

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.

GEMMA SLADKY,

Respondent.

Case No. CIS 10-06-11-286

FILED

MAR 19 2013

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

ORDER APPROVING STIPULATION FOR SETTLEMENT OF DISCIPLINARY ACTION

The Stipulation for Settlement of Disciplinary Action (Stipulation) having come before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada (Commission), during its regular agenda on Tuesday, March 19, 2013, and the Commission being fully apprised in the premises, and good cause appearing,

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

This Order shall become effective on the 19th day of March, 2013.

Dated this 19th day of March, 2013.

COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM
HOTELS DEPARTMENT OF BUSINESS &
INDUSTRY STATE OF NEVADA

By: [Signature]

Name: BARRY BRESLOW

Title: Acting Chair

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT 1

1 3. For the May 25, 2010 election, there were seven (7) candidates running to
2 three (3) open positions.

3 4. The Association's voting instructions for the meeting required that the secret
4 written ballot be mailed to the Association in the addressed envelope provided or brought by
5 the unit owner to the meeting.

6 5. Prior to May 25, 2010, the Ombudsman at the time, Lindsay Waite, was asked
7 to attend the meeting. Ms. Waite could not attend, but sent education officers, Nick Haley
8 and Ingrid Trillo, to attend the meeting.

9 6. Mr. Haley and Ms. Trillo attended the annual meeting having never attended
10 such a meeting in the past and having no knowledge of the Association or its board members.

11 7. Mr. Haley and Ms. Trillo did not attend the meeting to oversee the election.
12 They sat around other attendees and conversed with them.

13 8. There were approximately 30 people in attendance at the annual meeting.

14 9. At 6:00PM, RESPONDENT announced that the ballots would be counted and
15 volunteers were selected to open and count the ballots.

16 10. At some point close to the start of the meeting, Helen King, a candidate on the
17 ballot, entered the meeting area and handed RESPONDENT a number of sealed ballots.

18 11. RESPONDENT added the ballots brought by Ms. King to the ballots previously
19 returned to the Association to be counted thereby preventing them from being separated from
20 the previously returned ballots.

21 12. The ballots brought to the meeting by Ms. King were used to determine the
22 outcome of the election.

23 13. According to the minutes of the election meeting, there were 23 ballots brought
24 to the meeting (3 were excluded because they were late) and 129 total ballots were counted
25 for the election.

26 14. Ms. King received 68 votes securing her a seat on the board. The other two
27 seats were filled by Toni Garrison with 81 votes and Ronald Thomas with 80 votes.

28 ...

1 15. Ms. King beat Lisa Hopkins (who received 48 votes) and Sharon Laird (who
2 received 54 votes).

3 16. Mr. Haley and Ms. Trillo did not know Ms. King was a candidate or that she
4 submitted ballots to be counted in the election.

5 17. After the election, unit owners filed a complaint with the Division regarding the
6 election.

7 18. RESPONDENT informed Division investigator, Cheryl Fleming, in a telephone
8 conversation on June 8, 2010, that she was unaware of the requirements of NRS 116.31034
9 as it relates to candidates possessing ballots.

10 19. By letter dated June 29, 2010, the Division sent a request to RESPONDENT for
11 a written response to the allegation that she accepted ballots from Ms. King and used them to
12 determine the outcome of the election.

13 20. By letter dated April 13, 2011, the Division requested a response to its June 29,
14 2010 letter.

15 21. On or about June 9, 2011, RESPONDENT submitted an affidavit regarding the
16 allegations and admitted to accepting and counting the ballots from Ms. King.

17 22. According to Ms. King, she went to the wrong address for the meeting as did a
18 number of other unit owners. Ms. King agreed to take the ballots of those unit owners to the
19 correct location for the meeting.

20 23. By letter dated January 10, 2012, the Division issued RESPONDENT a closing
21 letter of instruction advising RESPONDENT of the requirements of NRS 116.31034 and
22 instructing her not to allow candidates to possess ballots until after they are opened and
23 counted at a meeting.

24 24. By letter dated February 3, 2012, the Association's attorney notified the Division
25 that RESPONDENT and the Association disagreed with the closing letter of instruction and
26 demanded that it be rescinded.

27 ...

28 ...

1 25. By letter dated May 3, 2012, the Division's attorney notified the Association
2 attorney that the letter of instruction to RESPONDENT was rescinded and a complaint with
3 this Commission would follow.

