

## Shareholder Preventing Sale

### Q & A

By Adam Leitman Bailey, Esq.

**Q** We have a shareholder who has posted notices around our co-op that condemn the co-op and the board. They are in plain view of potential buyers. When the buyers read these notices, they refuse to even look at the available unit that we have. The real estate agent is embarrassed and takes the potential buyer to other co-ops with available units. What can we, the co-op board, do in this case with the offender? Can he be evicted for interfering with the operations of the co-op?

*-- Losing On My Investment in Manhattan*

**A** According to Adam Leitman Bailey, a partner in the AV-rated law firm bearing his name, “The famous ‘freedom of speech’ guarantees of the United States Constitution’s First Amendment have no relevance when it comes to the relationship between a cooperative board and a cooperator. For these purposes, a cooperative is very much like an ordinary landlord-tenant relationship. What exactly is and is not permitted is governed by the proprietary lease and the cooperative’s other governing documents. Such documents typically give the board the right to regulate where posters and flyers may be put up, typically on a board near the mailboxes or in the laundry room. The documents also typically give the board the right to determine what is offensive material.

Under the famous ‘Pullman’ case, New York’s highest court, the Court of Appeals, gave cooperative boards enormous latitude in determining what is and what is not conduct so objectionable as to warrant an eviction. In two recent cases interpreting Pullman, one of them from an appellate court covering Manhattan and the Bronx (1050 Tenants Corp. v. Lapidus) and the other from an appellate court covering the rest of New York City (Breezy Point Co-op, Inc. v. Young), it was decided that the specific conduct which is the basis for an eviction does not have to be set out in the cooperative’s governing documents ahead of time. The cooperative’s board has enough power to judge particular facts of particular cases and determine if those facts add up to ‘undesirability.’ So long as the board is acting honestly and not motivated by self-interest, including the self-interest to keep itself in power, the courts will uphold that finding.”