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Attorney, Mediator, Arbitrator, Expert Witness

WORK HISTORY

Founding Partner, Goldsmith & Fass, 1998-present; Partner, Sonnenschein Sherman & Deutsch, 2004-08; Partner, Friedman, Krauss & Zlotolow, 1993-04; Partner/Associate, Phillips, Nizer, Benjamin, Krim & Ballon, 1979-93; Special Deputy New York State Attorney General, Department of Securities and Public Financing, 1973-79; Assistant District Attorney, Office of the District Attorney, Queens County, 1972-73.

EXPERIENCE AS AN ATTORNEY

Forty years experience as a lawyer. Primary areas of experience include:

Real Estate

- Cooperatives and Condominiums, 40 years experience as a mediator, regulator and advocate.
- Complex commercial, industrial, residential, office leasing work. Negotiated an eight-figure lease with Chanel in midtown Manhattan for commercial space in a cooperative building owned by our client. Simultaneously litigated with the cooperative regarding our client's right to lease the premises.
- Contracts for sales and acquisition of real property.
- Representation of developers and owners in complex construction, promotion, and sale transactions, one of which was acquisition of six major Manhattan properties pursuant to a tax free exchange; we then converted the buildings to cooperatives.

Litigation

- In private practice and as a Special Deputy New York Attorney General: claims of purchasers, including fraud, faulty construction, breach of warranty, noncompliance with cooperative and condominium prospectuses, the New York Securities Law and Regulations of the New York Attorney General.
- In complex business disputes, including partnership and corporate breakups. Recently litigated dispute between two doctors, partners in a medical business which generated \$15 million per year. Issues were disputed terms of the partnership agreement, rights, powers, and obligations of interlocking, entities and valuation of partnership assets.
- Successfully represented a homeowners association with 200 members against the City of New York; an unprecedented case involving demands by the City that each member construct and pay for sewer lines from their homes, connecting to New York City sewer lines.
- Represent purchasers and developers in new construction claims, including faulty construction, non-compliance with law, contract disputes.

Commercial

- Represent real estate brokers and purchasers in lease and contract negotiations, contract rights and enforcement, requirements of law and regulations, including those of Department of State.
- General corporate representation, advice regarding corporate documentation, duties of Boards of Directors, rights of stockholders, issues regarding corporate powers and limitations, law regarding business transactions.
- Corporate/Commercial work with cooperatives, condominiums and homeowner associations; advice to Boards on actions and procedures, issues with shareholders, contractors, developers, promoters and sponsors. Review of bids, proposals and plans for construction and repair work on buildings. Communications with contractors and other building professionals, physical inspection of the work.

Construction

- Represent developers and occupants regarding alleged construction defects, repair and replacement of building components and systems, responses to complaints of building inspections, communications with architects, engineers and contractors, procedures, timing and expense of work.
- Appearances before New York City agencies, including the Department of Buildings, Environmental Control Board, Landmarks Preservation, regarding alleged violations of law and regulations.

Securities and Guarantors

- Represent individuals and corporate guarantors as sureties under commercial leases when tenant defaults.
- Representation in disputes regarding guarantees of performance in real estate agreements.
- Represent sureties in commercial transactions; represented a doctor who was a guarantor of payment for medical equipment with value in seven figures.
- Represented an individual guarantor of the obligations of a corporate tenant under a lease with a major developer; the tenant was in the process of declaring bankruptcy.

EXPERIENCE IN ALTERNATIVE DISPUTE RESOLUTION

More than 25 years and more than 300 matters, many involving complex issues and multiple parties, including work with AAA, NASD, and FINRA.

REPRESENTATIVE ARBITRATION MATTERS

- Arbitration regarding multiple construction defects of residential condominium loft gut rehabilitation, fraud, non-compliance with partnership agreements, and prospectus.
- Arbitration of rights of owner and related tenant in shopping center.
- Arbitration regarding rights of purchasers in real estate syndications involving fraud, construction defects, and securities violations.
- Valuation of premises at 280 Park Avenue pursuant to a large and complex long lease with an option to buy, between two of the largest real estate owners in New York.
- Interest arbitration to determine damages to claimant resulting from a breach of covenant in respondent's deed.
- Arbitration involving fraud on purchasers of life insurance pursuant to a class action settlement.
- Arbitration regarding damages resulting from a property owner's alleged breach of lease, refusal to grant access to lessee.

BACKGROUND AS A MEDIATOR

Mediation philosophy: The mediator acts as a catalyst in guiding the parties toward settlement which, when reached, belongs solely to the parties. I use a combination of evaluative and facilitative approaches. After many years of experience, I quickly recognize how much a claim is worth. I may suggest one or a variety of solutions to one or more parties, as needed, to achieve an efficient resolution.

REPRESENTATIVE MEDIATION MATTERS

- Real Estate - Cooperative and condominium disputes; disputes regarding ownership, financing, easements, landlord-tenant obligations under commercial/residential leases; rights and obligations of promoters and owners pursuant to multi-party agreements and disclosure statements required by law.
- Multiparty disputes regarding partnership agreements, claims of ownership interests by partners, performance guarantees, rights and obligations of lender.
- Disputes involving rights and obligations of promoters, purchasers, tenants in cooperatives, condominiums and property owners associations, including detailed and complex allegations of construction defects and fraud, generally involving dollar amounts in seven figures.
- Disputes regarding rights of sellers to retain down payments, often relating to complex contract disputes, generally involving six or seven figure dollar amounts.
- Construction - Mediation of complex construction disputes involving multi unit cooperative, condominium, and property owners associations, new construction and existing structures.
- Commercial - Disputes involving contracts for purchase and sale of goods, services. Rights and duties of general and limited partners under complex partnership agreements and related documents.

