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Some Animals Are More Equal Than Others

HUD issues updated guidance on reasonable accommodations for animals under the Fair Housing Act

BY ALEXA ENGLANDER



On January 28, 2020, the U. S. Department of Housing and Urban Development (“HUD”) issued updated guidance on the topic of “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation under the Fair Housing Act.” This HUD Guidance supersedes the prior HUD guidance issued on the topic in April, 2013.

The Fair Housing Act (“FHA”), as well as City and State Human Rights laws, require that housing providers make reasonable accommodations for individuals with disabilities. As set forth in the Guidance, a disability is a “physical or mental impairment that substantially limits one or more major life activities.”

Typically, in order to establish entitlement to a reasonable accommodation, the requesting individual must provide a letter from a healthcare professional attesting to the disability and disability-related need for the requested accommodation. Where the disability and related need are “observable,” (described in the Guidance as “obvious” and not “reasonably attributable to non-medical causes by a lay person”), it is inappropriate to request a supporting letter from a healthcare professional.

A reasonable accommodation may be in the form of a structural change to an apartment or to a building’s common areas, like installing a ramp where there are stairs, or in the form of a modification to a building rule or policy, like a “no dog” policy or a policy imposing restrictions on the size or breed of an animal. The Human Rights and Fair

Attorney Advertising: Prior results do not guarantee a similar outcome.

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Housing protections included under this body of City, State and Federal laws extend to tenants, cooperative shareholders, condominium unit owners, sub-tenants and other lawful occupants of an apartment—like children, significant others and roommates (who reside in an apartment but may not be named on the lease).

The HUD Guidance sets forth “best practices” for housing providers to ensure FHA compliance in the face of a request by a resident for a reasonable accommodation, including a request to keep an animal in an apartment as a reasonable accommodation to a building’s pet policy. These best practices include, but are not limited to, the housing provider’s obligations to engage in a good faith dialogue with the requester regarding the individual’s needs and to determine a request “promptly,” which is considered to be within 10 days of receiving documentation from the requesting individual. Where insufficient documentation is provided initially, the housing provider should offer the requesting individual a “reasonable opportunity” to submit additional information or documentation.

The Guidance reiterates that service and support animals are not pets, such that housing providers may not charge pet fees or impose restrictions on these animals that may be imposed on pets.

The Guidance further elaborates on the difference between a service animal, which must be a dog that is individually-trained to do work or perform tasks, and a support animal, which typically has no training and provides therapeutic support only. (The Guidance clarifies that under very limited circumstances, “unique animals” may be recognized as service animals, giving the example of a capuchin monkey that can perform certain tasks requiring the use of hands that could not be performed by a dog.)

In our daily practice, we are often asked to advise regarding reasonable accommodation requests where the requester confuses the above terminology and claims to require a service dog when, in fact, he or she is requesting to keep an emotional support animal. Often, these requests are supported by a letter from a therapist which was procured online, for a fee, and does not include any indication that the therapist has any personal relationship with the purportedly disabled requester. Essentially anyone may procure this type of “ESA Letter” online, in minutes, at a cost of about \$100.

Notably, the City Commission on Human Rights legal guidance provides that a letter from a healthcare provider in support of a reasonable accommodation request need only be “minimally sufficient.” The City Commission has taken the position that ESA Letters, procured online for a fee, typically meet this very low threshold.

The HUD Guidance, however, specifically states that the Guidance is intended “to help housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by housing providers’ pet policies, such as pet fees or deposits.” In sharp contrast to the position typically taken by the City Commission on this topic, the HUD Guidance includes a section titled “Documentation from the Internet,” which provides that a housing provider may request “reliable documentation” from a healthcare provider, and further states, “[i]n HUD’s experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.” The HUD Guidance further states, “by contrast,” that a “reliable form of documentation” would confirm the

disability and disability-related need based on the healthcare provider’s “personal knowledge of the individual.”

While the City Human Rights laws still govern reasonable accommodation requests pertaining to housing in New York City, the HUD Guidance includes language that may be helpful to housing providers in responding to any reasonable accommodation request – including those supported only by an ESA Letter procured online. This new Guidance may also encourage the City Commission on Human Rights to consider reasonable accommodation requests more carefully, particularly in consideration of the abuses of the City, State and Federal Human Rights and Fair Housing laws recognized by HUD in its Guidance.

