

BORAH GOLDSTEIN ALTSCHULER NAHINS & GOIDEL, P.C.

ATTORNEYS AT LAW

Firm Newsletter

Fall 2015 - Volume 2

Meet our Newest Attorney



Janire Lamiquiz joined the firm as an Associate in the firm's Transactional group and is also working to build the firm's Business Immigration law practice. Her article ["How changes to the EB-5 visa program will impact real estate developments"](#) was recently published in Real Estate Weekly.

Case in the Spotlight

Yellowstone Injunction Denied

Yellowstone injunctions are routinely sought by tenants to avoid forfeiture of their leasehold interest, prior to a determination of the merits of a legal proceeding to evict them. The Supreme Court, Queens County recently explained in [NY Great Stone Inc. v. Two Fulton Square LLC](#), handled by Partner Joseph I. Farca and Senior Partner David R. Brody, a failure to maintain insurance is not a curable default because a prospective insurance policy does not protect a landlord against unknown claims that might arise during the period in which no coverage existed.

Other Recent Notable Cases

We are pleased to share Borah Goldstein's Fall 2015 newsletter with you.

The newsletter highlights recent cases that Borah Goldstein handled which we thought might be of general interest. The newsletter also showcases a number of the firm's partners and associates and their involvement in the legal, civic and charitable communities.

We are also proud to announce that our firm has recently been recognized by Real Deal Magazine as one of the ten largest real estate law firms in New York City.

We encourage you to contact any one of the firm's partners about the services we provide relevant to your business.

Sincerely,

Robert D. Goldstein
Managing Partner

Attorney Speaking Events & Presentations

Partner Harriet Polinsky participated on the panel "Women at the Top of Their Industry" at this month's **NYC Real Estate Expo**.



L: Partner Harriet Polinsky interviewed after panel. R: Darren Marks speaks to press while networking.

Non-Primary Residence Holdover

[Liberty Street Realty v. Jonathan Harrington, Matthew McKeany, "John Doe" and/or "Jane Doe"](#),

In a proceeding handled by Partner Gregory G. Vail, he moved the court for dismissal of respondent's defenses and for discovery. The court struck respondent's affirmative defenses as conclusory, devoid of any facts, and merely stating legal conclusions insufficient to inform the court and petitioner of the nature of his claims. Respondent sought to interpose an amended answer to cure these defects which the court rejected as failing to address the deficiencies of his original answer.

The court also granted petitioner discovery over respondent's objections, including an assertion that petitioner merely sought to harass him by demanding the production of documents relative to its claim of non-primary residence.

The court further denied respondent's cross-motion to assert retaliatory eviction finding that his DHCR complaint against petitioner for harassment post-dated the filing of petitioner's holdover.

Breach of Commercial Lease

[148th Street Associates, LLC v. Mohamad S. Ehel Mostapha](#),

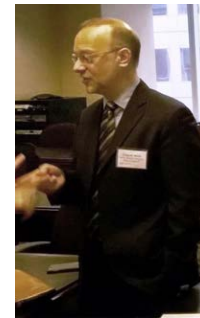
In this case, handled by Senior Partner David B. Rosenbaum and Associates Jonathon Schreier and Jason Frosch, Plaintiff commenced an action seeking damages based upon Defendant's breach of lease, including all rent and additional rent due equal to accelerated rent through the balance of the lease. Defendant's defense was for breach of lease and breach of the covenant of good faith and fair dealing. The court granted Plaintiff's motion for summary judgment ruling that the tenant took the premises "as is" and that defendant's inability to get a tobacco license was not the landlord's responsibility to remedy, nor is it grounds to rescind the entire lease.

Denial of Yellowstone

"The State of Airbnb", - Partners [Todd I. Nahins](#) and [Craig M. Notte](#) presented on legal developments at Berdon, LLP in October. The event was co-sponsored by Signature Bank and ClickPay.



Partners Todd I. Nahins and Craig M. Notte



Partner Craig M. Notte.

