The Section 8 Program: Voluntary Participation Is a Thing of the Past

By Jeffrey R. Metz

In the past 18 months, the judiciary and the City Council have carved out protections for tenants qualifying for what is commonly known as the Section 8 Program.[1]

Complaints that these new protections require owners, large and small, to lose a significant amount of control over those to whom they rent, or have previously rented to on a non-Section 8 basis, and to face difficulties with the bureaucracies that administer the program on the local level have fallen on deaf ears. In getting to this state of affairs, the question thus arises: Have the judicial and legislative branches been guided by sound legal principles, or, more pragmatically, have they been guided by the notion that the societal burden of housing the less fortunate should be shifted to the property owner whom they believe can best bear the burden? Predictably, as with most issues, the answer rests with what side of the ideological fence you are on.

The Section 8 Program

Section 8 of the United States Housing Act of 1937 was enacted "[f]or the purpose of aiding low-income families [to] obtain decent and affordable housing."[2] Under the program, tenants make rental payments based upon their income and ability to pay;[3] any shortfall is covered by the Department of Housing and Urban Development ("HUD") in the form of "assistance payments."[4] To effectuate such payments, HUD enters into contribution contracts with local housing authorities (PHAs)[5] who, in turn, make the assistance payments to the owner.[6]

As the Court of Appeals explained:

> The Section 8 system (Tenant Based Assistance: Housing Choice Voucher Program) is a federal program that provides housing assistance to eligible low-income families by giving subsidies to landlords who rent apartments to them (see 42 USC §1 437f). Once NYCHA has issued a Section 8 voucher to an eligible family, and the family has found a landlord willing to accept it, the landlord and NYCHA must sign a Housing Assistance Payments (HAP) contract (see 24 CFR § 982.451). The HAP contract specifies the terms of the landlord's participation in the Section 8 program. Section 8 tenants make rental payments based on their ability to pay, and NYCHA issues subsidy payments to the landlords to cover the balance of the agreed rent.[7]

Thus, the Section 8 relationship is not merely a bilateral landlord-tenant relationship but rather a tripartite relation of (i) landlord-tenant/federal program, (ii) tenant-federal program, and (iii) landlord-federal program. The tenant and landlord enter into a lease agreement; the tenant and the agency administering the Section 8 program enter into a contract, and the landlord and the administering agency enter into a Housing Assistance Payments (HAP) Contract.[8]

The HAP contract consists of three parts.[9] As is relevant here, part B of the HAP contract specifically provides that it is a separate contract between the PHA and the owner.[10] It runs concurrently with the lease between the landlord and the tenant.[11] Significantly, it "terminates automatically if the lease is terminated by the owner or the tenant."[12] Underscoring that it is separate and distinct from the lease agreement between the owner and the tenant, the HAP contract provides:

> The family is not a party to or a third party beneficiary of Part B of the HAP Contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or PHA under Part B.[13]

Part C of the HAP contract contains a tenancy addendum that must be attached to the lease if any tenant participates in the program.[14] It sets forth the duties and obligations of the landlord and tenant with respect to the other provisions of the HAP contract.[15] It states that "[t]he tenant shall have the right to enforce the tenancy addendum against the owner."[16] It also provides that Federal Law is controlling:

> Conflict with Other Provisions of Lease
>
> a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
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> b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.[17]

Thus, "[t]he tenant and the owner may not make any changes in the tenancy addendum,"[18] and "[i]f there is any conflict between the tenancy addendum and any other provisions of

this lease, the language of the tenancy addendum shall control."[19] *Critically, there is no language in the HAP contract or the addendum that restricts an owner's right to opt out of the Section 8 program at the expiration of a term of a HAP contract*.

The Heretofore Voluntary Nature of the Section Program

The intent of the U.S. Congress in enacting the Section 8 program was to make landlord participation voluntary.[20] As one Court put it: "That 42 U.S.C. § 14237f does not mandate landlord participation in the Section 8 program is undisputed."[21] Another Court observed: "Since its inception, a hallmark of the Section 8 program has been its voluntary aspect . . . [where] . . . [n]o landlord is required to participate . . . or to take a Section 8 tenant."[22]

In that regard, 42 U.S.C. § 1437f(1)(A) states that "the selection of tenants shall be the function of the owner."[23] The implementing Code of Federal Regulations further provides at 24 CFR § 982.302(b) in pertinent part: "If the family finds a unit, and the owner is willing to lease the unit under the program, the family may request PHA approval of the tenancy."[24]

Similarly, 24 CFR § 982.452(b) provides that an owner is responsible for "(1) [p]erforming all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit."[25]

