

Condo Association Reform – Heightened Professional Responsibility, State Agency Responsiveness, And Wrongdoer Accountability

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In our capital market context, the failure of lawyers and accountants to exercise their professional responsibilities to the organization and the investors undermines and dramatically exposes the organization to harm and the investors to significant loss. It is also critical, and even more so in a condo association; where regulation is less sophisticated, the community does not have exacting standards, and is more informal; for lawyers to serve with a high degree of consciousness in a role that will not allow the organization's transparency, integrity and sensitivity to the association's true beneficial interests to be compromised.

As I previously stated, governmental regulation cannot always be pervasive, but every organization through a diligent Board should have highly competent counsel that will not allow an organization's integrity to be compromised. The quote in the attached article from Judge Henry Friendly, historically one of the most brilliant of American jurists; underscores the importance of competent and ethical counsel. Judge Henry Friendly in **United States v Benjamin**, 328 F.2d.854 (2d Cir. 1964) expressed the point as follows:

In our complex society the accountant's certificate and the lawyer's opinion can be instruments for inflicting pecuniary loss more potent than the chisel or the crow bar.....{To maintain the integrity of an organization or association, professionals cannot}.... shut their eyes to what was plainly to be seen or have represented a knowledge that they did not possess."

In the case of PACC2, the 2015 Holdover Board allowed and in fact utilized the corrupt services of the Shendell lawyers to destroy the democratic election process and the Shendells conducted unethical and illegal collection practices that took advantage of vulnerable unit owners. Neither the Board nor the Shendells were held accountable because of the election fraud in 2015-2016. Directors Peter Kretz, and Joe O'Neill, tried to challenge the conduct but one Court absurdly held Kretz (a dissenting Director) had no standing and he personally got slammed with a \$105,000

attorney fee award that wound up in the pocket of the Shendells. Where were the Courts, the DBPR and the State Bar that "shut their eyes to what was plainly to be seen...".

Hopefully PACC2 will elect a 2017 Board with integrity and honesty that will stick with PACC2's new and outstanding counsel, Gerry Collins Esq., that between the democratically elected 2016 Board and its chosen counsel restored an Association that works in the best interest of all, and will be solidly established in 2017 and then continue into the future.

In respect to the lessons to be learned, fiduciary responsibilities of the Boards and professionals have to be strengthened and never compromised. As the Grand Jury Report emphasized, Associations have to have a stronger link with state agencies and the lines of communications always have to be open so government is always sensitive and responsive to the needs of every unit owner. My proposal is that every Association has a designated representative to a statewide association of condo associations that has a Council that will consist of Association representatives who will serve as a liaison with the DBPR and other State agencies, so bureaucratic indifference will not be tolerated, and when the need arises, the State will be proactive.

In respect to collection practices and in order to avoid litigation and possible corruption, there should be Association procedures and practices that will informally and in a user friendly way work out payment arrangements with unit owners that currently have difficulties and do not want to lose their residences.

Before the final chapter in respect to PACC2's current problems is written, the Shendells also should be held accountable so in the future the Board and counsel selected will not be lax in maintaining an association culture that does not yield integrity.

Norman B. Arnoff
nbarnoff@aol.com
917-912-1165