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RENT STABILIZATION BOARD

CITY OF EAST PALO ALTO

ARTEMIO ARBOITES, et al.

Petitioners,

Case Nos. 08-19 to 08-154

vs.

PRELIMINARY RULINGS

WOODLAND PARK MANAGEMENT,
LLC, et al.,

Respondents.

Following the hearings held herein on January 23, 2009 and February 26, 2009, the following rulings are issued:

I. APPLICABILITY OF RULINGS

These rulings shall govern the 136 petitions presently before the Hearing Examiner in the cases numbered 08-19 to 08-154. These rulings are preliminary and are being issued prior to the taking of any evidence relating to any individual petition. The rulings are being made for issues which are alleged to be common to, if not all, at least a significant number of the 136 petitions herein. No decision on any of the 136 petitions is being made by these rulings. These rulings anticipate that evidence will be presented for each petition so that a decision on the merits can be made as to each petition.

II. ISSUES PRESENTED

- (1) Can petitioners maintain their actions pursuant to Sections 12 and 15 of the Rent Stabilization Ordinance or are they barred by Section 12E?

- 1 (2) If petitioners can maintain their actions, then what is the correct base rent to be used
2 to determine the maximum legal rent of each unit?
3
4 (3) Are petitioners untimely and therefore precluded from challenging a certificate of
5 maximum legal rent issued by the Rent Stabilization Board (“Board”)?

6 **III. RULINGS**

7 **A. PETITIONERS CAN MAINTAIN THEIR ACTIONS PURSUANT SECTION**
8 **S 12 AND 15 OF THE RENT STABILIZATION ORDINANCE.**

9 Section 15 of the Rent Stabilization Ordinance gives a tenant remedies where a landlord
10 demands, accepts, receives or retains any payment in excess of the maximum allowable rent
11 permitted by the Ordinance. Where a landlord has demanded payment in excess of the maximum
12 allowable rent permitted, a tenant may petition the Board for appropriate relief. Rent Stabilization
13 Ordinance §15A and 15A(1). Indeed, Section 15A is entitled “Remedies for Violation of Rent
14 Ceilings or Failure to Register.”
15

16 Upon receipt of a petition by the tenant, the rent ceiling of individual controlled rental units
17 may be adjusted upward or downward in accordance with the procedures set forth elsewhere in the
18 Ordinance. Rent Stabilization Ordinance §12A.
19

20 Petitioners have filed their respective petitions requesting downward adjustment of the rent
21 ceiling for their individual rent controlled rental units pursuant to a claim that the base rent used to
22 determine their rent ceilings violates the Costa-Hawkins Rental Housing Act (“Costa-Hawkins”),
23 Civil Code sections 1954.50, *et seq.* Petitioners have filed their petitions pursuant to Sections 12
24 and 15 of the Rent Stabilization Ordinance. Petitioners do not seek downward adjustment of the
25 rent ceiling for their individual rent controlled units based on a challenge to the rent increase
26 granted pursuant to Section 11A.
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1 Rule 12E precludes petitioners from appealing any rent increases pursuant to Section 11A.
2 Section 11A is entitled "Annual General Adjustment of Rent Ceilings" and provides for a yearly
3 adjustment of the rent ceiling based upon one hundred percent (100%) of the percent change in
4 consumer price index designated "All Urban: or "Shelter: Rent Residential", whichever is lower for
5 the year period ending the month of April immediately preceding the rent adjustment date.
6

7 Petitioners do not challenge the annual general adjustment of their individual rent ceilings.
8 A challenge to the annual general adjustment would place into issue the percentage rental increase
9 allowed for any given year. Petitioners are not challenging the rental increases made pursuant to
10 Section 11A. Petitioners are challenging the establishment of base rent made pursuant to Section
11 10. This being the case, petitioners are not precluded by Section 12E in maintaining their claims.
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13 **B. WHERE IT CAN BE SHOWN THAT A PETITIONER'S INDIVIDUAL RENT**
14 **CONTROLLED UNIT IS SUBJECT TO THE COSTA-HAWKINS RENTAL**
15 **HOUSING ACT, BASE RENT FOR THAT UNIT WILL BE SET PURSUANT**
16 **TO THAT ACT.**

17 With limited exceptions, Costa-Hawkins allows the landlord to establish the initial rental
18 rate for a dwelling or unit where there is a new tenancy. The landlord may set the initial rental rate
19 without regard to local regulation of rent. Costa-Hawkins was enacted to allow owners of
20 residential real property in rent control jurisdictions to establish initial rental rates when there was a
21 change in occupancy at a dwelling unit, a policy known as "vacancy decontrol." Civil Code §§
22 1954.50, *et seq.*

