

JUNE 20, 2018

Rosenberg & Estis Win Allows Solow Management to Build New Hotel & Condo at 10 West 57th Street

Rosenberg & Estis, P.C., New York's largest real estate law firm, and premiere litigation department in real estate, recently obtained a unanimous determination of the Appellate Division, First Department, which, in an order entered June 14, 2018, declared the leasehold interests of Metropolitan Fine Arts & Antiques, Inc. to commercial premises at **10 West 57th Street** to be void pursuant to Real Property Law Section 231, and that the landlord, 10 West 57th Street LLC, an entity controlled by Sheldon Solow, was entitled to immediate possession of the premises.

The Appellate Court held that Metropolitan's guilty plea to violating provisions of the New York Environmental Conservation Law that prohibit the sale, purchase, trade, barter or distribution of elephant ivory without a license or permit, a Class D felony, and accompanying allocutions of Metropolitan and its principals, were sufficient to establish that Metropolitan was using the premises for an illegal

trade or business. The Court also noted that Metropolitan's sale of ivory continued four or five months after its license expired in August 2015. The Court noted that "a commercial enterprise operating and using a particular premises as an illegal business subjects the lessees of those premises to eviction proceedings under Real Property Law Section 231(1)."

In so ruling, the Appellate Division unanimously reversed a decision of Supreme Court, New York County, that had held that more than a single isolated incident (here, a conviction of a Class D felony) was required to trigger Real Property Law Section 231(1) and void a lease. The Appellate Court disagreed, especially given the nature of the offense -- a Class D felony involving illegal commercialization and sale of ivory products at the premises without a license.

The appeal was successfully argued by Norman Flitt of Rosenberg & Estis, P.C. The underlying strategy, which

ultimately prevailed in the Appellate Court, was devised by a team consisting of Warren Estis, a founding partner of Rosenberg & Estis, Bradley Silverbush, a member of the firm, and Richard Corde, an associate.

As Mr. Flitt stated: "The Appellate Division recognized that the conviction at issue here, which was based on a guilty plea and sworn statements of the tenant and its principals admitting to the illegal use, was sufficient to invoke the statute and automatically void the lease." Flitt emphasized that once voided by the statute, the lease is over, and neither the parties nor a court can reinstate it.

This is a powerful weapon in a landlord's arsenal with respect to tenants who violate the law within their demised space. The case is also important because it holds that illegal activities committed within premises which, as here, were supposed to be used for the sale of fine arts and antiques, qualify as an illegal trade or business under the statute.

The case represents one of very few Appellate Division rulings involving Real Property Law 231(1) and should be required reading for any real estate practitioner.

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.

