

# Finkelstein Newman LLP

## Newsletter

February 2006  
Issue 17

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### CAVEAT COOPS! AVOID DISPARATE TREATMENT OF THE UNMARRIED



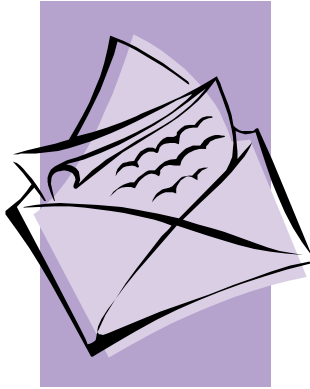
When reviewing applications to purchase a unit, can a coop board treat a married couple differently from an unmarried one, without running afoul of New York’s discrimination laws? While courts have been tackling the issue of marital-status discrimination in the context of rental apartments, university housing, and the workplace, there seems to be a dearth of case law involving cooperatives. But a recent New York County Supreme Court case, *Latoni v. Sherman Square Realty Corp.*, decided by the Honorable Emily Jane Goodman, may set the standard for such disputes.

In *Latoni*, the plaintiffs, Lisa Latoni and Andrew Jorgensen, were a heterosexual, cohabiting, unmarried couple who jointly signed a contract to purchase a cooperative apartment and who had successfully procured a bank loan to purchase the unit. However, when it came time to secure board approval for the transaction, the couple was informed that only Latoni could purchase shares because Jorgensen was individually financially unqualified.

In this case, the board treated applications from married couples as coming from a single economic unit, and often approved such applications even when one spouse had no income and would not otherwise be financially qualified. But, when an unmarried couple submitted an application, the cooperative treated the application as from two disparate economic units and only the financially qualified individual(s) would be approved. Thus, the question here is whether the cooperative’s policy, which denied Jorgensen the opportunity to purchase the apartment jointly with Latoni, comprised a form of prohibited discrimination.

In deciding a motion to dismiss made by the cooperative board, Justice Goodman reviewed the relevant, but limited, case law such as *Matter of Manhattan Pizza Hut v. New York State Human Rights Appeal Bd.*, in which an individual, who worked under her husband’s supervision, alleged marital-status discrimination when she was fired under Pizza Hut’s rule forbidding employees to work under the supervision of a spouse, parent, sibling, or offspring. New York State’s highest court, the Court of Appeals, concluded that the plaintiff was not terminated for

*cont’d pg.3*



## LETTER TO THE EDITOR

Dear Editor:

I'm sure that I can "reasonably rely" on your description of the *Huron* case, [December 2005, Issue 15, "*Buyers Beware-No Kidding!*"], so I am not going to use "due diligence," etc., and read the actual opinion.

I share your skepticism, as a matter of law (allocation of loss should be on the party in the best position to know the truth, i.e., the seller), and common sense (a visit might not have revealed the subject tenant's residential status.)

Thanks for an informative newsletter. A.E. [Name withheld]

If you would like to share your comments or opinions, please send an email to [Editor@FinkelsteinNewman.com](mailto:Editor@FinkelsteinNewman.com). We welcome your feedback.

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## UPCOMING SEMINAR

FEBRUARY 28, 2006

### *Hot Topics in Landlord-Tenant: 2006 Update*

On Tuesday, February 28, 2006, from 6:00 P.M. to 9:00 P.M., partner Lucas A. Ferrara, will serve as moderator of a continuing legal education ("CLE") seminar sponsored by New York County Lawyers' Association (NYCLA). Featured speakers will include Paul N. Gruber; Kent Karlsson; Hon. Gerald Lebovits; Hon. Philip S. Straniere; Margaret B. Sandercock; Dov Treiman; Meryl L. Wenig; and Bruce H. Wiener.



### ISSUES ON THE AGENDA

- "She's So Unusual": Was Cyndi Lauper Overcharged?
- Actual Partial Evictions: How Much is Too Much?
- "Illegal Sublets": Roommates & Immediate Family Members
- Video Surveillance: Security Pretext, Harassment Subtext?
- Discriminating Co-ops: Don't Tread on the Unmarried!
- Applying RPAPL § 745(2): Motion = Adjournment ≠ Use & Occupancy?
- Use Clause Violations: Are "Child Care" Providers Entitled to a Free Pass?
- Contract Representations: When Can You Believe What You Read?

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## CAVEAT COOPS!

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### AVOID DISPARATE TREATMENT OF THE UNMARRIED

being married, but for being married to her supervisor. Therefore, her marital-status discrimination claim could not prevail.

