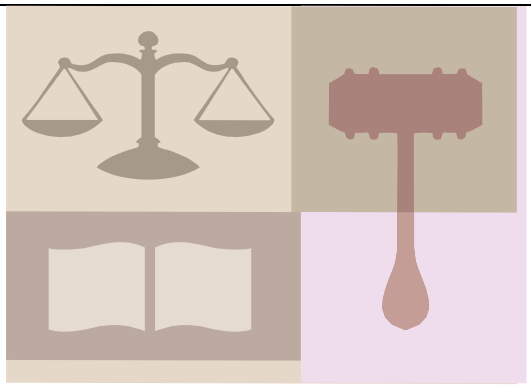
Finkelstein Newman LLP

Finkelstein Newman LLP
Newsletter

October 2004
Issue 1

Inside this issue

Finkelstein Newman LLP
225 Broadway, 8th Fl.
New York, NY 10007
212-619-5400
www.finkelsteinnewman.com



THE FIRM'S TEACHING TRADITION CONTINUES

The Firm's lawyers have a long tradition of teaching, both within the legal profession and in the larger real-estate industry, and this Fall is no exception. Partners Jonathan H. Newman and Lucas A. Ferrara, along with Robert C. Epstein (of counsel to the Firm) will be speaking at a meeting of the Asset Management Roundtable at the Building Owners Management Association (BOMA) offices in late October. On November 16, 2004, the same three Finkelstein Newman attorneys will also be teaching a continuing legal education ("CLE") course sponsored by Lorman Education Services. Entitled, "Evaluating Real Estate Asset Performance in New York," the program will examine an array of topics that impact the acquisition, ownership and management of New York real estate. [See page 3]

On November 6, 2004, partner Lucas A. Ferrara will be a featured speaker at a

continued . . . . . page 3

FINKELSTEIN NEWMAN TO HOST RECEPTION FOR JUDGES

On October 28, 2004, Finkelstein Newman LLP will be hosting a VIP reception to honor current and former Housing Court Judges, at the New York County Lawyers' Association. The occasion is to mark the Housing Court's 30th anniversary, and it is indeed a special event, for one of the speakers will be the Hon. Judith S. Kaye, Chief Judge of the Court of Appeals, the state's highest court. The Firm is pleased to be part of this celebration and congratulates the Court on achieving this important milestone.

In the Courts:
Our Take on "Profiteering"

It has long been lawful for rent-stabilized tenants to take roommates, and charge them a share of the rent. But abuses were common. Some rent-stabilized tenants charged their roommates much more than a reasonable share of the rent. In fact, some would recoup more than they actually paid to their landlords.

In response, the Rent Stabilization Code was amended in 2000, to require rent-stabilized tenants to charge roommates no more than a "proportionate share" of the rent.

continued . . . . . page 2

Attorneys in Print

Associate Daniel J. Curtin, Jr., recently co-authored an article with Judge Gerald Lebovits, J.H.C., appearing in the Summer/Fall 2004 issue of *N.Y. Real Property Law Journal*, published by the Real Property Law Section of the New York State Bar Association. The article, entitled *The Illegal Multiple Dwelling in New York City*, examines issues pertaining to the collection of rent from tenants residing in illegal apartments as well as mechanisms for securing possessory judgments against occupants of such housing. Additionally, the article explores the inconsistency with which New York City courts deal with illegal dwellings.

We are also pleased to announce that of-counsel attorney Robert C. Epstein recently wrote an article, entitled "Loan-Related Damages in Lease Remedy Provisions," which appeared in the widely-read *New York Law Journal* on September 10, 2004.

If you would like to receive a complimentary copy of these articles, please contact Daniel J. Curtin, Jr. at (212) 619-5400 x 217 or at DCurtin@Finkelsteinnewman.com.

In the Courts:
Our Take on "Profiteering"

(cont'd from page 1)

According to the Code amendment, a roommate's "proportionate share" is determined by dividing the rent by the number of tenants and roommates occupying the premises. Rent-stabilized tenants who charge roommates more than the proportionate share are "profiteering" in violation of the law.

But recent appellate court case law makes it clear that despite the plain language of the 2000 Code amendment, tenants may be given considerable latitude. Under lower court interpretation of the 2000 amendment, the price of rent profiteering is the loss of the overcharging tenant's stabilized tenancy, yet some judges have been reluctant to automatically apply this penalty.

