



Avery S. Mehlman

*Partner*

[amehlman@herrick.com](mailto:amehlman@herrick.com)

(212) 592-5985 PHONE

(212) 545-3424 FAX

Avery Mehlman concentrates his practice in complex commercial litigation including title insurance, banking, real estate, securities law and employment law, in both state and federal courts, as well as administrative tribunals, arbitration and mediation. Avery also represents companies and individuals accused of securities law violations, business crimes and fraudulent practices by the U.S. Attorney's Office, State Attorney General, District Attorney and U.S. Securities and Exchange Commission.

In addition, Avery represents employers and employees in ERISA and employment litigation, including claims alleging wrongful discharge, sexual harassment and discrimination based upon disability, age, race, national origin and gender. Avery regularly litigates such matters before the state and federal courts, the EEOC, New York State Executive Department, Division of Human Rights and the New York City Commission on Human Rights. Avery also has worked extensively on complex wage and hour and other employment litigation including FLSA matters.

Avery's experience provides Herrick's clients with a distinct advantage in government investigations. Prior to joining Herrick, Avery worked for Mayor Michael Bloomberg as the Deputy Commissioner of the New York City Commission on Human Rights. As Deputy Commissioner, he successfully tried a landmark religious discrimination case which allowed Sikh members of the Police Department's Traffic Enforcement Unit to wear turbans, as required by the tenets of their faith. Additionally, Avery took on 16 of New York City's largest advertising agencies, requiring that they diversify their managerial and creative workforce.

Prior to joining the Mayor's office, Avery was a prosecutor in Brooklyn, serving as the chief of the Major Narcotics Investigations Bureau. In that role he supervised long-term narcotics and weapons investigations, and tried more than 50 felony cases, leading to the conviction of some of Brooklyn's most dangerous criminals. Avery also served as an appellate attorney in the District Attorney's Appellate Bureau and has argued before the Appellate Division, Second Department.

### Services

- Litigation
- Business Litigation
- White Collar Defense & Investigations
- Securities Litigation and Enforcement
- Employment Litigation
- Real Estate Litigation & Dispute Resolution
- Real Estate Restructuring & Foreclosures
- Title Insurance
- Investment Management

## Education

- Fordham University School of Law (J.D., 1991)
- Yeshiva University (B.A., *cum laude*, 1988)

## Matters

### Developers - Summary Judgment Dismissing Breach of Joint Venture Claims

Obtained summary judgment on behalf of real estate developers dismissing all claims filed by a plaintiff alleging our clients had breached an oral joint venture that entitled the plaintiff to share in the profits of a sale of a Brooklyn property. The Kings County Supreme Court also denied plaintiff's cross motion for leave to amend and to compel disclosure.

### Real Estate Management Company - Precedent Setting Decision in Wage & Hour Action

Successful defense of a real estate management company and its principal sued by a former residential janitor and two alleged former laborers at New York City properties managed by our client. The plaintiffs claimed minimum wage and overtime violations under the Fair Labor Standards Act and New York Labor Law, as well as related common law claims. The court granted, in substantial part, our motion to dismiss, striking 9 of the plaintiffs' 12 claims in one of the first decisions to interpret the minimum wage and overtime provisions under New York law and the Minimum Wage Order for the Building Service Industry as they relate to residential janitors.

### Appellate Division Reverses Civil Penalty against Landlord over ADA Accommodations

Herrick achieved a significant appellate victory on behalf of a national real estate development and management firm, securing a ruling from the Appellate Division, Second Department that reversed a New York City Commission on Human Rights order requiring the client to pay a \$185,000 fine for denying a tenant's request to construct a handicapped-accessible entrance to her Queens apartment. In its ruling, the court wrote that the record lacked "substantial evidence" to contradict our client's claim that installing an accessible entrance was not structurally feasible. The decision was the culmination of a nearly 6-year-long dispute in which we initially prevailed on the client's behalf before an administrative law judge who held that the proposed accommodation sought by the tenant was not reasonable. The Commission, however, summarily rejected the ruling, and awarded \$200,000 in damages and penalties. A Queens Supreme Court affirmed the agency's decision but reduced the award of damages. On appeal, and after oral argument, the Second Department reversed the trial court's decision, holding that the Commission's determination of unlawful discrimination and award of damages should have been annulled in its entirety.

### Successful Defense of Unfair Labor Practice Claims

Represented a medical waste disposal company in a successful defense against unfair labor practice claims filed with the National Labor Relations Board involving allegations that the client refused to hire and wrongly discharged individuals based on their affiliation with a local union.

