Queens BAR BULLETIN

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Cooperative Leaders Challenge Local Law 97 in Lawsuit

BY GEOFFREY MAZEL, ESQ.

Co-Chairperson of the Cooperative & Condominium Law Committee

As we are all aware, the New York City Council passed Local Law 97 in 2019 to great fanfare. The so-called Climate Mobilization Act is landmark legislation requiring extensive retrofits in an effort to address global warming and climate change. This legislation is designed to combat climate change by setting strict caps on carbon emissions from real property and imposing substantial penalties on property owners throughout New York City. The goal of Local Law 97 is to reduce the emissions produced by the city's buildings 40 percent by 2030 and 80 percent by 2050.

When the details of Local Law 97 became apparent, it raised tremendous concern in the Cooperative Community. Although the law is designed to reduce carbon emissions, the law only applies to approximately 60% of the buildings in the City of New York. The law specifically exempts City owned buildings; New York City Housing Authority-owned land, buildings with more than 35% rent regulated units and buildings under 25,000 square feet, which means most one to four family buildings are exempt from the reaches of this statute. Essentially, Cooperative and Condominium homeowners are the only homeowners in New York City who will be required to comply with Local Law 97. This makes no logical sense and has added to the ire in the Cooperative community that other housing sectors were excluded for political expediency.

In addition, as the price tag of compliance or non-compliance of the law becomes clearer, the leaders in the Cooperative Community decided to take a stand and filed a lawsuit against New York City in an effort to overturn Local Law 97. The lawsuit specifically states that the Plaintiffs in this action are not "climate deniers" and understand the impact of global warming. They agree that something needs to be done, but the costly and onerous requirements of Local Law 97 are not the answer.

As a result, on May 18, 2022, a lawsuit was filed entitled **Glen Oaks Village Owners Inc. etal v. City of New York, New York City Department of Buildings, and Eric Ulrich, in his official capacity as Commissioner of the New York City Department of Buildings**, Supreme Court, New York County, Index number 154327/2022. The lead plaintiffs in this case include Robert Friedrich and Warren Schreiber. They are the Presidents of Glen Oaks Village Owners Inc. and Bay Terrace Cooperative Section 1, Inc. respectively. They are well known leaders in both the Cooperative Community and as civic leaders.

The complaint outlines five basic principles for overturning Local Law 97. We will review each point briefly, but suggest you review the statute for more detail. The complaint alleges that Local Law 97 is unconstitutional based on the following five independent reasons listed below:

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The Docket

Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

OCTOBER 2022

Thursday, October 6	Hispanic Heritage Month Event: Honoring Latinx/a/o Judges in the Queens County Judiciary - 5:30 pm
Monday, October 10	*Columbus Day – OFFICE CLOSED*
Wednesday, October 26	**CLE:** Recent Significant Developments & Decisions From Our Highest NYS Appellate Courts - 5:30 pm

NOVEMBER 2022

Tuesday, November 1	**CLE:** Business Valuations – Family Law Committee - 5:30 pm
Wednesday, November 2	Academy of Law Committee Mtg - 1:00 pm
Wednesday, November 2	Grievance Committee Mtg - 5:30 pm
Tuesday, November 8	*Election Day – OFFICE CLOSED*
Friday, November 11	*Veterans Day – OFFICE CLOSED*
Tuesday, November 15	**CLE:** Landlord & Tenant Update - 5:00 pm
Wednesday, November 16	**CLE:** Surrogate's Court Update - 1:00 pm (at Surrogate Court)
Thursday, November 17	Friendsgiving - Tentative
Wednesday, November 23	Family Court Committee Mtg – 1:00 pm
Thursday, November 24	*Thanksgiving Day – OFFICE CLOSED*
Friday, November 25	*Thanksgiving Holiday – OFFICE CLOSED*

DECEMBER 2022

Wednesday, December 7	**CLE:** Criminal Court Seminar - 1:00 pm
Thursday, December 15	Holiday Party - 5:30 pm
Monday, December 26	*Christmas Day Observed – OFFICE CLOSED*

JANUARY 2023

Monday, January 2	*New Year's Day Observed – OFFICE CLOSED*
Monday, January 16	*Martin Luther King, Jr. Day – OFFICE CLOSED*

UPCOMING SEMINARS

Animal Law	Equitable Distribution	No Fault Update
Ethics Update	LGBTQ+ Seminar	

Necrology

Gerald Chiariello

For additional resources from the Lawyer's Assistance Committee,

visit www.qcba.org

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Editor's Note

Requiem for a Heavyweight Building

By Paul E. Kerson

Our QCBA Building at 90-35 148th Street, Jamaica, NY 11435 has been our home for 62 years.

Soon, for budgetary reasons, it will be sold and rented headquarters substituted. I was opposed to this plan, but outvoted on this point.

So, I brought my daughter and granddaughter to our QCBA Building this past summer to see where I spent so much of my time this past 46 years.

I showed them my name in bronze on a list of Past Presidents near the front door.

I showed them our Dining Room where Justices, Judges, Law Secretaries and Lawyers break bread together and get to know one another better.

I showed them my photograph on the wall of Past Presidents.

I showed them the Auditorium where we learned new law every year in our excellent CLE programs and where we award the Golden Jubilarian certificate to our 50-year members.

I told them how much I was looking forward to being called up there four years from now if I am fortunate enough to live that long. Now this will never come to pass as the building is going to be sold. The Golden Jubilarian Awards will be given out (if it all) in some restaurant somewhere, or G-d forbid remotely on Zoom or Microsoft Teams.

I sat in our Board room and showed my daughter and granddaughter the President's Chair where I sat all year at our Board meetings in 2015-2016.

In doing so, I vividly recall the 30 plus years I spent on the Board of Managers in that very room and our on-going debates over judicial discipline and the single most important legal topic – Court Administration.

How quickly can we get Justice done? "Justice delayed is justice denied". Our continual answer to this question is our most important function.

I also had my daughter and granddaughter view the Chair's Place in the Werner Room where I spent 33 years picking Public Defenders for Queens County.

My daughter asked me why I did all of this. "Justice". I said. "This is where Justice is created, in these two rooms. This is why we have one of the most prosperous, international and peaceful counties in history – because of what goes on in these two rooms".

"But what motivated you in the first place?" She asked me.

