



ETHAN R. COHEN

MEMBER - Litigation

733 Third Avenue, New York, NY 10017 ecohen@rosenbergestis.com 212-551-1223



Practice Areas

Litigation

Commercial Arbitration (Rent Reset and Property Valuations)

Administrative proceedings, including Office of Administrative Trial and Hearings, Environmental Control Board, and the Board of Standards and Appeals

Appeals

Co-op / Condo Disputes

Class Action Defense

Construction Disputes and Adjoining Access Issues

Adverse Possession Cases

Landlord / Tenant Disputes, including *Yellowstone* Injunctions

Contract Disputes

Partnership and Joint Venture Disputes

Constitutional Challenges

Building Violation Resolution

Mechanics' Lien Proceedings

Rent Stabilization Issues: Coverage, Rent Overcharge, Substantial Rehabilitation and Regulatory Compliance

Article 78 Proceedings and Appeals Challenging Agency Orders

Administrative Law

Bar Admissions

New York, 2013

Education

University of Maryland School of Law

• J.D. (*magna cum laude*) - 2012

Williams College

• B.A. - 2009

Ethan R. Cohen joined Rosenberg & Estis, P.C. in 2014 and is a Member and Head of the firm's Appellate Litigation Department.

Just days after R&E named Cohen as the new Head of the Appellate Litigation Department, Cohen secured a critical victory at the Appellate Division, First Judicial Department, in *Burrows v 75-25 153rd Street, LLC* ("*Burrows*"). In *Burrows*, the Appellate Division unanimously reversed the lower court and dismissed the tenants' putative rent overcharge class action in its entirety, while making significant rulings for owners in New York that are fighting claims of fraud and defending rent concession or "net effective rent" claims.

The decision in *Burrows* represents a continuation of success for R&E's Appellate Group in a string of high-profile and landmark appellate cases, including the pivotal Court of Appeals' decisions in *Casey v Whitehouse Estates, Inc.* (2023) ("*Casey*") and *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal* (2020) ("*Regina*"), which is considered one of the most significant court decisions to impact the New York real estate industry in decades. Cohen played a substantial role in all three of these cases.

In *Casey*, the Court agreed with Cohen's arguments and unanimously held that the Appellate Division misapplied the historic Regina ruling. In Cohen's second Court of Appeals victory in as many cases, the Court also confirmed that fraud will only allow the punitive default rent formula to be used where a tenant shows that a fraudulent scheme to deregulate an apartment tainted the reliability of the rent on the base date rent four years prior to the action.

In *Regina*, after the New York City real estate industry was stunted by the passage of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), Cohen helped secure a precedent-setting victory in which the Court of Appeals held that retroactive application of the HSTPA in pending and future rent overcharge cases was unconstitutional, saving property owners millions of dollars and preventing potentially catastrophic underwriting and liability costs. The Court of Appeals also significantly held that tenants must establish all of the common-law elements of fraud before a court may employ DHCR's default rent formula against a landlord, an important ruling for owners in New York.

Over the course of his career, Cohen has successfully litigated cases of critical, industrywide importance on behalf of the city's most prominent owners and developers, including The Durst Organization, Vornado Realty Trust,



733 Third Avenue,
New York, NY 10017
www.rosenbergestis.com

ETHAN R. COHEN

and A&E Real Estate. Among other litigation victories, Cohen won a summary judgment decision against ecommerce giant Amazon after it allegedly breached a letter of intent with The Durst Organization in a matter that was later resolved between the parties.

Prior to joining Rosenberg & Estis, Cohen served as an Appellate Court Attorney with the State of New York Supreme Court, Appellate Division, Third Judicial Department and was an Associate Attorney at the Breier Deutschmeister Urban Popper Law Group PLLC.

Cohen achieved his J.D. magna cum laude in 2012 from the University of Maryland School of Law. He earned his bachelor's degree in sociology in 2009 from Williams College, where he was also an accomplished college wrestler.

Cohen is a member of the New York State Bar Association.

