

SANTA MONICA RENT CONTROL BOARD – MEMO

TO: Board Commissioners

FROM: Legal Staff

BOARD MEETING: March 10, 2011

RE: Proposed Amended Regulation 8066 – Time of Decision for Excess Rent Complaints

INTRODUCTION

Staff is recommending that the Board adopt the attached proposed amended Regulation 8066, which provides for final action on excess rent complaints within 120 days of the filing of the complaint. The amendments to the regulation are based on a Court order that certain wording in the original Regulation 8066 did not reflect the intent of Charter Amendment section 1809(b). The original Regulation 8066 was adopted pursuant to a court order requiring the Board to adopt a regulation to comply with Charter Amendment section 1809(b), which states in relevant part:

The Board shall establish by rule and regulation a hearing procedure similar to that set forth in Section 1805(d).

- (1) The rules and regulations adopted by the Board shall provide for final Board action on any complaint for excess rent within one-hundred and twenty (120) days following the date of filing of the complaint.

The original Regulation 8066 adopted by the Board provides:

Pursuant to section 1809(b)(1), the Board will take final action on any complaint for excess rent within one-hundred and twenty (120) days following the date of filing of the complaint unless good cause is shown or the parties otherwise agree. This regulation is declarative of existing law and practice and does not impose any new requirements or rights, or limit any existing requirements or rights under the Rent Control Law.

The recommended changes to the regulation are the underlined words, as follows (with deleted word in brackets):

Pursuant to section 1809(b)(1), the Board shall [will] take final action on any complaint for excess rent within one-hundred and

twenty (120) days following the date of the initial filing of the complaint unless good cause is shown or the parties otherwise agree. This regulation is declarative of existing law and practice and does not impose any new requirements or rights, or limit any existing requirements or rights under the Rent Control Law.

This amendment to Regulation 8066 is necessary because at a recent status conference in the court action, the Court found that Charter Amendment section 1809(b)(1) requires that the regulation state that the Board “shall” take final action on complaints for excess rent within 120 days after the complaint is filed. The Court also found that the regulation must refer to the “initial” date of filing of a complaint to reflect the Court’s ruling that a complaint must be considered filed on the date it is first presented to staff, before the determination is made as to whether the complaint states a prima facie case for excess rent, for purposes of determining when the 120-day period for decision begins.

The proposed amendments to the regulation continue to reflect the Board’s current policy and practice. Although the Court may not interfere with the Board’s discretion, the Court may decide whether the regulation complies with the Court’s order to adopt a regulation that effectuates the intent of Charter Amendment section 1809(b). The court confirmed that the proposed changes accomplish this.

The Court also confirmed that substitution of the word “shall” for “will” does not change the Court’s ruling that the 120-day requirement is directory, not mandatory. That is, while the Board is obligated to render a final decision on excess rent cases within 120 days, the Board does not lose jurisdiction over a matter that is not decided within 120 days. The Court upheld all other aspects of Regulation 8066 as complying with the requirements of Section 1809(b), including the provision that extensions may be granted for good cause or if the parties agree to an extension. The Court also upheld the provision stating that Regulation 8066 is declarative of existing law and practice and does not impose any new requirements or rights, or limit any existing requirements or rights under the Rent Control Law.

Substitution of the word “shall” for “will” in Regulation 8066 effects no legal difference in the nature of the Board’s obligation to render a final decision on excess rent complaints within 120 days. The Rent Control Law provides no consequences to either party if an excess rent complaint is decided or otherwise disposed of after expiration of the 120-day period. Under settled case law, where a statute provides no consequences for exceeding the time limit, the courts have found such provisions to be directory rather than mandatory.¹ No purpose would

¹ *Edwards v. Steele* (1979) 25 Cal. 3d 406.

be served if tenants' rights to recover excess rent were cut off after 120 days where the law is designed to benefit tenants who have legitimate excess rent claims. If either party objects to a delay in the Board rendering a final decision on a complaint beyond 120 days, they may seek an order from the superior court mandating that the Board take final action.²

RECOMMENDATION

Staff recommends that the Board adopt the proposed regulation after the public hearing.

Attachments: Proposed Regulation 8066, as amended.
Judgment Granting Peremptory Writ
Peremptory Writ of Mandate

² Where the Rent Control Law intends that a deadline is mandatory, it is expressly stated. For example, section 1801(c)(7) requires that if an application for exemption is not acted on within 90 days it is deemed approved. Section 1809(b)(1) does not contain similar consequences.

1 Whereas, the Court has reviewed and received into evidence the record of the
2 administrative proceedings, received additional evidence, arguments having been presented, and
3 judicial notice of the matters submitted by the parties having been taken, and

4 Whereas, it appears to this Court that Petitioner has no other plan, speedy and adequate
5 remedy in the ordinary course of law,

6 IT IS ORDERED that:

7 1. The Court finds that the Petitioner is entitled to a writ of mandate under California
8 Code of Civil Procedure, section 1085 because the Respondent has a duty imposed by Santa
9 Monica City Charter Article XVIII, section 1809(b)(1) to adopt "rules and regulations" which "
10 . . shall provide for final Board action on any complaint for excess rent within one hundred and
11 twenty (120) days following the date of filing of the [excess rent] complaint." This Court finds
12 that Respondent has failed to adopt any rules or regulations implementing section 1809(b)(1),
13 which requires that the Board take final action within 120 days after an excess rent complaint is
14 filed. The Court finds that the 120-day provision in section 1809(b) should be interpreted as
15 directory, not mandatory under *Edwards v. Steele*, 25 Cal.3d 406. The Court finds that for
16 purposes of determining the 120-day period, the "date of filing" of an excess rent complaint shall
17 be the initial date that a complainant submits to Respondent a complaint for excess rent.

18 2. A writ of mandate shall issue from the court, commanding Respondent to adopt
19 rules and regulations in conformance with section 1809(b)(1) within 120 days of entry of
20 judgment, unless an extension of time is necessary for good cause only, but that nothing in this
21 judgment or in that writ shall limit or control in any way the discretion vested in Respondent.

22 3. The Court finds that the administrative decision in excess rent case M-750 is
23 affirmed with respect to the findings that Petitioner was not entitled to implement a vacancy rent
24 increase upon partial vacancy of the unit under Civil Code section 1954.53(d)(3) and Rent
25 Control Law 1804(b), and therefore Petitioner collected excess rent in violation of Rent Control
26 regulation 8020(a) from September 2007 through October 2008, and that under Rent Control
27 Board regulation 8024(c) Petitioner was not entitled to implement the September 2008 annual
28 general rent adjustment for the months of September 2008 and October 2008, under Rent Control

1 Board regulation 8020(i).

2 4. The Court finds that Respondent failed to proceed in the manner required by law
3 under Rent Control Board regulation 8024(c) with regard to the September 2007 annual general
4 rent adjustment, because Petitioner was entitled to implement the September 2007 annual general
5 rent adjustment. The Court finds that no findings of fact support the disallowance of surcharge
6 pass-throughs based on amounts in Petitioner's property tax bills as stated in her rent increase
7 notices for 2007 and 2008. The Court finds that the Board abused its discretion in awarding a
8 penalty for willful violation of the Rent Control Law. The Court finds that the Board abused its
9 discretion in making a total award in the amount of \$1456.56

10 5. Therefore, the Court ~~sets aside~~ ^{vacates} in part Administrative Decision M-750, and a writ
11 of mandate shall issue from the court, remanding it to Respondent for entry of a modified
12 damages award against Petitioner in the amount of \$561.58 plus interest in the amount of \$46.57,
13 for a total amount of \$608.15, and to allocate said excess rent award by dollar amount, with
14 specificity to each individual Tenant(s)/Real Party(ies) in Interest.

15 6. To the extent that Petitioner prevailed on the issuance of ^{Either or} both writs under CCP
16 §1085 and §1094.5, she shall recover costs in accordance with CCP §1032 and §1094.5(a).

17 7. ~~The Court makes no finding on attorney's fees.~~ Attorney's fees, if any, will be
18 determined only upon noticed motion.

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8. The Court retains jurisdiction of this matter to determine compliance with this Order.

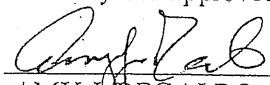
DATED: December 9, 2010

CRAIG D. KARLAN

Hon. Craig D. Karlan
Judge of the Superior Court

Submitted by and approved:

Approved: 

By: 
AMY J. REGALDO

By: _____
DAVID R. AKIN

MICHAELYN JONES
General Counsel
AMY J. REGALADO
Senior Litigation Attorney
SANTA MONICA RENT CONTROL BOARD
1685 Main Street, Room 202
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(310) 458-8781

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Tel. Number 310-264-0729

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ELAINE GOLDEN GEALER

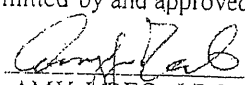
Attorneys for Defendant/Respondent
Santa Monica Rent Control Board

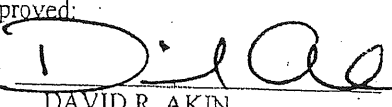
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DATED: December ____, 2010

