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The New Procedural Frontier of Co-op Admissions

By Matthew Eiben
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For 35 years, *Levandusky v. One Fifth Ave. Apt. Corp.*, 75 NY2d 530 (1990) and the business judgment rule have insulated co-op boards' decisions on admissions, permitting boards to respond to an application at their leisure and without reason or justification so long as they act in good faith and pursuant to their authority under the by-laws and Business Corporation Law.

Within the past 18 months, the New York City Council has enacted two laws, Local Law 24 of 2024 (the Fair Chance for Housing Act [FCHA], effective Jan. 1, 2025) and Local Law 2026/058 (the Cooperative Application Timeline Law [CATL], formerly Intro 1120-B, effective July 28, 2026), which impose substantive and procedural constraints on that historically unfettered space.

Yet both statutes are silent as to how a violation of either statutory scheme would affect the application of the business judgment rule. For instance, neither statute expressly provides that a violation of either scheme would create a presumption of bad faith when boards fail to comply, nor do the statutes provide for any remedy which would otherwise compel a board to accept an applicant who was prejudiced by any violation of the two statutory schemes.

Instead, both statutes call for civil fines/penalties to be paid to the City, with no private right of action for affected individuals. These silences are not drafting oversights; they reflect a deliberate legislative compromise that leaves the business judgment rule doctrinally intact, and the practitioner's task is to understand what room remains for both board defense and applicant challenge in the resulting gap.

The Levandusky Baseline

The existing case law governing business judgment rule application to cooperative decision-making powers provides the analytical baseline for understanding the ramifications of both FCHA and CATL.

In *Levandusky*, the Court of Appeals for the first time held that the business judgment rule applies to the actions and decisions of a cooperative board absent bad faith, action taken against the best interests of the Corporation, or an action outside the scope of the Board's authority. In *40 W. 67th St. v. Pullman*, 100 NY2d 147 (2003), the Court of Appeals determined that this protection extended to decisions to terminate a shareholder's lease based on alleged objectionable conduct.

In *Singh v. Turtle Bay Towers Corp.*, 74 AD3d 568 (1st Dept 2010), and its progeny, the courts consistently applied the business judgment rule to a board's decision whether or not to accept or reject a prospective purchaser's sale application for any reason or no reason, subject only to anti-discrimination laws and the aforementioned business judgment rule exceptions.

Local Law 2026/058: A Granular Walk-Through

The CATL (Local Law 2026/058) creates strict deadlines by which a cooperative board must review and determine a prospective sale application. The restrictions apply to all cooperatives with 10 or more residential units. It does not apply to apartments being sublet by a tenant utilizing it as his/her primary residence, nor to condominiums, HDFCs, Mitchell-Lama buildings, and/or property owned by an entity for which membership interest is subject to governmental approval. Further, for the properties covered, it applies to sales, transfers, assignments, gifts, devises, and trust and estate transfers.

The first deadline is triggered upon the cooperative's receipt of a complete sales application. Within 15 days of receipt, the cooperative (or its transfer agent) must provide the applicant with written acknowledgment by both email and registered mail of same. This notice must state that the application is indeed "complete" or, if it is not complete, itemize deficiencies (e.g. missing financial documents, personal references, tax returns, etc.).

In the event this notice is not timely issued, the application will be "deemed complete" thus preventing the cooperative from requesting any supplemental documentation/information pertaining to its determination.

Following issuance of the notice of receipt of the completed application (or deemed completion, if such notice is not timely issued), the cooperative board then has 45 days to issue its decision (i.e. approval, conditional approval, or denial). The board has the right to a 14-day extension of this deadline if made in writing prior to the expiration of the 45-day deadline.

Notably, regarding denials, the Board has no obligation to provide a reason or basis for the denial, though this requirement had been included in prior iterations of the legislation.

The board is also afforded the right to adopt a summer recess policy within the months of July and August during which any of the aforementioned deadlines will be tolled. This "summer recess period" must be formally adopted by the board and notice of same must be included within the board's approved sales application package.

Notably, "Cooperative corporation" is defined to include the managing agent. This means violations of the statute could carry direct statutory liability for managers, who often act as transfer agents for cooperatives. In turn, management agreements (in particular any indemnification provision) as well as applicable insurance policies may need to be updated to ensure this risk is adequately covered.

A violation of the aforementioned application protocols and deadlines carries with it HPD-enforced civil penalties of $1,000 for a first violation / $1,500 for a second violation / $2,000 for a third or subsequent violation. Nothing in the statute expressly provides for a private right of action for a prospective purchaser or shareholder affected by such violation.

As important context to the legislative history of the law, the bill was initially vetoed by Mayor Eric Adams on Dec. 31, 2025, but the City Council later overrode the veto on Jan. 29, 2026.

