

**Chapter 8**  
**Vengeful HOA/COA & Justice Denied**  
**1200 Vine Street**  
**Denver CO 80206**

The purpose of this article is to reveal the systematic takeover of a community by a group of homeowners that will stop at nothing to destroy anyone who interferes with their agenda. It is also the story of a runaway law firm that will pervert the law so as to create lawsuits and line its own pockets at the expense of innocent homeowners. Also of a justice system that ignores the law. This is a story that needs to be told! I need your help.

My Condominium Owners Association (COA), located at 1200 Vine Street, Denver CO, 80206, has refused to accept payment from me for a court judgment against me since I have frequently raised objections to their abuse of power and they are attempting to foreclose. They are represented by the law firm of HindmanSanchez, who has been the COA's law firm from almost day one which was previously known as Orten & Hindman. The current property management firm is Hammersmith Management; which took over from LCM Property Management. I have an attorney and we are fighting it; but recently a Judge, R. Michael Mullins, awarded summary judgment to the COA although there are numerous items in dispute including the validity of the assessment.

I am 62 years old, living on Social Security and have never been late with payment to the COA. My attorney bills are already in the tens of thousands of dollars and with the appeal process are sure to increase even further. My health is beginning to suffer, especially from all the emotional distress. I have decided that I can no longer continue the fight alone. Numerous neighbors, who are trying their best to fight the good fight, are also about to throw in the towel.

The law is being broken and ignored. In recent years, the legislature has passed a couple of bills in an attempt to corral runaway HOA Board of Directors and strengthen the Colorado Common Interest Ownership Act (CCIOA), for example, SB05-100. The courts are not adhering to the contents of these bills nor the CCIOA. Homeowners are being stripped of their contractual rights and due process.

The facts of the matter are as follows:

1. I mailed my check to the 1200 Vine Street Condominium Owners Association (COA) for the full amount of the judgment on August 27, 2005.
2. I: (a) made numerous offers, both written and oral, to write another check and hand deliver it when advised that the COA did not receive my initial check, (b) the COA did not accept these offers, and (c) such actions were not in good faith as required by the Colorado Common Interest Ownership Act (CCIOA).

3. The then COA Board Members have never given sworn statements that they never received my original check. In fact, four (4) of the five (5) affidavits submitted by the Plaintiff totally misrepresented the facts in that (a) COA Board Members Patrick Soran, Michelle Segovia and Kevin Kelley all claimed that it was their understanding that I refused to pay the judgment when in truth I had made numerous offers to write another check (see 2 above) and (b) Ms. Stella Brown claimed that she had never received a check from me from as early as June 2004 yet I presented a signed receipt from Ms. Brown showing that she had received a check from me in 2005 (This is another check and not the one in dispute. It was only mentioned to discredit Ms. Brown's affidavit.).

4. The COA failed to follow its governing documents with respect to the hearing afforded me having: (a) predetermined the outcome prior to the meeting, (b) that two members of the hearing tribunal were neighbors, (c) that one member of the panel has an animus towards me and her participation was challenged, (d) the hearing was not adjourned and the challenge addressed, (e) never afforded me a fair and impartial hearing, and (f) the COA actions were not in good faith.

5. The COA failed to follow its governing documents with respect to procedures with respect to late notices and the timeliness of legal proceedings in that after writing to me and advising the judgment was due January 29, 2006 it: (a) failed to send me a ten (10) day late notice, (b) failed to send me a 30 day late notice, and (c) commenced legal proceedings prior to the 60 day waiting period. Foreclosure proceedings were begun in February 2006 by the action of the then board Elizabeth O'Donnell, Michelle Segovia, and Kevin Kelley. It should be pointed out that our governing documents state that the Board of Directors shall consist of five (5) members; but the actions of these three (3) caused two (2) decent members to resign just prior to commencing the foreclosure proceedings.

6. The COA did not act in good faith as required by CCIOA by: (a) conspired to keep hidden from me that all attorney fees had been paid by the COA's insurance carrier, (b) actually lying to another homeowner when questioned regarding the insurance company's payment of attorney fees, and (c) as further detailed in other paragraphs. T

7. The COA has no basis for a claim against me since (a) the judgment was not awarded to the COA but rather to the law firm of Wood, Ris, and Hames and (b) even if the judgment was deemed awarded to the COA, it cannot be treated as an Individual Personal Assessment, as they are attempting to do in order to foreclose, by the COA. Such an action is a violation of our governing documents.

8. The COA failed to follow its governing documents by not sending me a statement of my accounts which requested in accordance with the provisions of those same governing documents.

9. The Board of Directors of the COA is not, and has not, been legally impaneled as required by its governing documents since December 2002.

10. The Small Claims Court: (a) lacked jurisdiction and (b) if it had jurisdiction, it exceeded its authority by granting a judgment in excess of \$7,500.

11. The COA is driven by improper retaliatory and vindictive animus towards me.

12. The COA has failed to comply with the rules of discovery. In fact, they have provided absolutely no disclosure whatsoever.

It is my understanding that for a judge to award SUMMARY judgment, he has to believe EVERYTHING that I have presented to him in my submissions to the court, and still find that the other party should prevail. As such, if he believes even HALF of what I say, it is obvious that the COA has refused all my attempts to pay the judgment and are only interested in causing me substantial financial losses in their attempt to foreclose and drive me out of the building.

The COA does not want my money, they only want me OUT OF THE BUILDING since I have been and continue to be a voice of dissent regarding their continued disregard for my, and everybody else's, rights as homeowners.

All Coloradans that live in HOA/COA communities are at risk from these types of actions. If the courts do not protect our rights, then we have none! If this upsets you, please contact your Senator and/or Representative and demand that something be done.

