SUPREME COURT, APPELLATE DIVISION
FIRST DEPARTMENT

OCTOBER 7, 2014

THE COURT ANNOUNCES THE FOLLOWING DECISIONS:

Mazzarelli, J.P., Acosta, Freedman, Richter, Clark, JJ.

12896 Shiby Abraham, etc., Index 101134/10
Plaintiff-Respondent,

-against-

Chelsea Piers Management, Inc.,
Defendant-Appellant.

_____

Rivkin Radler LLP, Uniondale (Cheryl F. Korman of counsel), for appellant.

Weitz & Luxenberg, P.C., New York (Pierre Ratzki of counsel), for respondent.

_____

Order, Supreme Court, New York County (Milton A. Tingling, J.), entered July 26, 2013, which denied defendant's motion for summary judgment dismissing the complaint, unanimously reversed, on the law, without costs, and the motion granted. The Clerk is directed to enter judgment accordingly.

In the early morning hours of April 1, 2009 plaintiff's decedent drowned in the Hudson River, just off Chelsea Piers, after trespassing onto one of the piers by scaling a locked gate while intoxicated. He was part of a group of five men who had been escorted off the piers earlier that night by two Chelsea Piers employees. One of the employees relocked the gate after

letting the men out. A witness who saw the decedent in the water about 15 yards from the walkway dialed 911 and called to decedent to come back, but the decedent moved further out in the water and within a minute had gone under, never to reappear. An employee of Chelsea Piers received a call reporting that someone was in the water, and ran over from the command center with a life ring, but it was too late. Under these circumstances, the decedent's actions were not foreseeable, and there is no basis for holding Chelsea Piers liable for his demise (see *Maheshwari v City of New York*, 2 NY3d 288, 295 [2004]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Mazzarelli, J.P., Renwick, Andrias, Richter, Feinman, JJ.

13011 The People of the State of New York, Ind. 155/10
Respondent,

-against-

Randell T.,
Defendant-Appellant.

_____

Office of The Appellate Defender, New York (Richard M. Greenberg of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Susan Axelrod of counsel), for respondent.

_____

Judgment, Supreme Court, New York County (Analisa Torres, J.), rendered May 11, 2011, convicting defendant, upon his plea of guilty, of robbery in the second degree, and sentencing him to a term of 3½ years followed by three years' postrelease supervision, unanimously modified, as a matter of discretion in the interest of justice, to the extent of vacating the conviction, adjudicating defendant a youthful offender, and reducing the sentence to a term of 1⅓ to 4 years, and otherwise affirmed.

In light of defendant's age and limited prior juvenile or criminal record at the time of the incident, we exercise our discretion to modify the sentence to the extent indicated. Under the circumstances of this case, including the fact that the

presentence report recommended youthful offender adjudication, we find that "the interest of justice would be served by relieving [defendant] from the onus of a criminal record" (CPL 720.20[1][a]; *see People v Kwame S.*, 95 AD3d 664 [1st Dept 2012]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13111 The People of the State of New York, Ind. 1285/06
Respondent,

-against-

Michael Ross,
Defendant-Appellant.

_____

Robert S. Dean, Center for Appellate Litigation, New York (Abigail Everett of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Sara M. Zausmer of counsel), for respondent.

_____

Order, Supreme Court, New York County (Michael J. Obus, J.), entered on or about January 3, 2013, which adjudicated defendant a level two sex offender pursuant to the Sex Offender Registration Act (Correction Law art 6-C), unanimously affirmed, without costs.

The court granted defendant's request for a downward departure to level two. On appeal, defendant argues, for the first time, that he should receive a further downward departure in light of his current age of 49, citing social science research indicating a negative correlation between sexual offender recidivism and age. As defendant acknowledges, that claim is unpreserved, and we decline to review it in the interest of justice. As an alternative holding, we find that defendant's age does not warrant a downward departure, especially in light of his

prior history of sexual misconduct and the seriousness of the underlying offense, involving a criminal sexual act with a child (*see, e.g. People v Cruz*, 100 AD3d 574 [1st Dept 2012]; *People v Harrison*, 74 AD3d 688 [1st Dept 2010], *lv denied* 15 NY3d 711 [2010]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13112 In re Dean W.,
Petitioner-Appellant,

-against-

Karina McK.,
Respondent-Respondent.

_____

Leslie S. Lowenstein, Woodmere, for appellant.

The Bronx Defenders, Bronx (Patricia Moon of counsel), for respondent.

Karen P. Simmons, The Children's Law Center, Brooklyn (Sarah McCarthy of counsel), attorney for the child.

_____

Order, Supreme Court, Bronx County (Diane Kiesel, J.), entered on or about March 18, 2013, which, inter alia, modified a joint custody order and awarded sole custody of the parties' child to respondent mother, unanimously affirmed, without costs.

The hearing evidence showing that since shortly after the entry in June 2009 of a joint custody order the parties have been unable to get along, frequently engaging in intense and even violent altercations, at times in the presence of their child, establishes that there has been a change of circumstances and modification of the joint custody order is required (*see Matter of Santiago v Halbal*, 88 AD3d 616 [1st Dept 2011]).

The determination that it is in the best interests of the child that sole custody be awarded to respondent has a sound and

substantial basis in the record (*see Lubit v Lubit*, 65 AD3d 954, 955 [1st Dept 2009], *lv denied* 13 NY3d 716 [2010], *cert denied* 560 US 940 [2010]). The evidence demonstrates that respondent has long been almost solely responsible for the child's education and healthcare and that the child is healthy and doing very well in school. Respondent is also much more capable than petitioner of meeting the child's financial needs.

