

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 Nos. 2015-3615; 2015-2155;  
2015-3100; 2015-2207

Petitioner,

vs.

ANTHEM HIGHLANDS COMMUNITY  
ASSOCIATION; ROBERT STERN;  
CHARLES HERNANDEZ; and RONNIE  
YOUNG,

Respondents.

**FILED**

JUL 14 2016

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

MOTION TO DISQUALIFY RESPONDENTS' COUNSEL

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 Motion to Disqualify Respondents' Counsel. The Division requests an order from this Commission to disqualify Ted Boyack and all members of his firm as attorneys for Respondents in all matters before this Commission. This motion 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

Anthem Highlands Community Association (the "Association") and Charles Hernandez are both represented by Ted Boyack and his firm in matters before this Commission. Mr. Boyack on behalf of both the Association and HERNANDEZ filed a Motion to Reconsider the Commission's order in this matter. The motion requests reconsideration of the Commission's finding that HERNANDEZ knowingly and willfully violated NRS 116.3103. Absent a finding of

1 a knowing and willful violation, the Association would be responsible for the costs imposed  
2 against HERNANDEZ and would not be able to seek reimbursement for defense costs  
3 against HERNANDEZ. As such, the arguments made in favor of HERNANDEZ are in direct  
4 conflict with the interests of the Association and is a violation of the Nevada Rules of  
5 Professional Conduct (the "Rules"), Rule 1.7. Based on this direct conflict of interest, the  
6 Division asks that this Commission disqualify Mr. Boyack and his firm from representing both  
7 the Association and HERNANDEZ in all matters before this Commission.

## 8 II. FACTS

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10 At its hearing in June, this Commission found that Hernandez knowingly and willfully  
11 violated NRS 116.3103 by exhibiting incompetent, negligent or grossly negligent conduct.  
12 The Commission imposed the costs of the hearing – that took 2½ days – against  
13 HERNANDEZ personally in the amount of \$4,023. The Division's prehearing costs of  
14 approximately \$30,000 were waived. The Commission also ordered HERNANDEZ to be  
15 removed from the Association's board immediately.

16 Mr. Boyack filed a motion to reconsider the Commission's order on behalf of the  
17 Association and HERNANDEZ. The Association held one meeting after the Commission's  
18 June meeting, but before the filing of the motion to reconsider. The draft minutes from that  
19 meeting do not state that the board voted on or even discussed filing a motion to reconsider.<sup>1</sup>  
20 The meeting was held on June 22 and the motion was filed on July 1.

21 Beginning on page six of the motion, it is alleged that there is an error in the  
22 Commission's order due to the finding of a "knowing and willful" violation of the law. The  
23 motion makes the argument that there cannot be a knowing and willful violation of law  
24 acknowledging that without such a finding the costs imposed would be due from the  
25 Association.

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28 <sup>1</sup> See Ex. A, Declaration of Darik Ferguson.

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III. LEGAL ARGUMENT

A. IT IS A VIOLATION OF THE NEVADA RULES OF PROFESSIONAL CONDUCT FOR AN ATTORNEY TO REPRESENT CLIENTS WITH ADVERSE INTERESTS.

The Nevada Rules of Professional Conduct (the "Rules") establish standards of conduct for attorneys licensed to practice law in this State. Rule 1.7 concerns conflicts of interest with current clients. Rule 1.7 states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) The representation of one client will be directly adverse to another client; or
- (2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) The representation is not prohibited by law;
- (3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) Each affected client gives informed consent, confirmed in writing.

According to Section (a) above, a lawyer shall not represent clients who are directly adverse to one another. Section (b) allows a lawyer to represent conflicting clients with informed written consent under very limited circumstances. The concurrent conflict of interest may not be waived if the adverse representation is in the same proceeding before a tribunal, as it is here.

B. THE INTERESTS OF THE ASSOCIATION ARE ADVERSE TO THE PERSONAL INTERESTS OF HERNANDEZ.

The conflict between the Association and HERNANDEZ began when the Division's

1 complaint was filed. The violations of law were clearly brought as knowing and willful  
2 violations to impose personal liability on the board members, not the Association. The conflict  
3 was absolutely apparent once the Commission found HERNANDEZ knowingly and willfully  
4 violated NRS 116. Respondents' motion to reconsider the Commission's order makes  
5 arguments in favor of HERNANDEZ to the detriment of the Association. The vast majority of  
6 the motion advocates specifically for HERNANDEZ. The motion claims there was an error in  
7 the decision based on the Commission's finding that the violation of law was committed  
8 knowingly and willfully.

