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FILED

JUN 20 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

8 **COMMISSION FOR COMMON-INTEREST**
9 **COMMUNITIES AND CONDOMINIUM HOTELS**
10 **STATE OF NEVADA**

11
12 JOSSEPH (J.D.) DECKER, Administrator,
13 REAL ESTATE DIVISION, DEPARTMENT
14 OF BUSINESS & INDUSTRY,
15 STATE OF NEVADA,

16 Petitioner.

17 vs.

18 ANTHEM HIGHLANDS COMMUNITY
19 ASSOCIATION, PENNIE PUHEK, JAMES
20 LAUTH, and CHARLES HERNANDEZ,

21 Respondents.

) Case Nos. 2015-291

) **RESPONDENT PENNIE PUHEK'S**
) **MOTION FOR MORE DEFINITIVE**
) **STATEMENT, AND ANSWER TO**
) **COMPLAINT FOR DISCIPLINARY**
) **ACTION**

22
23
24 Respondent Pennie Puhek ("Respondent"), by and through her attorney John B. Marcin,
25 Esq., of Marcin Lambirth, LLP, hereby answers the Nevada Real Estate Division's (the
26 "Division") Complaint for Disciplinary Action ("Complaint") as follows:
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28

MOTION FOR MORE DEFINATE STATEMENT

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2 The complaint and allegations therein are so general that ambiguity arises in determining
3 the nature of the claim(s) and/or the party(ies) against whom the claim is being made. Pursuant to
4 the United States Supreme Court case *Crawford-El v. Britton* (1998) 523 U.S. 574, 596-598, 118
5 S.Ct. 1584, 1596-1597 (1998), where a complaint includes allegations of improper motivation, the
6 complainant must allege ‘specific non-conclusory factual allegations’ that establish such improper
7 motives. Indeed, where a respondent is faced with a lengthy, ‘shotgun’ complaint,’ the
8 Commission should *sua sponte* require a more definite statement. *See, Kim v. Quichocho* 708
9 F.Supp.2d 1079, 1090 (D NMI 2010); *Paylor v. Hartford Fire Ins. Co.* 748 F.3d 1117, 1126-28
10 (11th Cir. 2014).
11

12 Allegations such as: “knowingly and willfully violated NRS 116.3103 (through NAC
13 116.405(2)) by failing to act in good faith, and in the best interests of the Association by acting for
14 reasons of self-interest, gain, prejudice, or revenge” suggest improper motives, but aside from
15 allegations that Respondent supposedly improperly posted something online and supposedly
16 revealed “confidential information,”¹ there is nothing which suggests which conduct is improper
17 and why the conduct is supposedly improper. As such, these allegations should be stricken, or the
18 Complaining Party required to make specific non-conclusory factual allegations as required by
19 law.
20

21 ///
22 ///
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24 _____
25 ¹ There can be no claim or violation for NAC 116.405(4) as this section is hopelessly vague and
26 ambiguous (and thus “void for vagueness”) and, as (attempted to be) applied herein, violates
27 Respondent’s First Amendment Rights (and those rights enumerated Article 1, Section 9, et seq. of
28 the Nevada Constitution).

JURISDICTION AND NOTICE

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2 1. Answering paragraph 1 of the Complaint, Respondent denies that she was a board member
3 during the entire time period set forth in the complaint. As to the remaining allegations in this
4 paragraph, said allegations do not seek relief against Respondent and as a result, Respondent is
5 not required to admit, deny, or deny on information and belief the allegations thereof. To the
6 extent that an answer is required, Respondent denies each and every allegation contained therein.

7
8 2. Answering paragraphs 2 of the Complaint, Respondent denies each and every allegation
9 contained therein.

FACTUAL ALLEGATIONS

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11 3. Answering paragraph 3 of the Complaint, Respondent admits that the Association is a
12 master association. Respondent denies the remaining allegations, as Respondent is informed and
13 believes the Association includes 1,647 homes.

14
15 4. Answering paragraph 4 of the Complaint, Respondent is informed and believes that the
16 Association entered into an agreement with Stern, but does not have first-hand knowledge as she
17 was not a board member when this happened.

18
19 5. Answering paragraph 5 of the Complaint, Respondent is informed and believes that the
20 Association alleged that Stern violated the agreement, but again, does not have first-hand
21 knowledge as she was not a board member at this time.

22
23 6. Answering paragraph 6 of the Complaint, Respondent admits the allegations contained
24 therein (although Respondent denies the implicit allegation in this paragraph that Respondent was
25 a board member when the board took action to commence the civil action, which she was not).

26
27 7. Answering paragraphs 7, Respondent admits that the Division received an intervention
28 affidavit filed by homeowner Robert Stern. Respondent denies the remaining allegations.

8. Answering paragraphs 8, Respondent denies each and every allegation contained therein.

9. Answering paragraph 9, 10, and 11, Respondent admits the allegations contained therein.

1 10. Answering paragraph 12, Respondent admits to posting a comment that Mr. Stern filed a
2 number of complaints against the Association with the Division, and that the state shut him down
3 by basically dismissing his petty complaints. Respondent denies the remaining allegation that a
4 large portion of Mr. Stern's complaints were resolved as part of the ICA settlement.

5 11. Answering paragraph 13, Respondent denies each and every allegation contained therein.