"The Holocaust", I said. "A society with vigorous Public Defenders can never have a Holocaust. In our country, if the Police haul you away, a Public Defender will come to see you right away and pepper the Police and the District Attorney with hundreds of questions. We call it the Omnibus Motion, and they must answer nearly every question we can think of about your arrest."

"And also, the Civil Rights Movement?" She asked. "Yes, that especially". I said. "The very idea that most of the arrests involve Young Men of Color must be vigorously questioned every step of the way".

I told her what was accomplished in the Werner Room over those 33 years. The City's Administrator of the Assigned Counsel Plan for Brooklyn, Queens, and Staten Island told me that the Queens Panel was the best of the three.

"So, for you, Dad, this really was a synagogue, wasn't it?" she added.

Well, I hadn't thought of that before. In churches, synagogues, mosques and temples we pray for Justice.

But, ah, in the QCBA Building we actually create Justice Itself – every time we insist on high standards for every Public Defender applicant and Judicial Candidate; and every time we petition our Administrative Judges and Office of Court Administration (OCA) for improvements in the way our Courts operate.

So, yes, for me it was a synagogue, church, mosque and temple all rolled into one – it is the place where the prayers for Justice from all of those religious institutions were actually answered.

For me, the QCBA Building is the location of the Answer to all the prayers for Justice said by Queens County residents in Saint Patrick's Cathedral, the Islamic Cultural Center of New York, Temple Emanuel, the Cathedral of Saint John the Divine, Chabad Lubavitch World Headquarters at 770 Eastern Parkway, Saint Demetrios Greek Orthodox Cathedral, the Ebenezer Baptist Church, the Hindu Temple Society, the Mahayana Buddhist Temple and the Hillcrest Jewish Center all combined into one large prayer for Justice.

Without our building, can we keep creating Justice and answering prayers for Justice in all languages and cultures in the world's most diverse County? Let us hope and pray that we can. The stakes are high if we don't.

President's Message

By Adam Moses Orlow

The QCBA has had some challenging times, financially, as of late. We have had deficits for as many years back as I can recall. As an economics major in college my professors used to debate the merits of deficit spending by the government...but that's government. No one I know would argue that deficits are good for an organization such as ours. It is simply unsustainable. Last year, the financial cliff that was once on the horizon, was in full view. The Board had no choice but to act. And act we did.

We put both long- and short-term solutions in place. In the short term, we instituted a platinum sponsorship program for our attorneys and a corporate sponsorship program for our friends in the business community. Jonathan Riegel, our executive director, did a fabulous job in creating a package of benefits for a person, firm or business that sponsors our Association. He then followed that up by reaching out to many of our long-time supporters and others who can take advantage of the benefits we offer and secured many new sponsors for our Association. This made a big impact. I will take this opportunity, and every opportunity I can, to thank our sponsors. You have enabled this Association to continue to do all the good work we do. I hope you have found your sponsorships worthwhile, that you will continue to sponsor us in the future and that many others will follow your lead and join you in sponsoring us.

In the long term, the plan is to sell our building, lease adequate office space and use the proceeds from the sale to help sustain us well into the future. Selling the building was not something I wanted to do. I love our current building and all the history it contains within its walls. Also, it is conveniently located near the courts and well suits the needs of our Association. Nevertheless, even though the Queens County Bar Association Fund, Inc. owns it outright, without any mortgage, the building still costs our Association a significant amount of money every year in taxes, maintenance and more. In fact, when you calculate the amount we anticipate spending on rent in our new space versus the amount we spend each year just to own the current building it comes to almost the same amount; except that in selling the building we will be left with income from the proceeds of the sale which we won't have without selling the building. This made selling the building a relatively easy decision. What made it exciting, was the space we found for our new home. I was extremely excited to report about that new space to you but, unfortunately, since we do not yet have a signed lease, I must contain myself and wait until the ink is on the dotted line. However, rest assured we are working on getting our new space secured and hope to have it finalized in the near future. Stay tuned for more about that.

While we remain focused on addressing our finances, I am pleased to report that QCBA continues to be a buzz with activity. We recently held our annual golf and tennis outing, which was very well attended, very successful financially and enjoyable for all present. Thank you to Past President David Cohen for your tremendous efforts in organizing the event. In September, we launched a new programming year with three great CLEs and have many more planned for the coming months. The annual Court of Appeals update is next month, sponsored by many of the Queens County affinity bar associations, and we are proud to be co-sponsoring a Diwali celebration at the end of October with SAICBA-Q, QCWBA and others. The events and CLEs don't end there. The calendar is quickly filling up for the balance of this year and beyond; we have already begun planning our annual holiday party (save the date…Thursday, December 15), Judiciary Night in March, our Annual Dinner on May 4, 2023 and countless other programs and CLEs between now and then. We offer something for everyone so please join us for these great events!

Our Association was founded in 1876. It has managed to maintain itself financially for 145 years. This administration will do all it can to lay the foundation for the financial viability of the Queens County Bar Association for many years into the future.

Cooperative Leaders Challenge Local Law 97 in Lawsuit

BY GEOFFREY MAZEL, ESQ.
Co-Chairperson of the Cooperative & Condominium Law Committee

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1) Local Law 97 is preempted by New York State law. In 2019, New York State enacted the Climate Leadership and Community Protection Act ("CLCPA") with the intent that it would provide a comprehensive regulatory framework to reduce greenhouse emissions across New York State.
2) Local Law 97 violates due process through the excessive penalties it imposes. As stated above this law will subject Cooperatives to potential devastating civil penalties if they cannot reach compliance with the law, despite their best efforts. The "tribunal" to prosecute these non-compliance cases have not yet been promulgated. Even the most basic guidelines on how these penalties will be enforced and how to mitigate them are unknown, even though the penalties will be taking effect in 2024.
3) Local Law 97 is unconstitutionally retroactive in violation of property owners due process rights. The complaint states that in the last several years property owners have taken significant steps to comply with then current City laws to reduce carbon emissions. Many building owners, at great expense and with the encouragement of New York City, converted to natural gas to comply with New York City laws. Local Law 97 is blind to these prior efforts and only applies a one size fits all calculation of carbon emissions. The great expense of property owners to comply to prior New York City laws is not a factor at all when calculating Local Law 97 compliance.
4) Local Law 97 is impermissibly vague and ambiguous, in violation of due process. Essentially, the statute does not specify how penalties are determined and imposed, and how adjustments in the form of mitigating factors will be applied.
5) Local Law 97 operates as an unauthorized and improper tax. The income generated from Local Law 97 penalties are not required to be deposited in any designated fund by New York City, therefore giving the penalties the qualities of a "carbon emissions tax". The complaint further states that since New York State has not authorized New York City to tax greenhouse gas emissions, these penalties are an illegal tax, in violation of the Municipal Home Rule requirements, and therefore unconstitutional.

