

# HABITAT Weekly

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## Board Recoups Legal Costs After Evicting Smoker

By Bill Morris

**SOME CO-OP AND** condo boards are penny wise pound foolish. And then there's the board at an 80-unit co-op in Wheatley Heights, Long Island, which decided to spare no expense when it set out to evict a shareholder who repeatedly flouted the co-op's smoking ban. It was a gamble that came with no guarantees and could have cost the co-op a bundle in legal fees.

Instead, the board's bold decision produced a win-win. First, the courts ruled that the offending shareholder had to forfeit his shares and vacate his apartment. That decision was remarkable in itself. Now, Suffolk County District Court Judge John Schettino has ruled that the evicted shareholder must pay \$56,395 of the co-op's legal fees, which included a four-day trial during which 17 witnesses were called to testify.

"We're happier than happy," says Kathy Vetter, president of the co-op board, who urged her six fellow members to pursue the risky legal battle. "Nobody wants to see somebody lose their home, but you have to respect your neighbors. The board was unanimous that we had to move forward with the eviction." The co-op's attorney, Emanuela Lupu, senior associate at Smith, Buss & Jacobs, spent a year and a half marshaling evidence. This included having residents and staff keep detailed logs of when they smelled smoke, and hiring an environmental consultant to conduct "swipe tests" to detect nicotine residue in the offender's apartment, which came back positive after a laboratory analysis. Even

without eyewitness testimony, Lupu was able to convince the court that the shareholder was breaking the co-op's proprietary lease.

From Lupu's perspective, the case carries lessons for all co-ops. "Too many boards seem to think there's nothing they can do when people violate the proprietary lease – noise, smoking, leaks, it could be anything," she says. "This case is proof that boards have the ability and the obligation to act. And they need to do their fact-finding before they act. It turns on credibility – having the board build the case brick by brick. We built this case."

For its part, Vetter says, the board found itself in an uncomfortable predicament. On the one hand there was

the risk of losing a costly lawsuit.

"But we were opening ourselves to a huge lawsuit if we ignored the smoking," Vetter says. "We had a strong case, but nothing is guaranteed."

The outcome has convinced Vetter that hiring the right professionals is important for all co-op boards. "Emanuela Lupu is an excellent attorney who walked us through this process," Vetter says. "She showed us we had to do it step by step. We pursued the case because nobody should be subjected to the dangerous chemicals in secondhand smoke."

Vetter offers one final lesson for all penny-wise boards: "In the end, you have to be willing to spend the money." ■

