Attachment DD

Homeowners' Petition for Review of Arbitrator's Decision on Remand

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

April 10, 2016

We the homeowners' representatives for the homeowners of Nomad Village respectfully petition for Review by the Board of Supervisors of the opinion and award, dated March 5, 2016, in the matter or arbitration between Nomad Village Homeowners and Nomad Village Mobile Home Park. This petition alleges prejudicial abuse on the behalf of the arbitrator as set forth below.

BACKGROUND

On January 19, 2016 the Santa Barbara County Board of Supervisors reconsidered their May 15, 2012 actions as it related to Awards 4, 5, 6, 7, 8, 11, and 12 of the Arbitrator's December 20, 2011 decision. The board made specific findings and remanded these items back to the arbitrator to "make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence." A hearing before the Arbitrator was set and held on February 17, 2016. The homeowners presented evidence and legal citations on which the Arbitrator could make findings of fact. Management requested that the Arbitrator ignore the County's instructions and the Homeowners evidence and return an award in the amount and detail that they requested.

The Arbitrator released an award letter signed March 5, 2016, awarding all items that management had request. There are no findings whatsoever. The Arbitrator made no effort to hide his prejudicial treatment of the Homeowners.

Award No. 4 (Amortization Period and Rate)

The County's finding correctly determined that "amortization is based upon the useful life of capital improvements and capital expenses (County Code § 11A-6(a)(2); (b)(2))", and that "The Arbitrator determined that "[a]ll granted temporary increases are to be amortized at 9% for seven (7) years", but did not make any findings or analysis to support this award."

The Arbitrator made no findings or analysis in his award letter. He ignored the County's finding and awarded Management's request that "4. All granted temporary increases are to be amortized at 9% for seven (7) years." Award number 12 contains a discussion of charging interest.

Award No. 5 (Escrow Account and Costs Expended)

The County found that "The decision of the Arbitrator is not supported by findings as to whether the $62,145.55 in claimed costs are related to capital improvements and/or capital expenses and thus eligible to be passed on to homeowners".

The Homeowners presented evidence that this list of items was never included in the rent increase (attachment F, Exhibit C). Santa Barbara County Ordinance 11A-5(j) states "The total increase shall not

exceed the amount in management's notice of rent increase." Had Management been awarded their total notice of increase, this amount would clearly be in violation of the ordinance. Nowhere does the ordinance discuss 'backfilling' disallowed items with items not originally noticed.

The Homeowners presented evidence that this list of items was created and included expenses that were eight months after the notice of increase, and were ordinary operating expenses, not allowed to be passed through, per the ordinance, according to Management's own evidence. The homeowners presented evidence that this list of items included charges to the landowners, the Bells, not to management and included charges related to building violations (violating California Civil Code Section 798.39.5).

The Arbitrator made no "findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence." as required by the County's findings, as based on Judge Anderle's June 17, 2014 ruling.

Award No. 6 (Professional Fees)

The Board of Supervisors remanded this Award back to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence. Judge Anderle's ruling stated "In light of the arbitrator's lack of findings in awarding capital improvement and capital expense costs, discussed above, which will be the subject of further proceedings, the arbitrator's findings here may have been influenced by its erroneous determination as to the $320,000 escrow funds." Quite simply, there is no capital asset that incurred legal fees.

The homeowners presented evidence that incurred costs must be functionally interdependent components of an asset in order to become part of that capital asset and that these fees were treated as an ordinary expense by management. (Attachment F, Exhibit K). They presented evidence that none of the line items had anything to do with any capital asset. Some of the fees listed were for a 2009 case brought by the homeowners against prior management and settled in favor of the homeowners with legal fees awarded to the Homeowners in a hearing on November 29, 2009.

Many of the line items were dealing with the County Planning and Development department and County Counsel regarding numerous Health and Safety violations. Charging the Homeowners for these fees violates California Civil Code Section 798.39.5.

Award No. 7 (Architecture and Engineering Fees)

The Board of Supervisors remanded this Award back to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence. Judge Anderle's ruling stated in Award number 6 also applies to award number 7, "In addition, the arbitrator's findings here may have been influenced by its erroneous determination as to the $320,000 escrow funds. Remand is appropriate as to this award, too." Quite simply, there is no capital asset that incurred A & E fees.

The homeowners presented evidence that incurred costs must be functionally interdependent components of an asset in order to become part of that capital asset. They presented evidence that there was no monetary transaction between the prior and current Management. Management merely presented copies of the prior Manager's old documents and represented to the Homeowners that $90,000 was the purchase price.

The County is aware that none of these documents were ever used for any capital project by the current Management.

