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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

FILED

AUG 03 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby files its Opposition to Respondents' Motion to Strike as Untimely Division's Opposition to Respondent Hernandez's Motion to Reconsider.¹ This opposition is made and based on the following Memorandum of Point and Authorities as well as any and all pleadings on file herein and any oral argument that may be heard at the time of the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Respondents, Anthem Highlands Community Association and Charles Hernandez, filed a motion to reconsider this Commission's order finding Hernandez had violated NRS 116

¹ The motion to strike refers to "Hernandez's motion to reconsider" as if it was filed only by Hernandez, but in fact, it was filed on behalf of both the Association and Hernandez. The exact name of the motion to strike is used in this opposition despite the error.

1 on July 1, 2016 with the Commission. The Division filed its opposition to the motion on July
2 13th. On July 26, Respondents filed a motion to strike as untimely the Division's opposition
3 alleging that the opposition was due on July 8, 7 calendar days (including a 3-day holiday
4 weekend) from when it was filed with the Commission. Respondents cite to NAC 116.617.

5 Respondents' motion is frivolous, wrong on the law, and yet another example of the
6 dysfunction that continues to exist at the Association. There is no reason to file a motion to
7 strike anything in an administrative proceeding. The Division is not required to oppose any
8 motion, and the Commission is not under any obligation to grant the motion to reconsider
9 even if it were not opposed. This Commission can consider or not consider whatever it
10 chooses. Respondents claim to be so concerned about the cost of a special election yet they
11 continue to incur extensive legal fees for no apparent reason. Respondents' motion is wrong
12 on the law, because the deadline to oppose a motion to reconsider is triggered upon the
13 service of the motion on that party. Respondents never served the Division's counsel with a
14 copy of the motion to reconsider which is specifically required by NAC 116.617. The Division
15 has no problem going with the strict reading of NAC 116.617, as requested by Respondents.
16 Based on the language of NAC 116.617, the motion to reconsider is invalid as it was not filed
17 and noticed properly.

18 **II. FACTS**

19 Respondents' motion to strike the Division's opposition includes a certificate to prove
20 service of the motion. The certificate represents that an unidentified document was delivered
21 to 2501 E. Sahara Ave #303. This address is for the Commission's coordinator. The
22 certificate does not identify what was dropped off at this address, and it does not include any
23 verification from any Division staff accepting receipt. Respondents' motion to reconsider was
24 not served on any party.

25 As was noticed to all the parties when the complaint in this matter was filed on
26 December 31, 2015, copies of documents sent to the Commission are to be copied to the
27 Division's counsel at 555 E. Washington Ave., Ste 3900. This address for the Division's
28 counsel is on every document filed with the Commission and copied to opposing counsel.

1 III. LEGAL ARGUMENT

2 A. A STRICT READING OF NAC 116.617 MAKES THE MOTION ITSELF UNTIMELY.

3 Respondents' motion alleges the Division's opposition was filed 7 working days after it
4 was filed with the Commission, instead of 7 calendar days as provided by NAC 116.617; and
5 therefore, should be stricken as untimely. Respondents' analysis of NAC 116.617 is flawed
6 for two reasons. First, Respondents failed to comply with the requirements of NAC 116.617
7 when the motion was filed.

8 NAC 116.617(2) provides:

9 A motion for rehearing or reconsideration must be filed with the Commission,
10 and a copy of the motion provided to all parties, not later than 15 days after the
11 date on which the final decision of the Commission is served.

12 The regulation clearly states that the motion for reconsideration must be filed with the
13 Commission and "a copy of the motion provided to all parties."

14 Respondents' motion admits that the only way the motion to reconsider was served is
15 when it was delivered to the address of the Commission coordinator for filing on July 1.
16 Respondents made no attempt to serve the Division's counsel or any other party with a copy
17 of the motion. Without having complied with NAC 116.617(2), the motion itself is invalid as
18 untimely and should be denied on that basis.

19 The second problem with Respondents' analysis is in calculating the deadline for the
20 opposition to be filed. By failing to serve a copy of the motion on the parties, the deadline to
21 oppose the motion cannot be calculated.

22 NAC 116.617(6) provides as follows:

23 A party who opposes a motion filed pursuant to this section may file an
24 opposition to the motion within 7 days after the date on which the motion is
25 served on that party.

