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FOR IMMEDIATE RELEASE:

ROSENBERG & ESTIS SECURES ATTORNEYS' FEES AND USE AND OCCUPANCY AWARD FOR CLIENT AFTER LICENSEE HOLDOVER PROCEEDING

*Firm set to Recover \$185,000 in Attorneys' Fees,
Costs, Disbursements and Use and Occupancy*

Rosenberg & Estis, P.C., New York's largest real estate law firm, successfully represented the petitioner, 1 Perry Street LLC, in the post-possession phase of a licensee holdover proceeding against a well-known downtown Manhattan restaurant. The law firm won the right to recover in excess of \$150,000 in legal fees, costs, disbursements and expert witness fees, and \$35,000 in use and occupancy for its client.

Norman Flitt and Adam Lindenbaum, Members with Rosenberg & Estis, represented 1 Perry Street LLC in the hearing held before the Hon. William Franc Perry of the Civil Court of the City of New York for New York County.

Restaurant tenant 1 Perry Restaurant Inc. d/b/a Yerba Buena had a lease for the ground-floor premises located at 1 Perry Street in Manhattan, but had also usurped the use of the cellar for food preparation and storage purposes. The tenant's use of the cellar had been ongoing for years prior to the petitioner acquiring the property. The new owner served the tenant a Notice to Quit and began a licensee holdover proceeding.

The original petition did not claim attorney's' fees because there was no lease for the cellar, however, in its answer the tenant claimed that the cellar constituted an appurtenance to the ground-floor space and was essential to the restaurant's operations at the premises. Because the tenant invoked the lease in its answer, including affirmative defenses and counterclaims based on the lease, the petitioner asked for attorneys' fees in a reply well in advance of trial.

The possessory phase of the proceeding was determined by stipulation of settlement at the conclusion of a trial held in December 2015, wherein the respondent agreed to a final judgment and to vacate the cellar within three weeks' time. The petitioner preserved its claims for attorneys' fees and use and occupancy in the stipulation, and the hearing before Judge Perry was held as the result of petitioner's successful post-trial motion demonstrating its entitlement to recover both attorneys' fees and use and occupancy.

“The Court’s determination was consistent with the American Rule on attorneys’ fees requiring a statute or contract to award fees to the prevailing party. Respondent invoked the lease as its defense to eviction from licensed space, and petitioner became the prevailing party when it overcame that defense.”

Judge Perry also awarded 1 Perry Street LLC post-termination use and occupancy for the cellar space in the amount of \$35,000.00 based upon the petitioner’s unrebutted expert testimony.

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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