Petitioner contends that the court erred in rejecting the forensic psychologist's findings that respondent was an angry person and that he was the better parent. However, the court was not required to accept the expert's findings (*Edgerly v Moore*, 232 AD2d 214 [1st Dept 1996]). While the expert based his findings on a few hours of observation of the parties, the court has had extensive contact with the parties in various proceedings over the last several years. Moreover, the court found respondent's testimony that both parties were at fault in the altercations more credible than petitioner's testimony that

respondent always attacked him without cause or provocation, and these credibility determinations are entitled to great deference (*Matter of Mildred S.G. v Mark G.*, 62 AD3d 460 [1st Dept 2009]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13113 Brenda Williams, et al., Index 108648/10
Plaintiffs-Respondents,

-against-

Air Serv Corporation,
Defendant-Appellant.

_____

Littler Mendelson, P.C., New York (Craig R. Benson of counsel), for appellant.

Virginia & Ambinder, LLP, New York (LaDonna M. Lusher of counsel), for respondents.

_____

Order, Supreme Court, New York County (Lucy Billings, J.), entered May 23, 2013, which granted plaintiffs' motion for class certification and certified as a class all persons, other than managers, corporate officers or directors, or clerical or office workers, who performed work for defendant, Air Serv Corporation, at John F. Kennedy International Airport between June 2004 and the present, unanimously affirmed, with costs.

The court providently exercised its discretion in holding that plaintiffs met their burden of demonstrating the prerequisites for class action certification under CPLR 901 and 902 (*see Pludeman v Northern Leasing Sys., Inc.*, 74 AD3d 420, 421-423 [1st Dept 2010]). Plaintiffs' evidence demonstrated that plaintiffs and numerous similarly situated employees of defendant may have been underpaid due to a policy originating from a

single Air Serv supervisor (CPLR 901[a][1]). Common issues of law and fact predominate (CPLR 901[a][2]), and the minor differences in each individual class member's claim do not defeat typicality (*see Kudinov v Kel-Tech Constr. Inc.*, 65 AD3d 481, 481-482 [1st Dept 2009]; CPLR 901[a][3]). Furthermore, certification is not defeated simply because defendant has submitted declarations from six employees denying that they were ever underpaid (65 AD3d at 481).

The motion court correctly determined that the named plaintiffs are adequate representatives for the putative class (CPLR 901[a][4]). That one of the named plaintiffs may have had some supervisory responsibilities over other members of the putative class does not create an insurmountable conflict of interest (*see Lamarca v Great Atl. & Pac. Tea Co., Inc.*, 55 AD3d 487 [1st Dept 2008]). Moreover, the named plaintiffs have sufficiently demonstrated at least a general awareness of the claims in this action, which is sufficient for certification (*see Brandon v Chefetz*, 106 AD2d 162, 170 [1st Dept 1985]).

Lastly, plaintiffs demonstrated that a class action is superior to the prosecution of individualized claims in an administrative proceeding (CPLR 901[a][5]), given the difference in litigation costs and the modest damages to be recovered by each individual employee (*see Dabrowski v Abax Inc.*, 84 AD3d 633,

635 [1st Dept 2011]).

We have considered defendant's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13114 The People of the State of New York, Ind. 4590/11
Respondent,

-against-

Freddy Parra,
Defendant-Appellant.

_____

Steven Banks, The Legal Aid Society, New York (Eve Kessler of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Diane N. Princ of counsel), for respondent.

_____

An appeal having been taken to this Court by the above-named appellant from a judgment of the Supreme Court, New York County (Charles H. Solomon, J.), rendered on or about April 27, 2012,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgment so appealed from be and the same is hereby affirmed.

ENTERED: OCTOBER 7, 2014

CLERK

Counsel for appellant is referred to § 606.5, Rules of the Appellate Division, First Department.

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13115 Andrew Beck, III, Index 108995/09
Plaintiff-Respondent,

-against-

Studio Kenji, Ltd., et al.,
Defendants-Appellants,

Justin Miyamoto Weiner,
Defendant.

_____

Wilson Elser Moskowitz Edelman & Dicker LLP, White Plains (James F. O'Brien of counsel), for Studio Kenji, Ltd., appellant.

Krieg Associates, P.C., Dix Hills (Marc Krieg of counsel), for Ellen Honigstock, appellant.

Anderson & Ochs, LLP, New York (Mitchell H. Ochs of counsel), for respondent.

_____

Order, Supreme Court, New York County (Louis B. York, J.), entered November 22, 2013, which, upon renewal, restored a prior order granting plaintiff's motion for summary judgment as to liability on his contract claim against defendants Studio Kenji, Ltd. and Ellen Honigstock, vacated prior orders denying plaintiff partial summary judgment, awarded plaintiff costs, and sanctioned defendants, unanimously reversed, on the facts and in the exercise of discretion, without costs, plaintiff's motion for summary judgment and costs denied, and the award of sanctions vacated.

The new evidence submitted by plaintiff on his motion for renewal raises a factual issue whether nonparty New York City Department of Buildings (DOB) approved the double-height space that defendants had created in plaintiff's condominium unit; it does not definitively show that DOB disapproved the space. Thus, there is a triable issue of fact whether defendants breached their contract with plaintiff.

The motion court was mistaken in saying that "a deposition of [former third-party defendants Joseph Vance and Joseph Vance Architects'] expediter revealed that the double height space was not discussed with the Department of Buildings' officials." First, the expediter was not deposed; he merely submitted an affidavit. Second, the expediter said that he discussed a drawing that showed the double-height space with the DOB official who approved the application (nonparty Kenneth Fladen).

The court also erred in saying that "the double height space . . . violated both DOB and Fire Code regulations." At his deposition, Fladen testified that the space did not necessarily violate the fire separation requirement, since that requirement could be met by devices such as a sprinkler and water curtain, not only by a physical separation.

