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Revised Response to Finance Committee

Posted By [bobfrank](#) On [February 5, 2009](#) @ 01:23 In [2009 Campaign](#), [Truth Squad](#), [SCA Board](#), [Community Affairs](#), [News!](#) | [No Comments](#)

Note: The following revised posting was accomplished after receiving advice from the SCA Election Committee on February 2, 2009.

PDF version of this posting is at this link:

[1] [PDF Version of this Posting](#)

Here are the minutes of the annual meeting with the Finance Committee allegations on which the following responses are stated:

[2] [Annual Meeting Minutes + Finance Committee Complaints](#)

The SCA Finance Committee (FC) Chairman Joe DeMeo and all other FC members have made five public allegations against me. The FC complaints are summarized here since the full text is available from the Board's mailing in February 2009, and since most of Mr. De Meo's words are not directly related to the Review Journal article. My responses have to be detailed because the consequences of further misunderstandings are quite high.

1. FC Complaint: Focused on defending SCA financial management before, during, and since the transition in May 2005, and claimed there was no evidence of misconduct or mismanagement by anyone on the FC, CAMs or the Boards.

My Response to 1: I believe the FC complaint is deceptive and disingenuous. The time frame I focused on was May 2005 until the end of 2006. Because of the many changes in management and CAM companies, there is ambiguity on which individuals were responsible for the association's accounting and financial management in 2005 and 2006. Del Webb's financial records prior to March 2006 were not made available for open review until mid 2007.

We have been told that RMI manually transferred the accounting records, developed a new chart of accounts, and changed other key accounting records and procedures when RMI took over in 2006. Those many accounting changes, manual records adjustments, and employee changes provided many opportunities for errors and/or financial misconduct. When millions of dollars are involved and subjected to major changes, prudent managers have to be very inquisitive and very cautious.

Once again, RMI replaced its accounting system during the following year (2007). The SCA accounting system was rebuilt with a new chart of accounts and extensive manual re-keying of records in 2007. That sort of manual conversion process creates errors and provides temptations for corruption. The conversion in 2007 was supposed to be handled electronically between the old RMI systems to the new RMI system. But, Directors were told that the electronic conversion failed and the transfer processes had to be manually completed during the summer months.

Meanwhile, there were many problems caused by the conversion that were reported by FC members while they were trying to develop the annual budget. We were told that at one point the SCA member account data was so corrupted from the RMI conversion that a manual spreadsheet had to be keyed in and used for dealing with SCA's 7,000+ members. We were told this manual spreadsheet

was used to accomplish monthly mailings of SCA's magazine and official records for some time. We were also told RMI's Comptroller was fired/replaced because of the many accounting and finance problems in the RMI system, and that it took almost a year for RMI's accounting and financial reporting to finally come up to SCA's minimum requirements. Not reported were the amounts of overtime hours and extra SCA costs in 2007 and 2008 due to correcting conversion problems.

In summary, SCA's multi-million-dollar financial systems suffered two complete overhauls in less than 2 years. I am fully justified in be highly concerned about the errors and possible losses from those experiences. And, since only one member of the current Finance Committee was serving on the committee at transition time, and since none of the FC members have been SCA Directors, the current Finance Committee members have insufficient first-hand knowledge to make such serious, unanimous, group allegations against a director. The FC report is an embarrassment to the chair and its members, and it should be retracted.

2. FC Complaint: Although he was not involved in the issue at that time, Mr. De Meo insisted that nothing adverse happened during and after transition that would justify an investigative/forensic audit. The FC has contended that in spite of the complex financial transition activities, nothing could have been missing while millions of dollars of bank accounts were transferred between Del Webb Community Management Company bank accounts and SCA's bank accounts with RMI. FC claimed that during such a huge transfer of assets and management company responsibilities, no one should be concerned that only routine audits were performed, and that the auditor (inherited from Del Webb) reported no significant issues in 2005 or 2006.

