

# ROBERT E. FRANK

Director, Sun City Anthem CAI  
2450 Hampton Drive, Henderson, NV 89052

February 16, 2009

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HILBURN & LEIN, CPA'S  
Attn. Mr. Gary Lein  
5520 S. Fort Apache  
Las Vegas, Nevada 89148

Comment: This letter from me to the association auditor was totally ignored. Not one word of response from the auditor, Board President Roz Berman, Board Treasurer Shirley Cheri, Finance Committee Chair Don Manning or attorney John Leach. Nothing! And yet, every one of the 11 items suggests financial mismanagement or corruption. In my career experience, such a letter from a member of an honest corporate board of directors would have triggered an immediate investigation into the facts, or a legal letter in return threatening to sue for defamation. These people seem to truly believe they are "untouchable".

Dear Mr. Lein:

This letter is in response to your statements during the January 22, 2009 Sun City Anthem CAI Board Meeting where you asked me to advise you of my auditing concerns and candidates for review in your 2009 audit of this association.

The issues outlined below might be considered out-of-scope for your standard audit; but, since the SCACAI has relied on your business judgment for almost a decade, this is a special case. During that time you have served SCACAI as its Chief Financial Consultant, Tax Preparer, Certified Public Accountant, and Auditor. In my opinion, Nevada CPA and AICPA ethics and codes of conduct require answers to these issues that occurred during your period of continuous service, and I respectfully request that you do so at no extra cost.

With the above in mind, I hereby request the following 11 issues receive audit attention this year. I will submit additional details if and when you need them.

1. In 2008 there was a SCA Reserve Fund "look back" study/report by a Finance Committee task group the caused the SCA Reserves to be recalculated. The developer's obligation to pay in May 2005 was significantly revised this past year. Hundreds of thousands of dollars due to the SCA Reserves Accounts have

been affected by the so-called “look back” study. It appears that the current Reserves Study contractor (Diversified Facility Services) did not investigate or validate the requested changes submitted by the members of the ad hoc task group. I have been told that the company accepted the study group’s numbers and modified the reserves calculations exactly as submitted. That appears to violate NV statutes.

Since the changed reserve study values were also used to calculate the 2009 budget; and, since the revised reserve study numbers are being used to support the demands planned for the developer for paying the reported 2005 shortages in reserve funds, your audit services are needed to review this situation. We need to validate the accuracy of the processes used for the 2009 reserve funds and budget data. Hundreds of thousands of dollars are at risk if errors were made by the study group.

2. **Unresolved SCA Income Tax Questions.** As you know, there are still unresolved issues concerning SCA’s past income tax returns in 2004 through 2007. Since you were our tax preparer for almost a decade, and you know of my deep concerns, I am requesting that you join me and the Board President and Board Treasurer on a conference call to the national IRS expert on Tax ruling 70-604. We need to confirm the accuracy of past SCA Board decisions to cite NRS 116.3103(1) as authorizing them to use their “business judgment” to over-rule the IRS’s policies and thereby avoid having to ask the members on what to do with the surplus assessments. I also need to be advised by you on why the SCA income tax return filed in September 2008 was calculated much differently than the previous three years--when no tax was paid?
3. **Contract to Valley Crest Landscaping for 969 tons of landscape rock replenishment for \$71,706 in August 2008.** There were no written requests for quote/bid. There were two lower bids (\$28,975 from Cedco and \$24,050 from High Desert) in response to a verbal RFQ. Research by Mr. Sonnenfeld indicates the lower bids may have been responsive and probably could have been accepted. Valley Crest has not provided valid proof of delivery and proof of installation for its contract for 969 tons of rocks at \$71,706. It appears that

RMI allowed its facility manager to sign the order for over \$71,000 even though RMI's agreement states that **contracts over \$5,000 must be signed by two board members**. Also, RMI has not provided any proof of supervision of the contract, nor has RMI provided proof of acceptance of all of the deliveries. Yet, RMI was authorized by two SCA directors to pay in full. Reviews of this contract suggest there have been **serious contracting errors and/or management misconduct**. An audit is urgently needed.

4. **Sole-source Contract for \$87,961.60 Lutron Lighting system upgrades** to the Anthem Center lighting system in 2008. This contract was **improperly awarded by RMI** at above the \$84,239 amount approved by the board. RMI's contract **does not allow it so spend over \$5,000 without Board approval**. Subsequent analysis shows that most, if not all of the contract could have been competed to provide SCA the same or better products and services at **less than half the cost of the RMI contract**. After SCA member Nathan Sonnenfeld's inquiries, Lutron appears to have slightly reduced its price to \$77,421.21. But, that number was still too high considering the very limited products and services delivered. This **contract points to many significant errors and/or misconduct**. Circumstances require that it be audited this year.
5. **Insufficient supporting details to back up RMI check requests**. In the past, there have been times when **RMI has provided insufficient information to support two director signatures of a requested SCA check**. An example from my past was an RMI request to reimburse its operational payroll of over \$81,000 **without providing the information explaining the backup for the payment**, and without containing an RMI executive's signature to **authenticate** the payments for the individuals--including such details as overtime and reimbursements for individual expenses. I have been told this problem has been corrected, but it **needs to be audited and verified for accuracy, completeness and consistency**.
6. **Cleo Design Program Contracts for refurbishment services and equipment to various companies as recommended by Cleo Design for approximately \$600,000**. It appears that most, if not all of the orders for materials and services were placed using sole-source procedures. The resulting project costs appear to have been **significantly higher** than if competitive contracting was

used. This contract needs to be audited/validated in terms of compliance with statutes, competitive procurement rules, and accounting rules.

