Rent Stabilization: New C.A.B. Rent Overcharge Procedures

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I. Introduction

In response to a rental housing emergency, New York City enacted the Rent Stabilization Law of 1969 (RSL). This legislation was intended primarily to (1) preserve rental housing stock by providing adequate rental income to owners, and (2) "prevent speculative, unwarranted and abnormal increases in rents." In 1974, New York State enacted the Emergency Tenant Protection Act (ETPA), which greatly expanded the number and types of apartments subject to rent stabilization. The New York City Council recently declared that a rental housing emergency continues to exist and extended rent stabili-
zation to 1985. Originally intended as a temporary measure, rent stabilization has thus expanded in scope and duration to become a broad and perhaps permanent feature of the New York City rental housing industry.

The rent stabilization program, however, increasingly is unable to fulfill its intended purposes. Rent increases designed to provide adequate rental income to owners have been overly generous to some owners and have yielded inadequate returns to others as the variety and number of apartments subject to rent stabilization has grown. Moreover, efforts to prevent large rent increases have been subverted by widespread illegal overcharging.

to the RSL. Id. See also note 102 infra for a discussion of the types of apartments subject to the RSL.

7. NEW YORK, N.Y. LOCAL LAW 18 (March 30, 1982). The ETPA defines a vacancy rate of five percent or less as grounds for declaring a housing emergency. N.Y. UNCONSOL. LAWS § 8623(A)(McKinney Supp. 1982-1983). The New York City rental housing vacancy rate was 2.13% in 1981. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, 1981 NEW YORK CITY HOUSING AND VACANCY SURVEY, excerpted in M. STEGMAN, THE DYNAMICS OF RENTAL HOUSING IN NEW YORK CITY 96 (1982). A rental housing vacancy survey must be conducted every two years to justify the continuance of emergency rent regulations. 1962 N.Y. LAWS ch. 21, § 1(3) [enabling legislation]. The Stegman compilation includes statistical information on the supply, location, condition and rents charged for available rental housing. It also examines the socio-economic characteristics, needs, and housing expense burdens of New York City renters.


9. 2 REPORT OF THE NEW YORK STATE TEMPORARY COMMISSION ON RENTAL HOUSING, supra note 3, at 5-51.

Instead of uniform services, uniform simple guidelines and a homogeneous housing stock of post-war buildings, the CAB has since mid-1974 been charged with administering a system with different base dates . . . , a multitude of special complex guidelines and a heterogeneous housing stock of both pre-war and post-war buildings. . . .

Id. (paraphrasing remarks of D. Prince, Chairman of the Conciliation and Appeals Board, at Hearings of the Temporary State Commission on Rental Housing, New York City, Jan. 23, 1979).

10. See notes 58-63 infra and accompanying text.

11. See note 102 infra.

Shortcomings in the present system are most evident in the area of rent overcharging. The Conciliation and Appeals Board (CAB) is a quasi-judicial body empowered by the RSL to resolve rent overcharge complaints. The Code of the Rent Stabilization Association (RSA), the administrative arm of the RSL, requires owners accused of overcharging to provide the CAB with rental histories necessary to calculate the maximum legal rent for the stabilized apartment in question. Owners often fail to provide these rent histories, especially when the information was not passed on to them when ownership of buildings changed. The failure of owners to maintain and furnish this information to the CAB has significantly impeded enforcement of the RSL and settlement of overcharge cases.

By September 1982, the Conciliation and Appeals Board had a backlog of 7000 rent overcharge cases. The average processing time per case had reached twenty months, most of which was spent collecting rent histories and other information needed to resolve a case. As early as 1979 the CAB characterized its administrative problems associated with rent overcharge cases as having reached "crisis proportions." Since then, overcharge cases have proliferated, and resolving them has become even more difficult.


17. N.Y. City Record, Aug. 30, 1982, at 2721, col. 2. The City Record is the official journal of the City of New York.

18. Id. The CAB stated that "it has become virtually impossible for the Board to fulfill its primary duty: enforcement of the regulated rent." Id.


21. Id.


23. The number of overcharge cases brought before the CAB increased from approximately 200 per month in 1979 to over 350 per month in 1982. Attorney
In response to the backlog of unresolved complaints, the CAB recently promulgated new procedures for determining the maximum legal rent when owners fail to provide sufficient rent histories to the Board. This Note will examine the CAB's new procedures in light of past enforcement policies and the CAB's powers under the Rent Stabilization Law. The Note concludes that although the procedures accomplish de facto what the CAB might not accomplish de jure, the CAB had the authority to issue the new procedures. The procedures, though imperfect, will be effective in reducing the backlog of overcharge cases. Enactment of proposed legislative changes in the RSL and continued use of the new procedures will enable the CAB to remedy its present enforcement problems and restore the integrity of the rent stabilization system.

II. New York City Rent Regulations

A. Pre-Rent Stabilization

Congress enacted the first comprehensive rent control law during World War II as part of an emergency price control program. The controls were intended to prevent unwarranted increases in prices and rents in the face of abnormal market conditions and scarcities caused by allocations of capital to the military. The Office of Price Administration was created and the Price Administrator was authorized to designate "defense-rental areas" where defense activities were infla-
ing rents, and to set maximum rents on premises within these centers. By limiting rent increases the controls facilitated the development of urban labor pools for the war effort. The controls, effective in New York in November 1943, froze rents at their March 1943 levels. Ultimately, most of the New York City housing controlled in 1943 would remain continuously controlled under various programs until 1971.

After the war the housing crisis in New York City and elsewhere was exacerbated by three factors: (1) workers who had migrated to the city defense centers during the war remained there; (2) housing construction was seriously curtailed during the war; and (3) returning veterans increased the demand for rental housing. In a dual effort to protect tenants and encourage residential construction nationwide, Congress passed the Federal Housing and Rent Act of 1947. This statute exempted from rent control apartments built after February 1, 1947, thereby allowing increased rental income to owners of new buildings. However, rents in existing buildings were frozen at the maximum rent in effect under the 1942 Emergency Price Control Act. The Housing and Rent Act of 1947 also eased eviction controls for all rental accommodations and decontrolled hotels and rooming houses. During the same year, New York City enacted its own laws controlling evictions more strictly and recontrolling the decontrolled premises.

As the economy normalized, the necessity for rent controls began to vary from community to community, and a federal system of rent controls became less defensible. In 1949 the Federal Housing and

32. M. Stegman, supra note 7, at 21.
34. Id.
35. See discussion of vacancy decontrol at notes 93-97 infra and accompanying text.
39. Id. § 204(b), 61 Stat. at 198.
40. Residential Rent Control in New York City, supra note 33, at 34.
41. Id.; New York, N.Y. Local Law 66 (Sept. 17, 1947) (evictions); New York, N.Y. Local Law 54 (July 16, 1947) (hotels, rooming houses). New York City commercial space was controlled from 1945 to 1963 under the Emergency Commercial Space Rent Control Law. 1945 N.Y. Laws ch. 3 (expired 1963). See Residential Rent Control in New York City, supra note 33, at 33 & n.42.
42. M. Stegman, supra note 7, at 22.
Rent Act was amended to allow state and local governments to assume the responsibility for maintaining rent controls. The New York State Legislature subsequently established the Temporary State Housing Rent Commission to oversee New York's rent control system.

Within New York State itself the need for rent controls also varied. In 1955 the state empowered New York City to impose its own rent control system, but the City declined to do so. However, state enabling legislation compelled the City to assume responsibility for its rent control system in 1962. The City enacted its own local rent control law, creating the Rent and Rehabilitation Administration to administer the program. Under the City law, post-1947 housing remained unregulated to stimulate production. However, demand continued to outpace supply. From 1965 to 1968 the New York City rental housing vacancy rate plummeted from 3.19% to 1.23%. Rents in the uncontrolled sector increased by as much as sixty percent over prior lease amounts.

44. Emergency Housing Rent Control Law, 1950 N.Y. LAWS ch. 250, § 3. This act superseded the 1946 act of the same name, which was a "standby" type statute contemplating the lapse of federal rent controls. B. FRIEDLANDER & A. CURRERI, RENT CONTROL—FEDERAL, STATE AND MUNICIPAL 249 (1948). This standby act, 1946 N.Y. LAWS ch. 274, became operative between July 1 and July 25, 1946, during a brief lapse in federal rent control law. Residential Rent Control in New York City, supra note 33, at 34.
45. M. STEGMAN, supra note 7, at 22. Id. By 1960 New York was the only state maintaining rent controls.
47. Residential Rent Control in New York City, supra note 33, at 35.
48. Local Emergency Housing Control Act, 1962 N.Y. LAWS ch. 21, § 1(2); N.Y. UNCONSOL. LAWS § 8602 (McKinney 1974).
50. Id. NEW YORK, N.Y. ADMIN. CODE tit. Y, § Y51-4.0, reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 388 (McKinney 1974). The Rent and Rehabilitation Administration has been superseded by the Division of Rent Control (DRC), a division of the Department of Housing Preservation and Development (HPD). 1978 N.Y. LAWS ch. 655, § 137.
52. L. BLOOMBERG, supra note 2, at 223.
B. The Rent Stabilization Law of 1969

To moderate rent increases\(^{54}\) in the tight rental housing market,\(^ {55}\) New York City enacted the Rent Stabilization Law of 1969 (RSL).\(^ {56}\) The RSL was designed to regulate rent increases while preserving rental housing stock\(^ {57}\) by ensuring that owners receive an adequate return for property maintenance.\(^ {58}\) As originally enacted, the RSL applied rent restrictions to buildings constructed after 1947 containing six or more units, which were not covered by the existing rent control system.\(^ {59}\) New construction would not be subject to any controls.\(^ {60}\) Rents in effect on May 31, 1968 were established as base rents.\(^ {61}\) The statute permits owners to raise rents upon vacancies and renewals of leases according to annual guidelines issued by the Rent Guidelines Board.\(^ {62}\) The permissible rent increases allowed under these guidelines reflect increased operating expenses, including fuel, labor and financing costs, and tax and utilities charges.\(^ {63}\)


\(^{55}\) See note 1 supra.


\(^{57}\) See notes 3-4 supra and accompanying text.

\(^{58}\) See text accompanying notes 61-64 infra.


\(^{63}\) New York, N.Y. Admin. Code tit. YY, § YY51-5.0(d)(1), reprinted in N.Y. Unconsol. Laws tit. 23, ch. 4 app. at 595 (McKinney 1974). Rent Guidelines Board Order No. 13, affecting rent levels October 1, 1981 through September 30, 1982, provided for increases of 10, 13, and 16% for 1, 2 and 3 year renewal leases respectively. A 15% vacancy increase was also granted. Thus, for example, a tenant entering into a two year lease on a new apartment could be charged 28 % more than the prior tenant. Between 1978 and 1981, the operating costs of rent stabilized apartments rose by 38.6%. M. Stegman, supra note 7, at 2. Rent Guidelines Board Order No. 14, affecting rent levels October 1, 1982 through September 30, 1983,
In exchange for the right to pass along to tenants increased operating expenses, the RSL requires owners to: (1) maintain the level of services provided at the base date; (2) offer lease renewals at the tenant’s option; and (3) comply with statutory provisions concerning tenants’ rights and owner conduct.

The RSL has two characteristics which distinguish it from rent control. First, it was designed from the start to provide fair returns on property owners’ equity by allowing adjustments to reflect increased operating costs. By contrast, rent control rigidly froze rents at those levels in effect under the state law in 1962. This concept of economic rents was introduced to the rent control system in limited form in 1970 under the maximum base rents formula. Second, the RSL is administered by a combination of public and private bodies, rather than strictly by the City itself.

provided for increases of 4, 7, and 10% for 1, 2 and 3 year lease renewals respectively. No vacancy allowances were granted. The index of operating costs had increased only 2.8% in 1981. N.Y. Times, June 26, 1982, at 27, col. 2.

64. NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY51-6.0(c)(8), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 599 (McKinney 1974).

65. Id. § YY51-6.0(c)(9), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 599 (McKinney 1974).

66. Id. § YY51-6.0(c), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 599 (McKinney 1974). See also RSA Code §§ 50-65, reprinted in J. RASCH, supra note 14, at 163-75.

67. NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY51-5.0(b), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 595 (McKinney 1974); M. STEGMAN, supra note 7, at 24-25.

68. If an apartment had been continuously occupied by the same tenant since 1943, the March 1943 rent level plus a 15% increase allowed by the State in 1953 would be the rent for the apartment. Residential Rent Control in New York City, supra note 33, at 36 n.82.

69. The maximum base rent (MBR) system introduced in 1970 reform ed rent control by allowing increases intended to be sufficient to enable owners to maintain their apartment buildings. NEW YORK, N.Y. LOCAL LAW 30 (July 10, 1970), amending NEW YORK, N.Y. ADMIN. CODE tit. Y, § Y51-5.0 (1963). Rent increases of 7.5% per year are allowed until the rent attains the maximum base rent level established by the DRC. NEW YORK, N.Y. ADMIN. CODE tit. Y, § Y51-5.0(a)(4), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 392 (McKinney 1974). MBRs may be adjusted biennially to reflect changes in operating costs and to allow the owner a return on his investment. NEW YORK, N.Y. ADMIN. CODE tit. Y, § Y51-5.0(g)(1), (2), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 392 (McKinney 1974). MBRs are determined on a building-by-building basis and are intended to close the “rent gap” between controlled rents and rents necessary to pay maintenance costs and yield a small return to the owner. See The ABC’s of MBR: How to Spell Trouble in Landlord/Tenant Relations, 10 COLUM. J.L. & SOC. PROBS. 113 (1974).

