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SERVING THE LEGAL PROFESSION AND THE PUBLIC FOR OVER 84 YEARS.

Judicial portraits unveiled at Supreme Court

Edward Brown and Hon. Marie Santagata

Judge Arthur D. Spatt and Michael J. Ostrow

Judge Arthur D. Spatt

Left to right: John Bracken, Frank Yannelli, Joseph Tobin and James Dowling

SPATT HONORED: *Hon. Arthur D. Spatt was the man of the hour at the Bar Association's Eighteenth Judiciary Night in September. The cocktail party provided Association members with a perfect opportunity to meet and talk informally with Nassau County judges.*

In a deeply moving ceremony to a capacity audience presided over by Hons. Albert A. Oppido, Arthur D. Spatt, Robert J. Sise, Sol Wachtler and David T. Gibbons, portraits of five retired Supreme Court justices, who were all present, were unveiled in the Supreme Court on September 21, 1984. The portraits were, for the most part, funded by the Bar Association. Below are excerpts of remarks made by President Michael J. Ostrow.

"Judge Oppido, Justice Spatt, Judge Sise, Judge Wachtler, Justice Gibbons, our distinguished honorees, Judge Altimari, Justice Gulotta, Justice Derounian, Justice Smith, Justice Young, distinguished members of the judiciary, ladies and gentlemen.

"Our Association is extremely proud of the judiciary of Nassau County at every level in our court system. It is particularly proud of the members of our Supreme Court bench and the justices we honor this morning who through their individual and collective temperament, integrity, ability and intellect contributed to the tradition of judicial excellence which has been our hallmark.

"This tradition of the bar association in presenting to

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The new 'Truth in Heating Law' is a trap for lawyers and clients

By BRUCE J. BERGMAN

With little fanfare, the New York State Legislature passed Chapter 555 of the Laws of 1980 adding a new Section 17-103 to the Energy Law entitled "Truth in Heating." Effective as of January 1, 1981, this statute provides in essence that a seller or lessor of a residential structure, upon written request of a "prospective" purchaser or lessee, must provide a complete set of heating and/or cooling bills or a summary thereof for the life of the structure or the preceding two years - whichever is shorter - all under penalty of a one hundred dollar fine for each violation.

Although the request need not be honored once a contract is signed, even a cursory analysis of the law reveals very serious problems, not only for sellers and lessors, but for their attorneys as well. It is, as a practical matter, unworkable and dangerous and, to a significant extent, unenforceable.

Conceptually, this statute appears to be an attempt to protect consumers from themselves. Prospective house purchasers (or lessees) should and do know that the costs of heating and cooling are a significant factor in the purchase (or lease) of a home. They can, and do, often ask for the appropriate records to help them make a decision. If they do not, it is a matter an attorney will frequently raise. Therefore, it seems that the statute is unnecessary in the first instance.

The law speaks of a "prospective purchaser." Who is a prospective purchaser? How serious does a buyer have to be? Must an owner of a house give copies of heating bills upon written request to every single person who walks through the house to take a look? This creates a huge burden and a patent ambiguity. Why should every selling homeowner and every lessor go to the trouble and expense of obtaining and transmitting this information to each and every person who in any form expresses any interest in possibly purchasing or renting? Any owner or lessor who questions the seriousness of a prospective purchaser or lessee and declines to waste time futilely submitting the heating information exposes himself to fine.

No exception is made in

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NASSAU DECISION

Supreme Court values closely held corporation

By LESTER FOREST, JR.

In a 46-page decision rendered after trial in a matrimonial action, Supreme Court Justice Beatrice S. Burstein tackled the problem of valuing the parties' closely held corporation, a bakery. The Court pointed out the considerable difficulty of this task because stock in a closely held corporation is rarely offered for sale so there is no open, active market for a willing buyer and seller. The Court cited matrimonial cases in which valuations of a business differed by several $100,000, and one in which the wife's expert gave a value of $650,000, the husband's expert claimed it was worthless, and the business was later sold for $10 million.

