

THE COMMERCIAL OBSERVER

AUGUST 7, 2012

THE LAWYERS YOU CALL

WARREN ESTIS

ROSENBERG & ESTIS

When the Metropolitan Transportation Authority finally sees its construction plans for the Fulton Center through, the final result will be a downtown commuter's dream.

But to get there, the MTA had to use eminent domain to take over and demolish 194-196 Broadway, a building owned by DLR Properties, in 2006. The agency valued the building, which housed a host of fast-food tenants, at \$27.4 million. The attorneys at Rosenberg & Estis disagreed, claiming the building was valued at nearly \$60 million. The firm represented DLR Properties in three separate rulings and eventually helped its client score as many victories: The food-service tenants in the building can recover \$15 million in damages for the value of trade fixtures lost, the MTA must pay \$35.2 million for undervaluing the property, and the agency must also pay the legal fees and expenses for DLR. Rosenberg and Estis founding partner Warren Estis revealed how he helped DLR Properties get its true value from eminent domain.

The Commercial Observer: When were you first approached by The Riese Organization [the parent fee owner of 194 Broadway]?

Mr. Estis: I've been representing the Riese family going back since 1980, when the Riese brothers, Irving and Murray Riese, ran the organization, and had a wonderful, and still have a wonderful, relationship with them.

How did they categorize their problems with the MTA at the time?

He [current CEO Dennis Riese] was trying to protect his property interests at a location that's been in the Riese family for many, many years. If it was going to be taken, he wanted to make sure he was properly compensated for the property.

What was your initial argument in court?

I think we were verifying that it was appropriate and ... it became an issue of compensation for the fee owner and also the tenants [KFC, TGI Friday's, Pizza Hut and Dunkin' Donuts, all affiliates of The Riese Organization] that were occupying the premises.

What happened next?

The MTA initially offered to the fee owner, I believe it was approximately \$15, \$16 million.

At the end of the day, after a full trial and appeal to the appellate division, we recovered for the fee owner approximately [\$35.2] million, and because the MTA had basically lowballed us—there is a statutory provision [under which] you could ask the court, if they find that there was a significant differential between their offer and what you recover, you are able to recover your legal fees along with interest. The \$35.2 million does not include our legal fees, and, in fact, there is a proceeding before the court now in which we can recover. The court already said we can recover, it's just a matter of how much we can recover at this point in time.



How much are we talking about?

It's in excess of \$1 million.

Why were there separate settlements for both the fee and the fixtures?

What was interesting on that aspect was that the MTA took a position that, since the restaurant operations involved entities that in some way were partially related to the fee owner, you're not entitled to make any claims for fixtures. Meaning that if the owner also operated a store, they could only get [compensated] for the fee, they couldn't get for the fixtures. Here, we said, the owner—the fact that he has an interest in the restaurant operation is not dispositive, and you have to look [at them] if they are totally separate and distinct entities. After a trial, the court ruled in our favor.

Now that you've had three rulings in your favor, do you think this will have any lasting effect on how eminent domain procedures are handled and valued?

I think eminent domain is used—you have Hudson Yards, that is going now. It is frequently used.

The law says if you comply, you're entitled to proceed. And you deal with it accordingly.

I think [what one should] get out of it are two significant points: The fact that we were lowballed, that we ended up getting our legal fees, is unusual and far from the norm. And the fact that the MTA had only wanted to pay 4 percent on interest, claiming that's all they had to pay. We argued that we're entitled to the legal rate of 9 percent, and the appellate courts agreed with us. That's a significant issue, and a costly one to the MTA in the future.

—Daniel Edward Rosen