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December 7, 2010

VIA FACSIMILE - (480) 991-7040
(Original by U.S. Mail)

Jason Smith, Esq.
Carpenter, Hazlewood, Delgado & Wood, P.C.
1400 W. Southern Avenue
Tempe, Arizona 85282-5691

Re: Haruff/Worbington v. Sunland Village Homeowners Association (the "Association")

Dear Jason:

Please allow this letter to serve as a response to the Association's December 1, 2010 letter sent to my clients demanding attorneys' fees. Apparently, this letter was sent to them as a follow up to your letter sent to us on September 24, 2010 in which you also demanded attorneys' fees from clients because they hired you to respond to the issues raised in our May 27, 2010 letter. We hadn't heard from you since September 24 and we believed this matter was put to rest. Now, rather than peacefully attempt to resolve these issues through diplomacy, the Board has shamefully resorted to intimidation tactics. Our clients, however, refuse to be intimidated by bullies. For the reasons stated below, we highly recommend that the Association withdraw its threats to collect attorneys' fees from our clients over this matter.

As a general proposition, you are well aware that the Association cannot arbitrarily demand attorneys' fees from my clients. In order to conclude that it can collect attorneys' fees, the Association must effectively be awarded fees in a court of law. No court of law has awarded attorneys fees to the Association. While the Association may "wish" to collect fees from my clients, wishing does not make it so. Thus, as a matter of course, we demand that the Association remove any fees from its accounting and cease sending clients invoices for fees.

Furthermore, the whole reason we raised the issues stated in our May 27, 2010 was to avoid litigation. While we believe we had colorable claims against your clients, and still do, we had hoped our letter would effectively open a dialogue with the Association so that the parties could avoid having to spend fees. Unfortunately, the Association does not share this view.

The Association has absolutely no ability to collect attorneys' fees from our clients simply because they chose to question some of the Board's practices. Based upon your September 24, 2010 letter, however, you believe the Association's authority to collect fees is derived from the applicable sections of the CC&Rs and the Bylaws. You contend that pursuant to Article IX, Section 8 of the Bylaws, that because our clients chose to have their attorneys write a letter to the Association rather than complain about the Association's practices at a meeting our clients, "...waived their right to object to the issues..." In addition, you claim that because they failed to raise their objections to the Board's practices at a meeting, our clients have somehow violated a CC&R restriction, entitling the Association to punish them and collect attorneys' fees. In other words, you expect my clients to pay for your fees involved with having to respond to my letter dated May 27, 2010.

Your interpretation of the Association's community documents in this regard is overreaching and, frankly, wrong. Article IX, Section 8 of the Association's Bylaws states the following:

> All irregularities in the giving of notice or in the manner in which any action is taken shall be deemed waived unless objection is made personally at the meeting by the objecting person or unless objection is made in signed writing delivered to the president or secretary within 30 days after the meeting.

First, our clients on numerous occasions, during and after open Board meetings, complained about the issues raised in our May 27, 2010 letter. Your clients chose to ignore them, which required my clients to hire us to finally get their attention. Since your clients chose to ignore our clients and forced them to hire attorneys, if anything your clients should have to pay for our clients' attorneys' fees and not the other way around.

Regardless, even if you could show our clients failed to object to their practices at a meeting, our clients' alleged failure to comply with Article IX, Section 8 of the Bylaws does not permit the Board to punish them. According to Article XI, Section 11 of the CC&RS:

> If an owner defaults in making the payment of any assessment or in the performance of their observation of any provision of restrictions, the owner shall pay to and reimburse the Association for any reasonable costs, fees, and expenses, including attorneys' fees incurred by the Association.

Under the Community documents, a Bylaw is not the same as a restriction. "Restrictions" are defined in the definitions section under Article 3 of the CC&Rs as: "Restrictions mean this amended and restated declaration of covenants, conditions, restrictions and reservations as amended from time to time." Examples of restrictions are found in Article IV of the CC&Rs, which include placement of garbage cans, landscaping, storing a trailer, etc. Our clients violated none of these "restrictions". There is absolutely no authority contained in the community documents for the Association to fine our clients for allegedly failing to follow a meeting procedure stated in the Bylaws. If this were the case, I can assure you that if you reviewed the Association's meeting minutes in 2010 and if you did other minimal investigation, you would find that the members of the Board and other members of the Association violate the Bylaws with respect to procedural issues constantly. Why haven't these persons been issued fines? The Association's threatened imposition of fines against my clients in this regard is nothing short of selective enforcement.

Furthermore, even if the Association could somehow construe that a violation of the Bylaws is tantamount to a violation of use restrictions under the CC&Rs, the Association did not afford our clients proper due process under Arizona law before they decided that our clients owe them $4,867.50 in attorneys' fees. As you well know, A.R.S. § 33-1803(d) states: "Only after notice and an opportunity to be heard may the Board of Directors impose reasonable monetary penalties on members for violations of the Declaration." The Board's December 1, 2010 letter is not notice of a hearing. It is simply an opportunity for our clients to speak before Board sentences them. The Board has already decided that our clients violated a restriction and is forcing them to pay a penalty without first giving them notice of a hearing. This is the same thing as instead of having a trial, a jury convicts a defendant on the spot, a Judge subsequently issues the penalty, and then asks the defendant to prove why he is not really guilty. In this Country you are innocent before proven guilty. Perhaps you need to remind your clients of that adage.

The Board's persistent witch hunt against my clients is nothing less than troubling. Our clients did not pursue litigation over the issues raised in my May 27, 2010 letter because they hoped these matters could be resolved peacefully in the community. Our clients will make no apologies for hiring attorneys to speak on their behalf because they were previously shunned by the Board. However, it appears the Association is trying to make an example out of my clients and in doing so is sending a message to the community that if a member attempts to challenge the Board he will be punished without due process. Is this really how the Board wants to portray itself? If it is, I can assure you that if the Association does not withdraw its claim for attorneys' fees, our clients will have no choice but to assert breach of fiduciary duty claims against the Association.

Jason, please advise your clients to withdraw their unjustified threats immediately. We are confident that if this matter results in litigation, our clients will be deemed the successful parties and in turn the Association will pay our clients for any attorneys' fees and costs they

incur and have incurred thus far. Please respond with a letter stating that the Association is withdrawing its claim for attorneys' fees no later than **December 17, 2010**.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: _____
Stewart F. Gross
For the Firm

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