

LINOWES
AND | BLOCHER LLP
ATTORNEYS AT LAW

July 31, 2007

Joseph P. Lapan
301.961.5172
jlapan@inowes-law.com

District of Columbia Board of Zoning Adjustment
441 4th Street, NW
Suite 210 South
Washington, D.C. 2001

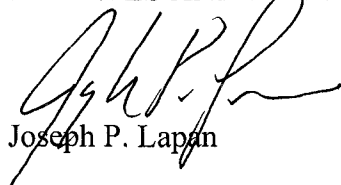
Re: BZA Appeal #17615 (the "Appeal")

Dear Chairman and Members of the Board:

On behalf of Washington Harbour Condominium Unit Owners' Association, Inc. (the "Association"), enclosed please find an original and twenty copies of the Association's Opposition to Appellant's Motion to Compel, which was filed with the Board on July 30, 2007.

Sincerely yours,

LINOWES AND BLOCHER LLP



Joseph P. Lapan

:jpl

cc: Vernon W. Johnson, Esq.
Dennis Taylor, Esq.
Emily J. Vaia, Esq.
Paul Sweeney, Esq.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17615

EXHIBIT NO. 30

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Board of Zoning Adjustment
District of Columbia
CASE NO. 17615
EXHIBIT NO. 30

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of William J. Harnett from the
Administrative Decision of the Zoning
Administrator, DCRA, to Issue Building
Permit No. 101019

Appeal No. 17615

OPPOSITION TO APPELLANT'S MOTION TO COMPEL

Washington Harbour Condominium Owners' Association ("Washington Harbour"), by and through its attorneys, Emily J. Vaias, Joseph P. Lapan, Paul Sweeney and Linowes and Blocher LLP, hereby files this Opposition to Appellant's Motion to Compel filed on July 30, 2007 in the Appeal of William J. Harnett vs. Zoning Administrator, and as grounds therefore states as follows:

1. On the day before this hearing, Washington Harbour received a document identified as a Motion to Compel (the "Motion"). Upon consultation with counsel for the Department of Consumer and Regulatory Affairs (DCRA), Washington Harbour learned that DCRA has yet to receive the Motion. Since the last hearing held on July 17, 2007, counsel for Appellant has made no request for any information. Moreover, at no time during the July 17, 2007 hearing did the Board ever provide an instruction that there must be a production. Given the passage of over two weeks since the previous hearing, it is curious that the issue is now only raised the day before this hearing.

2. Washington Harbour believes that the materials requested by Appellant in the Motion to Compel are not relevant or necessary to the current proceedings before the Board.

The former Zoning Administrator has testified under oath that he reviewed and relied on the plan marked BZA Exhibit No. 28. How he received that plan does not appear to be germane to the zoning compliance issues before the Board. Washington Harbour believes that the Zoning Administrator can sufficiently testify as to the basis and use of Exhibit 28 without the production of any correspondence.

3. The Board stated at the July 17, 2007 hearing that information and/or correspondence regarding the motives or background as to how Mr. Williams came to testify before the Board was wholly irrelevant to the proceedings and issues in this case.

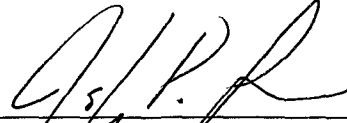
4. Again, Washington Harbour believes that the Board and the Appellant have all necessary information to review and discuss the issues of zoning compliance that are properly subject to the Board's jurisdiction. Washington Harbour believes that in filing the Motion to Compel, the Appellant is, in fact, continuing his pattern of frivolous and unsuccessful discovery efforts that led District of Columbia Superior Court Judge Frederick H. Weisberg to state, in his February 23, 2007 order to deny the last of five Motions to Compel filed by Mr. Harnett in related litigation, Civil Action No. 04-7452 (the "Order", attached hereto as Attachment 1):

"From the court's vantage point, which admittedly is outside the fray, if this case never gets resolved, it will be because of Plaintiff's [Mr. Harnett] attempt to make it something it is not—a one resident crusade to root out corruption and mismanagement of a condominium association, acting through its board, alleged to be acting in dereliction of its duty to represent all residents fairly and equitably—rather than what it is, which is a claim by one resident that he is being discriminated against..." See the Order at p. 4.

5. Appellant's eleventh hour request that the Board compel production of irrelevant information is a transparent and ineffective attempt to distract the Board's attention from a simple zoning compliance matter where no error exists.

WHEREFORE, Washington Harbor respectfully requests that the BZA deny Appellant's Motion to Compel for the reasons stated herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J.P. Lapan', written over a horizontal line.

Emily J. Vaia

Joseph P. Lapan

Paul Sweeney

Linowes and Blocher LLP

7200 Wisconsin Avenue, Suite 800

Bethesda, Maryland 20814

301-961-5174

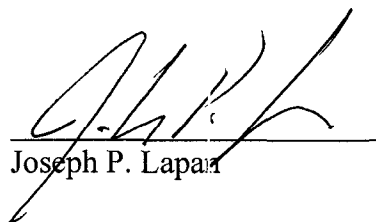
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2007, a copy of the foregoing Opposition to Appellant's Motion to Compel was sent via hand delivery and via electronic transmission to:

Vernon W. Johnson, III
Nixon Peabody, LLP
401 Ninth Street, NW
Suite 900
Washington, D.C. 20004-2128

Matt LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capital Street, NE
Suite 2000
Washington, D.C. 20002

Dennis Taylor, Esq.
Department of Consumer & Regulatory Affairs
941 North Capitol Street, NE
Room 9401
Washington, D.C. 20001



Joseph P. Lapan

ORDERED Plaintiff's Motion to Compel Production of Documents

Withheld Improperly And Privilege Log be, and it hereby is, denied in substantial part and granted to the limited extent of requiring supplemental responses consistent with this order.

