



Rosenberg & Estis, P.C. represents Excelsior 57th Corp.

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New York, NY Rosenberg & Estis, P.C. has secured a victory for a cooperative on East 57th St. in New York State Supreme Court in New York County, securing possession of a parking garage within the building whose leaseholder had defaulted on rent payments.

Rosenberg & Estis members Bradley Silverbush, Howard Kingsley and Norman Flitt, and associate Richard Corde, represented Excelsior 57th Corp. against Select Parking LLC and Citizens Icon Holdings before Supreme Court Justice David Benjamin Cohen.

Following the pandemic, the master lease holder surrendered possession and assigned the rents owed by subtenants to the co-op, leaving the cooperative to deal with the existing parking garage operator who was three months in arrears. While the sublease expired, given the existing eviction moratorium, Rosenberg & Estis moved in State Supreme Court for declaratory judgment, seeking an order directing the garage operator to pay the arrears and surrender possession.

Rosenberg & Estis filed for an Order to Show Cause which also sought to enforce a sublease provision that required the garage to pay holdover use and occupancy at triple the rent that was in effect at the expiration of the sublease. The court directed a virtual hearing on the requested relief at which the defendants failed to appear and upon completion of the hearing, granted Rosenberg & Estis the relief it sought. The court's order included a direction that the operator pay a total of \$1.571 million in arrears, and in addition, turn over all daily receipts effective as of the date of the court's order, to be paid to the co-op within two days of receipt.

Attorney Silverbush and the litigation team successfully opposed the garage's subsequent attempt to vacate the court's order; after a hearing on the claims asserted, Justice Cohen rejected the arguments advanced and kept the order in place resulting in the voluntary vacatur and surrender of the garage to the coop.

"This case demonstrates that even at a time of enormous distress, when the court system has been hampered by COVID-19 and resulting case backlogs, decisive and creative legal representation can protect the rights of property owners," Silverbush said.

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