IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC13-889

THE FLORIDA BAR RE: ADVISORY OPINION
ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS

BRIEF IN REPLY TO ANSWER BRIEF OF THE STANDING COMMITTEE ON THE UNLICENSED PRACTICE OF LAW OF THE FLORIDA BAR

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INTRODUCTION

The patience of the Court is again begged in that the petitioner is a Community Association Manager (CAM) and not an attorney.

The Answer Brief in footnote #1 tries to justify lack of notice to affected parties as not required by rule 10-9.1. We pray that the spirit of the rule was purposely thwarted in that the circulation of the Osceola County edition of the Orlando Sentinel is severely limited and not relevant to providing notice to affected parties.

To wit, the records of the Florida Department of Business and Professional Regulation, as of August 11, 2013, indicate that in Osceola County there are 96 condominium associations comprised of 14,405 units. That represents .00357% of Florida's condominium associations and .00957% of units in Florida's condominium associations.

As of July 2011 statistics of Osceola County show: County population 276,163; owner occupied houses and condos, 58,541(2010); renter occupied apartments, 32,062; average occupants per housing unit, 3.05.

Based on these statistics we can estimate the number of residents in condominiums in Osceola County at 43,935. If that is extrapolated for the State we get a condominium population of 4,592,461.

Additionally DBPR records (2013) indicate there are 164 community

association managers licensed with an Osceola County address. That is .0108% of Florida's CAMs.

With 26,890 condominium associations comprised of 1,505,725 condominium units and 15, 139 CAMs it can hardly be called sufficient notice.

Since the DBPR is currently doing a census of homeowner associations their numbers are not included in the records available but would exacerbate the lack of sufficiency of notice.

The Answer Brief of The Real Property, Probate & Trust Law Section of The Florida Bar begs the question of the necessity of the proposed new rules and is not supported by any evidence of necessity.

The Bar states, "a showing of public harm is not a requirement," and that is illogical on its face.

For those of us old enough to remember, this action by the Bar is comparable to a "snipe hunt" and should not be condoned or tolerated.

The petition of the UPL committee should be regarded as an insult to the Court in that theoretical cases are best addressed as an exercise of legislation and even the 1996 opinion was based on a theoretical question and if it is not at least vacated this new petition must be dismissed as irrelevant.

SUMMARY OF ARGUMENT IN REPLY

The Standing Committee, that we must note does not include attorneys that assert expertise in community association law, claims a crown of authority over the intent and authority of the legislative and executive branches of Florida government.

Constantly the Bar insists that public harm is endemic if a CAM asserts an action that is based on real experience or actual case experience.

Personally I, and many other CAMs, have experience administering community associations far exceeding that of most attorneys and to generalize that all attorneys are better qualified to determine the applicability of the issues raised is again illogical.

The management of community associations is a partnership of a board of directors, a community association manager and the association attorney. It must not be a castle wall only breached with trebuchets.

The Bar consistently refers to the "potential" for public harm. The "public" is erroneously identified in that in these issues the defendants or plaintiffs are corporations or voluntary members. Again we are assaulted by theoreticals.

Is there also "potential" for public harm when 50% of attorneys in litigation are wrong and the "public" must still pay their attorney fees?

ARGUMENT IN REPLY

I. REPLY TO: ACTIVITIES OF A REGULATED INDUSTRY OR PROFESSION CAN BE FOUND TO BE THE UNLICENSED PRACTICE OF LAW.

The argument presented is obviously overly broad and unfounded so as to be irrelevant. The Florida Department of Business and Professional Regulation licenses, regulates and disciplines many professions including; Architecture and Interior Design, Asbestos Contractors and Consultants, Athlete Agents, Auctioneers, Barbers, Boxing, Kick Boxing and Mixed Martial Arts, Building Code Administrators and Inspectors, Certified Public Accounting, Child Labor, Community Association Managers and Firms, Construction Industry, Cosmetology, Drugs, Devices and Cosmetics, Electrical Contractors, Engineers, Employee Leasing Companies, Farm Labor, Florida Building Codes and Standards, Geologists, Harbor Pilots, Home Inspectors, Labor Organizations, Landscape Architecture, Mold-Related Services, Real Estate, Talent Agencies, Veterinary Medicine, Business Regulation, Alcoholic Beverages and Tobacco, Condominiums and Cooperatives, Hotels and Restaurants, Mobile Homes, Pari-Mutuel Wagering and Timeshares, Yacht and Ships.

The question arises as to why the Bar singled out community association managers to persecute for unfounded non-occurrences of UPL?

II. REPLY TO: IT IS NOT NECESSARY TO SHOW PUBLIC HARM FOR AN ACTIVITY TO BE FOUND TO BE THE UNLICENSED PRACTICE OF LAW.

Again the bar is begging the question in that it is claimed the "harm is not a required element for a finding of unlicensed practice of law."

Then what are we doing here?

Recompense and recovery of damages is readily available for any action by a licensed professional that is damaging or detrimental to the interests of a CAM's clients. The same is not generally available to attorney clients.

The assertion of the Bar, "specific proof of harm is not required in the advisory opinion process" again exemplifies the Bar's disregard for the time and efforts of the Court.

This whole question and exercise is best addressed in the legislative and disciplinary processes available in existing institutions without impinging on the sanctity and value of the Court.

The citations listed by the Bar in their Answer Brief are not demonstrative of UPL by a CAM and if they were the CAM could have been held liable for any damages.

Hindsight is always a useful tool when examining any opinion whether provided by an attorney or an attorney consulted by an opposing party.

III. REPLY TO: THE CURRENT OPINION DOES NOT EXPAND THE 1996 OPINION

This is an assertion not demonstrated by any evidence of the 1996 opinion being inadequate. Nor does this exercise prove any additional rulings or opinions are necessary, required or at all beneficial.

CONCLUSION

This is an opportunity for the Court to correct and vacate the 1996 opinion that did not provide the opportunity to fully examine the issues and provide effective argument.

It is still remarkable and incomprehensible as to why, at this point in time, the Bar has initiated this action.

There is a hesitance to assign any pecuniary motive to the action except that it is remarkable that legal firms specializing in community association issues did not respond with objections or arguments pro or con.

Respectfully Submitted,

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Certificate of Service

I certify that a copy of this REPLY BRIEF was sent by Email to the following, on this 28th day of August, 2013:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the text herein is printed in Times New Roman, 14-point font, in compliance with Fla. R. App. P. 9.210.

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