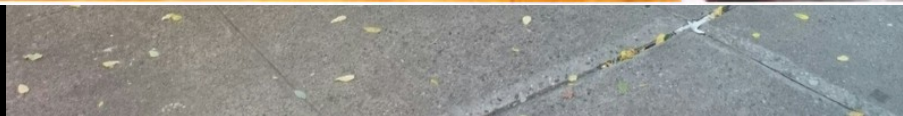


## ***40 West 67th Street v. Pullman***

- 38 apartments in a cooperative
- What is a cooperative?
- Pullman buys apartment 1998
  - Comes with 80 shares in cooperative

# *40 West 67th Street v. Pullman*



## *40 West 67th Street v. Pullman*

- 38 apartments in a cooperative
- What is a cooperative?
- Pullman buys apartment 1998
  - Comes with 80 shares in cooperative
- Complains about retired college professor
  - running a loud and illegal bookbinding business in their apartment
  - toxic materials
  - “psychopath in our midst”
- Alterations to apartment without approval

## *40 West 67th Street v. Pullman*

- Special meeting
- “if at any time the Lessor shall determine, upon the affirmative vote of the holders of record of at least two-thirds of that part of its capital stock which is then owned by Lessees under proprietary leases then in force, at a meeting of such stockholders duly called to take action on the subject, that because of objectionable conduct on the part of the Lessee, or of a person dwelling in or visiting the apartment, the tenancy of the Lessee is undesirable.”
- 2,048 shares to 0 – objectionable
- What do they want?

## *40 West 67th Street v. Pullman*

- Business judgment rule
  - defer to a cooperative board's determination “[s]o long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith”
  - “best balances the individual and collective interests at stake”

## ***40 West 67th Street v. Pullman***

- 5 RPAPL 711(1):
- “A proceeding seeking to recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.”

## *40 West 67th Street v. Pullman*

- Instances where decision gets no deference:
  - (1) outside the scope of its authority
  - (2) in a way that did not legitimately further the corporate purpose
    - Can test legitimacy of corporate purpose
  - (3) in bad faith
- Meet the covenant requirements?
- Enough for a private entity to take a property interest?

- Worry about privatization of property law here?
  - Privatization of government



Evan McKenzie

# PRIVATOPIA

Homeowner Associations and the Rise  
of Residential Private Government