

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

JENNIFER ANN SEIDE and T. COWAN on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

-v-

25-21 31<sup>ST</sup> AVENUE OWNER, LLC

Defendant.

Index No.: 717276/2018

**NOTICE OF PROPOSED  
SETTLEMENT OF CLASS ACTION,  
SETTLEMENT HEARING AND  
RIGHT TO APPEAR, AND  
APPLICATION OF PLAINTIFFS'  
COUNSEL FOR AN AWARD OF  
FEES AND EXPENSES**

TO: ALL INDIVIDUALS AND ENTITIES WHO RENTED DEREGULATED APARTMENTS  
IN THE BUILDING LOCATED AT 25-21 31<sup>ST</sup> AVENUE (THE "BUILDING") AT ANY  
TIME PRIOR TO JUNE 30, 2016, AND WHO RESIDED IN THE BUILDING AFTER  
NOVEMBER 1, 2014

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF, AFTER  
REVIEWING THIS NOTICE, YOU HAVE QUESTION REGARDING THE NOTICE, THE  
AMOUNT TO WHICH YOU MAY BE ENTITLED, AND/OR THE AMOUNT OF YOUR  
RENT AFTER FINAL APPROVAL OF THE SETTLEMENT, YOU MAY CONTACT LEAD  
COUNSEL NEWMAN FERRARA AT 212-619-5400, OR VIA EMAIL AT  
RSACHAR@NFLLP.COM.**

THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF LITIGATION AND  
CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. YOUR RIGHTS  
WILL BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION. IF YOU TAKE  
NO ACTION AND THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL  
BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS OR  
ADEQUACY OF THE PROPOSED SETTLEMENT, OR FROM PURSUING ANY OF THE  
SETTLED CLAIMS.

**AFTER REVIEWING THIS NOTICE, YOU MAY FILE A CLAIM TO RECOVER ANY  
DAMAGES FOR PAST RENT OVERCHARGES THAT YOU MAY BE ENTITLED TO  
RECEIVE UNDER THE SETTLEMENT, BUT YOU MUST FOLLOW THE  
INSTRUCTIONS IN SECTION III BELOW AND IN THE ATTACHED CLAIM FORM.  
FAILURE TO FOLLOW THOSE INSTRUCTIONS WITHIN THE TIME FRAME**

## **REQUIRED COULD RESULT IN A WAIVER AND FORFEITURE OF YOUR DAMAGES AWARD.**

### **I. PURPOSE OF THIS NOTICE**

**THIS NOTICE IS GIVEN** pursuant to an Order (the “Preliminary Approval Order”) of the New York State Supreme Court, Queens County (the “Court”) entered in the above-captioned class action (the “Action”) brought on behalf of persons and entities who rented certain apartments (the “Units”) at the Building. The purpose of this Notice is to inform you of the proposed settlement of the Action (the “Settlement”), and of a hearing (the “Settlement Hearing”) to be held before the Honorable Pam Jackson Brown in Supreme Court of the State of New York, County of Queens, Part 19, 88-11 Sutphin Boulevard, Courtroom 44, Jamaica Queens, at 10 a.m. on August 21, 2023. The purpose of the Settlement Hearing is (i) to determine whether the proposed Settlement, as set forth in a Stipulation and Agreement of Settlement entered into by the parties to the Action and dated as of December 15, 2022 (the “Stipulation”), is fair, reasonable, adequate, in the best interests of the Class (defined below), is consistent with the New York Rent Stabilization Law (“RSL”) and Rent Stabilization Code (“RSC”), and should be approved by the Court; (ii) to determine whether a judgment should be entered in the Action pursuant to the proposed Settlement that will, among other things, dismiss the Complaint (defined below) with prejudice and release the Released Claims (defined below); (iii) to consider the application of Plaintiffs’ counsel for an award of attorneys’ fees and expenses; and (iv) to consider such other matters as the Court may deem appropriate.

