

Renée Steinhagen, Esq.
NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.
744 Broad Street, Suite 1525
Newark, New Jersey 07102
(973)735-0523

Frank Askin, Esq.
RUTGERS CONSTITUTIONAL
LITIGATION CLINIC
123 Washington Street
Newark, New Jersey 0710
973-353-5687
Attorney ID:223961966
Co-Counsel for Plaintiffs

	X	
CONCERNED OWNERS OF	:	SUPERIOR COURT OF NEW JERSEY
ALEXANDRIA ASSOCIATION,	:	SOMERSET COUNTY:
	:	CHANCERY DIVISION
	:	
Plaintiff,	:	
--vs.--	:	
	:	<u>AMENDED AND SUPPLEMENTAL</u>
ALEXANDRIA AT HILLSBOROUGH	:	COMPLAINT FOR
CONDOMINIUM ASSOCIATION, and	:	DECLARATORY AND
DARWESH SYED, in his capacity as	:	INJUNCTIVE RELIEF
President of the Board of Trustees,	:	
	:	
Defendants.	:	
	X	

Plaintiff, CONCERNED OWNERS OF ALEXANDRIA ASSOCIATION, by
way of its Complaint, states as follows:

INTRODUCTORY STATEMENT

1. Plaintiff, a group of unit owners residing in a 300 unit, moderate-income condominium development, brings this equitable action against the Defendants seeking declaratory and injunctive relief to enforce the By-Laws of the Alexandria at Hillsborough Condominium Association, to ensure that any Board of Trustee Election is

fair and transparent in accord with legal and equitable principles, and to enforce their unit owner rights to open board meetings and financial disclosure pursuant to the Property Real Estate Development and Full Disclosure Act (“PREDFDA”), N.J.S.A. 45:22A-43 et seq. (1993)(which is applicable to condominium associations) and the New Jersey Condominium Act, N.J.S.A. 46:8B-13 and 14(g)(iii).

2. Specifically, Plaintiff alleges that Defendants, by not scheduling an annual Board meeting with the purpose of conducting Board of Trustee elections that are fair, transparent and accountable to the unit owners, are in violation of the governing documents of the Alexandria at Hillsborough Condominium Association, the Property Real Estate Development and Full Disclosure Act (“PREDFDA”), N.J.S.A. 45:22A-44,-45 (which is applicable to condominium associations), the New Jersey Condominium Act, N.J.S.A. 46:8B-13 and the Appellate Division decision in Committee for a Better Twin Rivers v. Twin Rivers Homeowners Ass’n., 383 N.J. Super. 22, 50-1 (App. Div. 2006), rev’d on other grounds, 192 N.J. 344 (2007).

3. Plaintiff also alleges that Defendants have engaged in and continue to engage in actions and practices that deny Plaintiff, its members, and other unit owners the right to conduct a special meeting in accord with the Association’s By-Laws to discuss issues that unit owners have raised with the Board of Trustees for several years, including election procedures employed by the Association, its lack of financial disclosure, its failure to hold open Board meetings and to make Board minutes available to all owners, and its refusal to provide adequate alternative dispute resolution.

4. In addition, Plaintiff also assert that Alexandria at Hillsborough Condominium Association’s policy of conducting closed Board meetings at which all decisions are

made and restricting homeowner's access to financial documents violates PREDFDA and the New Jersey Condominium Act.

5. Plaintiff has no adequate remedy at law to protect their rights and seek equitable relief to prevent further injury that cannot be compensated with monetary damages.

PARTIES

6. Plaintiff, CONCERNED OWNERS OF ALEXANDRIA ASSOCIATION ("Concerned Owners"), is an unincorporated, trademarked association, which is located at 16 Deanna Drive Apartment 23, Hillsborough, New Jersey, 08844. Pursuant to its Constitution and By-laws, it's members must be unit owners. It was recently established as a watchdog group that intends to act as a liaison between unit owners and the Board of Trustees. It currently monitors the propriety and reasonableness of actions taken by the Board of Trustees, and seeks to compel the Board to be accountable to Association members --- *i.e.*, unit owners. The Concerned Owners are primarily concerned with halting the physical decay of the community, holding the Board financially accountable to its unit owners, eliminating excessive, unfair and arbitrary assessments and fines, and conducting fair and open Board elections. At this time, the Concerned Owners has significantly more than seven (7) members and has the support of over 100 owners. The Association is the successor organization of the Committee to Take Back Alexandria that was formed by one unit owner several years ago in response to the community-wide concern that the property of the Association was deteriorating, and the management company retained by the Board of Trustees was not taking necessary and appropriate steps to maintain the safety, security and value of the condominium's common property and that of the individual unit owners.

