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Nonpayment Proceedings: The So-Called Spiegel Defense—Part I

Gerald Lebovits

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Nonpayment Proceedings: The So-Called Spiegel Defense

by Gerald Lebovits, Esq.

Editors' Note: This article is presented in two parts. In Part I, below, the author examines the history and purpose of the Spiegel Law and the ongoing debate over who may invoke its benefits. Part II of the article, which will appear next month, examines the elements of the affirmative defense, and whether a nonpayment proceeding should be stayed weh the defense is raised.

Section 143-b of the Social Services Law (SSL)[1] offers a defense in a nonpayment proceeding. It does not apply to holdover proceedings.[2] That much is certain. Uncertain, however, are its contours, how it can be invoked, and who can invoke it. Everything important, in other words, is uncertain. Most of the cases and secondary authorities on SSL § 143-b, better know as the Spiegel Law, the Spiegel Act, or the Spiegel defense, say altogether different things about the defense. And they say different things without citing one another or quoting the statute itself, or quoting every word of the statute without analyzing it. So uncertain is the real meaning of the Spiegel defense that the West Group headnotes it the "so-called *Spiegel* Law."[3] That tells the reader something. "So called" does not mean that some people *(continued on page 2)*

Practice Update: Harlem Housing Court To Open May 21, 2001

On May 21st, the Harlem CommunityHousing Court will begin hearing landlord-tenant cases emanating from the Harlem neighborhoods covered by postal zip codes 10035 and 10037, according to Hon. Jonathan Lippman, Administrative Judge for the New York State Unified Court System.

All proceedings related to residential and commercial premises located within those areas must be filed in the Harlem Community Courthouse, which is located at 170 East 121st Street, New York, NY. The only exception is for proceedings brought by the District Attorney's Office under RPAPL § 711 and § 715, which will continue to be heard at 111 Centre Street.

Starting May 21, 2001, the Clerk's office will be open Monday through Friday, between the hours of 9 a..m. and 5 p.m. and may be reached at (212) 828-7558 or (212) 828-7416. ◆

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call it that, and do so correctly. It means that the term is wrong—and that those who use that term do so incorrectly.[4]

The Spiegel defense has become a so-called defense because the courts have forgotten the Spiegel Law's purpose and two seminal, controlling cases. In theory—and note the nonagentive passive voice here—the Spiegel defense may be used (who may use it?) in a nonpayment proceeding if a dangerous or hazardous condition exists in a building where a recipient on public assistance resides and if the welfare agency is told about the condition. In practice, that sentence, that definition, means nothing.

The Spiegel Debate

So much for theory and practice, because the debates about the Spiegel defense go to the heart of the Spiegel Law and call for immediate appellate clarification. May only the welfare agency, or tenants as well, benefit from the Spiegel defense? On April 6, 2001, in *Notre Dame Leasing L.L.C. v. Rosario*,[5] the Appellate Term, Second Department, Second and Eleventh Districts, become the first court in a reported opinion to hold that the Spiegel defense benefits only the welfare agency.

Assuming that the defense inures to tenants and the welfare agency, must a welfare agency be notified about the existence of violations as a condition precedent to raising the defense, and, if so, how can that happen? How can the defense be raised—on a summary-judgment motion, at a hearing, or during trial? Should a successful defense lead to a stay or dismissal? Is the Spiegel defense a complete defense, or may a landlord who repairs the violation return to court to seek back rent, limited only by laches, an MDL § 302-a six-month rent-impairing defense, constructive eviction, and an RPL § 235-b warranty-of-habitability defense? Which side has what burden of proof under the Spiegel Law? What constitutes a hazardous condition? To what extent must the Spiegel defense be raised to avoid a rent deposit under the 1997 Rent Reform Regulation Act exception in RPAPL § 745(2)(a)(iii)? It is hard to imagine an area of law so fraught with open questions.

