

1 **BEFORE THE COMMISSION FOR COMMON-INTEREST**
2 **COMMUNITIES AND CONDOMINIUM HOTELS**
3 **STATE OF NEVADA**

4 JOSEPH (J.D.) DECKER, Administrator,
5 REAL ESTATE DIVISION, DEPARTMENT
6 OF BUSINESS & INDUSTRY, STATE OF
7 NEVADA,

8 Petitioner,

9 vs.

10 ANTHEM HIGHLANDS COMMUNITY
11 ASSOCIATION; ROBERT STERN;
12 CHARLES HERNANDEZ; AND RONNIE
13 YOUNG,

14 Respondents.

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

FILED

APR 29 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS 

15 **MOTION FOR PRE-HEARING CONFERENCE TO BRING A MORE DEFINITE**
16 **COMPLAINT OR, IN THE ALTERNATIVE, TO CLARIFY THE COMPLAINT**

17 This Motion is submitted by BOYACK ORME & TAYLOR, counsel for the Respondent
18 ANTHEM HIGHLANDS COMMUNITY ASSOCIATION, and counsel for Respondent CHARLES
19 HERNANDEZ in his capacity as a Board Member for Anthem (the "Respondents"). As of the time
20 of this Motion, Respondent ROBERT STERN has indicated that he retained separate counsel to
21 represent him in this matter. Respondent RONNIE YOUNG has been dismissed from this action by
22 way of a Stipulation and Order for Partial Settlement of Disciplinary Action filed on February 2,
23 2016.

24 Respondents hereby bring this Motion to request that a Pre-Hearing Conference be conducted
25 in order to define with specificity the allegations in the Complaint for Disciplinary Action and Notice
26 of Hearing ("Complaint"). The allegations therein are too indefinite, ambiguous, and lacking in
27 specificity in order to prepare adequately for the hearing scheduled for June 7-9, 2016. Additionally,
28 Respondents will be filing, contemporaneous to this Motion, a Motion to Dismiss the Complaint on
various theories. As a dismissal of the Complaint would obviate the need for the June hearing, a pre-

1 hearing conference to decide on the Motion to Dismiss is warranted as well.

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3 FACTS

4 This Motion is brought in response to the Complaint, filed December 31, 2015. The
5 Complaint concerns four cases: 2015-3615, 2015-2155, 2015-3100, and 2015-2207. Respondents
6 filed their Response to the Complaint on or about February 1, 2016. In the Response, Respondents
7 informed the Real Estate Division, Department of Business & Industry as Petitioner ("Division") that
8 the allegations were so vague and ambiguous as to deny Respondents the ability to respond
9 coherently due to lack of specific allegations of misconduct. Furthermore, the Response highlighted
10 the effect of such vague and ambiguous allegations to frustrate Respondents' ability to prepare their
11 defense before the Commission for Common-Interest Communities and Condominium Hotels
12 ("Commission"). Finally, the Response highlighted the Division's failure to tie *any* of the alleged
13 violations contained in the Complaint to the purported Factual Allegations, thus leaving
14 Respondents' with an inability to investigate any of the circumstances that may indicate which
15 factual allegations apply to which allegations of violations.

16 Specifically, the Complaint raises seven alleged "Violations of Law," but fails to cite any
17 circumstances, acts, or omissions that underlie or support the supposed violations. Each violation
18 alleged contains vague language only suggesting a violation, such as Respondents "knowingly and
19 willfully violated [the NRS] by failing to act in good faith and the best interest of the Association
20 by committing an act or omission which amounts to incompetence, negligence or gross negligence,"
21 or that Respondents "knowingly and willfully violated [the NRS] by failing to act in good faith and
22 in the best interests of the Association by failing to cause the Association to hold meetings of the
23 executive board with such frequency as to properly and efficiently address the affairs of the
24 Association." *See* Complaint, 7-8.

25 No facts or circumstances are provided to demonstrate either Respondents' knowledge of
26 their unlawful acts or omissions, or that such alleged unlawful acts or omissions were done willfully.

1 No facts or circumstances are provided to demonstrate that Respondents' alleged unlawful acts or
2 omissions amounted to incompetence, negligence, or gross negligence.

3
4 **LEGAL STANDARD**

5 The Commission has the authority, under NAC 116.557 - Prehearing conferences, to decide,
6 either "upon its own motion or a motion made by a party of record," to hold a pre-hearing
7 conference. The substance of this pre-hearing conference may involve any of the following purposes:

- 8 (a) Formulate or simplify the issues involved in the hearing.
9 (b) Obtain admissions of fact or any stipulation of the parties.
10 (c) Arrange for the exchange of proposed exhibits or prepared expert
11 testimony.
12 (d) Identify the witnesses and the subject matter of their expected
13 testimony and limit the number of witnesses, if necessary.
14 (e) Rule on any pending prehearing motions or matters.
15 (f) Establish a schedule for the completion of discovery.
16 (g) Establish any other procedure that may expedite the orderly conduct
17 and disposition of the proceedings or settlements thereof.
18 NAC 116.557(1).

19 A pre-hearing conference in this matter would accomplish multiple aims as set forth under
20 NAC 116.557. First, it would "formulate or simplify the issues involved in the hearing" by clarifying
21 the allegations and allowing the Respondents to present a cogent, organized defense. If the
22 allegations are specified, and the Respondents are able to determine what, if any, defenses apply to
23 the factual allegations, then the parties may be able to "Obtain admissions of fact or any stipulations"
24 designed to expedite the formal hearing process. In the very least, the parties would be able to
25 "Arrange for the exchange of proposed exhibits or prepared expert testimony," if any. The
26 Commission could also "Establish any other procedure that may expedite the orderly conduct and
27 disposition of the proceedings or settlements thereof."

28 As a final consideration, as put forth above, the Respondents are filing a Motion to Dismiss
the Complaint, contemporaneous with this Motion for a pre-hearing conference. This
contemporaneous Motion to Dismiss could be ruled on as a "pending prehearing motion[] or
matter[]," and could therefore eliminate the need for the June hearing altogether if the Commission

1 is persuaded that a dismissal is appropriate.

2
3 CONCLUSION

4 Without a more definite Complaint, Respondents are unable to determine what it is exactly
5 that they are accused of doing. The appropriate relief is for the Commission to oversee a pre-hearing
6 conference, wherein more definite allegations can be formulated and the Respondents may then
7 respond appropriately through the normal adversarial process provided for in the June hearing.
8 Additionally, a pre-hearing conference is required to rule on Respondents' contemporaneous Motion
9 to Dismiss the Complaint.

10 Based on the foregoing, Respondents formally and respectfully request that the Commission
11 grant this Motion for a pre-conference hearing.

12 DATED this 28th day of April, 2016.

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14 BOYACK ORME & TAYLOR

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