



FRANK LOVECE

#### THE ELMWOOD PARK 5

(from left to right): Thomas Raia, Leroy Tepper, Ron Silver, Thom Milazzo, Charles Montemaranno.

EILEEN TEPPER

**ON ONE SIDE: FIVE SENIOR CITIZENS WHO LIKED SITTING IN A PUBLIC SPACE**

**ON THE OTHER SIDE: A BOARD THAT BELIEVED IT WAS DOING ITS DUTY**

**RESULT:**

# THE LOBBY WAR

**By Frank Lovece**

**W**HEN DOES A PUBLIC space become too public? And when do a board's actions amount to overkill?

The answers may lie in the case of a Staten Island condominium association that has endured a war of sorts between the condo board and five senior citizens who range in ages from 66 to 90, with a Korean War and two World War II veterans among them. The seniors' crime? Hanging out in the lobby, making a public space their own. Their condo board – after fining them, banishing them, and forbidding them to sit together on outdoor benches, a prohibition never applied to any other resident – is now defending itself in a lawsuit that's making its expensive and time-consuming way to court. The board's position is simple. The





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Sarcastic senior Tepper in the basement: "Congratulations for putting your cigarette out in the planter."

lobby is a public space that offers visitors (and potential buyers) a first impression of what the property is all about. And it shouldn't be monopolized by one group of people.

Cheryl Ruiz, the regional director of Wentworth Property Management and the managing agent for the two-building complex, says some residents "have complained about people sitting in the lobby. People who live on the first floor are entitled to their privacy like anybody else. If I had teenagers hanging in that lobby, do you know what would happen?" Ruiz also says the men open the buzzer-operated doors to let people in. "They claim they didn't do it, but three people attested to it."

One of the seniors responded by showing a three-page petition with several dozen signatures under the statement, "I feel no discomfort or hear any annoying noise when [the five seniors] socialize in the lobby or outside, away from the building entrance."

How did a seemingly simple situation reach such a boiling point? Could the volatility have been avoided, or was litigation inevitable? Were there no possible alternatives? And, most importantly, how can any board, faced with a similar situation, find a way to handle it more productively, less acrimoniously, and less expensively?

#### FIVE AGAINST THE HOUSE

For years, no one expressed any particular concern over the handful of retirees chatting together for a couple of hours in the spacious lobby of Staten Island's middle-class Elmwood Park II condominium. There, different iterations of the five unit-owners had gathered, on and off, to shoot

the breeze: Thomas Milazzo, a former chauffeur; Charles Montemaranno, who had reconditioned electrical motors; Ron Silver, an ex-New York City Department of Buildings employee; Thomas Raia, who had labored in construction; and Leroy Tepper, who used to sell greeting cards.

The latter-day equivalent of stoop-sitting isn't unusual. It's fairly common, in fact, in the New Springville

neighborhood near where Anthony Reinglas grew up. "You can drive down any given block on a nice night around there, and you're going to find people sitting out on their stoops and congregating. That's the kind of area it is," says Reinglas, a property manager with Bradford N. Swett Management, who is not involved in the current dispute. "Remember the old neighborhoods where it is safe to sit outside at 11:00 at night? What [the board is] taking offense at is [not uncommon here, but is] quite indicative of the area."

The board had not, in fact, taken offense until February 2009. That's when Leroy Tepper

exchanged words with board-member Joann Goldstein over her putting out a cigarette in an outdoor planter.

"She would come down and talk with us in the summertime when we were outside on the sidewalk in front of the building," Tepper recalls. When Goldstein doused her cigarette in the planter, Tepper recalls that he criticized her, saying she, "as a board member, shouldn't do that. And she got excited and things developed and she told her husband, who came down the next day or so and threatened me. I'll kick the living [crap] out of you! I wish you were 15 years younger!"