This article collects the law and comes to conclusions. Both the respondent tenant and a welfare agency may raise the Spiegel defense. An affirmative defense, it applies if either a tenant or a code-enforcement agency notifies a welfare agency of an existing violation, regardless how the notification is made, and the courts must take judicial notice that the code-enforcement agency responsi-

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ble for collecting all violations in multiple dwellings is currently notifying the City's welfare agency of existing violations. A single hazardous violation anywhere in the building suffices, such as one class "B" violation under the Housing Maintenance Code ("HMC"). Courts should allow tenants to raise the Spiegel defense early, on summary judgment under CPLR 3212(b); courts should grant a Spiegel hearing if the litigants dispute the facts; and, if no Spiegel hearing is held, courts should allow tenants to raise the defense at trial.

The Spiegel defense, moreover, is a complete defense that, if wholly successful, leads to dismissal with prejudice. Thus, granting a stay or dismissing without prejudice is inappropriate, for the Spiegel Law prohibits a landlord from commencing or continuing a proceeding for old, unpaid rent, even if the landlord has corrected the violation after the case was stayed or dismissed. A tenant on public assistance may raise the Spiegel defense in a nonpayment proceeding on proof, presumptively valid but rebuttable, that an outstanding hazardous or immediately hazardous violation, not corrected within the time allotted under the HMC, exists anywhere in the building, and that serves to invoke the rent-deposit exception in RPAPL § 745(2)(a)(iii). Proof of the violation may be made under MDL § 328(c), which allows for the court to admit into evidence violations displayed on the court's computer and offers a rebuttable presumption that a violation exists. Alternatively, if a violation is not extant, a tenant may raise the defense, prospectively, only by notifying the code-enforcement authority, because a supposed prerequisite to raising the defense is that the code agency notify the welfare agency of the violation. A tenant may not raise the defense retroactively. A landlord may defend on the basis that the tenant was not on welfare for any portion of time that the defense would otherwise apply.

The landlord has strong counter-defenses under the Spiegel Law: It has the ultimate burden to prove that the violation does not exist, that the violation was corrected timely, that the tenant caused the violation, or, if the violation is in the tenant's apartment, that the tenant refused access to repair.

History and Purpose of the Spiegel Law

The Spiegel defense is named after Assembly Member, and later judge and surrogate, Samuel A. Spiegel, who sponsored the legislation. It went into effect on July 1, 1962,[6] together with the 1962 Receivership Law, now MDL § 309, and became part of the Social Welfare Law, since 1967 the Social Services Law. The Spiegel Law was promulgated well before the Housing Part opened its doors in 1973, and here lies part of the problem. The Legislature designed the Spiegel Law to provide a civil remedy to supplement a then-inadequate criminal sanction for code enforcement.[7] Although civil remedies changed with the 1972 adoption of Civil Court Act § 110, which established a Housing Part of the New York City Civil Court, the Spiegel Law was not amended to take that dramatic change into account.

New York City Mayor Robert F. Wagner advocated for the Spiegel Law. He proclaimed in March 1962 that the Spiegel Law "should help substantially to eliminate slums and to prevent use of taxpayer's money to support slums and slumlords."[8] Governor Nelson Rockefeller had high hopes too. The Spiegel Law, he explained in his signing memorandum, "will provide a useful new weapon in the fight against slum housing."[9] The preamble to the Spiegel Law hailed the Legislature's high-minded intent: The Spiegel Law is meant to curtail "evils and abuses . . . which have caused many . . . . welfare recipients . . . to suffer untold hardships, deprivation of services and deterioration of housing facilities because certain landlords have been exploiting such tenants by failing to make necessary repairs and by neglecting to afford necessary services in violation of the laws of the state."[10] It was in this way that the Spiegel defense was enacted "in the public interest."[11]

The Forgotten, Seminal, Controlling Cases: *Schaeffer & Farrel*

In the public interest came Judge Vincent Trimarco, a Spiegel Law scholar. He decided *In re Schaeffer v. Montes*,[12] the seminal Spiegel classic, a scant eighty-four days after the Spiegel defense took effect. Judge Trimarco upheld the Law's constitutionality, boldly writing in *Schaeffer* that "[t]he law-abiding landlord has nothing to fear of this newly-enacted legislation. It strikes at the heart—and pocket—of the recalcitrant, law-breaking landlord."[13]

