



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

November 30, 2018

Brian Ball
Secretary of
Commerce and Trade

Old Heller Brothers Lofts, LLC
c/o William Eric Blevins, President
P.O. Box 1687
Bristol, TN 37621

Re: Old Heller Brothers Lofts Condominium
Temporary Cease and Desist Order

Dear Mr. Blevins:

The Common Interest Community Board (Board) considered a proposal for a Temporary Cease and Desist Order against Old Heller Brothers Lofts, LLC, declarant of Old Heller Brothers Lofts Condominium at its meeting on November 29, 2018. While this order is in effect, the Declarant is prohibited from offering or disposing of any interest in a unit in this condominium until such time as the order is lifted. Further, any offer or disposition of any interest in a unit by the Declarant that occurs while this order is in effect may be legally invalid. Enclosed is a copy of the Temporary Cease and Desist Order adopted by the Board.

Please feel free to contact me at (804) 367-2684, or at the below address with any questions you may have.

Sincerely,

COMMON INTEREST COMMUNITY BOARD

A handwritten signature in blue ink that reads "Joseph C. Haughwout, Jr.".

Joseph C. Haughwout, Jr.
Board Administrator

Enclosure

cc: Gentry, Locke, Rakes & Moore, LLP

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

In Re: Old Heller Brothers Lofts Condominium
 Old Heller Brothers Lofts, LLC

Registration No.: 0517080160

TEMPORARY CEASE AND DESIST ORDER

On November 29, 2018, the Common Interest Community Board (“the Board”) met and reviewed a memorandum from staff dated November 16, 2018, to consider issuance of a temporary cease and desist order against Old Heller Brothers Lofts, LLC, the declarant of Old Heller Brothers Lofts Condominium, Registration Number 0517080160.

The Board considered its applicable law: Chapter 23.3 of Title 54.1 (§§ 54.1-2345 et seq.) and Chapter 4.2 of Title 55 (§§ 55-79.39 et seq.) of the Code of Virginia. After reviewing the facts and information presented in the memorandum at the Board meeting, the Board determined that the declarant has failed to file an annual report within thirty (30) days of the condominium project registration anniversary date as required by § 55-79.93 of the Code of Virginia. The declarant’s failure to comply with § 55-79.93 of the Code of Virginia does not assure the public that the declarant is in compliance with the Condominium Act (§§ 55-79.39 et seq.) and the Board’s Condominium Regulations, and would cause irreparable harm to the public interest.

ORDER

In the interest of protecting the public from harm, the Board hereby enters a temporary cease and desist order in accordance with § 55-79.100(b) of the Code of Virginia. The Board orders Old Heller Brothers Lofts, LLC, the declarant of Old Heller Brothers Lofts Condominium, to **cease and desist** from the sale of units in the condominium project until an annual report is submitted and determined to be acceptable by the Board. Further, the Board orders that Old Heller Brothers Lofts, LLC submit the required annual report to the Board within 30 days of the effective date of this order.

If the declarant of Old Heller Brothers Lofts Condominium fails to comply with the terms of this order, the Board may refer the matter for enforcement pursuant to § 54.1-306 of the Code of Virginia, and/or impose sanctions and take other actions permitted by Chapter 4.2 of Title 55 (§§ 55-79.39 et seq.) of the Code of Virginia.

This order remains in effect until the declarant submits acceptable documentation to the Board that it has taken the affirmative actions necessary to correct the deficiencies above or the matter is adjudicated, whichever is later.

AS PROVIDED BY § 55-79.100(b) OF THE CODE OF VIRGINIA, UPON REQUEST A HEARING WILL BE HELD PROMPTLY TO DETERMINE WHETHER OR NOT THE TEMPORARY CEASE AND DESIST ORDER BECOMES PERMANENT.

SO ORDERED:

Entered this 29th day of November, 2018.

