

Submitted 8/9/13

Affidavit: Request by Riley Condominium for Criminal Charges against Zion Yehoshua (74 Newtonville Ave. Newton, MA 02458) by David Rosmarin and Patricia Hinchey, Owners and Representatives of Riley Condominiums

Honorable Henry H. Shultz
Clerk of Courts
Newton, Massachusetts

Riley Condominium is a six-unit residence with addresses 99, 101, 103, 105, 107, and 109 Bellevue St. in Newton. (For correspondence please contact Patricia Hinchey 103 Bellevue Street Newton MA 02458 and David Rosmarin 105 Bellevue Street Newton, MA 02458) The property was established in the 1980s. For at least a decade, there has been a continuous fence that starts at Bellevue Street and continues north—running east-west to the sides and back yards of properties on Newtonville Avenue. Where the fence again turns south back towards Bellevue Street, it also includes a locked gate where the property has access to Bennington Street.

Running east-west along the abutting backyards of Newtonville Avenue residences is a chain-link fence approximately 5 feet height. This fence, bordering 74 Newtonville Avenue, is wholly on Riley condominium property. This fence had been maintained in excellent condition, with no breaches except those caused by owners of 74 Newtonville Ave. According to Massachusetts law, it serves as a no-trespass structure and serves to bar unauthorized entry to a pond on the Riley property, which is situated several feet from the fence.

Shortly before 9-27-11 a tree from 74 Newtonville Ave. fell on the fence. The owners were personally apprised of their obligation to repair it, as was their realtor—both by Ms. Hinchey. The damage was plainly evident on casual inspection from the 74 Newtonville house. (See last photo Exhibit A) The owners declined to repair it.

On 4/27/12, Mr. Yehoshua and Nikzun Gordon purchased the property on 74 Newtonville Ave. Sometime thereafter, Mr. Yehoshua dismantled and removed most of our fence bordering his property, including in the area of the pond. He cut down all the trees in the back of his property and discarded them on our property, including in the pond. This was done without our knowledge or authorization. Exhibit A comprises 8 pages with 14 dated photographs depicting the situation. They clearly show where Mr. Yehoshua had cut down the trees on his property, dismantled and removed our fence, and deposited the tree cuttings on our property. Following discovery of this, Ms. Hinchey personally went to the Yehoshua residence, knocked on the door, and requested a meeting. Mr. Yehoshua assured her that he would remedy the situation in full. Months passed with no progress.

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Therefore, Riley Condominiums sent Mr. Yehoshua a letter on 7/16/12 citing his trespass and damage to our property, demanding immediate removal of all the tree remnants, and immediate replacement of our fence with identical fencing that matched the fencing he had not removed. (Exhibit B). No response was received. On 7/31/12 we sent Mr. Yehoshua a certified letter demanding a response. (Exhibit C) These two letters were sent on our behalf by our property manager at the time, Mr. Colbert. Mr. Yehoshua responded orally that he would remedy the situation. However, he refused to do so. On 10/8/12, Mr. Colbert sent another certified letter to Mr. Yehoshua demanding prompt remedy. (Exhibit D)

Mr. Yehoshua applied to the City of Newton for a special permit/site plan approval. Mr. William Forte, Newton Zoning Enforcement Agent, inspected Mr. Yehoshua's property and the damage to our property and contacted us, suggesting we should issue a Request for Zoning Enforcement. Relevant to Mr. Yehoshua's pattern of flouting the law, it is our understanding from Mr. Forte that Yehoshua actually had made many of the changes to his property in advance of his formal request. The "Request for Zoning Enforcement" form was filed on 4/18/13 by Ms. Hickey. (Exhibit E) It included copies of the prior letters to Mr. Yehoshua in exhibits B,C,D.

On 5/14/13, Mr. Yehoshua appeared before the Land Use Committee of the Newton Board of Aldermen to petition for his special permit. Riley Condominium owners and other neighbors on Newtonville Avenue argued against the petition. The Committee postponed the appeal for further review.

Since that time, Mr. Yehoshua has refused to remove all of his tree remnants from our property. Using some thin wire of a smaller and non-matching gauge (Exhibit F), he has made partial, Mickey Mouse repairs to portions of our fence, but large gaps remain, which also pose a hazard because of the pond. Exhibit G comprises 5 pages of 5 photos. The inadequate repair of our fence is evident in the first 4 photos. The last photo shows some of the remaining tree remnants that Mr. Yehoshua placed on our property.

Begging the Court's forbearance because we are not lawyers, we have included printed web pages for jury instructions for trespass and willful and malicious destruction of property. We have also included the law for disposal of rubbish.

The trespass statute requires that the accused entered or remained on improved or enclosed land of another when the accused was forbidden to do so. The instructions states that in the event there was no posted notice, "Such a person may also bar entry by securing the premises with secure fences or walls and with locked gates or doors, and this is considered to be 'directly' forbidding entry to the premises. We have attached these pages (Exhibit H)

The willful and malicious to structure property instructions require that the cost of repair exceed \$250. This is plainly so, as our photographs document. It requires that the accused damaged our property, did so willingly, and did so with malice. It can be argued that Mr. Yehoshua's malice is inferred by his repeated refusals over a year to remedy the situation. (Exhibit I)

M.G.L. 270 section 16 governs the disposal of "debris, scrap, waste or other material of any kind." It prohibits the unauthorized disposal of such "on the property of another." It provides for fines and remediation. (Exhibit J)

Based on the foregoing, it is our respectful request of the Court that criminal charges for the three be brought against Mr. Yehoshua. This affidavit is submitted cognizant of the penalties for perjury.

Respectfully,

David Rosmarin, M.D.

Patricia Hinchey

Representing Riley Condominium