CITY OF CAMBRIDGE
831 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139
TEL (617) 349-6161

RENT CONTROL BOARD
TERRENCE P. MORRIS,
EXECUTIVE DIRECTOR

94 MAY 25 AM 11:21
OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: ROBERT W. HEALY, CITY MANAGER

FROM: TERRENCE P. MORRIS, EXECUTIVE DIRECTOR

RE: COUNCIL ORDER # 12, DATED 5/9/94 - IMPACT OF SUPERIOR COURT DECISION IN YOGEL V. CAMBRIDGE RENT CONTROL BOARD ET AL, SUPERIOR COURT NO. 93-1257

DATE: May 24, 1993

On April 8, 1994, the Superior Court, (Zobel, J.) issued a declaratory judgment that "[a]ll units in the City of Cambridge within the Massachusetts Rental Voucher Program whose maximum rents are limited by the MRVP schedule of ceiling rents are "not" controlled rental units..." A copy of the decision is attached.

On April 19, 1994, the Board met in Executive Session and voted to appeal this decision. The Board and the tenants/co-defendants in this action filed a joint Notice of Appeal on May 9, 1994. The Board has been informed that the tenants intend to seek a stay of the Superior Court decision to maintain the status quo pending appeal.

Although the Board has taken the position that the MRVP does not "regulate rents" within the meaning of the §3(b)(3)(ii) exemption from the Rent Control Act (see Board's Memorandum in Support of Summary Judgment, attached hereto),[1] the Superior Court disagreed and ruled that E.O.C.D.'s imposition of "ceiling rents" constitutes "rent regulation" within the meaning of the exemption. If this ruling stands, sixty-four (64) of the approximately

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[1]/ Pursuant to §3(b)(3)(ii) of the Act, rental units are exempt from the Cambridge Rent Control Act when "[a] governmental unit, agency, or authority...regulates the rents..."

seventy-seven (77) tenants who receive rental subsidies under the Massachusetts Rental Voucher Program (MRVP) and who are currently residing in rent controlled units will face rent increases. The average increase for these tenants will be approximately $105.00 per month.[2]/ A number of these tenants will in fact pay more for their rent controlled apartments than they would be required to pay if they did not have the "benefit" of the MRVP subsidy. It is likely that some may choose to forfeit their subsidy, in order to continue to pay the lower rent controlled rents.

The effective date of any rent increase is governed by the terms of the individually negotiated leases which all landlords and tenants participating in the program were required to execute. At an early stage of the litigation, a Superior Court judge refused the landlords' request to extend the time to enter into such leases until the rent control status was decided by the Court. To the best of our knowledge, none of the effected tenants entered into leases which would require them to pay higher rents retroactively.

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[2]/ These calculations were provided by the Cambridge Housing Authority.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX
THE SUPERIOR COURT

CITY OF CAMBRIDGE
RENT CONTROL BOARD
RECEIVED
APR 19 12 PM '94

DOCKET# MICV93-01257

RE: Yogel et al v Cambridge Rent Control Br. et al

TO: Vali Buland
Cambridge Rent Control Board
831 Massachusetts Avenue
Cambridge MA 02139

NOTICE OF DOCKET ENTRY

You are hereby notified that on 04/08/94 the following was entered onto the docket of the above referenced case:

Memorandum and Order: Accordingly, it is Ordered, that judgment enter forthwith as follows: It is Adjuged and Declared that all unites in the City of Cambridge within the Massachusets Rental Voucher Program whose maximum rents are limited by the MRVP schedule of Ceiling Rents are not "Contolled rental units", within the meaning of Acts, 1976, c-36, s3(b)(3)(ii). (Zobel, J.) copies sent 4/15/94

Dated: 15th day of April, 1994

Edward J Sullivan, Clerk of Courts

BY:
C Carney, Asst Clerk
Telephone: 617-494-4341

Christine Berrouet
Marie Valmont
By their attorney,

Susan Hegal (V.B.)

Susan Hegal
Cambridge and Somerville
Legal Services, Inc.
BBO# 228850
432 Columbia Street, Suite 16
Cambridge, MA 02141
(617) 494-1800 Ext. 112

Dated: March 18, 1994

Memorandum: The case was briefed and argued as though on cross-motions for summary judgment. The pivotal issue is whether the phrase "regulate the rents" as it appears in the Rent Control Enabling Act, Acts, 1976 c. 36, §3(b)(3)(ii), includes the establishing of a rental maximum, or cap, by the Massachusetts Rental Voucher Program (an arm of the Executive Office of Communities and Development).

