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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,

Case No. CIS 13-09-19-075

Petitioner,

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

vs.

DIANE WILD,

FILED

FEB 26 2014

**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 February 25, 2014, at Gaming Control Meeting Room, 555 E. Washington Ave. Room 2450, Las Vegas, NV 89101 (the "Hearing"). The Respondent, Diane Wild, failed to appear at the Hearing, and failed to answer the Complaint. Michelle D. Briggs, Esq., 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").

Ms. Briggs presented testimony from Teralyn Thompson, the Commission coordinator, regarding Ms. Wild having requested and received a continuance of this matter from the Commission's meeting in December of 2013. Ms. Thompson testified that notice of this hearing was sent to Ms. Wild via certified mail, return receipt requested. Ms. Thompson also testified that Ms. Thompson exchanged emails with Ms. Wild regarding this hearing day and time. The Commission, having considered the evidence introduced by Petitioner and being fully advised, enters the following Findings of Fact, Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 116 and 116A, the Commission has legal jurisdiction and authority over this matter.

FINDINGS OF FACT

Pursuant to NAC 116A.590, the Commission considers the following factual allegations

1 to be true.

2 1. RESPONDENT is, and was at all relevant times mentioned in this Complaint,
3 licensed as a supervising community manager under certificate number CAM.0000164-SUPR.

4 2. At all relevant times, RESPONDENT was the supervising community manager
5 for her company Castle Management & Consulting LLC ("Castle Management").

6 3. Castle Management managed Smokey Lane Condominium Association (the
7 "Association") in 2011.

8 4. RESPONDENT was the manager of the Association on November 22, 2011
9 when the Association opened bids for a new management company.

10 5. RESPONDENT submitted a bid for the Association to consider and prepared the
11 agenda for the meeting on November 22, 2011.

12 6. Present at the board meeting were Tammy Strenge and Arlene Walker on behalf
13 of Castle Management.

14 7. At that time, Tammy Strenge was a licensed community manager under license
15 number CAM.0006976 and Arlene Walker was a provisional community manager under
16 license number CAM.0007402-PROV who worked under RESPONDENT.

17 8. Before the board members opened the bids, Ms. Strenge and Ms. Walker were
18 asked to leave the meeting.

19 9. The board voted to accept the bid of a new management company and to
20 terminate Castle Management.

21 10. The next day, November 23, board member, Julian Ferguson, hand delivered a
22 notice of cancellation of Castle Management's contract to their office.

23 11. Later that day, Ms. Walker and Trudy Perkins (an employee of Castle
24 Management) called Association President, Bruce Allsop, about the management company
25 change.

26 12. They told him he was making a big mistake hiring the new management
27 company and made derogatory comments about the new company. They said the new
28 company has hidden charges that are not in the contract. They tried to get him to change his
vote, but he refused.

1 13. Also on November 23 and unbeknownst to the Association's board members,
2 Castle Management ordered coupon books for the Association and prepared Invoice #3072 to
3 the Association for \$1,323.00 for coupon book printing and \$130.26 for coupon book postage
4 totaling \$1,453.26.

5 14. The Association budgeted \$900 for coupon books for 2012.

6 15. On December 2, 2011, Association board member, Ronald Karr, received a
7 request from Castle Management to sign Association checks.

8 16. Mr. Karr was given Check #4200 in the amount of \$2,198.26 in favor of Castle
9 Management.

10 17. Mr. Karr signed Check #4200 believing the amount was for the regular monthly
11 management fee.

12 18. Mr. Karr compared the check to Invoice #3072 that was attached to the check
13 and realized there was a discrepancy in the amount.

14 19. Mr. Karr asked Castle Management employees, Tammy Strenge and Arlene
15 Walker, what the bases for the charges were, but they could not explain it.

16 20. Mr. Karr put a sticky note on the check directing that it not be cashed until it was
17 clear what the charges were for.

18 21. Mr. Karr then called the President, Bruce Allsop, told him about the check and
19 asked him not to sign as the second signature until RESPONDENT could explain the
20 discrepancy.

21 22. Later the same day, when Mr. Allsop was presented with Check #4200 to be co-
22 signed by him, it did not include the sticky note left by Mr. Karr.

