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*Sabrina Charles-Pierre, Editor*

# ROCKLAND COUNTY BAR ASSOCIATION

# NEWSBRIEF

[www.rocklandbar.org](http://www.rocklandbar.org)

November 2017

## CLE TIME

### Immigration Enforcement 2017

**Friday, November 3, 2017**

**12:00pm - 3:00pm**

**Banchetto Feast**

**75 West Rt. 59 & S. Middletown Road**  
**Nanuet, NY 10954**

## Matrimonial Update

**Tuesday, November 14, 2017**

**6:00pm - 9:00pm**

**Banchetto Feast**

**75 West Rt. 59 & S. Middletown Road**  
**Nanuet, NY 10954**

*It's A Wonderful Time of Year*

*The Rockland County Bar Association*

*INVITES YOU TO*

*Celebrate the Season!*

## **HOLIDAY PARTY**

Thursday, December 14, 2017

6:00pm - 9:00pm

*Bella Gianna's*

*77 NY-303, Congers, New York 10920*

Cost: \$60/PP

RSVP via check or online by

December 4, 2017

MAKE ALL CHECKS PAYABLE TO:  
ROCKLAND COUNTY BAR ASSOCIATION  
337 NORTH MAIN STREET, SUITE 1  
NEW CITY, NEW YORK 10956

**COMMERCIAL LITIGATION ISSUES OF INTEREST****November 2017**

**Submitted by Paul Savad, Esq.  
Chair, Commercial and Corporate Law Committee,  
Joseph Churgin, Esq., and Susan Cooper, Esq., of  
SAVAD CHURGIN, LLP, Attorneys at Law**

Your client, a co-trustee of a trust created by his deceased relative's will, signed a contract to sell real property held by the trust. The fully executed contract contained a handwritten correction on the first page striking the misidentification of your client as the "Executor" of his relative's estate, and identifying your client as "Trustee of the Last W+T" of his deceased relative. The contract's rider identified your client as "Executor," which was not corrected. The rider also contained a clause providing that any inconsistency with the contract would be controlled by the rider. Neither the contract nor the rider was signed by the other co-trustee, but all transfer documents necessary to close were signed by both trustees. The purchaser brought an action for return of the down payment on the ground that the contract was null and void because the named seller did not possess title, and the co-trustee did not sign the contract. You move to dismiss the action and for summary judgment, arguing that the discrepancy in identification of the owner was a mere scrivener's error. The purchaser cross-moved for summary judgment. You submit an affidavit of the other co-trustee stating that she was fully aware of the contract, participated in the transaction, and did not believe her signature was necessary. Will your client's contract be upheld?

The answer is *no*.

In *Leonard H. Shapiro Revocable Living Trust v. Achenbaum*, 605858/2016, NYLJ 1202796204129, at \*1 (Sup. Ct. Nassau Co. August 9, 2017), Defendant Warren Achenbaum was one of two "Trustees of the Trust Created Under Article Fifth of the Last Will and Testament of Elaine Achenbaum." Achenbaum signed a contract to sell real property belonging to the trust. Achenbaum received a down payment of \$98,500, which the plaintiffs sued to recover, claiming that the contract is null and void because the seller did not possess title, and because the co-trustee did not sign the contract.

The pre-printed contract misidentified the seller on the first page as "Executor of the Estate of Elaine Achenbaum." The misidentification was corrected by hand to say "Warren Achenbaum as Trustee of the Last W+T of Elaine Achenbaum."

The contract's uncorrected pre-printed rider identified Achenbaum as "Executor of the Estate of Elaine Achenbaum." Neither the contract nor the rider were signed by the second co-trustee, Anne Cacciola. The rider provided that any inconsistency between the contract and the rider would be controlled by the rider.

The title report required the contract to be amended to identify the title holder as "Warren Achenbaum and Anne Cacciola, as Trustees of the Trust Created Under Article Fifth of the Last Will and Testament of Elaine Achenbaum who died a resident of Nassau County on April 1, 2013."

