

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO
Court Address: 7325 South Potomac Street
Centennial, Colorado 80112

PLAINTIFF (s) JAMES W. BURNESON Pro Se

V

DEFENDANT(s)

**DAM EAST HOMEOWNERS' ASSOCIATION A NON PROFIT
CORPORATION BOARD OF DIRECTORS: President Jake Hummel Esq.,
Kelsey Quigg Director, Julie Geyer Vic President, Cathleen Speidel
Treasurer, and Heather Swigert Director, Fritz Herman Chairman ACC.
Tom Ruzicka Co-Chairman ACC**

**Registered Agent's Office
Earl Johnson Manager
Western States Properties Services Inc.
10020 W. Girard Ave.
Denver, Co 80231**

**Cherry Creek HOA Professionals, LLC
David & Denise Kinney
14901 E. Hampden Ave., #230
Aurora, CO 80014
303-693-2118
303-693-8803 Fax**

Attorneys: James W. Burneson Pro Se
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Aurora, CO 80014
Phone Number: 303-750-1500

^ COURT USE ONLY ^

Case Number: 07CV1609

Div 408 Ctm: ____

COMPLAINT

COMES NOW Plaintiff James W. Burneson Pro Se requests "Claim of Relief" by the Court granting an Order for the Board of Directors of "The Dam East Homeowner Association" to open for inspection the Association Books and Papers as the Colorado State Legislature intended by their passing **CCIOA 38-33.3-317. Association records.** See Exhibit **1**.

And the Dam East Homeowner Association Bylaws. See Exhibit 2

A 5 day notice will be posted on the date this Complaint is granted. The Plaintiff's Claim of Relief by the fact this Board and previous boards have wrongfully denied Plaintiff his right to inspect the Books and Papers as stated in the Association's Bylaws and the CCIOA 38-33-307, 38-33.3-319 which supersedes all other laws of the State. This authority is stated See **Exhibit 3 attached 38-33.3-319**

1. Fact: Plaintiff requested by a "NOTICE OF INTENT INSPECT ASSOCIATION RECORDS" DATED JULY 11, 2007 WITH THE RECORDS BEING MADE AVAILABLE 5 DAYS LATER ON JULY 16TH 2007. See **Exhibit 4** attached Copy of the written request. This request was denied by the written signatures of 4 directors named Judy Geyer Vice President, Heather Swigert Treasurer, Cathleen Speidel Secretary and President Jake Hummel Esq.

The reason given for the denial was an invalid statute as follows, quote: "Denied for same reason as previous, your request is not consistent with the standards established by 7-136-102 C.R.S." See Exhibit 2 A

Problem with this denial is statute quoted is invalid. This Statute when in conflict with any part of the CCIOA 38-33.3-319 is cause to supersede this statute and thus not valid.

See Exhibit 3. CCIOA 38-3303-319

2. Fact: Plaintiff has reviewed the Association's Books and Papers in the past but the records were incomplete with certain records intentionally removed to prevent a complete inspection. This is especially true with respect to invoices and contracts between the association and Mr. Jeffrey Lane of Patterson, Nuss & Seymour, P.C. Once an inspection is performed by a member it does not in itself-limit a second, third or fourth inspection. This re-inspection is especially true when missing records are returned to the Books and Papers after a member inspects the books.

3. Fact: The Books and Papers are to be maintained at the office of registration for the Dam East Homeowners Association. According to the Secretary of State the Office of Western States Property Management Company is the office of registration for the Dam East Homeowners Association and the agent is Earl Johnson from 2000 to the present. Property manager Mr. Earl Johnson and Board of Directors has refused Mr. Burneson's inspection after 5 day notice and a list of the records to be inspected was provided. See letters of request from years 2000 to the present. Exhibit 4

5. C.R.S. 7-136-101,102,103,104, and 106. Has been used in the past by Defense Counsel and Board of Directors as a deliberate effort to hide and defeat Plaintiff's legitimate request to inspect all of the records. As the CCIOA 38-33.3-319 states where there is a conflict between the CCIOA statute and C.R.S. 7-136 the CCIOA will prevail. There is no conflict between CCIOA and C.R.S. 7-136-104 which states the following: "If a nonprofit corporation refuses to allow a member, or the member's agent or attorney, who complies with section (7-136-102 (1) This entire section of the statute is in conflict with CCIOA's statute on inspection of books and is now no longer valid in this case to inspect

or copy any records that the member is entitled to inspect or copy by said (as specified by CCIOA 38-33.3-319 See exhibit 3-) sections, the district court of the county in this state where the nonprofit corporation's principals office is located on application by the member. **Summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense. (2) If a nonprofit corporation refuses to allow a member, or member's agent or attorney, who complies with section 7-136-102 (2) and (3) (Is superseded by CCIOA records. and DAM EAST HOMEOWNER ASSOCIATION Bylaws. See Exhibit 2.) to inspect or copy any record that the member is entitled to inspect or copy pursuant to section 7-136-102 (2) and (3) (superseded by 38-33.3-317) within a reasonable time following the member's demand, the district court of the county in this state where the Nonprofit corporation's principal office is located or, if the nonprofit corporation has no registered office, the district court for the city and county of Denver may on application of the member, summarily order the inspection or copying of the records demanded."**

