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

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

15 Petitioner.

16 vs.

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

20 Respondents.

) Case No. 2015-291

) RESPONDENT PENNIE PUHEK'S  
) RESPONSE TO NRED'S NOTICE OF  
) NON OPPOSITION TO RESPONDENT'S  
) REQUEST FOR PREHEARING  
) CONFERENCE

**FILED**

JUL 14 2016

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

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24 Respondent Pennie Puhek ("Respondent"), by and through her attorneys Marcin Lambirth,  
25 LLP, hereby responds to the Real Estate Division of the Department of Business and Industry,  
26 State of Nevada ("NRED") "Notice of Non-Opposition" to Respondent's request for a prehearing  
27 conference.  
28

INTRODUCTION

1  
2 Both Respondent and NRED have filed motions. These should be heard before those  
3 matters that are set forth in Nevada Administrative Code §116.557(1) are heard. Before the  
4 unopposed prehearing conference, Respondent must conduct discovery including taking initial  
5 depositions and obtaining documents. Once the motions are heard and initial discovery is  
6 obtained, then it would make sense to have the prehearing conference as to do so absent the above  
7 happening would be to have the hearing in a vacuum.

8  
9 Counsel is unavailable on August 16<sup>th</sup> through August 18<sup>th</sup> (even if the matter was moved  
10 to Las Vegas), and Respondent is unavailable (on vacation and out of the Continental United  
11 States) for the two weeks after that. Sometime after that, at the convenience of the Commission  
12 and NRED's counsel is when Respondent respectfully requests the pre-hearing conference be  
13 held.

14 Respondent suggests the weeks of either September 26<sup>th</sup> or October 3<sup>rd</sup> for the prehearing  
15 conference.<sup>1</sup>

DISCUSSION

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18 By suggesting that the hearing be held on August 16<sup>th</sup>, NRED mixes-up the purpose of a  
19 Pre-Hearing Conference with the need to have Respondent's and NRED's Motions heard. It is  
20 premature at this point to have a prehearing conference until Respondent's Motion for More  
21 Definite Statement and NRED's Motion for Partial Summary Judgment are first heard.  
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25 <sup>1</sup> Respondent's counsel called and left a message for Edward Boyack, Esq. who represents Anthem  
26 Highlands Community and spoke with Gregory Kerr, Esq. who represents James Lauth. Mr. Kerr  
27 said that he supports and joins the request for the prehearing conference to be heard someday either  
28 the week of September 26<sup>th</sup> or the week of October 3<sup>rd</sup>.



1 hearing conference heard on August 16<sup>th</sup>.<sup>4</sup> (The depositions will not take place now on August 2<sup>nd</sup>  
2 because Respondent needs documents before this deposition and NRED will not produce any  
3 documents before twenty (20) days after the issuance of a subpoena to it (see discussion below  
4 under the heading "Suggested Conference Date is Premature.") Respondent will work with  
5 NRED to get new deposition dates.

6 It is inappropriate to ask the Commission to "take notice" of something in what should  
7 amount to a simple "we don't oppose," let alone something that is not factually accurate. The fact  
8 is that Puhek's counsel requested that the Commission *issue subpoenas for D'Alessandro and*  
9 *Ferguson for August 2<sup>nd</sup>*, but wrote to the Commission that:

11 We'd like the Commission to issue subpoenas for the depositions of Darik  
12 Ferguson and Gina D'Alessandro for ½ day depositions, one at 10:00 a.m.  
13 and the other at 2:00 p.m. on Tuesday August 2<sup>nd</sup> at the Bradley  
14 Building. **(We thought we'd make it easy on the Division and Ms.**  
15 **Briggs so that they are not waiting around in some lawyer's**  
16 **office). Do I need to make a formal request somehow, or is this**  
17 **sufficient? (I can have our attorney service pick them up when issued, just**  
18 **let me know).**

