

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**November 18 through November 24, 2011**

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

GERSTEN et al. v 56 7<sup>TH</sup> AVENUE, LLC, et al.:

1<sup>ST</sup> Dept. App. Div. order of 8/18/11; modification; leave to appeal granted by App. Div., 11/10/11;  
ADMINISTRATIVE LAW - DOCTRINE OF ADMINISTRATIVE FINALITY - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT 1999 LUXURY DEREGULATION ORDER BY DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR) IS ENTITLED TO COLLATERAL ESTOPPEL EFFECT PRECLUDING PLAINTIFFS FROM NOW CHALLENGING THE RENT REGULATED STATUS OF THEIR APARTMENT; EFFECT OF NEW RENTAL AGREEMENT ENTERED DURING J-51 BENEFIT PERIOD; WHETHER 1999 LUXURY DEREGULATION ORDER IS VOID BY OPERATION OF LAW; DHCR'S INHERENT POWER TO REVOKE 1999 LUXURY DEREGULATION ORDER;

Supreme Court, New York County granted defendant's motion to dismiss complaint requesting a judgment declaring that a 1999 luxury decontrol order by the Division of Housing and Community Renewal (DHCR) was invalid and awarding plaintiffs reimbursement for alleged rent overcharges; App. Div. modified to declare that the 1999 luxury decontrol order is final.

MANKO v LENOX HILL HOSPITAL:

2<sup>ND</sup> Dept. App. Div. order of 8/16/11; dismissal of appeal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right and whether the appellant is a party aggrieved within the meaning of CPLR 5511; APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL BASED ON LACK OF AGGRIEVEMENT;

Supreme Court, Kings County, among other things, denied, without prejudice to renewal, defendant hospital's motion for summary judgment dismissing the action; App. Div. dismissed the appeal by Nella Manko on the ground that she was not aggrieved by the 12/13/10 Supreme Court, Kings County order, denied as academic her motion to enlarge the time to perfect the appeal and granted the application by Lenox Hill Hospital to enlarge the time to perfect its appeal.