

THE CATELLI LAW FIRM, L.L.C.

COUNSELLORS – AT – LAW

365 BROAD STREET, SUITE 4R

RED BANK, NEW JERSEY 07701

RONALD T. CATELLI (N.J. & TN.)

MANAGING MEMBER

RULE 1:40 QUALIFIED MEDIATOR

N.J. SUPREME CT. SPECIAL ETHICS MASTER

THE HONORABLE PAUL F. CHAIET, J.S.C. (RET.)

OF COUNSEL

JAMIAN RONCA SPADAVECCHIA (N.J. & N.Y.)

OF COUNSEL



www.catellilaw.com

MAIN OFFICE:

365 BROAD STREET, SUITE 4R

RED BANK, NJ 07701

TEL: 732-554-1800

FAX: 732-554-1801

OCEAN COUNTY OFFICE:

(CROSSROADS BLDG)

480 ROUTE 530

WHITING, NJ 08759

WASHINGTON, DC:

1717 K STREET NW, SUITE 900

WASHINGTON, DC 20006

February 4, 2021

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND REGULAR MAIL**

Enchantment at Hightstown Homeowners Association, Inc.

c/o Integra Management

19 Middlesex Blvd

Plainsboro, NJ 08536

Attention: Dana Forbes O'Brien, Community Portfolio Manager

Re: My Client(s): E. Martin Davidoff and Beth E. Davidoff
Subject Premises: 9 Ashton Lane, Hightstown, New Jersey 08520
Block: 10.01 Lot: 57

Dear Sir/Madam:

Please be advised that this firm has been retained to represent the above-referenced property owner/member of Enchantment at Hightstown Homeowners Association Inc. ("Enchantment" or "Association"), E. Martin Davidoff, regarding an ongoing dispute with the Association as more specifically set forth herein.

This letter of complaint is respectfully submitted under the provisions of the Enchantment Declaration of Restrictive and Protective Covenants, Easements, Conditions, Charges and Liens ("Declaration") and Bylaws ("Bylaws") (collectively "Governing Documents"), and pursuant to said documents Mr. and Mrs. Davidoff set forth the following:

BACKGROUND

My client, E. Martin Davidoff, purchased the above-referenced home in June of 2015, which is located within the Association. He has resided in the home from July, 2015 and has since 2016, down through today, resided there with Beth Ellen Davidoff. My clients are proud and contributory members of the Enchantment Association community, and active participants in the community with Mr. Davidoff having served on various ad-hoc committees and as the chair of the Judicial Committee. Thus, it is with the utmost respect and seriousness of purpose that my

clients submit this letter of complaint—seeking an efficient and amicable resolution of this matter.

The current complaints arise from nearly four years of entreaties and engagement efforts with the Association's management company ("Integra") and various members of the Association's Board of Trustees in an effort to find a resolution to what can only be described as a persistent cacophony of loud, deeply distressing frog noise invading/penetrating my clients' home. The frogs live and their noises emanate from the stormwater management facilities/basin(s) located within the Association and directly appurtenant to or nearby Mr. and Mrs. Davidoff's home. This cacophony of noise has and is materially and adversely impacting/impairing not only Mr. and Mrs. Davidoff's use and quiet enjoyment of their home but is equally distressing to their health and general welfare. For instance, during the cacophony season (May through August) Mrs. Davidoff needs to use her hands to physically cup her ears while trying to fall asleep in order to muffle the frog noise; an ineffective endeavor, resulting only in the manifestation of arm and shoulder pain from the awkward positing such contortions require. Such sleepless nights and distress caused by the croaking frogs were expressed in numerous emails to the Association/Integra as well as the futile (but expensive) efforts to personally mitigate/resolve the situation; whereby Mr. & Mrs. Davidoff have attempted the use of sound machines, online white-noise applications, and in 2017 spent \$5,000.00 to install hurricane shutters over their bedroom windows ... all in an unsuccessful attempt to quell the unquietness of the frogs' croaking.

