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April 21, 2017

NOMAD VILLAGE MOBILEHOME PARK HOMEOWNERS' PETITION

TO SANTA BARBARA COUNTY BOARD OF SUPERVISORS REGARDING ARBITRATION REMAND OPINION AND AWARD OF MARCH 13, 2017

Signed April 21, 2017

Debra Hamrick

Debra Hamrick
Homeowners Representative
for Nomad Village Mobilehome
Park Homeowners

DECLARATION OF ELECTRONIC EMAIL SERVICE

I, LINDSE DAVIS, declare that I am, and was at the time of service, over the age of 18 years and am a party to the action mentioned within. My home address is 4326 Calle Real, Space 133, Santa Barbara CA 93110 in Santa Barbara County.

On April 22, 2017, I served the foregoing document entitled NOMAD VILLAGE MOBILEHOME PARK HOMEOWNERS' PETITION to the interested parties in this action by emailing a true and correct copy as follows:

Stephen Biersmith
Arbitrator
email: sbiersmith@aol.com

James P. Ballantine
Attorney for park management
email: jpb@ballantinelaw.com

Don Grady
County of Santa Barbara
Real Property Division
email: dgrady@countyofsb.org
cc: mwagner@co.santa-barbara.ca.us

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on April 22, 2017, at Santa Barbara, California

Lindse Davis

To: The Clerk of the Board
Re: Rent Increase Arbitration
Nomad Village homeowners
Nomad Village Mobile Home Park

April 19, 2017

Homeowners allege once again prejudicial abuse on the behalf of the arbitrator as set forth below.

THE COUNTY'S RESPONSIBILITY UNDER ORDINANCE 11 & 11A

The county assumed the responsibility and enforcement duties as delineated in Ordinance §§ 11 and 11A. Ord. §11A-1 includes as an overall purpose to "protect the owners and occupiers of mobilehomes from unreasonable rents". Management's 'rent increase' violates the county ordinance, includes various instances of fraud, and violates multiple California state laws. The county, on the advice of county counsel, through constant ex parte communication with James Ballentine, has decided not to "protect the owners" and their rights to personal and real property, to quiet enjoyment and due process, but has taken a illegal position against the homeowners, their constituents and the residents of the county.

THE ORDINANCE'S EXPRESS PURPOSE

Santa Barbara County Ordinance 11A(1) "...Because of such factors and the high cost of moving mobilehomes, the potential for damage resulting therefrom, requirements relating to the installation of mobilehomes, including permits, landscaping and site preparation, the lack of alternative homesites for mobilehome residents and the substantial investment of mobilehome owners in such homes, the board of supervisors finds and declares it necessary **to protect the owners** and occupiers of mobilehomes from unreasonable rents while at the same time recognizing the need for mobilehome park owners to receive a fair return on their investment and rent increases sufficient to cover their increased costs."

The "fair return" standard is a legal standard. In *Galland v. City of Clovis* (200 1) 24 Cal. 4th 1003, 1026, the **California Supreme Court held that the concept of "fair rate of return" is a legal term that refers to a "constitutional minimum,"** even though the term is borrowed from the terminology of economics and finance:

Although the term "fair rate of return" borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional minimum within a broad zone of reasonableness. As explained above, within this broad zone, the rate regulator is balancing the interests of investors, i.e., landlords, with the interests of consumers, i.e., mobilehome owners, in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully. (*Kavanau*, supra, 16 Cal.4th at pp. 778-779.) For those price-regulated investments that fall above the constitutional minimum, but are nonetheless disappointing to investor expectations, the solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.

The legal presumption is that the 'automatic increase' (seventy-five percent of the CPI increase) provides a fair return. It is management's burden to rebut this presumption and prove that they are entitled to a larger rent increase.

