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**APPELLATE TERM UNANIMOUSLY RULES
AGAINST TENANTS WHO ATTEMPTED TO USE
RECENT ROBERTS DECISION TO NULLIFY EVICTION**

*Rosenberg & Estis, P.C., Successfully Represents Building Owner
In Case Against Tenants at 845 West End Avenue*

New York, January 11, 2011 — The Appellate Term, First Department handed down a unanimous decision in favor of the owner of 845 West End Avenue, overturning a lower court ruling that had granted the motion of two tenants in the building to vacate a stipulation settlement whereby the pair had agreed to vacate the unit or face eviction. Their attempt to void the stipulation relied on the Court of Appeal’s 2009 decision in *Roberts v Tishman Speyer Properties LP*.

Jeffrey Turkel, a partner with Rosenberg & Estis, P.C., successfully represented SAP V/Atlas 845 WEA Associates NF LLC, owner of 845 West End Avenue, in his case — *SAP V/Atlas vs. Jannelli* — before the Appellate Term, First Department.

“At the time the tenants signed the stipulation agreement in August of 2009, the status of the apartment as a rent-regulated unit was, at best, up in the air,” said Turkel. “There was no guarantee as to how the Court of Appeals would rule in *Roberts*. Since there was a good chance the court’s decision would not be in favor of tenants, and the Jannellis would face eviction, they signed the stipulation.”

The case involved two tenants — Ronald A. Jannelli and Gwenn R. Jannelli — who had leased the apartment from the landlord’s predecessor for a two-year term beginning in February 2004 at a rent of \$5,000 per month. The previous owner had charged the tenants a market-rate rent since the Division of Housing and Community Renewal had determined in 2002 that the unit was except from all rent regulations. The DHCR’s determination was never reviewed or challenged.

Approximately five months after the lease term commenced, the prior landlord’s entitlement to J-51 tax abatement benefits for the building expired. The lease was

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subsequently renewed for a period ending on January 31, 2008 and, upon the expiration of the renewal, the tenants remained in occupancy as month-to-month tenants. The current landlord became the owner of the building in July 2008 and, in February 2009, notified the tenants he was terminating the month-to-month tenancy.

While the parties were engaged in negotiations to resolve the dispute, on March 5, 2009, the Appellate Division, First Department, decided *Roberts v Tishman Speyer Properties LP*. On April 7, 2009, the Appellate Division granted Tishman Speyer's motion to appeal its decision to the Court of Appeals.

On August 19, 2009, the landlord and the tenants entered into a two-attorney stipulation of settlement. As part of the stipulation, the tenants agreed they would vacate the apartment by December 31, 2009, and would pay use and occupancy costs in the amount of \$5,200 per month until that date. The Jannellis had reviewed the stipulation with their landlord-tenant attorney and "knowingly and voluntarily entered into" the stipulation. Civil Court so-ordered the stipulation on September 10, 2009. The Court of Appeals affirmed the First Department's order in *Roberts* on October 22, 2009 (13 NY3d 270 [2009]).

Shortly before they were legally bound to leave the apartment, the Jannellis moved to vacate the stipulation, arguing that, as a result of the recent *Roberts* decision, the apartment was rent stabilized. They also argued the stipulation violated public policy because it did not reflect that the apartment was stabilized and the stipulation had the effect of waiving certain rent stabilization rights. The Civil Court granted the motion and vacated the stipulation.

In reversing the decision by the Civil Court, the Appellate Term noted that "it is well-established that '[s]tipulations of settlement are favored by the courts and not lightly cast aside.'" A party seeking to vacate a stipulation must demonstrate there is cause — such as fraud, collusion, etc. — to invalidate the contract. The court noted the tenants "failed to demonstrate any basis upon which to disturb the stipulation" and "submitted no evidence demonstrating fraud by landlord, or that they entered into the stipulation due to mistake or by accident."

Furthermore, the court noted the "highly-publicized *Roberts* litigation was extant during the negotiation process." The court found that everyone involved in the stipulation knew about the case and the impact it could have on the Jannellis. The court also found that, given DHCR's 2002 order finding that the apartment was not stabilized, the owner lawfully concluded "that the apartment was exempt from all rent regulations."

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“Although the tenants attempted to use the Roberts decision to show the building owner somehow misrepresented the status of the apartment, the court saw through their argument,” said Turkel. “The court noted correctly that all parties were aware of the possible impact of the decision and that the building owner had been very upfront about the fact that their apartment was not rent stabilized. The justices found no cause to vacate the stipulation.”

Founded in 1979, 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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