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Columns

Dear Moshe

Posted 12/22/2004
By MOSHE LAZARUS

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Dear Moshe,

I am 28 years old, single, and work in New York City as an investment banker. I've recently decided to move out of my parents' house and look for an apartment closer to my office. After some months of searching, I was able to find a one-bedroom co-op apartment in an upscale building in the city that was perfect for my needs.

I entered into a contract to purchase the apartment, which was subject to the co-op board's approving me as a tenant. I had assumed that earning the board's approval would be a piece of cake as I have no children, would hardly ever be in my apartment, and earn a very comfortable income. My confidence that I would be accepted was only bolstered by my interview with several members of the co-op board, which went exceedingly well (in my eyes, anyway).

You can imagine my surprise when I learned, through a letter from the co-op's manager, that the board had rejected my application. I am at a loss and cannot figure out why the board would have rejected me. The only reason that I can think of for this rejection is that the board members with whom I met may have been uncomfortable with my being an obviously observant Jew. They can't be allowed to reject me because of my religion, can they? Is there anything I can do?

Answer:

I will begin by telling you that if the co-op board rejected your application because you are Jewish, that was reprehensible. However, practically speaking, I am afraid that your best course of action may be to simply turn the other cheek, tolerate this injustice, and move on. I understand that this passivity may not be particularly appealing or satisfying for you, so please allow me to explain my reasoning.

As a legal matter, you are of course correct — it is absolutely illegal for a co-op board to consider an applicant's religion (or several other factors, including age, gender, race or marital status) in determining whether or not to approve his application. What's more, courts have historically been quite willing to award substantial damages to applicants who have in fact been rejected due to one of these prohibited factors. However, as a practical matter, there are several factors, which lead me to believe that a lawsuit against the board would likely fail in your situation.

For starters, as a matter of policy, courts generally accord a great deal of deference to decisions

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made and actions taken by co-op boards. Pursuant to a policy known as the "business judgment rule," courts will refuse to review any action of a co-op board, which is taken in good faith and in the furtherance of the interests of the co-op. This policy is applied quite strictly, and, absent evidence of bad faith or illegal discrimination (a mere feeling or suspicion on your part that the board acted in a discriminatory manner will not suffice in this regard), courts will generally give the co-op board the benefit of the doubt.

Furthermore, courts will generally accord a great deal of deference to decisions made by co-op boards with respect to apartment transfer applications. The law recognizes and appreciates that co-op owners who live in such close proximity with each other, and who interact with and rely on each other regularly, will be quite concerned that their neighbors are a good fit for the co-op community. As such, New York law allows co-op boards the absolute right to reject an applicant for any reason or for no reason at all (absent illegal discrimination, of course).

This being the case, although you see no reason why the board has rejected you, there are, in fact, any number of perfectly valid reasons other than your religion to which your rejection can (and will) be attributed by the board.

Finally, co-op boards that do in fact engage in discriminatory conduct (and there are, undoubtedly, a number that do) have developed quite sophisticated methods of avoiding liability for their actions. A board that illegally discriminates against an applicant will of course exercise every precaution to ensure that no record or mention of this motivation (and thus no evidence of illegal conduct) exists of record (or at all). What's more, since a co-op board is entitled to reject an applicant for any number of reasons (as discussed previously), it is likely that the co-op board has come up with a perfectly legitimate rationale in support of your rejection, and has taken every effort to make sure that this reason is memorialized in a manner which would serve to shield themselves from liability. As such, it would likely be prohibitively difficult to prove that any discriminatory motive in fact existed in your case.

Of course, if there were an overt or blatant manifestation of discriminatory motive on the part of the board (for example, had they asked you inappropriate questions with respect to your religious practices at the interview), my answer would be quite different. However, there unfortunately seems to be no such luck in your case. Co-op boards, and particularly those of upscale cooperatives (which are usually more sophisticated and better advised), have become quite adept at masking any evidence of illegality, and I am afraid that this has happened in your case.

For these reasons, I believe that it is likely that an action against the co-op board would unfortunately prove unsuccessful in your case. As such, I feel that it would be unwise for you to spend the time, energy and money necessary to initiate a lawsuit, and that you would be better served simply moving on, and beginning your search for a new (and more welcoming) apartment complex.

I wish you much mazel and bracha in your apartment search and in all of your endeavors.

Disclaimer: The advice contained in this column is general in nature, and may vary greatly depending on the particulars of a given situation. For this reason, one should not act in reliance on the information contained in this column without first consulting with an attorney. •

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