The Court has determined that the Action shall be maintained as a class action under New York Civil Practice Law and Rules (“CPLR”) §§ 901, *et seq.*, consisting of all persons who were signatories of leases for units in the Building, who resided in an apartment in the Building prior to June 30, 2016 (the date the Building stopped receiving tax benefits pursuant to the J-51 Program), and November 1, 2014 (the statute of limitations cutoff).

This Notice describes the rights you may have under the Settlement and what steps you may take in relation to the Settlement.

If the Court approves the Settlement, the parties to the Action will ask the Court to enter an Order and Final Judgment (defined below) dismissing the Complaint with prejudice on the merits. You may review copies of the Stipulation, Preliminary Approval Order and other pertinent documents by visiting [www.nflp.com/252131stsettlement.com](http://www.nflp.com/252131stsettlement.com)

### **II. DESCRIPTION OF THE LITIGATION**

On November 9, 2016, Plaintiffs Jennifer Seide and Tausha Cowen (“Plaintiffs”) filed a putative class action complaint (“Complaint”) challenging the rent stabilization status of the apartments at the Buildings. According to the allegations in the Complaint, certain tenants did not receive rent-stabilized leases and were charged rents in excess of the legal rent in violation of the Rent Stabilization Code and Rent Stabilization Laws. The Complaint alleges that the Buildings received tax abatements and/or exemptions pursuant to the New York City J-51 tax abatement

program (the “J-51 Program”) under the New York Real Property Tax Law (“RPTL”). In 1993, the New York State Legislature enacted the Rent Regulation Reform Act, which permitted rent-stabilized apartments for which the legal rent was \$2,000 per month or more and were either vacant or occupied by tenants with a combined annual income of greater than \$250,000 per year to be removed from rent stabilization (the so-called “Luxury Deregulation Rule”). Certain Units in the Buildings were treated as deregulated pursuant to the Luxury Deregulation Rule. The Complaint alleges that this deregulation was improper because buildings receiving J-51 benefits were barred from luxury deregulation. The Complaint further alleges that tenants in buildings receiving J-51 benefits are entitled to a rider (the “J-51 Rider”) disclosing that the building is receiving J-51 benefits, and the date those benefits expire, and that, according to the J-51 Program’s rules, failure to provide the J-51 Rider entitled tenants to rent-stabilized leases for as long as they (or their successors) occupy their units. As remedies, the Plaintiffs sought: (a) monetary damages for the alleged overcharge of tenants in the Units (“Past Rent Claims”); and (b) a declaration that future rents were to be set at levels determined by the RSL and RSC (“Future Rent Claims”).

To avoid the costs, distractions and uncertainties of litigation, Plaintiffs and Defendant have agreed to the resolution of the Action pursuant to the terms and conditions set forth in the Stipulation, and summarized below, which shall be presented to the Court for final approval pursuant to CPLR 908 after this notice is delivered to members of the Class.

On the basis of information available to them, including publicly available information, documents produced in the litigation, and documentation made available by Defendants in connection with settlement discussions, Lead Counsel and Plaintiffs have determined that the Settlement described herein is fair, reasonable, adequate, consistent with the RSL and RSC, and in the best interests of the Plaintiffs and the Class.

EXCEPT WHERE EXPRESSLY STATED OTHERWISE, THE FOREGOING DESCRIPTION OF THE LITIGATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

### **III. SUMMARY OF THE SETTLEMENT TERMS**

#### ***PAST RENT CLAIMS***

All those who signed leases to rent Units during the period prior to the expiration of the J-51 Program (June 30, 2016), and occupied a unit in the Building on or after November 1, 2014, who has timely and properly filed a Claim Form (and do not opt out as described in Section V. below) is an “Eligible Class Member.” Each Eligible Class Member will receive a disbursement of cash from the Cash Settlement Account (defined below) in the amount of such Eligible Class Member’s Past Overcharge Amount(s) (the “Settlement Distributions”). Defendants will contribute \$1,100,000 into the Cash Settlement Account. If the total Past Overcharge Amount for all Eligible Class Members exceeds the available funds in the Cash Settlement Account (the “Net Cash Settlement Amount”), then the Past Overcharge Amount will be paid based on the pro

rata share that each Eligible Class Member's Past Overcharge Amount bears to the total Net Cash Settlement Amount.