7. Defendant ALEXANDRIA AT HILLSBOROUGH CONDOMINIUM ASSOCIATION (“Condominium Association”) is a non-profit corporation organized under the laws of the State of New Jersey, located at 524 Andria Avenue in Hillsborough, New Jersey. The condominium complex is governed by a five person Board of Trustees (hereinafter “The Board”), whose members are elected for two year terms at an annual election. Two members are elected one year, and three members are elected the following year. Establishment of such Board is required by the New Jersey Condominium Act, N.J.S.A. 46:8B-13, as well as PREDFDA, N.J.S.A. 45:22A-45.
8. Current Board members are President Darwesh Syed, Vice President Russell Marion, Secretary Taseer Syed, Treasurer Matilda Srouji and Trustee Leonard Sieminski. Approximately eight years ago, Management Solutions Plus (“MSP”) became the managing agent of the complex.
9. Defendant DARWESH SYED is the President of the Alexandria at Hillsborough Board of Trustees since April 2012. Previously, he served on the on the Board as Secretary, but has been the President at all times relevant to this complaint. He is being sued solely in his capacity as an officer of the Board of Trustees.

COUNT ONE

(FAILURE TO CONDUCT FAIR AND TRANSPARENT ELECTIONS)]

10. On March 15, 2013, Plaintiff, via counsel, sent a letter to the Defendants demanding that they conduct the upcoming Board of Trustee election in a manner that is procedurally fair, transparent, and open to all unit owners.
11. On April 5, 2013, counsel for Defendants replied to Plaintiff, but did not address the issue of when and whether they would be holding fair and transparent elections. In

that letter, Defendants articulated the Board's refusal to allow a neutral third party, such as the League of Women's Voters or a retired judge, oversee and supervise the nomination, voting and/or ballot counting process.

12. Additionally, in its response letter, Defendants accused Plaintiff's members of illegally distributing literature to unit owners by posting information sheets on the doors of individual condominium owners. The sheets announced the creation of the Concerned Owners and advocated for fair Board elections. Defendants' accusation is contrary to its responsibilities pursuant to the free speech and expression provisions of the New Jersey Constitution. See Twin Rivers, 192 N.J. at 368-69; see also Guttenberg Taxpayers and Rentpayers Assn. v. The Galaxy Towers Condominium Assn., 297 N.J. Super. 404 (Ch. Div. 1996), on remand from 296 N.J. Super. 101 (App. Div. 1995), aff'd, 297 N.J. Super. 309 (App. Div. 1996), cert. den. 149 N.J. 141 (1997).

13. Plaintiff, via counsel, responded to this letter on April 9, 2013, and tried to engage Defendants in a discussion as to the manner they intended to employ at the upcoming annual election.

14. Despite several attempts to reach counsel by phone, no discussions ensued. In a letter dated April 28, 2013, Plaintiff's counsel asked Defendants' counsel for the date on which it intended to hold the annual board election. No response has been received.

15. On or about June 18, 2013, Plaintiff's counsel was informed by Defendants' former counsel that her firm no longer represented Defendants, and she is "not aware of the name of the law firm, if there is one that is currently representing the Association."

16. Article 3, § 2(B) of the Association's By-Laws requires that an annual board meeting be scheduled at which Board of Trustee elections would take place. Article 2, §7

requires that “there be a regular annual meeting of the Unit owners . . . each year during the same month of each succeeding year after the first annual meeting.” There is no provision in the By-laws for the timing of this annual meeting to be changed.