The litigation is ongoing, and the Defendants filed a motion to dismiss on July 28, 2022. It is expected to be heard by the end of September 2022. This lawsuit has many issues of first impression and it will be interesting to see how the Courts decide on this landmark piece of legislation. More to follow.

The Practice Page

Revisiting Venue Selection

BY HON. MARK C. DILLON
Serves on the Appellate Division, Second Department

There was an amendment to the venue-selection statute, CPLR 503(a), in 2017,[1] which widened the venue selection options for plaintiffs. Previously, venue was to be placed in a county where any party resided at the time of an action's commencement, and if a party was a corporation, the county of its principal office.[2] There are boutique exceptions to those general rules for the enforcement of contracts, municipal defendants, the location of real property for actions *in rem*, the location of contested personalty, and others.[3]

The 2017 amendment to CPLR 503(a) expanded the venue choices to also include "the county in which a substantial part of the events or omissions giving rise to the claim occurred." The amendment primarily helps plaintiffs in choosing the most plaintiff-friendly venue possible. But the amendment has no real effect if the substantial events or omissions occur in a county where a party already resides.

Now that the amendment to CPLR 503(c) has been on the books for over five years, we can examine how the amendatory language has worked in practice. Does the statutory phrase "substantial part of the events or omissions" refer only to the situs of the liability, or potentially, to damages if elsewhere? If an injurious event occurs in one county but hospital and medical treatment is administered in another, may an action be commenced in the latter? If a defective product is manufactured in one county, sold in a second, and causes injury in a third, which county(ies) qualify for a "substantial part of the event"? In an earlier Practice Page, I predicted that the 2017 amendment allowed for ambiguities, and that the courts would be required to parse some of the new language's meaning.

One such case is *Harvard Steel Sales, LLC v Bain*,[4] from the Fourth Department. The plaintiff, of Cleveland, was in the business of selling galvanizing steel, and contracted for the galvanizing process to be performed by Galvstar, LLC, at a facility in Buffalo (Erie County). The defendant, Bain, was the principal of Galvstar and resided in New York County. The plaintiff's complaint sounded in fraud in the inducement, for Galvstar's alleged misrepresentation of its ability to galvanize steel meeting certain requirements. The defendant claimed the representations were made in Cleveland, while the defendant maintained in opposition that the parties' "meetings" were in Buffalo. Defendant Bain was the only named party with a residence in the state. The plaintiff commenced the action in Erie County and the defendant moved to change venue to New York County. The Appellate Division affirmed the change of venue to New York County, as the defendant's averments that specific representations were made in Cleveland were not necessarily contradicted by the plaintiff's opposition that non-specific "meetings" were held in Buffalo, as to qualify as a substantial part of the events for CPLR 503(c) venue there. The lesson from the case is the value of specificity.

In the Second Department case of *Vereen v Flood*,[5] the plaintiff's decedent was admitted to a hospital for treatment in Orange County and then transferred to another hospital in Bronx County, where she died. The plaintiff's estate commenced an action against all of the medical providers in Bronx County, and certain Orange County defendants moved to change venue to Orange based on their residences. The plaintiff sought to retain venue in the Bronx based on that county being where a substantial part of the events or omissions occurred. The Appellate Division found insufficient evidence in the record for concluding where the substantial events or omissions occurred, and remitted the matter to the trial court for a framed-issue hearing. Again, the lesson of the case is the need for specificity in the papers.

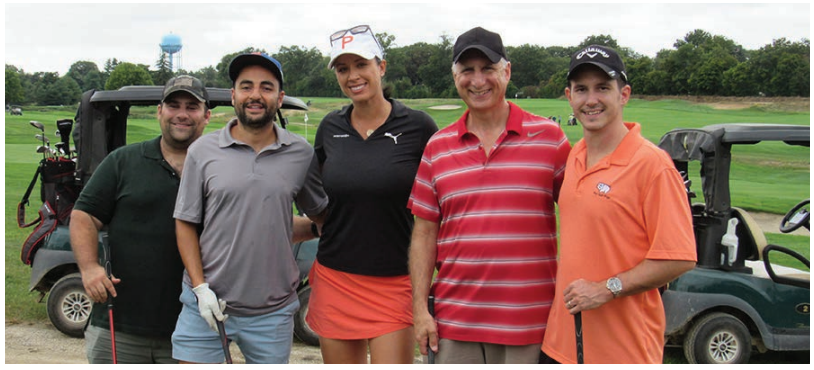
The bottom line of these cases is that if a party is relying upon the substantial events prong of CPLR 503(c), the more evidentiary facts that can be presented on the issue by a party, the better for that party.

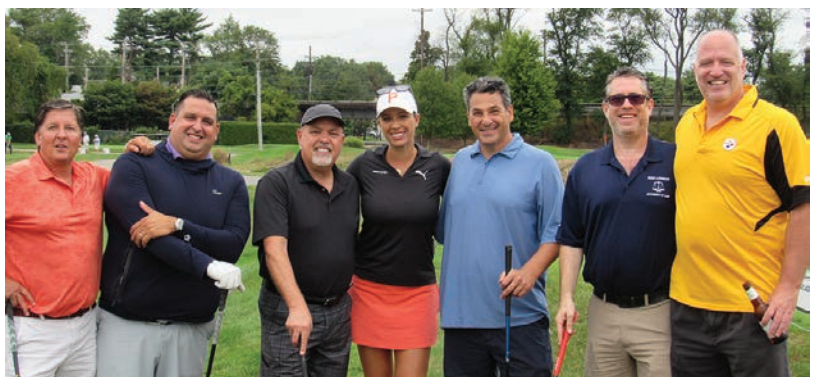
Mark C. Dillon is a Justice of Appellate Division, 2nd Dep't., an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author to the CPLR Practice Commentaries in McKinney's.

