



The approval of the report does not exclude the responsibility of the administrator.

Failure to challenge the financial statements within the terms set out in art. 1137 cc transforms an illegal management act into lawful?

Mariano Acquaviva 03/11/2022

The **Court of Rome** (sentence no. **3580 of 7 March 2022**) again expressed its opinion on a liability action against the former director. In the present case, the condominium acted against its old representative to obtain compensation for damages attributable to the defendant's bad management.

Faced with the multiple charges, the former director asserted that he had carried out his mandate correctly and that, in any case, it was not possible to complain about the alleged irregularities that emerged from the **financial statements** , as they had not been **promptly challenged** .

Faced with this complaint, the Court of Rome has established that **the approval of the report does not exclude the responsibility of the administrator** , against whom it is always possible to act to assert one's contractual liability pursuant to art. 1218 cod. civ. Let's go deeper into the story.

The liability action against the director

A condominium sued its former administrator to hear him condemn him to **pay compensation for damages** deriving from multiple breaches.

The condominium specified that, following the revocation, the administrator omitted the preparation of the last budget and did not take care to proceed promptly with the **handover** , so much so that the condominium was forced to urgently request the delivery of all documentation still in its possession.

Once the documentation was obtained, the condominium appointed an **auditor** in order, among other things, to verify the correctness of ordinary management and to prepare the final report omitted by the defendant.

multiple defaults by the administrator with regard to the management of the condominium accounting would have emerged , as well as various irregularities regarding some expenses made by the defendant and resulting from the current account of the condominium, **without accounting justification** , while for some of them it would be operated by **cash payment** without suitable supporting tax documentation.

The defense of the administrator

The defendant was constituted contesting and opposing all the complaints raised by the condominium, underlining the goodness of the administration, the **correctness of his work** and highlighting that he had, indeed, a credit against the latter for advances not returned, as would emerge from the same report of handover.

Also according to the administrator, **the complaints** inherent to alleged management irregularities would be belated, given that the previous financial statements had been approved and not challenged.

The nature of the administrator's responsibility

The Court of Rome, in sentence no. **3580 of 7 March 2022** in question, preliminarily specifies



how the **administrator's responsibility** towards the condominium is of a **contractual** nature .

The relationship, as is known, must in fact be framed within the **mandate with representation** assumed on a collective mandate with the consequent applicability, in the relations between the mandated administrator and each of the mandating condominiums, of the provisions referred to in Articles 1703 and 1730 cc, as well as those that require the agent to carry out the task received with the **diligence of a good father of a family** , in addition to the specific rules dictated on the subject (articles 1129 and 1130 cc).

It follows that, in the event of non-fulfillment in the performance of his duties, the director will be required to answer by way of contractual liability pursuant to art. 1218 cc

Administrator responsibility and burden of proof

According to the Court of Rome, in application of the ordinary criteria for **dividing the burden of proof** , it is up to the condominium acting for the contractual responsibility of the revoked administrator to attach and prove, in addition to the negotiating source of its right, to have suffered prejudices causally linked to the defaulting conduct by the administrator.

The condominium, as principal, is burdened with proof (to be provided both through the **accounting** - if regularly kept and approved - and / or the **payments** made and the expenses proven by expense documents as well as through the movements of the current account) that certain financial they are closed with **hidden accounting irregularities** or that specific obligations incumbent on the administrator have been violated, without prejudice to the usual burden of proof (of the loss suffered) for whoever claims to be damaged.

On the other hand, the outgoing administrator is charged, as he is contractually indebted to the condominium for his performance as agent, for **proof of correct management** .

Thus, the administrator will be required, at the expiration of the relationship (or the revocation of the assignment), to **give an account of his work** and to return all that he has received due to the mandate.

In particular, jurisprudence has repeatedly pointed out that *"the **reporting obligation** is legitimately fulfilled when whoever is required to provide proof, through the necessary supporting documents, not only of the sums collected and the causal entity of the disbursements, but also of all the factual elements functional to the identification and examination of the procedures for carrying out the assignment, in order to establish whether his work has been adapted to the criteria of good administration "* (cf. Cass., 14 November 2012, no. 19991).

Report approval: does it exclude the administrator's responsibility?

With regard to the exception according to which the failure to promptly challenge the reports would no longer allow action against the administrator, the Court of Rome observes on the contrary that the **finality of the final balance** , consequent to the expiration of the terms provided for **by art. 1137 cc** for the appeal by the condominiums, **it cannot in any case preclude any dispute by the same** and definitively legitimize the management activity carried out by the administrator.

*« It could not, in fact, be admitted that any majority and even the unanimous vote of the condominium assembly can **transform an illegal management act into lawful** ; as a direct consequence, a liability action against the administrator following the approval of the final balance must be considered possible ».*

The Capitoline judge cites in this regard a precedent of merit (Court of Milan, sentence no. 7460/2005) for which *" The shareholders' meeting resolution approving the report does not preclude the contestation in the filing of a compensation action by the Condominium against the 'former administrator, both for the declaratory and confessory nature of the act of approval of the account, revocable or modifiable in case of willful misconduct or gross negligence of the agent (pursuant to art. . 3 and 1135 of the Italian Civil Code) can approve and authorize payments only if they refer to expenses actually paid for the maintenance of the common parts of the building and for the exercise of common services "*), with the consequence that, where this inherence is

lacking, the 'former administrator cannot shield himself from the condominium resolution to evade his responsibility ».

In short: the approval of the report does not exclude the possibility of taking action against the administrator to assert his contractual liability.

The decision on the responsibility of the administrator

The Court of Rome, at the end of these considerations, considers the responsibility of the former administrator to be proven, also on the basis of the CtU which highlighted **the impossibility of fully ascertaining the progress of condominium management** and verifying the reporting, in the absence of registers complete with receipts and expenses.

According to the Capitoline judge, therefore, the accounting reconstruction for the defendant's management periods was characterized by the difficulty due to the lack of documentation relating to these periods due to a **lack of diligence** in the maintenance and drafting of the condominium documentation, from which the contractual liability of the administrator.

Source: <https://www.condominioweb.com/appapproval-rendiconto-non-esclude-responsabilita-amparmi.19885>

GECOSEI by Giuseppina Napolitano

Giuseppina Napolitano