17. Historically, the Association’s annual meeting and Board of Trustee elections take place in April.

18. On or about June 29, 2013, residents of Alexandria at Hillsborough received an undated memorandum from their Board of Trustees. The memorandum primarily maligned Plaintiff and its predecessor organization, and, without any factual basis, asserted that “[t]heir constant belligerence has interfered with running Alexandria and delayed scheduling our annual meeting. We will have our annual meeting and elections soon.” The memorandum also served to warn residents not to vote for any of “these persons and their supporters,” who it claimed “have already started to run for board seats.”

19. At this time, the required annual board meeting has not been scheduled, and, at the time this Complaint was filed, on July 15, 2013, and served on July 28, 2013, neither the current Board nor has the managing agent had solicited nominations from the unit owners.

20. On or about August 15, 2013, Plaintiff and other unit owners received an undated letter announcing the intention of the Condominium Association to “soon have our annual meeting.” In that letter, nominations to the Board of Trustees were solicited and required to “be returned to our management office no later than August 27, 2013.” A meeting “in preparation for our annual meeting” was noticed for August 30th, 2013 at 6:30pm, the day before labor day weekend. No date for the annual meeting was set.

21. On August 30, 2013, a meeting was held, and approximately thirty-five homeowners attended. The Board of Trustees stated that the annual meeting will be held “sometime in October.” There was no date certain given, and there was no information as to when owners will be informed as to whether they are candidates, when ballots will be sent out, and who, when and how ballots will be counted. The Board made mention of other issues such as DCA’s response the Concerned Owners’ complaint, maintenance fees, the potential for a 7 year audit, and the fact that there were needed repairs that they did not know how to handle. Board members also made negative remarks about and toward supporters of the Concerned Owners, and they would not tell people how much money the Condominium Association had in reserves.

22. Historically, the Condominium Association announced the date of the annual meeting at least one-month before it was to be held; request for nominations were distributed approximately three weeks before the election and ballots were sent to all unit owners at least two weeks prior to the election (without envelopes in which to return or place the ballot). Owners were permitted to vote either by mailing or bringing the ballot to the management office prior to the annual meeting or in person at the annual meeting. Ballots were counted at the annual meeting in public although mailed-in ballots had already been counted, and anonymity of each ballot was not maintained.

WHEREFORE Plaintiff Concerned Owners demands relief against Defendant s Condominium Association and Syed (1) adjudging and declaring that its failure to solicit nominations, distribute ballots, and conduct an election of three Board members at its annual board meeting that is always held in April violates Article 3, § 2(B). of the By-Laws of the Condominium Association, and Article 2, §7; (2) directing Defendants to

schedule and conduct the election of three Board members on a date certain; (3) directing Defendants to conduct that election in a manner that is fair, open and transparent in accord with the common law, the New Jersey Condominium Act, PREDFDA, constitutional principles governing elections, and the Appellate Court decision in Twin Rivers, including setting dates certain when nominations will be announced, time to appeal denial of requests to be a candidate, and ballots to be distributed, and adopting procedures that will ensure privacy of the ballot and fair and neutral counting thereof ; and (4) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

COUNT TWO

(FAILURE TO SCHEDULE A SPECIAL MEETING)]

23. Plaintiff repeats the allegations contained in paragraphs 1-22.

24. On or about August 30, 2012, unit owner Helen Bacorn on behalf of eight other unit owners filed a complaint with the Department of Community Affairs (DCA), under their own names and the Committee to Take Back Alexandria. The Complaint specifically delineated facts supporting their claim that the Board of the Condominium Association did not hold public board meetings where decisions were made in the presence of unit owners. It also claimed that owners had been wrongfully denied access to certain financial documents of the Condominium Association, and that the Condominium Association did not have an Alternative Dispute Resolution (ADR) procedure.

25. The Committee specifically attached a request from Ms. Dorene Hawkins, dated February 27, 2012, requesting ADR to protest what she entitled “Excessive Fines

Levied Against Residents of Alexandria.” On information and belief, Ms. Hawkins was not provided ADR and instead was told verbally that liens will be placed on units where there is any resistance to such fines.

26. During November, 2012, the Committee to Take Back Alexandria submitted to the Condominium Association 95 signed letters that were addressed to Defendant Syed and the entire Board of Trustee requesting a special meeting in compliance with Article 2, § 8 of the By-Laws of the Condominium Association. In that petition, individuals owning 95 units sought to discuss at a Special Meeting the failure of the Board of Trustees to hold open board meetings, the failure of the Board to have a financial disclosure policy in accord with PREDFDA, the failure of the Board to offer its unit owners Alternative Dispute Resolution, and the terms of the current Board members.

