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Management In A Minute - June 2011 21 Years after Levandusky, Courts Continue to Support Boards

The landmark decision in the case of *Levandusky v. One Fifth Avenue Apartment Corp.*, which celebrates its 21st anniversary this year, and the case of *40 West 67th Street v. Pullman*, decided 13 years later, established the precedent that New York Courts will typically give great deference to Board decisions unless it can be shown that the Board acted in bad faith, beyond its authority, or in contradiction to the co-op's or condo's operating documents or best interests.

According to Jeff Schwartz, Esq., Partner at the law firm of Wolf Haldenstein Adler Freeman & Herz, LLP, "Since *Levandusky*, New York Courts have, in many cases, not questioned the decisions made by co-op and condo Boards in challenges made by disgruntled shareholders or unit owners. Cases that have upheld Board decisions include those involving repairs and alterations, recognition agreements, transfers (including rejection of a purchase application), parking, and objectionable conduct by a shareholder or unit owner, among others. In all of these, the Courts have held that the business judgment rule insulated those actions by each Board because the Board had acted in good faith and within its authority.

"Cases in which Boards may not be protected would include those in which a Board decision or action directly contradicts the co-op's or condo's bylaws, the Board's own prior decisions, or a shareholder's or owner's contractual rights. Boards are also exposed in situations where they exceed the authority given to them by the co-op's or condo's documents, where the Board breaches its fiduciary duty to the complaining shareholder or unit owner, where the Board fails to apply a uniform standard to all of the building's shareholders and owners, or where the Board's action is in direct violation of the law."

While nothing is ever guaranteed, thanks to *Levandusky* more than two decades ago, as long as a Board can demonstrate that it has acted in good faith, within the bounds of its authority, and within the parameters of the law, it remains likely that a complaint brought to court against a Board complaining of a specific action will be dismissed. That said, it is still critical for Boards to maintain directors and officers liability insurance and retain capable corporate counsel that can appropriately defend Board members against lawsuits and ensure the stability of the co-op or condo.

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