That Congress views the program as a voluntary one for owners is illustrated by its 1998 express repeal of two provisions it had enacted in 1987.[26] The first was known as the "take one, take all" provision.[27] As the name implies, if an owner chose to rent to one Section 8 tenant, he then had to accept all subsequent Section 8 applicants.[28] Thus, by removing the owner's choice to limit his participation in the program (after he had accepted the first Section 8 tenant), the "take one, take all" provision so conflicted with normal market practices that it was discouraging owners from accepting their first Section 8 tenant.[29]

The second provision was known as the "endless lease" provision.[30] It provided that at the end of a lease term, the landlord could not refuse to renew a Section 8 lease "except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State or local law, or for other good cause."[31]

This provision, in particular, had owners up in arms. As the Senate Report from the Committee on Banking Housing and Urban Affairs noted:

> The Committee bill recognizes that the lease conditions under the current section 8 programs have deterred private owners from participating in the programs because they require owners to treat assisted residents differently from unassisted residents. The Committee bill reforms the lease conditions to make the new voucher program operate as much like the unassisted market as possible.[32]
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> Some program requirements have constrained the ability of owners to make rational business decisions. . . . The Committee bill reforms section 8 to make the program operate like the unassisted market as much as possible. . . .[33]

The sole purpose and effect of the repeal, one Court instructed, "was to clarify the seminal issue of who will participate in the program itself—that is, to specify that a landlord may, at the end of the lease term, decide to forego the burdens and benefits of its Section 8 participation, just as a tenant may make a similar decision."[34]

Rosario v. Diagonal Realty, L.L.C.

In light of this background, can an owner in New York City opt out of the Section 8 program if a tenancy is subject to the Rent Stabilization Law?[35] In *Rosario v. Diagonal Realty, L.L.C.* ("*Rosario*"),[36] the Court of Appeals answered in the negative.

In that case, the tenant entered into possession on an ordinary rent-stabilized basis. Approximately twelve years into the long term (30 years) tenancy, the tenant obtained Section 8 benefits and the landlord agreed to participate in the program. The owner was also receiving what are commonly known as "J-51" benefits.[37] The J-51 law contains a broad anti-discriminatory provision prohibiting owners from declining to rent to a prospective tenant because of his or her receipt of Section 8 benefits. N.Y.C. Admin. Code § 11-243(k) states in pertinent part:

> No owner of a dwelling to which the benefits of this section shall be applied . . . shall directly or indirectly deny . . . the use of, participation in, or being eligible for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program . . . of any of the dwelling accommodations in such property. . . .[38]

In 2003, the landlord informed NYCHA that it was electing to opt out of the Section 8 program with respect to Rosario. Further, it refused to accept a subsidy payment and then sued Rosario for nonpayment of rent.

Rosario, and others, commenced a declaratory judgment action against certain owners for a declaration that the owners could not opt out of the Section 8 program.

Arguing before the Supreme Court, the tenants asserted that (i) the

Section 8 subsidy was a material term of a rent-stabilized lease, and that under the Rent Stabilization Code, they must be offered a renewal lease on the same terms and conditions as the prior lease which contained the Section 8 subsidy, and (ii) that because the landlords were receiving J-51 benefits, they were prohibited from engaging in discriminatory practices against the tenants and, therefore, were required to accept the subsidy.

The owners countered by arguing that the renewal provisions of the Rent Stabilization Law conflicted with and were pre-empted by the federal repeal of the endless lease provision. Moreover, they contended that the J-51 anti-discrimination provision applied solely to initial rentals, not to existing tenancies.

The Supreme Court found for the tenants, and the Appellate Division affirmed.[39] The Court of Appeals similarly affirmed, finding in the main that "a landlord's prior acceptance of a Section 8 subsidy is a term of a lease that must be continued on a renewed lease."[40] That Rosario was not a Section 8 beneficiary when she first signed her lease was, according to the Court, of no legal moment. The Court wrote:

> But 9 NYCRR 2522.5(g) (1) [New York City's Rent Stabilization Code] makes no mention of a tenant's initial lease. It requires that a renewal lease "be on the same terms and conditions as the expired lease"—not necessarily the original lease. "Expired lease" means the lease that will have just expired when the renewal lease is to become effective.[41]

The high court then went on to give decidedly short shrift to the owners' preemption argument, finding that there was no express or implied preemption of federal law and ruling: "We conclude that it was not the intent of Congress, when it created the so-called endless lease rule, to remove state and local law protections afforded to Section 8 recipients."[42]

To be sure, the Court of Appeals soundly rebuffed the owners' position, and the U.S. Supreme Court has declined to entertain the case.[43] The tenor of the Court's opinion appears to indicate that the bundle of property rights which accompanies ownership must give way to house the less fortunate, especially when considering that "assistance payments" will always make up a given shortfall.

