

Buying & Selling

how to:

Deal with a Low Purchase Price

- If rejecting a low purchase price, the decision must be in the best interests of the co-op.
- Be mindful of liability if you try to hold a seller hostage in hopes of obtaining the unit.
- The Business Judgment Rule may provide support for rejecting a low purchase price.



Pierre Debbas
Managing Partner
Romer Debbas

Size:
Partners: 7
Associates: 5
Of Counsel: 5
Paralegals: 6

Co-op/Condo Specialists:
Partners: 4
Associates: 4
Paralegals: 2

Hourly Rates:
Partners: \$500
Associates: \$275-325
Of Counsel: 500
Paralegals: \$175

Board Clients: 25

Location:
NYC: 100%

A common dilemma co-op boards often face is whether they can reject a buyer because they think the purchase price is too low. Co-op boards have the authority to reject a buyer without providing a reason and at times the premise of the rejection can have nothing to do with the buyer or any of the parties involved in the transaction. Neither will be privy to the board's motive for rejection. The board of directors has a fiduciary duty to the co-op to act in the best interests of the corporation. Recent case law says that letting a board reject a buyer solely on the purchase price is valid since the board is preventing the value of other units from being reduced, which ultimately is for the benefit of the shareholders. Case law provides for this authority under the Business Judgment Rule. We had one board that had rejected multiple buyers of a unit, which was owned by a bank (the unit had gone through foreclosure). In this situation, the board was contemplating buying the unit for the

co-op itself since it found it to be a good investment for the corporation as it was being sold below fair market value. The board concluded that this decision is covered under the Business Judgment Rule because it was obtaining an asset below fair market value.

Takeaway

A co-op board must be careful when rejecting a buyer based on its concern over the purchase price. In making this decision, the board must be making it solely in the best interests of the co-op and not for any self-serving reasons, such as a board member whose unit is on the market who may be concerned how this will affect sales. Additionally, in a situation where the board would try to hold a seller hostage in the hopes of obtaining the unit itself, the board must be aware of the best interests of the co-op under the Business Judgment Rule and any liability that in can be exposed to if its actions are deemed to have not been in the best interests of the co-op. ■