

November 19, 2021

Dear Fellow Member,

In its so-called Litigation Update, AAFPO described supposedly “disturbing revelations” emerging from its lawsuit filed against the Resort without notice to the members – a lawsuit the current AAFPO board and the candidates they have endorsed appear determined to continue to pursue. AAFPO congratulates itself for uncovering alleged wrongdoing past AAFPO boards somehow “overlooked” or “agreed” to for the previous quarter-century, all by suggesting that a vote for any candidates other than those favored by AAFPO is a vote for continued complicity and ignorance. Nonsense. Here are their *deceptions*, coupled with the actual facts:

1. *“Recently, Judge Chavez ordered [the Resort] to produce some of the information AAFPO has been requesting for months.”*

What “orders” is AAFPO talking about?

- Amounts paid for the membership database appear in detailed reports that the Resort provides to each AAFPO board annually, and that the Resort would have provided to this board months ago had it agreed – as all previous boards have – to sign a nondisclosure agreement safeguarding the information from the Resort’s competitors. Read Judge Chavez’s June 10th order [here](#).
- AAFPO claims that the Resort was “forced by court order” to produce a list of delinquent property owners. Again, as Judge Chavez’s order notes, the Resort has been willing to produce this information “subject to appropriate confidentiality provisions” – which Judge Chavez required through a June 9 protective order proposed by the Resort and opposed by AAFPO. Read it [here](#).

2. *“We have learned that AAFPO has contributed 100% of the approximately \$245,000 that has been paid for the membership database software used by the Resort. Previously, the Resort argued that AAFPO had paid nothing for this software.”*

Complete deception. The evidence confirms – as the Resort has long maintained – AAFPO itself has paid nothing for the software. The bankruptcy plan allocates 95% of the annual membership assessments to the Resort for the purpose of operating the amenities. Expenses associated with the membership database are paid exclusively out of the Resort’s 95% share, and nothing from AAFPO’s portion. To assert that AAFPO owns the database because members pay assessments, is akin to arguing that AAFPO owns the amenities because member assessments go toward the costs of maintaining them. In fact, as the governing documents provide, the Resort owns the amenities and maintains them for the benefit of all members.

3. *“The most current list [of delinquencies] has 757 properties for which assessments were not paid By normal business standards, the Resort’s performance of [its collection duties] as an agent of AAFPO is unacceptable.”*

The Resort has collected over 91% of the membership assessments owed on a 10-year rolling average. By resort-industry standards, that rate is excellent. And the Resort has every incentive to keep it high – because, under the bankruptcy documents, 95% of the assessments are earmarked for the Resort. The

less the Resort collects in assessments, the more the Resort's owners must pay out of their own pockets to maintain the amenities, and they do quite a bit of deficit-financing of the amenities already.

4. *"Between 2011 and 2016, the Resort foreclosed judicial liens on approximately 35 properties in Angel Fire.... In other words, the Resort has taken title to 35 properties because the owners of these properties owed assessments to AAFPO."*

It is stunningly hypocritical that AAFPO criticizes the Resort foreclosures, after complaining about the Resort's "unacceptable" performance in collections. Foreclosure is a last resort. Auctions on the courthouse steps rarely attract buyers; the Resort typically bids the full amount of its judgment and may acquire the property as a result. When it does so, it immediately writes a check not only for unpaid Village of Angel Fire fees and taxes, but also for the entire amount of the unpaid assessments – assessments that would have continued to go unpaid had the Resort failed to take judicial action. And because properties held by the Resort generate no assessments – for the Resort or AAFPO – the Resort strives to sell them as soon as possible to owners who will take the assessment obligation seriously.

5. *"Upon taking title [to] the foreclosed properties, why wasn't AAFPO informed? Why have Resort employees been executing and notarizing Claims of Lien and Releases of Lien as if they were authorized to do so on behalf of AAFPO? How were the past dues assessments spent?"*

This tiresome AAFPO technique, indictment by rhetorical question, collapses as soon as the answers are supplied. AAFPO knows the bankruptcy documents obligate every Angel Fire property owner to pay annual assessments to the Resort and empowers the Resort to "enforce" this obligation. (See Supplemental Declaration, 3(A) and (C).) AAFPO also knows the bankruptcy plan designates the Resort as the party entitled to collect the assessments. (See Plan ¶ 4.16(j)(ii).) And AAFPO knows that the Resort has been performing these duties – including, if necessary, actions to foreclose liens – for many years now. Finally, AAFPO knows exactly how past assessments were spent, because the Resort shares that information with AAFPO every year, under appropriate and reasonable conditions of confidentiality.

6. *"Keep in mind that the list of eligible voters (members in good standing) was prepared by [the] Resort."*

And keep in mind that despite AAFPO's vocal and often repeated claims about the list's inaccuracy, Special Master Nan Nash has now certified the list as "substantially true and accurate." See the Special Master's report [here](#).

When you cast your ballot in AAFPO's upcoming election, please vote for the truth.

Best regards,

ANGEL FIRE RESORT OPERATIONS, LLC



Mark Manley
General Counsel