

# Terminating An Employee — Reviewing The Steps

## COUNSELS' CORNER:

By: Kenneth J. Finger, Carl L. Finger and Daniel S. Finger, Finger & Finger, Chief Counsel, Building & Realty Institute (BRI)



Your superintendent "mouths off" to your Managing Agent, or to a shareholder, or someone smells liquor on his breath, or lateness is becoming a severe problem, or monies are missing and building supplies are being used for the personal use of the employee. These are but a few of the many disciplinary situations that at one time or another will face every employer. What, if anything can you do about this?

### The Need For Paper

Disciplining an employee is one of the most difficult and

over that the true colors, on occasion, will begin to show. And the longer a person is an employee and the longer you live with the problem without taking remediation steps the harder it is to correct the condition or terminate the employee.

### A Progressive Approach

The basic labor relations theory, over the years, is one of "progressive discipline." The thrust of that policy is to correct the problem and/or improve the performance. Presumably,

**"paper, paper, paper" is the key to the labor relations industry.**

perplexing problems facing any employer, particularly an apartment house owner, a cooperative or condominium, or a developer or supplier. And what makes the situation particularly difficult is that the more you ignore a situation the more the situation becomes embedded and harder to deal with.

Our office, over the years as the chief counsel for the Building & Realty Institute (BRI), has handled literally thousands of grievances, arbitrations and the like, and if we have one message that must be assiduously followed, it is: "paper, paper, paper." While "location, location, location" is the key to the real estate industry, "paper, paper, paper" is the key to the labor relations industry.

### Examples

While there are certain examples of situations that lead to immediate discharge, such as being drunk on duty, assaulting someone or theft, the usual situation is not that easy. You might have an employee who is just plain lazy, or who is somewhat insubordinate, or who comes in late with some consistency, or leaves work to "have a smoke." Discipline may be called for but the nature and extent is not always clear.

With some union contracts, such as with Local 32BJ, they provide for a probationary period when the employee begins his employment. But as with an appliance that you buy, or an automobile, we all know that the appliance or car only breaks down the day after the warranty period is over. Similarly, with an employee, everything will be roses and cream during the probationary period. It is only when that period is

if an employee is advised of the problems with his employment, then that employee will take steps to remediate his failings and improve his job performance. Thus, putting aside the situations where an immediate discharge is called for such as set forth above, the employer is put on notice that it has to follow the proper procedure.

### Warnings

First, oral warnings. The employee should be counseled as to the problems with the job performance and a written memo of the oral warning should be noted in the employee's file. The better procedure is to copy the employee's union with the notation of the oral warning. This is the least severe of all disciplinary steps, but an oral warning is an absolutely necessary first step. Further oral warnings may be called for if the problem is not severe, but after a lack of improvement, a formal written warning is called for. With this warning, the employee is given a piece of paper which states the problem and the suggested remediation or corrective steps necessary. The employee is asked to sign for the letter acknowledging receipt (not necessarily an admission of the wrongdoing) and if the employee does not acknowledge receipt, it is still given to the employee and the employer and a third person sign that it was given to the employee and the employee refused to acknowledge receipt. A copy is also sent to the union (which should always be by certified mail, return receipt requested, or some similar method where receipt is acknowledged).

### Suspension

Thereafter, if there is still no improvement, the next step is a

suspension. That suspension can be for any reasonable period of time and is a severe disciplinary step that will usually lead to a grievance and/or possible arbitration. However, if we have the "paper, paper, paper" trail, that will assist in justifying the suspension and we have usually been successful in upholding the discipline with this "paper" support.

### The Final Step

Finally, if the work is still not improved, or the problem rectified or remediated, then the final step is discharge. Once again, the possibility of being successful in the discharge process is greatly enhanced if the employer has a significant paper trail showing not only the

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## Development Study:

# Locals Celebrate the 'Topping Off' of The Residences at The Ritz-Carlton, Westchester & The Ritz-Carlton, Westchester

*44-Story Residential Tower is County's Tallest Building; The Ritz-Carlton, Westchester is County's First Luxury Hotel*

WHITE PLAINS – Ushering in a new era in luxury living in Westchester, The Ritz-Carlton Hotel Company, L.L.C. and Louis R. Cappelli recently celebrated the "topping off" of The Residences at The Ritz-Carlton, Westchester, a new 44-story residential tower featuring 213 distinctive residences, and The Ritz-Carlton, Westchester, the county's first luxury hotel.

Gov. George Pataki, Simon F. Cooper, president and chief operating officer of The Ritz-Carlton Hotel Company, L.L.C., Louis R. Cappelli, president and chief executive officer of Cappelli Enterprises and a host of VIP dignitaries were on hand for the October 3 event to celebrate the new landmark building, which is Westchester's tallest, project spokesmen said.

Guests and VIPs were treated with a trip to the top floor of the concrete structure that affords breathtaking views of the Manhattan Skyline, Long Island Sound, the Hudson River Valley and beyond. The topping off ceremony, which marks the completion of the building's highest floor, was celebrated with cannons showering the crowd with confetti, colorful balloons floating in the air, and members of the cast of the new Twyla Tharp/Bob Dylan Broadway Musical "The Times They Are A-Changin'" performing songs from the show.

The event also featured a ribbon-cutting ceremony to mark the official opening of The Residences at The Ritz-Carlton, Westchester Sales Presentation Center at 227 Main Street.

Speaking at the event held across from the construction site in downtown White Plains, Cappelli said: "Today we are elevating luxury living to new heights in Westchester County and the surrounding region. We are extremely pleased to have The Ritz-Carlton Hotel Company, a name synonymous with luxury living, five-star accommodations and unparalleled personal service."

