

## AN INDEPENDENT SUMMARY & OPINION OF THIS CASE

### **Journalist/SCA Homeowner Ron Johnson's published opinion on What Really Happened and Why when Board President Roz Berman and Board VP Carl Weinstein attacked SCA member Kay Frank during the June 26, 2008 Board Meeting member comment period.**

*"As relayed in some detail below, the June Board meeting got off to a terrible start when Roz Berman and Carl Weinstein teamed up to attack Kay Frank during her two minute public comment session."*

*"In my opinion, there was one clear lesson learned at the June Board meeting. It was that the president, as was later conveyed through her so called "interview" by David Berman, will do her utmost to humiliate and intimidate any homeowner who she feels has stepped "over the line" to criticize or question the actions of the Board during the member comment portion of the meeting. So be forewarned, if as a member of the Association you choose to call the Board's past actions into question, you may be silenced and humiliated in the process. Such paranoia was especially evident when Kay Frank, wife of Board member Bob Frank, began to speak.*

*"Contrary to the allocates expressed by some residents on the performance of the Board, I found that performance very troubling. Most disturbing of all was the outrageous display exhibited by a Board vice president Carl Weinstein towards a speaker during the public comment period, the worst behavior I've seen in my seven years of attending Board meetings. But more on Carl's behavior a little further along in this commentary."*

*Back to Kay's efforts to speak. As Kay had explained to the audience, she was reading a brief passage from an attorney's analysis of the complaint against Bob that Mike Dixon as president of the Board had submitted last year to the Ombudsman's Office. In her efforts to stop Kay from continuing, Roz offered up her plainly lame, actually dumb reason for doing so, namely, that the subject matter of Kay's comment was unrelated to Association business.*

*It was clear, of course, that Roz' stated reason was just plain silly as everyone in earshot realized. There has never been such a test or requirement in speaking during the member comment period. Moreover, I would venture that the topics of member comments are frequently if not typically unrelated to the actual business of the Association. So what was it that Roz didn't want homeowners to hear?*

### **Much Ado About Nothing**

*While our heading is from Shakespeare's famous comedy of that title, that same title heading aptly applies to the Board's charges that were lodged against Board member Bob Frank. In our case, though, we are looking at an ongoing real live tragedy that our Board has orchestrated to the detriment of our Community.*

*In point of fact, and contrary to Roz Berman's assertion, the subject matter of Kay Frank's effort to speak was most definitely on target and related to Association business. After all, it was the Association's Board that had filed a complaint against Bob Frank with the Ombudsman's office.*

*Make no mistake, as the Board had repeatedly reminded the Community, it was the 2007-08 Board of Directors headed by Mike Dixon that had sought to silence Bob and have him sanctioned by the state for his actions, allegedly, according to the Board, for breaches of his fiduciary duty. In repeated efforts to raise questions of accountability and challenging Board efforts to preserve things the way they were, Bob became an irritant if not an embarrassment to other Board members.*

*The Board had no interest in changing course or in exposing past misdeeds. In fact, that Board had their own credibility issues with their deceitful efforts to deny the Villa Neighborhoods a proper accounting of transition reserves. That effort in turn resulted in outright fraud against those Villa homeowners, who were subsequently required to pay additional assessments as the price for the Board's failure to protect their legitimate interests. It was little wonder that Bob Frank was on the Board's hit list.*

*So, just what were those allegedly flagrant misdeeds that Bob had committed that so troubled the Board? The important question to answer is not whether members of the Board were upset or troubled in some way by Bob's actions, but legally whether those actions rose to the level of a breach of his fiduciary duty to the members of the Association. That duty, mind you, is not to the president, or even to the Board, but is to the members of the Association, like you and me. A fiduciary, by the way, is a person who holds something in trust for another.*

*For an insight into the Board's charges and thinking, our readers would benefit from a quite revealing analysis that attempts to set straight just how reckless the Board was in making those allegations. Click here to read Maddox' analysis. <http://www.scaview.org/MaddoxAnalysis.html>*