Notable Work

- In *Burrows v 75-25 153rd Street, LLC* (“*Burrows*”), the Appellate Division, First Judicial Department unanimously reversed the lower court and dismissed the tenants’ putative rent overcharge class action in its entirety, while making significant rulings for owners in New York that are fighting claims of fraud and defending rent concession or “net effective rent” claims. The landlord’s predecessor openly registered both initial legal regulated rents and lower preferential rents with DHCR in 2007 in a building receiving 421-a tax benefits. In 2020, some 13 years after the initial DHCR registrations were filed, tenants of the building commenced a putative rent overcharge class action against the current landlord, following a pattern of class actions brought by tenants against landlords claiming fraud. Here, the tenants claimed that the landlord’s predecessor engaged in fraud in registering the initial legal rents in 2007, because the law prohibited the use of preferential rents for initial tenants in 421-a buildings. Cohen moved to dismiss the claims, arguing that the tenants’ belated challenges to the initial DHCR registrations were time-barred by the applicable four-year statute of limitations. Cohen further argued that the tenants could never establish the only “fraud exception” to the statute of limitations because fraud requires “reliance,” and here, the tenants could not have reasonably relied on the alleged errors in the initial registrations as a matter of law, because any error was plain on the face of registrations in 2007, and tenants failed to bring a claim until 2020. The First Department agreed and dismissed the case.
- In *Casey v Whitehouse Estates, Inc.*, 2023 NY Slip Op 01351 (Ct. App. Mar. 16, 2023), Cohen was appellate counsel and second chair on the legal team that secured a critical victory in the New York State Court of Appeals, which unanimously held that the Ap-

ETHAN R. COHEN

pellate Division, First Department misinterpreted the historic *Regina v DHCR* ruling and incorrectly ruled that the property owner at 350 East 52nd Street in Manhattan had fraudulently increased rents on 72 apartments. The landlord had luxury deregulated 72 apartments in the building while receiving J-51 tax abatements. The Court of Appeals found that the landlord did not commit fraud by the manner in which he attempted to register and recalculate the rents for the 72 apartments after the Court of Appeals ruled in the 2009 *Roberts* case that such deregulations were not permitted by the rent laws. The Court of Appeals also held that fraud will only allow the four-year lookback period to be breached, and the punitive default rent formula to be used, where the alleged fraud taints the reliability of the base date rent four years prior to the action. Instead, the actual rent charged on the base date controlled. This was Cohen's second victory at the Court of Appeals, New York's highest court.

- In *Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal*, 35 NY3d 332 (2020) ("*Regina*"), affirming *sub nom Reich v. Belnord Partners LLC*, 168 AD3d 482 (1st Dept 2019), Cohen drafted a successful motion to dismiss the rent overcharge complaint of the plaintiffs, who asserted a J-51 rent overcharge claim outside of the applicable statute of limitations, more than six years after the seminal *Roberts* decision was issued. He then drafted a successful appellate brief opposing the plaintiffs' appeal to the Appellate Division, First Department, which affirmed Supreme Court's dismissal order. After winning at the Appellate Division, the plaintiffs were granted leave to appeal to the Court of Appeals, and the Legislature then enacted the HSTPA, which, on its face, applied to all pending cases and would have altered the result of the action because it expanded the statute of limitations for rent overcharge claims. Cohen drafted a successful appellate brief and supplemental briefing regarding the HSTPA in opposition to the plaintiffs' appeal to the Court of Appeals. He also drafted a brief in response to briefs for *Amici Curiae*. In January 2020, Cohen second seated the oral argument at the Court of Appeals. In April 2020, in *Regina*, the Court of Appeals affirmed the dismissal of the action, agreeing with our arguments and holding, *inter alia*, that the HSTPA did not revive time-barred claims and, critically, that retroactive application of the HSTPA to conduct that occurred prior to the HSTPA was unconstitutional – a landmark decision in the New York real estate industry.
- In *DOLP 1133 Properties II LLC v. Amazon Corp. LLC*, 2020 NY Slip Op 30274(U) (Sup Ct, New York County 2020), The Durst Organization sought damages against Amazon for breaching an exclusive letter of intent concerning a ten-floor premises. Cohen drafted a successful motion for partial summary judgment in favor of Durst on the issue of Amazon's liability for breaching the LOI, and the Court directed a trial to determine the amount of damages to be awarded to Durst. Amazon then moved to reargue the summary judgment order, and Cohen drafted a successful opposition to Amazon's motion to reargue, which was denied in its entirety. Cohen then

