

**IN THE
COMMONWEALTH OF VIRGINIA
COMMON INTEREST COMMUNITY BOARD**

Re: FirstService Residential DC Metro LLC
Fairfax, VA 22030

File Number 2019-00817
License Number 0501000085

CONSENT ORDER

Respondent FirstService Residential DC Metro LLC ("FirstService Residential DC Metro LLC") recognizes and acknowledges being subject to and bound by the Regulations of the Common Interest Community Board ("Board"), as well as by all other applicable Virginia laws.

FirstService Residential DC Metro LLC knowingly and voluntarily waives any proceedings for this matter under the Administrative Process Act, §§ 2.2-4019, 2.2-4020, and 2.2-4021 of the 1950 Code of Virginia, as amended.

Board's Regulations provides:

18 VAC 48-50-140. Grounds for disciplinary action.

The board may place a regulant on probation, impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia, or revoke, suspend or refuse to renew any license or certificate when the regulant has been found to have violated or cooperated with others in violating any provisions of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

By signing this Consent Order, FirstService Residential DC Metro LLC acknowledges an understanding of the charges and admits to the violation(s) of the Counts as outlined in the Report of Findings. FirstService Residential DC Metro LLC consents to the following term(s):

Count 1:	18 VAC 48-50-190.7	\$ 3,750.00
	(Violation One = \$1,000.00)	
	(Violation Two = \$250.00)	
	(Violation Three = \$1,500.00)	
	(Violation Four = \$500.00)	
	(Violation Five = \$500.00)	

SUB-TOTAL (MONETARY PENALTIES)		\$ 3,750.00
BOARD COSTS		\$ 150.00
TOTAL		\$ 3,900.00

In addition, for violation of Count 1, FirstService Residential DC Metro LLC agrees to a sixty (60) day probation of its license as of the effective date of this Consent Order. During the probation, FirstService Residential DC Metro LLC agrees to provide written certification to the Board, in a form acceptable to the Board, that it has (i) performed a review of all contracts, (ii) performed a review of transition protocol with its staff, and (iii) that it will perform a review of all contracts and review of transition protocol with its staff every year thereafter.

If FirstService Residential DC Metro LLC fails to comply with the terms of probation, then its license shall be suspended until compliance is obtained.

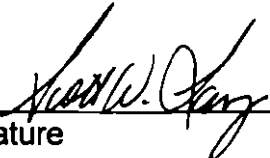
Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this Consent Order unless otherwise specified above. FirstService Residential DC Metro LLC acknowledges any monetary penalty and/or costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, FirstService Residential DC Metro LLC will be responsible for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of any funds due.

FirstService Residential DC Metro LLC further acknowledges that failure to pay any monetary penalty or costs and/or to comply with all terms of this Order within the noted time period may result in further action by the Board.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

The undersigned represents and affirms that he/she has the authority to legally bind FirstService Residential DC Metro LLC, to this Consent Order. The individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that FirstService Residential DC Metro LLC, shall be bound by its terms and conditions.


Signature _____ Date 3/18/19

Scott W. Lang EVP - Finance
Printed Name and Title _____

SO ORDERED:

Entered this 5th day of September, 2019.

Common Interest Community Board

BY: 
Mary Broz-Vaughan, Acting Secretary

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VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
9960 MAYLAND DRIVE, SUITE 400
RICHMOND, VA 23233

REPORT OF FINDINGS

BOARD: *Common Interest Community Board*
DATE: *January 25, 2019*

FILE NUMBER: 2019-00817
RESPONDENT: FirstService Residential DC Metro LLC
LICENSE NUMBER: 0501000085
EXPIRATION: May 31, 2019

SUBMITTED BY: Robert A. Franchok, Jr., Investigator
APPROVED BY: Christine J. Bourcy, Investigations Supervisor

COMMENTS:

None.

FirstService Residential DC Metro LLC ("FirstService") was at all times material to this matter subject to the Board's regulation as an applicant for licensure or a licensed Common Interest Community Manager in Virginia (No. 0501000085).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On September 14, 2018, the Department of Professional and Occupational Regulation ("the Department") received a written complaint from Kathy R. Beaulne ("Beaulne") regarding FirstService. Beaulne is the general manager for Kingstowne Residential Owners Corporation Inc. ("Kingstowne"). (Exh. C-1)

On February 7, 1994, Kingstowne (No. 0550000618) registered as a Common Interest Community ("CIC") Association. (Exh. I-2)

On May 24, 2011, FirstService was issued a CIC Manager License (No. 0501000085) as a Limited Liability Company. (Exh. I-1)

On March 14, 2011 Kingstowne entered into a Financial Management Services Agreement ("Agreement") with Armstrong Management Service Inc. ("Armstrong"). The Agreement commenced on January 1, 2011 and was to continue for a term of 36 months. (Exh. C-2)

The Agreement referenced Armstrong as "The Financial Management Agent." (Exh. C-2)

On June 27, 2013, Armstrong changed its name to FirstService. (Exhs. C-3 and I-1)

