

THE REAL DEAL

Judge Disqualifies Manhattan House Law Firm Over Conflict

Ruling marks major blow in market-rate tenants' eviction trial

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By David Jones



Manhattan House and attorney Peter Axelrod

The developer of the Upper East Side's Manhattan House condominium suffered a major blow in the long-awaited eviction trial of 17 market-rate tenants yesterday when a housing court judge disqualified their legal counsel for failing to disclose that one of their lawyers previously represented one of the defendants against the condo.

Housing Court Judge Brenda Spears ruled that Axelrod, Fingerhut & Dennis could no longer represent Manhattan House, because Peter Axelrod, one of the law partners defending the developer, failed to disclose that he had previously represented defendant [REDACTED], in a 2007 case involving the replacement of her windows at the 200 East 66th Street tower, and had inside information that was relevant to the current case.

"That attorney had information that could be used against us," said attorney **Adam Leitman Bailey**, who along with Colin Kaufman, both of **Bailey's** eponymous firm, represents the 17 market-rate tenants in the case.

O'Connor Capital Partners, a Manhattan-based real estate fund formerly led by the late Jeremiah O'Connor, acquired the 200 East 66th Street building with former partner Richard Kalikow, in 2005 for \$623 million, which was one of the biggest prices ever for a single residential tower.

The ruling is said to be one of the first of its kind, as most law firms do a routine conflict check before a case goes to trial, and after five years of negotiations and legal filings, this case could not be resolved out of court and just went to trial earlier this week. The building has sold more than 150 units and has about 140 rent-stabilized tenants, leaving more than 200 unsold units. A number of apartments are being combined into larger units.

The judge, in her ruling, cited a previous case, *Kassis vs. Teachers Insurance & Annuity Association*, in

which a law firm for the defendants was disqualified because it hired an attorney who previously worked for the law firm representing the plaintiffs.

Lawyers contacted by *The Real Deal* said the disqualification of the Manhattan House lawyers was surprising, because law firms routinely do conflict checks before a trial of such magnitude gets before a judge.

The case has been one of the most closely watched in the city as O'Connor Capital, fought tooth and nail to evict the building's 17 remaining market-rate tenants from the building, a former rental tower with 583 units. The original case involved 35-market rate tenants, but the remaining tenants have either moved, died or are not part of the current group defending their right to remain in the building.

The developer argued that the tenants illegally remained beyond their lease and prevented the owners from being able to put their units on the open market as condos. But, tenants countered that they were members, and in some cases, officers of the Manhattan House Tenants Group, and claim they were illegally harassed by the developer because they had complained about asbestos, vermin, noise and other conditions in the building, and also raised questions about the building's financial condition.

"At the time I retained Mr. Axelrod, I had a lengthy discussion with him about the substance and details about my tenancy at Manhattan House, the problems associated with the takeover of the building by the new owners, the problems which I had with management and with the new owners and my goals in the litigation," █████ said in a June 15 affidavit, submitted to the judge. "I fully discussed with him the history of the new owners' harassment of me, other market-rate rental tenants and the Manhattan House Tenants Group."

At the time he represented █████, Axelrod had his own firm and Fingerhut was representing the Manhattan House developer. According to █████ affidavit, she got into a billing dispute with Axelrod, and he sued her for some unpaid fees and they settled for less than the full amount.

The market-rate tenants had originally argued that they were also protected from eviction by the Martin Act, a state act that protects tenants with current leases, but an appeals court ruled that tenants are not protected once the leases expire.

The law firm is said to be appealing the disqualification.

Officials at the law firm did not return repeated calls seeking comment and Manhattan House officials were not immediately available for comment.