Things are not always what they seem to be, and the way Judge Trimarco resolved *Schaeffer* was not as pro-tenant or anti-slumlord as it appears. Judge Trimarco never held that tenants may benefit from the Spiegel defense. That issue never came up. The tenant in *Schaeffer* was a mere side-show in the litigation. The tenant was represented amicus curiae by the Department of Welfare, now the Human Resources Administration ("HRA"), currently the State's Division of Social Services ("DSS")

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arm in New York City. It made good, economic sense for the Department of Welfare to represent the tenant. The tenant did not pay rent, even a part of the rent. Today, HRA/DSS pays a portion of the rent, often by direct-vendor checks, for those on social services. In the olden days, the state paid the entire rent for welfare recipients. If the tenant in *Schaeffer* lost, the Department of Welfare, not the tenant, would pay the rent, all the rent. It was, after all, the Department of Welfare in *Schaeffer*, not the tenant, that stopped paying rent because of the landlord's violations. Thus did Judge Trimarco Latinate the case "*In re*," or "In the Matter of," a title seen only in the Official Reports, not in the West unofficial reporter.

Judge Trimarco further found that the Spiegel defense, when successful, merely allows "the Welfare Department . . . . [to] temporarily withhold[] payments of rent until hazardous and dangerous conditions are removed."[14] He granted the tenant's motion—really Welfare's motion—to dismiss, "but without prejudice to the landlord instituting a new proceeding after he has complied with the law and cleared his building of all violations."[15] So much for striking fear in the hearts and pockets of slumlords. Temporary fear was *Schaeffer*'s final order of the day. Instilling temporary fear was not Judge Trimarco's fault. Sam Spiegel himself explained that the "sole purpose of this legislation" is "the temporary withholding of rent from the landlord, so as to give tenants a decent, clean apartment, free of hazardous conditions."[16]

It took five years for the Court of Appeals to review Judge Trimarco's handiwork.[17] In another "In the Matter of" case, *In re Farrel v. Drew*,[18] the Court of Appeals, citing *Schaeffer* approvingly, affirmed another Judge Trimarco dismissal. But the court dismissed the landlord's nonpayment petition with prejudice, which Judge Trimarco did not do in *Schaeffer*. That makes *Farrel*, not *Schaeffer*, the one case to read if you are reading only one.

The reason? The Spiegel Law was amended in 1965,[19] well after *Schaeffer* was decided, to abolish the previous rule under which, according to the Court of Appeals, "the landlord had a right to recover all the rent payments which had been withheld as soon as he corrected the building law violations"[20] By making the 1962 "temporary withholding of rent" a 1965 permanent withholding of rent, the Legislature wanted to add some fangs to a law that had a bite but small teeth. In light of that amendment, no purpose would be served for the Court of Appeals to dismiss without prejudice, to grant a stay, or to discontinue the proceedings until the landlord corrected the violation. Rather, the court dismissed with prejudice because, the court found, the Spiegel Law provides a "rent abatement for welfare tenants"[21] and because the Spiegel Law is "remedial legislation" that must be interpreted broadly to "correct[] the evil of substandard housing."[22]

In *Farrel*, Chief Judge Stanley Fuld found the Spiegel Law constitutional under the Equal Protection Clause. He wrote that the Legislature properly determined before it enacted the Spiegel Law that slumlords take advantage of welfare recipients, who cannot choose where to live, and that landlords who receive rent directly from public funds have less incentive to effect repairs than do landlords who receive rent directly from tenants.[23] The Court of Appeals therefore disagreed with the landlord's advocate, one Daniel Finkelstein, Esq.[24] Reciting the facts of a case is often a dullard's affair, but not so *Farrel*'s facts, which appear only in the two-judge dissent. The facts open a door to what was hardly an open-and-shut case. A Bronx landlord sued three tenants on welfare for not paying rent. A fourth tenant, not a welfare recipient, had a problem with his door. A City inspector testified at a Spiegel hearing. The inspector was called by the Department of Welfare, which represented the tenants, just as it did in *Schaeffer*. It seems, said the inspector, that he told the landlord about the door and the landlord repaired the door, a theoretical fire hazard, "'but still the door would bind slightly. In other words it would not close fully.' The inspector added: 'The tenant seemed happy, but I wouldn't accept it.'"[25] The dissent would not accept affirming the petition's dismissal. Wrote Judge Van Voorhis: "Because of the fact that this door will not completely close, the tenants of three other apartments in the building, because they are on relief, whose apartments contain no violations, are permitted to live there at the expense of the landlord without paying rent."[26] The landlord was still able to make ends meet, though. The nonwelfare tenant, the only one who had a problem with his door, still paid rent, although the landlord had no standing to argue in court that the Spiegel Law discriminates against nonwelfare tenants.