This story was totally written by myself and represents my opinion of what has happened to me. I do however have numerous emails and other documentation as well as transcripts that totally support my viewpoint. If you would like further information, you may reach me at [skicat@frii.com](mailto:skicat@frii.com).

Thank you for your interest,

Michael P. Marotta

### **LATEST UPDATE July 12, 2009**

I sued them in Small Claims Court and lost. Judge awarded insurance company attorney legal fees. I sent COA a check. (I thought award was to COA but my attorney, much later, pointed out that it was not.) COA denied ever receiving it. I offered to write another if they would stipulate that they never received the first one. They ignored.

Insurance company (US Liability) was not going to try and collect from me so COA had insurance company assigned the award to them (although from paperwork it appears they only waived their rights to the award). They lied to myself and other homeowners that this ever happened. Have emails to prove the lies.

They then told me they were going to treat as Individual Personal Assessment. I requested hearing as governing documents affords me. They denied hearing.

They sent letter saying payment due 1/29/06. Declaration says no legal action until debt 60 days past due. They filed foreclosure proceedings 2/27/06. This is when I hired attorney and found out award was not to COA.

My attorney presented over 160 exhibits to support my case and all the violations of COA governing documents and Colorado Common Interest Ownership Act (CCIOA). These included:

(a) having mailed check to the COA on August 27, 2005, (affidavit asserting same was provided);

(b) when advised that check had not been received by the COA, made numerous offers to write another if the COA would assert in writing that it had not received the first check, (affidavits by Board of Directors submitted stating that it was "To my understanding, Mr. Marotta refused to pay his debt owed to the 1200 Vine.....", the Board of Directors has never denied under oath that they did not receive Plaintiff's check);

(c) received a letter from the COA requesting payment by January 29, 2006 (the COA Declarations state that the COA cannot take legal action until a debt is 60 days past due and hence legal action was a violation of the COA Declarations);

(d) the COA had failed to provide late notices as required by its Declaration, By-Laws, Rules & Regulations, and/or Policies;

(e) the COA, in treating the judgment as an Individual Personal Assessment ("IPA"), had exceeded its authority to assess as specified in its Declaration;

(f) after advising that it was treating the judgment as an IPA, refused to grant a hearing as required by its Declaration, By-Laws, Rules & Regulations, and/or Policies;

(g) the COA was in violation of numerous provisions of the Colorado Common Interest Ownership Act ("CCIOA") including but not limited to acting in good faith with respect to numerous issues related to the foreclosure action;

(h) the award by the Small Claims Court was to the law firm of Wood, Rymes and Hames and not to the COA (this was supported by trial transcripts and was clearly so indicated on the case file jacket);

(i) Wood, Rymes and Hames was paid by the COA insurance carrier, the insurance carrier waived all claims against homeowner and the COA, entered into an agreement with their insurance carrier to establish a claim against homeowner and attempted to conceal all this from homeowner.

(j) the COA then entered into an agreement with the insurance carrier to collect the judgment while not being assigned its insurance company's right of subrogation;

(k) homeowner, as an insured, was protected against subrogation;

(l) Small Claims Court is limited by statute to awards of \$7,500.00 or less;

(m) the Small Claims Court lacked jurisdiction since the court itself asserted that the initial case it heard was injunctive in nature;

(n) the COA failed and or limited its responses to repeated requests for disclosures, production of documents, interrogatories, and admissions;

(o) the COA acknowledged in a Board of Directors meeting of the destruction of COA records which had been sought by homeowner;

(n) as well as numerous other irregularities and defenses.

Case No. 06CV2358 was assigned to Judge Mullins who awarded summary judgment to COA on 6/7/07 without a trial. Summary judgment means that even though he believed EVERYTHING I said, a jury would not have found in my favor. What would you have found if seated on that jury remembering that EVERYTHING I said above is true?

An appeal was logged with the Appellate Court, Case No. 07CA1374, who upheld the lower court's ruling. Judge Terry wrote the opinion with Judges Vogt (now retired) and Lichenstein concurring.

Of particular note is their statement: **“Regardless of whether ..... mailed the Association a check for payment of the assessment, it is undisputed that funds were never disbursed to the association. Thus ..... never satisfied the debt.” In other words, if your COA/HOA does not cash your check, they can then foreclose on you! How do you like that ruling?**

The Colorado Supreme Court was then petitioned, Case No. 08SC918, but they refused to hear the case.

It should be fairly obvious from the above that homeowners are totally at the mercy of corrupt COA/HOA organizations and that the provisions of CCIOA are there for their protection and not the protection of the homeowners themselves. This is particularly true in any association that is represented by HindmanSanchez who are the lowest form of attorneys possible.

It is time for homeowners in COA/HOA associations to do something to reform not only the rules governing COA/HOA associations but also to reform the judicial system. Judge Mullins makes a totally absolutely incorrect ruling (and is protected by judicial immunity), the Appellate Court compounds the error (and is protected by judicial immunity) and the Colorado Supreme Court says it can't be bothered trying to protect the rights of homeowners and due process requirements of the US Constitution (they didn't say that exactly but that is exactly what they inferred).

COA/HOA associations have to be placed under the authority of the Real Estate Commission. The courts refuse to be the watchdog they are supposed to be or else they

side with the fellow attorneys to enable them to bring suit to line their pockets with homeowner money. Of course, they realize that one day when they leave the bench for private practice they will be able to do the same thing themselves.

Judges have to be held accountable for such obvious miscarriages of justice. Judicial immunity allows judges like Mullins (it has been related to me that Judge Mullins is somewhat lazy and also not well versed in real estate law) to ignore the facts of the case and ease their workloads by "passing the buck" regardless of the impact on the person who is being wronged. The Appellate Court obviously did not review the case either or if they did they are totally incompetent.

What do you think?