Kosoglyadov v. 3130 Brighton Seventh, L.L.C.

If *Rosario* left open any question regarding the enforceability of the anti-discrimination provisions of the "J-51" law, it was put to rest in *Kosoglyadov v. 3130 Brighton Seventh, LLC* ("*Kosoglyadov*").[44] There, the tenants entered into possession without Section 8 benefits and became eligible for a voucher 13 years into the tenancy.[45] The owner had obtained J-51 benefits in the interim. When the tenants demanded that the landlord accept their Section 8 voucher, and the landlord declined, the tenants brought a suit alleging, *inter alia,* that the landlord's refusal to accept her Section 8 subsidy violated the anti-discrimination provisions of the J-51 law.[46]

In opposition to the tenants' motion for summary judgment, the owner indicated that the program was voluntary and that it chose not to volunteer because it would incur the following burdens (quoting from Appellant's brief)**:**

- doubling of the managing company's workload by having to prepare both tenants' renewal leases each term and having to prepare and file additional paperwork with NYCHA for the same event;
- in the event that a tenant fails to submit documents to NYCHA, having to wait for the tenant to correct this situation before NYCHA will tender the rent subsidy, which could take months;
- subjecting the Owner to substantial additional delay and paperwork when commencing nonpayment proceedings against tenants;
- having to keep separate accounting books for both the tenant and NYCHA;
- submitting to annual inspections by NYCHA and being forced to supply tenants with services and maintenance above and beyond state and local housing and building codes; and
- paying for the additional administrative fees, legal fees, and apartment maintenance costs associated with these additional burdens.[47]

Among several other arguments, the landlord also contended that transforming Section 8 from a voluntary to a mandatory program would act as serious disincentive to owners to participate in the J-51 program, the purpose of which is to provide incentives to upgrade premises, not to subject owners to the loss of control over whom they accept as tenants and the concomitant burdens of dealing with the PHA.[48]

Equally, if not more important, the owner argued that the anti-discriminatory provision of the J-51 law applied only to initial rentals, and since the tenants had already been living in their unit for 13 years, the owner never deprived the tenants of any dwelling accommodations.[49]

As in *Rosario*, the owner's complaints fell on deaf ears. Citing to *Rosario*, the Appellate Division found that:

> Despite the voluntary nature of the Section 8 program at the federal level, state and local law may

> properly provide additional protections for recipients of Section 8 rent subsidies even *if these protections could limit an owner's ability to refuse to participate in the otherwise voluntary program*.[50] (emphasis added)

Therefore, the Court found that the tenants "established, prima facie, that the defendants discriminated against them in violation of the anti-discrimination provision of the J-51 tax abatement law by refusing to accept the means of payment proffered by them solely because these means are obtained through a federal housing program."[51]

Both in *Rosario* and *Kosoglyadov*, the owners' concerns over the loss of control of their tenant populations and their disdain for another layer of bureaucracy found no traction whatsoever.[52] Hence, it appears clear that the judiciary has determined that owners are better equipped to, and should, therefore, bear the societal burden of dealing with housing for the less fortunate. This sentiment has now been expanded upon by the City Council, which has enacted a significant amendment to the New York City Human Rights Law that leaves owners with no control over Section 8 recipients, regardless of whether a tenant is stabilized or the owner receives J-51 benefits.[53]

N.Y.C. Admin. Code § 8-101, *et seq.*

In 2008, the City Council enacted Local Law 10, which amended the New York City Administrative Code § 8-101, *et seq*. (the "N.Y.C. Human Rights Law") to prohibit owners from rejecting or discriminating against present or potential tenants based upon any "lawful source of income," i.e., Section 8 vouchers.[54]

In so doing, the City Council overrode Mayor Bloomberg's veto of the bill. The Mayor's veto message forcefully stated in pertinent part:

> The City Council's effort to protect tenants from "source of income discrimination" while well-intentioned, would force private landlords to participate in a public program even at a cost to their bottom lines and has the potential to result in increased rents in our most affordable housing stock. Intro. 61-A fails to recognize that the onus should be on the government to make the program more attractive for private sector participation, not the other way around. Furthermore, Intro. 61-A fails to address the City's housing crisis; it is a solution in search of a problem.[55]

The Mayor further noted that Section 8 participation often results in business losses for owners:

> While we are seeing improvements to the Section 8 program, we must recognize that landlords participating in the program may incur costs for which they are not compensated. Even with the improvements that my administration is implementing, once a landlord agrees to a Section 8 voucher for a particular unit, the unit is taken off of the market while the necessary inspections and paperwork are completed. While HPD and NYCHA have made great efforts to reduce this time period, it is still an average of three months. Rent is not collected on the unit during this time. The City must respect a landlord's decision not to forsake multiple months of rent by participating in the Section 8 program. In addition, once in the program, housing units are subject to annual inspections and subsidy payments may be suspended until violations are rectified.[56]

The Mayor also reflected on the loss of control issue: "The Section 8 program should work for both tenants and landlords . . . Intro. 61-A prohibits private owners from making sound business decisions regarding the disposition of their own property and mandates them to enter into a contract with a government agency they would otherwise never had to engage."[57]

The Mayor concluded by stating that Intro. 61-A essentially "makes a voluntary government program involuntary. . . ."[58] But like the owners' arguments before the Courts, the Mayor's concerns regarding the costs and burdens to the landlords were overridden by the perceived benefits poor tenants would receive.[59]

Section I of Local Law 10 contains the City Council's legislative intent. It could not be any clearer:

> The Council hereby finds that some landlords refuse to offer available units because of the source of income tenants, including current tenants, plan to use to pay the rent. In particular, studies have shown that landlords discriminate against holders of section 8 vouchers because of prejudices they hold about voucher holders. This bill would make it illegal to discriminate on that basis.[60]

In a press release issued on the override, Council Speaker Quinn noted that the legislation "will not only increase access for people eligible for Section 8 vouchers to affordable housing, it will fully protect an individual's right to housing, regardless of their financial circumstances."[61] The press release also stated, almost as an afterthought, that:

> [Because] small landlords may have difficulty with the administrative burden that can come to the Section 8 program, the legislation exempts landlords who own five or fewer units. However, rent con-

> trolled tenants who reside in these small properties would come under the protection of the law. The law applies to all housing accommodations, regardless of number of units in each, of anyone who owns at lease one property of six or more units.[62]

Local Law 10 has had an immediate impact on the judiciary.

Rizzuti Issacs v. Hazel Towers, Co.

In *Rizzuti Issacs v. Hazel Towers, Co.* ("*Rizzuti*"),[63] the tenants commenced an action to compel the owner to accept their Section 8 vouchers. The owner was subject to J-51 benefits, and according to the Court, the "tenants rely on the provision of J-51, Administrative Code § 11-243, which prohibits landlord recipients of this subsidy to property owners from discriminating on the basis of Section 8."[64] The owner countered by arguing that the J-51 anti-discrimination provision "does not apply to tenants already in possession in contrast to incoming applicants."[65]

The Court never addressed this issue as it applied, apparently *sua sponte*, Local Law 10, and held that "the new protection [accorded by Local Law 10] expressly extends to tenants such as the plaintiffs herein, already in residence as well as incoming, potential tenants."[66]

Thus, by virtue of Local Law 10, a Section 8 recipient, regardless of whether he or she is rent regulated or not, and regardless of whether he or she is first applying for an apartment, or has previously occupied a unit as a non-Section 8 tenant, can dictate that the owner participate in, and not opt out of, the Section 8 program.[67]

Given this state of affairs, certain owners believe that the treatment accorded to Section 8 tenants is as unfair as it is a violation of federal law.

This is especially true in light of a recent decision of the Appellate Division, First Department, as well as one decided by the Supreme Court.

Mother Zion Tenant Association v. Donovan

Mother Zion Tenant Ass'n v. Donovan ("*Mother Zion*")[68] dealt with another aspect of the Section 8 program, which the Appellate Division explained in the following manner:

> In order to entice owners to develop Section 8 housing, in the 1960s Congress enacted legislation offering developers below-market interest rates and mortgage insurance for 40-year mortgages. However, owners had a right to prepay the federal mortgages and exit the Section 8 program after 20 years. Subsequent legislation required owners opting out of the Section 8 program to give one year's notice to the United States Department of Housing and Urban Development (HUD), the appropriate state and local agencies, and the affected tenants, and provided for "enhanced voucher assistance" for tenants and other incentives, including restructuring of mortgage debt and increased rents, to induce owners to remain in the Section 8 program or to enable tenants to remain in their apartments after an owner exits the program.[69]

Thus, the Court pointedly observed that "the federal Section 8 program is a voluntary one, based on incentives."[70]

The Court next explained that Local Law 79 (N.Y.C. Admin. Code § 26-801 *et seq*.), which the City Council passed over mayoral veto on August 2005, provides:

> *inter alia*, that owners of "assisted rental housing," including Section 8 and Mitchell Lama programs, must provide tenants and HPD with one year's notice of intent to withdraw from such an assisted housing program, and grants the tenants, through a tenant association or qualified entity approved by HPD, a right of first opportunity to purchase the building at an "appraised value" set by a three-member "advisory panel" or a right of first refusal to purchase at the price offered by a bona fide purchaser approved by HPD.[71]

Thus, the Local Law "forces an owner to choose between remaining in Section 8 [and] offering to sell the building at a rate determined by appraisers."[72]

The owner qualified and invoked the opt-out provision as of March 2007. The tenants formed an association and notified HPD and the owner that they sought to invoke the right of first refusal. Both HPD and the owner contended the Local Law 79 was preempted by federal and state laws. The tenants then brought an action to declare that the owner must follow Local Law 79.