A board member with direct knowledge of the situation,

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who insists on anonymity, confirms Tepper's claim. "They had words with [Goldstein]. That's when it all started," the board member recalls. Tepper had "stopped [Goldstein] to say sarcastically, 'Congratulations for putting your cigarette out in the planter!'" The board member goes on to say that Goldstein's husband, Ricci Crisafulli, a former police officer, did yell at Tepper, pretty much as the senior recalled.

The board member who confirmed Tepper's recollection also claims the threat was justified, because the seniors "make comments about all the women's legs and backsides. A bunch of women go through the garage to avoid these men." Tepper and Goldstein subsequently developed a feud that has gone on to involve police visits, accusations of vandalism, and verbal and physical threats.

(A request to speak with the board's attorney was refused. John Buday, a Staten Island-based architect who was board president until leaving the board on September 16, did not return several calls made to his home and workplace over a period of two months.)

without apparent purpose," adds attorney James Samson, a partner at Samson Fink & Dubow, who is not involved in the case. "They have a purpose. They even have an ownership. Can you be guilty of loitering on your own property?"

Yet another long-time Manhattan real estate attorney, Bruce Levinson, agrees, noting, however, "that doesn't necessarily answer the question of whether you can have a meeting in the common area every day."

Was fining a small group of retired senior citizens over an unsupportable interpretation of "loitering" really the best and most productive way of handling the matter? Because it wound up becoming the first of many missed opportunities for creative compromise that could have saved the board a great deal of time, trouble, and expense.

## OF FOX AND MEN

When any authority brings the hammer down on what many perceive as some of society's most helpless – say, a 90-year-old WWII vet on a fixed income – it becomes a David-and-Goliath story.

Following newspaper reports in the *Staten Island*

## LOITERING AT HOME?

Nonetheless, having a handful of seniors sitting around chewing the fat for a couple hours in the afternoon didn't seem to be a problem until the Tepper-Goldstein exchange. Soon after that, each man received a warning letter from Ruiz, saying the seniors were violating Section 5, Article 6, of the house rules (which in this case are a formal part of the condominium's bylaws). Revised April 2008, it reads: "No one shall play or loiter in the public halls, elevator, vestibules, lobby or stairway of the front entry of the building."

The men responded that, according to dictionary and penal-code definitions, standing and chatting in the entrance of one's own home is not loitering. (Several attorneys, managing agents, and board presidents not involved in the case agreed.) Without further discussion, the board fined each senior \$25 for loitering.

Some professionals say the board was out of line in its response. "It's their home," observes property manager Reinglas. "The law defines loitering as staying in one place

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*Advance*, the saga was picked up by *New York Post* columnist Andrea Peyser, who wrote, "These vintage citizens' civil and human rights have been violated." On TV's Fox News Channel, *Fox & Friends* co-host Gretchen Carlson had some choice words for the board's behavior

when two of the seniors and their attorney, Robert Adinolfi, appeared on the show on July 8.

The board steadfastly refused media requests, thereby not getting out its side of the story. The result? The board appeared to be picking on a bunch of old veterans, making the condo seem like an inhumane place to live and fulfilling the worst public stereotypes of co-op and condo boards as little-Napoleon fiefdoms. That doesn't help a building's reputation or spur apartment sales.

Still, the board by that time had made a peace overture. It told the seniors they could gather in a small basement anteroom next to the laundry room. It turned out to be cold



and dingy, and indeed, wrote Peyser, "When I visited, the room was freezing, the toilet stuffed."

So, on March 25, the board sent Tepper a memo allowing the men two hours a night to use a first-floor studio apartment where the board holds its monthly meetings – provided the seniors agreed not to gather either in the lobby or on two outdoor benches the board was in the process of purchasing. The memo specifically singles out the men and no other resident: "You agree not to have your meetings in the loop," the area outside the building. The men agreed.

The peace didn't last long. In August, the men's attorney, Adinolfi, filed a civil suit in New York State Supreme Court against the condo association and related parties. Consequently, the board instructed building security to bar the men from the studio apartment.

