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JUN 20 2012

DEPT OF BUSINESS & INDUSTRY
Real Estate Division - LV

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,

Case No. CIS 10-10-06-046

Petitioner,

FILED

vs.

JUN 21 2012

THERESA DA SILVA,

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Respondent.

ORDER APPROVING STIPULATION
FOR SETTLEMENT OF DISCIPLINARY ACTION

The Stipulation for Settlement of Disciplinary Action having come before the Commission For Common-Interest Communities and Condominium Hotels, Department of Business and Industry, State of Nevada, during its regular agenda on December 6, 2011 and the Commission being fully apprised in the premises, and good cause appearing,

IT IS ORDERED that the Stipulation for Settlement of Disciplinary Action attached hereto as **Exhibit 1** and incorporated herein, is approved in full.

This Order shall become effective on the 26 day of July, 2012.

DATED this 18TH day of JUNE, 2012.

COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS

By: Randolph Watkins
CHAIRMAN

Attorney's Office
555 E. Washington, Suite 3000
Las Vegas, NV 89101

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EXHIBIT 1

1 **FACTUAL ALLEGATIONS SET FORTH IN THE COMPLAINT**

2 1. RESPONDENT, at relevant times in this Complaint, was a licensed Community
3 Manager under license number CAM.001021. Currently, RESPONDENT is licensed as a
4 Supervising Community Manager under license number CAM.001021.SUPR.

5 2. At all relevant times, RESPONDENT was the Community Association Manager
6 for Sun City Anthem Community Association ("Association") and employed by RMI
7 Management, LLC. ("RMI" or "Managing Agent").

8 3. In or about the summer of 2008 the Association approved the solicitation of bids
9 for the installation of shade structures to the Independent Center courtyard area.

10 4. Pursuant to the management agreement in effect at the time, "the Managing
11 Agent shall obtain the necessary bids per Nevada Revised Statutes and shall submit projects
12 funded from capital appropriations or the appropriate Reserve Fund to the standing
13 committees and the Board of Directors of the Association for approval. The Managing Agent
14 shall coordinate and supervise the completion of the approved projects."

15 5. The management agreement also states the requirement to hire, pay and
16 negotiate agreements with "independent licensed contractors required for the proper
17 maintenance and operation of the business of the Association."

18 6. Three bids were acquired for the large permanent 20' x 20' x 8' structures from
19 Shade & Steel Structures, LLC, Shade' n Net and Awning, and from Intrepid Iron, Inc.

20 7. The original packet to committees and board do not contain any information
21 regarding the contractor's licenses of any of the bidding companies, only proof of business
22 licenses.

23 8. The installation of the structures by Shade & Steel Structures, LLC was
24 approved by all necessary committees and the Board.

25 9. The shade structure was completed in or about September 2008.

26 10. In December 2008, the shade structure collapsed as a result of a snow storm.

27 11. The Association paid Shade & Steel, LLC an additional approximately \$5,000 to
28 put the shade structures back up.

1 12. Neither Shade & Steel Structures, LLC nor its principle Terence Gilpin has been
2 licensed as a contractor in the State of Nevada at any time relevant to the Complaint.

3 13. RESPONDENT worked with the Facilities Manager, Bruno Panek, on the shade
4 structure project.

5 14. Mr. Panek advised that a contractor's license was not required to install the over
6 \$20,000 shade structure.

7 15. Pursuant to NRS 624, a contractor's license is required in order to bid for or
8 perform the work relating to the construction of the subject shade structures at the
9 Association.

10 16. NRS 624.020 defines a "contractor" as one who will submit a bid to or undertake
11 to "construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any
12 building, highway, road, railroad, excavation or other structure, project, development or
13 improvement, or to do any part thereof, including the erection of scaffolding or other structures
14 or works in connection therewith."

15 17. Terence Gilpin has been charged in Henderson Justice Court, Case number
16 09FH0826Q with willfully, unlawfully, feloniously and knowingly engaging in the business of or
17 acting the capacity of a contractor to construct the subject shade shelter at the Association
18 without first having obtained a contractor's license issued by the Nevada State Contractors'
19 Board. This matter is still pending.