My Response to 2: A forensic audit was clearly called for in November 2006 to review a few financial issues. Because of the simultaneous transitions of both the Board of Directors and the Community Managers, there should have been a close review to ensure full integrity of all accounts. In this case, the Finance Committee's claims about the term "outside auditor" should be considered deceptive.

I have been told that SCA's auditor, Mr. Gary Lein, has performed every audit, and prepared all SCA tax returns since Sun City Anthem was initiated in the late 1990s. Of course, we all know he is not an employee of SCA, DW, Pulte or RMI. He is a consultant/auditor employed by his own company.

But, we know it is possible for consultants involving financial matters to possess even more serious conflicts of interest than other types of corporate employees. It is wrong for the FC to try to claim that because Mr. Lein is an independent auditor that he could have never had any conflicts of interest between Del Webb and SCA community interests. And, even if one has such a potential conflict of interest that does not suggest anything improper was acted upon.

In my opinion/business judgment, regardless of how good Mr. Lein may have been in the past, the auditing company should have been changed at transition time in May of 2005 from the developer's selection to another company not affiliated in any way with the developer. I also believe our auditing company should be routinely changed every three to five years to encourage fresh and innovative reviews of our association's business practices. I have found during my career it is an advantage to have new auditors looking at a company's accounts because they detect things that can be missed by those who might be too close to the ways things have always been done.

Since we know of at least some poor financial management decisions were made during 2005, 2006 and 2007 that resulted in the association losing hundreds of thousands of dollars, we must be alert to possible financial misconduct and/or

fraud during that same time frame.

And, since there were (a) two accounting system conversions involving many manual actions, (b) two transitions in community managers involving major corporate changes in people and policies, and (c) major changes in the SCA board members between 2004 and 2007, our association has been exposed to many opportunities for misconduct and fraud. We need to always be alert to such possibilities. We can not afford to be caught by the kinds of fraud and power abuses our Nation and State are involved in at this time.

No person has been accused of any specific misconduct, and it is more than appropriate for a Director to be highly concerned when answers to his valid questions about finances and contracting are ignored or suppressed. If the records and accounting procedures were as clean and complete as claimed by the Finance Committee, it would not take long and not cost much for a qualified forensic auditor to verify the results. Everyone in our community would benefit from investing in such independent validations of the associations funds and financial records.

3. FC Complaint: Because the Del Webb-appointed auditor worked for his own company, members of the FC believe it could be unfair to claim Mr. Lein might have had conflicts of interest with the SCA community's interests at transition and since. And, because Mr. Lein is a very nice person and has earned high credentials within the auditing community, and because he was endorsed by previous developer-controlled and other SCA Boards, he should be above being questioned about possible conflicts of interest.

My Response to 3: It is deceptive for the committee to try to claim that because Mr. Lein is a named partner in his own firm that he was not retained/did not "work for" the Del Webb Community Management Company—a Pulte Corp. company. Mr. Lein has admitted he has been the auditor for the SCA since he was originally retained by Del Webb in the late 1990s. Mr. Lein's firm services hundreds of other homeowner associations. And, Mr. Lein can receive new business accounts when developers open up new communities and/or when Community Management Companies are changed by HOAs. Conflicts of interest are clearly possible.

There is nothing factually wrong with what I said in the paper, or above. As a Director with relevant business experience in this auditing area, I have the obligation to question Mr. Lein about potential conflicts of interests related to his Del Webb/Pulte business, and he should not feel uncomfortable with such questions. Nothing untoward or improper was suggested or inferred. This is an example due diligence by a board member.

4. FC Complaint: Because Mr. Lein has always followed normal auditing practices, and because there are 4 CPAs on the FC, no one should question the results of the past audits. Also, because a forensic audit would cost more to validate some of Mr. Lein's work, such additional audits would be a waste of time and money.

My Response to 4: My statement is factual, and the FC's recommendations have been noted. As an elected Director I have legal fiduciary duties and responsibilities that appointed FC members do not have. The FC advises and the Board makes the decisions. In the case of potential misconduct or fraud, a Director is required to consider and advocate the matter of an investigative audit until being satisfied—even if the majority of the board does not wish to do so.

