

# Finkelstein Newman LLP

## Newsletter

November 2004  
Issue 2

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### HOUSING COURT RECEPTION A GREAT SUCCESS

On October 28, 2004, Finkelstein Newman attorneys took part in a reception at the New York County Lawyers' Association honoring the Housing Court's 30th anniversary. Aside from the Firm's sponsoring the event, Finkelstein Newman attorneys participated in a panel discussion on October 29, 2004, designed to examine the impact and performance of the Housing Court from the perspective of all the participants—judges, litigants, and attorneys alike.

The October 29<sup>th</sup> conference was comprised of "Working Group" panels charged with examining various aspects of the Housing Court and called upon to recommend changes to improve one of the court system's most dynamic and important arms. Topics included the right to counsel and preserving housing stock. Partners Jonathan H. Newman and Robert Finkelstein took part in discussions which addressed the needs of *pro se* litigants, the adjudication of cases involving persons of diminished capacity, and other social and economic issues that our citizens face and that the City's Housing Court regularly addresses.

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### IN THE SPOTLIGHT:

**ROBERT C. EPSTEIN, ESQ.**

Since Spring 2004, Finkelstein Newman has been fortunate to have Robert C. Epstein, a well-known (and well-published) real-estate lawyer, as "of counsel" to the firm. Epstein, a Cornell alumnus and Stanford Law School graduate, is admitted in both New York and California, and has practiced at the highest level in both jurisdictions. In California, he practiced with Allen Matkins, Leck, Gamble & Mallory, one of the largest real-estate law firms in the country, where Epstein worked on numerous major commercial real-estate deals--negotiating the lease for the 330,000 square foot Taco Bell corporate headquarters, and a major equity lease for Wells Fargo Bank, among them.

In New York, as general counsel to Peter R. Friedman, Ltd., a major brokerage-plus firm, Epstein again worked on multi-million-dollar deals, like the acquisition of over a million square feet in Manhattan by

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### **HOUSING COURT RECEPTION A GREAT SUCCESS**

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Both Mr. Finkelstein and Mr. Newman agreed that the reception was an overwhelming success and that the conference was a step in the right direction in setting about the important task of recognizing and improving the services that the Housing Court offers. "It is important to recognize that the Housing Court may well be the only place in which a City resident comes into contact with our legal system," said Robert Finkelstein. "It is for that reason that we, as participants in the process, must work to ensure that the services delivered are as efficient and targeted as possible in order to effect the most good for all those who come into contact with our courts."

If you would like further information regarding the panel topics and recommendations made, please contact Robert Finkelstein at 212-619-5400 x 227 or [RFinkelstein@FinkelsteinNewman.com](mailto:RFinkelstein@FinkelsteinNewman.com).

### **UPCOMING SEMINARS**

#### **Commercial Leasing: Basics from the Pros!**

On Monday, November 8, 2004, from 6:00 pm to 9:00 pm, partner Lucas A. Ferrara and Robert C. Epstein, of counsel to Finkelstein Newman LLP, will be lecturing the members of the New York County Lawyers' Association at a continuing legal education ("CLE") seminar entitled "The Nuts and Bolts of Commercial Leasing." The course will provide a detailed analysis of key commercial lease provisions and will examine the elements and practical considerations for negotiating commercial leases, from both the tenant and landlord perspectives. Discussion will also focus on reducing risks and costs for owners and lessors.

Mr. Epstein is a recognized leader in the negotiation and drafting of commercial leases and Mr. Ferrara has vast experience in litigating commercial-lease disputes. This is a unique opportunity to learn from industry leaders. If you are interested in attending this lecture, please contact the New York County Lawyers' Association at 212-267-6646 or visit them on the web at [www.nycla.org](http://www.nycla.org).

#### **Landlord-Tenant Practice: The Anatomy of a Summary Proceeding**

On Friday, November 19, 2004, from 9am to 4pm, partners Lucas A. Ferrara and Daniel Finkelstein will be conducting a full-day CLE seminar at New York County Lawyers' Association. Professors Finkelstein and Ferrara will present an in-depth analysis of summary proceedings from start to finish, and will provide an overview of some of the latest legal developments impacting the recovery of commercial or residential space in the City and State of New York. The speakers will examine the component parts of a Nonpayment and Holdover case, outlining tactical considerations and winning (and losing) strategies from both a landlord's and a tenant's perspective.

The morning session will cover Nonpayment Proceedings, including preliminary considerations, ethical concerns, service methodologies and "Demand of the Rent" form and content. The law as it pertains to pleadings (Notice of Petition and Petition, service methodologies, requisite allegations/content), and motion practice will also be reviewed.