70. A further distinction is that rent controlled tenants are statutory tenants, while stabilized tenants occupy under one, two or three year leases. This has implications on the right to sublet and the owner’s right to evict. Residential Rent Control in New York City, supra note 33, at 47.
The Rent Stabilization Association of New York, Inc. (RSA) is a private organization whose members are owners of apartments subject to the RSL. The RSA is responsible for: (1) enrolling owners of stabilized apartments in the RSA; (2) collecting dues from members to defray the costs of administering the RSL; and (3) drafting a code for stabilization of rents covering related terms and conditions of occupancy. The RSA drafted a code in 1969 which RSA members are bound to abide by.

Supervisory and adjudicatory powers under the RSL are entrusted to three governmental or public bodies. The New York City Department of Housing Preservation and Development (HPD), the City's official housing agency, was charged with registering the industry association upon satisfaction of conditions specified in the RSL, and its subsequent supervision. HPD may suspend the registration of the RSA at any time if the association's conduct, rules or code do not conform with the RSL's requirements. This system of self-regulation has withstood constitutional challenge.

The Rent Guidelines Board (RGB) is a city agency consisting of nine members appointed by the mayor: two tenant representatives,

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72. New York, N.Y. Admin. Code tit. YY, § YY51-6.0(b), reprinted in N.Y. Unconsol. Laws tit. 23, ch. 4 app. at 597 (McKinney 1974); New York City Conciliation and Appeals Board, Tenants' and Owners Rights and Duties Under the Rent Stabilization Law 2 (rev. ed. 1981) [hereinafter cited as Tenants' and Owners' Rights]. Owners of newly stabilized apartments must join the RSA within 60 days. Owners, including new owners, of buildings with stabilized apartments must join within 30 days. Id. § YY51-4.0(a), reprinted in N.Y. Unconsol. Laws tit. 23, ch. 4 app. at 593. Failure to join can result in placing the dwelling unit of entire building under the city rent control system. Id.


74. Id.

75. See note 14 supra.


77. This system of self regulation was patterned after the securities dealers association authorized by the Securities Act of 1934, 15 U.S.C. §§ 780-783 (1976). 8200 Realty Corp. v. Lindsay, 27 N.Y.2d at 132, 261 N.E.2d at 651, 313 N.Y.S.2d at 739.


two housing industry representatives, and five public members. The RGB determines the rent increases an owner may demand for vacancy and renewal leases. Rent increases are intended to enable owners to properly maintain their buildings while providing the same level of services in effect on the base date. These increases, based on estimates of increased operating costs, are adjusted annually and published on July 1st in the form of Rent Guidelines Board Orders.

The Conciliation and Appeals Board (CAB) is an independent public agency provided for by the RSL and the RSA Code, and funded by the RSA. The Board consists of nine members appointed by the mayor and approved by the City Council: four tenant representatives, four industry representatives, and an impartial chairman. A quasi-judicial body, the CAB's duties include the adjudication of complaints from tenants and appeals from owners claiming hardship under rent levels set by the RGB. The CAB is empowered to discipline owners for Code violations and for failure to comply with CAB orders. CAB orders are final administrative determinations binding on all parties to the proceeding. Aggrieved parties may seek judicial review under Article 78 of the Civil Practice Law and Rules.

C. Modifications of the Rent Regulations

By 1970, the ills associated with rent regulations were perceived as worse than those they were designed to cure. In 1971, New York

80. Id. Public members each must have at least five years' experience in either finance, economics or housing. Id.
82. See note 3 supra and accompanying text.
83. See note 63 supra.
84. See CAB Report, supra note 3, at 7.
90. Tenants' and Owners' Rights, supra note 72, at 3.

Rent control in New York City has played havoc with natural market forces, which normally would have matched housing supply with housing
State instituted vacancy decontrol, which deregulated any rent controlled or rent stabilized apartments upon the occurrence of a vacancy. Decontrol was designed to: (1) restore market incentives to maintain and upgrade existing housing; (2) discourage widespread abandonment of buildings; and (3) establish an atmosphere conducive to the massive construction of new housing by the private sector. By 1974 approximately 110,000 rent stabilized units and 300,000 rent controlled units had become decontrolled. Vacuum decontrol, however, failed to prevent abandonment and stimulate the housing industry. As a result, rents increased sharply in the deregulated sector.

In response to the "exaction of unjust, unreasonable and oppressive rents," the State enacted the Emergency Tenant Protection Act of 1974. The ETPA modified vacancy decontrol by placing all vacancy demand. The rent control law in many respects has worked to the detriment of the very groups it was designed to help. Tenants have suffered as owners and investors, caught as they have been between rent controls and rising costs, have increasingly found themselves unable to afford to maintain their properties. Ultimately, sound buildings have been abandoned entirely—at a present rate of about 1000 apartments a week in New York City. Potential investors in new housing have been looking elsewhere, in large measure because of the presence of a rent control system that has threatened the possibility of a fair return. . . . The present rent control system, designed initially to assure people of decent, reasonably-priced housing in areas where housing shortages exist, had turned into a device that aggravated the shortage and deprived people of housing—the people such laws were supposed to protect.

Id. at 562.
94. Governor's Memo, supra note 92, at 562.
95. CAB REPORT, supra note 3, at 4.
96. "No beneficial side effects have resulted from vacancy decontrol; major capital investment has slowed, new construction has been unaffected and there is no indication that the abandonment rate has abated." TEMPORARY STATE COMMISSION ON LIVING COSTS AND THE ECONOMY, 1974 REPORT ON HOUSING AND RENTS 21 [hereinafter cited as 1974 REPORT ON HOUSING AND RENTS].

The ETPA specifically cites reduced federal subsidies, increased construction costs and "other inflationary factors" for discouraging new construction. N.Y. UNCONSL. LAWS § 8622 (McKinney Supp. 1982-1983).
97. "Vacancy decontrol has placed an extreme hardship on the tenants of this state, particularly on the elderly and the poor, in the form of increased rent and insecurity." 1974 REPORT ON HOUSING AND RENTS, supra note 96, at 21. Rents in previously controlled units rose by more than 52 % and in previously stabilized units by 19 %. Id.
decontrolled apartments under rent stabilization. The ETPA also provided that in the future individual rent controlled apartments would immediately become subject to rent stabilization upon the occurrence of a vacancy. This gradual phase-out of the rent control system has increased the number of stabilized apartments from under 300,000 in 1973 to over 900,000 in 1981.