9 The motion states: "[i]t is unlawful to require that Charlie personally pay the  
10 administrative fine imposed."<sup>2</sup>

11 The motion goes on to say:

12 Here, the standard of "knowing and willful" violation has been misapplied,  
13 resulting in personal liability. There is no basis in the law for this proposition, as  
14 negligence is a concept at law that does not comport with a knowing and willful  
15 violation. Nevertheless, the Commission ordered that Charlie pay the costs of  
16 the hearing - \$4,023 - from his personal funds as opposed to the cost being  
17 paid by Anthem.

18 ...Respondents here request that the fine not require personal  
19 repayment.<sup>3</sup>

20 NRS 116.785(5) requires a finding that a board member or officer knowingly and  
21 willfully committed the violation; otherwise, any fine or costs imposed against the board  
22 member or officer would have to be paid by the association. In other words, the Association  
23 should want the Commission to find a knowing and willful violation, so the Association would  
24 not be responsible for any fine or costs imposed. In addition, NRS 116.785(2) requires a  
25 finding that the board member or officer knowingly and willfully committed a violation to have  
26 them removed from their office or position.

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28 <sup>2</sup> Motion at 9, ln 4-5.

<sup>3</sup> Motion at 9, ln 6-16.

1 Removing the knowing and willful finding would also hurt the Association if it sought  
2 reimbursement against the board member for the costs it incurred indemnifying the board  
3 member. NRS 116.31037 requires indemnification for board members including costs of  
4 defense, "unless it is proven that the member acted with willful or wanton misfeasance or with  
5 gross negligence." The statute goes on to say that "[a]fter such proof, the association is no  
6 longer liable for the cost of defense, and may recover costs already expended from the  
7 member of the executive board who so acted."<sup>4</sup> Therefore, not only is the Association at risk  
8 for paying the costs imposed by the Commission, it is at risk for losing its right to  
9 reimbursement of the defense costs.

10 The arguments in the motion are directly adverse to the Association, and no neutral,  
11 fiduciary-minded board would ever agree to make such arguments to this Commission. In  
12 fact, the Association's board did not discuss or approve a motion to reconsider at its  
13 meeting.<sup>5</sup> It is not clear how the motion could be brought on the Association's behalf and in  
14 direct conflict with its interests without explicit authority given. If the individual board members  
15 did in fact authorize the filing of the motion to reconsider (outside an open meeting or upon  
16 the authority of one board member), it raises the question of whether the board members are  
17 acting in accordance with their fiduciary duty.

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19 **C. THE MOTION TO RECONSIDER IS INCONSISTENT WITH THE ACTIONS OF THE**  
20 **ASSOCIATION.**

21 The motion to reconsider includes a challenge to the Commission's order requiring a  
22 special election. Claiming the cost of the election is too expensive seems to be an argument  
23 the Association may have. But an unsolicited email provided to the Division's counsel from  
24 the Association's president, Frank Capello, dated July 12, 2016 states otherwise.<sup>6</sup> In the  
25 email, Mr. Capello states that the board sought bids for the special election and states its  
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28 <sup>4</sup> NRS 116.31037 (2015).

<sup>5</sup> See Ex. A, Ferguson Declaration.

<sup>6</sup> See Ex. B, Email from Frank Capello dated July 22, 2016.

1 plan to open the bids on July 27<sup>th</sup> at its next board meeting.<sup>7</sup> Mr. Capello states that the  
2 election will then begin immediately.<sup>8</sup> That means the board would have already begun the  
3 special election process before the motion to reconsider could be heard by the Commission.  
4 Mr. Capello also states that he believes the Association is in compliance with the  
5 Commission's order and asks for confirmation.<sup>9</sup> Mr. Capello's email is in direct conflict with  
6 the pending motion to reconsider filed on behalf of the Association.

