Finkelstein Newman LLP

# Finkelstein Newman LLP

# Newsletter

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Senator Clinton with Heather and Jonathan Newman

## SENATOR HILLARY CLINTON AND CHIEF JUDGE HONORED, FIRM PLAYS ROLE

On Tuesday, December 14, 2004, at the renowned Waldorf=Astoria Hotel, the New York County Lawyers' Association ("NYCLA") celebrated the achievements of Outstanding Women of the Bar, and was honored by the presence of the evening's keynote speaker, New York's Junior Senator, Hillary Rodham Clinton. Finkelstein Newman's Managing Partner, Jonathan H. Newman, served as the event's Co-Chair.

The honorees, a group of approximately 50 women, were composed of corporate counsel, lead attorneys for public-service organizations, corporate officers, law school deans, and managing partners of some of New York's largest firms.

Prior to the Senator's speech about the important contributions made by these and other women leaders to the legal profession, Mr. Newman had an opportunity to meet privately with Senator Clinton (see photo), and was impressed by the Senator's kindness and candor. "She was extremely friendly and forthcoming and it was a pleasure to see her again. Of course, it was also a real honor to be a part of this record-breaking event, and to acknowledge the achievements of such an amazing group of attorneys."

New York State's highest judge, the Honorable Judith Kaye, Presiding Judge of the New York State Court of Appeals, received NYCLA's "William Nelson Cromwell Award"—the Association's highest honor. Judge Kaye spoke briefly about her experiences as a young attorney, and the challenges ahead for women in the profession.

It was an historic evening and Finkelstein Newman LLP was pleased to be part of this special program. All of us extend our congratulations to Senator Clinton, Judge Kaye, and all of the honorees.

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## IN THE COURTS:

### FINKELSTEIN NEWMAN MAKES CITY PAY $500,000

In 2002, partner Jonathan H. Newman defeated the City of New York after a lengthy trial whereby the City was ordered to pay some $500,000 in back rent to one of its landlords. The case involved the building at 1490 Madison Avenue, in which the City's Human Resource Administration leased office space. During its occupancy, the City had refused to remit rent increases for the period 1995 to 2001, and claimed that the money was not owed because the landlord had not performed certain renovation work.



After several days of hearings, the Civil Court determined that the City was required to pay the rent increases. At the time, the decision was picked up by local media, and was noted as a boon for landlords. "This case," Mr. Newman concluded, "shows that the City may not hide behind its stature as a municipality and default in its contractual obligations." As one may suspect, the City appealed the trial court's decision seeking to get it overturned.

Last month, the Appellate Term, First Department, unanimously affirmed the trial court's findings. The court found that there was "no basis to disturb the Civil Court's resolution of the issues of fact and credibility." For as the landlord showed on appeal, while the landlord's witness had full personal knowledge of the parties' conduct and communications during the lease term (and had in fact negotiated the lease), the City's sole witness had little relevant personal knowledge. Moreover, in affirming the Civil Court's disposition of the case, the Appellate Term noted (as the landlord had emphasized), that the lease gave the City other remedies in case the landlord's work was not substantially completed on time, including a per diem credit. As a consequence, the landlord's money judgment of some $500,000 remains undisturbed.

If you would like a copy of the decision, or more information about the case, please feel free to contact Jonathan Newman at JNewman@FinkelsteinNewman.com or at (212) 619-5400 x 205.

**L&T INSIDER:**

## "NO-PET" RESTRICTIONS: A DOG OF A CASE?

It is somewhat unusual for New York courts to overrule an administrative determination in a landlord-tenant case, but in a recent decision of the Kings County Supreme Court, in the action entitled *Matter of Contello Towers II Corp. v. N.Y.C. Dept. of Housing Preservation and Development and Ilona Shur*, that is precisely what occurred.

*Contello Towers* case concerns "no-pet" clauses in occupancy agreements, a perennial subject of landlord-tenant litigation. In that case, a single mother and her pre-teenage daughter moved into a Mitchell-Lama apartment in Brooklyn, pursuant to an occupancy agreement that prohibited keeping a dog or cat in the premises. Before moving in, the daughter became anxious and depressed, which interfered with her schoolwork and social functioning, conditions that persisted. After the move-in, unaware that the building barred pets, the daughter's therapist recommended that the tenant get her daughter a dog, and when the tenant did, the daughter's mood and emotional well-being improved markedly.