Did the welfare tenants benefit in *Farrel*? Well, their landlord was punished for not fixing their neighbor's door. But the tenants in *Farrel*, like those in the seminal *Schaeffer*, were only indirect beneficiaries of Sam Spiegel's largess. They never paid rent before their case began. If they won, the Department of Welfare would save money in arrears. If they lost, the Department of Welfare would pay their arrears.

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Who Won *Schaeffer & Farrel?*

So who really won *Farrel* and *Schaeffer*? We all did, rich and poor, good landlords and good tenants, and neighbors of welfare recipients alike. The public won by not being forced to support code violators. As Judge Trimarco wrote in *Schaeffer*, the Spiegel defense was "enacted to cure the cancer of subsidization of ruthless 'slumlords' through the taxpayer's purse."[27] And the poor won too. As the Chief Judge wrote in *Farrel*, a landlord may argue that the Spiegel Law is unwise,[28] but it is nonetheless constitutional for the Legislature "to select one class of landlords"—landlords who have a violation in a building where a welfare recipient resides—"and impose a special sanction against them."[29] And the nonwelfare tenant in *Farrel* benefitted because if a landlord will think twice in the future about not repairing a door perfectly, the landlord will think ten times before deciding not to repair truly dangerous conditions. A 100% abatement results from the Spiegel Law, not only a possible HP proceeding to correct.

What have we learned from *Farrel* and *Schaeffer*? In the end, not much, in part for the times have been a-changin', in part because the courts have not followed the Spiegel Law's statutory mandate or the Court of Appeals's directives in *Farrel*. It may fairly be said that *Farrel* opened a so-called door that recent events and cases have closed.

The pre-Housing Part Spiegel Law does not offer a perfect fit with current Housing Part law. HRA/DSS has not paid full rent subsidies to the poor for some time. No longer does HRA/DSS represent welfare tenants victimized even in egregious cases by health-hazardous conditions. Although some cases hold that a successful Spiegel defense requires that HRA/DSS be notified that health-hazardous conditions exist, it is, practically speaking, a cold day in heaven when a self-represented litigant knows enough to notify HRA/DSS, an even colder day when a self-represented litigant can prove that the current HRA/DSS was notified, and an outright frozen day when HRA/DSS will act on its own to stop rent subsidies by direct-vendor checks. Rare are Spiegel pretrial hearings of the kind *Farrel* and *Schaeffer* approved; current case law prefers to await trial—and then, if the tenant prevails, grant a mere stay. Courts are split on everything from whom the defense benefits, to when the defense may be raised, to whether it is a defense with or without prejudice.

Who Enjoys the Spiegel Defense?

Is a landlord entitled to the tenant's portion of the rent the tenant paid independently of HRA/DSS? May a tenant even invoke the Spiegel defense, or is the Spiegel defense available only to HRA/DSS? The answer is murky because when the Spiegel Law was drafted, HRA/DSS recipients paid no portion of their rent. Those who believe that tenants may not raise the Spiegel defense could argue that the Spiegel Law provides a framework for HRA/DSS to withhold rent on behalf of a tenant on public assistance if a landlord has a health-hazardous violation. They may further argue that the Spiegel Law is a mechanism for HRA/DSS, a third party that without the Spiegel Law would have no privity or standing to litigate, to withhold rent on behalf of a tenant who pays no rent so that the state need not spend money on code violators and so that tenants on public assistance may take advantage of warranty laws as do other tenants not on public assistance who withhold rent.

