

Absorption of Office & Retail Space Softens In Third Quarter In Westchester, Multifamily/Industrial/Flex Sectors Stay Strong

RYE BROOK

Absorption of office and retail space has softened while the demand for multifamily development and industrial/flex space remains strong, according to the Third Quarter Westchester Office Market Report recently released by Houlihan Lawrence Commercial.

According to the report, commercial real estate transaction volume in Westchester has moderated significantly but the median price per transaction has remained relatively stable.

Here are the report's key trends:

The Westchester Multifamily Sector Is Strong

The unabated strength of the multifamily sector in Westchester continues to please developers and surprise consumers. Multifamily apartments boast the highest occupancy rates, the strongest absorption, and highest lease rates in three years.

Fundamentals have flourished during the last 12 quarters coinciding with a period where deliveries of new apartments amounted to 5 percent of existing inventory, which is quite high by historical standards. The strength of fundamentals in the presence of significant new supply speaks loudly about the preference that households are demonstrating for the affordability and convenience that multifamily rental apartments offer. A robust pipeline of new development continues to require healthy household formation and migration into Westchester to sustain the continued health of this segment of the real estate market, the report said.

Westchester Retail & Office Space Absorption Continues to Soften

After a hopeful beginning of the year, the take-up of retail space in Westchester has weakened over the last two quarters, according to the study. As a result, vacancy has increased although lease rates do not appear affected for the time being. New businesses have become more hesitant to lease other than the minimum space required, and existing businesses appear to be delaying expansions in the face of troubling political headlines, trade disputes and falling consumer confidence.

The study said that the rehabilitation of tired inventory has also become increasingly more expensive, creating yet another hurdle for assimilating this inventory into productive use. Leasing activity has remained relatively healthy, but retail store closures and failures have more than offset new leases.

Westchester office demand weakened during the third quarter as there were a smaller number of leasing transactions. Limited tenant departures helped to maintain a net positive supply-demand balance. The constructive fundamental balance enhanced landlord pricing power during the quarter. Most office departures took place in sublet space suggesting tenants are seeking permanent locations. Smaller offices in non-core locations and/or distant from walkable city centers continue to be harder to lease. Office tenants increasingly look for location where the employer's brand is enhanced by the physical appearance, convenience and amenities offered by their place of business, the report said.

Industrial and Flex Space Demand Continues

Industrial and flex properties, like multifamily apartments, continue to be in very high demand. Last quarter, data indicated a large block of industrial space became available for lease. While it appears that this availability remains in the system and is impacting statistics, on the ground, it is very difficult to find quality useable industrial space, according to the study.

Industrial space rent stability underscores the persistent strength of the sector. Looking ahead, the trends that have driven continued robust demand for industrial space, such as digital purchases and fulfillment, are uninterrupted. Demand for industrial properties, close to densely populated cities, is even stronger. Urban dwellers are notoriously short of space and time so just-in-time deliveries of anything from clothing to pantry items are strongly preferred by these consumers, further fueling demand for warehouses and similar space, the report said.

Houlihan Lawrence is the leading real estate brokerage serving New York City's northern suburbs, company spokesmen said. Founded in Bronxville in 1888, the family-run company is deeply committed to technological innovation and the finest client service, spokesmen added. The firm has 30 offices and 1,300-plus agents serving Westchester, Putnam, Dutchess, Columbia, Ulster and Orange counties in New York and Fairfield County in Connecticut. The company ranks in the top 20 of all brokerages nationally and achieved a total sales volume of more than \$6.5 billion in 2017.

INVITATION FOR BID FOR CALCAGNO HOMES, YONKERS

The Municipal Housing Authority for the City of Yonkers (the "Authority" or "MHACY"), hereby solicits proposals from qualified firms for vacant and occupied unit repair to comply with Housing Quality Standards (HQS) at its Ross F. Calcagno Homes Development at 10 Brook St. and 50 & 80 School St., Yonkers, New York, as specified in this Invitation for Bid ("IFB"). This IFB package contains submission requirements and terms and conditions and other pertinent information for submitting a proper and responsive proposal. This IFB is the only information provided to prospective bidders (hereinafter "Responders") and is available online starting October 21, 2019 at

www.mhacy.org.



Counsel's Corner

The HSTPA Stings Landlords in Recent Court Cases

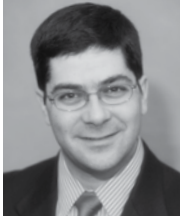
By Kenneth J. Finger, Esq., Carl L. Finger, Esq. and Daniel S. Finger, Esq., Finger and Finger, A Professional Corporation, Chief Counsel, Builders Institute (BI)/Building and Realty Institute (BRI)



Ken Finger



Carl Finger



Dan Finger

WHITE PLAINS

Courts in interpreting the 2019 Housing Stability and Tenant Protection Act (HSTPA) have issued decisions to the detriment of the Landlord in almost every case. While founded in the statute the cases nonetheless bruise the landlords in virtually every instance.

A number of cases address the immediate applicability of 2019 HSTPA as to pending cases. Landlords thus find themselves having to adjust their expectations not only as to the future, but also as to pending cases after the case appeared to have been finally and fully resolved.

