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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, PENNIE PUHEK, JAMES  
LAUTH, and CHARLES HERNANDEZ,

Respondents.

Case Nos. 2015-291

**FILED**

**JUL 22 2016**

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

**REPLY TO PUHEK'S RESPONSE TO NRED'S NON OPPOSITION  
TO PUHEK'S REQUEST FOR PREHEARING CONFERENCE**

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 Reply to Puhek's Response to NRED'S Non-Opposition to Puhek's Request for Prehearing Conference. This reply is made and based on the following memorandum of points 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 March 24, 2016. The hearing was scheduled for the Commission's June meeting. Respondent Pennie Puhek ("PUHEK") requested and received a continuance of this matter. PUHEK filed an answer to the complaint on June 20, 2016 and also moved for a more definitive statement. The Division opposed the motion for a more definitive statement and countered with a motion for summary judgment.

PUHEK filed a motion for a prehearing conference pursuant to NAC 116.557 on July

1 11. The Division does not oppose a prehearing conference for the purposes listed in NAC  
2 116.557. In response to the Division's notice of non-opposition to a prehearing conference in  
3 August, PUHEK makes it clear that she in fact wants more out of a prehearing conference  
4 than she is entitled to and wants this Commission to convene on a date other than its regular  
5 schedule to accommodate her request. PUHEK states that her counsel is unavailable all  
6 three days during this Commission's meeting in August.

7 PUHEK'S response to the Division's non-opposition to the prehearing conference  
8 includes a laundry list of documents that PUHEK now needs prior to the previously scheduled  
9 depositions. The Division granted permission for the two depositions in good faith, but now  
10 the depositions cannot be done on the date previously agreed to. In light of the PUHEK'S  
11 change in position, the Division will no longer agree to have any depositions taken. The  
12 Division does not agree to allow extensive discovery as now requested by PUHEK. PUHEK'S  
13 response also makes it clear that she intends to delay the hearing of this matter by  
14 requesting redundant, confidential and irrelevant documents and depositions. The Division  
15 opposes PUHEK'S request for the prehearing conference to the extent it results in a delay of  
16 the hearing of this matter or a final adjudication in November 2016.

## 17 II. LEGAL ARGUMENT

### 18 A. NAC 116.557 DOES NOT ALLOW FOR THE DISCOVERY REQUESTED BY PUHEK.

19 NAC 116.557(1) provides as follows:

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

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

1 The Division is more than happy to discuss any of these matters with PUHEK at any  
2 time, but the requests for certain records and depositions of Division staff are excessive,  
3 inefficient, and designed only to delay the hearing of this matter. As clearly set forth by the  
4 Nevada Supreme Court, the Nevada Rules of Civil Procedure do not apply to administrative  
5 proceedings and the Nevada Administrative Procedure Act "makes no provision for  
6 discovery."<sup>1</sup> Discovery in this administrative proceeding is limited to the statutes and  
7 regulations governing this Commission.<sup>2</sup> NAC 116.557 is the only provision governing this  
8 matter as it relates to discovery. NAC 116.557 is intended to streamline the hearing process  
9 and promote settlement. It does not allow for a protracted discovery process. This matter is  
10 not near as complicated as PUHEK would like this Commission to believe. There is no  
11 legitimate need to depose any Division staff member. The Division previously agreed to allow  
12 two of its investigators to be deposed. But since that agreement has been changed multiple  
13 times by PUHEK, the Division can no longer agree. Despite what PUHEK alleges in her  
14 response, the Commission would not issue a subpoena for a deposition. Depositions are not  
15 allowed as a matter of right in administrative proceedings.

16 Despite the sarcastic tone in PUHEK'S response, the Division did allow two  
17 depositions as a courtesy, so that PUHEK could obtain whatever evidence she thinks is  
18 relevant to her defense. It was only after the date was scheduled for the depositions that  
19 PUHEK submitted a laundry list of documents she needed for the depositions. She also  
20 added two more people from the Division to be deposed. The documents requested are  
21 irrelevant to the facts of this case and do not help to establish or disprove any of the facts of  
22 this case. The Division did not agree to the depositions believing multiple documents would  
23 be requested from the Division for the depositions, effectively delaying the depositions. And  
24 that she would not only change the date of the depositions, but the people to be deposed as  
25 well. The Division is no longer willing to allow any depositions.

26 PUHEK'S response includes a list of several categories of documents and case files.

27  
28 <sup>1</sup> Dutchess Business Serv., Inc. v. Nevada State Bd. of Pharmacy, 124 Nev. 701, 713, 191 P.3d 1159, 1167  
(2008).

<sup>2</sup> See id.

1 Some of the case files are closed investigative files that are confidential according to NRS  
2 116.757. PUHEK further claims to need four depositions of Division staff. PUHEK does not  
3 list any specific purpose for deposing these people, but generally alleges the Division is  
4 acting improperly. Of course all respondents – in nearly every case brought to this  
5 Commission – think the Division is acting improperly and allege some personal vendetta  
6 against them. But allowing depositions of Division staff is nothing more than a fishing  
7 expedition and a waste of Division resources. The only issue is whether or not PUHEK'S  
8 conduct violated the law. Nothing the Division did or could have done changes what PUHEK  
9 did, and it is up to this Commission to determine if her conduct was appropriate. The  
10 provisions of NAC 116.557 do not list taking depositions or having access to confidential  
11 records. These requests are outside the scope of NAC 116.557 and should not be allowed.

### 12 III. CONCLUSION

13  
14 For all the foregoing reasons, the Division respectfully requests that this Commission  
15 not allow unnecessary and improper requests for discovery that serve only to delay the final  
16 adjudication of this matter and are beyond the scope of NAC 116.557.

17  
18 DATED this 22nd day of July, 2016.

19 ADAM PAUL LAXALT  
Attorney General

20  
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 22nd day of July, 2016, I served the foregoing REPLY TO PUHEK'S RESPONSE TO NRED'S NON OPPOSITION TO PUHEK'S REQUEST FOR PREHEARING CONFERENCE 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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An Employee of the Office of the Attorney General