FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Robert O. Morvillo, Esq.
Morvillo, Abramowitz, Grand, Iason,
Anello & Bohrer, P.C.
565 Fifth Avenue
New York, NY 10017

MAR 5 2010

RE: MUR 6040
Fourth Lenox Terrace Associates
a/k/a Lennox Terrace Development
Assoc.

Dear Mr. Morvillo:

On October 24, 2008, the Federal Election Commission ("the Commission") notified your clients, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 24, 2010, found that there is reason to believe your client, Fourth Lenox Terrace Associates a/k/a Lenox Terrace Development Assoc. violated 2 U.S.C. § 441a(a)(1)(A) and (C), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be

pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,

Matthew S. Petersen
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Fourth Lenox Terrace Associates a/k/a Lenox Terrace Development Assoc. **MUR: 6040**

I. INTRODUCTION

This matter was generated by a complaint filed by Kenneth F. Boehm, Chairman of the National Legal and Policy Center. *See* 2 U.S.C. § 437g(a)(1).

The complaint asserted that the owner of the apartment building located at 40 West 135th Street in New York City, which is part of a six building complex called Lenox Terrace, made prohibited in-kind contributions to Representative Charles B. Rangel's congressional campaign committee, Rangel for Congress ("RFC"), and his leadership committee, the National Leadership PAC ("the NLP")(collectively "the Committees"), by providing the Committees with office space at a substantial discount. 2 U.S.C. § 441b(a); 11 C.F.R. §§ 114.1 and 100.52(d)(1).

Representative Rangel represents the 15th Congressional District in New York and RFC is his principal campaign committee. His leadership political action committee, the NLP, is registered with the Commission as a non-connected PAC and multicandidate committee. 11 C.F.R. § 109.5(g)(5); *see* Leadership PACs, 68 Fed. Reg. 67,013 (Dec. 1, 2003).

The rent-stabilized apartment at issue in this matter is owned by Fourth Lenox Terrace Associates a/k/a Lenox Terrace Development Assoc. ("Fourth Lenox"). Lenox Terrace was built in 1958 by Robert S. Olnick, the late president of the Olnick Organization, Inc. ("Olinck Inc.") http://www.olnick.com. Each of the six buildings that

make up Lenox Terrace, including Fourth Lenox, are currently owned by separate general partnerships.[1] The general partnership that owns Fourth Lenox has seventeen general partners, sixteen of whom are individuals or trusts. The seventeenth general partner is a limited liability company that elects to be treated as a partnership for tax purposes.

Olnick, Inc., a New York corporation that develops residential, commercial and hotel properties, provides the following services to the Lenox Terrace complex: advertising rentals, accepting and processing residential lease applications, and providing property management services. www.olnick.com/residential/rent and www.olnick.com/management.

During the relevant time period, Representative Rangel leased four rent-stabilized apartments in Fourth Lenox's apartment building at 40 West 135th Street. In 1988, Representative Rangel and his wife signed a two-year lease for a previously combined rent-stabilized apartment [redacted]). In 1997, Representative Rangel signed a two-year lease for an adjacent rent-stabilized apartment [redacted]). Representative Rangel and his family have continuously resided in these apartments since signing the original leases, which have been renewed at the expiration of each prior lease.

In July of 1996, the tenant living in Unit 10U of the building in which Representative Rangel resides vacated the rent-stabilized one bedroom apartment. On October 16, 1996, Representative Rangel signed a two-year lease to rent Unit 10U from November 1, 1996 until October 31, 1998 for $498.87 per month. In pertinent part, the lease states "[y]ou shall use the apartment for living purposes only." The lease also

[1] Mr. Olnick, as president of the Fourth Lenox Terrace Corporation, sold the building at issue in this matter to Fourth Lenox on December 31, 1967.

barred the tenant from subletting Unit 10U without the landlord's "advance written consent."[2] Thereafter, Representative Rangel signed two-year Renewal Lease Forms for Unit 10U in 1998, 2000, 2002, 2004 and 2006. The rent for Unit 10U increased with each lease renewal and by the 2006-2008 lease renewal period it was $677.34 per month.

According to Representative Rangel, he sublet Unit 10U to RFC and the NLP. The available information indicates that RFC started paying rent directly to Fourth Lenox in December 1996. RFC's 1996 Year End Report indicates that, on December 3, 1996, the Committee paid "office rent" to Fourth Lenox in the amount of $166.73 per month and, on December 5, 1996, it reimbursed Representative Rangel $1,000 for "office rent" paid to Fourth Lenox. It appears that the NLP began splitting the rent for Unit 10U with RFC in November 1998. NLP's 1998 30 Day Post-Election Report indicates that the Committee made its first disbursement to Fourth Lenox on November 12, 1998.