This reluctance was illustrated in a recent case decided by the Appellate Division, First Department. Even though the tenant admitted to charging his roommate more than the roommate's proper 50% share of the rent, the court refused to authorize the tenant's forfeiture of his rent-stabilized tenancy. The court reasoned that the tenant's violation of the law was "inadvertent" and the overcharge was not "substantial." Unfortunately, the court did not provide any guidelines to determine the substantiality of an overcharge in this or future situations. (The tenant was of course required to refund to his roommate the amount of the overcharge.)

This recent jurisprudence indicates that while a refund of the overcharge amount will typically be ordered in a "profiteering" case, minor violations of the Rent Stabilization Code anti-profiteering provision may not be enough to warrant a tenant's eviction.

The landlord has moved for reconsideration of the case by the Appellate Division, First Department. In the meanwhile, landlords and tenants should be aware that the law regarding rent-stabilization profiteering is being applied with less than literal strictness. For more information, please contact partner Jonathan H. Newman at (212) 619-5400 x 205 or at JNewman@Finkelsteinnewman.com.

TEACHING TRADITIONS ... (cont'd from page 1)

special forum sponsored by the New York Times. Mr. Ferrara is expected to address over 500 people at the CUNY Graduate Center at an event entitled, "Your House, Your Home: A New York Times Real Estate Event."

Also in November 2004, associate Daniel J. Curtin, Jr., is scheduled to teach a landlord-tenant CLE course for recently-admitted attorneys at the New York County Lawyers' Association, as part of its "Bridge the Gap" series.

On the academic front, partners Daniel Finkelstein and Lucas A. Ferrara are once again teaching landlord-tenant law at New York Law School this fall. Both Finkelstein and Ferrara--co-authors of a critically acclaimed landlord-tenant practice guide, *Landlord and Tenant Practice in New York* (West Group) and co-editors of a law journal *Landlord-Tenant Monthly* (Treiman Publications)--are Adjunct Professors of Law at New York Law School, as is Daniel J. Curtin, Jr.

And, earlier this year, the Firm received authorization from the State of New York to offer a CLE program under the Firm's own auspices. The Firm will be offering, in a live classroom format, a course entitled "Introduction to Landlord-Tenant Law." Attendees of this program can receive a maximum of 8 CLE hours.

If you would like to attend any of these programs, contact Daniel J. Curtin, Jr., at (212) 615-5400 x 217 or at DCurtin@Finkelsteinnewman.com.

Evaluating Real Estate Asset Performance in New York
November 16, 2004
New York's Hotel Pennsylvania
8:30 AM - 4:30 PM

AGENDA

- Leases: Primary Aspects of, and Differences Between, Residential, Office and Retail Leases; Leasing Brokerage Issues
- Landlord-Tenant Litigation/Major Topics in New York State
- The Real Estate Cash Flow Model: Performance And Valuation
- Financing
- Tax Certiorari Matters (i.e., Property Tax Challenges)
- Contractor Issues
- Insurance Pitfalls and Opportunities
- Labor/Employment Law Matters
- Bankruptcy Issues

CONTINUING EDUCATION CREDITS:

- Bankers 8.50
- CPE 8.0
- IACET 0/65
- NY CLE 8.0
- CFP (pending)
- NY RE (pending)

Finkelstein Newman LLP

L&T Insider: Owner's Use

A landlord may seek to terminate a tenancy and recover a regulated apartment when it requires the unit for his/her own use or for that of an immediate family member. (See, e.g., RSC § 2524.4(a)). While the law requires a landlord to show a "genuine intention" to occupy the apartment when making out its *prima facie* case, is a tenant entitled to discovery (in advance of trial) in order to determine whether the landlord's contentions are bonafide? Yes, according to the Court in *Hoffman v. Reiss*.

Citing an Appellate Term case, the Civil Court concluded as follows:

> "[I]t is clearly within the Court's discretion to grant disclosure to a tenant in a "owner's use" holdover proceeding where the operative facts as to the petitioner's intention to recover the premises for use by a family member as a primary residence are within petitioner's exclusive knowledge. *Miller v. Vosooghi*, N.Y.L.J., April 18, 2001, p. 18, col. 1 (App.Term 1st Dep't)."

Hoffman v. Reiss, (Civ.Ct., N.Y. County) (8 pages)

If you would like to receive a copy of the Court's decision or would like additional information, please contact senior partner Daniel Finkelstein at (212) 619-5400 x 209 or at DFinkelstein@Finkelsteinnewman.com.

Finkelstein Newman LLP

225 Broadway, 8th Fl.
New York, NY 10007
212-619-5400

We're on the Web!
Visit us at:
www.finkelsteinnewman.com