7 The action taken by the board at its June 22 meeting is also counter to the arguments  
8 made in the motion to reconsider. At the board meeting on June 22, the board voted  
9 unanimously to remove from the agenda an item regarding the appointment of a fifth board  
10 member to replace HERNANDEZ.<sup>10</sup> In the motion, it is alleged that the four remaining board  
11 members want to appoint a candidate from the prior election.<sup>11</sup> There is no indication based  
12 on any action at the board's meeting that the four board members would agree on any  
13 particular individual. In fact, based on Mr. Capello's email, the Association is already moving  
14 forward with the election. The Association's actions since the Commission issued its order  
15 are inconsistent with the arguments asserted in the motion.

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17 **D. BOYACK AND HIS OFFICE SHOULD BE DISQUALIFIED FROM REPRESENTING**  
18 **THE ASSOCIATION AND HERNANDEZ BEFORE THIS COMMISSION.**

19 While it is acknowledged that a violation of the Rules governing conduct of attorneys is  
20 not necessarily grounds for disqualification from a proceeding, the facts of this matter warrant  
21 disqualification. The Division brought its case to stop the Association's board from behaving  
22 badly. It looks like even though Robert Stern and Ronnie Young have not been part of the  
23 Association for several months, the Association's problems remain. The Division has dealt  
24 with members of the Association's board acting as though NRS 116 does not apply to them,  
25 including deliberate efforts to defy the Division, for years. The current situation reveals an

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27 <sup>7</sup> See id.

<sup>8</sup> See id.

<sup>9</sup> See id.

<sup>10</sup> See Ex. A, Ferguson Declaration.

<sup>11</sup> See Motion at 21.

1 even bigger problem. Mr. Boyack's motion on their behalf is clearly contrary to their best  
2 interests. Are individual board members working to help HERNANDEZ? Is the board being  
3 taken advantage of? Whatever the reason, this Commission should not allow it to continue at  
4 least as it pertains to matters before this Commission.

5 Under NRS 116.615, the Division administers the provisions of NRS 116. Under NRS  
6 116.750, the Division investigates violations of NRS 116 and the Commission has jurisdiction  
7 to take appropriate action against any person who commits a violation. The Division and the  
8 Commission have an interest in stopping violations of NRS 116. A board that looks out for the  
9 personal interests of a former board member above the interests of the association is  
10 violating NRS 116.3103. It is ironic that the motion to reconsider alleges misconduct on the  
11 part of the Commission members, but the only conflict of interest is between HERNANDEZ  
12 and the Association. The Division asks that this Commission not allow Mr. Boyack and his  
13 office to continue to promote the personal interests of HERNANDEZ to the detriment of the  
14 Association.

#### 15 IV. CONCLUSION

16 For all the foregoing reasons, the Division respectfully requests that Mr. Boyack and  
17 his firm be disqualified from representing the Association and HERNANDEZ in proceedings in  
18 front of this Commission.

19 DATED this 14th day of July, 2016.

20  
21 ADAM PAUL LAXALT  
Attorney General

22  
23  
24 By: 

25 MICHELLE D. BRIGGS  
Senior Deputy Attorney General  
555 E. Washington Ave. Ste 3900  
26 Las Vegas, Nevada 89101  
(702) 486-3420  
27 Attorneys for Real Estate Division  
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Office of the Attorney General  
555 E Washington Ave. Suite 3900  
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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 14th day of July, 2016, I served the foregoing MOTION TO DISQUALIFY RESPONDENTS' COUNSEL 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 1640 0000 6157 0132

*Michelle Lano*  
An Employee of the Office of the Attorney General

**EXHIBIT "A"**

**EXHIBIT "A"**

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Respondents.

DECLARATION OF DARIK FERGUSON

I, Darik Ferguson, make the following declaration:

1. I am the Chief of the Compliance/Audit Section of the Common-Interest Communities and Condominium Hotels section of the Nevada Real Estate Division.
2. On July 6, 2016, I emailed Marlina Short, the community manager for Anthem Highlands Community Association.
3. In my email to Ms. Short, I requested copies of all board minutes for June 2016 including executive sessions.
4. On July 6, 2016, Ms. Short emailed me draft copies of meeting minutes for a meeting of the board held on June 22.
5. The minutes provided by Ms. Short included the executive session.
6. Attached to this Declaration are true and correct copies of the minutes provided to me by Ms. Short.

