

Tolliver v Esplanade Gardens, Inc.
2021 NY Slip Op 32310(U)
November 16, 2021
Supreme Court, New York County
Docket Number:
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **52M**

Justice

-----X

ROBYN TOLLIVER, WILLIAM ROSS,
Petitioner,

INDEX NO. 157230/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

- v -

ESPLANADE GARDENS, INC., THE BOARD OF
DIRECTORS FOR ESPLANADE GARDENS, INC., JOHN
AND JANE DOE

**DECISION + ORDER ON
MOTION**

Respondent.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

This petition arises out of allegations that petitioners were wrongfully removed from their positions as Board members on the Board of the cooperative apartments, Esplanade Gardens, Inc. (“Esplanade”). For the reasons below, the petition is denied.

Facts

Petitioner Tolliver had been on the Board of Directors at Esplanade since February 2020 and an owner/shareholder of her premises since approximately 2002. Petitioner Ross was on the Board of Directors since October of 2020 and has been an owner/shareholder of his premises since 2002. Petitioner Ross was also a member of the Board of Directors from approximately 2003 to 2009.

On March 4, 2021 petitioners sent a letter to Housing Preservation and Development (HPD) on Esplanade letterhead inquiring into the status of succession rights of a shareholder and well as an inquiry as to the addition of a non-Board members addition to a stock certificate. Further, the e-mail address from which they sent the March 4 letter, “Esplanade Gardens

esplanadegardensboard@gmail.com” was an e-mail address that was never used or authorized by Esplanade or the Board. Counsel for the Board was subsequently informed of this correspondence and as a result the Board held a meeting on March 16, 2021, at which both petitioners were present. At the meeting a resolution was adopted to give the petitioners a 14-day notice regarding their possible removal.

On March 19, 2021 the petitioners were provided a 14-day notice of discussion of their possible removal from the Board. The notice specifically advised that a Board meeting will be held on April 6, 2021 to discuss the possible removal of both petitioners based upon their discussion and dissemination of personal and confidential information. Petitioners Tolliver and Ross were terminated by the Board on April 7, 2021.

In addition, there have been allegations raised by the respondents that the petitioners disseminated confidential information to Madison Security Group (“Madison”) prior to their termination as the security contractor for Esplanade in April 2021.

Discussion

There is no dispute that the business judgment rule applies to the instant petition. This rule applies to decisions of residential-cooperative boards (*see 40 W. 67th St. v Pullman*, 100 NY2d 147, 153 [2003]), and requires a court to defer to board determinations “[s]o long as the board acts for the purpose of the cooperative, within the scope of its authority, and in good faith” (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 538 [1990]). As such, this Court’s role is limited to determining whether the respondents’ actions, specifically removing the

petitioners as directors, were made in good faith, for a corporate purpose, and within the scope of its authority¹.

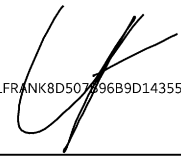
This Court finds that the respondents have demonstrated the good faith and corporate purpose required. What is undisputed is that on July 29, 2020, the President of the Board of Directors informed the Board members that they could not use the corporate letterhead without permission of the Board. Nevertheless, the petitioners used the letterhead, without the permission of the Board, and wrote a letter to HPD inquiring about the status of the succession rights of another member of the Board. In this letter, which listed the officers of the Board with neither knowledge nor authorization from the Board, the petitioners identified themselves as Board members. The letter also included information that identified individuals other than the Board member.

Thus, while there is some question of whether the petitioners further disseminated confidential information through communications with Madison which to this Court has not been proven, the Board's actions of removing the petitioners for the conduct described above regarding surreptitious and unauthorized use of letterhead of the Board, as well as confidential information regarding the succession rights of a Board member shareholder, satisfy the good faith and corporate purpose as required under the business judgment rule. The Court has reviewed petitioners' remaining contentions and find them unavailing. Accordingly, it is hereby

ADJUDGED that the Article 78 petition is denied.

¹ There does not appear to be any dispute that the procedures followed by the Board of Directors was consistent with the by-laws of Esplanade. As such, there appears to not be in dispute that removing Board of Directors members is within the scope of the Board of Directors' authority.

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11/16/2021
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE