



File No.: 3807

February 3, 2023

NOTICE TO CEASE AND DESIST AND TO COMPLY

Via U.S. Mail & Certified
(Return, Receipt Requested)

Steve Gittleman
28555 Conejo View Drive
Agoura Hills, CA 91301

RE: ANNANDALE TOWNHOUSE ASSOCIATION, INC.
-Breach of Fiduciary Duty
-Failure to Comply with the Governing Documents

Dear Mr. Gittleman:

As you know, this firm serves as general legal counsel to Annandale Townhouse Association, Inc. ("Association"). Please direct any and all correspondence, to my attention, at our Woodland Hills address.

I have been informed that you have engaged in conduct that is, at best, inappropriate and runs contrary to your fiduciary obligations as a member of the Board of Directors. Moreover, this pattern of behavior exposes you to liability for defamation, pursuant to California law.

Specifically, since taking your seat on the Board following the 2022 election, you have failed or refused to attend regular meetings, communicate with your fellow directors regularly, and otherwise meet your basic fiduciary duties of care and loyalty. This includes unilaterally reaching out to legal counsel for direction on records and past Board member communications, with no clear legitimate purpose for these requests. You have also disseminated mass communications to the membership via email, which have not otherwise been sanctioned by the Board, and which accuse the Association of holding "year-after-year of fraudulent elections."

What is more, I understand that you have verbally made antisemitic and anti-Muslim slurs while in the presence of other directors.

Contacting vendors and/or the membership unilaterally not only comes at a cost to the Association, but exposes you to personal liability when said communications are not approved by the Board. Additionally, rogue behavior severely undermines your credibility as a Board member and the Board as a whole, and increases liability and unbudgeted expenses for the Association. I understand that the Board has also attempted to work with you to schedule a new Board member "training" with legal counsel, to discuss Board member responsibilities, duties, and the like, but you have refused.

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Corporations Code Section 7210 requires an association's affairs to "be exercised by or under the direction of the board." (Emphasis added.) In other words, the Board has one legal voice, and must act as a whole. By unilaterally contacting or directing vendors and the membership, you have undermined the Board's authority and disobeyed their directive, which demonstrates a breach of your fiduciary duties to the Association and to the Board.

As an individual director, you owe a fiduciary duty to the Association to act in good faith, in the best interests of the Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. (Corporations Code § 7231.) Additionally, Corporations Code Section 7231.5 provides that board members are protected from liability as long as their action(s) satisfied the following criteria: (1) it was performed in good faith; (2) it was performed in a manner such director believed to be in the best interests of the association; (3) it was performed with such care and reasonable inquiry as an ordinarily prudent person in a like position would use under similar circumstances.

While you are in breach of your fiduciary obligations, you have also exposed yourself to liability for defamation, by accusing the Association, i.e., the Board, of engaging in "fraudulent" behavior. Civil Code Section 45 provides:

"Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation."
(Emphasis added.)

At a minimum, this conduct is tantamount to a nuisance under the CC&Rs. Section 15.2 states:

"Without limiting the generality of the foregoing section, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission."

Finally, the use of xenophobic or racial slurs/profanity, undermine directors' and other vendors' ability to perform their duties and work in a hostile-free environment. These actions create a toxic and unhealthy environment and expose the Association and Board to significant liability claims. California law requires employees to be provided a hostile-free workplace. (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264.) Your actions are extremely concerning to the Board. The Association, and Board members, stand exposed to liability claims by Association staff, and their respective employers, arising from your actions.

The federal Fair Housing Act requires associations to take prompt steps to address, investigate, and end claims of discriminatory harassment based on race, color, religion, national origin, sex, familial status, and disability. This includes harassment by owners, residents, guests, board members, managers, or vendors. An association will be liable if it knows or should have known about the conduct and fails to take reasonable steps within its authority to correct and end the discriminatory conduct.

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24 CFR Section 100.7(a)(1) *et seq.* provides:

"A person is directly liable for:

(i) The person's own conduct that results in a discriminatory housing practice.

(ii) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct.

(iii) Failing to take prompt action to correct and end a discriminatory housing practice by a third party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party. (Emphasis added.)

For purposes of the Association, 24 CFR Section 100.600 (a)(2) defines "hostile environment harassment", as "unwelcome conduct that is sufficiently severe or pervasive as to interfere with the . . . use or enjoyment of a dwelling." Thus, the obligation to take action to end violating conduct extends to homeowners associations.

Based on the forgoing, demand is hereby made that you **immediately and permanently cease and desist** from engaging in unauthorized actions, violating the Association's governing documents, making xenophobic or other ethnic/racial slurs or comments, and engaging in rogue or other conduct which amounts to a breach of fiduciary duties to the Association.

You are not being singled out nor discriminated against. Instead, you are given notice of your breach of fiduciary obligations and violations of the governing documents. The Board cannot tolerate your failure to comply. Accordingly, should you fail to comply with the demands set forth, the Board may take the following actions against you:

- Censure,
- Removal from committees (if applicable);
- Request for your resignation from the Board;
- Recall by the membership; and
- Legal proceedings

Nothing contained herein or omitted from this letter shall be deemed a waiver of any legal rights or remedies, and the Association expressly reserves all of its rights and remedies.

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Thank you.

Very truly yours,

BEAUMONT TASHJIAN

A handwritten signature in dark ink, appearing to read "A.J. Jahanian", is written over a horizontal line.

A.J. JAHANIAN, ESQ.

AJ:sk
cc: Board of Directors