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**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**

JUN 30 2016

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

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**OPPOSITION TO RESPONDENT PENNIE PUHEK'S MOTION FOR MORE DEFINITE  
STATEMENT, AND COUNTERMOTION FOR PARTIAL SUMMARY JUDGMENT**

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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 files its Opposition to Respondent Pennie Puhek's Motion for More Definite Statement, and submits its Countermotion for Partial Summary Judgment. This opposition and countermotion is made and based on the following Memorandum of Points and Authorities as well as any and all pleadings on file herein and any oral argument that may be heard at the time of the hearing of this matter.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

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**I. INTRODUCTION**

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The Division filed a complaint against the Respondents, Anthem Highlands Community Association and three of its board members, in March of 2016. The complaint alleges RESPONDENT PENNIE PUHEK posted disparaging comments about another homeowner on a neighborhood social networking site. The hearing was originally scheduled for the Commission's meeting in June 2016, but was continued at PUHEK'S request. On June 20, 2016, PUHEK submitted her answer to the complaint and simultaneously moved for

1 a more definite statement. The Division opposes PUHEK'S request for a more definite  
2 statement based on the clear factual allegations set forth in the complaint already responded  
3 to by PUHEK. The Division also submits a counter motion for summary judgment in that  
4 PUHEK'S answer admits that she posted the comments on the social networking site which  
5 are the basis for the complaint. Based on PUHEK'S admission, the Commission need only  
6 decide whether or not such posts violated NRS 116 or NAC 116. Summary adjudication is  
7 appropriate.

## 8 II. FACTS

9 The complaint, filed on March 24, 2016, was brought against Anthem Highlands  
10 Community Association and three board members, PENNIE PUHEK, JAMES LAUTH, and  
11 CHARLES HERNANDEZ. The complaint includes the following factual allegations.

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

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

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

18 4. In January 2015, the Division received an intervention affidavit filed by Robert  
19 Stern against the Association and its board members.

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

22 6. The posts were made on a social networking site for neighborhoods called  
23 Nextdoor.

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

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

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.

9. 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.

The facts set forth in the complaint are clear and are the basis for the alleged violations of law. There is no dispute that PUHEK was a board member when she made the posts regarding Mr. Stern. PUHEK admits she posted the comments. The only issues to be decided by this Commission are the legal questions of whether PUHEK was retaliating against Mr. Stern for filing complaints against the board and whether or not her actions violated her fiduciary duty to act in good faith and in the best interests of the Association.

III. LEGAL ARGUMENT

A. THE MOTION FOR MORE DEFINITE STATEMENT SHOULD BE DENIED, BECAUSE THE ALLEGATIONS IN THE COMPLAINT ARE CLEAR AND COMPLY WITH THE LAW.

PUHEK'S motion states that the "complaint and allegations therein are so general that ambiguity arises in determining the nature of the claim(s) and/or the part(ies) against whom the claim is being made." (See Respondent's Motion at 2, In 2-3). PUHEK refers to the alleged violations of law as being too confusing as to what conduct is improper and "why the conduct is supposedly improper." (See *id.*, In 17-18). PUHEK goes on to say that this Commission's regulation is "hopelessly vague and ambiguous" such that any violation supported by the regulation, NAC 116.405(4), would violate her First Amendment rights. (See

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1 id., fn 1).

2 The Commission's regulation PUHEK alleges violates her First Amendment rights states  
3 as follows:

4 NAC 116.405 In determining whether a member of the executive board has performed  
5 his or her duties pursuant to NRS 116.3103, the Commission may consider whether  
6 the member of the executive board has:

7 4. Except as otherwise required by law or court order, disclosed confidential  
8 information relating to a unit's owner, a member of the executive board or an officer,  
9 employee or authorized agent of the association unless the disclosure is consented to  
10 by the person to whom the information relates....

11 PUHEK'S allegation that disclosing confidential information about a homeowner is  
12 protected by her First Amendment right to free speech is ludicrous. Her assertion supports  
13 the Division's position that PUHEK should not serve as a board member in the state of  
14 Nevada. If she is more concerned with her First Amendment right to free speech than in  
15 protecting confidential owner information, she should not have access to confidential owner  
16 information.

17 PUHEK'S motion requests a more definite statement of the conduct and how it is  
18 alleged to be improper. Essentially PUHEK fails to see how her conduct could violate NRS  
19 116. That is for this Commission to decide and such additional detail is not required by the  
20 law. As set forth in NRS 233B, the complaint must include notice as provided in NRS  
21 233B.121(2) which states:

- 22 The notice must include:
- 23 (a) A statement of the time, place and nature of the hearing.
  - 24 (b) A statement of the legal authority and jurisdiction under which the hearing is to be held.
  - 25 (c) A reference to the particular sections of the statutes and regulations involved.
  - 26 (d) A short and plain statement of the matters asserted.

27 As set forth in the law, the complaint must only provide "a short and plain statement of  
28 the matters to be asserted." (NRS 233B.121(2)(d)). The complaint meets the notice requirements detailed in NRS 233B.121(2). The conduct of PUHEK is explicit. PUHEK does

1 not allege any confusion as to the facts. PUHEK admits to making the offending posts.  
2 Furthermore, each of the alleged violations of law set forth in the complaint specifically state  
3 the name of the respondent against whom it is being asserted.

