

Gonzalez, P.J., Andrias, Catterson, Renwick, Manzanet-Daniels, JJ.

3095 In re Mercedes Casado, et al., Index 402267/08
 Petitioners-Respondents,

-against-

Marvin Markus, as Chair of the New
York City Rent Guidelines Board, et al.,
Respondents-Appellants.

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Rent Stabilization Association of NYC, Inc.,
Community Housing Improvement Program,
Inc., and The Council of the City of New York,
Amici Curiae.

Michael A. Cardozo, Corporation Counsel, New York (Fay Ng of
counsel), for appellants.

Steven Banks, The Legal Aid Society, New York (Ellen Davidson of
counsel), for respondents.

Rosenberg & Estis, P.C., New York (Jeffrey Turkel of counsel),
for Rent Stabilization Association of NYC, Inc. and Community
Housing Improvement Program, Inc., Amici Curiae.

Elizabeth R. Fine, New York (Lauren G. Alexrod of counsel), for
The Council of the City of New York, Amicus Curiae.

Judgment, Supreme Court, New York County (Emily Jane
Goodman, J.), entered February 2, 2010, in an article 78
proceeding, vacating Rent Guidelines Board Orders Nos. 40 of 2008
and 41 of 2009 insofar as they provided for minimum dollar rent
increases for rent stabilized apartments renting for less than
\$1,000 that had not been subject to vacancy increases for the
preceding six years, unanimously affirmed, without costs.

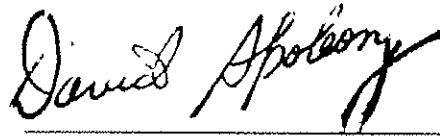
Under the Emergency Tenant Protection Act of 1974

(McKinney's Unconsolidated Laws of NY § 8621 et seq.), the Council of the City of New York is empowered to regulate the rents of housing accommodations subject to the New York City Rent Stabilization Law (Administrative Code of City of NY § 26-501 et seq.). The New York City Rent Guidelines Board was created pursuant to that statutory authority and, under Rent Stabilization Law § 26-510(b) (tracking ETPA § 8624(b)), is authorized to annually adjust the "maximum rate or rates of rent" for rent stabilized units. In so doing, the Rent Guidelines Board is necessarily subordinate to the City Council, which is vested by the State with the exclusive power to promulgate local rent regulations. Although the City Council has the power to establish classifications of housing accommodations, and, if deemed necessary, to thereby allow for differentiations of rental treatment, it has not done so. It does not follow, however, that the Rent Guidelines Board may, in effect, step into the breach, without express statutory authority or delegation by the City Council. By imposing minimum dollar rent adjustments based on tenant longevity and rental amount, the Rent Guidelines Board not only went beyond its authority to set maximum rent rates, but also impermissibly created a new class of rental accommodation, a policy determination exclusively reserved to the City Council

(see EPTL 8623[a]; *Matter of New York State Tenants & Neighbors Coalition, Inc. v Nassau County Rent Guidelines Bd.*, 53 AD3d 550 [2d Dept 2008]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 22, 2010

A handwritten signature in black ink, reading "David Apolony". The signature is written in a cursive style with a long, sweeping tail on the "y".

CLERK