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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
DOCKETED

2012 MAR 7 PM 1 58

MAR - 7 2012

COMMISSIONERS

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

DOCKETED BY

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

DOCKET NO. WS-03478A-08-0256

NOTICE OF CONTINUING NON-  
COMPLIANCE WITH DECISION  
72594 AND  
RENEWED REQUEST FOR ORDER  
TO SHOW CAUSE

COMPLAINANT,

vs.

FAR WEST WATER AND SEWER, INC.,

RESPONDENT.

BROWNSTEIN HYATT FARBER SCHRECK, LLP, A LAW CORPORATION  
One East Washington Street, Suite 2400  
Phoenix, AZ 85004  
602.382.4040

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On September 15, 2011, the Arizona Corporation Commission ("Commission") issued Decision 72594 in the above-captioned formal complaint docket. Pursuant to this decision, Far West Water and Sewer, Inc. ("Far West") was ordered to comply with the following ordering paragraphs (among others) by December 14, 2011:

IT IS FURTHER ORDERED that the amount of \$154,180 is immediately due and payable to Spartan Homes & Construction, Inc.

IT IS FURTHER ORDERED that Far West Water and Sewer, Inc. shall pay the amount of \$154,180 to Spartan Homes & Construction, Inc. within 90 days after the effective date of this Decision unless they reach an agreement as to a later payment date.

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

IT IS FURTHER ORDERED that Far West Water and Sewer, Inc. shall, within 10 days of making payment to the Spartan Homes & Construction, Inc. as ordered herein, file with Docket Control, in this docket, proof of having made such payment in the form of copies of the payment instrument and copies of proof of delivery of the payment instrument to, or acknowledgment of receipt of the payment instrument by, an agent of Spartan Homes & Construction, Inc.

1 Far West failed to timely comply with these ordering paragraphs (as well as other ordering  
2 paragraphs of Decision 72594) and on December 19, 2011, Spartan Homes and Construction, Inc.  
3 ("Spartan") filed a Notice of Non-Compliance with Decision 72594 and Request for Order to  
4 Show Cause (the "Notice of Non-Compliance").

5 On February 1, 2012, Far West filed made a Compliance Filing which stated that "[t]he  
6 parties are currently negotiating an acceptable payment arrangement and are optimistic they will  
7 shortly be able to resolve this matter."<sup>1</sup> However, it is not true that the parties are negotiating a  
8 payment arrangement, nor is Mr. Householder of Spartan optimistic that the matter will be  
9 resolved without additional intervention by the Commission. On January 23, 2012, Mr. Marks on  
10 behalf of Far West first contacted counsel undersigned via e-mail to ask whether Spartan would  
11 consider some kind of payment schedule with interest. This communication came more than a  
12 month after the December 14, 2011, compliance deadline in Decision 72594; more than a month  
13 after the filing of Spartan's December 19, 2011, Notice of Non-Compliance; and more than two  
14 months after a November 2, 2011, e-mail to Far West requesting confirmation that Far West  
15 would meet the deadline to pay the \$154,180 to Spartan. A copy of the November 2 e-mail is  
16 attached as Attachment 1. Far West never provided confirmation that it would comply with the  
17 compliance deadline.

18 In a phone call following Mr. Marks' January 23, 2012 e-mail, counsel undersigned  
19 suggested to Mr. Marks a possible resolution to the payment matter. A short time after that, Mr.  
20 Marks responded that he had spoken with Mr. Capestro of Far West and Mr. Capestro was  
21 interested in the idea that had been suggested. Mr. Marks stated that Mr. Capestro would  
22 immediately contact Mr. Householder to further discuss the matter. However, it has been well  
23 over a month, and Mr. Capestro has not contacted Mr. Householder. In fact, Mr. Householder has  
24 had no communication with Mr. Capestro since the December 14, 2011, compliance deadline.<sup>2</sup>  
25 Likewise, the undersigned has not received any further communication from Mr. Marks regarding

26 \_\_\_\_\_  
27 <sup>1</sup> Compliance Filing by Far West Water and Sewer dated February 1, 2012, at 1, lines 13-14.

28 <sup>2</sup> The communication that Messrs. Householder and Capestro did have on the December 14, 2011, compliance deadline was actually initiated by Mr. Householder who went to Mr. Capestro's office to hand-deliver a signed copy of the sewer main extension agreement.