4 The violations of law against PUHEK set forth in the complaint state as follows:

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

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

12 21. RESPONDENT PUHEK knowingly and willfully violated NRS 116.3103 (through  
13 NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
14 Association by committing an act or omission which amounts to incompetence,  
15 negligence or gross negligence when she posted disparaging comments about a unit  
16 owner on a community website.

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

21 The violations of law are specifically tied to PUHEK. The complaint satisfies the  
22 requirements of NRS 233B and could not be made any more clear. PUHEK'S motion for  
23 more definite statement should be denied.

24 **B. PUHEK ADMITS TO MAKING THE POSTINGS LEAVING NO ISSUES OF MATERIAL**  
25 **FACT FOR THIS COMMISSION TO DETERMINE AND SUMMARY JUDGMENT IN**  
26 **THE DIVISION'S FAVOR IS APPROPRIATE.**

27 Summary judgment is appropriate and "shall be rendered forthwith" when "the  
28 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
affidavits, if any, show that there is no genuine issue as to any material fact and that the  
moving party is entitled to judgment as a matter of law."<sup>1</sup> There are no issues of material fact

<sup>1</sup> See NEV. R. CIV. P. 56(c); see also Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).

1 to be decided in this case to determine the violations of law against PUHEK.

2 In PUHEK'S answer to the complaint, PUHEK admits that the posts were made on a  
3 social networking site for neighborhoods called Nextdoor and that PUHEK posted the  
4 comments quoted in the complaint. (See Respondent's Motion at 3, In 28; at 4, In 1-3)  
5 PUHEK does not deny making the posts about a fellow homeowner who filed complaints  
6 against the board. She does not deny that her comments were made on a community social  
7 networking site for neighborhoods. There is no dispute that she was a board member when  
8 she made the posts. The issue for this Commission is whether her conduct was appropriate  
9 for a board member of the Association and whether she violated the law. The Division  
10 believes board members – who owe a fiduciary duty to their association – must always act in  
11 good faith when dealing with fellow homeowners. Calling an owner names like "pathetic and  
12 shameless" is not acting in good faith and advertising it to the entire Association is even  
13 worse. PUHEK'S post is intended to encourage all owners to dislike Mr. Stern and to take  
14 action against him.

15 NRS 116.31183(1) provides as follows:

16 An executive board, a member of an executive board, a community manager or an  
17 officer, employee or agent of an association shall not take, or direct or encourage  
18 another person to take, any retaliatory action against a unit's owner because the unit's  
19 owner has: (a) Complained in good faith about any alleged violation of any provision  
20 of this chapter or the governing documents of the association...

21 PUHEK directs other owners to take action against Mr. Stern specifically, as she states:

22 I am asking all homeowners in Anthem Highlands to help finally get rid of this cancer  
23 and boycott anything he does or sells and make sure you vote against him and anyone  
24 else he supports in upcoming Board elections.

25 PUHEK encourages other owners not to vote for Mr. Stern or anyone he supports in  
26 the upcoming election and to "boycott" him. She did this in response to the complaints Mr.  
27 Stern made about the Association. PUHEK complains about all the complaints Mr. Stern  
28 made about the Association. PUHEK says Mr. Stern has "terrorized the community" and  
refers to his complaints as "petty" saying the Division "shut him down." As a way to take  
revenge against him, PUHEK specifically encourages other owners to retaliate against him by

1 not voting for him or anyone he may support in the upcoming election. This conduct is a  
2 violation of NRS 116.31183.

3 PUHEK'S comment also says that Mr. Stern's primary residence is North Carolina. Mr.  
4 Stern's primary residence is confidential information of the Association. Not only does  
5 PUHEK not have the right to disclose such information as a board member, she uses this  
6 information to discredit Mr. Stern and incite other owners against him. PUHEK clearly dislikes  
7 Mr. Stern and is seeking revenge against him with her post. As a board member she received  
8 information about Mr. Stern's complaints. She used information she received as a board  
9 member of the Association to incite other owners and disparage Mr. Stern publically. Such  
10 conduct violates PUHEK'S fiduciary duty as she is not acting in good faith and in the best  
11 interests of the Association. She is acting out of her own dislike for Mr. Stern and  
12 encouraging other owners to feel the same way and to take action against him. As a matter of  
13 law, the Commission should find that PUHEK committed the violations of law set forth in the  
14 complaint.

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1 IV. CONCLUSION

2 PUHEK'S motion for a more definite statement is not supported by the law and should  
3 be denied. PUHEK admitted that she posted the comments as alleged in the complaint.  
4 There are no material issues of fact for this Commission. PUHEK directed other owners to  
5 take action against Mr. Stern, because Mr. Stern complained about the Association.

6 PUHEK'S posts violated NRS 116.31183 and NRS 116.3103 as a matter of law. For  
7 all the foregoing reasons, the Division respectfully requests that PUHEK'S motion be denied,  
8 and that summary judgment in favor of the Division be granted as to the violations of law  
9 against PUHEK.

10 DATED this 29th day of June, 2016.

11 ADAM PAUL LAXALT  
12 Attorney General

13 By: 

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 29th day of June, 2016, I served the foregoing OPPOSITION TO RESPONDENT PENNIE PUHEK'S MOTION FOR MORE DEFINITIVE STATEMENT, AND COUNTERMOTION FOR PARTIAL SUMMARY JUDGMENT by causing a true and correct copy thereof to be served via U.S. Mail, Postage Prepaid addressed to the following:

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