

Paul Kardos
204 Cleveland Lane, Monroe Bldg.
Rockaway, NJ 07866
973-527-1433 cell
Plaintiff *Pro Se*

<p>Paul Kardos</p> <p><i>Plaintiff</i></p> <p>v.</p> <p>Fox Hills at Rockaway Condominium Association, Inc.</p> <p><i>Defendant</i></p>	<p>Superior Court of New Jersey Chancery Division Morris County</p> <p>Docket No. MRS-C-102-18</p> <p>Civil Action</p> <p><i>AMENDED</i> <i>2nd Amendment</i> <i>COMPLAINT</i></p>
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This First Amendment to the original Complaint of Sept. 20, 2018 adds additional violations of statute that happened after the original Complaint of Sept. 20, 2018.

This Second Amendment to the original Complaint adds an additional violation of statute that happened after the First Amendment.

Note: The additions of the First Amendment are in bold typeface. The Second Amendment adds paragraphs 18.10, 18.11, 18.12, 18.13, 18.14, 18.15 and 20.03, also in bold typeface.

Plaintiff, Paul Kardos, residing at 204 Cleveland Lane, Township of Rockaway, County of Morris, State of New Jersey, complaining of defendant, states as follows:

COUNT ONE

1. The Plaintiff (Paul Kardos) was and is a homeowner at the Defendant, Fox Hills at Rockaway Condominium Association, Inc. (hereafter “Defendant Association”) and as such under the Defendant Association Bylaws is a member of the Defendant Association.
2. Defendant Associations Rules & Regulations Article I Section 3 (Exhibit A) describes the requirements and procedures to be used for flyer distribution within the condominium complex of the Defendant Association.
3. On Thursday morning of May 17, 2018, Plaintiff submitted a flyer (Exhibit B) to the Defendant Association by dropping the flyers off at the condominiums clubhouse for Friday folder distribution (standard distribution to each of 14 residents’ buildings).
4. On Thursday May 17, 2018, at 10:22 AM, the Plaintiff received a phone message from Defendant Association agent (Community Manager) Lynn Meekins stating, “*regarding your flyer for Friday folders, the board has decided not to post that, unfortunately you are attacking the board and calling them liars and that’s not acceptable to be posted.*”
5. Defendant was criticized/attacked in the Defendant Association Board of Directors (hereafter “the Board”) Notice of February 16, 2018 (Exhibit C).
6. Freedom to speak and write and publish are guaranteed by the *New Jersey Constitution* and are further defined by the New Jersey Supreme Court in Dublirer vs. 2000 Linwood Ave. , 220 NJ 71-89 (2014).
7. The Plaintiff brings this action because of the Boards failure to follow New Jersey Constitution Article I paragraph 6, “*Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or the press.*”

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

8. Declare that the action of Defendant Association's agent described in the Complaint violated Plaintiffs rights to free speech under the New Jersey Constitution.
9. Declare that Defendant Association Rules and Regulations Article I section 3. A. (requiring written permission of the Board to distribute literature) violates the free speech guarantee in New Jersey's Constitution.
10. Declare that Defendant Association Rules and Regulations Article I section 3. B. 2. (prohibiting any attack against persons or groups) violates the free speech guarantee in New Jersey's Constitution.
11. Declare that Defendant Association Rules and Regulations Article I section 3. C. (requiring board approval for Friday folder distribution) violates the free speech guarantee in New Jersey's Constitution.
12. Permanently enjoin Defendant Associations agents, employees and all persons in active concert or participation with Defendant Association who receive actual notice of the injunction, to provide the same or equal distribution for homeowner's political flyers throughout the condominium complex as is available and used by the Board.
13. Order such other relief as the Court may deem just and proper.

COUNT TWO

14. The Plaintiff repeats and realleges the allegations of COUNT ONE of this Complaint as if fully set forth herein at length.
15. Title 46 Chapter 8B section 13 (a) of the *Condominium Act* prescribes,

"...all meetings of that governing board, except conferences or working sessions at which no binding votes are to be taken, shall be open to attendance by all unit owners, ... except that the governing board may exclude or restrict attendance at those meetings, or portions of

meetings, dealing with (1) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; (2) any pending or anticipated litigation or contract negotiations; (3) any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or (4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association.”