Representative Rangel continued to lease Unit 10U until the 2006 lease expired on October 31, 2008. According to the Statement of Candidacy filed on March 31, 2009, the Committee moved to 193 Lenox Avenue, New York. The NLP continued to report a Post Office Box in New York City as its address. Disclosure reports for both RFC and the NLP indicate that in October 2008 the Committees each began paying a monthly rent of $2,000 to Wicklow Properties, LLC.

[2] Pursuant to section 226-b of New York's Real Property Law, rent-stabilized tenants have the right to sublet their apartments provided the owner is notified by certified mail. The owner is then required to respond to the tenant's request to sublet within thirty days. Tenants who do not comply with the requirements of section 226-b may be subject to eviction proceedings. 9 NYCRR § 2525.6.

The complaint alleges that RFC and the NLP occupied Unit 10U at a greatly reduced rent in violation of New York's Rent Stabilization Code ("Code").[3] In support of its allegation, the complaint referenced an attached newspaper article that ran in the July 11, 2008 issue of the NEW YORK TIMES. David Kocieniewski, *For Rangel, Four Rent-Stabilized Apartments*, NEW YORK TIMES, July 11, 2008 ("NEW YORK TIMES article"). The article asserts that Representative Rangel used Unit 10U "as a campaign office, despite state and city regulations that require rent-stabilized apartments to be used as a primary residence" and that state and city rent regulations permit renewals of rent-stabilized apartments "as long as the [tenants] use it as a primary residence." According to this article, Representative Rangel and his Committees made use of the office space even while "the Olnick Organization and other real estate firms have been accused of overzealous tactics as they move to evict tenants from their rent-stabilized apartments and convert them to market-rate housing." The article reported that state officials and city housing experts "knew of no one else with four" rent-stabilized apartments. The article also stated that the Committees pay $630 for Unit 10U while one-bedroom apartments in the same development "are now rented for $1,865 and up." The complaint also highlighted the article's statements that one of the owners of Olnick Inc. contributed to both committees in 2004, and further contributed to the NLP in 2006 and asserts that city records show that in 2005 a lobbyist from the Olnick organization met with

[3] The complaint alleged that the landlord was legally precluded under the Code from leasing Unit 10U to Representative Rangel because the apartment was not his primary residence.

Representative Rangel regarding government approval of a plan to expand Lenox Terrace.[4]

Based on the above information, the NEW YORK TIMES article suggested that the rental arrangement between the landlord, Representative Rangel and by extension his Committees, "could be considered a gift because it is given at the discretion of the landlord and it is not generally available to the public."

In its response, Fourth Lenox stated that it is the owner of the property at issue in this matter. Fourth Lenox denied that leasing a rent-stabilized apartment to Representative Rangel resulted in its making in-kind contributions to RFC or the NLP. Fourth Lenox also asserted that it is not legally prohibited from leasing Unit 10U to Representative Rangel because the apartment was not his primary residence. According to Fourth Lenox, a tenant that is not an individual or does not use the rent-stabilized apartment as a primary residence is not necessarily subject to eviction, nor is the apartment automatically "destabilized."[5] Instead, the landlord "has the option" of not renewing the lease if the landlord can establish that the tenant does not meet those two requirements. Fourth Lenox stated in its response that the Code does not prevent landlords from leasing a rent-stabilized apartment (or renewing that lease) to a "non-compliant" tenant, "such as a corporate entity or a political committee."

[4] Sylvia Olnick, who is an owner of Olnick, Inc. contributed $2,000 to RFC in 2004 and $1,500 to NLP in 2004 and 2006. Three Fourth Lenox partners also contributed to the Committees. Nancy Olnick Spanu contributed $1,000 to the NLP in 2005. Fourth Lenox partner Alison Lane Rubler contributed $1,000 to RFC in 2005 and Fourth Lenox partner Meredith Lane Verona contributed $1,000 to RFC in 2005 and $500 to the NLP in 2006.

[5] Pursuant to the Code, a tenant is entitled to rent protection and automatic renewal of his or her lease provided they satisfy two requirements; that they are individuals and they use the apartment as a primary residence. 9 NYCRR §§ 2520.6(u) and 2520.11(k).

Nevertheless, Fourth Lenox stated that it did not consent to the sublease and denied that its management knew the Committees were operating out of Unit 10U until June or July of 2008.[6] Fourth Lenox explained that its management never saw RFC's and the NLP's rent checks because, in accordance with company policy, tenants sent their rent checks to a "lock box" instead of the company. According to Fourth Lenox, rent checks were taken from the "lock box" and deposited directly into a bank account.