- Federal Securities - Disputes, sometimes multi-party, involving investors, brokerage houses and brokers regarding claims of fraud, negligence, misconduct and mismanagement, allegedly causing investor losses.
- New York State Securities Disputes regarding fraud in purchase and sale of real estate securities under New York law such as cooperatives, condominiums, real estate syndications and time shares.
- Insurance - Multiple disputes involving alleged fraud in sale of life insurance pursuant to class action settlement.

Multi Party Mediation Experience

- Real Estate - Multiparty claims among parties regarding ownership of real property, with lenders as additional parties; cooperative and condominium disputes involving cooperative/condominium owners, boards and lenders.
- Securities - Alleged fraud in purchase and sale of securities including mismanagement and failure to supervise by the brokerage house and churning, misrepresentations, negligence and theft by the broker.
- Insurance - Fraudulent practices in sale of life insurance by major insurer pursuant to a voluminous class action settlement including complex provisions of law and regulation regarding insurers, brokers and insureds. Participants were attorneys for insurers and brokers, and the insured.

Mediation Experience as an Advocate or Party

- Construction - Disputes regarding alleged construction defects in residential and commercial buildings, including coops and condos, generally involving seven figure dollar amounts.
- Commercial - Disputes regarding valuation of partnership and partnership assets, pursuant to a complex partnership agreement and corporate dissolution pursuant to law.
- Real Estate - Dispute involving seven figures as to provisions of 60-page partnership agreement regarding rights of first refusal of partners to purchase, validity of purported contract to sell, disputes regarding commercial obligations of the parties under related agreements. This was a multi-party mediation involving the partners and the party designated as purchaser in the disputed contract of sale.
- Securities - Alleged fraudulent purchase and sale of securities by a broker without the knowledge or consent of the investor. Transfer of investor's funds into a shell corporation with no assets in which the broker had an interest.

Alternative Dispute Resolution Training

AAA Webinar, Arbitrator Boundaries: What are the Limits of Arbitrator Authority?, 2011; Commercial Division, Supreme Court, New York County, Advanced Commercial, Mediation Training, 2010; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2009; AAA Arbitration Fundamentals and Best Practices for New Arbitrators, 2009; AAA, Prudential Mass Claims ADR program, 1998; AAA Advanced Arbitrator Training, 1993; AAA Commercial/Construction Arbitrator Training, 1992; AAA Mediator Training, 1992; Mediation Training through New York City Bar Association and NASD (now FINRA).

EXPERIENCE AS AN EXPERT WITNESS

More than 20 years and more than 25 matters.

REPRESENTATIVE EXPERT WITNESS MATTERS

Coops and condos

- Testified for homeowners in a multimillion dollar law suit regarding real estate taxes on homes, where the pivotal issue was whether the development should be characterized as a cooperative or a property owners association.
- Served as an expert on the issue of legality of formation and operation of a cooperative.
- Served as an expert on the issue of where registration of an offering plan had been efficiently processed by defendant.
- Consulted as an expert regarding rights and powers of condominium owners and commercial tenant.
- Consulted as an expert regarding purchase rights of tenants in a building being converted to condominium ownership.
- Testified in multiple matters regarding condominium components as part of units or common elements.

Commercial Leases

- Testified for a commercial tenant on the issue of whether an option to renew under the lease had been effectively exercised.
- Consulted as an expert regarding lease provisions for successive multi-year renewals.

Contracts to Buy and Sell Real Estate

- Served as an expert in cases as to whether attorney had exercised due care as determined by custom and practice in the industry.

Real Estate Brokerage

- Consulted as an expert regarding broker's right to multimillion dollar commission in procuring a lease for commercial space.

PROFESSIONAL LICENSES

Admitted to the Bar, New York, 1971.

PROFESSIONAL ASSOCIATIONS

New York State Bar Association (Real Estate Section, Committee on Cooperatives, Condominiums and Property Owners Associations).

EDUCATION

Queens College of the City of New York (BA); New York University School of Law (JD; LLM).

PUBLICATIONS, SPEAKING ENGAGEMENTS, AND TEACHING

EXPERIENCE

Publications

Co-author, "Cooperatives, Condominiums and Homeowners Associations," REAL PROPERTY PRACTICE GUIDE, Matthew Bender; "Mediation and Arbitration of Cooperative and Condominium Disputes," NEW YORK LAW JOURNAL; author, for 25 years, McKinney's Practice Commentaries to THE CONDOMINIUM ACT; author, for 25 years, of Practice Commentaries to the NEW YORK STATE SECURITIES LAW (THE "MARTIN ACT"), including COOPERATIVES AND CONDOMINIUMS; author "Alternative Dispute Resolution as a Problem Solving Device," publication, Commercial Leasing Law and Strategy, September 2010; author, "Cooperative and Condominium Disputes," NEW YORK LAW JOURNAL.

Speaking Engagements

Chairman, "Cooperatives, Condominiums and Homeowners Associations – The Emerging Role of the Attorney General," New York Practising Institute Program; "Real Estate Aspects of Franchising," convention of gas station/convenience store franchisors and franchisees, Miami, FL; "Shopping Center Leasing - Problems and Pitfalls," convention of shopping center owners and tenants, Washington, DC; Adjunct Professor, "Arbitration and Mediation," "Real Estate Workouts," and "Cooperatives and Condominiums," Baruch University of the City University of New York; Speeches at the New York Bar Association on real estate topics; has spoken for 15 years at the Annual Convention of the New York Counsel of Cooperatives and Condominiums including cooperative and condominium boards, real estate brokers, managers, and title companies.

Teaching Experience

Baruch College of the City University of New York: courses included building management, responsibilities of board of directors, rights of owners, work with contractors, subs and lenders, dealing with construction lending and construction contract problems.