

# online news continued

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## Mediation Is Tried in Post-9/11 Disputes

By Ronald Drenger

The financially wounded of the World Trade Center attack walk the narrow 11th-floor hallway of the Civil Court building, awaiting a chance to rescue their small businesses from ruin.

Here, on a recent Tuesday, are the owner of a financial consulting firm on Lower Broadway, the proprietor of a nail salon on Pearl Street, and the lawyer for a Lower East Side restaurateur.

They are not in the courthouse for trials, though some may end up there. They've come in hope of resolving disputes with their landlords in a mediation program begun last month that's intended to save Lower Manhattan businesses.



A new Civil Court mediation program for Downtown business owners and landlords has involved the work of (standing from left) court clerk Marcy Hoenig; Fern Fisher, Civil Court administrative judge; Elizabeth Clements, director of mediation for Safe Horizon; and Judge Paul Feinman. Mediators Michael Lang and Jeff Caplan (left and right at end of table) are with lawyers for both sides of landlord-tenant dispute involving a Cliff Street restaurant. Photo: Carl Glassman

devastated by the financial downturn. He knows he has to abandon the business but hopes the landlord will forgive some of his back rent. A first mediation session was unproductive, but he'll return for another, accompanied by his pro bono attorney, Rizpah Morrow, provided by the new court program.

"I'm in debt and I just can't pay," he said.

Cases like these have been all too common in the past six months, said Kevin Curnin, an attorney at Stroock & Stroock & Lavan, who after Sept. 11 co-founded From the Ground Up, a coalition of Downtown businesses.

"We were seeing lots of issues but the commercial lease issues in particular called out for an innovative, collaborative solution," he said.

Curnin, together with representatives of the Legal Aid Society, the New York City Bar Association and Downtown law firms, formed the plan for the new program and then approached Fisher, who embraced the idea. She created a special court calendar to handle the cases.

On Tuesday and Thursday afternoons, tenants and landlords willing to try the program—whether or not their disputes have already led to a lawsuit—come to the 11th floor of 111 Centre, where they are met by a phalanx of staff offering free help: mediators provided by the court and the nonprofit group Safe Horizon; volunteer lawyers; a judge who will speak to the parties but not decide their cases; and a representative of the city's Economic Development Corp., armed with information on grants and other assistance programs.

Behind closed courtroom doors, mediators and disputants try to hammer out a settlement, or at least find a partial solution, leaving the rest to be decided in court.

"Mediation allows for resolutions not dictated by case law and statutes and lets the parties fashion their own settlements," said Paul Feinman, a judge in the program during its first two weeks. "This is a situation not contemplated by the parties when they wrote up their leases and it requires creative thinking. It's asking the parties, especially the lawyers, to think differently."

Attorney Jay Ringel, who went through the process, agreed. He represented David Baldwin, the landlord of Mike's Shoe Repair on Dey Street, a small shop devastated by the disaster. Its owner, Mike Mamoukakis, had fallen far behind on his rent. Baldwin decided to evict the store and Judge Feinman urged the parties to try the program. With the help of mediators, they settled.

"We realized we weren't really all that far apart," Ringel said. "It helped us step back from being litigators and with the help of the mediators, we became problems solvers."

Baldwin waived about \$100,000 in back rent, for which Mamoukakis had signed a personal guarantee, and agreed not to pursue his case against the business owner, according to Ringel. In return, Mamoukakis promised to vacate his space at the end of July.

In another case, the owner of a small business on Liberty Street agreed to make overdue rent payments over the summer while the landlord waived \$7,000 in back rent, a deal that will allow the business to stay open while it tries to rebound.

The landlord of a Cliff Street restaurant backed away from trying to evict his tenant after the parties worked out a less stringent rent payment schedule.

"In mediation, tenants and landlords might come up with better, more mutually beneficial resolutions than evictions," said Fern Fisher, an administrative law judge who oversees the Civil Court system. "If a business is evicted, the owner loses a tenant and money, and the tenant loses a business. It does nobody any good to have empty storefronts." If businesses do have to clear out, the parties are encouraged to use mediation to resolve outstanding financial disputes without litigation.

"There really are no good guys and bad guys," said Fisher. "The situation was not caused by owners or tenants but by terrorists."

The jury is still out on the program, but so far the results are promising. Of the 14 cases that went through the program last month, half were settled in mediation, three are coming back for another session, and four were sent back to the regular court calendar for trial.

Murray Markovitz, the financial consultant, was shut out of his Broadway office for weeks after Sept. 11. His computers were damaged by Trade Center dust and his business further

"There's been understanding and empathy from landlords and their counsel," said Francisco Negron, a Safe Horizon mediator who helped Baldwin and Mamoukakis. "And reaching a resolution in one case gives us an incentive to continue."

"People who come through this courtroom are well-intentioned, hard-working people," Feinman said. "They're in a terrible situation and they're trying to make a go of it. If people are forced to leave, you're ceding victory to the terrorists."

Tenants or landlords interested in participating in the mediation program should call the Bar Association at 382-4763 or Safe Horizon at 577-1740.

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