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FILED

JUL 21 2016

**NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS**

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7 **COMMISSION FOR COMMON-INTEREST COMMUNITIES AND
CONDOMINIUM HOTELS
STATE OF NEVADA**

9 JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
10 OF BUSINESS & INDUSTRY, STATE OF
NEVADA,

11 **Petitioner,**

12 **vs.**

13 ANTHEM HIGHLANDS COMMUNITY
14 ASSOCIATION, PENNIE PUHEK, JAMES
LAUTH, and CHARLES HERNANDEZ,

15 **Respondents.**

Case No. 2015-291

**RESPONDENT JAMES LAUTH'S
MOTION FOR PREHEARING
CONFERENCE UNDER NEVADA
ADMINISTRATIVE CODE § 116.557**

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18 Respondent James Lauth ("Lauth"), by and through its attorney Gregory P. Kerr, Esq., of
19 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby requests that the Nevada
20 Commission for Common-Interest Communities and Condominium Hotels ("Commission")
21 schedule a Prehearing Conference to hear Respondent Lauth's Motion to Dismiss or, in the
22 Alternative, Motion for Summary Judgment. The Commission has already granted Respondent
23 Penny Puhek's Motion for a Prehearing Conference and, for purposes of efficiency, it is requested
24 that Respondent Lauth's motions be heard at the same time pursuant to Nevada Administrative
25 Code ("NAC") 116.557(1).

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I. INTRODUCTION

The prehearing conference regarding the allegations that the Nevada Real Estate Division (“Division”) would be beneficial for the following reasons: (1) the Commission can hear and consider Lauth’s motions in conjunction with Respondent Puhek’s motions, allowing it to address many of the issues and allegations in Complaint 2015-291 all at the same time; (2) allow Respondent Lauth to argue his motions and, ultimately simplify or reduce the amount of evidentiary testimony during the disciplinary portion of the Commission’s regular agenda; and (3) potentially dispose of the claim against Lauth, thereby eliminating any need for a hearing during the disciplinary portion of the Commission meeting. Two of the goals under NAC 116.557 that the Commission is to promote when granting or denying a prehearing conference request are the simplification of the issues involved in the hearing (NAC 116.557(1)), and to rule on any pending prehearing motions (NAC 116.557(e)). Both of those goals would be advanced by granting Lauth’s request for a prehearing conference in this case.

II. ARGUMENT

In conjunction with this Motion for a Prehearing Conference, Lauth will be filing a Motion to Dismiss, or in the alternative, Motion for Summary Judgment. That motion will argue that the single claim against Lauth as set forth in the Division’s complaint is completely baseless and is immensely unsupported by the evidence that the Division relied on to bring the claim against Lauth in the first place. Even assuming for sake of argument that the single allegation in the complaint against Mr. Lauth is true, it does not come close to constituting the statutory or regulatory violation that the Division alleges it does. The statute and regulation that the Division states Mr. Lauth violated have absolutely nothing to do with the conduct that the Division states Mr. Lauth committed.

The arguments in favor of dismissal or summary judgment as to Mr. Lauth are set forth in more detail in the Motion served in conjunction herewith. For purposes of this request, there is good cause for the Commission to grant Mr. Lauth’s request for a prehearing conference and Mr. Lauth respectfully requests that the Commission grant its prehearing conference request so that it

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 21st day of July, 2016, a true and correct copy
3 of **RESPONDENT JAMES LAUTH'S MOTION FOR PREHEARING CONFERENCE**
4 **UNDER NEVADA ADMINISTRATIVE CODE § 116.557** was placed in an envelope, postage
5 prepaid, addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at WOLF,
6 RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP and by electronic mail. The firm has
7 established procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day
8 by an employee and deposited in a U.S. Mail box.

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24 RABKIN, LLP
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