16. In the June 2018 issue of the official publication of the Defendant Association, The Fox Hills Courier (Exhibit D), the Board announced that the speed limit was being raised to 25 miles per hour.
17. The only Board meeting that was open to unit owners in 2018 prior to the June announcement of the new speed limit was the quarterly meeting of April 2, 2018. There is no mention of a decision to raise the speed limit in the minutes of this meeting. Indeed, the minutes of this meeting report, “No old business” and “No new business.”
18. The decision to raise the speed limit must have been made other than at a Board meeting open to all homeowners.
- 18.01 A notice dated 1/31/19 went up in the Plaintiffs building (Monroe building) announcing that the speed limit signs would be reverting to the original 15 mph.**
- 18.02 The decision to lower the speed limit back to 15 mph must have been made at another secret meeting whose date is unknown.**
- 18.03 No minutes of this meeting have been issued to document this decision.**
- 18.04 The Fox Hills Courier of Oct. 2018 (Exhibit E) reported that the board had selected the Pillari, LLC bid of \$110,000.**
- 18.05 The decision to select the Pillari, LLC bid of \$110,000 must have been made at another secret meeting whose date is unknown.**
- 18.06 No minutes of this meeting have been issued to document this decision.**

18.07 An undated notice by the Events Committee (Exhibit F) went up in the Plaintiffs building (Monroe building) on March 26, 2019, announcing that the Board of Directors had decided that all ticket sales will be in Card Room 1.

18.08 The decision to hold ticket sales in Card room 1 must have been made at another secret meeting whose date is unknown.

18.09 No minutes of this meeting have been issued to document this decision.

18.10 The Plaintiff received a MEMORANDUM dated June 22, 2020 (Exhibit G) from the board stating that the outdoor pool will remain closed for the 2020 season.

18.11 The decision to keep the outdoor pool closed must have been made at another secret meeting whose date is unknown.

18.12 No minutes of this meeting have been issued to document this decision.

18.13 On July 1, the Plaintiff received the AGENDA for the Quarterly Meeting of July 13, 2020 (Exhibit H).

18.14 Under New Business of this AGENDA, the second item reads, “Resolution #58 to vote to suspend opening of Pool for 2020 season.”

18.15 On July 13, 2020, after the decision has already been made at an unknown date prior to the MEMORANDUM dated June 22, the Board voted to suspend opening the pool.

19. The Plaintiff brings this action because of the Boards failure to follow the *Condominium Act* requiring binding decisions to be made at meetings open to homeowners.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

20. Declare that the Boards decisions to raise **and lower the speed limit violated Title 46 Chapter 8B section 13 (a) of the *Condominium Act*.**

20.01 Declare that the Boards decision to select the Pillari, LLC bid of \$110,000 violated Title 46 Chapter 8B section 13 (a) of the *Condominium Act*.

20.02 Declare that the Boards decision to hold all ticket sales in Card Room 1 violated Title 46 Chapter 8B section 13 (a) of the *Condominium Act*.

20.03 Declare that the practice of voting to ratify previous votes or previously made decisions, as was done by the Board on July 13, 2020, violates the legislative intent of Title 46 Chapter 8B section 13 (a) of the *Condominium Act*.

21. Permanently enjoin the Defendant Associations Board of Directors to open all Board meetings **(even if they are called work-sessions)** to all unit owners except for those conferences or working sessions at which no binding decisions are to be made.

21.01 Permanently enjoin the Board to ensure that proper minutes are recorded for all Board meetings (even if they are called work-sessions), that all binding decisions made at these meetings are recorded and that these minutes are issued to homeowners.