Claiming that the tenant had broken the "no-pet" rule by harboring a dog, the landlord sought a certificate of eviction from the New York City Department of Housing Preservation and Development (HPD). HPD denied the landlord's application, finding that the landlord was required to exempt the tenant from the building's "no-pet" policy under the New York City Human Rights Law.

The landlord then sought judicial review of the HPD's determination, under Article 78 of the New York Civil Practice Law and Rules. The standard for upholding agency determinations under Article 78 is low, for the reviewing court must uphold the agency unless the action challenged is "arbitrary and capricious" or "without a rational basis in the record." Nonetheless, the Kings County Supreme Court (per Justice David I. Schmidt) overturned the HPD's ruling, finding that while the dog was likely beneficial to the tenant's daughter, the tenant had not shown that the dog was "necessary" for the daughter to use and enjoy the apartment. Absent such proof of "necessity," the Supreme Court found that the landlord was not required to allow the dog to remain as a "reasonable accommodation" to the daughter's disability—a term broadly defined under State, City, and Federal law.

As soon as the Supreme Court's decision in *Contello Towers* was issued, it was the subject of a front-page article in the *New York Law Journal*, achieved significant media coverage, and elicited instant comment from knowledgeable practitioners, most of it critical. Among other things, disability-law specialists have complained that the *Contello Towers* decision misconstrues settled law respecting the "reasonable accommodations" required of a landlord concerning a tenant's disability under the Federal Americans With Disabilities Act and other statutes.

The Supreme Court's decision in *Contello Towers* may well be reargued or appealed. Meanwhile, if you would like any further information about this case, or if Finkelstein Newman can help you in any other way, please f eel free to contact Lucas A. Ferrara, at (212) 619-5400 x 211or at LFerrara@FinkelsteinNewman.com.

## UPCOMING SEMINARS:

### JANUARY 19, 2005

**REAL ESTATE CLOSINGS:**
**FROM THE RESIDENTIAL HOME TO THE MULTI-UNIT DWELLING**

On Wednesday, January 19, 2005, from 9:00 A.M. to 4:30 P.M., at Pace University, partner Lucas A. Ferrara will be a featured speaker at a continuing legal education ("CLE") seminar sponsored by Lorman Education Services, a national CLE provider.

**CRITICAL ISSUES ON THE AGENDA**

- The Contract, the Negotiation, the Players and the Closing of the Real Estate Deal
- Title Insurance Issues
- Taxes Due and Tax Strategies to Minimize Tax Implications At Closing
- Cooperative and Condominium Contracts and Closings
- Landlord-Tenant Issues Affecting Real Estate
- Due Diligence Issues Affecting the Multi-Family Dwelling
- Ethical Issues Involving the Real Estate Transaction.

CONTINUING EDUCATION CREDITS:

- NY RE 6.0
- NY CLE 7.0 / Ethics 0.5
- Bankers 7.75
- IACET 0.60

For pricing information, including group discounts, or to register for this course, please contact Lorman Education Services at (888) 678-5565 or at www.Lorman.com.

### FEBRUARY 2, 2005

**HOT TOPICS IN LANDLORD-TENANT LAW**

On Wednesday, February 2, 2005, from 6:00 P.M. to 9:00 P.M., partner Lucas A. Ferrara will be a featured speaker at a continuing legal education ("CLE") seminar sponsored by The New York County Lawyers' Association (NYCLA).

Since landlord-tenant law is in a constant state of flux, it is particularly important for attorneys—even experienced counsel—to keep abreast of the latest issues. Joining Lucas will be some of the leading "players" in the field. They include:

Ida Rae Greer (Greer & Associates, P.C.)
Paul Gruber (Borah Goldstein Altschuler & Schwartz, PC)
Mary Ann Hallenborg (Hallenborg-Heine LLC)
Kent Karlsson (Karlsson & Ng, PC)
Honorable Gerald Lebovits (NYC Civil Court, Housing Part)
Honorable Philip Straniere (Supervising Judge, NYC Civil Court, Richmond County)
Dov Treiman (Treiman Publications)

*Upcoming Seminars … continued page 6*


Daniel J. Curtin, Jr. (left) rides with Lance Armstrong (right)

## IN THE SPOTLIGHT:

## DANIEL J. CURTIN, JR.

Daniel J. Curtin, Jr. has been associated with Finkelstein Newman since graduating from New York Law School in 2001. Daniel focuses on litigating summary proceedings and plenary actions, and has a large role in assisting the firm and its partners with academic pursuits—be they their various publications or CLE seminars. Not satisfied with purely professional pursuits, Daniel is also an active member of his law school's community (he is an Alumni Advisor to the school's Moot Court Board, an Adjunct Professor, as well as a member of the Recent Graduate Committee), and raises funds for cancer research.

