

COMMERCIAL RENT REGULATION

Thanks for this newsletter. I would like to comment on the issue relating to retaining small mom-and-pop stores. As an owner and manager of over 45 properties in New York, many of which have ground floor retail space, and as a real estate brokerage company representing retailers, I deal with the issues confronting mom-and-pop retailers on a daily basis. I have the following observations which may help shed some light on this debate:

1. Ebb and flow of the market: it is difficult for the mom-and-pop retailers to compete in very strong markets because they are forced to compete with national and well-known retailers. However, in bad and weakening markets, the mom-and-pops thrive. In fact, this is being borne out by the current market. Banks and Large national retailers are now sitting on the sidelines and in many instances actually disposing of space they recently rented, and small mom-and-pop retailers are filling the void. The brokers in my office have been extremely busy representing mom-and-pop stores in their search for more locations in New York during this market. As is typical of any cycle, we can expect to see more and more mom-and-pop retailers opening up during the course of the next couple of years so that the retail landscape will have a more appropriate balance between mom and pops and national retailers. It is questionable then if we really need to create a system of regulation to address this problem.

2. Credit worthiness: small mom-and-pop's often do not have the credit worthiness that is desirable to a landlord. This problem is compounded by the fact that it can take a landlord over one year to evict a non-paying tenant. During this period of time the landlord is incurring significant legal fees while not collecting any rent from its store tenant. This is a huge problem for small buildings where the bulk of the rent is being paid by the retailer. It is no wonder then that landlords and their lenders much prefer to deal with creditworthy tenants. To solve this problem we need a court system that is more even handed in protecting not just tenants' rights but those of landlords as well. The irony is that by trying to protect tenants, the court system actually makes it more difficult for small tenants to rent space. The other possible solution is to create a governmental program (partial lease guarantees?) that would help enhance the credit worthiness of mom-and-pop retailers.

3. Capital: small mom-and-pops are often undercapitalized. Part of the problem is often they need to provide large security deposits which is partly a function of the problem described in paragraph 2 above; the difficulty in evicting a nonpaying tenant. Landlords require large security deposits from noncredit tenants because of the risk involved in renting to them. Again, a credit enhancement program would help obviate this problem.

4. Mortgages: mortgage lenders prefer credit tenants and in difficult financing markets will often avoid making mortgage loans on buildings where a significant part of the income is derived from noncredit, mom-and-pop stores. We are currently dealing with this issue on a number of our buildings whose mortgages are rolling over. Because of the difficulty in the credit markets right now we are having difficulties in finding lenders to refinance these mortgages. Not only does this put buildings at risk of foreclosure it also substantially reduces their market values. This could have a serious impact on tax revenues derived from real estate as property values decrease as result.

5. Relationships/Transaction costs: notwithstanding the above, there are several advantages to a landlord in leasing to a small, mom-and-pop. Transaction costs are usually much lower, the deals get done much quicker and, believe it or not, many property owners much prefer having a small mom-and-pop tenant with whom they have a strong personal relationship than a large faceless national tenant with whom they cannot converse. It is not always about dollars and cents.

6. Side Streets: I would favor a policy of allowing low impact, ground floor retail uses one side streets. Currently, zoning regulations prohibit such use is on most side streets despite the fact

that for the most part low impact retail uses have not been a problem on the side streets where they currently are allowed. Opening up side streets to mom-and-pop retailers is an idea that should certainly be explored.

7. Tax Base: as a general rule of thumb, real estate taxes on properties are usually 20% of their gross rent rolls. To the extent that property values are kept lower because of regulations affecting rents, etc., there is a real costs incurred by the city.

8. Regulations: many small retailers are frustrated in their efforts to open and operate stores by the hundreds of regulations with which they must comply. They are often nicked and dimed to death by the many fines and violations that they receive for trivial offenses. Also, to the extent they are required to obtain permits and licenses from various governmental agencies, the process can be extremely time-consuming and expensive. They need a government that will work with them and not against them.

The objective of allowing mom-and-pop stores to thrive in New York is one that I and most of us in the real estate industry enthusiastically support. Few of us want to see the city turn into a glorified shopping mall. This would destroy the character of the city and ultimately serve nobody's interest. However, recommending a system of rent regulations and the like to achieve this objective is fraught with peril. There are many other alternatives that should be explored to assist mom-and-pop retailers would not run the risk of severely diminishing the value of retail properties in the tax revenues to the city generated by them.