

The Sword and the Shield Exercise

Created by Esme Carmello & Eloise Lawrence

Background

A historically Black neighborhood with a large number of long-term tenants and a substantial portion of Boston's naturally occurring affordable rental housing is being “gentrified.” Corporate real estate companies are beginning to buy up properties en masse and either sell them quickly at a substantial markup – essentially speculating on the neighborhood’s rapidly rising rents – or hold them and raise rents dramatically without any property improvements. This is leading to mass displacement of individuals and families, mostly Black families, and disruption of the existing community.

One of the primary speculators is Real Property Company LLC (or RPC), which has purchased 200 rental units in the area in just the last two years. It routinely neglects its properties, refusing to make even emergency repairs. It also routinely raises rents upon purchasing a building, demanding up to 400% more in rent on just 30 days’ notice.

Because many Boston tenants have month-to-month tenancies, a rent increase can be requested at any time. If a tenant doesn’t agree, the landlord can bring a no-fault eviction case. Under Massachusetts law, a tenant can defeat a no-fault eviction by trying the case and proving that the landlord has failed to correct conditions of disrepair. Only 6% of tenants have a lawyer, however, while landlords nearly always have lawyers. RPC certainly has one at all times.

City Life’s Neighborhood Stabilization Work

City Life has decided to try to mobilize community members to stabilize rents in the area to prevent mass displacement and community destruction. Members are engaged in fighting for a law that would allow Massachusetts cities to impose rent control, and it is gaining traction. Because policy change is slow and uncertain, City Life is also trying mount a public relations campaign to pressure RPC to engage in collective bargaining with all of its tenants. (As in the labor union context, collective bargaining would likely lead to lower rents, predictable and affordable rent increases, repairs, and other benefits for tenants across RPC’s portfolio.) Both of these campaigns require public outrage and action, and with everything else going on, it can be difficult to attract attention. In the past, City Life has engaged in a form of civil disobedience called an “eviction blockade,” in which protestors peacefully resist the state’s effort to carry out an eviction order. Eviction blockades tend to draw the greatest public attention. They can also be powerfully motivating for City Life members because they make both the violence of eviction and the solidarity of community very real.

HLAB is a longtime partner of City Life's. It supports City Life's base-building work by serving as the Shield to City Life's Sword, offering advice to attendees at City Life's weekly meetings, and representing members as they resist displacement in court. Organizers and lawyers meet biweekly to discuss various building struggles and develop joint strategies. Over time, a deep trust has developed between the organizations; without it, their work together would be much less effective.

55 Rockland Street

One night, Bobbie Jackson joins a weekly City Life meeting and tells her story. RPC has just bought her building and asked her to agree to a rent increase from \$1100 to \$3500 per month. If she didn't agree, they said, they would bring a case to evict her.

City Life organizers speak with Bobbie and tell her about their RPC campaign. She hears from other RPC tenants at the meeting with their own, similar stories. For the first time, rather than being depressed and ashamed about her situation, she is outraged and energized. She shares that she lives with her partner and adult child in a triple decker and that the families in the other two units are facing the same unaffordable increase and eviction threat.

The next week, the tenants from all three units meet together at the property with City Life and HLAB. The tenants emphatically agree that they share a goal of resisting the rent increases both for themselves and to contribute to City Life's broader campaign to protect the neighborhood from speculators like RPC. They are angry that their neighborhood is being "whitewashed." They want to use their cases, collectively, to bargain for long-term fair rents in their homes, to pressure RPC to engage in collective bargaining city-wide, and to support the campaign for rent control. They enter into a group retainer with HLAB, agreeing that they will work together towards benefits for everyone, and that if conflicts arise between them, HLAB might develop a conflict of interest and be ethically required to withdraw as counsel. But no one thinks that is likely. They all want to support each other and the goals of the RPC and rent control campaigns.

