

Republic of the Philippines
HUMAN SETTLEMENTS ADJUDICATION COMMISSION
REGIONAL ADJUDICATION BRANCH IV-A
Units 207-208, 2nd Floor Dencris Business Center, National
Highway, Halang, Calamba City, Laguna

GENERAL JUFEL C.
ADRIATICO, PNP (Ret),
Complainant,

- versus -

HOA
HSAC Case No. RIVA-REM-
220701-00284

JOSE RONALD VALLES,
ET. AL.,
Respondents.

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D E C I S I O N

This case involves violation of the Magna Carta of Homeowners and Homeowners Associations¹ particularly the amendment of the HOA By-Laws²; right to inspect³; the repeated violations of any provision of the HOA By-Laws or existing rules and regulations of the association, and exhibiting conduct detrimental to the HOA⁴ and the creation of a management committee⁵ prior to the holding of a special election in case of expulsion of the respondents, filed by complainant General Jufel C. Adriatico, PNP (Ret), on 01 July 2022, against respondents Jose Ronald Valles, Joyce Felisa Dapat, Barbara Ann De Jesus, Ma. Regina Soliongco, Camille montano, Allen Diaz, Lester Sinlao, Alex Aaron Rios, Ismael Cervantes and John Erwin Laviles.

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¹ Republic Act No. 9904.

² Section 23 of the Implementing Rules and Regulations of R.A. No 9904.

³ Id., Section 13 (b) in relation to Section 99 (c).

⁴ Section 6, Article II (Expulsion from the Association) of the FEHAI By-Laws.

⁵ Section 59, Rule 16 of the HSAC Rules of Procedure.

Complainant is of legal age, married and a resident of 78 Eastville Ave. corner Moscow Ave., Filinvest Eastville, Bgy. San Isidro, Cainta, Rizal and a member in good standing of Filinvest Eastville Homeowners Association, Inc. (FEHAI).

On the other hand, respondents are members of the Board of Directors of FEHAI with address located at FEHAI Admin Office, Eastville Avenue, Filinvest Eastville, Bgy. San Isidro, Cainta, Rizal.

Complainant's Allegation:

The complainant alleges that the respondents violated the Magna Carta of Homeowners and Homeowners Association and its Implementing Rules and Regulations (IRR), their HOA By-Laws, which are briefly summarized under the following:

- a) "the respondents, being members of the Board of Directors of FEHAI allowed the ratification of the proposed amendment of the FEHAI By-Laws in violation of Section 23 of the IRR of the Magna Carta, which did not meet the required majority votes of all members of the HOA, as shown in the Elecom's Certificate⁶;
- b) the continuing refusal of the respondents to provide the records of the 24 June 2017 election for the Board of Directors to the complainant despite a formal request;
- c) the respondents repeatedly in continuing fashion violated Section 5, Article VII of their By-Laws by allowing proxies in all elections they have conducted in relation to Section 1 Article IV of the same By-Laws which calls for their expulsion as members of the HOA;
- d) the overstaying of the respondents in their respective posts and been in a hold over capacity since 11 November 2018;

⁶ Annex "B" of the Complaint.

After due hearing, the complainant is seeking that the respondents be sanctioned under the laws and be expelled as members of the HOA and in case of the respondents' expulsion, an interim management committee be created prior to the holding of a special election to elect the new members of the FEHAI Board of Directors.

On 04 July 2022, Summons and Notice of Mediation Conference was sent to the respondent and setting the Mediation Conference on 04 August 2022.

On 29 July 2022, the respondents, by counsel, filed their Verified Answer.

On 30 August 2022, considering the failure of the Mediation Conference, a Notice of Mandatory Conference was issued setting the Mandatory Conference to 13 September 2022.

On 09 January 2023, the respondents, by counsel, filed a Motion To Terminate Mandatory Conference, which an Order⁷ was issued "directing the complainant to correct the defect in the verification of his complaint pursuant to Section 22 (a) in relation to Section 20 (e) of the rules of Procedure within 5 days from notice. Failure to make the necessary correction shall cause the dismissal of the complaint".

On 02 May 2023, the complainant filed a Manifestation praying "that the jurat in his complaint be deleted and the Verification/Certification appended on the last page be adopted as sufficient compliance of the Order dated 11 April 2023".

On 05 May 2023, an Order was issued granting the Manifestation of the complainant and adopted the Verification / Certification appended on the last page of the Complaint as sufficient compliance of Section 22 (a) in

⁷ Dated 11 April 2023.

(Signature)

relation to Section 20 (e) of the Rules of Procedure and directed the parties to submit their respective Position Papers and Draft Decision within 15-calendar days from notice. After which, this case is submitted for resolution.

