

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.

ANTHEM HIGHLANDS COMMUNITY  
ASSOCIATION; ROBERT STERN;  
CHARLES HERNANDEZ; and RONNIE  
YOUNG,

Respondents.

Case Nos. 2015-3615; 2015-2155;  
2015-3100; 2015-2207

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER

**FILED**

JUN 15 2016

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 June 7, 8 and 9, 2016, at the Grant Sawyer Building, 555 E. Washington Ave., Rm. 4412, on the 7<sup>th</sup> and 8<sup>th</sup> and 2501 E. Sahara Ave., 2<sup>nd</sup> Floor conference room, on the 9<sup>th</sup>, Las Vegas, Nevada (the "Hearing"). Respondents Charlie Hernandez and Anthem Highlands Community Association (the "Association"), represented by Edward Boyack, Esq. of the law firm of Boyack, Beck and Taylor, appeared at the Hearing. The Commission previously accepted and approved stipulated settlements for Respondents Ronnie Young and Robert Stern. Michelle D. Briggs, 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").

After hearing the allegations, the respective arguments, and having considered the evidence introduced by the parties and being fully advised, the Commission enters the following Findings of Fact, Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 116, the Commission has legal jurisdiction and authority over this matter.

FINDINGS OF FACT

1  
2 The Commission, by a vote of 4 to 1, based upon the evidence presented during the  
3 Hearing, finds that by a preponderance of the evidence in the record the following facts have  
4 been proven.

5 1. The Association is a master association with approximately 1,549 homes.

6 2. The Association entered into an informal conference agreement with  
7 RESPONDENT ROBERT STERN dated February 20, 2014 ("ICA") to settle a number of  
8 intervention affidavits filed by the Association and RESPONDENT STERN.

9 3. In May 2014, the Association alleged a violation of the ICA by RESPONDENT  
10 STERN and filed a claim with the Division's referee program.

11 4. RESPONDENT STERN refused to agree to the referee process and the  
12 Association pursued a claim with the District Court in October 2014.

13 5. The Association's claim with the District Court sought declaratory relief as to the  
14 ICA terms and requirements, but also alleged a claim for fraud against RESPONDENT  
15 STERN.

16 6. RESPONDENT STERN filed a few intervention affidavits against the Association  
17 after the ICA, including: one for not complying with NRS 116.31088 in the filing of the civil  
18 action; and one for the board using Association funds for a trip to Carson City to meet with  
19 legislators during the legislative session.

20 7. The civil case was dismissed and ordered to go to the referee program.

21 8. The Division investigated the affidavit and issued a letter of instruction to the  
22 Association for failing to comply with NRS 116.31088.

23 9. The Division also investigated the issue of the use of Association funds and  
24 issued a letter of instruction to the board advising them that a trip to the Nevada Legislature is  
25 not a common expense.

26 10. RESPONDENTS STERN and HERNANDEZ ran for and were elected to the  
27 board on May 27, 2015, also elected to the board at this time was Jody Fassette and Ken  
28 Brensinger. RESPONDENT YOUNG was already on the board.

1           11. On or about May 31, 2015, Pennie Puhek contacted Ms. Fassette to discuss  
2 Association issues.

3           12. Ms. Puhek was part of the investigations the Division concluded with a letters of  
4 instruction and was a member of the Association's board when issues addressed by the ICA  
5 were originally brought to the Division and has a long history of conflict with RESPONDENT  
6 STERN.

7           13. The Association was to consider a memorandum of understanding with a sub-  
8 association, Earlstone Homeowners Association ("Earlstone").

9           14. Ms. Puhek is a member of the board for Earlstone.

10          15. Ms. Fassette agreed to meet with Ms. Puhek on June 3, 2015 in a public place.

11          16. RESPONDENT HERNANDEZ and board member Brensinger were also  
12 present, but Ms. Fassette was not told prior that they would be there.

13          17. Ms. Puhek, with Mr. Brensinger and HERNANDEZ, tried to convince Ms.  
14 Fassette to vote in favor of the Earlstone memorandum.

15          18. Ms. Fassette was concerned about the terms of the memorandum and wanted  
16 to see supporting documentation, so she could make an informed decision.

17          19. At the meeting later on June 3, board members RESPONDENTS STERN,  
18 HERNANDEZ and YOUNG, as well as Ms. Fassette and Mr. Brensinger were present.

19          20. At the meeting, RESPONDENT HERNANDEZ made a motion to approve First  
20 Service as the community manager effective September 1, subject to a committee of the  
21 board to interview and approve a manager. The motion also included approval of the  
22 Earlstone memorandum.