1 *L.2017, ch. 366, sec. 1.*
2 *CPLR 503[c].*
3 *CPLR 501, 503[b], [d], [e], [f], 504, 506, 507, 508, Unconsol. Laws 7405.*
4 *188 AD3d 79 (4th Dep't. 2020).*
5 *184 AD3d 758 (2nd Dep't. 2020).*

QCBA Golf Outing

September 12, 2022 • Garden City Country Club





QCBA Golf Outing

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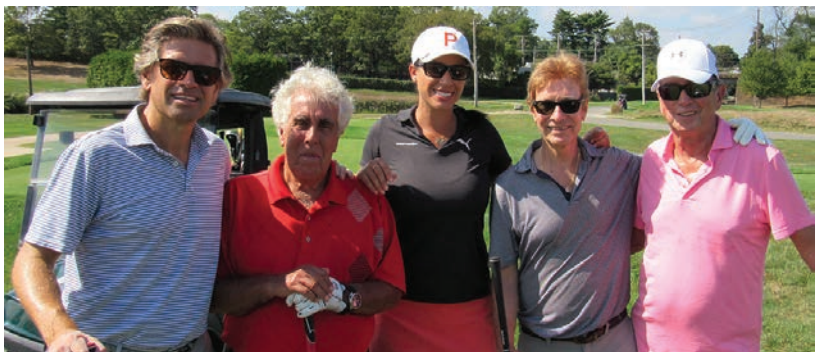

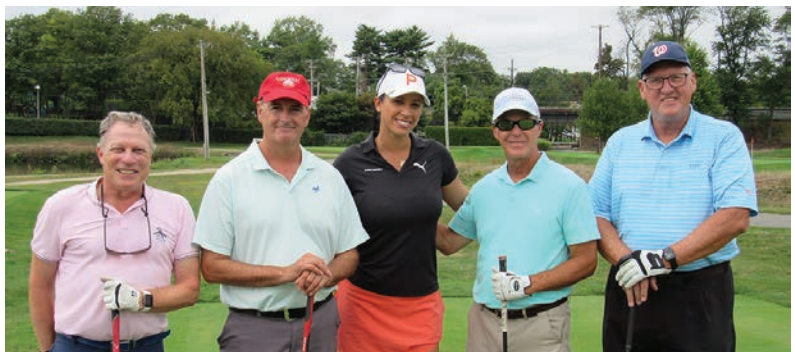

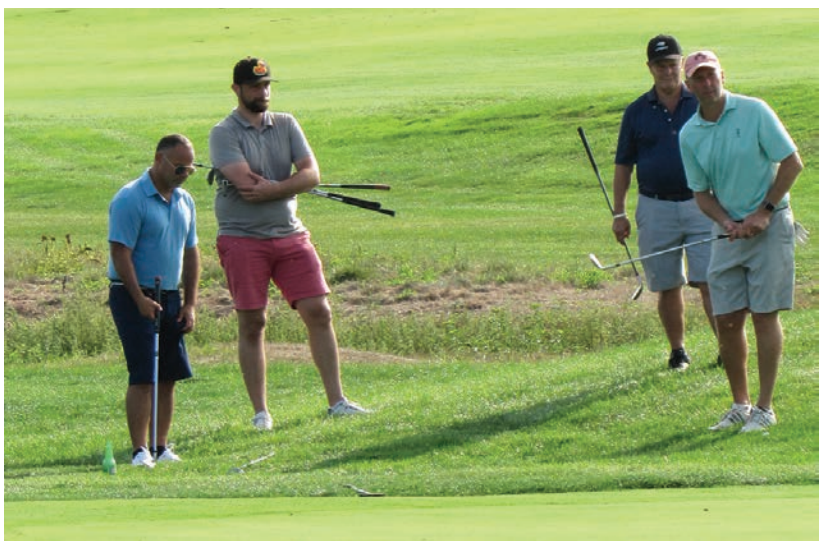

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Presented by the Appellate Practice Committee and the Academy of Law

RECENT SIGNIFICANT DEVELOPMENTS AND DECISIONS FROM OUR HIGHEST NYS APPELLATE COURTS

Virtual Stated Meeting

Wednesday, October 26, 2022 5:30 PM - 7:30 PM

PRESENTERS:
Moderated by: Hon. Valerie Brathwaite Nelson, Associate Justice, Appellate Division, Second Department

NYS Court of Appeals
Hon. Anthony Cannataro, Acting Chief Judge (Welcome Video Remarks)
Hon. Jenny Rivera, Associate Judge

Appellate Division, Second Department
Hon. Hector D. LaSalle, Presiding Justice (Welcome Video Remarks)
Hon. Valerie Brathwaite Nelson, Associate Justice
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CLE CREDIT: 2.0 in Professional Practice

Transitional Seminar. Valid for All Attorneys
ACCREDITATION: QCBA has been certified by the NYS CLE Board as an Accredited CLE Provider in NYS, 10/2019 - 10/2022.

QUEENS COUNTY BAR ASSOCIATION

In honor of Hispanic Heritage Month

Honoring Latinx/a/o Judges in the Queens County Judiciary

Thursday, October 6, 2022, at 5:30pm at the Queens County Bar Association 90-35 148th St. - Jamaica, NY 11435

Esteemed Panelists

Hon. Jenny Rivera – Associate Judge of the Court of Appeals
Hon. Joseph Zayas – Associate Justice Appellate Division 2nd Dept.
Hon. Diego A. Freire – Judge of the Criminal Court
Hon. Gary Miret – New York Court of Claims
Acting Justice of the Supreme Court
Hon. Enedina Pilar Sanchez – Judge of the Housing Court
Hon. Lourdes M. Ventura – Justice of the Supreme Court
Hon. Patria Frias-Colon – Supervising Judge of Civil Court
Hon. Nestor Diaz – Judge of the Civil Court
Hon. Mildred Negron – Judge of the Family Court

And honoring all Latinx/a/o members of the Queens Judiciary

Each judge on this esteemed panel will share what it means to them to be a Latinx/a/o in the judiciary and recognize their fellow Latinx/a/o in the judiciary in their respective courts.

Light refreshments, music and other surprises!

Free for members of the co-sponsoring associations
$25 per person for nonmembers.

Co-Sponsored By:

"He's a Shoplifter and a Thief"

- and the big surprise to come

a human interest story

BY LEONARD L. FINZ

Have you ever been caught in a situation that triggered extreme tension and fear? Most people have! What follows is a nightmarish experience that captures the two inflammatory traumas. And it starts off something like this…

Mr. and Mrs. Marco James (fictitious names), middle aged, citizens of a small foreign country, decided to visit a large American city. At the conclusion of their trip, they planned to do some last-minute shopping for the purpose of bringing home some special gifts to family and friends. Pursuing that desire, they proceeded to a popular department store. Inside, they were surrounded by racks of ladies' shirts, men's attire – and the complement of clothes that one would expect to be found in a retail setting.