I conclude that ~~the~~ when an agency imposes a rental cap it limits the amount of return a landlord may derive from his real estate. True it leaves to negotiation between the landlord and prospective tenants the level of any rent up to the cap figure. Nonetheless, the rental is not freely established by market value, unless current market value chances to be less than the cap, cf. Niles v. Boston Rent Control Administrator, 6 Mass. App. Ct. 135, 144 n. (1978).

The instant case differs from Rent Control Board of Cambridge v. Cambridge Town Corp., 394 Mass. 809, 812-813 (1985), where the putative rent-regulating agency had explicitly ~~[illegible]~~ withheld its discretionary authority to regulate rents. See also, Rent Control Board of Cambridge v. 375 Associates Limited Partnership, 396 Mass. 695, 700 (1986).

Order: Accordingly, it is Ordered, that judgment enter forthwith as follows: It is Adjudged and Declared that all units in the City of Cambridge within the Massachusetts Rental Voucher Program whose maximum rents are limited by the MRVP Schedule of Ceiling Rents are ~~exempt from~~ not "controlled rental units," within the meaning of Acts, 1976, c. 36, §3(b)(3)(ii).

Hiller B. Zobel
4/8/94

(c.c. 4/19/94)

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, SS

CIVIL ACTION NO. 93-1257

Eric Yogel et al.,	)
Plaintiffs	)
v.	)
The Cambridge Rent Control Board et al.,	)
Defendants	)

DEFENDANTS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

The Cambridge Rent Control Board (the "Board"), Christine Berrouet and Marie Valmont (the "tenants") submit this memorandum in support of their motion for summary judgment on all claims.[1]/

BACKGROUND

Plaintiffs Eric Yogel, David Yogel, Murray Yogel (collectively the "Yogels") and Metropolitan Boston Housing Partnership, Inc. ("MBHP") seek a declaratory judgment from this Court which would render certain rental units exempt from Chapter 36 of the Acts of

[1]/ In support of this motion, the defendants rely on the agreed upon statement of core facts ("Facts") and table of exhibits ("Exhibits") which were jointly submitted by the parties.

1976, as amended, (the "Cambridge Rent Control Act" or "Act") pursuant to Section 3(b)(3)(ii), which provides an exemption for a rental unit when "a governmental unit, agency or authority ... regulates the rents..." The rental units for which the plaintiffs are seeking exemptions are units occupied by low income tenants who receive rental subsidies through the Massachusetts Rental Voucher Program (MRVP).[2]

The MRVP program was created in November, 1992 as a result of the State Legislatures's drastic reduction in appropriations for state rental assistance. In July, 1992, the Legislature defunded the Chapter 707 rental assistance program effective October 31, 1992, and directed the Executive Office of Communities and Development ("EOCD") to promulgate a new state rental assistance program in which the tenant's rent was no longer based upon a percentage of income. St. 1992, c. 133 §2, Line 3722-9024 (Ex. 2). EOCD created MRVP to replace the previous state rental assistance programs.

Relying on the plain language of the regulations promulgated by EOCD for the MRVP program, the Board, as the agency charged with administering the Rent Control Act, began regulating those units.

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[2]/ Count III of the complaint alleges that the Federal Section 8 Voucher Program ("FVP"), as it is administered by the plaintiff MBHP, should also be considered exempt from the Act. The Board has exercised jurisdiction over units leased under the FVP program since it came into existence in about 1984. The Board's jurisdiction was not challenged prior to the instant complaint. The Board has now scheduled a Public Policy session to be held on April 27, 1994 for the purpose of reviewing the program with input from the housing agencies administering it and members of the public. The Court should thus dismiss this count as premature.

Since, as a matter of law, MRVP does not regulate rents within the meaning of Section 3(b)(3)(ii), the units became subject to the Board's jurisdiction.

Although the Board applied the § 3(b)(3)(ii) exemption to the State's previous rental assistance program, (the Chapter 707 program), unlike the previous program, the express purpose of MRVP is to permit landlords and tenants to negotiate their own leases with a minimum of state intervention. The goal of the program as described by EOCD is "to reduce the state's role in the tenant-landlord relationship by providing that <u>tenants and landlords negotiate their own leases with a minimum of state intervention</u>..." 760 CMR 49.01, paragraph 5 (emphasis added) (Ex. 3). To this end, tenants and landlords negotiate their own lease agreements with rents based on what the market will bear.[3]/ (See, 760 C.M.R. 49.01 and paragraph 1(B) and 4(a)(3) of E.O.C.D.'s Mobile Voucher for the Mobile MRVP, Exhibits 3 and 5).