For twelve months, the tenants fight off eviction in court with HLAB's help. City Life members attend the court hearings, pour organizing resources into the building, and invest in developing Bobbie as a movement leader. Bobbie and her neighbors become, in many ways, the face of the RPC campaign.

Finally, trial dates are set. Two of the cases are strong, because poor conditions in the apartments have created strong defenses to eviction. But Bobbie's case is weak. She is likely to lose at trial. She knows that City Life would be willing to do an eviction blockade at her house, and in fact, she knows that such a blockade is exactly what the movement needs at that moment. It would garner publicity, energize the base, and

potentially spark the final push to a collective bargaining agreement and passage of the rent control home rule bill. But Bobbie and her partner and child would be evicted. They wouldn't be homeless, but they would have to leave suddenly with nothing, and their housing search would be hard because of high prices, discrimination, and the difficulties of moving in a pandemic. Plus, Bobbie and her family are tired. They aren't sure they want to go through all the preparation and drama of trial. Yet there is no other case in the RPC portfolio likely to create the opportunity for an eviction blockade, and the movement needs a shot in the arm.

RPC senses this and calls HLAB with an offer: Bobbie can stay for six months at her current rent, and when she moves, RPC will pay her moving costs and give her \$10,000 in cash.

HLAB must decide with whom to discuss this offer and how. Given the many client and community goals and relationships, this is not as simple as it looks, as you will discover.

Some relevant “Rules of Professional Conduct” governing the practice of law in Massachusetts

Rule 1.2, Scope of Representation: “...A lawyer shall abide by a client’s decision whether to accept an offer of settlement of a matter...”

Rule 1.4, Communication: “A lawyer shall...promptly inform a client of any decision or circumstance with respect to which the client’s informed consent...is required [and] reasonably consult with the client about the means by which the client’s objectives are to be accomplished....”

Rule 1.6, Confidentiality of Information: “A lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent [or] the disclosure is impliedly authorized in order to carry out the representation.... "Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (i) protected by the attorney-client privilege [i.e., the substance of a communication between the attorney and the client], (ii) likely to be embarrassing or detrimental to the client if disclosed, or (iii) information that the lawyer has agreed to keep confidential....”

Rule 2.1, Advisor: “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”

Reflection Questions

To prepare for the in-class exercise, consider your responses to the following questions as they relate to your assigned role. Roles are assigned in a chart in the class readings.

All Groups:

- From the perspective of your assigned role, what do you think should happen next?
- What should the communication between the various parties look like, keeping in mind the lawyer's ethical duties and the longstanding political and professional alignment between HLAB and City Life?
- How should the decision be made?
- What is the right decision? Is there a right decision?

Guiding Questions for Lawyer (HLAB) Group:

- What should you do with the offer information you've just received from opposing counsel? To whom should you speak and how?
- How do we observe the duties of confidentiality, loyalty, and zealous advocacy for clients while also honoring (1) the longstanding relationship of trust and solidarity with community partners (here, City Life/Vida Urbana) and (2) shared political goals and theory of change that led to the dedication of legal resources to this case?
- What are the limits of your "counseling" of your client?
 - Are we limited to legal and economic considerations?
 - How do respective power relationships impact your answer?

Guiding Questions for Tenant (Bobbie) Group:

- Do you have any conflicting feelings in this situation?
 - If so what were they, and how can you sort through them?
 - What obligation do you feel to City Life?
 - What other obligations do you feel?
- How can you best use your relationships with City Life and HLAB to make a decision?
- Who do you trust and why?

Guiding Questions for Community Organizer (City Life/Vida Urbana) Group:

- What are your goals here?
- What pressure, if any, is appropriate to apply to Bobbie?
 - What pressures do you imagine Bobbie is feeling?
- How do you articulate to Bobbie the benefits of continuing to fight up to an eviction blockade?
- What kind of interactions should you have with HLAB?
 - Should you insist on being in their client meetings? Why or why not?
 - How do you ensure that the political community voice is not sidelined by traditional rules governing attorney-client relationships?