22. Order such other relief as the Court may deem just and proper.

CERTIFICATION OF NO OTHER ACTIONS

I certify that the dispute is not the subject of any other action pending in any other court or a pending arbitration proceeding, to the best of my knowledge or belief. Also to the best of my knowledge or belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: July 14, 2020 Signature Paul Kardos
Paul Kardos

CERTIFICATION OF FILING AND SERVICE

The undersigned hereby certifies that a copy of this pleading was served and filed within the time permitted by the court rules.

Dated: July 14, 2020 Signature Paul Kardos
Paul Kardos

CERTIFICATION OF IDENTIFIERS

I certify that confidential identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Dated: July 14, 2020 Signature Paul Kardos
Paul Kardos

EXHIBIT A (sheet 1 of 2)

FOX HILLS AT ROCKAWAY CONDOMINIUM ASSOCIATION, INC. RESTATED RULES AND REGULATIONS

The Fox Hills at Rockaway Condominium Association is a community organization made up of owners of units in the Fox Hills Condominium located in Rockaway Township, New Jersey.

These Rules and Regulations are intended to set out the use restrictions and rules for living in a planned community in such a way that all can enjoy peace and quiet, with respect for one another. These Rules should be read in conjunction with the Master Deed and By-Laws. The Master Deed, By-Laws, and Rules and Regulations apply to all unit owners, as well as their tenants and guests. Unit owners are responsible for the conduct of their tenants and/or guests and infractions committed by them.

A failure not to enforce one or more of the Rules and Regulations shall not be deemed a waiver of the right, obligation, and power of the Board of Directors to enforce any of them.

Should any provision hereof be determined to be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.

I GENERAL PROVISIONS

1. Smoking is prohibited in the following areas: garages, building hallways and lobbies, the greenhouse, clubhouse, tennis courts, bocce courts, shuffleboard courts, horseshoes, pools, covered outdoor pool area, barbecue area, clubhouse balconies, and all other common facilities and areas. **Smoking is permitted in the Clubhouse upper and lower level parking lots ONLY!**
2. Each unit resident should have 1 photo ID and 1 guest card or badges per unit without charge. Those unit owners who still retain the brown guest badges shall be permitted to use them.
3. A. The distribution of literature to residential units without the prior written permission of the Board of Directors is prohibited. Any Association member wishing to distribute literature must submit a written request including a copy of the literature to the Association for review by the Board of Directors. Approval may be granted if, in the sole discretion of the Board of Directors, the material is deemed appropriate and does not expose the Association to any liability. Photo identification must be on your person at all times.
3. B. Political flyers may be distributed door to door with the following limitations:
 1. The flyer must relate to the governance or operation of Fox Hills;

EXHIBIT A (sheet 2 of 2)

2. The flyer date and the resident's name must appear on the flyer; and may not contain any attack against persons or groups
3. The resident distributing the flyer is responsible for following all applicable N.J. Laws (e.g. libel, slander, etc.)
4. Residents from another building distributing flyers door to door must be accompanied by a building resident that allows them in.
3. **C.** Flyer distribution in buildings will be done by giving the flyers to the office for distribution in Friday's folders with review and approval by the board
4. Guests must always be accompanied by a resident at all common area amenities.
5. Photos taken at Fox Hills, for use on the internet, require the signed permission of everyone in the photo.
6. Definitions

For the purpose of brevity and clarity, certain words and terms used in these Rules and Regulations are defined as follows, unless the context clearly indicates otherwise:

Association: The entity formed to serve as a means through which the condominium may take action with regard to the administration, management, maintenance, repair and operation of the property. The Association shall be governed by the New Jersey Condominium Act, the Master Deed, the By-Laws and the Rules and Regulations.

Board or Board of Directors: The entity of the Condominium Association, as constituted at any time or from time to time, in accordance with the applicable provisions of the By-Laws.

By-Laws: The governing regulations adopted under the New Jersey Condominium Act (46:8B-12.2) for administration and management of the condominium and condominium property and the actions of the Association.

Common Elements: All properties within the boundaries of Fox Hills Condominium exclusive of residential units.

Director: A member of the Board of Directors.

