

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 12-12-02-094

Petitioner,

FILED

vs.

JUN 21 2012

DENISE KESER,

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Respondent.

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 March 6, 2012 at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4412, Las Vegas, NV 89101 ("Hearing"). Present were Commissioners M. Favil West, Barry Breslow, Gary Lein, Randolph Watkins, Robert Schwenk, Scott Sibley, and Marilyn Brainard. Commissioner Schwenk abstained from voting as he is currently the community manager as Chateau Nouveau. Respondent Denise Keser was present and represented by Conor Flynn, Esq. 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. RESPONDENT was licensed as a Supervising Community Manager under certificate number CAM.0001018-SUPR.

1 2. On November 1, 2011, RESPONDENT entered into a Plea Memorandum with
2 the United States of America regarding criminal charges filed against RESPONDENT
3 pursuant to Case number 2:11-cr-00382-GMN-GWF.

4 3. RESPONDENT pled guilty to the felony charge of conspiracy to commit wire and
5 mail fraud.

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

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

10 6. From as early as in or about April 2006 through at least in or about February
11 2007, RESPONDENT knowingly participated in a scheme to control various Homeowner
12 Association (HOA) boards of directors so that the HOA boards would award the handling of
13 construction defect lawsuits and remedial construction contracts to a law firm and construction
14 company designated by RESPONDENT's co-conspirators.

15 7. In order to accomplish this scheme, co-conspirators acted as straw purchasers
16 of properties in numerous Nevada HOA communities. RESPONDENT was aware that co-
17 conspirators managed and operated the payments associated with maintaining these straw
18 properties by running a so-called "Bill Pay Program," pursuant to which the co-conspirators
19 funded the properties at the direction of a co-conspirator. Many of the payments on these
20 straw properties were wired from California to Nevada. RESPONDENT was aware that co-
21 conspirators also transferred an interest in some of the units to other co-conspirators to make
22 it appear as if the co-conspirator was a bonafide homeowner.

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

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1 9. To ensure these co-conspirators would win the elections, RESPONDENT was
2 aware that her co-conspirators employed deceitful tactics, such as preparing and sending out
3 ballots, putting watermarks on ballots so that they could trace ballots, using mailing lists to
4 send ballots to homeowners and trace the returned voted ballots, and having the voted ballots
5 sent to the property management companies that they controlled so that they would have
6 access to the ballots. RESPONDENT observed her co-conspirators using mailing lists to mail
7 voting ballots to Vistana homeowners, who would vote for co-conspirators who had been
8 promoted for the HOA board positions. RESPONDENT and her co-conspirators were
9 instructed by a co-conspirator to use her position as property manager at Chateau Nouveau to
10 send emails to the homeowners that were intended to smear the reputation of bonafide board
11 members, which she and other co-conspirators did.

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

17 11. Co-conspirators also attempted to create the appearance that the elections were
18 legitimate by hiring independent attorneys to run the HOA board elections. The homeowners
19 were led to believe that these "special election masters" were supposed to: (i) contact the
20 bonafide homeowners to inform them of the election; (ii) mail the bonafide homeowners
21 election ballots and voting instructions; (iii) collect and secure those election ballots returned
22 by mail until the date of the election; and (iv) preside over the HOA board election, including
23 supervising the counting of ballots. However, they, too, were paid in cash, check, and
24 promised things of value, by or on behalf of RESPONDENT's co-conspirators for their
25 assistance in rigging the elections.

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

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1 13. Once hired, the co-conspirator property managers, including RESPONDENT
2 were paid in cash, check, or things of value for using their positions to gain inside information
3 and provide it to con-conspirators in furtherance of their efforts to obtain remediation and
4 construction defect repair work and construction defect litigation work on behalf of the HOAs.

5 14. In or around September 2006, RESPONDENT agreed with co-conspirators to
6 open a new property management company, which would be owned and controlled by these
7 co-conspirators, for the purpose of managing the HOA board at Chateau Nouveau and others.
8 As compensation for her participation in the conspiracy, RESPONDENT was given a weekly
9 salary, among other things, from her co-conspirators. RESPONDENT ran all of a co-
10 conspirator's personal expenses on a company credit card for which RESPONDENT was a
11 guarantor, which was reimbursed to her by a co-conspirator. At a co-conspirator's instruction,
12 RESPONDENT observed a co-conspirator cause on-site maintenance personnel at Chateau
13 Nouveau to quit and RESPONDENT and her co-conspirator paid through the property
14 management company several of the co-conspirator's employees to work at Chateau
15 Nouveau in order to conceal the employees' relationship with the co-conspirator and so that
16 the co-conspirator would have loyal employees working at the community.