The court erred by implying that the condominium building's lack of a permanent certificate of occupancy (C of O) meant that

DOB had disapproved the double-height space in plaintiff's unit. Fladen admitted that there could be any number of reasons for the failure to have a C of O, and said that he was not aware of any denial of a C of O based on the double-height space. Vance – the building's architect – testified that the lack of a permanent C of O was due to unit owners other than plaintiff.

Defendant Studio Kenji's argument that it is not liable for defendant Honigstock's acts because she was an independent contractor is improperly raised for the first time on appeal (*see e.g. Gouldbourne v Approved Ambulance & Oxygen Serv.*, 2 AD3d 113, 114 [1st Dept 2003], *lv denied* 3 NY3d 605 [2004]). In any event, it is unavailing, since the instant appeal involves plaintiff's *contract* claim, not a negligence claim (*see Kleeman v Rheingold*, 81 NY2d 270, 273 [1993]).

Defendants' argument that Vance's December 2008 letter and/or his February 2012 affidavit created an issue of fact did not warrant sanctions (*see generally Sakow v Columbia Bagel, Inc.*, 32 AD3d 689 [1st Dept 2006]). Although Vance did not personally submit an application to DOB, it was reasonable for him to assume that the application had been granted when he gave it to his expediter, directed him to file it with DOB, and

received an approved application. Plaintiff's own email of July 3, 2008 shows that Vance did not invent a story after the fact for this litigation.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13116 Frank Randazzo, etc., et al., Index 302563/13
Plaintiff-Appellants,

-against-

The Bank of New York Mellon Corporation, as Trustee of CIT Mortgage Loan Trust 2007-1, et al.,
Defendants-Respondents,

Consolidated Edison Company of New York, Inc., et al.,
Defendants.

_____

Gorayeb & Associates, P.C., New York (Mark J. Elder of counsel), for appellants.

K&L Gates LLP, New York (David S. Versfelt of counsel), for respondents.

_____

Order, Supreme Court, Bronx County (Wilma Guzman, J.), entered January 8, 2014, which granted defendants The Bank of New York Mellon Corporation (BNY) and Vericrest Financial, Inc.'s motion to dismiss the complaint against them pursuant to CPLR 3211(a)(1) and (a)(7), unanimously reversed, on the law, without costs, the motion denied, and the complaint reinstated against said defendants.

The documentary evidence submitted by defendants was substantially the same as the evidence submitted by defendant BNY in a companion wrongful death action arising from the same deadly fire. As we previously decided, this evidence failed to

conclusively refute plaintiffs occupants' factual pleadings alleging that defendant Domingo Cedano, owner of the multiple dwelling, had abandoned the premises within the meaning of Real Property Law and Actions 1307(1) (*see Lezama v Cedeno*, 119 AD3d 479 [1st Dept 2014]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13117- Index 600920/08
13118-
13119-
13120-
13121 Millennium Holdings LLC,
Plaintiff,

The Northern Assurance Company
of America,
Plaintiff-Appellant,

Certain Underwriters at
Lloyd's, et al.,
Intervenor Plaintiff-Appellants,

-against-

The Glidden Company, now known
as Akzo Nobel Paints, et al.,
Defendants-Respondents.

_____

Zuckerman Spaeder LLP, Washington, D.C. (Jason M. Knott of the bar of the District of Columbia, admitted pro hac vice, of counsel), for appellants.

Debevoise & Plimpton LLP, New York (Maura K. Monaghan and James Amler of counsel), for respondents.

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An appeal having been taken to this Court by the above-named appellant from orders of the Supreme Court, New York County (Shirley Werner Kornreich, J.), entered November 26, 2013,

And said appeal having been argued by counsel for the respective parties; and due deliberation having been had thereon,

It is unanimously ordered that the orders so appealed from be and the same are hereby affirmed for the reasons stated by Kornreich, J.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13122 The People of the State of New York, Ind. 1585/09
Respondent,

-against-

Anonymous,
Defendant-Appellant.

_____

Richard M. Greenberg, Office of The Appellate Defender, New York (Samantha L. Stern of counsel), for appellant.

_____

Judgment, Supreme Court, New York County (Michael J. Obus, J.), rendered on or about July 14, 2010, unanimously affirmed.

Application by appellant's counsel to withdraw as counsel is granted (*see Anders v California*, 386 US 738 [1967]; *People v Saunders*, 52 AD2d 833 [1st Dept 1976]). We have reviewed this record and agree with appellant's assigned counsel that there are no non-frivolous points which could be raised on this appeal.

Pursuant to Criminal Procedure Law § 460.20, defendant may apply for leave to appeal to the Court of Appeals by making application to the Chief Judge of that Court and by submitting such application to the Clerk of that Court or to a Justice of the Appellate Division of the Supreme Court of this Department on reasonable notice to the respondent within thirty (30) days after service of a copy of this order.

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13123 The People of the State of New York, Ind. 575N/10
Respondent,

-against-

Joel Joseph,
Defendant-Appellant.

_____

Seymour W. James, Jr., The Legal Aid Society, New York (Arthur H. Hopkirk of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Manu K. Balachandran of counsel), for respondent.

_____

Judgment, Supreme Court, New York County (Bruce Allen, J. at *Darden* hearing; Robert M. Stolz, J. at suppression hearing; Michael R. Sonberg, J. at plea and sentencing), rendered February 8, 2012, convicting defendant of criminal possession of a controlled substance in the third degree, and sentencing him, as a second drug felony offender, to a term of six years, unanimously affirmed.