Extenuating Circumstances: An unusual circumstance suggesting a Board ruling.

Guest: Shall mean and refer to a person who occupies or visits a unit but has a permanent residence elsewhere. Aides are not considered guests as they are considered a paid employee of a resident.

Limited Common Elements: Spaces within residential buildings assigned to the sole use of a specific unit. Garage parking, utility closets and balconies are the current designated areas.

Photo ID: A facial picture card dated annually which should be carried by the resident when in the common areas of the community.

Resident:

The term "Resident" and "Permanent Resident" when used herein shall be synonymous.

EXHIBIT B - Flyer

The opinions of the author do not necessarily reflect the opinions of the Board. However, in accordance with the First Amendment (Freedom of Speech) this document is being distributed

The litigation (Fox Hills vs. Applebaum, Kardos & Rothstein) started with a lie and now ends with a lie.

Starting Lie:

Paragraph 4 in the Verified Complaint:

"During the course of that communication, the Owners conspired to "shoot" a recently elected member of the Board; currently the Board's president, Ms. Gloria Stahl. Paul Kardos assembled the Owners, along with others who he believed might be willing to participate in his conspiracy, and to participate in the actual shooting."

This is pure fantasy. In my mind it is akin to deliberate perjury. But I was unable to sustain a claim for defamation due to a legal principle called *Litigation Immunity*. Deliberate lies are allowed in legal pleadings.

I would like to know who wrote this lie. I would like to know who on the board, besides Secretary Cohen who signed for it, acquiesced to this lie. If any board member objected to this lie, I'd like to know who it was. They should be commended for knowing it's wrong to falsely accuse someone of a crime.

Ending lie¹:

The board posted a notice dated May 10, 2018 stating:

"We have been advised by Council that the Agreements preclude the Board from providing any additional information regarding this matter".

According to my attorney the contents of the Settlement Agreement are confidential, BUT anything else about the litigation can be discussed!!!

Questions:

The following questions have nothing to do with settlement agreements and should be able to be answered by the board:

1. What lessons were learned from this frivolous litigation?
2. What was the total cost of the litigation to homeowners?
3. Why is David J. Byrne, Esq. no longer the association's attorney?
4. Was any attorney or settlement money paid for by insurance?
5. Was any settlement money paid for by David J. Byrne, Esq.?
6. Did the attorney encourage the Board to pursue this lawsuit, or did the Board convince him?
7. Attorneys do not come cheap. Would any of the board members contribute toward attorney costs of the defendants? How about \$500 per director?
8. Do you think the board owes an apology to the defendants for the frivolous litigation and the false report filed with the police department?
9. Do you think the board owes an apology to the homeowners of Fox Hills?

Paul Kardos

¹ The board statement is not true. If the board knew it wasn't true, and they must have known, then it's a lie. If they thought it was true but it wasn't, then it's just a false statement.

5/17/18

EXHIBIT C

Notice

Update on Association's Complaint Against 3 Homeowners

February 16, 2018

Yesterday, Judge Robert J Brennan rejected the Association's attempt to subject the 3 homeowners to restraints. He also granted motions to dismiss for 2 of the 3 homeowners.

While the Board is disappointed in these rulings, it stands by its decision to file this Complaint, as an attempt to discourage future instances of cyber-harassment and bullying in our community.

The language used in the chain of emails by the 3 homeowners included the language, "shoot her" and "if I could get away with it, I'd buy a gun and pull the trigger." According to one of the 3 homeowners, Judge Brennan did acknowledge that this language was inappropriate, well out-of-bounds and terribly in bad taste.

The Board agrees with the Judge, especially in light of Wednesday's mass shooting in Florida... the latest in a rash of shootings in recent years.

We realize that this complaint will result in an extra legal cost for the Association. The Board believes this legal cost represent a necessary price to pay for pro-actively trying to protect all homeowners from harassment and fear. We should keep in mind that this extra legal cost is a direct result of the irresponsible behavior of the 3 homeowners.

