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. JEFFREY ALLAN FREDERICK, Respondent.	**Case No. 2014-1057** FILED DEC 30 2015 NEVADA COMMISSION FOR 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, Esq., Senior Deputy Attorney General, hereby notifies Respondent JEFFREY ALLAN FREDERICK ("RESPONDENT" or "FREDERICK") 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 Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116 and 116A 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 RESPONDENT pursuant to the provisions of NRS and NAC including, but not limited to, NAC 116A.360.

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JURISDICTION

1. During all relevant times mentioned in this complaint, FREDERICK was licensed as a community manager by the Division and is, therefore, subject to the jurisdiction of the Division and the provisions of NRS Chapters 116 and 116A and NAC Chapters 116 and 116A.

ALLEGATIONS OF FACT

2. FREDERICK was at all relevant times mentioned in this Complaint, licensed as a community manager under certificate number CAM.0007580.

3. FREDERICK acted as the community manager for Laurel Canyon Homeowners Association (the "Association") until January 2014 and then became the community manager again in March 2014.

4. The Association hired a new community manager in December 2013 and sought legal action against PW James Management and Consulting, LLC ("PW James") for refusing to relinquish control over the Association and to stop a pending election.

5. During this time, FREDERICK'S community manager certificate was associated with MP Association Management according to Division records, but the Association's 2013 management contract is with PW James.

6. Board members only dealt with Penny Frederick at PW James.

7. Penny Frederick, RESPONDENT FREDERICK'S wife, does not have a community manager certificate, but is an owner of PW James with RESPONDENT.

8. Board member, Dov Erlichman, filed a complaint against FREDERICK for his failure to turn over Association records to the new manager and also alleged Penny Frederick was managing the Association without a certificate.

9. The ballots for the election at issue in the legal proceeding were not turned over to the new manager and were eventually opened at a meeting noticed by two candidates, James Schumann and Robert Valentine, resulting in those two candidates becoming board members, but board member, Dov Erlichman, was not notified of the meeting to open the ballots and did not know how that occurred.

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10. By emergency meeting on March 17, 2014, the two new board members rehired FREDERICK and terminated the prior manager.

11. The Division notified FREDERICK of the complaint's allegations by letter dated April 28, 2014 as follows:

a. It is alleged that you have violated NRS 116.31153(1) by signing checks from the Association's Reserve account.

b. It is alleged that you have violated NRS 116.31153(2) by allowing checks to be paid from the Association's operating account with only your sole signature on the checks.

c. It is alleged that you have violated NRS 116A.630(a) by signing checks from the Association's operating account without being an authorized signer on that account.

d. It is alleged that you have violated NRS 116.31034(4) as less than 30 days after sending out notice of the unit's owner's eligibility to serve as a member of the executive board you prepared the ballots for the 2014 election.

e. It is alleged that you have violated NRS 116.31034(4) as you did not send notice to all qualified owners notifying them of eligibility to serve as a member of the executive board for the 2014 election.

12. In July 2014, the Secretary of State's records were updated to include James Schumann and Robert Valentine as board members and officers, but the Division received no such notification.

13. The Division sent a second letter to FREDERICK dated May 23 and requested additional information.

14. The Division requested and received audio recordings for meetings in 2013 to August 21, 2014.

15. In October of 2014, FREDERICK responded to the Division with a binder of various documents from the court proceedings, but no sworn affidavit as to the allegations from the April letter.

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16. By letter dated October 16, 2014, the Division requested documents based on the information in the binder.

17. FREDERICK responded by affidavit dated October 24 by attaching some documents and stating "PWJames is not in possession of original voting materials. The board of Directors has these items."

18. FREDERICK provided no other response to the allegations from April.

19. By letter dated December 4, 2014, the Division provided another request for information.

20. On or about December 18, 2014, FREDERICK responded in part to the request from the Division by providing unsigned minutes from 2014 and the following in response to the allegation concerning the election materials:

> Regarding the February 2014 election meeting – PWJames was not the management company at the time of the February 2014 election meeting, and as such were not included in the process. We are unaware as to who made the determination to hold the February 2014 election meeting. The contract between PWJames Management and the Laurel Canyon HOA was terminated in January 2014 and reinstated in April 2014.

21. By this time, the Association still had not filed an amendment to the annual registration form with the Division.

22. By letter dated February 4, 2015, the Division requested additional details regarding the election, the petition of homeowners, and the emergency meeting from February 2014.

23. By letter dated February 13, 2015, the Division again requested a response to the allegations from the April 2014 letter.

24. FREDERICK did not respond.

25. The Division received an email from the complainant, board member Dov Erlichman, stating that FREDERICK threatened to hurt him during a meeting of the board on February 12, 2015.

26. By letter dated February 18, 2015 to FREDERICK, the Division requested audio

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from the Association's February 12, 2015 meeting.