23          21. The motion failed.

24          22. Immediately after the June 3<sup>rd</sup> meeting Mr. Brensinger and RESPONDENT  
25 HERNANDEZ verbally resigned, but never submitted a resignation in writing and continued to  
26 act as members of the board.

27          23. On June 5, Ms. Puhek emailed the Association's board members threatening  
28 legal action if the Earlstone memorandum is not approved.

1           24. An emergency meeting was called for June 12, 2015 to discuss and take action  
2 on a new management contract.

3           25. Ms. Fassette emailed RESPONDENT HERNANDEZ, the board president, on  
4 June 10 after she received the revised agenda for the emergency meeting.

5           26. The original agenda had not included the Earlstone memorandum, but the  
6 revised agenda included the memorandum and tied it to the approval of the management  
7 contract.

8           27. Ms. Fassette's email states:

9                   I do not believe this falls under the emergency meeting criteria as the Earlstone  
10                   Memorandum is not an emergency.

11          28. Ms. Fassette went on to explain her issues with the Earlstone memorandum in  
12 detail and asked for clarification.

13          29. Ms. Fassette also emailed the Association's attorney with her issues regarding  
14 the Earlstone memorandum.

15          30. Ms. Fassette claims RESPONDENT HERNANDEZ told her the main issue was  
16 the management agreement and that he would remove the Earlstone memorandum from the  
17 agenda for the emergency meeting.

18          31. RESPONDENT HERNANDEZ did not remove the Earlstone memorandum from  
19 the agenda, and instead phoned into the emergency meeting forcing Ms. Fassette to chair the  
20 meeting.

21          32. Ms. Fassette was not comfortable voting in favor of the Earlstone memorandum.

22          33. During the meeting, the board created a committee consisting of RESPONDENT  
23 HERNANDEZ and Ms. Fassette to interview and hire a manager.

24          34. Ms. Puhek is heard throughout the meeting yelling for a point of order as is  
25 RESPONDENT STERN.

26          35. RESPONDENT STERN objects to having the Earlstone memorandum  
27 addressed as it is not an emergency.

28          36. Mr. Brensinger says RESPONDENT STERN is not recognized by the chair

1 which seems to change from RESPONDENT HERNANDEZ to Ms. Fassette at various times.

2 37. The meeting is chaotic and ultimately the board continued the matter of the  
3 Earlstone memorandum.

4 38. As a result of the June 12, 2015 meeting, Jody Fassette submitted her  
5 resignation citing as her reason "threats, litigation intimidation from more than one individual,  
6 retaliatory actions for voting/not voting a certain way and public defaming."

7 39. By email dated June 18, 2015, Ms. Fassette notified RESPONDENT  
8 HERNANDEZ that she wished to finish her term on the board.

9 40. RESPONDENT HERNANDEZ initiated a few letters from the Association's  
10 attorney regarding Ms. Fassette's resignation and the effectiveness of it.

11 41. On June 30, RESPONDENT STERN posted to the Association's community  
12 blog that he "will not be attending any board meetings until it is absolutely clear that  
13 competent armed security is in place."

14 42. On July 2, RESPONDENT STERN posted to the same blog that "trained  
15 professionals with the necessary permits and training have decided that they will attend the  
16 open board meetings to provide security." He goes on to say he will attend the July 22  
17 meeting of the board.

18 43. By letter dated July 8, Ms. Fassette states that her resignation was given under  
19 duress and explains the situation she felt she was in.

20 44. By email dated July 19 to other board members, Ms. Fassette and Ms. Puhek,  
21 RESPONDENT STERN states:

22 The clock is set and the final reel is unwinding. Get the popcorn and snow  
23 cones. It is time to really protect the children and their parents from the enemies  
24 within the Community. Most of the audience has figured it out and fearful that the  
25 evil doers may prevail. Midsummers Nightmare. Coming to your local theater  
July 22.

26 45. RESPONDENT HERNANDEZ refused to allow Ms. Fassette to return to her  
27 position on the board, so RESPONDENT STERN filed an intervention affidavit against him.

28 46. RESPONDENT HERNANDEZ refused to attend an informal conference with the

1 Ombudsman's office to resolve the complaint.

2 47. At the July 22 meeting, several items were postponed and several items failed  
3 due to split votes with only 4 board members.

4 48. RESPONDENT STERN made a motion to terminate the Association's attorney  
5 as general counsel.