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### UPCOMING SEMINARS *continued from page 2*

#### **Landlord-Tenant Practice: The Anatomy of a Summary Proceeding**

The afternoon session will address Holdover Proceedings, including a discussion of the impact/relevance of rent regulation on predicate notices and procedures; the form and content of notices; and the appropriate service and filing methodologies. Grounds for terminating a tenancy, together with the array of claims and defenses that will impede an owner's recovery of a residential or commercial space, will also be examined. For information please contact Dan J. Curtin, Jr. at 212-619-5400 x 217 or [DCurtin@FinkelsteinNewman.com](mailto:DCurtin@FinkelsteinNewman.com).

**Note:** Each paid registrant will receive a free copy of the 2004 edition of the speakers' two-volume treatise *Landlord and Tenant Practice in New York* (Finkelstein/Ferrara, Vols. F-G, New York Practice Series, West Group). West Group will ship the text directly to the address indicated on the registration form approximately three weeks after the program date. Each paid registrant will also receive a complimentary three month subscription to the speakers' law journal, *Landlord Tenant Monthly* (Treiman Publications). The total value for the free books and trial subscription exceeds \$300.00!

### IN THE COURTS:

#### **Tenant's Knowledge Of Illegal Activity Not Needed For Eviction**

According to the court in *Woodycrest Realty LLC v. Molano*, a tenant need not have actual knowledge of illegal activity to trigger an eviction.

A landlord instituted a holdover proceeding, pursuant to RPAPL §§ 231(1), 711(5), and 715(1), as well as § 2524.3 of the Rent Stabilization Code, alleging that the apartment was being utilized for the sale of narcotics. On or about June 27, 2002, a detective entered the apartment pursuant to a court order, to ascertain whether narcotics were stored

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### IN THE SPOTLIGHT: *continued from page 1*

#### **ROBERT C. EPSTEIN, ESQ.**

Bertelsmann, the international media conglomerate.

When Epstein returned to private practice, with Del Bello, Donnellan, Weingarten & Tartaglia here in New York, he again represented major clients such as Stew Leonard's ("the world's largest dairy store"), Citibank Private Bank, and Hitachi.

Then Epstein became general counsel at ZAR Realty, which owns more than 6 million feet of residential and commercial space in Manhattan. With ZAR, Epstein negotiated or restructured commercial leases for several prime Manhattan real-estate parcels, often working on conversion, construction, and financing issues as well. He also took the lead in settling several multi-million-dollar civil actions, some involving front-page litigants like the MTA and Lloyd's, the London insurer.

Since Bob Epstein became "of counsel" to Finkelstein Newman, he has continued to work on complex, large-scale transactions and cases. But somehow Epstein has found the time to write for publication (the New York Law Journal and the New York Real Estate Weekly have both published his articles) and teach (he will be speaking with Finkelstein Newman partner Lucas A. Ferrara at a continuing legal education program, called "The Nuts and Bolts of Commercial Leasing," this November).

In just the short time he has been with Finkelstein Newman, Bob Epstein has made a real contribution to the firm's growth. His association with Finkelstein Newman helps the firm provide a full range of services to its clients in the real-estate field. We are indeed lucky to have him aboard.

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### IN THE COURTS:

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#### **Tenant's Knowledge Of Illegal Activity Not Needed For Eviction**

for the purpose of sale and distribution. The detective testified that upon entering the apartment, he discovered: one box of glassine envelopes in the rear bedroom; large amounts of heroin in the hallway closet; a small box containing cocaine; a blue strainer and pestle; 57 grams of cocaine; \$1,715.00 in cash; numerous plastic bags; and, an electric scale used for weighing narcotics. According to the detective, everything was in plain view when recovered.

The tenant denied having any knowledge of narcotic activity in her apartment and denied knowing of her co-occupant's involvement with narcotics trafficking. Taking into account the fact that most of the contraband was found in plain view, and that the tenant's testimony was spotty, the court found her not to be credible. The court further determined it was unlikely that the tenant was oblivious to the drug activity taking place in her own apartment, and concluded that regardless of her claims of innocence, the law is clear that a tenant need not have knowledge of illegal activity in order to be evicted.

If you wish a copy of the case, please contact Daniel J. Curtin, Jr. (212) 619-5400 x 217 or at [DCurtin@finkelsteinNewman.com](mailto:DCurtin@finkelsteinNewman.com).



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