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ROSENBERG & ESTIS SECURES POSSESSION OF DISPUTED APARTMENT AFTER TAKING OVER CASE

Adam Lindenbaum Achieves Judgment in Holdover Proceeding

Rosenberg & Estis, P.C., New York City's largest real estate law firm, has secured a judgment for its client in Housing Court against a tenant holding over in a Brooklyn apartment, achieving possession of a disputed apartment that ultimately was proven to be an unregulated residential month-to-month tenancy.

Adam Lindenbaum, a Member of Rosenberg & Estis, P.C., represented the petitioner, 178 Nassau LLC, before Judge Eleanora Ofshtein in Kings Country Civil Court.

The case represented the final steps in a three-year legal battle that focused on a rent stabilization exemption in a three-story building. A predecessor law firm initially commenced the holdover proceeding on the theory that the subject apartment was exempt from rent stabilization because it was located in a three-story building that had fewer than six units and, as a matter of law, was a frame building incapable of accommodating six or more residential units.

Complicating matters was the fact that the prior owner had previously converted two ground-floor apartments to commercial units, reducing the total number of units from six to four. Additionally, years later, the prior owner had also divided some of the remaining four residential units leaving what was alleged to be a configuration of six units in the building (typically, a building must have 6 or more units to be regulated).

At the time R&E was retained and substituted into the case, petitioner and respondent had each moved for summary judgment on their respective claims although the motions were never fully briefed or submitted. As petitioner had not performed a full due diligence of the building prior to purchase, R&E's administrative law department performed a FOIL request and reviewed the building's file at the Division of Housing and Community Renewal. R&E discovered that the prior owner had in 2004 successfully argued to DHCR that the entire building was exempt from regulation due to the substantial rehabilitation that included the conversion of the ground floor units into commercial space.

Upon this discovery, the petitioner successfully moved to amend the petition to assert the new theory of deregulation based upon the substantial rehabilitation and to have the pending summary judgment motions withdrawn. After the respondent asserted many of the same affirmative defenses and counterclaims to the amended petition, the petitioner moved to strike the defenses relating to the recovery of possession and for partial summary judgment, which was awarded by Judge Ofshtein. Judge Ofshtein found that the petitioner had established its *prima facie* case and that there were no issues of fact that warranted a trial on the applicability of the DHCR Order or the exemption of the apartment from rent stabilization, and scheduled a hearing to determine the use and occupancy owed to the petitioner.

Shortly after Judge Ofshtein's Order, the parties settled the proceeding upon what the petitioner viewed as favorable terms.

"After taking over this case, our administrative law department did a fantastic job discovering the 2004 DHCR ruling which advanced our case substantially," Lindenbaum said. "We are pleased to bring this longstanding case to a final resolution for our client."

About Rosenberg & Estis, P.C.

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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