

LEGAL CORNER

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SEVERAL YEARS AGO I was requested by a union official to research the issue of whether a musician who regularly practices and rehearses in his Manhattan co-op may be evicted because he is allegedly disturbing his neighbors and creating a nuisance.

Most courts considering this issue have found that daily practice of musical instruments is permissible despite neighbors' complaints of noise nuisance.

One court found that an hour of drum playing daily is O.K. *Douglas Elliman & Co. v. Karlsen*, 59 Misc.2d 243, 298 N.Y.S.2d 594 (Civ.Ct.N.Y.Co. 1969).

Another court found that six hours of guitar playing per day is permissible. *Florence Realty Corp. v. Shakespeare*, N.Y.L.J., 8/12/77, p. 12.col.3 (Civ.Ct.N.Y.Co.).

In another case, the efforts of a co-op board to restrict the playing of musical instruments to one and a half hours per day per person, and prohibiting any playing after 8 p.m., were unsuccessful. The court found that such a restriction was arbitrary and unreasonable. *Justice Court Mutual Housing Cooperative, Inc. v. Sandow*, 50 Misc.2d 541.270 N.Y.S.2d 829 (Sup.Ct.Qns.Co. 1966).

It is clear that if a similar restriction were placed upon a professional musician in a general residential lease, it would be similarly deemed unreasonable by a court.

More recently, disturbed neighbors have attempted to prosecute noise of-



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Can you please turn it down!

Your right to practice in your apartment

fenders in the criminal forum, also without success.

In one case, neighbors in a residential area brought a case for criminal harassment against a defendant because of his daily drum playing. The court stated that the "development and practice of one's musical talents is just as much a pursuit of a legitimate business or livelihood as the operation of a factory or auto repair shop which also necessarily involves the emanation of sounds or noises." *People v. Cifarelli*, 115 Misc.2d 587, 588, 454 N.Y.S.2d 525 (Crim.Ct. Queens Co. 1982).

This same court held that the proof was insufficient to prove the criminal charge, and that defendant's conduct was not a subject for criminal prosecution, citing *People v. Markovitz*, 102 Misc.2d 575, 423 N.Y.S.2d 996 (Crim.Ct.N.Y.Co. 1979).

The court also observed that the defendant's conduct was also insufficient to support even a claim for private nuisance since "musical instrument practice" is one of the "certain inconveniences which people living in populous areas must tolerate."

In another decision, which predated the others that I had originally reviewed, the court held that a piano student's daily practice did not create a nuisance. First, the student was actually a concert pianist who had developed an international reputation. Furthermore, the residential lease contained a provision that permitted piano playing during reasonable hours. *Twin Elm Management Corp. v. Banks*, 181 Misc. 96 (Municipal Court of the City of New York, 1943). The plaintiff had not proven a violation of that clause.

In light of these decisions, I believe it would be difficult at best for the owner or management of a residential building to successfully evict a professional musician on the ground that his or her regular practice of a musical instrument created a "nuisance." However, it is always best to have a provision in your residential lease permitting you to practice. With an explicit statement in your lease permitting apartment practice, you may be able to avoid expensive and time consuming court proceedings.

You should also be aware that one court decision I found held that a civil nuisance suit for money damages caused by the unfettered rehearsing of a rock band in a residential neighbor-

hood was warranted where the decibel level of the music was well above the noise code formula established in the New York City Administrative Code, sections 24-201. The noise level caused by that rock band was consistently over 60 to 100 decibels. *Siglianese v. Vallone*, 637 N.Y.S.2d 284 (Civil Ct. 1995).

Also, you should know that the same latitude that the court accorded to professional musicians practicing within their apartments is not given in respect to commercial uses of the premises. For example, a musician who leased out his apartment as a recording studio was found to have violated city zoning regulations prohibiting such activity in residential premises. The landlord in that case was permitted to evict the tenant, even though his lease contained a covenant that permitted the tenant to use his apartment as a recording studio. *Ansonia v. Bozza*, 180 Misc. 2d 702, Supreme Court, Appellate Term, N.Y. 1st Dept.. (1999). An almost identical decision was issued four years later in *Mason v. The Department of Buildings of the City of New York*, 307 A.D. 2d 94 (1st Dept. 2003).