20 18. The Nevada State Contractors' Board website offers instant information
21 regarding contractor's licensure. This inquiry can be accomplished by simply typing in the
22 name of the individual or the company name.

23 19. It was the responsibility of the RESPONDENT to ensure the proper licensure of
24 the individuals hired to install the over \$20,000 shade structures.

25 20. It was not reasonable to abrogate her statutory and contractual duty to a
26 facilities manager to assure that the subject capital improvement project was performed
27 pursuant to all laws and regulations.

28

1 **VIOLATIONS OF LAW SET FORTH IN THE COMPLAINT**

2 1. RESPONDENT allegedly violated NAC 116.360(1)(a)(1) (2007) pursuant to NAC
3 116.360(2)(b) (2007) by committing unprofessional conduct by failing to disclose to a client
4 any material fact or other information that she knows or, in the exercise of reasonable care or
5 diligence, should have known, which concerns or related to the common-interest community
6 and which is of customary or express interest to the client.

7 2. RESPONDENT allegedly violated NAC 116.360(1)(a)(2) (2007) pursuant to NAC
8 116.360(3)(b) (2007) by committing professional incompetence by failing to exercise
9 reasonable skill and care with respect to a duty or obligation owed to a client.

10 3. RESPONDENT allegedly violated NAC 116.360(1)(a)(1) or (2) (2007) pursuant
11 to NAC 116.360(4)(j) by committing unprofessional conduct or professional incompetence by
12 failing to acquire knowledge of all material facts that are reasonably ascertainable and are of
13 customary or express concern to a client and has conveyed that knowledge to the client.

14 **DISCIPLINE AUTHORIZED**

15 Pursuant to the provisions of NAC 116.370 (2007) the Commission has discretion to
16 impose discipline as it deems appropriate, and may take one or more of the following actions:

- 17 1. Revoke or suspend the certificate;
- 18 2. Refuse to renew or reinstate the certificate;
- 19 3. Place the community manager on probation;
- 20 4. Issue a reprimand or censure to the community manager;
- 21 5. Impose a fine of not more than \$5,000 for each violation of statute or regulation;
- 22 6. Require the community manager to pay restitution;
- 23 7. Require the community manager to pay the costs of the investigation and
24 hearing;
- 25 8. Require the community manager to obtain additional education relating to the
26 management of common-interest communities; or
- 27 9. Take such other disciplinary action as the Commission deems appropriate.
- 28

SETTLEMENT

1
2 The Division was prepared to present its case based upon the filed Complaint with the
3 Commission and RESPONDENT was prepared to defend such Complaint. However, the
4 parties desire to compromise and settle the instant controversy upon the following terms and
5 conditions:

6 1. RESPONDENT stipulates to the above stated Factual Allegations and Violations of
7 Law.

8 2. Respondent agrees to pay to the Division ONE THOUSAND DOLLARS
9 (\$1,000.00) in an administrative fine within 60 days of the effective date of the Commission's
10 Order Approving Stipulation. If payment is not actually received by the Division on or before
11 its due date, then it shall be construed as an event of default by the Respondent.

12 3. In the event of default, Respondent agrees that her license shall be immediately
13 suspended, the unpaid balance of the administrative fine shall become immediately
14 accelerated, and the unpaid balance, together with any attorney's fees and costs that may
15 have been assessed, shall be due in full to the Division within ten (10) calendar days of the
16 date of default. Respondent agrees that the suspension of her license shall continue until the
17 unpaid balance is paid in full.

18 4. Respondent agrees to attend a three hour course in ethics continuing education
19 and a three hour course in contracts continuing education, to be completed within six months
20 of the Effective Date of the Commission's Order Approving Stipulation. The hours must be
21 live education and will not count towards Respondent's continuing education requirements.
22 Respondent agrees that her license shall be immediately suspended if she fails to timely
23 attend and complete the above continuing education. Respondent agrees that the suspension
24 of her license shall continue until the continuing education is completed.

25 5. The Division agrees not to pursue any other or greater remedies or fines in
26 connection with Respondent's alleged conduct referenced herein.
27
28

1 6. Respondent and the Division agree that by entering into this Stipulation,
2 Division does not concede any defense or mitigation Respondent may assert and that once
3 this Stipulation is approved and fully performed, the Division will close its file in this matter.