Defendant's suppression motion was properly denied. Drug enforcement task force officers received information from a confidential informant, who testified at a hearing pursuant to *People v Darden* (34 NY2d 177 [1974]). The informant provided reliable information that the target of the investigation (a person other than defendant) was trafficking in narcotics from his apartment, and this was confirmed by behavior observed by the

officers during several months of surveillance. These police observations established, circumstantially, that the drug activity was ongoing, and that it continued up to the time of defendant's arrest. Accordingly, there was sufficient evidence that the informant's information had not become stale, and we reject defendant's arguments to the contrary.

On the night of the arrest the officers saw the target take a white plastic bag of "some weight" from his apartment and drive a lengthy distance to a high crime area, where defendant approached the car, engaged in a very brief conversation with the target, and then removed the white bag from the rear of the car. Based on their experience and training as well as their knowledge that the target was involved in narcotics trafficking, the officers reasonably concluded that defendant had received illegal drugs from the target. Although, if viewed in isolation, the generic bag could have been innocuous, it clearly indicated the presence of a drug transaction when viewed in context. Accordingly, the police had probable cause to arrest defendant (*see People v DiMatteo*, 62 AD3d 418 [1st Dept 2009]).

The record also supports the suppression hearing court's alternative holding that even if the officers did not have probable cause to arrest defendant, they had reasonable suspicion that a crime had occurred based on the totality of their

information and observations, and therefore were entitled to make a forcible stop. Defendant's flight from the officers, after they had identified themselves, and his struggle when they tried to stop him, elevated the officers' suspicions and provided probable cause regardless of whether it already existed (*see e.g. People v Jenkins*, 44 AD3d 400, 402 [2007], *lv denied* 9 NY3d 1007 [2007]).

Defendant's procedural arguments do not warrant a remand for further suppression proceedings. The report issued by the *Darden* court and the scope of cross-examination at the suppression hearing were both adequate to protect defendant's rights under the circumstances of the case, given, among other things, the risk of disclosure of the informant's identity. The particular point in time when the informant ceased providing information about the target's drug activity was not necessary to a determination of the suppression hearing, because, as discussed above, police observations established circumstantially that the information was not stale.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13124-
13125 In re Tarik G. McS., Jr.,

A Dependent Child Under the Age
of Eighteen Years, etc.,

Tarik G. McS., Sr.,
Respondent-Appellant,

St. Vincent's Services, Inc.,
Petitioner-Respondent.

- - - - -

In re Tarik G. McS., Jr.,

A Dependent Child Under the Age
of Eighteen Years, etc.,

Sherrie T., etc.,
Respondent-Appellant,

St. Vincent's Services, Inc.,
Petitioner-Respondent.

_____

Julian A. Hertz, Larchmont, for Tarik G. McS., Sr., appellant.

Andrew J. Baer, New York, for Sherrie T., appellant.

Magovern & Sclafani, Mineloa (Joanna M. Roberson of counsel), for respondent.

Law Offices of Randall S. Carmel, Syosset (Randall S. Carmel of counsel), attorney for the child.

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Order of disposition, Family Court, Bronx County (Carol Sherman, J.), entered on or about February 20, 2013, which, following a fact-finding determination that respondents permanently neglected the subject child, terminated respondents'

parental rights and transferred custody and guardianship of the child to petitioner agency and the Commissioner of Social Services, for the purpose of adoption, unanimously affirmed, without costs.

The court's finding that respondents permanently neglected the child is supported by clear and convincing evidence that petitioner made diligent efforts to strengthen the parents' relationship with the child through multiple referrals for services, including drug treatment, and scheduling regular visitation (*see* Social Services Law §§ 384-b[7][a], [f]; *Matter of Sheila G.*, 61 NY2d 368, 373 [1984]), and that, despite these efforts, respondents failed to comply with the referrals, complete necessary programs, refrain from using illegal drugs, and visit the child regularly (*see Matter of Dina Loraine P. [Ana C.]*, 107 AD3d 634, 635 [1st Dept 2013]; *Matter of Elijah Jose S. [Jose Angel S.]*, 79 AD3d 533, 534 [1st Dept 2010], *lv denied* 16 NY3d 708 [2011]).

A preponderance of the evidence supports the finding that termination of the parents' rights is in the child's best interests (*see Matter of Elijah Jose S.*, 79 AD3d at 534). The child was placed into foster care shortly after birth, and has not resided with respondents since that time. The child, who suffers from severe developmental delays, cerebral palsy and

ADHD, requiring extensive services and constant supervision, has bonded with the foster mother and has done well under her care. The foster mother has adequately cared for the child and met his special needs, whereas the parents have demonstrated no ability to take on such a demanding task (*see Matter of Jaileen X.M. [Annette M.]*, 111 AD3d 502, 503 [1st Dept 2013], *lv denied* 22 NY3d 859 [2014]).

The parents have failed to establish a consistent, nurturing relationship with the child, or to demonstrate an understanding of his needs and the ability to care for him. Under these circumstances, a suspended judgment is not warranted (*id.*)

We have considered respondents' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13126 Kara Eichman, Index 100737/11
Plaintiff-Appellant,

-against-

Jason Baker, et al.,
Defendants-Respondents,

Ali Amjad,
Defendant.

_____

Nicoletti Gonson Spinner, LLP, New York (Benjamin Gonson of counsel), for appellant.

Epstein Gialleonardo Harms & McDonald, New York (Kenneth E. Pinczower of counsel), for Jason Baker, respondent.

Cobert, Haber & Haber, Garden City (David C. Haber of counsel), for Farra Taxi and Yves Lebron, respondents.

_____

Order, Supreme Court, New York County (Arlene P. Bluth, J.), entered November 14, 2013, which, insofar as appealed from as limited by the briefs, granted defendant Jason Baker's motion for summary judgment dismissing the complaint as against him, unanimously affirmed, without costs.