4 26. On or about April 19, 2011, the Division's letter dated April 13, 2011 – which
5 was addressed to RESPONDENT'S address on file with the Division – was returned to the
6 Division by the U.S. Post Office.

7 27. The Division's investigator, Cheryl Fleming, called RESPONDENT regarding the
8 returned letter to obtain her current address and resent the letter. The Division's investigator
9 instructed RESPONDENT to contact the Division's licensing department regarding her
10 change of address.

11 28. The Division received notice of a change of address for RESPONDENT on or
12 about June 20, 2011, but RESPONDENT failed to surrender her original license for it to be
13 updated.

14 29. The Division notified RESPONDENT on or about June 22, 2011 of the deficient
15 transaction to change her address, but RESPONDENT did not update her address records
16 until July 11, 2012.

17 30. RESPONDENT'S attorney is also the Association's attorney.

18 31. The attorney for the Association and RESPONDENT provided as a defense for
19 RESPONDENT that she "can only do that which [she is] authorized by the association to do."
20 He further states that "the manager cannot control what goes on at an association."

21 32. By letter dated July 12, 2012, the Division informed RESPONDENT of NRS
22 116A.640 (6) and NAC 116A.345 (5) which prohibits RESPONDENT from forming an
23 attorney/client relationship with the Association's attorney in this matter.

24 33. RESPONDENT'S attorney responded to the July 12, 2012 letter by reiterating
25 RESPONDENT'S right to use him as her attorney and threatening legal action against the
26 Division's investigator and the Division's attorney.

27 ...

28 ...

1 **SUMMARY OF VIOLATIONS OF LAW ALLEGED IN THE AMENDED COMPLAINT**

2 1. RESPONDENT violated NAC 116A.355 (1)(a)(1) (through NAC 116A.355
3 (2)(a)(3)) by committing an act of unprofessional conduct when she included ballots not
4 properly returned to the Association to be counted to determine the outcome of the
5 Association's annual election on May 25, 2010 in violation of NRS 116.31034 (11)(d) and (f).

6 2. RESPONDENT violated NAC 116A.355 (1)(a)(2) (through NAC 116A.355 (3))
7 by committing an act of professional incompetence by demonstrating a significant lack of
8 knowledge of how to run a secret written ballot election in accordance with NRS 116.31034
9 (11) and by failing to exercise reasonable skill and care with respect to running a secret
10 written ballot election in accordance with NRS 116.31034 (11).

11 3. RESPONDENT failed to comply with the standards of practice for community
12 managers under NRS 116A.630 (1)(a) by breaching her fiduciary duty owed to the
13 Association by accepting ballots from an incumbent board member and candidate and using
14 them to determine the outcome of the election in violation of NRS 116.31034 (11).

15 4. RESPONDENT failed to comply with the standards of practice for community
16 managers under NRS 116A.630 (1)(b) by failing to exercise ordinary and reasonable care in
17 the performance of her duties.

18 5. RESPONDENT failed to comply with the standards of practice for community
19 managers under NRS 116A.630 (2)(a) by failing to comply with NRS 116.31034 (11).

20 6. RESPONDENT failed to comply with the standards of practice for community
21 managers under NRS 116A.630 (18) by failing to comply with the voting instructions provided
22 to each unit owner and to comply with the secret written ballot election requirements of NRS
23 116.31034 (11).

24 7. RESPONDENT violated NAC 116A.340 (1) by failing to provide proper written
25 notice to the Division of her change of address within 10 business days of her move.

26 8. RESPONDENT is in violation of NAC 116A.335 (2) for failing to display an
27 accurate certificate in her office.

28 ...

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 improprieties in the election process. Ms. Waite was unable to attend, but sent Nick Haley
2 and Ingrid Trillo in her place.

3 2. At the 2010 Election, Ms. Helen King was a candidate; she was not already a
4 Board member. Because of some confusion regarding the location of the 2010 election, 7
5 other unit owners in the Association gave their ballots to Ms. King who then hand delivered
6 them to respondent at the election site.

7 3. At or about the same time that she delivered the ballots, Ms. King introduced
8 herself to Mr. Haley who was present near the table where the ballots were being received.
9 None of the Ballot Envelopes turned in by Ms. King showed any signs of tampering.
10 Ultimately, Ms. King was elected to the third of three open board seats. She defeated the
11 fourth place candidate by 14 votes.

12 4. At no time during the election process did either Mr. Haley or Ms. Trillo indicate
13 that Ms. King's delivery of the ballots or Respondent's receipt of the ballots was in any way a
14 violation of any state statute.