Alexa Englander is a partner in BBG’s Administrative Law Department, and can be reached at aenglander@bbgllp.com, or 212-867-4466, extension 410.

New Member of the BBG Team



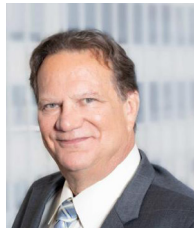
We are excited to welcome **Lloyd F. Reisman** as a partner in the Firm's Transactional Department.

Lloyd's practice focuses on co-ops and condos, representing Boards, sponsors of condo conversions and new construction condos, and individuals and entities in all sorts of real estate transactions. Lloyd regularly counsels co-op and condo Board members and managing agents with regard to the myriad intricate legal issues that arise and affect Boards, and works regularly with the New York State Attorney General's office on co-op and condo matters. Lloyd has more than 12 years' expertise in these areas, which he honed at two of the City's other leading co-op and condo law firms prior to joining BBG. Lloyd's addition will greatly enhance our ability to meet our co-op and condo clients' legal needs.

Lloyd's in-depth knowledge and experience have demonstrated BBG's industry reputation as a magnet for top talent as we help our clients handle all forms of legal issues involving their properties.

Lloyd can be reached at lreisman@bbgllp.com, or 212-867-4466, extension 387.

City Intensifies Rules Governing Façade Inspections



BY ROBERT JACOBS

After a piece of falling terra cotta killed a pedestrian walking on a sidewalk in 1980, New York City

enacted Local Law 10 of 1980, mandating a five-year façade inspection cycle of buildings higher than six stories. Expanded by Local Law 11 of 1998, the law is now known and administered under the auspices of the Façade Inspection System Program (FISP).

As of February 21, 2020, with the beginning of the 9TH Inspection Cycle, the New York City Department of Buildings ("DOB") promulgated new rules in its continuing campaign to safeguard the public against façade-related injuries. As with any move to enhance oversight and safety, these rules will impact owners by increasing the cost of maintaining their buildings as well as increasing the fines for violating the law. This article presents a summary of the new rules.

- The number of "hands-on" inspectors required on site to inspect a building has been increased. Under the old rule, one inspector sufficed per building. Now, one inspector is required for every 60-foot interval of street frontage and public right-of-way facing facades.
- Experience requirements for Qualified Exterior Wall Inspectors (QEWI) have been raised to a minimum of seven years' experience, with anyone involved in the inspection process to have either: (i) three years of relevant experience and a bachelor's degree in engineering or architecture, or (ii) five years of relevant experience if lacking such a degree.
- Starting with the 9TH Inspection Cycle, and for every odd inspection cycle thereafter, probe inspections are now required for every 60-foot interval of "cavity wall" facades to check for the presence and integrity of wall ties. (A cavity wall is a wall system where a space is left between two walls for insulation purposes with the walls conjoined by ties.)
- A façade inspection certificate (similar to an elevator inspection certificate) has to be displayed conspicuously in the building lobby containing information as to the status of the condition of the façade.
- Close-up inspection photographs are now required to be submitted to the DOB to prevent false or misleading filings.
- If a QEWI does not file a report within 60 days of a critical examination, a new examination is required to be filed.
- QEWI's must now inspect the structural soundness and connections of balcony enclosures at greater intervals.
- For the full recladding of a façade, a site safety manager must be present at all times. A partial recladding requires the presence of a site safety manager only during specified times.
- The fine for failure to file a FISP report has been increased from \$2,000 to \$5,000, with the fine for late filing doubled from \$500 to \$1,000 per month.
- A new separate filing fee will be charged owners by the DOB's Façade Unit if the DOB has rejected a façade inspection report twice previously.

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- Owners who fail to correct an Unsafe Condition face a \$1,000 per month penalty plus an additional monthly penalty based on the linear frontage of the sidewalk shed.

The foregoing is a summary only and not intended as a substitute for reading the applicable rules, which can be found in Article 302 of Title 28 of the Administrative Code of the City of New York.

Robert Jacobs is a partner in the Transactional Department at BBG. For information on legal issues surrounding façade inspections and related topics, please contact Mr. Jacobs at rjacobs@bbgllp.com, or 212-867-4466, extension 359.