The calculation of each Eligible Class Member's Past Overcharge Amount shall be calculated as follows:

**First**, a "Default Formula Rent" is established, which is the amount derived from the lowest of the formulas set out at RSC §2522.6(b)(3).

**Second**, if an Eligible Class Member between November 1, 2014 and the Preliminary Approval Date paid rent in excess of the Default Rent, the Eligible Class Member shall be entitled to a refund of the difference between the amount of Rent actually paid, and the Default Formula Rent, plus simple interest at the rate of nine (9) per centum per year, calculated from the first date of each month occurred (the "Past Overcharge Amount").

**Third**, the Past Overcharge Amount shall be reduced by any amount due and owing to the landlord ("Non-Payment Deductions") by the Eligible Class Member.

Past Overcharge Amounts and claims for Past Overcharge Amounts shall not be assignable or otherwise transferable by Eligible Class Members to any person or entity, other than Eligible Class Member's executor, administrator or trustee (for a trust that is in existence as of the Preliminary Approval Date or is a special needs trust) who may file or accept payment of that Class Member's claim.

If the Eligible Class Member for a particular lease term consists of two or more co-tenants, the Past Overcharge Amount will be divided equally amongst them. Settlement Distributions shall be made to only those co-tenants who timely submit a Claim Form. Any Non-Payment Deductions also shall be made equally and proportionally from each such co-tenant's Settlement Distribution, even if other co-tenants exist, but fail to submit a Claim Form (unless any other co-tenant opts out, in which case all the co-tenants shall be deemed to have opted out, including those co-tenants who timely submit a Claim Form). Any disputes among co-tenants concerning the allocation of any Settlement Distributions under this Settlement must be addressed and resolved amongst the co-tenants outside the scope of this Settlement, and the existence of any such actual or potential disputes shall not be a basis for objecting to the Settlement.

Any Non-Payment Deductions that will be deducted from any Past Overcharge Amount as discussed above shall be remitted to Landlord at the time Settlement Distributions are made. Any such payments to Landlord will reduce any amount owed by an Eligible Class Member, but such Eligible Class Member shall remain liable to Landlord for any balance remaining due after such payments. Any rent forgiven as part of legislation as part of any public health emergency legislation shall not be deducted as part of any Non-Payment Deductions. Any rent payment plan entered into by a tenant with Landlord prior to the Order and Final Judgment Date shall be accelerated and treated as a Non-Payment Deduction. If the amount owed under such payment plan exceeds the Past Overcharge Amount, then no Settlement Distribution shall be made and the remaining rental arrears shall be due and payable pursuant to the payment plan. If the Landlord claims a Non-Payment Deduction should be made to an Eligible Class Member's claim, such

Eligible Class Member shall have forty-five (45) days from the receipt of notice to submit an objection to the claimed Non-Payment Deduction and any supporting documentation or other materials (the “NPD Objections”). Plaintiffs and Defendant will confer on the resolution of all NPD Objections. All NPD Objections that cannot be resolved will be submitted to the Court for determination.

**TO RECEIVE ANY DAMAGES TO WHICH YOU MAY BE ENTITLED, YOU MUST FILE A CLAIM FOR SETTLEMENT DISTRIBUTIONS BY COMPLETING THE ATTACHED CLAIM FORM AND MAILING IT POSTMARKED ON OR BEFORE AUGUST 16, 2023 TO LEAD COUNSEL AT THE ADDRESS LISTED ON THE FORM.**

If a single Unit had multiple co-tenants at any given time, any subsequent dispute as to the entitlement to any Settlement Distributions under this Stipulation shall be solely between and among such co-tenants without recourse to Landlord and without any liability to any of the parties to this Stipulation. For identity verification purposes, all Claim Forms shall require Class Members to provide the month and year when their lease(s) commenced and terminated and the addresses of such Class Member's leased Unit(s). Class Members who do not timely file a Claim Form pursuant to these procedures shall be deemed to have waived and released their Past Rent Claims and Past Overcharge Amounts but shall nonetheless remain subject to the applicable releases discussed below unless he, she or it becomes an Opt-Out. Determinations as to whether a Claim Form has been timely and properly filed shall be made by the Claims Administrator.