Your Board of Directors

EXHIBIT D



The Fox Hills Courier

"The Premier Active Adult Community In Morris County"

Fox Hills at Rockaway Condominium Association, Inc.
One JFK Circle * Rockaway, NJ 07866 * 973-361-4057
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June 2018
Volume 18, Issue 5

Fox Hills Board of Directors

Gloria Stahl, President
Eleanor Hunt, Vice President
Bonnie Cohen, Secretary
Peter Forman, Treasurer
Connie Kelly, Assistant Treasurer
Jay Amdur, Director
Barrie Werfel, Director

Quarterly Directors' Meetings

1st Quarterly Meeting
April 2, 2018, 7:00 PM

2nd Quarterly Meeting
July 9, 2018, 7:00 PM

3rd Quarterly Meeting
October 1, 2018, 7:00 PM

Annual Meeting
December 10, 2018, 7:00 PM

Courier Committee

Aurelie Gurda
Adrienne Migdale

BOARD NEWS...

SAR I Lawsuit Regarding Easement Rights

The Board is very grateful to the residents for their great efforts to return their votes in a timely manner. It was a challenging time table, but we had the best response to any ballot sent to the community. The official count:

497 - Mediation
33 - Litigation

As mediation continues, we will keep you apprised of developments. Since this is a very serious matter with great consequence to the community, we will make every effort to keep you informed in a timely manner.

2017 Audited Financial Statements

Our independent auditor, Marie Mirra, has completed our 2017 Audited Financial Statements (AFS), in which she issued a "clean" opinion... the highest level of confidence regarding the reliability of our financial statements. Copies of the 2017 AFS will be available in the office on or shortly after June 4th to interested homeowners.

Speed Limits within the Property



Although it may seem counter-intuitive, in an effort to reduce speeding within the community, the Speed Limit signs are in the process of being changed to 25 MPH rather than 15 MPH. Our intent is to offer a more realistic speed limit that drivers, especially outside vendors and delivery trucks, could maintain. The 25 MPH is used state wide in all residential and school areas unless otherwise posted.

EXHIBIT E

Fox Hills Courier - Oct, 2018

BOARD NEWS CONTINUED...

To ensure that the needed repairs would be completed properly and cost effectively, the Board asked FWH to prepare and send RFPs to qualified contractors, conduct interviews and recommend their preferred contractor to the Board. In August, FWH submitted the names of two qualified contractors, and the Board selected one, Pillari, LLC, on the basis of having the best understanding of the scope of the project and the lower bid price of \$110,000.

This Project is expected to be completed next year. FWH will be performing ongoing of the Project and evaluating contractor invoices.

The lower-than-expected cost of this repair will help minimize future increases in Capital Reserve Contributions.

Because You Asked

Question: The Radburn Bill is now state law. When can we expect updates to our By-laws reflecting these changes?

Response: The Radburn Law was signed into law on July 13, 2017 (P.L.2017, Ch.106 [S-2492/A-4091]). The new law made changes to the procedures for board elections and voting participation rights.

Upon finalization of the law, the Board of Directors took immediate action to amend the nominating process. Starting with the 2017 election, it was no longer necessary to obtain ten (10) signatures in order to submit a nominating form. Additionally, the names of candidates appeared in alphabetical order on the election ballot.

Donna Shahrabani, an associate at the law firm of Buckalew, Frizzell, and Crevina, will be attending the October 1, 2018 Quarterly meeting. She is prepared to address the applicability of the law and would be pleased to respond to any specific questions you may have regarding the Radburn Law.

EXHIBIT F

Please post -

Important notice for all residents:

We have been notified that the Board of Directors had decided that beginning in February and going forward, all ticket sales will be held in Card Room 1.

They have received complaints from activity groups in the Ballroom and TV Lounge that the noise from the ticket sales was distracting.

Leaders of the clubs have been notified.

Events Committee

EXHIBIT G

MEMORANDUM

To: Fox Hills Residents
From: Board of Directors
Date: June 22, 2020
Subject: Outdoor Pool

The Board of Directors deeply regrets that the outdoor pool will remain closed for the 2020 summer season. We made the decision after exploring all possible avenues for meeting our responsibility to protect our residents and the financial well-being of the association. This decision was made after extensive consultations with our attorney, insurance broker, management company and pool vendor.

There were many factors that influenced our decision, but the most important was protecting the health, safety, and welfare of our residents, as well as our on-site staff and contractors. It would be extremely difficult for us to fully implement in a timely manner all of the exhaustively comprehensive requirements for operating the pool that have been imposed by the New Jersey Department of Health and Governor Murphy's Executive Orders. And more importantly, we are not confident that we could achieve full compliance with these standards. These standards would require us to carefully implement many protective measures.

The standards mandate, required among other things, hiring and training an "ambassador" to monitor and encourage social distancing of patrons on the pool deck and pool, as well as a "COVID contact person"; implementing a system, such as an electronic reservation system, to assure that the pool and pool deck do not exceed 50% of maximum capacity at any time; taking the temperature of staff and screening them for COVID-19 symptoms; ensuring that 6 feet social distancing is maintained; maintaining a record of all staff/patrons who enter the pool area in order to facilitate potential contact tracing efforts; implementing mitigation strategies to limit COVID-19 exposure; documenting cleaning protocols; installing sanitizer stations throughout the pool facility; conducting sanitization multiple times per day of areas open to pool patrons, including frequently touched surfaces and shared objects after each use; encouraging staff/patrons to wear a cloth face covering while not in the pool when social distancing of 6 feet cannot be maintained; and implementing a robust communications plan (notices, email, mobile communications, and signage) that conveys the importance of social distancing, hygiene and rules associated with use of the pool facility.

There are also other serious legal, insurance and financial considerations that could have a very adverse impact on the association. The State of New Jersey has established standards that are exhaustive and comprehensive which places significant responsibility on the Association. As explained by our attorney, while a tightly drawn waiver with indemnification and hold harmless provision would strengthen a defense, there is no guarantee that it would stand up in court. Even if we prevailed, the risk and associated legal costs would not be considered prudent. One lawsuit could result in a significant financial burden on the association that could require the imposition of a special assessment on all homeowners, the borrowing of funds, or even result in the insolvency of the association.

The Board shares in the feelings of loss and disappointment. The pool is one of the most coveted amenities in Fox Hills, but we believe we have made the right decision. Over the past few months, we have handled many unfortunate circumstances and expect we will continue to face difficult decisions. This is unprecedented territory lacking solid guidance. The Board has been meeting at least once a week as the situation evolves. We will be glad to answer any questions you may have at our Quarterly meeting on July 13, 2020. As part of our new normal, we will be conducting the meeting virtually. We will provide instructions well in advance and allow you the opportunity to submit questions prior to the call.

EXHIBIT H

AGENDA

JULY QUARTERLY MEETING
FOX HILLS AT ROCKAWAY CONDOMINIUM ASSOCIATION, INC.
July 13, 2020 at 7:00 PM

Via Zoom Conferencing

SALUTE TO THE FLAG

MOMENT OF SILENCE

ROLL CALL

Guest: Donna R. Shahrabani, Esq. of Buckalew, Frizzell, & Crevina, LLC

Approval of minutes from Annual Meeting December 2019

DIRECTORS REPORTS

New Business

- Ratify vote to cancel April Quarterly Meeting.
- Resolution #58 to vote to suspend opening of Pool for 2020 season.
- Responses to previously submitted questions by Unit Owners

ADJOURNMENT

Those that submitted email addresses, will receive a separate invitation with a link to the meeting.

Those that did not submit an email address to the office, can dial the following phone #'s 1-929-436-2866 or 1-301-715-8592 or 1-312-626-6799 or 346-248-7799 or 1-669-900-61

Questions to the Board must be received by the Office no later than Noon on Thursday, July 9th by calling 973-361-4057 or email Lynn Meekins at lmeekins@taylormgt.com.