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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 59 SSM 59  
Jemrock Realty Co., LLC.,  
Respondent,  
v.  
Jay Krugman,  
Appellant.

Submitted by Barry J. Yellen, for appellant.  
Submitted by Jeffrey Bodoff, for respondent.  
New York State Division of Housing and Community  
Renewal, amicus curiae.

MEMORANDUM:

The order of the Appellate Division should be reversed,  
without costs, the case remitted to that court for further  
proceedings in accordance with this memorandum, and the certified  
question answered in the negative.

This case turns on the factual issue of whether the  
landlord's expenditures for "improvements" were at least equal to

the amount (approximately \$30,000) necessary to bring the legal rent above the luxury decontrol threshold. Contrary to the contentions of both parties, and to the majority and dissenting opinions at the Appellate Division, the resolution of that issue is not governed by any inflexible rule either that a landlord is always required, or that it is never required, to submit an item-by-item breakdown, showing an allocation between improvements and repairs, where the landlord has engaged in extensive renovation work. The question is one to be resolved by the factfinder in the same manner as other issues, based on the persuasive force of the evidence submitted by the parties.

Here, the Appellate Term, modifying the contrary decision of Civil Court, found that the landlord had met its burden of showing that its expenditures on improvements exceeded the requisite amount. The Appellate Division erroneously decided this question as a matter of law, and did not exercise its power to review the facts. We remit to the Appellate Division so that it may do so.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, without costs, case remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein and certified question answered in the negative. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided January 14, 2010