

SUMMER NEWSLETTER

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IN THIS ISSUE

CRIMINAL LAW.....	1
BUSINESS & EMPLOYMENT LAW.....	2
IMMIGRATION LAW.....	2
REAL ESTATE.....	2

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CRIMINAL LAW

MIRANDA RIGHTS

In 1963, the Supreme Court created a set of guidelines for law enforcement to follow, better known as the Miranda Rights, which must be read before a suspect is subject to interrogation. A recent decision by a New York District Court underscores how fragile and nuanced the Miranda Rights really are.

In United Sates v. Feuer, the Defendant, Edward C. Feuer, was charged with knowingly receiving child pornography. After his arrest Mr. Feuer was read his rights, which he waived, and then interrogated by two agents. At trial, the Defendant moved to suppress statements made during interrogation concerning his e-mail account on the grounds that he was coerced because the agents continued to question him on his internet use despite his repeated assertions that he did not want to talk about the internet. The judge denied the Defendant's motion, holding instead that "to suppress an involuntary statement made by someone who has received Miranda warnings, the Court must find that law enforcement employed coercive tactics and that such tactics 'overbore' Defendant's will." The judge held that despite Mr. Fuer's repeated assertions

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continued from Criminal Law

about not wanting to talk about the internet, the agents did not use any coercive tactics

This decision is indicative of the dichotomy between Miranda Rights as portrayed by popular culture and their actual application. For example, contrary to many movies, police need only advise suspects of their rights when they are subject to "custodial interrogation." That is, when an individual is placed under formal arrest or when their freedom of movement is restricted as if they are under arrest. The implication is that statements voluntarily given to a police officer outside of such a situation are admissible, such as when pursuant to a police request a suspect goes to the police station on their own, or even when a suspect voluntarily "accompanies" one or more officers to the station house. This is just one example of the many exceptions developed by courts over the years that have eroded Miranda Rights. It is crucial to ask to see an attorney in these situations. Katona & Mir offers legal counsel and representation in matters involving criminal issues and can help you or your family should such a matter arise.



IMMIGRATION LAW

SECURITY CHANGES TO CREATE VISA BACKLOG

The Department of Homeland Security plans to begin electronic prescreening of travelers from countries that are part of the Visa Waiver Program beginning in August and becoming mandatory starting January 12th. The new measures are intended to close security holes in the Program, which permits travelers from 27 countries to come to the U.S. without having to apply for a visa. While the Department of Homeland Security says it does not anticipate dramatic changes in visa workload, the Government Accountability Office (GAO) reports that travelers rejected by the new screening process would need to apply for a visa, which could significantly increase the number of visa applicants. According to the GAO, the result could mean even longer waits for visa processing since the increased demand will likely overwhelm existing operations.

REAL ESTATE

A report on the median price paid for a Manhattan apartment during the second quarter of this year will likely be released in the next couple weeks. Those who've been waiting for a decline, like what other big U.S. cities are undergoing, will be disappointed. Analysts are indicating that this quarter is likely to be even better than the first quarter, when the median sales price was \$945,276, 13.2% above the year-earlier level and 11.2% above the 2007 fourth quarter figures. However, analysts also caution that the market is being supported to a large extent by the ultra luxury sector, with apartments starting at \$8 million. Still, Manhattan has a substantial list of other measures of support which may keep the market healthy. For example, 70% of Manhattan housing stock is co-ops, which demand stellar credit quality. Furthermore, the city remains a world capital, drawing many wealthy foreigners who want to take advantage of the cheap dollar. If you are interested in purchasing or selling a co-op or condo, please feel free to give us a call to discuss your options.

BUSINESS & EMPLOYMENT LAW

SUPERVISORS MAY BE HELD LIABLE FOR SEX DISCRIMINATION

A former employee of M. Fabrikant & Sons, a diamond and jewelry manufacturer and distributor, brought a sexual harassment suit against the company and her supervisor Mr. Brown, claiming that Mr. Brown harassed her by making sexually provocative comments on a regular basis and that she was fired by the company in retaliation after she complained. After the Plaintiff entered into a settlement agreement with the company, Mr. Brown moved to dismiss the complaint. He argued that the mere title of supervisor does not make him liable under either State or City Human Rights Law and since the Plaintiff may not establish liability against the company because of the previous settlement, the supervisor cannot be liable for "aiding and abetting."

The New York Supreme Court held that while a corporate employee who has a title as an officer, manager, or supervisor of a corporate division, is not individually subject to suit with respect to discrimination based on sex under New York State Human Rights Law, they may be individually liable under the New York City Human Rights Law. The judge found that the City Human Rights Law contained a statutory basis for individual employee liability in the New York City Administrative Code, which states that it shall be an unlawful discriminatory practice for an "employer or agent thereof" to discriminate based on sex. The implication is that the aider and abettor provision contained within the City Human Rights law may support a finding of individual liability regardless of the individual's role as an owner or supervisor.



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