Pursuant to the Chapter 707 program, local housing agencies administering the program were required to inspect each unit and negotiate the rent with private landlords based upon the size, condition, location, utilities and certain amenities as set forth in EOCD's guidelines (Ex. 13,14 and 15). However, the housing

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[3]/ MRVP tenants are limited to finding units in which the rent is at or below the schedule of ceiling rents that EOCD has established for the program. The schedule of ceiling rents is identical to the one used in the Chapter 707 program and is based on a survey of market rents in Cambridge (Ex.. 14). However, under the Chapter 707 program, housing agencies had authority to negotiate rents either above or below the ceiling (Ex. 14-17). No similar authority exists under MRVP.

agencies are neither authorized nor funded to inspect units or negotiate rents under the regulations which govern the MRVP program (Ex. 3 and 6). Additionally, under the Chapter 707 program but not under MRVP, landlords and tenants were required to use EOCD's form lease (Ex. 12) which regulated in part, rent increases after the first year of the tenancy (see, para. 7.3, p. 7 of Ex. 12).

Further, tenants who participated in the Chapter 707 program paid only a fixed percentage of their income for housing costs (Ex. 10 and 11). The local housing agency administering the Chapter 707 certificates paid the balance of the rent to the private landlord. Tenants who participate in MRVP must now pay the difference out of their own pocket when the amount of the rent demanded by the landlord exceeds the tenant's subsidy (Ex. 3 and 5).

In or about October, 1992, the Board was apprised of the change in the state's rental assistance program. Since it was apparent from the face of the new state rental assistance program, that rents were not regulated by any governmental authority (see, 760 C.M.R. 49.01, paragraph 5, Ex. 3), the Board believed that, as a matter of law, the §3(b)(3)(ii) exemption was not applicable. The Board took immediate steps to assist landlords who might face a reduction in rent because the lawful maximum rent under rent control was less than the contract rent that they had been receiving under the 707 program (Ex.7 and 8). On November 4, 1992, after a public hearing, the Board passed an emergency regulation which provides an expedited procedure for these landlords to obtain rent increases based on the reasonable cost of improvements to the unit.[4]

On November 6, 1992, the Board sent letters to the Yogels (Ex. 9) and other landlords of approximately fifty-two units, which had been considered exempt pursuant to §3(b)(3)(ii) of the Rent Control Act due to their participation in the Chapter 707 program, advising them that they might now be eligible for the expedited adjustment procedure (Facts, para. 16, Ex. 8).

Although the plaintiff Yogels were apprised of the Board's interpretation of the regulations governing the MRVP program at least by November 1992, when they received letters from the Board, they failed to seek administrative or judicial relief until the instant complaint was filed in March, 1993.

ARGUMENT

I. A STATE RENTAL SUBSIDY PROGRAM WHICH MANDATES THAT LANDLORDS AND TENANTS NEGOTIATE THEIR OWN TENANCY TERMS, INCLUDING RENTS, CAN NOT BE CONSTRUED AS RENT REGULATION WITHIN THE MEANING OF THE §3(B)(3)(ii) EXEMPTION FROM THE ACT

A. A Statutory Exemption Must Be Narrowly Construed

In 1970, the City of Cambridge adopted rent and eviction controls. St. 1970, c. 842. In 1976 these controls were re-enacted

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[4]/ Many landlords who participated in the former 707 program, made improvements to their units over the years. Yet, they often failed to have their lawful maximum rents adjusted at the Board, since they were receiving higher rents under the 707 program. This regulation provides those landlords who have entered into leases with tenants holding MRVP vouchers with the ability to obtain interim rent increases prior to an administrative hearing, provided that such increases do not exceed the amount of the tenant's voucher and that there are no outstanding Sanitary Code violations for the unit.

and continued in St. 1976, c. 36 as amended ("C. 36 or the "Rent Control Act") (Ex.1). The Rent Control Act was designed to ameliorate the public emergency with respect to "[a] substantial and increasing shortage of decent rental housing accommodations especially for families of low and moderate income and for elderly people on fixed income" and to stabilize sky-rocketing rents. Rent Control Act, § 1; Grace v. Brookline, 379 Mass. 43, 50-51 (1979).

