

The AOAC and the Realty Sector Continue Their Strategies for the "2018 Rent Guidelines Season," continued from p. 1

A Definite Need for Participation

"Year after year, we stress the fact that it is so very important that Owners and Managers testify on the continuing increases in costs that the local realty sector is facing," said Jerry Houlihan, AOAC chair. "We are urging our members to attend the Public Hearings and Deliberations and to offer their individual struggles with their day-to-day costs to the guidelines board."

Houlihan added: "We cannot emphasize it enough - we need the AOAC membership to help us. In turn, the participation of our members will help us help them. The lack of an impressive turnout from the membership of the AOAC will, without question, hurt the realty industry in this process."

Albert Annunziata, executive director of the AOAC, said that an impressive representation of the AOAC membership at the Public Hearings and Deliberations is "vitally important."

"Without question, a solid response and turnout from the AOAC and members of the realty industry makes a good impression upon the guidelines board," he said. "It is as simple as this - if we do not receive a good turnout from the AOAC membership and our industry,

Going Home Again Can Most Definitely Be Done!, Continued from p. 2

❖ A report in our new "IMPACTIVITY" photo section illustrating that members of the BRI and its staff participated in more than 20 meetings and seminars in the first four months of 2018 as part of what association officials termed as the organization's "consistent and persistent efforts" to monitor all issues and developments affecting the building, realty and construction industry.

❖ A review in our new "Radioactivity" section on the continued success of "Building Knowledge with the BRI," our organization's weekly radio show on WVOX 1460 AM and wvox.com. The program, which airs every Friday from 11:30 a.m. to 12 noon, is continuing to receive a series of positive reviews.

❖ A study in Counsels' Corner on the importance for owners and managers of formal Lease Agreements with tenants. The report was written by Finger and Finger, A Professional Corporation. The firm serves as Chief Counsel to the BRI and its affiliate organizations.

❖ A review in Insurance Insights on key exclusions in Commercial Property Insurance Policies. The article is the second of a two-part series on Insurance Policy Exclusions. The study was prepared by Levitt-Fuirst Associates. The firm is the insurance manager for the BRI and all of its component associations.

❖ A special commentary in Co-op and Condo Corner from Diana Virrill, CCAC chair. Virrill salutes the efforts of the BRI's staff in the article.

❖ An interesting Question-and-Answer report with BRI member Stacey Tompkins, vice president of Tompkins Excavating of Shrub Oak. Tompkins is a member of the Board of Directors of The Commercial Builders Advisory Council (CBAC) of the BRI. The article was written by Maggie Collins, the BRI's director of membership.

❖ An analysis in Tech Talk on the importance of on-line reputations to businesses. The article was written by Andrea Wagner, president of Wagner Web Designs, Inc.

Those reports, combined with our other features, result in a series of solid reading opportunities for BRI members, as well as for members of the building, realty and construction industry.

The writing and editing of those articles - in addition to my Apr. 25 visit to the groundbreaking ceremony at the former Standard Star offices - most definitely reminds me of my roots as a reporter/columnist. And, how fortunate I am to be the Editor of this publication. Sorry Thomas Wolfe, but you can go home again.

Enjoy the issue!

the results will be highly negative to Owners and Managers, as well as to the overall realty sector."

Annunziata said that AOAC members - as well as members of its affiliate organization, The Building and Realty Institute (BRI) - will receive updates on the efforts of the AOAC as it continues to prepare for the Public Hearings and Deliberations.

The AOAC represents more than 300 Owners and Managers of more than 17,000 rental units, association officials said. The BRI has more than 1,800 members in 14 counties of New York State. Those members are involved in virtually every sector of the building, realty and construction industry, association officials said.

Co-Op and Condo Corner, continued from p.2

official radio show. The program airs every Friday from 11:30 a.m. to 12 noon on WVOX 1460 AM and wvox.com. The show, which features a different BRI member guest each week, has been a huge hit since its debut last June.

Collins came to the BRI two years ago with an impressive background in many fields. She has injected an infusion of energy and vitality to the BRI that has helped to result in increased membership and membership services for our associations.

Together, Annunziata, Hanley, Collins, Gill and Telesco are most definitely contributing to the continued success of the BRI. The organization is representing the building, realty and construction industry in a most impressive manner.

The following assessment from Kathleen Jensen-Graham, a member of the Board of Directors of the CCAC, perfectly describes my message in this column. She recently wrote that "the entire BRI/CCAC staff is the most knowledgeable, efficient and affable group of people, and I am fortunate to be associated with all of them."

I could, without a doubt, go on. The BRI and CCAC has recently received a consistent series of positive messages about the efforts of our staff. But I think this column summarizes what I am trying to say - the members of our organization are very lucky to have such a talented and dedicated staff representing them.

And, I am happy to consistently emphasize that assessment, because our staff deserves praise. And more praise!

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We will take it from there!

Thank You!