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1 7. The redacted portions of the board's executive session do not relate to this matter.

2  
3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on July 12, 2016



DARIK FERGUSON

Office of the Attorney General  
555 E Washington Ave. Suite 3900  
Las Vegas, Nevada 89101

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# ANTHEM HIGHLANDS COMMUNITY ASSOCIATION

Board of Directors Meeting  
Wednesday, June 22, 2016 at 6:00PM  
Solera at Anthem Community Center  
2401 Somersworth Drive  
Henderson, NV 89044  
MINUTES

## CALL TO ORDER

President Capello called the meeting to order at 6 p.m. upon establishment of a quorum.

## ROLL CALL:

Frank Capello, President – PRESENT  
Mark West, Treasurer - PRESENT  
Ken Brensinger, Secretary – PRESENT  
Jill Levin, Director - PRESENT

Vice President - VACANT

## MANAGEMENT PRESENT:

Marlina Short, CMCA®, AMS®, PCAM®, Community Manager, FirstService Residential

**HOMEOWNER'S OPEN FORUM** – In accordance with NRS116.31083 this portion of the meeting is devoted to unit owners' comments and discussion of those items listed on the agenda directly. Comments are limited to three (3) minutes. Per NRS116.31068, the general substance of remarks made by unit owners during this time is shown as follows:

- Vacancy on the Board and the expenses the owner incurred being a candidate for the last election

## APPROVAL OF MINUTES

May 18, 2016 – A motion was made by Secretary Brensinger, seconded by President Capello to approve the minutes from the regular board meeting held on May 18, 2016 as presented. Motion carried unanimously.

May 25, 2016 – A motion was made by Secretary Brensinger, seconded by Treasurer West to approve the minutes from the organizational meeting held on May 25, 2016 as presented. Motion carried unanimously.

**LANDSCAPE REPORT** – The Board reviewed the Landscape Report as submitted by Brightview Landscape.

## APPROVAL OF FINANCIALS

April 2016 – A motion was made by Treasurer West, seconded by President Capello to approve the April 2016 financials as presented. Motion carried unanimously.

**REVIEW / APPROVE BAD DEBT WRITE OFF** – None.

## PENDING LITIGATION / LEGAL MATTERS

Advanced Lighting Update – Management provided the update new LED test bulbs will be installed on June 27, 2016.

Case No 2-15-cv01692-JAD-VOF, Fannie Mae vs. Anthem Highlands – Management provided the update there has been no activity in this case since the filing of cross claims and will be continued to be monitored for activity.

Legal Matters Update – The Board reviewed the legal matters update letter as submitted by Ted Boyack, Association General Counsel.

## COMMITTEE REPORTS

Haddington and Edinburgh Budget Working Group Call for Volunteers Letter – A motion was made by Treasurer West, seconded by President Capello to table the Haddington and Edinburgh budget working group call for volunteer's letter. Motion carried unanimously.

## ACTION LIST REVIEW / MANAGEMENT REPORTS

Action List – The Board reviewed the action list as submitted by FirstService Residential.

## UNFINISHED BUSINESS

Commercial Insurance Proposals – A motion was made by Treasurer West, seconded by Secretary Brensinger to approve the proposal from LaBarre/Oksnee Insurance for the annual premium of \$18,214. The motion carried unanimously.

Monthly lighting maintenance contract proposals – A motion was made by President Capello, seconded by Director Levin to approve Desert Clark lighting maintenance quarterly contract. President Capello amended his motion to table the lighting maintenance contract proposals, seconded by Treasurer West. Motion carried unanimously.

Roving security patrol proposals – A motion was made by President Capello, seconded by Treasurer West to reject roving security patrol for 2016 fiscal year. Motion carried unanimously.

Lighting resolution for Haddington and Edinburgh – A motion was made by President Capello, seconded by Treasurer West to table the lighting resolution for Haddington and Edinburgh. Motion carried unanimously.