6. The Board on purpose has continually refused the records to from years 2000 to 2003 have passed. In a recent litigation involving this HOA in Magistrates Petrie Court Aurora, County all records by years 2000 thru to 2006 was provided. Boxes listing these years were provided but a major number of files were intentionally missing. **See attached exhibit marked 3** This document describes Mr. Earl Johnson and Lawyer Rich Johnston replacing HOA files they removed after the Defendant was allowed 6 days to inspect the Court Ordered Books and Papers. At least 1/3 of the files and documents were missing from the HOA files later efforts were made to replace the file. . .

7. Time needed for the inspection is two weeks overlapping each year of records by two weeks. This projected time will be extended if files are found missing. An audit will be part of the inspection of the books to determine if the reports of a CPA audit is correct or been a method of cooking the books.

8. All files must be made available so any missing files can be identified. If a contract for an agent's service is missing it must be established if there ever was a contract in the first place. Claims by past boards that contracts existed but now are lost when the contract never existed. Minutes of Board meetings have been falsely prepared by President Jake Hummel in an effort to cover the failure of the HOA of hiring of Mr. Jeffrey Lane as counsel. All minutes must be verified as being true and not created for the moment by this Board of Directors as a cover up.

9. In all rules cited herein from CCIOA 38-33.3-101 and the HOA Bylaws the intent is expressed that the Board of Directors must maintain **accurate books** for the membership to review. If files are missing and they are crucial to the member's review then a true inspection has not be granted by the Board of Directors. The review as Ordered by this Court in effect has not been granted as required by the law until the missing records are found and returned to the Association Records.

If files are claimed lost and cannot be found then the Board of Directors has failed in their fiduciary duties as officers of the HOA to maintain accurate records. The Court with proper proof the records are not accurate must find the individual directors, property

manager, and attorneys of the HOA in Contempt of Court and a penalty of fines and jail must be considered. Otherwise files or evidence needed in Plaintiff's Complaint with the District Attorney can easily be defeated by losing critical files. This has been the history of over 10 years of inspection of the files of this HOA under the guidance and controls of Mr. Timothy Moeller Esq. Mr. Rich Johnston Esq. and Mr. Jeffery Lane Esq. and Jake Hummel current President, all officers of the court.

Mr. Jeffrey Lane through Mr. Hummel President is the sole manager and leader in the management of this HOA. He has been rewarded for this leadership by receiving over \$80,000 from the HOA without authorization of the Board of Directors.

10 At a recent Special Meeting of the HOA to consider an increase in assessments claims were made by the Directors that a short fall in annual funds was not due to excessive legal fees. This claim is fraud on the membership and an inspection of the books was refused by the directors to hide this fact of legal fees being the major cause of an increase in assessments. Without the books the Board of Directors claims could not be refuted and the increase was approved by the membership. This was fraud on the membership.

11. Perjury is not enforced in Colorado Civil Courts. Plaintiff requests the Court to explain how this litigation will be held in truth and not suborn perjury where the defense witnesses are coached on how to commit perjury in their testimony. All past litigation with Rich Johnston attorney and Jeffrey Lane attorney in their court transcripts the Board of Directors and property managers all lied on the stand under oath. I have the transcripts and have some of them published on the Internet at www.court-house.com.

The actions of the Board of Directors and namely the Presidents Mr. Greg Silva and Mr. Jake Hummel to deny Mr. Burneson's multiple requests to review the books defeated any statute of limitations since discovery could not occur until the books are provided. Mr. Burneson was granted the right to review the books in 2003 but most of the important files were removed by Mr. Jeffrey Lane and President Silva. Mr. Jake Hummel and Rich Johnston along with Earl Johnson refused Mr. Burneson's request to review the books and when given a court order to provide the books for review by Jackie Aymani in court case Number BO 3 C 8084 C-2 only part of the records were provided. It is a matter of record that both Mr. Earl Johnson and Mr. Rich Johnston were caught stuffing the HOA files as explained in **Exhibit 5**

Magistrate Petrie's court files withheld by them to deny the review... Go to website www.court-house.com Chapter 10 for a complete review.

All actions by the Board of Directors must be by motion and vote at a duly held public board meeting with a quorum and the minutes must record the votes that passed and approved the action. Without this board approval nothing acted upon by a single director has any authority and is to be considered outside of the corporate authority.

