

Mulcahy inspection iced, possible confrontation a concern

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Mulcahy residence in Burlingame Ranch neighborhood.

A possibly violent confrontation that appeared set for Tuesday between Lee Mulcahy and local law enforcement was called off Friday.

The Aspen-Pitkin County Housing Authority did an about-face and asked District Judge Chris Seldin to amend his Nov. 10 order authorizing forcible entry into Mulcahy's Burlingame Ranch home for a pre-closing inspection before the authority forcibly buys back the home. The request came after the Sheriff's Office contacted Mulcahy to schedule the inspection, according to the authority's request.

"(Mulcahy) informed the Pitkin County sheriff and other persons that he would not permit entry onto the property for that purpose," according to a motion filed Friday by APCHA attorney Tom Smith. "After consultation with the Pitkin County sheriff, APCHA is concerned about the potential for a violent confrontation if a pre-closing inspection is attempted at this time."

Instead, APCHA opted for a post-closing inspection, when the authority will be able to make claims for any deficiency with the property against the proceeds of the sale, according to Smith's motion. In addition, Seldin on Friday authorized the immediate transfer of the title to Mulcahy's home to APCHA, while the money for the home will be placed in a court-controlled account and eventually disbursed from there.

"APCHA has determined that the need for the pre-closing inspection is outweighed by concerns for public safety," according to Smith's motion filed Friday.

Mulcahy and his 86-year-old mother, Sandy Mulcahy, told the Times on Tuesday they would not allow the pre-closing inspection on the deed-restricted, taxpayer-subsidized home to take place. On Friday, he declared himself the winner of the most recent foray with his nemesis.

“We realize it’s just one battle in a long war,” Mulcahy said. “Thirty-three-hundred households under the tyranny of (APCHA) should all be cheering for the Mulcahys.”

He reiterated that he is willing to show that he is in compliance with APHCA employment rules, will pay fines and do community service in exchange for allowing him to stay in the home.

Mulcahy, a local artist, ran afoul of APCHA rules when the agency found him out of compliance with affordable housing employment guidelines that say he must work 1,500 hours a year in Pitkin County. He sued APCHA and lost at the district court and Colorado Court of Appeals, while the Colorado and U.S. Supreme Courts refused to hear the case.

That meant previous court decisions finding that Mulcahy violated the deed restriction on the property at 53 Forge Road. Seldin appointed a receiver to sell the home on Mulcahy’s behalf in November 2019 for a maximum price of \$995,000.

At a hearing Tuesday, Seldin found that Mulcahy’s defiant position essentially means he is placing himself “above the law,” a posture that is “incompatible with citizenship in a civilized society,” according to his order. Further, the judge said that Mulcahy’s frequent use of “language pregnant with veiled threats of violence” means he considers the judicial system’s orders “illegitimate,” according to the order.

Seldin said he was certain that Pitkin County Sheriff Joe DiSalvo would try every peaceable means to get Mulcahy to permit the pre-closing inspection.

“If necessary, however, the sheriff is authorized and directed to secure compliance with this order using whatever force is reasonably necessary in the circumstances, including forcible entry into the residence,” Seldin wrote in the order Tuesday.

That directive was rescinded Friday when Seldin signed Smith’s order waiving the pre-closing inspection, which Seldin noted was “a reversal of the request it made” during the hearing Tuesday.

While APCHA may be close to taking ownership of Mulcahy’s home, it is probably not much closer to taking possession of the property, said Joseph Krabacher, an Aspen attorney representing the receiver in the Mulcahy sale. That’s because if Mulcahy continues to refuse to leave – and he’s given no indication that he will change his stance – then he is entitled to an eviction proceeding in court that is akin to another lawsuit, he said.

“An eviction can take some time,” Krabacher said.

Essentially, that means any confrontation between Mulcahy and local law enforcement was kicked down the road Friday and likely into the distant future, because he will be allowed to remain in his home through the eviction process.

The rub for Mulcahy, however, is that Seldin has authorized a penalty of \$500 a day to be levied against him if he refuses to leave the property once the title has been transferred and the sale of the home closes. That adds up to \$15,000 a month or \$180,000 a year, which will accrue throughout the eviction process, however long it takes, and be deducted from the final sale price.

Local law enforcement were tight-lipped this week about any plans they’re making in relation to Mulcahy.

DiSalvo declined to comment, though Undersheriff Alex Burchetta said Thursday that the department was attempting to exhaust all peaceable means to comply with Seldin’s order.

“We’re not going to divulge our operations plans,” he said. “We need to keep our operations close to the vest to ensure safety for everyone.”

The Burlingame neighborhood is within the city of Aspen, though the Sheriff’s Office functions as the court’s law enforcement officers. Aspen Assistant Police Chief Bill Linn said Friday that the agency’s main concern is safety of neighborhood residents and law enforcement officers.

“We’re working to support (the Sheriff’s Office),” he said.

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