In that sense, those who believe that tenants may not invoke the Spiegel defense would argue that tenants are already protected by myriad other defenses—from HP proceedings to defenses that can abate rent for a landlord's breach of the warranty of habitability—and that only the welfare agency needs a special remedy. And for historical support they would point out that when the Spiegel Law was enacted, the welfare agency paid the welfare tenant's entire rent. Some Legislators may not have imagined that tenants would later try to assert the Spiegel defense to withhold their own rent.

These views received judicial recognition on April 6, 2001, in *Notre Dame Leasing L.L.C. v. Rosario*, decided by the Appellate Term, Second Department, Second and Eleventh Districts.[30] The *Notre Dame Leasing* court found that the Spiegel Law "does not authorize the tenants themselves to withhold their rent payments based on violations that may exist in the building." Accordingly, the court reversed Housing Part Judge Ulysses B. Leverett's decision staying the proceedings until the landlord "submits satisfactory proof to this court that conditions constituting pending 'B' violations that are dangerous, hazardous and detrimental to life and health have been corrected." In deciding as it did, the Appellate Term, in a two-page, double-spaced opinion that cited no case, uprooted law thought well-established for some thirty-five years, and caused in split in the departments. And it did so by a harsh reversal rather than by gently vacating the Housing Part's stay.

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Notre Dame Leasing is, respectfully, wrong as a matter of law. It cited SSL § 143-b(5)(a) for the proposition that the Spiegel defense "shall be a valid defense in any action or summary proceeding against a welfare recipient for non-payment of rent." But the court then found that because only a public-welfare official may determine whether a violation justifies withholding rent under SSL § 143-b(2), "it is only after the official has made such a determination and actually withheld rent payments that it can be said that the 'existing violations' are the 'basis for non-payment.'" That might be so were it not for SSL § 143-b(5)(b), which the court did not cite. While SSL § 143-b(5)(a) allows HRA/DSS to withhold rent, SSL § 143-b(5)(b) allows tenants to withhold rent. It provides that "[i]n any such action . . . the . . . landlord shall not be entitled to an order or judgment . . . providing for removal of the tenant, or to a money judgment against the tenant, on the basis of non-payment of rent for any period during which there was outstanding any violation of law relating to dangerous or hazardous conditions or conditions detrimental to life or health." SSL § 143-b(5)(b) prohibits tenants on public assistance from being evicted and for paying a money judgment if there is a hazardous violation, regardless who pays rent.

Additionally, the Legislature reconfirmed that the Spiegel defense benefits tenants, not merely the welfare agency, when it enacted the 1997 exemption to the rent-deposit law in RPAPL § 745(2)(a)(iii). As the First Department held in *Lang v. Pataki*, one reason the rent-deposit law is constitutional is that it incorporates the Spiegel defense: "the disadvantaged and most vulnerable tenants are largely exempt from operation of the statute by the exclusion for recipients of public assistance . . . and tenants receiving rent subsidies . . . ."[31] HRA/DSS need not deposit rent. Only tenants must do so, if a deposit is called for. Furthermore, a series of authoritative cases has long held that tenants themselves may withhold rent under the Spiegel defense and that if they are successful, the defense leads to a complete abatement. Indeed, every reported Spiegel Law case that has survived an appeal has assumed that tenants may assert the Spiegel defense. The cases quibble about nearly every important part of the defense, but—until *Notre Dame Leasing*—not about whether tenants may raise it regardless what HRA/DSS does. For example, the Court of Appeals in *Farrel*, dismissing nonpayment petitions against tenants for whom the welfare agency was paying rent, wrote that the Spiegel Law provides a "rent abatement for welfare tenants."[32] The Supreme Court, Westchester County, in *Williams* held in a CPLR Art. 78 proceeding that "it is quite clear from the explicit language of subds. 5(a) and (b) of Section 143-b that *petitioners [tenants] are granted a valuable defense* in an action or summary proceeding *against them* for nonpayment of rent by showing existing violations . . . ."[32] The Civil Court, New York County, held in *Dearie v. Keith* that "the Legislature . . . enacted [the Spiegel defense] for the protection of tenants' rights"[34] and in *NYCHA v. Medlin* that the Spiegel defense and other remedial legislation "have provided various remedies for tenants in regard to deteriorated and dangerous housing conditions."[35] *Notre Dame Leasing* has also caused a split in the departments. In the Appellate Term for the First Department, tenants, not simply HRA/DSS, may invoke the Spiegel defense. Consider but one case, *ACB Realty Corp. v. Gaines*,[36] from the First Department's Spiegel catalogue. In explaining why the court denied a Spiegel hearing in a case in which HRA/DSS continued to pay rent for a welfare tenant whose small East Village walk-up building had four class "C" violations and seventy-four class "B" violations, the Housing Part ruled that "[w]hat a Spiegel hearing may provide is that a petitioner be ordered to correct violations before it may receive monies from the Department of Social Services."[37] In other words, the court held that only HRA/DSS may invoke the Spiegel defense. The Appellate Term affirmed, but on different reasoning on the Spiegel issue. The court found that "Social Services Law § 143-b(5) . . . , if established, would have precluded entry of final judgment based upon nonpayment of rent."[38]

