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ROSENBERG & ESTIS, P.C. SECURES POSSESSION OF RENT-STABILIZED APARTMENT IN AIRBNB CASE

*Property Owner Granted Possession After Tenant
Rents Apartment On Airbnb*

Rosenberg & Estis, P.C. has secured summary judgment granting possession of a rent-stabilized apartment to the property's owner, 859 Ninth Avenue LLC, after the tenant violated the lease by renting the unit on Airbnb and by using it as a hair salon.

Michael A. Pensabene, member, and Isaac Tilton, associate, of Rosenberg & Estis, represented the petitioner, 859 Ninth Avenue LLC, in the holdover proceeding before Judge Hannah Cohen in Civil Court of the City of New York, Housing Part E.

Rosenberg & Estis sought possession of the premises on behalf of the petitioner after a notice of termination was served to the unit's occupant. The petition alleged that the respondent was committing a nuisance by permitting it to be used as a short-term rental on Airbnb and as a hair salon.

Rosenberg & Estis premised its motion for summary judgment on subpoenaed Airbnb records from 2013 to 2015 and on respondent's tax records, in which respondent claimed that in 2013 50 percent of the apartment was used for business purposes. The respondent deducted half the rent as a business expense.

From October 2013 to October 2015, respondent received income of \$31,203 from Airbnb, renting the apartment 33 times for a total of 186 days. In 2014, respondent deducted \$21,120 as a management fee. In his deposition, the respondent further admitted that he gave instructions on the Airbnb website, directing guests never to mention Airbnb and to state that they were friends if anyone ever asked.

"Based on the rate for his rent-stabilized lease, the tenant paid approximately \$58 per night for the unit, and yet charged \$119 or more per night on Airbnb," Pensabene said. "This clearly undermines the structure of the rent stabilization system and allows a tenant to collect profits for a unit that the unit's actual owner is unable to collect."

The respondent asserted a host of defenses, including that he was in compliance with lease and Rent Stabilization Code, and that the notice of petition and petition were not

properly served. Judge Cohen said in her ruling that these defenses were “devoid of any facts or data, and thus are fatally defective.”

“As petitioner has demonstrated that respondent has commercialized his premises for profit from 2013 through 2015, petitioner’s motion for summary judgment is granted,” Judge Cohen wrote in her ruling.

About Rosenberg & Estis

Founded in 1975, Rosenberg & Estis, P.C. is widely recognized as one of New York City’s pre-eminent real estate law firms. Rosenberg & Estis, P.C. represents clients in all aspects of real estate development, transactions, financing, litigation, rent regulation and governmental affairs.

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