

— **BERNARD D'ORAZIO** —
& ASSOCIATES, P.C.
NEW YORK CITY

DORAZIO-LAW.COM

JUDGMENT ENFORCEMENT & DEBT COLLECTION LITIGATION

The Final Judgment

The Commercial Debt Collection and Judgment
Enforcement Newsletter

Our Practice Areas



Debt Collection Litigation



Post Judgment Litigation



Judgment Enforcement



Domestication of Judgments

Enforcing a Judgment Against the Beneficiary of an Estate



Judgments entered against a decedent prior to death may and should be presented to the estate's fiduciary for payment as debts of the estate, as set forth in Surrogate's Court Procedure Act. See SCPA § 1803. But what if the judgment is against the beneficiary of an estate? The SCPA does not address that scenario.

Preliminarily, you need to confirm an estate has been opened and identify the fiduciary. You can obtain from the Surrogate's Court a copy of the Will or the petition if the decedent died intestate, which would identify the beneficiaries. These records unfortunately are not available online, but you can search the Surrogate's Court's filings by the decedent's name on the New York e-courts website to see if an estate has been opened. There also should be some information in the Surrogate's Court filings about the decedent's assets.

If you believe the judgment debtor is in-line to receive a significant bequest or intestate distribution, a judgment creditor can take action to make sure the funds or property come to you, not the judgment debtor. The appropriate procedure is to file a turnover order special proceeding pursuant to CPLR 5225/5227 in the Supreme Court against the estate fiduciary. See CPLR 5201(c)(2) ("Where property consists of a right or interest to or in a decedent's estate or any other property or fund held or controlled by a fiduciary, the executor or trustee under the will, administrator or other fiduciary shall be the garnishee.")

CPLR 5225/5227 allow a judgment creditor to reach property of a judgment debtor in the possession or control of a third party (the garnishee) or debts owed to the judgment debtor by a garnishee. The judgment debtor is not a necessary party but must be sent notice of the proceeding, as provided in the statutes. It is advisable to invoke both sections when making an application for a "turnover" order. See D. Siegel & P. Connors, New York Practice § 510, at 894 (6th ed. 2018).

[Click here to read the full article...](#)

Representative *Case Highlights*

More Success in Commercial Litigation Matters

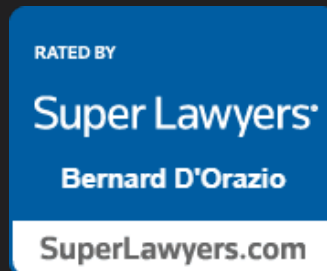
We continue to have success in our commercial debt collection litigation practice.

We recently won summary judgment on behalf of a commercial landlord client in an action for nonpayment of rent before the Supreme Court, New York County. In the case of Harlington Realty Co. LLC v. Green Healthy Living LLC, the pivotal issue was whether there were valid early surrenders of possession by the tenant.

The leases contained “no-waiver” clauses that provided there would be no valid surrender of the premises without an agreement accepting such surrender in writing signed by the landlord. There were no such writings in this case.

Following well-established law, the express language of the leases was held dispositive. The court ruled the defendants failed to raise a genuine issue of material fact and awarded our client a substantial money judgment, which we expect to collect.

[Read more case highlights here...](#)



With more than two decades of litigation experience, **Bernard D'Orazio & Associates, P.C.** brings determination, persistence, and creativity to bear on the issues facing creditors and others seeking to collect debts.

Our firm is led by Attorney Bernard D'Orazio, who has built a reputation for aggressively representing his clients in a wide variety of litigated matters.

Steven G. Yudin is Senior Counsel
Erica Cho is Office Manager/Legal Assistant

The Legal Studio
238 W 139th St.
New York, NY 10030
212-608-5300
www.dorazio-law.com



AGGRESSIVE | RESOURCEFUL | EXPERIENCED | RESPONSIVE



Judgments may be submitted for a confidential evaluation, without charge.

Submit



New York Law Journal

Attorney Advertising. This newsletter is designed and intended for general information only. The information presented in this newsletter should not be construed to be formal legal advice nor as giving rise to the formation of a lawyer/client relationship. Prior results do not guarantee a similar outcome.

Copyright 2021 Bernard D'Orazio & Associates, P.C., All rights reserved.

BERNARD D'ORAZIO
& ASSOCIATES, P.C.
NEW YORK CITY

THE LEGAL STUDIO | 238 WEST 139TH STREET | NEW YORK, NY 10030
DORAZIO-LAW.COM | BDORAZIO@DORAZIO-LAW.COM
PHONE 212-608-5300 | FAX 212-608-5398



Try email marketing for free today!