

1                                   **BEFORE THE COMMISSION FOR COMMON-INTEREST**  
2                                   **COMMUNITIES AND CONDOMINIUM HOTELS**  
3                                   **STATE OF NEVADA**

3   Sharath Chandra (Formerly Joseph (J.D.) Decker), Administrator, Real Estate  
4   Division, Department of Business & Industry, State of Nevada,   Case No. 2015-291  
5

6                                   Petitioner,

6   vs.

7   Anthem Highlands Community  
8   Association, Pennie Puhek, James Lauth,  
9   and Charles Hernandez,

9                                   Respondents.

**FILED**

**NOV 30 2016**

**NEVADA COMMISSION OF**  
**COMMON INTEREST COMMUNITIES**  
**AND CONDOMINIUM HOTELS**

11                                   **STIPULATION AND ORDER FOR**

12                                   **PARTIAL SETTLEMENT OF DISCIPLINARY ACTION**

13           This matter came before the Commission at its regularly scheduled meeting on  
14   November 17, 2016. James Lauth appeared through his attorney of record, Gregory Kerr, of  
15   Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP. Michelle D. Briggs, Senior Deputy  
16   Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real  
17   Estate Division of the Department of Business and Industry, State of Nevada (the  
18   "Division"). Mr. Kerr and Ms. Briggs presented the terms of a settlement of the Complaint  
19   as to Mr. Lauth. The Commission voted to approve the settlement as stipulated by the  
20   parties.

21                                   **JURISDICTION AND NOTICE ALLEGED IN THE COMPLAINT**

22           1.    During the relevant times mentioned in this complaint, RESPONDENTS  
23   PENNIE PUHEK, JAMES LAUTH, and CHARLES HERNANDEZ were directors of  
24   ANTHEM HIGHLANDS COMMUNITY ASSOCIATION (the "Association"), a homeowners'  
25   association located in Henderson, Nevada.

26           2.    RESPONDENTS are subject to the provisions of Chapter 116 of each the  
27   Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC")  
28   (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the

1 Division, and the Commission for Common-Interest Communities pursuant to the  
2 provisions of NRS 116.750.

3 **FACTUAL ALLEGATIONS ALLEGED IN THE COMPLAINT**

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

5 4. In February 2014, the Association entered into an Informal Conference  
6 Agreement ("ICA") with a homeowner, Robert Stern, to settle legal matters and resolve  
7 approximately 10 intervention affidavits filed by Mr. Stern against the Association.

8 5. In May 2014, the Association alleged Mr. Stern violated terms of the ICA.

9 6. In October 2014, the Association filed a civil action against Mr. Stern with the  
10 District Court regarding the ICA.

11 7. In January 2015, the Division received an intervention affidavit filed by a  
12 homeowner, Robert Stern, against the Association and its board members.

13 8. The intervention affidavit alleged Mr. Stern was the victim of retaliation based  
14 on disparaging remarks posted by RESPONDENT PENNIE PUHEK on a community blog.

15 9. The posts were made on a social networking site for neighborhoods called  
16 Nextdoor.

17 10. On or about January 16, 2015, Mr. Stern posted an announcement of a book  
18 signing for a book he wrote entitled, "HOA Wars: What Happens in Vegas Can Happen  
19 Anywhere."

20 11. RESPONDENT PUHEK commented to Mr. Stern's posting as follows:

21 You are pathetic and shameless. You have terrorized the community and its last two  
22 management companies, so you can make a buck. I am asking all homeowners in  
23 Anthem Highlands to help finally get rid of this cancer and boycott anything he does  
24 or sells and make sure you vote against him and anyone else he supports in upcoming  
25 Board elections. He is trying to write another book at our associations expense. His  
26 primary residence is North Carolina, but he comes back to Las Vegas during election  
27 time to terrorize our community so he can write more books. Please mark your  
28 calendars for the next Board meeting in February to come find out what you can do to  
get rid of pure evil.

12. In another comment, RESPONDENT PUHEK states that Mr. Stern filed a  
number of complaints against the Association with the Division, and that the "state shut

1 him down by basically dismissing his petty complaints," even though a large portion of Mr.  
2 Stern's complaints were resolved as part of the ICA settlement.