Common Interest Community Board

BY:


Jay W. DeBoer, Secretary

MEMORANDUM

**TO: Members
Common Interest Community Board**

**FROM: Joseph C. Haughwout, Jr., Board Administrator
Common Interest Community Board**

DATE: November 16, 2018

SUBJECT: Referral for Consideration of Temporary Cease and Desist Order

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|---------------------------------|--|
| Declarant Name: | Old Heller Brothers Lofts, LLC |
| Condominium Project Name | Old Heller Brothers Lofts Condominium |
| Registration No. | 0517080160 |

On August 22, 2008, Old Heller Brothers Lofts Condominium ("Heller") became registered as a condominium project in Virginia. Old Heller Brothers Lofts, LLC ("Heller LLC") is the Declarant for Heller. There are 5 registered units in the condominium. (Exh. 1)

As part of the registration for Heller, Heller LLC submitted an Irrevocable Letter of Credit ("assessment letter of credit") issued by TruPoint Bank, in the amount of \$10,000.00, in favor of the unit owners' association for Heller. The assessment letter of credit is automatically renewable from year to year. On October 22, 2018, the issuer of the letter of credit verified the letter of credit is valid through August 2019. (Exh. 1)

Failure to File Required Annual Report

Section 55-79.88 of the Code of Virginia states, in part:

Unless exempt by § 55-79.87

1. No declarant may offer or dispose of any interest in a condominium unit located in this Commonwealth, nor offer or dispose in this Commonwealth of any interest in a condominium unit located without this Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

Section 55-79.93 of the Code of Virginia states:

The declarant shall file a report in the form prescribed by the regulations of the agency within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

In addition, Board Regulation 18 VAC 48-30-540 states, in part:

- A. A declarant shall file an annual report on a form provided by the board to update the material contained in the registration file at least 30 days prior to the anniversary date of the order registering the condominium.
- B. The annual report shall contain, but may not be limited to, the following:
 11. Whether the declarant is current in payment of assessments; and
 12. Current evidence from the surety or financial institution of any bond or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia.

On July 13, 2018, the Common Interest Community Board ("the Board") sent an Annual Report solicitation to the Declarant for the 2018 Declarant Annual Report for Heller. The 2018 Declarant Annual Report for Heller was due to the Board prior to August 22, 2018. On September 11, 2018, the Board issued a reminder notice to the Declarant. On September 27, 2018, the Declarant contacted the Board and indicated the annual report would be forthcoming. However, no further response was received from the Declarant or anyone on its behalf. (Exh. 1 and 3)

Board Regulation 18 VAC 48-30-690 states, in part:

The following acts are prohibited and any violation may result in action by the board, including but not limited to issuance of a temporary cease and desist order in accordance with § 55-79.100(b) of the Code of Virginia:

1. Violating, inducing another to violate, or cooperating with others in violating any of the regulations of the board, Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, or Chapter 4.1 (§ 55-79.1 et seq.) or Chapter 4.2 (§ 55-79.39 et

seq.) of Title 55 of the Code of Virginia.

Section 55-79.100 of the Code of Virginia states, in part:

(a) If the agency determines after notice and hearing that a person has:

(1) Violated any provisions of this chapter;

it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this chapter.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

On November 8, 2018, staff sent a Final Notice to the Declarant and the Declarant's registered agent, notifying Heller LLC that it may be in violation of the Condominium Act and the Board's regulations. The notice further specified that a proposal to issue a temporary cease and desist order would be presented to the Board on November 29, 2018. The notice sent to the Declarant's registered agent was delivered on November 13, 2018. As of November 15, 2018, the notice sent to the Declarant had not been claimed. (Exh. 4)

Staff requests that the Board consider a proposal to issue a temporary cease and desist order in accordance with § 55-79.100(b) of the Code of Virginia against the Declarant. Staff requests the Board to find that the Declarant's failure to comply with § 55-79.93 of the Code of Virginia does not assure the public that the Declarant is in compliance with the Condominium Act (§§ 55-79.39 et seq.) and the Condominium Regulations, and would cause irreparable harm to the public interest. Further, staff requests the Board require Declarant to submit the required annual report in accordance with the Code of Virginia and the Board's regulations within 30 days of the order's effective date.

This memorandum and attached supporting documentation contain information that is being presented to you for your consideration and determination as to whether the issuance of a temporary cease and desist order is appropriate.

**EXHIBIT
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Description of Exhibit

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| 1 | Registration information for Old Heller Brothers Lofts Condominium |
| 2 | State Corporation Commission record for Old Heller Brothers Lofts, LLC |
| 3 | Board letters to Declarant requesting 2018 Declarant Annual Report |
| 4 | Board meeting letter, dated November 8, 2018 |