

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,

Case No. 2013-464
(formerly CIN 13-02-37-238)

FILED

JUL 21 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Petitioner,

vs.

RHONDA FREIH,

Respondent.

**OPPOSITION TO MOTION TO DISMISS COMPLAINT DUE TO THE FAILURE TO
FILE AGAINST FREIH WITH THE DIVISION WITHIN ONE YEAR (NRS 116.760)**

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 Respondent's Motion to Dismiss the Complaint Due to the Failure to File Against Freih with the Division Within One Year (NRS 116.760). 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

The Complaint for this matter was filed on October 7, 2015. Respondent, Rhonda Freih ("FREIH"), is a supervisory community manager with a certificate from the Division. The hearing was scheduled for November 17-19, 2015. FREIH requested and received a continuance. This matter was rescheduled for hearing on March 29-31, 2016. FREIH

1 surrendered her certificate pending the outcome of the hearing on this matter to have the
2 hearing continued a second time from March 2016. The hearing was rescheduled to August
3 16-18, 2016. FREIH'S motion to dismiss is based on the original complainant's failure to
4 comply with NRS 116.760. NRS 116.760 does not apply to complaints against a community
5 manager. In particular, FREIH focuses on the one year statute of limitation contained in
6 NRS 116.760. FREIH misapplies the law. NAC 116A.350 applies to allegations of misconduct
7 against a community manager and no such one year statute of limitations applies. There is
8 no one year statute of limitations applicable to complaints against a community manager.
9 NAC 116A.350 allows a complaint against a manger to be filed by any person, or the Division
10 may initiate its own investigation. Furthermore, any delay in the filing of the statement of fact
11 was due to FREIH'S improper conduct. FREIH'S motion to dismiss is wrong and should be
12 denied.

13 II. FACTS

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15 Beginning in 2005 with the commencement of the project, FREIH managed Autumn
16 Trails Homeowners' Association (the "Association"). The Association consists of
17 approximately 148 units located in Sparks, Nevada. By letter dated February 3, 2012, FREIH
18 demanded payment of approximately \$19,000 from the Association and threatened legal
19 action against the Association for a breach of the management contract. According to FREIH,
20 the amount due was related to collection costs from 2006 through 2009 that FREIH charged
21 the Association. The Association disputed the charges and terminated the contract with
22 FREIH in March 2012. The Association made multiple demands for records from FREIH upon
23 the termination of her contract. According to FREIH, the Association's records were picked up
24 by its new manager on April 30, 2012.

25 Part of the documents provided to the Association included a contract for services
26 signed in 2011 by FREIH on behalf of the Association with Red Rock Financial Services
27 ("Red Rock Contract"). None of the minutes turned over by FREIH included a reference to the
28 Red Rock Contract. The Association asked FREIH to provide evidence that she had authority

1 to sign the Red Rock Contract. In response, FREIH provided unsigned minutes from an
2 alleged 2011 executive session meeting where the board agreed to engage Red Rock for
3 collections work. These minutes were not included in the records FREIH provided to the new
4 manager in April.

5 The minutes state that “[p]er earlier email and phone communications with the Board
6 members it was ratified to move all future accounts to Red Rock Financial services.” FREIH
7 failed to provide any of the emails referenced in the minutes. Board members from 2011 do
8 not believe the executive session took place and do not remember any discussion regarding
9 changing their collections company. The regular session meeting minutes for the same day in
10 2011, which are signed by the board president, do not refer to the Red Rock Contract. The
11 Association filed a statement of fact against FREIH on February 13, 2013.

12 By letter dated April 30, 2013, FREIH informed the Division that the Red Rock
13 Contract was approved by board members, Jolene Fisher and Mike Thomey. Both Ms. Fisher
14 and Mr. Thomey deny approving the contract and deny that the executive session meeting
15 took place. Ms. Fisher also correctly stated in her declaration that contracts may not be
16 entered into in executive session.

17 On or about September 25, 2015, after the Division concluded its investigation, FREIH
18 provided a copy of her journal notes allegedly from the executive session meeting in 2011.
19 FREIH’S notes for the alleged executive session do not match what is contained in the
20 unsigned minutes FREIH provided previously.