Defendant Baker established prima facie his freedom from liability for any injuries suffered by plaintiff as a result of the collision of his vehicle with the taxi in which plaintiff was a passenger. The record shows that Baker was making a permitted left turn from the middle lane of a roadway when the taxi driver, defendant Lebron, proceeded straight ahead in the left lane, in

violation of traffic signs and pavement markings requiring him to turn left. Plaintiff's speculation that Baker may have contributed to, and been able to avoid, the accident is insufficient to raise an issue of fact (*see Flores v City of New York*, 66 AD3d 599 [1st Dept 2009]). Nor does Lebron's inability to recall whether his lane was controlled by traffic signals raise any issue of fact.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13127 The People of the State of New York, Respondent, Ind. 3639/09

-against-

Josie Almonte,
Defendant-Appellant.

_____

Steven Banks, The Legal Aid Society, New York (Ellen Dille of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Hope Korenstein of counsel), for respondent.

_____

Judgment, Supreme Court, New York County (Bonnie G. Wittner, J.), rendered March 24, 2011, as amended on October 18, 2011, convicting defendant, after a jury trial, of grand larceny in the third degree (11 counts), grand larceny in the fourth degree, scheme to defraud in the first degree, and criminal impersonation in the second degree (15 counts), and sentencing her to an aggregate term of 3⅓ to 10 years, unanimously affirmed.

Defendant's challenge to the court's jury instructions is unpreserved and we decline to review it in the interest of justice. As an alternative holding, we find no basis for reversal. The court's charges regarding larceny by false pretense and scheme to defraud, which adhered to the Criminal Jury Instructions, properly conveyed to the jury all of the elements of those crimes.

We have considered and rejected defendant's ineffective assistance of counsel claim.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13128 Travis D. Griffin, Index 106369/11
Plaintiff-Appellant,

-against-

AIG, et al.,
Defendants-Respondents.

_____

Travis D. Griffin, appellant pro se.

Law Offices of Bryan M. Rothenberg, East Meadow (Argyria A.N. Kehagias of counsel), for respondents.

_____

Order, Supreme Court, New York County (Ellen M. Coin, J.), entered August 20, 2012, which denied plaintiff's motion for a default judgment and granted defendants' cross motions to compel acceptance of the answer nunc pro tunc and to dismiss the complaint, unanimously affirmed, without costs.

Plaintiff is precluded from maintaining this action to recover no-fault benefits, because he submitted the matter to

arbitration before commencing the action (*see Roggio v Nationwide Mut. Ins. Co.*, 66 NY2d 260, 263-264 [1985]; *Cortez v Countrywide Ins. Co.*, 17 AD3d 508, 509 [2d Dept 2005], *lv denied* 5 NY3d 716 [2005]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13129 Janak Datwani, Index 112937/11
Plaintiff-Appellant,

-against-

Kishin Datwani,
Defendant-Respondent.

_____

Law Office of Steven Riker, New York (Steven Riker of counsel), for appellant.

Boundas, Skarzynski, Walsh & Black, LLC, New York (Evan Shapiro of counsel), for respondent.

_____

Order and judgment (one paper), Supreme Court, New York County (Louis B. York, J.), entered January 15, 2014, dismissing the complaint on the ground of forum non conveniens, unanimously affirmed, without costs.

After considering all the factors set forth in *Islamic Republic of Iran v Pahlavi* (62 NY2d 474, 478-479 [1984], *cert denied* 469 US 1108 [1985]), the motion court properly determined that this action would be better adjudicated in India. The most important factor is that India presents an alternate forum where this dispute could, and should, be adjudicated. Several other actions are currently pending in India that relate to ownership of the shares in question. A global resolution of these issues would be preferable, and to proceed in India would eliminate the risk of conflicting judgments. Indeed, shortly after bringing

the instant motion in New York, defendant filed an action in India against both plaintiff (his brother) and his other brother regarding ownership of the shares. While that action was dismissed out of "respect[]" for "the comity of jurisdictions," the Indian court stated that the case could be refiled in the event defendant prevailed on his motion to dismiss in New York. There is nothing preventing plaintiff from filing a similar action in India.

Among the other *Pahlavi* factors that support dismissal is the presence of substantially all the witnesses and evidence in India. Contrary to plaintiff's argument that the stock transfer agreement is unambiguous and there is no need for parol evidence, as the motion court found, issues of fact exist as to the authenticity of the agreement, which defendant claims is a forgery. There is also a potential for prejudice and hardship to defendant posed by the continuation of the New York action, most

significantly, as indicated, the possibility of inconsistent judgments.

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13130 Andrew Arner, Index 105347/10
Plaintiff, 590831/10

-against-

RREEF America, L.L.C., et al.,
Defendants.

- - - - -

RREEF America, L.L.C., et al.,
Third-Party Plaintiff-Respondents,

-against-

Sweet Construction Corporation, et al.,
Third-Party Defendants,

Emprise Construction, Inc.,
Third-Party Defendant-Respondent,

Adelphi Restoration Corp.,
Third-Party Defendant-
Respondent-Appellant,

Coda Interiors,
Third-Party Defendant-
Appellant-Respondent.

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Cascone & Kluepfel, LLP, Garden City (Howard B. Altman of counsel), for appellant-respondent.

Milber Makris Plousadis & Seiden, LLP, Woodbury (Lorin A. Donnelly of counsel), for respondent-appellant.

Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Debra A. Adler of counsel), for RREEF America, L.L.C., 56 7TH Avenue, LLC, Northbrook Partners LLC and Northbrook Management, LLC, respondents.

Lewis Brisbois Bisgaard & Smith LLP, New York (Nicholas P. Hurzeler of counsel), for Emprise Construction, Inc., respondent.

