



UPDATE

BBW&G ON THE MOVE!

**As of August 23rd, BBW&G moved to our new offices at:
270 Madison Avenue — between 39th and 40th Streets**

Although our telephone and fax numbers have remained the same, much has changed. We've more than doubled the size of our office space and now occupy two full floors.

We believe that our new home will not only permit our significantly expanded staff to practice in more comfortable quarters, but will enable us to serve our clients' legal service needs even more effectively and efficiently.

Whenever you are in the neighborhood, please stop by and say "Hello"!

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OK TO OUST OVERCHARGING TENANT

In *Lepow Assoc., LLC v. Kapen and Icler*, the owner, represented by BBW&G's **Jeffrey L. Goldman** and **Brian Haberly**, brought a holdover proceeding predicated upon an allegation that the prime tenant was in violation of the recent amendment to the Rent Stabilization Code limiting the amount that a rent stabilized tenant may charge a roommate to the proportionate share of the rent for the apartment. The owner also asserted that this constituted a violation of the tenant's lease and tenancy by reason of the tenant's failure to abide by all governmental rules and regulations.

The tenant moved to dismiss claiming that this did not present a

valid cause of action. The tenant alternatively sought to stay the proceedings because the new Code — including the provision establishing the limitation on the rent that a tenant may charge a roommate — was being challenged via litigation pending in another county.

Judge Peter M. Wendt denied the tenant's motion in its entirety. Judge Wendt found that the holdover petition presented a valid possessory cause of action and further found that the mere pendency of a Code challenge did not present a sufficient basis to halt the owner's right to proceed based upon a violation of the code and the tenant's lease.

Special Points of Interest:

- BBW&G attorneys and cases receive broad media coverage.
- Rent stabilized tenant limited on rent can charge roommate.
- Succession rights depend upon familial relationship in addition to length of co-occupancy

BBW&G NEWS**MAY I QUOTE YOU?**

This past summer saw BBW&G's attorneys and development projects frequently referred to or quoted in numerous publications.

The New York Times, *The New York Law Journal* and *The Wall Street Journal* all reported on a \$240 million purchase by Charleston, South Carolina's **Greystar Real Estate Partners** of more than 1,000 apartments located throughout New York City from a long time BBW&G client. BBW&G partner **Craig Ingber**, assisted by **Ann Ryan**, acted as lead counsel to Thurcon in the successfully completed and highly complex transaction. BBW&G will continue to be involved in this portfolio of multi-family properties as Greystar has now retained BBW&G to represent it in various commercial leasing and landlord-tenant matters involving these properties.

The New York Law Journal described the opening of client **Izak Senbehar's** Grand Beekman at 400 East 51st Street and the work of BBW&G partners **Joseph Burden** and **Howard Wenig** in the pre-development phase. In addition, **Sherwin Belkin** and **Kara Rakowski** had handled the administrative proceedings and negotiations that led to two small buildings being vacated and a luxury condominium being constructed on the site.

Town & Village reported on BBW&G's successful dismissal of a tenants' association's lawsuit challenging a Major Capital Improvement Increase application filed by BBW&G client **MetLife** regarding Stuyvesant Town and Peter Cooper Village. The litigation was successfully handled by BBW&G's **Martin Heistein** and **Phillip Billet**.

Errol Brett was quoted by *The New York Times* in Jay Romano's *Sunday "Q&A"* column regarding the income threshold *that* must be attained by a regulated tenant in order for DHCR to issue and order of luxury deregulation.

Mr. Brett was also called upon by the *Times* to give his opinion as to the import and impact of the recent *Jennifer Realty* decision -- a case which has received significant media ballyhoo as to the obligation of a sponsor to sell its unsold apartments. Mr. Brett urged a bit of caution since the case was really at an early procedural stage, such that the true substantive ramifications of the Court's holding still remain to be seen.

The New York Times' Real Estate Section reported on the opening of BBW&G client **Gotham Construction's** new 47 story mixed use building, Atlas New York, at 66 West 38th Street. This development was constructed on a site previously occupied by several small commercial buildings. The negotiations and litigation that led to the vacating of the site so that Atlas New York could be developed was handled by BBW&G's **Sherwin Belkin** and **Jeffrey L. Goldman**.

Sherwin Belkin was quoted by the *New York Times* in its Real Estate Section feature article on Individual Apartment and Building-Wide Major Capital Improvements. Mr. Belkin described the procedures and the substantive requirements that must be followed in order for owners to maximize the recoupment of their investments. In addition, Mr. Belkin described many of the subtle differences between how such improvements are treated under Rent Control vs. Rent Stabilization.

New York Magazine also quoted **Sherwin Belkin** in its cover story -- "Rent Asunder" -- in which he described the conflict that often arises between newer market rent tenants (who would like to see services upgraded, but are stymied by the owner's fear that an upgrade can become a permanently regulated required service) and long term regulated tenants (who begin to feel like strangers and resentful of the newcomers to a building which the longtime resident could not afford to move into at today's market rents). BBW&G clients **The Aphorp** and **Barbara Daly**, President of **ACP Realty Group** were also featured in this article.

Court Finds No Succession Despite 20 Years of Co-Occupancy

It has been said of Jazz:
 "It don't mean a thing, if it ain't got that swing!"
 Similarly, it can be said of succession rights (albeit with significantly less artistry):

"You ain't getting this home, based upon your occupancy alone!"

In *Roberts Avenue Associates, LLC v. Sullivan* the owner brought a licensee holdover proceeding following the death of the rent controlled tenant. The occupant asserted a right to succeed to the rent controlled tenancy based not only upon the requisite two years of

co-occupancy with the tenant prior to his death, but more than *two decades* of such living arrangement.

The owner, represented by BBW&G's **Robert T. Holland**; argued that co-occupancy was only one of the two criterion which the occupant was required to prove in order to establish his succession rights.

The owner argued that the occupant was obligated to show that his relationship with the former tenant had risen to the level of "non-traditional family member" -- which re-

quired a showing of both financial and emotional commitment and interdependence.

Judge Elizabeth J. Tao agreed and found that "in spite of a twenty year cohabitation" the occupant had not shown that his relationship with the former tenant had "ever blossomed into anything more than friendship of roommates wherein one was accommodating to the other's needs."

As a result, the owner was granted a judgment of possession.

Belkin's Bar