On July 1, 2013, an addendum was signed between Kingstowne and FirstService which extended the Agreement until December 31, 2016. (Exh. C-3)

On December 14, 2016 a second addendum was signed between Kingstowne and FirstService which extended the Agreement through December 31, 2019. (Exh. C-4)

On September 15, 2017, Jeanne McCarroll, President of Kingstowne, sent FirstService a notice for termination of the Agreement effective December 31, 2017. The letter stated SFMC Inc. dba Service First Management & Consulting Inc. ("SFMC") (No. 0501000070) was being retained effective January 1, 2018. (Exhs. C-5 and I-3)

On September 20, 2017, FirstService received the termination letter. (Exh. R-2)

1. Board Regulation

18 VAC 48-50-190. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

7. The intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents.

Historical Notes:

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

Print Date: March 1, 2012

FACTS:

VIOLATION ONE:

The Agreement stated, in part:

Pages 9 and 10:

10. Termination:

10.3 As of the date of termination, all sums due to the Financial Management Agent for services properly provide, including all Additional Costs of Services and Compensation as provided for on Exhibit A, shall be paid in full. In the event the Association disputes any of the Financial Management Agents' bills or charges, sufficient funds of the Association shall be deposited in an Escrow Account established in the joint control of the Association and the Financial Management Agent pending the resolution of the dispute. [emphasis added] (Exh. C-2)

Beaulne stated there were no disputes by Kingstowne for any of FirstService's bills or charges. (Exh. I-4)

On November 20, 2017, check number 70314 in the amount of \$20,000.00 was written to FirstService on Kingstowne's Union Bank operating account ("Union Account"). (Exh. C-6)

On December 1, 2017, \$20,000.00 was debited from the Union Account via check number 70314. (Exh. C-7)

Beaulne stated that it was later learned that an escrow account had been set up by FirstService with the \$20,000.00 that was withdrawn from the Union Account. Kingstowne did not have access to the funds in the escrow account set up by FirstService. (Exh. I-4)

Alan R. Trachtenberg, ("Trachtenberg"), In-house Counsel and Director of Risk Management for FirstService stated that he does not have an explanation for FirstService withdrawing \$20,000.00 from the Union Account. He was not aware of anything in the Agreement that allowed for the \$20,000.00 payment to FirstService or of any dispute that would have resulted in the establishment of an escrow account pursuant to Section 10.3 of the Agreement. (Exh. I-5)

First Service failed to comply with the terms of the management contract by withdrawing \$20,000.00 from the operating account to unnecessarily set up an escrow account that was not jointly controlled by Kingstowne.

VIOLATION TWO:

The Agreement stated, in part:

Pages 9 and 10:

10. Termination:

10.4 In addition to funds escrowed pursuant to Section 10.3, if any, the Financial Management Agent shall also withhold a reasonable amount of Association funds, not to exceed One Thousand Dollars (\$1,000), to cover transition relation costs, such as but not limited to copying, postage and charges provided for in Exhibits A and B. [emphasis added] (Exh. C-2)

On May 30, 2018, Kingstowne c/o SFMC received from FirstService:

- An invoice dated May 23, 2018 which stated "Close out escrow,"
- A check for \$18,687.36 made payable to Kingstowne, and;
- A spreadsheet listing the expenditures from the escrow account. (Exh. C-8)

The spreadsheet listed the total cost of expenditures as \$1,312.64 and included items such as copies/envelopes/labels/postage and collection fees. (Exh. C-8)

Trachtenberg stated that the amount withheld from the Union Account should have been capped at \$1,000.00 pursuant to the Agreement. An invoice of \$312.64 should have been sent to Kingstowne for payment. (Exh. I-5)

FirstService failed to comply with the terms of the management agreement by withholding funds greater than \$1,000.00 for transition related costs.

VIOLATION THREE:

In addition to the facts above:

The Agreement stated, in part:

Pages 9 and 10:

10. Termination:

10.4... The Financial Management Agent shall, at no cost to the Association, prepare a final detailed accounting of such funds as of the termination date, and such accounting and any remaining funds shall be provided to the Association together with any unclaimed books and records of the Association as soon as practical but in any case no later than sixty (60) days after the termination date. [emphasis added] (Exh. C-2)

The Agreement terminated effective December 31, 2017. (Exh. C-5)

Trachtenberg did not have an explanation why the remaining \$18,687.36 was not returned to Kingstowne within 60 days pursuant to the Agreement. (Exh. I-5)

On March 1, 2018, the Union Account still contained a balance of \$316,464.71. There were still credits and debits occurring on the account. (Exhs. C-9 and C-10)

On April 6, 2018, \$300,000.00 was wired from the Union Account to Kingstowne's new operating account with Mutual of Omaha ("Omaha Account") held with SFMC. (Exhs. C-10, C-11 and C-12)

On April 26, 2018, the Union Account was closed by FirstService with a closing transaction amount of \$15,500.99. (Exh. C-10)

On April 27, 2018, a cashier's check in the amount of \$15,500.99 was made payable to Kingstowne. (Exh. C-13)

In May of 2018, the cashier's check in the amount of \$15,500.99 was received by Kingstowne. (Exh. C-14 and I-4)

Trachtenberg stated he did not understand why FirstService did not wire at least \$300,000.00 to Kingstowne at the end of January of 2018. He did not have an explanation for the length of time in excess of 60 days it took FirstService to return over \$300,000.00 to Kingstowne and close the Union Account. He acknowledged the transition team took its time and did not adhere to the Agreement. (Exh. I-5)

FirstService failed to abide by the management agreement by failing to return remaining funds to Kingstowne within 60 days of the termination date.

