

## BREAKING THE CO-OP BARRIER

*Choosiness or discrimination? In tight economic environment, board turndowns get more scrutiny*

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*By Candace Taylor*

No one knows exactly why Jeff Blau, the 41-year-old president of the Related Companies, was denied a co-op board interview this spring at exclusive 820 Fifth Avenue. In what would have been one of the biggest deals of the year, Blau reportedly planned to pay \$31 million for a fourth-floor spread at the limestone building between 63rd and 64th streets, where each apartment takes up a floor.

Many possible explanations for the high-profile turndown have been bandied about by real estate observers.

Was it the fact that Blau is in real estate, at a time when the city's housing market has slumped? Was

it the fact that he's Jewish, in a city where many of the most exclusive buildings were forged in a crucible of anti-Semitism? Was there bad blood between Blau and a building resident?

Co-op boards are not required to disclose the reason for rejections, so the world may never know what thwarted Blau's application. But at a time when the luxury market is struggling, the case has thrown a spotlight on how New York's elite buildings hand-pick their residents and has drawn new attention to the issue of illegal discrimination by co-op boards.

While some in the real estate industry say discrimination among New York's co-ops has mostly disappeared, others argue that it's alive and well, just harder to detect than in the past. Coupled with other forms of co-op board persnickiness, advocates say, this subtle discrimination is harming the city's already weakened housing market by eliminating qualified buyers.

In fact, boards' current emphasis on finances may be unwittingly spawning even more discrimination against some "protected classes" — such as single parents, the disabled and Wall Streeters — because boards stereotype them as financially unstable.



"The lack of transparency means that some subset of qualified buyers are not being able to close transactions, and that is terrible for the economy," said Craig Gurian, executive director of the Anti-Discrimination Center of Metro New York. "You don't want to have extra drags on the system."

## **History of discrimination**

New York, like other cities across the country, struggles with a legacy of housing discrimination and segregation.

According to a University of Albany study based on 2000 census data, the New York metro area ranked fourth in the country in residential segregation for African-Americans, and fifth for Latinos.

In February of this year, Natali Todd, an African-American lawyer, filed a lawsuit in federal district court alleging that a Brooklyn brokerage, Jack Potak Real Estate, and a developer refused to sell her a condo at 2569 Ocean Avenue in a predominantly white area of Sheepshead Bay because of her race.

"Once the developer met her, and saw that she was African-American, the price began to change," said Diane Houk, an attorney and executive director of the Fair Housing Justice Center, a Manhattan-based non-profit.

Todd's discrimination complaint is far from an isolated incident, she said.

"For many people, it's something they'll have to deal with at least once in every [housing] search," Houk said. "It's not something we think about in New York, because we see a lot of diversity. But when New Yorkers go home, they live in very segregated neighborhoods."

The city's largest and most respected real estate firms are not immune to complaints about discrimination either.

In 2006, the National Fair Housing Alliance filed a complaint with the federal Department of Housing and Urban Development alleging that agents in the Brooklyn Heights office of the Corcoran Group had engaged in discriminatory sales practices such as racial steering. The group said that a Corcoran agent produced a map of Brooklyn and outlined the areas where a white tester should consider living. The organization dropped its complaint with HUD this winter after being informed that Corcoran had fired the agent in question and instituted anti-discrimination training for its agents. This March, the brokerage officially banned more than 200 potentially discriminatory terms, such as "bachelor pad" and "professional."

Meanwhile, last year, Brown Harris Stevens was sued by a couple who claimed an agent refused to show them an apartment when she learned they were expecting a child. A spokesperson for the company said the suit has been settled.

While housing discrimination is a nationwide phenomenon, New York has a unique version of the problem because it has far more co-ops — in which residents actually choose their neighbors — than any other city in

the country. Moreover, many of New York's most exclusive co-ops were founded at a time when open exclusion on the basis of race, class and religion was the norm.

Formed in the late 1800s and early 1900s, many of Manhattan's grandest East Side co-ops were explicitly designed to house the old-money establishment, while excluding newcomers and non-WASPs. Jews, in particular, found they were not welcome at many of the top-flight buildings.

"Some of the earliest apartment buildings on Central Park West were built specifically for wealthy Jews who were not welcome on the East Side," wrote Steven Gaines in his 2005 book, "The Sky's the Limit: Passion and Property in Manhattan."

Celebrities have also found that they were sometimes personae non grata at New York's most exclusive co-ops. Over the years, high-profile co-op rejections in New York have included former President Richard Nixon, who was attempting to buy at the East Side's River House (which also famously rejected Gloria Vanderbilt, the actress-artist-socialite). The board that denied Blau an interview at 820 Fifth Avenue also has a reputation as one of the pickiest in the city, and has previously rejected the likes of Valentino, billionaire investor Ron Perelman and casino developer Steve Wynn.