A handwritten signature in black ink, appearing to read "Frederick H. Weisberg". The signature is fluid and cursive, with a large initial "F" and a long horizontal stroke at the end.

JUDGE FREDERICK H. WEISBERG

Copies served electronically through eFiling for Courts.

Lest there be any misunderstanding, the court will address a few points raised by Plaintiff. First, there is no “arbitrary” cut-off of discovery in the summer of 2006. Defendant’s discovery obligations are continuing. To the extent that materials are created during the pendency of the case, right up to the time of trial, which are within the scope of Plaintiff’s legitimate discovery requests and relate directly to the claims and defenses being asserted in this action, the court will order Defendant to supplement discovery and produce such documents. Super. Ct. Civ. R. 26 (f)(3). For example, Plaintiff alleges in Count V that retaliation is ongoing, and documents relating to repairs completed on other units or repairs completed or not completed on the units owned by Plaintiff and the Washington Capital Group, Inc. should be produced.

Second, the privilege log attached as Exhibit B to Defendant’s opposition to Plaintiff’s prior motion to compel is sufficient if, but only if, the privilege log is responsive to, and coextensive with, Plaintiff’s request for production of documents **from this Defendant**. If it is, counsel for Defendant must say so in writing to counsel for Plaintiff, and Plaintiff has what he is asking for. If it is not, counsel for Defendant, within ten days of receipt of this order, must produce another privilege log corresponding specifically to documents Plaintiff is seeking from this Defendant, which Defendant has in its possession but has not produced based on a claim of privilege.

That being said, the court feels constrained to add a few words. What is left of Plaintiff’s case are claims that Defendant has breached its fiduciary duties by treating board members and other “insider” residents more favorably than

Plaintiff (now including Plaintiff's corporation) in conducting the "parking space auction," that Defendant has interfered with Plaintiff's and the corporation's use and enjoyment of their property by failing to make repairs and by blocking access to a parking space, and that this same conduct constitutes retaliation against Plaintiff for having filed this action. THE LEGALITY OF THE AUCTION OF THE PARKING SPACES, *VEL NON*, IS NO LONGER IN THIS CASE. Discovery going solely to that issue is largely irrelevant, except to the extent it may lead to discovery of admissible evidence in connection with the claim in Count III. In addition, Plaintiff's discovery requests seeking such things as "documents relating to or containing Information relating to communications between You and any Person relating to the condominium, the Association, the Board, the Garage, any Parking Unit ...and/or any transaction in any way involving or concerning the Condominium," to cite just one example, are hopelessly overbroad in the context of the claims and defenses that remain in this litigation. Even if Defendant had responsive documents, the court would not order them produced unless Plaintiff narrowed the request. In any event, Defendant's counsel represents that he has produced everything the Association has that has not been produced by others and that he has no responsive non-privileged documents that have not been produced. More than that he cannot do, and the court will not order the impossible.¹

¹ To repeat, the court takes counsel at his word. The court assumes that counsel is using "possession" to include "custody" and "control." Super. Ct. Civ. R. 34. Further, when counsel represents that documents do not exist, the court assumes he means "do not exist," even if such documents existed sometime in the past. As to alleged non-existent pre-existing documents, Plaintiff is entitled to a statement in writing that after a diligent and exhaustive search, documents that did exist, which would have been responsive to Plaintiff's document requests and which Defendant did not object to on other grounds, cannot be located. So, for example, with respect to "missing" minutes of Board meetings and Construction Committee

From the court's vantage point, which admittedly is outside the fray, if this case never gets resolved, it will be because of Plaintiff's attempt to make it something it is not – a one-resident crusade to root out corruption and mismanagement of a condominium association, acting through its board, alleged to be acting in dereliction of its duty to represent all residents fairly and equitably – rather than what it is, which is a claim by one resident that he is being discriminated against, in part because he filed a lawsuit complaining about the board's decision to create additional parking spaces out of common areas and to sell licenses to park in those spaces to the highest bidders. If Plaintiff wants discovery that is strictly limited to the claims he has, and tailors his requests accordingly, he should be able to get it from reasonable opposing counsel, and probably would have had it by now without two attempts to enlist the court on his side. If, on the other hand, Plaintiff wants discovery on the claims he might wish he had, only to turn around and use such discovery to add to his list of grievances or to plead new claims, it is no wonder that counsel for Defendant is being more than a little niggardly in his responses in the interest of protecting his client against vexatious litigation.² In the meantime, deposition discovery should proceed, and if any pertinent documents turn up, they will be produced.

For the foregoing reasons, it is this 23rd day of February, 2007,

meetings during the relevant time period, either no such meetings were held, meetings were held but minutes were not taken, or meetings were held, minutes were taken, but the minutes are missing and cannot be located after a diligent and exhaustive search. Defendant is required to supplement its discovery in these categories by explaining why it does not have possession of "meeting minutes," which Plaintiff continues to insist Defendant has in its possession despite Defendant's insistence that it does not.

² The court finds Plaintiff's "defense" of his conduct as reflected in his deposition transcript to be especially disturbing. The suggestion that he was not being intransigent and was merely being careful is reminiscent of the protestations of love and loyalty by the player-queen to her first husband, which evoked Gertrude's oft-quoted observation to Hamlet. The behavior manifested is not lost on the court.