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**BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA**

GAIL J. ANDERSON, Administrator, REAL
ESTATE DIVISION, DEPARTMENT OF
BUSINESS & INDUSTRY, STATE OF
NEVADA,

Petitioner,

vs.

JOSEPH BITSKY; BARBARA BITSKY;
HELLEN MURPHY; and AUTUMN CHASE
HOMEOWNERS ASSOCIATION,

Respondents.

Case No. IS 10-2194

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER**

FILED

OCT 17 2012

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry, State of Nevada (the "Commission"), during a regular agenda on August 15th, 2012, at the Grant Sawyer Building, 555 E. Washington Ave., Rm. 2450, Las Vegas, NV 89101 and continued on October 8, 2012 at the Grant Sawyer Building, 555 E. Washington Ave., Rm. 2450 (the "Hearing"). Respondents Joseph Bitsky, Barbara Bitsky, and Hellen Murphy appeared at the Hearing. Respondents filed an Answer to the Complaint. Michelle D. Briggs, Senior Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

After hearing the allegations, the respective arguments, and having considered the evidence introduced by the parties and being fully advised, the Commission enters the following Findings of Fact, Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 116, the Commission has legal jurisdiction and authority over this matter.

FINDINGS OF FACT

The Commission, based upon the evidence presented during the hearing, finds that there is substantial evidence in the record to establish each of the following Findings of Fact.

1 1. On or about October 4, 2008, RESPONDENTS, JOSEPH BITSKY and HELLEN
2 MURPHY, were elected to the AUTUMN CHASE HOMEOWNERS ASSOCIATION (the
3 "Association") executive board and RESPONDENT, BARBARA BITSKY, was appointed to the
4 Association's executive board. RESPONDENTS, JOSEPH BITSKY and BARBARA BITSKY,
5 served on the executive board previously.

6 2. Despite the Association's governing documents providing the term of office for
7 the three board members' seats as follows: two (2) seats serve for one (1) year; and one (1)
8 seat serves for two (2) years; RESPONDENTS remain on the executive board as there have
9 not been any annual elections since 2008.

10 3. The Association's annual budget is under \$10,000 per year with 46 units paying
11 \$16 per month from 2008 to present. The Association is and has always been self-managed.

12 4. RESPONDENT, JOSEPH BITSKY, is the Association's custodian of records.

13 5. The Association does not have any financial statements.

14 6. The Association's most current reserve study, dated June 25, 2003, was
15 provided by the developer based on 36 units. There are 46 units in the Association.

16 7. On or about April of 2010, RESPONDENTS required unit owner Amie-Jo Dinsio
17 to acknowledge the following rules prior to reviewing Association records in the home of
18 RESPONDENTS JOSEPH BITSKY and BARBARA BITSKY:

19 Review of the Documents

- 20 1. There will no questions asked.
21 2. There will be no conversation at all.
22 3. There will be no writing instruments.
23 4. There will be no recording instruments.
24 5. There will be no cameras allowed.

25 8. On or about June 4, 2010, unit owners, Amie-Jo Dinsio, Jerolyn Dolan, Cathy
26 Aja, and Joseph Salvatore, filed a complaint with the Division alleging violations of NRS 116
27 against RESPONDENTS.

28 9. By letter dated June 16, 2010, the Division's investigator, David Garrick, notified
RESPONDENTS of the complaint and requested various documentation.

 10. On or about June 27, 2010, RESPONDENTS provided Mr. Garrick with an
incomplete response to the investigator's request.

1 11. By letter dated August 18, 2010, Complainant Joseph Salvatore received notice
2 from RESPONDENT, BARBARA BITSKY, that he could not run for the executive board,
3 stating:

4 Also, because you have filed and signed a complaint with the NRED, you are
5 now in conflict with the Association procedures and Covenants, and any action
6 or statement by a Board member as a campaign endeavor, could be and would
7 be construed as a retaliatory action or statement against you, as proven by your
8 current complaint.

9 12. By letter dated August 18, 2010, Complainant Cathy Aja was notified by
10 RESPONDENT, BARBARA BITSKY, that her candidate forms were invalid.

11 13. By letter dated September 12, 2010, RESPONDENTS notified all the unit
12 owners that there would not be an election for 2010.

13 14. On or about October of 2010, RESPONDENT BITSKY having hosted an
14 Association meeting at his house refused to let the attendees leave after finding out the
15 meeting had been recorded. Law enforcement was called and RESPONDENT BITSKY pled
16 no contest to two counts of coercion on or about April 14, 2011.

