

AttachmentC
Rent Increase Application I-108

Attachment C

HEARINGS DIVISION
Rent Stabilization Department
8611 Santa Monica Boulevard
West Hollywood, California 90069

CITY OF WEST HOLLYWOOD

RENT STABILIZATION COMMISSION

In the matter of the Rent Decrease Application
of:

LA FONTAINE, a California Limited Partnership

Regarding property located at:

1283 Crescent Heights Blvd.
Pin No. 5554-009-001

**HEARING EXAMINER'S
DECISION
ON RENT INCREASE
APPLICATION I-108**

PROCEDURAL BACKGROUND

The following events of procedural significance took place on the dates shown:

Registration Forms filed:	September 12, 1985
Application I-108 filed:	August 30, 1993
Notice of Hearing mailed:	February 28, 1994
Hearing held:	March 17, 1994 March 22, 1994
Record Closed:	April 5, 1994

ISSUES

Application I-108 raises the following issues: Is the Applicant entitled to individual rent adjustments due to failure to receive the minimum Net Operating Income guaranteed by Rent Stabilization Ordinance Section 6411(C)? If so, then what amount of increase is Applicant entitled to receive pursuant to this Section?

SUMMARY OF TESTIMONY UPON WHICH DECISION IS BASED

All those who testified did so under oath and were questioned by the Hearing Examiner. The following people testified: Tillie Tikotin and Saul Gershkowitz on behalf of Applicant and William Pleasant Responding.

The following testimony was found relevant to the determination of the matter:

Testimony of Tillie Tikotin

Tillie Tikotin has managed the property for the past 24 years. In this capacity she is responsible for all bookkeeping, writing checks, managing maintenance personnel and overall building management.

Ms. Tikotin prepared the books and records for the 1983 calendar year and for the period from July 1, 1992 through June 30, 1993. Ledgers were prepared monthly for 1983 and for the 1992-1993 application current year. The Statement of Operations for the base year of 1983, submitted in support of the application, was prepared by Ms. Tikotin within a month or two of compiling all of the information for the 1983. The statement was prepared in early 1984 and given to the accountant for the purpose of preparing the taxes. The Statement of Operations was based on income and disbursements recorded in the general ledger for 1983.

The building is owned by Ms. Matilda Streat, Roberto Redo and Juan Sanchez Navarro. Ms. Stream acquired 50% of the building in 1984. Mr. Redo and Mr. Sanchez-Navarro each inherited a 25% interest in the property in 1987 from Alfredo De La Vega.. All three of the owners maintain residences in the building. Ms. Stream has lived in unit 1287E since 1979; Mr. Redo has resided in unit 1285J since 1987 and Mr. Navarro has resided in unit 1285K since 1987. Prior to Mr. Navarro taking residence in unit 1285K Mr De La Vega resided in the unit. Also residing in the building are Eugene Koenig and Louis Garcia, maintenance personnel for the building. Mr. Koenig and Mr. Garcia live in rooms that are not included as rental units in the building. Neither Mr. Koenig nor Mr. Garcia pay rent; rental of the rooms are part of their compensation.

Base Year Gross Income: Rents were recorded on the rental report from rent ledgers prepared as the rents are received. Unit 1285J was occupied by James Wilson, a owner of the building until his death. After his death all of the rent received for unit 1285J, except for \$200 was given to Mr. Wilson's estate. In July 1983 a new tenant moved into the unit for a monthly rental of \$1,300. The new tenant paid \$1,275 as security deposit, cleaning deposit and the key deposit. The ledger shows a payment of \$1,300 for the August rent; all but \$200 was transmitted to Mr. Wilson's estate. \$50 was being charged to Edward

Randolph for rental of a small room next to the office - it is actually one of the office spaces and is not being used as living space. The room is not included as rental property. The \$.14 discrepancy in the rent for unit 1287A for the month of January 1983 is an error; the rent should have been recorded as \$565.59.

The payment from Terry Altman in the amount of \$500 was a deposit for Warner Brothers Studios, subsequently an additional \$3,600 deposit was paid. An apartment was rented by Warner Brothers Studio for a day each in January, February and March at a rental of \$1,800 per day. In June, July and August Warner Brother's rented the unit for a month at a monthly rental of \$2,000 per month.

There was additional income from the coin operated laundry facility. The building owns the machines.

The security deposits were deposited in the same bank account as the rents; in 1983 the account was not interest bearing. RC represent a refundable cleaning deposit and there was a refundable key deposit was collected from the tenants. \$25 added to the unit was for the rent for some of the units for an intercom system. This amount was charged to the units receiving an intercom system until a certain amount was paid. There was an additional monthly fee to some of the units for use of the garage and/or rental of a locker.

Unit 1285C was vacant in March and unit 1289 was vacant in February, March, April and May; the tenants in those units voluntarily moved out. Unit 1285H was vacant in June as the result of the death of the tenant.

Base Year Expenses: Ms. Tikotin testified that she is unable to locate the actual records for the base year after a search of the storage facility and other possible locations of the records. However, Ms. Tikotin prepared the ledgers from which the Statement of Operations was prepared from the bills, invoices and statements received and testifies to the information given herein from her personal knowledge.

The building pays gas and electricity for units 1285 A,B,C,E,F,G and units 1285J and K, the owner's units.

Actual expenses were claimed as management expenses. The amount claimed is based on the Statement of Operations. In 1983 Alfredo De La Vega, one of the owners of the building, participated in the building's management. The \$16,000 management fee shown on the Statement for 1983 was paid 1/2 to Mr. De La Vega for managing the building and one half to the family of Mr. Wilson. Mr. Wilson's family came by about once every few weeks to talk to Mr. De La Vega and to help around the building. Payroll and payroll taxes consists of the salaries for the maintenance people. Payroll taxes represents the amounts deducted from the paychecks.

The appraisal was in connection with an attempt to sell the building when Mr. Wilson died.

In 1983 the building was only for liability; an umbrella policy which included fire and theft and worker's compensation insurance. There was no coverage for the boiler in 1983.

Ms. Tikotin believes the accounting fees were about \$1,000 and the balance of the legal/accounting fees shows for 1983 were legal fees incurred for probating Mr. Wilson's estate.

The \$56 license fee was for the elevator permit.

Ms. Tikotin testified that the \$82.80 miscellaneous fees were for the exchange of owners checks for company checks.

There were three telephones, two downstairs and one in Mr. De La Vegas apartment. All of the telephones were for use in conduct of the building's business.

The furniture/fixtures expense shown on the Statement is for purchase of a typewriter.

Current Year Gross Income: Amounts charged in excess of the Maximum Allowable Rent could have resulted because of a charge for rental of an extra garage space or locker; the additional rent for parking and/or the rental of a locker was added into the unit rent.

Current Year security deposits are still be placed in the checking account with the rents; the account is interest bearing account.

Magni Design had unit 1285B and C. He moved to the fourth floor and combined his business and residence. Mr. Design maintained unit 1285B until his friend moved out. Unit 1287G was vacated because the tenant moved into unit F. Unit 1287C became vacant in June because they owed back rent.

Current Year Expenses: There are two property tax bills, there is one for the garden and one for the building.

Trash is picked up weekly and is paid for on a monthly basis. Ms Tikotin confirmed that the fee for trash collection increased from \$259 to \$299.

The building pays the gas and electricity for units 1285 A,B,C,E,F,G,J and K. The building is not reimbursed by the tenants for the utility payments. There are separate bills for the apartment K, one of the owners, for apartment 1285 A,B,C and 1285 E,F,G, power for the hallway, two bills for the entire building and for apartment J, another of the owners.

The only assessment to the tenants in the previously stated units for the utilities is the additional one half percent per utility allowed in the general adjustment.

At one time units A,B and C were one unit and are still on one meter; units E,F and G were also one unit and are on the same meter. The electricity for these units must therefor be paid by the building. The same situation exists with the respect to the gas. Ms. Tikotin is unaware of what the notation "12 central facilities" on the gas bill refers to.

The small checks written to Ms. Tikotin are to reimburse her for the purchase of supplies (coffee, sugar, sweet and low, toilet tissue, etc) used in the office.

Telenational Communications is the buildings long distance carrier. The owners use it for Mexico - they live in Mexico. When they come into town the owners use the service for calls to Europe - for personal use. About a third of the bills are Ms Tikotin's calls to contact the owners when they were in Mexico, particularly during the seismic work.

The telephone numbers in the building for the building use are 213-654-9681, 656-3182 and 656-3184. All of the telephones are located in the office. There is no personal use of the telephones.

The bill to Telecomp Communications is for repair of the fax machine. The bill to Arrowhead is for water for use in the office.

Checks written in the amount of \$570 are payroll checks for Ms. Tikotin and checks written to Eugene Koenig and Luis Garcia are also payroll checks. Mr. Garcia was also paid additional money for helping with the painting after the seismic work. Ms. Tikotin receives a flat sum of \$150 per month and Mr. Koenig receives a flat sum of \$62.50 per month to reimburse them for traveling on the building's business. Ms. Tikotin does stop at another building owned by the partners and pick up the receipts and deposits them. Ms Tikotin estimates that 75% of her traveling was for the La Fontaine and 25% for the other building.

The check for \$907 and \$1038, made to Security Pacific National Bank are for payroll taxes. Checks written to the Employment Development Division is for State payroll taxes. Checks to the Internal Revenue Service are for income taxes deducted from the employee payroll.

Carlos Murillo is also a maintenance person hired to assist Mr. Koenig.

The accounting bill for \$1,125 is for preparation of the partnership tax returns. Bills for Hillview Apartments were included in the application by error. La Fontaine is the only property owned by this partnership. Individual members of the partnership do own other property.

The bill from Witter and Harpole in the amount of \$12.50 was a consultation concerning the building. Hanneken v Lee and La Fontaine v. Lee Ann Jarvis were eviction actions. The bill from Witter and Harpole in the amount of \$45 was services in connection with the probate of Mr. De La Vega.

The bill from Southern California Roofing is for repair of leaks in the building roof. Because of the age of the building, there are a lot of small leaks, plumbing and electrical problems that have come up and needed repair.

The owners decided to have the building retrofitted against earthquake. They contracted with Vahdani construction for all of the work except for touchup painting. Barelli and Associates was hired to do the engineering work, which was not covered by the contract with Vahdani Construction. The contract also did not cover the cost of inspection, the owners paid additional fees to Shumway Inspection for this service. The money was actually paid to Vahdani on behalf of Shumway.

There were no outstanding loans on the building, then Mr. De La Vega took out a \$600,000 loan to buy out his partners. In July 1992 a loan in the amount of \$666.66 was taken out by one of the owners to pay for the seismic work. The \$51,000 loan was to pay additional costs and interest resulting from sale of the loan documents from one bank to another. Ms. Tikotin did not remember the names of the banks involved. The building was refinanced in the amount of \$1,000,000. Of this sum, \$400,000 paid back the first mortgage (the loan documents indicate this amount was actually over \$600,000), \$280,000 was used to reimburse the owners for advances for the seismic work; the building still has approximately \$80,000. The retrofit work actually was \$320,000, but part of the payments fell before the application current year and are not claimed herein.

The seismic work has stiffened the building. Whether it works or not has been, but the building did come through the 1994 earthquake without any damage.

Testimony of William Pleasant

Mr. Pleasant has lived in building since the end of 1983 or 1984. Shortly after he moved in there was water damage to the unit, at that time he was told there was no building insurance.

After the retrofit, Mr. Pleasant noticed that more items fell off of shelves - there was more of a mess after the most recent aftershocks.

SUMMARY OF EXHIBITS UPON WHICH DECISION IS BASED

Two exhibits were admitted into evidence:

Exhibit No. 1 is the Rent Increase Application with supporting documentation of income and operating expenses for this property.

Exhibit No. 2 is the Property Registration Form and attachments for this property, filed by the owners, listing information pertaining to the rental units, including the Base Rents, the number of bedrooms, and the housing services provided to each unit.

ANALYSIS OF THE EVIDENCE

Jurisdiction: Section 6411(a) of the City of West Hollywood Rent Stabilization Ordinance provides that a landlord may file a rent adjustment application to achieve a just and reasonable return based on net operating income principles.