This latter endeavor was born out of his father's diagnosis with a malignant brain tumor in June 2003. Daniel sought and found a way to assist his father, and others like him, by raising funds for the Lance Armstrong Foundation. The Foundation was founded by 6-time Tour de France winner Lance Armstrong, and seeks to improve the lives of those living with, through, and beyond cancer. Funds raised go towards various research programs, support organizations, and survivor groups around the country. In 2004, the Foundation's grass-roots fundraising effort, known as the Peloton Project, raised over $5.5 million in furtherance of its mission.

Sadly, July 2004 saw the passing of Daniel's father. In his memory, Daniel reached out to family, friends, and colleagues, and with their generosity, as well as that of complete strangers and some famous names, Daniel raised over $15,000 for the Foundation. Additionally, this past October, Daniel participated in the Foundation's "Ride for the Roses." Individuals from all over the world who raised or contributed funds were invited to Austin, Texas for a 100-mile bike ride. Since Daniel was a top fundraiser he was also invited to a series of special events, including a private ride with Lance Armstrong (see photo).

"The members, staff, and other attorneys of Finkelstein Newman have been nothing short of outstanding in terms of supporting and encouraging my fundraising efforts," said Daniel. "Their support is a prime example of how much they all care about the lives of their colleagues. It is a real testament to the Firm."

Finkelstein Newman is pleased to have played a role in Daniel's charitable endeavors and we wish him much success in 2005 and beyond. If you would like information regarding Daniel's fundraising efforts, you may contact him at his website at www.danielcurtin.com.

## UPCOMING SEMINARS:

*continued from page 4*

This panel, of noted authors, judges, professors, and practitioners, will provide a comprehensive overview of the latest "hot topics" impacting ownership and management of residential and commercial real-estate. Areas to be discussed include:

- *ATM*: Are Five Days to be Added to All Predicate Notices?
- *Domen*: What is a Nuisance?
- Multiple Dwelling Registration and Certificate of Occupancy Violations
- No-Pet Provisions and Exemptions
- Non-Primary Residency: When are Multiple Residences Permitted?
- Preferential Rents and Ways to Modify or Revoke Them
- *Pullman*: Terminating Cooperative Tenancies for "Objectionable Conduct"

Since this is an advanced course, familiarity with the basics of landlord-tenant practice will be assumed. The participants will not "lecture" about these and other hotly contested issues. Rather, the panel members seek to have an open dialogue between themselves—and the audience—concerning the newest developments impacting today's real-estate practice. Be prepared for a lively, educational, and entertaining exchange.

CONTINUING EDUCATION CREDITS: NY CLE 3.0

For pricing information, or to register for this course, please contact NYCLA's CLE Department at (212) 267-6646, or at www.NYCLA.org.

### MARCH 16, 2005

**LANDLORD AND TENANT LAW IN NEW YORK**

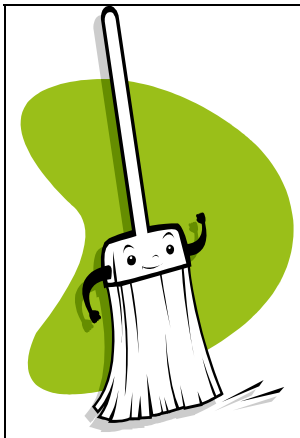
On Wednesday, March 16, 2005, from 8:30 A.M. to 4:30 P.M., at The New York Ramada, partners Robert Finkelstein and Jonathan H. Newman, along with associate Daniel J. Curtin, Jr., will be featured speakers at a seminar sponsored by Lorman Education Services, a national CLE provider. Topics to be discussed include:

- Anticipating Litigation: How to Win (Or Lose) Your Case
- Landlord-Tenant Litigation: A Primer
- "Let's Make A Deal" — Use and Goals of a Stipulation of Settlement
- Special Considerations in Commercial Landlord-Tenant Proceedings

CONTINUING EDUCATION CREDITS:

- NY RE (pending)
- NY CLE 8.0
- CPE 8.0
- IACET 0.65

For pricing information, including group discounts, or to register for this course, please contact Lorman Education Services at (888) 678-5565 or at www.Lorman.com.