Proposed “Good Cause Eviction” Law Would be Disaster for Co-ops, Condos and Subletters



**BY AARON
SHMULEWITZ**

A proposed bill that is currently pending before the New York State Senate Judiciary Committee would—

whether intentionally or inadvertently—create significant hurdles for co-ops seeking to evict shareholders for non-payment of maintenance, as well as for co-op and condo apartment owners seeking to evict delinquent renters; the proposed law could even conceivably affect condominiums seeking to enforce payment obligations of Unit Owners.

The proposed bill, Senate Bill 2892-B, is named the “Prohibition of Eviction Without Good Cause Law”, and is currently co-sponsored by 24 of New York’s 63 State Senators. The proposed law would add a new Article 6-A to the Real Property Law (the “RPL”). The proposed law has been decried by many as seeking to enact

“universal rent control” on all residential premises in New York State.

Of chief concern to the co-op and condominium community is a proposed new section 213 of the RPL, which provides: “No landlord shall ... remove any tenant from housing accommodations ... except for good cause...”. While failure to pay rent is stated to be a permitted ground for eviction, proposed new section 214(a) provides a huge carve-out: “[P]rovided, however, that the rent due and owing, or any part thereof, did not result from a rent increase which is unreasonable. In determining whether a rent increase is unreasonable, it shall be a rebuttable presumption that the rent is unreasonable if the rent has been increased in any calendar year by a percentage exceeding either three per cent, or one and one-half times the annual percentage change in the consumer price index for [that] region, whichever is greater.”

Thus, the proposed new law would mean that a co-op seeking to evict a delinquent shareholder following a maintenance increase, or an apartment owner seeking to evict a delinquent renter following a rent increase, exceeding 3% would have the burden of proving in Housing Court that that maintenance/rent increase was “reasonable”. And, should the co-op or apartment owner fail to convince the Housing Court judge of the reasonableness of any such increase that exceeded 3%, the shareholder or renter could not be evicted.

The loosely drafted provisions of the new law are written broadly enough so as to be potentially applicable to condominiums seeking to enforce payment obligations of delinquent Unit Owners.

The proposed law would also impose several additional procedural requirements in eviction proceedings which would significantly hamper and slow such proceedings, and make evicting shareholders/renters much more unlikely—even for “good cause”.

The co-op/condo industry was taken by surprise by the scope of the HSTPA in 2019, even if the provisions of that law were arguably “not intended” to apply to co-ops; the industry is still dealing with the ramifications of the HSTPA, and still trying to achieve legislative clarification. Let’s not get caught flat-footed again, with regard to this proposed new law. Please contact your State Senators and register your opposition.

Aaron Shmulewitz heads the Firm’s co-op/condo practice, and can be reached at ashmulewitz@bbgllp.com, or 212-867-4466, extension 390.

Attorneys' Fees and Additional Rent: Housing Court Jurisdiction to Award Judgment Under The HSTPA

BY MARTIN MELTZER AND
BENJAMIN J. MARGOLIN



Since the enactment of the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”) on June 14, 2019, issues have arisen in Housing Court about the HSTPA’s applicability to issues that, for decades, had never raised a question by judges or tenant advocates. Now, however, because of the legislature’s poor draftsmanship or intended ambiguities in various sections of the HSTPA, uncertainty has surfaced over parties’ rights. These issues cause unnecessary legal expense to parties, court calendars to clutter, and necessitate the commencement of collections actions outside of Housing Court.

Two particularly troublesome issues are whether the Housing Court has jurisdiction to award judgment for additional rent and/or attorneys’ fees in light of the HSTPA.

Additional Rent

Often, owners in nonpayment proceedings seek to recover rent and additional rent from residential tenants. Most of the time, rent stabilized leases contain a provision that defines all charges other than rent as “additional rent.” This provision is required

in order for an owner to seek reimbursement of the additional rent charges in Housing Court. Before the HSTPA, additional rent was unquestionably permitted and was routinely sought in Housing Court. Allowable additional rent charges would result in a non-possessory money judgment being awarded to the owner, while a judgment for rent would result in a possessory and money judgment.

Real Property Actions and Proceedings Law (“RPAPL”) §702 is a new law under the HSTPA that defines “rent” as “the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral written agreement.” Before the HSTPA, an owner’s right to collect additional rent in Housing Court had been unquestionable. However, the legislature’s intent in including this new section as part of the HSTPA was to prevent tenants from being evicted for failing to pay “fees, charges or penalties other than ‘rent,’” as defined above.

