

Litigation Summary Update

April 22, 2021

On April 22, 2021, Judge Emilio Chavez granted AAFPO's Motion for Partial Summary Judgment, declaring that the Board was legally constituted. The Court specifically held that AAFPO's By-Laws and New Mexico Statutes allowed AAFPO's Board to appoint directors to fill vacancies left by the resignation of five of the nine directors in July and August 2020. This ruling is contrary to the position the Resort has been taking since August 2020.

At hearing on April 22, 2021, the Court granted AAFPO's Motion to Compel, ordering that the individual Board Members did not have to sign Non-Disclosure Agreements, that had been required by the Resort in order to provide certain information requested in discovery. The Court declined to determine whether AAFPO is a "Homeowner Association," as defined by the New Mexico Homeowner Association Act. The parties are to attempt to come to an agreement on a Protective Order for the disclosure of information by the Resort, which Protective Order will contain a provision that allows AAFPO to have the Court decide whether any particular documents must be kept confidential. If the parties cannot agree to the terms of the Protective Order, they will submit competing Orders to the Court.

We are hopeful that, as a result of the Court's Order, we will be able to obtain information regarding collection of assessments, how the assessments have been spent, and records of the bank account or accounts in which the assessments have been deposited. There are still many other areas of information for which AAFPO has requested documents that the Resort has not provided. AAFPO's counsel will seek to have this information provided by the Resort voluntarily before filing another Motion to Compel.

The Court set trial for this matter for August 29, 2022. Counsel for the Resort requested seven days for trial. Counsel for AAFPO does not believe this trial should take so much time, and had hoped the trial could be heard in April 2022. Counsel for the parties will attempt to agree on deadlines to be put into a Scheduling Order to submit to the Court.