17 15. On or about October 13, 2010, RESPONDENTS adopted the following
18 resolution without a meeting, referring to it as an emergency action:

- 19 1. No Member (Owner) shall have the right to vote on any issue concerning
20 the Autumn Chase Homeowners Association if:
- 21 a.) the member is in violation of the Governing Documents (CC&R's 1.16) of
22 Autumn Chase Homeowners Association,
 - 23 b.) the member is more than sixty (60) days in arrears of Association
24 Assessments,
 - 25 c.) the members' subdivision interest (property) is in lien,
 - 26 d.) the member is in violation of any city, county or state ordinances or
27 statutes,
 - 28 e.) the member has an unpaid fine,
 - f.) the member is in "continuing" fine,
 - g.) the violation of non-profit Corporate laws [sic],
 - h.) a member(s) illegally using the registered name "Autumn Chase
Homeowners Association"
 - j.) [sic] Any member who illegally obtains and uses recordings of comments
or conversations of meeting of owners.
2. This Resolution shall have no time constraints, for as long as the Member
is in violation (conflict) of Article 1, that member will not be allowed to vote
on any matter concerning the Autumn Chase Homeowners Association.

1 3. Any member in violation of Article 1 above, may not run for a Directors
2 position for Autumn Chase Homeowners Association.

3 16. By letter dated August 20, 2011, RESPONDENTS notified Complainant Joseph
4 Salvatore that he had "disqualified" himself from running for the board and that no "forms"
5 would be sent to him.

6 17. RESPONDENTS sent the same letter to Complainant Cathy Aja.

7 18. Neither Joseph Salvatore nor Cathy Aja received notice of any violation of the
8 Association's governing documents.

9 19. By letter dated September 26, 2011, the Division's auditor, Michael Mandolfo,
10 requested specific documentation from RESPONDENTS.

11 20. On or about October 3, 2011, RESPONDENTS sent a non-responsive letter to
12 Mr. Mandolfo.

13 21. By letter dated October 29, 2011, RESPONDENTS sent all units' owners notice
14 that there would not be an election that year "because two (2) people, Joe Salvatore and
15 Cathy Aja, are in violation of the Governing documents and NRS 116."

16 22. The same letter states:

17 We did have an audit by an Auditor II and a discussion with a Representative of
18 the Real Estate Commission, there was nothing wrong with our financials or the
19 Governing Documents, and issues being raised by two people were found to be
20 invalid. The BOD raised the issue that we are protecting the "health, safety and
21 welfare" of the BOD, and the Community, the Representative agreed that was
22 correct. Therefore, Hellen Murphy, Barbara Bitsky and Joe Bitsky will remain in
23 office.

24 23. To conduct an audit of the Association's accounts, the Division received through
25 subpoena: bank records, credit card records, and utility bills, and compared those to the
26 records produced by RESPONDENTS.

27 24. RESPONDENT JOSEPH BITSKY applied for a credit card in the name of the
28 Association on or about December 3, 2003. RESPONDENT JOSEPH BITSKY represented to
the Division that he applied for the Association's credit card in 2008.

25 25. In response to the Division's request by its investigator and its auditor for the
26 Association's operating account statements, RESPONDENTS:

- 1) Failed to provide a complete statement for May 2008;
- 2) Failed to provide a statement for November 2008;
- 3) Failed to provide a complete statement for December 2008;
- 4) Failed to provide a complete statement for April 2009;
- 5) Failed to provide a complete statement for May 2009;
- 6) Failed to provide a complete statement for June 2009;
- 7) Failed to provide a statement for July 2009;
- 8) Failed to provide a complete statement for August 2009;
- 9) Failed to provide a complete statement for October 2009;
- 10) Failed to provide a statement for November 2009;
- 11) Failed to provide a complete statement for December 2009;
- 12) Failed to provide a complete statement for January 2010;
- 13) Failed to provide a complete statement for February 2010;
- 14) Failed to provide a complete statement for March 2010;
- 15) Failed to provide a complete statement for April 2010; and
- 16) Failed to provide a complete statement for May 2010.

26. In response to the Division's request by its investigator and its auditor for the Association's credit card statements, RESPONDENTS:

- 1) Failed to provide a statement for May of 2008;
- 2) Failed to provide a complete statement for July 2008;
- 3) Failed to provide a complete statement for October 2008;
- 4) Failed to provide a complete statement for November 2008;
- 5) Failed to provide a complete statement for December 2008;
- 6) Failed to provide a complete statement for January 2009;
- 7) Failed to provide a statement for February 2009;
- 8) Failed to provide a statement for March 2009;
- 9) Failed to provide a statement for June 2009;
- 10) Failed to provide a statement for October 2009;
- 11) Failed to provide complete statement for December 2009;
- 12) Failed to provide a complete statement for February 2010.