In an additional series of emails to the Association/Integra through June 2020, Mr. Davidoff repeatedly requested, and made numerous substantive suggestions as to finding actionable solutions to the frog-noise nuisance. Indeed, in a recent (June 23, 2020) email exchange with Integra, Mr. Davidoff related the research he conducted regarding possible abatement solutions. As an example, Mr. Davidoff spoke with The Pond Team (Tel: 267.636.0690); a company specializing in abatement of these types of wildlife nuisances and in fact went as far as arranging an onsite service call for the company to conduct an expert analysis of the nuisance conditions with the aim of finding an abatement solution. Unfortunately, Mr. Davidoff's arrangements for an onsite expert were ignored by Integra, and like most of Mr. Davidoff's efforts to engage the Association/Integra on taking a cooperative course of action, his entreaties fell upon deaf ears.

As has been expressed numerous times in correspondence to the Association/Integra, the frogs and the cacophony of their loud, distressing noise is an untenable adverse condition/nuisance, persistently impacting/impairing my clients' quiet enjoyment, health, and general welfare. The cacophony takes place from May to August each year and the Davidoffs are hopeful that a resolution can be reached prior to May of this year.

SELECTED CLAIMS

A. MR. AND MRS. DAVIDOFF’S USE AND QUIET ENJOYMENT OF THEIR HOME AND COMMON ELEMENTS ARE MATERIALLY AND ADVERSELY IMPACTED/IMPAIRED BY THE DAILY CACOPHONY OF FROG NOISE EMANATING FROM THE STORMWATER BASIN(S); AND AS SUCH THE ASSOCIATION HAS A DUTY NOT ONLY TO PROTECT THEIR PROPERTY RIGHTS, BUT ALSO THEIR HEALTH AND GENERAL WELFARE

As the Association is aware, under Association Declaration, Article III *Property Rights*, Section 1. *Owner’s Easements of Enjoyment* states in pertinent part: “Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot ...” Moreover, in accordance with the Bylaws of the Association, specifically Article VII *Powers, Duties and Liabilities of The Board of Trustees*, Section 2. *Duties*:

(g) cause the Common Areas to be maintained in accordance with these By-Laws, the Declaration and any applicable governmental resolutions, rules, orders, statutes or ordinances.

(j) discharge its powers in a manner that protects and further the health, safety and general welfare of the Owners in the Community.

Under these express provisions, as well as implicit to the wider obligations of the Association to its members’ property rights and general welfare; the Association has a clear duty not only to protect, through the enforcement of its Governing Documents, Mr. and Mrs. Davidoff’s property rights from a nuisance that interferes with those rights or adversely impacts/impairs the use and quiet enjoyment of their home and common elements, but also the duty to protect, through taking affirmative action to abate such nuisances that adversely impact/threaten Association members’ *health, safety, and general welfare*.

As chronicled above, the frog-noise nuisance is materially and adversely impacting/impairing my clients’ use and quiet enjoyment of their home/common elements as well as their health and general welfare. As such, it is asserted that the Association has a clear duty to abate the frog-noise nuisance, not only to ensure the sanctity of my clients’ quiet enjoyment, health, and general welfare but also of those likewise effected within the Association community as a whole.

B. THE ASSOCIATION HAS A DUTY TO PROPERLY MAINTAIN THE STORMWATER FACILITY BASIN(S) FOR THE BENEFIT OF ALL ASSOCIATION MEMBERS, INCLUDING THE ABATEMENT OF ANY ADVERSE CONDITION IMPACTING/IMPAIRING A MEMBER'S USE AND QUIET ENJOYMENT PROPERTY RIGHTS

Under Declarations, Article VII *Maintenance, Utilities and Repairs*, Section 2. *Responsibilities of Association* holds in pertinent part:

The Association shall only be responsible for the following items of maintenance, repair, replacement and service:

(c) The maintenance, repair and upkeep of any recreational and stormwater management facilities owned by the Association located on the Properties.

