

Excuse me, who is guilty of what?

The September Board meeting witnessed the Board's final effort to humiliate Bob Frank by removing him as the Community's vice president. While those on the Board were alleging that Bob had released information of some consequence, Bob's real offense appeared to be that he had become for some a royal pain in the ass to work with. Yes, Bob was likely guilty of insisting that the Board should be looking at "x" when the Board had no interest in looking at "x." Having more than one person attempting to provide leadership is difficult for most organizations to cope with, especially in the case of Boards of Directors who superficially rule by consensus.

Organizational conflicts of this type can readily occur when there are highly focused individuals who are less inclined to yield to rule by consensus, especially when they believe they are right and others are misguided for any number of reasons. A "remedy" to fix the situation, at least for those who are in control, may or may not be forthcoming or even in sight. While some may prefer to seek a mutually agreeable accommodation to avoid conflict, others are not so disposed. Some less strong leaders would prefer to rely on the perception of a broken rule, a regulation not precisely adhered to, or an indiscretion pointing to something "wrong" in making or justifying their management decisions. Whether such management decisions reflect good or poor management practices I'll leave for others to work out and decide.

This reminds me of the Board's action last year when Favil West decided he had had enough of the Business Development Club and demanded that they cease operations. While everyone knew the reason was the Club's seminar series on Trumpets, the Board was obliged to pony up a list of pseudo Charter Club infractions that this newly formed Club had ostensibly committed. In other words, while Trumpets was the only matter at issue, as readily acknowledged in a statement made by our Association's legal counsel John Leach at a Board meeting, the Board would have us believe the matter involving the BDC was really about this or that rule infraction. That viewpoint, as recently reiterated by Kay Dwyer, is simply a poor and inexcusable attempt to re-write history. [For more on that matter, see: <http://www.scaview.org/Speculate.html>.]

I mention this because the BDC/Trumpets connection was raised anew by a resident during the Public Comments portion of the most recent Board meeting. Incredibly, when the issue was raised, Kay Dwyer sought to dismiss the Trumpets connection by wrongly asserting that the matter was really about violating Charter Club rules. As sad as that was to hear from

Kay Dwyer's lips, I believe it goes to the mentality of our present Board in addressing and attempting to justify recent Board personnel decisions.

But Kay Dwyer has other, seemingly more serious problems facing her—one of allegedly failing to accept personal responsibility for her actions as Board Treasurer in signing a Pulte-prepared document that among other things¹ would release Pulte from any future liability or claim by the Association for Neighborhood reserves. The potential problem stems from a clause in the document that in making the Agreement the signing Parties for the Association (Favil West and Kay Dwyer) agreed that they are relying on the advice of their individual counsel. For the purpose of further clarification, and in the context of the prior language in the Agreement, the term "counsel" is understood to mean "legal" counsel.

Although the Parties to the Agreement represent that they were relying "on their individual counsel," there is no information available as yet to support that conclusion, namely, that any counsel was relied upon by the Parties as stated in the Agreement. Even allowing that no counsel was sought, and allowing that Association counsel was available for that purpose, was the apparent failure of the Parties to seek such counsel a matter of material importance? Some residents believe so. Some have gone ahead and voiced the opinion that the failure of the Parties to seek legal advice in this matter, especially given the language of the Agreement in executing a general release of all past and future claims of liability, constitutes a breach of fiduciary duty by those office holders of the Association.

Association legal counsel John Leach made it clear in an opinion he rendered on the confidentiality of the Agreement that his advice was never sought. As Mr. Leach wrote Mike Dixon ". . . *neither the Association's legal counsel nor his firm participated in the preparation, review or negotiation of the Agreement or any terms and conditions set forth therein.*" See Documents, Villas Docs., Attorney Opinion . . . at www.sca-hoa.org

As reported by David Berman, Kay Dwyer has pleaded not guilty to a breach of fiduciary duty, while floating the idea of having since secured a legal opinion of her own as her defense in this matter.

Ron Johnson, 8 October 2007

¹ The initially confidential Agreement was limited in scope to the five Neighborhoods (consisting of 162 Villa duplexes plus the gated community of Pinnacle) and their reserve accounts. The Agreement resulted in the Association's acceptance of slightly more than \$241,000 to be allocated to the reserve accounts, plus an agreement to provide a landscape hardscape (rock) overlay for use in the Neighborhoods. This Agreement may be viewed on the Association's website, located at: www.sca-hoa.org.