

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.

DIANE WILD,

Respondent.

Case No. CIS 14-07-51-051

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

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 notice of the Complaint, hearing and documents to Ms. Wild via certified mail. 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 to be true.

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

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

5 3. On March 27, 2013, the Division received a statement of fact against
6 RESPONDENT filed by the president of Mission Hills Homeowners' Association (the
7 "Association"), Chuck Wood.

8 4. The Association's board members had discussed obtaining bids for a new
9 management company in early 2011 and the monthly fee increase requested by
10 RESPONDENT for 2011 was not approved by the Association.

11 5. The Association hired a new management company effective December 1,
12 2011.

13 6. In August of 2012, the Association's auditors found two checks written to Castle
14 Management on April 28, 2011:

15 a. Check No. 5065 was in the amount of \$49,320 for 1,096 hours of "additional
16 management fees to oversee the defect construction repairs" (hereinafter
17 "Construction Defect Check") and

18 b. Check No. 2161 was in the amount of \$1,761.75 for 39.15 hours for additional
19 management fees to meet with an owner, Kurt Smith, to review Association
20 records ("Review of Records Check").

21 7. RESPONDENT'S management contract with the Association does not mention
22 any fee to the Association for overseeing construction defect repairs or for having a
23 homeowner review records.

24 8. RESPONDENT'S management contract states that RESPONDENT shall not
25 incur any expense in excess of \$500 without the approval of the board.

26 9. Neither the Construction Defect Check nor the Review of Records Check was
27 discussed at a board meeting and both were signed by board members, Jackie Squire and
28 Judy Gabriel, without the knowledge of Mr. Wood.

1 10. Jackie Squire was appointed to the board in March of 2011 to fill a vacancy and
2 Judy Gabriel worked for a property management company owned by RESPONDENT.

3 11. Jackie Squire resigned from the board suddenly and without reason on
4 September 7, 2011. Judy Gabriel's term expired in November 2011.

5 12. The Association board never approved to have RESPONDENT monitor the
6 construction defect work.

7 13. The Association never approved RESPONDENT to spend over 39 hours with
8 an owner requesting records.

9 14. The check request for the Review of Records Check does not specify when the
10 hours were incurred or provide any time frame.

11 15. The check request for the Construction Defect Check states that a total of 1,096
12 hours were spent from April 2009 through December 2010, without any additional detail.

13 16. According to letters from the Association's contractor, G.B. Group, construction
14 defect repairs commenced around February of 2009, and completed the repairs no later than
15 December of 2009.

16 17. During 2009 and 2010, Doree Seaver, provisional community manager
17 CAM.0001660-PROV, now CAM.0007477-PROV, provided services to the Association under
18 RESPONDENT.

19 18. Ms. Seaver initially observed the construction work for approximately 8 to 9
20 hours per week and then after the first month she spent about one hour per week at the
21 Association.

22 19. As a provisional community manager, Ms. Seaver wanted to learn about the
23 repair process and observe. She was not qualified to supervise the work being performed.

24 20. Ms. Seaver provided management services to approximately 17 other
25 communities in 2009.

26 21. Ms. Seaver does not recall ever discussing with RESPONDENT keeping track
27 of time spent at the Association for the purpose of billing the Association for that time and she
28 does not know of RESPONDENT ever supervising any construction defect work herself.

1 32. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary in
2 her relationship with the Association by requesting and taking the Review of Records Check
3 for additional management fees in the amount of \$1,761.75 that were not authorized by
4 RESPONDENT'S management agreement.

5 33. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and
6 reasonable care in the performance of her duties by requesting and taking the Construction
7 Defect Check for additional management fees that were not authorized by RESPONDENT'S
8 management agreement.

9 34. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and
10 reasonable care in the performance of her duties by requesting and taking the Review of
11 Records Check for additional management fees that were not authorized by
12 RESPONDENT'S management agreement.

13 35. RESPONDENT violated NRS 116A.630(10) by failing to cooperate with the
14 Division in resolving complaints filed with the Division by failing to provide documents
15 requested by the Division or any defense to the allegations made by the Association.