Similarly, in *Hudson View Properties v. Weiss*, the Court of Appeals held that the eviction of an unmarried tenant from an apartment based on her cohabiting with her male partner in violation of her lease agreement did not constitute discrimination based on marital status. Here, the tenant would not have been evicted had she been married to her partner. The court concluded that the tenant was not evicted because she was single, but because she violated her lease by living with someone who was a non-family member. The court essentially held that the lease had the effect of more broadly discriminating based on family composition, and not narrowly on marital-status.



And, in *Levin v. Yeshiva University*, the Court of Appeals held that the University's housing policy did not discriminate on the basis of marital-status. In that case, the University provided housing to its medical students, their spouses, and dependent children only, which resulted in the exclusion of plaintiff's lesbian partner. The court reasoned that because the housing policy allowed all of its medical students, whatever their marital status, to live in student housing, for which plaintiff applied and was accepted, the policy did not discriminate on the basis of marital-status. The court further characterized the housing policy as preferential treatment of families, as opposed to discrimination on the basis of marital-status.

If any similarities exist between the three cases examined by the court, it is that marital-status discrimination has been defined quite narrowly. As a result, the Supreme Court elected to analyze Latoni and Jorgensen's situations separately. After all, since Latoni had been granted the right to purchase the apartment, her marital status was technically irrelevant to the cooperative board's decision.

As in *Levin*, where a medical student could not maintain an action based upon marital discrimination when she was permitted to live in university housing, but her lesbian partner was not, Latoni could not maintain an action against the cooperative board for the denial of a benefit to her cohabiting partner. And unlike in *Hudson View Properties*, where the plaintiff was evicted for living with someone other than a family member, Latoni was not denied any benefit. To the contrary, she was permitted to purchase the apartment.

Jorgensen's discrimination claims were different in that he alleged a denial of a benefit to himself. Had Jorgensen been married to Latoni, he would have been permitted to purchase the unit. Thus, according to the court, Jorgensen lost a significant benefit solely because he was single. And that stated a prima facie discrimination claim on the basis of marital-status in the terms, conditions, or privileges of the sale, rental, or lease of a housing accommodation. The court distinguished Jorgensen's situation from *Manhattan Pizza* where the plaintiff was discharged because she had been married to her supervisor. Jorgensen was denied the opportunity to purchase the apartment because of his own particular circumstances, not because of his relationship with a particular person. As a result, only Jorgensen's discrimination suit against the cooperative was permitted to proceed.

If upheld on appeal, the outcome of *Latoni v. Sherman Square Realty Corp.* could have a significant impact on how cooperatives and other housing providers enforce policies relating to married and unmarried couples. Until we receive definitive guidance from our appellate courts, the best advice to boards is the most obvious: "Thou shalt not discriminate."

If you have any questions or concerns about this recent case, please contact partner Lucas A. Ferrara at 212-619-5400 x 211 or email him at [LFerrara@FinkelsteinNewman.com](mailto:LFerrara@FinkelsteinNewman.com).

## ILLEGAL USE YIELDS NO GAIN

Violating the law never pays off and this is particularly true in the landlord-tenant context. According to a series of recent New York court decisions, tenants who occupy their premises for residential purposes, when zoning laws do not allow them to do so, may be subjected to eviction, and landlords can be prevented from collecting any unpaid rent.

In a recent case, *Wolinsky v. Kee Yip Realty*, tenants leased and occupied space in a seven-story commercial building located in downtown Manhattan. Disregarding their commercial leases, and the zoning laws, these tenants renovated their loft space for residential use. As the expiration of their commercial leases approached, the tenants commenced an action arguing that, notwithstanding their “illegal” use, their interests were protected by the 1982 Loft Law, which provided a statutory framework for the legalization of the type of dwellings that the tenants occupied. (It was of no concern to the tenants that they were almost two decades removed from the scope of the Loft Law.)

After the New York State Supreme Court and the Appellate Division ruled against the tenants, the State’s highest court, the New York Court of Appeals, did so as well, concluding that the tenants were not protected by the Loft Law because that statute had been designed to address the expansion of illegal conversions which existed at the time of the law’s enactment.

The landlord brought a separate action seeking possession of the premises, rent, legal fees and other charges authorized by the lease. Since there was no question that the residential occupancies were “illegal,” the landlord was found to have an absolute right to immediate possession. However, by virtue of the unlawful occupancy, the lease for the space could not be enforced, and the owner was not permitted to collect rent or other charges due from the tenants.

These decisions should serve as a reminder to both landlords and tenants that courts are unlikely to be sympathetic to parties skirting the law and, ultimately, will not enforce agreements which have been crafted to further an “illegal” purpose, use or gain.

If you have any questions or concerns about this recent case, please contact partner Jonathan H. Newman at 212-619-5400 x 205 or email him at [JNewman@FinkelsteinNewman.com](mailto:JNewman@FinkelsteinNewman.com).



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