Where a rent increase application is filed based on the reduction of earthquake hazards, the application is governed by Section 6411.1 through 6411.6. City of West Hollywood Rent Stabilization Ordinance Section 6411.1(a). To the extent that the procedural and substantive grounds for the rent increase application is not covered in sections 6411.1 through 6411.6, such procedure and substance shall be governed by Section 6411 (a), (b) and (c) of the Ordinance. City of West Hollywood Rent Stabilization Ordinance Section 6411.1(b).

Notice: Pursuant to Section 60002 of the City of West Hollywood Rent Stabilization Regulations an application for a rent increase must be accompanied by a copy of a written notification from the landlord to all tenants that the landlord is filing a rent increase application, the amount of the proposed increase for each unit and a declaration that the written notification was served on all tenants. The application was accompanied by a copy of such written notification to all tenants in the building.

Base Year Determination: Section 6411(C)(1)(e) of the City of West Hollywood Rent Stabilization Ordinance establishes 1983 as the base year for determining rent adjustment applications. In the instant case no evidence has been presented that a year other than 1983 should be used as the base year.

Base Year Gross Income: Tillie Tikotin, the manager of the subject building testified that the rental reports for 1983 were compiled on a monthly basis from ledger sheets prepared as the rents were received. Her unrefuted testimony establishes that the rent reports for 1983 were contemporaneously prepared. Contemporaneously prepared rent records are usually the most reliable available evidence of rent levels.

Section 6402 of the City of West Hollywood Rent Stabilization Ordinance defines rent as the consideration paid for the use or occupancy of a dwelling unit rented or offered

for rent for human habitation and all housing services provided in connection with such use and occupancy.

Base Year Gross Rents, as detailed in Table 1, are determined to be \$207,409.74. Rental income is imputed for unit 1285J, 1285K. With respect to unit 1285J, Ms. Tikotin's testimony establishes that in 1983 the tenant actually paid \$1,300 in rent, although only \$200 was actually realized by the building. The unit was subsequently registered at a \$1,300 base rent. Pursuant to the definition of rent stated in section 6402 of the city of West Hollywood Rent Stabilization Ordinance, \$1,300 is the actual rent of the unit and is used herein for the purpose of calculating Base Year Gross Rents.

Unit 1285K was in 1983, and continues to be, owner-occupied. The rental reports indicate that the owner was paying \$275 per month as rent. Since this is the only reliable income reported for the unit, it is accepted as the base year rent.

Additional rental income is claimed during the Base Year totalling \$9,047.06. This additional income is comprised of \$1,528.47 received for the rental of garage and/or locker space; \$300 representing rent paid for use of a small office space for six months; \$6,100 received from the rental of a unit for the filming of several television shows and \$1,118.59 in income from the laundry facilities. The additional income from rental of the garage/locker space and the income from the laundry facilities is allowed pursuant to Section 6411.5(a)(1)(b).

Section 6411.5(a)(1)(b) of the City of West Hollywood Rent Stabilization Ordinance defines gross income as gross rents, interest from security and cleaning deposits, income from services, garage and parking fees and all other income or consideration received or receivable for or in connection with the use or occupancy of rental units and housing services. The income claimed for rental of the office space and for rental of an apartment for the filming of several television shows is not income derived from a dwelling unit rented or offered for rent for human habitation or a housing service provided in connection with the use or occupancy of a rental unit. Said income is not therefore gross income within the meaning of Section 6411.5(a)(1)(b) of the City of West Hollywood Rent Stabilization Ordinance and is not allowed.

Allowable rent losses are losses beyond the landlord's control. Ms. Tikotin testified to the following rent losses in 1983: Unit 1285C in March and unit 1289B for February, April and May because of the tenants voluntary vacation of the units; and unit 1285H in June due to the death of the tenant. Utilizing the last rent charged for each unit from the rent ledger sheets the vacancy losses are calculated to be \$5,586. This amount is within the 3% presumption for rent loss and, based on the testimony of Ms. Tikotin, is reasonable based on the evidence.

Total rents, less allowable rent losses, totals the Base Year total Collected Gross Income of \$204,470.80.

The applicant alleges a total gross income for the Base Year of \$234,695. This amount includes sums not allowable under Section 6411.5(b). The total of the rents listed in the rent column of the rent reports for 1983 is \$208,440.65. Additionally, the rent report for 1983 shows \$2,150 as rental income. Ms. Tikotin testified the sum was actually the payment of the cleaning, security and key deposits on the rental of unit 1285J. The gross income claimed in the application also included \$6,585 in security, cleaning and key deposits received upon rental of units. The aforesaid deposits are, according to the testimony of Ms. Tikotin refundable to the tenants, they are not therefore considered income to the owners for the purpose of determining gross income. However, Section 6411.5(a)(1)(b)(2) provides for the inclusion of interest earned on deposits received from tenants in calculating gross income, to the extent the interest is not payable to the tenant. Ms. Tikotin testified that in 1983 the deposits were deposited in a non-interest bearing account, therefore there was no accrued interest income.

Additionally, the gross income claimed in the application includes \$5,600 representing a charge of \$25 paid by some of the units. Ms. Tikotin testified that this charge was to pay part of the cost for installation of a security intercom system. The payments were to only continue until a portion of the cost of the system was paid. The payments did subsequently stop, although Ms. Tikotin could not remember the date of cessation. The \$5,600 represents reimbursement of money spent prior to the 1983 base year. Since the expense for installation of the intercom system is not included in the 1983 base year, the inclusion of moneys received as reimbursement for the system in the gross rents would improperly inflate the gross income for the building and is therefore not allowed.

\$385.92 in miscellaneous income is also claimed in the application. Ms. Tikotin testified that this sum is derived from several sources, including the exchange of checks from the owner's for cash. Based on the evidence received it cannot be established that the \$385.92 is actually income, it is therefore not allowed.

The total allowed gross income for the base year of 1983 is \$204,470.80.

Base Year Operating Expense

Section 6411.3 of the City of West Hollywood Rent Stabilization Ordinance sets forth a rebuttable presumption that accounting records are business records created contemporaneously and are the complete, accurate and actual records for the base year, unless reasonable doubt is raised concerning the credibility of the records. In the instant case Ms. Tikotin testified that she prepared the Statement of Operations containing the base year expenses from invoices and receipts recorded in the general ledger as they were paid. The original of the bills, invoices and receipts for 1983 cannot, after search of

the records in the office and in storage, be located, however, no evidence was presented casting doubt on the credibility of the Statement of Operations submitted. Therefore, for purposes of the analysis herein, the Statement of Operations is accepted as the accurate record of base year expenses.