4 7. Respondent agrees that if the continuing education is not timely completed, or if
5 the terms and conditions of this settlement are not met, the Division may, at its option, rescind
6 this Stipulation and proceed with prosecuting the Complaint before the Commission.

7 8. Respondent agrees and understands that by entering into this Stipulation,
8 Respondent is waiving her right to a hearing at which Respondent may present evidence in
9 her defense, her right to a written decision on the merits of the complaint, her rights to
10 reconsideration and/or rehearing, appeal and/or judicial review, and all other rights which may
11 be accorded by the Nevada Administrative Procedure Act, NRS 116 and NRS 116A and
12 accompanying regulations, and the federal and state constitutions. Respondent understands
13 that this Agreement and other documentation may be subject to public records laws.
14 Respondent understands and agrees that the Commission members who review this matter
15 approval of this Stipulation may be the same members who ultimately hear, consider and
16 decide the Complaint if this Stipulation is either not approved by the Commission or is not
17 timely performed by Respondent. Respondent fully understands that she has the right to be
18 represented by legal counsel in this matter at her own expense.

19 9. Each party shall bear its own attorney's fees and costs.

20 10. Stipulation is Not Evidence. Neither this Stipulation nor any statements made
21 concerning this Stipulation may be discussed or introduced into evidence at any hearing on
22 the Complaint, if the Division must ultimately present its case based on the Complaint filed in
23 this matter.

24 11. Approval of Stipulation. Once executed, this Stipulation will be filed with the
25 Commission and will be placed on the agenda for approval at its December 6-8, 2011 public
26 meeting. The Division will recommend to the Commission approval of the Stipulation.
27 Respondent agrees that the Commission may approve, reject, or suggest amendments to this
28

1 Stipulation that must be accepted or rejected by Respondent before any amendment is
2 effective.

3 12. Withdrawal of Stipulation. If the Commission rejects this Stipulation or suggests
4 amendments unacceptable to Respondent, Respondent may withdraw from this Stipulation
5 and the Division may pursue its Complaint before the Commission at the Commission's next
6 regular public meeting.

7 13. Release. In consideration of execution of this Stipulation, the Respondent for
8 herself, her heirs, executors, administrators, successors, and assigns, hereby releases,
9 remises, and forever discharges the State of Nevada, the Department of Business and
10 Industry and the Division, and each of their respective members, agents, employees and
11 counsel in their individual and representative capacities, from any and all manner of actions,
12 causes of action, suits, debts, judgments, executions, claims, and demands whatsoever,
13 known and unknown, in law or equity, that the Respondent ever had, now has, may have, or
14 claim to have, against any or all of the persons or entities named in this section, arising out of
15 or by reason of the Division's investigation, this disciplinary action, and all other matters
16 relating thereto.

17 14. Indemnification. Respondent hereby indemnifies and holds harmless the State
18 of Nevada, the Department of Business and Industry, the Division, and each of their
19 respective members, agents, employees and counsel in their individual and representative
20 capacities against any and all claims, suits, and actions brought against said persons and/or
21 entities by reason of the Division's investigation, this disciplinary action and all other matters
22 relating thereto, and against any and all expenses, damages, and costs, including court costs
23 and attorney fees, which may be sustained by the persons and/or entities named in this
24 section as a result of said claims, suits, and actions.

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1 15. Respondent has signed and dated this Stipulation only after reading
2 understanding all terms herein.

3 State of Nevada
4 Department of Business and Industry
5 Real Estate Division

6 Dated: 12-06-11

7 By: Gail J. Anderson
8 Gail J. Anderson, Administrator

9 Dated: 12-6-11

10 By: Theresa Da Silva
11 Theresa Da Silva, Respondent

12 Approved as to form:

13 CATHERINE CORTEZ MASTO
14 Attorney General

15 Dated: 12-6-11

16 By: Kimberly A. Arguello
17 Senior Deputy Attorney General

18 Leach, Johns, Song & Gruchow

19 Dated: 12/5/11

20 By: John E. Leach
21 John E. Leach
22 Attorney for Respondent
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