

JURISDICTION

1
2 1. During all relevant times mentioned in this complaint, RESPONDENT held a
3 community manager certificate from the Division and is, therefore, subject to the jurisdiction
4 of the Division and the provisions of NRS Chapters 116 and 116A and NAC Chapters 116
5 and 116A.

ALLEGATIONS OF FACT

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7 2. RESPONDENT was at all relevant times mentioned in this complaint and
8 currently holds a community manager certificate from the Division under certificate number
9 CAM.0007435.

10 3. During the time RESPONDENT has held her community manager certificate,
11 she has worked for First Service Residential Nevada, LLC which provides community
12 manager services to Vistana Condominium Owners Association (the "Association") located in
13 Las Vegas, Nevada.

14 4. RESPONDENT works on-site for the Association.

15 5. In September 2014, the Division received two statements of fact filed by
16 different complainants against RESPONDENT based on similar facts and circumstances.

17 6. The complaints allege that their vehicles were towed within the Association
18 during a repaving project.

19 7. Both complainants talked to RESPONDENT about the location of their vehicles
20 after realizing their vehicles were towed.

21 8. RESPONDENT told the complainants they needed to pay \$275, and she would
22 tell them where their vehicles were.

23 9. One complainant was able to negotiate the cost down to \$75 after bargaining
24 with RESPONDENT. When he was walking to the bank to get the money, he found his
25 vehicle in the parking lot and took it back.

26 10. The other complainant, Rio Radice, paid \$275 by money order to
27 RESPONDENT; and in exchange RESPONDENT informed Ms. Radice her vehicle was a few
28 hundred feet away.

1 11. Ms. Radice also filed a complaint with the Nevada Transportation Authority
2 against Quality Towing.

3 12. The Division opened two separate cases against RESPONDENT and
4 requested a response from RESPONDENT by letters dated October 3 and October 6, 2014.

5 13. RESPONDENT failed to respond to the first letter sent for both cases, so the
6 Division sent a second letter for both cases advising RESPONDENT that it was the second
7 request for a response for both cases.

8 14. The second letters were dated November 6, 2014.

9 15. By February 2015, RESPONDENT still had not responded to any of the four
10 Division letters.

11 16. As of February 1, 2015, RESPONDENT'S community manager certificate was
12 expired as not renewed even though she continued to work for the Association.

13 17. The Division imposed a \$1,000 administrative fine against RESPONDENT for
14 each of the two cases for her failure to cooperate and for impeding the investigation by failing
15 to provide requested documents.

16 18. By letter dated February 24, 2015, RESPONDENT disputed the administrative
17 fines imposed saying the board responded to the Division, and she provided tow company
18 documents regarding the towing of vehicles.

19 19. The documents provided by RESPONDENT show the Association was charged
20 \$75 per vehicle and multiple tows were performed from August 13 through August 27, 2014.

21 20. RESPONDENT failed to provide all the records requested by the Division, and
22 RESPONDENT did not submit a sworn affidavit regarding the allegations against her.

23 21. The Division requested a response from the Association's board members, but
24 did not receive an adequate response.

25 22. By letter dated April 14, 2015, the Division informed RESPONDENT that she
26 was performing the services of a community manager while her certificate was expired due to
27 her failure to renew it.

28 23. RESPONDENT provided a sworn affidavit in response saying she was wrong

1 not to renew her certificate and claimed she was not acting as a community manager even
2 though she was working for the Association and her name appeared on Association
3 correspondence while her certificate was inactive.

4 24. RESPONDENT'S certificate was reinstated on April 24, 2015.

5 25. The NTA investigation revealed 84 vehicles were towed within the Association
6 and Quality Towing charged the Association \$75 per tow.

7 26. According to meeting minutes from a board meeting in August of 2015,
8 RESPONDENT informed the board that 30 vehicles had been towed for the resurfacing
9 project in 2014, and the Association collected a total of \$4,375 which was placed in the
10 Association's operating account.

11 27. The Division received a copy of the minutes through a separate investigation.

12 28. By letter dated February 10, 2016 to RESPONDENT, the Division requested
13 additional documentation for the investigation including board meeting minutes for 2014 and
14 2015, audio for the meetings in 2014, and documentation regarding the names of those
15 owners or residents who paid towing fees and the amount they paid.

16 29. RESPONDENT did not respond.

17 30. By letter dated April 4, 2016, the Division notified RESPONDENT that this
18 matter would proceed to hearing before the Commission.

19 31. RESPONDENT provided a sworn affidavit dated April 15, 2016 saying the
20 board agreed "to have the additional \$200 assessed to the vehicle owner as a violation."

21 32. RESPONDENT claims she advised the board that they had to go through the
22 hearing process, "but they knew there was no way they would get their fines, if they went
23 through the hearing process."

24 33. RESPONDENT provided copies of notices allegedly provided to owners and
25 residents, but she does not say a sign was posted on the property and the notices do not
26 state the telephone number of the police department as required by NRS 487.038.

27 34. RESPONDENT did not provide the documents requested in the letter dated
28 February 10, 2016; and she did not provide all the documents requested when the

1 investigation began in October 2014.

2 **VIOLATIONS OF LAW**

3 35. RESPONDENT violated NAC 116A.345(2)(a) by impeding or otherwise
4 interfering with an investigation of the Division by failing to comply with a request by the
5 Division to provide documents.

6 36. RESPONDENT violated NAC 116A.345(2)(c) by impeding or otherwise
7 interfering with an investigation of the Division by concealing facts or documents relating to
8 the business of the Association.