Counsels' Corner

The Importance of a Formal Lease: Jury Trial Waivers Contained in a Lease Are Valid

By Kenneth J. Finger, Esq., Carl L. Finger, Esq. and Daniel S. Finger, Esq., Finger and Finger, A Professional Corporation, Chief Counsel, Builders Institute (BI)/Building and Realty Institute (BRI)

WHITE PLAINS

It is our experience that many smaller landlords do not appreciate the significance of a formal Lease Agreement with a tenant. Whether using one of the form leases or a handwritten "agreement," or even just a handshake, if a problem with the tenant arises, the landlord will be happy having spent the few extra dollars and entered into a formal lease, using one of the complete forms.

One of the most significant clauses of a well-drafted lease (that is, in the most standard forms) is the waiver of a jury trial in the event of a dispute, and waiver of counterclaims in the event of a non-payment and holdover proceeding. The alternative leaves the landlord subject to extensive delays with a jury (in addition to the inherent prejudice against landlords), as well as the possibility of having to defend specious counterclaims.

It is a well-settled principle of New York law that parties may waive their right to trial by jury and that such contractual waivers will be upheld as valid by the courts. The Civil Practice Law and Rules provides the areas of actions that may be tried by jury "unless a jury trial is waived..." CPLR § 4101.

The CPLR also sets forth circumstances under which a waiver may occur in Section 4102(c) but does not specifically mention "contractual waivers." As explained by Professor Siegel, however, "A Jury Waiver can result in other ways than those recited by CPLR 4102(c). It can be waived in a contract between the parties, and as long as no deceit is shown affecting the waiver of jury clause, a mere unawareness of the clause's existence will not necessarily undo the waiver." SIEGEL, N.Y. prac., § 378 (3D. ed.).

Enforcement

One of the most significant clauses of a well-drafted lease (that is, in the most standard forms) is the waiver of a jury trial in the event of a dispute, and waiver of counterclaims in the event of a non-payment and holdover proceeding.

As noted by Professor Siegel, public policy and judicial economy both weigh heavily in favor of enforcing such clauses. Id. The court in *David v. Manufacturers Hanover Tr. Co.*, 298 N.Y.S.2d 847, 848 (1969) stated, reversing the lower court's denial of the defendant bank's request to enforce a contractual jury trial waiver arising out of the plaintiff-depositor's signature card, "[i]n our opinion, the agreement [waiving jury trial rights] is neither unconscionable nor offensive to public policy which imposes no limitation or restriction on the freedom of contract between a bank and its depositors." See also *Gunn v. Palmieri*, 589 N.Y.S.2d

577 (2d Dep't 1992), where "[t]he plaintiffs executed contracts of sale for the purchase of their condominium which provided, 'I waive my right to trial by jury in any action, proceeding, or counterclaim in any way connected with this agreement or the plan.'"

The court held "we reject the plaintiffs' contentions that this provision was so ambiguous as to be unenforceable, and that it did not apply to all the defendants."

It is well settled that parties may waive statutory and constitutional rights, including the right to a trial by jury. *Narcotic Addiction Control Comm'n v. Couloufacos*, 29 A.D.2d 199, 201, 287 N.Y.S.2d 238, 241 (2d Dep't 1968) (positing that "a jury may always be waived by the party entitled to the jury trial").

Consistency

Where such a waiver is contained in a written agreement executed by the parties, the courts have consistently upheld such contractual waivers., *Barclays Bank of New York, N.A. v. Heady Electric Co.*, citation omitted (enforcing broad jury waivers contained in six secured notes and two guarantees, noting that a jury waiver may be found "in an instrument other than that representing the agreement upon which the action is founded"); *Sherry Assocs. v. Sherry-Netherland, Inc.* ("Plaintiffs waived their right to a jury trial with respect to claims arising under the 1996 proprietary lease, pursuant to the express waiver clause of that agreement, which this Court has already determined is valid and enforceable according to its terms.")

In *Lera Realty Co. v. Rich*, the summary proceeding was based upon the written lease and the Court held that the "...landlord had the right to invoke the jury-waiver clause contained therein. It could not be deprived of that right by the tenant's interposition of a plea alleging that he was in possession under a new lease." *Berdam Holding Corporation v. Lieberman*.

It is interesting to note that even where the lease expired, the courts have expressly held that a lease's jury waiver provision continues to bar a jury trial even after the lease's expiration. See *Barrow v. Bloomfield*, ("there is no question" that the jury waiver provision in the parties' expired lease continued beyond the lease's expiration); *AroDev. Corp. v. Goodie Brand Packing Corp.*, (provisions of the parties' expired lease, "including the jury waiver, were properly read as continued into the holdover tenancy").

The leading case on point is *Teitler v. Tetenbaum*, in which the Court held that a jury waiver clause in a residential lease was binding on the tenant, even though the lease had expired. The Court held that "there is no legal or equitable justification to delete the terms and conditions previously entered into" merely because the parties' lease had expired.

The cases since *Teitler* have followed this rationale. For example, *Alden Raleigh Estates v. King*, the Court held that the expired lease for the tenant's rent-controlled apartment "projected into the ensuing statutory month-to-month tenancy," and the tenant was therefore "bound by the jury waiver clause in the lease."

For the same reasons as set forth above, a no counterclaims clause will similarly be enforced.

Editor's Note: The authors are with Finger and Finger, A Professional Corporation. The firm, based in White Plains, is Chief Counsel to The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region.



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