27. RESPONDENTS JOSEPH and BARBARA BITSKY used the Association's credit card approximately 137 times from December 2006 through 2010 to enrich themselves approximately \$6,720.09, as follows:

- 1) December 17, 2006 charge of \$39.95 by Grant Resource Network.
- 2) January 1, 2007 charge of \$15.90 by IPAY Friendfinder.
- 3) January 8, 2007 charge of \$19.80 by Search for Talent.
 - a. January 18, 2007 late charge \$35 and interest \$14.76.
- 4) January 19, 2007 charge of \$39.95 by Grant Resource Network.
- 5) January 26, 2007 charge of \$5.98 by Hercules Hook.
- 6) February 1, 2007 charge of \$15.90 by IPAY Friendfinder.
- 7) February 9, 2007 charge of \$44.95 by GTI ABS Diet Online.
 - a. February 16, 2007 late charge \$35 and interest \$21.13.
- 8) March 2, 2007 charge of \$15.90 by IPAY Friendfinder.
- 9) March 4, 2007 charge of \$44.95 by Intuit TurboTax.
 - a. March 10, 2007 interest \$13.38.
- 10) March 20, 2007 charge of \$287.07 by The Pepboys.
- 11) March 24, 2007 charge of \$44.47 by Craig Road Car Wash.
- 12) March 26, 2007 charge of \$5.98 by Hercules Hook.
- 13) April 3, 2007 charge of \$125.11 by Cox Las Vegas Comm.
- 14) April 6, 2007 charge of \$38.95 by Chevron.
- 15) April 6, 2007 charge of \$16.01 by Moulton Parkway Auto Spa.
- 16) April 8, 2007 charge of \$144.30 by Hotel Huntington Beach.
- 17) April 8, 2007 charge of \$181.66 by Hotel Huntington Beach.
- 18) April 12, 2007 charge of \$100.20 by Checker.
 - a. April 17, 2007 interest \$15.47.
- 19) April 29, 2007 charge of \$16.95 by GTI ABS Diet Online.
 - a. May 17, 2007 interest \$14.99.
- 20) May 24, 2007 charge of \$5.98 by Hercules Hook.
- 21) May 26, 2007 charge of \$50.62 by Autozone #2211.
- 22) May 26, 2007 charge of \$61.39 by Autozone #2211.
 - a. May 26, 2007 credit of (\$40.93) by Autozone #2211.
- 23) May 27, 2007 charge of \$10.00 by PayPal 2CarPros.com.

- 1 24) May 30, 2007 charge of \$16.95 by GTI ABS Diet Online.
- 2 25) June 2, 2007 charge of \$14.95 by AllData Corp #8604.
- 3 26) June 4, 2007 charge of \$36.75 by Chevron.
- 4 27) June 5, 2007 charge of \$230.00 by PayPal.
- 5 28) June 6, 2007 charge of \$129.00 by Travel Reservations.
- 6 29) June 15, 2007 charge of \$51.97 by Yuma County Treasurer.
- 7 30) June 15, 2007 charge of \$5.00 by Yuma Cnty Treas Conv.
- 8 31) June 17, 2007 charge of \$110.85 by Gempler.
 - 9 a. June 18, 2007 interest \$17.59.
- 10 32) June 28, 2007 charge of \$1.95 by PVI GovAuctionAlert.
 - 11 a. July 4, 2007 credit of (\$230.00) by PayPal.
- 12 33) July 9, 2007 charge of \$154.87 by City of N. Las Vegas Util (traced to personal
13 utility bill) (001002 and 001017).
- 14 34) July 13, 2007 charge of \$19.95 by PVI GovAuctionAlert.
- 15 35) July 15, 2007 charge of \$14.95 by AllData Corp #8604.
 - 16 a. July 18, 2007 interest \$20.55.
- 17 36) August 11, 2007 charge of \$14.95 by AllData Corp #8604.
 - 18 a. August 17, 2007 interest \$25.02.
- 19 37) August 31, 2007 charge of \$25.95 by Korner Kwik Lube.
- 20 38) August 31, 2007 charge of \$47.00 by Nevada DMV.
- 21 39) September 2, 2007 charge of \$25.91 by Speedee Mart.
- 22 40) September 3, 2007 charge of \$31.20 by Circle K, Yuma AZ.
 - 23 a. September 19, 2007 interest \$32.21.
- 24 41) September 21, 2007 charge of \$80.48 by WM Supercenter.
- 25 42) September 29, 2007 charge of \$201.05 by City of N. Las Vegas Util (traced to
26 personal utility bill) (001017).
- 27 43) October 12, 2007 charge of \$121.67 by Rock Auto Madison, WI
 - 28 a. October 18, 2007 interest \$33.04.
- 44) October 31, 2007 charge of \$145.61 by Korner Kwik Lube.