27. FREDERICK did not respond.

28. The Division's second request for the audio included a request for all 2014 meetings through April 2015.

29. FREDERICK did not respond.

30. The Division issued an administrative fine in the amount of $1,000 to FREDERICK dated June 2, 2015 for his failure to cooperate with the Division.

31. FREDERICK did not pay the administrative fine and did not appeal the fine to the Commission.

32. The Division opened an investigation against the Association for its failure to file its annual registration form in 2015 and against two board members James Schumann and Robert Valentine for failing to respond to the Division.

33. Through its attorney, the Division received a copy of pleadings filed in a civil proceeding brought by the Association against PW James, Penny Woods-Frederick, James Schumann and Robert Valentine.

34. The Division discovered that the pleadings that were provided to the Division by FREDERICK in a binder were not complete copies and that exhibits had been withheld.

35. As exhibits to an Opposition filed by all the defendants, Schumann and Valentine submitted their declarations.

36. The binder provided by FREDERICK included the Opposition, but did not include any of the exhibits.

37. Both Schumann and Valentine state that they were candidates in the 2014 election that had been challenged in court.

38. On or about February 13, 2014, Schumann and Valentine state that they went to PW James and asked Penny Frederick to turn over the returned ballots to them.

39. Schumann and Valentine state that the meeting took place on February 17 at which FREDERICK handed the ballots to Schumann and Valentine.

40. The ballots were opened and counted at that meeting and Schumann and

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Valentine received the most votes.

41. According to the records provided by FREDERICK, the nomination form for the election was mailed on October 31, 2013 and states that it must be returned no later than November 18, 2013.

42. NRS 116.31034(4) states: "Not less than 30 days before preparation of a ballot for the election of members of the executive board, the secretary... shall cause notice to be given to each unit's owner of the unit's owner's eligibility to serve as a member of the executive board."

43. The ballot created by Penny Frederick states the following:

> There are two vacant seats on the Board of Directors available for election. Each home is entitled to cast one vote, for one candidate. If more than one vote is shown below, or if more than one vote is shown for any one candidate, the ballot will not be counted.
>
> . . .
>
> **Total Number of Votes – 1**

44. The ballot was in error, because there were two vacancies on the board; therefore, two votes per unit's owner were permitted.

45. During the investigation, the Division subpoenaed bank records for the Association from January 2012 through April 2014.

46. FREDERICK was not a signor on the Association's bank accounts after March 1, 2013, yet his name appears on virtually every Association check issued after that date.

47. FREDERICK'S signature is on approximately 74 Association checks:

a. Three of the checks are only signed by FREDERICK.

i. Check No. 300 dated October 10, 2013 made payable to Ami Bornheimer for $76.00;

ii. Check No. 295 dated October 4, 2013 made payable to PW James for $2,630.16; and

iii. Check No. 252 dated April 25, 2013 made payable to PW James for $2,471.

b. One check is from the Association's reserve account.

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i. Check No. 11 dated September 11, 2013 made payable to Park Pro for $453.91.

c. One check was made out to the Association for its reserve account, but deposited into the account of PW James.

i. Check No. 256 dated May 16, 2013 made payable to Laurel Canyon for $2,709.31.

48. PW James received more than $45,000 with checks improperly endorsed by FREDERICK.

49. PW James's management contract dated December 1, 2013 provided for a monthly fee of $2,058.

50. PW James's management contract dated March 17, 2014 and signed by James Schumann on behalf of the Association provides for a monthly fee of $2,743.50.

51. However, PW James received two checks in March 2014 totaling $5,214.50 and four checks in April 2014 totaling $12,830.94.

52. FREDERICK filed paperwork with the Division to associate his license with PW James as of September 22, 2015.

53. FREDERICK filed the Association's registration with the Division on November 2, 2015 and submitted fees, with penalties and interest that had accrued.

54. Although the registration form states that the board members provided Division Form 602 per NRS 116.31034(15); no such forms were provided for James Schumann or Robert Valentine.

VIOLATIONS OF LAW

55. RESPONDENT FREDERICK violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding or otherwise interfering with an investigation of the Division by failing to comply with a request of the Division to provide documents.

56. RESPONDENT FREDERICK violated NRS 116A.640(2)(b) and NAC 116A.345(2)(b) by impeding or otherwise interfering with an investigation of the Division by supplying false or misleading information to an investigator when he stated by affidavit that

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he did not was not aware of the February 2014 election meeting and was not included in the process.

57. RESPONDENT FREDERICK violated NRS 116A.640(2)(c) and NAC 116A.345(2)(c) by impeding or otherwise interfering with an investigation of the Division by concealing facts and documents relating to the February 2014 election and by failing to respond to allegations regarding Association checks.

58. RESPONDENT FREDERICK violated NRS 116A.640(3) and NAC 116A.345(3) by commingling money from the Association with PW James's money by depositing a check payable to the Association into PW James's account.

59. RESPONDENT FREDERICK violated NRS 116A.640(5) and NAC 116A.345(4) by being a signor on a withdrawal from a reserve account.