ETHAN R. COHEN

prepared the case for the damages trial and prior to trial, the action was resolved.

- In *Astoria Equities 2000 LLC v Halletts A Development Company LLC*, Index No. 705215/2014, Cohen worked on a complex litigation involving a Durst Organization development in Astoria at Halletts Point. Astoria Equities had agreed to sell a parcel(s) of land to The Durst Organization (defendant Halletts A), but then attempted to unwind the purchase and sale agreement. Based, in part, on Cohen's careful review of the relevant contracts, including his identification of an applicable arbitration provision therein, R&E successfully moved on behalf of Durst to compel arbitration of certain causes of action and successfully obtained a preliminary injunction, creating leverage to negotiate a settlement. In the arbitration, R&E counterclaimed for specific performance of the PSA and for damages. Thereafter, R&E was able to negotiate a resolution of all claims in the action and the arbitration and obtaining the property for Durst's Halletts Point development.
- In *Vornado 40 East 66th St Member v. Krizia Spa*, 135 AD3d 649 (1st Dept 2016), Cohen drafted a successful appellate brief and reply brief for Vornado in an appeal to the Appellate Division, First Department, after Supreme Court erroneously denied Vornado's right to recover its attorneys' fees. On appeal, R&E successfully obtained reversal of the Supreme Court order that had denied Vornado's right to recover attorneys' fees.
- In *KMART Corporation v VNO Bruckner Plaza LLC c/o Vornado Realty Trust*, Cohen researched and developed a creative argument, and drafted a successful arbitration statement, in opposition to KMART's claim that Vornado was required to replace a Vermaport Shopping Cart conveyor for the price of \$3,000,000. Although the lease provided that Vornado was required to replace all "escalator systems," R&E successfully argued that, based on the NYC Building Code and an expert witness, a shopping cart conveyor, which moved carts from floor-to-floor in a supermarket next to an escalator, was not an "escalator system," and instead was a conveyor, a distinct apparatus. As a result of the binding arbitration decision, KMART's \$3,000,000 claim was denied in its entirety, with the arbitrator holding that Vornado "is not obligated to save and hold [KMART Corporation] harmless or to reimburse it for all costs incurred in replacing the down Vermaport." Cohen then successfully brought an action to confirm the arbitration order in Supreme Court in *UE Bruckner Plaza LLC v. KMART Corporation*, Index No. 653500/15.
- In *68-74 Thompson Realty, LLC v Heard*, 54 Misc3d 144(A) (App Term, 1st Dept 2017), Cohen drafted a successful appellate brief to the Appellate Term, First Department in opposition to the appeal of a subtenant who was attempting to gain tenancy rights based on the illusory tenancy doctrine. He then successfully opposed the subtenant's motion for leave to appeal to the Appellate Division, First

ETHAN R. COHEN

Department. R&E's client regained possession of the apartment.