The Supreme Court rejected the tenants' position, and the Appellate Division affirmed, finding that Local Law 79 "actually conflicts with the federal regime of an entirely voluntary program. . . ."[73] The Court further observed that "[L]ocal [L]aw 79 was enacted, in part, with the aim of nullifying the federal provision allowing for an owner's voluntary withdrawal."[74] And, for good measure, the Court found that "[p]etitioners' characterization of the Local Law affording 'additional protections' does not disguise that actual conflict with the federal laws."[75]

The Appellate Division cited to *Rosario* for the proposition that the repeal of the "endless lease" provision did not preempt application of state rent regulation laws requiring renewals on the same conditions[76] "because legislative and regulatory language expressly contemplated that state and local laws would continue such pro-

tections."[77] Yet, in the next breath, it went on to forcefully reject the notion that states have "an unfettered ability to impose restrictions greater than those imposed by federal law. . . ."[78]

Prior to *Mother Zion*, the Supreme Court decided *Real Estate Board of New York, Inc. v. City Council* ("*Real Estate Board*"),[79] which, in addressing Local Law 79, "reluctantly conclude[d] that to the extent that it applies to federal housing programs, Local Law 79 is preempted by federal housing law."[80]

Whether *Mother Zion* and *Real Estate Board* can be reconciled with *Rosario* and *Kosoglyadov,* and whether these more recent cases foreshadow a viable challenge to Local Law 10, remains to be seen.

The Ideological Divide

For low income tenants and their advocates, the recent judicial decisions and the amendments to the New York City Human Rights Law are welcome developments that allow for greater freedom in the renting of apartments in New York City.

But for certain owners, who reject the notion that they should be required to bear the societal burden or housing the less fortunate, this recent turn of events is highly disturbing. These owners believe that a tenant's impecuniousness should not wield a sword so mighty that they are forced to participate *in a voluntary program* against their wishes. Further, they believe that the judiciary and the City Council have no business dictating to whom they rent.

But, of course, as with most housing issues, the true state of events depends upon your point of view.