The Base Year Operating Expense, as detailed in Table 2, is determined to be \$105,482.74. Property taxes, telephone charges, insurance and trash collection are allowed as claimed.

Ms. Tikotin testified that the building pays the electricity for units 1285A,B,C,E,F,G and 1285J and K. Units 1285J and K belong to owners of the building, however, Ms. Tikotin also testified that the owners who lived in units 1285J and K died and the units were rented out during the base year. Ms. Tikotin further testified that the building's payment of the gas and electricity for the aforesaid units was necessitated by these units being master metered. The building is not reimbursed for payment of the gas and electricity for the aforesaid units except for the additional 1% allowed as part of the annual general adjustment. Expenses for the payment of gas and electricity are allowed as claimed.

Applicant chose to claim actual management expenses rather than utilize the presumption. The management expense listed in the Statement of Operations is \$16,425.36. Ms. Tikotin testified that during the base year Alfredo De La Vega, one of the owners of the building managed the building, one half of the claimed management fee was paid to Mr. De La Vega as fee for managing the building. The other half of the management fee was given to the family of Mr. Wilson, a deceased owner of the building. Mr. Wilson's family came to the building about once every few weeks to talk to Mr. De La Vega and help around the building.

Mr. De La Vega resided in the building and actively participated in management of the building. Section 6411(1)(c) of the City of West Hollywood Rent Stabilization Ordinance provides for the payment of expenses for owner provided management services. Compensation of the owner for providing such management services is treated no differently from the payment of fees to a non-owner management company. In the instant case Mr. De La Vega received \$8,212.68 for the base year for managing the building. This amount is reasonable and is allowed.

With respect to the family of Mr. Wilson, the testimony leads this Hearing Examiner to the conclusion that their management services to the building were minimal, if rendered at all. In reaching this conclusion this Hearing Examiner notes that members of family came to the building once every few weeks to talk with Mr. De La Vega. Therefore the \$8,212.68 paid to the family of Mr. Wilson is not a reasonable management fee and is not allowed.

In addition to the management fee paid to Mr. De La Vega payroll expenses, the purchase of a typewriter, insurance premiums, phone charges and accounting fees, claimed under normal repair and maintenance in the application, are actually expenses incurred in the management of the building and are included herein.

An appraisal fee in the amount of \$4,000 was paid in 1983. Ms. Tikotin testified that this fee was connected with the attempted sale of the building. Section 6411(c)(1)(c) does not provide for the payment of expenses incurred in the attempted sale of the property. Additionally, such expense is not reasonable and necessary to maintaining the building. Therefore, the expense incurred for appraisal of the property is not allowed.

Ms. Tikotin testified that the payroll for 1983 was for herself and the maintenance personnel. Shown as a separate line item are the payroll taxes deducted from the employee's compensation, this money must be added to the amount shown as payroll to come up with the total payroll expense for 1983; the total payroll expense is \$41,295.68. Payroll expenses are allowed as a management expense.

An expense of \$228.95 was incurred for the purchase of a new typewriter in the office. This expense is allowed as a management expense.

Applicant incurred an expense of \$29.46 in bank charges and \$1,000 in accounting fees. These expenses allowed as a reasonable management expenses.

Ms. Tikotin testified that approximately \$740 in legal fees were incurred in 1983 for the probate of Mr. Wilson's estate. These legal fees were not incurred in the management of the building and are not allowed.

Page three of the 1983 Statement of Operations shows \$5,004 disbursed for repair and maintenance items. \$228.95 for the replacement of the office typewriter was included as a management expense. The remaining sum of \$4,777.08 is allowed. In addition the expense of \$3,378.94 for materials and amounts paid to outside contractors for the elevator of \$2,333.96; \$4,615.07 paid to the gardener, and \$330.18 paid to the exterminator are allowed.

License fees in the amount of \$56 are allowed.

Base Year Net Operating Income

The Base Year Net Operating Income is determined to be \$98,988.06. This figure is derived by subtracting the total operating expenses from the total collected gross income.

Section 6411.5(c) establishes the presumption that the Net Operating Income produced by the property during the Base Year provided the landlord a fair return. The presumption has not been refuted by any of the parties hereto and therefor shall apply.

Current Year Gross Income

Rent Increase Application I-108 uses the period from July 1, 1992 to June 30, 1993 as the Current Year.

The Current Year Gross Rents, as detailed in Table 4 are determined to be \$339,798.13. Maximum Allowable Rents for the applicable period have been utilized in arriving at this figure. Rent ledger style records contemporaneously-prepared by the Applicant's manager were substantially consistent, with the principal exception that these records reflect the \$4.00 pass-through of the annual registration fee to tenants.

Rental income is imputed for units 1285J, 1285K and 1287E; all owner-occupied units. The rent imputed for unit 1285J is based on the Current Maximum Allowable rents shown in records of the City of West Hollywood Rent Stabilization Department. There are no Maximum Allowable Rents are reflected in Rent Stabilization Department records for units 1285K and 1287E. Testimony and the rent ledger indicate that in 1983 a rent of \$275 per month was being paid by the owner for rental of the unit. Application of intervening general adjustments to this amount results in a imputed income for the application current year for unit 1285K of \$4,242.56.

Unit 1287E was rented in 1983 for a monthly rental of \$916.00. In 1985 the unit was registered with the Rent Stabilization Department as owner-occupied as of April 30, 1984, therefore no Maximum Allowable rent was established for the unit. The application of intervening general adjustments to the \$916 paid in 1983 yields an imputed income for the application current year of \$14,132.20.

Subtracted from gross rents are rent losses beyond the landlord's control. Ms. Tikotin testified that unit 1285B was voluntarily vacated by the tenant, who had maintained two units. Unit 1287G became vacant when the tenant moved into unit F and the tenant in 1287C moved because they owed back rent. The preceding testimony establishes that the stated vacancies were caused by factors beyond the control of the landlord. Vacancy rent losses are allowed in the amount of \$5,294.65. This amount is well below 3% of the gross rents and therefore, pursuant to section 6411.5(a)(1)(b)(5) is presumed to be reasonable.