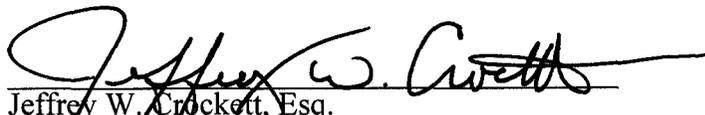
1 a resolution of the outstanding payment owed to Spartan. No payment plan of any type has been  
2 proposed. Sadly, this type of bad faith dealing is consistent with Spartan's years of experience  
3 with Mr. Capestro and Far West, which has caused the Householders great financial harm and  
4 emotional distress.

5 As of the date of this filing—almost 90 days past the December 14 compliance deadline—  
6 Far West has not paid Spartan the \$154,180 refund that was ordered in Decision 72594 on  
7 September 15, 2011, nor has Far West made any arrangement with Spartan for a later payment  
8 date. Far West remains out of compliance with the most important requirement of Decision  
9 72594, and Far West has shown total contempt for the repayment ordered in Decision 72594

10 Spartan hereby renews its request that the Commission issue an order to show cause why  
11 Far West should not be found in contempt for violation of Decision 72594. As part of such a  
12 proceeding, Spartan requests that the Commission consider appropriate fines and penalties under  
13 A.R.S. §40-424, as well as the imposition of interest on the unpaid \$154,180 refund amount at the  
14 statutory rate<sup>3</sup> of 10% since the date of Decision 72594.

15 RESPECTFULLY submitted this 7<sup>th</sup> day of March, 2012.

16 BROWNSTEIN HYATT FARBER SCHRECK LLP

17   
18 Jeffrey W. Crockett, Esq.  
19 One East Washington Street, Suite 2400  
20 Phoenix, Arizona 85004  
Attorneys for Spartan Homes and Construction, Inc.

21 ORIGINAL and thirteen (13) copies filed  
22 this 7<sup>th</sup> day of March, 2012, with:

23 Docket Control  
24 ARIZONA CORPORATION COMMISSION  
25 1200 West Washington Street  
26 Phoenix, Arizona 85007  
27

28 <sup>3</sup> See A.R.S. § 44-1201(A).

1 COPY of the foregoing hand-delivered  
this 7<sup>th</sup> day of March, 2012, to:  
2  
3 Belinda A. Martin, Administrative Law Judge  
4 Hearing Division  
5 ARIZONA CORPORATION COMMISSION  
6 1200 West Washington Street  
7 Phoenix, Arizona 85007  
8  
9 Janice Alward, Chief Counsel  
10 Robin Mitchell, Senior Staff Counsel  
11 Legal Division  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

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18 Copy of the foregoing sent via e-mail and first  
class mail this 7<sup>th</sup> day of March, 2012, to:

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# **Attachment 1**

**Crockett, Jeffrey W.**

---

**From:** Crockett, Jeffrey W.  
**Sent:** Wednesday, November 02, 2011 3:41 PM  
**To:** Craig.Marks  
**Subject:** Far West Water and Sewer--Decision 72594

Craig:

I am writing to request an update regarding the status of certain requirements of Decision 72594.

Far West Water & Sewer has two compliance items under Decision 72594 that are due November 14, 2011:

- Prepare a sewer collection main extension agreement for Sierra Ridge Unit 1 for review and execution by Spartan Homes; and
- Prepare an accounting of the refunds that are due to Spartan Homes for the period August 31, 2005 to the present.

Far West Water and Sewer also has two compliance items that are due December 14, 2011:

- File to extend the utility's sewer CC&N to include the entire Spartan Homes property; and
- Pay Spartan Homes \$154,180.

I would appreciate it if your client would confirm that Far West is on track to meet these compliance deadlines.

Also, please let me know if Far West Water & Sewer needs any additional information from Spartan Homes regarding either the sewer collection main extension agreement or the application to extend the utility's sewer CC&N. Spartan will provide any requested information right away.

Best regards,

Jeff

Jeffrey W. Crockett, Esq.  
Brownstein Hyatt Farber Schreck LLP  
One East Washington Street, Suite 2400  
Phoenix, Arizona 85004  
e-mail: [jcrockett@bhfs.com](mailto:jcrockett@bhfs.com)  
direct: (602) 382-4062  
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mobile: (602) 999-4188

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