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 MAR 24 2016 NEVADA COMMISSION OF COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING

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 notifies Respondents ANTHEM HIGHLANDS COMMUNITY ASSOCIATION, PENNIE PUHEK, JAMES LAUTH, and CHARLES HERNANDEZ (hereinafter, collectively "RESPONDENTS") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

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JURISDICTION AND NOTICE

1. During the relevant times mentioned in this complaint, RESPONDENTS PENNIE PUHEK, JAMES LAUTH, and CHARLES HERNANDEZ were directors of ANTHEM HIGHLANDS COMMUNITY ASSOCIATION (the "Association"), a homeowners' association located in Henderson, Nevada.

2. RESPONDENTS are subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and the Commission for Common-Interest Communities pursuant to the provisions of NRS 116.750.

FACTUAL ALLEGATIONS

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

4. In February 2014, the Association entered into an Informal Conference Agreement ("ICA") with a homeowner, Robert Stern, to settle legal matters and resolve approximately 10 intervention affidavits filed by Mr. Stern against the Association.

5. In May 2014, the Association alleged Mr. Stern violated terms of the ICA.

6. In October 2014, the Association filed a civil action against Mr. Stern with the District Court regarding the ICA.

7. In January 2015, the Division received an intervention affidavit filed by a homeowner, Robert Stern, against the Association and its board members.

8. The intervention affidavit alleged Mr. Stern was the victim of retaliation based on disparaging remarks posted by RESPONDENT PENNIE PUHEK on a community blog.

9. The posts were made on a social networking site for neighborhoods called Nextdoor.

10. On or about January 16, 2015, Mr. Stern posted an announcement of a book signing for a book he wrote entitled, "HOA Wars: What Happens in Vegas Can Happen Anywhere."

11. RESPONDENT PUHEK commented to Mr. Stern's posting as follows:

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> You are pathetic and shameless. You have terrorized the community and its last two management companies, so you can make a buck. I am asking all homeowners in Anthem Highlands to help finally get rid of this cancer and boycott anything he does or sells and make sure you vote against him and anyone else he supports in upcoming Board elections. He is trying to write another book at our associations expense. His primary residence is North Carolina, but he comes back to Las Vegas during election time to terrorize our community so he can write more books. Please mark your calendars for the next Board meeting in February to come find out what you can do to get rid of pure evil.

12. In another comment, RESPONDENT PUHEK states that Mr. Stern filed a number of complaints against the Association with the Division, and that the "state shut him down by basically dismissing his petty complaints," even though a large portion of Mr. Stern's complaints were resolved as part of the ICA settlement.

13. Being aware of the long history the Association has with Robert Stern as well as the pending litigation over the ICA, the Division's Administrator met with board members RESPONDENT PUHEK and RESPONDENT HERNANDEZ to discuss this and other pending matters.

14. RESPONDENT PUHEK was hostile and argumentative when the Administrator expressed concerns over her posts, and had to be asked to leave.

15. The Administrator informed RESPONDENT HERNANDEZ that the Association and other board members would not be included in the investigation if they provided a statement to the Division that they did not condone RESPONDENT PUHEK'S actions.

16. Instead of disavowing RESPONDENT PUHEK'S posts, RESPONDENT HERNANDEZ, as president of the Association, informed the Division that the Association does not have the authority to censure RESPONDENT PUHEK.

17. During the Division's investigation of the matter, the Association provided an affidavit from RESPONDENTS HERNANDEZ and LAUTH, and another board member Ronnie Young stating that "the board had no business or authority to censure her free speech rights as a private citizen."

18. Board Member Ronnie Young later recanted his affidavit and provided an

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affidavit against RESPONDENT PUHEK'S conduct.

VIOLATIONS OF LAW

19. RESPONDENT PUHEK knowingly and willfully violated NRS 116.31183 by posting disparaging comments on a community website about a unit owner who had complained about the Association multiple times.

20. RESPONDENT PUHEK knowingly and willfully violated NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best interests of the Association by acting for reasons of self-interest, gain, prejudice, or revenge when she posted disparaging comments about a unit owner on a community website.