Haddington four square and mailbox stone enhancement proposals and letter – A motion was made by Treasurer West, seconded by Secretary Brensinger to approve sending the letter to Haddington residents for the four square and mailbox stone enhancement proposals. Treasurer West amended his motion to table the Haddington four square and mailbox stone enhancement proposals and letter, seconded by Secretary Brensinger. Motion carried unanimously.

Geotech Consultant update on Bicentennial Road Improvements – No update at this time.

#### **NEW BUSINESS**

Board member orientation workshop date and time – A motion was made by President Capello, seconded by Director Levin to approve a Board member orientation workshop with date and time to be determined. Motion carried unanimously.

If a vacancy on the Board occurs by way of resignation prior to the final Commission order being issued in case #2015-2155, the Board will appoint the candidate with the next highest votes in the last election to fill the vacancy until an election can take place. This action is being taken to make sure the Board has 5 members at all times. – A motion was made by President Capello, seconded by Secretary Brensinger to remove the item if a vacancy on the Board occurs by way of resignation prior to the final Commission order being issued in case #2015-2155, the Board will appoint the candidate with the next highest votes in the last election to fill the vacancy until an election can take place. Motion carried unanimously.

Ratification of action without a meeting to vote to hire security patrol for 4<sup>th</sup> of July for four hours to make sure illegal fireworks are not being set off in the Community – A motion was made by President Capello, seconded by Secretary Brensinger to acknowledge action without a meeting to vote to hire security patrol for 4<sup>th</sup> of July for four hours to make sure illegal fireworks are not being set off in the Community. Motion carried unanimously. A motion was made by Treasurer West, seconded by Director Levin to reject hiring a security patrol for 4<sup>th</sup> of July for four hours to make sure illegal fireworks are not being set off in the Community. Motion carried unanimously.

Ratification of Action without a meeting to vote to send a letter to the attorney for the foreclosure case on Strichen Avenue requesting all documentation and a fee review of the charges. If the fees are not reduced then the association will file a dispute with the State Bar of Nevada – A motion was made by President Capello, seconded by Treasurer West to acknowledge action without a meeting to vote to send a letter to the attorney for the foreclosure case on Strichen Avenue requesting all documentation and a fee review of the charges. If the fees are not reduced then the association will file a dispute with the State Bar of Nevada. Motion carried unanimously. A motion was made by President Capello, seconded by Treasurer West to approve sending a letter to the attorney for the foreclosure case on Strichen Avenue requesting all documentation and a fee review of the charges. If the fees are not reduced then the association will file a dispute with the State Bar of Nevada. Motion carried unanimously.

**NEXT MEETING DATE(S)** – The next board meeting is scheduled for Wednesday, July 27, 2016 at 6:00 p.m. at Solera at Anthem (with executive session at 4:30 p.m.)

**HOMEOWNERS FORUM** – This open forum session is reserved for general homeowner comments. General comments / subject matter was as follows:

- Postponement of Haddington and Edinburgh budget volunteers letter
- Concerns regarding not having 5 Board members
- June Commission hearing results and costs to the Association

- Homeowner assessment statements not being received for July
- Board meeting agendas not easily found on community website; send via email instead of postal service
- Association attorney representing Anthem Highlands and Charles Hernandez conflict of interest
- Landscape issues in Inverness common areas
- Disappointment in landscape vendor not attending the Board meeting
- Mailbox stone enhancement should have been done by developer
- Landscape contract bids and renewal
- Late fee waivers
- Light bulbs not matching in street lamps
- Audience unable to hear the meeting
- Congratulations to Mark West and Jill Levin on the election
- Legal costs to the community
- Board fiduciary duties
- Suggested layout change of the Board table configuration and audience chairs

**ADJOURNMENT** – There being no further business to discuss, a motion was made by President Capello, seconded by Treasurer West to adjourn the meeting at 7:28 p.m. Motion carried unanimously.

Respectfully Submitted By:

Marlina Short, CMCA, AMS, PCAM FirstService Residential

Accepted By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

**DRAFT**

# ANTHEM HIGHLANDS COMMUNITY ASSOCIATION

## Executive Session

Wednesday, June 22, 2016 at 4:30PM

Solera at Anthem Community Center

2401 Somersworth Drive, Henderson, NV 89044

## MINUTES

*Executive Session is not open to homeowners unless called to a hearing.*

### CALL TO ORDER AND ESTABLISHMENT OF A QUORUM

President Capello called the meeting to order at 4:30 p.m. upon establishment of a quorum.

