

## Q&A: Financial Fiasco

By Geoffrey Mazel, Esq.

**Q** I moved out of my Queens co-op apartment two years ago, right before the building started having numerous financial problems including bankruptcy and sponsor embezzlement. I am trying to sell my apartment, and have finally found a bank willing to give mortgages.

After six months, I found a buyer whose offer I accepted. The buyer's finances are more than adequate for the purchase, yet the co-op board rejected the sale, claiming the price was too low.

The building's new sponsor received about 40 apartments upon taking over and has started putting a lot of money into the building for repairs including windows, elevators and new garages, as well as has renovated the 40 apartments and is asking for very high sale prices for them. I was informed by one of the board members that they don't want any apartments selling at lower rates because it lowers the value of their apartments; however, their asking prices are very high in comparison to mine, which is both reasonable and comparable to other asking prices in the same area.

I can't continue paying \$1,300 per month in maintenance (which is very high for the area the co-op is in) as well as the mortgage payment on an empty apartment for much longer. I have also been told that we can no longer rent out apartments, as they are now 'owner-occupied' only.

This all seems so unfair, and I feel like the board may want me to go into foreclosure so that they can buy my apartment from the bank at a low price. Is there anything I can do?

-Queens Shareholder

**A** According to attorney **Geoffrey R. Mazel of the New York-based law firm of Hankin, Handwerker & Mazel, PLLC**, "Unfortunately, the Queens shareholder is in a very difficult situation. The board of directors is allowed to deny an application to purchase for any lawful reason. A court will NOT second-guess a board of directors as long as they exercised proper business judgement in their denial. This is known as the 'business judgement rule.' Therefore, if you can not find that the board rejected the application to purchase for an unlawful reason, such as discrimination based upon race, religion, physical disability, marital status, etc., a court will not be of any assistance.

"With respect to subletting, you must look at your proprietary lease to see what the board's authority to deny a sublet is. A board cannot adopt a 'no sublet' policy unless the proprietary lease gives them that authority. Many proprietary leases allow for sublets, subject to board approval, which may not be unreasonably withheld. Therefore, it is advisable to review your proprietary lease's sublet provision. The best practical advice I can give is to put your apartment back on the market at a higher price and see if there is any interest."