27. A second request for such special meeting was made on or about December 6, 2012; and a third request was made on December 17, 2012. The Committee received no response.

28. In a letter dated December 20, 2012, DCA contacted the Condominium Association regarding the Committee’s complaint, and asked the Association for a “written explanation of the board’s position” and a copy of its “provisions for the ADR and Opening Meeting rights.” The Condominium Association responded in a letter dated January 18, 2013, to DCA that it had open board meetings and “financial records are available to the residents,” though it specified that only the proposed budget was mailed out to all homeowners. The letter went on to malign Ms. Bacorn, and say that the complaint was nothing more than a “fishing expedition” born from her personal discontent.

29. In a letter dated January 31, 2013, DCA responded to counsel for the Condominium Association specifically stated that the “condominium’s Alternative Dispute Resolution (ADR) procedure is not within the parameters set forth in the New Jersey Condominium Act.” DCA again requested copies of the Condominium Associations’ “written procedure for ADR” and “written procedure for access to financial records.

30. In a letter dated, February 26, 2013, counsel for the Condominium Association wrote DCA that “no individual unit owner has brought a matter to the attention for the Board that needs to be resolved using ADR. In addition, no unit owner has been denied the right to review the financial records of the Association.” The letter acknowledged “discontent among a group of unit owners,” and said that the Board is making arrangements for a special “meeting of unit owners so that any concerns can be aired in an appropriate setting.”

31. . Article 2, § 8, requires that a Special meeting be called “upon receipt of the Secretary of a petition signed by 30% or more of unit owners for the purpose of considering matters properly before the [special] meeting.”

32. On April 9, 2013, Plaintiff, via counsel, sent counsel for Defendants a letter indicating that it would like to discuss the agenda for the special meeting that it understood the Association had agreed to schedule, as stated in its counsel’s letter to DCA. Plaintiff’s counsel suggested that “it would be best if the meeting were devoted to discussing the ground rules and procedures for the upcoming board election [instead of the terms of the board members], and any changes that [the Association] contemplates implementing Alternate Dispute Resolution.”

33. On April 28, 2013, Plaintiff, via counsel, sent a letter to Defendants' counsel via both e-mail and regular mail, demanding that a special meeting pursuant to the by-laws be scheduled.

34. Defendants have not scheduled nor have they held a special meeting as requested by individuals owning 95 units in November 2012 to discuss the Association's policies regarding financial disclosure, open board meetings, and ADR.

35. Pursuant to Article 2, § 8 of the By-Laws of the Condominium Association, the President of the Board of Trustees also has the independent authority to call a special meeting. Under these circumstances, Defendant Syed has opted not to use his authority to call a special meeting despite the expressed desires of almost 1/3 of the community.

WHEREFORE Plaintiff Concerned Owners demands relief against Defendant s Condominium Association and Syed (1) adjudging and declaring that its failure schedule a special meeting violates Article 2, § 8 of the By-Laws of the Condominium Association; (2) directing Defendants to schedule such Special Meeting to discuss the Association's policies regarding financial disclosure, open board meetings, and ADR and (3) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

COUNT THREE

(FAILURE TO HOLD OPEN BOARD MEETINGS AND PROVIDE MINIUTES)

36. Plaintiff repeats the allegations contained in paragraphs 1-35.

37. Pursuant to Article 3, § 5 of the By-Laws of the Condominium Association
“regular meetings of the Board of Trustees may be held at such time and place as shall be

determined by a majority of the members of the Board, but at least four such meeting shall be held in each calendar year.”

38. For the past few years, the Board of Trustees announces the dates for the regular meetings at which it permits owners to attend and have a discussion with the Board. After approximately one-half hour, however, it closes what is in effect an open forum and goes behind closed doors to hold its meeting, make all decisions and take all binding votes.

39. In written documents dated February 17, 2013, March 4, 2013 and March 12, 2013, homeowner Paulina Levinzon, who is also a member of the Concerned Owners, made a request to the Board of Trustees, care of Willam Hoopmann of Management Solutions Plus, for a copy of “all minutes from the January 2012-February 2013 Alexandria@Hillsborough Board of Trustees meetings.” She has never received a reply nor receipt of the minutes requested.