New York County Lawyers' Association (NYCLA), Jack Newton Lerner Landlord-Tenant Practice Institute.- Senior Partner Todd I. Nahins presented in October.



Partner Todd I. Nahins presents at NYCLA

"High Rent Deregulation Under the Rent Act of 2015" , Partner David Cabrera presented at the CHIP Rent Act of 2015 Seminar in September. See presentation slides [here](#).

The workshop "**Tenants & the City: Dealing with Housing Regulations and Conflicts in a Tenant-Friendly City**", was presented by a team of firm partners at the 7th Annual Multifamily Summit in September.



Senior Partner Stephen C. Shulman was moderator



Partner David B. Cabrera addressed DHCR & regulatory issues



Partner Jeffrey H. Seiden presented on Airbnb

Injunction

[Tap Tap, LLC v. 558 7th Avenue Corp.](#), The court denied a tenant's application for a Yellowstone Injunction, ruling that the landlord's letter to the tenant giving them permission to pay fines to remove violations at ECB did not invalidate the notice to terminate the tenancy. The notice to terminate was based upon the tenant's failure to operate the premises in violation of the lease and the certificate of occupancy, and the Yellowstone was denied because the tenant was unable to demonstrate the ability to cure the default. Senior Partner David B. Rosenbaum handled the case.

Guaranty of Lease

[Sixth Ave West Associates v. Manhattan Wholesalers.](#) This case, handled by Senior Partner David B. Rosenbaum, involved a summary judgment on breach of lease and guaranty. The court rejected the tenant's argument that oral consent by the landlord for the tenant to vacate does not operate as a termination of the lease, where the lease required 6 months notice and written consent.

Loft Law

[In the Matter of Fiona Campbell et al. v. New York City Loft Board.](#) Supreme Court, New York County, the purported occupants of an interim multiple dwelling commenced an Article 78 proceeding to overturn a Loft Board determination denying them Loft Law protection. The occupants alleged the Loft Board violated the Public Officers Law by going into closed session to discuss a related litigation. The court declined to reverse the Loft Board. While the Loft Board's deliberation should have been public, there was no prejudice and the Loft Board's decision was otherwise proper. This case was handled by Partner Craig M. Notte and Senior Partner David R. Brody.

Will Contest

Association of Arbitrators, Inc., Civil Court of The City of New York, Partner Darren Marks presented a CLE class in June. See the presentation slides [here](#).



"Practical Advice on Litigating a Yellowstone Injunction Action Once Issued", Senior Partner David Rosenbaum presented for CLE credit in May, at the **New York State Bar Association's Real Property Landlord and Tenant Committee.**(click [here](#) to access presentation slides)

Senior Partner Myron Altschuler gave a presentation to Empire State Trust on current landlord tenant issues in May.

Sponsorships and Causes We Support

Several of the Firm's partners attended **The 20th Annual Real Estate Council Benefit** at The Metropolitan Museum of Art, which honored Adam Rose and Amy Rose of Rose Associates, November 16, 2015.



Left to right: Todd I. Nahins, Stephen C. Shulman, Eric M. Goidel, Adam Cooper, Managing Partner Robert D. Goldstein, Carlos Perez-Hall, David B. Cabrera, Jeffrey H. Seiden and Gregory G. Vail

Nations Triathlon - Washington, DC - Senior Partners Stephen Shulman and Eric Goidel participated in this event to benefit The Leukemia & Lymphoma Society in September.

The Real Deal Golf Outing - Partner Darren Marks hosted a foursome and the firm was a sponsor at the June event.

[Matter of Mery Su Ling Chin](#)

In a will contest, where one witness to the will and the attorney drafts person did not have perfect memory of the execution ceremony and another witness testified that the will was not properly executed, the Court admitted the will to probate after trial, holding that perfect memory was not required and that the Court, as trier of fact, could determine the credibility of the persons testifying at trial. The proponent of the will was represented by Partner Jeffrey L. Noguee, Esq., with the assistance at trial of Partner Anna Guiliano, Esq.