(d) Maintenance of the stormwater management facilities, including aeration and regular draining and cleaning; and,

(e) By way of illustration, the maintenance obligations of the Association shall include, but will not be limited to: (6) cleaning and maintenance of the portions of the Community which are not proposed to be or may not be developed for residential or accessory uses;

It is submitted that since the stormwater management facilities (i.e., those stormwater basin(s) appurtenant to Mr. and Mrs. Davidoff's home) are the very habitat that enables the wildlife (here frogs) creating the nuisance, and interfering with Mr. and Mrs. Davidoff's use and quiet enjoyment of their home/common elements as well as their general welfare, the Association's duty of proper maintenance of the stormwater basin(s) for the benefit of its members must extend to the abatement of an adverse condition (here wildlife nuisance) located within its stormwater management facilities/basin(s). Thus, my clients contend that the Association's duty not only includes the abatement of the wildlife nuisance (i.e. the frogs themselves) due to the material and adverse impact the frog-noise is having on the use and quiet enjoyment of their home and common elements, but that the Association is further charged with the express obligation to properly maintain the environment (i.e., relevant stormwater basin(s)) that enable and sustain the frog-noise nuisance.

Simply stated, Enchantment's duty to properly maintain their stormwater management facility basin(s) (an explicit Association obligation in-and-of-itself) for the benefit of all members equally encompasses the duty to abate the adverse conditions/nuisances contained therein.

This letter of complaint is respectfully submitted in accordance with the *Alternative Dispute Resolution* provisions of the Association Bylaws under Article XVI, Section 1. Fully aware of the Association Board of Trustees' duties under Article VII, Section 2(h) of the Bylaws; namely the express duty to "provide fair and efficient procedures for the resolution of disputes between individual Members and between Members and the Association, that shall be readily available as an alternative to litigation," Mr. and Mrs. Davidoff seek, in accord with such language, an efficient and amicable resolution to this matter. By this letter and or dispute resolution process, however, they do not relinquish any claim(s) or rights they may seek to pursue in the courts and under the laws of the State of New Jersey. By copy of this letter, my clients also submit this letter of complaint to the below-indicated members of the Association's Judiciary Committee pursuant to Article XVI of the Association Bylaws. It is my clients' respectful request and expectation that this matter shall proceed pursuant to the Judiciary Committee's submission and timeline requirements as more specifically set forth under Article XVI of the Association Bylaws. It should also be noted that due to Mr. Davidoff being Chair of the Judiciary Committee, a communication to the Board of Trustees shall be forthcoming addressing and reconciling same.

As stated throughout, my clients have attempted to engage the Association and its management company over the last four years in a vain effort to resolve these matters. The frogs, and the cacophony of noise they generate, have and continue to not only adversely impact/impair Mr. and Mrs. Davidoff's use and quiet enjoyment of their home; but have and continue to cause untenable levels of distress and sleep deprivation deleterious to their health and general welfare. It is time for the Association to act.

Thank you for your kind and courteous consideration in this matter. My clients respectfully request that this letter of complaint is submitted and proceeds in a timely manner pursuant to the Association's in-place alternative dispute resolution procedures as referenced above. My clients look forward to the Association's response, and an efficient and amicable resolution for all concerned.

Once again, thank you for your courtesy and consideration, and if you should have any questions, or require additional information, please do not hesitate to contact me at your convenience. I remain,

Very truly yours,


JAMIAN RONCA SPADAVECCHIA

cc: Client
E. Martin Davidoff, Chair, Judiciary Committee, Enchantment at Hightstown Homeowners Association, Inc. (via CM/RRR/Regular Mail)
Ron Kohn, Member, Judiciary Committee, Enchantment at Hightstown (via CM/RRR/Regular Mail)
MaryAnn Carnevale, Member Judiciary Committee, Enchantment at Hightstown. (via CM/RRR/Regular Mail)
Dorinda (Dee) Sparacio, President, Board of Trustees, Enchantment at Hightstown Homeowners Association, Inc. (via CM/RRR/Regular Mail)
Dana Forbes O'Brien, Community Portfolio Manager, Integra Management (via email)
Ronald L. Perl, Esq., Counsel, Enchantment at Hightstown Homeowners Association, Inc. (via email and regular mail)