The Fair Chance for Housing Act in Brief

In the FCHA, co-op and condo boards (along with residential landlords) are generally prohibited from considering criminal history for prospective purchasers/lessees prior to approving the application. The boards are permitted to consider only "reviewable criminal history" and only after the application is conditionally approved. The "reviewable criminal history" includes registered sex offenses, felonies within five years of release/sentencing, and misdemeanors within three years.

If the board denies an application following its receipt of a criminal background report, the board must provide a copy of the report to the applicant and must set forth how the "reviewable criminal history" is relevant to the board's legitimate business interest and, further, how the other information included with the application was taken into account concerning this analysis.

Importantly, if the report pulled for an applicant, who is denied housing, and such report contains criminal history which is outside the scope of "reviewable criminal history," then there is a rebuttable presumption that the board relied on the non-reviewable criminal history and thus violated the law. However, just as with Local Law 2026/058, there is no express presumption that a violation equates to bad faith by the board in making its determination.

Here, enforcement is handled by NYC Commission on Human Rights and carries civil penalties up to $250,000.

Statutory Violations May Not Equate to Application Approvals

Neither statute provides that a board's failure to comply strips the protection of the business judgment rule or creates a rebuttable presumption that the board acted in bad faith and/or did not act in the interest of the Corporation. However, in practice, a violation of the FCHA would likely have greater ramifications and potential for losing business judgment rule protection, than a violation of CATL.

Unlike CATL, the FCHA regulates the substance of the admissions decision. *Levandusky*, and *40 W. 67th St. v. Pullman*, 100 NY2d 147 (2003), protect only board actions taken "in the lawful and legitimate furtherance of corporate purposes." A rejection resting on a criminal-history inquiry the FCHA forbids is not a lawful furtherance of a corporate interest, so even a technical violation arguably falls outside the safe harbor on the "unlawful" prong.

The Courts have used similar reasoning when overturning sublet and flip tax policies which treated certain classes differently in violation of BCL § 501[c] (*see Razzano v. Woodstock Owners Corp.*, 111 AD3d 522 [1st Dept. 2013]; *Fe Bland v. Two Trees Mgt. Co.*, 66 NY2d 556 [1985]). Where the FCHA violation is willful, the bad faith exception to the business judgment rule may also be triggered.

In *Biondi v. Beekman Hill House Apt. Corp.*, 94 NY2d 659 (2000), the lower court determined that a Board had rejected a sublet application based upon race and then retaliated against the shareholder for opposing the denial.

The court held that this corporate action violated the Fair Housing Act and New York Human Rights Law and that the Board had acted both in bad faith and not in lawful furtherance of a corporate interest.

In *Fletcher v. Dakota, Inc.*, 99 AD3d 43 (1st Dep't 2012), the Appellate Division 1st Department treated a discriminatory admissions decision as "incompatible with good faith." For a knowing FCHA violation, the statutory silence on presumed bad faith is immaterial.

Under CATL, a violation alone may be insufficient to pierce the business judgment rule. The *Razzano/Fe Bland* line of cases turns on the substance of the board›s action being illegal and violative. A timeline violation is not that. A board that fails to meet the «deemed complete» clock or the response deadline has committed a collateral procedural breach; the rejection it may eventually issue is not thereby rendered substantively unlawful.

Nothing in *Razzano* or *Fe Bland* extends to a procedural lapse untethered from the merits of the decision itself. The *Biondi* route is equally unavailable, because a missed deadline, absent evidence to the contrary, is silent as to motive and does not evince discrimination, vendetta, or self-dealing the way a civil-rights violation does.

The pragmatic synthesis is that a CATL violation is, at most, circumstantial evidence in a bad-faith case that must stand on independent grounds. It can corroborate a pretext theory, for example, a board that ignores the statutory clock and offers shifting or unsupported reasons begins to resemble the vendetta posture that warranted a bad-faith hearing in *Matter of Boisson v. 4 E. Hous. Corp.*, 129 AD2d 523 (2d Dep't 1987), but it cannot carry the claim by itself. The penalty structure reinforces this reading: by specifying a regulatory remedy and conspicuously omitting deemed approval, the City Council signaled that non-compliance sounds in penalty, not in automatic invalidation of the rejection.

Conclusion

The New York City Council's recent restrictions on apartment application processes are sure to be litigated in the coming years. Until Courts have determined which statutory violations alone will (i) pierce the business judgment rule, or (ii) require additional evidence of intent or (iii) be deemed bad faith, or (iv) be simply irrelevant, boards should scrupulously conform to the statutory requirements.

For practitioners advising co-op boards, the good news is that *Levandusky* remains the backbone of admissions defense; but the bad news is that boards now operate in a procedurally exacting environment where small administrative failures can cascade into HPD penalties, Human Rights enforcement, and evidentiary fodder in private litigation.

Until the City Council, the Court of Appeals, or both speak to the gaps identified in this article, boards and applicants alike will be transacting in a doctrinal grey zone.

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