

**665-675 Apartment Corp. d/b/a Hilltop Terrace, Petitioner v. Kelly Verdeschi,
Respondent, LT 2609-13
LT 2609-13**

**City Court, Westchester County
NYLJ Publication Date: Mar 04, 2015**

Cite as: 665-675 Apartment Corp. v. Verdeschi, LT 2609-13, NYLJ
1202719414578, at *1 (City., WE, Decided February 4, 2015)
LT 2609-13

Judge Anthony Carbone
Read Summary of Decision
Decided: February 4, 2015

ATTORNEYS

Attorneys for Petitioner: Steven Accinelli, Esq., Veneruso, Curto, Schwartz &
Curto, LLP, Yonkers, NY.

Attorney for Respondent: Karen Copeland, Esq., New York, NY.

DECISION AND ORDER

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This summary holdover proceeding was commenced to recover possession of the subject premises, located at 675 Pelham Road, Unit F-15, New Rochelle, New York, based upon the termination of the respondent's proprietary lease pursuant to a notice of termination for violating the rules and regulations of said proprietary lease. Specifically, the petitioner alleges that the respondent, by failing to keep her dogs leashed while in common areas and harboring an aggressive dog, is endangering the health, safety and welfare of the other shareholders as well as interfering with the use and quiet enjoyment of the subject building by the other shareholders. A bench trial commenced on November 20, 2014 and concluded on December 22, 2014. The petitioner's witnesses were: Dori Engley (current board president), Denise Del Pirrore (shareholder), Cheryl Drewes (board secretary), Barbara Grandinetti (shareholder). The respondent's witnesses were: respondent, Jack Matarasso (former board president), Dr. Peter Borschelt (animal behaviorist), and Cynthia Labrusciano (shareholder). Both the petitioner and the respondent submitted post-trial memorandum of law.

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Based on the testimony of the witnesses, the Court found that there was contradictory testimony as to whether or not the respondent's dog, Nelly, was ever unleashed on the premises. There was also contradictory testimony as to whether

or not the respondent's dog, Nelly, ever chased Denise Del Pirrore and was an aggressive dog.

Moreover, there was testimony from the former board president, Jack Matarazzo, that the action taken by the board against the respondent was not in good faith. Mr. Matarazzo testified that based on letters about the respondent's dog, the board initially voted to proceed to legal regarding the respondent's dog being over the permitted weight limit. Mr. Matarazzo also testified that he did not know when the board changed its direction with its case against the respondent because he had resigned as president of the board. He testified that he tendered his resignation as president of the board due to the actions taken against the respondent which he knew were unfounded. Specifically, Mr. Matarazzo testified that he was present when the alleged "chasing" incident occurred, and he unequivocally testified that the dog did not chase anyone, rather the dog was in the respondent's car the entire time.

The petitioner argues, in its closing papers, it is permitted to evict the respondent because it terminated the respondent's proprietary lease pursuant to a notice of termination for violating the rules and regulations of said proprietary lease. Specifically, the petitioner states that it received several letters that the respondent failed to keep her dogs leashed while in common areas and the dog was aggressive. These conditions resulted in endangering the health, safety and welfare of the other shareholders as well as interfering with the use and quiet enjoyment of the subject building by the other shareholders. Moreover, the petitioner is invoking the business judgment rule that its decision to terminate the respondent's proprietary lease is beyond judicial *3 review because, it argues, said decision was made in good faith and was within its authority to act on behalf of its shareholders.

The respondent argues, in her closing papers, that the petitioner simply failed to prove, at trial, the basis of its notice of termination against her. Moreover, the respondent is alleging that the board's decision to terminate her proprietary lease and evict her was made in bad faith. This allegation was borne out in the testimony of the respondent's witness Mr. Matarazzo.

The business judgment rule is a common-law doctrine by which courts exercise restraint and defer to good faith decisions made by boards of directors in business settings. In *Matter of Levandusky v. One Fifth Ave. Apt. Corp.*, 75 NY2d 530 (1990), the Court of Appeals held that the business judgment rule, also known as the Levandusky standard, is the proper standard of judicial review when evaluating decisions made by residential cooperative corporations in New York State. (See

also, 40 West 67th Street v. Pullman, 100 NY2d 147 [2003]). However, courts are not required to automatically defer judicial review of a cooperative board's decision. Rather, judicial review is triggered "where an aggrieved shareholder-tenant can show that the board acted (1) outside the scope of its authority, (2) in a way that did not legitimately further the corporate purpose or (3) in bad faith." (Pullman at 752).

As the Court of Appeals cautioned in Levandusky, supra, and reiterated in Pullman, "the broad powers of cooperative governance carry the potential for abuse when a board singles out a person for harmful treatment or engages in unlawful discrimination, vendetta, arbitrary decisionmaking or favoritism…; *While deferential, the Levandusky standard should not serve as a rubber stamp for cooperative board actions, particularly those involving tenancy terminations.*" (Id. at 753 [emphasis added]).

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Based on the foregoing, the Court hereby finds in favor of the respondent. As indicated above, the petitioner was not able to sustain its burden of establishing the basis of the underlying notice of termination, to wit: that the respondent violated the provisions of her proprietary lease by failing to keep her dogs leashed while in common areas and harboring an aggressive dog and thereby endangering the health, safety and welfare of the other shareholders as well as interfering with their use and quiet enjoyment of the subject building.

Ultimately, the fact that the petitioner is a cooperative board, has little bearing on the outcome of this case. Any petitioner-landlord would still have to prove the basis of its notice of termination in order to evict the shareholder-tenant. Assuming, arguendo, that the petitioner herein acted legitimately and in good faith (despite testimony to the contrary), the petitioner would still have to prove the allegations set forth in the underlying notice of termination. As indicated above, the Court has found that the petitioner herein failed to prove the allegations set forth in the underlying notice of termination.

Accordingly, judgment shall be entered in favor of the respondent and the underlying holdover petition is hereby dismissed with prejudice.

The Court declines to award attorney's fees to either party in this matter. Moreover, the petitioner may not collect any legal fees charged against the respondent relating to this matter.

The foregoing constitutes the Decision and Order of the Court.

Dated: February 4, 2015

New Rochelle, N.Y.