23 23. Mr. Allsop refused to sign the check and requested clarification of the charges.

24 24. In February of 2012, the Association learned that Check #4200 had been
25 deposited on December 8, 2011 into Castle Management's bank account without a second
26 signature.

27 25. The Association's board determined that \$745.00 of the \$2,198.26 received by
28 Castle Management (Check #4200) was for collection costs and was allowed, but the
remaining \$1,453.26 (Invoice #3072 for coupon books) was not authorized.

1 26. The Association's board members gave Castle Management the benefit of the
2 doubt that the coupon books were ordered before their contract was terminated. But the cost
3 was still \$553.26 over budget.

4 27. The Association's board believed the excess cost for the coupon books was
5 because Castle Management ordered books for owners who paid their assessments
6 electronically and never received coupon books previously.

7 28. The Association, through their new management company, questioned Castle
8 Management about Check #4200 and requested reimbursement for the extra coupon books
9 ordered by Castle Management.

10 29. Arlene Walker, the provisional community manager who worked for the
11 Association under RESPONDENT'S supervisory community manager license, responded to
12 the inquiries.

13 30. On February 27, 2012, Ms. Walker stated by email, "...the Board did not
14 approve not sending any coupon books to homeowners on ACH in a meeting... coupon books
15 were ordered at the last minute."

16 31. On March 8, Ms. Walker states by email, "It is a valid bill and payment... As I
17 am sure you are aware, NRS 116 requires 2 signatures on checks drawn on a reserve
18 account."

19 32. On May 1, Ms. Walker sent a letter of the same date to the Association's
20 management company by email claiming an offset for "extra services" they supplied the
21 Association during the course of the contract.

22 33. The May 1, 2012 letter states: "You, as a community manager know that NRS
23 supersedes CC&R's and contracts. We were not told by Ronn Karr to hold the check after he
24 signed it, and only one signature is required BY LAW on non-reserve accounts."

25 34. In response to the May 1 letter, the Association's manager requested from Ms.
26 Walker the invoice from the company who prepared the coupon books.

27 35. Castle Management refused to provide the vendor invoice to the Association.

28 36. Before filing a complaint with the Division, the Association sent a letter with
supporting documents to RESPONDENT asking for reimbursement for the over charge.

1 37. RESPONDENT received the letter from the Association on or about July 5, 2012
2 via certified mail.

3 38. The Association never received a response from RESPONDENT.

4 39. As part of the Division's investigation of the Association's complaint, the Division
5 requested a response to the allegations from RESPONDENT.

6 40. RESPONDENT alleges that Check #4200 was properly deposited, because the
7 Board previously decided that only Ronn Karr would sign checks.

8 41. RESPONDENT provided no evidence support this contention.

9 42. Association board meeting minutes from May 9, 2011 state:

10 "Ronn Karr moved that checks be signed by him in Mesquite and then
11 forwarded to Bruce Allsop for second signature and dispersal when all
12 board members are out of town. Kathleen Curry seconded, all approved."

13 43. RESPONDENT'S response further states:

14 "All correspondence that Arlene sent were at my direction and editing. All
15 business matters were run through me including meeting notices and
16 general business matters for the Association."

17 44. RESPONDENT provided to the Division the actual invoice from the vendor,
18 SouthData, for the coupon books reflecting the total cost to be \$570.26.

19 45. RESPONDENT alleges that the ASSOCIATION knew she was making a "small
20 profit off of providing this service."

21 46. RESPONDENT'S profit was \$883.

22 47. According to the records of SouthData, the Association's coupon books were
23 ordered by Castle Management employee Trudy Perkins on November 23, 2011. The day
24 after the Association voted to terminate their contract.

25 48. The only management contract in the Association's records expired in 2008, but
26 provides:

27 a. "Notwithstanding the foregoing, the Agent shall not incur an expense in excess
28 of \$500.00 without approval of the Board of Directors." Page 1, Section 1.

1 b. "The withdrawal of funds from the Association's financial or any savings account
2 or Certificate(s) of Deposit shall require the signature of at least two (2) Board
3 members." Page 3, Section 9.

