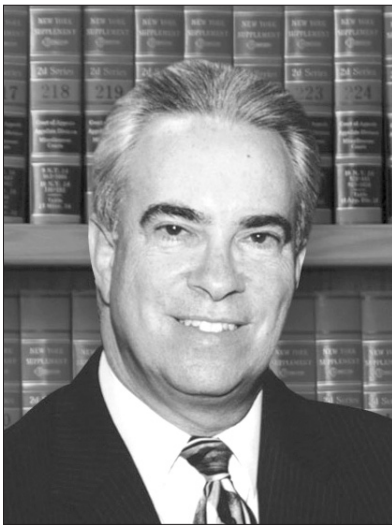


WHO'S WHO | in Litigation Law

DONALD JAY SCHWARTZ

*Forchelli, Curto, Schwartz,
 Mineo, Carlino & Cohn LLP*



Donald Jay Schwartz is partner-in-charge of Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn LLP's (FCSMC&C) litigation department.

Schwartz concentrates his practice in all aspects of commercial litigation including real estate, corporate, partnership, commercial landlord and tenant, employer and employee rights, insurance law and personal injury.

He handled the landmark case of *Mostow v. State Farm Insurance Company* (88 N.Y.2d 321) from the initial

arbitration award through the Court of Appeals. The case was responsible for changing the law in NY with regard to the interpretation of underinsurance clauses in insurance contracts. Schwartz also tried the Roosevelt Raceway tax certiorari case, which resulted in a \$4.1 million award.

"In a recent case that we litigated, the relevant operating agreements of the LLCs in issue permitted members to withdraw merely by giving advance notice of the members' intention to do so," Schwartz said. "Our clients gave the required notice and then sought to be paid the fair value of their membership interests. Since the case involved commercial real estate that had enjoyed a significant increase in value over time, the "fair value" of our clients' interest proved to be substantial."

Therefore, careful attention should be given to drafting an LLC operating agreement, particularly with respect to a member's right to withdraw and the amount the withdrawing partner is entitled to receive upon withdrawal, Schwartz noted. "If there are no limitations placed in the operating agreement, the courts will find no such limitations at the time of withdrawal, as in our case, to the sur-

prise of opposing counsel," he said.

Prior to joining the firm in 1977, Schwartz served as an assistant district attorney for Nassau County, where he was a senior trial attorney.

He is also a former village prosecutor and is a current member of the Panel of Arbitrators of the American Arbitrators Association.

Schwartz is a member of the NYS District Attorneys Association, the NYS Trial Lawyers Association, the Jewish Lawyers Association of Nassau County and the NYS Bar Association. He is also a member of the Nassau County Bar Association and serves on a number of its committees including the grievance committee, which is by appointment only, where he holds the position of vice chair.

Founded in 1976, FCSMC&C has more than 40 attorneys and offices in Mineola and Melville. The firm's practice areas include land use and zoning, real estate, environmental law, tax certiorari, litigation, banking and finance, corporate and commercial transactions, loan closings and bulk loan sales, tax, trusts and estates, bankruptcy and debtor/creditor right, employment and labor law, municipal law and business and personal transactions.

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