In the instant case, plaintiff-wife's expert used three methods to value the business. The profit potential method was employed - averaging profit over five years and reducing it by the cost of the assets - yielding a final figure of $550,000. The gross operating income method - averaging gross operating income over five years and deducting the cost of merchandise used - produced a figure of $338,000. The multiple net profit method - averaging net profit for five years, then adding excess depreciation, excess income and unreported cash, then multiplying by a selected capitalization factor - resulted in $431,500.

The defendant-husband's claim of an unsuccessful effort

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'Truth in Heating Law' is a trap for lawyers

Continued from page 1
the statute for someone who has taken title to a dwelling by foreclosure, through an estate, at a sheriff's sale or by other legal action. In each of those instances, the owner of the house might very well be unable to obtain records of heating costs and could therefore not comply with the statute, even though a complaint could - as the statute is now written - be lodged against him.

The inclusion in the statute of a requirement to give copies of "cooling bills" would also appear to be an impossibility. Air conditioning is run by electricity and there is no separate meter for air conditioning. How then could an owner of a house separate out the specific cost of cooling? Clearly he could not.

As the New York State Department of Commerce had noted in opposing this legislation, it increases the cost of doing business in New York - particularly egregious when it really serves no useful purpose. In this day of attempting to roll back burdensome bureaucratic meddling, it seems still more inappropriate to impose such a formulation.

The information to be disclosed is not that useful in any event since energy costs are a function not only of the cost of fuel and/or utilities, but personal habits of occupants as well. In many instances, segregating heating and cooling costs from overall utility bills will be impossible, particularly in structures employing electric heat exclusively. In the situation of multiple dwellings, a landlord knows that rent for a particular unit was paid, but he won't necessarily know how often the particular tenants were in a unit turning heat up or down - thus making the information of questionable value at best.

The argument advanced in the Legislature that this law will encourage owners to insulate for higher efficiency is ludicrous. What more incentive does an owner need than a desire to reduce his own astronomical costs?

On balance, it seems apparent that the statute is fraught with insurmountable difficulties - at least in its present form. Consumers are conscious enough of heating and cooling costs to make that a consideration when purchasing or renting. They can, should and do ask an owner or lessor for past bills. If such records are not forthcoming, they are free to suspect or infer something untoward and refuse to go forward until satisfied. Why then have this law on the books?

Finally, we have the position of the lawyer in the middle. There is a possibility that every lawyer who ever represents a purchaser or lessee may be deemed responsible to know of the existence and import of this obscure statute. Even assuming everyone in the profession learns of it, there may be considerable risk in neglecting to mention to the client the rights available under this arcane section. In the heat of a hurriedly arranged contract session, truth in heating may be forgotten or offhandedly dismissed by all parties.

But even careful counsel may be at the mercy of a forgetful and purposefully aggrieved client. Suppose a purchaser or lessor was advised by counsel prior to contract (remember, after contract is too late) of his rights under the law - together with all the other matters which so perple the layman in a real estat transaction. The purchase moves into the house an because the heating an cooling costs are so high faces a tenuous financia position, perhaps a fore closure or bankruptcy. H then is told by a friend tha his lawyer certainly shoul have advised the purchase in advance that heating an cooling bills were available Failing to recall that counse did advise him, he com plains to the grievance com mittee, or worse, sues fo malpractice. Farfetched One would hope so, but w can hardly be certain.

With the foregoing i mind, some attorneys hav prepared a letter to be sign ed by the client at contrac acknowledging that hi rights under the "Truth i Heating" law were explain ed and that he declined t take advantage thereof. I is certainly something t consider.

At the very least, at torneys do their clients an themselves a considerabl service in becoming familia with "Truth in Heating."

Bruce J. Bergman is a directo of the Bar Association and a member of the firm of Roach & Bergman in Carle Place.

Review course is offered by the Academy

The Nassau Academy of Law, in cooperation with BARBRI, is offering a Florida Bar Review Course from December 1984 through February 1985 for the Bar Examination in February. For further information call Pam Feinberg at 747-4070.

"In answer to the question which I just asked the witness, 'Did your husband support, honor and cherish you,' the answer is deemed to be 'No.'"

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