17 15. RESPONDENT further concealed from the bonafide homeowners the
18 relationship that she and the property management company that she headed had with their
19 co-conspirators in order to ensure that the HOA hire the property management company.

20 16. This process created the appearance of legitimacy since bonafide homeowners
21 believed the elected board members and property managers were, as fiduciaries, acting in
22 their best interest rather than to advance the financial interests of co-conspirators. In fact,
23 RESPONDENT and others were paid or received things of value by or on behalf of her co-
24 conspirators for her assistance in using her position to manipulate the HOA's business and to
25 further the goals the goals of the conspiracy, and to enrich the co-conspirators at the expense
26 of the HOA and the bonafide homeowners. In addition, RESPONDENT was aware that others

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1 were paid or received things of value by or on behalf of their co-conspirators for their
2 assistance in purchasing the properties, obtaining HOA membership status and rigging
3 elections.

4 17. RESPONDENT admits to the allegations in the complaint. Counsel for
5 RESPONDENT stated that there is a pending criminal case and that Ms. Keser has pled guilty
6 and these are the facts that Ms. Keser has pled guilty to in the criminal case.

7 **CONCLUSIONS OF LAW**

8 Based upon substantial evidence, the Commission, hereby finds:

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

11 2. The Commission finds that the following charges specified in the Complaint are
12 true and supported by substantial evidence.

13 3. RESPONDENT violated NRS 116A.610(1) by failing to disclose her expectation
14 to receive financial compensation from co-conspirators.

15 4. RESPONDENT 116A.610(2) by failing to disclose the affiliation with and
16 financial interest in the management company she headed and her co-conspirators.

17 5. RESPONDENT violated NRS 116A.630(1) by failing to act as a fiduciary in her
18 client relationships by knowing participating in a scheme to control various HOA boards of
19 directors so that the HOA would award the handling of construction defect lawsuits and
20 remedial construction contracts to a law firm and construction company designated by
21 RESPONDENT's co-conspirators.

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

25 7. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in
26 her client relationships by allowing co-conspirators to gain access to the election ballots.

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1 8. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in
2 her client relationships by allowing co-conspirators run the "Bill Pay Program" in order to fund
3 straw buyers in furtherance of the conspiracy.

4 9. RESPONDENT violated NRS 116A.630(1) by failing to act as a fiduciary in her
5 client relationships by concealing her relationship with co-conspirators from the bonafide
6 homeowners.

7 10. RESPONDENT violated NRS 116A.630(1) by failing to act as a fiduciary in her
8 client relationships by using her position as community manager at Chateau Nouveau to send
9 emails to homeowners for the purpose of smearing the reputation of bonafide board members.

10 11. RESPONDENT violated NRS 116A.630(1) by failing to act as a fiduciary in her
11 client relationships by participating in and allowing co-conspirator to force on-site maintenance
12 personnel at Chateau Nouveau to quit in furtherance of the conspiracy.

13 12. RESPONDENT violated NRS 116A.630(1) by failing to act as a fiduciary in her
14 client relationships by using her position as community manager to pay several of
15 conspirator's employees to work at Chateau Nouveau and concealing the employees
16 relationship with co-conspirator in furtherance of the conspiracy.

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

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

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

26 16. RESPONDENT violated NRS 116A.640(1) by disclosing confidential information
27 relating to a client by allowing co-conspirators access to voting ballots at Vistana.

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1 17. RESPONDENT violated NRS 116A.640(1) by disclosing confidential information
2 relating to a client by allowing co-conspirators access to voting ballots at Chateau Nouveau.

3 18. RESPONDENT violated NRS 116A.640 (11) by accepting compensation or
4 other items of material value for her assistance in using her position to manipulate the HOA's
5 business and the further the goals of the conspiracy and to enrich the co-conspirators at the
6 expense of the HOA and the bonafide homeowners.

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

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

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

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

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

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

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

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

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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 \$24,757.00. The total fine reflects a fine of \$24,000 for committing the above violations of law plus \$757.00 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 Supervising Community Manager license, license number CAM.0001018-SUPR. 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 24th day of July, 2012.

DATED this 19TH day of JUNE, 2012.

COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS

By: Randolph Watkins
CHAIRMAN