### Electricity Supplier - TCPA Class Action Favorably Resolved

Negotiated a favorable settlement on behalf of a national electricity services provider to resolve a putative class action filed in New Jersey federal court by a plaintiff alleging violations of the Telephone Consumer Protection Act (TCPA).

### Multiple Claims Dismissed in Shareholder Derivative Litigation

Secured a ruling in Kings County Supreme Court on behalf of a garment manufacturer and certain affiliated individuals and entities that dismissed several causes of action in a purported shareholder derivative suit. Among the claims asserted was the allegation that a competing entity had been used by certain defendants to usurp business opportunities, and that ownership of a company facility had been fraudulently transferred to a charitable trust

and foundation. The court granted our motion to dismiss the claim for a constructive trust over either the alleged competing entity or the foundation; an unjust enrichment claim against the charitable trust and foundation defendants; and a claim of rescission of the alleged fraudulent transfer of the facility, which the court found was time-barred.

#### National Energy Supplier - Wage/Hour Class Action

Negotiated a favorable settlement on behalf of a national energy service company, avoiding protracted litigation in a wage and hour class action lawsuit alleging violations of federal and state labor laws.

#### Major League Baseball Franchise - Contract Dispute

Obtained summary judgment, including dismissal of all claims and recovery on counterclaim for breach of contract, on the district court level on behalf a Major League Baseball franchise in a contract dispute involving advertising and sponsorship rights, and protected judgment on appeal to the Second Circuit.

#### Limited Liability Company - Malpractice Claims

Representing a limited liability company in litigation with former counsel in a dispute involving allegations of malpractice in the preparation of a written operating agreement and the refinancing of a property located in Brooklyn. Action seeks to recover damages of over \$11 million, plus interest and attorneys' fees.

#### Non-Profit Organization - Wrongful Termination and Discrimination Claims

Representing a New York City non-profit organization in a dispute with former employees claiming wrongful termination and discrimination based on age and sexual orientation.

#### Healthcare Services Provider - Alleged Violations of FLSA and Connecticut Wage and Hour Laws

Negotiated a favorable settlement on behalf of a leading provider of mental health services to resolve litigation filed in Connecticut federal court by a former staff psychologist alleging wrongful termination and failure to pay wages pursuant to the Fair Labor Standards Act and Connecticut Wage and Hour law.

#### Majority Shareholder - Successful Litigation for Control of Midtown Manhattan Property

Successful representation of a majority shareholder in a dispute with a minority stakeholder over control of a corporation whose sole asset was a valuable Manhattan property. Through litigation filed in New York state court, Herrick was able to secure the client control over a building located on prime midtown Manhattan real estate.

#### Residential Healthcare Facility - Wage/Hour Class Action

Represented a nursing and residential health care facility in a wage and hour collective and class action lawsuit alleging violations of federal and state labor laws. This litigation was settled on terms favorable to our client.

#### International Media Company - Workers' Compensation Board Investigation

Represented an international media company in an investigation by the New York State Workers' Compensation Board.

#### Real Estate Management and Investment Firm - Loan Acquisition

Represented a boutique real estate management and investment company on the acquisition of certain loans secured by vacant land located in Upper Manhattan (on which construction is contemplated of an affordable housing apartment building). The loans had an aggregate original principal balance of nearly \$5.5 million.

#### Network Technology Company -- Wage/Hour Class Action

Successfully represented a network technology company in litigating and settling a putative class action lawsuit brought by network technicians based on an alleged failure to pay prevailing wages and benefits on publically financed construction projects.

#### Title Insurance Company - Agent's Fraud Imputed to Lender

Representation of a title insurance company against a lender whose agent committed a fraud that caused the loss of the insured mortgage. Our client successfully argued that since the agent acted on behalf of the bank, the fraud could be attributed to the bank and therefore fell under the policy's exclusion for "acts of the insured." The court's ruling will have ramifications in the title insurance and mortgage lending industry since many sub-prime lenders relied upon unscrupulous agents to close their loans, and to the extent any frauds committed by those agents lead to a title loss, the lenders cannot look to the title insurers for indemnification.

#### International Investigation - Market Manipulation

Representation of a foreign citizen in connection with an indictment by the U.S. Attorney's Office and an SEC investigation alleging market manipulation of multiple OTC securities in the U.S. markets via the internet.

## Publications

January 2016

[New York City's Affordable Transit Act Went into Effect January 1, 2016; New York City Council Passes Bill Banning Discrimination Based on Caregiver Status; New York Increases Minimum Wage—no Change to New Jersey's Minimum Wage for 2016](#)