### ROLL CALL:

Frank Capello, President – PRESENT

Mark West, Treasurer – PRESENT

Ken Brensinger, Secretary – PRESENT

Jill Levin, Director – PRESENT

Vice President – VACANT

### OTHERS PRESENT

Marlina Short, CMCA®, AMS®, PCAM®, Community Manager, FirstService Residential

Ted Boyack, Association General Counsel, Boyack, Orme & Taylor

### APPROVAL OF MINUTES

A motion was made by Secretary Brensinger, seconded by President Capello to approve the minutes from the executive session on May 18, 2016 as presented. Motion carried unanimously.

President Capello spoke up at this time to move agenda item 1-legal Matters for this meeting to the beginning of the Executive Session due to time constraints of the Association Attorney.

### LEGAL MATTERS

Advanced Lighting – [REDACTED]

Chapter 40 against Lennar and Pulte [REDACTED]

Bank of America vs. Anthem Highlands (AZ11638) – Notice of Entry of order Granting Motion for Voluntary Dismissal of Action was filed on 4/23/16 with the court. On May 26, 2016, the case was vacated/closed.

Bank of America vs. Heritage Square South HOA et al (A12670230B) – [REDACTED]

Joseph Decker, NRED, Department of Business & Industry, State of Nevada vs. AHCA, Pennie Puhk, James Lauth, and Charles Hernandez (2015-291) – The complaint has been postponed to the November 15 – 17, 2016 Commission Hearing. The response to the complaint was filed on April 25, 2016.

Joseph Decker, NRED, Department of Business & Industry, State of Nevada vs. AHCA, Robert Stern, Charles Hernandez, and Ronnie Young (2015-3615; 2015-2155; 2015-3100; 2015-2207) – The cases were heard before the Commission on June 7 – 9, 2016. The Commission rendered the following decision:

The Commission found one out of seven counts against Mr. Hernandez for negligent conduct and assessed \$4,023 to Mr. Hernandez in costs for the hearing. No fines were imposed against Mr. Hernandez. All Board members are required to attend education classes within one year. Mr. Hernandez is to be removed from the Board and is

prohibited from serving for five years. The Commission also ordered a special election to take place, to fill the vacant position.

FNMA vs AHCA (215CV01692JADVCF) - [REDACTED]

Elsinore LLC vs AHCA (A13685833C) - [REDACTED]

RECESS – A motion was made by Treasurer West, seconded by President Capello to recess the executive session at 5:58 p.m. and proceed with the Regular Session meeting. Motion carried unanimously.

CALL TO ORDER – President Capello called the meeting to order to resume the Executive Session meeting at 7:41 p.m.

HEARINGS –

1	[REDACTED]	Landscaping-tree appears stressed - NOW IN COMPLIANCE
2	[REDACTED]	Landscaping-missing tree- Granted 30 day extension to cover with turf per Board with management to verify landscape coverage.
3	[REDACTED]	Parking-commercial vehicle in view - NOW IN COMPLIANCE
4	[REDACTED]	Landscaping-garbage and debris in yard – Still in violation as of 6/22/16
5	[REDACTED]	Signage for sale-prohibited - NOW IN COMPLIANCE Weeds - NOW IN COMPLIANCE
6	[REDACTED]	Maintenance/Stucco damage – Granted 2 week extension per owner's request.
7	[REDACTED]	Landscaping-rock landscaping-barren – Still in violation as of 6/22/16
8	[REDACTED]	ARC-general improvements-no approval – Still in violation as of 6/22/16.
9	[REDACTED]	ARC-general improvements-no approval – Owner requested to move hearing to July to appear in person.
10	[REDACTED]	Landscaping-replace dead shrubs – NOW IN COMPLIANCE
11	[REDACTED]	Landscaping-weeds-all areas – Still in violation as of 6/22/16
12	[REDACTED]	Landscaping-rake leaves and remove debris – NOW IN COMPLIANCE
13	[REDACTED]	Landscaping-replace dead trees-Granted 30 day extension to cover with turf per owner's request with management to verify landscape coverage.

