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8 COMMISSION FOR COMMON-INTEREST
9 COMMUNITIES AND CONDOMINIUM HOTELS
10 STATE OF NEVADA

11
12 JOSPEPH (J.D.) DECKER, Administrator,
13 REAL ESTATE DIVISION, DEPARTMENT
14 OF BUSINESS & INDUSTRY,
15 STATE OF NEVADA,

16 Petitioner.

17 vs.

18 ANTHEM HIGHLANDS COMMUNITY
19 ASSOCIATION, PENNIE PUHEK, JAMES
20 LAUTH, and CHARLES HERNANDEZ,

21 Respondents.

) Case No. 2015-291

) RESPONDENT PENNIE PUHEK'S
) MOTION FOR PREHEARING
) CONFERENCE UNDER NEVADA
) ADMINISTRATIVE CODE § 116.557(1)

FILED

JUL 11 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

22
23 Respondent Pennie Puhek ("Respondent"), by and through her attorneys Marcin Lambirth,
24 LLP, hereby requests that the Nevada Commission for Common-Interest Communities and
25 Condominium Hotels ("Commission") schedule a Prehearing Conference on the above captioned
26 matter pursuant to *Nevada Administrative Code* ("NAC") § 116.557(1).
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1 Such a Prehearing Conference would (1) help narrow or eliminate a number of issues in
2 this case, (2) help streamline the hearing in the matter, (3) allow Respondent an opportunity to
3 argue why her Motion for More Definite Statement should be granted (a motion for more definite
4 statement argues that the allegations in the Complaint against Respondent are too broad, and a
5 shotgun approach which is unfair for Respondent to have to prepare against, and without such a
6 motion being granted will cost every one time and money in trying to figure out what facts apply
7 to which charges which is something Respondent should not have to do), and (4) allow
8 Respondent to argue why the Division's aggressive and wasteful Motion for Summary Judgment
9 should be denied (the two motions must be set for hearing in any event).¹
10

11 Lastly, (5) by requiring the Division to meet and discuss the issues at hand, the
12 Commission can avoid what Respondent believes will be a similar result to the last hearing heard
13 before the Commission related to the Anthem Highlands Community Association: an over-
14 charged complaint which the Division has no chance of prevailing upon and (at least in its current
15 form, will waste everyone's time and money). This would achieve the very first goal of NAC §
16 116.557(1) (a) which is to "simply the issues involved in the hearing."
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19 I.

20 STATEMENT OF FACTS

21 The Real Estate Division, Department of Business & Industry, State of Nevada
22 ("Division") filed a Complaint for Disciplinary Action and Notice of Hearing ("Complaint") on
23

24 _____
25 ¹ The Commission is tasked with "rul[ing] on pending prehearing motions and matters" (NAC §
26 116.557(1)(e)), as well as, by doing the above, "establish a schedule for the completion of
27 discovery," ((NAC § 116.557(1)(f)), which will be much more time-consuming if the issues and
28 claims in this matter are not narrowed.

1 March 23, 2016, alleging various violations of Chapter 116 of the *Nevada Revised Statutes* (“NRS”)
2 against the Anthem Highlands Community Association (“Association”), James Lauth, Charles
3 Hernandez and Respondent.

4 The Respondent requested an extension to file an answer pending a determination from the
5 Association’s insurance carrier as to whether the carrier was going to accept defense of the
6 Complaint. Respondent was also required to request and receive approval of Indemnification from
7 the Association’s Board of Directors pursuant to the Association’s Bylaws, Article 5. The Board
8 of Directors approved Indemnification for Respondent at its April 27, 2016 meeting. Respondent
9 filed an Answer to the Complaint on June 20, 2016. On the same date, Respondent filed the
10 pending “Motion for More Definite Statement.”
11

12 The allegations in the Division’s Complaint are too indefinite and lacking in specificity to
13 allow the Respondent to prepare a cogent and organized defense. Many of the allegations involve
14 time periods in which the Respondent was not a Board member and not subject to the jurisdiction
15 of the Division and also involve allegations in which the Respondent may have had knowledge of,
16 but did not directly participate in the allegations asserted. Additionally, no facts, circumstances, or
17 evidence are provided to demonstrate Respondent’s “knowingly and willfully” violated *Nevada*
18 *Revised Statutes* (“NRS”) §§ 116.3103 or 116.31193 or, quite frankly, any statute under *NRS*
19 Chapter 116 or the Association’s governing documents.
20

21 Moreover, Respondent maintains and believes that the alleged violations cited in the
22 complaint do not even constitute violations of any statute under *NRS* Chapter 116 and that one of
23 the reasons that this complaint is being brought is because Respondent has been outspoken about
24 the Division’s misconduct in violating its own statutes, that it is required to comply with, and that it
25 regularly engages in unequal enforcement of *NRS* Chapter 116.
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1 On June 29th, the Division served its Motion for Summary Judgment (which surprisingly
2 says that “there are no issues of material fact” – which anyone knowing even a smidgen of the
3 history of the Division’s proceedings vis-à-vis Anthem would never call “undisputed”), which
4 must be heard at some point prior to the hearing in this matter.