Further, particular care must be exercised when entering into a commercial lease. For example, I recently consulted with a music school that had entered into a commercial lease that contained provisions prohibiting excessive noise. The school primarily focused on training percussionists and not surprisingly was determined by the New York State Supreme Court to have violated the lease. What was particularly disconcerting was that the landlord was aware of the use the school intended for the premises, yet did nothing to forewarn the leasee ahead of time.

It should be noted that unlike residential leases, there is no duty for a landlord to find a replacement tenant if the occupant is evicted. In other words, eviction does not excuse the tenant from paying rent. Thus, before signing a commercial lease, the lease should be thoroughly examined and reviewed by an attorney to make sure the intended use of the premises does not violate its terms. As an object lesson, take heed from the music school that had consulted with me. The last time I heard from them, they were considering moving music instruction out of the building they had leased just for that very purpose.

'How do you get a gig in this town?'

By **MARISA FRIEDMAN**
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EVERY DAY THE staff in the Theatre Department is asked, "How do you get a job in this town?" The answer? Network! Local 802 has hosted an annual Meet and Greet for participants in the New York Musical Theatre Festival – and later the Fringe Festival – since 2005. This year, Local 802 staff and theatre musicians attended 20 NYMF shows and 12 Fringe shows, to make contacts with new musicians. This brings the total number of productions seen since 2005 to just over 220. Three of these have gone on to Broadway ("Next To Normal," "[Title of Show]" and "Chaplin"), with dozens more going to Off Broadway and regional theaters.

After the festivals are concluded each year, we host our annual Meet and Greet networking event with a panel of experts from different parts of the theatre industry – contractors, instrumentalists, orchestrators, music directors and producers, among others. Approximately 90 festival musicians and new members attended this year.

Our panelists included:

- Jay Brandford, a member of Local 802's Executive Board as well as a member of the orchestra of "Nice Work if You Can Get It."
- Jack Cummings, the artistic director of the Off Broadway Theatre Company Transport Group, which recently put on the musical "Queen of the Mist."
- Matt Hinkley, the associate music director for the revival of "Godspell."
- John Miller, who has contracted dozens of Broadway and Off Broadway shows and national tours.
- Charlie Rosen, who recently served as the music director of "One Man, Two Guvnors."



As usual, our annual Meet and Greet networking meeting was packed. This year's panelists included (from left) Jack Cummings, Matt Hinkley, Charlie Rosen, Jay Brandford and John Miller.

The night began with panelists discussing how important it is for musicians to treat their work as a business. Networking and professionalism are key. Jay Brandford told the audience, "Like it or not, word-of-mouth is very powerful in this business. Musicians, conductors and contractors can and will call around before offering an opportunity to a new player. Do your best to make sure that the word on the street about you is good."

The panel repeatedly emphasized that your performance has to be stellar.

Charlie Rosen said, "If I'm in the audience of a gig at any venue of any size and I see or hear a great musician really kill it in their performance, I'm going to want to meet that player. This is even more true if I'm playing on a gig with somebody I've never met before and we vibe really well together in our performance." Other panelists discussed the

importance of honing your craft and realizing that the theatre world is more than Broadway.

Matt Hinkley said, "For me, it started out as relationships with writers and composers. I had the advantage of knowing some folks affiliated with NYU and the Tisch Graduate Musical Theatre Writing Program," and it was this work that enabled him to meet many music directors and eventually work his way up to Broadway.

Finally, your other gigs help cultivate relationships, in addition to such mundane things as paying the rent. You can't sit and wait for the gig to come to you. As John Miller pointed out, "You have to play where you can."

Next year's Meet and Greet will take place in fall of 2013. For more information, contact Marisa Friedman at Mfriedman@Local802afm.org