The evidence establishes that additional income was derived from the rental of garage or locker spaces in the amount of \$5,880. Section 6402 of the City of West Hollywood Rent Stabilization Ordinance defines rent as the consideration paid for the use of a rental unit and for the provision of related housing services. Section 6402 defines housing services as services, facilities and privileges provided by the landlord on or after

April 30, 1984 connected with the use or occupancy of a rental unit, including but not limited to, such facilities as parking. The testimony established that in 1983 the tenants were able to rent garage and/or storage space; such facilities are housing services within the meaning of Section 6402. Therefore, the value of provision of such service is, by operation of the Ordinance, included in the Maximum Allowable Rent for each unit. The additional charge of \$5,880 is therefore in violation of the City of West Hollywood Rent Stabilization Ordinance and cannot be allowed.

The laundry facilities yielded additional income during the Current Year of \$1,297.25. Based on the information contained on the rental reports for application current year, a total of \$9,235 in security deposits was collected in the current year. Pursuant to Section 6408 of the City of West Hollywood Rent stabilization Ordinance, the tenants are entitled to a refund of 5.5% interest on the amount to the security deposit each year; this comes to \$507.97. The landlord is entitled to claim interest in excess of this amount as income. The Application claims interest income of \$694. Based on the bank statements submitted as part of the application the actual interest income is \$691.68; of this amount \$507.97 is refundable to the tenants, therefore \$183.75 is allowed as interest income.

Total rents, less allowable rent losses results in a Current Year Total Collected Gross Income of \$336,454.37.

In addition to the aforesaid adjustments to the current year income, addition of the rent income column of the rental report reveals an understatement of the rental income shown in the application in the amount of \$23,043.85.

Current Year Operating Expenses

Current Year Operating Expenses, as detailed in Table 5, are determined to be \$185,003.41. Expenses for property taxes and trash collection are allowed as claimed.

Applicant claimed \$12,688 in electrical expense and \$8294 for gas consumed in the building. The bills submitted for electricity total \$8,086.95; those submitted for gas total \$3,240.52. The expenses for electricity and gas are allowed in the amount of \$8,086.95 and \$3,240.52. Applicant did not claim an expense for water used in the building in the application. Applicant did provide evidence of the payment of water bills for the building in the amount of \$3,990.66. Expense for water service for the building is allowed in the amount of \$3,990.66.

Management expense is allowed in the amount of \$64,049.73. Management expense includes salary expenses for Ms. Tikotin, Eugene Koenig, Luis Garcia, Mildred Secal and Carlos Murillo. Said expenses total \$56,639.88. Ms. Tikotin, Mr. Koenig and Mr. Garcia are long-term staff of the partnership charged with the overseeing the management and maintenance of the property. Ms. Secal's services were engaged as a

temporary manager and Mr. Murillo was hired on a temporary basis to assist Mr. Garcia.

The subject property is the only property owned by the La Fontaine limited partnership therefore accounting fees in the amount of \$1,125 for preparation of the partnership tax return are allowed and included in the management expenses.

Also included in management expenses is one third of the charges to Telenational Communications Company. Ms. Tikotin testified that approximately one third of the charges paid to Telenational Communications Company resulted from her use of the system to contact the owners of the property in Mexico, the balance of the charges resulted from the owner's personal use of the system. Therefore, only one third of the charges are an operating expense of the building.

Legal expense is allowed in the amount of \$524.50. Ms. Tikotin's testimony established that the bill for \$12.50 was for a consultation concerning the building and that the bills for \$298.00 and \$214.00 were for successful eviction actions. They are therefore allowed as reasonable building expenses pursuant to Section 6411(c)(1)(d). The evidence established that the bill from the Law Offices of Witter and Harpole in the amount of \$45.00 is for services rendered in connection with the probate of Mr. De La Vega's estate. It is not an expense pertaining to the building and is not allowed.

Insurance expense in the amount of \$17,555.87 is allowed. An insurance policy is maintained for the building for the boiler having an annual premium. Applicant maintains a general liability and fire insurance and worker's compensation insurance. Ms. Tikotin testified that payment of the Automobile Club of Southern California and Farmer's Insurance Exchange were for insurance on the owner's personal vehicles. Considering that the owners are at the property only a few days a month, there is insufficient evidence to establish that maintenance of personal vehicles is a reasonable building expense. The insurance premiums for the vehicles is not allowed.

Normal repair and maintenance expenses have been determined based upon the documentation submitted. Included in the claimed normal repair and maintenance expense claimed in the Application were the payroll expenses for Luis Garcia, Eugene Koenig, Carlos Murillo and Mildred Secal. These persons are employees engaged in the day to day maintenance and operation of the building. Their salary expense has therefore been addressed as a management expense.

An invoice and check evidence the payment of \$1,350 to Southern California Roofing for the repair of leaks around the popout and other areas of the building roof. This is appropriately included as a capital expense. The repair of the roof provides the tenants with a dwelling free of interior rain damage and will prevent other water damage to the building. This repair work is therefore necessary and reasonable and of benefit to the tenants.

Also included in normal repair and maintenance is \$9,202 to various individuals for painting. This amount was not itemized in the Application, although documentation was provided. The indicated sum was paid over a period of seven months and, per Ms. Tikotin's testimony, was for retouching the paint in various areas of the units and common areas necessitated by the seismic work. In spite of the total sum paid for painting, the nature of the work would make it more appropriately included as a normal repair and maintenance expense rather than a capital expense - the expense is so treated.

Applicant claims a plumbing expense of \$18,284 for the current year, however, the documentation submitted only supported a total plumbing expense of \$9,587.74. Of this amount, the invoices indicate that \$7,329.09 represents expenses incurred in the replacement of pipes and water lines. The extensiveness of the work involved in the replacement of pipes and water lines running from floor to floor and to the roof and basement, as indicated in the detail of the various invoices is indicative of a capital expenditure or improvement rather than normal repair and maintenance and is therefore treated herein as a capital expense. Since this work affects the ability of the tenants to obtain and utilize water the replacement and repair of the lines is reasonable and necessary and of benefit to the tenants.