16 36. RESPONDENT violated NRS 116A.640(2)(a) by impeding or otherwise
17 interfering with an investigation of the Division by failing to comply with a request of the
18 Division to provide documents.

19 37. RESPONDENT violated NAC 116A.320 by failing to comply with NRS
20 116A.630 as set forth in paragraphs 32 through 35, inclusive.

21 38. RESPONDENT violated NAC 116A.345(2)(a) by impeding or otherwise
22 interfering with an investigation of the Division by failing to comply with a request of the
23 Division to provide documents.

24 39. RESPONDENT violated NAC 116A.345(9) by collecting fees or other charges
25 from the Association that were not specified in the management agreement when
26 RESPONDENT requested and received the Construction Defect Check in the amount of
27 \$49,320.

28 ///

1 40. RESPONDENT violated NAC 116A.345(9) by collecting fees or other charges
2 from the Association that were not specified in the management agreement when
3 RESPONDENT requested and received the Review of Records Check in the amount of
4 \$1,761.75.

5 41. RESPONDENT violated NAC 116A.350(1) by failing to provide the Association
6 with a response to the requests made by the Association with regard to the Construction
7 Defect Check and the Review of Records Check.

8 42. RESPONDENT violated NAC 116A.355(1)(a)(1) through NAC 116A.355(2)(c)
9 by committing unprofessional conduct by engaging in deceitful, fraudulent or dishonest
10 conduct by communicating false, misleading or fraudulent information to the Association
11 when RESPONDENT submitted a request for the Construction Defect Check without
12 authority.

13 43. RESPONDENT violated NAC 116A.355(1)(a)(1) through NAC 116A.355(2)(c)
14 by committing unprofessional conduct by engaging in deceitful, fraudulent or dishonest
15 conduct by communicating false, misleading or fraudulent information to the Association
16 when RESPONDENT submitted a request for the Review of Records Check without
17 authority.

18 44. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(f))
19 by committing unprofessional conduct by failing to cooperate with the Division's investigation
20 of a complaint when she failed to provide documents requested by the Division.

21 45. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(i))
22 by committing unprofessional conduct by exceeding her authority when she requested and
23 accepted the Construction Defect Check and Review of Records Check.

24 46. RESPONDENT violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a))
25 by committing professional incompetence by demonstrating a significant lack of ability,
26 knowledge or fitness to perform a duty or obligation owed to a client when RESPONDENT
27 billed the Association for over 1,900 hours of alleged additional management fees over a year
28 after such time was allegedly incurred without a breakdown of when the hours were incurred

1 and by whom.

2 47. RESPONDENT violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b))
3 by committing professional incompetence by failing to exercise reasonable skill and care with
4 respect to a duty or obligation owed to the Association when RESPONDENT billed the
5 Association for over 1,900 hours of alleged additional management fees over a year after
6 such time was allegedly incurred without a breakdown of when the hours were incurred and
7 by whom.

8 **ORDER**

9 The Commission, being fully apprised in the premises, and good cause appearing to
10 the Commission, ORDERED as follows.

11 1. The Respondent shall pay to the Division a total fine of \$19,018.50. The total
12 fine reflects a fine of \$17,000.00 for committing the violations of law, plus \$2,018.50 for the
13 Division's attorney's fees and costs. The total fine shall be paid in full no later than 60 days
14 from the date of this Order.

15 2. Respondent's license is revoked for a period of no less than 10 years from the
16 date of this Order.

17 3. Respondent's reserve study specialist registration is revoked for a period of no
18 less than 10 years from the date of this Order.

19 4. Respondent shall pay restitution to the Association in the amount of \$51,081.75
20 in full no later than 60 days from the date of this Order.

21 5. Respondent shall not prepare or be involved in the preparation of any financial
22 statements required by NAC 116.451 for any common interest community in this State for no
23 less than 10 years from the date of this Order.

24 ///

25 ///

26 ///

27

28

