

**NO RIGHT TO RECEIVE HARDSHIP EXCEPTION
FROM RENTAL RESTRICTION**

by

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Recently, a Cook County trial court judge ruled that a unit owner did not have a “right” to receive a hardship exception from her association’s rental restriction.

In the case of Beracasa v. Foxwood Townhome Owners’ Association, et al. (order entered December 15, 2011), a unit owner sued her association and the individual members of the board of directors because she was denied a hardship exception . The association had amended its declaration to prohibit leasing, but did empower the board of directors, in their discretion, to grant an exception if it was demonstrated that the prohibition would cause “undue hardship” on the owner.

The owner tried to sell her townhome but claimed that she would have to sell it for below its value. Her four requests for a hardship exception were rejected by the board which, among other things, stated that she had not realistically priced her townhome “in the current real estate environment.” In addition, during this time, the association adopted another declaration amendment prohibiting leasing of units to “anyone other than a blood relative.” Finally, in 2011 she sold her townhome for \$230,000, as opposed to her original 2009 asking price of \$295,000. She then brought the lawsuit charging that the association and directors breached their fiduciary duty to her and seeking damages.

The trial judge determined that although the owner had properly alleged that the association and directors had a fiduciary duty, she did not allege that the directors breached that duty by deviating from the procedures set forth in the declaration. The judge emphasized that the board had a discretionary right to make a hardship exception and that the board was not mandated by the declaration to grant any such exceptions and, therefore, the board’s denial “cannot be seen as a breach.” In addition, the judge pointed out that the owner’s loss was caused by a downturn in the housing market, not by the board’s actions.

The case is still pending at this time.

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