

BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA

JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Petitioner,

vs.

JUDITH FENNER,

Respondent.

Case No. CIS 11-01-57-205

FILED

NOV 19 2014 CR

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

FINDINGS OF FACT AND 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 (the "Commission"), during a regular agenda on November 19, 2014, at 2501 E. Sahara Avenue, 2nd Floor Conference Room, Las Vegas, NV 89104 (the "Hearing"). The Respondent, Judith Fenner (the "Respondent"), failed to appear at the hearing. 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 "Petitioner").

Ms. Briggs requested the Commission to take notice of Respondent's answer to the complaint, which was read into the record. Ms. Briggs also presented the testimony of Claudia Rosolen, the Commission Coordinator, regarding a November 19, 2014, email request from Respondent for a continuance of the hearing. Ms. Rosolen testified that the request was forwarded to the Commission Secretary for consideration, which was subsequently denied, and that thereafter she sent a certified mail, return receipt letter to Respondent to advise her that the request for continuance was denied and that the hearing

1 will proceed on November 18, 19, and 20, 2014. Ms. Rosolen further testified that she
2 received the receipt for the certified mail on November 14, 2014 signed by Respondent on
3 November 13, 2014.

4 The Commission, having considered the evidence introduced by Petitioner,
5 Respondent's answer, and being fully advised, enters the following Findings of Fact,
6 Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada
7 Administrative Code (NAC) Chapter 116 and 116A, the Commission has legal jurisdiction and
8 authority over this matter.

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FINDINGS OF FACT

11 Pursuant to NAC 116A.590 and Respondent's failure to appear before the
12 Commission, the Commission considers the following factual allegations to be true.

13 1. RESPONDENT was at all relevant times mentioned in this Complaint, licensed
14 as a community manager under certificate number CAM.0006716.

15 2. RESPONDENT acted as the community manager for Pueblo at Santa Fe
16 Condominium Association (the "Association") until September of 2013 when she terminated
17 her contract with the Association after three of the four members of the board of directors
18 resigned to settle a disciplinary case before this Commission.

19 3. The Association consists of 168 condominium units and has an annual budget
20 of approximately \$260,000.

21 4. In 2011, the Division received a statement of fact against RESPONDENT from
22 a homeowner in the Association, Crear Mitchell.

23 5. Mr. Mitchell complained about not receiving complete financial records from
24 RESPONDENT who was acting as a community manager, but calling herself the bookkeeper
25 for the Association.

26 6. RESPONDENT deposited Association assessment payments totaling \$3,664
27 into a different association's account on or about March 9, 2010. The Association's attorney
28 pursued correction of the error which occurred in 2013.

1 7. The Association incurred overdraft and insufficient check fees totaling
2 approximately \$4,300 from March 22 through December 28, 2010.

3 8. RESPONDENT requested a transfer of \$18,000 from the Association's reserve
4 account to its operating account on or about July 20, 2010.

5 9. In December of 2011, RESPONDENT received a check from the Association in
6 the amount of \$7,500 when she was under contract to be paid \$1,000 per month.

7 10. In December of 2012, RESPONDENT received a check from the Association in
8 the amount of \$7,125 when she was under contract to be paid \$1,100 per month.

9 11. During the course of RESPONDENT'S contracts with the Association, she
10 sometimes referred to herself as the bookkeeper and disclaimed any use of her license as a
11 community manager.

12 12. Concern over RESPONDENT'S attempt to avoid the jurisdiction of the Division
13 and this Commission prompted the Division to look into the actions of RESPONDENT with
14 several other associations.

15 13. In 2012, RESPONDENT filed a lawsuit against the Division, the Division's
16 investigator and this Commission in an attempt to interfere with the Division's investigation of
17 RESPONDENT'S services for several homeowners' associations (the "Respondent Lawsuit").

18 14. In 2012, RESPONDENT informed the board members that there was not
19 enough money in their operating account to meet their expenses and suggested that the
20 board members take money from the reserve account.

21 15. As a result of RESPONDENT'S representations, the board members
22 transferred \$40,000 from the reserve to the operating account in 2012.

23 16. RESPONDENT directed the Association to pay her attorneys' fees for the
24 Respondent Lawsuit in an amount in excess of \$37,000.

