

Palm Beach Gardens restaurant wins nearly \$11 million over eviction
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PALM BEACH GARDENS —

Six years after the Palm Beach Gardens Embassy Suites hotel threw out Zia Restaurant in what appeared to be a ho-hum eviction, a Palm Beach County Circuit Court jury has awarded \$10.8 million in damages to the restaurant's owner.

The decision, which came after a week-long trial this month, is vindication for the restaurant owner, Robert Abruzzo of Delray Beach. He claimed that his restaurant, bar and catering business was wrongly evicted from the hotel.



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"After a long struggle with these landlords, I feel relieved that I will be able to repay my family and friends who believed in and invested in me," Abruzzo said in a statement. "I feel that justice was served." The large award stemmed from the fact that the jury agreed it was wrong "to have somebody seize your business, shut it down and put you out of business," said Alan Rose, attorney for Nantucket Enterprises Inc., Zia's legal business name.

Alan Rose and Gregory Weiss of the law firm Mrachek Fitzgerald Rose Konopka Thomas & Weiss in West Palm Beach represented Nantucket Enterprises at trial.

Timothy Schulz represented the hotel owner, PB Florida Hotel And Office Building Limited Partnership, which is owned by Ashford TRS IV LLC, part of a real estate investment trust, Ashford Hospitality Trust. Other defendants are management companies, Remington Lodging & Hospitality LLC and Remington Lodging & Hospitality LP.

Schulz said he had never heard of such a large jury award for a restaurant eviction. "We're reviewing all our legal avenues and will see where we go from here," Schulz said.

Other West Palm Beach litigators not connected to the case, such as Peter Sachs of the Jones Foster law firm and Gerald Richman of the Richman Greer firm, agreed the award was large for a landlord-tenant action.

Before the jury received the case for consideration, Palm Beach County Circuit Court Judge Meenu Sasser ruled the eviction was unlawful.

This left the issue of damages up to the jury. The panel came back with the \$10.8 million figure. The jury awarded \$8.8 million in damages to Nantucket in wrongful eviction, and another \$2 million for conversion, or theft.

Rose and Weiss said they did not factor lost profits into the case. Instead, they focused on the difference in the cost of the 30-year lease for 20,000 square feet, compared with the cost at another location in the marketplace at that time.

"If you have a great deal on a lease, and the landlord wrongfully evicts you, you get the benefit of the

bargain had the landlord not evicted you," Weiss said.

Schulz said he believes the jury erred when it factored relocation costs into the damages, since the restaurant didn't open elsewhere. "My view is you don't get relocation expenses unless you incurred expenses to relocate," Schulz said.

Schulz also said the rent, at \$7.50 a square foot, was abnormally low and not a true rent price because the restaurant was also running food and beverage services for the hotel.

Nantucket had operated at Embassy Suites since 1992 under a different owner and restaurant names. In 2005, Abruzzo bought Nantucket's stock, and his Zia Restaurant and Lounge opened in 2007. Embassy Suites is at 4350 PGA Blvd.

Zia didn't stay open long. By November 2008, the hotel had shuttered the restaurant.

PB Florida Hotel said in an eviction action that the restaurant breached its lease by failing, among other things, to have its employees wear proper attire. The landlord also alleged restaurant employees would drink at the bar "to the point of intoxication" and yell and curse at customers.

In addition, the lawsuit also claimed that the restaurant was tagged as having code violations by the city of Palm Beach Gardens.

Abruzzo fought back.

His Nantucket company alleged in a counterclaim that PB Florida Hotel didn't follow eviction law because it did not obtain a court order to shut down the restaurant.

Richard Lackey, a Palm Beach Gardens restaurant broker, testified for Nantucket/Zia at trial. He said he estimated the cost of a lease at another location in the area, plus relocation costs, to be about \$12.6 million.

Upon learning of the jury's award, Lackey said: "The verdict was very fair. Obviously they made some adjustment in this verdict" from his amount, he said.