Achenbaum moved to dismiss the plaintiffs' action and for summary judgment, arguing that the discrepancy between the seller listed in the contract and the name of the titled owners was nothing more than a scrivener's error. An affidavit of the second co-trustee, Cacciola, states that she was fully aware of the sale at the time of the transaction and did not believe her signature on the contract was necessary. They argue that any defect was remedied by both Achenbaum and Cacciola being ready, willing, and able to close, and that both trustees had signed all transfer documents. The plaintiffs cross-moved for summary judgment.

The Court noted that no title is established by a deed from a person not in possession or who is not the owner, citing *Gardner v. Hart*, 1 N.Y. 528. The Court ruled that the contract was signed by Achenbaum as Executor of the Estate of Elaine Achenbaum, who had no interest in the property that was owned by the trust. The handwritten correction was meaningless, as the rider controlled. There was no valid contract, and the plaintiffs were entitled to the return of their down payment.

#### *The lesson?*

A contract to sell real property must contain the name of the seller as it appears on the title documents, such that a title company will insure title transfer. If the seller is not properly named, then the purchaser may cancel the contract, because a deed from a seller who is not in possession or is not the owner establishes no title.

Savad | Churgin



## **Portrait Unveilings & Presentations**

*Honorable Victor J. Alfieri, Jr.*

Judge of the County Court and  
Acting Justice of the Supreme Court, Retired

**Friday, November 3, 2017**

**3:00 p.m.**

**Rockland County Courthouse**

**Room 479**



*Honorable William A. Kelly*

Justice of the Supreme Court, Retired

**Monday, November 6, 2017**

**3:00 p.m.**

**Rockland County Courthouse**

**Room 453**

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# RCBA'S ANNUAL DINNER

October 26, 2017





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CASINO  
*Night*

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*\$150 per person*

Includes Casual Dinner  
and Dessert, Open Bar,  
Gaming Tables and  
Casino Chips,  
and Fabulous Prizes

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Please join the  
Legal Aid Society  
of Rockland County

for a night of fun and  
entertainment as we honor

Stephanie Fox  
Court Appointed Special Advocates

Thursday  
November 16, 2017  
6:00 - 10:00 pm

Nyack Seaport  
21 Burd Street, Nyack





**Bankruptcy  
Tax Analysis**

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Compromise**

**Unfiled Tax  
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PROBLEMS**

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**We are looking for  
Spanish-speaking attorneys for  
Assigned Counsel panels.**



*News from the Executive Director*

**RCBA STAFF UPDATE**

*Below please find a break-down of major areas of responsibility for the  
RCBA Staff:*

