

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC13-889

FILED
THOMAS D. HALL
SEP 25 2013

CLERK, SUPREME COURT
BY _____

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

**RESPONSE TO PETITIONERS OBJECTION TO MARK R. BENSON'S
MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY AND
OBJECTION TO PROPOSED REPLY BRIEF**

COMES NOW, Mark R. Benson, Community Association Manager, and moves for rejection of the objection of the Petitioner, The Real Property, Probate, and Trust Law Section (RPPTL) of the Florida Bar and submits as follows:

The brief of August 23, 2013 by Jennifer A. Winegardner, Esq. on behalf of The Continental Group, Inc., Associations, Inc., and CEOMC Florida, Inc. is joined and included herein by reference as leave to contribute the brief of August 29, 2013 as described in the Respondent's MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY filed September 11, 2013.

It is submitted that the Court has the authority and prudence to make its determination as to the appropriateness of any submissions and appreciates all relevant information concerning the issues at hand.

The Petitioner's objections to real world evidence of practices and professionalism of community association management is problematic and questionable as to the motives and belies the current benefits to community association members by community association managers.

The community association manager is the only professional with consistent daily contact and contribution to a community association client. Services of all other providers, including attorneys, are transient with limited exposure to the thousands of successful community associations that enhance the Florida experience. Additional intrusion or restrictions on the current level of proficient administration raises mistrust of an association's board and CAM.

We pray the Court consider the valuable contributions CAMs provide to community associations in concert with unit owner boards of directors compared to the obscure possibilities of harm that may be incurred by misinformation or misunderstanding of a board's intents or misguided pecuniary instances as follows:

The role of the Managing Agent (CAM) is to implement the decisions and the policy established by the Board of Directors of the Association. The Board of Directors of the Association has control of common areas and is responsible for the administration of the programs, services, and activities of the association as established in the founding documents and as amplified or clarified by resolution of the corporation. At all times this is subject to direction by the Board of the Association. CAM's functions, duties, responsibilities, and authority may typically include the following:

1. To be available on a daily basis to provide supervision, inspection, and response to the affairs of the Association (daily is generally meant to mean Monday through Friday, 9:00 a.m. to 5:00 p.m. except National or State recognized holidays and the day after Thanksgiving) to:

- 1.1 Attend to repairs.

- 1.2 Implement the policies of the Association concerning Rules and Regulations.

- 1.3 Provide inspection of the records of the Association as required by law.

- 1.4 Consult with outside contractors and professionals retained by the association.

- 1.5 Confirm outside services rendered.

- 1.6 Representation as registered agent for the association.

- 1.7 Guide and assist members of the Board in the performance of their obligations.

- 1.8 Guide and assist the Board in the development of policies and procedures.

1.9 Assist in the administration as requested by the Board, to the extent practical, of the provisions of the Declaration, Articles of Incorporation, and Bylaws, rules and regulations and policies of the Association (the Documents").

1.10 Keep records of the affairs of the Association and the Board, including but not limited to, the Declaration, Articles of Incorporation, Bylaws, rules and regulations, policies, minutes of meetings, copies of contracts, etc. (which documents are to be provided to CAM by the Association) and maintain such documents in a current status. Such printed records shall belong to the Association.

1.11 Maintain registers of Owners, Officers and Directors and such other registers or schedules as may be required by the Documents, the initial information is to be provided to CAM by the Association.

1.12 Attend to necessary correspondence.

1.13 Assist in resolving individual Owner requests as they pertain to the administration of the Association, its Common Elements, and Governing Documents.

2. Provide on a monthly basis:

2.1 Account for assessments and other charges due by Owners; maintain checking, savings and other income accounts styled in the name of the Association and maintain comprehensive records thereof; each of such accounts to be separate and apart from other accounts of CAM and the amounts therein not to be commingled with any other funds controlled by CAM.

2.2 Mail notice of delinquency to any Owner in arrears and take such reasonable action for the collection of the delinquent assessments as the Board may determine in accordance with the Documents and adopted policy procedures.

2.3 Make disbursements from assessments collected for normal recurring expenses as provided in the budget. Expenditures not budgeted shall be made

only with the approval of the Board. Approval shall be deemed on acceptance of the monthly financial report at the subsequent meeting of the Board.

2.4 Furnish a monthly financial report prepared on a cash basis that will include income and expenses and will reflect the net cash position of the Association.

2.5 Organize meetings of the Board of the Association, including the preparation of notices, agendas and other necessary documents.

2.6 Provide the Board of Directors with copies of correspondence and other business during the previous month.

3. Provide on a calendar year basis:

3.1 Furnish information to CPA for filing of Federal and State Tax returns and compilation, review or audit.

3.2 File Annual State Corporation Report.

3.3 Provide for payment of necessary fees and licenses by the Association.

3.4 Prepare an estimated annual budget. The budget shall be based on prior operating expenditures, estimated future expenses, and required capital reserves. CAM shall not be responsible for discrepancies between the budget and actual expenses, the budget being an estimate to be used only as a guide. The budget shall be submitted to the Board for consideration and adoption.