- In *Sag Harbor Pooh, LLC v Plaza Surf and Sport, Inc.*, 60 Misc3d 137(A) (App Term, 2d Dept 2018), Cohen drafted a successful appellate brief and reply brief to the Appellate Term, Second Department. In this commercial holdover proceeding regarding a restrictive use provision, the petition of prior counsel was dismissed by the Justice Court. Cohen reviewed the record below, performed extensive legal research, crafted a creative appellate argument, and appealed the dismissal order to the Appellate Term, including arguing the appeal. The Appellate Term reversed the dismissal order and reinstated the petition. Thereafter, Cohen successfully obtained a judgment of possession against the commercial tenant and an award of attorneys' fees for R&E's client for both the underlying proceeding and the appeal.
- In *Tap Tap, LLC v 558 Seventh Ave. Corp.*, 144 AD3d 409 (1st Dept 2016), in five consolidated appeals, Cohen drafted a successful appellate brief and reply brief to the Appellate Division, First Department. In this case, prior counsel had failed to obtain a Yellowstone injunction, and unsuccessfully opposed a summary judgment motion in Civil Court, such that a judgment of possession was issued against our client. After piecing together the complicated legal history in both Civil and Supreme Court, Cohen prepared a motion for clarification in Supreme Court, a motion to reargue the summary judgment motion in Civil Court, a motion for a stay pending appeal to Civil Court, and a motion to consolidate several appeals to the Appellate Division. He then drafted the appellate briefs to the Appellate Division, which held in our favor that "[t]he court's August 2015 order was erroneous" and "the matter is reopened, the complaint reinstated, and the matter remanded to Supreme Court to consider whether, under the circumstances, plaintiff's Yellowstone injunction was timely filed." As a result, R&E saved a valuable commercial net lease for its client and ultimately negotiated a settlement.
- In *35-33 36th Street Corp (Beer Garden) v EIB Studio Square*, Index No. 702142/16, Cohen played an instrumental role in a contentious legal battle requiring frequent motion practice, creative legal strategy, appellate practice, a Supreme Court hearing, and extensive settlement negotiations. He drafted complex motions and memoranda to Supreme Court and the Appellate Division, Second Department (including a successful motion to the Appellate Division staying enforcement of an erroneous order pending appeal), conducted a successful hearing regarding the commercial tenant's insurance defaults, including examining an expert witness at the hearing, and drafted a post-hearing memorandum. Cohen also drafted an appellate brief to the Appellate Division, Second Department, perfecting landlord's appeal. After nearly two years, R&E obtained a favorable ruling from Supreme Court granting its client, the landlord, the right to terminate the tenant's lease based on its insurance defaults, which ruling lead to a settlement of the action.

ETHAN R. COHEN

- In *Mahmood v Mason Mgt. Services Corp. d/b/a Stellar Management et al.*, 2019 NY Slip Op 32175(U) (Sup Ct, New York County 2019), a putative class action lawsuit that was commenced by approximately 60 tenants against Stellar Management regarding more than a dozen buildings, Cohen successfully moved to dismiss to action against both Stellar's principal, Larry Gluck, and Stellar Management. More than two years after the action was commenced, as a result of our R&E's motion, the action was dismissed in its entirety because the plaintiffs had failed to sue the action direct owners of the buildings, and instead only sued the management company. In the motion to dismiss, Cohen successfully argued that the managing agent cannot be held not liable for alleged rent overcharges when it was at all times acting as an agent for disclosed principals. Accordingly, the action was dismissed in its entirety.
- In *City's 5th Avenue 54th Street LLC v. 685 Fifth Avenue Owner LLC et al*, Index No. 650728/17, an action commenced against R&E's client by a purchaser pursuant to a contract of sale for the commercial condominium unit at 685 Fifth Avenue, the purchaser filed a notice of pendency against the property and sought specific performance of the contract. Cohen drafted counterclaims seeking specific performance of the contract, and successfully moved to dismiss the purchaser's cause of action for fraud. Thereafter, Cohen played an instrumental role in crafting the creative legal strategy to move for partial summary judgment on both the seller's and purchaser's causes of action seeking specific performance of the contract, and he drafted the motion for partial summary judgment, forcing the purchaser's hand. As a result of our motion, the purchaser cancelled the notice of pendency and withdrew its cause of action for specific performance. With the notice of pendency cancelled, R&E's client closed on the sale of the Commercial Unit to a third party. Thereafter, R&E successfully negotiated a settlement with the purchaser.
- In *BR 52 LLC v. M.J.C.L.K. LLC et al*, Index No. 655219/2020, Cohen played an instrumental role in crafting the legal strategy to terminate the commercial tenant's lease as a result of its failure to provide security, which termination occurred prior to the guarantors' purported surrender date. Cohen thereafter drafted a complaint and commenced an action seeking damages. After settlement negotiations were unsuccessful, Cohen moved for summary judgment against the commercial tenant and personal guarantors, arguing, inter alia, that the guarantors' surrender notice was ineffective, the Covid-19 defenses were without merit and the guarantor's law limiting the personal liability of guarantors during Covid-19 was not applicable to this lease because the tenant was not a retail establishment. Cohen then negotiated, over several months, a favorable settlement resolving the action.
- *Asher v 101 West 78th, LLC* 2017 NY Slip Op. 32455(U) (Sup Ct, New York County 2017), Cohen drafted a successful, complex

