

# CITY OF CAMBRIDGE

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

94 MAY 17 AM 9:30  
OFFICE OF THE CITY MANAGER

## RENT CONTROL BOARD

TERRENCE P. MORRIS,  
EXECUTIVE DIRECTOR

May 16, 1994

to: Robert W. Healy, City Manager  
from: Terrence P. Morris, Executive Director  
re: Communication # 19, 4/25/94  
"COMMUNICATION FROM PEPITA SOTA REGARDING  
ORDINANCE 1093 (AMNESTY) RULING AGAINST THE RENT  
CONTROL BOARD"

This is in response to your request for my review of the above communication. For the reasons stated herein I do not recommend that the action requested by James W. Headley and Pepita Soto be taken.

The Rent Control Board had hoped that the Appeals Court's decision in Soto v. Cambridge Rent Control Board would produce a definitive ruling on the interpretation and application Ordinance 1093, thereby finally settling issues engendered by that legislation. However, because of the way Soto was decided, the case did not accomplish that result.

First, Soto cannot be precedent because it was decided under Appeals Court Rule 1:28 (summary disposition). As the Appeals Court has repeatedly stated, a summary disposition ruling is only applicable to the particular case then under consideration. See Lyons v. Labor Relations Commission, 19 Mass. App. Ct. 562, 566, n. 7 (1985) (such unpublished decisions "are not to be relied upon or cited as authority in unrelated cases.") Since Lyons the court has regularly and consistently reiterated the standard and admonished parties for attempting to invoke Rule 1:28 decisions in other cases. See for example, Wolbach v. Beckett, 20 Mass. App. Ct. 302, 306, n. 5 (1985); Prudential Property and Casualty Ins. Co. v. Allaire, 25 Mass. App. Ct. 159, 162, n. 2 (1987); Purvis v. Commissioner of Correction, 29 Mass. App. Ct. 190, 192, n. 5 (1990); Peabody v. Peabody Benevolent Assoc., 34 Mass. App. Ct. 113, 115, n. 5 (1993); Langton v. Commissioner of Correction, 34 Mass. 564, 574 (1993).

The only legal argument which might be made for applying Soto to other "1093" cases is that those cases are "related," and thus fall outside of the usual prohibition against following Rule 1:28 decisions. In my view this argument should not prevail for the following

reasons.

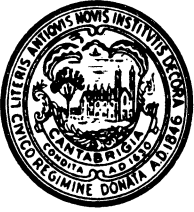
The procedural facts in Soto are convoluted and unique. It is perhaps for this reason that the Appeals Court chose not to issue a formal opinion. Indeed, as the Appeals Court observed in several of the cases cited above, one of the grounds for not permitting reliance on Rule 1:28 decisions is that the facts may not be explained fully in the ruling.

Additionally, the Appeals Court was informed that Soto potentially applied to other "1093" cases. Had the court intended to enunciate a rule of law applicable to all pending "1093" cases, it would not have used Rule 1:28 but would have issued a formal opinion. That the court chose to employ Rule 1:28 demonstrates that it did not intend the case to be binding in other matters.

Finally, since there is another Superior Court case which applied a different reading of Ordinance 1093 and which reached a different result from Soto, and because the Appeals Court merely accepted the Superior Court's rationale in Soto, the suggestion that Soto should be applied and not the other case is self-serving at best. In Signer v. Cambridge Rent Control Board, Middlesex Superior Court, no. 91-2726 (20 Forrest Street), the Superior Court accepted and followed the Board's interpretation and application of Ordinance 1093. Moreover, even though the Signer court was aware of the Soto Superior Court decision, it did not follow it. The property owners in Signer did not appeal. Thus, in effect the two Superior Court decisions, Soto and Signer, are of equal weight. To favor the one case which ruled against the Board's reading of "1093" over the other which accepted the Board's interpretation would be unwarranted on both legal and policy grounds.

On policy grounds the following considerations militate against applying Soto to other pending cases. First, to do so would abrogate the City's interpretation that a bona fide conflict as to the number of units in the property had to have existed as of the time the unit(s) were created, to result in a lawful reduction of units under 1093. Since the so-called "conflicts" issue arose, the City has consistently maintained that a real conflict had to exist before units could be reduced without a removal permit. To change this position now would result in further reduction of the city's controlled rental housing stock. Although Mr. Headley and Ms. Soto raise concerns about increased costs to property owners, the city's concern should focus on the city's policy to protect the controlled rental housing stock.

Should you wish further information or elaboration, I would be glad to provide it.



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

May 23, 1994

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 23, regarding a communication from Pepita Soto relative to Ordinance 1093 (Amnesty) ruling against the Rent Control Board, please find attached a response from Terrence P. Morris, Executive Director of the Rent Control Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy  
City Manager

RWH/mev  
attachment

Consent Agenda # 6

S-252

Response to Awaiting Report Item Number  
Twenty-Three regarding a communication  
from Pepita Soto relative to Ordinance  
Number 1093, Amnesty, ruling against the  
Rent Control Board.

*for original ~~order~~ Communication  
see 1994 Sundries # 169*

In City Council,

May 23, 1994

*Placed on file*