- 1 45) November 5, 2007 charge of \$30.00 by Chevron.
- 2 a. November 16, 2007 late charge \$35 and interest \$78.27.
- 3 46) November 19, 2007 charge of \$31.33 by Chevron.
- 4 a. December 18, 2007 interest \$93.25.
- 5 b. January 23, 2008 interest \$92.62.
- 6 47) January 23, 2008 charge of \$30.06 by Shamwow.
- 7 48) February 6, 2008 charge of \$79.28 by Walmart.
- 8 a. February 18, 2008 late charge \$50.00 interest \$44.85.
- 9 49) February 19, 2008 charge of \$180.92 by SecurityCamerasandMore.
- 10 a. March 18, 2008 interest \$37.20.
- 11 b. April 17, 2008 interest \$34.92.
- 12 c. May 16, 2008 interest \$35.46.
- 13 d. June 17, 2008 Interest \$35.12.
- 14 50) June 25, 2008 charge of \$40.12 by Terribles.
- 15 51) June 25, 2008 charge of \$67.89 by TLF Kincaid's Flowers.
- 16 52) June 27, 2008 charge of \$26.04 by Food4Less.
- 17 53) July 6, 2008 charge of \$27.93 by Walmart.
- 18 54) July 17, 2008 charge of \$17.95 by Publishers Clearing House.
- 19 55) July 18, 2008 charge of \$62.00 by Nevada DMV.
- 20 a. July 24, 2008 interest \$39.81.
- 21 b. August 8, 2008 interest \$31.47.
- 22 c. September 16, 2008 interest \$34.11.
- 23 56) September 23, 2008 charge of \$12.00 by UOL The Namesdatabase.
- 24 57) October 2, 2008 charge of \$178.55 by Alamo Rent-A-Car Austin TX.
- 25 58) October 15, 2008 charge of \$68.91 by Radioshack.
- 26 59) October 15, 2008 charge of \$93.05 by Walmart.
- 27 a. October 24, 2008 interest \$27.31.
- 28 60) November 7, 2008 charge of \$29.99 by Talenthunter.com.
- 61) November 15, 2008 charge of \$40.00 by JustAnswer Experts.

- 1 62) November 15, 2008 charge of \$40.00 by JustAnswer Experts.
2 a. November 24, 2008 late fee \$39.00 interest \$25.95.
- 3 63) December 8, 2008 charge of \$29.99 by Tallenthunter.com.
4 a. December 23, 2008 interest \$21.85.
5 b. January 23, 2009 credit of (\$29.99) by Adjustment-Purchases.
- 6 64) January 8, 2009 charge of \$29.99 by Talenthunter.com.
7 a. January 13, 2009 interest credit of (\$1.31).
8 b. January 13, 2009 credit of (\$59.98) by Adjustment-Purchases.
9 c. January 23, 2009 interest \$20.43.
- 10 65) February 2, 2009 charge of \$29.94 by CLKBank.com.
- 11 66) February 8, 2009 charge of \$29.99 by Talenthunter.com.
12 a. February 23, 2009 interest \$20.18.
- 13 67) March 3, 2009 charge of \$29.99 by Talenthunter.com.
- 14 68) March 3, 2009 charge of \$29.99 by Talenthunter.com.
- 15 69) March 3, 2009 charge of \$29.99 by Talenthunter.com.
16 a. March 3, 2009 credit of (\$29.99) by Talenthunter.com.
- 17 70) March 3, 2009 charge of \$30.71 by Walmart.
- 18 71) March 6, 2009 charge of \$210.29 by PRTCTNDEPT 8776696368.
- 19 72) March 21, 2009 charge of \$35.00 by Craig Road Car Wash.
20 a. March 24, 2009 interest \$19.88.
- 21 73) April 7, 2009 charge of \$48.36 by Walmart.
- 22 74) April 22, 2009 charge of \$5.00 by Chevron.
23 a. April 23, 2009 interest \$19.11.
24 b. May 22, 2009 late fee \$39.00 interest \$15.54.
- 25 75) June 9, 2009 charge of \$121.12 by Walmart.
26 a. June 23, 2009 interest \$15.65.
- 27 76) July 17, 2009 charge of \$10.00 for overdraft to checking account.
28 a. July 24, 2009 interest \$15.89.
b. August 24, 2009 interest \$17.34.

- 1 77) September 7, 2009 charge of \$49.95 by RealtyTrac.
- 2 78) September 10, 2009 charge of \$9.90 by Walmart.
- 3 79) September 15, 2009 charge of \$110.81 by City of N. Las Vegas-UT (traced to
- 4 personal utility bill). (001017)
- 5 80) September 15, 2009 charge of \$49.95 by www.TheGuardPC.com (second anti-
- 6 virus software purchased).
- 7 a. September 23, 2009 late fee \$39.00 and interest \$67.34.
- 8 81) September 24, 2009 charge of \$12.00 by UOL The NamesDatabase
- 9 82) October 7, 2009 charge of \$49.95 by RealtyTrac.
- 10 83) October 19, 2009 charge of \$243.47 by City of N. Las Vegas-UT.
- 11 84) October 20, 2009 charge of \$4.50 by Walmart.
- 12 a. October 23, 2009 interest \$72.22.
- 13 85) November 10, 2009 charge of \$188.14 by PayPal Swannstore.
- 14 a. November 23, 2009 interest \$20.85.
- 15 86) November 24, 2009 charge of \$152.99 by PayPal Swannstore.
- 16 87) December 12, 2009 charge of \$29.95 by www.safecart.com.
- 17 88) December 17, 2009 charge of \$52.72 by M and R Surplus.
- 18 a. December 23, 2009 late fee \$39.00 and interest \$63.56.
- 19 b. January 10, 2010 interest \$70.87.
- 20 c. February 22, 2010 interest \$68.19.
- 21 89) February 24, 2010 charge of \$124.30 by Speedway RE:SW Gas.
- 22 a. March 22, 2010 interest \$82.60.
- 23 90) March 30, 2010 charge of \$34.34 by Walmart.
- 24 a. April 23, 2010 interest \$72.43.
- 25 91) May 13, 2010 charge of \$6.00 by City LV Parking Meter.
- 26 a. May 24, 2010 interest \$35.58.
- 27 92) May 28, 2010 charge of \$100.00 by LV Muni Court.
- 28 93) June 15, 2010 charge of \$103.99 by McAfee.com.
- 94) June 18, 2010 charge of \$26.95 by HermanStreet.com.

- 1 a. June 23, 2010 interest \$39.86.
- 2 95) June 29, 2010 charge of \$30.06 by 7-Eleven.
- 3 96) July 15, 2010 charge of \$12.90 by Harbor Freight Tools.
- 4 97) July 15, 2010 charge of \$24.83 by Harbor Freight Tools.
- 5 98) July 15, 2010 charge of \$20.00 by Speedee Mart.
- 6 99) July 17, 2010 charge of \$90.00 by LV Muni court.
- 7 a. July 23, 2010 interest \$47.81.
- 8 b. August 24, 2010 interest \$50.93.
- 9 100) September 8, 2010 charge of \$23.07 by Walmart.
- 10 101) September 13, 2010 charge of \$147.16 by Publishers Clear House.
- 11 102) September 15, 2010 charge of \$4.55 by Shell Oil.
- 12 103) September 22, 2010 charge of \$22.12 by Autozone.
- 13 a. September 23, 2010 interest \$15.53.
- 14 104) September 22, 2010 charge of \$9.55 by 99 Cent Only.
- 15 105) September 24, 2010 charge of \$12.00 by UOL The NamesDatabase.
- 16 106) September 30, 2010 charge of \$19.99 by KFC.
- 17 107) September 30, 2010 charge of \$28.00 by Speedee Mart.
- 18 108) September 30, 2010 charge of \$154.97 by city of N. Las Vegas-UT (traced to
19 personal utilities).
- 20 109) October 2, 2010 charge of \$31.44 by Pizza Hut.
- 21 110) October 5, 2010 charge of \$4.99 by DDL Instalflex Trial.
- 22 111) October 7, 2010 charge of \$38.68 by Cugino's Deli + Pizzeria
- 23 112) October 8, 2010 charge of \$32.76 by Food4Less.
- 24 113) October 14, 2010 charge of \$37.27 by Radioshack.
- 25 a. October 15, 2010 credit of (\$32.42) by Radioshack.
- 26 114) October 14, 2010 charge of \$15.24 by Walmart.
- 27 115) October 16, 2010 charge of \$26.95 by AllData Corp.
- 28 a. October 22, 2010 interest \$14.28.
- 116) October 25, 2010 charge of \$74.98 by Instaflex 30Day Supply.

- 1 117) November 6, 2010 charge of \$43.98 by PayPal 209Memory.
- 2 118) November 9, 2010 charge of \$35.01 by Speedee Mart.
- 3 119) November 15, 2010 charge of \$19.95 by Peoplefinders.com.
- 4 120) November 17, 2010 charge of \$33.95 by US Search.
- 5 121) November 17, 2010 charge of \$2.95 by Peoplefinders.com.
- 6 122) November 17, 2010 charge of \$2.95 by Peoplefinders.com.
- 7 123) November 17, 2010 charge of \$2.95 by Peoplefinders.com.
- 8 124) November 17, 2010 charge of \$2.95 by Peoplefinders.com.
- 9 125) November 19, 2010 charge of \$19.95 by US Search.
- 10 126) November 19, 2010 charge of \$24.95 by Peoplefinders.com.
- 11 127) November 20, 2010 charge of \$75.80 by Intellius CM.
- 12 128) November 20, 2010 charge of \$7.16 by Intellius CM.
- 13 a. November 22, 2010 interest \$16.37.
- 14 b. November 22, 2010 credit of (\$75.80) by Intellius CM.
- 15 c. November 22, 2010 credit of (\$7.16) by Intellius CM.
- 16 129) November 23, 2010 charge of \$16.95 by MVQ DealMax (consumer products
17 discount site).
- 18 130) November 25, 2010 charge of \$16.95 by MVQ Savingsace (amusement park
19 discount tickets).
- 20 131) November 28, 2010 charge of \$22.99 by CLKBank.com (digital products
21 retailer).
- 22 132) November 28, 2010 charge of \$2.95 by CLKBank.com.
- 23 a. November 29, 2010 credit of (\$43.98) by PayPal 209Memory.
- 24 133) December 5, 2010 charge of \$30.98 by NCHSoftware.com.
- 25 134) December 17, 2010 charge of \$19.95 by US Search.
- 26 135) December 21, 2010 charge of \$16.95 by MVQ Savingsace.
- 27 136) December 22, 2010 charge of \$9.72 by Netflix.
- 28 a. December 23, 2010 interest \$14.76.

1 137) December 23, 2010 charge of \$16.95 by MVQ DealMax (amusement park
2 tickets).

3 28. The interest accrued on the Association's credit card for the non-association
4 charges cost the Association approximately \$1,565.65 through 2010.

5 29. The Association's credit card had late fees in the amount of \$321 through 2010.

6 **30. The total amount of damage to the Association attributed to the willful and**
7 **intentional misuse of the Association's credit card by RESPONDENT JOSEPH BITSKY**
8 **is \$8,606.74 from December 2006 through 2010.**

9 31. All payments made to the Association's credit card came from the Association's
10 operating account.

11 32. RESPONDENTS JOSEPH and BARBARA BITSKY used funds from the
12 Association's operating account for their own personal use 11 times totaling \$1,706.09 as
13 follows:

14 1) On or about January 3, 2008, a charge for "Home Finance IVR- PMT Joe Bitsky"
15 of \$400.67 and "Home Finance Fee-PMT Joe Bitsky" of \$12.00 are reflected in the
16 Association's bank statement dated January 29, 2008.

17 2) On or about February 1, 2008, a charge for "Home Finance TEL-PMT Joe
18 Bitsky" of \$452.82 and "Home Finance Fee-PMT Joe Bitsky" of \$20.00 are reflected in the
19 Association's bank statement dated February 28, 2008.

20 3) On or about March 4, 2008, a charge for "Home Finance TEL-PMT Joe Bitsky"
21 of \$399.31 and "Home Finance Fee-PMT Joe Bitsky" of \$20.00 are reflected in the
22 Association's bank statement dated March 27, 2008.

23 4) Association Check dated March 8, 2008 is made payable to "Rick Berg" for
24 "security" in the amount of \$80.00 and signed by RESPONDENT JOSEPH BITSKY. The
25 check coincides with a RadioShack purchase using the Association's credit card. This is for
26 the home of RESPONDENTS JOSEPH and BARBARA BITSKY.

27 5) Association Check dated October 4, 2008 is made payable to "Jason Farrant" for
28 "security" in the amount of \$50.00 and signed by RESPONDENT JOSEPH BITSKY. This is
for the home of RESPONDENTS JOSEPH and BARBARA BITSKY.

1 6) On or about February 17, 2009, a charge for "Capital One online PMT BITSKY
2 JOE" of \$72.00 is reflected in the Association's bank statement dated February 27, 2009.

3 7) On or about November 23, 2009, a charge for "Nevada Power CO Online Pmt
4 Bitsky, Joseph OR Barba" of \$132.15 is reflected in the Association's bank statement dated
5 November 30, 2009.

6 8) On or about May 12, 2010, a charge for "Southwest Gas Online pmt Bitsky,
7 Joseph or Barba" of \$67.14 is reflected in the Association's bank statement dated May 27,
8 2010.

9 33. Despite unsubstantiated representations by RESPONDENT JOSEPH BITSKY to
10 the contrary, RESPONDENTS JOSEPH BITSKY and BARBARA BITSKY did not make any
11 payments to the Association's operating account other than assessment dues.

12 34. **The total amount of damage to the Association attributed to the willful and**
13 **intentional misuse of the Association's operating account funds by RESPONDENT**
14 **JOSEPH BITSKY is \$1,706.09 from 2008 through 2010.**

15 35. In 2010, seventeen (17) Association checks from its operating account
16 contained only one signature, that of RESPONDENT BARBARA BITSKY or JOSEPH
17 BITSKY, as follows:

18 36. Association Check No. 7185 dated January 10, 2010 in the amount of \$151.80 is
19 signed only by RESPONDENT BARBARA BITSKY.

20 37. Association Check No. 7188 dated February 20, 2010 in the amount of \$126.28
21 is signed only by RESPONDENT BARBARA BITSKY.

22 38. Association Check No. 7187 dated February 20, 2010 in the amount of \$175.00
23 is signed only by RESPONDENT BARBARA BITSKY.

24 39. Association Check No. 7189 dated March 23, 2010 in the amount of \$175.00 is
25 signed only by RESPONDENT BARBARA BITSKY.

26 40. Association Check No. 7190 dated April 15, 2010 in the amount of \$175.00 is
27 signed only by RESPONDENT BARBARA BITSKY.

28 41. Association Check No. 7191 dated May 2010 in the amount of \$175.00 is signed
only by RESPONDENT BARBARA BITSKY.

1 42. Association Check No. 7193 dated July 9, 2010 in the amount of \$750.00 is
2 signed only by RESPONDENT BARBARA BITSKY.

3 43. Association Check No. 7194 dated July 15, 2010 in the amount of \$60.00 is
4 signed only by RESPONDENT BARBARA BITSKY.

5 44. Association Check No. 7197 dated August 18, 2010 in the amount of \$18.27 is
6 signed only by RESPONDENT BARBARA BITSKY.

7 45. Association Check No. 7192 dated June 21, 2010 in the amount of \$175.00 is
8 signed only by RESPONDENT BARBARA BITSKY.

9 46. Association Check No. 7198 dated September 14, 2010 in the amount of \$36.82
10 is signed only by RESPONDENT BARBARA BITSKY.

11 47. Association Check No. 7195 dated August 18, 2010 in the amount of \$175.00 is
12 signed only by RESPONDENT BARBARA BITSKY.

13 48. Association Check No. 7196 dated August 18, 2010 in the amount of \$40.00 is
14 signed only by RESPONDENT BARBARA BITSKY.

15 49. Association Check No. 7201 dated November 4, 2010 in the amount of \$40.00 is
16 signed only by RESPONDENT BARBARA BITSKY.

17 50. Association Check No. 7202 dated November 4, 2010 in the amount of \$350.00
18 is signed only by RESPONDENT BARBARA BITSKY.

19 51. Association Check No. 7199 dated September 14, 2010 in the amount of
20 \$175.00 is signed only by RESPONDENT BARBARA BITSKY.

21 52. Association Check No. 7205 dated December 16, 2010 in the amount of
22 \$250.00 is signed only by RESPONDENT JOSEPH BITSKY.

23 53. RESPONDENTS JOSEPH BITSKY and BARBARA BITSKY both signed Check
24 No. 7204 dated December 16, 2010 made payable to the Ombudsman's Office in the amount
25 of \$138.00.

26 54. RESPONDENTS do not have minutes of any executive board meetings.

27 55. The reserve study for the Association from 2003 recommended an annual
28 contribution to the reserve of \$1,252.80, increasing over time.

1 56. The Association's budgets prepared by RESPONDENTS reflect an annual
2 reserve contribution of \$350 for 2008 and 2009 and \$348 in 2010.

3 57. RESPONDENTS deposited a total of \$126.28 into the Association's reserve
4 account from 2008 through 2010.

5 58. RESPONDENTS kept the assessments the same each year, so no new budget
6 was ever adopted by the Association or ratified by the unit owners.

7 59. On or about May 17, 2005, RESPONDENT JOSEPH BITSKY was brought
8 before the Commission for Common-Interest Communities and was ordered to pay a fine of
9 \$8,000 for engaging in the management of a common-interest community without a permit or
10 certificate from the Real Estate Division. RESPONDENT JOSEPH BITSKY has not paid the
11 fine imposed by the Commission.

12 CONCLUSIONS OF LAW

13 The Commission concludes as follows.

14 60. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
15 MURPHY knowingly and willfully violated NRS 116.31144 (2009) for failing to have a financial
16 statement of the Association reviewed by a certified public accountant.

17 61. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
18 MURPHY knowingly and willfully violated NRS 116.31152 by failing to have a reserve study
19 conducted at least once every 5 years.

20 62. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
21 MURPHY knowingly and willfully violated NRS 116.3101 by failing to properly fund the
22 Association's reserve account.

23 63. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
24 MURPHY knowingly and willfully violated NRS 116.31034 by failing to conduct board elections
25 for 2009, 2010, and 2011.

26 64. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
27 MURPHY knowingly and willfully violated NRS 116.3103 by failing to prepare monthly interim
28 and annual financial statements as required by NAC 116.405(8)(j) and NAC 116.451 for the
years 2008, 2009, 2010, and 2011.

1 65. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
2 MURPHY knowingly and willfully violated NRS 116.31083(7) by failing to prepare and
3 maintain minutes of any meetings of the executive board.

4 66. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
5 MURPHY knowingly and willfully violated NRS 116.31183 by refusing to allow unit owners,
6 Joseph Salvatore and Cathy Aja, to run for the executive board in 2010 and 2011 in retaliation
7 for them filing a complaint with the Division.

8 67. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
9 MURPHY knowingly and willfully violated NRS 116.3103 (through NAC 116.405(2)) by acting
10 for reasons of prejudice or revenge.