The balance of \$2, 215.65 in plumbing expenses is for more routine maintenance items such as replacing faucets and drains and is included as a normal repair and maintenance expense.

There are no claims for owner-performed labor for the Current Year.

Rent stabilization fees were paid by Applicant in the amount of \$120 per unit per year, of which \$60 per unit per year is recoverable from the tenants. The resulting cost to Applicants of the \$1,500 is allowed as an operating expense for the purpose of assessing the merit of the application, pursuant to Section 6411(C)(1)(c). Applicants are also allowed \$240 for the elevator permit.

The annual cost of building improvements, major repairs and replacements have been included as amortized; see Table 7 for detail. The capital expense for plumbing and roofing were discussed earlier. Ms. Tikotin testified that these expenses were paid out of the building account. Section 60040(D) of the City of West Hollywood Rent Stabilization Regulations, provides a rebuttable presumption that the cost of financing of capital expenditures is 5.5% when the cost of a capital expenditure is financed by an individual or entity affiliated with the Landlord. Based on the aforesaid presumption the capital expense for plumbing and repair of the roof is amortized at an interest rate of 5.5%.

The owner of the property entered into a written contract with Vahdani Construction Co., Inc. on July 31, 1992 for "all labor, transportation, materials, scaffolding and tools necessary to bring the building up to full compliance with the requirements of the City of West Hollywood's Ordinance #254, Section #8114. The contract was in the amount of \$280,000. Checks were submitted with the Application evidencing payment of this full amount to Vahdani Construction, Inc. The contract did not include inspection services - Ms. Tikotin testified that additional fees were paid to Vahdani Construction Inc. for Shumway Inspection Services, Inc. for inspection services. The invoices evidence payment to Vahdani Construction for Shumway Inspection Services, Inc. in the amount of \$2,880. An additional \$3,830 was paid to Barelli & Associates, Inc for precontract engineering services on September 24, 1992. A total of \$286,710 is allowed for seismic rehabilitation of the building.

Pursuant to section 60073(A) of the City of West Hollywood Rent Stabilization Regulations, capital improvements specifically related to seismic improvements shall be amortized over 30 years.

Section 60040(B) of the City of West Hollywood Rent Stabilization Regulations provides that any portion of a requested rent increase based on recovery of the cost of a capital expenditure shall be granted only if the landlord demonstrates that the capital expenditure was necessary or reasonable to maintain and/or improve the property and resulted in real benefit to the tenants of the property and did not result from the deferral of maintenance.

Section 60073(B) of the City of West Hollywood Rent Stabilization Regulations provides a rebuttable presumption that seismic retrofitting work for which the landlord has obtained the required City of West Hollywood building permit, results in real benefit to the tenants. The testimony of Ms. Tikotin indicated that the building survived the January 1994 earthquake without damage, although Mr. Pleasant stated that because of the additional rigidity of the building, more items came off of shelves than he had previously experienced. The foregoing supports the conclusion that the seismic rehabilitation of the building was of real benefit to the tenants.

Section 60040 of the City of West Hollywood Rent Stabilization Regulations allows for reasonable financing costs incurred in financing an allowed capital expenditure. Applicant has presented evidence that the applicable permits have been obtained and seismic retrofitting work performed. The seismic retrofitting work was finance through a loan from Jefferson Guaranty Bank. Ms Tikotin testified that the loan was on the best terms the owners could obtain based on the credit market at the time the loan was taken out. Ms. Tikotin had also testified that the owner's had advanced money to begin the seismic work and were reimbursed the money advanced upon funding of the loan. The promissory note executed evidencing the loan indicates that a total of \$1,000,000 was borrowed at an interest rate of 8.5% for the first 36 months and 9.0% for the next 23

payments. Ms. Tikotin indicated that approximately \$660,000 of the loan amount was utilized to pay of the existing mortgage and put the lender in first position. The note calls for a balloon payment at the end of the five year period. Based on this evidence, the cost of financing of 8.5% is found to be reasonable and is allowed.

Current Year Net Operating Income.

The Current Year Net Operating Income is \$148,857.03. The Current Year Net Operating Income is arrived at by subtracting the total operating expenses from the total collected gross income. (See Table 7).

Rent Increase

There is an increase of \$49,868.23 in the NOI from the Base Year NOI of \$98,988.80. This represents a 50.4% increase in the NOI from the Base Year to the Current Year.

Ordinance section 6411(C)(1)(h) of the City of West Hollywood Rent Stabilization Ordinance guarantees minimum growth in the NOI of 60% of the percentage growth in the local Consumer Price Index (CPI).

The relevant CPI for this Application is the CPI last released as of the date of the Application, which was the July 1993 CPI of 442.6. The CPI in 1983 was 292.7. There has been a growth of 149.9 from the Base Year to the date of the Application. This is a 51.2% increase in the CPI. Sixty percent of this increase is 30.7%.

There is an actual increase in the NOI from the Base Year to the Current Year of 50.4%; therefore no special rent increase is required for the Applicant to receive the guaranteed Net Operating Income for this property.

FINDINGS OF FACT

1. The property is located at 2485 N. Crescent Heights Blvd., West Hollywood, California.
2. Applicant Matilda Streat has owned an interest in the property since 1987. Applicants Roberto Redo and Juan Navarro have each held an interest in the property since 1987.
3. The Current Maximum Allowable Rents for units at this property are as follows:

<u>Unit ID</u>	<u>CMAR</u>
1285-A	\$ 423.87

1285-B	1,005.81
1285-C	671.75
1285-D	1,376.59
1285-E	632.22
1285-F	948.33
1285-G	693.87
1285-H	1,251.45
1285-J	1,626.90
1825-K	NONE
1825-L	2,173.58
1285-M	2,371.16
1287-A	832.52
1287-B	915.85
1287-C	1,342.90
1287-D	889.19
1287-E	NONE
1287-F	906.44
1287-G	1,340.52
1287-H	1,195.45
1289-A	706.10
1289-B	2,511.23
1289-C	2,820.09
1289-D	1,050.58

4. Applicant has not established that a base year other than 1983 should be used or that 1983 does not reflect a fair and reasonable base year for this Application.