The complainant and respondents submitted their respective Position Papers and Draft Decisions on 29 May 2023 and 30 May 2023, respectively.

Respondents' claim:

The respondents denied the material allegations of the complainant and claimed that the complainant mistakenly applied Section 23 of the IRR of the Magna Carta, for it was not applicable at the time the FEHAI By-Laws was ratified by the general membership via remote communication. The governing law was DHSUD Circular No. 2020-003, as further amended by DHSUD Circular No. 2021-01 on the basis of quorum in all meetings and referenda using remote communication for all existing homeowners association. Respondents further allege that they did not misapply the provisions of Sections 11 and 12 of DHSUD Circular No. 2020-003 for that only members in good standing who notified or informed the Association Secretary of their intention to participate in the meeting by means of remote communication, in person or proxy, were allowed to participate and vote on issues during the said meeting.

Per Election certificate, the basis of the quorum during the special election assembly, is total membership. A quorum was declared because the required quorum is only 188 members or 50% plus 1 out of 375 total membership. The total registered members during the zoom meeting was 272 or more than the required quorum of 188. There being a quorum based on total membership, the meeting proceeded and the members cast their votes and the agenda matter presented including the ratification of the proposed amendment of the by-laws.

On the required affirmative votes to ratify the proposed by-laws, it must be pointed out that FEHAI was incorporated in 1998 and its by-laws was



approved by the Home Insurance and Guaranty Corporation and has not been re-registered under Republic Act No. 9904 nor issued a certificate of incorporation as provided under Sections 32 and 33 of IRR of the Magna Carta, that the proposed amendments to the by-laws has not been approved by the Regional Director of Region IV-A, hence what is applicable is the existing FEHAI by-laws. The respondents are aware that the 30% quorum requirement as stated in Section 5, Article VII of the by-laws is contrary to law. Hence, the 30% quorum was not adopted for purposes of quorum during the special general assembly of the members on December 18, 2021, but rather, the required 50% plus 1 was adopted as basis of quorum on total membership.

As to the number of the affirmative votes required to ratify the proposed by-laws, it was ratified by the members representing a majority of the members present in a quorum as provided in Section 2, Article IX of the existing FEHAI by-laws and not by 30%.

In this connection, the second portion of Section 5 of the FEHAI by-laws and quorum provides 50% affirmative votes to approve all matters brought before the meeting. At any rate, respondents relied in good faith in their interpretation of quorum based on existing by-laws of FEHAI. Complainant has not shown any damage from the approval of the proposed amendments to FEHAI by-laws which is still pending approval with the DHSUD.

Complainant failed to allege with particularity how respondents repeated committed violations of FEHAI by-laws. Complainant merely cited the rule on proxy without establishing any factual incidents how the rule on proxy was violated. Complainant also failed to establish in what manner the respondents' acts in repeatedly calling for an election is detrimental to the HOA. At any rate, the issue on proxy and election of the members of the Board of Directors are properly raised in an election protest which should be filed within 20 days from the date of the election being questioned in accordance with the Rules of Procedure.



Complainant admitted that the elections were held on June 2015, June 2017, January 2018, December 2019, November 2020, February 2021 and March 2022. The complainant filed this complaint only on July 1, 2022 way beyond the period to file an election contest.

Simply put, any election-related action raised in the Complaint has *already prescribed*.

Respondents specifically deny that they are over-staying members of the Board of Directors of FEHAI but the proper correct term are "hold-over" members of the Board of Directors.

Respondents specifically deny the allegation that there was a violation of the right of the complainant to inspect the books of the association under Section 13 (b) of the Revised IRR of R.A. 9904. What is being requested are elections reports for the election held on June 24, 2017 or more than 3 years ago and not the inspection of books and records. The association only maintains records only for 3 years except for books of accounts and financial records. Even the DHSUD cannot produce the said documents filed more than 3 years ago. Be that as it may, the right to inspect books is not absolute. It must be done in good faith and for legitimate purposes. Complainant has not shown any legitimate purpose in inspecting election report for the conduct of 2017 election whose term of office expired in 2019.

Respondents further allege that the instant action is in the nature of derivative suit. The allegations in the complaint and the prayer shows that the suit is not being brought to recover a personal claim of the complainant. But rather the suit pertains to the acts of the Board of Directors in approving and submitting the proposed amendments of the by-laws as well as the conduct of the referendum where the association itself should be a party and thus a derivative suit.



Complainant's cause of action is premature because the proposed FEHAI by-laws has not been approved by the Regional Director nor a Certificate of Amendment was issued approving the by-laws.

The respondents also filed a Compulsory Counterclaim in order to dissuade other parties in filing unwarranted vexatious and clearly unfounded suit and for moral damages. It also prayed for the conduct of a supervised election under the control and supervision of the DHSUD, HOA-CDD at the expense of the complainant.

