HOME *NOT* ALONE:
New York's War on Landlords

by Sam Kazman

The key to rent control's political appeal lies as much in its restrictions on eviction as in its capping of rents. Artificially low rents mean little to tenants unless they can keep their apartments. Without that ability, they would be forced to compete with countless other potential tenants for below-market rentals, losing much of what they had gained politically.

For this reason, rent control schemes almost invariably restrict evictions. However, there is usually an exception for "owner-occupancy" evictions, where the landlord seeks to personally occupy the premises. In a way, these owner-occupancy provisions are a strange bit of nostalgia. Having eviscerated property rights, the state now turns around and tips its hat to their memory — it may not allow a building owner to do very much with his property, but at least it will let him live in it.

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Nearly a decade ago, however, New York State decided that even this was going too far. It amended New York City's rent control law to prohibit owner-occupancy evictions of tenants who were elderly or disabled, or who had resided in their buildings for more than twenty years. The law took effect immediately upon passage. People who had purchased rent controlled buildings expecting to eventually reside in them found their plans smashed overnight.

Two of the people caught in this law's web of dashed expectations were Jerry and Ellen Ziman, whom were represented by CEI before New York's high court. After a seven year legal battle they finally succeeding in evicting their tenants. Their victory came not on any constitutional ground, but on an "economic hardship" technicality involving their low rate of return. CEI is now representing them in a second suit, arguing that the lengthy delay they endured before they could fully occupy their building amounted to a taking of property for which compensation is constitutionally required.

The Zimans were far from the only building owners affected in this manner. In November, 1983, Joan Dawson, a schoolteacher, bought a small Harlem brownstone as a home for herself and her two grown children, Paul and Tandra Dawson. They moved into the house and have lived there ever since, together with Tandra's daughter and two foster children for whom Joan Dawson currently cares.

When Joan Dawson purchased her house it contained two occupied rent-controlled units, whose tenants Ms. Dawson intended to eventually evict so that she and her family could have exclusive use of the house. Seven months later, however, her dream of single-family home was destroyed by the new law. Because her tenants had lived in the building for more than twenty years, they could no longer be evicted on owner-occupancy grounds.

In 1990, Joan Dawson and her two children filed suit in New York State Supreme Court, challenging the law as an uncompensated taking of their property. Because the Dawsons could not take advantage of the economic hardship provision utilized by the Zimans, their case was a straight constitutional challenge to the 20-year provision.

The Dawsons lost. The court ruled that there was an essential difference between the Dawsons' situation and the major cases invalidating housing regulations on takings grounds — specifically, the Supreme Court's 1982 *Loretto* case (which ruled that mandatory television cable installations in privately owned buildings constituted a taking) and New York's 1989 *Seawall* case (which overturned a single-room-occupancy conversion law). According to the court, these cases established that the state cannot impose a new tenancy upon a landlord. However, they did not restrict the extent to which the state could regulate *existing* tenancies, and this is all that the Dawsons' predicament supposedly involves. Since the tenants were in the building when Joan Dawson bought it, the argument goes, she has nothing to complain about.

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The Dawsons appealed, with CEI acting as co-counsel, and a hearing is now set for late January.

The state's argument is, needless to say, exceedingly curious. Joan Dawson bought a house with *evictable* tenants. Seven months later a new law turned them into *permanent* tenants. There is no real difference between this and the state imposing *new* tenants on a building owner. From the standpoint of government intrusion, there is no distinction between a landlord whose door is forced open by the state, and one who voluntarily opens his door to tenants only to be barred later from closing it. For landlords this is a serious issue, but for the state it's a game of one-way tag; if there's a tenant in your building then you're "it," forever.

The state also attacks Joan Dawson for thinking that the owner-occupancy eviction law would stay on the books. It claims that, given rent control's "highly regulated" nature and its "continuing trend toward tenant-protective measures," Joan Dawson "could not have imagined that the law would remain fixed." In short, under rent control there can be no legitimate expectations (at least not by landlords); instead, anything goes.

Rent control does many things. At the urban level, it is, as Swedish economist Assar Lindbeck put it, the most efficient technique known for destroying a city short of bombing. (This point is nicely driven home in *Rent Control: Myths and Realities*, a 1981 Fraser Institute book containing photos of urban devastation — you can't tell the bombing sites from the rent control sites.) At the social level, it has turned landlords and tenants into permanently warring parties, and it has made the apartment (who gets it? who keeps it?) the defining feature of thousands of lives and relationships. (See Tama Janowitz's *Slaves of New York* for a literary treatment of this phenomenon.) At the regulatory level, it has created an unparalleled labyrinth of bureaucratic snakes and ladders; if Kafka had built a theme park, this would have been it. And at the individual level, the level that really counts, it has had, in Professor Richard Epstein's words, "extraordinary impacts on ordinary people."

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New York City instituted rent control 50 years ago as a temporary solution to a temporary housing shortage. For a temporary fix, this is a pretty impressive resume. And if the Fifth Amendment puts a few dents in it, it will be an even more impressive coda.

Sam Kazman *is CEI's general counsel.*

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Editor's note: As of this writing, the Zimans' suit for damages under the Fifth Amendment takings clause is pending in New York trial court. As for the Dawsons, in April, 1994, the New York Appellate Division ruled against them. The court held that, given rent control's expanding nature, the Dawsons should have known better than to rely on existing law when they bought their house. This reasoning conveniently ignores the fact that the very purpose of the Fifth Amendment is to *restrain* such expansion; as Justice Oliver Wendell Holmes noted a half-century ago, the compensation requirement is intended to check "the natural tendency of human nature ... to extend [regulation] more and more until at last private property disappears." On appeal, New York's highest court dismissed the case, and the U.S. Supreme Court declined to review it. The Dawsons finally paid their tenants to leave; they may not have received justice, but at least they have their house.