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; ROBERT STERN; CHARLES HERNANDEZ; and RONNIE YOUNG, Respondents.	**Case Nos. 2015-3615; 2015-2155; 2015-3100; 2015-2207** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

FILED
JUN 15 2016
NEVADA COMMISSION OF COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry, State of Nevada (the "Commission"), during a regular agenda on June 7, 8 and 9, 2016, at the Grant Sawyer Building, 555 E. Washington Ave., Rm. 4412, on the 7th and 8th and 2501 E. Sahara Ave., 2nd Floor conference room, on the 9th, Las Vegas, Nevada (the "Hearing"). Respondents Charlie Hernandez and Anthem Highlands Community Association (the "Association"), represented by Edward Boyack, Esq. of the law firm of Boyack, Beck and Taylor, appeared at the Hearing. The Commission previously accepted and approved stipulated settlements for Respondents Ronnie Young and Robert Stern. Michelle D. Briggs, Senior Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

After hearing the allegations, the respective arguments, and having considered the evidence introduced by the parties and being fully advised, the Commission enters the following Findings of Fact, Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 116, the Commission has legal jurisdiction and authority over this matter.

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Las Vegas, NV 89101

FINDINGS OF FACT

The Commission, by a vote of 4 to 1, based upon the evidence presented during the Hearing, finds that by a preponderance of the evidence in the record the following facts have been proven.

1. The Association is a master association with approximately 1,549 homes.

2. The Association entered into an informal conference agreement with RESPONDENT ROBERT STERN dated February 20, 2014 ("ICA") to settle a number of intervention affidavits filed by the Association and RESPONDENT STERN.

3. In May 2014, the Association alleged a violation of the ICA by RESPONDENT STERN and filed a claim with the Division's referee program.

4. RESPONDENT STERN refused to agree to the referee process and the Association pursued a claim with the District Court in October 2014.

5. The Association's claim with the District Court sought declaratory relief as to the ICA terms and requirements, but also alleged a claim for fraud against RESPONDENT STERN.

6. RESPONDENT STERN filed a few intervention affidavits against the Association after the ICA, including: one for not complying with NRS 116.31088 in the filing of the civil action; and one for the board using Association funds for a trip to Carson City to meet with legislators during the legislative session.

7. The civil case was dismissed and ordered to go to the referee program.

8. The Division investigated the affidavit and issued a letter of instruction to the Association for failing to comply with NRS 116.31088.

9. The Division also investigated the issue of the use of Association funds and issued a letter of instruction to the board advising them that a trip to the Nevada Legislature is not a common expense.

10. RESPONDENTS STERN and HERNANDEZ ran for and were elected to the board on May 27, 2015, also elected to the board at this time was Jody Fassette and Ken Brensinger. RESPONDENT YOUNG was already on the board.

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11. On or about May 31, 2015, Pennie Puhek contacted Ms. Fassette to discuss Association issues.

12. Ms. Puhek was part of the investigations the Division concluded with a letters of instruction and was a member of the Association's board when issues addressed by the ICA were originally brought to the Division and has a long history of conflict with RESPONDENT STERN.

13. The Association was to consider a memorandum of understanding with a sub-association, Earlstone Homeowners Association ("Earlstone").

14. Ms. Puhek is a member of the board for Earlstone.

15. Ms. Fassette agreed to meet with Ms. Puhek on June 3, 2015 in a public place.

16. RESPONDENT HERNANDEZ and board member Brensinger were also present, but Ms. Fassette was not told prior that they would be there.

17. Ms. Puhek, with Mr. Brensinger and HERNANDEZ, tried to convince Ms. Fassette to vote in favor of the Earlstone memorandum.

18. Ms. Fassette was concerned about the terms of the memorandum and wanted to see supporting documentation, so she could make an informed decision.

19. At the meeting later on June 3, board members RESPONDENTS STERN, HERNANDEZ and YOUNG, as well as Ms. Fassette and Mr. Brensinger were present.

20. At the meeting, RESPONDENT HERNANDEZ made a motion to approve First Service as the community manager effective September 1, subject to a committee of the board to interview and approve a manager. The motion also included approval of the Earlstone memorandum.