Any claims for treble damages, any other punitive damages, fines or interest (other than 9% simple interest referenced above) are waived under the Settlement.

If you wish to opt out (defined below) of this damages portion of the settlement, you may do so by the procedures outlined below at Section V., “Your Right to Opt Out.” If you do so, you will not be entitled to any monetary payment under this Settlement, but you may retain the right to seek past damages in an independent action or proceeding. Please read Section V. carefully before opting out, as it sets forth additional risks those who opt out (“Opt-Outs”) may potentially face.

#### **IV. RELEASES**

The Stipulation provides that if the Settlement is approved by the Court, a judgment will be entered dismissing the Complaint with prejudice, and containing a broad release applicable to you, both individually and on behalf of all other members of the Class. All Class Members (other than Opt-Outs), whether or not they submit a Claim Form, will release all of the Defendants and certain related parties from all claims that were or could have been made in the Action, including without limitation, damages, penalties, punitive damages, treble damages, liabilities or other remedies relating to (a) residential rents at the Building, (b) the rent-regulated status of any Unit at the Buildings, and/or (c) any other claims arising under the RSL or RSC based on any act, event or alleged failure to act prior to the Order and Final Judgment Date, including but not limited to any claim that a tenant was entitled to any particular form of lease, notice, or that the Buildings had to be registered with any governmental agency (the “Released Claims”).

The full language of the releases is set forth in the Stipulation.

## V. YOUR RIGHT TO OPT OUT

You may choose to be excluded from the provisions of the settlement relating to the Past Rent Claims. If you choose to be excluded in this way (“opt out”) you will not receive any cash payment as a result of this Settlement, and you may seek damages by bringing an independent action or proceeding on your own behalf.

Each Class Member will be bound by all provisions of the Stipulation and the Settlement, whether favorable or unfavorable, unless such person mails, by first class mail, a written request for exclusion from the Class, postmarked no later than August 16, 2023 (the “Bar Date”), addressed to Lead counsel, which shall provide daily reports of such requests to each of the parties’ attorneys. **No Class Member may exclude himself, herself or itself from the Class after the Bar Date.**

In order to be valid, each request for exclusion must: (a) set forth the name and address of the Class Member requesting exclusion (the “Opt-Out”); (b) provide that such Class Member “requests exclusion from the Class in *Seide et ano v 25-21 31st Avenue Owner, LLC* (Index No. 717276/2018)”; (c) be signed by such Class Member; and (d) include the addresses of all of such Class Member’s leased Unit(s). **Requests for exclusion will not be accepted if they do not include the required information or if they are not made within the time stated above, unless they are otherwise accepted by the Court.** If one co-tenant of a Unit is an Opt-Out, all co-tenants of that Unit shall likewise be deemed to be Opt-Outs as to each lease term for which they were co-tenants.

The maximum rent for all Opt-Outs who are current tenants of the Buildings at the time they opt out shall be the Permitted Rent and may be increased thereafter in accordance with applicable law.

Opt-Outs will not receive any Settlement Distributions. In any subsequent proceeding, Opt-Outs may make any claim or argument as to Past Rent Claims belonging to such Opt-Outs and Defendants may raise any defenses available to them whether at law, equity or pursuant to the Order and Final Judgment.

## VI. REASONS FOR THE SETTLEMENT

Defendant asserts various defenses to this action, including that its conduct did not violate the rent regulations. Nevertheless, Defendant is entering into the Settlement solely because the proposed Settlement will eliminate the uncertainties, burden and expense of further litigation.