Those fond of *Notre Dame Leasing* should consider the Spiegel Law's history. As explained in *Kouletas Real Est. v. Collado*, the Legislature added § 143-b(5) in 1965 with its eyes wide open, intending to give tenants a right to dismissal with prejudice, following opposition from the real-estate industry, which "interpreted the amendment as granting the tenant the right to withhold rent."[39]

Notre Dame Leasing also expresses unfortunate policy. The current HRA/DSS will rarely intervene for tenants in Spiegel cases by withholding rent. This means that the Spiegel defense will die of starvation and from disuse. That will affect tenants on public assistance. They will not be able to force repairs under the standard warranty-of-habitability defense; landlords will have little incentive to repair when they get direct-vendor checks from HRA/DSS. That will affect the neighbors of those on public assistance. And that will affect the public, which will subsidize slumlords.

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How does RPAPL § 745(2)(a)(iii) affect the Spiegel Defense?

Some practitioners have argued that RPAPL § 745(2)(a), amended by L. 1997, ch. 116, § 36, has further codified the Spiegel Law. RPAPL § 745(2)(a) provides that if a respondent in a New York City summary proceeding makes a second request for an adjournment or if thirty days after the first appearance has passed, then on the petitioner's request the court shall require a tenant to deposit ongoing rent from the service of the petition. Under RPAPL § 745(2)(a)(iii), the Legislature created an exception by which a tenant who has properly interposed a defense under 143-b is excepted from depositing rent.

If a petitioner requests a rent deposit from tenants who have a Spiegel defense, should the judge automatically deny the request or hold a hearing to determine whether the defense can withstand summary judgment? And if the respondents are unable to meet their burden, would they be required to deposit rent because their Spiegel defense was not properly interposed? These are open questions. But the aim of the statute is to exempt tenants with valid Spiegel defenses from depositing rent.

***Gerald Lebovits** is a principal court attorney in Supreme Court, Criminal Term, New York County, and an adjunct professor since 1989 at New York Law School. Previously he was with The Legal Aid Society, Criminal Defense Division, in Manhattan. He graduated, most recently, from NYU Law School with an LL.M. (in Criminal Justice) in 1986.*

Endnotes:

1. The Spiegel Law provides as follows at SSL § 143-b:

> 2. Every public welfare official shall have power to and may withhold the payment of any such rent in any case where he has knowledge that there exists or there is outstanding any violation of law in respect to the building containing the housing accommodations occupied by the person entitled to such assistance which is dangerous, hazardous or detrimental to life or health. A report of each such violation shall be made to the appropriate public welfare department by the appropriate department or agency having jurisdiction over violations.
>
> 5. (a) It shall be a valid defense in any action or summary proceeding against a welfare recipient for non-payment of rent to show existing violations in the building wherein such welfare recipient resides which relate to conditions which are dangerous, hazardous or detrimental to life or health as the basis for non-payment.
>
> (b) In any such action or proceeding the plaintiff or landlord shall not be entitled to an order or judgment awarding him possession of the premises or providing for removal of the tenant, or to a money judgment against the tenant, on the basis of non-payment of rent for any period during which there was outstanding any violation of law relating to dangerous or hazardous conditions or conditions detrimental to life or health. For the purposes of this paragraph such violation of law shall be deemed to have been removed and no longer outstanding upon the date when the condition constituting a violation was actually corrected, such date to be determined by the court upon satisfactory proof submitted by the plaintiff or landlord.
>
> (c) The defenses provided herein in relation to an action or proceeding against a welfare recipient for non-payment of rent shall apply only with respect to violations reported to the appropriate public welfare department by the appropriate department or agency having jurisdiction over violations.
>
> 6. Nothing in this section shall prevent the public welfare department from making provision for payment of the rent which was withheld pursuant to this section upon proof satisfactory to it that the condition constituting a violation was actually corrected. Where rents were reduced by order of the appropriate rent commission, the public welfare department may make provision for payment of the reduced rent in conformity with such order.

2. The Spiegel defense does not apply to holdover proceedings. *Valentine v. Maybank*, 131 Misc. 2d 721, 722, 501 N.Y.S.2d 553, 554 (Dist. Ct., Suffolk Co., 1986).

3. *See, e.g.*, *2356 Grand Ass'n v. Moran*, 176 Misc 2d 787, 673 N.Y.S.2d 847 (Housing Pt., Bronx Co., 1998), in which the West Group used that phrase in its syllabus and in its headnote.

4. Gerald Lebovits, *Advanced Judicial Opinion Writing*, 315 (2001) (OCA) (presciently using phrase "so called Spiegel Law" to explain what "so called" means).

5. N.Y.L.J., Apr. 18, 2001, at 22, col. 1 (App. T., 2d Dep't, 2d & 11th J.D.).

6. Section 143-b, Social Welfare Law, Consol. Laws ch. 55, L. 1962, ch. 997, enacted Apr. 30, 1962, eff. July 1, 1962.

7. Judah Gribetz & Frank P. Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 Colum. L. Rev. 1254, 1275-81, 1282 n.132 (1966) (recommending that a housing court be established in New York City to remove cases from Criminal Court and have to a venue to handle dispossess cases and Spiegel Law defenses). This article, powerfully influential, was cited with approval in *In re Farrel v. Drew*, 19 N.Y.2d 486, 281 N.Y.S.2d 1 (1967).

8. Statement of Mar. 26, 1962 (quoted in *Schaeffer v. Montes*,

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37 Misc. 2d 722, 725, 233 N.Y.S.2d 444, 448-49 (Civ. Ct., Bx Co., 1962)).

9. Governor's Memorandum of May 1, 1962, McKinney's Session Laws 1962, at 3678 (quoted in *Schaeffer*, 37 Misc. 2d at 726, 233 N.Y.S.2d at 449).

10. L. 1962, ch. 997, § 1 (quoted in *Farrel*, 19 N.Y.2d at 490, 281 N.Y.S.2d at 4).

11. *Id.*

12. 37 Misc. 2d 722, 233 N.Y.S.2d 444 (Civ. Ct., Bx. Co., 1962).

13. *Id.* at 730, 233 N.Y.S.2d at 452.

14. *Id.*, 233 N.Y.S.2d at 452.

15. *Id.*, 233 N.Y.S.2d at 452.

16. Letter from Assembly Member Spiegel, Bill Jacket, L. 1962, ch. 997.

17. A few other opinions upheld the Spiegel law during that time. *See, e.g.*, *Milchman v. Rivera*, 39 Misc. 2d 347, 240 N.Y.S.2d 859 (Civ. Ct., Bx. Co., 1963), *appeal dismissed*, 13 N.Y.2d 1123, 247 N.Y.S2d 122 (1964); *Sterling 1373 Corp. v. Ramos*, N.Y.L.J., Jan. 23, 1963, at 18, col. 3 (Civ. Ct., Kings Co.); *Kuperberg v. Rivera*, N.Y.L.J., Jan. 14, 1963, at 17, col. 2 (Civ. Ct., N.Y. Co.). These cases, like *Schaeffer*, held that the Spiegel defense contemplates a dismissal without prejudice, but they, like *Schaeffer*, were decided before the Spiegel Law was amended in 1965.