Condo Foreclosure

[Bank of New York et al. v. Robert O'Neil III and the Board of Managers of 103 Greene Street Condominium](#), In this case, handled by Partner Craig M. Notte and Senior Partner David R. Brody, the plaintiff-lender obtained a judgment of foreclosure and sale against a condominium unit owner. The lender failed to arrange an auction, leaving the unit owner in possession owing years of common charges. The condominium board compelled the lender to enforce its judgment and auction the apartment, resulting in a sale that paid off the mortgage, the common charges and the majority of the condominium board's attorneys' fees.

[Read about more decisions here.](#)

Learn more about our services in our brochure:

Access by clicking [here](#).



The Lung Cancer Research Foundation - The firm sponsored the The Strides for Life Walk on South Hampton, LI in August.

NYCLA Civil Practice Dinner - Managing Partner Robert Goldstein was co-chair of the event in May.

J.P. Morgan Corporate Challenge in Central Park - the firm participated in the race in June.



Pictured: Team Borah Goldstein.

Puerto Rican Bar Association's Annual Scholarship Fund - the firm is a sponsor of the PRBA Scholarship fund and assisted in this year's fundraising efforts.



Pictured from left to right: David Rosenbaum, Managing Partner Bob

BORAH GOLDSTEIN ALTSCHULER NAHINS & GOIDEL, P.C.

A Full Services Real Estate Law Firm

BORAH GOLDSTEIN ALTSCHULER NAHINS AND GOIDEL, P.C. is a mid-sized law firm, headquartered in the heart of New York's District. For more than fifty five years the firm has represented property owners and management companies owning thousands of residential and commercial units located in New York City and in Queens, Suffolk, Westchester and Rockland Counties. While the concentration of our firm was originally centered in housing law, over the years the firm has developed into a multifaceted full service real estate law firm. The firm has a significant New York State Supreme Court litigation, Administrative, IRS, Cooperative/Condominium law, Federal Court, Appellate, Land Use, and Tax Center practice. The firm also handles complex commercial and residential real estate transactions including conveying, leasing and financing.

Recognized as pioneers in the real estate industry and on the cutting edge of the New York real estate law, we have captured the attention of those of the trade and are well respected by the New York State Judiciary and local publishers.

Practice Areas

- Residential Non Payment & Holdover Proceedings**
Experienced senior partners with outstanding success in our practice and associates regularly dealing with issues including:
 Lease Interpretation
 Valuation of Leases of Premises
 Non-Payment Proceedings
 Unlawful Detainer
- Supreme Court Litigation**
Our Supreme Court division handles complex actions and matters in law and equity affecting real property as well as landlord/tenant disputes including:
 Writs of Certiorari
 Lease Law Disputes
 Actions to Enforce or Refrain from
 Breach of Contractual Obligations
 Valuation Disputes
- Commercial Disputes & Disputes**
Partnerships
 Trade & Service Agreements
 Distribution & Franchise Disputes
- Construction Litigation**
Construction Disputes
 Contract Disputes
 Architectural Proceedings
 Disputes with Owners
- Real Estate**
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 Short Term Rentals

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Goldstein, Carlos Perez-Hall, Todd Nahins, David Cabrera and Steve Shulman, at the Annual Gala in May.

The firm was proud to support **Asphalt Green's 20th Annual Big Swim Event** in May.

Borah Goldstein in the News

"[Eliminating Airbnb from Your Building](#)", by Senior Partner Eric M. Goidel, was featured in the **The Cooperator**, November 2015.

"[Women at the Top: You Can Have it All](#)", Partner Harriet Polinsky is quoted in **New York Real Estate Journal** article, after speaking on a panel at the NYC Real Estate Expo, November 17, 2015.

"[Avoid Triple Damages in Post-Roberts Rent Overcharge Cases](#)", by Partner Eileen O'Toole was published in **Apartment Law Insider**, November 5, 2015.