ETHAN R. COHEN

motion for summary judgment on eleven causes of action brought by a tenant alleging that she was wrongfully evicted, intimidated, threatened, and harassed when she was forced to temporarily relocate while construction work was being performed in her apartment. Cohen successfully moved for summary judgment dismissing every cause of action in the complaint with prejudice.

- *201 East 66th St. L.L.C v Carlo Pazolini (USA) LLC*, Index No. 650482/15, Cohen brought an action against a commercial tenant after the tenant failed to pay rent and other charges, abandoned the commercial premises, and failed to pay contractors, resulting in mechanic's liens being filed. After the commercial tenant appeared and R&E amended the complaint, Cohen successfully moved for a default judgment on the amended complaint, securing a judgment in favor of our client and against the commercial tenant for all of the arrears that were owed, with pre-judgment interest, plus an award of all of R&E's attorneys' fees.
- *New York Bone and Joint Specialists, PLLC v Milro Associates*, Index No. 651201/2015, Cohen drafted a successful cross-motion to dismiss the commercial tenant's defenses asserting that the landlord had incorrectly been calculating the CPI increases pursuant to the parties' lease. Cohen devised and drafted a successful argument that the tenant's course of conduct and voluntary payments over the course of the lease defeated their argument that the landlord's interpretation of the CPI increases was incorrect. The court granted R&E's motion in its entirety and dismissed the commercial tenants' defenses, which ultimately lead to a favorable settlement at trial.
- *Yan Zhovtis v. 1120 Brighton Owners Corp.*, Index No. 516388/2020, a shareholder of a cooperative performed illegal alterations to his apartment without the permission of the cooperative board, and the board decided to terminate the shareholder's proprietary lease. Cohen drafted a notice of default and, in the subsequent an action commenced by the shareholder, he successfully opposed the shareholder's motion for a Yellowstone injunction. Cohen then facilitated a favorable settlement with the shareholder which removed the shareholder from the building and covered the full amount of the attorneys' fees incurred by the cooperative corporation in the action.
- *200 Corbin Owners Corp., v Yury Gokhberg*, Index Nos. 088326/17 and 087119/18, in multiple proceedings against a chronically delinquent cooperative shareholder, including one proceeding that we prosecuted through a successful trial to judgment, Cohen successfully moved to recover three judgments for attorneys' fees in favor of the cooperative board. Cohen then successfully prepared for and, with colleagues, conducted a UCC Article 9 non-judicial foreclosure against the shareholder, thereby cancelling the shares of the shareholder.
- *NRP LLC I v New York SMSA Limited Partnership d/b/a Verizon Wireless*, Index No. 052516/15, Cohen successfully moved for sum-

ETHAN R. COHEN

mary judgment against Verizon, obtaining a judgment of possession and warrant of eviction with respect to a commercial roof space that Verizon refused to vacate after the expiration of its lease term.

Published Works

- “Are Inclusionary Air Rights Unique? Specific Performance Revisited,” New York Law Journal, October 2023
- “The ‘Fraud Exception’ Requires Fraud,” New York Law Journal, August 2023
- “NY Rent Recovery Case Adds Structure To Overcharge Claims,” Law360, April 2020