Endnotes

1. *See* 42 U.S.C. § 1437f (2009) (outlining the Low Income Housing Assistance Program, commonly known as Section 8).
2. *Mother Zion Tenant Ass'n v. Donovan*, 55 A.D.3d 333, 334, 865 N.Y.S.2d 64, 66 (1st Dep't 2008) (explaining that Section 8 "provides for rent subsidies to owners of multiple dwelling rental properties, either through vouchers issued to individual tenants or through project-based programs"); 42 U.S.C. § 1437f(a)(1) (2009).
3. *See Rosario v. Diagonal Realty*, L.L.C., 8 N.Y.3d 755, 761, 872 N.E.2d 860, 862, 840 N.Y.S.2d 748, 750 (2008).
4. *See* 42 U.S.C. § 1437f(a) (2009) ("For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of . . . [section 1437f].").
5. The public housing agencies (PHAs) that administer the program in New York City are: (i) the New York City Housing Authority ("NYCHA") (*see, e.g.*, *German v. Fed. Home Loan Mortgage Corp*., 885 F.Supp. 537, 573 (S.D.N.Y 1995); (ii) New York City Department of Housing Preservation & Development ("HPD") (*see, e.g., Manhattan Plaza Assoc., L.P. v. Dep't of Hous. Pres.*, 3 Misc.3d 717, 717-18, 779 N.Y.S.2d 740, 740-41 (N.Y. Sup. Ct. 2004); and (iii) the State Div. of Hous. & Cmty. Renewal ("DHCR") (*see, e.g., Rizzo v. N.Y. State Div. of Hous. and Cmty. Renewal*, 16 A.D.3d 72, 79-80, 789 N.Y.S.2d 139, 146 (1st Dep't 2005).
6. *See* U.S. Dep't of Hous. and Urban Dev., Form HUD–52641, Housing Assistance Payments Contract, 4 (2007), *available at* http://www.hud.gov/offices/adm/hudclips/forms/files/52641.pdf (stating that the PHA is responsible for making payments to the owner).
7. *Rosario*, at 760–61, 872 N.E.2d at 862, 840 N.Y.S.2d at 750 (citing 42 U.S.C. § 1437f; 24 C.F.R. § 982.451 (2009)).
8. *See Seminara Pelham, L.L.C. v. Formisano*, 5 Misc. 3d 695, 700-01, 782 N.Y.S.2d 898, 902 (New Rochelle City Ct. 2004) (stating that landlords accepting Section 8 were in a tripartite relationship of landlord-tenant/federal program).
9. *See* U.S. Dep't of Hous. and Urban Dev., s*upra* note 6 at i (asserting that the HAP has three parts: Contract Information, Body of Contract, and Tendency Addendum).
10. *See id.* at 3, Part B.1.c ("During the HAP contract term, the PHA will pay housing assistance payments to the owner in accordance with the HAP contract.").
11. *See id.*, Part B.4.a.
12. *Id.*, Part B.4.b.1.
13. *Id.* at 5, Part B.12.a.
14. *See* U.S. Dep't of Hous. & Urban Dev., Form HUD–52641–A, Tenancy Addendum (2007), *available at* http://www.hud.gov/offices/adm/hudclips/forms/files/52641–a.pdf.
15. *See id.* at 1–5 (setting forth such duties and obligations, such as the lease, the use of the contract unit, the rent to the owner, family payment to the owner, other fees and charges, maintenance, utilities, and other services, the termination of the tenancy by the owner, the lease in relation to the HAP contract, PHA termination of assistance, a family moves out, the security deposit, prohibition and discrimination, conflict with other provisions of the lease, changes in the lease or the rent, and notices).
16. *Id.* at 1, Part 2.b (describing the rights of the tenant in a lease).
17. *Id.* at 4, Part 14.b.
18. *Id*. Part 15.a.
19. *Id.* at 1, Part 2.b.
20. *See Salute v. Stratford Greens Garden Apts.*, 136 F.3d 293, 296, 300-01 (2d Cir. 1998) (honoring owners' refusal to rent to Section 8 certificate holders).
21. *Franklin Tower One, L.L.C. v. N.M.*, 725 A.D.2d 1104, 1113, 157 N.J. 602, 619 (1999) (noting that, even though landlord participation is voluntary, "the voluntary nature of the Section 8 program is not at the heart of the federal scheme.").
22. 30 *Eastchester, L.L.C. v. Healy*, No. SP–2002–77, 2002 WL 553709, at *3 (N.Y. City Ct. Mar. 28, 2002).
23. 42 U.S.C. § 1437f(c), (d) (2009).
24. 24 C.F.R. § 982.302(b) (1999).
25. 24 C.F.R. § 982.452(b) (2008).
26. *See Salute v. Stratford Greens Garden Apts*., 136 F.3d 293, 300 (2d Cir. 1998) (noting that the voluntariness was adopted when the two provisions were part of the statute, but holding that "[t]he repeal of the . . . provisions does not affect the voluntariness of the Section 8 program.").
27. *See id.* (indicating that "[t]he 'take one, take all' . . . provision[] [was] part of the statute when the voluntariness provision was adopted").
28. *See id.* at 295.
29. *Id.* at 297-98 (quoting *Salute v. Stratford Greens Garden Apts*., 918 F.Supp. 660, 664 (E.D.N.Y. 1996)) (observing that the "take one, take all" provision would create an incentive for landlords to evict tenants who later become indigent and eligible for Section 8, so that the landlord does not have to become a full–fledged participant).
30. *See id.* at 300.
31. *Id.* at 300 n.5.
32. S. Rep. No. 105–21, at 36 (1997).
33. *Id.*
34. *Seminara Pelham, L.L.C. v. Formisano*, 5 Misc. 3d 695, 698, 782 N.Y.S.2d 898, 901 (New Rochelle City Ct. 2004).
35. *See* New York, N.Y., Admin. Code Tit. 26, ch. 4, § 26–501 (2008) (defining how an emergency is found and then declared).
36. 8 N.Y.3d 755, 872 N.E.2d 860, 840 N.Y.S.2d 748 (2007), *cert. denied*, 128 S.Ct. 1069, 169 L. Ed. 2 808 (2008).
37. *See* New York, N.Y., Admin. Code Tit. 11, ch. 2, § 11–243 (2008) (reextending the exemption and tax abatament when

improvements are made to substandard dwellings).

38. NEW YORK, N.Y., ADMIN. CODE tit. 11, ch. 2, § 11-243(k) (2008) (explaining that denial cannot be "because of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status").