23 Prior to the enactment of the Costa-Hawkins Act, local rent control ordinances were
24 generally categorized as 'strict' or 'moderate.' 'Strict' or 'vacancy control' ordinances
25 continued control of the rent on a unit when it became vacant, prohibiting an increase when
26 a new tenant occupied the unit. 'Moderate' or 'vacancy decontrol' ordinances, such as the
27 San Francisco Rent Ordinance, permitted a landlord to raise the rent on a unit to market rate
28 when it became vacant and a new tenant moved in; once this new rent was determined the
rent was again controlled during this tenant's occupancy. (Citation omitted)

1 The Costa-Hawkins Act establishes vacancy decontrol for residential dwelling units where
2 the former tenant has voluntarily vacated, abandoned or been legally evicted. (Citations
3 omitted) Thus, '[n]otwithstanding any other provision of law, an owner of residential real
4 property may establish the initial rental rate for a dwelling or unit,' except in specified
5 situations. (Civ. Code § 1954.53, subd. (a).) Although the Costa-Hawkins Act does not
6 define 'initial rental rate,' the parties do not dispute that Civil Code section 1954.53,
7 subdivision (a) permits landlords to impose whatever rent they choose at the commencement
8 of a tenancy. *Cobb v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2002)
9 98 Cal.App.4th 345, 351.

10 Section 10 of the Rent Stabilization Ordinance controls the establishment of base rent for the
11 purpose of determining the rent ceiling to be applied to an individual controlled rental unit. In
12 pertinent part, Section 10 states:

13 "Base Rent: Upon approval of this Ordinance no landlord shall charge rent for any rental
14 unit covered by the terms of this Ordinance affecting rents, in any amount greater than the
15 lawful base rent as prescribed by the terms of this Ordinance. The base rent is the lawful
16 rent established as April 1, 1985 (sic). The base rent is a reference point from which the rent
17 ceiling shall be adjusted in accordance with Sections 11 and 12."

18 The Costa-Hawkins Rental Housing Act preempts local rent control by permitting landlords
19 to set the initial rent for vacant units. *Bullard v. San Francisco Residential Rent Stabilization Bd.*
20 (2003) 106 Cal.App.4th 488, 489.

21 That Costa-Hawkins preempts the Rent Stabilization Ordinance in setting the initial rent for
22 a vacant unit as the base rent for purposes of rent control is not disputed by the parties. The
23 preemption dispute relates to the extent of preemption.

24 Respondents argue that base rent will be determined under Costa-Hawkins only where there
25 has been an increase in rent for a new tenant which exceeds the existing certified rent ceiling for the
26 particular unit, and, where a landlord charges a rental amount less than the certified rent ceiling then
27 the base rent is not set at the initial rental rate of the new tenancy. In other words, if the initial rental
28 rate for the new tenancy is lower than the existing certified rent ceiling, Costa-Hawkins does not

1 apply.

2 Neither Costa-Hawkins nor the case law supports the respondents' position. As noted in
3 *Cobb, supra.* p. 4, Costa-Hawkins does not define "initial rental rate." Costa-Hawkins permits
4 landlords to impose whatever rent they choose at the commencement of a tenancy. The initial rental
5 rate can be whatever the market will bear. Costa-Hawkins does not contain any language that limits
6 its application to an initial rental rate that exceeds the existing certified rent ceiling. Therefore,
7 where it can be shown that a petitioner's individual rent controlled unit is subject to the Costa-
8 Hawkins Rental Housing Act, base rent for that unit will be set pursuant to that Act.

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11 Where a petitioner claims that his rent should be determined pursuant to Costa-Hawkins, the
12 petitioner, by a preponderance of the evidence, must show that (1) Costa-Hawkins applies to his
13 tenancy, (2) the initial rental rate for that tenancy, and (3) the date the tenancy commenced.

14 **C. PETITIONERS MAY CHALLENGE THE CERTIFICATES OF MAXIMUM**
15 **LEGAL RENT WHERE THERE IS A SHOWING OF FRAUD OR**
16 **MISREPRESENTATION.**

17 **1. PETRIS ACT CERTIFICATES OF MAXIMUM LEGAL RENT ARE**
18 **NOT BINDING AND CONCLUSIVE WHERE THERE IS FRAUD OR**
19 **INTENTIONAL MISREPRESENTATION.**

20 The Petris Act by its terms applies only to certificates of maximum legal rent where such
21 certificates are issued after a request by either the landlord or the tenant. Civil Code § 1947.8(c).