19 Email to Commission dated July 8, 2016 (emphasis added).

20 Respondent has the right to these depositions, and actually proposed, for the convenience  
21 of the deponents, the Division, and Ms. Briggs, that it be held on August 2<sup>nd</sup> at their place of  
22 business. So there's no "please take notice that we agreed to allow Puhek's counsel" anything.  
23 This discussion is also not pertinent to the notice of non-opposition.  
24

25 <sup>4</sup> Also, interestingly, although the Commission is set to convene in Reno in August, by requesting  
26 the conference take place on August 16<sup>th</sup> – 18<sup>th</sup>, it either wrongly assumes that Respondent can be  
27 made to go to Reno, or knows something that is not public knowledge: that the Commission meeting  
28 is taking place in Las Vegas.

SUGGESTED CONFERENCE DATE IS PREMATURE

1  
2 The suggested prehearing conference date is premature because NRED has only given a  
3 trickle of documents to Respondent who needs much more to defend against the baseless charges  
4 against her. NRED wrote in papers filed on July 13<sup>th</sup> in another matter that: "Respondents admit  
5 that the email was produced to them by virtue of a subpoena to Administrator Decker served late  
6 on May 27th, the Friday before Memorial Day. There was approximately one week before the  
7 hearing after the Memorial Day holiday. The subpoena itself gave Mr. Decker 20 days to respond,  
8 so Respondents would have known when it was served that they may not be able to get the records  
9 they were requesting prior to the hearing. Respondents failed to exercise reasonable diligence to  
10 discover the evidence."  
11

12 If NRED is not following its duty to provide all relevant documents to parties it brings  
13 administrative charges against and then is willing to go so far as to say that it had no obligation to  
14 produce documents until the moment of a hearing, Respondent does not want to be accused of  
15 "not exercising reasonable diligence."  
16

17 Thusly, Respondent has propounded some twenty (20) document production requests to  
18 NRED to get the documents she needs to defend herself.<sup>5</sup> As this production will not take place  
19

20 <sup>5</sup> These include:

- 21 1) Any written correspondence, email, or other form of communication or records between  
22 Mr. Ferguson and Ronnie Young in Case #2015-291  
23 2) The complete case file of Case #2015-291 including all communications between Division  
24 staff in the investigations and preparation of prosecution of this case #2015-291 before the  
25 Commission.  
26 3) The complete case file of Cases #2015-5 and #2015-725 including but limited to all  
27 communications, emails, and correspondence of the original investigation and its findings  
28 and the re-opening of the cases and the subsequent investigation and findings.

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- 4) Any written correspondence, email, or other form of communication or records between Mr. Ferguson and Investigator Gina D'Alessandro regarding case #2015-291, #2015-5, and #2015-725
  - 5) Any written correspondence, email, or other form of communication or records between Mr. Ferguson and Ombudsman Jackson regarding Case #2015-291, #2015-5, and #2015-725
  - 6) Any written correspondence, email, or other form of communication or records between Mr. Ferguson and Joseph Decker regarding Case #2015-291, #2015-5, and #2015-725
  - 7) Any written correspondence, email, or other form of communication or records between Mr. Ferguson and former Investigator Christopher Sewell in Cases #2015-291, #2015-5, and #2015-725
  - 8) Any email communication or written correspondence between Darik Ferguson and Christopher Sewell regarding any Anthem Highlands Community Association Board of Director or case from January 1, 2016 to June 30, 2016 after Mr. Sewell left the employment of the Division
  - 9) Any email communication or written correspondence between Darik Ferguson and Christopher Sewell regarding an opinion on the prosecution of any Anthem Highlands Board of Director between December 1, 2015 to June 30, 2016
  - 10) The complete case file of Case #2015-1841.
  - 11) Any email or communication between Darik Ferguson and Robert Stern in case #2015-291, #2015-5, #2015-725, #2015-1841
  - 12) Verification from the Division IT department confirming that a search of the email documents were completed and independently and produced by them.