This enormous expansion of the rent stabilization system has made CAB enforcement of the RSL increasingly difficult. Prior to enactment of the ETPA, the average yearly caseload was under 2000 cases. Immediately after the ETPA's enactment the caseload quadrupled; it now exceeds six times pre-ETPA levels.

100. N.Y. UNCONSOL. LAWS § 8625 note on subject apartments (McKinney Supp. 1982-1983); TENANTS' AND OWNERS' RIGHTS, supra note 72, at 4.
102. M. STEGMAN, supra note 7, at 11. The ETPA also increased the number of different types of apartments subject to the RSL, so that today there are 14 different categories of apartments to which Rent Stabilization is applicable. TENANTS' AND OWNERS' RIGHTS, supra note 72, at 4. New York City's rent regulation system today is as follows:

All pre-1947 apartments in which there has not been a change in tenants since June 30, 1971 are covered by the residential rent control law. All previously controlled and stabilized apartments which were decontrolled upon vacancy between 1971 and 1974 were allowed to be brought up to then-market rent levels upon vacancy and made subject to the RSL in mid-1974 by the ETPA. All stabilized units which were not vacancy decontrolled between mid-1971 and mid-1974 continue to be subject to the RSL without having had their rents brought up to market levels. Privately built apartments constructed after mid-1974 are free from any rent regulation unless they receive public subsidies in the form of real estate tax abatements or exemptions. New or rehabilitated buildings receiving these subsidies are subject to rent stabilization while receiving these subsidies. New York, N.Y. ADMIN. CODE tit. YY, § YY51-3.0(c), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 102 (McKinney Supp. 1982-1983) (subsidies under the "J51" program); New York, N.Y. ADMIN. CODE tit. J, § J51-2.5 (Supp. 1982-1983); N.Y. REAL PROP. TAX LAW, art. IV, tit. II, § 421-a (McKinney Supp. 1982-1983) (amending § 421 (1972)) ("421" subsidies). Apartments in buildings containing less than six units are not subject to rent stabilization unless they are receiving tax abatements or exemptions subject to the above provisions. See N.Y. UNCONSOL. LAWS § 8625(a)(4)(a); NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY51-3.0, reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 585, Supp. at 101 (McKinney 1974 & Supp. 1982-1983); TENANTS' AND OWNERS' RIGHTS, supra note 72, at 3-6; M. STEGMAN, supra note 7, at 27.


103. CAB REPORT, supra note 3, at 8.
104. Id. In 1980 the Board's intake totaled 11,801. Ninety-three percent (10,963) were resolved in 1980; 48% of these (5,319) through mediation, and 52% (5,644) through CAB orders. Id. at 9. Only 7,643 cases were resolved in 1979. Id. at 3.
A large proportion of these cases are rent overcharge cases. In order to determine whether there has been an overcharge, the CAB must take these steps: (1) ascertain the base date rent of the apartment in question; (2) determine what vacancy and renewal leases have been entered into since the base date; (3) apply the permissible increases applicable to these leases to calculate the maximum legal rent for the apartment; (4) compare this figure with the current rent charge. In order to accomplish steps one and two above, the CAB under the Code must rely on the owner of the apartment to supply the rental history of that apartment. These rental histories often have not been made available to the CAB, causing average processing time of rent overcharge cases to double by 1979. Moreover, 1980 rent overcharge cases rose twenty percent over 1979 levels. In an attempt to handle efficiently the growing caseload, the CAB adopted several different policies. An examination of the procedures used to determine the existence of overcharging will help frame a discussion of these policies.

III. CAB Enforcement

A. Determination of Rent Overcharges

The Rent Stabilization Law of 1969 did not create a mechanism by which the CAB is to determine permissible rents for individual apartments. Rather, the RSL stipulated that the real estate industry formulate in its code a method for the CAB to make its determination. The only requirement set forth in the RSL was that the method adopted must be "designed to provide safeguards against unreasonably high rent increases and, in general, to protect tenants and the
Further, owners bound by this code must not exceed the level of permissible rent increases, and must refund any overcharges. The RSA Code did not provide a central rent registration system from which lawful stabilization rent could be determined. Instead, section 42A of the RSA Code made it the responsibility of individual owners to maintain the rent records for each of their stabilized apartments and to furnish them to the CAB upon request. The CAB uses this rent history, as outlined above, to determine whether there has been an overcharge. The owner is also required to attach a "42A rider" to each vacancy and renewal lease, listing the name of the prior tenant, the tenant's right to examine all prior leases on his apartment back to the base date and the rents payable under these leases.

Many owners have not complied with section 42A. Therefore the rent histories necessary to establish the legal rents for apartments are often unavailable. The CAB has attempted to reconstruct rent histories, but this is a time-consuming process and is virtually impossible. This has led to a backlog of 7000 cases and has prompted the CAB to seek statutory reform and alter its own policies.

112. *Id.* § YY51-6.0(c), *reprinted in N.Y. Unconsol. Laws* tit. 23, ch. 4 app. at 598.
113. *Id.* § YY51-6.0(c)(2),(3), *reprinted in N.Y. Unconsol. Laws* tit. 23, ch. 4 app. at 598. Tenants may also abate their rent to recover the overcharge.
115. *Id.*
116. *See* text accompanying notes 106-07 *supra*.
119. "In an awful lot of cases the records are unavailable. . . . You call the owner and he laughs at you." Harvey Clarke, a principal in A.J. Clarke Management, which manages 150 buildings with 7000 apartments, *quoted in* Oser, *supra* note 19, at 7, col. 2.
120. CAB Report, *supra* note 3, at 10. The rent history has to be constructed back to the base date; in many cases as far back as May 31, 1968.
122. *See* note 19 *supra* and accompanying text.

The City Council in 1982 had under consideration amendments to the RSL which would: (1) update the base date to 1976; (2) create a two year statute of limitations on overcharge complaints; and (3) impose a fine in the amount of three times any
B. CAB Enforcement Policies and Sanctions

1. Rent Rollbacks and the Weight of the Evidence

Prior to December 14, 1978, the CAB did not enforce section 42A. An owner accused of overcharging or a complaining tenant could submit any evidence tending to establish the rent paid by the prior occupant of the apartment. If the owner submitted sufficient information, the CAB would use it to establish the proper rent. If not, the Board would accept the tenant's evidence and order the owner to roll back the rent and refund or credit against future rent payments all excess rent collected.

2. Enforcement of Section 42A

a. Suspension of Guidelines Increase

CAB Opinion No. 9127 marks the first time the CAB enforced section 42A. In this case, the owner had not attached a 42A rider to the tenant's lease. The owner also failed to comply with a CAB request for the rent history of the apartment. Unable to determine the legal rent, the Board reduced the tenant's rent by the amount of the latest guidelines increase and ordered the owner to furnish the 42A rider to the tenant and a complete rental history to the Board.