*I got off track and now I'm back to the member comment period. For those who did not know what this matter was all about, Kay Frank wanted to share a brief and easily understood example of the type of Board accusation that had been alleged against her husband and she wanted to comment. As Kay made clear to the audience, she was reading from an analysis by attorney Robert Maddox, who had representing Bob Frank in this matter. Here was what Kay Frank was attempting to read when she was repeatedly accosted verbally by Roz Berman.*

*In the second paragraph of page 7, again Mr. Dixon accuses Mr. Frank of breaching his fiduciary duties and, again, offers no explanation. Mr. Dixon claims that Item 40 attached to the Dixon Intervention Affidavit supports his contention that Mr. Frank acted unilaterally on association matters without prior board knowledge, discussion or decision. Item 40 is an email from Terry DaSilva to all board members, requesting the board members to agree upon a date for a seminar to be conducted. Mr. Frank responded to that email, selecting a certain date and suggesting all residents be invited to the seminar. Supposedly, Mr. Frank breached his fiduciary [duties] to the association because he responded to the association manager's request for a seminar date, and recommended that the seminar be open to others in the community." [From page 12 of Analysis.] This and materials related to this incident can be found on the Anthem Voice website at <http://www.anthemvoice.org>.*

*So what exactly was Kay Frank doing? I think that Kay wanted to share with the Community one short example of the type of charge the Board had made against her husband. When reading the above charge you should get a very clear picture of the severity of the charges the Board had leveled against Bob Frank. If you got the impression that the Board's charge was without merit,*

*was even silly, and was a waste of Board resources to make and defend, let alone for Bob to defend against, you are absolutely correct.*

*Some may be thinking that, well, one ridiculous, ill conceived charge will have little impact on the weight of evidence the Board had lodged in their complaint against Bob, while agreeing that this particular charge did not rise to the level of a breach of fiduciary duty. But were the other charges worthy of the State's intervention or were they just as frivolous as the one Kay had read?*

*What you will learn from reading the Maddox analysis is that the Board's charges against Bob Frank are equally frivolous and without merit, and clearly do not rise to level of breaching one's fiduciary duty. So, you may ask, who is this Mike Dixon that would recklessly place the Association in such legal jeopardy?*

*While Mike is many things, at least we know that he was willing to waste the Board's time, resources and even its reputation in a concerted effort to slander the character of an honest, honorable, duty-driven fellow Board member that just happened to have a different point of view on matters of Community interest or concern.*

### ***On Carl Weinstein***

*Kay was clearly upset by Berman's repeated efforts to shut her down. But as Kay attempted to continue, matters got even worse and out of control when Board Vice President Carl Weinstein took over the meeting. While Kay was commenting about the legal fees being incurred to defend against the Board's accusations and alluding to the Board's potential liability to cover those expenses, Carl, interjecting himself into the exchange between Roz and Kay, took the microphone, leaned forward and shouted, "**Kay, that is a lie**" . . . . "**Kay, you are lying.**"*

*Carl was responding to Kay's statement of her understanding that the Association was incurring an ongoing liability for Bob Frank's legal expenses to respond to the Board's charges. Kay asked a simple question. Why should the Association have to pay legal fees for Bob to respond to such nonsense, my words, not Kay's? Board members are typically covered by some type of Association-provided management liability policy. However, that matter is really beside the point of Carl's outburst and is for legal practitioners to resolve in the event of any dispute.*

*Carl's uncalled for outburst was clearly rude, offensive and inappropriate behavior for a Board member to display. Although one would like to assume that Carl knew better, based on his work experience in human resources, that experience in no way hindered his unacceptable behavior. Carl's subsequent apology at the close of the meeting notwithstanding, his ill tempered response should raise serious questions concerning his suitability to function properly as a volunteer member of Board of Directors. When, who and under what circumstances will Carl shout out and attack another homeowner? Carl's inability to control his behavior as a Board member reflects poorly on the Community he professes to serve. Carl's behavior offended not just Kay Frank but the entire Community."*

**By Ron Johnson, Publisher of The SCA View Journal**

<http://www.scaview.org/BODMtgJune2008.html>