled in 2010 that there the J-51 law does not allow for retroactive payment of taxes and that IPN must be rent stabilized. The owner appealed to New York's intermediate appellate court; the judges of that court ruled in the landlord's favor. Tenants then asked the New York State Court of Appeals to hear the appeal. State Senator Daniel Squadron and Borough President Scott Stringer filed amicus briefs on behalf of the tenants, supporting the appeal. The following elected officials signed on to these briefs: Representative Jerold Nadler; State Senator Thomas Duane, State Assembly Members Deborah Glick and Brian Kavanagh; City Council Members Margaret Chin, Daniel R. Garodnick, and City Council Speaker, Christine Quinn along with Community Board #1, The Legal Aid Society, Pratt Area Community Council, South Brooklyn Legal Services and Tenants and Neighbors.

Despite this widespread support the appeal request was denied. Ironically the denial was made on the same day that power went out due to Hurricane Sandy. Since the Court of Appeals never ruled on the case itself, the mid-level court's decision allowing former Mitchell-Lama landlords to retroactively withdraw from J-51 stands. This decision can negatively impact thousands of current Mitchell Lama tenants whose landlords receive J-51 abatements.

This is a tremendous disappointment and a slap in the face to all tenants and to the advocacy organizations and elected officials who joined our appeal

request. IPNTA has spent \$250,000 in legal fees (donated by tenants) and years of work on this case. Post Mitchell Lama tenants in the J-51 litigation made a significant contribution to funding the litigation. The court has turned a blind eye to IPN's owner's repeated refusal to follow the law beginning in 1998 when no notice was ever given to IPN tenants about the J-51 abatement despite the law's notice requirement.

By making IPN a "market rate" complex the landlord receives millions of dollars in direct federal subsidy for pre-2004 low income tenants. Their apartments have not been renovated but the federal government pays the renovated market rate. Thus for pre-2004 low income tenants who pay between \$400 and \$1200 in rent – the federal government kicks in up to \$4,000 or more per month which goes directly into the landlord's pocket. With rent stabilization, low income tenants at IPN could afford to pay their own rent, and would have access to other programs designed to assist low-income tenants such as SCRIE (Senior Citizens Rent Increase Exemption) or DRIE (Disabled Rent Increase Exemption). With rent stabilization federal money could be used to fund affordable housing instead of lining the pockets of wealthy real estate owners.

For pre-2004 "LAP" tenants' rent continues to be limited by the contract negotiated in 2004 between the tenants association and owner – when the tenants did not know that under J-51 IPN should have become rent stabilized. This protection is limited: many LAP tenants are paying overcharges because of Stellar Management's refusal to abide by this contract. The contract provides for annual increases which are tied to citywide rent stabilization increases until next year when an additional 3.3% per year will be tacked on for three years, followed by 1% per year thereafter. This contractual protection is not available to the many pre-2004 residents who were unemployed or under-employed (still feeling the effects of 9/11) when the complex left Mitchell-Lama. To remain in their homes at affordable rent they had to accept the federal vouchers that subsidize the landlord. When their job status improved, rents increased astronomically to levels that are no longer affordable. These are not high paid people -- they include waiters, teachers, and artists. The landlord subsidy requiring they pay 30% of their annual income in rent keeps them struggling, while the landlord profits at their expense. This is too high for many of them.

This fight in the battle for affordable housing protection has come to an end – but the battle continues. We will continue to join other affordable housing activists throughout the city and the nation who are struggling to protect existing affordable housing. We will continue to work with and for the elected officials who join us in these efforts to make affordable housing a right for all.

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