After this case, an owner accused of overcharging who failed to provide a complete rental history to the CAB upon request risked forfeiture of the latest guidelines increase. However, the CAB did not impose a penalty for failure to provide a rent history to a tenant upon the signing of a lease as required by section 42A, as long as the owner subsequently furnished the information to the CAB upon re-

illegal overcharge collected. N.Y. Times, March 26, 1982, at B9, col. 2. None of these has been adopted.


126. Tenant's rent is "rolled back," i.e., reduced, to the proper level.


129. Id.

130. RSA CODE § 42A(1), (3), reprinted in J. RASCH, supra note 14, at 162-63.
Consequently, noncompliance with section 42A continued.132

b. Expulsion from the RSA

RSA Code section 7 provides that owners of stabilized apartments can be expelled from the RSA for certain RSA Code violations, including rent overcharging and failure to comply with CAB orders. Expulsion results in transferring the owner's stabilized apartments into the rent control system,133 which can result in substantial reductions in rents.134

In CAB Opinion No. 13,400, issued on July 31, 1980, the Board first threatened an owner accused of rent overcharging with expulsion from the RSA. In this case, the owner refused to supply the rent history of the complaining tenant's apartment to either the CAB or the tenant. Unable to determine the legal rent, the CAB ordered the owner to provide a complete rental history for the apartment—under threat of expulsion from the RSA.135 The Board further ordered the owner to include a section 42A rider in all new leases on all stabilized units in the building, and to furnish the Board with copies for review.136 The order provided that failure to comply with any of these directives would result in immediate and permanent loss of current guidelines increases, and possibly expulsion from the RSA.


133. NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY51-4.0(a), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 105 (McKinney Supp. 1982-1983).

134. Apartment Law Insider, Nov. 1980, at 7, col. 2. The expulsion order will indicate which apartments are to be transferred to rent control. The DRC will assume jurisdiction over these apartments and will establish new maximum rent levels for each apartment. If the owner submits sufficient income and expense information to the DRC it will compute the apartments' MBR's. See note 69 supra. If the owner does not supply sufficient information the DRC will establish the maximum rent based on median rent levels for New York City apartments. Either of these rent levels can be substantially lower than the stabilized rent in effect before expulsion. Apartment Law Insider, Nov. 1980, at 4, col. 1.


136. Id.
On October 16, 1980, the CAB expelled an owner from the RSA for failure to comply with an order similar to that issued in Opinion No. 13,400.\textsuperscript{137} The owner failed to supply a 42A rider with rent history information to the tenant either with the lease or upon subsequent request by the tenant. The tenant filed an overcharge complaint, whereupon the CAB ordered the owner to furnish the rental histories to the Board within ten days. The owner also was ordered to supply 42A riders with all new and renewal leases in the building. The owner failed to furnish the requested information to the CAB. Consequently, the Board suspended the guidelines increase on the complaining tenant's apartment and expelled the owner from the RSA.\textsuperscript{138} This ruling transferred the entire building to the rent control system.\textsuperscript{139}

The New York Supreme Court recently reviewed a similar case, in Endeavor Property Holdings, N.V. v. Conciliation & Appeals Board,\textsuperscript{140} in which a tenant alleged overcharging and failure to attach a 42A rider to both his initial and renewal leases. On March 13, 1981, the CAB issued a notice directing the owner to include a 42A rider in the tenant's lease or provide the CAB with leases or other evidence\textsuperscript{141} of the apartment's rent history from the base date.\textsuperscript{142} In response, the owner submitted only a copy of the prior tenant's lease, claiming it had received no other lease records from the prior owners. On September 24, 1981, the Board ordered the owner to produce, within fifteen days, all leases back to the base date.\textsuperscript{143} The owner submitted the apartment's rental history back to January 1, 1976, and two affidavits stating that it had tried unsuccessfully to obtain earlier rent records.

Unable to determine the legal stabilization rent on the basis of this information, the Board expelled the owner from the RSA.\textsuperscript{144} After the

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138. Id.
140. 116 Misc. 2d 541, 455 N.Y.S.2d 697 (Sup. Ct. N.Y. County 1982).
141. "Other evidence" includes copies of rent rolls, rent ledger pages, rent cards, or any other evidence tending to show what rent the prior tenants were paying. Id. at 542, 455 N.Y.S.2d at 698. See also Apartment Law Insider, Dec. 1980, at 4, col. 1: "An owner who cannot fill the CAB's request for prior leases should not give up and allow the apartment (or the building) to become rent controlled. The board will accept any reasonable evidence tending to show what rents have been charged on the apartment since it became rent stabilized."
142. Endeavor, 116 Misc. 2d at 542, 455 N.Y.S.2d at 698. May 31, 1968 was the base date in this case. Id.
144. Id., CAB Expulsion Order No. 494, at 3 (Feb. 25, 1982).
CAB refused to reconsider its decision, the owner brought an Article 78 proceeding seeking an order enjoining the enforcement of, and annulling, the CAB expulsion order.\textsuperscript{145}

The New York Supreme Court dismissed the petition, holding that the owner was required to supply the rent history back to the base date, regardless of changes in ownership.\textsuperscript{146} Justice Schwartz reasoned that the real estate industry specifically required, under the RSA Code, that owners be responsible for maintaining records showing base date rents and subsequent increases.\textsuperscript{147} Moreover, the industry has vigorously opposed proposals providing for central registration of rents.\textsuperscript{148} Accordingly, owners must exercise "'a high degree of good faith and diligence in fulfilling obligations under the law.'"\textsuperscript{149} The widespread noncompliance with section 42A, and the Board's "signal [lack] of success" in enforcing its provisions through suspension of guidelines increases and other methods, justified the order expelling the owner from the RSA.\textsuperscript{150}

c. Four-pattern system

In early 1981 the CAB again modified its policy for handling overcharge complaints.\textsuperscript{151} The Board created a four-pattern system for rent overcharge complaints where the owner failed to supply the CAB with a complete rental history for the complaining tenant's apartment.\textsuperscript{152} This system unfortunately proved to be an ineffective en-

\textsuperscript{145} \textit{Endeavor}, 116 Misc. 2d at 541, 455 N.Y.S.2d at 697.
\textsuperscript{146} \textit{Id.} at 545-46, 455 N.Y.S.2d at 699-700.
\textsuperscript{147} \textit{Id.} at 544, 455 N.Y.S.2d at 699.
\textsuperscript{148} \textit{Id.}
\textsuperscript{149} \textit{Id.} at 543, 455 N.Y.S.2d at 699 (quoting Thwaites Place Assocs. v. Conciliation & Appeals Bd., 81 A.D.2d 804, 804 (1st Dep't 1981)).
\textsuperscript{150} \textit{Endeavor}, 116 Misc. 2d at 545, 455 N.Y.S.2d at 699 (word deleted from Reporter unintentionally). \textit{See Endeavor}, N.Y.L.J., Sept. 8, 1982, at 6, col. 4 for proper text.
\textsuperscript{151} Apartment Law Insider, March 1981, at 1, col. 1.
\textsuperscript{152} The four patterns are as follows:

Pattern # 1. Tenant files an overcharge complaint. Owner fails to provide the CAB with any rent histories, past leases, or other evidence in response to a CAB request. Result: Tenant's rent is reduced and CAB orders production of rent histories. If owner fails to comply, the entire building is removed from rent stabilization to become rent-controlled.