He added: "The Residences at The Ritz-Carlton, Westchester offers a once-in-a-lifetime opportunity for homebuyers who are seeking an ultra-luxury lifestyle never before available in this market. The Ritz-Carlton, Westchester will set a new standard for luxury hotels in the area."

Cooper noted that The Ritz-Carlton Hotel Company was "delighted to be bringing the unique and distinctive style of Ritz-Carlton living to the Westchester County area."

"White Plains and Westchester County are a perfect fit for our brand. This world-class building, with its close proximity to New York City, marks yet

another important step forward for our company's residential portfolio," he said.

White Plains Mayor Joseph Delfino said he spoke for the entire City of White Plains in welcoming Ritz-Carlton.

"The transformation of our downtown has been nothing short of astounding. The Residences at The Ritz-Carlton, Westchester and The Ritz-Carlton, Westchester form a centerpiece in the ongoing renaissance of our downtown and places White Plains among the leading small cities in our nation," he said.

### Details

The Residences at The Ritz-Carlton, Westchester includes 181 condominium residences and 32 Atelier suites. The residences range in size from 1,200 to 5,200 square feet and offer spacious floor plans from 1-bedroom, 1½ baths to 3-bedroom, 3½ baths. Also planned are Penthouse and Sky Club levels. The Atelier suites are fully furnished residences with built-in features that are ideal for corporate executives. Prices of residences start at \$700,000 and go up to \$3.5 million. The opening date is anticipated in early 2008, project officials said.

Owners at The Residences at The Ritz-Carlton, Westchester will have exclusive access to a wide array of The Ritz-Carlton's legendary five-star amenities and services, including maid service, room service, concierge and a luxury spa, to

name a few. Owners will also benefit from The Ritz-Carlton privileges around the world, project officials said.

The Residences at The Ritz-Carlton, Westchester is the first of two towers being built as part of the \$400 million, 940,000-square-foot Renaissance Square complex being developed by Cappelli. The towers rise from a 10-level hotel podium comprised of the 123-room The Ritz-Carlton, Westchester.

### Hotel Features

The Ritz-Carlton, Westchester will feature a 10,000-square-foot luxury spa and fitness center and 10,000 square feet of meeting and special event space. It will also include two fine dining restaurants—a two-story "wintergarden" restaurant fronting on Main Street and a rooftop restaurant at The Residences at The Ritz-Carlton, Westchester tower. At 400 feet in height, the rooftop restaurant will offer a spectacular dining experience unrivaled anywhere outside of Manhattan. The Ritz-Carlton, Westchester is one of only three suburban hotels in the company's present portfolio.

The residences are designed by the architectural firm Costas Kondylis and Partners of New York City, with hotel interiors by renowned designer Frank Nicholson.

The Ritz-Carlton Hotel Company, L.L.C. of Chevy Chase, MD., operates 61 hotels in the Americas, Europe, Asia, the

Middle East and Africa. More than 20 projects are under development around the globe with hotel openings planned for Moscow, Ireland, and two in Beijing over the next year. The Ritz-Carlton is the only service company to have twice earned the prestigious Malcolm Baldrige National Quality Award, which recognizes outstanding customer service, company officials said.

Cappelli Enterprises Inc. is a leading real estate developer and general contractor in the Northeast. Headquartered in Valhalla, the company has built

more than 10 million square feet of mixed use, retail, waterfront, residential, office building, laboratory and parking facilities.

Cappelli Enterprises, company officials said, has been the driving force behind the dramatic revival of downtown White Plains with the highly successful 1 million-square-foot City Center complex including the sold-out Trump Tower, Westchester's first luxury high-rise condominium, and now Renaissance Square featuring The Ritz-Carlton, Westchester and The Residences at The Ritz-Carlton, Westchester.

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problems with the employment and work record, but the employers repeated and genuine efforts at counseling,

the subject of a future article. **Editor's Note: The authors are attorneys with Finger & Finger, A Professional Cor-**

**With virtually every discharge you can generally assume that a discharge will lead to an arbitration**

remediation and warnings.

With virtually every discharge you can generally assume that a discharge will lead to an arbitration, which is a separate procedure and will be

poration. The firm is based in White Plains. **Kenneth J. Finger is chief counsel to the Building & Realty Institute of Westchester and the Mid-Hudson Region (BRI).**

## Continuing to Review the Busy Activity Affecting Building and Realty Industry Members

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calling the BRI at (914) 273-0730.

Other examples of the fast pace around the BRI and our staff monitoring issues affecting the building and realty industry in this issue are:

- A report from the Business Council of New York stressing that legislators performed worse in 2006 when compared to last year.
- A story on the groundbreaking for Hudson Park North, a new \$110 million luxury rental waterfront community in Yonkers.
- A feature on Struever Fidelco Cappelli (SFC) recently unveiling details of the \$1.5 billion first phase of its redevelopment plan for key areas of downtown Yonkers, the Hudson River Waterfront and the Nepperhan Valley corridor. Project officials termed the announcement as the first step of the most extensive re-

vitalization effort ever undertaken in Westchester County and one of the largest in the New York metropolitan area.

- A report on what project officials termed as "the ushering in of a new era in luxury living in Westchester" - The Ritz-Carlton Hotel Company, LLC and Louis R. Cappelli recently celebrating the "topping off" of The Residences at The Ritz-Carlton, Westchester, a new 44-story residential tower featuring 213 distinctive residences, and The Ritz-Carlton, Westchester, the county's first luxury hotel. The projects are in White Plains.
- A page one story on the BRI's announcement of its upcoming meetings and seminars in November and December. Full details are contained in the story.

As you can see, there has been no break in the action around the BRI. Enjoy the issue!

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To list or find a treasure call (914) 813-5415 or log on to westchestergov.com, go to "Find It A to Z" and click on "Treasure Hunt".

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