3.5 Provide necessary information to Unit Owners as per the Association Documents and State Statutes.

3.6 Organize annual meeting of Owners, including the preparation of notices, agendas, and other necessary documents.

4. The Manager shall have at least _____ persons available to provide for the fulfillment of the agreement obligations.

5. Physical Management

5.1 As authorized by the Board of Directors, direct and cause to be done those things that are necessary to maintain the property in accordance with the

provisions of the operating budget. CAM shall not be responsible for taking any action unless directed by the Board.

5.2 On behalf of the Association, monitor the performance of employees of the Association if any. Any employee hired for the Association may be an employee of CAM. All remuneration payable to such employees and/or salaries, tax, burden and other expenses payable on account of such employees shall be operating expenses of the Association and shall be paid to CAM out of the funds of the Association.

5.3 Negotiate and execute contracts on behalf of the Association, for such services for the Association as may be necessary and advisable. CAM may also purchase on behalf of the Association such equipment, tools, appliances, materials and supplies for the proper maintenance of the Association. Such purchases and contracts shall be in the name and at the expense of the Association.

5.4 CAM has not been given any control of the common areas or amenities. CAM may only implement decisions and policies of the Board of Directors. CAM shall not be responsible to determine if the Association is in compliance with any state, federal or local law.

6. Notwithstanding anything to the contrary contained in this Article and the limitations herein imposed, CAM may, on behalf of the Association without prior consent, expend any amount, or incur a contractual obligation in any amount required to deal with emergency conditions which may involve a danger to life or property, or may threaten the suspension of any necessary service to the Association.

7. Everything done by CAM under the provisions of this Article shall be done as an agent for the Association, and obligations or expenses incurred hereunder shall be for the account, on behalf, and at the expense of the Association. Any payments to be made by CAM hereunder shall be made out of such sums as are available in the banking or investment accounts of the Association. CAM shall not be obliged to make any advance to or for the account of the Association or to pay any sum, except out of funds held or provided as aforesaid, nor shall CAM be obliged to incur any liability or

obligation for the account of the Association without assurance that the necessary funds for the discharge thereof will be provided.

8. CAM (its agents and employees) shall be held to the same standard of care in regards to the performance of its tasks as a Director of the Association as provided in the Florida Corporation Not for Profit Act and the Florida Condominium Act. Specifically, CAM shall discharge its duties, in good faith, with ordinary care, and in the manner that CAM believes to be in the best interest of the Association, and shall have a fiduciary responsibility in the same manner as ASSOCIATION directors and officers. CAM is not deemed to have the duties of a trustee of a trust with respect to the Association.

9. No service herein anticipated or provided shall be deemed nor intended to be legal advice. No part of any fee paid by the Association to CAM shall in any way be considered compensation for legal services. This does not preclude the Association from appointing CAM as representative of the Association in legal proceedings, including but not limited to arbitration, mediation, small claims actions or expert witness testimony for which the Association may compensate CAM. Neither the Manager nor any of its employees are attorneys and no advice or suggestions offered, by way of anecdotal or personal experience in any situation is meant to substitute for advice from Association's counsel.

INSURANCE

1. CAM shall cooperate in investigating and reporting accidents or claims for damage relating to the ownership, operation and maintenance of the Association and shall supervise the preparation of claims when required and follow-up on payment. Investigating, reporting, supervising and following up on payment on insurance claims for damages covered by the Association's insurance shall be subject to an administrative charge (presently \$____ per hour) or ____% of the claim, whichever is the greater, which shall be regarded as part of the loss and shall be included in the claim. If the administrative charge is not paid to the Association as part of the claim it will not be collected from the Association.

2. CAM agrees to carry at its own expense -

2.1 Workers Compensation Insurance in compliance with Florida Law.

2.2 General Liability Insurance with minimum limits of \$1,000,000/\$2,000,000.

2.3 Auto Liability Insurance with minimum limits of \$1,000,000.

2.4 Professional Liability Insurance with minimum limits of \$1,000,000.

2.5 All necessary State and Municipal licenses and Registrations.

2.6 Fidelity Insurance coverage in such amount necessary to comply with Florida law as pertains to the protection of the Association's funds. It is acceptable for such coverage to be carried under ASSOCIATION'S policy, so long as ASSOCIATION'S funds are protected as required by law.

3. The premium in regard to any increase in the amount of coverage set forth in paragraph 2 above required by the Association shall be paid by the Association and shall be considered as an expense of the operation of the Association.

4. CAM shall be named an additional insured on the Association's general liability, umbrella, bonding and Directors and Officers policies, which policies shall be maintained in full force and effect during the entire term of this management agreement and in such amounts as the Association and CAM may agree. Association will maintain at least a minimum premium, no payroll, Workers Compensation policy. The Association's insurance shall be considered primary coverage for the benefit of CAM.