After the parties filed their respective Position Papers and Draft Decision, this instant case is now submitted for decision.

Now, for adjudication by this Office are the following issues:

- I. ***"Whether or not there is a need to implead FEHAI as a party respondent?"***
- II. ***Whether the respondents are liable for violation of their powers and duties as officers and members of the Board of Directors of their HOA under their By-laws, R.A. No. 9904 and its implementing rules and regulations".***

This Office finds that the instant complaint has merit.

**There is no need to implead FEHAI
as a party respondent.**

A derivative suit is a remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority. Under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees. However, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights. In such actions, the corporation is the real party in interest, while the stockholder

suing on behalf of the corporation is only a nominal party. Considering its purpose, **a derivative suit, therefore, would necessarily touch upon the internal affairs of a corporation.** It is for this reason that a derivative suit is among the cases covered by the Interim Rules of Procedure Governing Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001.⁸

As compared with, direct claims are those seeking redress to the *individual directly*, which include the stockholder being unable to vote on a *particular corporate action* or the denial of his right to inspect the corporate books.

There is no need to implead FEHAI as party respondent in this case, considering that whatever be the result of the decision in this case, FEHAI will not be directly affected.

The quorum required in all HOA meetings or elections must be in accordance with law.

The provisions of the IRR is very clear that an Articles of Incorporation and/or Bylaws of the association may be amended by the majority vote of all members of the Board, and majority of all members of the association regardless of standing, at a regular or special meeting called for the purpose, or as a result of a referendum after the proposed amendments are discussed in a regular or special meeting of the association members.⁹

In the assailed referendum, the total number of votes casted was only 122 out of the 375 total number of homeowners. The Majority votes would be 50% plus one of the total number of homeowners which is 188. The total casted votes of 122 is far below the needed majority votes of 188.

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⁸ Metrobank vs. Salazar Realty Corporation, Et Al., G. R. No. 218738, 09 March 2022.

⁹ Section 23 of the IRR of RA No. 9904.

The allegations of the respondents that they relied in good faith in their interpretation of a quorum cannot be taken into consideration. One of the respondents is lawyer who is presumed to be knowledgeable of the law.

Thus, the actions ratified by the general membership of FEHAI is considered null and void. However, since there was no evidence adduced by the complainant that the construction of the pool gazebo was tainted with corruption, the same is considered deemed regular.

Denial of the complainant's
statutory right to inspect HOA
records.

A HOA member has the right "inspect association books and records during office hours and to be provided, upon request, with a copy of annual reports, including financial statements, at the member's own expense"¹⁰. The same IRR prohibits any person or association to "prevent any homeowner who has paid the required fees and charges from reasonably exercising the right to inspect association books and records".¹¹ The claim of the respondents that the HOA only maintains records only for 3 years except for books of accounts and financial records is contrary to the Letter¹² of the FEHAI Board of Directors through its President, respondent Valles.

In the said Letter, the FEHAI Board of Directors, composed of the respondents, admitted that "the documents you seek were already sealed and only the Department of Human Settlements and Urban development (DHSUD) can order us to open it. The documents are available at DHSUD and you can secure copies of the requested documents from their office."

The contradicting statements of the respondents are despotic display of powers in utter violation of Section 99 (c) of the IRR. The said Letter being couched in plural form with the imprimatur of the respondents who are

¹⁰ Section 1.3 (b) of the IRR of RA No. 9304.

¹¹ Id. At Section 99 (c).

¹² Letter addressed to Mr. Jufel C. Adriatico dated April 23, 2022 and marked as Annex "D" of the complaint.

FEHAI Board members clearly shows the denial to the complainant of his right, as a HOA member, to inspect and have access to HOA records. If indeed the respondents wanted the complainant to pay the required fees, the respondents should had stated in their Letter. The existence and veracity of the said Letter was never impugned or denied by the respondents.

The denial of the right to inspect is sanctioned under the IRR either by *fine or disqualification from being elected or appointed as member of the Board, officer or employee of the HOA.*¹³

Complainant failed to show evidence of repeated violations by the respondents of the provisions of the FEHAI By-laws and the related laws.

Aside from his allegations, the complainant failed to substantiate his claim of repeated violations by the respondents of the provisions of the FEHAI By-Laws and related laws that would warrant their expulsion from the HOA as members.

The complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation cannot be given credence.¹⁴ In this case, there is no sufficient, clear and convincing evidence to hold the respondents to have been repeatedly violated the FEHAI By-laws and other related laws. Though, the respondents violated the right of the complainant to inspect the HOA records, it cannot be considered as a repeated violations for the provisions of the By-laws speaks of habituality or recidivism when it made reference to the word "repeatedly".