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Order, Supreme Court, New York County (Shlomo S. Hagler, J.), entered June 25, 2013, which, to the extent appealed from as limited by the briefs, denied third-party defendant Coda Interiors' (Coda) motion for summary judgment dismissing the third-party complaint as against it, and denied third-party defendant Adelphi Restoration Corp.'s (Adelphi) motion for summary judgment dismissing the third-party complaint and all cross claims as against it, unanimously modified, on the law, Adelphi's motion granted to the extent of dismissing third-party plaintiffs' third cause of action against it, alleging breach of contract for failure to procure insurance, and otherwise affirmed, without costs.

Plaintiff commenced this action seeking to recover for injuries he sustained when he allegedly tripped and fell on a Masonite board sticking up from the floor near the mail room and service entrance of the building in which he resided, which was undergoing extensive construction work at the time. Third-party plaintiffs, owners and managers of the building (owners/managers), asserted a third-party complaint seeking contractual and common law indemnification and contribution against various contractors working in the building at the time, as well as asserting causes of action alleging failure to procure insurance.

Coda and Adelphi failed to establish their prima facie entitlement to summary judgment dismissing the third-party claims asserting common law and contractual indemnification and contribution and cross claims against them. Coda and Adelphi each used the service entrance to bring material into the building. The statements of their respective owners that their workers did not dislodge the Masonite board is not supported by any evidence. Because neither was at the site on a daily basis as the work was being performed and neither stated the basis for such an assertion, such assertions were conclusory.

Adelphi was entitled to summary judgment dismissing the third-party claim against it alleging breach of contract for failure to procure insurance. The contract of insurance procured by Adelphi and letter from its insurer to owners/managers declining their tender should have been considered by Supreme Court (*see Sanford v 27-29 W. 181st St. Assn.*, 300 AD2d 250, 251 [1st Dept 2002]). In its moving papers Adelphi argued that it had procured insurance naming owners/managers as additional insured as required by its contract, and submitted a copy of the certificate of insurance. In opposition, the owners/managers argued that Adelphi's insurer had declined their tender and, based on the certificate of insurance, an issue of fact exists as to the identity of the additional insureds. With its reply

papers, Adelphi submitted a copy of the insurance policy with additional insured endorsement and the insurer's letter declining tender in reply to owners/managers' arguments.

Adelphi's contract required it to procure insurance "protecting all the Owner Entities . . . against liabilities arising out of the operations of [Adelphi]." Adelphi procured insurance in the specified amounts, and the additional insured endorsement provides coverage for organizations "[a]s required by written contract signed by both parties prior to loss." Moreover, although the additional insured endorsement did not state the covered locations, the owners/managers never raised this as a ground for denial of Adelphi's summary judgment motion, and Adelphi's insurer did not offer it as a reason for declining owners/managers' tender. Accordingly, the motion court improperly relied on the failure to state the covered location in denying Adelphi's motion to dismiss so much of the claim against it as was based on its alleged failure to procure insurance.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13132 The People of the State of New York, Ind. 4619/12
Respondent,

-against-

Julio Godinz,
Defendant-Appellant.

_____

Scott A. Rosenberg, The Legal Aid Society, New York (Joanne Legano Ross of counsel), for appellant.

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Judgment, Supreme Court, New York County (Richard D. Carruthers, J. at plea; Jill Konviser, J. at sentencing), rendered on or about February 13, 2013, unanimously affirmed.

Application by appellant's counsel to withdraw as counsel is granted (*see Anders v California*, 386 US 738 [1967]; *People v Saunders*, 52 AD2d 833 [1st Dept 1976]). We have reviewed this record and agree with appellant's assigned counsel that there are no non-frivolous points which could be raised on this appeal.

Pursuant to Criminal Procedure Law § 460.20, defendant may apply for leave to appeal to the Court of Appeals by making application to the Chief Judge of that Court and by submitting such application to the Clerk of that Court or to a Justice of the Appellate Division of the Supreme Court of this Department on reasonable notice to the respondent within thirty (30) days after service of a copy of this order.

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13133 Dart Mechanical Corp., Index 651023/12
Plaintiff-Appellant,

-against-

City of New York, et al.,
Defendants-Respondents.

_____

Tunstead & Schechter, Jericho (Jeremy Kalina of counsel), for appellant.

Zachary W. Carter, Corporation Counsel, New York (Drake A. Colley of counsel), for respondent.

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Order, Supreme Court, New York County (Shirley Werner Kornreich, J.), entered August 21, 2013, which granted defendants' motion to dismiss the complaint as untimely, unanimously affirmed, without costs.

The motion court correctly applied the limitations period in the parties' construction contract to bar plaintiff's claim for delay damages. The six-month period was not unreasonably short (*see CAB Assoc. v City of New York*, 32 AD3d 229, 232 [1st Dept 2006]; *Top Quality Wood Work Corp. v City of New York*, 191 AD2d 264, 264 [1st Dept 1993]).

The period began to run from the date of issuance of the letter from defendant contracting agency's chief engineer notifying plaintiff that the contract work was substantially complete. The letter constitutes a "certificate of substantial

completion" under the terms of the contract, and it was issued by the Commissioner's duly authorized representative, as permitted under the contract. The limitations provision does not conflict with another provision regarding the procedures for obtaining payment for substantially complete work, as the provisions address independent obligations.

Plaintiff's waiver argument is unavailing; plaintiff fails to even suggest that defendants clearly manifested an intent to relinquish their right to enforce the contractual limitations period (*see Fundamental Portfolio Advisors, Inc. v Tocqueville Asset Mgt., L.P.*, 7 NY3d 96, 104 [2006]). Nor can defendants be estopped from relying on the limitations period. Plaintiff could have commenced this action regardless of whether it had submitted the required documentation for payment for substantially complete work and for an extension of time to perform under the contract. Accordingly, defendants' alleged delays and improper conduct regarding the documentation did not frustrate plaintiff's ability to bring this action (*see Antonini v Petito*, 96 AD3d 446, 447 [1st Dept 2012], *lv dismissed* 20 NY3d 1029 [2013]).

