

**CITY OF MOUNTAIN VIEW
RENTAL HOUSING COMMITTEE
HEARING OFFICER DECISION**

Rental Housing Committee Case No.: 17180006

Address of Rental Property: 184 Centre Avenue
Mountain View, CA 94043

**Rental Units Noted in the Petition or
Petitions:** 1, 3, 6, 7, 9, and 11

Date(s) of Hearing June 5, 2018

**Date Evidence Closed after
Supplemental Briefing** June 15, 2018

Date of Decision: July 11, 2018

Date of Mailing: See attached Proof of Service.

Hearing Officer: Jil Dalesandro

I. Definitions:

1. "Landlord" as used herein shall mean ADOI LLC, incorporated on August 18, 2010 according to the California Secretary of State. Deed documents filed with the Recorder's Office show the Property is actually owned by Issachar and Rachel Ohana through their Trust;
2. "Tenants" or "Respondents" as used herein shall mean the tenants of units 1, 3, 6, 7, 9, and 11;
3. "Original Petition" as used herein shall mean the Landlord's Petition submitted on January 16, 2018 and supporting documentation;
4. "Amended Petition" as used herein shall mean the Landlord's Amended Petition dated March 26, 2018;
5. "The Act" as used herein shall mean the Mountain View Community Stabilization and Fair Rent Act ("CSFRA");
6. "The Property" as used herein shall mean the subject property located at 184 Centre Avenue, Mountain View, CA 94041, APN 158-04-034. The Property consists of 11 rental units. The Property has been owned by Landlord since February 19, 2016.

II. Issues Presented by the Petition(s):

1. Which Petition shall control this Adjustment – the Original Petition or the Amended Petition;
2. Which CPI should be used;
3. Whether Landlord is entitled to a Vega Adjustment;
4. Which year shall be used as the Base Year for Income – 2015 or 2016;
5. Which year shall be used as the Base Year for Expenses – 2016 or 2017;
6. Whether Landlord is entitled to an individual upward adjustment in the rent as requested in the Petition beginning after the Notice Date, and if so, how much and across which Units.

III. Appearances at the Hearing:

The following persons attended the hearing:

1. Landlord Authorized representative, David Avny;
2. Landlord Witness, Issachar Ohana;
3. Attorneys Juliet Brodie and Certified Law Student Kelsey Merrick of the Stanford Community Law Clinic, and Jason Tarricone, of Community Legal Services in East Palo Alto for Respondent Tenants;
4. Tenants in Units 3, 6, 7, 9, and 11 appeared through their Declarations.

IV. Witnesses

The following persons were duly sworn, testified at the hearing, and presented the following testimony:

1. Landlord Authorized representative, David Avny;
2. Landlord Witness Issachar Ohana; and
3. Tenants in Units 3, 6, 7, 9, and 11 appeared through their Declarations.

V. Evidence

1. Landlord's Petition dated January 16, 2018 and supporting documentation in this matter was admitted into evidence as Exhibit A;
2. Landlord's Amended Petition dated March 26, 2018 were collectively admitted into evidence as Exhibit B;
3. Landlord's Response to Hearing Officer's Request for Documents, and supporting Documents were collectively admitted into evidence as Exhibit C;
4. Landlord's Binder of photographs of the Property were collectively admitted into evidence as Exhibit D

5. Respondent Tenants' Response to Petition and Amended Petition, including Tenants' Declarations (and attached Exhibits), and Juliet Brodie's Declaration (and attached Exhibits) were collectively admitted into evidence as Exhibit E;
6. Declaration of Stephen Barton and attached exhibits were collectively admitted into evidence as Exhibit F;
7. Landlord's Response to Tenants Opposition to the Petition, including all Exhibits thereto, and including Landlord's response to Issues Raised in Tenants' Declarations were collectively admitted into evidence as Exhibit G;
8. Landlord's Tax History was admitted into evidence as Exhibit H; and
9. Sworn testimony taken from Witnesses at the Hearing; and
10. Evidence was closed without objection, and the Hearing was adjourned on June 15, 2018, thus beginning the time period for the rendering of this Decision. The Hearing was adjourned on said date due to the unusually large volume of documentation submitted by all Parties. As a result thereof, the Hearing Officer made a thorough supplemental review of the same, in light of the newly submitted briefs to ensure that no further evidence was necessary before this Decision could be rendered. Once that review was completed, the hearing was adjourned on June 15, 2018. There was no evidence that was offered but not accepted into evidence.