21. RESPONDENT PUHEK 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 when she posted disparaging comments about a unit owner on a community website.

22. RESPONDENT PUHEK knowingly and willfully violated NRS 116.3103 (through NAC 116.405(4)) by failing to act in good faith and in the best interests of the Association by disclosing confidential information relating to an owner's primary residence on a community website.

23. RESPONDENTS HERNANDEZ and LAUTH knowingly and willfully violated NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best interests of the Association by acting for reasons of self-interest, gain, prejudice, or revenge by failing to disavow the actions of RESPONDENT PUHEK and placing the Association at risk for liability.

DISCIPLINE AUTHORIZED

Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS 116.790 the Commission has discretion to take any or all of the following actions:

1. Issue an order directing RESPONDENTS to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.

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2. Issue an order directing RESPONDENTS to take affirmative action to correct any conditions resulting from the violation.
3. Impose an administrative fine of up to $1,000 for each violation by RESPONDENTS.
4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the Association, such RESPONDENTS may be removed from his/her position as a director and/or officer.
5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.
6. Require the BOARD MEMBERS to hire a community manager who holds a certificate.
7. Require RESPONDENTs to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.
8. Take whatever further disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above. If the Commission finds that the RESPONDENTS knowingly and willfully violated the provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be personally liable for all fines and costs imposed.

NOTICE OF HEARING

PLEASE TAKE NOTICE, that a disciplinary hearing has been set to consider this Administrative Complaint against the above-named RESPONDENTS in accordance with Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116 and 116A of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE on June 7-9, 2016 beginning at 9:00 a.m. each day or until such time as the Commission concludes its business. **The Commission meeting on June 7 and 8, 2016, will be located at the Grant Sawyer Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada 89101, with videoconferencing at the Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada 89701. The Commission meeting on June 9, 2016, will be located at the Department of**

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Business and Industry, 2501 E. Sahara Avenue, 2nd Floor Conference Room, Las Vegas Nevada 89104, with videoconferencing to the Department of Business and Industry, Director's Office, 1830 East College Parkway, Suite 100, Carson City, Nevada 89706.

STACKED CALENDAR: Your hearing is one of several hearings that may be scheduled at the same time as part of a regular meeting of the Commission that is expected to take place on June 7-9, 2016. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the complaint were true. If you need to negotiate a more specific time for your hearing in advance because of coordination with out of state witnesses or the like, please call Claudia Rosolen, Commission Coordinator, at (702) 486-4606.

YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an open meeting under Nevada's open meeting law, and may be attended by the public. After the evidence and arguments, the commission may conduct a closed meeting to discuss your alleged misconduct or professional competence. A verbatim record will be made by a certified court reporter. You are entitled to a copy of the transcript of the open and closed portions of the meeting, although you must pay for the transcription.

As a RESPONDENT, you are specifically informed that you have the right to appear and be heard in your defense, either personally or through your counsel of choice. At the hearing, the Division has the burden of proving the allegations in the complaint and will call witnesses and present evidence against you. You have the right to respond and to present relevant evidence and argument on all issues involved. You have the right to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant to the issues involved.

You have the right to request that the Commission issue subpoenas to compel witnesses to testify and/or evidence to be offered on your behalf. In making this request, you may be required to demonstrate the relevance of the witness' testimony and/or evidence.

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Other important rights and obligations, including your obligation to answer the complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS Chapter 233B.

Note that under NAC 116.575, not less than five (5) working days before a hearing, RESPONDENT must provide to the Division a copy of all reasonably available documents that are reasonably anticipated to be used to support his position, and a list of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to provide any document or to list a witness may result in the document or witness being excluded from RESPONDENTS' defense. The purpose of the hearing is to determine if the RESPONDENTS have violated the provisions of Chapter 116, and to determine what administrative penalty is to be assessed against RESPONDENT.

DATED this 24 day of March, 2016.

REAL ESTATE DIVISION
DEPARTMENT OF BUSINESS & INDUSTRY
STATE OF NEVADA

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