The Ordinance expressly sets out a formula, Ord §11A-5(g) to §11A-5(i)(6) that the arbitrator must follow. Ord §11A-5(i) "To determine the amount of any increase in excess of the automatic increase, the arbitrator **shall**:" When used in statutes, contracts or the like, the word **"shall"** is generally imperative or mandatory.[*Independent School Dist. v. Independent School Dist.*, 170 N.W.2d 433, 440 (Minn. 1969)]

The county, the arbitrator and management have continually ignored the homeowners' request to follow the express instructions of Ord §11A-5(g) to §11A-5(i)(6) in calculating any increase. The county, the arbitrator and management have continually failed to provide evidence that the increases granted are necessary to achieve the constitutional minimum fair return, as required by the intent and express language of the ordinance as well as every court case on the subject.

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the ordinance. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

AWARD NO. 4 (AMORTIZATION PERIOD AND RATE)

Arbitrator Biersmith refused to follow the explicit requirements of the remand promulgated by the county. He, not surprisingly, ignored the homeowners' absolutely and completely**, denying the homeowners of due process**. Biersmith once again relies on the "expert testimony of Michael St. John" regarding period and rate. St. John has no expertise or background in the law, accounting, financial analysis or the ordinance.

Neither Beirsmith nor St. John supported their position that would **"Point to the relevant evidence that supports that the costs to be subject to amortization are for capital improvements and/or expenses as permitted to be passed through by the Ordinance." and "Point to the relevant evidence that supports what is the useful life of the capital improvements and/or expenses."**—the express requirement of the county.

Homeowners reallege and reassert their March 2, 2017 homeowners Hearing Brief on Remand. The homeowners' position is based on the internal revenue code and Generally Accepted Accounting Principles, and addresses the requirements of the remand directly. Both sources refute St. John who, again, has zero expertize on the subject.

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand and the ordinance. In the alternative, the homeowners are prepared to

hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

AWARD NO. 5 (ESCROW ACCOUNT AND COSTS EXPENDED)

The $62,145.55 in question was never noticed, as required by Civil Code §798.32.

Mr. Ballantine (line 18, Page 13 of 9/19/2011 arbitration transcripts): "The third area is the infrastructure, and its $320,000. Now, let me talk about that. We'll have evidence of exactly what that is. That is a payment made by Lazy Landing into an escrow account. It was paid in in 2008, and it's specifically designated for park infrastructure. None of the money has been spent yet, although it's been paid in."

Management makes it clear that the $62,145.55 is not part of the noticed $320,000. California Civil Code requires written notice of all rent increase amounts in excess of the automatic annual increase.

The $62,145.55 in question includes **Fraud**.

$20,760 attributed to **Cusac Construction** on 11/29/2008 is a **refundable deposit** (see contract attached). Management knew when including this amount on 9/19/2011 that the money had been returned and no part of the project described in the contract ever took place.

Had county counsel, the board of supervisors or the arbitrator ever actually bothered to review this list of non-noticed, non-arbitrated items, they might have at least asked management why they added the same 'permit' twice double charging $971.65.

Permit	S.B. County Planning & Development	1/19/11	$971.65
Permit	S.B. County Planning & Development	1/19/11	$2,000.00
Plans and Consulting	JMPE	4/2/11	$2,060.00
Plans and Consulting	JMPE	7/28/11	$2,940.00
Permit	S.B. County Planning & Development	7/29/11	$971.65
Permit	S.B. County Planning & Development	7/29/11	$250.32
TOTAL:			$62,145.55

$1,557.49 listed as "permit" is actually a bill from the county for engineering work by Brad Paola, directed by the county to be performed to access and document the electrical health and safety violations (see attached).

The remaining line items are related to the health and safety violations issued by your county and are each a violation of Civil Code §798.39.5.

The board of supervisors is aware that the $62,145.55 was never noticed, violating CC §798.32 and depriving the homeowners of their due process rights. They are aware that the $62,145.55 includes fraud and is in direct violation of CC §798.39.5

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand and the ordinance. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

AWARD NO. 6 (PROFESSIONAL FEES)

The board of supervisors has ample evidence that there is no capital asset associated with these fees and are fully aware that they contain violations of Civil Code §798.39.5.