"The board made every effort," Ruiz maintains. "Eighty percent of the board members are war veterans and retirees," she says. "The apartments have balconies in each unit, so it's not that they don't have a place to entertain people."

Besides, as she had written in a memo to the five seniors, the condominium "is not a 55-and-older building; it is a luxury high-rise for persons of all ages." To the old men, that letter was insulting, suggesting there is something wrong with seniors being so visible in a luxury building.

But luxury is in the eye of the beholder. Although the Elmwood Park II is attractive and well-maintained, it has no concierge or doorman, and most apartments sell for well under \$450,000, according to city records. None of this contributes to the usual definition of a New York City "luxury" building.

So, the dispute is partly an image issue. "People who live in a building have varying views of what you first see when you walk in, and there may be people who live there that when they are selling or buying want a certain impression," says property manager Tim Fine of Charles H. Greenthal & Company, who is not affiliated with the condo. Reinglas, however, takes a different view. "Whether they want the 'stigma' of being considered a 55-and-over community," he says,

"the fact is people move in when they're young and, if they like it, they are going stay and grow older. That's something that should be celebrated instead of something to be ashamed of. It means you're running a building and a community that works."

But such disputes are also about space, observes Ira Meister, president of Matthew Adam Properties, who is not affiliated with the condominium. Although he grew up on Manhattan's Lower East Side and understands the city tradition of stoop-sitting, Meister agrees that the lobby gatherings are "unfair to the other people in the building. Let's say everybody decided to bring down a folding chair and sit in the lobby. You'd have to run a gauntlet to get in the elevator." Agrees Pat Bettino, an account executive at Orsid Realty, not affiliated with the condo: "It's not a stoop. It's a lobby in a building of maybe 400 people. You have to look at it as, 'Can I fit 400 people in the lobby at any time at their will?'"

"You can't take every argument to its extreme to prove your point," counters attorney Hollander. "You could say, 'What if everybody wanted to use the laundry room at the same time?' Do these men interfere with people entering or leaving? Do they disturb the peace in any way? If you get positive answers to those kinds of concrete behavioral questions, then I agree something should be done about it. But not just because they're there, and you want to call it loitering."

Adds attorney Levinson: "If these people were all to congregate once in a while and shoot the breeze, that's fine; that wouldn't be problematic. But this seems to be a regular, planned social occasion, which the board in its exercise of its reasonable judgment says is intrusive and potentially bothersome of other inhabitants of the building."

Does it remain an exercise of reasonable judgment when the activity ruffled no feathers until one board member took personal pique?

"As for whether the board was out for retribution because a board member got pissed off at something else," he says, "if there's a legitimate reason coupled with an improper reason, the court won't set it aside, since there was still a legitimate reason."

## THE REAL ISSUE

"When a board member has a personality conflict with someone, that's when these things become magnified," says Ari Mintz, the former president and current vice president of the block-long, 120-unit Manhasset Apartments co-op at 301 West 108th Street and 300 West 109th Street. "You have to go a little further and ask if it really affects other residents. Is it upsetting other people are just this one person?" His advice: start talking.

"The board should have sent a letter saying, 'It's come to our attention you guys may be loitering,' and give them a chance to ask, 'What constitutes loitering?' and start a conversation. You cut off your options when you fine somebody too quickly. It makes an instant enemy, and it's not going to clarify the matter. You've escalated the problem without having had any kind of dialogue." Agrees Meister: "There are certain steps to take. You can't just go in with a baseball bat."

Communication and calm are good remedies. "First, I'd speak to the board member," says William C. Ragals Jr., president of The Strand, a 300-unit, luxury high-rise at 500 West 43rd Street in Manhattan. "I'd want to have a heart-to-heart talk with the person to see what was really up. Maybe [Tepper] didn't express himself right and offended her. But the board acted improperly in escalating the thing" from a personal spat to a condo-wide issue.