The Landlord in Dani Lake LLC v. Torres, Slip Copy (2019) Slip Copy, 64 Misc.3d 1231(A), 2019 WL 4049138 (Table), 2019 N.Y. Slip Op. 51383(U) commenced an action in 2018. In August 2019 the Court rendered a decision, relying upon the 2019 HSTPA, indicating the Court's authority to review records six years prior to the inception of the action as opposed to the four-year limitation in effect prior to the 2019 HSTPA. Fortunately for the Landlord in that case, the rent charged was always lower than the legally permitted rent and thus no rent overcharge occurred.

The Court held that all available history reasonably and necessary can be reviewed in order to determine the legal regulated rent for purposes of deciding a rent overcharge complaint. 3440 Broadway BCR LLC v. Channon Greenfield, Slip Copy (2019), Slip Copy, 64 Misc.3d 1217(A), 2019 WL 3367770 (Table), 2019 N.Y. Slip Op. 51194(U). The court granted the Tenant's motion for discovery finding that the "new regulations permit the court to consider 'any rent registration or other records filed with the state Division of Housing and Community Renewal (DHCR), or any other state, municipal or federal agency, regardless of the date to which the information on such registration refers.' " The Court noted that "The legislation specifically provides that such amendment to the law 'shall take effect immediately and shall apply to any claims pending or filed on or after such date.' "

Further Decisions

In 699 Venture Corp. v. Zuniga, 64 Misc.3d 847 (2019), 64 Misc.3d 847, 105 N.Y.S.3d 806, 2019 N.Y. Slip Op. 29200, the court, relying on similar provisions extended the tenant's right to discovery relative to the legal regulated rent back to 1996. Needless to say the records from over 23 years ago may not be in pristine condition or the landlord's possession, nevertheless, the Court will consider them.

The Court in Ollie Associates LLC v. Santos, Slip Copy (2019) Slip Copy, 64 Misc.3d 1208(A), 2019 WL 2850569 (Table), 2019 N.Y. Slip Op. 51085(U) agreed with the Landlord that an open-ended discovery back to 1997 was in fact overbroad. The Court limited the inquiry in that case to the records available in 2011. It seems to be a small victory but in the present environment landlords will need to look for success wherever it may be found.

The immediately effective nature of the many provisions has disrupted numerous proceedings, to the detriment of landlords. In one particularly egregious case a landlord had sought to recover possession of apartments for individual use. The Court held that "the case at hand had commenced in 2018."

"The Golub Notice states plainly that petitioner's purpose is to recover all apartments in the building for purposes of its conversion into a private home. Amendment of the Rent Stabilization Law now precludes recovery of possession for the purposes set forth in the Golub Notice. The petition therefore fails to state a cause of action. Accordingly, respondent's motion is granted, and this proceeding is dismissed. This is the decision and order of the court." Fried v. Lopez, 64 Misc.3d 1025 (2019), 64 Misc.3d 1025, 106 N.Y.S.3d 591, 2019 N.Y. Slip Op. 29237.

Additional Negatives For Landlords

More disconcerting, perhaps, are cases that have been resolved but now, based on the new law revived to the substantial prejudice and detriment of the Landlord.

For instance, in September 2018 a Landlord's motion to dismiss a rent overcharge complaint was granted with the Court directing the Tenant to DHCR as the more appropriate forum for resolution of such a complaint. The Court, noting the 2019 HSTPA, "[p]ursuant to Part F, § 1, '[t]he courts and [DHCR] shall have concurrent jurisdiction subject to the tenant's choice of forum," granted the Tenant renewal of the earlier motion, vacated the judgment against the tenant dismissing the case, and restored the case to the calendar.

In other words, a case that had been fully and finally litigated to judgment was completely reversed and permitted to proceed much to the detriment of the landlord. Query, however, whether the landlord would be worse off with a determination by a court than DHCR.

Similarly, in the case of SF 878 E. 176TH LLC. V. GRULLON, 65 MISC.3D 171 (2019), 65 MISC.3D 171, 106 N.Y.S.3D 561, 2019 N.Y. SLIP OP. 29201, the Court vacated a stipulation of settlement entered into by the parties wherein the tenant had been represented by an attorney at various points, though not at the initial agreement. The Court stated that at the time of the stipulation, absent fraud, the statute of limitations for a rent overcharge complaint was four years. However, the court noted that given the recent change in the law under the 2019 HSTPA the Court could consider all available rent history to evaluate a rent overcharge complaint, i.e. more than four years prior. The court went on to vacate the judgment and warrant that had entered upon the default of the tenant, vacate the prior stipulations of settlement in the matter deem the new answer served and filed, and set the matter down for trial.

SF 878 E. 176TH LLC. V. GRULLON, 65 MISC.3D 171 (2019), 65 MISC.3D 171, 106 N.Y.S.3D 561, 2019 N.Y. SLIP OP. 29201 is perhaps the most dangerous and disturbing of the cases thus far interpreting the 2019 HSTPA because it calls into question every stipulation and in fact every judgment entered previously based on the four-year statute of limitations. By the apparent terms of this decision, any case where the four-year statute of limitations had been imposed, due to absence of a permitted exception, is now subject to being vacated and overturned.

Editor's Note: The authors of this report are attorneys with Finger and Finger, A Professional Corporation. Finger and Finger, 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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