

DAILY BUSINESS REVIEW

PROFILES IN LAW

Donna DiMaggio Berger Tells of Odd Issues She Encounters as Condo Association Attorney

by Lidia Dinkova

Maybe it was a sign, or maybe it was just a coincidence, but just three months before Donna DiMaggio Berger embarked on her career as a community association attorney, she went through her own community association experience.

Berger and her husband, Michael Berger, wanted to move into an Aventura townhouse community in the early 1990s and met with the board president.

“The president looked at us and said, ‘Listen, if I like you, you are in. If I don’t, you are not,’ “ Berger recalled, now laughing at the absurdity of the situation. “I can tell you years later that that is not appropriate protocol for screening someone. That is not the way you screen



ANDREA LUGO

“After doing this for 25 years now, you think you’ve heard everything,” Donna DiMaggio Berger said. “And then you go into a new client interview, and someone brings up the case of the poisoned dog biscuits.”

DONNA DIMAGGIO BERGER

Born: 1967, Chicago

Children: Ryan, Lauren

Spouse: Michael Berger

Education: University of Miami, J.D., 1989, B.A., 1986

Experience: Becker, 2014-present; Katzman Garfinkel & Berger, 2007-2014; Becker & Poliakoff, 1992-2007

new purchasers in your community. It’s not a popularity contest. At the time, we were basically kids and didn’t know any better. So we were looking at each other thinking, ‘I hope he likes us.’ “

That wasn’t the last of the unusual experiences with their new association. After moving in, residents were assessed \$1,000 —

a hefty sum for two recent law grads — to replace skylights in the units, but no work was done. Instead, she said the condo board president, the same one who interviewed them, left with the assessments.

As for the Bergers’ skylight?

“Not only did the skylights leak, they fell in,” Berger said.

Three months later, Becker & Poliakoff reached out asking if she would work in community association law.

“It was quite a confluence of events,” she said.

Now, Berger is a shareholder in the firm’s Fort Lauderdale office and still focusing on community association law.

CLOSER RELATIONSHIP

In the early 1990s when she first met with the firm’s co-founder, the late Gary Poliakoff, she recalls him telling her, “I’m sure you are familiar with the condo act law.”

“Oh, sure. I’ll just read the statute. How hard can it be?” she remembers thinking at the time.

Association law is vastly covered in state laws — Chapter 718 for condominiums, Chapter 719 for cooperatives and Chapter 720 for homeowner associations — but in practice, this legal field is quite vast.

“I learned over the years and in the trenches that this area of law representing community associations involves so many other areas of law,” she said. “When you are actually representing these communities, which are all very, very different and spread throughout the state, you are dealing with property law, you are dealing with employment law, you are dealing with landlord-tenant issues, you are dealing with fair housing issues, particularly now with the service animal and the emotional support animals. You are dealing with communications issues in terms of the cable and the wiring in these communities. You are dealing with construction defects and design issues, land use and zoning, particularly when new buildings go up next door.”

If litigation and other matters outside her expertise arise, she gets other Becker & Poliakoff attorneys involved, she added.

And community association law is unlike other areas of practice, Berger said.

“It really runs the gamut. It’s a very layered representation,” she said.

In many attorney-client relationships, attorneys represent their clients during a legal battle or transaction. But once that’s done, everyone goes their separate ways. Berger works with her community association clients on an ongoing basis.

“It’s a closer relationship than most attorneys have with their clients because ... you are dealing with volunteer board members who have come to rely on you on a lot of different input on a lot of different decisions to the community, whether it’s creating the budget, whether it’s hiring or firing personnel,” Berger said.

Being an association attorney sometimes is likened to being a municipal attorney. Not only are they there for the long run, they are there to provide neutral legal guidance free from political pressures that might come from board members. But a condo or homeowner association board could change its attorney once a new board with a new agenda is elected.

“Somebody I had to send a demand letter to subsequently became president of the board. You would think that you might get terminated, but if you handled yourself and provided the correct legal advice to that board ... even the people you had to at times be adverse to in the community, if they see that, they are going to say, ‘I still want that legal representation for the community,’ “ she said.

ODD PROPERTY USES

The legal issues Berger has worked on or been contacted about show the colorful gamut of issues that community association law spans.

She represented an association about five years ago when pornography was being filmed in a unit and on the balcony of a Miami high-rise. In another case, a high-rise condo unit was being used as a modeling agency. And she has represented associations in issues involving celebrity residents.

Her goal in these and other cases is to resolve issues before they escalate to litigation.

“With the porn case, that’s a violation. They were told they can’t do that anymore. They stopped doing it, and ultimately that entity sold the property,” Berger said.

The modeling agency came to a similar end. Attorneys showed the unit owner that the association governing documents prohibited the use, and the owner stopped, Berger said.

“Remember, it’s a living-together relationship,” she said.

More recently, she was contacted by Fort Lauderdale condo residents who reported a former condo board member planted poisoned dog biscuits after a new condo board allowed dogs, Berger said. She met with the parties and said a police investigation is underway.

“After doing this for 25 years now, you think you’ve heard everything,” Berger said. “And then you go into a new client interview, and someone brings up the case of the poisoned dog biscuits.”

Lidia Dinkova covers South Florida real estate for the Daily Business Review. Contact her at LDinkova@alm.com or 305-347-6665. On Twitter @LidiaDinkova.