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. DEBORAH GENATO, Respondent.	**Case No. CIS 12-09-14-071** FILED JUN 21 2012 NEVADA COMMISSION OF COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry, State of Nevada ("Commission") on December 6, 2011 at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4401, Las Vegas, NV 89101 ("Hearing"). Present were Commissioners Michael Buckley, Randolph Watkins, M.Favil West, Gary Lein, Robert Schwenk, Scott Sibley, and Marilyn Brainard. Respondent Deborah Genato failed to appear at the Hearing, failed to file and Answer to the Complaint, and failed to request a continuance of the Hearing. Kimberly A. Arguello, Senior Deputy Attorney General appeared on behalf of Petitioner.

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. Counsel for Petitioner made an offer of proof that RESPONDENT was given proper Notice of the Hearing.

2. Teralyn Thompson, Commission Coordinator, testified that the Complaint, Notice of Complaint and Notice of Documents were mailed to RESPONDENT at the last known address RESPONDENT provided to the Division via certified and regular mail more than 30 days prior to the Hearing.

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3. Ms. Thompson testified that the mail was returned to the Division as unclaimed.

4. Ms. Thompson testified that and the Commission so finds that RESPONDENT failed to file an Answer and failed to request a continuance of the Hearing.

5. The Commission finds that proper notice of the hearing was given to RESPONDENT.

6. Pursuant to NAC 116A.590, the Commission finds that the following charges specified in the Complaint are true.

7. RESPONDENT was licensed as a Provisional Community Manager or as a licensed Community Manager under license number CAM.0001445.

8. On September 23, 2011, RESPONDENT entered into a Plea Memorandum with the United States of America regarding criminal charges filed against RESPONDENT pursuant to Case number 2:11-CR-399-LDG-GWF.

9. RESPONDENT pled guilty to the felony charge of conspiracy to commit wire and mail fraud.

10. To date, RESPONDENT has failed to notify the Division in writing of her plea of guilty to the felony charge of conspiracy to commit wire and mail fraud.

11. RESPONDENT pled guilty to the felony charge of conspiracy to commit wire and mail fraud because RESPONDENT is guilty of the charged offenses.

12. RESPONDENT specifically admitted and declared under penalty of perjury that all of the facts set forth below are true and correct.

13. From as early as in or about February 2007 through at least in or about February 2009, RESPONDENT knowingly participated in a scheme to control various Homeowner Association (HOA) boards of directors so that the HOA boards would award the handling of construction defect lawsuits and remedial construction contracts to a law firm and construction company designated by RESPONDENT's co-conspirators.

14. In order to accomplish this scheme, co-conspirators acted as straw purchasers of properties in numerous Nevada HOA communities. The co-conspirators managed and operated the payments associated with maintaining these straw properties by running a so-

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called "Bill Pay Program," pursuant to which the co-conspirators funded the properties through several limited liability companies and at the direction of a co-conspirator. Many of the payments on these straw properties were wired from California to Nevada. Co-conspirators also transferred an interest in some of the units to other co-conspirators to make it appear as if the co-conspirator was a bonafide homeowner.

15. The straw purchasers and those who acquired a transferred interest in a unit agreed to run for election to the respective HOA boards. These co-conspirators were paid in cash, check, or promised things of value for their participation, all of which resulted in a personal financial benefit to the co-conspirators.

16. To ensure these co-conspirators would win the elections, RESPONDENT and her co-conspirators employed deceitful tactics, such as creating false phone surveys to gather information about homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town homeowners unlikely to participate in the elections, and submitting fake and forged ballots. Co-conspirators also hired private investigators to find "dirt" on the bonafide candidates in order to create smear campaigns. RESPONDENT used her position as property manager at Vistana, Park Avenue, and Chateau Nouveau by providing mailing lists, labels, and other voting materials to create fake election ballots. She also allowed co-conspirators to gain access to the election ballots that had been mailed into the property management company by the bonafide homeowners prior to the election date.

17. Another tactic the co-conspirators used to rig certain HOA board elections was to prepare forged ballots for out-of-town homeowners and either cause them to be transported or mailed to California and thereafter to have the ballots mailed back to Las Vegas from various locations around California so as to make it appear that the ballots were completed and mailed by bonafide homeowners residing in other states.

18. Co-conspirators also attempted to create the appearance that the elections were legitimate by hiring independent attorneys to run the HOA board elections. The homeowners were led to believe that these "special election masters" were supposed to: (i) contact the bonafide homeowners to inform them of the election; (ii) mail the bonafide homeowners

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election ballots and voting instructions; (iii) collect and secure those election ballots returned by mail until the date of the election; and (iv) preside over the HOA board election, including supervising the counting of ballots. However, they, too, were paid in cash, check, and promised things of value, by or on behalf of RESPONDENT's co-conspirators for their assistance in rigging the elections.

19. Once elected, the co-conspirator board members would meet with other co-conspirators in order to manipulate board votes, including the selection of property managers, contractors, and general counsel for the HOA and attorneys to represent the HOA.

20. Often the co-conspirators created and submitted fake bids for "competitors" to make the process appear to be legitimate while ensuring co-conspirators were awarded the contract. In addition, Co-Conspirator A's initial contract for emergency remediation repairs contained a "right of first refusal" clause to ensure that a co-conspirator was awarded the construction repair contracts following the construction defect litigation.

21. Once hired, the co-conspirator property managers, including RESPONDENT, breached their fiduciary duties by receiving and accepting cash, check, or things of value for using their positions to gain inside information and recommend that the HOA board hire a co-conspirator for remediation and construction defect repairs and other co-conspirator for the construction defect litigation, and concealing their relationship with the co-conspirators from the bonafide homeowners.