9 37. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC
10 116A.355(2)(a)(3)) by committing unprofessional conduct by failing to comply with NRS
11 116.3102(1)(s) by directing the removal of vehicles in the Association without complying with
12 NRS 487.038.

13 38. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC
14 116A.355(2)(a)(3)) by committing unprofessional conduct by failing to comply with NRS 116
15 by imposing fines, including negotiating the amount of the fine, when the Association had not
16 complied with NRS 116.31031.

17 39. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(f))
18 by committing unprofessional conduct by failing to cooperate with the Division in the
19 investigation of a complaint by failing to provide documents requested during the
20 investigation by letters dated October 3, 2014, October 6, 2014, November 6, 2014, and
21 February 10, 2016.

22 40. RESPONDENT violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a))
23 by committing an act of professional incompetence by demonstrating a significant lack of
24 ability, knowledge, or fitness to perform a duty or obligation owed to a client.

25 41. RESPONDENT violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b))
26 by committing an act of professional incompetence by failing to exercise reasonable skill and
27 care with respect to a duty or obligation owed to a client.

28 42. RESPONDENT violated NAC 116A.355(1)(a)(1) and (2) (through NAC

1 116A.355(4)(a)) by committing an act of unprofessional conduct and professional
2 incompetence by failing to do her utmost to protect the public against fraud,
3 misrepresentation or unethical practices related to the business affairs of the client.

4 43. RESPONDENT violated NAC 116A.355(1)(a)(1) and (2) (through NAC
5 116A.355(4)(e)) by committing an act of unprofessional conduct and professional
6 incompetence by failing to comply with the applicable governing documents, policies and
7 procedures of the client when she enforced a fine against owners and residents knowing the
8 Association did not comply with the required fine procedure required by NRS 116.31031.

9 44. RESPONDENT violated NAC 116A.355(1)(a)(1) and (2) (through NAC
10 116A.355(4)(g)) by committing an act of unprofessional conduct and professional
11 incompetence when she failed to act in the best interests of the client by imposing fines
12 against owners and residents knowing the Association did not comply with the required fine
13 procedure required by NRS 116.31031.

14 45. RESPONDENT violated NAC 116A.355(1)(a)(1) and (2) (through NAC
15 116A.355(4)(g)) by committing an act of unprofessional conduct and professional
16 incompetence when she failed to act in the best interests of the client by causing vehicles to
17 be towed within the Association without complying with NRS 116.3102(1)(s) and NRS
18 487.038.

19 **DISCIPLINE AUTHORIZED**

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

- 23 1. Revoke or suspend the certificate;
- 24 2. Refuse to renew or reinstate the certificate;
- 25 3. Place the community manager on probation;
- 26 4. Issue a reprimand or censure to the community manager;
- 27 5. Impose a fine of not more than \$5,000 for each violation of a statute or
28 regulation;

1 at (702) 486-4606.

2 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an
3 open meeting under Nevada's open meeting law, and may be attended by the public. After
4 the evidence and arguments, the commission may conduct a closed meeting to discuss your
5 alleged misconduct or professional competence. A verbatim record will be made by a certified
6 court reporter. You are entitled to a copy of the transcript of the open and closed portions of
7 the meeting, although you must pay for the transcription.

8 As a RESPONDENT, you are specifically informed that you have the right to appear
9 and be heard in your defense, either personally or through your counsel of choice. At the
10 hearing, the Division has the burden of proving the allegations in the complaint and will call
11 witnesses and present evidence against you. You have the right to respond and to present
12 relevant evidence and argument on all issues involved. You have the right to call and
13 examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter
14 relevant to the issues involved.

15 You have the right to request that the Commission issue subpoenas to compel
16 witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
17 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
18 Other important rights and obligations, including your obligation to answer the complaint, you
19 have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter 233B, and NRS
20 Chapters 116 and 116A and NAC 116 and 116A.

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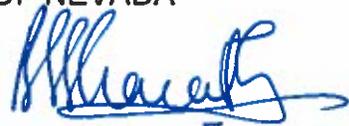
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1 Note that under NAC 116A.585, not less than five (5) working days before a hearing,
2 RESPONDENT must provide to the Division a copy of all reasonably available documents
3 that are reasonably anticipated to be used to support his or her position, and a list of
4 witnesses RESPONDENT intends to call at the time of the hearing. Failure to provide any
5 document or to list a witness may result in the document or witness being excluded from
6 Respondent's defense. The purpose of the hearing is to determine if the RESPONDENT has
7 violated any of the provisions of NRS and NAC Chapters 116 and 116A, and to determine
8 what administrative penalty is to be assessed against RESPONDENT, if any, pursuant to
9 NAC 116A.360.

10 DATED this 20 day of September, 2016.

11 REAL ESTATE DIVISION
12 DEPARTMENT OF BUSINESS & INDUSTRY
13 STATE OF NEVADA

14 By: 
15 SHARATH CHANDRA, Administrator
16 2501 East Sahara Avenue
17 Las Vegas, Nevada 89104
18 (702) 486-4033

19 ADAM PAUL LAXALT
20 Attorney General

21 By: 
22 MICHELLE D. BRIGGS, ESQ.
23 Senior Deputy Attorney General
24 555 East Washington Avenue, Suite 3900
25 Las Vegas, Nevada 89101
26 (702) 486-3809
27 Attorneys for Real Estate Division
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