Furthermore for the benefit of the Court's understanding of community association operations we offer the addition following list of specific areas of responsibility that CAMs in concert with boards of directors deal with on a daily basis:

1. Collection of maintenance fees
2. Negotiate banking arrangements
3. Recommend investment vehicles
4. Bill owners for monthly maintenance fees
5. Assess late fees

6. Posting/collection of accounts receivable
7. Balance bank accounts
8. Posting/payments of accounts payable
9. Provide monthly financial accounting
10. Provide monthly financial reports
11. Compute management fees
12. Record office expenses
13. Attend monthly board meetings
14. Attend annual meetings
15. Prepare and distribute minutes of meetings
16. Administer association contracts for, among other things:
 - a. Cable television
 - b. Electricity
 - c. Telephone
 - d. Water and sewer
 - e. Street cleaning
 - f. Signage
 - g. Mulch and Sod
 - h. Plant replacement
 - i. Tree trimming
 - j. Mangrove trimming permits
 - k. Landscape maintenance
 - l. Landscape supplies
 - m. Exterior pest control
 - n. Pool repairs
 - o. Seawall repairs
 - p. Fountain maintenance
 - q. Furniture replacement
 - r. LP Gas
 - s. Lighting supplies
 - t. Plumbing repairs
 - u. Irrigation maintenance
 - v. Pressure washing
 - w. Electrical maintenance
 - x. Building maintenance

- y. Roof repairs
 - z. Fire equipment maintenance
 - aa. Painting
 - bb. Lighting and electrical
 - cc. Janitorial services
 - dd. Exterior pest control
 - ee. Remit fees/forms to the Division
 - ff. Remit fees/forms to the Department of State
 - gg. Obtain pool permits
 - hh. Obtain flood insurance
 - ii. Obtain property/liability insurance
 - jj. Obtain workers comp insurance
17. Calculate and deposit amounts to reserves as applicable and as example for:
- a. Roof replacement
 - b. Building painting
 - c. Pavement resurfacing
 - d. Pool resurfacing
 - e. Furniture replacement
 - f. Equipment replacement
 - g. Fountains
 - h. Fencing
 - i. Landscape replacement

In addition to the above, maintain an interpersonal relationship with all members and board members through attendance at all meetings, correspondence, emails and phone calls.

WHEREAS a CAM or CAM firm has responsibilities, as any contractor retained by an association, it also accepts the responsibility and liability of any actions or advice proffered.

WHEREAS the RPPTL has deemed it necessary to petition the Court concerning infrequent actions that may ever be addressed by a community association. It is unconscionable that the Court has been imposed upon to proffer an opinion that is so theoretical and with no evidence of abuse or need.

WHEREFORE, the undersigned requests denial of Petitioners' Motion to Strike or, in the alternative, grant Reply Briefs at issue be accepted and considered in this above-captioned matter.

Respectfully Submitted,

By: /s/Mark R. Benson

Mark R. Benson
Community Association Manager
4711 Harbortown Lane
Fort Myers, FL 33919
239-489-0584
CAM License No. 2153
Email: mark@markRbenson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail and/or regular U.S. Mail on this 25th day of September, 2013 to the following:

Nancy Munjiovi Blount, Chair Standing Committee on
Unlicensed Practice of Law
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300 Email: upl@flabar.org

Jeffrey T. Picker and
Loris S. Holcomb
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300 Email: jpicker@flabar.org
Secondary Email: upl@flabar.org

Ms. Margaret A. Rolando, Chair
Real Property, Probate & Trust Law Section of the Florida Bar
Shutts & Bowen LLP
201 S. Biscayne Blvd., Ste. 1500
Miami, Florida 33131
(305) 370-9144
Email: mrolando@shutts.com

Jennifer A. Winegardner
The Chase Law Firm
1535 Killearn Center Blvd., A1
Tallahassee, Florida 32309
(850) 385-9980
Email: jwinegardner@chasefirm.com

David M. Felice
4809 Ehrlich Road, Ste. 105
Tampa FL 33624
(813) 374-2363
Email: dfelice@terralawfirm.com

Jeffrey M. Oshinsky
Association Financial Services, L.C.
4400 Biscayne Blvd., Ste. 550
Miami, Florida 33437
(305) 677-0022
Email: joshinsky@afslc.com

Mauri Peyton, Esq. Fla. Bar No.: 44773
PeytonBolin, PL
4758 W. Commercial Blvd.
Fort Lauderdale, Florida 33319
Office: 954-316-1339 ext. 4003
Fax: 954-727-5776
Primary: mauri@peytonbolin.com
Secondary: gian@peytonbolin.com

Steve Caballero
2945 W. Cypress Creek Road, Ste. 201
Fort Lauderdale Florida 33309
(800) 510 7787 caballero365@yahoo.com

Mark R. Benson
Community Association Manager
4711 Harbortown Lane
Fort Myers, FL 33919
239-489-0584
CAM License No. 2153
Email: mark@markRbenson.com