22. This process created the appearance of legitimacy since bonafide homeowners believed the elected board members and property managers were, as fiduciaries, acting in their best interest rather than to advance the financial interests of co-conspirators. In fact, RESPONDENT and others were paid or received things of value by or on behalf of their co-conspirators for their assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using their positions to manipulate the HOA's business and to further the goals of the conspiracy, and to enrich the co-conspirators at the expense of the HOA and the bonafide homeowners.

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CONCLUSIONS OF LAW

Based upon substantial evidence, the Commission concludes:

1. RESPONDENT was given proper notice of the Hearing pursuant to NRS Chapters 116A and 233B and NAC Chapter 116A.

2. Pursuant to NAC 116A.590, the Commission finds that the following charges specified in the Complaint are true.

3. RESPONDENT violated NRS 116A.600 by failing to notify the Division in writing within 10 days of entering her plea of guilty to the felony charge of conspiracy to commit wire and mail fraud.

4. RESPONDENT violated NRS 116A.610 by failing to disclose her expectation to receive financial compensation from co-conspirators.

5. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in her client relationships by receiving and accepting cash, check, or things of value for using her position to gain inside information.

6. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in her client relationships by allowing co-conspirators to gain access to the election ballots that had been mailed into the property management company by the bonafide homeowners prior to the election date.

7. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in her client relationships by recommending that the HOA board hire a co-conspirator for remediation and construction defect repairs and other co-conspirator for the construction defect litigation, and concealing her relationship with the co-conspirators from the bonafide homeowners.

8. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and reasonable care in the performance of her duties.

9. RESPONDENT violated NRS 116A.630(2)(a) by failing to comply with all applicable federal, state and local laws, regulations and ordinances.

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10. RESPONDENT violated NRS 116A.630(2)(b) by failing to comply with all applicable lawful provisions of the governing documents of each client.

11. RESPONDENT violated NRS 116A.630(6) by failing to establish policies and procedures designed to provide reasonable assurances in the reliability of the financial reporting including proper maintenance of accounting records, facilitation of fraud detection and prevention and compliance with all applicable laws and regulations governing financial records.

12. RESPONDENT violated NRS 116A.640(1) by disclosing confidential information relating to a client by using her position as property manager at Vistana and providing mailing lists, labels, and other voting materials to create fake election ballots.

13. RESPONDENT violated NRS 116A.640(1) by disclosing confidential information relating to a client by using her position as property manager at Park Avenue and providing mailing lists, labels, and other voting materials to create fake election ballots.

14. RESPONDENT violated NRS 116A.640(1) by disclosing confidential information relating to a client by using her position as property manager at Chateau Nouveau and providing mailing lists, labels, and other voting materials to create fake election ballots.

15. RESPONDENT violated NRS 116A.640 (11) by accepting compensation or other items of material value for her assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using her position to manipulate the HOA's business and further the goals of the conspiracy and to enrich the co-conspirators at the expense of the clients.

16. RESPONDENT violated NAC 116A.355(1)(a)(1) by engaging in unprofessional conduct.

17. RESPONDENT violated NAC 116A.355(1)(a)(2) by engaging in conduct which was professionally incompetent by failing to do her utmost to protect the public against fraud, misrepresentation or unethical practices related to the business affairs of the client pursuant to NAC 116A.355 (4)(a).

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18. RESPONDENT violated NAC 116A.355(1)(a)(2) by engaging in conduct which was professionally incompetent by failing to comply with the applicable governing documents, policies and procedures of the client pursuant to NAC 116A.355 (4)(e).

19. RESPONDENT violated NAC 116A.355(1)(a)(2) by engaging in conduct which was professionally incompetent by failing to act in the best interest of her client pursuant to NAC 116A.355 (4)(g).

20. RESPONDENT violated NAC 116A.355(1)(a)(3) by engaging in negligent or grossly negligent conduct.

21. RESPONDENT violated NAC 116A.355(1)(a)(4) by committing a felony which is also an offense involving moral turpitude.

22. RESPONDENT violated NAC 116A.355(2)(c) by engaging in deceitful, fraudulent or dishonest conduct by actively participating in the fraudulent election process at Vistana in violation of NRS 116.31034.

23. RESPONDENT violated NAC 116A.355(2)(c) by engaging in deceitful, fraudulent or dishonest conduct by actively participating in the fraudulent election process at Park Avenue in violation of NRS 116.31034.

24. RESPONDENT violated NAC 116A.355(2)(c) by engaging in deceitful, fraudulent or dishonest conduct by actively participating in the fraudulent election process at Chateau Nouveau in violation of NRS 116.31034.

25. RESPONDENT violated NRS 116A.640 (11) by accepting compensation or other items of material value for her assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using her position to manipulate the HOA's business and further the goals of the conspiracy and to enrich the co-conspirators at the expense of the clients.

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ORDER

The Commission being fully apprised in the premises, and good cause appearing to the Commission, IT IS HEREBY ORDERED THAT:

1. The RESPONDENT shall pay to the Division a total fine of $23,922.00 The total fine reflects a fine of $23,000.00 for committing the above violations of law plus $922.00 for Petitioner's attorney's fees and costs. Respondent shall pay the total fine to the Division within 60 days of the effective date of this Order.

2. The Division may institute debt collection proceedings for failure to timely pay the total fine.

3. RESPONDENT's Provisional Community Manager and Community Manager license, license number CAM.000144, is hereby **REVOKED**.

4. The Commission retains jurisdiction for correcting any errors that may have occurred in the drafting or issuance of this Order.

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

DATED this 19TH day of JUNE, 2012.

COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

By: Randolph Watkins
CHAIRMAN

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