Anecdotally, jurists are generally of the opinion that new RPAPL §702 deprives the Housing Court of jurisdiction to award any additional rent, even on a non-possessory basis. We respectfully disagree with this narrow, restrictive reading of the statute.

The first point of analysis is to read the actual language of RPAPL §702. The premise of many jurists’ position is that the statute states “. . . No fees, charges or penalties other than rent may be sought in a summary proceeding . . .”

There is an argument to be made, however, that additional rent such as late fees¹, electricity charges, gym membership and other amenity fees may be sought—and are recoverable—in a summary proceeding because they are associated with the weekly or monthly use and occupation of a dwelling² pursuant to a written or oral written agreement. Taking this position, one would argue that such additional rent is *not* precluded under the legislature’s definition of “rent” and therefore the Housing Court maintains jurisdiction to award owners a non-possessory money judgment for additional rent. This interpretation would not differ with the legislature’s clear intent to preclude tenants from being evicted over failure to pay additional rent, and would also not require owners to commence separate actions in Civil and Small Claims Court to recover charges that owners are entitled to under most leases.

Accordingly, there is legitimate room for questions post-HSTPA over whether the Housing Court has jurisdiction to award judgment for additional rent. In our opinion, the statute does not unambiguously ban recovery of additional rent in Housing Court, because additional rent is a charge associated with the “rent” charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement. Ultimately, this issue will remain open, and judges will likely continue to decline awarding judgment for anything but straight “rent” until the issue is challenged and decided in an appellate Court.

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¹ Under the HSTPA, late fees are now capped at \$50 or five percent of the monthly rent, whichever is less.

² A “dwelling” is defined under New York State Multiple Dwelling Law Article 1, Section 4 and under New York City Housing Maintenance Code Section 27-2004 as “any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings.”

Attorneys' Fees to the Prevailing Party

There is no question, however, that the Housing Court still has jurisdiction to award attorneys' fees to the prevailing party of a litigation, so long as there is an attorneys' fees provision in the parties' lease.

In a recent case that Belkin • Burden • Goldman, LLP ("BBG") litigated and won, Martin Meltzer, as counsel for the owner, requested that the Court award attorneys' fees to our client. Notably, the case was started years before the enactment of the HSTPA; (by its terms, the HSTPA applies only to cases commenced after June 14, 2019). However, the judgment and order of eviction were awarded after the enactment of the HSTPA.

Nevertheless, even if the Court were to consider the new statute, it is clear that the words "fees, charges or penalties" in RPAPL §702 are unambiguous. These words must be read in the context of both RPAPL §702 and RPL §234, which makes clear that the legislature intended for a prevailing party in a residential summary proceeding to have recourse for an award of attorneys' fees in Housing Court. The plain words of RPAPL §702 confirm that it does not apply to "attorneys" or "legal" fees because the legislature did not use the words "attorneys' fees" or "legal fees." The legislature used the word "fees" as related to rent.

Notably, in RPL §234, the legislature specifically used the words "attorneys' fees" when it added the new prohibition of a landlord's ability to seek attorneys' fees on a default judgment. Had the legislature intended to prohibit the Housing Court from awarding legal or attorneys' fees to the prevailing party in Housing Court, it would have included the word "legal" or "attorneys'" fees in RPAPL §702. Further, the legislature would not have amended RPL §234 to reaffirm the Court's power and

jurisdiction to award legal fees in a summary proceeding under RPAPL Article 7, and would have provided for the lawful splitting of a cause of action. Thus, attorneys' fees may still be awarded to a prevailing party in Housing Court post-HSTPA.

Lastly, there is no case law in which a Court has interpreted a lease provision that allows for the recovery of "fees" to mean the recovery of "legal" or "attorneys" fees. In our case, because the parties' lease specifically provided for the recovery of attorneys' fees, BBG argued that the Court should award our client attorneys' fees as the prevailing party. As a result of the arguments, the Court awarded our client a judgment for attorneys' fees in the amount of \$169,687.59.

If you have a situation where a tenant owes rent and/or additional rent, it is recommended that you consult with experienced counsel to determine the most practical, efficient and cost-effective course of action to recover unpaid rent, additional rent and/or attorneys' fees.

Martin Meltzer (mmeltzer@bbgllp.com) is a partner at BBG and heads the firm's nonpayment practice.

Benjamin J. Margolin (bmargolin@bbgllp.com) is an associate in the Firm's Litigation Department.

Both can also be reached at 212-867-4466, extensions 313 and 432, respectively.