During the several hours spent viewing and admiring all sorts of attractive garments, they selected those they thought their friends back home would enjoy. Having completed their shopping, they began to exit the store. As they were leaving and passing through the open doors, a loud alarm sounded. It was shrill, striking, and totally bewildering to Mr. and Mrs. James. Not knowing what the loud shriek messaged, they continued onto the sidewalk. What happened next however, was most shocking and frightening. And here it is…

As Mr. and Mrs. James continued their casual walk away from the store, three security officers ran towards them. Two of the security men tackled Mr. James to the ground as the other security person violently grabbed his wife. Both were held forcibly while panic screams filled the air.

Being citizens of a foreign country and not too familiar with the English language, the couple voiced their terror as best they could. Within seconds, however, they were physically dragged back into the store. Despite strong protests, Mr. and Mrs. James were hustled into a back room of the store. Frightened, and not knowing what was happening, Mr. James, in broken English, yelled out, "What are you doing to us?" One of the security men brusquely fired back, "You're being charged with shoplifting."

The door of the room was shut with a loud thud and then locked. The two frightened foreigners were guarded closely by the three security men. Within minutes, the door opened and a young man with a cropped beard and dressed in a business suit, shirt, and tie, entered. Despite the continuing protests that rang out loudly from the frightened and hysterical couple, he ignored them and proceeded to empty the contents of the store bag that contained the merchandise onto a large table. He then forcibly seized Mr. James' wallet and inspected all its contents. Thereafter, he unceremoniously grabbed the handbag from Mrs. James' hand, turned it upside down and scattered its entire contents over the top of the table as well.

Terrified, Mr. James screamed out in broken English, "This is an insult. Everything in the bag, I paid. What you doing to us? You see the receipt. It's right there on the table. I paid for everything in the bag," he cried out.

Upon further examination, the young man looked through the many garments. To his surprise, he discovered three shirts still with security tags attached to them. The receipt indicated clearly that all items had been marked "paid." Apparently, an inexperienced cashier neglected to remove the tags that were still hooked to the shirts thereby setting off the alarm as Mr. and Mrs. James were exiting the store. Their initial outcries and outrage were totally ignored. Interestingly, however, what happened to them was not an isolated occurrence when the removal of security tags were overlooked despite full payment being made.

Once the paid receipts were uncovered, Mr. and Mrs. James demanded they be allowed to leave. With arrogance, and no apologies, their desperate requests were denied. They were told they would have to wait until the Chief of Security returned from lunch. Despite their continuing protests, they were held as prisoners against their will for one more hour in a locked room until the Chief returned. When he finally arrived and told about the two security tags that were not removed, together with the receipt showing that full payment was made for every item, Mr. and Mrs. James were finally released and allowed to leave.

When similar occurrences were reported in the past (and there were many), the department store, as a matter of policy, would offer gift certificates that were usually valued at a few hundred dollars. If the customer refused the gifts, and a lawsuit was later brought, it would usually be settled for a few thousand dollars at best. As for Mr. and Mrs. James, they refused the gift certificates. Instead, they instituted a lawsuit against the department store charging it with wrongful imprisonment, assault, and emotional harm.

After pre-trial proceedings which spanned several years, the department store finally made an offer of fifteen thousand dollars which it insisted, was most generous. The offer was flatly refused by Mr. and Mrs. James despite the recommendation of their attorney that they should accept the store's offer.

More years passed, since the lawsuit was given a low priority. The case however, did eventually come to trial, but with a far more experienced substituted law firm representing Mr. and Mrs. James. What developed during the course of the trial would literally knock ones'sox off…

As the record disclosed, amazingly, Mr. James was a candidate for the presidency of his country two years after the department store incident. He lost however, to a popular incumbent. The record shows further that during a hotly contested campaign for the presidency, leaflets had been dropped from single engine planes over several major cities of the foreign country. The headline on the documents read, "James Arrested for shoplifting." Stories also appeared in the local press accusing James of being a thief.

At trial, an expert witness was called on behalf of James. What at the outset looked like a garden-variety shoplifting case (in which the defendant department store offered fifteen thousand dollars in full settlement), was presented to the jury as an international affair with all of its historical interests and intrigue. In fact, the expert called by the plaintiff, was a history professor who had specific knowledge of the fascinating life story of Mr. James. It was a narrative of such high human interest as to make the jury lean forward in their seats as if raptured by every word that described the fascinating biography of Marco James.

Case in point…the jury listened with awe as a sudden and almost bizarre silence permeated the courtroom. They heard how Marco James, then a young man, enlisted in the Army; how he received his military awards and promotions; how he became the victim of a political arrest by the then country's dictator; how he was jailed without a trial; how he spent years in prison; how upon his release he organized the peasants throughout the land; how he gave them a voice they never had; how he was appointed to the police bureau; how he rose eventually through the ranks to become the nation's Chief Enforcement Officer, and much, much, more.

Based upon some of the media reports, the jury, and even the judge, were glued to their seats as the professor related drama after drama about the rise of Marco James - information the professor had retrieved and compiled from ancient documents he discovered in the country's national archives. Each account was so immersed in eye-popping excitement that any by itself could have served as the plot-twist of a thriller movie.

As the story unfolded with increasing momentum throughout the trial, it was claimed further that the loss of Mr. James' reputation was immeasurable - an added component that cost him the election for President of his country.

After summations and charge, the jury retired to deliberate its verdict. They returned to the courtroom three hours later with their verdict. The foreman stood up and reported it clearly…

In a loud, clear, voice, a packed audience heard the following, "We the jury find for the plaintiff in the sum of one million dollars." It was an unbelievable distance from the $15,000 that was originally offered. Further, it was reported to be the highest verdict ever recorded in a lawsuit that involved a customer, falsely charged with shoplifting.

This case is also the living proof that what is the initial product of extreme tension and fear, can ultimately result in civility, accountability, and justice. And when each day comes to its end, is that not a prized goal of the 7.9 billion human beings who inhabit our extraordinary planet!