3 13. Being aware of the long history the Association has with Robert Stern as well  
4 as the pending litigation over the ICA, the Division's Administrator met with board  
5 members RESPONDENT PUHEK and RESPONDENT HERNANDEZ to discuss this and  
6 other pending matters.

7 14. RESPONDENT PUHEK was hostile and argumentative when the  
8 Administrator expressed concerns over her posts, and had to be asked to leave.

9 15. The Administrator informed RESPONDENT HERNANDEZ that the  
10 Association and other board members would not be included in the investigation if they  
11 provided a statement to the Division that they did not condone RESPONDENT PUHEK'S  
12 actions.

13 16. Instead of disavowing RESPONDENT PUHEK'S posts, RESPONDENT  
14 HERNANDEZ, as president of the Association, informed the Division that the Association  
15 does not have the authority to censure RESPONDENT PUHEK.

16 17. During the Division's investigation of the matter, the Association provided an  
17 affidavit from RESPONDENTS HERNANDEZ and LAUTH, and another board member  
18 Ronnie Young stating that "the board had no business or authority to censure her free  
19 speech rights as a private citizen."

20 18. Board Member Ronnie Young later recanted his affidavit and provided an  
21 affidavit against RESPONDENT PUHEK'S conduct.

#### 22 VIOLATIONS OF LAW

#### 23 ALLEGED IN THE COMPLAINT AS TO LAUTH

24 19. RESPONDENTS HERNANDEZ and LAUTH knowingly and willfully violated  
25 NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best  
26 interests of the Association by acting for reasons of self-interest, gain, prejudice, or revenge  
27 by failing to disavow the actions of RESPONDENT PUHEK and placing the Association at  
28 risk for liability.

1 **DISCIPLINE AUTHORIZED**

2 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS  
3 116.790 the Commission has discretion to take any or all of the following actions:

4 1. Issue an order directing RESPONDENTS to cease and desist from continuing  
5 to engage in the unlawful conduct that resulted in the violation.

6 2. Issue an order directing RESPONDENTS to take affirmative action to correct  
7 any conditions resulting from the violation.

8 3. Impose an administrative fine of up to \$1,000 for each violation by  
9 RESPONDENTS.

10 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND  
11 WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best  
12 interest of the Association, such RESPONDENTS may be removed from his/her position as  
13 a director and/or officer.

14 5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

15 6. Require the BOARD MEMBERS to hire a community manager who holds a  
16 certificate.

17 7. Require RESPONDENTS to pay the costs of the proceedings incurred by the  
18 Division, including, without limitation, the cost of the investigation and reasonable  
19 attorney's fees.

20 8. Take whatever further disciplinary action as the Commission deems  
21 appropriate.

22 The Commission may order one or any combination of the discipline described above.  
23 If the Commission finds that the RESPONDENTS knowingly and willfully violated the  
24 provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be  
25 personally liable for all fines and costs imposed.

26 **SETTLEMENT**

27 Ms. Briggs and Mr. Kerr presented the settlement to the Commission as follows:

28 1. RESPONDENT LAUTH does not admit to liability as alleged in the

1 Complaint.

2 2. RESPONDENT LAUTH agrees not to serve on any board of directors for a  
3 common-interest community located in the state of Nevada for a period of 5 years from the  
4 date this Stipulation is approved by the Commission.

5 The following are additional terms agreed to by the parties:

6 3. The Division agrees not to pursue any other or greater remedies or fines in  
7 connection with RESPONDENT LAUTH'S alleged conduct referenced herein.

8 4. RESPONDENT LAUTH and the Division agree that by entering into this  
9 Stipulation, the Division does not concede any defense or mitigation RESPONDENT  
10 LAUTH may assert and that once this Stipulation is approved, the Division will remove  
11 RESPONDENT LAUTH as a respondent in this matter.

12 5. This Stipulation includes any claims that could have been included in a  
13 supplemental or amended complaint arising from the same operative facts, transactions and  
14 occurrences in existence as of the effective date of this Agreement. However, this  
15 Settlement does not include claims arising from facts or circumstances which have been  
16 concealed by RESPONDENT LAUTH.