6 49. The Association's attorney represented the Association against RESPONDENT  
7 STERN in the ICA matter referred back to the referee program and was not yet concluded.

8 50. RESPONDENT YOUNG supported the motion.

9 51. The motion passed with a "yes" vote from Mr. Brensinger who tried to take back  
10 his vote saying he was confused about the motion and an argument ensued.

11 52. The same motion was brought up for a second vote and failed.

12 53. RESPONDENT STERN asserted Mr. Brensinger was not allowed to take back  
13 his vote and treated the second vote as a motion to reconsider.

14 54. RESPONDENT HERNANDEZ, chairing the meeting, did not call for a vote  
15 regarding Ms. Fassette's request to return to her seat on the board and no action was taken to  
16 fill her vacancy.

17 55. By email dated September 9, Ms. Fassette asks RESPONDENT HERNANDEZ  
18 and Mr. Brensinger to allow her to come back to the board as "a four person board is a  
19 detriment to this community."

20 56. The Association had a meeting scheduled for September 23, but the meeting did  
21 not occur due to a lack of a quorum with RESPONDENTS STERN and YOUNG not in  
22 attendance.

23 57. By letter dated October 5, the Division notified RESPONDENT HERNANDEZ  
24 that all efforts need to be taken to put an end to the board's current impasse.

25 58. Also by letter dated October 5, RESPONDENT STERN was notified that while  
26 the intervention affidavit filed against him for failing to attend board meetings was being closed  
27 due to the complainant's refusal to attend an informal conference, the Division reserved the  
28 right to re-open the case if RESPONDENT STERN continued to fail to attend future board

1 meetings.

2 59. On or about October 6, 2015, Mr. Brensinger and RESPONDENT HERNANDEZ  
3 signed an agreement whereby they would agree to bring Ms. Fassette back to the board on  
4 certain conditions.

5 60. Ms. Fassette also signed the agreement, but RESPONDENT STERN and  
6 YOUNG did not.

7 61. RESPONDENT STERN requested different terms of Ms. Fassette's return to the  
8 board.

9 62. The board meetings scheduled for October 28, November 16, and December 9  
10 did not take place due to a lack of a quorum as RESPONDENTS STERN and YOUNG did not  
11 attend.

12 63. A meeting scheduled for December 28, requested by RESPONDENT STERN  
13 with the agenda set by RESPONDENT STERN, did not happen due to a lack of a quorum with  
14 RESPONDENTS STERN and YOUNG not in attendance.

15 64. The board has not met since the meeting on July 22, 2015.

16 65. The board has not addressed owner violations or adopted a budget for 2016.

17 66. The Association's fiscal year begins January 1.

18 **CONCLUSIONS OF LAW**

19 Based on the foregoing factual findings, the Commission concludes by unanimous vote  
20 that the following violations of law occurred:

21 67. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
22 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
23 Association by committing an act or omission which amounts to incompetence, negligence or  
24 gross negligence.

25 **ORDER**

26 The Commission being fully apprised in the premises, and good cause appearing to the  
27 Commission, by a vote of 3 to 2, ORDERS as follows:

28 68. RESPONDENT HERNANDEZ shall be deemed removed from the board of the

1 Association as of June 9, 2016.

2 69. RESPONDENT HERNANDEZ shall not serve as a board member of any  
3 homeowners' association in the State of Nevada for a period of not less than 5 years from  
4 June 9, 2016.

5 70. RESPONDENT HERNANDEZ shall personally pay an administrative fine  
6 consisting of Division costs of \$4,023.00 to be paid within 90 days of the date of this Order.

7 71. RESPONDENT ASSOCIATION shall require that all current board members and  
8 the board member who is elected to replace RESPONDENT HERNANDEZ take "The Board  
9 Leadership Development Workshop" course offered by the Nevada Chapter of the Community  
10 Associations Institute in Las Vegas within 6 months, if the class is offered, but in no event later  
11 than one year from the date of this Order.

12 72. RESPONDENT ASSOCIATION shall immediately commence a special election  
13 in compliance with all requirements of Chapter 116 for the replacement of RESPONDENT  
14 HERNANDEZ.

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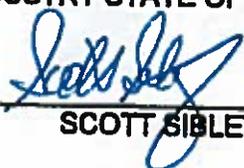
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1  
2 73. The Division may institute debt collection proceedings for failure to timely pay  
3 the total fine. Further, if collection goes through the State of Nevada, then RESPONDENT  
4 HERNANDEZ shall also pay the costs associated with collection.

5 DATED this 15<sup>th</sup> day of June, 2016.

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

10 By:   
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