VI. Findings of Fact Supporting This Decision

1. Operative Petition:

The operative Petition in this matter is the Amended Petition. All references to the "Petition" from this point forward shall be to the Amended Petition.

2. Base Year for Income:

Base Year Income shall be that from 2015, since Landlord testified that the only income was from rent (*See, Original Petition*), and provided actual income numbers therein. Further, Landlord testified at the hearing that it had actual rent numbers, as they had been available from the Seller of the Property. The Act defines the Base Year as 2015. *See, the Act* at Regulation 6(C)(1). No extenuating circumstances exist to use another time period for income.

2. Operative Base Year for Expenses:

The operative Base Year for Expenses shall be 2016 as ordered prior to the hearing in this matter.

3. Operative CPI:

In its Amended Petition, Landlord changed the Consumer Price Index ("CPI") used to calculate the CPI percentage increase on Worksheet 5. The Act clearly states:

The Consumer Price Index for the Petition Year shall be the Consumer Price Index

that was most recently published as of the date a Petition for Upward Adjustment of Rent is submitted.

See, *The Act* at Regulation 6(C)(4)(b). The Original Petition was signed and submitted on or about January 16, 2018. See, *Exhibit A*, at p. 3. The proper CPI for the Petition Year is 428.426. The CPI percentage used shall be 1.15.

3. **Landlord is Not Entitled to a Vega Adjustment:**

A Vega adjustment is unwarranted where

[T]he physical condition of the property or any individual [unit], the market conditions that related to the property or any individual [unit], and/or any other relevant evidence” demonstrates “that a recalculation of the Base Year Gross Income ... is unnecessary for the landlord to receive a fair return on investment for the property, fails to ensure fairness, or is otherwise contrary to the purposes of the Act.”

See, *the Act*, at Regulation 6(G)(3)(d).

a. The Property is old, the Tenants’ Units are not newly remodeled, and the level of service and maintenance has decreased since Landlord purchased the Property.

According to the majority of the evidence, and declarations of the tenants, the Property is over 60 years old, and Tenants’ units lack amenities such as air conditioning, central heating, dishwashers. See, *Exhibit E*, Tenants’ Declarations.

Subject Tenants -- according to their testimony, and photographs provided by Landlord -- reside in units that have not been remodeled since they moved in, and which contain worn carpets, aging wall-unit heaters which do not heat most of the apartment and no air conditioning. Tenants testify that since the heaters do not provide effective heating in most of the Affected Units, they are forced to supplement with space heaters in the cold months. The Tenants also testify that the Units on the upper floor are sweltering in the hot months.

Each of the Tenants testifies that the prior owner took pride in the landscaping and grounds and that the building and gardens were very well cared for. The prior owner would deliver new heater filters to tenants every year and she herself often tended to the gardens herself. Tenants further testify that Landlord has hired a “mow and blow” gardener, who does not tend to the planting with expertise and that the gardens are overgrown and unkempt – to the point of blocking ingress and egress on the side of the building. Furthermore, Tenants assert that Landlord removed decorative stones at the front of the property and replaced them with bushes which they feel was

less attractive and an unnecessary expense. The photographs submitted by Landlord support the Tenants' assertions. *See, Exhibit D.*

A preponderance of the evidence supports a rebuttal to any presumption of a *Vega* Adjustment to the Net Operating Income for the Base Year. The market conditions of the property show that the rents as charged adequately reflect the condition of the property and that such an increase is "unnecessary for the landlord to receive a fair return on investment for the property." *See, The Act* at Regulation 6(G)(3)(d).) As a result of all of these factors, Landlord's request for a *Vega* adjustment for these units is hereby **denied**.