Pattern # 2. Tenant files a general overcharge complaint (i.e., he does not state, or introduce evidence to show what he believes the legal maximum rent should be). The Board requests past leases back to the base date and the owner provides some but not all. If the Board can compute the legal rent, it will do so. If the owner has not submitted sufficient information, the tenant's individual apartment will be removed from rent stabilization, to become rent controlled.

Pattern # 3. Tenant files a specific overcharge complaint (i.e., he submits evidence of, or claims to know, that the prior tenant was paying less than the present rent
forcement tool. The CAB was forced to pigeonhole each case into one of the four categories, and to attempt to reconstruct rent histories. This failed to facilitate the processing of the growing number of rent overcharge cases, and the large backlog of cases persisted.

C. Enforcement Problems

By early 1982, rent overcharge complaints were being resolved in one of two ways: (1) if the owner supplied rental history information sufficient for the CAB to determine the maximum legal rent, the Board set the rent at this level and ordered a refund of any overcharge; or (2) if the owner failed to provide sufficient information, the tenant’s rent was reduced, and the apartment or building was removed from rent stabilization and eventually placed under rent control.

This strict enforcement of section 42A and use of the expulsion sanction created many problems. The increasing number of expulsions was defeating the purposes of the RSL. During the period after an apartment or building was removed from the stabilization system, and before the DRC established new rent levels, tenants were afforded little protection from the City’s rent laws. Also, returning

minus his guidelines increases). The Board requests past leases back through that of the prior tenant. If the owner produces enough information for the Board to compute the legal rent, it will do so. If he does not, the tenant’s apartment will be removed from rent stabilization, to become rent controlled.

Pattern # 4. The tenant of a formerly rent controlled apartment files a general overcharge complaint. The Board will ascertain the apartment’s maximum base rent (MBR) at the time the apartment became decontrolled (with information from the Division of Rent Control). The MBR becomes the base rent, to be increased by the proper guidelines amount for each lease submitted by the owner. The owner is not expelled from the RSA. Id. at 6-7.

154. See text accompanying notes 17-18 supra.
158. See note 50 supra and accompanying text.
159. Technically, the apartments become rent controlled immediately upon expulsion. However, several months may pass before the DRC establishes new rent levels. These rent adjustments are retroactive to the date the owner was expelled. Apartment Law Insider, Nov. 1980, at 4, col. 1.
buildings to the rent control system was inconsistent with the objective of phasing out that system.

Strict enforcement of section 42A also creates a hardship when rental histories are truly unavailable to owners. This is likely to be the case where a building has changed hands several times since 1968, or where the buildings (or individual apartments) were vacancy deregulated between 1971 and 1974. Since section 42A was not enforced between 1969 and 1978, early owners may not have maintained rent histories carefully. Indeed, with the prospect of eventual decontrol of all apartments under vacancy decontrol there seemed little need to do so. Arguably, it is unjust to penalize owners who did not receive any rental histories where they purchased buildings before 1978, when the CAB first enforced section 42A. This is especially true for less sophisticated small owners who may not have the computerized record systems of large real estate management firms.\textsuperscript{160}

Enforcement of section 42A also affects both the salability and mortgageability of many rent stabilized apartments which lack rent histories. Rent reductions or removal of rental units from the stabilization system for an owner's failure to supply the CAB with rent histories reduces the future rental income of a building. Prudent investors and lenders will take this into account in determining whether to purchase or finance such buildings.\textsuperscript{161}

In August, 1982, as a result of the problems inherent in section 42A, the CAB adopted new procedures in handling rent overcharge cases involving owners who fail to supply an adequate rental history.\textsuperscript{162}

IV. The New CAB Procedures

The new procedures state that if an owner accused of rent overcharging is unable\textsuperscript{163} to supply a complete rental history back to July 1, 1974 for the apartment in question, he must furnish a current rent roll for the entire building.\textsuperscript{164} The CAB will then set the tenant's

\textsuperscript{160} Oser, \textit{supra} note 19, at 7, col. 2.
\textsuperscript{161} "The immediate impact of the C.A.B.'s move is not on tenants but on the sales market. Investors will hesitate to buy buildings with rent stabilized apartments unless they can get the rent records they need to meet the board's requirements." \textit{Id.}, at col. 5.
\textsuperscript{162} New CAB Procedures, \textit{supra} note 157, at 2721-22, Provision II-A.
\textsuperscript{163} Presumably the New CAB Procedures will also be used where an owner is unwilling to supply rent histories but claims inability. However, "unable" is not defined.
\textsuperscript{164} "Current rent roll" means a rent roll for the same month and year of the CAB's notice requesting same. New CAB Procedures, \textit{supra} note 157, Provision II-B.
“initial” rent at the lowest of the following three amounts: (1) the lowest stabilized rent in the complaining tenant’s line of apartments, augmented by any renewal increase allowable during the preceding twelve-month period if the tenant renewed during that period; (2) the complaining tenant’s initial rent reduced by any vacancy and renewal increases allowable when the tenant took occupancy; or (3) the last rent paid by the prior tenant. This initial rent, adjusted to reflect any new services or equipment, becomes the maximum legal rent for the life of the existing lease.

The new procedures state explicitly that the CAB shall not, absent extraordinary circumstances, fine or expel an owner for rent overcharging where he has complied with the Board’s notice requesting a current rent roll. If, however, the owner fails to supply the CAB with the current rent roll when ordered to do so, the entire building will be removed from the rent stabilization system and the owner will forfeit any increases under the current guidelines. In the event of a subsequent overcharge complaint from a tenant in the same building and a failure to submit a complete rental history, the CAB will use the rent roll supplied in the earlier case to determine the maximum legal rent. The procedure for determining the rent chargeable is essentially the same as in the first case. Since the necessary rent information already will be in the CAB’s hands upon receipt of the subsequent overcharge complaints, the Board can determine the maximum legal rent immediately upon failure by the owner to supply rent histories. This should help speed the processing of overcharge complaints.

Separate procedures are created for pre-1947 buildings which have been vacancy decontrolled and which became subject to the RSL by virtue of the ETPA of 1974. The owner is directed to provide a

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165. Initial rent is the legal rent level a tenant assents to upon entering a new lease.

