
CLIENT ADVISORY

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SHAREHOLDER'S FAILURE TO PAY MAINTENANCE RESULTS IN SUBSTANTIALLY GREATER LIABILITY FOR LEGAL FEES

When a cooperative shareholder fails to pay maintenance or assessments, the Board of Directors may bring a legal proceeding to collect the moneys owed. Sometimes, a shareholder's nonpayment is based on factual disputes that must be resolved through protracted litigation and a trial. However, because most proprietary leases provide for the Cooperative to recover legal fees and expenses if the Cooperative prevails in a litigation triggered by a shareholder's non-payment, a shareholder's decision to withhold maintenance can be a costly one.

In 465 WEA Owners Corp. v. Strongwater, 2005 WL 3443057 (App. Term 1st Dep't Dec. 15, 2005), the Appellate Term affirmed a Housing Court decision holding that a shareholder who had withheld maintenance for eight months, thereby accruing arrears of approximately \$10,000, was liable for the unpaid maintenance and late charges. In that case, the shareholder had claimed that she should not have been required to pay maintenance for several months because a water leak had damaged her apartment, purportedly rendering it unusable.

After trial, however, the Housing Court found that the water leak had originated from the ice-maker in an upstairs apartment, and that the insurance carrier for the owner of that apartment had compensated the shareholder for the water damage caused by the leak. Moreover, the court found that the building personnel had acted responsibly in working quickly to ameliorate the consequences of the leak. Under the circumstances, the court rejected the shareholder's contentions that the Cooperative had breached the warranty of habitability and that she had been constructively evicted from her apartment. Therefore, the shareholder had no basis for withholding maintenance, and the court ordered her to pay the arrears promptly or face eviction. The Appellate Term agreed and also awarded the Cooperative more than \$1,000 in late fees.

The court also granted the Cooperative's motion to recover its attorneys' fees incurred in the litigation, holding that such an award was appropriate under the proprietary lease. The remaining issue was the amount of the Cooperative's legal fees that the shareholder must pay. Unfortunately, parties to litigation can incur substantial legal expenses even when the underlying dispute involves a relatively small dollar amount. Here, the shareholder's adamant refusal to pay her maintenance resulted in almost two years of litigation, including numerous motions and court appearances, a two-day trial, and an appeal. When the matter was ultimately settled, the amount the shareholder had to pay to the Cooperative for its legal fees was more than \$50,000, on a dispute that had originally involved only about \$10,000 in maintenance.

— The case is a reminder that shareholders involved in disputes will be well-advised to resolve their differences with their buildings in a fashion other than by withholding maintenance. Conversely, boards confronted with a non-paying shareholder will wish to remind the shareholder of the possibility that he or she will incur liability for legal fees that may substantially exceed the original amount in dispute. Ganfer & Shore, LLP represented the prevailing Cooperative in the Strongwater case and has also been involved in several other cases involving similar issues.

**PROPOSED CITY LAW WOULD REQUIRE COOPERATIVE BOARDS
TO DISCLOSE REASONS FOR REJECTING PURCHASE APPLICATIONS**

From time to time, legislative proposals are introduced that would require cooperative boards to disclose their reasons for rejecting applications from prospective apartment purchasers. To date, such proposed legislation has not been enacted.

The most recent proposal to require boards to give reasons for rejecting applications is now pending before the City Council. It would require a board that rejected an application to provide the rejected purchaser with a statement of all its reasons for doing so, to identify the sources of any negative information that the board relied upon in making its decision, and to set forth how many applications that the board had approved and rejected within the past three years.

On their face, these proposals would not change the law governing the board's right to reject an application in the exercise of its business judgment, for any reason other than an unlawful or discriminatory one. However, most commentators agree that requiring boards to set forth specific reasons for rejecting applications would lead to a substantial increase in disputes and litigation following such rejections. For example, many rejected applicants could be expected to challenge the candor of the reasons set forth by the board as the basis for rejection, the accuracy of the board's conclusions, or whether the board's approval criteria had been applied even-handedly to other applicants. The enactment of this law would also likely have a chilling effect on securing information from third parties, such as former landlords or investigative firms, since they would face potential litigation predicated on allegations that information they provided was inaccurate. Finally, cooperatives and their board members would be deterred from responding to reference checks from other cooperatives for fear that they would be subjected to litigation and potential liability in the event of disapproval by another building to which a resident might apply.

In view of the potentially serious impact that this legislation, if enacted, could have upon cooperative boards and residents, interested persons may wish to contact their City Council Member to express their opinion on the proposed legislation.

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