60. RESPONDENT FREDERICK violated NRS 116A.640(10) and NAC 116A.345(9) by collecting fees or other charges from the Association not specified in the management contract for the months of March and April 2014.

61. RESPONDENT FREDERICK violated NRS 116A.630(1)(a) by failing to act as a fiduciary in his relationship with the Association by signing or allowing his name to be placed on Association checks without being an authorized signor on the bank accounts, including a reserve account check in violation of NRS 116.31153.

62. RESPONDENT FREDERICK violated NRS 116A.630(1)(b) by failing to exercise ordinary and reasonable care in the performance of his duties by signing or allowing his name to be placed on checks when he was not an authorized signor on the Association's bank accounts.

63. RESPONDENT FREDERICK violated NRS 116A.630(6)(a) by failing to ensure that the financial transactions of his client were current, accurate, and properly documented.

64. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(f)) by committing unprofessional conduct by failing to cooperate with the Division in the investigation of a complaint by failing to produce requested documents and by failing to provide a response to allegations of misconduct.

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65. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(a) by committing unprofessional conduct by failing to pay an administrative fine issued by the Division or timely file an appeal to the Commission.

66. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by committing professional incompetence by demonstrating a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client by failing to turn over Association records to the Association's new community manager.

67. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by committing professional incompetence by demonstrating a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client by giving two candidates named on a ballot the ballots returned to the Association in violation of NRS 116.31034(11).

68. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by committing professional incompetence by demonstrating a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client by failing to notify the Division of the new board members or to timely file the Association's annual registration.

69. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by committing professional incompetence by demonstrating a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client by supplying false information on the Association's registration form.

70. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by committing professional incompetence by failing to exercise reasonable skill and care with respect to a duty or obligation owed to a client by failing to turn over Association records to its new community manager.

71. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by committing professional incompetence by failing to exercise reasonable skill and care with respect to a duty or obligation owed to a client by giving two candidates

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named on a ballot the sealed ballots returned to the Association instead of turning them over to the Association's new community manager.

72. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(i)) by committing unprofessional conduct by exceeding the authority granted to him by his client.

73. RESPONDENT FREDERICK violated NAC 116A.355(1)(a)(1) and (2) (through NAC 116A.355(4)(g)) by committing unprofessional conduct and professional incompetence by failing to act in the best interests of the client.

74. RESPONDENT FREDERICK violated NRS 116A.620(6) and NAC 116A.325(6) by failing to transfer Association records to the new management company; instead providing returned ballots to candidates in the election.

75. RESPONDENT FREDERICK violated NAC 116A.340 by failing to give the Division timely notice of his change of association from MP Association Management to PW James.

DISCIPLINE AUTHORIZED

Pursuant to the provisions of NAC 116A.360 the Commission has discretion to impose discipline as it deems appropriate, including, but not limited to one or more of the following actions:

1. Revoke or suspend the certificate;
2. Refuse to renew or reinstate the certificate;
3. Place the community manager on probation;
4. Issue a reprimand or censure to the community manager;
5. Impose a fine of not more than $5,000 for each violation of a statute or regulation;
6. Require the community manager to pay restitution;
7. Require the community manager to pay the costs of the investigation and hearing;
8. Require the community manager to obtain additional education relating to the

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management of common-interest communities; and

9. Take such other disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above.

NOTICE OF HEARING

PLEASE TAKE NOTICE, that a disciplinary hearing has been set to consider this Administrative Complaint against the above-named RESPONDENT 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 February 2-4, 2016 beginning at 9:00 a.m. each day or until such time as the Commission concludes its business. **The Commission meeting on February 2, 2016, will be located at the Department of 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. The Commission meeting on February 3, 2016, will be located at the Nevada Department of Employment Training and Rehabilitation, 2800 East St. Louis Avenue, Conference Room A-C, Las Vegas, Nevada 89104, with videoconferencing to the Nevada Department of Employment Training and Rehabilitation, 500 East Third Street, Carson City, Nevada 89713. The Commission meeting on February 4, 2016, will be located at the Department of Business and Industry, 2501 E. Sahara Avenue, 2nd Floor Conference Room, Las Vegas Nevada 89104, with no videoconferencing.**

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 February 2-4, 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

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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. Other important rights and obligations, including your obligation to answer the complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A.

Note that under NAC 116A.585, 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 or her position, and a list of witnesses RESPONDENT intends 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 Respondent's defense. The purpose of the hearing is to determine if the RESPONDENT has violated any of the provisions of NRS and NAC Chapters 116 and 116A, and to determine

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what administrative penalty is to be assessed against RESPONDENT, if any, pursuant to NAC 116A.360.

DATED this _____ day of _____, 2015.

REAL ESTATE DIVISION
DEPARTMENT OF BUSINESS & INDUSTRY
STATE OF NEVADA

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DATED this 30TH day of December, 2015.

REAL ESTATE DIVISION
DEPARTMENT OF BUSINESS & INDUSTRY
STATE OF NEVADA
* ON behalf of J.D Decker

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