



Responsibility of the administrator for non-recovery of credits and for failure to keep the condominium assets.

The administrator compensates the damage to the condominium only if these are a direct consequence of his non-fulfillment.

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The responsibility of the condominium administrator does not end with the termination of his office: since he is an agent in all respects, the responsibility for any non-fulfillment is contractual and, therefore, only expires after ten years. With this article we will focus on the **liability action against the former administrator** in the light of a ruling which, although a few years ago, appears to be particularly significant.

The Court of Catania, with sentence no. **5981 of 10 December 2016**, examined a hypothesis of responsibility of the condominium administrator now revoked, an action that was based on the multiple charges that the team moved to its old representative.

The decision is very interesting because it testifies how, even in the presence of a formal violation of his duties, the administrator does not have to pay the compensation, unless concrete and direct damage to the condominium has resulted from his conduct.

Let's investigate the matter and see how the **liability action against the former administrator works**.

Liability action against former director: the charges

The condominium was suing its former administrator (now revoked) moving him various charges which, according to him, would have justified the payment of compensation.

To be precise, the administrator was charged for the following defaults:

- **failure to notify an injunction** proposed against the condominium, with consequent failure to oppose it;
- **lack of credit recovery action**, thus violating the obligation expressly provided for by law (**Article 1129 of the Italian Civil Code**), according to which the administrator must take action to recover the condominium credits within six months of the end of the financial year in which the due credit is included, also making use of an immediately executive injunction pursuant to **art. 63 avail. att. cc**;
- **omitted custody of the generator** present in the condominium, conduct which, on the occasion of some flood events, had determined the non-functioning of the suction pumps and the consequent flooding of the condominium parts;
- **failure to appear in court** in a civil proceeding brought against the condominium, in a lawsuit concerning the restoration of the terrace flooring that had determined the infiltrations.

The appearance of the administrator in court

In response to these charges, the former administrator appeared before the court, who asked for his own insurance to be called into question and explained a **counterclaim** against the same condominium asking that he be sentenced to pay a sum of which he was a creditor for some advances he had. carried out in the interest of the team during the period in which they were managing the building.



Liability action against the former director: the decision

The Court of Catania, with sentence no. **5981 of 10 December 2016** in comment, partially accepted the condominium's request, however compensating the compensation requested with the credit of the administrator pleaded in counterclaim.

The ruling focuses on all the objections raised, thus providing an interesting overview of the **responsibility of the former director** according to the individual breaches contested. Let's analyze them briefly.

Liability for failure to notify injunction

The Catania court considers that the administrator's responsibility for the failure to communicate the injunction notified to the condominium is well founded.

*"The **duty of information** - regardless of the outcome of the judicial dispute - weighed on the director pursuant to law, being expressly sanctioned **by art. 1131 cc** which provides for an explicit hypothesis of responsibility of the administrator, who can be revoked, and is required to pay damages, if he does not give notice to the assembly of condominiums of a summons or a provision notified to him, which exceeded by its attributions".*

However, according to the sentence in question, the administrator **does not have to pay anything** for this non-compliance, as the failure to communicate the injunction (and the consequent failure to propose the opposition) has not, in fact, caused damage to the condominium, who was peacefully debtor towards the creditor who acted with an injunction.

In short: any opposition would not have reasonably changed the fate of the process.

Liability for non-recovery of credits

The Court of Catania, on the other hand, holds the administrator completely responsible for not having acted promptly for the **recovery of condominium credits**.

In fact, from the documents it was clear that the former administrator had acted for the compulsory recovery only limited to three defaulting condominiums.

The defendant represented that he had carried out these three judicial initiatives with personal advances, given the huge arrears of the condominium which did not allow him to take other actions.

This justification, however, is generic and does not go beyond the obligation of the director to do so.

And, indeed, the administrator is required, pursuant to art. 1130 n. 3 cc, to collect the "contributions" required for the management of the condominium. The **collection** has its basis in the budget and in the state of distribution approved by the assembly, so much so that where the condominiums are in default, the administrator has the power to collect the contributions, which, pursuant to the art. 63 avail. att. civ. of the code, may request an **immediate executive injunction against the condominiums in arrears**.

The procedure for the collection of contributions falls within the normal powers of the director, also because more than a faculty, art. 63 avail. att. cc constitutes an **obligation** for the director himself.

If, in fact, he does not take action to recover the credits from the defaulting condominiums, he may be sentenced to **reimburse the condominium** the debts consisting of penalties and default interest resulting from delayed and / or omitted payments.

In the present case, the administrator will have to compensate the condominium for all the credits that he has not collected, for a sum equal to almost 30 thousand euros.

Liability for non-custody of condominium assets

As regards the alleged **omitted custody of the condominium assets** (in this case, the generator), the judge considers that he must reject the request, since it has not been proven that the malfunction of the system was attributable to an inattention by the administrator.

Indeed, the ctu in charge hypothesized that it could have been damaged as a result of the calamitous events (in particular, the floods).

Liability for failure to appear in court

The Sicilian judge holds the administrator responsible for the violation of the **duty of information** enshrined in art. 1131 cc, as he was required to warn the condominiums of the appeal undertaken against the team.

The Court of Catania found, however, that the issue was not unrelated to the condominium, given that it appears from the documents that the administrator had called more than one assembly to discuss the action taken against the team.

This circumstance is relevant in order to assess whether the administrator's failure to communicate has caused **damage to the condominium**. The answer must be negative given that the damage of the condominium's condemnation could have been avoided by participating in the assemblies dedicated to discussing the problem; thus the order with which the condominium was then condemned **is not a direct consequence of the administrator's omission of information** but of the non-attendance of the shareholders' meeting in the relative meetings, even if called by the administrator to deliberate on the work to be carried out. This request must therefore also be rejected.

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