Courts Hand Down Justice in Rejecting Home Health Care Aide's Succession Claim

BY NOELLE PICONE



Under the Rent Stabilization Law, in order to prove succession rights as a “non-traditional family member” an occupant must prove both

cohabitation with the tenant for the requisite one or two year period and a financial and emotional interdependent relationship.

In a case recently handled by BBG, *Cornfeld, et al v. Bhuiyan*, the Housing Court, New York County issued a decision after an eight-day trial rejecting the non-traditional succession claim of a tenant's former home health care aide. The Court concluded that the aide had abused his role by exercising undue influence over the tenant in order to acquire an estate valued at more than \$4 million—in addition to the tenant's rent-stabilized apartment.

In a related Surrogate's Court proceeding, the family members of the tenant challenged the tenant's most recent Last Will & Testament that named the aide as the sole beneficiary, as well as a series of financial transactions made by the tenant during the last fifteen months of her life that added the aide as a joint account holder and/or transferred money to him. The Housing Court credited the Surrogate's Court's post-trial findings that the aide had exercised undue influence over the tenant and that the tenant had suffered from dementia during the last several years of her life.

In a cogent, well-reasoned opinion, Judge Jack Stoller explained that the aide had not proven the requisite “emotional commitment and interdependence” to establish a succession claim as a non-traditional family member because the aide

was a fiduciary who had “manipulated” the tenant for his personal benefit. The Court further found that the aide abused his fiduciary duties to the tenant and isolated the tenant from the rest of her family.

The Court concluded powerfully:

Families come in all incarnations, shapes, and sizes, and “emotional commitment” and “emotional interdependence” can look like a lot of things, but “emotional commitment and interdependence” do not look like fiduciaries “manipulating” clients for their personal benefit, even if an effect of such conduct is the prior tenant's affection for Respondent.

So compelling was counsel's presentation that the true nature of the aide's relationship with the tenant was one of manipulation, abuse, and undue influence, that the Appellate Term, relying upon the owner's opposition papers, denied the occupant's motion for a stay pending appeal.

This case underscores the point that a succession claim is not always what it appears to be and highlights the importance of creative and aggressive counsel conducting thorough discovery and relentless cross-examination of the occupant (the aide here) and his witnesses—especially where, at least on paper, it appeared that the aide here should have been entitled to succession rights since he was the tenant's health care proxy, power of attorney, the sole beneficiary of her most recent Last Will & Testament, and a joint account holder on her bank accounts.

If you have a similar situation, please contact the attorneys at BBG to discuss a strategy to maximize your chances of success.

Noelle Picone is a partner in the Firm's Litigation Department, and can be reached at npicone@bbgllp.com or 212-867-4466, extension 394.



Co-Op | Condo Corner

BY AARON SHMULEWITZ

Aaron Shmulewitz heads the Firm's co-op/condo practice, consisting of more than 300 co-op and condo Boards throughout the City, as well as sponsors of condominium conversions, and numerous purchasers and sellers of co-op and condo apartments, buildings, residences and other properties. If you would like to discuss any of the cases in this article or other related matter, you can reach Aaron at 212-867-4466, extension 390, or (ashmulewitz@bbgllp.com).

HOARDING BY CO-OP SHAREHOLDER CONSTITUTES NUISANCE AND OBJECTIONABLE CONDUCT, ENTITLING CO-OP TO EVICT

140 West End Avenue Owners Corp. v. Lustig

Civil Court, New York County, Landlord & Tenant Part

COMMENT | But the Court ruled that the shareholder was entitled to a 90-day stay in light of her physical and mental condition (a guardian had previously been appointed for her).

CONDO UNIT OWNER NOT ENTITLED TO AN ACCOUNTING, SINCE HE HAD HAD ACCESS TO ALL SUCH INFORMATION AS A LONG-STANDING BOARD MEMBER

Zoltek LLC v. 349 Greenwich Street Condo Association

Supreme Court, New York County

COMMENT | The Court also held that the condo was entitled to summary judgment on its counterclaims for unpaid common charges and assessments, as well as legal fees.

CO-OP SHAREHOLDER CANNOT SUE CO-OP FOR REQUIRING VALID AUTO REGISTRATION AS CONDITION FOR USING PARKING SPACE IN THE BUILDING

Hajovsky v. Berkely Cooperative Towers Section III Corp.