There is no ground for the creation of a management committee.

¹³ Section 103 of the IRR of RA No. 9904.

¹⁴ Cabas vs. Atty. Sususco, Et Al., 787 Phil 167 (2016).

No petition for the creation of the management committee shall be granted unless it is established that no other adequate remedy is available and the same is necessary: (a) To avert dissipation, loss, wastage, or destruction of assets or other properties of the association; (b) To prevent paralyzation of operations which may be prejudicial to the interest of the members and the general public; or (c) When the election of the incumbent board members or officers has been declared null and void and majority of the members of the previous board who shall in the meantime hold over is composed of those whose election was declared null and void.¹⁵

Considering the non-expulsion of the respondents, there is no need for the creation of a management committee to handle and manage the affairs of FEHAI.

Since, the parties have an identical clamor and desire for the holding of an election for the members of the Board of Directors of FEHAI, it is but necessary to direct the Department of Human Settlements and Urban Development Region IV-A, Homeowners Association and Community Development Division (DHSUD IV-A, HOA-CDD) to call, conduct and supervise the election of the herein parties' HOA Board of Directors.

All told, this Office finds basis to hold the respondent administratively liable.¹⁶

WHEREFORE, premised on the foregoing considerations, judgment is hereby rendered as follows:

1. **DECLARING** the respondents to have violated the right of the complainant to inspect the HOA records as provided for in R.A. 9904 and its implementing rules and regulations, and hereby **METED a penalty of disqualification from being elected or appointed as member of the board of directors, officer or**

¹⁵ Section 60, HSAC Rules of Procedure.

¹⁶ Section 103 of the IRR of RA No. 9904, providing sanctions and penalties for its violations.



employee of Filinvest Eastville Homeowners Association, and pay the amount of Ten Thousand Pesos (P 10,000.00) each, as administrative fine; and,

2. **DIRECTING** the Department of Human Settlements and Urban Development Region IV-A, Homeowners Association and Community Development Division (DHSUD IV-A, HOA-CDD) to call, conduct and supervise the election of the herein parties' HOA Board of Directors immediately upon finality of this Decision, which has the power and function to "conduct pre-election conference, creation and defining the powers of Election Committee, formulation of election rules and guidelines, setting of the dates of filing of certificate of candidacy, campaign period and the election, and preparation of the list of members qualified to vote. Expenses and honoraria of the DHSUD IV-A, HOA-CDD representatives for the conduct of the election are chargeable from the funds of the HOA.

The respondents' counterclaim is hereby DISMISSED.

No pronouncement as to costs.

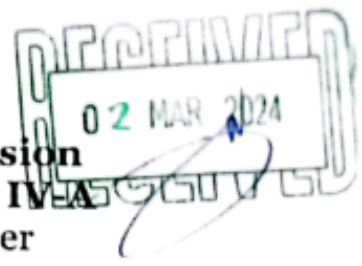
Furnish the DHSUD IV-A, HOA-CDD copy of this Decision.

SO ORDERED.

Calamba City, Laguna, 27 February 2024.


HAROLD NAPOLEON W. ALCANTARA
Chief Regional Adjudicator

Republic of the Philippines
Human Settlements Adjudication Commission
REGIONAL ADJUDICATION BRANCH NO. IV
Units 207- 208, 2nd Flr. Dencris Business Center
National Highway, Brgy. Halang, Calamba City, Laguna 4027



GENERAL JUFEL C. ADRIATICO,
PNP (Ret),
Complainant,

- versus -

**HSAC Case No. RIVA-REM-^{HOA}
220701-00284**

JOSE RONALD VALLES, ET. AL.,
Respondents.

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NOTICE OF DECISION

Sirs/Mesdames:

Please take notice that on 27 February 2024, a DECISION was issued in the above-entitled case, a copy of which is attached hereof, and the original is on file.

You are hereby required to inform this Office, within five (5) days from receipt of this notice.

No Motion for Reconsideration is allowed. Thus, pursuant to Section 109, Rule 24 of the Rules of Procedure of the HSAC, an appeal may be taken from the decision of the Regional Adjudicator on any legal ground and upon payment of the appeal fee, by filing with the Regional Adjudication Branch a verified Appeal Memorandum in three (3) copies within fifteen (15) calendar days from receipt of the assailed decision.

In case of money judgment, an appeal bond in cash or manager's check posted with the Commission or surety bond equivalent to the amount of the award and actual damages, excluding interests, other damages and attorney's fees is also required.¹

Issued this 28th day of February 2024 at Calamba City, Laguna.


ANDREA NICOLE C. CAING
Housing & Homesite Regulations Officer II

¹ Section 110 (i), Rule 24, HSAC Rules of Procedure