5 II.

6 **GOOD CAUSE EXISTS FOR THE SCHEDULING OF A PREHEARING CONFERENCE**

7 A Prehearing Conference is authorized under *NAC* § 116.557(1) which states that:
8

9 The Commission or a hearing panel may, upon its own motion or a motion made by
10 a party of record, hold a prehearing conference to accomplish one or more of the
11 following purposes:

- 11 (a) Formulate or simplify the issues involved in the hearing.
- 12 (b) Obtain admissions of fact or any stipulation of the parties.
- 13 (c) Arrange for the exchange of proposed exhibits or prepared expert testimony.
- 14 (d) Identify the witnesses and the subject matter of their expected testimony and
15 limit the number of witnesses, if necessary.
- 16 (e) Rule on any pending prehearing motions or matters.
- 17 (f) Establish a schedule for the completion of discovery.
- 18 (g) Establish any other procedure that may expedite the orderly conduct and
19 disposition of the proceedings or settlements thereof.

20 Given that there are multiple Defendants and allegations made by the Petitioner in its
21 Complaint, good cause exists for the scheduling of a Prehearing Conference in order to better
22 organize and streamline the issues in the matter. Respondent contends that a Prehearing
23 Conference would accomplish most, if not all, of the proposed goals in *NAC* § 116.557(1) (a)-(g).

24 A Prehearing Conference would allow the parties to discuss and simplify the issues
25 involved and also stipulate to certain facts, thereby alleviating the need for certain testimony. *NAC*
26 § 116.557(1)(a)-(b).

27 Respondent has already identified thirteen (13) witnesses that she intends to subpoenaed to
28 provide evidence in the matter and anticipates the other Respondents and the Commission to
produce numerous witnesses. Respondent also asserts that her 1st and 6th Amendments rights

1 under the United States Constitution (and those rights enumerated in Article 1, section 9, et seq. of
2 the Nevada Constitution) have been (and continue to be) violated, therefore, Respondent will
3 likely produce expert testimony in this matter. Lastly, Respondent has already identified over 45
4 exhibits to be presented at the hearing. A Prehearing Conference, therefore, would allow for the
5 “exchange of proposed exhibits or prepared expert testimony” and “(i)dentify the witnesses and
6 the subject matter of their expected testimony”. *NAC* § 116.557(1)(c)-(d).

7 Respondent contends that the goals identified in *NAC* § 116.557(1) must be accomplished
8 in order for the Commission to conduct an orderly and expeditious resolution of the matter (and
9 for the hearing to be fair to her). Based on the extensive expected testimony and exhibits to be
10 presented, Respondent contends that the hearing process could easily take 4 to 5 days to fairly and
11 adequately present a defense if a Prehearing Conference does not take place.

12 Respondent desires to be considerate of the Commissions time and is aware of the fact that
13 its meetings include many matters that need to be resolved other than the Complaint in this matter.
14 Respondent believes that, based on the last hearing involving the Association and one of its Board
15 members, the Division will engage in conduct with the intention to create bias and distract the
16 Commission from the actual alleged violation stated in the Complaint. Therefore, a Prehearing
17 Conference will help focus the Commission, and the Parties, on the specific issues in the
18 Compliant that need to be addressed at the hearing.

19
20 **CONCLUSION**

21 Based on the foregoing, Respondent contends that good cause exists and, therefore,
22 requests the scheduling of a Prehearing Conference under *NAC* § 116.557(1).

23 DATED: July 5, 2016

MARCIN LAMBIRTH, LLP

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26 By: 

John B. Marcin, Esq.

Attorneys for Respondent Pennie Puhek

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on the 8th day of July, 2016, I caused to be served a true and correct copy of the RESPONDENT PENNIE PUHEK'S MOTION FOR PREHEARING CONFERENCE UNDER NEVADA ADMINISTRATIVE CODE § 116.557(1), by mail and e-mail to the following party(ies):

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For filing (by email only)

An employee of Marcin Lambirth, LLP