



## And The Defense Wins

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DRI member [Jonathan B. Bruno](#), a partner of **Kaufman Borgeest & Ryan LLP** in New York City, obtained a summary judgment dismissal and then successfully defeated an appeal of the dismissal of a legal malpractice action brought against his client, a real estate lawyer. The lawyer's former client sued for legal malpractice. The plaintiff, a cooperative corporation, retained the attorney to consummate the sale of its New York City apartment building, the terms of which had been agreed upon by the corporation's board of directors, who were also plaintiffs, and the buyer. The attorney's retainer agreement provided that he would not be rendering any tax advice but would be available to speak with the corporation's accountants and tax advisors. Prior to the closing, the plaintiffs were advised by their accountant that the transaction, which was structured as a sale of the building, not a sale of the cooperative shares, would result in significant capital gains tax to the plaintiffs. In the legal malpractice suit, the plaintiffs alleged that the lawyer was negligent in failing to advise them of the tax implications of the sale and failing to consult with appropriate tax professionals about the sale, resulting in damages in the form of additional tax liabilities totaling almost \$1.5 million.

In affirming the dismissal of the complaint, the Appellate Division of the New York State Supreme Court unanimously held that the lawyer owed the plaintiffs no duty of care to provide any tax advice pursuant to the terms of the retainer agreement, nor did the lawyer have a duty to ensure that the corporation's accountant considered the tax implications. The court further held that plaintiffs' argument that "but for" their lawyer's negligence, they would not have suffered a capital gains tax loss was speculative and unsubstantiated.

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