Blau and the board at 820 Fifth Avenue both declined to comment.

Through the years, stories of incredibly finicky boards abound.

Barbara Corcoran, the founder of the Corcoran Group, recalled one incident in which a buyer, an executive at a paper company, was rejected from a Central Park West co-op after questioning a board rule that required all residents to use a certain kind of toilet paper.

That board likely was completely within its rights. Co-ops have the legal right to pick and choose their neighbors and do not have to give a reason for rejections. The only exception is that the New York City's Human Rights Law makes it illegal to reject a potential purchaser on the basis of race, color, creed, age, national origin, citizenship status, gender, sexual orientation, disability, marital and family status, lawful source of income and occupation, explained real estate attorney Aaron Shmulewitz, a partner at Belkin Burden Wenig & Goldman.

He noted that New York City has one of the most comprehensive civil rights laws in the nation, with even more "protected classes" than the federal government.

"If [co-op board members] don't like the color of [a buyer's] eyes, they can turn them down, but they can't turn them down based on the color of their skin," Shmulewitz explained.

Because co-ops don't have to disclose their reasons for rejecting buyers, it's impossible to tell how much discrimination occurs, but observers say it has declined in recent years.

"When I started in the business, I was shocked to hear brokers talk about buildings in those terms: 'This building does not like those types of people,'" said Paul Purcell, the co-founder of Charles Rutenberg Realty and former president of Prudential Douglas Elliman. "I don't think it exists to the level that it existed 25 years ago."

In part, that's because the workforce has become more diverse. Members of minority groups accumulated enormous fortunes during the recent boom, which in turn helped them gain entrée to Manhattan's exclusive co-ops, according to one broker who specializes in luxury apartments, but asked to remain anonymous.

"I think it's more a matter of money than whether they have dark skin or light skin," the broker said, adding that Asian and Asian-American buyers in particular are now more likely to be found in the city's elite co-ops than they were a decade ago. "A lot of buildings are very mixed."

The argument that discrimination has largely disappeared was used by many in 2007, when a proposed City Council bill, the Fair and Prompt Co-op Disclosure Law, would have required boards to give their reasons for denying an applicant in writing.

The legislation never received a hearing amid an outcry from co-op boards and the real estate industry, who claimed that discrimination is now extremely rare, and that the proposed measure would not rectify what's left of it.

"The buildings that are exercising prejudice — and I hope they are few and far between — are going to come up with some excuse," rather than providing the true reason for rejection, said Mary Ann Rothman, vice president of the Council of New York Co-operatives and Condominiums, who added that co-op board turndowns are uncommon.

### **Silent discrimination**

Advocates say discrimination hasn't disappeared, but is simply more difficult to detect.

"Just look at how many co-ops up and down Fifth and Park are all white," said Michael Gross, author of "740 Park: The Story of the World's Richest Apartment Building." "I would be surprised if there wasn't de facto discrimination going on all the time."

The vast majority — 84 percent — of co-ops in Manhattan are occupied by households identified as white, a category that makes up only 60 percent of the households in Manhattan, according to a 2008 report by the Furman Center for Real Estate and Urban Policy at New York University.

By contrast, 6 percent of co-op residents are black households, which make up 13 percent of Manhattan's population.

Houk said some of the discrepancy can be explained by differences in income between demographic groups,

but not all of it. Income "doesn't account for the levels of segregation" in the city, she said, adding: "We don't think that segregation happens by accident."

Some buildings have unofficial quotas for certain groups rather than barring them outright, sources said.

"There are buildings where it's known that children are welcome and buildings where they aren't, and buildings where there are limits on people of certain religions," Gurian of the Anti-Discrimination Center said. "Speak to anybody who has been in this business for any period of time, and they'll be able to give you a breakdown on buildings that are difficult in general and buildings that have discriminatory preferences."

In an era of political correctness, however, these prejudices are rarely discussed. Instead, agents "steer" certain types of buyers toward buildings where they're unlikely to be rejected, sources said.

"In the better buildings, people who are unlikely to be accepted rarely get to the point where there's an offer and a board interview. They are, in effect, pre-screened by the brokers and by the seller," Gross said.

Brokers who work frequently with co-ops have little choice but to participate in this "steering," because their livelihood depends on it.

"People who deal with the mafia that is the best buildings in Manhattan know that the mafia has rules, and you violate them at your own risk," Gross said.

For the same reason, most are extremely wary of talking about the issue.

In 1986, agent Edith Salton was fired from Halstead Property after being quoted in the New York Times about co-op boards that bar or limit the number of Jewish residents. Salton, who is now an agent at the Corcoran Group, did not respond to requests for comment.

On a pragmatic level, agents simply want to find their client an apartment as quickly as possible, especially since they don't get paid until the deal closes, Barbara Corcoran said.

