

BRANSTETTER, STRANCH & JENNINGS, PLLC

ATTORNEYS AT LAW
227 SECOND AVENUE NORTH
FOURTH FLOOR

NASHVILLE, TENNESSEE 37201-1631
TELEPHONE (615) 254-8801 ~ FACSIMILE (615) 250-3937

CECIL D. BRANSTETTER, SR., 1920-2014
R. JAN JENNINGS*
JOE P. LENISKI, JR.
DONALD L. SCHOLES
MIKE STEWART
JAMES G. STRANCH, III
J. GERARD STRANCH, IV
MICHAEL J. WALL

ASSOCIATES:
RAQUEL L. BELLAMY
KARLA M. CAMPBELL
BEN GASTEL*
SEAMUS T. KELLY

OF COUNSEL:
ROBERT E. RICHARDSON, JR. **

December 31, 2014

* ALSO ADMITTED IN GA
** ONLY ADMITTED IN OH

Chairman, Tennessee Regulatory Authority
c/o Sharla Dillon, Dockets and Records Manager
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

via Email and US Mail

Re: Laurel Hills Condominiums Property Owners' Association v. Tennessee
Regulatory Authority
Docket No. 12-00077

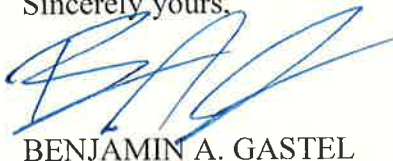
Dear Sharla:

I have enclosed an original and five copies of the Respondent's Opposition To The Consumer Advocate Divisions' Motion To Intervene.

This Motion and this cover letter are being filed electronically by electronic mail this same date. Please return the additional copy of the Motion stamp filed to me.

Thank you for your assistance.

Sincerely yours,



BENJAMIN A. GASTEL

Enclosure

c: Shiva Bozarth

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re:

SHOW CAUSE PROCEEDING AGAINST
LAUREL HILLS CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION FOR
ALLEGED VIOLATIONS OF TENN. CODE
ANN. 65-4-201, 65-4-301(A), 65-5-102, 65-4-
101 AND/OR 65-4-103 AND 65-4-115

Docket No. 12-00077

**RESPONDENT'S OPPOSITION TO THE CONSUMER ADVOCATE DIVISIONS'
MOTION TO INTERVENE**

On December 8, 2014, the Attorney General's Consumer Advocate Division (the "CAD") filed a motion to intervene in the above-captioned show cause proceeding (the "Proceeding"). Respondent Laurel Hills Condominiums Property Owners' Association ("Laurel Hills") hereby files this opposition to the two motions.

The CAD seeks intervention in this case as a result of unidentified interests that customers have in the Proceeding. This Proceeding strictly entails whether Laurel Hills purportedly violated state law and has no impact on any customers of Laurel Hills.¹

Tenn. Code Ann. § 65-2-106 states the following:

The [Tennessee Regulatory Authority] is empowered and authorized in the exercise of the powers and jurisdiction conferred upon it by law to issue orders on its own motion citing persons under its jurisdiction to appear before it and show cause why the authority should not take such action as the authority shall indicate in its show cause order appears justified by preliminary investigation made by the authority under the powers conferred upon it by law. All such show cause orders shall fully and specifically state the grounds and bases thereof, and the respondents named in the orders shall be given an opportunity to fully reply thereto.

¹ Certain customer intervenors also filed motions to intervene and Laurel Hills opposed those interventions on substantially the same grounds as those asserted here.

This Proceeding is initiated under this code section and on its very terms, this Proceeding is brought on the Tennessee Regulatory Authority's (the "TRAs") own motion and only one party is contemplated: the Respondent. The case is litigated based on the finding of the preliminary investigation made by the TRA. *Id.* The TRA then functionally acts as a prosecutor of this civil enforcement proceeding and no other entity can assume that role.

This is consistent with Tennessee law on similar enforcement actions brought by other agencies. For example, in *State v. Brown and Williamson Tobacco Corp.*, 18 S.W.3d 186 (Tenn. 2000), the Supreme Court held that where the State brings suit in its official capacity as sovereign to enforce state law, third parties "do not have a substantial legal interest in the State's suit entitling them to intervene." *Id.* at 92.

Here, the TRA is not seeking to prosecute any other entity other than Laurel Hills for alleged violations of the state law. The TRA seeks to impose a civil penalty on Laurel Hills for purported violations of state law and enjoin it from continuing such purported violations. The case against Laurel Hills necessarily rises or falls based on the preliminary investigation undertaken by the TRA and Respondent must be given a full opportunity to defend the action. Given this dynamic and the issues in play it is simply unclear what role the CAD seeks to assume and they do not attempt whatsoever to define such a role. In fact they cite to no statute, law, or even fact that would justify their intervention in this Proceeding.

Put simply, the CAD have no interest in this Proceeding and have failed to carry their burden of demonstrating an interest. Including them in this proceeding would only add to the cost and expense of this Proceeding without any appreciable benefit gained by their inclusion. The Motion to Intervene should be denied.

Respectfully submitted this 31st day of December, 2014.



Benjamin A. Gastel, BPR #28699
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue North, 4th Floor
Nashville, Tennessee 37201
Tel: 615-254-8801
Fax: 615-255-5419
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served on the following by U. S. Mail, postage prepaid:

Shiva Bozarth, General Counsel, BPR #22685
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505
Attorney for TRA Staff

Vance Broemel
Consumer Advocate Division
Office of Attorney General
P.O. Box 20207
425 5th Avenue North, 2nd Floor
Nashville, TN 37243-0500

Melanie Davis
Kizer & Black Attorneys, PLLC
329 Cates Street
Maryville, TN 37801

This the 31st day of December, 2014.



Benjamin A. Gastel