

## **ROSENBERG & ESTIS, P.C.**

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### **ROSENBERG & ESTIS, P.C. SUCCESSFULLY DISMISSES AN ADVERTISER'S CLAIMS FOR DAMAGES, LEASE EXTENSION AND PERMANENT INJUNCTION AT 456 11<sup>TH</sup> AVENUE, SUCCESSFULLY ARGUING THAT A PURPORTED "ORAL LICENSE AGREEMENT" IS UNENFORCEABLE**

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Rosenberg & Estis, P.C., representing an owner on the far west side of Manhattan, successfully moved to dismiss a lawsuit relating to an advertising billboard and access to the underlying premises.

The decision, issued April 2, 2018 by Justice Timothy S. Driscoll of the Supreme Court of the State of New York, Nassau County, dismissed all of the claims asserted by Atlantic Outdoor Advertising Inc., who claimed to possess an alleged "oral license agreement" in connection with the subject billboard and property.

Alexander Lycoyannis, Member of Rosenberg & Estis, represented the owner.

The plaintiff, a former tenant and licensee of a three-sided advertising billboard across from the Jacob Javits Convention Center, commenced an action against the owner seeking several forms of relief, including, *inter alia*, (1) a permanent injunction prohibiting the owner from preventing the plaintiff's unfettered access to the billboard and premises based on a purported "oral license agreement" that the plaintiff could continue to utilize the billboard until such time, if ever, that the owner sold the underlying premises; (2) invalidation of a settlement agreement between the parties in a prior action, based on the plaintiff's allegations that the owner made false representations that induced the plaintiff to enter into such settlement, and a declaration that a prior lease and purported lease extension were effective; (3) restoration as owner of the billboard, title to which had passed pursuant to the aforesaid settlement agreement; and (4) damages of up to \$ 5 million based on the owner's denial of access to the premises to permit the plaintiff to carry out advertising contracts it had signed without having first sought the owner's permission or arranging for access to the premises.

Rosenberg & Estis, on the owner's behalf, successfully moved to dismiss the complaint, arguing, *inter alia*, that (1) the affidavit of the owner's principal and the documentary evidence annexed thereto proved that no "oral license agreement" existed as a matter of either fact or law, and that any rights the plaintiff may have once had to occupy the premises had long since expired pursuant to the terms of the parties' written agreements; (2) the settlement agreement the plaintiff previously

signed -- after consultation with its counsel, who negotiated the agreement on its behalf -- specifically provided, *inter alia*, that the plaintiff was not induced to enter into the settlement agreement by any statement, representation or agreement not specifically contained therein; (3) the documents to which the plaintiff sought to give effect had either expired by their terms (the parties' former lease) or are unenforceable under the Statute of Frauds (a proposed 15-year extension that the owner never executed or otherwise agreed to); (4) title to the billboards had passed to the owner via the settlement agreement, which there was no basis to disturb; and (5) advertising deals the plaintiff had presumptuously made without the owner's knowledge or consent could not bind the owner as a matter of law.

The Court agreed with all of Rosenberg & Estis's arguments, dismissing the complaint in full and roundly rejecting the plaintiff's claims. The Court held that the settlement agreement specifically precluded the oral modifications asserted by the plaintiff and, further, that the plaintiff could not establish eligibility for a permanent injunction (plaintiff could neither establish that it would suffer irreparable harm nor that the balance of equities favored it), just as Rosenberg & Estis had argued. The Court also rejected the plaintiff's claims for occupancy and damages because the lease, by its terms, expired on December 31, 2015, with the proposed lease extension being unenforceable since the owner never signed it or otherwise agreed to its terms in writing.

"Unfortunately, from time to time owners are faced with specious claims by tenants of oral understandings that conflict with the parties' written agreements," said Lycoyannis. "The Court's ruling reaffirms that owners can rely on the clear language of leases, licenses and other negotiated agreements, and that the certainty of the written word should carry the day over suspicious, self-serving 'oral agreements' that deviate from the terms of negotiated contracts entered into by counseled businesspeople."

*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. provides full service representation and advice in every aspect of real estate, from performing due diligence and evaluating financing, to handling joint ventures, acquisitions and leasing, construction and design team agreements, land use and zoning matters, co-op and condo offering plan filings, as well as the litigations and negotiations which sometimes ensue when deal making. Rosenberg & Estis' wealth of experience in New York real estate makes it the ideal thought partner for owners, developers, not-for-profit corporations, educational institutions, sponsors, equity investors and lenders in both real estate transactions and in all court venues.

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