21 III. LEGAL ARGUMENT

22 A. FREIH’S MOTION TO DISMISS MISSTATES THE LAW APPLICABLE THIS 23 MATTER.

24 The motion to dismiss is based on the Association's failure to comply with
25 NRS 116.760 when it filed the statement of fact against FREIH. NRS 116.760 requires that
26 an aggrieved party file an affidavit with the Division within 1 year after the person discovered
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1 or reasonably should have discovered the alleged violation. FREIH further details the
2 statute's provisions regarding certified notice of the issues and referral to the Ombudsman for
3 an informal conference. NRS 116.760 does not apply to alleged misconduct by a community
4 manager. The Ombudsman's informal conference process is available to board members and
5 owners as a way to resolves issues of conflict.

6 Allegations of misconduct against a community manager are investigated by the
7 Division. They are not sent through the informal conference process with the Ombudsman.
8 NAC 116A.350 provides a mechanism for alleging misconduct against a community
9 manager. NAC 116A.350 does not require certified mailings or a 1 year statute of limitations.
10 It provides that the person making the allegation of misconduct send the allegations to the
11 community manager in writing and that the manager has 12 working days to respond. The
12 statement of fact filed in this matter details numerous allegations of misconduct.
13 NAC 116A.350 also allows the Division to initiate an investigation of a community manager in
14 its own discretion. In this case, the Division accepted the information provided for the
15 investigation and investigated the allegations in accordance with its authority in
16 NAC 116A.350. As a result, there are no grounds to dismiss this matter.

17 **B. FREIH'S BAD FAITH IS ILLUSTRATED BY HER ALLEGATION THAT THIS**
18 **MATTER IS TIME BARRED WHICH - IF IT APPLIED - WAS DUE TO HER OWN**
19 **MISCONDUCT.**
20

21 As discussed previously, the one year statute of limitations contained in NRS 116.760
22 does not apply to this matter. But the Division finds FREIH'S argument regarding the one
23 year statute of limitations particularly disturbing. The allegations against FREIH are that she
24 signed a contract without authority and then to cover-up her misconduct, she manufactured
25 minutes for a meeting that never took place. The Association filed the statement of fact
26 against FREIH shortly after receiving the unsigned meeting minutes from FREIH.

27 Due to FREIH'S devious conduct, the Association's board did not know FREIH signed
28 the Red Rock Contract in 2011. Once the Red Rock Contract was provided to the Association

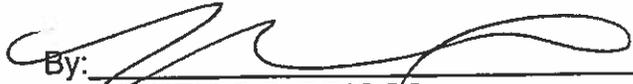
1 in April 2012, the Association diligently questioned her authority to sign on behalf of the
2 Association. FREIH responded to the Association by providing unsigned meeting minutes she
3 previously did not provide when she was supposed to turn over all the Association's records.
4 The Association filed its complaint against FREIH within a few months of receiving the
5 unsigned minutes. While the one year statute of limitations does not apply here, the
6 statement of fact was in fact filed within a year of the Association learning about FREIH'S
7 misconduct.

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10 **IV. CONCLUSION**

11 FREIH'S motion to dismiss alleges that the Association did not comply with
12 NRS 116.760 when it filed the statement of fact in this matter. Whether or not the Association
13 complied with NRS 116.760 is irrelevant. NRS 116.760 does not apply to allegations of
14 misconduct against community managers. The Division's investigation was in accordance
15 with NAC 116A.350 which is applicable to allegations of misconduct against a community
16 manager. For all the foregoing reasons, FREIH'S motion to dismiss should be denied.

17 DATED this 21st day of July, 2016.

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19 ADAM PAUL LAXALT
Attorney General

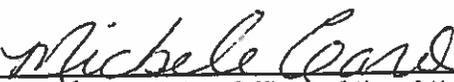
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21 By: 

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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 21st day of July, 2016, I served the foregoing OPPOSITION TO MOTION TO DISMISS COMPLAINT DUE TO THE FAILURE TO FILE AGAINST FREIH WITH THE DIVISION WITHIN ONE YEAR (NRS 116.760) by causing a true and correct copy thereof to be served via U.S. Mail, Postage Prepaid addressed to the following:

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