



Darlene Fairman

Counsel

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Darlene Fairman's practice includes a wide range of civil litigation with emphasis on complex commercial and real estate litigation in New York's state and federal courts.

Art Law

Beginning with the successful representation of the Republic of Turkey in recovering the "Elmali Hoard" of rare and valuable ancient silver coins, Darlene has represented Turkey in matters seeking the return of looted cultural property. In addition, she has represented the heirs of world-renowned Russian artist Kazimir Malevich in their litigation against the City of Amsterdam to reclaim his artworks. This litigation was successfully settled in 2008 when the City of Amsterdam returned five paintings to them.

Darlene has been involved in Holocaust looted art matters, has represented art dealers and galleries in various matters and has successfully represented a jewelry designer in a copyright dispute.

Complex Commercial and Real Estate Litigation

As a result of Darlene's broad based experience as a real estate litigator, she has had the opportunity to work with nursing home owners and operators, commercial and affordable housing developers, title insurance companies and the Real Estate Board of New York in connection with a variety of thorny issues including zoning and governmental disputes, challenges to local laws, environmental issues and fraudulent transfers. Her complex commercial experience in both State and Federal courts, at both the trial and appellate level, includes a wide variety of matters including breach of contract, business divorce, family and partnership disputes, and economic torts including fraud, breach of fiduciary duty and tortious interference claims. Darlene also has experience with accounting and accountants' malpractice matters.

Darlene's representative matters include:

- Represented purchaser of \$80 million Long Island City mixed-use property in breach of purchase agreement action
- Represented purchaser of \$155 million corporate division in breach of purchase agreement action
- Successful litigation to preserve the lien of a mortgagee whose borrower was revealed to be the knowing recipient of a fraudulent transfer of the mortgaged property
- Represented the owner of a former inactive hazardous waste site in connection with litigation over a seawall built at the site and the sale of the property
- Represented a major affordable housing developer and operator in a dispute with the New York City Housing Authority
- Litigation of a partnership dispute involving the sale of six low income housing developments

- Represented the Real Estate Board of New York in its successful lawsuit against the New York City Council to overturn Local Law 79
- Successfully represented a developer in litigation over its right to convert a building it purchased from office/retail use to mixed office/retail and residential use
- Represented a nursing home owner and operator in numerous business and real estate concerns, both transactional and litigation
- Litigation of trusts and estates matters in Surrogate's court
- Represented former executive in litigation over alleged use of confidential information.

Services

- Litigation
- Corporate Litigation
- Alternative Dispute Resolution
- Real Estate Litigation & Dispute Resolution
- Distressed Real Estate
- Intellectual Property Litigation

Education

- Georgetown University Law Center (J.D., *cum laude*, 1989)
- Cornell University

Publications

February 2015

Panel Discussion on Issues for Art Collectors and Their Advisors
Art & Advocacy

May 28th, 2014

Protection of Art Experts from a Swiss Perspective
Art Antiquity and Law - Volume XIX, Issue 1 - April 2014

February 4, 2014

The True Cost of Authentication Litigation
Artbank Intelligence

July 2013

The True Cost of Authentication Litigation
Art & Advocacy

August 2011

New York Board of Regents Adopts New Rules Regarding Deaccessioning of Artworks
Art & Advocacy

January 2010

Arbiters of Authenticity
Art & Advocacy

February 2009

New Bill Regarding Resale Royalties for Artists
Art & Advocacy

February 2009

New Guidelines for the Acquisition of Archaeological Materials of Ancient Art
Art & Advocacy

February 12, 1996

Inherently Distinctive Gains New Clarification
National Law Journal

Matters

Publicly Traded Digital Accessibility Solutions Company – Secured Dismissal of Retaliation Claims

Obtained a complete victory on behalf of the Executive Chairman of a publicly traded provider of digital accessibility solutions. Our client, along with the company and its CEO, were sued by a former executive after he was terminated for misrepresentations on his resume. After his termination, the plaintiff made allegations of retaliation and infliction of emotional distress. The Commercial Division dismissed all claims with prejudice.

Underwriter - Complete Dismissal of All Claims in Complex Multi-Year Litigation

Defended underwriter against claims alleging misrepresentations and self-dealing in connection with a multi-million-dollar municipal bond offering. This included federal securities fraud claims as well as common-law claims for fraud, breaches of fiduciary duty, negligence, aiding and abetting. After several years of litigation, the United States District Court for the Southern District of New York, citing “blatant acts of bad faith” by the plaintiff, ultimately issued a final order dismissing the entire against Herrick’s client.

Prominent Real Estate Family - Trust and Estate Litigation

Herrick successfully represented a member of a prominent real estate family in the arbitration of a decades-long dispute over a family trust and estate, involving multiple family members and approximately \$100 million in various assets. The core arguments in the case centered on whether or not the original arbitration award purporting to govern the rights to the estate was valid. The Court ultimately ruled in favor of Herrick’s client, finding that the distribution of the estate was not an arbitrable matter, denied the petition to confirm and granted our motion to vacate the award.

Represented Cyber Security Firm in Asset Sale Transaction

Represented Cohere Cyber Secure, a provider of cyber security and risk assessment services, in the sale of substantially all of its assets to Dataprise, a provider of managed IT, cybersecurity and cloud solutions.