21. The motion failed.

22. Immediately after the June 3rd meeting Mr. Brensinger and RESPONDENT HERNANDEZ verbally resigned, but never submitted a resignation in writing and continued to act as members of the board.

23. On June 5, Ms. Puhek emailed the Association's board members threatening legal action if the Earlstone memorandum is not approved.

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24. An emergency meeting was called for June 12, 2015 to discuss and take action on a new management contract.

25. Ms. Fassette emailed RESPONDENT HERNANDEZ, the board president, on June 10 after she received the revised agenda for the emergency meeting.

26. The original agenda had not included the Earlstone memorandum, but the revised agenda included the memorandum and tied it to the approval of the management contract.

27. Ms. Fassette's email states:

> I do not believe this falls under the emergency meeting criteria as the Earlstone Memorandum is not an emergency.

28. Ms. Fassette went on to explain her issues with the Earlstone memorandum in detail and asked for clarification.

29. Ms. Fassette also emailed the Association's attorney with her issues regarding the Earlstone memorandum.

30. Ms. Fassette claims RESPONDENT HERNANDEZ told her the main issue was the management agreement and that he would remove the Earlstone memorandum from the agenda for the emergency meeting.

31. RESPONDENT HERNANDEZ did not remove the Earlstone memorandum from the agenda, and instead phoned into the emergency meeting forcing Ms. Fassette to chair the meeting.

32. Ms. Fassette was not comfortable voting in favor of the Earlstone memorandum.

33. During the meeting, the board created a committee consisting of RESPONDENT HERNANDEZ and Ms. Fassette to interview and hire a manager.

34. Ms. Puhek is heard throughout the meeting yelling for a point of order as is RESPONDENT STERN.

35. RESPONDENT STERN objects to having the Earlstone memorandum addressed as it is not an emergency.

36. Mr. Brensinger says RESPONDENT STERN is not recognized by the chair

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which seems to change from RESPONDENT HERNANDEZ to Ms. Fassette at various times.

37. The meeting is chaotic and ultimately the board continued the matter of the Earlstone memorandum.

38. As a result of the June 12, 2015 meeting, Jody Fassette submitted her resignation citing as her reason "threats, litigation intimidation from more than one individual, retaliatory actions for voting/not voting a certain way and public defaming."

39. By email dated June 18, 2015, Ms. Fassette notified RESPONDENT HERNANDEZ that she wished to finish her term on the board.

40. RESPONDENT HERNANDEZ initiated a few letters from the Association's attorney regarding Ms. Fassette's resignation and the effectiveness of it.

41. On June 30, RESPONDENT STERN posted to the Association's community blog that he "will not be attending any board meetings until it is absolutely clear that competent armed security is in place."

42. On July 2, RESPONDENT STERN posted to the same blog that "trained professionals with the necessary permits and training have decided that they will attend the open board meetings to provide security." He goes on to say he will attend the July 22 meeting of the board.

43. By letter dated July 8, Ms. Fassette states that her resignation was given under duress and explains the situation she felt she was in.

44. By email dated July 19 to other board members, Ms. Fassette and Ms. Puhek, RESPONDENT STERN states:

> The clock is set and the final reel is unwinding. Get the popcorn and snow cones. It is time to really protect the children and their parents from the enemies within the Community. Most of the audience has figured it out and fearful that the evil doers may prevail. Midsummers Nightmare. Coming to your local theater July 22.

45. RESPONDENT HERNANDEZ refused to allow Ms. Fassette to return to her position on the board, so RESPONDENT STERN filed an intervention affidavit against him.

46. RESPONDENT HERNANDEZ refused to attend an informal conference with the

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Ombudsman's office to resolve the complaint.

47. At the July 22 meeting, several items were postponed and several items failed due to split votes with only 4 board members.

48. RESPONDENT STERN made a motion to terminate the Association's attorney as general counsel.

49. The Association's attorney represented the Association against RESPONDENT STERN in the ICA matter referred back to the referee program and was not yet concluded.