11 68. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
12 MURPHY knowingly and willfully violated NRS 116.31083 by adopting a resolution affecting
13 the voting rights and candidacy eligibility of unit owners without a meeting and where no
14 emergency circumstances existed.

15 69. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
16 MURPHY knowingly and willfully violated NRS 116.3103 by failing to act in the best interests
17 of the Association when RESPONDENTS misrepresented the status of the Division's
18 investigation and audit to the unit's owners.

19 70. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
20 MURPHY knowingly and willfully violated NRS 116.3103 (through NAC 116.405(5)(a),(b) and
21 (c)) 28 times by impeding and interfering with the Division's investigation and audit by failing to
22 comply with a request by the Division's auditor, by supplying false and misleading information
23 to an investigator and the auditor, and by concealing facts and documents relating to the
24 Association.

25 71. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
26 MURPHY knowingly and willfully violated NRS 116.3103 (through NAC 116.405(1)) by acting
27 outside of the scope of their authority in the Association's governing documents.
28

1 72. RESPONDENTS JOSEPH BITSKY, BARBARA BITSKY, and HELLEN
2 MURPHY knowingly and willfully violated NRS 116.3103 (through NAC 116.405(4)) by
3 disclosing confidential information about unit owners to other unit owners.

4 73. RESPONDENTS JOSEPH BITSKY and BARBARA BITSKY knowingly and
5 willfully violated NRS 116.3103 (through NAC 116.405(2)) by failing to act as a fiduciary and in
6 the best interests of the Association and by acting for reasons of self-interest and monetary
7 gain when they used the Association's operating account approximately 11 times for their own
8 personal use and used the Association's credit card approximately 137 times from December
9 2006 through 1010 for their own personal expenses causing damage to the Association in the
10 amount of \$10,312.83.

11 74. RESPONDENTS BARBARA BITSKY knowingly and willfully violated NRS
12 116.31153(2) by not having two signatures on sixteen (16) checks from the Association's
13 operating account in 2010 and JOSEPH BITSKY knowingly and willfully violated NRS
14 116.31153(2) by signing one check from the Association's operating account in 2010.

15 75. RESPONDENT JOSEPH BITSKY knowingly and willfully violated NRS 116.3103
16 (through NAC 116.405 (1), (2), and (3)) by acting outside the scope of his authority, by acting
17 for reasons of self-interest, gain and revenge, and by committing an act amounting to
18 incompetence and intentional wrongdoing when he used coercion against unit owners
19 attending an Association meeting at his home.

20 76. RESPONDENT JOSEPH BITSKY knowingly and willfully violated NRS
21 116.785(3) by failing to comply with the Order of this Commission effective as of July 6, 2005
22 requiring payment of a fine in the amount of \$8,000 within 6 months of the effective date of the
23 Order.

24 **ORDER**

25 The Commission, being fully apprised in the premises, and good cause appearing,
26 ORDERED as follows:

27 77. RESPONDENTS, JOSEPH BITSKY, BARBARA BITSKY and HELLEN
28 MURPHY shall be deemed removed from the board of the ASSOCIATION as of October 8
2012 and with that be removed from any office of the ASSOCIATION that they may hold;

Office of the Attorney General
250 West Sahara Avenue, Suite 201
Las Vegas, Nevada 89104

1 78. RESPONDENTS, JOSEPH BITSKY, BARBARA BITSKY and HELLEN
2 MURPHY, shall not serve on any board of directors of any common-interest community
3 association in the State of Nevada indefinitely;

4 79. RESPONDENTS, JOSEPH BITSKY, BARBARA BITSKY and HELLEN
5 MURPHY, shall turn over all records of the Association to the Ombudsman's office located at
6 2501 E. Sahara Ave., Suite 202, Las Vegas, Nevada 89104 immediately, including the
7 ASSOCIATION'S credit card obtained by JOSEPH BITSKY;

8 80. RESPONDENTS JOSEPH BITSKY and BARBARA BITSKY shall pay full
9 restitution to the ASSOCIATION in the amount of \$10,312.83 within 6 months from the date of
10 this Order;

11 81. RESPONDENT JOSEPH BITSKY shall pay a fine of \$41,700 within 6 months
12 from the date of this Order;

13 82. RESPONDENT BARBARA BITSKY shall pay a fine of \$40,900 within 6 months
14 from the date of this Order;

15 83. RESPONDENTS JOSEPH BITSKY and BARBARA BITSKY shall pay the
16 Division's costs of the proceeding totaling \$22,884.39 within 6 months from the date of this
17 Order;

18 84. RESPONDENTS JOSEPH BITSKY and BARBARA BITSKY are jointly and
19 severally liable for all restitution, fines, and costs ordered to be paid herein.

20 85. RESPONDENT ASSOCIATION shall hire a certified community manager within
21 90 days of the date of this Order; and

22 ///
23 ///
24 ///