VIOLATION FOUR:

The Agreement stated, in part:

Pages 9 and 10:

10. Termination:

10.4...The Financial Management Agent shall, at no cost to the Association, prepare a final detailed accounting of such funds as of the termination date, and such accounting and any remaining funds shall be provided to the Association together with any unclaimed books and records of the Association as soon as practical but in any case no later than sixty (60) days after the termination date. [emphasis added]
(Exh. C-2)

In June 2018, Beaulne received the last accounting record information from FirstService for the accounting of Kingstowne's funds as of December 31, 2017. (Exhs. C-15 and I-4)

Upon review, Beaulne noticed that the bank reconciliations for April 6, 2018 and May 2, 2018, showed different amounts for outstanding deposits as of January 31, 2018. The difference between the April 6, 2018 and May 2, 2018 bank reconciliation totaled \$4,389.03. She asked FirstService to provide an explanation but never received an accounting explanation for the \$4,389.03 from FirstService. (Exhs. C-16, C-17 and I-4)

Trachtenberg stated that as of July 2, 2018, final accounting records had been provided to Kingstowne. He did not have an explanation for why complete accounting information was not provided within 60 days of the termination date. (Exhs. R-1 and I-5)

On December 11, 2018, Trachtenberg provided Investigator Robert A. Franchok, Jr. ("Investigator Franchok"), the Board's agent, FirstService's accounting records for the \$4,389.03 difference in the outstanding deposit lists¹. (Exh. R-3)

Although Trachtenberg provided Investigator Franchok FirstService's accounting records for the \$4,389.03, Beaulne never received accounting records or an explanation for the \$4,389.03. (Exhs. R-3 and I-4)

FirstService failed to comply with the terms of the management agreement by failing to prepare a final detailed accounting of funds within 60 days of the termination date.

VIOLATION FIVE:

The Agreement stated, in part:

Page 3:

3.1 Fiscal Management

(c) Depository Accounts

i. Operating Account. The Financial Management Agent shall deposit within one week of receipt all funds collected from owners and others into

¹ FirstService was able to determine \$3,100.75 in payments had been deposited in December of 2017 and not removed from the outstanding deposit list. There was \$469.53 in balances on settlement checks deposited into the Union Account where a portion of the checks could not be identified. After obtaining information from the settlement companies, it was learned that those amounts should have been applied to other associations and they subsequently were. Finally, there was \$818.75 in payments left as deposits in transit due to the lack of information included with the payments. FirstService was later able to determine which accounts to apply the \$818.75 payments to. (Exh. R-3)

an account (hereinafter the "Operating Account") in a mutually agreed upon bank whose deposits are federally insured....[emphasis added] (Exh. C-2)

On May 9, 2018, Kingstowne received a packet from FirstService which included payments totaling \$6,489.25 from November and December 2017 that had never been deposited into the Union Account. The payments had been included on the December 31, 2017 and January 31, 2018 bank reconciliations as outstanding deposits even though the payments were never deposited. (Exhs. C-7, C-17, C-18 and R-4)

Received or Income Deposit Transmittal Completed	Payment Type	Amount
November 15, 2017	Money Order	\$500.00
November 30, 2017	Money Order	\$250.00
November 30, 2017	Money Orders	\$1,525.00
December 5, 2017	Check	\$1,350.00
December 8, 2017	Money Orders	\$700.00
December 8, 2017	Money Orders	\$850.00
December 11, 2017	Checks	\$102.00
December 13, 2017	Money Orders	\$612.50
December 14, 2017	Check	\$200.00
December 20, 2017	Check	\$300.00
December 20, 2017 (check dated December 31, 2017)	Check	\$99.75
	Total:	\$6,489.25

(Exh. C-18)

Trachtenberg stated that he did not have an explanation as to why the November and December 2017 payments totaling \$6,489.25 were not deposited within seven days of receipt by FirstService. He acknowledged this was clearly a failure of the seven day requirement in the Agreement. Trachtenberg did not understand why the \$6,489.25 showed as outstanding deposits on any of the bank reconciliations if the payments were never deposited. He did not have an explanation as to why it took until May 2018 for the payments to be sent to Kingstowne. (Exh. I-5)

FirstService failed to comply with the terms of the management contract by failing to deposit all funds received within one week of receipt.