

LANDLORDS BEWARE: DO NOT COMINGLE SECURITY DEPOSITS

by: **Chaim J. Jaffe**

In *23 E. St. Mgt. Corp. v. 23 E. 39th St. Dev. LLC* (2015 NY Slip Op 09605), the New York State Appellate Division, First Department, relied on Section 7-103 of the General Obligations Law in awarding Plaintiff-tenant an award of damages in the amount of \$115,944.19. This amount represented the balance of the security deposit Defendant-landlord owed Plaintiff-tenant after application of the balance thereof to the unpaid rents which Plaintiff-tenant conceded were due and owing.

The Court's ruling is significant insofar as it serves as a reminder to all landlords and tenants that: 1) security deposits must be kept in segregated accounts and not comingled with a landlord's other funds; 2) failure to comply with General Obligations Law Section 7-103 gives rise to an action in conversion insofar as a landlord is considered to be a trustee with respect to those funds; 3) a landlord who violates General Obligations Law Section 7-103 cannot utilize the security deposit as an offset against unpaid rents; and 4) a tenant may apply its security deposit as an offset against unpaid rents.

Click [here](#) for a full copy of the Court's decision.