Because plaintiff's claim for delay damages is independent of its right to obtain payment under the contract, the short limitations period does not affect plaintiff's right to file or

enforce a mechanic's lien for payment under the contract. Accordingly, the limitations period does not violate Lien Law § 34.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Moskowitz, Manzanet-Daniels, JJ.

13134 The People of the State of New York, Ind. 6332/09
Respondent,

-against-

Nathaniel Myers,
Defendant-Appellant.

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Robert S. Dean, Center for Appellate Litigation, New York (Bruce D. Austern of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Hope Korenstein of counsel), for respondent.

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Judgment, Supreme Court, New York County (Arlene D. Goldberg, J.), rendered March 8, 2012, convicting defendant, after a jury trial, of assault in the second degree, and sentencing him, as a second felony offender, to a term of five years, unanimously affirmed.

The verdict was based on legally sufficient evidence and was not against the weight of the evidence (*see People v Danielson*, 9 NY3d 342, 348-349 [2007]). There is no basis for disturbing the

jury's evaluation of medical testimony and other evidence establishing that the officer's fall while pursuing of defendant was the cause of the officer's herniated disc.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK

Sweeny, J.P., Renwick, Andrias, Richter, Kapnick, JJ.

12792-
12793 In re RAM I LLC,
Petitioner-Respondent,

-against-

New York State Division of Housing and Community Renewal, et al.,
Respondents-Appellants.

Index 114412/11

Gary R. Connor, New York (Martin B. Schneider of counsel), for New York State Division of Housing and Community Renewal, appellant.

Cozen O'Connor, New York (Menachem J. Kastner of counsel), for Phyllis Berk, appellant.

Graubard Miller, New York (Lawrence D. Bernfeld of counsel), for respondent.

Order, Supreme Court, New York County (Geoffrey D. Wright, J.), entered June 4, 2012, reversed, on the law, without costs, the petition denied and the proceeding dismissed. The Clerk is directed to enter judgment accordingly.

Opinion by Sweeny, J.P. All concur.

Order filed.

SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT,

John W. Sweeny, Jr., J.P.
Dianne T. Renwick,
Richard T. Andrias,
Rosalyn H. Richter,
Barbara R. Kapnick, JJ.

12792-12793
Index 114412/11

_____x

In re RAM I LLC,
Petitioner-Respondent,

-against-

New York State Division of Housing and Community Renewal, et al.,
Respondents-Appellants.

_____x

Respondents appeal from the order of the Supreme Court, New York County (Geoffrey D. Wright, J.), entered June 4, 2012, which, inter alia, granted the article 78 petition of RAM I LLC seeking annulment of DHCR's determination, dated October 26, 2011, that the subject apartment was exempt from high-rent/high-income rent deregulation pursuant to Administrative Code of the City of New York § 26-403(e)(2)(j).

Gary R. Connor, New York (Martin B. Schneider of counsel), for New York State Division of Housing and Community Renewal, appellant.

Cozen O'Connor, New York (Menachem J. Kastner and Ally Hack of counsel), for Phyllis Berk, appellant.

Graubard Miller, New York (Lawrence D. Bernfeld, Peter A. Schwarz and Neil P. Ritter of counsel), for respondent.

SWEENY, J.

The issue in this case is whether an apartment that was subject to rent control prior to receiving J-51 tax benefits remains exempt from luxury deregulation by virtue of its rent-controlled status after the J-51 benefits expire, notwithstanding the fact that it is otherwise qualified for luxury deregulation. For the following reasons, we hold that the present statutory scheme requires it to remain exempt.

The apartment at issue in this case was, at all times relevant to this proceeding, subject to the New York City Rent and Rehabilitation Law (Administrative Code of City of NY) § 26-401, *et seq.* (hereinafter Rent Control Law or RCL). Respondent tenant has lived in that apartment since 1958. Petitioner RAM I LLC is the owner of the cooperative shares allocated to the apartment. In 1994, RAM (owner) obtained "J-51" tax benefits valued at slightly over $8,000.[1] The apartment continued to be rent-controlled while the benefits were in effect, and remained rent-controlled after the benefits expired in tax year 2004/2005. It is uncontested that, pursuant to RCL 26-403(e)(2)(j), while

[1]"J-51" tax benefits, deriving its name from the prior Administrative Code section, and now codified at § 11-243 of the Administrative Code, are authorized by Real Property Tax Law § 489, and permit localities to grant real estate tax exemptions and tax abatements for certain alterations and improvements made to qualifying multiple dwellings.

the building was receiving benefits, it was exempt from luxury deregulation.

In June 2008, the owner filed with respondent New York State Division of Housing and Community Renewal (DHCR) a petition for luxury deregulation. It is undisputed that the requisite thresholds for total household income and apartment rent were met at the time the petition was filed. In November 2010, DHCR's Rent Administrator issued an order deregulating the apartment. The tenant then filed a petition for administrative review (PAR) challenging the deregulation order.

In October 2011, DHCR issued an order that granted the tenant's PAR, revoked the Rent Administrator's deregulation order and denied the owner's deregulation petition.

Petitioner thereafter commenced an article 78 proceeding seeking to annul the agency's determination. DHCR and the tenant both moved to dismiss. On May 21, 2012, the IAS court issued an order granting the petition, revoking DHCR's order and denying both motions to dismiss. This appeal followed.

