



The administrator cannot claim extra compensation.

The director cannot ask for more than what was agreed in the act of appointment, unless increases have been budgeted for extraordinary activities.

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It is well known that the administrator must diligently carry out his duties as imposed by the common civil laws that govern the **mandate contract**. Among his obligations there is also that of immediately returning the documentation (possibly delivering it to the successor) and any other property in his possession that belongs to the condominium.

The risk in the event of non-performance is to incur not only civil but also criminal liability (embezzlement).

The Court of Milan, with sentence no. **159 of 11 January 2023**, in condemning a director who is totally in breach of his office, established among other things that **the director cannot claim extraordinary compensation not initially agreed**, except in the event of specific circumstances. Let's take a closer look at the story.

Administrator's responsibility: the case

A condominium sued its former administrator, accusing him of a **multiplicity of illicit conducts**, such as: failure to deliver the documentation; shortage of over 30 thousand euros; emoluments collected and not due.

The administrator appeared in court requesting the complete rejection of the plaintiff's request.

The decision of the Court of Milan

The **Court of Milan**, with sentence no. **159 of 11 January 2023** in comment, fully accepted the condominium claims, condemning the former administrator to return the documentation, money and sums collected without reason.

What is relevant here, however, is how the Milanese judge established that **no extra compensation is due to the director** who has not already requested it at the time of appointment.

It is hardly necessary to recall that, pursuant to **art. 1129 code civ.**, *"The administrator, upon acceptance of the appointment and its renewal, must analytically specify, under penalty of nullity of the appointment itself, the amount due as compensation for the activity performed"*.

According to the Court of Milan, in the absence of a **shareholders' resolution** establishing (directly or *"per relationem"* to the contract) an extraordinary remuneration in favor of the director for specific jobs or for specific activities, this right cannot be recognized even on the basis of the presumption of onerousness of the mandate pursuant to art. 1709 code civ. Let's delve into this aspect.

Director: when are you entitled to extraordinary compensation?

What was established by the Milan court is not new in the jurisprudential panorama (*ex multis*, Cass., sentence n. **22313 of 30 September 2013**), within which the possibility of requesting **extra compensation was recognized** only if this was already set accounted for in the budget



submitted to the shareholders' meeting at the time of appointment.

In fact, the only case in which a condominium administrator is allowed to receive extra remuneration is that in which the higher remuneration for **the extraordinary administration activity** is reported in the analytical estimate approved together with the appointment.

For example, the administrator is given the possibility to **quantify** his extra compensation in a fixed amount or to determine it in an additional percentage parameterized to the entire amount of the extraordinary works, to the extent that usually stands approximately between 2% and 4% percent.

The condominium administrator therefore has **the right to additional compensation** if it is not demanded unilaterally but is the subject of a resolution by the assembly; no higher remuneration is due than the remuneration fixed in the absence of a specific condominium resolution in this regard.

Alternatively, the director could obtain a higher compensation than that estimated only in the hypothesis in which the assembly, with a **subsequent resolution**, decides to consent to his request.

In summary, therefore, the condominium administrator can claim a right to **extraordinary compensation** only if accepted by the assembly. This acceptance usually takes place when the assignment is conferred, at which time the assembly must approve the estimate proposed by the administrator, taking care to include in the latter also any increase (fixed or in percentage) on extraordinary activities.

Alternatively, if initially nothing had been agreed regarding extra fees, the director may claim such sums only if agreed by the shareholders' meeting, which freely decides to recognize the higher fee.

Source: <https://www.condominioweb.com/lartigianato-non-puo-pretendere-un-compenso-extra.20214#2>

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