END OF STORY

Leonard L. Finz, age 98, is a former New York State Supreme Court Justice, (Queens County); a decorated WWII Veteran (1st. Lt., Field Artillery, Pacific War Zone, Philippines); inducted into the prestigious U.S. Army OCS Artillery "Hall of Fame"; and on July 23, 2022 inducted into the elite Army OCS "Hall of Fame" by order of the United States Department of Defense; the author of four published thriller novels; Peer-Reviewed as "One of America's preeminent lawyers"; an active member of the QCBA for 68 years; and the founder of Finz & Finz, P.C.

Opinion

A Court Long Ignored: An Overview of the Housing Court, Then and Now

BY HON. GEORGE M. HEYMANN

As a first-year law student in 1971, I was taught about New York's byzantine, multi-tiered court system, which in recent years has come under much criticism as being too complex and duplicative. At that time, Housing Court in New York City was nonexistent.

Originally, all landlord and tenant matters were tried by Civil Court judges, in addition to all the other cases that were calendared. The sheer volume of cases to be disposed of, whether by settlements or trial, clearly overburdened the Civil Court. Moreover, landlord and tenant law is a highly specialized and technical area that requires expertise that most Civil Court judges do not possess, nor have any interest in learning about. It constitutes an intricate statutory scheme, intertwining the Real Property Actions and Proceedings Law, the Real Property Law, the Multiple Dwelling Law and the Housing Maintenance Code, as well as a myriad of rules and regulations of other agencies such as the Division of Housing and Community Renewal.

To alleviate this problem, the New York Civil Court Act was amended in 1972 by adding a new section – 110 – to create a housing part of the Civil Court for the city of New York, commonly referred to as the Housing Court.

The Housing Court, a "statutory" court, officially began functioning on April 1, 1973, with only five individuals who were selected to serve as "Hearing Examiners" – notwithstanding that paragraph (e) of Sec. 110 repeatedly uses the term "housing judges." One of the original hearing examiners was the late Queens Supreme Court Justice Eugene J. Berkowitz, for whom I had the privilege of serving as his principal law clerk until I ascended to the bench in 1991, with his strong encouragement and support. I went on to serve for two decades until my retirement in 2011. Berkowitz became the first president of the Housing Court Judges Association and fought to have the "hearing examiners" designated as "judges," entitled to receive all the same benefits and accoutrements of the judges in the constitutional courts, such as wearing judicial robes, among other things.

In Housing Court, the parties are designated as petitioners, the person or people commencing the action, and respondents, the person or people being sued. Although such actions are deemed "summary proceedings," they are anything but, especially as a result of the recent pandemic which brought about consecutive moratoriums on evictions over a two-year period.

Moreover, the ability of tenants to further forestall their day in court and potential eviction came about with the passage of the Emergency Rental Assistance Program, where any tenant who merely filed such form with the appropriate party or agency, without any accompanying proof of inability to pay, would have their case put on indefinite hold until such time as the application could be reviewed and decided.

One of the most important provisions of section 110 of the CCA is subdivision 5 of paragraph (a) which establishes the Court's authority to hear and determine "all summary proceedings to recover possession of residential premises to remove tenants therefrom, and to render judgment for rent due, including without limitation those cases in which a tenant alleges" various defenses such as Warranty of Habitability, etc.

Housing Court cases basically fall into two categories: the majority are "nonpayment proceedings", and the remainder are referred to by the catch-all phrase "holdover proceedings." The ability of the Court to fashion its own remedy to resolve issues is set forth in paragraph (c) which provides that "regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest…".

By the time I was appointed to the bench, the number of Housing Court judges had expanded to 36. A few years later the number was increased to 50 where it has remained ever since. Clearly a paltry number of judges to tackle the busiest court dockets in the city with a recently estimated backlog of 200,000 pending cases, plus new cases being filed daily.

I have in the past and continue to recommend the use of retired Housing Court judges to serve as judicial hearing officers and/or mediators to help dispose of the huge backlog of cases. While it appears that this proposal would be welcomed by the landlords' bar, the tenants' bar and advocate groups have expressed a preference for the status quo, as it further delays potential evictions.

Becoming a judge of the Housing Court is a rigorous process. When vacancies on the bench become available, the Chair of the Housing Court Advisory Council will post the information in the New York Law Journal and elsewhere seeking interested individuals to apply. The applications are then screened and those applicants that pass muster will be called in for a series of interviews. The Council will then prepare a list of finalists of those "qualified by training, interest, experience, judicial temperament and knowledge of federal, state and local housing laws and programs by the advisory council for the housing part" from which the citywide administrative judge will make the selections.

Unfortunately, unlike every other citywide judge, housing judges only serve for a five-year term. They are under the constant scrutiny of every agency, and well-organized advocate groups, especially those representing tenants, that have a stake in the outcome of the cases, which adds additional stress in an already pressure-cooker atmosphere. No sooner do you get appointed than you are gearing up to go through the entire gauntlet of the reappointment process. This is a definite disadvantage that needs to be changed in order to provide greater judicial independence.

It has been frequently stated that the two most difficult courts for litigants, their counsel and the judges that preside over their cases are the Housing and Family Courts. These two courts have the greatest impact on our society because they have the power to, among other things, remove individuals or entire families from their homes – Housing – or can determine the custody of children and pets and what, if any, visitation will be allowed to non-custodial parents – Family.

They are the most contentious courts, where emotions run rampant. Yet, there is a major distinction between the two.

As noted, Housing Court judges only serve five-year terms, whereas Family Court judgeships are for ten years; judges in the Housing Court, which has always been considered the stepchild of the Civil Court, earn $189,900 as compared to Family Court judges banking $208,000 per year. Civil Court judges have always received a higher salary – currently $193,500 – notwithstanding that Housing Court is the busiest and perhaps the most vital part of the Civil Court. In the various court restructuring plans, Family Court was being elevated into the Supreme Court while the Housing Court remained in the lower tier of trial courts.

The importance of the workings of the Housing Court was brought to the fore during the pandemic. To add insult to injury, despite said court's impressive efforts to get ahead of the tsunami that was created by COVID, the governor just signed into law a bill creating four new Family Court judges while, once again, snubbing the Housing Court, which remains stagnant with only 50 judges. This was a missed opportunity, indeed.

Several efforts seeking a complete overhaul of the court structure began in earnest with the late former Chief Judge Judith Kaye. She envisioned combining all the trial courts into a two-tier system comprised of a single Supreme Court – absorbing into the Supreme Court the Surrogate's Court, Court of Claims and Family Court – and a statewide District Court – encompassing all the lower courts.

