
Nuisance provision in association documents can backfire – Condos and HOAs – Sun-Sentinel

Most condominium and homeowners' association documents contain a covenant prohibiting nuisances. Some boards use this provision to label the owner a "nuisance" for various offenses that may or may not ever rise to the legal level of a nuisance. There are undoubtedly occasions where the alleged activity is so egregious that such action is warranted. There are other times where a minor dispute can escalate into all out war, and vague covenant provisions are abused to target a "troublemaker".

It seems the latter occurred eight years ago for Nancy Wear, a homeowner who just happened to also be a former police officer and practicing attorney with many years of trial experience. Tired of hauling junk mail to her condo unit, Wear asked the Alca Condominium Association, Inc. in Miami to provide a wastebasket, presumably by the mailbox. When the association refused, she began dropping mail in the hallway. What should have been a simple matter escalated.

In circumstances like this, emotions run high on both sides. Rather than resolving what appeared to be a minor dispute, the association declared legal war. The association's attorney at Becker & Poliakoff filed for arbitration to declare Wear a "nuisance" and even to have her evicted from her home. The association obtained an arbitration order against her. Wear challenged that arbitration order in circuit court and obtained a jury verdict in her favor. A Miami judge reversed the verdict, claiming that Wear "defaced" condo postings. Not to be deterred, Wear appealed that to the Third District Court of Appeals. On April 7, 2010, the appellate court reversed the lower court's ruling and sent it back to the circuit court to reinstate the jury verdict.

Finally, on June 7 of this year, a different circuit court judge awarded Wear attorney's fees and costs for a total of \$201,347. The association's insurance company sent a check to Wear – which Wear promptly used to pay off her mortgage to ensure that she would stay in the condo.

This was a hard lesson for Alca Condominium Association. Unfortunately, associations sometimes use vague or nuisance covenants to sue uncooperative owners – owners who ask questions, commit minor "violations" or otherwise annoy the board. Associations that take legal action on issues that could be easily resolved should consider all the possible repercussions of beginning wars that can backfire in a big way.