5. **Landlord Is Not Entitled To An Individual Upward Rent Adjustment In Rent.**

Landlord has owned this property since February 2016. Evidence shows that the units subject to this Petition are, for the most part, old and not remodeled (see above). Inspections are current. Based on proper evidence and calculations under the Act, Landlord has failed to prove that it is entitled to a rent increase; in fact, evidence shows the Petition Year NOI is positive \$ 35,140.50.

a. **Adjusted Gross Income in the Base and Petition Years:**

The Evidence and testimony shows proper Adjusted Gross Income of \$190,311 (rental income plus laundry income) in the Base Year and \$ 253,164.00 in the Petition Year. The Act requires Gross Income to be calculated using rents that are "lawfully collectible," not simply rents that were actually collected. *See, The Act* at Regulation 6(D)(1). *See, Exhibit B at Worksheet 2.*

b. **Total Operating Expenses in the Base and Petition Years.**

1. **Property Taxes:**

Since the Base year for Expenses is 2016, Landlord was assessed the sum of \$ 49,650 in Property Tax for the Base Year and the sum of \$ 58,030.00 for the Petition Year. Those shall be the amounts used.

2. **Reasonable Costs of Ordinary Repair, Replacement, and Maintenance.**

In this category, several expenses that must be excluded or reclassified.

a. **Management Expenses:**

Reasonable Management Expenses are presumed to be 6% of gross income. *See, Act* at Regulation 6(E)(1)(g).) Regulation 6(E)(1)(g) prohibits

Management expenses in excess of [6%] of Gross Income ... unless it is established that such expenses do not exceed those ordinarily charged by commercial

management firms for similar residential rental properties.

See, Act at Regulation 6(E)(I)(g). The evidence fails to support such an exception as the Property is over 60 years old, and Tenants' units lack amenities such as air conditioning, central heating, dishwashers. *See, Exhibit E, Tenants' Declarations.*

Subject Tenants -- according to their testimony, and photographs provided by Landlord -- reside in units that have not been remodeled since they moved in, and which contain worn carpets, aging wall-unit heaters which do not heat most of the apartment and no air conditioning. Tenants testify that since the heaters do not provide effective heating in most of the Affected Units, they are forced to supplement with space heaters in the cold months. The Tenants also testify that the Units on the upper floor are sweltering in the hot months.

Each of the Tenants testifies that the prior owner took pride in the landscaping and grounds and that the building and gardens were very well cared for. The prior owner would deliver new heater filters to tenants every year and she herself often tended to the gardens herself. Tenants further testify that Landlord has hired a "mow and blow" gardener, who does not tend to the planting with expertise and that the gardens are overgrown and unkempt -- to the point of blocking ingress and egress on the side of the building. Furthermore, Tenants assert that Landlord removed decorative stones at the front of the property and replaced them with bushes which they feel was less attractive and an unnecessary expense. The photographs submitted by Landlord support the Tenants' assertions. *See, Exhibit D.*

Since the evidence shows that Landlord performs less management than its predecessors, Management Expenses are hereby capped at 6% of Gross Income or \$ 11,419.00 in the Base Year and \$ 15,190.00 in the Petition Year. This 6% has been recalculated based upon the actual 2015 income for the Base Year of \$190,311, and based upon the lawfully collectible rent in 2017 for the Petition Year. *See, § 5(a) above.*

c. Allowable Attorneys' Fees and Costs:

The allowable attorneys' fees must be amortized as required by the Act. Thus, amortized over 5 years, the fees total \$ 889.00 in the Petition Year. *See, Act* at Regulation 6(E)(I)(i).

e. Other Operating Expenses:

Landlord improperly categorizes several management expenses as "Other" expenses, when the same should be capped as set forth above. These expenses include truck expenses, credit card fees, postage, office supplies, accounting fees and costs, and meals to discuss Tenant renewals and

Partner meetings. Thus, Other Expenses must be reduced to \$ 3,416.00 in the Base Year and \$ 2,611.00 in the Petition Year.

g. Total Operating Expenses:

Operating Expenses for the Base and Petition Years are hereby ordered to be:

<u>Category</u>	<u>Base Year</u>	<u>Petition Year</u>
Rental Housing Fees	\$ N/A	\$ 0-0
Business License Fees	\$ 31.00	\$ 31.00
Real Property Taxes	\$ 49,665.00	\$ 58,030.00
Landlord Utility Costs	\$ 13,162.00	\$ 15,221.00
Insurance	\$ 6,740.00	\$ 6,150.00
Reasonable Repair, etc.	\$ 4,931.00	\$ 2,622.00
Reasonable Management Expense	\$ 11,419.00	\$ 15,190.00
Reasonable Capital Improvement	\$ 972.00	\$ 2,332.00
Allowable Attorneys' Fees	-0-	\$ 889.00
Owner Performed Labor	\$ 325.00	\$ 350.00
Other Operating Expenses	\$ 3,416.00	\$ 2,611.00
TOTAL OPERATING EXPENSE	\$ 90,661.00	\$ 103,426.00

h. Any awarded Upward Adjustment of Rent shall be apportioned across all 11 units:

The Act requires that, except for a *Vega* increase – which is denied here -- any rent increase should be allocated equally among all units in a property. *See, Act* at Regulations 6(G)(3)(e) & 6(J). As a result, were there to be any rent increase, it would be applied equally to all 11 units of the Property and awarded only as to the Affected Units.

i. Rent Increase Calculation:

<u>Category</u>	<u>Base Year</u>	<u>Petition Year</u>
<u>NOI</u>		
AGI	\$ 190,311.00	\$ 253,164.00
Total Operating Expense	\$ 90,661.00	\$ 103,426.00
Net Operating Income	\$ 99,650.00	\$ 149,738.00

NOI Plus CPI Adjustment

Net Operating Income	\$ 99,650.00	\$ 149,738.00
CPI	371.075	428.426
CPI Percentage	15% or 1.15	
Adjusted NOI	\$ 114,597.50	
Adjusted Petition Year NOI per <i>CSFRA Reg. Chapt. 6, Sec.B</i> (Upward adjustment of rent is determined if the Petition Year NOI is negative.)		\$ 35,140.50
Allowed Rent Increase/Month		N/A
Allowed Increase/Unit/Month		N/A

Here, the Annual General Adjustment (“AGA”) of 3.4% was available to the Landlord for 2017. Landlord may only "bank" the 2017 AGA if none of the available 3.4% 2017 AGA was implemented as a rent increase on a Unit. *See, the Act* Section 1707(d).

VII. Discussion

See Section VI above.

VIII Conclusions of Law Supporting This Decision

In addition to those sections of the Act cited above, the following also applies to this Petition and Decision:

The CSFRA regulates rent increases as set forth in section 1706:

No Landlord shall increase Rent for a Covered Rental Unit except as authorized by this Article. Rent increases shall be limited to those imposed pursuant to Section 1707 (Annual General Adjustment) and Section 1710(a) (Petition for Upward Adjustment—Fair Rate of Return). A Landlord may set the initial Rent for a new tenancy pursuant to Section 1708 (Initial Rents for New Tenancies).

See, CSFRA § 1706.

As set forth above, based on the Annual General Adjustment of 3.4 percent and Fair Rate of Return, Landlord’s proposed rate increase is not reasonable.

1. Fair Rate of Return:

CSFRA Chapter 6 B of the Regulations states:

A Landlord's fair rate of return on investment for a property containing a Covered Rental Unit for the Petition Year is the "Adjusted Net Operating Income." For purposes of this Section (B), the Adjusted Net Operating Income shall equal the Net Operating Income for the Base Year, adjusted by the percentage increase or decrease in the Consumer Price Index between the Base Year and the Petition Year. If the Landlord's actual Net Operating Income for a property in the Petition Year is less than the Adjusted Net Operating Income, then the Landlord shall be entitled to an Upward Adjustment of Rents for that property sufficient to provide a Net Operating Income equal to the Adjusted Net Operating Income.

See, The Act, at Regulations, Chapter 6(B).

CSFRA Regulations at Chapter 6(F) define Capital Improvements as

[A]dditions to or modifications of a physical feature of a Covered Rental Unit or of a building or property containing a Covered Rental Unit. To qualify as a Capital Improvement, the addition or modification must:

- a. Be necessary to bring the property or Covered Rental Unit into compliance, or to maintain compliance, with applicable building or housing codes

See, The Act, at Regulations, Chapter 6(F)1.

