Attachment 3

Review of Vega Adjustment Case Law

The 1990 Court of Appeal decision in *Vega v. City of West Hollywood* arguably created a new requirement to ensure rent control programs do not deprive landlords of a fair return. However, the requirement is limited to jurisdictions that define a landlord's fair return based on maintaining the net operating income earned from the property in a specified base year.

The *Vega* case is cited by courts in ten published decisions. Five decisions directly discuss the Vega adjustment, which generally addresses unusually low base year income; each case is briefly discussed below, beginning with *Vega*. Five decisions do not address the Vega adjustment but cite the case for general rent control law purposes: *Los Altos El Granada Investors v. City of Capitola* (2006) 139 CA 4th 629; *Abramson v. City of West Hollywood* (1992) 7 Cal. App. 4th 1121; *Cole v. Oakland Residential Rent Arbitration Bd.* (1992) 3 Cal. App. 4th 693; *Givoni v. Santa Monica Rent Control Bd.* (1991) 234 Cal. App. 3d 94; and *West Hollywood Concerned Citizens v. City of West Hollywood* (1991) 232 Cal. App. 3d 486.

Although it does not cite the *Vega* case, the California Supreme Court implicitly upheld the Vega adjustment concept in *Kavanau v. Santa Monica Rent Control Board* (1997) 16 C 4th 761. The Court stated: "when a rent control law establishes a 'base rent' by reference to rents on a specified date, the law should permit adjustments of that base rent for those rental units that had artificially low rents at that time." (*Id*. at 772.)

Vega v. City of West Hollywood (1990) 223 CA 3d 1342

Rent board and hearing officer initially denied but then allowed a small adjustment of base year rents. The appeal court relied on the specific text of the city's ordinance and regulations, which had no standard for how to increase base year income if rents were unusually low due to peculiar circumstances. The landlord hired a professional real estate appraiser who analyzed rents from similar properties to argue the units could have commanded a higher rent in the base year than was actually received and the court concluded that evidence was adequate to raise base year income for purposes of determining future fair returns from the property by maintaining net operating income. The case quotes the California Supreme Court, which required rent control programs to include an adjustment mechanism to provide for "situations in which the base [year] rent cannot reasonably be deemed to reflect general market conditions." (223 CA 3d at 1349 (quoting *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 169).)

Stardust Mobile Estates, LLC v. City of San Buenaventura (2007) 147 CA 4th 1170

Rent board and hearing officer denied a Vega adjustment because mobilehome park owner had not provided substantial evidence of "unique circumstances" why base year rents were unusually low. The appeal court remanded the Vega adjustment issue back to the rent board to allow the park owner to present more evidence in accordance with the text of that city's Vega adjustment regulation. Notably, the rent board denied the Vega adjustment based on the "unique circumstances" test included in the *Vega* case, which test was not included in the city's ordinance or regulations.

MHC Operating Limited Partnership v. City of San Jose (2003) 106 CA 4th 204

Indirectly affirming the Vega concept: a mobilehome park owner challenged denial of a requested rent increase. The court of appeal affirmed the denial because the park owner's proposed "substitution of an alternative base year does not employ the same methodology or accomplish the same result" as the ordinance. The court cited expert testimony estimating base year income and expenses to reject the park owner's claim that it was "impossible to reconstruct net operating income for 1985 as a base year." (106 CA 4th at 224-25.)

Concord Communities v. City of Concord (2001) 91 CA 4th 1407

Property owner challenged denial of Vega adjustment for two mobilehome parks by rent board. The court of appeal vacated the rent board's denial for both parks based on the text of the city's ordinance. The ordinance presumed a property owner earned a fair return by maintaining the net operating income earned from the property in the base year, unless "rents charged by the park owner in the Base Year were significantly below the rents charged for mobile home spaces in the City with comparable amenities, because of unique or extraordinary circumstances." (91 CA 4th at 1411.)

Both the property owner and the city ultimately hired real estate appraisal experts to analyze comparable base year rents; even the city's expert said the purchase price for the mobilehome parks were "reasonable" and the base year rents were "lower than those in the City's parks with comparable amenities." (*Id*. at 1412.) However, the rent board ignored this and other evidence, concluding the base year rents were not significantly below market. Accordingly, the rent board's decisions were not supported by substantial evidence and so the court vacated the denials of the requested adjustments.

City of Berkeley v. City of Berkeley Rent Stabilization Bd. (1994) 27 CA 4th 951

Berkeley Property Owners' Association challenged regulations adopted by the rent board. The case upheld rent control regulations allowing a rent adjustment if the base rent frozen by the inception of rent control was much lower than the rents charged for other comparable rental units. The Court quoted the regulation: "The Base year net operating income and current lawful rent ceiling shall be adjusted by the Board if …

The base year rent was below prevailing market rents for comparable units in the base year. Comparability of units shall be judged based on the number of bedrooms, neighborhood, services, amenities provided, and other relevant factors." (27 CA 4th at 983.)

The case also upheld an additional regulation regarding "historically low rents." The regulation defined "historically low rents" as rents below seventy-five percent (75%) of HUD fair market rents published Alameda County. (27 CA 4th at 983-84.)

Apartment Assn. of Greater L.A. v. Santa Monica Rent Control Bd. (1994) 24 CA 4th 1730

Apartment Association of Greater L.A. challenged regulations adopted by the rent board that allowed for different rent adjustments depending upon when the landlord purchased the property. The appeal court concluded that landlords who purchased a rent-controlled building *after* rent control is enacted must be allowed to apply for a Vega adjustment, but are not necessarily entitled to the adjustment. The court held, "there is no general entitlement to an increase in base date rents predicated on market conditions." (24 CA 4th at 1737.)

The court concluded that Santa Monica's blanket rule that new owners cannot request a Vega adjustment was "too broad" because "it does not allow any post-rent control purchaser [of a rent controlled building] to petition for a base year rent increase on any ground."