James Ballantine told Biersmith to ignore the homeowners and the county's requirements and gave him wording to copy and paste. That is exactly what Biersmith did, depriving the homeowners of any due process whatsoever.

Regarding the alleged 'finding' that "The homeowner's own consultant agreed that professional fees could be amortized and that they were analogous to a capital expense item." There is no evidence to back up such a claim. Even if there were evidence that Mr. Baar made an analogy, which does not meet the substantial evidence standard, Mr. Baar, like Mr. St. John, did not read the ordinance, has no expertize in the tax code, generally accepted accounting principles or any other authority on the subject matter.

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand and the ordinance. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

AWARD NO. 7 (ARCHITECTURE AND ENGINEERING FEES)

Management committed fraud by representing to and charging the homeowners $90,000 based on documents that they merely copied from the prior management. The homeowners have clearly shown management's pursuit of the old documents from the previous owner, the fact that there is no transaction in their financial statements, and that there isn't any document that evidences a monetary transaction of any kind.

Again, James Ballantine told Biersmith to ignore the homeowners and the county's requirements and gave him wording to copy and paste. That is exactly what Biersmith did, depriving the homeowners of any due process whatsoever.

In this instance, Mr. Ballantine told Mr. Biersmith to point to old plot plans for an abandoned water and sewer project. Mr. Biersmith did exactly as he was told and went further stating that these 2005-2006

documents "were properly categorized as capital improvement expenses" without pointing to ANY evidence to support his claim.

Nowhere does Mr. Biersmith explain how these old documents fit the ordinance definition of "Capital improvement": any addition or betterment made to a mobilehome park which consists of more than mere repairs or replacement of existing facilities or improvements and which has a useful life of five or more years.".

The county has ignored this fraud for years but it is fraud, theft, an illegal taking. CALCRIM No. 3476 provides protections against the taking of personal or real property. This illegal taking simply will not stand.

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand and the ordinance. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

AWARD NO. 8 (PAST PAYMENTS BY PARK OWNERS FOR INCREASED REAL PROPERTY TAXES)

Management committed fraud by representing the supplemental tax bills to the owners (the Bell Trust) as $130,531 when the county bill was $31,533.96.

The board of supervisors is aware that their own bill to the owners was $31,533.96 and represents the total of all supplemental property taxes.

The Internal Revenue Code and its associated revenue rulings and regulations, as well as generally accepted accounting principles (GAAP), Judge Anderle's ruling and the county ordinance all classify property taxes as ordinary operating expenses.

Internal Revenue Code §164 specifically includes property taxes as an allowable deduction for the taxable year within which paid or accrued. The county's finding specifically quotes ordinance section 11A-5(f)(1), which delineates property tax as "an expense in connection with operating the park" and different from capital improvements or capital expenses.

The county requires the arbitrator to "bridge the analytic gap" between considering property taxes per 11A-5(f)(1) and passing them through as a capital expense per 11A-6, the exclusive domain of capital assets. The expressed requirement is for the arbitrator to "Point to the relevant evidence that supports that the costs to be subject to amortization are for capital improvements and/or expenses as permitted to be passed through by the Ordinance." And to "Point to the relevant evidence that supports what is the useful life of the capital improvements and/or expenses."

Mr. Biersmith ignored the county and the homeowners.

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand and the ordinance. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

AWARD NO. 11 (LEGAL FEES ASSOCIATED WITH THE CHALLENGE TO THE RENT INCREASE)

The board of supervisors is aware that legal fees are an ordinary operating expense that cannot be passed through as a capital asset, as settled by Judge Anderle. County counsel is aware that many of the line items in management's exhibits relate to their interactions with management's attorney regarding health and safety violations and related penalties violating Civil Code §798.39.5.