CSFRA Regulations at Chapter 6(E) define "Operating Expenses" to include not only Capital Expenses as set forth above, but also:

- a. The portion of annual fees assessed under Section 1709(j)(1) of the Community Stabilization and Fair Rent Act that is not allowed to be directly passed through to Tenants; and
- b. Business license fees; and
- c. Real property taxes; and
- d. Utility costs paid by the Landlord, to the extent that such costs are not passed through to Tenants; and
- e. Insurance; and
- f. Reasonable costs for ordinary or routine repair, replacement, and maintenance of one or more Covered Rental Units and the property containing Covered Rental Units. Repair, replacement, and maintenance costs shall include, but not be limited to, building maintenance, including

carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, and security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets; and

g. Reasonable management expenses (contracted or owner-performed), including necessary and reasonable advertising, accounting, or other managerial expenses. Management expenses are presumed to be six percent (6%) of Gross Income, unless established otherwise. . . and

i. Attorney's fees incurred in the normal operation of the [units.]

See, The Act, at Regulations, Chapter 6(E)1.

Mountain View voters enacted the Act in November 2016 to control

[E]xcessive rent increases . . . while ensuring Landlords a fair and reasonable return on their investment.”

See, the Act at Art. XVII, Sec. 1700. That same law permitted Landlords to increase rents for existing residents by 3.4% in 2017. This increase accounts for inflation to ensure that landlords earn a fair and reasonable rate of return on their investment by maintaining their net operating income. *See, the Act* at Regulation 6(A)(3) and 6(B); *see also, Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles* (1983) 142 Cal.App.3d 362, 371.

The California Supreme Court has consistently held that any increase in rents sought by the landlord must be balanced against the tenants' interests in keeping their homes affordable:

[T]he rate regulator is balancing the interests of investors, i.e. landlords, with the interests of consumers, i.e. [tenants], in order to achieve a rent level that will on the one hand maintain the affordability of the [property] and on the other hand allow the landlord to continue to operate successfully.

See, Galland v. Clovis (2001) 24 Cal.4th 1003, 1026. The Supreme Court has further held that if investment returns for landlords are merely “disappointing” without being confiscatory,

[T]he solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.

Ibid. Thus, as long as rent levels permit a growth in net operating income, the constitutional minimum for a “fair rate of return” has been met. *See, Fisher v. City of Berkeley* (1984) 37 Cal.3d 645, 680-683.

3. Allocation of Upward Adjustment of Rents:

CSFRA Regs at Chapter 6 (J) state:

Upward Adjustments of Rents authorized by Hearing Officers and/or the Rental Housing Committee shall be allocated equally among all Rental Units in the property, subject to the condition that in the interests of justice, a Hearing Officer and/or the Rental Housing Committee may allocate Rent increases in another manner necessary to ensure fairness and further the purposes of the Act.

See, The Act, at Regulations, Chapter 6(J).

IX. Decision

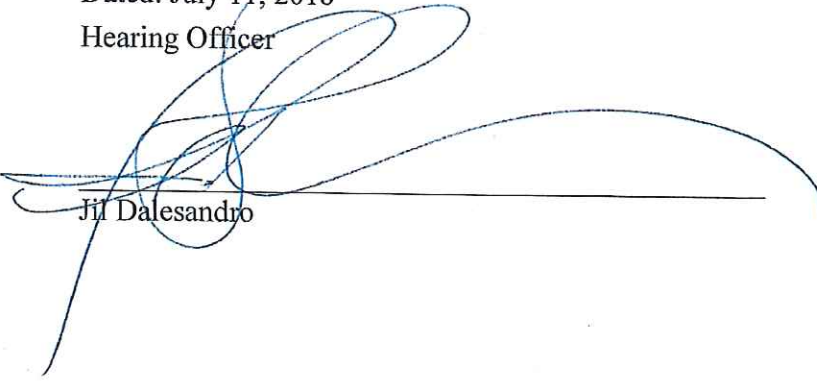
Based on the above findings of fact and conclusions of law, it is hereby decided that, The Petition filed by Landlord is hereby **denied** as follows:

1. Landlord's request for a *Vega* adjustment for these units is hereby **denied**.
2. The Petition is **denied** in that Landlord is hereby denied an upward adjustment of rent for any unit;
3. The Petition is **denied** as to the request to apportion and charge any awarded upward adjustment of rent to only the Affected Units; and
4. No decision is hereby rendered regarding the constitutionality of the Act, and no decision is hereby rendered as to the Tenants' assertion that several portions of the regulations exceed the statutory authority granted by the CSFRA. These assertions were disallowed as not within the jurisdiction of the Hearing Officer, the Petition, or this Hearing.

SO ORDERED.

Dated: July 11, 2018

Hearing Officer



JJ Dalesandro