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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

DOCKETED

APR 18 2012

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

IN THE MATTER OF THE FORMAL
COMPLAINT OF SPARTAN HOMES AND
CONSTRUCTION, INC.,

DOCKET NO. WS-03478A-08-0256

RESPONSE TO REQUEST
TO EXTEND PAYMENT
DEADLINE

COMPLAINANT,

vs.

FAR WEST WATER AND SEWER, INC.,

RESPONDENT.

On March 30, 2012, Far West Water and Sewer, Inc. ("Far West" or the "Company") belatedly filed a Request to Extend Payment Deadline (the "Payment Extension Request") regarding the \$154,180 refund the Company was ordered to pay to Spartan Homes and Construction, Inc. ("Spartan") by December 14, 2011, pursuant to Decision 72594. For the reasons set forth herein, Spartan respectfully requests that the Arizona Corporation Commission ("Commission") deny Far West's Payment Extension Request and order the immediate return of Spartan's money as required in Decision 72594.

Far West has acted in bad faith in this case and is withholding money that rightfully belongs to Spartan. Decision 72594 was issued September 15, 2011. Prior to that, a recommended opinion and order ("ROO") was issued August 22, 2011. At no time since the ROO was issued more than seven months ago did Far West notify the Commission of its alleged inability to pay the ordered refund until its March 30, 2012 filing. In fact, the only reason Far West even made the March 30 filing was in response to a Compliance Notification Letter issued by the Commission's Compliance and Enforcement Manager dated March 14, 2012, which stated that "Far West ... has until March 30, 2012, to come into compliance with the payment obligation

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1 of Decision No. 72594 or Staff may pursue an [order to show cause] against the Company." Far
2 West's willful refusal to comply with a Commission order has caused Spartan to incur yet
3 additional legal expenses to obtain the return of its money and has wasted the resources of
4 Utilities Division Staff and the Commission.

5 If Far West was truly unable to make the ordered refund, it would have notified the
6 Commission many months ago, and it has certainly had ample opportunities to do so. On August
7 22, 2011, the Administrative Law Judge issued her ROO in this docket. Among other things, the
8 ROO contained the following ordering paragraphs:

9 IT IS FURTHER ORDERED that the amount of \$126,270.72 is immediately due
10 and payable to Spartan Homes & Construction, Inc.¹

11 IT IS FURTHER ORDERED that Far West Water and Sewer, Inc. shall pay the
12 amount of \$126,270.72 to Spartan Homes & Construction, Inc. within 90 days
13 after the effective date of this Decision unless they reach an agreement as to a
14 later payment date.

14 IT IS FURTHER ORDERED that if Far West Water and Sewer, Inc. and Spartan
15 Homes & Construction, Inc. reach an agreement as to a later payment date, they
16 shall jointly file with Docket Control, within 90 days of the effective date of this
17 Decision, as a compliance item in this docket, a document signed by both parties
18 memorializing their agreement as to the later payment date.

17 On August 30, 2011, Far West filed one exception to the ROO, stating as follows:

18 Far West Water and Sewer, Inc. ("Far West") has reviewed Judge Martin's
19 Recommended Opinion and Order, dated August 23, 2011, ("ROO") and has one
20 Exception.

21 * * * *

21 The ROO would essentially require Far West to file "a new rate case within six
22 months of the date of this decision," which would be sometime in early March
23 2012. This would not provide Far West enough time to prepare and file a rate
24 case based on a test year ending December 31, 2011. Accordingly, Far West asks
25 that the deadline for filing a new rate case be May 31, 2012.

25 Far West said nothing in its filing about the alleged inability to refund Spartan's money as
26 ordered in the ROO, nor did the Company seek an extension of the proposed December 14, 2011,

27 ¹ In Exceptions filed August 31, 2011, Spartan requested that the refund amount be increased
28 from \$126,270.72 to \$154,180. An amendment to increase the refund amount to \$154,180 was
subsequently offered, adopted and incorporated into Decision 72594.

1 payment deadline. If Far West was truly concerned about making the refund, it no doubt would
2 have addressed such an important issue in its exceptions.

3 The ROO was considered by the Commission at its Open Meeting on September 6, 2011,
4 and was adopted with amendments, including the amendment specifically requested by Far West
5 in its exception. There was significant discussion at the Open Meeting involving legal counsel
6 for both Far West and Spartan. Although Far West had another opportunity to notify the
7 Commission of its alleged inability to make the ordered refund, it did not do so. If Far West's
8 concern about the refund was real, the Company had a duty of candor to disclose that concern
9 while the Commission was discussing the very issue with its legal counsel.