Award No. 8 (Past Payments by Park Owners for Increased Real Property Taxes)

The Board found "the Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. The Arbitrator did not identify whether the supplemental tax increase was categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners; thus, the Board of Supervisors determines that the Arbitrator abused his discretion."

The homeowners presented evidence that Judge Anderle's ruling was clear that the supplemental assessment is an ordinary operating expense, "Thus, the supplemental assessment reflects an increase in property taxes within the meaning of section 11A-5(f)(1) of the Ordinance".

The Arbitrator treated these taxes as a 7 year pass-through, Ord. §11A-6 capital improvement.

The Homeowners presented evidence that the Ground lease clearly shows the taxes are a financing activity related to cost of possession: Rent #3 (Attachment F, Exhibit H) and that the Code of Federal Regulations, 26 CFR 1.162-11 – Rentals: § 1.162-11 Rentals explicitly defines taxes on behalf of the lessor as rent in acquisition of a leasehold. Judge Anderle's same rational as applied to denying percentage increase applies to taxes, "Here, the arbitrator noted, the Ground Lease included a provision for a $500,000 one-time payment which could not be recouped as an operating cost. If the rule were to allow this additional percentage rent to be passed through, the one-time payment could easily be lowered to an equally valuable higher percentage rent, thus converting the same payment from a non-recoupable acquisition cost to a recoupable operating cost. (Ibid.)".

The Homeowners presented evidence that the actual supplemental tax bills equaled $31,533.96. (Attachment O) Management's representation to the homeowners that the supplemental taxes were $130,531 is a material misrepresentation. The County is aware that the total supplemental assessment since 2008 equals $31,533.96.

Award No. 11 (Legal Fees Associated with the Challenge to the Rent Increase)

The Board found "the Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. Findings for this Award are especially important because legal fees are not expressly identified in the Ordinance as an allowable operating expense. The Arbitrator did not make findings regarding the final calculation of the legal fees awarded nor did the Arbitrator identify whether the legal fees were categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners."

The homeowners presented evidence that Judge Anderle's ruling was clear that the legal fees are an ordinary operating expense, "The Ordinance does not expressly include or exclude legal fees incurred in connection with rent increase notices and proceedings…..(1) Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance and repairs …." (S.B. County Code, ch. 11A, § 11A-5(f)(1).)".

The Arbitrator treated legal fees as a 7 year pass-through, Ord. §11A-6 capital improvement.

The homeowners presented evidence that Management's own testimony was that they had not incurred any of these costs (Attachment M, page 172) and were collecting almost $1,000 a month in interest on monies not spent. (This one item alone)

Many of the line items were dealing with the County Planning and Development department and County Counsel regarding numerous Health and Safety violations and the associated penalties. Charging the Homeowners for these fees violates California Civil Code Section 798.39.5.

Award No. 12 (Total Permanent and Temporary Increase)

The homeowners presented evidence that the Arbitrator had not previously determined increases per Ord. §11A-5(i). Section 11A-5(i) provides a precise formula stating "To determine the amount of any increase in excess of the automatic increase, the arbitrator ***shall***:…" follow steps 1 through 6. The Arbitrator ignored the Ordinance and provided management with an award in the same form, amounts, timing and interest rate that they requested.

Ordinance §11A-6 provides for the cost of capital projects and "reasonable financing costs" that may be passed on to the homeowners. The 'financing costs' are actual borrowings that management may need in order to complete a project and the ordinance allows management to defray some of those costs.

Management is not passing on reasonable financing costs. There are no financing costs for Management to defray. Management is ***charging*** the Homeowners 9% interest as the lender to 150 households. Management has complete control over the term in years, interest rate and loan amount, with the threat of eviction if not paid. Management has sent out eviction notices based on their 'lending practices'.

According to the Federal Deposit Insurance Corporation (FDIC), illegal "predatory lending" typically involves:
"Imposing unfair and abusive loan terms on borrowers, often through aggressive sales tactics, taking advantage of a borrower's lack of understanding of complicated transactions, and outright deception." Simply put, predatory lending becomes a crime in California when the lender manages the loan transaction to extract the maximum value for itself without regard for the borrower's ability to repay the loan.

This would include collecting interest on loan amounts not incurred, as in Award #11 and others.

Conclusion

The County's findings and Judge Anderle's ruling were clear that the Arbitrator must make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner, as described above.

Therefore, the Board of Supervisors must find that the Arbitrator abused his discretion on each award above by not supporting his award with findings.

Respectfully submitted,

Nomad Village Homeowners

Debra Hamrick
Homeowners Representative