\*\*A motion was made by Treasurer West, seconded by President Capello to proceed in accordance with the adopted enforcement policy if the items listed on the hearing list shown as *still in violation* by fining the homeowner \$100, providing 14 days for compliance then fining \$100/week until compliance occurs. Motion carried unanimously.

HOMEOWNER CORRESPONDENCE / REQUESTS / DISPUTES

[REDACTED] The homeowner appealed in person to request a waiver of the entirety of the fine account and to clarify where to park his utility service vehicle. After reviewing the information, a

motion was made by Treasurer West, seconded by Secretary Brensinger to waive the initial fine and continuing fines in the amount of \$700 and clarify the utility service vehicle be parked in the driveway in the outcome of hearing letter. Motion carried unanimously.

[REDACTED] - This homeowner is requesting the removal of \$700 in violation fines pertaining to the closed violation of wall leaching irrigation damage. After reviewing the information, a motion was made by Treasurer West, seconded by President Capello to approve the waiver of \$600 in fines and uphold the initial \$100 fine. Motion carried unanimously.

[REDACTED] - The homeowner is requesting a waiver of the \$450 in violation fines pertaining to the closed violation of storing trash containers from view that were levied by the previous management company. After reviewing the information, a motion was made by Treasurer West, seconded by President Capello to approve a waiver of \$450 in fines. Motion carried unanimously.

[REDACTED] - This homeowner is requesting a waiver of \$1950 in violation fines levied in 2011 and 2012. After reviewing the information, a motion was made by President Capello, seconded by Treasurer West to approve a waiver of 75% of the fines in the amount of \$1462.50 upon verification with Red Rock Financial Services the collection costs were paid by the owner. Motion carried unanimously.

[REDACTED] - The owner is requesting a variance for driveway gate height extension of 16 inches. President Capello directed management to remove this item from the agenda as the Architectural Review Committee previously approved this item.

**NEW BUSINESS / OTHER** - None at this time.

**REPORTS / REVIEW**

**Review of Non-Compliance Log** - The Board was provided with a copy of the non-compliance log reflecting all open violations at this time for their review and information. The Association is following its adopted Enforcement Policy at this time. No action required.

**Review of ARC Log / Submittals** - The Board was provided with a copy of the ARC log reflecting all ARC submittals & ARC Committee decisions for their review and information. No action required.

**Review of Call Log** - The Board was provided with a copy of the call log. No action required.

**Review of Delinquency Report(s)** - The Board was provided with a copy of the delinquency report for their review and information. No action required.

**REVIEW COLLECTION REPORTS** - Current collection status reports were provided to the Board for their review and information from AMS, RRFS and their current collection company HOA Services.

**BAD DEBT WRITE-OFFS** - None at this time.

**ADJOURNMENT** - A motion was made by Treasurer West, seconded by President Capello to adjourn the meeting at 8:53 p.m. Motion carried unanimously.

Respectfully submitted by:

Marlina Short, CMCA, AMS, PCAM FirstService Residential

Approved By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

**EXHIBIT “B”**

**EXHIBIT “B”**

## Michelle D. Briggs

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**From:** Frank Capello <CapelloF@aol.com>  
**Sent:** Tuesday, July 12, 2016 3:06 PM  
**To:** Michelle D. Briggs  
**Cc:** capellof; Marlina Short  
**Subject:** Order concerning Anthem Highlands Special Election

Dear Ms Briggs

I wanted to touch base with you on the action the board has taken to comply with the order from the Commission regarding the Special Election. As required by the statute and due to the significant cost of holding this election the board has sought three (3) proposals from vendors that will print and mail the nomination forms and packets. We are also in the process of getting a proposal from the ballot box to oversee the election process. These proposals will be opened at the July 27th meeting as required by the statute. Once the board approves the vendor at the meeting it will immediately begin the election process.

It is my belief that we are in compliance with the Commission order, but wanted to seek your opinion as well, please advise.

Frank Capello  
Present Anthem Highlands  
Retired U.S. Marine Corps  
Vietnam combat veteran