

**M.H. Chris Brown**  
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February 2, 2010

Diane Moore  
Assistant General Counsel  
State of Florida  
Department of Business and Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0750

Re: Case Number 2009-016750 Spencer Richard Solomon

Dear Ms. Moore,

I have examined the Department of Business and Professional Regulation Investigative Report and Exhibits. The alleged and listed violations against Spencer Solomon are F.S. 468.436(1)(B)(5), Committing acts of gross misconduct or gross negligence in connection with the profession; a licensee shall not deny access to association records, and F.S. 720.3085(3)(a) ... the association may also charge an administrative late fee in the amount not to exceed the greater of \$25 or 5 percent of the amount of each installment... In my opinion, the review of the report and exhibits does not support a violation but the Department may want to consider an Information Letter.

Complainant Victoria Laney alleges that CAM Solomon did not mail her a requested financial report and did not make the report available for her to view. The Complainant further claims that the \$50 fee charged on delinquent accounts is in violation of the law.

Regarding the allegation that CAM Solomon did not mail the financial report or make the report available for viewing, there does not appear to be evidence to support this claim. The Complainant brings up the issue that CAM Solomon does not have an office and works out of his home and that the association does not have an office thereby creating confusion as to where records can be viewed.

The Department may want to send an Information Letter that while a formal office is not necessary for records viewing, CAM Solomon may want to make it clear where the records are maintained and where they may be viewed by owners. I do not see a violation but this would help eliminate any confusion in the future.

Regarding the claim that the \$50.00 fee charged on delinquent accounts is illegal, I agree with the association's attorney that the fee is legal. Also the fee is part of the management contract and as such is a cost not a late fee as described in F.S. 720.3085(3)(a). Attorney Slaten properly explains the difference and why the \$50 fee is legitimate. This opinion is shared by other attorneys whom I work with. Per Statute, the Board of Directors has the right to rely on professional opinion and specifically their legal counsel. Florida Statute 607.0830 General Standards for directors, states:

*(2) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial and other financial data if presented by: (b) Legal counsel, public accountants,...*

The standard mailout (copy enclosed) that was supplied in the file, that is used for all associations managed by Southwest Property Management properly describes the fee as a cost of collection and intent to lien. However the file also contained a letter (copy enclosed) sent to the owners of the Complainant's association, that calls the \$50 charge a late fee which would violate F.S. 720.3085(3)(a). I would suggest the Department send an Information Letter to CAM Solomon to not ever refer to the charge as a late fee or he may be in violation of F.S. 720.3085(3)(a).

In accordance with my review of the Investigative Report and all Exhibits furnished with the Report, it is my opinion that evidence has not been provided to sustain a violation against Spencer Solomon of F.S. 468.436(1)(B)(5), Committing acts of gross misconduct or gross negligence in connection with the profession; a licensee shall not deny access to association records, and F.S. 720.3085(3)(a) ... the association may also charge an administrative late fee in the amount not to exceed the greater of \$25 or 5 percent of the amount of each installment...

Respectfully submitted,



M.H. Chris Brown, CAM CMCA AMS PCAM

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