Plaintiffs and Lead Counsel believe that the Settlement is fair, reasonable, adequate and in the best interests of the Plaintiffs and the Class. Plaintiffs and Lead Counsel also took into consideration the strengths and weaknesses of the Class’ claims and defenses and determined

that the terms of the proposed Settlement are fair, reasonable and adequate, and in the best interest of the Class.

## **VII. CONDITIONS OF SETTLEMENT**

This Settlement is conditioned upon the fulfillment of a series of conditions which relate to, among other things, final court approval, dismissal of the Complaint with prejudice, and the occurrence of the Effective Date without any material change to the terms of the Stipulation (unless agreed to in writing by the parties). If any of the conditions do not come to pass, the Settlement shall be null and void, and no party shall be prejudiced by having signed the Stipulation.

## **VIII. FINAL ORDER AND JUDGMENT**

If the Settlement (including any modification thereto made with the consent of the parties) shall be approved by the Court following the Settlement Hearing as fair, reasonable, and adequate and in the best interests of the Class, an Order and Final Judgment shall be entered in substantially the same form attached as Exhibit C to the Stipulation. The approval of the Settlement by the Court shall be considered final for purposes of the Stipulation upon the first day following the last of the following occurrences (the "Effective Date"): (a) the last date to file an Appeal or seek permission to Appeal has expired with no Appeal having been taken or sought; or (b) if any Appeal is taken or sought, the date a remittitur or order is entered by a court: (i) affirming the Order and Final Judgment or denying or dismissing any Appeal from the Order and Final Judgment, and any Appeal is finally dismissed or the Order and Final Judgment is finally affirmed with no possibility of subsequent Appeal therefrom; (ii) reversing or modifying the Order and Final Judgment in any non-material respect and (1) the time for any further Appeal has expired without such Appeal having been taken or sought or (2) any further Appeal is finally denied or dismissed or the Order and Final Judgment is finally affirmed with no possibility of subsequent Appeal therefrom; and (iii) reversing or modifying the Order and Final Judgment in a material respect provided Plaintiffs and Defendant agree in writing to remain bound to the Settlement as reversed or modified and (1) the time for any further Appeal has expired without such Appeal having been taken or sought or (2) any further Appeal is finally dismissed or the Order and Final Judgment is finally affirmed with no possibility of subsequent Appeal therefrom. For purposes of this definition, a reversal or modification shall be deemed "material" if it materially affects any term of this Stipulation.

## **IX. PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES, AND OTHER PAYMENTS**

Lead Counsel may apply to the Court, unopposed by Defendant, for a fee award of up to 33.33% of the Settlement Amount, plus out of pocket expenses (the "Attorney's Fees and Expenses Award"), to be paid from the Settlement Amount, as well as for a Class Representative Incentive Award in the amount of up to \$7,500.00.

## **X. STAY OF PROCEEDINGS**

Pending final determination of whether the Settlement should be approved, you are barred and enjoined from commencing, prosecuting, instigating or in any way participating in the commencement or prosecution of any action asserting any claims asserted in this Action, either directly, representatively, derivatively, or in any other capacity, against Defendant or any of the parties released as set forth in Section IV.

#### **XI. SUCCESSORS AND ASSIGNS**

The Stipulation and all its terms will be binding on you and any agent, heir, affiliate, successor, executor, affiliate, and assign of yours, as well as any agent, executor, heir, affiliate, successor and assign of any Defendant.

#### **XII. CHOICE OF LAW**

The parties have agreed that the Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to New York's conflict of law rules, as said laws exist on the execution of the Stipulation.

#### **XIII. SETTLEMENT HEARING AND RIGHT TO APPEAR**

You have the right to appear in person or through an attorney in Court at the Settlement Hearing and object to the proposed Settlement, or to otherwise be heard at the Settlement Hearing. You may present any evidence or argument that may be proper and relevant. However, to do so, you must, by no later than August 16, 2023 file with the Clerk of Court and serve notice of your intent to appear by hand or by first class mail, postage prepaid, upon counsel for the parties, as specified below:

Roger A. Sachar Jr., Esq.  
**NEWMAN FERRARA LLP**  
1250 Broadway, 27<sup>th</sup> Floor  
New York, NY 10001  
rsachar@nflp.com

*Attorneys for Plaintiffs*

Carolyn Z. Rualo, Esq.  
**ADAM LEITMAN BAILEY, P.C.**  
One Battery Park Plaza, 18<sup>th</sup> Floor  
New York, New York 10004  
crualo@alblawfirm.com

*Attorneys for Defendant*

Such notice shall contain: (a) a written notice of intention to appear containing a notarized statement attesting to the fact that such person is a member of the Class, and setting forth the Unit(s) in the Building in which the member resides or resided and the dates of said residence; (b) a detailed statement of such person's specific position with respect to the matters to be considered at the Settlement Hearing and the grounds therefore; and (c) copies of any papers such person intends the Court to consider.

Any member of the Class who fails to object in the above-prescribed manner shall be deemed to have waived his, her or its objection and shall be barred from raising such objection in this or any other action or proceeding.

Any Class Member who files and serves such a notice will be subject to discovery procedures by the parties' counsel to enable counsel to explore the objector's standing to object and the basis for the objection, as well as other relevant matters. Such discovery procedures may include without limitation taking your testimony under oath, demanding your answers to interrogatories or other written questions, and compelling production of documents and other relevant materials by you. All such discovery will be conducted and completed before the Settlement Hearing. By filing and serving such a notice, you will be deemed to have consented to conducting all such discovery on an expedited basis on three (3) days' written notice served upon you or your counsel, should you hire counsel.

Members of the Settlement Class who have no objection to the proposed Settlement do not need to appear at the Settlement Hearing or take any other action. If the Settlement is not approved, the case will continue and the Stipulation and the proposed Settlement shall become null and void and of no further force or effect.

#### **XIV. DISMISSAL OF THE ACTION**

If the Court approves the proposed Settlement, the Court will enter a judgment:

- 1) approving the proposed Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and directing consummation of the proposed Settlement, in accordance with the terms and conditions of the Stipulation;
- 2) dismissing the Action with prejudice on the merits, without costs except as provided in the Stipulation;
- 3) permanently barring and enjoining any and all Class Members from instituting, commencing, prosecuting, participating in or continuing any action or other proceeding in any court or tribunal of this or any other jurisdiction, either directly, representatively, derivatively or in any other capacity, asserting any claims that arise out of, or in any way relate to, the Released Claims;
- 4) awarding Lead Counsel such fees and expenses as the Court deems appropriate, as well as awarding the Class Representative Incentive Award; and
- 5) reserving jurisdiction over all matters related to the consummation of the proposed Settlement.

The Court has the right to approve the proposed Settlement with modifications and without further notice to members of the Class. The Court may also adjourn the Settlement Hearing or any previous adjournment thereof without further notice other than to counsel for the parties.

#### **XV. SCOPE OF THIS NOTICE**

The foregoing description of the Action, the Settlement Hearing, the terms of the proposed Settlement and other matters described herein does not purport to be comprehensive. The references in this Notice to the pleadings in the Action, the Stipulation and other papers and proceedings are only summaries and do not purport to be comprehensive. For the full details of the Action, the claims that have been asserted by the parties and the terms and conditions of the Settlement, including a complete copy of the Stipulation and related orders and proposed forms

of orders, members of the Class are referred to the Court files for the Action. You or your attorney may examine the public Court files during regular business hours of each business day at the offices of the Clerk, Supreme Court of the State of New York, County of Queens, 88-11 Sutphin Boulevard, Jamaica, New York 11435. The index number for the Action is 717276/2018.

#### **XVI. FURTHER INFORMATION**

**Any questions you have about the matters in this Notice should NOT be directed to the Court, but should instead be directed by telephone or in writing to Lead Counsel:**

Roger A. Sachar Jr.  
**NEWMAN FERRARA LLP**  
1250 Broadway, 27<sup>th</sup> Floor  
New York, NY 10001  
Tel: (212) 619-5400  
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