

Dear Friends and Colleagues,

Considerable progress has been made since I took an interest a little over two (2) years ago in what was happening at Palm Aire Condo Association II. The Miami Grand Jury Report highlights for us the systemic problems that not only affect the problems we have experienced but that of a wide number of condo associations. Key is the election fraud. In 2015 several candidates on the ballot who would have won were removed from the ballot on pre-textual and phony grounds on the day of the election when the law as a safeguard to democratic process **only** allowed a challenge to the election within 60 days after the election results were announced. A major cause of this corruption was Tamar Shendell, the Association's attorney, who apparently advised the incumbent Board they could affect the election process in this way. We know this advice that disregarded clear law turned the election process from a democratic to an undemocratic one because apparently the removed candidates would have won. The Board in power would not have stayed in power. Voter choice was that they should not have continued beyond their term as constituted.

Again on February 29, 2016 shortly before the March 2, 2016 election, the same incumbent Board decided, anticipating their clear loss; voted to postpone or cancel the election. We know their intent was to retain their power to control Association affairs because, if the so called and perceived irregularities they expressed as a basis for their concerns were of real concern, remedial measures would have been put in place expeditiously and a new date set for the annual election within a short period would have been scheduled to take away the reality as well as the perception of fraudulent manipulation. Hereto democracy was negated on the advice of the Shendells who were present and sanctioned the 2015 Holdover Board's vote to postpone indefinitely or cancel the election and could only be changed by an amendment to the By-Laws. These incompetent and unethical lawyers disregarded the law that the election date was set in the By-Laws. If the concerns were real and later substantiated, a challenge could have been made to the election by legal process within 60 days after the results were announced. Moreover, a set election date in the By-Laws could **only** have been changed by a majority vote of all the unit owners. This did not occur so a group **not** duly elected attempted to and did retain control after their terms expired over the Association's affairs until the Florida Appellate Court on December 14, 2016 fixed the wrong; at least procedurally.

However, it is now up to the unit owners to really fix the problems by a democratic vote after informative discussions both as to identify the fundamental problems but also putting in place sound remedial measures. The problems that need to be looked into, in addition to anti-democratic election fraud and

manipulation; are the role of the property management; and the role of association counsel whose responsibilities were and are to exercise their professional and fiduciary obligations to facilitate the exercise of the Board's fiduciary duties, individually and collectively; as well as financial irregularities where the surface has not been even scratched. Hopefully, going forward both prior wrongs and problems will be exposed and remedied.

It is my strong recommendation that financial and ethical irregularities be inquired into by an independent auditor and independent counsel (and/or the State Bar). In 2014 the independent auditors disclaimed because, as stated in the footnote disclosure in the 2013 financial statements, there was inadequate internal control, record keeping and reporting with respect to the collection of assessments. From my own experience with my wife's condo unit, I experienced taking over to the management office in January 2015 a bank check in full payment of assessments that James Martin, property manager at the time; would not accept and told me to send it to the Shendells so they could deposit it in the law firm's escrow account. Subsequent experiences later entailed receiving invoices from the Shendells with attorney fee charges that would "continue to accrue" until the unit owner's account was made current and taken out of collection by not merely the payment of the assessment but the attorney fees and other tack on charges.

On a number of occasions the Shendells did not merely reject checks timely sent because in the memo portion of the check there was a notation by the maker of the check what it was for but they falsely and fraudulently claimed this was a "restrictive endorsement". These "learned counsel" apparently did not know or more likely concealed that a "restrictive endorsement" appeared **only** on the back of the check to condition negotiability. Also if there was a genuine concern the unit owner could have been informed to mark on the check, "without prejudice". Why was this not done? Because the Shendells and James Martin wanted the funds to be routed through the Shendells so they could apparently get, from non-clients, attorney fees for themselves and/or to be shared along with other tack on charges.

My inquiry informed me that the individual delinquencies of unit owners (whether actual or trumped up) and the proper remedies were not discussed by or approved by the Board and these charges instead of being a reimbursement for the Association's already incurred out of pocket expenses were new and direct charges. Moreover, the Florida Condominium Statute, Chapter 718; provided attorney fees could **only** be awarded to the winning party in a litigation and **only** after the court reviewed the fees for reasonableness. Therefore the "continuing to accrue" legal fees in the Shendell dunning letters to unit owners were manifestly unethical and illegal. Even in foreclosure proceedings, if the unit owner pays the outstanding balance, the law's policy is to forgive attorney fees.

All Palm Aire Condo Association II unit owners who were charged or paid legal fees should report what occurred, so the Shendells can account to the unit owners and make restitution, but also to the State Bar and the DBPR (hopefully to be stimulated by the Grand Jury Report) to take effective disciplinary and enforcement action. The collection of such fees should now be subject to audit by an independent auditor and also the appropriate State Agencies as the ordinary lay person, not generally familiar with fee shifting under exceptions to the American Rule; is an easy and unsuspecting target for such illegal and unethical fee shifting. The Grand Jury Report recommends broader access to Association records by unit owners and accordingly the records of all assessments and attorney fees processed through Shendell accounts are subject to inspection by the Association and individual unit owners, especially those who were illegally charged fees. In reality, these are Association records and subject to the Association's and the unit owner's access.

In the future my recommendation to the Board to be voted in would be to have a sub-committee of Board members and unit owners; to review purported delinquencies; and see if a reasonable payment arrangement could be worked out with the unit owner to constructively avoid unnecessary litigation and prevent unethical and abusive collection practices.

The issues raised above are not exhaustive. Informed and civil discussion should take place in respect to the issues perceived to be important (not only with those who are in agreement but those who have differences) to achieve a better condo association for all and not just some of the unit owners. Woodrow Wilson in his book, **The New Freedom**, wrote, "The whole purpose of a democracy is that we may hold counsel with one another, so as not to depend upon the understanding of any one man, but to depend upon the counsel of all." To that end, I acknowledge Deborah Goonan, a blogger strictly in pursuit of the public interest with respect to condo associations, and ask her to give not only my thoughts and recommendations a broader circulation, but the thoughts and recommendations of all those who have a keen interest to reform Palm Aire Condo Association II with sounder policies and practices, as well as all the condo associations that raise systemic issues that were the subject matter of the Grand Jury Report. Thank you for giving consideration to the foregoing.

Respectfully,

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