-also-

- 1) The complete case file of Case #2015-291 including all communications between Division staff in the investigations and preparation of prosecution of this case #2015-291 before the Commission.

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8 2) The complete case file of Cases #2015-5 and #2015-725 including but limited to all  
9 communications, emails, and correspondence of the original investigation and its findings and the  
10 re-opening of the cases and the subsequent investigation and findings.

11 3) Any written correspondence, email, or other form of communication or records  
12 between Mr. Ferguson and Investigator Gina D'Alessandro regarding case #2015-291, #2015-5, and  
13 #2015-725.

14 4) Any written correspondence, email, or other form of communication or records  
15 between Gina D'Alessandro and Ombudsman Jackson regarding Case #2015-291, #2015-5, and  
16 #2015-725.

17 5) Any written correspondence, email, or other form of communication or records  
18 between Gina D'Alessandro and Joseph Decker regarding Case #2015-291, #2015-5, and #2015-  
19 725.

20 6) Any written correspondence, email, or other form of communication or records  
21 between Gina D'Alessandro and former Investigator Christopher Sewell in Cases #2015-291,  
22 #2015-5, and #2015-725

23 7) Any written correspondence, email, or other form of communication or records  
24 between Gina D'Alessandro and Robert Stern regarding any Intervention Affidavit filed by Robert  
25 Stern.

26 8) Verification from the Division IT department confirming that a search of the email  
27 documents were completed and independently and produced by them.  
28

1 before the depositions that Respondent wanted to have taken, the date of the depositions will be  
2 moved in order to give Respondent a reasonable time to obtain and digest the documents NRED  
3 will produce to give to Respondent. As stated above, the depositions originally set for August 2<sup>nd</sup>  
4 will be moved to August 12<sup>th</sup> or 15<sup>th</sup> (or as is convenient for all involved). Thus, it is premature to  
5 suggest that anything is ripe for a prehearing conference at this point.

6 In any event, neither Respondent nor her counsel are available to attend or participate in a  
7 prehearing conference on August 16<sup>th</sup> -18<sup>th</sup> or the week after (Respondent will be out of the  
8 Continental United States August 22<sup>nd</sup> through September 6<sup>th</sup> and her counsel has depositions set  
9 for August 16<sup>th</sup> and 18<sup>th</sup> and a hearing in Los Angeles, California on August 17<sup>th</sup>. As Respondent  
10 is setting depositions in this matter for mid-September 2016, sometime after the completion of  
11 these depositions would make most sense for the prehearing conference.  
12

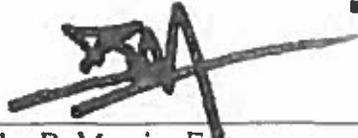
#### 13 CONCLUSION

14 Based on the foregoing, Respondent requests that the Commission set a hearing for the two  
15 pending motions, and set the prehearing conference for a time after the Commission rules on the  
16 motions and after discovery has taken place so that any issues related to the discovery, stipulations  
17 as to the evidence or narrowing of issues, and related matters can be handled then. Respondent  
18 suggests the weeks of either September 26th or October 3rd for the prehearing conference.  
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20 DATED: July 14, 2016

Respectfully submitted,

21 MARCIN LAMBIRTH, LLP

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24 By: 

John B. Marcin, Esq.

Attorneys for Respondent Pennie Puhek

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14<sup>th</sup> day of July, 2016, I caused to be served a true and correct copy of the RESPONDENT PENNIE PUHEK'S RESPONSE TO NRED'S NOTICE OF NON-OPOSITION, by e-mail to the following party(ies):

Michelle Briggs, Esq.  
Senior Deputy Attorney General  
Nevada Attorney General's Office  
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Las Vegas, NV 89101  
(c/o mcaro@ag.nv.gov)

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*For filing (by email only)*

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An employee of Marcin Lambirth, LLP