

PROFILE OF THE WEEK

Marc Fried & Adam Gilbert, partners
Nixon Peabody LLP

Legal peace-makers are pleaders of the pack

BY LINDA BARR

Make peace, not war could be the mantra of Nixon Peabody LLP attorneys, Marc Fried and Adam Gilbert.

Despite an enviable record of landmark cases — three of which generated new laws — the partners view their role among the city's top real estate litigators as one of peace-makers intent on finding a solution to a problem.

"We don't fight for the sake of fighting," said Gilbert, former general counsel to Insignia Financial Corp. whose 1992 case, *Bass vs. Tax Commission* not only resulted in a \$33 million judgment against the City of New York, but generated a new law concerning the way property is valued when asbestos is present.

"There are lots of litigators who say they go for the jugular and that means fighting rather than offering the client some real judgment as to the best thing to do to resolve a situation. Sometimes it may mean you have to fight, but sometimes you may not."

Fried cites as an example of the pair's court whisperer approach a recent case involving a six-figure commission dispute.

Rather than filing an immediate law suit and starting the process of litigation — a process that can develop a life of its own and drag on sometimes for several years — the partners sent a letter to the other party's attorney and followed up with a face-to-face meeting. When the other side appeared to balk at the offer on the table, Fried and Gilbert drafted a complaint but, instead of filing it, sent a copy to the opposing counsel.

"We asked them just to think about how strong our case was," said Fried. "In a matter of days, the whole matter was resolved."

"Resolving the issue and getting the client a resolution with the least interruption to his business was the goal. We would have benefited [financially] from a three year litigation, but we are trying to develop a process of ongoing relationships with clients, not to make as much money as we can, as fast as

we can.

"We aim to give clients the best advice, even when the best advice is not advice that is going to generate a lot of legal fees."

Like many of the real estate industry's most successful partnerships, Fried and Gilbert complement each other in character as well as purpose. Both have a staunch belief in providing their clients with an honest and straightforward assessment of their positions, and developing relationships with their clients is paramount to their litigation strategy.



ADAM GILBERT

Gilbert and Fried first began working together in 1993, when Fried was assistant head of real estate litigation at Nixon Peabody and Gilbert was making what he calls his 'cameo appearance' at the law firm of Morris & Cohen, a firm he'd joined following a 16-year stint at Shea & Gould and at which he spent just six months before joining

Nixon Peabody in 1994.

Gilbert — who was born and raised in Manhattan and studied law at Georgetown — had been handling a myriad of legal cases but, more and more, found himself drawn to the real estate cases that involved intricate tax assessments, land contamination and corporate disclosure cases where real estate was the primary asset. His clients at the time included such well know real estate figures as Leona Helmsley, George Klein and Andrew Farkas.

Fried — who grew up in Westchester and studied at Columbia Law School — had begun his legal career at Parker Chapin before joining Nixon Hargrave Devans and Doyle, as Nixon Peabody was then known, in 1993.

When a complicated arbitration case landed on Fried's desk, a colleague suggested he call Gilbert to consult on the issue. "The case was right up our alley," recalled Gilbert of the fledgling partnership, which has grown to become one of the most respected in the city's real estate circles.

In 1998, Gilbert accepted the position of General Counsel with Insignia Financial Group, Inc., although he and Fried continued to

practice law together, only this time with Gilbert as the client and his friend as the service provider. With Fried acting as understudy counsel to Insignia, the two men's relationship flourished over the next five years until Gilbert returned to Nixon Peabody as a partner when Insignia was swallowed up by CB Richard Ellis in 2003.

Since then, Gilbert and Fried have been working to bring what they call a sophisticated and service oriented approach to the often rough and tumble New York litigation arena.

On the island of Manhattan, where space is a premium and the dollar amounts rack up in the billions, it isn't always easy for the voice of reason to be heard, yet Fried and Gilbert have managed to not only make themselves heard, they've shattered the sound barrier.

Gilbert won a \$10 million judgment against Nassau County in a case involving the over-assessment of an Alexander's department store. He also spurred the creation of a new law concerning the rights of minority owners in real estate corporations who exercised their appraisal rights upon corporate dissolution. His clients were members of the Keoppel real estate family and the result in that case favorably impacts the manner in which minority interests in real estate entities are valued.

Fried and Gilbert successfully battled the city when they represented the Times Square Center Associates in the massive condemnation disputes surrounding the redevelopment of 42nd Street and, in a closely watched case involving the Bank of Montreal and its long-term lease at 430 Park Avenue, they once again helped pave the way for a new law, this time one that directs landlord and tenant actions at the termination of a lease.

"New York's is a very robust market and people have a lot at stake," remarked Fried. "There's a lot going on in a small space that results in a lot of legal issues."

"One of the things we both enjoy is being faced with a problem that people come up with in this very

fluid and high-paced market and being able to get into the facts and investigate what's going on underneath then helping clients work through the issues. Whether we work through them by going to court and winning, or by structuring some sort of accommodating resolution that allows them to go on with their business — which is most clients' goal — and resolve the dispute in way that they can live with, being able to do that brings a lot of satisfaction."

Often describing themselves as old-fashioned house doctors who still make house calls, the pair is in the throes of growing Nixon Peabody's Real Estate Litigation Group. As one of the largest legal firms in the county, Nixon has a plethora of practices serving everything from transactional, leasing and finance to affordable housing. But while utilizing that platform of services and tools their

firm already provides to help their clients, Fried and Gilbert are conscious of maintaining very personal relationships with their clients.

Fried explained, "We don't want our clients going from one lawyer who does one type of work to another who specializes in something else. We bring other people in but, once we become involved, we stay involved."

"It goes beyond our focus on real estate litigation — it's a focus on the way we deliver legal services because we do try to provide good judgment and answer clients' questions as if we were the client. What would we do if we were in their situation?"

"Part of the balance in advising clients who are very successful at what they do and know what they want is to be able to suggest something other than what they want, but also be able to work with what they do want."

"We are not doing our job if we just tell our clients what they want to hear. We look for the best resolution to often very complex issues. Yes, we'll happily take a case to trial and judgement, but that's not necessarily the best resolution to a dispute." ■



MARC FRIED