166. A “line” of apartments includes all apartments in a building possessing the same number of rooms, features (e.g., patios), and approximate floor space.

167. New CAB Procedures, supra note 157, Provision II-B. It will be noted that the second and third amounts will be equal, i.e., they will both set the prior tenant’s rent as the lawful maximum. However, the second amount is arrived at through computation, while the third amount must be shown by evidence. Apartment Law Insider, Sept. 1982, Supplement, at 2, col. 1.

168. New CAB Procedures, supra note 157, Provision II-C.

169. Id., Provision II-F.

170. Id., Provision II-E.

171. Id., Provision II-D.

172. Id. The only difference is that under the “lowest rent in the same line” amount, the owner will not be granted a guidelines increase for a renewal lease entered into in the year preceding the month of the rent roll.

complete rent history back to the date the apartment became subject to the RSL.\textsuperscript{174} If he is unable to do so, the maximum base rent (MBR)\textsuperscript{175} in effect for the apartment upon decontrol becomes the base rent.\textsuperscript{176} The owner is then allowed the appropriate vacancy and renewal increases for leases he entered into after decontrol.\textsuperscript{177} Any overcharges must be refunded or credited against future rent payments.\textsuperscript{178}

These new procedures were designed to speed the processing of overcharge complaints while avoiding expulsion of owners from the stabilization system.\textsuperscript{179} To the extent that the owners comply with the request for rent rolls these goals will be accomplished. Rather than expending time reconstructing rent histories, the CAB can immediately reduce the rent to one of three levels. Furthermore, if the owner fails to provide rent histories in a timely manner in the event of a second overcharge complaint from the same building, the rent rolls will be available immediately for determination of the new legal rent. This obviates the need for expulsion and provides the CAB with more leverage for obtaining the desired rent histories promptly.

The new procedures, however, do not provide a time period within which the owner must comply with requests for rent histories or rent rolls. This flaw may delay processing of complaints unless the CAB creates in its decisions a policy of timely response to its notices and orders. The CAB usually requires compliance with its orders within fifteen days;\textsuperscript{180} it is likely that the Board will apply this standard in requests for rent rolls. On the other hand, lack of a mandatory compliance period permits some flexibility.

Early indications are that the new procedures are very effective in speeding the processing of overcharge cases.\textsuperscript{181} The CAB claims that

\textsuperscript{174} If the date of vacancy decontrol cannot be established, the CAB will use the 1974 MBR. \textit{Id.}
\textsuperscript{175} \textit{See note 41 supra.}
\textsuperscript{176} New CAB Procedures, \textit{supra} note 157, Provision II-G, at 2722.
\textsuperscript{177} \textit{Id.}
\textsuperscript{178} \textit{NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY51-6.0(c)(3), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 598 (McKinney 1974).}
\textsuperscript{179} Mass expulsion of building owners from the system because they cannot (or will not) comply with the requirements of 42A would defeat the purposes and intent of the Rent Stabilization Law. On the other hand, finding an alternative method of determining the stabilization rent, absent full rent records, is consistent with both the Law's intent and the Board's responsibilities.
\textsuperscript{180} \textit{See, e.g., Kaplan v. Brusco, CAB Opinion No. 16,592, at 6 (May 28, 1981).}
\textsuperscript{181} Telephone interview with Mel Zalkin, on behalf of Ellis S. Franke, Executive Director, CAB (Jan. 18, 1983).
broad compliance with CAB directives since issuance of the new procedures has enabled the Board to triple its processing of rent overcharge cases. Compliance also averts the necessity of expulsion from the stabilization system.

V. Aims and Effects of the New Procedures

The new procedures constitute an attempt to create *de facto* certain changes in the law which the CAB has sought since 1977 but which the Legislature and City Council have not enacted. In attempting these changes the CAB has acknowledged that the present law is inadequate to enable them to perform their duties. The CAB has apparently accomplished its desired reforms through adoption of the new procedures, but not without creating potential problems. Moreover, promulgation of the procedures has raised the issue of the CAB’s rulemaking authority.

One reform the CAB has called for in the past is central registration of rents. This would facilitate the calculation of the maximum legal rent for any registered apartment and allow the determination of rent overcharges without having to rely on owners to submit rent histories. Owners have in the past strongly opposed a system of central registration because (1) they view it as a step towards permanent rent control and (2) it would increase their administrative burdens. By enabling the CAB to request rent rolls and retain them to determine future rent overcharges in the same building, the new procedures are creating a limited system of *de facto* central registration.

In effect this system of central registration is a voluntary system, since only those owners who have not maintained rental history information in compliance with section 42A will be obliged to produce a current rent roll. These owners will then have the option of complying with the demand or subjecting their apartments to rent control. Hav-

182. *Id.*
186. The New CAB Procedures do not indicate whether an owner will be able to provide an updated rent roll for subsequent overcharge complaints. See New CAB Procedures, *supra* note 157, Provision II-D, at 2722.
ing created this additional opportunity for owner compliance, it is not unfair for the CAB to retain the rent roll for administrative convenience, especially in view of the likelihood that the owner will be unable to furnish rent histories in the event of a subsequent overcharge in the same building.

Another change sought by the CAB has been an updating of the base date.\(^{187}\) By requiring complete rent histories back only to 1974,\(^{188}\) where they might previously have been required as far back as 1968, the new procedures have essentially updated the base date to 1974. As a result, overcharges which occurred between enactment of the RSL and 1974 may now be unrecoverable, since the CAB will not have the pre-1974 information necessary to determine whether there has been an overcharge.

Since neither the RSL nor the new procedures impose a statute of limitations on rent overcharge complaints, this apparently leaves tenants who suspect that they were overcharged between 1969 and 1974 with the right but not the means to successfully prove their case before the CAB. Only tenants in apartments which were stabilized in 1969 and not vacated between July 1, 1971 and July 1, 1974 will have this potential problem, since all other stabilized apartments already have base dates of 1974 or later.\(^{189}\) The effect on these tenants is unclear.\(^{190}\)

The new procedures did not create a statute of limitations, a third reform the CAB has sought in the past. Bills imposing treble damages for rent overcharges but establishing a two year statute of limitations on overcharge complaints have been introduced in the state legislature.\(^ {191}\) These proposals are aimed at reducing the number of over-

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187. Id., Provision I, Explanatory Statement, at 2721. There is currently no statute of limitations on rent overcharge complaints. CAB Report, supra note 3, at 17.

188. New CAB Procedures, supra note 157, Provision II-A.

189. See note 106 infra.

190. The New CAB Procedures apply "[w]henever the owner has a gap in his rent records between July 1, 1974 and the date on which the complainant took occupancy." Id., Provision II-A, at 2721-22. This presumption that the tenant took occupancy after July 1, 1974 leaves open the possibility that the procedures as a whole will not be applied to tenants taking occupancy prior to this date.

