

# CLIENT ADVISORY

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MARCH 2001

## STATUTE PERMITS BLOCKING OF UNSOLICITED CALLS

A new state law permits New York residents to prevent telemarketers from placing unsolicited calls to their homes. By listing your home phone with New York State Consumer Protection Board, your phone number will be entered on a registry of numbers to which unsolicited calls may not be placed. Effective this April, most telemarketers who want to do business in New York will have to purchase a copy of this list of consumers who prefer not to be disturbed by unsolicited calls. By registering now, your phone number should be on the first list offered for sale. You can register either by calling (800) 697-1220 or by going to <http://www.consumer.state.ny.us/> and registering online. The new law does exempt charitable organizations and businesses you have dealt with before, but should go a long way toward cutting down on unwanted solicitation calls.

## WAIVER OF SUBROGATION APPLIED TO DAUGHTER

A shareholder in a Manhattan Cooperative owned an apartment in which his daughter resided. A fire broke out in the apartment, allegedly caused by the daughter's failure to extinguish a cigarette, which resulted in some \$215,590 of damage, and which was paid by the Cooperative's insurance carrier. The insurance carrier, Fireman's Insurance Company of Washington, D.C. ("Fireman's"), then brought an action against the shareholder and his daughter, as the subrogee of the Cooperative Corporation, seeking to recover the payment made under the policy. The insurance policy itself, however, had "waiver of subrogation" language, which stated that the insurer would waive subrogation against "...any Tenant-shareholder described in the Declarations, including the Sponsor, and members of his or her household..."

Fireman's discontinued its action against the father, apparently based upon this language, but refused to discontinue as to the daughter. Fireman's argued that she was not a member of her father's household, since the father did not reside in the apartment with his daughter. The New York Supreme Court (Trial Level), in the case of Fireman's Insurance Company of Washington, D.C. v. Yacker, refused to accept Fireman's narrow definition of household members. The Court held that if the insurer wished to exclude persons from its policy obligations, then it must do so in "clear and unmistakable" language. Ambiguity in the policy, according to the Court, must be resolved against the insurer, and the subrogation claim was dismissed.

## **COOP BOARD REJECTION OF FORECLOSURE SALE UPHELD**

Paley Management Corp. ("Paley") acting as agent for 244 East 60<sup>th</sup> Street Owners Corp. rejected the purchase application of Allison Aridas ("Aridas") for the purchase of a cooperative apartment which was the subject of a bank foreclosure by the Dime Savings Bank of New York. Aridas brought an action against Paley, alleging that Paley had wrongfully refused to give its consent to the sale of the apartment to Aridas, and sought an injunction directing Paley to consent to the sale. Aridas also asserted claims against the Cooperative Corporation and its president, for intentional interference with contractual relations, seeking compensatory and punitive damages. Aridas also asserted that under paragraph 17(b) of the proprietary lease, the sale was only subject to the approval of the managing agent, which approval "shall not be unreasonably withheld".

Paley and the Cooperative asserted that the application submitted on behalf of Aridas to the Cooperative Corporation made the sale subject to their approval. Further, the Cooperative and Paley asserted that the rejection of Aridas was based upon "financial deficiencies" – bona fide economic considerations. Justice Marilyn Shafer of the New York Supreme Court ruled that by submitting the application to the Cooperative, Aridas has relinquished her claim that only the managing agent could decide whether to approve or reject her application. Further, since Aridas failed to show evidence that the Cooperative or Paley had acted in a manner which wrongfully interfered with her contract for the sole purpose of harming Aridas, or that they had committed independent torts or predatory acts, the Court ruled that the tortious interference claim must also be dismissed.

## **ANNUAL NOTICE OF INSURANCE COVERAGE**

As notices of annual meetings and annual financial statements go out, now is a good time to check that the annual insurance notifications required under §726 of the Business Corporation Law (BCL) have been given to all shareholders, together with reserve fund and other required notices. The disclosure required includes the name of the insurance carrier, the date of the policy, the extent of the coverage of officers and directors, the policy dollar limits, the premium paid, and any indemnification claims paid to any present or former officers or directors. If your managing agent needs a form for the notice, we would be happy to provide one.

## **NEW NAME FOR FIRM**

Effective April 1, 2001 look for our new firm name, Ganfer & Shore, LLP. Some exciting developments, which include firm expansion, underlie our new name. Even the Client Advisory will be getting a new look. But despite our growth and changes, rest assured that we remain committed to providing quality representation to Coops and Condos in New York. Next month, we will share with our clients and friends more details on this exciting change, so look for our April special issue of the Ganfer & Shore, LLP Client Advisory.