**CURRENT AFFAIRS:**

## "BROOM-CLEAN" UPDATE:

## APPELLATE DIVISION MOPS UP

In our December issue, we reported on two decisions, where the Appellate Term, First Department (the court that hears landlord-tenant appeals in the Bronx and Manhattan) had excused the tenants' failure to leave their space in "broom-clean" condition upon surrender. We are pleased to report, however, that one of those cases has been reversed. In *1029 Sixth, LLC v. Riniv Corp.*, the Appellate Division, First Department, reversed the Appellate Term order in *1029 Sixth LLC v. Guity Fashion Corp.* In so doing, the higher appellate court found that because the tenant had failed to comply with its agreement to leave the premises in broom-clean condition—compliance upon which the tenant's entitlement to buy-out benefits was conditioned—the tenant was not entitled to the substantial buy-out monies.

The Appellate Division decision will influence lower courts' treatment of these kinds of disputes in the future. However, readers should be mindful that *1029 Sixth, LLC v. Riniv Corp*. concerned tenants who actually used the premises commercially. By contrast, in *Future 40th Street Realty, LLC v. Mirage Night Club, Inc.* (the other recent "broom-clean" case discussed in our December issue, where the tenant's agreement to leave the premises broom clean was excused), while a commercial lease form was used, the occupants (who used the premises residentially) claimed that the landlord's predecessor had known of, assented to, and abetted their residential use. So, notwithstanding the Appellate Division's holding, it is possible that trial courts will continue to excuse a tenant's agreement to leave the premises broom clean when a substantial buy-out payment to the tenant hangs in the balance and the tenant is a bona fide residential tenant under a residential lease. Under such circumstances, trial courts might find that the difference between residential and commercial tenants justifies a different approach, and decline to apply *1029 Sixth, LLC v. Riniv Corp*. However, the reasoning behind the decision in *1029 Sixth, LLC v. Riniv Corp.* certainly has applicability to all cases, whether they be residential or commercial, for the Appellate Division emphasized the strong public policy to encourage stipulations of settlement by granting such agreements full force and effect—even if they impose strict (but not unfair or one-sided) obligations on a tenant.

If you would like copies of the cases mentioned above—or if Finkelstein Newman can assist you in any other way—please feel free to contact Barry Gottlieb at BGottlieb@FinkelsteinNewman.com or at (212) 619-5400 x 226.

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## PENSION FUND WINS POSSESSION

Last month, Finkelstein Newman LLP successfully assisted a Pension Fund secure a judgment of possession against its subtenant. In *Production Workers Pension Fund v. Local 400 Welfare Fund and Local 400*, the Pension Fund sublet some of its office space to a union organization. A dispute arose between the union organization and the trustees of the Pension Fund as to the Pension Fund's operation.

Wanting to move to different space, the Pension Fund sought to terminate the union's oral, month-to-month sublease. A termination notice was served, and when the subtenant failed to timely vacate, the Pension Fund brought an eviction proceeding so that it could deliver vacant possession of its space to the landlord. In response, the subtenant alleged overreaching and improper activity by the Pension Fund. Once in Court, the Pension Fund sought summary judgment; a motion wherein the Pension Fund sought to obtain full and complete relief without having to go to trial.

In its decision, the Civil Court granted the Pension Fund's request for a warrant of eviction, noting that since the Pension Fund's lease had expired, there was no basis for the subtenant to remain in possession. "The right result was achieved in this case," said partner, Daniel Finkelstein. "Whatever was going on behind the scenes was not relevant. The subtenant had no greater rights to remain in the premises than those of the Pension Fund."

If you would like to see a copy of the decision in this case, please contact Daniel Finkelstein, at (212) 619-5400 x 209 or at DFinkelstein@FinkelsteinNewman.com.

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