**ASSIGNED COUNSEL COORDINATOR – MANUELA GOMEZ**

**LAWYER REFERRAL SERVICE COORDINATOR – MANUELA GOMEZ**

**CLE COORDINATOR – SABRINA CHARLES – PIERRE**

**ADVERTISING/NEWSLETTER – SABRINA CHARLES – PIERRE**

**EXECUTIVE DIRECTOR – NANCY LOW – HOGAN, Ph.D.**

# Upcoming EVENTS

## Honorable Victor J. Alfieri, Jr. - Portrait Presentation

Friday, November 3, 2017 @ 3:00 pm  
Rockland County Courthouse, Room 479

## Honorable William A. Kelly - Portrait Presentation

Monday, November 6, 2017 @ 3:00 pm  
Rockland County Courthouse, Room 453

## Holiday Party

Thursday, December 14, 2017 @ 6:00pm  
Bella Gianna's

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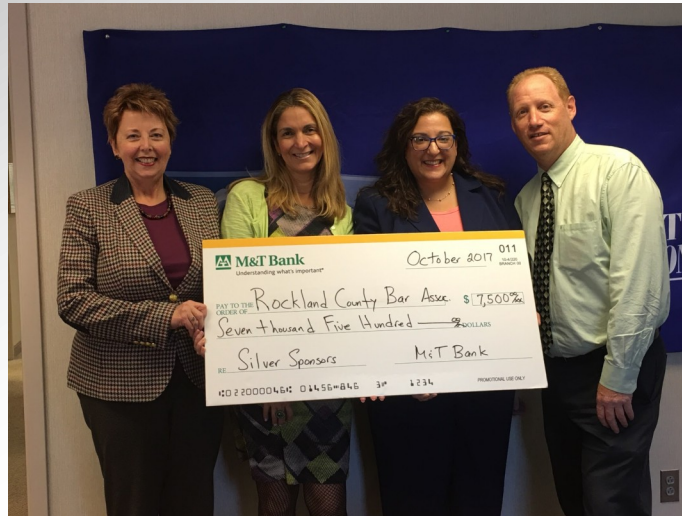
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## RCBA RECEIVES SILVER SPONSORSHIP CHECK FROM OUR 2017-18 SILVER SPONSOR M&T BANK



*Pictured above from left to right: Nancy Low-Hogan, Ph.D., RCBA Executive Director; Arlene R. Rodgers, Relationship Manager, M&T Bank; Andrea F. Composto, Esq., RCBA President; Ira S. Schoeps, Esq., RCBA Treasurer.*

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Relationship Manager | Business Banking  
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**ORANGE BANK & TRUST**



*Holiday Party*

December 14, 2017  
Bella Gianna's  
6:00PM

**MEMO**

**TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS**

The Association is seeking articles from your committee for publication in the Bar's monthly Newsletter. The membership would greatly benefit from your input and would appreciate it. The article does not have to be complicated or long - a succinct piece of general interest and importance would be best.

If you are able to submit an article for the Newsletter it should be sent via email to [sabrina@rocklandbar.org](mailto:sabrina@rocklandbar.org) by the 15th of the month so that the Executive Board may review it.

Thank you!

**Michael E. Zall**

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Fax# (845) 357-4616

**Michael E. Zall**  
Attorney At Law  
[Mike@Zall-Law.com](mailto:Mike@Zall-Law.com)



Monthly  
Newsletter



# COMMITTEE CORNER

## Assigned Counsel Committee Meeting

November 16, 2017 @ 12:30pm

Offices of the RCBA

## Debt Collection, Bankruptcy and Creditor's Rights Committee Meeting

November 20, 2017 @ 5:30pm

Offices of the RCBA



### READ A GOOD BOOK?

If anyone has read a book that they would like to recommend, please write a short review for publication in our Newsletter.



**ALL ADVERTISEMENTS  
AND ARTICLES MUST BE  
REVIEWED BY THE  
EXECUTIVE COMMITTEE  
FOR CONTENT.**

### Need a Place to Meet in New City?

RCBA Conference Rooms  
available for rent.

#### MEMBER PRICES:

**1<sup>st</sup> two hours FREE, then \$25/hour  
Full Day (8 hours) = \$140.00**

#### NON-MEMBER PRICES:

**\$50/hour  
Half Day (4 hours) = \$150.00  
Full Day (8 hours) = \$300.00**

# CLE CORNER

November 3, 2017

## Immigration Update

12:00pm - 3:00pm

November 14, 2017

## Matrimonial Update

6:00pm - 9:00pm

December 4, 2017

## ESI in Non-Commercial Litigation

6:00pm - 9:00pm

### CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited “transitional” education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice. Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories: Ethics and Professionalism, Skills, Practice Management or Professional Practice.

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1/8 PAGE (3.75x2.5):	\$125.00
BUSINESS CARD:	\$75.00



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*Our 2017-18 Sponsorship Year begins July 1, 2017.*

*There are several types of Sponsorships still available.*

*See complete details on our website under “About.”*

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### **OFFICE SPACE**

New City- 4 adjoining office suites, approx. 1800 sq. ft. total, can combine/ divide to suit individual user(s) needs -South Main Street, walk to courthouse, restaurants, gov't buildings, ample parking. Call Arthur 845-359-3560

### **OFFICE SPACE**

Office Space available in New City. Attorney or Accountant preferred. Please call us for details. DaSilva & Hilowitz LLP (845) 638-1550

### **STORAGE SPACE - ORANGEBURG**

Storage space for legal files available. 180 square foot storage space. 24/7 access. Currently used by local lawyers for storage. Premises are located in Route 303 in Orangeburg and are sprinklered. \$225.00/month, no lease required. Contact Bruce : 845-359-5400

### **OFFICE FURNITURE FOR SALE**

Priced to sell. Vertical and lateral file cabinets, storage units, desks, chairs, conference table, book cases, credenza, tables, dividers, bulletin boards, white board. Please call Madelon at 914-527-2400 for information. Items are located in New City.

### **ATTORNEY WANTED:**

New City, Rockland Law Office seeks attorney with experience in Personal Injury, Workers' Compensation, Dental/ Medical Malpractice, Nursing Home Neglect. Prefer minimum of 5 to 10 years plus experience in some or all of these areas. Deposition and Trial experience a plus. Salary and Benefits to be discussed. Call 845.598.8253. Email: [vcrownlaw@aol](mailto:vcrownlaw@aol).

### **NEWLY ADMITTED ATTORNEY**

Rockland County PI firm looking for newly admitted attorney (or awaiting admission) -- we are willing to train the right candidate in all phases of personal injury litigation...submit resume to [Lawyers@pilaw.com](mailto:Lawyers@pilaw.com).

### **WORKERS' COMP. ATTORNEY WANTED**

Perez & Morris LLC, a national client based law firm, seeks an experienced workers compensation attorney (at least one year) to handle NY workers compensation cases out of our Rockland County, NY office. We offer a competitive salary and benefit package. Email your resume to [mdonohue@perez-morris.com](mailto:mdonohue@perez-morris.com).

### **ATTORNEY WANTED**

New City, Rockland County, NY Law Office seeks attorney with some experience to handle all aspects of our Workers' Compensation cases in a busy and friendly small personal injury/malpractice law firm. Salary and Benefits to be discussed. Call 845-598-8253. E-mail: [vcrownlaw@aol](mailto:vcrownlaw@aol). Applicants can learn more about the Law Firm of Valerie J. Crown by visiting our website: [valeriecrown.com](http://valeriecrown.com)

### **IMMIGRATION ATTORNEY WANTED**

Immigration Attorney Wanted: New City Law Office seeking an attorney with immigration experience, full time, trial experience a plus, Spanish speaking a plus, admitted to Southern District of NY a plus. Also willing to assist with family law/ bankruptcy/collections and loan modifications a plus. Call 845.639.4600 or fax 845.639.4610 or E-mail: [michael@demoyalaw.com](mailto:michael@demoyalaw.com)

### **LEGAL ASSISTANT WANTED**

Entry level position available for part-time bilingual assistant. Located in New City, NY. Please call 845 709-6800

### **MATRIMONIAL ATTORNEY WANTED**

Attorney Wanted: New City Law Office seeking an attorney with matrimonial and family law experience, full time, trial experience a plus, Spanish speaking a plus, admitted to Southern District of NY a plus. Call 845.639.4600 or fax 845.639.4610 or E-mail: [michael@demoyalaw.com](mailto:michael@demoyalaw.com)

### **ASSOCIATE ATTORNEY NEEDED**

3-5 years litigation experience for busy Rockland County firm. Please forward resume to [phabas@barpc.com](mailto:phabas@barpc.com) or fax to 845-359-5577

### **TO MY FAMILY COURT AND MATRIMONIAL COLLEAGUES**

I am closing my New City office Effective August 31, 2017. I am "semi-retiring." I am writing to advise my colleagues that I will be available for per diem work. My telephone number is 845-641-8100. My email address is [CBilottaEsq@aol.com](mailto:CBilottaEsq@aol.com). Thank you for considering me. Cassandra Bilotta

### **RECEPTIONIST/CALENDAR CLERK WANTED**

For busy personal injury practice in Rockland County; typing and computer skills necessary; Spanish speaking a plus. Submit resume to [Lawyers@pilaw.com](mailto:Lawyers@pilaw.com)

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