In *Matter of Schiffren v Lawlor* (101 AD3d 456, 457 [1st Dept 2012]), a case where the facts are essentially the same as those here, we held that luxury deregulation was available to the owner upon the expiration of J-51 benefits. A significant difference, however, is the fact that the apartment in *Schiffren*

was regulated, before, during, and after the receipt of J-51 benefits, under the Rent Stabilization Law (RSL) rather than, as here, the RCL. Although the regulations are similar, the RCL and RSL represent two distinct statutory schemes. Petitioner argues that *Schiffren* dictates the same result here, while DHCR contends that a different outcome is warranted based on distinctions between the RSL and the RCL.

At the outset, we note that the question before us turns purely on statutory interpretation. As such, we need not defer to the agency's interpretation of the statutes in question, as we are not called upon "to interpret a statute where 'specialized knowledge and understanding of underlying operational practices or . . . an evaluation of factual data and inferences to be drawn therefrom' is at stake" (*Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270, 285 [2009], quoting *Matter of KSLM-Columbus Apts., Inc. v New York State Div. of Hous. & Community Renewal*, 5 NY3d 303, 312 [2005]; *see also Schiffren*, 101 AD3d at 457).

The starting point for statutory interpretation must be the language of the statute itself. RCL 26-403(e)(2)(j) sets the parameters of luxury deregulation for rent-controlled apartments. It first excludes from the definition of "housing accommodation" (i.e., units subject to rent control) apartments that meet certain thresholds for tenant income and maximum rent. These

thresholds were met here. Importantly, however, the statute then creates an exemption from this exclusion from rent control:

> "Provided however, that this exclusion shall not apply to housing accommodations which *became or become subject to this law* by virtue of receiving tax benefits pursuant to section four hundred eighty-nine of the real property tax law" (the J-51 tax benefits) (emphasis added).

The parties agree that this provision does not explicitly prescribe any time limitation for the applicability of the exemption. Rather, it simply provides that a housing unit qualifies for the exemption from luxury deregulation when it became subject to "this law" by receiving J-51 benefits (the "became or become clause").

That this apartment was subject to rent control before receiving J-51 benefits does not prevent it from "becoming" subject to regulation upon receiving J-51 benefits. As the *Roberts* court noted, albeit in the context of rent stabilization, an apartment can become subject to rent regulation for a second time when the building receives J-51 benefits (*Roberts*, 13 NY3d at 286).

The luxury deregulation provisions of the RSL (Administrative Code § 26-504.1) and RCL (Administrative Code 26-403[e][2][j]) are essentially the same. Both provide that luxury deregulation "shall not apply to housing accommodations which

became or become subject to this law" by virtue of receiving J-51 benefits" (*id.*). However, the RSL contains an additional provision, Administrative Code § 26-504(c), that addresses the regulation status of a unit upon the expiration of J-51 benefits where, inter alia, the unit was rent stabilized before receipt of the benefits. That section provides that "if such dwelling unit would have been subject to [the RSL] . . . in the absence of [J-51 benefits], such dwelling unit shall, upon the expiration of [J-51] benefits, continue to be subject to [the RSL] to the same extent and in the same manner as if [J-51 benefits] had never applied thereto." In *Schiffren*, we referenced the "plain language" of this provision and concluded that, upon the expiration of J-51 benefits, the apartment "revert[ed] to pre-J-51-benefit rent-regulation status," which "includes the right of an owner to seek luxury deregulation in appropriate cases" (*Schiffren*, 101 AD3d at 457).

Administrative Code § 26-504(c) , which clearly mandates the resumption of the rent-stabilized status the unit was subject to prior to receiving J-51 benefits, has no counterpart in the RCL.

The owner argues that the rationale of *Schiffren* should also apply to apartments subject to rent control, because, inter alia, to hold otherwise would be inconsistent with the purpose of the luxury deregulation law, which attempted to "restore some

rationality to a system which provides the bulk of its benefits to high income tenants" (*Noto v Bedford Apts. Co.*, 21 AD3d 762, 765 [1st Dept 2005] [internal quotations marks omitted]). We are not unmindful that the legislative history indicates a preference not to have people who can easily afford market value rental property inhabit rent-regulated housing. However, this history does not offer sufficient evidence to alter the unambiguous language of Administrative Code § 26-403(e)(2)(j). To do so would require us to import new language into the RCL and "give it a meaning not otherwise found therein" (McKinney's Cons Laws of NY, Book 1, Statutes § 94, at 190; *see Matter of Raritan Dev. Corp. v Silva*, 91 NY2d 98, 104-105 [1997]). Indeed, "where the language of a statute is clear, there is little room to 'add to or take away from that meaning'" (*Jones v Bill*, 10 NY3d 550, 555 [2008], quoting *Tompkins v Hunter*, 149 NY 117, 123 [1896]). If the application of such long-established principles of statutory construction produces "an undesirable result, the problem is one to be addressed by the Legislature" (*Chazon, LLC v Maugenest*, 19 NY3d 410, 416 [2012]).

Therefore, applying the plain language of Administrative Code § 26-403(e)(2)(j), we find that the tenant's rent-controlled apartment continued to be exempt from luxury deregulation after the J-51 benefits expired. Pursuant to the statute, the unit

became subject to rent control "for a second time" (*Roberts, L.P.*, 13 NY3d at 286) upon the advent of J-51 benefits, and nothing in section 26-403(e)(2)(j) restored the availability of luxury deregulation after the expiration of J-51 benefits.

Accordingly, the order of the Supreme Court, New York County (Geoffrey D. Wright, J.), entered June 4, 2012, which, inter alia, granted the article 78 petition of RAM I LLC seeking annulment of DHCR's determination, dated October 26, 2011, that the subject apartment was exempt from high-rent/high-income rent deregulation (luxury deregulation) pursuant to Administrative Code of the City of NY § 26-403(e)(2)(j), should be reversed, on the law, without costs, the petition denied, and the proceeding dismissed. The Clerk is directed to enter judgment accordingly.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 7, 2014

CLERK