191. N.Y.S. 5631, 189th Sess. (1982) would impose damages of two times the overcharge and would establish a two year statute of limitations. N.Y.A. 9338, 189th Sess. (1982) would impose treble damages for overcharges but does not impose a statute of limitations. The State Assembly passed a bill, N.Y.A. 4466, 189th Sess. (1982), on April 20, 1982, which would fine owners triple the amount of an illegal overcharge plus interest for willful overcharges. The owner would also lose all guidelines increases otherwise allowable during the entire term of the lease in question. Noncompliance with the provisions of RSA Code § 42A by the owner would create a rebuttable presumption of willfulness behind the overcharge. The bill,
charge complaints brought before the CAB, rather than at whether there has been an overcharge. The sanction of treble damages should deter owners from overcharging, while the statute of limitations would bar old complaints and encourage tenants to be diligent in lodging new ones. Enactment of these proposed reforms would reduce CAB burdens in the future.

VI. The Question of CAB Rule-Making Authority

The issue of the CAB's rule-making (as opposed to its clear enforcement) authority is raised by promulgation of these new procedures. The RSL established the CAB as an independent public agency. As the Board itself has stated in the past, "[t]he CAB does not make rent regulatory policy; it applies policies expressed in the Law, Codes and Guidelines Orders promulgated by the other branches of the Rent Stabilization system to the resolution of cases which come before it." However, the CAB is empowered "to do any and all things necessary or convenient to administer the regulation and control of residential rents. . . notwithstanding any provision of law to the contrary." The CAB expressly relies on this statutory authority in introducing the new procedures under discussion.

introduced at the request of New York State Attorney General Robert Abrams, remained in the Senate Cities Committee (Senate version—N.Y.S. 3462, 189th Sess. (1982)). The bill is currently being revised to include a statute of limitations. Attorney General's Legislation Program, supra note 12.

192. Assemblyman Sanders, a sponsor of N.Y.A. 4466, 189th Sess. (1982), supra note 170, stated: "At present, landlords have virtually an interest-free loan equal to the amount of the overcharge, since once the overcharge is discovered, all the landlord must do is make an appropriate refund. This legislation will eliminate the economic advantage landlords currently gain from illegally overcharging tenants." New York State Department of Law, Press Release, April 21, 1982.

The ETPA provides for recovery by the tenant of three times the amount of any willful overcharge plus costs and attorneys' fees for tenants in rent stabilized apartments in Nassau, Rockland and Westchester Counties. N.Y. UNCONSOL. LAWS § 8632(a)(1) (McKinney Supp. 1982-1983). New York City rent control laws also allow courts to impose treble recovery of willful overcharges plus costs and reasonable attorney's fees. NEW YORK, N.Y. ADMIN. CODE tit. Y, § Y51-11.0(d), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 451 (McKinney 1974).


194. CAB REPORT, supra note 3, at 7.

195. Id.

196. Housing—Rent Decontrol, 1974 N.Y. LAWS ch. 576, § 6(d) (Conciliation and Appeals Board: Members; Powers). See also id. § 6(e)(10): "The board's powers shall
Cooper's Treatise on State Administrative Law\textsuperscript{198} states:

The question as to the power of an agency to adopt procedural rules is one which rarely arises. It would seem that the very delegation to an agency of power to administer a statute would carry with it the power to adopt such reasonable procedures as are necessary or useful in carrying out its administrative tasks. In any event, the well-nigh universal legislative custom of providing, in any statute creating an agency, that the agency shall have power to make such rules as are necessary and proper in carrying out its delegated powers, is clearly sufficient to authorize the adoption of procedural regulations.\textsuperscript{199}

The CAB's new procedures were adopted pursuant to such customary language. The clear need for reform, evidenced by the failures of past enforcement policies and growing backlog of cases, coupled with the inaction of the City Council, the Legislature, and the RSA, made action by the CAB necessary if they were to carry out their adjudicatory functions. The CAB was justified in adopting the new procedures to enable the Board to fulfill its statutory duties.\textsuperscript{200}
The 1974 Laws enacting the ETPA also provide that "[n]othing herein contained shall in any way diminish the powers of the CAB . . . to make, amend or modify rules, regulations, or guidelines pursuant to this chapter or any local law." Accordingly it may be argued that the legislature contemplated that the CAB have rule-making authority necessary to effectuate the purposes of the RSL.

This leaves only the question of whether the new procedures are reasonably related to the purposes of the enabling legislation. If so, they are valid and have the force of law. The RSL is designed to prevent speculative and unwarranted rent increases (legal or illegal), and the CAB is empowered to adjudicate cases of suspected rent overcharging. The new procedures will enable the CAB to more quickly process rent overcharge cases and thus to reduce the collection of unwarranted rent charges. The new procedures, therefore, are reasonably related to the purposes of the enabling legislation, and it is likely that a court would find that they were executed within the statutory powers of the CAB.

VII. Conclusion

The new CAB procedures, promulgated within the statutory powers of the CAB, give owners a chance to avoid expulsion and consequent transferral of their apartments to the rent control system. Tenants benefit from prompt adjudication of their cases and quicker refund of any overcharges. Continued use of the new procedures will enable the CAB to process each case quickly and efficiently, reducing the existing backlog of cases, while revising the RSL to impose both a

N.Y.S.2d 286 (Sup. Ct. N.Y. County 1979) (administrative agencies have broad authority to adopt regulations in furtherance of their legislative mandate, and courts will not interfere with promulgation or interpretation of such regulations).


202. Schneider v. Whaley, 541 F.2d 916 (2d Cir. 1976), followed, 548 F.2d 394 (2d Cir. 1976) (administrative regulation must be sustained if it is reasonably related to purposes of the enabling legislation); U.S. v. First Nat'l City Bank, 457 F.Supp. 201, 204 (S.D.N.Y. 1978) (Postal Service regulation was authorized since it was reasonably related to statutory purposes); Tarrant Mfg. Co. v. State, 55 A.D.2d 972, 390 N.Y.S.2d 658 (3d Dep't 1977) (only qualification on power of administrative agency which promulgates regulations is that the regulations be reasonable).

203. See Acker v. Berman, 54 Misc. 2d 647, 283 N.Y.S.2d (Sup. Ct. Kings County 1967) (regulations promulgated by the New York City Rent and Rehabilitation Administrator have the force and effect of law); 1 F. Cooper, supra note 198, at 266.

204. See note 4 supra and accompanying text.

205. See note 88 supra and accompanying text.
statute of limitations and a treble damages sanction would decrease the number of overcharge cases arising in the future. Together these changes will enhance the integrity of the rent stabilization system and ensure its continued viability.

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