The exemption for rental units where "[a] governmental unit, agency or authority ... regulates the rents" must be read so as to be consistent with, and to accomplish, the statutory purpose of the Act. See, Charlesbank Apartments, Inc. v. Boston Rent Control Administration, 379 Mass. 635 (1980), where the issue was whether a similar exemption under Boston's Rent Control Ordinance applied to a housing project insured by the Department of Housing and Urban Development (HUD). The Court determined that the language of the exempting provision should be read in light of the general statutory purpose, following the "familiar canon" that "in case of doubt the perceived general policy should be favored over the exemption" (citations omitted), 379 Mass. at 639. Like the Boston law under consideration in Charlesbank, supra, the Cambridge Rent Control Act is a response through control of rent levels to a declared housing emergency (§ 1). The present exemption clause must be read so as to be consistent with, and to accomplish that statutory purpose.

The exemption must also be strictly construed. See, Opinion of the Justices, 254 Mass. 617, 620 (1926); Dion v. Board of

Appeals of Waltham, 314 Mass. 547, 555 (1962); Nantucket Conservation Foundation, Inc. v. Russell Management, Inc. 380 Mass. 212, 214 (1980); Martin v. Rent Control Board of Cambridge, 19 Mass. App. Ct. 745 (1985). This is especially true with respect to a remedial rent control statute designed to redress a severe housing emergency. The strict construction rule must be applied. Department of Environmental Quality Engineering v. Town of Hingham, 15 Mass. App. Ct. 409, 411 (1983).

B. MRVP Does Not Constitute Rent Regulation

The § 3(b)(3)(ii) exemption fits into the overall statutory scheme because if another governmental agency or authority is regulating rents, then the present inflationary effect that the statute is addressing would be accomplished. Additionally, it would be unduly burdensome for owners otherwise required to submit to rent regulation procedures to go through a second level of regulatory procedures at the Board. However, the statutory purpose is not served when a government housing subsidy program does not mandate the regulation of rents.[5/]

While the Board applied the §3(b)(3) exemption to the previous state rental subsidy program, unlike that program, the stated goal

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[5/] While there is no requirement that other agencies regulate rents in precisely the same manner as C. 36, it is important to at least note that rent setting under C. 36 is based on a formula whereby the actual operating expenses and capital improvement allowances for each controlled unit are added to base year rents and inflated to current dollars. Rents are later adjusted on an annual basis by a routine general adjustment and individual adjustments for operating expenses and/or capital improvements (see, C. 36 § 6 and 7 and Regulation Series 71, 72, 75, 76, Exhibit 1).

of MRVP is to minimize the role of the government in private landlord-tenant relations. To this end, eligible tenants are given a voucher for a fixed amount of money and may use that voucher to help pay the rent in virtually any dwelling unit that complies with the State Sanitary Code and does not have a rent which exceeds the market rent for the area as determined by EOCD. The rental amount is strictly a matter of negotiation between landlord and tenant. The local housing agencies administering the program are not authorized to interfere in the rental negotiation process. Although there are certain program requirements to which the landlord must adhere, these provisions do not constitute rent regulation within the meaning of the exemption.[6]/

In a similar case which also involved the § 3(b)(3)(ii) exemption at issue here, the Court interpreted "regulates" to mean "actively and affirmatively regulating." Rent Control Board of Cambridge v. 375 Associates Limited Partnership, 396 Mass. 696, 701, footnote 8 (1986). That case involved a HUD guaranteed mortgage pursuant to § 223(f) and § 207 of the National Housing Act. The terms of the guaranteed loan required that the apartments be operated in accordance with HUD regulations and the regulatory

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[6]/ The program requires a landlord to enter into a one year lease with the tenant voucher holder, not to evict except for good cause, and to comply with the State Sanitary Code, including annual inspections by the local code enforcement agency. Additionally, landlords may not discriminate against tenants on the basis of race, religion, national origin, marital status or receipt of public assistance (Exhibit 4, page 2).

agreement provided that the owner cannot charge rents "in excess of those approved in writing by the mortgagee ... in accordance with the administrative requirements of HUD." Id. 396 Mass at 697. The regulations also provided that local rent control would prevail in the normal course except that it could be pre-empted on a case-by-case basis. The Court found that this type of regulatory scheme does not "regulate" rents within the meaning of §3 (b)(3)(ii). See also, Rent Control Board of Cambridge v. Cambridge Tower Corp., 394 Mass. 809, 815 (1985) (where again, the minimal requirements imposed by the HUD guaranteed mortgage program, including adherence to a rent schedule based on market rents, was not of the "[c]haracter contemplated by the legislature in enacting the Cambridge Rent Control Act.")

