

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

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

8                                   Petitioner,

9       vs.

10       ANTHEM HIGHLANDS COMMUNITY  
11       ASSOCIATION; ROBERT STERN;  
12       CHARLES HERNANDEZ; AND RONNIE  
13       YOUNG,

14                                   Respondents.

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

**FILED**

**JUL 26 2016**

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

15       **MOTION TO STRIKE AS UNTIMELY DIVISION'S OPPOSITION TO RESPONDENT**  
16       **HERNANDEZ'S MOTION TO RECONSIDER**

17       This Motion to Strike is brought with regard to the Division's Opposition to Respondent  
18       Hernandez's Motion to Reconsider. The Opposition was untimely and therefore must be excluded  
19       from the record, and from any consideration by the Commission of the Motion to Reconsider.

20       DATED this 25th day of July, 2016.

21                                   BOYACK ORME & TAYLOR

22       By:           /s/ Edward D. Boyack          

23                                   EDWARD D. BOYACK  
24                                   Nevada Bar No. 005229  
25                                   401 N. Buffalo Dr. #202  
26                                   Las Vegas, NV 89145  
27                                   Attorney for Respondent,  
28                                   Charles Hernandez

**MEMORANDUM OF POINTS AND AUTHORITIES**

29       NAC 116.617(6) very clearly states that the timeline for an opposition to any posthearing  
30       motion, including a motion to reconsider, must be filed within 7 days after the date on which the  
31       motion is served on that party. Attached as Exhibit 1 is a delivery invoice showing that service of

1 the Motion to Reconsider was effected upon the Division, address of 2501 E. Sahara Ave., #303, Las  
2 Vegas, NV, and care of the Deputy Attorney General, on July 1, 2016 at 1120 a.m. This would mean  
3 that a timely opposition needed to be filed no later than July 8, 2016.

4 The Opposition to Motion to Reconsider was filed July 13, 2016- five full days after the time  
5 allowed for an opposition by NAC 116.617(6).

6 The timing for an opposition under NAC 116.617(6) is different than the timing for  
7 oppositions to motions generally under NAC 116.560(3) (allowing for 7 *working* days after the  
8 receipt of a motion). This proposition is supported in two ways.

9 First, plain meaning. It is well-established that where a statute, regulation, or provision is  
10 unambiguous, it is interpreted according to its plain meaning. *D.R. Horton, Inc. V. Eighth Judicial*  
11 *Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). Here, NAC 116.617(6) clearly states "7  
12 days" as opposed to "7 working days", as NAC 116.560(3) does. Not only is the plain meaning of  
13 "7 days" interpreted as calendar days, but the distinction elsewhere in NAC 116 of 7 *working* days  
14 demonstrates that the drafters of NAC 116 understood and appreciated the difference between the  
15 two. Therefore, the 7 calendar days of NAC 116.617(6) is a conscious and deliberate directive as to  
16 the timeliness of any opposition filed to a posthearing motion.

17 Second, and underlying the first reason, is that there is another deadline-to-file "backdrop"  
18 to the posthearing motions contemplated by NAC 116.617, generally: a petition for judicial review.  
19 According to NRS 233B(2)(d), a petition for judicial review must be filed no later than 30 days after  
20 service of the final decision of an agency. This timeline is 30 calendar days. NAC 116.617 was  
21 formulated and promulgated against this running deadline, as evidenced by multiple provisions of  
22 that section.

23 NAC 116.617(2) obligates respondents to file their posthearing motions no later than 15 days  
24 from the date of a final decision (again, calendar days). This, in essence, allows the agency (here, the  
25 Commission) to comply with NRS 233B.130 by filing an order either granting or denying the  
26 posthearing motion for relief no later than 5 days before the expiration of the time for filing the  
27

1 petition for judicial review. *NRS 233B.130(4)*. To allow a reading of NAC 116.617(6) to mean 7  
2 working days as opposed to 7 calendar days could allow for an opposition to be lodged after the  
3 agency (Commission) was statutorily obligated to have filed its response.