12. Additional HOA records to be reviewed.

A. ACC committee meeting minutes 2000 to the present. B. Transfer Certificates charged HOA members by Western States Property Services Inc. 2000 to the present.

C. All IRS tax returns filed from 2000 to the present and these returns must have copies of all 1099 and W2. In the event these copies are not available then the current HOA Treasurer will file with IRS requesting copies be made and mailed to Mr. Burneson's attention by Court Order

D. There are 164 records listed with the Clerk and Recorders of 18th Arapahoe County Court in Littleton and Aurora and 18th Arapahoe District Court from 1997 to the present. No record of any of these litigations has been listed in the HOA books. Attorneys in this town had to be involved in these litigations and they have copies of these records. The failure of this HOA to keep accurate books is further evidence the Board of Directors failed to perform their fiduciary to the membership as required by Statutes and CCIOA.

E. All bank records of checks, check registries, deposits from 2000 to the present are to be provided.

F. Judge Stuart and Judge Hickman's Orders both have been violated by all Lawyers and Board of Directors in this case. **Exhibit 6.** Most of the violation by this Board of Directors are due to their not following these two Orders by 18th District Judges such as approving all actions of the association by a motion and vote of the board at a public meeting with a quorum and the recording of all motions in the minutes of the minutes of the meeting. Legal fees, lawsuits, fines, commingling of legal fees with assessments are all illegal actions if not passed by a motion and vote of the board and recorded in the minutes at public meetings. A review of the books will determine how many actions taken by lawyers and maybe one director without the proper approval by the board. This is part of the "claim of relief" demanded by this complaint.

WHEREFORE Plaintiff requests the Court to Order the Dam East Homeowners Association to allow Plaintiff his right to the inspection of the Association books and papers as requested in writing per the RULING STATUTE CCIOA **38-33.3-317. Association records.** See Exhibit ___1___

Further Plaintiff requests the Court to Order reimbursement of Plaintiff's cost in getting copies of all records refused by the Board of Directors and Counsel for the Defense. Plaintiff needs to complete inspection of all the records of the Association from 2000 to the present. In the event records are found missing by this inspection a list will be presented to the court requesting an extension of time for the inspection until all records are completed by this Board of Directors.

In the event files are lost and can't be replaced the Court is requested to impose a fine of \$1,000 per each file lost to be paid by the individual Board of Directors responsible for maintaining accurate books during their term in office.

The court is asked to order the Board of Directors to make arrangements with a paralegal to review the list of 162 recorded cases at the three Court of Records of 18th County courts of Aurora, Littleton, and 18th District of Arapahoe County. Upon determining where these records are stored in lawyer's offices they are to be requested returned to this HOA for storage in the books and papers of the Association.

The Court is requested that Plaintiff will inspect the records in the HOA Clubhouse basement office at the Dam East Homeowner Association subdivision. The Plaintiff has been assaulted twice by Mr. Earl Johnson in his office all with the permission of the Board of Directors especially President Jake Hummel. Mr. Johnson Ordered Mr. Burneson never allowed in his office again. A change of property managers has occurred and Cherry Creek HOA Professionals, LLC are now under contract to provide services to the HOA. Western States Property Services Inc. has been the property manager since 2000 to August 6, 2007... There are many files in the position of this property manager which has not been transferred to Cherry Creek HOA Professionals, LLC.

With the Court's Orders as request by Plaintiff James W. Burneson Pro Se this will be the first time in over 15 years that the Books and Records have been opened for the membership review. During this 15 years the lawyers, property managers and Board of Directors in total conspiracy have willfully and wantonly denied all requests to open the books of this HOA. The purpose of this denial by those named was to hide their fraudulent actions and thief of HOA funds without approval by the Board of Directors. It is for this purpose the Plaintiff Burneson requires an honest review of the books and papers to further his charges files with the District Attorney of Arapahoe County.

During the inspection it may become necessary for the Court upon Plaintiff's Affidavit Request for a Preliminary Injunction Rule 65 to allow a 7-128-109 Removal of Directors by Judicial Proceedings. This portion of the nonprofit corporation statue is not in conflict with CCIOA.

FUTHER THE AFFAINT SAYETH NOT.

Respectfully submitted this day ___ August 2007.

By _____
Jim Burneson Pro Se
12641 E. Bates Cir.
Aurora, CO 80014
303-750-1500

State of Colorado

County of Arapahoe

The forgoing instrument was acknowledged before me this _____ day of
December 2002 by James W. Burneson

My commission expires
and official seal

Witness my hand

Notary Public

CERTIFICATE OF DELIVERY

I hereby certify that on the _____ day of August 2007 I placed in the US Postal Service
with adequate postage a true and correct copy of this **Complaint** to the addresses follows:

Jake Hummel Esq. President
Dam East Homeowner Association
12466 E. Amherst Cir
Aurora, CO 80014

By _____
Jim Burneson