We have many examples in this State and Nation where large numbers of highly experienced CPAs have hundreds of years of cumulative experience, but they failed to identify and act on findings pointing to significant fraud in companies

and government agencies. But, under Nevada law, the boards of directors can be held accountable for failing to use their business judgment to detect and initiate actions to correct financial problems. My objections and inquiries are clearly within my authority and duty.

On the other hand, the Finance Committee members serve at the pleasure of the Board. The FC charter does not provide it the authority to politically attack a Director. If a Director want to challenge the actions of another Director, he/she must make the challenge directly. A committee must not be exploited and misused to speak for other directors.

5. FC Complaint: The FC continues to deny there have been any past problems with SCA's income tax filings. The FC insists that it was proper for SCA to pay no income taxes in 2004 to 2006 while we were accumulating over \$3.7 million in "profits" from charging more dues/assessments than needed for operating expenses, reserve funds and facilities improvements.

The FC and Mr. Lein also claim that the SCA Boards used good business judgment to over-ride IRS policies and not refund or credit the surplus dues to members. The FC also claims it and the Board of Directors used good business judgment to fail to report the surplus dues as corporate profits—as believed to be required by IRS Revenue Ruling 70-604.

My response to 5: I consider the FC comments to be untrue, and I believe they are intended to politically influence members against me during the current board campaign. The facts do not support the FC claims.

Retired IRS agent advisers living in SCA have frequently made themselves available to meet with the FC members, SCA Treasurer and Board members. But, the Board officers and FC members have refused to meet to discuss the well-documented and precisely explained concerns. This failure by the Board of Directors is a well-documented fact.

Past rationale used by our auditor and FC and other board members to circumvent Revenue Ruling 70-604 has not been proven valid by the IRS. Until the IRS has provided written confirmation that our tax returns for 2004-2007 were correctly done, I must remain unconvinced of the legality of way our returns were prepared and submitted.

And, I must remain concerned over SCA's potential liabilities for paying back income taxes, penalties and interest that could exceed \$1.5 million. As a Director, I have the personal fiduciary duty to pursue the matter until it is clearly settled. The FC can advise, but it can not decide the matter. And, the FC must not be used as a political tool of other board members to try to bully me into agreement by using SCA funds to mail out politically-charged materials to influence the SCA membership. That action is highly unethical.

In addition, the FC and auditor Gary Lein refused to state categorically that there is no risk to SCA for owing back taxes. They know that I am right in claiming there is a good chance they made mistakes on past income tax returns for this community. They know there is a chance that our returns that reported no tax due for 3 consecutive years are wrong. And, they have refused to join me and our retired IRS tax advisers to consult with the appropriate national IRS staff member to settle this dispute. Instead, they insist waiting until an IRS audit is conducted on SCA in the future.

In summary: my tax concerns have been clearly stated. After receiving advice of highly competent professionals, I am convinced that SCA's income taxes have been incorrectly submitted in the past few years; and, I am quite worried that significant tax filing errors have been made on our \$3+ million of accumulated

surplus assessments (profits) have been made in the past. There appears to have been a cover-up of those errors in hopes that the IRS will not notice.

As a Director, I can not condone such apparent misbehavior. If our tax preparers (Mr. Lein and Jack Troia) and past SCA Treasurers (West, Dwyer, Roz Berman and Cheri) have made some mistakes, or made errors in judgment in filing our tax returns, then they need to admit such mistakes, and we can ask the IRS for permission to make the necessary corrections and pay a negotiated fine.

In the meantime, I must insist that SCA asks the IRS to confirm that we previously filed our returns correctly in 2004 through 2006. We can not afford to take the risk of waiting until we are audited to learn we have done our returns wrong. Such a mistake could cost us hundreds of thousands of unnecessary dollars in fines and penalties.

Bob Frank, SCA Director

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