40. PREFDA and the New Jersey Condominium Act provide that “all meetings of the Executive Board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all unit owners, and adequate notice of any such meetings shall be given to all unit holders. . .” N.J.S.A. 45:22A-46; N.J.S.A. 46:8B-13. Minutes of such meetings must be taken and copies thereof be made available to all unit owners prior to the next meeting. Id.

WHEREFORE Plaintiff Concerned Owners demands relief against Defendants Condominium Association and Syed (1) adjudging and declaring that its failure to hold open board of trustee meetings and to provide unit owners with copies of minutes of such meetings violates PREFDA, N.J.S.A. 45:22A-46 and the New Jersey Condominium

Act, N.J.S.A. 46:8B-13; (2) directing Defendants to hold all its Board of Trustee meetings in accord with PREDFDA and the Condominium Act and (3) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

COUNT THREE

(DENIAL OF THE RIGHT TO FINANCIAL DISCLOSURE)

41. Plaintiff repeats the allegations contained in paragraphs 1-40.
42. Pursuant to Art 3§ 14 of the By-Laws of the Condominium Association, the Board has the power and duty to “(g) adopt rules and regulations, with written notice therof to all Unit Owners, governing the details of the administration, management, operation and use of the property and the Common Elements”; (m) prepare and distribute the annual budget; and (n) “keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the property.” In addition to preparing the annual budget, “the Board shall cause to be furnished to each Unit Owner [an annual report in which] an itemized accounting of the common expenses for the preceding year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget or assessments, and showing the net excess or deficit of income over expenditures plus reserves” is delineated.
43. For at least the past eight (8) years, unit owners have not received an annual report as required in the By-Laws, and for the past two years, they have not received the proposed budget for FY2012 and 2013.
44. In their letter requesting a Special Meeting, persons owning 95 units requested “all financial records of Alexandria@ Hillsborough at a time convenient to you and our accountants.”

45. Ms. Bacorn, acting on behalf of the Committee to Take Back Alexandria has made, over the past two years, at least four (4) verbal requests to the Board, asking to inspect the financial records of the Condominium Association related to the Association's budget, its reserves, and its income received and expenses incurred.

46. In letters dated March 15, 2013 and April 9, 2013, counsel for the Concerned Owners requested, on behalf of their members, "a list of persons in arrears on their assessments so they may be notified that until the Association sets up an ADR procedure of its own, they may request ADR without cost from the Division of Consumer Protection."

47. Counsel further stated, "Unit owners are entitled to this information pursuant to N.J.S.A. 46:8B-14(g), and as we discussed we believe that all owners who have a bonafide dispute about such arrearages, or who have already resolved such claims should be entitled to vote."

WHEREFORE Plaintiff Concerned Owners demands relief against Defendants Condominium Association and Syed (1) adjudging and declaring that their failure to adopt a financial disclosure policy in accord with the New Jersey Condominium Act violates Art 3§ 14 of the Condominium Association's By-Laws, and to permit inspection of its financial records by unit owners and specifically, a list of all units that are in arrears violates the New Jersey Condominium Act, N.J.S.A. 46:8B-14(g) (2) directing Defendants to adopt a financial disclosure policy and to make available for inspection financial documents that are required to be available to unit owners under the Condominium Act and (3) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

Respectfully submitted,

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.

By: _____
Renée Steinhagen, Esq.

-and-

RUTGERS CONSTITUTIONAL
LITIGATION CLINIC

Date: September 18, 2013

DESIGNATION OF TRIAL COUNSEL

Renée Steinhagen, Esq., and Frank Askin Esq. are hereby designated as trial counsel for Plaintiff.

Renée Steinhagen, Esq.

Date: September 18, 2013

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RENÉE STEINHAGEN, hereby certify that:

1. The matter in controversy is not the subject of any other pending Court or arbitration proceeding;
2. I am not aware of any other contemplated Court or arbitration proceeding and;
3. I am not aware at the present time of any other party that should be joined to this litigation.

Date: September 18, 2013

Renée Steinhagen, Esq.