25 17. RESPONDENT directed the Association to pay her other attorney in an amount
26 in excess of \$4,000 claiming the fees were due because the Association had a duty to
27 indemnify RESPONDENT with reference to a complaint filed with the Division, but
28 RESPONDENT requested an indemnity, as a retroactive addendum to her contract, after the

1 complaints with the Division were filed.

2 18. RESPONDENT notified homeowners in election materials that candidate
3 Wayne Klosek was in good standing when he ran for the board in November 2012, but he
4 was not current in his payment of assessments.

5 19. In November 2012, RESPONDENT advised the board members that the
6 Association's 2007 reserve study showed the reserves were overfunded, which it did not.

7 20. The Association subsequently reduced their reserve contribution for 2013 and
8 transferred \$50,000 from the reserve account to the operating account.

9 21. The Association's reserve study from April 2013 reflects the Association is
10 63.2% funded.

11 22. The Association's balance sheets, prepared by RESPONDENT, for March 2012
12 through January 2013 are willfully misleading in that they overstate bank balances and
13 misrepresent the financial condition of the Association.

14 23. RESPONDENT failed to properly review attorney bills for the Association's
15 attorney, Avece Higbee, resulting in a refund to the Association in 2013 in an amount in
16 excess of \$21,000.

17 24. In May of 2013, while two board members were not current on their payment of
18 assessments and one other board member opposed the foreclosure, RESPONDENT refused
19 to stop the foreclosure of an owner's unit for delinquent assessments.

20 25. Joe Garin, the attorney representing the board members in a disciplinary case,
21 directed RESPONDENT to stop the foreclosure.

22 26. The owner previously filed a complaint against RESPONDENT with the
23 Division.

24 27. The owner tried to make payments to RESPONDENT, but they were rejected.

25 28. RESPONDENT took payment from the Association for three months in advance
26 in May of 2013 when she knew the board members were working on a settlement with the
27 Division which would have resulted in their resignation.

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CONCLUSIONS OF LAW

The Commission concludes by no less than a preponderance of the evidence:

29. RESPONDENT violated NRS 116A.630(1)(b) (and NAC 116A.355(1)(a)(1)) by failing to exercise ordinary and reasonable care in the performance of her duties by depositing Association assessment checks into a different association's account in 2010 and failing to correct the error until 2013.

30. RESPONDENT violated NRS 116A.640(3) (and NAC 116A.355(1)(a)(1)) by commingling money from the Association with the account of another association in 2010.

31. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and reasonable care in the performance of her duties by causing the Association to incur overdraft and insufficient check fees totaling approximately \$4,300 in 2010.

32. RESPONDENT violated NRS 116A.630(1)(a) (and NAC 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association in December 2011 when she accepted a check for \$7,500 when her contract at the time provided for a fee of \$1,000.

33. RESPONDENT violated NRS 116A.630(1)(a) (and NAC 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association in December 2012 when she accepted a check for \$7,125 when her contract at the time provided for a fee of \$1,100.

34. RESPONDENT violated NRS 116A.640(5) and NRS 116.31153(1) (and NAC 116A.355(1)(a)(1)) in July of 2010 by signing for a transfer of \$18,000 from the Association's reserve account into the Association's operating account.

35. RESPONDENT violated NRS 116A.630(6)(a) (and NAC 116A.355(1)(a)(1)) by failing to ensure that the financial transactions of the client are current, accurate and properly documented when she supplied balance sheets to the owners for March 2012 through January 2013 that were willfully misleading.

36. RESPONDENT violated NRS 116A.630(6)(b) (and NAC 116A.355(1)(a)(1)) by failing to ensure that there were established policies and procedures designed to provide reasonable assurances in the reliability of the financial reporting.

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1 37. RESPONDENT violated NRS 116A.630(7) (and NAC 116A.355(1)(a)(1)) by
2 failing to provide accurate interim and annual financial statements that fairly represent the
3 financial position of the Association.

4 38. RESPONDENT violated NRS 116A.640(2)(b) and (c) by interfering with an
5 investigation of the Division by supplying false and misleading information to the Division and
6 concealing facts and documents relating to the financial condition of the Association.

