

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; PENNIE PUHEK; JAMES
12 LAUTH; and CHARLES HERNANDEZ,

13 Respondents.

Case No. 2015-291

FILED

AUG 05 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

14 **JOINDER TO RESPONDENT JAMES LAUTH'S MOTION TO DISMISS OR, IN THE**
15 **ALTERNATIVE, FOR SUMMARY JUDGMENT**

16 This Joinder is brought due to the similarity of claims asserted by the Division against both
17 Respondent James Lauth and Respondent Charles Hernandez. Respondent Charles Hernandez
18 ("Charlie") hereby incorporates Respondent Lauth's Motion to Dismiss, and requests the same relief
19 from the Commission. In addition, Charlie hereby assigns additional points and authority in support
20 of the Motion to Dismiss.

21 DATED this 4th day of August, 2016.

22 BOYACK ORME & TAYLOR

23 By: /s/ Edward D. Boyack

24 EDWARD D. BOYACK
25 Nevada Bar No. 005229
26 401 N. Buffalo Dr. #202
27 Las Vegas, NV 89145
28 Attorney for Respondent,
 Charles Hernandez

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 This is a most disheartening, most distressing abuse of official power against private citizen
3 homeowners who choose to volunteer for the benefit of their community.

4 The Division in its Complaint makes allegations of “self-interest, gain, prejudice, or revenge”
5 against Charlie and the other Respondents, all while ignoring the long history of Robert Stern and
6 his abuse of process. In fact, Stern was disciplined by this Commission based on the factual
7 allegations in the Commission Complaint for case nos. 2015-3615, 2015-2155, 2015-3100, and
8 2015-2207, and pursuant to a Stipulation and Order for Partial Settlement of Disciplinary Action
9 filed June 16, 2016.

10 As part of that agreement, Stern admitted (via the stipulation as to the factual allegations
11 contained in the Complaint) to failing to participate in the mandatory referee program pursuant to
12 Stern’s agreement with the Anthem Association; Stern admitted to intimidating the board and
13 membership through ambiguous posts about “armed security” and “trained professionals” attending
14 a meeting, wherein Stern stated that the “final reel is unwinding” toward a “Midsummers
15 Nightmare”; Stern admitted to attempting to use his position as a board member to bring a motion
16 to terminate Anthem Association’s legal counsel while an active lawsuit was pending against him;
17 and Stern admitted to his intentional failure to attend board meetings so as to paralyze the Anthem
18 Association. *See Stipulation an Order for Partial Settlement of Disciplinary Action, filed June 16,*
19 *2016.*

20 Against the backdrop of this behavior, Stern was busy harassing, intimidating, and filing
21 intervention affidavits against... well, everybody. As stated in Respondent Lauth’s Motion,
22 Administrator Decker testified that Stern filed over forty intervention affidavits- the vast majority
23 of which were frivolous, and were ultimately dismissed. Without rehashing or attaching a small
24 novella to this Joinder, Charlie asks that the Commission take notice of the hundreds–approaching
25 a thousand–pages of emails sent by Stern to multiple people throughout the Anthem Association and
26 the Division. Many of these emails are threatening in nature, alleging illegality, incompetence,
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1 collusion, etc. Stern frequently promised in these emails a host of retaliatory actions such as
2 intervention affidavits, lawsuits, and criminal charges.

3 As mentioned in Commission Complaint 2015-291, Stern attempted to profit off of this
4 tension by writing a book about the Anthem Association. To support this book, Stern scheduled a
5 book signing and posted an announcement inviting the Anthem Association membership to attend.
6 The book itself is highly critical of the Anthem Association, the board members, and the
7 management company. It discusses several confidential and privileged matters, and generally paints
8 the Anthem Association and its officers in a very bad light.

9 Respondent Puhek posted, in her individual capacity as a homeowner, a response to Stern's
10 announcement. Stern filed an intervention affidavit against Respondent Puhek, alleging retaliation
11 and defamation. As alleged in Complaint 2015-291, the Division chose to pursue this affidavit by
12 requiring, under threat of disciplinary action, that the remaining Respondents disavow Respondent
13 Puhek. In essence, the Division attempted to coerce the board to turn on itself in order to build a case
14 against Respondent Puhek.

15 Charlie, for his part considered the Division's threat and rejected it, for three reasons.

16 First, Stern himself had already defamed the Anthem Association in his book, thus Stern was
17 the one who had acted out of reasons of self-interest, gain, prejudice, or revenge." Respondent
18 Puhek's response was not retaliatory; it was a response to Stern and the allegations already made,
19 and presented as fact, in his book.

20 Second, Charlie was not unmindful of the vexatious manner in which Stern conducts himself.
21 Stern had already filed a host of intervention affidavits, sent threatening and harassing emails, and
22 even attempted to file criminal charges for a number of disputes (against multiple respondents) that
23 were either frivolous, imagined, or both. To disavow Respondent Puhek in the manner the Division
24 was demanding would only have encouraged Stern to seek further retaliation against Respondent
25 Puhek, and thus subject her to further harassment, conflict, and/or perhaps even civil liability.

26 Third, Charlie genuinely and sincerely believes that Respondent Puhek's posts were made
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1 in her individual capacity, as a homeowner and member of the Anthem Association. Her comments
2 did not reflect the board's opinion, did not purport to speak for the board, and did not bind the board
3 in anyway. In fact, the post invites homeowners to attend the board meetings to make their own
4 determination. Charlie did not believe, and still does not believe, that the board has any power, right,
5 responsibility, or authority to censure, limit, restrict, or otherwise suppress a member's right to free
6 speech, especially when that member spoke as a homeowner and not under color of authority as a
7 board member.

8 **CONCLUSION**

9 Based on the foregoing, and for the reasons set forth in Respondent Lauth's Motion to
10 Dismiss, Charlie hereby requests that the Commission dismiss this Complaint against him.

11 DATED this 4th day of August, 2016.

12 BOYACK ORME & TAYLOR

13 By: /s/ Edward D. Boyack
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16 401 N. Buffalo Drive #202
17 Las Vegas, NV 89145
18 Attorney for Respondent
19 Charles Hernandez
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1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that on this 4th day of August, 2016, a true and correct copy of the
3 foregoing **JOINDER TO RESPONDENT JAMES LAUTH'S MOTION TO DISMISS OR, IN**
4 **THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** via electronic mail and U.S.
5 Mail postage prepaid, addressed to the following:

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