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## With Objectionable Shareholders, You Can Consider Alternatives to Pullman

By Frank Lovece

**Jan. 30, 2014** — One man, they say, can change history. And in 2003, **David Pullman** did just that, lending his name to the precedent-setting court decision in *40 W. 67th Street v. Pullman*.

Financial professional Pullman — who'd already made headlines working with David Bowie to package the singer's copyrights and catalog into what he trademarked as "Bowie Bonds" — had a documented history of ranting, raving and circulating defamatory fliers about various perceived transgressions at his Rosario Candela prewar classic. He pushed the co-op board and the shareholders to their limit, and then some. Finally, in a landmark turn, 100 percent of the shareholders voting in a special election, representing 75 percent of the shares, agreed to kick him out. The subsequent court case upholding that action solidified New York State co-op boards' nuclear option: eviction for "objectionable" behavior.

Whatever "objectionable" is. "Objectionable behavior is in the minds and hearts of board members," warns **Adam Leitman Bailey**, founder of [his namesake law firm](#), who has represented both boards and shareholders in what he estimates as more than 20 Pullman trials. Unless co-op boards behave responsibly, *Pullman* "means they can act like dictators. They can be like the Salem Witch Trials."

"I counsel my board clients that you *can* litigate and you will end up quote unquote winning," says [REDACTED] of [REDACTED] in **Westchester County**, "but it may be at a significant cost." Going the full *Pullman* is "expensive and time-consuming," says attorney [REDACTED], a principal at [REDACTED]. And it takes an emotional toll.

"The morale of a small building where Pullman is used, it's terrible," says Bailey. "It's a bad thing to live in a building where you're afraid of being evicted." And that fear extends to board members, who are shareholders themselves. "Today it may be you," he says metaphorically. "Tomorrow it may be me."

### Two-Step Process

And it's a long process: Even after a successful vote to terminate a lease, a co-op still has to file a lawsuit to evict the offending tenant-shareholder. That's why some board chose as an alternative "**amotion for declaratory judgment and injunction**," says [REDACTED]. "That's a Supreme Court action, as opposed to a Housing Court proceeding, in which a board alleges you have a rule prohibiting whatever the conduct is, that this shareholder or family occupiers are ignoring it, and that in essence the shareholders are challenging the board's effort to enforce. You're asking the court to declare the validity of the rule, the board's right to enforce it, and to enjoin the tenant-shareholder from further similar conduct."

Whatever the case, and whether you pursue Pullman later or not, the first step is to establish that you have continuing, repeated issues with a given shareholder, because judges will look askance at a board going nuclear over one-off problems or if negotiation hasn't been tried. "There has to be documented, longstanding problems that just won't go away," says ██████████, a veteran ██████████ in private practice, "leaving other occupants frustrated and legitimately feeling someone should be cast out."

### **Close Scrutiny**

"Courts don't like forfeitures," says ██████████. "If you're taking away someone's significant asset, courts are going to look a little more closely than with other cases." His advice: "You first want to try to enforce the house rules in a civil manner. So informal notice is a good step. If that doesn't result in any meaningful change, then do a formal written one."

For the next step, "Somebody who knows the person should try to talk to them" on behalf of the board and the other residents, says ██████████. "If they've lawyered up, then it's [the board's] lawyer to [the shareholder's] lawyer."

If these steps fail to change the offending behavior, "A lot of boards do a 'probationary stipulation,' where typical provisions include giving the tenant-shareholder a second chance," Bailey says. A stipulation such as this may state that the shareholder agrees to behave for two years without problems, and if he or she continues the disruptive conduct, they'll be evicted.