Appellate Division, 2nd Department

CONDO BOARD CAN SUE SPONSOR'S CONTRACTOR BECAUSE AMBIGUOUS LANGUAGE IN CONTRACT BETWEEN SPONSOR AND CONTRACTOR COULD HAVE MADE THE BOARD A THIRD-PARTY BENEFICIARY

Board of Managers of 141 Fifth Avenue Condominium v. 141

Acquisition Associates LLC Appellate Division, 1st Department

COMMENT | However, the Court held that the Board could not sue the sponsor's architect, because no such ambiguous language existed in that agreement.

CONDO UNIT OWNER ENJOINED FROM HARASSING OR CONTACTING NEIGHBOR

25 CPW City Views, LLC v. Cohen

Supreme Court, New York County

COMMENT | The decision discusses in excruciating detail the pattern of disturbing behavior by this nightmare resident, including such behavior towards prior residents who were forced to move out as a result.

CO-OP CAN EVICT SHAREHOLDER ENGAGING IN LONG PATTERN OF OBJECTIONABLE CONDUCT, UNDER 'PULLMAN'

Surfair Equities, Inc. v. Marin

Civil Court, Queens County, Landlord & Tenant Part

COMMENT | The Court examined, and rejected, each of the shareholder's (mostly procedural) arguments.

CO-OP CAN BE SUED BY EMPLOYEE INJURED IN FALL OVER LOW ROOF PARAPET

Broderick v. Edgewater Park Owners Cooperative, Inc.

Appellate Division, 1st Department

COMMENT | Questions of fact precluded summary judgment in this 2012 (!) case.

CO-OP CAN BE SUED BY CONTRACTOR'S EMPLOYEE INJURED DURING APARTMENT RENOVATION

Clemente v. 205 West 103 Owners Corp.

Appellate Division, 1st Department

COMMENT | Questions of fact regarding the condition of the apartment ceiling precluded summary judgment in this 2013 (!) case.

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SHAREHOLDER CANNOT SUE CO-OP FOR APARTMENT ALTERATIONS MADE BY THE CO-OP IN 1974

Wachtel v. Park Ave. & 84th St., Inc.

Appellate Division, 1st Department

COMMENT | The Court held that the proprietary lease made the shareholder responsible for alterations by its predecessors.

BUILDING OWNER LIABLE FOR \$87,000 IN DOB PENALTIES IMPOSED BECAUSE OF APARTMENT TENANT'S AIRBNB ACTIVITIES

Richard Breslaw Family LP v. NYC Department of Buildings

Supreme Court, New York County

COMMENT | Even though not involving a co-op or condo, this case is instructive. The Court dismissed the owner's suit on procedural grounds, but went out of its way to discuss the owner's substantive liability as property owner.

LLC'S STATUS AS HOLDER OF UNSOLD SHARES OF CO-OP APARTMENTS NOT DESTROYED BY OCCUPANCY BY MEMBER OF FAMILY THAT OWNS THE LLC

Bellstell 7 Park Avenue LLC v. Seven Park Avenue Corp.

Supreme Court, New York County

COMMENT | The Court examined the plain language of the proprietary lease, and held that an LLC does not have family members, so the disqualifying provision was inapplicable here.

COMMERCIAL CONDO UNIT OWNER CANNOT INSTALL VENT EXHAUST ON EXTERIOR OF COND-OP BUILDING

Avenue A Associates LP v. Board of Managers of The Hearth

House Condominium Supreme Court, New York County

COMMENT | In dismissing the complaint, the Court held that the building's exterior walls were part of the condo's Residential Unit, and the Commercial Unit Owner had no entitlement under the condo's governing documents to install equipment in the Residential Unit.

CO-OP PROPERLY TERMINATED SHAREHOLDER'S PROPRIETARY LEASE FOR UNAUTHORIZED ALTERATIONS

Patel v. Gardens at Forest Hills Owners Corp.

Appellate Division, 2nd Department

BBG In The News

A January 14 article in *The Commercial Observer* discussed REBNY-sponsored panel seminars on the new State rent laws presented by partners **Sherwin Belkin**, **Jeffrey Goldman** and **Kara Rakowski**: **Read article [here](#)**.