15 5. Respondent asserts in her response to the Amended Complaint that NRS 116.
16 116.31034(11)(f) does not prohibit a candidate from possessing his or her own Ballot
17 Envelope or the Ballot Envelopes of other members until the Ballot Envelopes are actually
18 returned to the Association for counting and tallying.

19 6. Respondent asserts that she does not have the unilateral authority nor a duty
20 under NRS 116.31034(11)(f) to reject ballots that are returned to the Association.

21 7. That any alleged violation of NAC 116A.340(1) and NAC 116A.335(2) was
22 resolved before the Amended Complaint was filed.

23 SETTLEMENT

24 1. The Division was prepared to present its case based upon the Amended
25 Complaint filed with the Commission and the Respondent was prepared to defend against the
26 Amended Complaint.

27 2. The Parties desire to compromise and settle the instant controversy upon the
28 following terms and conditions.

1 3. Respondent agrees to pay to the Division \$900.00 in an administrative fine,
2 accordance with the schedule of installment payments set forth in paragraph 5.

3 4. Respondent agrees to pay to the Division costs and fees amounting to
4 \$8,841.80, in accordance with the schedule of installment payments set forth in paragraph 5.

5 5. One payment of \$8,000.00 shall be due within 30 days of the effective date of
6 the Commission's Order Approving Stipulation. Then nine additional installment payments of
7 \$194.00 shall be due on the 15th day of each month following the initial payment, until the
8 administrative fine is paid in full. No grace period is permitted. Any installment payment not
9 actually received by the Division on or before its due date shall be construed as an event of
10 default by the Respondent.

11 6. Respondent agrees to attend 18 hours of Pre-Certification courses covering the
12 following approved tracks: Track 3 (Ethics in Community Management); Track 4 (NRS 116,
13 NRS 116A, NRS 116B and the Community Association); Track 5 (NAC 116 and the Community
14 Association); Track 6 (Other Nevada Statutes That Apply to Community Associations); Track 9
15 (Use of Experts in Common-Interest Communities – How and Why); Track 11 (CIC's – Board
16 Meetings, Members Meetings and the Secret Ballot). All classes to be completed within 12
17 months of the Effective Date of the Commission's Order Approving Stipulation. The hours must
18 be live education and will not count towards Respondent's continuing education requirements.

19 7. Respondent agrees to abide by the instructions in the Closing Letter sent to her
20 by the Division dated January 10, 2012.

21 8. In the event of default by the Respondent, the unpaid balance of the
22 administrative fine shall become immediately accelerated, and the unpaid balance, together
23 with any attorney's fees and costs that may have been assessed, shall be due in full to the
24 Division within 10 calendar days of the date of default.

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

27 10. Respondent and the Division agree that by entering into this Stipulation, the
28 Division does not concede any defense or mitigation Respondent may assert, nor does

1 Respondent admit to any factual allegation the Division may assert, and that once this
2 Stipulation is approved and fully performed, the Division will close its file in this matter.

3 11. Respondent agrees that if the terms and conditions of this settlement are not
4 met, the Division may, at its option, rescind this Stipulation and proceed with prosecuting the
5 Complaint before the Commission.

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

18 13. Each party shall bear its own attorney's fees and costs.

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

23 15. Approval of Stipulation. Once executed, this Stipulation will be filed with the
24 Commission and will be placed on the agenda for approval at its March 19-21, 2013 public
25 meeting. The Division will recommend to the Commission approval of the Stipulation.
26 Respondent agrees that the Commission may approve, reject, or suggest amendments to this
27 Stipulation and that it must be accepted or rejected by Respondent before any amendment is
28 effective.

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

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

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

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

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

3 REAL ESTATE DIVISION
4 DEPARTMENT OF BUSINESS & INDUSTRY
5 STATE OF NEVADA

6 Dated: 3-19-13

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

9 Dated: 3/19/13

10 By: Gemma Sladky
11 Gemma Sladky, Respondent

12 Approved as to form:

13 CATHERINE CORTEZ MASTO
14 Attorney General

15 Dated: 3-19-13

16 By: Michelle D. Briggs
17 Michelle D. Briggs, Esq.,
18 Senior Deputy Attorney General
19 Attorney for the Division
20

LIPSON NEILSON

21 Dated: 3/19/13

22 By: Kaleb D. Anderson
23 Kaleb D. Anderson, Esq.
24 Attorney for Respondent
25