In the instant case, neither EOCD's schedule of ceiling rents, based on market rate rents, nor the other minimal requirements of the MRVP program, can be said to constitute rent regulation within the meaning of the exemption. As the Appeals Court held in Niles v. Boston Rent Control Board, 6 Mass. App. Ct. 135, 143-144, note 7 (1978), "The use of market value as a test is inconsistent with the regulation of rents because the value of the property on the market depends in large measure upon its earnings and inflated rents result in inflated market values..".

Finally, the purpose of the State's rental subsidy program can not be to open up a route of evasion of rent control for units occupied by low income tenants. The apartments at issue here are all subject to the Rent Control Act so that, ordinarily, the landlord can not charge more than the lawful maximum rent allowed by the Board. It would be an absurd result if a landlord is permitted to demand market rate rents for a rent controlled apartment from a tenant who is an MRVP voucher holder and thus by definition low income, when he could demand no more than the controlled rent from a higher income tenant who had no subsidy.

Moreover, unlike previous rental subsidy programs where tenants paid only a fixed portion of their income for rent and the local housing agency was responsible for paying the landlord the difference, under the MRVP program if the rent exceeds the amount of the tenant's subsidy, the tenant, not the housing agency must pay the difference out of pocket. If the market rent exceeds the rent controlled rent, the subsidized tenant is likely to pay more out of pocket than her rent controlled neighbor. To interpret "regulates the rent" as used in §3(b)(3) of the Act, so broadly would be inconsistent with the explicit intent of the Rent Control Act and would serve no purpose other than to permit certain landlords to reap financial benefit from a rental subsidy program at the expense of low income tenants for whose benefit the program was enacted. Such a result would undermine both the purpose of the State's rental subsidy program and the Cambridge Rent Control Act.

II. THE PLAINTIFFS FAILED TO SEEK REVIEW OF THE BOARD'S DETERMINATION WITHIN 30 DAYS AS REQUIRED BY G.L. 30A § 14 AND THE RENT CONTROL ACT § 10 AND ARE BARRED FROM BRINGING THE INSTANT ACTION

Despite the public hearing on November 4, 1992 and the letter sent to the Yogels and other landlords on November 6, 1992, informing them of the change in the State's subsidy program and the resulting change in the status of their units from temporarily exempt under the Chapter 707 program, to controlled (see, Exhibits 8 and 9), the plaintiffs failed to appeal the Board's action until March, 1993 when the instant complaint was filed.

Pursuant to G.L. c. 30A § 14 (1), and The Rent Control Act § 10, if the plaintiffs believe that they were aggrieved "[b]y any action, regulation or order of the Board" they were obligated to file their complaint within 30 days after receipt of notice of the final agency decision. The plaintiffs received a letter informing them that their units were now subject to rent control on November 6, 1992, yet they failed to file their complaint until March, 1993. The plaintiffs also failed to make a timely request for an extension of the thirty day period and are thus barred from seeking such an extension now. Flynn v. Contributory Retirement Appeal Board, 17 Mass. App. Ct. 668 (1984). The State's appellate courts have repeatedly held that this time limit is jurisdictional and can not be waived by either the parties or the Court. See, e.g., Flynn, supra, at 669 and cases cited therein. By not timely commencing this lawsuit, the plaintiffs are now barred from pursuing their claims that MRVP exempts units from rent control.

CONCLUSION

For the foregoing reasons the defendants The Cambridge Rent Control Board, Christine Berrouet and Marie Valmont demand that this Honorable Court grant their Motion for Summary Judgment in this matter and declare that the mobile MRVP does not constitute "rent regulation" within the meaning of § 3(b)(3)(ii) of the Act.

6.

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 6, 1994

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 29, regarding the impact of the recent Superior Court decision in Yogel v. Cambridge Rent Control Board et al, please find attached a response from Terrence P. Morris, Executive Director of the Rent Control Board.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
attachment

Consent Agenda # 6 5/272

Response to Awaiting Report Item Number Twenty-Nine regarding the impact of the recent Superior Court decision in Yogel v. Cambridge Rent Control Board.

For original see 1994
City Manager Request
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In City Council,

June 6, 1994

Placed on file