4 49. The Association could not use the coupon books ordered by Castle
5 Management, and had to order new books with their new management company in January
6 2012.

7 CONCLUSIONS OF LAW

8 The Commission concludes:

9 50. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in
10 her relationship with the Association by profiting from the coupon books that were ordered
11 after RESPONDENT knew or should have known that the Association could not use them.

12 51. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in
13 her relationship with the Association by failing to confirm with the Association whether or not
14 to order coupon books in light of the Association's plans to change management companies.

15 52. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and
16 reasonable care in the performance of her duties by allowing the order for the coupon books
17 for 2012 to be made after she knew or should have known that the Association was going to
18 be using a new management company for 2012.

19 53. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in
20 her relationship with the Association when she failed to comply with the instructions of the
21 Association and NRS 116.31153(2) to have two signatures on Check #4200 before she
22 deposited or had the check deposited into Castle Management's bank account.

23 54. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and
24 reasonable care in the performance of her duties when she failed to comply with the
25 instructions of the Association and NRS 116.31153(2) to have two signatures on Check #4200
26 before she deposited or had the check deposited into Castle Management's bank account.

27 55. RESPONDENT violated NRS 116A.630(2)(a) by failing to comply with NRS
28 116.31153(2) when she deposited or authorized the deposit of Check #4200 in favor of Castle
Management with only one signature.

1 56. RESPONDENT violated NRS 116A.630(18) by failing to comply with the
2 directions of the Association when she deposited or authorized the deposit of Association
3 Check #4200 when she knew or should have known that the amount was in dispute.

4 57. RESPONDENT violated NAC 116A.355(a)(1) by committing unprofessional
5 conduct (through NAC 116A.355(2)(c)) by engaging in deceitful, fraudulent or dishonest
6 conduct when she directed the ordering of the coupon books for 2012 when she knew or
7 should have known that the Association was terminating her contract for 2012.

8 58. RESPONDENT violated NAC 116A.355(a)(1) by committing unprofessional
9 conduct (through NAC 116A.355(2)(c)) by engaging in deceitful, fraudulent or dishonest
10 conduct when she deposited or authorized the deposit of Check #4200 without informing the
11 Association and when the Association disputed the amount of the check.

12 59. RESPONDENT violated NAC 116A.355(a)(1) by committing unprofessional
13 conduct (through NAC 116A.355(3)) by demonstrating a significant lack of ability, knowledge
14 or fitness to perform a duty or obligation owed to the Association and failing to exercise
15 reasonable skill and care with respect to a duty or obligation owed to the Association when
16 RESPONDENT willfully profited from causing the Association to incur an unnecessary
17 expense.

18 60. RESPONDENT violated NRS 116A.620(6) and NAC 116A.325(6) by failing to
19 provide to the Association management contracts and amendments for the years 2008, 2009,
20 2010, and 2011.

21 61. RESPONDENT violated NAC 116A.355(4)(k) for failing to supervise the conduct
22 of provisional community manager, Arlene Walker, when Ms. Walker disparaged the
23 Association's new management company to the board president, failed to explain Invoice
24 #3072 to the board members, and misstated the requirements of NRS 116.31153(2) when she
25 said the law only requires one signature on non-reserve account checks.

26 62. RESPONDENT violated NAC 116A.355(4)(k) for failing to supervise the conduct
27 of an employee, Trudy Perkins, when Ms. Perkins disparaged the Association's new
28 management company to the board president and ordered the coupon books when she knew
the Association hired a new management company for 2012.

1 5. The Division may institute debt collection proceedings for failure to timely pay
2 the total fine. Further, if collection goes through the State of Nevada, then Respondent shall
3 also pay the costs associated with collection.

4 DATED this 24 day of February, 2014.

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

10 By: 
11 _____
12 RANDOLPH WATKINS, CHAIRMAN

13 Submitted by:

14 CATHERINE CORTEZ MASTO
15 Attorney General

16 By: 
17 Michelle D. Briggs, Esq.
18 Nevada Bar No. 7617
19 Senior Deputy Attorney General
20 2501 E. Sahara Ave., Ste. 201
21 Las Vegas, Nevada 89104
22 (702) 486-7041
23 Attorneys for Petitioner
24
25
26
27
28

