

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

4 Sharath Chandra, Administrator,  
5 Real Estate Division, Department of  
6 Business & Industry, State of Nevada,

Case No. 2016-1949

7                                   Petitioner,

**FILED**

8 vs.

NOV 30 2016

9 Pecos Creek Homeowners Association,  
10 James Gilmore, Rodolfo Rocha, Omar  
11 Guerra, Ofelia Santos, and Patricia Yuen,

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

12                                   Respondent.

13                                   **FINDINGS OF FACT AND ORDER**

14           This matter came on for hearing before the Commission for Common-  
15 Interest Communities and Condominium Hotels, Department of Business and  
16 Industry, State of Nevada (the "Commission"), during a regular agenda on  
17 November 15, 2016. The Respondents, Pecos Creek Homeowners Association,  
18 James Gilmore, Rodolfo Rocha, Omar Guerra, and Patricia Yuen did not appear  
19 and did not submit an answer to the Complaint on file. Respondent Ofelia Santos  
20 appeared in person. Michelle D. Briggs, Esq., Senior Deputy Attorney General with  
21 the Nevada Attorney General's Office, appeared on behalf of the Real Estate  
22 Division of the Department of Business and Industry, State of Nevada (the  
23 "Division").

24           Ms. Santos represented to the Commission that she was unaware she was on  
25 the board for the Association and does not think she was ever elected. The Division  
26 requested that the factual allegations in the Complaint be accepted as true and for  
27 an order from the Commission to establish the members of the board, so that the  
28 Association could work to correct the issues that were investigated by the Division.  
The Division requested that the board be required to report back to the  
Commission at its next meeting. A homeowner within the Association, Ubaldo

1 Chavarria, appeared at the hearing and expressed his desire to serve on the board.

2 **FINDINGS OF FACT**

3 In accordance with NAC 116.585(13), the Commission, based on a  
4 preponderance of the evidence, finds the following findings of fact have been  
5 proven:

6 1. PECOS CREEK HOMEOWNERS ASSOCIATION (the "Association")  
7 was formed in 1996.

8 2. In January 2014, the Division received an annual registration form  
9 for the Association signed by its manager, Jeffery Allan Frederick at PW James  
10 Management and Consulting ("PW James").

11 3. According to the registration form, the Association consists of 72  
12 condominium units and never had a reserve study performed.

13 4. The Association's annual budget is approximately \$113,400.

14 5. Mr. Frederick included a note saying the Association could not have a  
15 reserve study performed due to annexation issues with 48 other units.

16 6. The Association was referred to the Division's auditor for further  
17 review.

18 7. In July of 2015, the Division's auditor sent notice regarding the  
19 reserve study to Mr. Frederick, as the Association's manager, and each board  
20 member at their addresses provided by Mr. Frederick in 2014.

21 8. Receiving no response to her letter, the auditor referred the matter to  
22 the Division's compliance section.

23 9. Beginning in May 2016, the Division investigator sent letters to the  
24 Association through PW James and to each board member the Division was aware  
25 of.

26 10. The investigator sent two additional letters dated June 14 and June  
27 28.

28 11. The investigator received a letter from attorney, Bruce Flammey,

1 dated June 28, 2016.

2 12. In the letter from Mr. Flammey, he said he represents the Association  
3 and challenged the Division's jurisdiction to conduct its investigation.

4 13. The investigator responded to Mr. Flammey's letter and requested a  
5 response to the Division's previous letters.

6 14. The investigator sent additional letters on July 26 and August 24.

7 15. By email Mr. Flammey subsequently informed the Division that all  
8 the board members resigned, but could not provide a date for when that occurred.

9 16. The investigator never received a response to the allegations or the  
10 documents requested in the five letters she sent to PW James and each board  
11 member.

12 17. The Association is in default status with the Nevada Secretary of  
13 State and with the Division for not having filed an annual registration form since  
14 January 2014.

15 18. The Association currently owes the Division \$246.11 for annual  
16 registration fees.

17 19. The Association has not had a reserve study performed.

18 20. The Association does not have a reserve account.

19 21. The Association does not have audits for 2013, 2014, or 2015.

## 20 ORDER

21 The Commission, being fully apprised in the premises and good cause  
22 appearing to the Commission, by a unanimous vote, ORDERS as follows:

23 1. The Association's board is empaneled with Ofelia Santos and Ubaldo  
24 Chavarria. Ms. Santos and Mr. Chavarria shall have all authority afforded to  
25 board members of a common-interest community in the state of Nevada and in  
26 accordance with the Association's governing documents, including without  
27 limitation, the right to appoint another board member to the board. All other  
28 purported board members and officers are deemed to be resigned.