7 39. RESPONDENT violated NRS 116A.630(1)(a) (and NAC 116A.355(1)(a)(1)) by
8 failing to act as a fiduciary in her relationship with the Association when she advised the
9 board members to transfer \$40,000 from reserves in 2012 to their operating account to cover
10 shortfalls and then direct payment from the Association for her personal attorneys' fees in
11 excess of \$37,000.

12 40. RESPONDENT violated NRS 116A.630(1)(a) (and NAC 116A.355(1)(a)(1)) by
13 failing to act as a fiduciary in her relationship with the Association when she directed the
14 Association to pay her attorneys' fees for disciplinary cases before this Commission in an
15 amount in excess of \$4,000.

16 41. RESPONDENT violated NRS 116A.630(1)(a) and (b) (and NAC
17 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association and
18 by failing to exercise ordinary and reasonable care when in November 2012, RESPONDENT
19 notified homeowners that candidate and current board member, Wayne Klosek, was in good
20 standing when in fact he was delinquent in his assessment payments by more than \$1,700.

21 42. RESPONDENT violated NRS 116A.630(1)(a) and (b) (and NAC
22 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association and
23 by failing to exercise ordinary and reasonable care when in December of 2012 she advised
24 the board that their reserves were overfunded according to a 2007 reserve study resulting in
25 a transfer of \$50,000 from the reserves to the operating account, and a reserve study from
26 2013 reflects that the Association is 63% funded.

27 43. RESPONDENT violated NRS 116A.630(1)(a) and (b) (and NAC
28 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association and

1 by failing to exercise ordinary and reasonable care when RESPONDENT failed to notice that
2 the Association's attorney, Avece Higbee, overcharged the Association approximately
3 \$21,000 from 2009 into 2013.

4 44. RESPONDENT violated NRS 116A.630(1)(a) and (b) (and NAC
5 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association and
6 by failing to exercise ordinary and reasonable care when she failed to stop the foreclosure of
7 an owner's unit when the owner had filed complaints against her with the Division, she
8 refused to accept payments from the owner, two board members were also delinquent in the
9 payment of assessments at that time, and the board members' attorney representing them in
10 a disciplinary case before this Commission asked that the foreclosure be stopped.

11 45. RESPONDENT violated NRS 116A.640(9) (and NAC 116A.355(1)(a)(1)) by
12 refusing to accept payments from an owner who had filed a complaint against
13 RESPONDENT with the Division and whose unit was subsequently foreclosed upon by the
14 Association.

15 46. RESPONDENT violated NRS 116A.630(1)(a) and (b) (and NAC
16 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association and
17 by failing to exercise ordinary and reasonable care when RESPONDENT took payment for
18 three months in advance in May of 2013 when she knew the board members were working
19 on a settlement of their disciplinary case which would result in their resignation in June.

20 47. RESPONDENT violated NRS 116A.630(1)(a) and (b) (and NAC
21 116A.355(1)(a)(1)) by failing to act as a fiduciary in her relationship with the Association and
22 by failing to exercise ordinary and reasonable care when RESPONDENT claimed to be
23 acting only as a bookkeeper for the board when she was performing the functions of a
24 community manager.

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ORDER

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

4 1. The Respondent shall pay to the Division a total fine of \$102,795. The total fine
5 reflects a fine of \$95,000 for committing the violations of law, plus \$7,795 for the Division's
6 attorney's fees and costs. The total fine shall be paid in full no later than 60 days from the
7 date of this Order.

8 2. The Respondent shall pay restitution to the Pueblo at Santa Fe Condominium
9 Association in the amount of \$55,926.90, for Respondent's attorney fees paid by the
10 Association, in full no later than 60 days from the date of this Order.

11 3. The Respondent shall pay restitution to Pueblo at Santa Fe Condominium
12 Association the amount of \$4,300, for overdraft and insufficient funds fees incurred by the
13 Association, in full no later than 60 days from the date of this Order.

14 4. The Respondent shall not serve on any homeowners' association board in the
15 State of Nevada for a period of not less than 10 years from the date of this Order, but in no
16 event shall the Respondent serve on any board in the State of Nevada prior to the above total
17 fine and restitution are paid in full.

18 5. The Respondent shall not work as a bookkeeper for any homeowners'
19 association board in the State of Nevada. If Respondent is found to be working as a
20 bookkeeper on any homeowner association board, it will be considered unlicensed
21 community manager activity.

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