Hon. Craig D. Karlan
Judge of the Superior Court

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Los Angeles Superior Court

DEC 13 2010

John A. Clarke, Executive Officer/Clerk

By , Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-WEST DISTRICT

ELAINE GOLDEN-GEALER, an Individual,)	CASE NO: SC104078
)	
Plaintiff/Petitioner)	Proposed PEREMPTORY WRIT
)	OF MANDATE
vs.)	[CCP §§ 1085 and 1094.5]
)	
SANTA MONICA RENT CONTROL BOARD,)	
an Agency of the City of Santa Monica,)	Dept. N
)	Judge: The Honorable Craig D.
Defendant/Respondent.)	Karlan
)	
NESTOR LESLIE MIRANDA, MAX)	
CUSIMANO, OLSHAN WICKRAMANAYAKE,)	
)	
Real Parties in Interest.)	
)	
)	
)	

To SANTA MONICA RENT CONTROL BOARD, Respondent:

Judgment having been entered in this action, ordering that a peremptory writ of mandamus be issued from the Court,

YOU ARE HEREBY COMMANDED immediately on receipt of this writ to set aside in part Administrative Decision M-750, in light of this Court's Judgment, and issue a modified damages award against Petitioner in the amount of \$561.58 plus interest in the amount of \$46.57, for a total amount of \$608.15, to allocate said award by dollar amount, with specificity to each

1 individual Tenant/Real Party in Interest, and to take any further action specifically enjoined
2 upon you by law by no later than the date of 1/28/11; but nothing in this writ shall
3 limit or control the discretion legally vested in you. Respondent shall provide this Court with a
4 copy of the revised administrative decision by no later than the date of 2/7/11, and;

5 YOU ARE FURTHER COMMANDED to perform your duty imposed by Santa Monica
6 City Charter Article XVIII, Section 1809 (b)(1) to adopt "rules and regulations" which "... shall
7 provide for final Board action on any complaint for excess rent within one hundred and twenty
8 (120) days following the date of filing of the [excess rent] complaint" within 120 days upon
9 receipt of this writ, unless an extension of time is necessary for good cause, and to take any
10 further action specially enjoined on you by law, in conformance with this Court's Judgment, but
11 nothing in this writ shall limit or control the discretion legally vested in you.

12 YOU ARE FURTHER COMMANDED, to make and file a return to this Writ on or
13 before the date of 4/21/11 setting forth what you have done to comply.

14 **LET THE FOREGOING WRIT ISSUE.**

15 Dated: December 13, 2010

16 John A. Clark, Clerk of the Court

17 By: [Signature], Deputy Clerk

18 Submitted by and approved:

Approved:

19 By: [Signature]
20 AMY J. REGALDO

By: _____
DAVID R. AKIN

21 MICHAELYN JONES
22 General Counsel
23 AMY J. REGALDO
24 Senior Litigation Attorney
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ELAINE GOLDEN GEALER

Attorneys for Defendant/Respondent
Santa Monica Rent Control Board

1 individual Tenant/Real Party in Interest, and to take any further action specifically enjoined
2 upon you by law by no later than the date of _____; but nothing in this writ shall
3 limit or control the discretion legally vested in you. Respondent shall provide this Court with a
4 copy of the revised administrative decision by no later than the date of _____, and:

5 YOU ARE FURTHER COMMANDED to perform your duty imposed by Santa Monica
6 City Charter Article XVIII, Section 1809 (b)(1) to adopt "rules and regulations" which "... shall
7 provide for final Board action on any complaint for excess rent within one hundred and twenty
8 (120) days following the date of filing of the [excess rent] complaint" within 120 days upon
9 receipt of this writ, unless an extension of time is necessary for good cause, and to take any
10 further action specially enjoined on you by law, in conformance with this Court's Judgment, but
11 nothing in this writ shall limit or control the discretion legally vested in you.

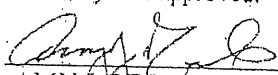
12 YOU ARE FURTHER COMMANDED, to make and file a return to this Writ on or
13 before the date of _____ setting forth what you have done to comply.

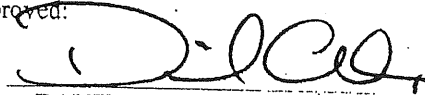
14 **LET THE FOREGOING WRIT ISSUE.**

15 Dated: December ____, 2010

_____, Clerk of the Court

By: _____, Deputy Clerk

18 Submitted by and approved:
19 By: 
20 AMY J. REGALADO

Approved: 
By: DAVID R. AKIN

21 MICHAELYN JONES
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8066. Time of Decision

Pursuant to section 1809(b)(1), the Board shall take final action on any complaint for excess rent within one-hundred and twenty (120) days following the date of the initial filing of the complaint unless good cause is shown or the parties otherwise agree. This regulation is declarative of existing law and practice and does not impose any new requirements or rights, or limit any existing requirements or rights under the Rent Control Law.