

## *Memorandum*

*To:* Cooperative Directors and Managers

*From:* John Van Der Tuin  
Eric D. Balber  
Todd S. Pickard  
Michael T. Manzi

*Subject:* "Objectionable" Shareholders

*Date:* May 21, 2003

We are pleased to report that the New York Court of Appeals in *40 West 67<sup>th</sup> Street Corp. v. Pullman* unanimously affirmed the decision our firm obtained last May from an intermediate appellate court. As you may recall, in that decision, a divided court upheld a cooperative's right to terminate a shareholder's proprietary lease on account of "objectionable" conduct. This unanimous decision from New York's highest court is a major development for cooperatives.

The opinion has been widely reported in *The New York Times*, the *New York Post*, *Newsday* and the *New York Law Journal*, as well as local broadcast media. A copy of the article from the *New York Law Journal* is enclosed.

The proprietary lease at issue in the litigation provided for termination of the lease by the board of directors after a super-majority vote of the shareholders at a special shareholders' meeting. The Court of Appeals held that the termination by the cooperative should be upheld so long as (i) the procedures set forth in the proprietary lease were strictly adhered to, (ii) the board acted within the scope of its authority, (iii) the termination legitimately furthered the corporate purposes of the cooperative, and (iv) the board did not act in bad faith. The court made clear that, under normal circumstances, the courts should not second-guess the cooperative's judgment as to whether or not particular conduct is "objectionable".

The process for ousting a problem shareholder may still be lengthy, expensive and fraught with difficulty. However, the Court's opinion in *Pullman* should provide cooperatives with a powerful tool, if carefully and judiciously used, to protect shareholders and their investments in their apartments from the occasional shareholder who is disruptive and a threat to the social or financial welfare of the cooperative as a whole.

The *Pullman* case was prosecuted by us as part of our extensive practice representing cooperatives. If you would like a copy of the complete decision, or would like to discuss the case and its ramifications for your cooperative or a cooperative that you manage, please call any of us.