County Council, charged with making findings in these proceedings, never disclosed the ex parte communications and agreements made with management, which is the direct subject matter of this award.

The Internal Revenue Code and its associated revenue rulings and regulations, as well as generally accepted accounting principles (GAAP), Judge Anderle's ruling, the county ordinance and the board's finding ("Baar's testimony is substantial evidence that legal fees, if reasonable in amount, are appropriately included as a basis for a rent increase as an **ordinary and necessary operating expense**.") all agree that legal fees are to be treated as ordinary operating expenses.

The county requires the arbitrator to "bridge the analytic gap" between considering legal fees "as a basis for a rent increase as an ordinary and necessary operating expense" per 11A-5(f)(1) and passing them through as a capital expense per 11A-6, the exclusive domain of capital assets. The expressed requirement is for the arbitrator to "Point to the relevant evidence that supports that the costs to be subject to amortization are for capital improvements and/or expenses as permitted to be passed through by the Ordinance." And to "Point to the relevant evidence that supports what is the useful life of the capital improvements and/or expenses."

Mr. Biersmith ignored the county and the homeowners.

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand and the ordinance. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

AWARD NO. 12 (TOTAL PERMANENT AND TEMPORARY INCREASE)

The board of supervisors is aware that any increase must follow Ordinance §11A-5(i)(1) to §11A-5(i)(6).

§11A-5(i) states: "To determine the amount of any increase in excess of the automatic increase, **the arbitrator shall**:" follow steps 1 through 6 (see ordinance section attached). This is not a mere suggestion, but a requirement of the law.

The board of supervisors is aware that the ordinance provides for recuperating **reasonable financing costs**, if any, for capital items only. Nowhere does the ordinance allow the **charging of interest**.

The board of supervisors is aware that management has unilaterally bound the homeowners to fraudulent loans, with no loan documentation, predatory lending practices, and usurious terms. Requiring homeowners to dispute these unlawful loan practices in that arbitration setting limits their choice of best forum to resolve disputes and is considered predatory.

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand and the ordinance. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.

CONCLUSION

The county has failed to protect the homeowners, the residents of Santa Barbara County who depend on Ord. §11 and §11A, and the ordinance itself. It has failed to provide the express purpose "to protect the owners and occupiers of mobilehomes from unreasonable rents while at the same time recognizing the need for mobilehome park owners to receive a fair return on their investment and rent increases sufficient to cover their increased costs."

The basic rules of statutory construction are well established. "When construing a statute, a court seeks to determine and give effect to the intent of the enacting legislative body." *People v. Braxton* (2004) 34 Cal.4th 798, 810. "'We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.' [Citation.] If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls." *Fitch v. Select Products Co.* (2005) 36 Cal.4th 812,

In this case, the construction of the ordinance is protect the homeowners while providing the park owners with the constitutional minimum fair return.

This construction includes a formula that must be followed in order to protect the homeowners. The express instructions of Ord. §11A-5(g) to §11A-5(i)(6) **SHALL** be used in calculating any increase.

Included in this formula, and the overall construction, is the requirement to prove that management is not already receiving a fair return. Ord. 11A-(5)(h) The arbitrator **may** allow an increase in excess of the automatic increase for increased costs where increases in expenses and expenditures of management **justify such increase**. Management never attempted to make a prima facie case that the current rents allowed and collected do not provide a fair return on investment, as the law requires.

The construction also provides for the treatment of ordinary operating expenses separate and apart from capital expenses or capital improvements. As above. "The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context." In other words, you cannot substitute an ordinary operating expense for a capital expense or capital improvement because that treatment suits your purpose (of extracting higher than legal rents).

The homeowners request that the board of supervisors deny management's request and find the arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the county remand, the ordinance, California code, and case law. In the alternative, the homeowners are prepared to hold the county legally and financially accountable for not following or enforcing its own ordinance and California state law.