In order to accomplish this goal, her proposal had to be approved by two successive Legislatures and then placed on a statewide ballot to be voted upon by the citizenry. Her efforts failed. Currently, the present – and about to be former – Chief Judge Janet DiFiore also picked up the mantle to restructure the courts. Unlike Kaye's proposal, the new adaptation denominates all the lower courts statewide as Municipal Courts, a name that New York City initially used and thereafter discarded to refer to its present civil and criminal courts. She, too, will be leaving her position without attaining her lofty goal.

If or when a change comes, Housing Court should be put on par with the Civil Court and its judges, rather than remain the Civil Court's stepchild.

April 1, 2023 will not only mark the 32nd anniversary of my becoming a judge, it will also be the half-century mark for what has truly been an exceptional court, always fighting against the odds for its proper recognition in the judicial system.

Between now and then, I call upon our elected officials in the city and state to make a good-faith effort to rectify some, if not all, of the issues I have raised herein to make the Housing Court a truly great court that will garner the respect it deserves, rather than disdain.

George Heymann is a retired judge of the NYC Housing Court; former adjunct professor of law, Maurice A. Deane School of Law at Hofstra University; certified Supreme Court mediator; of counsel, Finz & Finz, PC and a member of the Committee on Character and Fitness, Appellate Division, Second Department, 2nd, 10th, 11th & 13th Judicial Districts.

Guardianships

BY FRANK BRUNO, JR., ESQ.

Fielding telephone calls from prospective clients is a daily occurrence and can be frustrating and bewildering for the practitioner. So many litigants that have lived through Court experiences cannot answer what Court they were in; cannot fully explain what happened; misname proceedings and mischaracterize events. Sometimes it takes the first seven to eight minutes of the conversation to find out why the person is calling and what happened. I have had people ask for Powers of Attorney when they mean Probate. I have had clients request a Living Will when they mean a Trust. We face the prospective client that has a Google Law Degree and we also handle the absolutely uninformed about their own situation.

I get it and I have patience because Court proceedings can be overwhelming and intrusive and confusing however it can chew up time figuring out what I am actually listening to and why? "What is the present request and what do you need me to assist you with?"

Case in point, a person called me yesterday and the actual physical real-world event was that her ward is in the hospital and she had questions about care, medical coverage and Medicaid. I did not find that out until about eight minutes into the conversation. The starting point of the conversation was that there was a Court appearance (but I could not determine at first if the case was ongoing or adjudicated); then the journey lead to an initial guardian being appointed and then removed (not pertinent to the current situation); as the story continued on the path, I found out about Zoom Court and the many appearances along the way; how the caller was the true champion of the incapacitated person and ultimately she filled in the role. I am not certain if there had been a temporary guardian and then she was appointed permanent (which seems likely) or if the first guardian was appointed and declined. I pulled out the fact that it was a Queens Guardianship matter but the Judge could not be identified and the month that is ended could have been March or April but that was a "not sure" and no educational class was yet attended, or commission obtained. The name of the petitioning attorney was as remote as the appearance and although a family member, she was bereft of any financial knowledge of the incapacitated person. We then had a full conversation about determining the assets of the ward and capturing the mail and holding an eviction at bay. With the story loops, twists and turns out of the way, once I grabbed hold of what the purpose of the call was; I became fascinated by the family dynamics, the Court conflagration and the fact that this person felt alone in the wilderness. That's why I became a lawyer-to help those in their time of need. The underserved, the alone, the underdog and to become their champion just as this Guardian became the champion of her cousin. As an attorney we must be patient, willing to listen and to learn about the events and details surrounding a matter.

In that same conversation, the satirical comedy thriller about Guardianship "I Care a Lot" was referenced. The movie follows an attorney con woman who makes her living as a court-appointed guardian, seizing the assets of vulnerable elderly people and to heighten the plot, this includes the mother of a gangster.

The Hollywood example of an attorney that shall remain nameless convinces the legal system in California to grant her guardianship (a legal guardian is a person who has been appointed by a court and granted legal authority with the corresponding duty to care for the personal needs and property of another person, called a ward) over elders that she pretends cannot take care of themselves. In the film, the Court proceedings happen without the person being present at all (NY would not let this happen) with no one to advocate on their behalf. She places them in an assisted living facility (nursing home) where they are sedated and lose contact with the outside world. She sells off their homes and assets, pocketing the proceeds.

This will be the first in a series of guardianship posts to counteract misinformation. We have moved from an age of information to an age of attention: I will make these points quick for this article and expand later on.

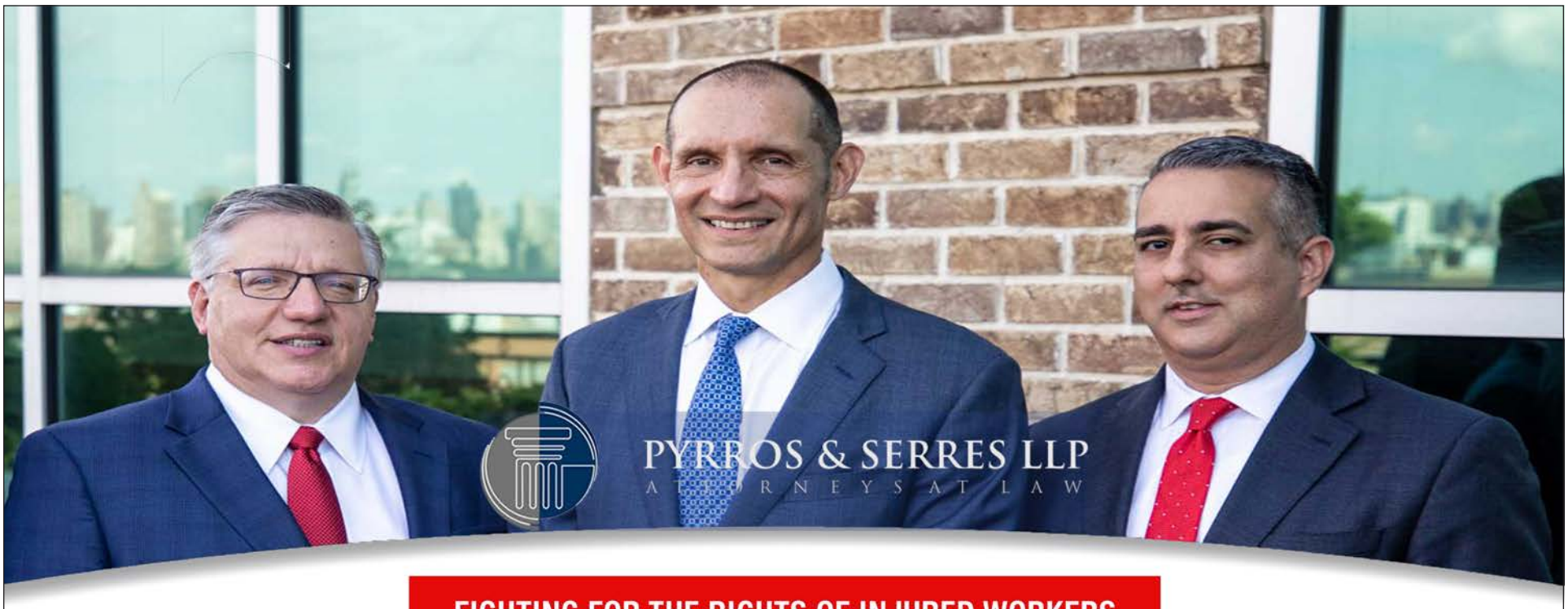
A few Guardianship tidbits.

