



---

**MEMORANDUM**

---

TO: REF Attorneys, Paralegals & Law Students

FROM: Mary Sabatini DiStephan & Gary R. Connor *MSD*

RE: Funding Reserve Fund Pursuant to Local Law 70  
(Replaces memos dated July 21, 1989, January  
10, 1990 and October 26, 1995)

DATE: June 17, 1996

---

Attached is a copy of a decision issued by the Appellate Division, First Department [NYLJ, June 10, 1996, p.26, col.5] in Turtle Bay Towers Corp. v. Welco Associates. The court has determined that under New York City's Local Law 70, reserve funds in cooperatives and condominiums [Admin. Code §26-702(b)(1)], the "last price" offered to tenants prior to becoming effective to be used in calculating the amount of the fund, is just that -- the last price offered, not the last price offered under a tenant exclusive purchase period (the "insider" price). This decision, if upheld by the Court of Appeals, may create additional funds for many cooperatives and condominiums in the City. When reviewing conversion plans please be aware of this change in calculation.

MSD/GRC:add

NYLJ June 10, 1996 p. 26, col. 5  
(App. Div. First Dep't)

By Milonas, J.P.; Ellerin,  
Wallach, Nardelli and Mazzarelli, JJ.

57382. TURTLE BAY TOWERS CORP.,  
pff-res, v. WELCO ASSOCIATES, def-ap—  
Judgment, Supreme Court, New York  
County (William Davis, J.), entered April  
13, 1995, awarding plaintiff residential co-  
operative corporation damages represent-  
ing defendants sponsors' underfunding of  
plaintiff's reserve fund, unanimously af-  
firmed, without costs.

The IAS court properly construed the  
definition of "total price" contained in the  
Administrative Code of the City of New  
York §25-702(b)(1) — "the number of all  
shares in the offering multiplied by the last  
price per share which was offered to ten-  
ants in occupancy prior to the effective  
date of the plan regardless of number of  
sales made" — as the price in effect just  
prior to the effective date, and not, as de-  
fendants contend, as the price in effect  
during the exclusive purchase period, i.e.,  
the so-called "insider's price." While de-  
fendants refer to the legislative history of  
the statute to buttress their claim that the  
"insider price" should have been used, the  
statutory language, "last price per share  
which was offered to tenants in occupancy  
prior to the effective date of the plan," is  
clear and unambiguous.

A statute must be construed according to  
the ordinary meaning of its words (*Riegert  
Apts. Corp. v. Planning Bd.*, 57 NY2d 206)  
and resort to extrinsic matter, such as the  
legislative history, is inappropriate when  
the statutory language is unambiguous and  
the meaning unequivocal (*Giblin v. Nassau  
County Med Center*, 61 NY2d 67; *Sega v.  
State of New York*, 60 NY2d 183; *New Am-  
sterdam Cas. Co. v. Stecker*, 3 NY2d 1).

(*Mtr of Daniel C.*, 99 AD2d 35, 41, *affd* 63  
NY2d 927).

We have examined the remaining con-  
tentions of defendants and find them to be  
without merit.

This constitutes the decision and order  
of the Supreme Court, Appellate Division,  
First Department.