Fourth Lenox also contended that the rental of 10U to Representative Rangel did not constitute an illegal in-kind contribution to RFC and the NLP because Representative Rangel was charged the maximum rent permitted by law for rent-stabilized apartments. According to Fourth Lenox, the rent charged Representative Rangel was first established and then increased with each lease renewal in accordance with the Rent Guidelines Board's annual orders.[7] Fourth Lenox stated that its main concern was to "fill the apartments in the building and earn money from rentals" and there was no economic incentive for it to reject a reliable tenant like Representative Rangel given the vacancy

[6] Representative Rangel's chief of staff is reported to have said that the landlord knew the apartment was being used as a campaign office. Sewell Chan, *Rangel Defends Use of Rent-Stabilized Apartments*, THE NEW YORK TIMES, July 11, 2008, http://cityroom.blogs.nytimes.com/rangel.

[7] The rent charged for a rent-stabilized apartment must be in accordance with the Rent Guidelines Board's ("RGB") annual orders, which caps the percentage by which a landlord may raise rent each year. http://www.housingnyc.com/html/about/intro/toc/html. The maximum amount of rent that a landlord may charge for a rent-stabilized apartment must be based on the amount paid the previous year adjusted by the percentage increase dictated by the RGB. In addition to the percentage increase dictated by the RGB, a landlord may increase the rent when a rent-stabilized tenant vacates and also when renovations are made to the apartment. *Id.*

rate in Lenox Terrace and the fact that Unit 10U could not be deregulated.[8] The respondent also stated that neither Representative Rangel nor the Committees were treated differently than "any other tenant who would have rented apartment 10U or will rent the apartment in the future."

According to RFC and the NLP, the landlord charged and they paid the maximum rent as dictated by law for Unit 10U. Representative Rangel stated that he did not receive any discount on rent when he entered into the lease for Unit 10U. The Representative also stated that he rented Unit 10U under the same terms as other tenants in the building and was charged the maximum legal rent, including rent increases and all capital costs. According to Representative Rangel, he subleased the apartment to his Committees for the same rent as he was charged.

II. LEGAL ANALYSIS

At issue in this matter is whether Fourth Lenox made excessive and/or prohibited in-kind contributions to RFC and the NLP in the form of reduced rent for their office space. The Act prohibits any corporation from making a contribution to a political committee and similarly prohibits political committees from accepting or receiving such contributions. 2 U.S.C. § 441b(a). The Act also provides that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for federal office which in the aggregate exceed $2,300. 2 U.S.C.

[8] Because Lenox Terrace was built in 1958, all the apartments in the six building complex were originally subject to rent-stabilization. Over time some of these apartments have been deregulated and are no longer subject to the Code. Rent-stabilized apartments may only be deregulated if the monthly rent becomes $2,000 or more and the tenant vacates, if the rent increases above $2,000 with the 20% vacancy adjustment, or if the rent increases to more than $2,000 during an active tenancy and the landlord can establish the tenant's income for the previous two years exceeded $175,000. N.Y. UNCONSOL. LAW § 26-504.1; 9 NYCRR § 2531.3. Once a rent-stabilized apartment is deregulated, it may be leased at any rate.

§ 441a(a)(1)(A). Further, no person shall make contributions to any other political committee in any calendar year, which in the aggregate, exceeds $5,000. 2 U.S.C. § 441a(a)(1)(C). Contributions received by a candidate's committee from a partnership may not exceed $2,300 per election. A contribution from a partnership also counts proportionately against each contributing partner's $2,300 limit for the same candidate. 11 C.F.R. § 110.1(b)(1) and (e). Contributions received by non-authorized committees from a partnership may not exceed $5,000 per calendar year. A contribution from a partnership also counts proportionately against each contributing partner's $5,000 limit for the same committee. 11 C.F.R. § 110.1(d) and (e).

A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). The Commission's regulations provide that "anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.52(d)(1). The regulations specifically include facilities as an example of such goods or services. *Id.* The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the political committee. *Id.* The usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.52(d)(2).[9]

[9] The "usual and normal charge" in the New York rental market is affected by New York rent-stabilization regulations.

In prior enforcement matters and Advisory Opinions, the Commission has affirmed that the purchase of goods or services at a discount does not result in a contribution when the discounted items are made available in the ordinary course of business and on the same terms and conditions to the vendor's other customers who are not political committees. *See* MUR 5942 (RGPC)(the discounted "standby" price that the Rudy Guiliani Presidential Committee paid the New York Times Company for an advertisement was the usual and normal charge for advertisements without guaranteed publishing dates); *cf.* MUR 5939 (MoveOn.org)(the discounted "standby" price that MoveOn.org Political Action Committee originally agreed to pay for a comparable advertisement to run on a specific date was below the usual and normal charge for advertisements with guaranteed publishing dates); *see also* Advisory Opinion 2006-01 (Pac For a Change)(reduced price for books was the usual and normal charge for bulk purchases directly from the publisher); Advisory Opinion 1994-10 (Franklin National Bank)(waiver of bank fees for political committees was permitted because it was within the bank's practice in the normal course of business regarding its commercial customers and is normal industry practice).

