

COUNSEL'S CORNER

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Court Denies Parking Space to Shareholder, Claiming Need as an Accommodation Under the Fair Housing Act

WHITE PLAINS—A recurring theme in Westchester and the New York area is the attempt of many tenants to obtain and maintain benefits not normally accorded them through the

ness of the cooperative or condominium.

In the case examined by this article the facts pertained to a cooperative. The cooperative had severely limited parking

signed a parking space several decades prior to the case. The shareholder, however, had not resided in the apartment as his primary residence for several years, but did have a car in the space which was registered out of state and had not been driven in several years. The shareholder claimed a disability and that the space was required to accommodate that disability, especially in the event he should return to the premises at sometime in the future.

The Analysis

The Court began its analysis with a review of the business judgment rule. The Court found the cooperative was authorized to commence the action and seek possession of the parking space. The Court found that, as long as the Board acted in good faith within the scope of its authority, and for cooperative purposes, it must defer to the Board's decision. The Court therefore appropriately indicated an intention to defer to the decision-making process of the board.

The Court reviewed the law and noted that the Fair Housing Act is intended to afford disabled individuals the right to equal enjoyment of their homes. However, in this case, the rules of the Board, i.e., that the shareholder reside in the

apartment and that the vehicle be registered in New York, did not preclude the shareholder's enjoyment of the home. In fact, the Court held that the request of the shareholder in this case would afford him greater rights than other shareholders, i.e. the right to store the car rather than to park the car.

The Court held that the exemption sought was not related to the disability or special need but to ensure that, if in the future the shareholder needed an accommodation, an eventuality which was in no way assured, it would be fulfilled.

Additional Findings

The Court particularly noted that the many other shareholders were being inconvenienced by the lack of parking and thus the idea that a future need might require an accommodation was not founded. The upholding of the need for a relationship between the re-

quested accommodation and the disability, and the present nature of the need for the accommodation are significant factors and should be considered by all landlords, including cooperatives and condominiums, when reviewing such an application.

It is important to note that while in this case should the shareholder return to the premises he may of course request an accommodation, this decision still was a substantially beneficial decision to the Board's authority to commence and prosecute the action, and in essentially upholding the analysis it underwent in denying the requested accommodation.

Editor's Note: Finger and Finger, a Professional Corporation, is based in White Plains. The firm is chief counsel to the Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI).

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use of the Fair Housing Act in a proactive fashion.

This is true not only in standard rental situations, but in cooperatives and condominiums as well. However, the cooperative and condominium cases implicate not only the Fair Housing Act, but the so-called "business judgment rule."

The Business Judgment Rule in New York State accords cooperative and condominium boards discretion in the management of the busi-

available, less than one space for every two apartments. Parking was thus a valuable commodity in this cooperative, as with many in Westchester. The cooperative required that shareholders assigned parking spaces actually reside at the cooperative for more than half the year and that the vehicles be registered to the shareholder with New York State registration and insurance.

The shareholder owned the apartment and had been as-

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