"A broker's never going to say, 'You have a kid? They don't take kids,'" Corcoran said. "But they will show you those buildings that have other kids and playrooms.

"The last thing you want is to waste all that time, and have a very embarrassed and unhappy buyer [after a board rejection]."

That could explain why co-op rejections are relatively rare.

Still, outright turndowns do occur. Houk said the Fair Housing Justice Center recently assisted a woman who sued a Brooklyn co-op, alleging that they rejected her because of her sexual orientation.

At the interview, board members allegedly told the woman, a lesbian, that she "wasn't what they expected," Houk said, adding that the case was settled with payment of an undisclosed sum by the board.

Co-op boards are required to reveal their reasons for rejecting a potential buyer if that buyer files a complaint with the city's Human Rights Commission.

The commission said it has received 105 housing complaints so far in 2009, with another 15 resolved before a complaint was filed.

But housing discrimination is dramatically underreported, advocates said, because victims rarely step forward, in part because discrimination is often very difficult to prove.

"For better or worse, it's virtually impossible to prove that you were rejected on the basis of race," said Benjamin Tessler, a Manhattan attorney who recently represented Lisa Sheen, a co-op owner in Flushing, Queens, who sued her board, alleging discrimination and harassment on the basis of race.

In particular, would-be purchasers in very high-end buildings fear the social consequences of taking action against perceived discrimination.

Gross said he recalls speaking to a rejected buyer at 740 Park who had filed a Human Rights Commission complaint.

"What I remember is them saying, with horror in their voice, 'Don't write about this,'" he recalled. "They didn't want to be known as the kind of people who file a complaint, because then, what co-op will want you?"

### **Modern-day discrimination**

In a rocky economy, the vast majority of co-op board rejections occur because of financial concerns.

"I really think 90 to 95 percent of board applications, if they're rejected, are because the board does not feel that the person is financially stable enough to maintain the apartment," said Judith Maysles, an agent at Prudential Douglas Elliman. "I don't think boards are vindictive and mean."

It's entirely legal to reject a buyer because of concerns about their ability to pay monthly costs of the apartment, but in their haste to protect the building's finances, some boards may unwittingly make illegal discriminatory decisions, sources said. That's especially true for newer protected classes, such as "source of income," which was added to city's Human Rights Law last year.

For example, Wall Street buyers are suddenly having a much harder time getting board approval, brokers said, even if the buyers have solid qualifications, because of the perception that the finance industry is in trouble. Disabled buyers also encounter this problem. Gurian said co-op boards often stereotype disabled buyers as being unstable financially, thinking "that maybe the person is not going to be working, which is truly

speculation," he said.

He added that boards also assume the disabled will require expensive ramps or other renovations in the future. The Anti-Discrimination Center is working with the wheelchair-bound potential buyer of an Upper West Side co-op who believes he was rejected by the board because of his disability, though he had not asked for any changes to the building.

Much of this kind of discrimination may be the result of ignorance, said real estate attorney Joseph Ferrara, the publisher of the Sellsius Real Estate Marketing Blog. Ferrara recently represented a client who filed a complaint with the federal Equal Employment Opportunity Commission, alleging that a New York co-op board discriminated against her because she is single.

"It was a clear case that they didn't want a single mom there," he said, noting that his client was questioned in the interview about her relationship with her child's father and his visitation schedule. After Ferrara's client filed her complaint, the co-op offered to settle.

Ferrara said he believes the board's gaffe occurred because some members simply weren't properly informed. "They had no clue that was illegal," he said. "The boards don't realize that it's not a viable excuse to reject someone because of their marital status."

In the midst of the economic crisis, co-ops with overly strict requirements — whether or not they are discriminatory — are doing themselves a disservice, brokers said.

These buildings believe they're protecting their shareholders, but nearly all of them are now hurting their property values by limiting their pool of buyers, brokers said.

"In a very small band of buildings, that high level of impossibility to get in ends up protecting their values," Purcell said. "But that doesn't work for the vast majority of buildings."

"Brokers just say 'they're impossible.' Any building that isn't in the top tier could increase their values by lightening up on things."

Co-op prices already are lower than those of condos, which don't require buyers to undergo an interview process. (The median sale price of a Manhattan co-op was \$649,000 in the second quarter, according to an Elliman report. The median price of a condo was \$999,000.)

Also, overly strict boards make it harder to sell co-ops, brokers said, which means frustration for shareholders, Ferrara noted. "It's hard enough to sell any property in this market, and then you get somebody and the board says 'no,'" he said.

While Blau may have been ready to pay \$31 million at 820 Fifth, it's unclear how long it will be before another buyer steps up in the current economy.

But co-ops of that caliber may simply not care if their apartment values fluctuate, so long as they can ensure that they're happy with their neighbors.

"These people are so wealthy," Purcell said. "They're not going to take someone that they're not in love with."