

FILED

JUL 25 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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5 BEFORE THE COMMISSION FOR COMMON-INTEREST
6 COMMUNITIES AND CONDOMINIUM HOTELS
7 STATE OF NEVADA

8 JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION,
9 DEPARTMENT OF BUSINESS &
INDUSTRY, STATE OF NEVADA,

10 Petitioner,

11 vs.

12 RHONDA FREIH,

13 Respondent.

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

**REPLY BRIEFING IN SUPPORT OF
MOTION TO DISMISS COMPLAINT**

14 **REPLY BRIEFING**

15 1. Though Petitioner claims NRS 116.760 does not apply in this setting, it should be
16 noted that the Real Estate Division's formal letter of March 13, 2013 informed Ms. Freih that the
17 Division had received a "Complaint" against Ms. Freih and thereafter decided to open their
18 investigation. Then the Division required Ms. Freih to respond to a letter drafted by the Autumn
19 Trails Homeowners Association's attorney which threatened as follows: "Therefore, demand is
20 made that in order to avoid an **Intervention Affidavit** being filed, you must comply with the
21 required documentation and applicable statutes." The letter also stated that it was being sent in
22 compliance with NRS 116.750 et sec. The Division, in his own letter to Ms. Freih advised her of
23 the pending Complaint and subsequent investigation, and also references the NRS 116.760
24 **Intervention Affidavit Process**. The Division instructs Ms. Freih that the "Complaint" that was
25 filed against her is confidential as set forth under NRS 116.757 and NRS 116.270. These
26 sections clearly refer to an Intervention Affidavit Complaint filed with the Division pursuant to
27 NRS 116.760 which must be completed within the one-year time period set forth in that same
28 statute.

1 NRS 116.757 Confidentiality of records: Certain records relating to Complaint or
2 investigation deemed confidential; certain records relating to disciplinary action deemed public
3 records.

4 1. Except as otherwise provided in this section and NRS 239.0115, a written affidavit
5 filed with the Division pursuant to NRS 116.760, all documents and other information filed with
6 the written affidavit and all documents and other information compiled as a result of an
7 investigation conducted to determine whether to file a formal Complaint with the Commission are
8 confidential.

9 NRS 116A.270 Confidentiality of records: Certain records relating to Complaint or
10 investigation deemed confidential; certain records relating to disciplinary action deemed public
11 records.

12 1. Except as otherwise provided in this section and NRS 239.0115, a Complaint filed
13 with the Division alleging a violation of this chapter or chapter 116 or 116B of NRS, all
14 documents and other information filed with the Complaint and all documents and other
15 information compiled as a result of an investigation conducted to determine whether to initiate
16 disciplinary action are confidential.

17 When the Investigator tells Ms. Freih to submit her notarized written response he never
18 states that it is not in response to the Intervention Affidavit described by Ms. Kern in her letter
19 and referenced by him in the confidentiality provisions related to such Complaint.

20 2. Petitioner argues that as there is no statute of limitations contained in NAC
21 116A.350 for bringing allegations of misconduct against a Community Manger and because of
22 that the Division may self-initiate an investigation of any community manger "in its own
23 discretion" presumably at any time. This would create a preposterous situation as the only
24 crimes in the State of Nevada having no statute of limitations are the crimes of **Murder and**
25 **Terrorism under NRS 171.080**. Now it appears if we believe the Petitioner's argument, the
26 administrative violations set forth in NAC 116A.350, are considered to be as serious as Murder
27 and Terrorism and as such not subject to any statute of limitations.

28 3. The Statement of Fact that was filed and which began this investigation was not
compliant with NRS 116A.350, nor was it compliant with the **requirements set forth on the**
face of the Statement of Fact Form itself. There was no proof of prior written communication
with the Manager regarding the specific violations related to the meeting in question, the minutes
of such or the Red Rock Collections contract. There were no specific citations to NRS or
governing documents at all in this section of the Statement of Fact. There was no compliance
with the 12-day response rule. Ms. Freih never had the chance to respond to those claims prior
to the actual Statement of Fact in this matter being filed. The Division, in accordance with NRS

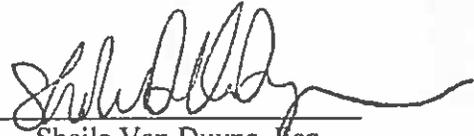
1 116A.350 can forward such a Complaint to an Investigator when the Complaint "complies with
2 subsection 2," which this one did not. The issues related to the 2011 meeting, its minutes and the
3 contract in question should never have been forwarded on to be investigated. Similarly, the
4 investigation that ensued should not have been included in the report to the Administrator or the
5 resultant Disciplinary proceeding.

6 4. Petitioner finally argues that the statutory rules and regulations, set forth by Ms.
7 Freih in her Motion to Dismiss, for the processing of Complaints and Investigations are
8 "irrelevant" and "particularly disturbing" because Ms. Freih obviously was engaging in
9 "devious" conduct. Such comments are not based on any finding of fact or determination against
10 Ms. Freih, but simply are the comments of the petitioner and will not be seen to actually be true
11 in this matter. There simply was no motivation, no "kickback," no reason at all that can be
12 shown for Ms. Freih should have signed a contract without believing she was supposed to have
13 done so. It simply doesn't not make sense nor will it ring true once the facts are presented to this
14 commission in this matter. Ms. Freih has the ability to put on a case and to defend herself
15 against such allegations but given the given the failure of the initial Complaint and investigation
16 to have been conducted in accordance with statutory requirements means that she should not be
17 forced to go through that expensive, time consuming and stressful process.

18 CONCLUSION

19 Respondent therefore respectfully requests a complete Dismissal of the Complaint due to
20 the fact that the underlying Statement of Fact was not compliant with Statutory requirements in
21 that it was not timely, did not make mention of specific statutory or document violations, nor was
22 it preceded by requisite communication with Freih. The Division itself told Ms. Freih she was
23 facing an Intervention Affidavit and should be estopped from now claiming that she was not.

24 Dated this 25th day of July 2016.

25
26 By: 

27 Sheila Van Duyne, Esq.
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 25th day of July 2016, a true and correct copy of REPLY
3 BRIEFING IN SUPPORT OF MOTION TO DISMISS COMPLAINT, was placed in an
4 envelope, postage prepaid, addressed as stated below, in a basket for outgoing mail at the firm of
5 VAN DUYNE LAW GROUP. The firm has established mail procedures so that all mail placed
6 in the basket is taken that same day and deposited in a U.S. Mail box.

7
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14 By: Betty Chronister
15 Betty Chronister, an employee of
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