5. The total collected gross income for the 1983 Base Year was \$204,470.80.

6. The operating expenses for the 1983 Base Year were \$105,482.74

7. The Net Operating Income for the 1983 Base Year was \$98,988.08 .

8. The total gross income for the Current Year period of July 1, 1992 to June 30, 1993 was \$336,454.37.

9. The Operating Expenses for the Current Year period were \$187,597.34.

10. The Net Operating Income for the Current Year period is \$148,857.03.

11. The relevant Consumer Price Index figures for this Application are CPI of 442.6 for the Current Year and 292.7 for the Base Year.

12. There has been a growth of 149.9 in the CPI from the Base Year to the date of the Application. This is a 45.5% increase in the CPI. Sixty percent of this increase is 30.7%.

13. The filing fee to file this application is waived pursuant to Section 6411.2 of the City of West Hollywood Rent Stabilization Ordinance.

14. Applicants paid registration fees of \$3,000 during the Current Year period, of which \$1,500 is not reimbursed by the Tenants.

CONCLUSIONS OF LAW

1. Section 6411(a)(1) of the City of West Hollywood Rent Stabilization Ordinance provides that a landlord may file a rent adjustment application for some or all units in the landlord's rental complex.

2. 1983 is the Base Year for determining whether or not a rent increase should be granted, unless the Applicant can establish that he cannot, after good faith attempts, produce base year income and expense information. City of West Hollywood Rent Stabilization Ordinance section 6411.5(b). Applicant has not established that any year other than 1983 should be used for the Base Year.

3. For purposes of the Net Operating Income analysis, gross income includes gross rental income computed at 100% occupancy. City of West Hollywood Rent Stabilization Ordinance section 6411.5(a)(1)(b)(1). Gross income shall be reduced only by the amount of uncollected rents due to circumstances beyond the landlord's control. City of West Hollywood Rent Stabilization Ordinance Section 6411.5(a)(1)(b)(5). Rent levels are imputed for units 1285J and 1287E. These units are owner-occupied and no Maximum Allowable Rent has been established for them.

4. The fees for filing this Application for a rent increase for seismic retrofitting were waived pursuant to City of West Hollywood Rent Stabilization Ordinance Section 6411.2.

5. It is presumed that expenses incurred in performing seismic retrofitting are reasonable and necessary and benefit all residential units of the property equally. City of West Hollywood Rent Stabilization Ordinance Section 6411.4a. The evidence supports a determination that the capital expenditures for seismic retrofitting were reasonable and necessary and of benefit to all residential units of the property.

6. It is presumed that the contract valuations approved by the City's Department of Building and Safety are complete and actual records of the reasonable cost of performing the seismic retrofitting work. Section 6411.4b of the City of West Hollywood

Rent Stabilization Ordinance. No evidence was presented rebutting the presumption that the contract amount represented the reasonable cost of performing the seismic retrofitting work.

7. Any portion of a requested rent increase that is based on recovery of the cost of a capital expenditure shall be granted only if the landlord demonstrates that the capital expenditure was necessary or reasonable to maintain and/or improve the property and resulted in real benefit to the tenants of the property. Section 60040(B) of the City of West Hollywood Rent Stabilization Regulations. The expense incurred for repair of the roof of the building and plumbing are reasonable or necessary and of real benefit to the tenants.

8. Reasonable financing costs incurred in financing the cost of an allowable capital expenditure are allowed. Section 60040(D) of the City of West Hollywood Rent Stabilization Regulations. The evidence supports a finding that the actual cost of financing the seismic retrofitting work is reasonable based on the credit market at the time the financing was undertaken.

9. Where the cost of an allowable capital expenditure is financed by an individual or entity affiliated with the landlord, by the landlord, or otherwise arranged through other than an arm's-length negotiation, recovery of financing costs through a rent increase shall be equal to interest at a rate of 5.5%. Section 60040(D) of the City of West Hollywood Rent Stabilization Regulations. The evidence established that the cost of repair of the roof and the plumbing repairs were financed by the owners. Therefore the cost of financing is determined to be 5.5%.

10. If any statement under the above heading is determined to be a finding of fact, it is to be treated as such.

DECISION

IT IS THE DECISION OF THE HEARING EXAMINER that Rent Increase Application I-108 be denied.

Dated: April 28, 1994


SUSAN K. HOLLIDAY
Hearing Examiner

NOTICE OF RIGHT TO APPEAL: You are hereby notified that the time within which judicial review of this Decision must be sought is governed by Section 6414 of the Rent Stabilization Ordinance and Section 1094.6 of the California Code of Civil Procedure.

**TABLE 1
GROSS RENTS - BASE YEAR**

<u>Unit I.D.</u>	<u>Rents at 100% Occupancy</u>		<u>Total</u>
1285-A	246x6+270x6	=	\$ 3,096
-B	600x12	=	7,200
-C	341x2+400x9+341*	=	4,623
-D	875x12	=	10,500
-E	350x12	=	4,200
-F	525x9+575x3	=	6,450
-G	377.45x6+414x6	=	4,748.70
-H	745x5+925x6+745*	=	10,020
-J	1300x12	=	15,600
-K	275x12	=	3,300
-L	699x9+764x3	=	8,583
-M	1800x2+1775x10	=	21,350
1287-A	565.59x9+607x3	=	6,911.31
-B	554x6+595x2+603x4	=	6,926
-C	975x12	=	11,700
-D	594x6+650x6	=	7,464
-E	916x12	=	10,992
-F	600x9+650x3	=	7,350
-G	775x12	=	9,300
-H	675x12	=	8,100
1289-A	424.34x11+453	=	5,120.74
-B	1500x1+1500*x3+1575x6*	=	15,450
-C	1800x4+1775+6000+1725x3	=	20,150
-D	675x9+700x3	=	<u>8,175</u>
		Total	\$207,409.75

*The unit was vacant for this period, the last charged rent is imputed for the period of vacancy.