4 This would mean an absurd result—a statute allowing for an opposition to be filed after the  
5 deadline for a decision has passed—and thus cannot be read into the statute. *See Allstate Ins. Co. v.*  
6 *Fackett*, 206 P.3d 572, 576 (Nev., 2009) (“We read statutes within a statutory scheme harmoniously  
7 with one another to avoid an unreasonable or absurd result.”).

8 Finally, the cognizance of the deadline to file a petition for judicial review is incorporated  
9 by direct reference into NAC 116.617 as well: “The filing of a motion pursuant to this section does  
10 not stop the running of the 30-day period of appeal to the district court from the date of the decision  
11 of the Commission for the purpose of judicial review pursuant to chapter 233B of NRS.” *NAC*  
12 *116.617(10)*. Allowing the Division 7 working days, in contravention of the plain meaning of NAC  
13 116.617(6), would disturb the delicate deadlines for judicial review petitions imposed by NRS 233B  
14 and NAC 116.617, as 7 working days conceivably could allow for late filings of opposition to  
15 posthearing motions.

16 Accordingly, NAC 116.617(6) makes clear that the Division’s duty was to file its opposition  
17 to the Motion to Reconsider no later than July 8, 2016.

18  
19 CONCLUSION

20 Based on the foregoing, the Division’s Opposition to Respondent Hernandez’s Motion to  
21 Reconsider should be stricken from these proceedings. As the Division clearly failed to produce and

22 ///

23 ///

24 ///

25 ///

26 ///

1 file its Opposition within the plain deadline of 7 calendar days, this Commission cannot consider  
2 it.

3 DATED this 25th day of July, 2016.

4 BOYACK ORME & TAYLOR

5 By: /s/ Edward D. Boyack

6 EDWARD D. BOYACK  
7 Nevada Bar No. 005229  
8 401 N. Buffalo Drive #202  
9 Las Vegas, NV 89145  
10 Attorney for Respondent  
11 Charles Hernandez

12 **CERTIFICATE OF MAILING**

13 I HEREBY CERTIFY that on this 25<sup>th</sup> day of July, 2016, a true and correct copy of the  
14 foregoing **MOTION TO STRIKE AS UNTIMELY DIVISION'S OPPOSITION TO**  
15 **RESPONDENT HERNANDEZ'S MOTION TO RECONSIDER** via electronic mail, to the  
16 following:

17 Commission for Common-Interest Communities and  
18 Condominium Hotels  
19 2501 East Sahara Avenue, Suite 202  
20 Las Vegas, NV 89104  
21 [crosolen@red.nv.gov](mailto:crosolen@red.nv.gov)

22 Michelle D. Briggs, Esq.  
23 Senior Deputy Attorney General  
24 555 E. Washington Avenue, Suite 3900  
25 Las Vegas, NV 89101  
26 [mbriggs@ag.nv.gov](mailto:mbriggs@ag.nv.gov)

27 By: /s/ Norma Ramirez  
28 An Employee of Boyack Orme & Taylor

EXHIBIT 1

3510

ROUTINE (24hrs)

AM:PM Legal Solutions

Confirmation: 89008

Ready Date/Time: 6/30/2016 2:21:00 PM  
Reference: 3300.03

Requestor: Tina  
Round Trip: No

Special Instructions:  
None

Client:  
Boyack, Orme & Taylor

Package Type: Not Specified

Total Pieces	Total Weight	Total Dimensions
1		Height: Width: Depth:

FROM	TO
client - -	Deputy Attorney General - NRED - 2501 E. Sahara Ave., #303 - Las Vegas - NV

Notes and Charges:

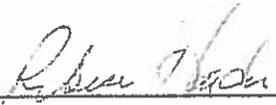
---



---



---

  
 Accepted by (Signature)

06/30/16 11:30  
 Delivery Date/Time:

COMPLETED  
 AM:PM LS

AM:PM LEGAL SOLUTIONS

AMPMLLEGAL SOLUTIONS@YAHOO.COM

702-385-2676