18. 19 N.Y.2d 486, 281 N.Y.S.2d 1 (1967).

19. L. 1965, ch. 701, SSL § 143-b(5)(b), (6).

20. 19 N.Y.2d at 491 n.2, 281 N.Y.S.2d at 4 n.2.

21. *Id.* at 490, 491, 181 N.Y.S.2d at 3, 4.

22. *Id.* at 493-94, 181 N.Y.S.2d at 7.

23. *Id.* at 491-92, 181 N.Y.S.2d at 4-5.

24. Mr. Finkelstein is the Editor in Chief of the Landlord-Tenant Practice Reporter. According to Mr. Finkelstein, the problem with the door in *Farrel* was a defective spring that the landlord eventually replaced for fifty cents. Recall the fable about how for want of a nail the war was lost?

25. 19 N.Y.2d at 494, 181 N.Y.S.2d at 7 (Van Voorhis, J., dissenting).

26. *Id.* at 494-95, 181 N.Y.S.2d at 7-8 (Van Voorhis, J., dissenting).

27. 37 Misc. 2d at 725, 233 N.Y.S.2d at 447.

28. 19 N.Y.2d at 494, 281 N.Y.S.2d at 7.

29. *Id.* at 492, 281 N.Y.S.2d at 5.

30. N.Y.L.J., Apr. 18, 2001, at 22, col. 1 (App. T., 2d Dep't, 2d & 11th J.D.).

31. 271 A.D.2d 375, 377, 707 N.Y.S.2d 90, 92 (1st Dep't) (mem.), *appeal dismissed*, 95 N.Y.2d 886, 715 N.Y.S.2d 377 (2000).

32. *Id.* at 490, 491, 181 N.Y.S.2d at 3, 4.

33. *In re Williams v. Kurtis*, 64 Misc. 2d 954, 958, 317 N.Y.S.2d 106, 110 (Sup. Ct., Westchester Co., 1969) (emphasis in the original).

34. 68 Misc. 2d 110, 111, 326 N.Y.S.2d 823, 825 (Civ. Ct., N.Y. Co., 1971).

35. 57 Misc. 2d 145, 149, 291 N.Y.S.2d 672, 677 (Civ. Ct., N.Y. Co., 1968).

36. The author represented the tenant in that matter pro bono.

37. Index No. 71791, Mar. 23, 1999, at 2 (unpublished opinion) (Lau, J.).

38. *ACB Realty Corp. v. Gaines*, N.Y.L.J., May 9, 2000, at 26, col. 3 (App. T., 1st Dep't) (per curiam).

39. N.Y.L.J., Oct. 14, 1998, at 26, col. 6 (Civ. Ct., N.Y. Co.) (citing Commerce and Industry Association letter to Hon. Sol N. Corbin, Apr. 22, 1965).◆

LUXURY DECONTROL

Luxury Deregulation and DHCR: The Onus of Inaction

By Terry L. Hazen, Esq
and Michael D. Simons, Esq.

Since 1993, New York's "luxury decontrol" laws have permitted the deregulation of rent-controlled and rent-stabilized apartments once the lawful monthly rent for the unit reaches $2,000 and the annual household income of occupying tenants reaches a statutory threshold, now $175,000, in each of the two preceding calendar years. "Annual income" for this purpose is defined as the federal adjusted gross income as reported on the New York State Tax Return.

But what if the tenant failed to file a New York State tax return for the period in question? In such situations, DHCR has embraced a path of least resistance, routinely refusing to issue an order of decontrol or to require the tenant to adequately document household income by alternate means. The effect of this circuitous reasoning is patent and chilling: A tenant whose income may well exceed the income threshold is "rewarded" for withholding crucial income information with a continued rent stabi-