**TABLE 2
OPERATING EXPENSES - BASE YEAR**

1. Property Taxes	\$ 7,436.62
2. Electricity	9,377.96
3. Gas	6,851.70
4. Trash Collection	1,712.04
5. Management Expenses	50,866.77
6. Legal Expenses	-0-
8. Insurance	13,528.47
9. Normal Repairs & Maintenance	15,653.18
10. License, Registration & Other Fees	<u>56.00</u>
Total	105,482.74

**TABLE 3
NET OPERATING INCOME - BASE YEAR**

Total collected gross income	\$204,470.80
Total operating expenses	\$105,482.74
Net Operating Income	\$ 98,988.06

TABLE 4
GROSS RENTS - CURRENT YEAR

<u>Unit I.D.</u>	<u>Gross Rents at 100% Occupancy</u>		<u>Total</u>
1285-A	396.65x2+411.52	=	\$ 4,908.50
-B	941.21x2+976.51x10	=	11,647.52
-C	628.21x2+652.18x10	=	7,778.22
-D	1,313.48x2+1,349.60	=	16,123.56
-E	591.62x2+613.81x10	=	7,321.34
-F	887.43x2+920.71x10	=	10,981.96
-G	649.31x2+673.66x10	=	8,035.22
-H	1,194.07x2+1,226.91x10	=	14,657.24
-J	1,552.31x2+1,595x10	=	19,055.62*
-K	345.63x2+355.13x10	=	4,242.56*
-L	2,073.93x2+2,130.96x10	=	25,457.46
-M	2,262.45x2+2,324.67x10	=	25,509.15
1287-A	794.36x2+816.20x10	=	9,750.72
-B	873.86x2+897.89x10	=	10,726.62
-C	1,281.33x2+1,316.57x10	=	15,731.36
-D	848.42x2+871.75x10	=	10,404.34
-E	1,136.02x2+1,167.26x10	=	14,132.20*
-F	864.89x2+888.67x10	=	10,616.48
-G	1,279.07x2+1,314.24x10	=	15,700.54
-H	1,140.64x2+1,172.01x10	=	14,001.38
1289-A	673.72x2+692.25	=	8,269.94
-B	2,396.10x2+2,461.99x10	=	29,412.10
-C	2,690.79x2+2,764.79x10	=	33,029.48
-D	1,002.41x2+1,029.98x10	=	<u>12,304.62</u>
		Total	\$339,798.13

* Rents for owner-occupied units are imputed

TABLE 5
OPERATING EXPENSES - CURRENT YEAR

1. Property Taxes	\$ 28,654.52
2. Electricity	8,086.95
3. Gas	3,240.52
4. Water	3,990.66
5. Trash Collection	3,473.28
6. Management Expenses	64,049.73
7. Legal Expenses	512.00
8. Insurance	17,555.87
9. Normal Repairs and Maintenance	29,247.64
10. License, Registration & Other Fees	240.00
11. Amortized Capital Expenses	<u>27,584.94</u>
Total	187,597.34

TABLE 6
NET OPERATING INCOME - CURRENT YEAR

Total collected gross income	\$336,454.37
Total operating expenses	\$187,597.34
Net Operating Income	\$148,857.03

TABLE 7
REPAIR AND MAINTENANCE - CURRENT YEAR

<u>Payee</u>	<u>Total Amount</u>
Acme Rents	\$ 504.83
All Point Electric	961.66
Alex Sheynkar(plumber)	2,215.65
Anawalt Lumber Co.	1,722.00
Arbuckle Electric Motors, Inc	228.69
Builders Emporium	487.37
Camilo Aguirre	864.00
Carlos Amaya	444.00
Carlos Carpet	20.00
Carlos Murillo	108.00
Chief Fire Protection, Inc.	449.18
Color Tile	14.23
E.L. Payne Co.	746.15
El Rancho Glass, Inc.	32.48
Electrolux	51.80
Fume-a-Pest	348.00
Gregorio Rodrigueq (Gardener)	4,538.00
Grover's Key Service	407.06
Grover's Security Store	23.06
Jose Ernesto Garcia	954.00
Laurel Hardware	1,404.80
Linoleum City	134.45
Los Angeles Elevator Co.	2,604.00
Luis Garcia	1,338.00
Mario Arriega	1,182.00
Mike Green Fire Equipment Company	281.91
Rick's Gate Works, Inc	219.66
Ritz Plumbing	124.27
Roberto Valasquez	254.00
Roto-Rooter Service & Plumbing Co	199.40
Roy Leonel Suerz	678.00
Sinclair Paint Co.	171.64
Southern California Edison	86.55
Standard Brands Paints	146.43
Telecomp Communicatons	55.00
Thrifty Washer Repair	945.06
Tom Posner	50.00
Westmark Paint Co.	1,972.86
Wilshire Tile Company	<u>2,325.00</u>
Total	\$29,427.64

TABLE 8

CAPITAL EXPENSES - CURRENT YEAR

<u>Expense Description</u>	<u>Initial Cost</u>	<u>Interest Rate</u>	<u>Cost to Finance</u>	<u>Total Cost</u>	<u>Amort Period (months)</u>	<u>Annual Cost</u>
Plumbing	\$ 7,329.09	5.5%	\$ 2,215.70	\$ 9,544.79	120	\$ 954.48
So. Cal. Roofing	1,350.00	5.5%	408.13	1,758.13	120	175.81
Vahdani Constr. (seismic Rehab.)	<u>286,710.00</u>	8.5%	<u>506,928.67</u>	<u>793,638.67</u>	360	<u>26,454.62</u>
Totals	295,389.09		509,552.50	804,941.59		27,584.94

TABLE 9

NET OPERATING INCOME COMPARISON

A. 1. Current Year NOI	\$148,857.03
2. Base Year NOI	98,988.06
3. Growth/decline in NOI	49,868.97
4. Percentage growth/decline in NOI	50.4%
B. 1. Consumer Price Index - Los Angeles as of date of Application - 7/93	442.6
2. CPI - Base Year (1983):	292.7
3. Change in CPI:	149.9
4. Percentage Growth in CPI:	51.2%
5. Rent Stabilization Ordinance allows for 60% of growth in CPI:	30.7%
C. 1. Base Year NOI	\$98,988.06
2. Guaranteed Percentage Increase in the CPI allowed:	30.7%
3. Amount of Increase in NOI guaranteed by the Ordinance:	\$30,389.33
4. Total Guaranteed NOI	\$129,377.39
5. Current Year NOI:	\$148,857.03
6. Total Amount of Increase which relates to specific units:	-0-
7. Total Amount of Increase which relates to all units:	-0-
8. Percentage Increase which relates to all units	-0-