39. *See Rosario v. Diagonal Realty, L.L.C.*, 9 Misc. 3d 681, 699, 803 N.Y.S.2d 343, 357 (Sup. Ct., N.Y. County 2005), *aff'd*, 32 A.D.3d 739, 821 N.Y.S.2d 71 (1st Dep't 2006) (finding rent–stabilized tenants are entitled to an automatic renewal lease).

40. *Rosario v. Diagonal Realty*, 8 N.Y.3d 755, 761, 872 N.E.2d 860, 863, 840 N.Y.S.2d 751, 751 (2007), *cert. denied*, 128 S. Ct. 1069, 169 L. Ed. 2d 808 (2008).

41. *Id*. at 762, 872 N.E.2d at 863, 840 N.Y.S.2d at 751 (contrasting 9 N.Y.C.R.R. 2522.5(g)(1) to Diagonal's argument that this section of the Rent Stabilization Code does not apply as a result of when Rosario initially signed the lease, she did not have the status of "a Section 8 beneficiary").

42. *Id*. at 764, 872 N.E.2d at 865, 840 N.Y.S.2d at 753 (holding that Congress intended to terminate "state and local protections" that the Section 8 recipients were receiving prior to the termination of the endless lease rule).

43. *See Rosario*, 128 S.Ct. 1069, 169 L. Ed. 2d 808 (2008) (denying petition for writ of certiorari to the Court of Appeals of New York).

44. 54 A.D.3d 822, 863 N.Y.S.2d 777 (2d Dep't 2008).

45. See *Kosoglyadov v. 3130 Brighton Seventh*, 54 A.D.3d 822, 823, 863 N.Y.S.2d 777, 779 (2d Dep't 2008) (stating that the New York City Housing Authority issued the plaintiffs a voucher under Section 8 in 2006, when the plaintiffs had initially applied for such voucher in 1992).

46. *Id.* at 824, 863 N.Y.S.2d at 780.

47. Brief of Defendants–Appellants at 16–17, *Kosoglyadov v. 3130 Brighton Seventh*, L.L.C., 54 A.D.3d 822, 863 N.Y.S.2d 777, No. 2007-10431 (2d Dep't 2008).

48. *See id.* at 20–21 ("[t]he Order's compulsory proscriptions—forcing an owner of an *existing long–term rent stabilized tenancy* to also (13 years into the tenancy) accept a Section 8 voucher and enter into additional regulatory burdens via a HAP contract, simply because it receives J–51 tax benefits for building improvements—are contrary to the express language and intent of the Section 8 law and the judicial precedent.").

49. *See id.* at 4 (arguing that the tenants were not deprived of ability to remain in possession because tenants had resided in there for over thirteen years with no apparent economic hardship).

50. *Kosoglyadov*, at 824, 863 N.Y.S.2d at 779 (citing *Rosario v. Diagonal Realty, L.L.C.*, 8 N.Y.3d 755, 764 n.5, 872 N.E.2d 860, 865 n.5, 840 N.Y.S.2d 748, 753 n.5 (2007), *cert. denied*, 128 S. Ct. 1069, 169 L. Ed. 2 808 (2008); 24 C.F.R. § 982.53(d) (2008)).

51. *Kosoglyadov v. 3130 Brighton Seventh*, 54 A.D.3d 822,824, 863 N.Y.S.2d 777, 779 (2d Dep't 2008) (citing NEW YORK, N.Y., ADMIN. CODE tit. 11, ch. 2, § 11–243(k) (2008)); *Cosmopolitan Assoc., L.L.C. v. Fuentes*, 11 Misc. 3d 37, 38–39, 812 N.Y.S.2d 738, 740 (Sup. Ct. App. T. 2d Dep't 2006).

52. *See, e.g.*, *Rosario v. Diagonal Realty, L.L.C.*, 8 N.Y.3d 755, 761, 872 N.E.2d 860, 863, 840 N.Y.S.2d 751, 751 (2007) (holding that a tenancy cannot opt out of Section 8 if it is subject to rent stabilization laws); *Kosoglyadov*, at 824, 863 N.Y.S.2d at 779 (stating that although Section 8 is voluntary, state and local laws may delimit an owner's ability to refuse to participate).

53. *See* New York City Commission on Human Rights, *Chapter 1. Commission on Human Rights § 8–101*, http://www.nyc.gov/html/cchr/html/ch1.html#1 (creating a city agency which has general jurisdiction over matters of discrimination over housing and other real estate).

54. *See id.*

55. Letter from Mayor Bloomberg to Hector L. Diaz (Feb. 29, 2008) (on file with author) (criticizing the effort of the City Council "to protect tenants from 'source of income discrimination'").

