

## Hope Following A Co-op Board Rejection: Two Instances Of Rejection Reversals

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Anyone who has applied for co-op ownership in New York City can attest to the fact that the process of purchasing a cooperative unit can be grueling, frustrating, lengthy and oftentimes highly invasive. Indeed, a prospective purchaser is contractually obligated to provide documents and other information that the Board may “reasonably” request, which undoubtedly includes

detailed financial statements, tax returns, credit and background checks, an itemization of assets, reference letters, copies of trust instruments or other entity formation documents (if the purchaser intends to buy in a trust or other entity), etc. — the list is not exhaustive and the documents required to be submitted with the board application are ultimately subject to the Board’s discretion. Coupled with the requirement of attending one or more board interviews that are often akin to job interviews and a Board’s near blanket authority to reject an incoming purchaser pursuant to its authority under the Business Judgment Rule, it is not uncommon for buyers and sellers to feel helpless by the process.

Board rejections do occur with some frequency, and in most cases, purchasers (and their sellers) are not privy to the board’s rationale for the rejection — in fact, boards are not obligated to articulate any reason for doing so. Nonetheless, although certainly not the norm, rejection reversals do happen and two such instances from recent transactions that my firm worked on are highlighted here. In the first case, my firm represented a well-respected individual in the film industry who was looking to purchase a cooperative unit with his wife. By all accounts, their financial profile was exemplary and their board application was completed timely and impeccably. After more than thirty days of radio silence from the Board and the Co-op’s managing agent as to the status of the purchasers’ board application, the managing agent finally responded on the thirty-fifth day with the following note from the Board: “This letter will serve to confirm that the Board of Directors has denied the resale of the above referenced apartment to [the purchasers]”. No further explanation was given and the Board had not even requested an interview of the purchasers to meet them in person to perhaps address some of the concerns it had. Needless to say, given the purchasers’ financial profile, terms of the deal (purchasers were only financing 50% of the purchase price, significantly less than 80% maximum financing permitted in this co-op) and demographic (highly successful and educated married couple with two children), the Board’s decision to reject the purchasers prior to a board interview was baffling to all involved, including the Seller.

The Purchasers inquired as to what could be done following the rejection, and the unfortunate answer to any buyer who has been rejected by a co-op is typically “very little”. However, in this instance, we were advised that the seller had a relationship with one of the board members, and a letter of reconsideration could be useful in convincing the Board to, at a minimum, interview the purchasers. Following the submission of a heartfelt letter of reconsideration, the Board agreed to interview the buyers (on the condition that their children be interviewed as well), and ultimately accepted them as shareholders in the building. Subsequent to this transaction, I have instructed rejected purchasers to enlist the help of their seller(s) to the extent such sellers have any relationships or influence on the Board that can be utilized. Since boards are answerable to its shareholders, this tactic has proved useful, although not a guarantee of success.

A second transaction where a board rejection was ultimately followed by an acceptance involved a young buyer who was purchasing a co-op unit on an all-cash basis. This particular buyer had substantial assets in his own name, but his board application revealed that a trust (in which he was one of the primary beneficiaries) was purchasing the apartment on his behalf and was ultimately going to pay the monthly maintenance and otherwise financially carry the apartment. The Board rejected the buyer on the basis that, in its opinion, the purchaser posed too much risk because (1) the trust could theoretically dissolve; or (2) the grantor of the trust could potentially terminate the purchaser’s interest thereunder, both scenarios creating a possibility (though remote) that the buyer would not be able to continue to afford the apartment. After several conversations with the co-op’s attorney, it was decided that the Board would reconsider the purchaser’s application on the condition that the co-op’s attorney be permitted to review the trust to ascertain whether the verbiage of the trust created too much risk. Fortunately, the co-op’s attorney was of the opinion that the co-op was adequately protected, and the purchaser was thereafter accepted in short order. Again, a bit of creative thinking can revive an otherwise doomed deal and protect all parties’ interests.

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