Commercial Real Estate Firm – Partial Summary Judgement Granted in Complex Dispute

Awarded partial summary judgement on behalf of commercial real estate client in a dispute with a former officer and member of the parties’ investment vehicle. The New York Federal Court held that that the plaintiff former officer breached contractual obligations and fiduciary duties by misappropriating resources and soliciting investors during his employment. The Court granted Herrick’s clients’ requested declaratory relief by holding that they properly ascribed “Cause” to the officer’s termination upon discovering the misconduct and validly effectuated the termination and redemption of his profits interest in the parties’ investment vehicle for a penny. The Court also ordered the disgorgement of the former officer’s salary and value of company paid benefits during his period of disloyalty together with injunctive relief requiring him to return all confidential and proprietary information. Notably, the Court also held that the officer’s new business and business partner were jointly and severally liable for aiding and abetting the breaches of fiduciary duty. The remaining claims asserted between the parties were resolved shortly thereafter on confidential terms.

Not-For-Profit Association - Executive Transition

Represented major sports league in connection with all employment and personnel issues.

Affordable Housing Developer - Resolution of Breach of Contract Claims against NYCHA

Negotiated a favorable settlement on behalf of a national developer of affordable housing, resolving a breach of contract litigation against the New York City Housing Authority related to a high-profile and long-stalled project to redevelop a large New York City public housing complex.

Developer - Successful Defense in Breach of Contract and Fraud Dispute

Herrick successfully defended Muss Development in the Appellate Division, First Department appeal of *Princes Point LLC, et al. v. Muss Development LLC et al.*, a case involving the plaintiff's breach of a \$36 million contract to purchase Princes Point, a 23-acre waterfront parcel of land on the south shore of Staten Island, from Muss. The First Department unanimously confirmed Herrick's earlier Supreme Court, New York County victory for Muss, which entitles the real estate developer to retain the plaintiffs' approximately \$4 million deposit plus other fees totaling nearly \$1 million. In doing so, the court delved into an area where there was a dearth of case law in New York - namely, whether a prospective real estate purchaser anticipatorily breaches a sale contract by commencing an action against the seller for rescission before the closing date, and whether, in that event, the seller is required to show that it was ready, willing, and able to complete the sale. The court held that the plaintiff had anticipatorily breached the contract and that Muss is entitled to keep the deposit and other significant fees without having to show that it was ready, willing and able to close. Once there was a breach, there was no need to spend time and money preparing for a closing that was not going to happen.

New York State Association for Affordable Housing - Challenge to Local Law 44

Representing the New York State Association for Affordable Housing and individual developers in litigation seeking to invalidate Local Law 44 - which requires any developer receiving city funding to submit quarterly wage reports - as unconstitutional, pre-empted by New York state law, and imposing an unreasonable economic burden on small businesses competing for affordable housing work.

Publicly Traded REIT - Credit Default Swap Default

Defense of a publicly traded hospitality REIT against allegations by its counterparty, a large multi-national investment bank, that two of our client's funds defaulted on their obligations under a \$1.2 billion credit default swap.

Former CEO - SEC Investigation

The former CEO of a major fiber optic company in an SEC investigation of accounting irregularities. After a grueling deposition and an in-depth Wells Submission, the SEC determined not to pursue any action against our client.

Real Estate Board of New York - Mitchell-Lama Litigation

Represented the Real Estate board of New York in its successful lawsuit against the New York City Council to overturn Local Law 79. The law required owners of Mitchell-Lama housing and housing subsidized by certain federal programs to give a right of first refusal to purchase their projects to tenants, pursuant to an ambiguous and burdensome process. The Court found that the law was preempted by federal and state housing laws, and enjoined the City from enforcing it.

Real Estate Developer - Mixed-Use Conversion Case

Successfully represented a real estate developer in litigation over its right to convert a building it purchased from office/retail use to mixed office/retail and residential use.

9/11 Families and Victims - Compensation Fund Assistance

Pro bono assistance to victims and their families in recovering funds from the 9/11 Victim Compensation Fund.

Republic of Turkey - Elmali Hoard Restitution

Represented the Republic of Turkey in recovering the "Elmali Hoard" of extremely rare ancient silver coins from a major collector.

Events

Herrick and The Art Newspaper Present: Fascinating Cases of Forgery and Fakes: Art Authentication Issues

June 25, 2015
Herrick, Feinstein LLP

SFO Wealth Operations & Performance Conference 2015

June 9, 2015
The Princeton Club

Appraiser's Association of America: Legal and Ethical Concerns for Appraisers

October 10, 2013
Herrick, Feinstein LLP

Discussion on Art Authentication Boards, Art Appraisal and International Law

April 24, 2013
New York Law School

Anti-Defamation League Next Generation Philantoropy Community Event: Recovering Art Looted by the Nazis during the Holocaust

November 29, 2012
Herrick, Feinstein LLP

Annual Art Litigation and Dispute Resolution Practice Institute

November 16, 2012
New York County Lawyers' Association

Rutgers Law Record: "Unspoken Trade: Stolen Art in America"

November 14, 2012
Rutgers School of Law-Newark

Penn Law Alumni Weekend: Local and Global Art Conflicts Seminar

May 12, 2012

Art Law Association Program: Cultural Heritage and Looting

November 17, 2011
Brooklyn Law School

A Snapshot of Cultural Heritage Property Law

July 28, 2011
Sotheby's Institute

Restitution of Holocaust Looted Art Panel

November 3, 2010
Brooklyn Law School

News

April 11, 2012

Brooklyn Law School Art Law Association Presents Dean Jones-Woodin Award to Darlene Fairman

Brooklyn Law School Art Law Association