56. *Id.* (recognizing the costs that landlords face when participating in the Section 8 program).

57. *Id.* (noting the business decisions that private owners would have to engage in when participating in the Section 8 program).

58. *Id.* (concluding that the Mayor believes that Intro. 61–A transforms a voluntary program into an involuntary one).

59. *Id.* (acknowledging that the concerns of the Mayor were ultimately disregarded).

60. N.Y.C. Commission on Human Rights, *To Amend the Administrative Code of the New York, in Relation to Prohibiting Landlords from Discriminating Against Tenants Based on Lawful Source of Income*, http://www.nyc.gov/html/cchr/html/ammend08.html.

61. Press Release, N.Y.C Council, Preserving Access to Affordable Housing (Mar. 26, 2008), *available at* http://council.nyc.gov/html/releases/024_032608_prestated_sec8override.shtml ("Members of the City Council will vote to override Mayor Bloomberg's veto of legislation to prohibit discrimination against prospective tenants based on lawful source of income.").

62. *Id*.

63. No. 406514/07, 2008 N.Y. Misc. LEXIS 2176 (Sup. Ct. N.Y. County Mar. 27, 2008).

64. *Rizzuti Issacs v. Hazel Towers Co.*, No. 406514/07, 2008 N.Y. Misc. LEXIS 2176, at *2–3 (Sup. Ct. N.Y. County Mar. 27, 2008) (arguing that the provisions of J-51 applies to tenants already in possession).

65. *Id.* at *3.

66. *Id.* at *5.

67. *See, e.g.*, *Rizzuti*, 2008 N.Y. Misc. LEXIS 2176 (granting the motion for summary judgment made by the plaintiffs for a declaration and an injunction).

68. 55 A.D.3d 333, 865 N.Y.S.2d 64 (1st Dep't 2008).

69. *Mother Zion Tenant Ass'n v. Donovan*, 55 A.D.3d 333, 334, 865 N.Y.S.2d 64, 65–66 (1st Dep't 2008) (citing 42 U.S.C. § 1437f(c)(8) (2009); 42 U.S.C. § 1437f(t) (2009); 12 USC § 1715l (2007); 12 U.S.C. § 1715z-1 (2000); 12 U.S.C. § 4106 (1992); *Forest Park II v. Hadley*, 336 F.3d 724 (8th Cir. 2003)).

70. *Mother Zion Tenant Ass'n*, at 334, 865 N.Y.S.2d at 66.

71. *Id*. at 334–35, 865 N.Y.S.2d at 66 (citing NEW YORK, N.Y., ADMIN. CODE tit. 26, ch. 9, §§ 26–801(f), (k), (n), (o) (2008), NEW YORK, N.Y., ADMIN. CODE tit. 26, ch. 9, § 26–802(a) (2008), NEW YORK, N.Y., ADMIN. CODE tit. 26, ch. 9, §§ 26–804(a)-(d) (2008); NEW YORK, N.Y., ADMIN. CODE tit. 26, ch. 9, §§ 26–805(a), (c), (e) (2008); NEW YORK, N.Y., ADMIN. CODE tit. 26, ch. 9, §§ 26–806(a), (b), (d) (2008)).

72. *Mother Zion, Tenant Ass'n*, at 335, 865 N.Y.S.2d at 66 (stating that Local Law 79 "does not specify whether the appraised value is to be based on the building's worth as assisted rental housing or unencumbered property that can be let at market rates or otherwise developed.").

73. *Id*. at 336, 865 N.Y.S.2d at 67 (citing *Forest Park II*, 336 F.3d at 731–34).

74. *Id*. (stating Local Law 79 "requires owners to either remain in Section 8 or sell their property to the tenants at a rate set by a panel of appraisers").

75. *Mother Zion Tenant Ass'n v. Donovan*, 55 A.D.3d 333, 336, 865 N.Y.S.2d 64, 67 (1st Dep't 2008) (examining the Petitioners' argument that the Local Law provides "additional protections").

76. *See id*.

77. *Mother Zion Tenant Ass'n*, at 336–37, 865 N.Y.S.2d at 67 (explaining the reasoning of the Court of Appeals in *Rosario*).

78. *Id*. at 337, 865 N.Y.S.2d at 68 (holding that the court would follow the reasoning from the Eighth Circuit in *Forest Park II*).

79. 16 Misc. 3d 530, 842 N.Y.S.2d 218 (Sup. Ct., N.Y. County 2007).

80. *Real Estate Bd. of N.Y. v. City Council of City of N.Y.*, 16 Misc. 3d 530, 541, 842 N.Y.S.2d 226 (Sup. Ct., N.Y. County 2007).

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