22 After the establishment and certification of permissible rent levels under subdivision (b), the
23 local agency shall, **upon the request of the landlord or the tenant**, provide the landlord
24 and the tenant with a certificate of the permissible rent levels of the rental unit. The
25 certificate shall be issued within five business days from the date of request by the landlord
26 or the tenant. **The permissible rent levels reflected in the certificate shall, in the absence**
27 **of intentional misrepresentation or fraud, be binding and conclusive upon the local**
28 **agency unless the determination of the permissible rent levels is being appealed.** The
landlord or the tenant may appeal the determination of the permissible rent levels reflected in
the certificate. Any appeal of a determination of permissible rent levels as reflected in the
certificate, other than an appeal made pursuant to subdivision (b), shall be filed with the

1 local agency within 15 days from issuance of the certificate. . . (Emphasis added) Civ. Code
2 § 1947.8(c)

3 Certificates of maximum legal rent issued pursuant to the Petris Act are binding and
4 conclusive in the absence of fraud or intentional misrepresentation.

5 Evidence presented shows or fraud and intentional misrepresentation on the part of
6 respondent and/or respondents' predecessors in interest.

7 Both Sections 1572 and 1710 of the Civil Code define "fraud" and "deceit" as follows:
8

9 1. The suggestion, as a fact, of that which is not true, by one who does not believe
10 it to be true;

11 2. The assertion, as a fact, of that which is not true, by one who has no reasonable
12 ground for believing it to be true;

13 3. The suppression of a fact, by one who is bound to disclose it, or who gives
14 information of other facts which are likely to mislead for want of communication of that
15 fact; or,
16

17 4. A promise, made without any intention of performing it.

18 Section 1572 adds "Any other act fitted to deceive."
19

20 The Rent Stabilization Ordinance requires that owners of property subject to the Ordinance
21 shall complete and submit a rent registration statement to the Board. Rent Stabilization Ordinance
22 §8, Rent Stabilization Program Rules & Regulations §801. The rent registration statement requires
23 the landlord to provide information regarding vacancy and re-rental, and the landlord is therefore
24 bound to disclose that fact. The landlord must file a vacancy registration form within 15 days of the
25 re-rental of the unit. The vacancy registration form requires the landlord to provide information
26 regarding the new tenancy, including the new monthly rent. Where there has been a new tenancy
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1 and the landlord has failed to disclose that fact as required by the Ordinance, the landlord has
2 committed a fraud.

3 The Rent Stabilization Board issued certificates of maximum legal rent violative of Costa-
4 Hawkins as a result of the failure of the respondent to disclose information it was required to report
5 under the Rent Stabilization Ordinance. This failure could constitute a fraud committed on the
6 Board.
7

8 Misrepresentations of the legal rent under Costa-Hawkins were knowingly made to the
9 tenants by both the respondent and the Board. There is uncontroverted evidence that Jim Thompson
10 and Antoinette Pietras of the Rent Stabilization Board participated in the issuance of certificates of
11 maximum legal rent that stated maximum legal rent violative of Costa-Hawkins.
12

13 Petitioner, by a preponderance of the evidence, must show that respondent failed to disclose
14 information regarding that petitioner's new tenancy where respondent was required to do so under
15 the Rent Stabilization Ordinance.
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17 In the alternative, petitioner, by a preponderance of the evidence, must show that
18 respondents participated in the issuance of a certificate of maximum legal rent which does not
19 accurately reflect the maximum legal rent allowable under Costa-Hawkins.
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21 The time limit for challenging a certificate of maximum legal rent issued pursuant to the
22 Petris Act is 15 days. Civil Code § 1947.8(c). Under the doctrine of equitable estoppel, in
23 appropriate cases, a defendant may be equitably estopped to assert the statute of limitations as a
24 defense. Equitable estoppel may apply to statutes of limitations in administrative proceedings as
25 well as judicial actions. *Jordan v. City of Sacramento* (2007) 148 Cal.App.4th 1487, 1496.
26

27 To establish a basis for equitable estoppel a petitioner herein must prove that he was induced
28

1 by a misrepresentation of the respondent to refrain from using such means or taking such action as
2 lay in his power , by which he might have retrieved his position and saved himself from loss.
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4 *Lantzy v. Centex Homes* (2003) 31 Cal. 4th 363, 384. The statement or conduct must amount to a
5 misrepresentation of fact bearing on the necessity of bringing a timely suit. *Lantzy v. Centex Homes*,
6 *supra.*, 31 Cal. 4th at 384. Silence, when there is a duty to speak, as well as affirmative assertions,
7 may be the basis for an equitable estoppel. *Dettamanti v. Lompoc Union High School Dist. of Santa*
8 *Barbara County* (1956) 143 Cal.App.2d 715, 721.