10 On November 2, 2011, counsel for Spartan sent an e-mail to counsel for Far West
11 requesting confirmation that Far West would pay the ordered refund by December 14, 2011.² In a
12 series of six e-mails received from counsel for Far West on November 9-10, 2011, not once did
13 counsel mention that the Company was unable to make the refund payment as ordered. A few
14 days after these e-mails, on November 15, 2011, Far West made a compliance filing in the docket
15 but again said nothing about any inability to make the ordered refund, even though the refund was
16 due 30 days later on December 14, 2011. Far West was obviously well aware of the deadlines in
17 Decision 72594 as evidenced by the fact that it was addressing other compliance requirements in
18 its filing.

19 On December 19, 2011, Spartan filed a Notice of Non-Compliance with Decision 72594
20 and Request for Order to Show Cause after Far West failed to make the ordered refund. In its
21 motion, Spartan notified the Commission that Far West failed to return the \$154,180 ordered in
22 Decision 72594 by the December 14, 2011 deadline, and likewise, had failed to make
23 arrangements (or even attempt to make arrangements) with Spartan for a later payment date. Six
24 weeks later, Far West made a compliance filing dated February 1, 2012, in which it stated that
25 "[t]he parties are currently negotiating an acceptable payment arrangement and are optimistic they
26 will shortly be able to resolve this matter." However, in its March 7, 2012, Notice of Continuing

27 ² A copy of the November 2, 2011, e-mail was attached as Attachment 1 to Spartan's Notice of
28 Continuing Non-Compliance with Decision 72594 and Renewed Request for Order to Show
Cause filed March 7, 2012, in this docket.

1 Non-Compliance with Decision 72594 and Renewed Request for Order to Show Cause, Spartan
2 responded as follows:

3 [I]t is not true that the parties are negotiating a payment arrangement, nor is Mr.
4 Householder of Spartan optimistic that the matter will be resolved without
5 additional intervention by the Commission. On January 23, 2012, Mr. Marks on
6 behalf of Far West first contacted counsel undersigned via e-mail to ask whether
7 Spartan would consider some kind of payment schedule with interest. This
8 communication came more than a month after the December 14, 2011,
9 compliance deadline in Decision 72594; more than a month after the filing of
10 Spartan's December 19, 2011, Notice of Non-Compliance; and more than two
11 months after a November 2, 2011, e-mail to Far West requesting confirmation that
12 Far West would meet the deadline to pay the \$154,180 to Spartan. (emphasis in
13 original)

14 Given its deeply injurious relationship with Far West since 2004, Spartan is unable to trust
15 any of the statements that are made by Far West, and the Commission should be similarly
16 skeptical. Spartan's mistrust has grown deeper based upon Far West's refusal to deal forthrightly
17 with Spartan on the issue of the refund since Decision 72594 was issued. Spartan has incurred
18 additional legal expenses since December 2011 attempting to secure the return of its money.
19 These recent legal expenses are on top of those already incurred by Spartan to reach a final
20 decision in this case, which expenses exceeded the amount of the ordered refund. Given these
21 circumstances, Spartan is justifiably unwilling to accept any arrangement that would require
22 periodic payments from Far West, which would no doubt require additional trips back to the
23 Commission and the expenditure of additional legal fees in order to get Far West to comply with
24 a payment schedule.

25 In its Payment Extension Request, Far West states that its "shareholders identified three of
26 their own residential lots currently on sale for \$55,000 each that could be used to satisfy the
27 Spartan Homes obligation."³ As described in a March 21, 2012, e-mail from Far West to counsel
28 for Spartan, a copy of which is attached hereto as Attachment 1, the offered lots are located in a
residential subdivision near Yuma known as El Rancho Encantado. The subdivision is owned by
El Rancho Encantado, LLC, which, in turn, is wholly owned by Paula and Andy Capestro, the
owners of Far West. The March 21 e-mail explains that only 13 of the original 92 lots remain

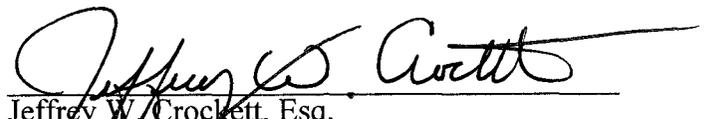
³ Far West Request to Extend Payment Deadline at p. 3, lines 16-19.