17 6. RESPONDENT LAUTH agrees that if the terms and conditions of this  
18 Stipulation are not met, the Division may, at its option, rescind this Stipulation and proceed  
19 with prosecuting the Complaint before the Commission.

20 7. RESPONDENT LAUTH agrees and understands that by entering into this  
21 Stipulation, RESPONDENT LAUTH is waiving his right to a hearing at which  
22 RESPONDENT LAUTH may present evidence in his defense, his right to a written decision  
23 on the merits of the Complaint, his rights to reconsideration and/or rehearing, appeal and/or  
24 judicial review, and all other rights which may be accorded by the Nevada Administrative  
25 Procedure Act, the Nevada Common Interest Ownership statutes and accompanying  
26 regulations, and the federal and state constitutions. RESPONDENT LAUTH understands  
27 that this Stipulation and other documentation may be subject to public records laws. The  
28 Commission members who review this matter for approval of this Stipulation may be the

1 same members who ultimately hear, consider and decide the Complaint if this Stipulation is  
2 not performed by RESPONDENT LAUTH.

3 8. Each party shall bear its own attorney's fees and costs.

4 9. Stipulation is Not Evidence. Neither this Stipulation nor any statements  
5 made concerning this Stipulation may be discussed or introduced into evidence at any  
6 hearing on the Complaint, except as it pertains to the hearing regarding the remaining  
7 Respondents, if the Division must ultimately present its case based on the Complaint filed  
8 in this matter.

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

19 11. Indemnification. RESPONDENT LAUTH hereby indemnifies and holds  
20 harmless the State of Nevada, the Department of Business and Industry, the Division, and  
21 each of their respective members, agents, employees and counsel in their individual and  
22 representative capacities against any and all claims, suits, and actions brought against said  
23 persons and/or entities related to the Release set forth in Section 10 hereof, including  
24 against any and all expenses, damages, and costs, including court costs and attorney fees,  
25 which may be sustained by the persons and/or entities named in this section as a result of  
26 said claims, suits, and actions.

27 12. Nothing contained in this Stipulation shall hinder the Division's pursuit of the  
28 Complaint as to the Respondents, excluding LAUTH. The Division specifically reserves the

1 right to pursue the Complaint as to the Respondents, excluding LAUTH.

2 Submitted by:

3 ADAM PAUL LAXALT  
4 Attorney General

5 By:   
6 Michelle D. Briggs  
7 Senior Deputy Attorney General  
8 555 E. Washington Ave. Ste 3900  
9 Las Vegas, Nevada 89101  
10 (702) 486-3420  
11 Attorneys for Real Estate Division

By: \_\_\_\_\_  
Gregory Kerr  
Wolf, Rifkin, Shapiro,  
Schulman & Rabkin, LLP  
3556 E. Russell Road, 2nd Floor  
Las Vegas, Nevada 89120  
Attorney for James Lauth

12 IT IS ORDERED that the foregoing Stipulation is approved in full.

13 Dated this \_\_\_\_\_ day of November, 2016.

14 Commission for Common-Interest Communities  
15 and Condominium Hotels Department of Business  
16 & Industry State of Nevada

17 By: \_\_\_\_\_  
18 James Rizzi, Vice-Chairman  
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1 right to pursue the Complaint as to the Respondents, excluding LAUTH

2 Submitted by:

3 ADAM PAUL LAXALT  
4 Attorney General

5 By: \_\_\_\_\_  
6 Michelle D. Briggs  
7 Senior Deputy Attorney General  
8 555 E. Washington Ave. Ste 3900  
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10 (702) 486-3420  
11 Attorneys for Real Estate Division

By: \_\_\_\_\_  
Gregory Kerr  
Wolf, Rifkin, Shapiro  
Schulman & Rabkin, LLP  
3556 E. Russell Road, 2nd Floor  
Las Vegas, Nevada 89120  
Attorney for James Lauth

12 **IT IS ORDERED** that the foregoing Stipulation is approved in full.

13 Dated this 30 day of November, 2016.

Commission for Common-Interest Communities  
and Condominium Hotels Department of Business  
& Industry State of Nevada

14  
15 By:   
16 James Rizzi, Vice-Chairman

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