Fourth Lenox conceded that providing facilities, such as an apartment, to a political committee at less than the usual rate can be deemed a contribution, but contended that, not only was Representative Rangel charged the maximum allowable rent, he and the Committees were "treated no differently than any other tenant who would have rented Unit 10U." Fourth Lenox asserted that, while the Code protects tenants by controlling rent increases and insuring continuation of their automatic lease renewal rights, landlords of rent-stabilized properties, like Fourth Lenox, retain a great deal of

flexibility with regard to who becomes and remains a tenant. For instance, Fourth Lenox stated that landlords are not under an affirmative obligation to refuse to renew a rent-stabilized lease for a tenant who fails to satisfy the primary residency requirement under the Code. In addition, Fourth Lenox argued that while the protections of the Code do not apply to housing accommodations used exclusively for professional, commercial, or other non-residential purposes, landlords are not barred from leasing rent-stabilized properties to entities such as businesses or political committees.

In this matter, the available information indicates that, with the lease of Unit 10U to Representative Rangel, Fourth Lenox may have provided a discounted rate to RFC and NLP that it did not provide to similarly situated customers that were not political committees or organizations. Specifically, it appears that, in several respects, the terms and conditions under which Representative Rangel maintained his tenancy in Lenox Terrace may have differed from those of other non-political tenants.

For example, the lease for Unit 10U stated specifically that the unit shall be used for living purposes only and that it could not be sublet without the landlord's advance written consent. Although Fourth Lenox claimed ignorance regarding the fact that the Committees were using Unit 10U as a "campaign office," it appears that Representative Rangel did not adhere to either of these provisions and did not attempt to hide his noncompliance with the terms of the lease, yet every two years his lease was renewed.[10] That Representative Rangel's other three units in the building were adjacent units on a

[10] As discussed *supra* at 3, each Committee paid Fourth Lenox directly with checks from their own accounts and the Committees' names appeared on the checks. Fourth Lenox stated that its management never looks at the checks because they are sent straight to a lock box and then directly deposited into their account.

single floor also raises the question of how Fourth Lenox and/or Olnick, Inc. could have thought the unit six floors below was part of Representative Rangel's residence.

Further, according to information provided by the complainant, Fourth Lenox's agent, Olnick, Inc. has been "accused of overzealous tactics as they move to evict tenants from their rent-stabilized apartments and convert the units into market-rate housing." Among the potential bases for evicting a tenant from a rent-stabilized unit, or not renewing a lease, include an illegal sublet, the use of multiple rent-stabilized apartments, or use of the unit for purposes other than as a primary residence. Fourth Lenox could have used any of these bases outlined above to remove Representative Rangel and the Committees from Unit 10U, but did not. For other tenants, it appears that Fourth Lenox has instituted eviction proceedings on a variety of grounds, including the failure to maintain a rent-stabilized apartment as a primary residence. *See Fourth Lenox Terrace Assoc. v. Wilson*, 15 Misc.3d 113, 838 N.Y.S.2d 332 (2007) (successor rights to rent-stabilized unit upheld in part because appellant primarily resided in unit on a continuous basis and shared a "simultaneous tenancy" with tenant prior to her death as required under the regulations).

Finally, further information attached to the complaint suggested that Representative Rangel may have received better treatment than other customers in connection with the lease of Unit 10U because of his relationship with Olnick, Inc. and Fourth Lenox. As discussed *supra* at 4 and 5, the complaint alleged that one of the co-owners of Olnick, Inc. made contributions to both Committees in 2004, and further contributed to NLP in 2006, and the complaint asserts that city records show that in 2005

a lobbyist from Olnick, Inc. met with Representative Rangel regarding government approval of a plan to expand Lenox Terrace.

In short, it appears that Fourth Lenox may have leased rent-stabilized Unit 10U to Representative Rangel for less than the usual and normal charge because that lease may not have been on the same terms and conditions that Fourth Lenox offered other similarly situated non-political committee tenants. As a result, Fourth Lenox may have made excessive in-kind contributions to RFC and the NLP.[11] Accordingly, the Commission finds reason to believe that Fourth Lenox Terrace Associates a/k/a Lenox Terrace Development Assoc. violated 2 U.S.C. § 441a(a)(1)(A) and (C).

[11] Further, since Fourth Lenox is a partnership, it appears that any in-kind contribution resulting from reduced rent on Unit 10U could result in excessive contributions from individual partners as well. 11 C.F.R. § 110.1(b)(1) and (e) and 11 C.F.R. § 110.1(d) and (e).