1 unsold. Assuming a sale price of \$55,900 per lot (which Spartan believes is a reasonable
2 estimate),⁴ the Capestros would have realized gross revenues exceeding \$4.4 million on the 79
3 lots that they have already sold. If the Capestros, as the owners of Far West, are willing to
4 convey three of their residential lots in lieu of refunding the money owed to Spartan, they
5 certainly have the cash available to pay the refund outright based upon the sales of 72 lots in the
6 El Rancho Encantado subdivision.

7 Brian and Susan Householder are small business owners, and their up-start Spartan Home
8 and Construction, Inc., was literally crippled by the actions of Far West, which has the financial
9 resources to bankrupt a small customer with stonewalling and legal posturing. The events that
10 gave rise to this complaint began in 2004. Spartan filed its formal complaint against Far West in
11 May 2008 and a hearing was held over four days in December 2009 and January 2010. A refund
12 of Spartan's money was ordered in September 2011. It is now 2012, and Spartan has yet to
13 receive the return of its money, no interest is accruing on that money, and Spartan continues to
14 incur legal expenses in an effort to force Far West's compliance with Decision 72594. The
15 distinguished British statesman William E. Gladstone once famously declared that "justice
16 delayed is justice denied." The \$154,180 that Far West is withholding belongs to Spartan and
17 should be returned without further excuse or delay. If Far West remains defiant and unwilling to
18 return the money, then Spartan urges the Commission to move forward with an order to show
19 cause to compel compliance with Decision 72594.

20 RESPECTFULLY submitted this 18th day of April, 2012.

21 BROWNSTEIN HYATT FARBER SCHRECK LLP

22 
23 Jeffrey W. Crockett, Esq.
24 One East Washington Street, Suite 2400
25 Phoenix, Arizona 85004
26 Attorneys for Spartan Homes and Construction, Inc.

27 ⁴ In its March 21, 2012 e-mail, Far West states that the list price of the three lots offered to
28 Spartan is \$55,900 per lot. The lots offered to Spartan (Lots 14, 70 and 71) are some of the least
desirable lots within the El Rancho Encantado development, and would therefore have some of
the lowest sales prices.

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- 1 ORIGINAL and thirteen (13) copies filed
this 18th day of April, 2012, with:
- 2
3 Docket Control
4 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
- 5 COPY of the foregoing hand-delivered
this 18th day of April, 2012, to:
- 6
7 Belinda A. Martin, Administrative Law Judge
8 Hearing Division
9 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
- 10 Janice Alward, Chief Counsel
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
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- 13 Steve Olea, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
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- 16 Copy of the foregoing sent via e-mail and
first class mail this 18th day of April, 2012, to:
- 17 Craig A. Marks, Esq.
18 Craig A. Marks, PLC
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Suite 200-676
19 Phoenix, Arizona 85028

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Attachment 1

Crockett, Jeffrey W.

From: Craig.Marks [Craig.Marks@azbar.org]
Sent: Wednesday, March 21, 2012 11:35 AM
To: Crockett, Jeffrey W.
Subject: FW: Spartan Homes
Attachments: Filed Public report El Rancho Encantado.pdf;
RECORDEDCOVENANTS,CONDITIONS&RESTRICTIONS-FEE#2008-30417.pdf

Jeff,

Please see the proposal below from Andy Capestro to resolve the Spartan Homes payment obligation.

Also, I asked some months ago for a property description and map for the Spartan Homes development so that we could file the requested CC&N Extension Request. I don't think I ever got any response. Can you check on these items?

Craig

Attached is the subdivision disclosure report for El Rancho Encantado, Phase 1, as well as the CC&R's for the subdivision. The subdivision is owned by El Rancho Encantado LLC, which in turn is wholly owned by Paula Capestro and me.

El Rancho Encantado has only thirteen lots remaining out of the ninety two originally offered. Paula and I have set aside three lots for Spartan Homes and Brian Householder to consider. Each of the three lots have a listed price of \$55,900. The lots and sizes are as follows: Lot 14, 7215 SqFt, Lot 70, 6321 SqFt, Lot 71, 6633 SqFt.

We propose that all three lots be transferred to Spartan Homes, free of all liens, for payment in full for the amount owed by Far West to Spartan Homes. We will agree to pay all sales commissions and all escrow fees.

As an alternative proposal, Far West would be willing to execute a note payable to Spartan Homes, carrying an interest rate of 10% per annum, with 10% of the principle amount owed paid in advance, and with a term of 5 years, interest only payable monthly. The note would be secured by the three properties set forth above, and would have a due on sale/release clause so that one third of the principal of the note would be paid upon the sale of any one of the properties.

Please transmit our proposal to Mr. Crockett. If any clarification is necessary, please advise.

4/18/2012