

Due Process in Private Clubs

Terry Aluisi was a member who was expelled from Fort Washington Golf and Country Club (the "Club") after a hearing based on a complaint that Mr. Aluisi used "vulgar, filthy and demeaning remarks made in the presence of women members." Mr. Aluisi sued the Club, seeking reinstatement. In July of 1995, the California Supreme Court denied review of Aluisi v Fort Washington Golf and Country Club. What that means for the Club is that the settlement of the lower court that forced the Club to reinstate Mr. Aluisi was upheld. Matters worsened for the Club when the Club agreed to pay \$75,000.00 to settle Mr. Aluisi related suit for emotional distress just prior to the case going to trial. The only good news for the Club is that Mr. Aluisi has as part of the settlement, agreed to resign immediately after he has been reinstated.

The written complaint was made by the women's board of directors ("women's board"). The "captain" of the women's board also spoke with the Club's president, explaining that the women involved in the incident were fearful of Mr. Aluisi and wished to remain anonymous. The board decided to keep the name of the witnesses confidential. The board considered the written complaint and decided to suspend Mr. Aluisi's membership pending an expulsion hearing. The board gave thirty days written notice to Mr. Aluisi which (i) referenced the written complaint, (ii) referenced past offenses committed by him which were documented in his file, (iii) informed him that his membership was suspended pending the outcome of the hearing, and (iv) gave him notice of the hearing date, so that he would have the opportunity to appear and be heard if he so desired.

Mr. Aluisi received three previous letters from the board concerning violations of the club rules which were in Mr. Aluisi's membership file. One on April 12, 1979, for playing golf in a "sixsome" and failing to comply with a directive of the club's professional. The second on November 9, 1979, which reprimanded Mr. Aluisi and five others for playing in groups in excess of five members, using profane language and violating parking regulations. Finally, the third letter, dated March 19, 1989, concerned an altercation between an employee and Mr. Aluisi, in which the board determined that Mr. Aluisi had acted "in a manner beneath that which is expected and required of a member of a country club."

The expulsion hearing took place on December 5, 1980. No witnesses were present, and the only writing presented was the original letter of complaint. Mr. Aluisi appeared at the hearing and denied using "filthy, vulgar language" toward the women players. He did admit, however, to telling his wife that the women were "a bunch of old hags," and that "she should have told that lady to shove her apology up her #*1." (Apparently, Mr. Aluisi's wife had mistakenly been accused of cheating during a golf tournament and had received an apology from an unnamed woman.) He also argued that the letters of reprimand should not be considered because the incident happened too long ago. The board president and a board member questioned Mr. Aluisi regarding whether he threatened anyone during conversations with various members. Mr. Aluisi denied threatening anyone and complained that he had not been given the complainants' names. The board member explained that the members' names were being kept confidential since the complainants were "scared to death" of Mr. Aluisi.

Afterwards, the board went into a closed session and Mr. Aluisi was excused. At that time, the board not only discussed the incident giving rise to the complaint, but also discussed four accusations concerning Mr. Aluisi and two other incidents regarding certain members of his family. The outcome was the expulsion of Mr. Aluisi from the Club.

The California Corporation Code sets forth the procedural due process required for suspending or expelling members of nonprofit corporations. The statute provided that "any expulsion, suspension, or termination must be done in good faith and in a fair and reasonable matter." The statute further states that a procedure is fair and reasonable when (i) the provisions set forth in the bylaws have been followed, (ii) 15 days notice is given, along with the reasons for the suspension, expulsion or termination of the membership, and (iii) it provides for an opportunity to be heard at least five days before the effective date of the suspension, expulsion or termination. According to the court in this case, however, the enactment of the statute was

“not intended to limit common law due process protections afforded members.” Accordingly, the court looked to prior decisions which were premised upon common law principles of procedural fairness in order to determine the due process requirements. After doing so, the court concluded that the elements of fair procedure include additional measures which were not set forth in the California statute - an opportunity to confront and cross-examine the accusers and examine and refute the evidence.

In this instance, the court found that Mr. Aluisi was not accorded fair procedure. The court ruled that Mr. Aluisi was deprived of a fair procedure when the Club decided to conceal the identities of two principles witnesses, and when the board considered matters not documented in Mr. Aluisi’s membership file and regarding which Mr. Aluisi did not have notice or a chance to respond. The court held that “the cumulative effect of the undocumented matters was likely to and did affect the decision of the Club to expel Mr. Aluisi and that Mr. Aluisi was neither noticed that these matters would be considered nor given the opportunity to examine the evidence and prepare his defense.”

What does all of this mean for your club? What this means is that this may be a good time for you to review your Club’s membership bylaws. The bylaws should contain a grievance procedure. The procedure should clearly set forth the notice and hearing requirements necessary before a member can be expelled, suspended or terminated from your club. We will also want to ensure that he or she is given notice of all of the claims which will be brought against him or her. Finally, in light of the Aluisi case, and the fact that the courts tend to look at the decisions made by other courts on a particular topic, it would probably be prudent to include a provision which allows the offending member the opportunity to confront his or her accusers. Preventative measures such as these will help to ensure that the club’s grievance procedure contains the minimal due process requirements that will protect your club from winding up in a similar situation as the one faced by Fort Washington Golf and Country Club.