26 The 7 day deadline commences on the date the motion is served on that party.
27 Respondents did not serve any party. Respondents filed its motion with the Commission and
28 failed to provide a copy of it to anyone else. The 7 day time period to oppose never
commenced.

1 When the complaint in this matter was filed on December 31, 2015, the Division
2 provided a notice of the complaint and obligation to respond. The notice includes direction to
3 copy the Division's counsel and includes the address of 555 E Washington Ave #3900. In
4 addition, the Division's counsel's address is listed on every document filed on behalf of the
5 Division.

6 Despite these notices, Respondents failed to serve their answer, which was only
7 emailed to Division's counsel and not filed with the Commission. Respondents failed to serve
8 their motion to dismiss and the motion for a more definite statement on the parties as well.
9 Respondents' motion to strike, for the first time in these proceedings, includes a certificate of
10 mailing and includes Division's counsel's actual address. Of course, the certificate says the
11 motion was served by email, which is not proper service unless the Division's counsel
12 previously agreed to accept service by email, but the certificate does show that Respondents
13 were aware of the Division's attorney's actual address.

14 Furthermore, there is no need for a condensed timeframe to file an opposition. The
15 timeframe of 7 days to file an opposition in NAC 116.617 is based on NRS 233B.130, which
16 requires the Commission rule on a motion to reconsider within 5 days of the deadline to file a
17 petition for judicial review. The petition for judicial review must be filed within 30 days of the
18 Commission's final decision. The motion to reconsider must be filed within 15 days of the final
19 decision, and any opposition would need to be filed within 7 days, leaving the Commission
20 with 3 days to grant or deny the motion to meet the deadline imposed by NRS 233B.130. This
21 Commission only meets four times a year, so it is unlikely that the Commission could ever
22 decide a motion to reconsider prior to the deadline to file a petition for judicial review. That is
23 why the Commission's regulation states the following:

24 The filing of a motion pursuant to this section does not stop the running of the
25 30-day period of appeal to the district court from the date of the decision of the
26 Commission for the purpose of judicial review pursuant to chapter 233B of
27 NRS.

28 NAC 116.617(10).

1 In fact, Respondents' motion to reconsider was placed on the Commission's agenda
2 for August. By letter dated July 5, the Commission coordinator notified all parties that the
3 motion to reconsider would be heard at the Commission's meeting August 16-18. Absent the
4 Commission's ability to hear the matter within the parameters laid out in NRS 233B, there is
5 no reason to have a condensed opposition timeframe. The documents for the Commission to
6 consider will be sent to the Commission members when they get all the materials for their
7 August meeting, not before.

8 **IV. CONCLUSION**

9 To the extent Respondents wish for this Commission to impose a stringent reading of
10 the procedures set forth in NAC 116.617, the motion to reconsider was never properly served
11 on the parties, making the motion itself defective and untimely. By not properly serving the
12 motion to reconsider, there is no way to calculate the 7 day response time. This motion is a
13 waste of time and resources for the Association, the Division, and this Commission. The
14 Division requests that the motion to strike be denied as a matter of law.

15 DATED this 3rd day of August, 2016.

16
17 ADAM PAUL LAXALT
Attorney General

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19
20 By: 

21 MICHELLE D. BRIGGS
22 Senior Deputy Attorney General
23 555 E. Washington Ave. Ste 3900
24 Las Vegas, Nevada 89101
25 (702) 486-3420
26 Attorneys for Real Estate Division
27
28

OFFICE OF THE ATTORNEY GENERAL
555 E Washington Ave. Suite 3900
Las Vegas, Nevada 89101

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 3rd day of August, 2016, I served the foregoing OPPOSITION TO MOTION TO STRIKE AS UNTIMELY DIVISION'S OPPOSITION TO RESPONDENT HERNANDEZ'S MOTION TO RECONSIDER by causing a true and correct copy thereof to be served via U.S. Mail, Postage Prepaid addressed to the following:

Boyack Orme & Taylor
Attn: Edward D. Boyack
401 N. Buffalo Drive #202
Las Vegas, Nevada 89145
*Attorneys for Charles Hernandez and
Anthem Highlands Community Association*

Certified Mail Number: 7012 1010 0000 1176 8010

Michelle Casero
An Employee of the Office of the Attorney General