

## **Late Payment of Common Charge Fees by Delinquent Unit Owner Deemed to Be an Admission of Liability: Condo Board Entitled to Recover Late Fees and Legal Fees**



Landlords and condominium boards frequently have to sue tenants and unit owners who fail to pay their rent or common charges in a timely manner. This is an unfortunate fact of life in the real estate world. In these situations, courts have typically been very stingy when awarding late fees or legal fees to the landlord or condominium board even though the language in the lease or by-laws the lawsuit is predicated upon requires the delinquent tenant or unit owner to pay late fees and reimburse the landlord or condominium board for the legal fees incurred commencing and adjudicating the lawsuit.

In these types of lawsuits, the delinquent tenant or unit owner often pays all base rent or common charges owed just prior to eviction or foreclosure, and then the presiding judge typically strongly encourages the parties to settle and asks the landlord or condominium board to waive late fees and to accept less than half the legal fees owed. In these situations, if the landlord or condominium board refuses to settle, the judge may end up awarding much less than half of the late fees and legal fees. This is not a fair result for the landlord or condominium board because it basically results in an interest free loan to the delinquent tenant or unit owner and encourages untimely payment and litigation.

In 2016 (technically December 15, 2015), this office won an appeal that appears to be a game



changing decision for condominium boards dealing with this issue. (Sorry, the decision only applies to condominiums boards not landlords.) In the case *Board of Managers of One Strivers Row Condominium v. Giwa*, 134 A.D.3d 514 (1<sup>st</sup> Dept. 2016), the Appellate Division, First Department ruled that payment of common charges by a delinquent unit owner after a condominium board has commenced legal action against such owner is an admission of liability, which entitles the condominium board to collect late fees and legal fees under such circumstances. Specifically, the court determined that \$42,037.32 in late fees and legal fees was “supported by the record and is not unreasonable.” This is a departure from prior case law where typically courts have only awarded a clear winner legal fees at the bitter end of a knock-down, drag-out lawsuit. In the *Board of Managers of One Strivers Row Condominium* case, the appellate court is stating clearly that the fact that the condominium board even had to commence litigation to collect payment was a sufficient basis to entitle the condominium board to the recovery of late fees and legal fees.

In sum, the new precedent established by this appellate court decision should save condominium boards and their associations thousands of dollars by forcing unit owners to pay on time or suffer the consequences of having to pay the condominium board late fees and legal fees if a lawsuit is commenced. If a lower court tries to force settlement on these items, there is now a binding appellant precedent, which holds that these items must be paid by the delinquent owner.

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