6 12. Answering paragraph 14, Respondent admits that she was asked to leave the meeting with
7 the Division Administrator. Respondent denies the remaining allegations. This allegation has no
8 bearing on the Complaint or the alleged violations, and the falsehood is only included to incite
9 prejudice against Responding Party.
10

11 13. Answering paragraphs 15, 16, 17 and 18, Respondent admits the allegations contained
12 therein.

13 **VIOLATION OF LAW**

14 14. Answering paragraphs 19, 20, 21, 22 and 23, these paragraphs state legal conclusions for
15 which no answer is required.
16

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Lack of Subject Matter Jurisdiction)**

20 As a separate and affirmative defense to the Complaint, Respondent submits that this
21 Commission lacks subject matter jurisdiction.
22

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Lack of Statutory Authority)**

25 As a separate and affirmative defense to the Complaint, Respondent submits that this
26 Commission does not have the statutory authority to grant the relief sought in the Complaint.
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THIRD AFFIRMATIVE DEFENSE

(Failure to State a Claim Upon Which Relief Can be Granted)

As a separate and affirmative defense to the Complaint, Respondent submits that the Complaint, and each purported claim therein, fails to state facts sufficient to constitute a claim upon which relief can be granted as against Respondent.

FOURTH AFFIRMATIVE DEFENSE

(Violation of Due Process)

As a separate and affirmative defense to the Complaint, Respondent submits that the Complaint, and each purported claim therein, violates the substantive and procedural due process rights provided and guaranteed the Respondent by the Fourteenth Amendment of the United States Constitution and Article One, Section Eight of the Nevada Constitution.

FIFTH AFFIRMATIVE DEFENSE

(Violation of Respondent’s Right to Free Speech)

As a separate and affirmative defense to the Complaint, Respondent submits that the Complaint, and each purported claim therein, violates the Respondent’s right to free speech as guaranteed the Respondent by the First Amendment of the United States Constitution and Article One, Section Nine of the Nevada Constitution.

SIXTH AFFIRMATIVE DEFENSE

(Ex Post Facto Application of NRS and NAC)

As a separate and affirmative defense to the Complaint, and without admitting that the Complaint states a claim, Respondent submits that the Complaint and each purported claim therein, is barred because the interpretation of the statutes and the Nevada Administrative Code, as set forth in the Complaint, is a new and after-the-fact application and interpretation of these statutes(s) and code.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

As a separate and affirmative defense to the Complaint, and to each purported claim alleged therein, Respondent, without admitting that the Complaint states a claim, submits that the

1 Complaint and each purported claim alleged therein, is barred by the applicable statute of
2 limitations or period in which a claim must be made.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 **(Wrongful Acts of Others)**

5 As a separate and affirmative defense to the Complaint, Respondent submits that the
6 purported violations referred to in the Division's Complaint, and each and every purported claim
7 for relief contained therein, were proximately caused or contributed to by the negligence or
8 wrongful acts of persons and/or entities other than Respondent.

9 **NINTH AFFIRMATIVE DEFENSE**

10 **(Unclean Hands)**

11 Respondent is informed and believes, and based thereon alleges, that Complainant is guilty
12 of wrongful conduct, bias, and/or omissions in connection with the alleged matters forming the
13 basis of the Complaint and should therefore be barred from all equitable relief sought in the
14 Complaint, or otherwise, by reason of its unclean hands.

15 **TENTH AFFIRMATIVE DEFENSE**

16 **(Denial of Each and Every Allegation)**

17 Respondent denies each and every allegation of the Division's Complaint not specifically
18 admitted or otherwise pled herein.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 **(Reservation of Rights and Non-Waiver)**

21 Respondent reserves the right to assert additional defenses, including affirmative defenses,
22 based upon further investigation and/or discovery. Respondent also reserves the right to amend or
23 supplement this Answer based on further formal or informal discovery and/or in response to any
24 amendments or supplements to the Complaint made by the Division, and for any such
25 amendments or supplements to the Answer to relate back to the filing of the original Answer.

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PRAYER

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WHEREFORE, Respondent prays for relief as follows:

1. That the Division takes nothing by way of the Complaint;
2. The Division's Complaint be dismissed with prejudice;
3. For Respondent's costs and attorneys' fees (if allowed by law), and,
4. For such other and further relief as the Commission may deem just and proper.

DATED: June 20, 2016

MARCIN LAMBIRTH, LLP

/s/

By: _____
John B. Marcin, Esq.
Attorneys for Respondent Pennie Puhek

1 CERTIFICATE OF SERVICE

2
3 I HEREBY CERTIFY that on the 20th day of June, 2016, I served a true and correct
4 copy of the **RESPONDENT PENNIE PUHEK'S MOTION FOR MORE DEFINITIVE**
5 **STATEMENT, AND ANSWER TO COMPLAINT FOR DISCIPLINARY ACTION**, by mail
6 party(ies):

7 Michelle Briggs, Esq.
8 Senior Deputy Attorney General
9 Nevada Attorney General's Office
10 555 E. Washington, Suite 3900
11 Las Vegas, NV 89101

Attorneys for Real Estate Division

12 The Commission for Common-Interest
13 Communities and Condominium Hotels
14 State of Nevada
15 2501 East Sahara Avenue, Suite 202
16 Las Vegas, Nevada 89104-4137

For Filing

17
18 /s/ Scott Reed
19 An employee of Marcin Lambirth, LLP
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