Mr. Belkin was quoted in the “Ask Real Estate” feature of *The New York Times* Sunday Real Estate section on February 29, with regard to a technique that is still available to building owners to obtain higher rents in light of the new State rent laws: **Read article [here](#)**. **Mr. Belkin** also penned an Op-Ed that appeared in *Crain’s New York*, decrying the pending “good cause eviction” bill: **Read article [here](#)**. **Mr. Belkin** was also quoted in *The Commercial Observer* on March 31 with regard to rumored legislative and administrative actions in response to the COVID-19 outbreak: **Read article [here](#)**.

Mr. Belkin was also quoted in articles in *The Real Deal*, as follows: on March 11, warning of the potential impact of a lawsuit by Stuyvesant Town tenants challenging the pending deregulation of apartments in that complex pursuant to the governing negotiated settlement agreement that had ended prior litigation: **Read article [here](#)**, on April 1 regarding the tenant lawsuit seeking to stop the deregulation of Stuyvesant Town apartments based on a provision of the 2019 rent laws: **Read article [here](#)**, on April 2 discussing a Court of Appeals decision striking down a portion of the 2019 rent laws: **Read article [here](#)**, on April 14 on the possible resumption of pending Housing Court litigations that were stayed during the COVID-19 outbreak: **Read article [here](#)**, on April 17 discussing a threatened City-wide rent strike: **Read article [here](#)**, and on April 23 discussing the perceived impact that the COVID-19 crisis may have on the deliberations of the City’s Rent Guidelines Board: **Read article [here](#)**. (Litigation partner (and former Rent Guidelines Board member) **Magda L. Cruz** was also quoted in

that article.) Finally, **Mr. Belkin** was also a panelist in a Zoom-based Webinar presented by *TRD Talks Live* on May 4 on the issues of government policies surrounding the rental housing market, rent strikes, the Rent Guidelines Board, rent shortfalls and how lenders are reacting to the crisis. **Watch [here](#)**.

Administrative Law Department co-head **Martin Heistein** and Transactional Department partner **Craig L. Price** were both quoted in a February 5 article in *Real Estate Weekly On-Line*, decrying proposed changes in the City’s real estate tax assessment system and their feared impact on long-term owners: **Read article [here](#)**. **Mr. Heistein** was also quoted in a March 2 article in *New York Business Journal* on the “draconian” impact of the new State rent laws on City real estate and related industries: **Read article [here](#)**.

Mr. Price was also quoted in a March 20 article in *The Real Deal*, questioning the effect and impact of a mortgage foreclosure moratorium “guidance” issued by Governor Cuomo in response to the COVID-19 virus: **Read article [here](#)**, in an April 1 article in *The Real Deal* on rent strikes threatened by tenants across the nation: **Read article [here](#)**, and in the “Ask Real Estate” feature of *The New York Times* Sunday Real Estate section on April 19, on landlords’ eligibility to apply for SBA loans under the CARES Act: **Read article [here](#)**. **Mr. Price** was also a panelist in a Zoom-based Webinar presented by *AmTrust Title* on April 17, on “How Deals Are Getting Done—COVID-19 Edition”: **Watch [here](#)**. Finally, **Mr. Price** was also featured in an interview on Channel 9 News on April 28, discussing the impact on landlords of a threatened City-wide rent strike: **Watch [here](#)**.

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Aaron Shmulewitz, head of the Firm's co-op/condo practice, was cited in a February 21 article in *Real Estate Weekly On-Line* discussing exotic pets in New York City apartments, and rules recently-adopted by the United States Department of Housing and Urban Development on the issue of various types of support animals: **Read article [here](#).**

Mr. Shmulewitz was also quoted in a March 17 article in *The Wall Street Journal* on how co-ops and condominiums are coping with the COVID-19 virus: **Read article [here](#)**, and in an April 3 article in *Realtor.com* on whether apartment owners are entitled to know COVID-19 infection information about their neighbors: **Read article [here](#).**

Litigation partner **Matthew Brett** was quoted in an April 7 article in *Real Estate Weekly* on the Court of Appeals decision striking down a portion of the 2019 rent laws: **Read article [here](#).**

Transaction of Note

Daniel Altman and **Lawrence Shepps** of the Firm's Transactional Department represented developer Triangle Equities in its closing on a \$87 million construction loan from CIT Group in connection with Triangle's (including its partners Township Capital and L&B Realty Advisors) construction of a 300,000 square foot cargo warehouse and storage facility near Kennedy Airport called Terminal Logistics Center. The transaction was reported in *The Real Deal* on January 20: **Read article [here](#).**



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