50. RESPONDENT YOUNG supported the motion.

51. The motion passed with a "yes" vote from Mr. Brensinger who tried to take back his vote saying he was confused about the motion and an argument ensued.

52. The same motion was brought up for a second vote and failed.

53. RESPONDENT STERN asserted Mr. Brensinger was not allowed to take back his vote and treated the second vote as a motion to reconsider.

54. RESPONDENT HERNANDEZ, chairing the meeting, did not call for a vote regarding Ms. Fassette's request to return to her seat on the board and no action was taken to fill her vacancy.

55. By email dated September 9, Ms. Fassette asks RESPONDENT HERNANDEZ and Mr. Brensinger to allow her to come back to the board as "a four person board is a detriment to this community."

56. The Association had a meeting scheduled for September 23, but the meeting did not occur due to a lack of a quorum with RESPONDENTS STERN and YOUNG not in attendance.

57. By letter dated October 5, the Division notified RESPONDENT HERNANDEZ that all efforts need to be taken to put an end to the board's current impasse.

58. Also by letter dated October 5, RESPONDENT STERN was notified that while the intervention affidavit filed against him for failing to attend board meetings was being closed due to the complainant's refusal to attend an informal conference, the Division reserved the right to re-open the case if RESPONDENT STERN continued to fail to attend future board

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meetings.

59. On or about October 6, 2015, Mr. Brensinger and RESPONDENT HERNANDEZ signed an agreement whereby they would agree to bring Ms. Fassette back to the board on certain conditions.

60. Ms. Fassette also signed the agreement, but RESPONDENT STERN and YOUNG did not.

61. RESPONDENT STERN requested different terms of Ms. Fassette's return to the board.

62. The board meetings scheduled for October 28, November 16, and December 9 did not take place due to a lack of a quorum as RESPONDENTS STERN and YOUNG did not attend.

63. A meeting scheduled for December 28, requested by RESPONDENT STERN with the agenda set by RESPONDENT STERN, did not happen due to a lack of a quorum with RESPONDENTS STERN and YOUNG not in attendance.

64. The board has not met since the meeting on July 22, 2015.

65. The board has not addressed owner violations or adopted a budget for 2016.

66. The Association's fiscal year begins January 1.

CONCLUSIONS OF LAW

Based on the foregoing factual findings, the Commission concludes by unanimous vote that the following violations of law occurred:

67. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the Association by committing an act or omission which amounts to incompetence, negligence or gross negligence.

ORDER

The Commission being fully apprised in the premises, and good cause appearing to the Commission, by a vote of 3 to 2, ORDERS as follows:

68. RESPONDENT HERNANDEZ shall be deemed removed from the board of the

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Association as of June 9, 2016.

69. RESPONDENT HERNANDEZ shall not serve as a board member of any homeowners' association in the State of Nevada for a period of not less than 5 years from June 9, 2016.

70. RESPONDENT HERNANDEZ shall personally pay an administrative fine consisting of Division costs of $4,023.00 to be paid within 90 days of the date of this Order.

71. RESPONDENT ASSOCIATION shall require that all current board members and the board member who is elected to replace RESPONDENT HERNANDEZ take "The Board Leadership Development Workshop" course offered by the Nevada Chapter of the Community Associations Institute in Las Vegas within 6 months, if the class is offered, but in no event later than one year from the date of this Order.

72. RESPONDENT ASSOCIATION shall immediately commence a special election in compliance with all requirements of Chapter 116 for the replacement of RESPONDENT HERNANDEZ.

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73. The Division may institute debt collection proceedings for failure to timely pay the total fine. Further, if collection goes through the State of Nevada, then RESPONDENT HERNANDEZ shall also pay the costs associated with collection.

DATED this 15th day of June, 2016.

COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS DEPARTMENT OF BUSINESS & INDUSTRY STATE OF NEVADA

By: _____
SCOTT SIBLEY, CHAIRMAN

Submitted by:
ADAM PAUL LAXALT
Attorney General

By: _____
MICHELLE D. BRIGGS
Senior Deputy Attorney General
555 E. Washington Ave. Ste 3900
Las Vegas, Nevada 89101
(702) 486-3420
Attorneys for Real Estate Division

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101