9
10 The evidence is that there were certificates of maximum legal rent issued by the Board
11 which were the result of respondents' agent Jim Thompson's insistence that they state maximum
12 rent in violation of Costa-Hawkins. Since the duties of the Board include setting the rent ceilings
13 for all rental units and setting rents at fair and equitable levels in view of and in order to achieve the
14 purposes of the Rent Stabilization Ordinance, a tenant can reasonably rely on the Board to fulfill
15 these duties and that the certificate of maximum legal rent issued by the Board correctly states the
16 maximum rent allowed by law. Rent Stabilization Ordinance §6(D)(1) and (5). A tenant who has
17 thus relied, and, not appealed the Certificate of maximum legal rent within 15 days as required
18 under the Petris Act, can assert that the landlord is equitably estopped from asserting that 15 day
19 time limit.
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21
22 In those petitions where it can be shown that the respondent engaged or participated by
23 words or conduct in either fraud or intentional misrepresentation, the respondent will be equitably
24 estopped to assert the that 15 day time limit to appeal a certificate of maximum legal rent issued
25 pursuant to the Petris Act bars a petitioner from challenging a certificate of maximum legal rent
26 issued pursuant to the Petris Act.
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2 **2. THE PETRIS ACT DOES NOT APPLY TO CERTIFICATES OF**
3 **MAXIMUM LEGAL RENT WHICH ARE ISSUED BY THE RENT**
4 **STABILIZATION BOARD PURSUANT TO SECTION 8 OF THE**
5 **RENT STABILIZATION ORDINANCE.**

6 Section 8 of the Rent Stabilization Ordinance governs the issuance the of certificates of
7 maximum legal rent which are issued by the Board. In pertinent part, it states:

8 Within thirty (30) days of the filing of a complete annual statement and the paying of annual
9 fees, the Board shall provide a Certificate of Maximum Legal Rent for each rental unit
10 covered by this Ordinance. The certificate shall include the most recently adopted annual
11 general adjustment. The certificate shall be mailed to the landlord and tenant of each rental
12 until (sic), and may be challenged for up to ten (10) days after receipt, pursuant to Section
13 1947.7 of the California Civil Code; provided that the ten (10) day deadline does not apply
14 in the event of alleged fraud or misrepresentation on the par (sic) of the landlord filing the
15 annual statement.

16 These certificates of maximum legal rent are not issued pursuant to a request from either
17 landlord or the tenant. The Petris Act does not apply.

18 Under Section 8 certificates of maximum legal rent may be challenged for up to ten (10)
19 days after receipt pursuant to Section 1947.7 of the California Civil Code, the Petris Act. The ten
20 (10) day deadline of Section 8 does not apply in the event of alleged fraud or misrepresentation on
21 the part of the landlord filing the annual statement.

22 The evidentiary considerations relating to fraud and misrepresentation discussed above with
23 respect to those petitions to which the Petris Act may be applicable, apply with equal force to those
24 certificates of maximum legal rent that are issued pursuant to Section 8. It should be noted that the
25 misrepresentation excusing the ten (10) day deadline for challenging the certificate of maximum
26 legal rent issued pursuant to Section 8 does not require that the misrepresentation be intentional. It
27 should further be noted that the fraud or misrepresentation need only be alleged.

28 In those petitions where it can be shown that the respondent engaged or participated by

1 words or conduct in either fraud or misrepresentation, petitioners will not be precluded from
2 challenging those certificates of maximum legal rent issued pursuant to Section 8 of the Rent
3 Stabilization Ordinance.
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5 **IV. FURTHER PROCEEDINGS**

6 Further hearing will be set. The amount of time needed to hear the 136 petitions must be
7 determined. The parties are ordered to submit their respective time estimate and the basis for such
8 time estimate.

9 DATED: April 21, 2009

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11 PETER C. LABRADOR
12 Hearing Examiner
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