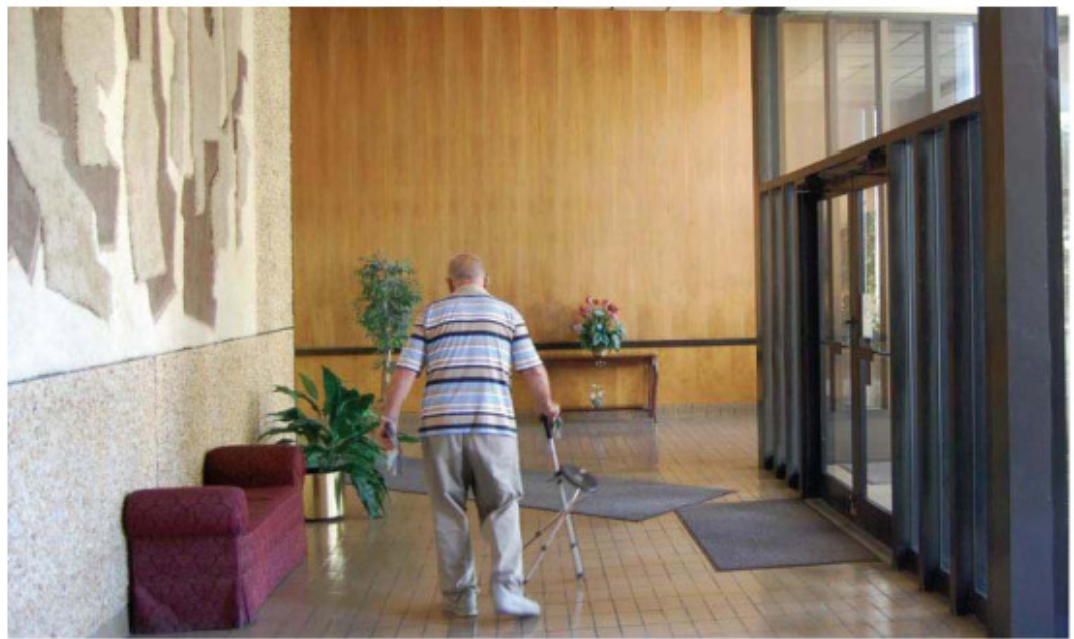
"It's ludicrous that it's going to court. I spent 40 years as an attorney. To me, the supreme form of advocacy is negotiation and settlement, not litigation. The whole thing sounds so petty. The best step would have been to try and defuse the situation. Speak to all the people, recognizing any misstatements or misunderstanding. People on some boards draw a line in the sand and that's it – they won't change their minds. I sometimes shoot from the hip, but I'm not afraid to rethink my position and change my view."

In this particular building, the very sizeable lobby wraps around three sides of a glass-enclosed vestibule. The simplest thing might have been to tell the men not to gather in front of the doors, but to spend their afternoon hour or two in the wraparound side away from foot

traffic. That option would make use of an otherwise unutilized space, keep the men out of pedestrians' way, and provide a modicum of eyes-and-ears security. As long as their actions – as opposed to their presence – don't create problems, it seems like a workable solution.

Mintz – a veteran board member who'd helped shepherd his building through a high-profile fire – raises an additional point that's both fiduciary (in terms of avoiding expensive lawsuits) and practical (in terms of preserving a sense of community). "There's the whole idea of having respect for an older generation," he says. "Quality-of-life issues are always very difficult, and when they end up in court, the court always looks at you like, 'Are you crazy? You're neighbors – be neighborly with each other.'"

Where does the Elmwood Park II issue stand? "I have been in



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Tepper exits lobby; "There's the whole idea of having respect for an older generation."

contact with the attorney for the board," Adinolfi wrote in an e-mail on September 17. "I am putting together a settlement proposal in the hopes that a mutually agreeable arrangement can be reached."

It need never have gone so far. Before fines and nasty letters, before

contributing to a toxic atmosphere, get together and talk. If everyone's too stubborn, says Meister, "bring in a mediator." He adds: "You have to step back and take a deep breath, realize what's going on, and not let your emotions get the better of your business judgment."