7. **Refurbishment of the restaurant and kitchen facilities for over \$150,000** using sole-source contracts and emergency procedures in September through November 2008. An audit is required to **confirm full compliance with emergency contracting rules**, and to verify that all required financial records are now available for review.
8. **Iron fence painting contract for approximately \$250,000** was initiated by RMI in 2007 and completed in 2008. But, members have reported that the contractor completely **failed to comply** with the board-directed **specifications**.

The specification required the contractor to remove all rust and corrosion with a wire brush, apply a primer coat with a brush, and then use a brush to apply two coats of finish paint of a standard color. Each paint coat was to be spaced to allow drying between the coats. However, it has been reported **the contractor was allowed to disregard the specification** and spray (not brush) only one coat of paint. The **one coat** of spray paint supposedly included a rust-inhibiting component with a **six-year warranty**. Little, if any, surface preparation was conducted to remove rust. This one-coat procedure violated the board-directed specification, and no evidence was been provided to show it was an acceptable substitute at the same price.

The selected contractor was about 50% lower than two other quotes. No information has been made available on why the lowest bidder was **not required to comply** with the board-directed specification, **or** why the other two bidders were not informed that the **specification was not mandatory**. We have been told that some finished work was inspected by RMI, but once a fence is painted, it is hard to verify that the board-directed specification was implemented. An audit of the contract records and an inspection of some finished fences are needed to determine if SCACAI claims against the contractor and/or RMI are appropriate.

SCA's expenses to re-paint and/or replace the iron fences in less than 3 years

due to negligence could cost hundreds of thousands of extra dollars to members. This may be a significant failure of RMI's contract management.

9. **\$16,700 Check Donation to Minuteman Foundation.** There appears to have been an illegal check for \$16,700 made out to the Minuteman Foundation in 2006 at the direction of Board President Favil West, prepared by CAM managers Arnie Snow and Terry DaSilva, and signed by Treasurer Kay Dwyer and Secretary Elaine Berg. Many facts concerning this SCA transaction were not discovered until late 2008, and no appropriate actions to correct the errors have been taken. Even worse, the current Board President and Board Treasurer disagree with the past Board Presidents and Treasurers on the basis for why the check was issued. Rosalyn Berman and Shirley Cheri claim the funds were used to buy shelving, but Favil West, Bob Berman and Charles Davis (President/VP/Treasurer of Minuteman Foundation) say that is false.

It appears there have been important law violations and resulting income tax consequences at the state and federal levels on this case. SCA President Favil West appears to have been involved in a self-dealing transaction when he ordered that this large payment be made from SCACAI to the Minuteman Foundation--where he was also serving as corporate board president and chief executive officer. But, the authorization and payment was not SCA Board approved, and it was not recorded in SCA records as required by Nevada Statutes and SCA governing documents.

We need to clear up the matter and deal with the audit findings. SCA Members Nathan Sonnenfeld and Tim Stebbins will help provide additional case details. Former Board President Mike Dixon may also have important information. The implications of apparent SCA Director West's misconduct and subsequent cover ups by the current board officers are too serious to ignore. This must be audited in 2009.

10. **Failure to use DW/Pulte payments of approximately \$300,000 in 2006 to correct construction defects** and amenities in Independence Center (IC). Such defects and amenities include: (1) voluminous electrical and fire code violations,

(2) Public Address system for the Morris, Nelson and Penn rooms, (3) building security system, and (4) a variety of other items. We need to know what those funds were used for. If not accounted for appropriately, if not spent as specified, and if not placed into the Reserves, there could be fire safety liabilities in IC and 2008 income tax liabilities. This needs to be audited and verified in 2009.

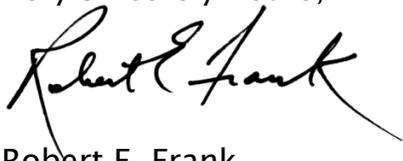
11. **Failure to collect the Co-Gen funds from DW/Pulte in 2005.** First-hand information provided by Board President Roz Berman in 2008 about the detailed history of this \$1.375 million contract agreed to in 2002 by DW/Pulte has never revealed why this huge obligation was not collected in 2005. From what I have seen, your recorded audits for 2005, 2006 and 2007 did not clearly highlight and address the fact that this payable was to be made into SCA's reserves in 2005, and that there was no legal basis or record to delay the payment of the \$1.375 million.

Also, I have not seen any accounting recognition in SCACAI records to show that Del Webb was obligated to pay \$1.375 million in May 2005. According to Board Presidents Dixon and Berman, there was a handshake agreement in 2005; but, was this a case of deceptive accounting practices by DW and RMI?

In addition, the board's 2007 and 2008 unilateral decisions to authorized Pulte to use all or most of the \$1.375 million for "greening" the 3<sup>rd</sup> Rec. Ctr. without economic justification and without receiving homeowner approval appears to have violated Nevada Statutes and SCA CC&Rs, by-laws and other governing rules. I strongly believe such a major decision required homeowner approval. A detailed audit of these actions and their consequences should show that the 2005, 2006 and 2007 board decisions on this matter were not made in full compliance with Nevada Statutes and SCA governing rules.

Please advise what information and/or documents you need from the CAM to be able to proceed with the above. If any extra billing will be required, please advise of the rationale.

Very Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert E. Frank". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Robert E. Frank

SCA CAI Director

Copies to: SCA Directors and CAM