

25 Nov 2020

Gus Aarnaes, President
Park Paseo Homeowner Association
Board of Directors
25 Christamon W.
Irvine, CA 92620-1836

Mr. President;

This letter is sent by certified mail, Certification #: 7019 2280 0001 4261 1206.

This Request for Alternate Dispute Resolution (ADR) is made in compliance with the *Civil Code* Section §[5930](#)(b).

I Prelude

On 26 Feb 2020 a [contract](#) to Ultimate Pool Remodeling Inc. was let to upgrade the Prosa Pool deck. Letting of this contract is of some substance.

- The amount of the contract, is \$126,192. The [2020 Reserve Data Analysis](#) (RDA) sets aside \$70,000 for this work. The amount of this contract in excess of the budgeted amount is \$56,192.
- [Bylaw](#) VII(2)(2) requires that a vote by the Association members be taken when the amount of expenditures exceeds 5% of the budgeted amount for a given year. The budgeted amount in the [RDA](#) is \$888,000, and the 5% margin is \$44,400. A vote by the Associated member is required but was not taken.
- The January and February Board Agenda has no mention that a Board vote was to be taken to let the contract to Ultimate Pool Remodeling Inc. It is mandated by *Civil Code* §[4930](#)(a) that "...the board may not discuss or take action on any item at a non emergency meeting unless the item was placed on the agenda ...", wherein *Civil Code* §[4930](#)(d) does not apply given that there is no urgency in this let.
- The January and February Board Minutes show no vote on the [contract](#) let. [Bylaw](#) VIII(8)(c) requires that the Board Minutes be recorded by the Board Secretary and contain the votes of each Board member on any voted item ("...The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors...")
- There was no vote of the membership to authorize the funds on this contract. There was no notification sent to the membership that a vote by the Board on this contract was scheduled. There was no vote by the Board on this contract.

On 9 Mar 2020 a [presentation](#) was made to the Board concerning various issues. Item 6 of this presentation presented to the Board that [Bylaw VII\(2\)\(2\)](#) requires that the Board have a vote on matters exceeding 5% of the current year budget, and [CC&R V\(3\)\(a\)](#) and [CC&R V\(3\)\(b\)](#) which restricts annual assessment increases to 5% without a vote.

On the 13 July 2020 Board Meeting

- The July [Board Agenda](#) indicates that an update will be presented concerning the Clubhouse deck upgrade.
- The July [Board Minutes](#) indicate that a vote was taken to award a [contract](#) to Ultimate Pool Remodeling Inc. Letting of this contract is of some substance.
- The July [Board Minutes](#) indicates that the amount of the contract is not to exceed \$481,655. The contract amount is \$473,830.
- The budgeted amount in the [RDA](#) for the Clubhouse deck upgrade is \$340,000. The amount of this contract in excess of the budgeted amount is \$133,830.
- No notification that a vote was to be taken by the Board to award this contract was made to the Association Members. Notification of an update of status is not an indication that the Board will vote.
- Pursuant to [Bylaw VII\(2\)\(2\)](#), the Association members were not given an opportunity to vote to authorize an expenditure in excess of 5% of the annual budget.

On the 14 Sep 2020 Board Meeting

- Item IV of the 14 Sep 2020 [presentation](#) made to the Board indicates that with information on hand at that time, the contracted amount for the Prosa and Clubhouse pool upgrade exceeded the [Bylaw VII\(2\)\(2\)](#) amount required for a member vote to authorize funds and that no vote was taken.
- The Board President, Mr. Gus Aarnes, stated that he had a legal opinion from the Board attorney distinguishing between upgrades/maintenance, and new purchases. Mr. Aarnes asserted that the legal opinion stated that upgrades were exempt from the member voting requirements but that new items were not.

On [23 Sep 2020](#) and [1 Oct 2020](#) my request for this legal opinion in writing was unanswered.

On [8 Oct 2020](#) I requested the legal opinion in writing.

- The Association Managing Agent, Lynn Wyatt, [answered](#) that the legal opinion was protected under attorney client privilege and was not “shared with homeowners”.
- I [responded](#) that attorney client privilege protects the attorney not the client and in a subsequent [email](#) that Mr. Aarnes public revelation breached whatever privilege was asserted.

On [14 Oct 2020](#) an Internal Dispute Resolution ([IDR](#)) was requested to resolve the issue of my request for this legal opinion.

On [6 Nov 2020](#) an [IDR](#) was held with the Board President, Mr. Aarnes, representing the Board. Mr. Aarnes left the [IDR](#) before the start of the [IDR](#) .

No IDR was held pursuant to the requirements in *Civil Code* [§4915](#)((b)3) in that no Board member was present to confer ([§4915](#)(b)(4)) or resolve ([§4915](#)(b)(5)) the dispute, nor to memorialize the proceeding nor sign into writing ([§4915](#)(c)) an agreement on behalf of the Board.

II Request For an Alternate Dispute Resolution (ADR)

The Association has been unable to successfully engage in an [IDR](#) and I therefor request an ADR pursuant to *Civil Code* Sections [§5925](#)(b)(1) and [§5925](#)(b)(3).

Pursuant to *Civil Code* [§5930](#)(c) you must respond within thirty (30) days to this request. If no response is received within thirty (30) days then the request for an ADR will be considered as rejected pursuant to *Civil Code* [§5930](#)(a)(3).

The proximate cause of this ADR is to receive in writing the legal opinion tendered by the Association attorney, Mr. David E. Cane of Cane, Walker & Hastings to the Board of the Park Paseo Homeowners Association.

Thank you;

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