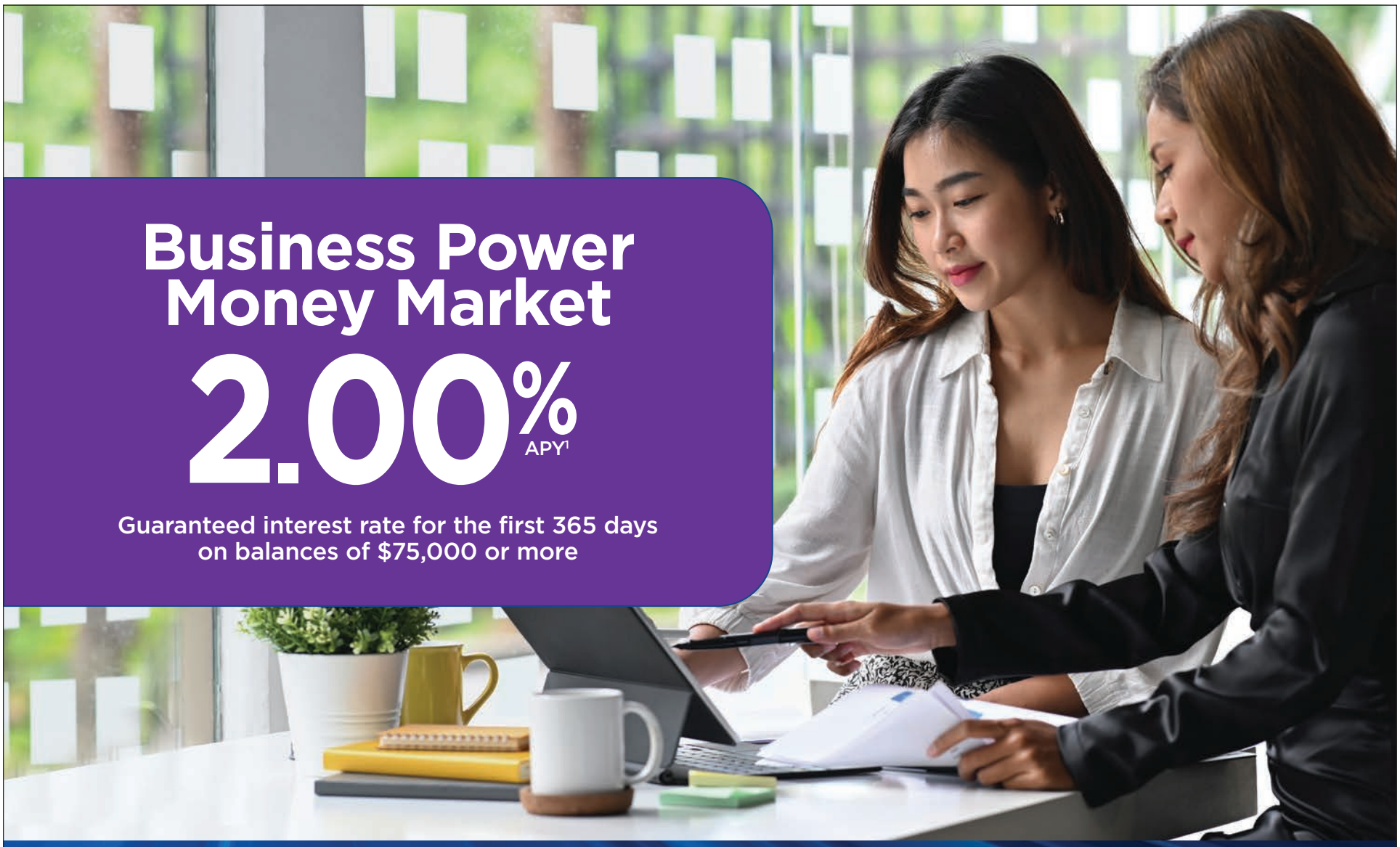
New York Guardianships will generally have the alleged incapacitated person (AIP) present. The Mental Hygiene Law provides that the AIP has a right to be heard at any hearing. The Court shall appoint a Court Evaluator to be the eyes and ears of the Court to interview the AIP, write a report and testify in Court; if there could be no meaningful participation then the AIP's individual participation could be waived. I have been involved in matters where the AIP had a stroke or was severely afflicted with dementia and in those instances their appearance was waived but an attorney was still appointed to that person to advocate for their rights. Wholly different than the movie which depicted an exparte hearing of persons with capacity.

Notice is given. Family members-spouse, adult children, siblings, household members, unrelated close friends that are in the life of the AIP (all relevant parties, paramours, upstairs neighbor, agent under a power of attorney, very involved neighbor that has assisted the person) are all noticed to appear in Court to be involved in some way. They could seek to fight it, support it, or cross petition to be a Guardian.

The Guardianship part has tremendous oversight on property issues (property is the term but it really means any asset not only real property). At the conclusion of the hearing a Court Examiner is appointed, and the newly appointed Guardian must file an Initial 90 Day Report with Annual Reports mandated thereafter. Should there be real property, a Guardian must seek additional permission from the Court to sell any property and the person must remain in the community until an additional hearing is held to determine the appropriate level of care. The very same people notified about the initial court filing must also be notified.

Unlike works of fiction, the NY Courts afford a person many protections for their life, care, and assets.





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