"[Recovery of Possession: Factors affecting landlords when a tenant passes](#)", by Senior Partner Stephen C. Shulman was published in **New York Real Estate Journal**, October 27, 2015.

"[Four-Year Rule Applied to Overcharge Claim](#)", Partner David B. Cabrera's case was digested in **Landlord v. Tenant**. This case is referenced: [Ten Sheridan Assoc. LLC v Cohen](#), September 2015.

"[Six Years After Roberts Rent-Setting Uncertainty Continues to Loom](#)", the article in **New York Housing Journal** featured a case handled and won by partner David B. Cabrera, September 2015.

"[The Effect of Bankruptcy Code on Commercial Leases](#)", a two part article by Partner Jeffrey Chancas, was featured in **New York Real Estate Journal**, September 8, 2015.

Managing Partner [Robert D. Goldstein was quoted in the "Ask Real Estate"](#) section of **The New York Times**, September 5, 2015.

Borah Goldstein was ranked 10th largest NYC Real Estate practice by **The Real Deal**, in the article "[NYC's biggest real estate law firms](#)". September 1, 2015.

"[Landlord Didn't Waive Right to Collect MCI Rent Hike](#)". Partner Stephen C. Shulman's case is digested in **Landlord v. Tenant**, August 2015.

"[DHCR Must Adjust Rent-Controlled Rent Not Increased Since 1961](#)", Partner David B. Cabrera's case ([see case here](#)) was digested in **Landlord v. Tenant**, August 2015.

"[No HPD Heat Violations in Connection with New Boiler/Burner](#)" -Associate David Napitupulu's case was digested

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in **Landlord v. Tenant**, July 2015.

["Changes to EB-5 Visa program will impact real estate developments"](#).

by Janire Lamiquiz, was published **Real Estate Weekly**, July 1, 2015.

[LOFT LAW OCCASIONAL NOTES: THE LOFT LAW IS RENEWED.](#)

by Partner David Brody, July 1, 2015. To subscribe to Loft Law notes, contact kconnolly@borahgoldstein.com

["Removing an Adult Son From a Rental"](#), Partner Paul N. Gruber was quoted in the "Ask Real Estate" of **The New York Times**, June 6, 2015.

["Rent-Stabilized Apartment in Co-op Building Under J-51 Subject to High-Income Deregulation"](#), partner David B. Cabrera's recent case was digested in **Landlord v. Tenant**, June, 2015.

["Terminating Tenancies for Overcrowding"](#), Partner Adam P. Cooper's article was published in **Apartment Law Insider**, May 8, 2015.

["Redrafting Bylaws Highlights Democracy's Beauty"](#), by Partner Carlos Perez-Hall was published in **New York Law Journal**, May 1, 2015.

[NY Great Stone Inc. Plaintiff v. Two Fulton Square LLC, Defendant](#), the decision summary for this significant Yellowstone case, handled by Senior Partner David R. Brody and Partner Joseph I. Farca, was featured in **New York Law Journal**, April 1, 2015.

["Management/Board Relations Who Do You Call?"](#) Senior Partner Eric M. Goidel was quoted extensively in **The Cooperator**, April 2015.

Press Mentions

Partner Ricardo Vasquez was featured in [Professional Profiles](#) section of **New York Real Estate Journal**, August 12, 2015.

The Firm's continued expansion in its ["Who's News"](#) section of **Real Estate Weekly**, August 6, 2015.

Partner Anna Guiliano was profiled in Women in Real Estate [Spotlight](#) edition of **New York Real Estate Journal**, June 23, 2015.

Industry Resources

We are members of several industry organizations and frequent contributors to publications which offer valuable information:

Organizations

[BOMA: Building Owners and Managers Association](#)

[NYARM - New York Association of Realty Managers](#)

[REBNY - Real Estate Board of New York](#)

Industry Publications

[Apartment Law Insider](#)

[The Cooperator](#)

[HabitatMag.com](#)

[New York Real Estate Journal](#)

[Real Estate Weekly](#)