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

SHARATH CHANDRA, Administrator, REAL
ESTATE DIVISION, DEPARTMENT OF
BUSINESS & INDUSTRY, STATE OF
NEVADA,

Petitioner,

vs.

VISTANA CONDOMINIUM OWNERS
ASSOCIATION, LARRY FITCH, ANTHONY
KNELP, LYNN WILLIAMS; and ARDYCE
NELSON,

Respondents.

Case No. 2015-3373

FILED

SEP 21 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

**COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING**

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 notifies Respondents VISTANA CONDOMINIUM OWNERS ASSOCIATION, LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS; and ARDYCE NELSON (hereinafter, collectively "RESPONDENTS") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

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JURISDICTION AND NOTICE

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2 1. During the relevant times mentioned in this complaint, RESPONDENTS LARRY
3 FITCH, ANTHONY KNELP, LYNN WILLIAMS; and ARDYCE NELSON were directors of
4 VISTANA CONDOMINIUM OWNERS ASSOCIATION (the "Association"), a common-interest
5 community located in Las Vegas, Nevada.

6 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the
7 Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter
8 collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and
9 the Commission for Common-Interest Communities pursuant to the provisions of NRS
10 116.750.

FACTUAL ALLEGATIONS

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12 3. In 2014, the Division received statements of fact against the community
13 manager for VISTANA CONDOMINIUM OWNERS ASSOCIATION (the "Association").

14 4. The complainants alleged the manager was unlawfully towing vehicles within
15 the Association.

16 5. In August of 2014, the Association completed a repaving project for its parking
17 areas.

18 6. Any vehicles parked within the repaving area were towed to a different location
19 within the Association.

20 7. The tow truck company billed the Association \$75 for each vehicle.

21 8. People looking to get their vehicles back were told by the Association's
22 manager to pay \$275 in exchange for the location of their car.

23 9. Some owners paid \$275 to find out where their car was, some owners
24 negotiated a lower fee, and some owners found their relocated cars on their own.

25 10. During its investigation, the Division requested that the Association and its
26 board members respond to allegations of potential violations of law and to provide documents
27 regarding the towing of the vehicles.

28 11. The Division received one affidavit from a board member, Robert Rijke, who

1 said he did not know about the towing and did not participate in any action to approve the
2 towing of cars in the Association.

3 12. The Division did not receive an adequate response to its requests from any
4 other board member and opened an investigation against the Association and its board
5 members.

6 13. The Division sent the Association and the Respondent board members three
7 separate letters requesting a response to the allegation that the towing was unlawful and
8 requested Association records.

9 14. The Division received no response to the three letters.

10 15. According to meeting minutes from a board meeting in August of 2015, the
11 manager informed the board that 30 vehicles had been towed for the resurfacing project in
12 2014, and the Association collected a total of \$4,375 which was placed in the Association's
13 operating account.

14 16. The Division received the minutes from the Association through a separate
15 investigation.

16 17. According to the tow truck company's records, there were 84 vehicles towed at
17 the direction of the Association.

18 18. The tow truck company used by the Association was sanctioned by the Nevada
19 Transportation Authority (NTA) which found it had violated three separate regulations multiple
20 times for a total of 178 counts.

21 19. In the proceedings before the NTA, the tow truck company, Quality Towing,
22 argued that the tows were consensual since the Association was the agent for the owners of
23 the vehicles.

24 20. Finding no such agency relationship existed, the NTA order states:

25 Vistana destroyed any possible claim of agency when it acted decidedly
26 contrary to the vehicle owners' interests by concealing the location of the
27 relocated vehicles and demanding a "ransom" be paid in an amount nearly
28 fourfold the amount Vistana was charged by Quality for the relocations. The
Authority declines to extend the term "agent" in the towing context to include a

1 hostile, "adverse" purported agent such as the HOA in this matter.

2 21. The Division sent a final letter to the RESPONDENTS to notify them that a
3 complaint would be filed with the Commission.

4 22. The Association's manager, Rosario Orozco, provided a sworn affidavit to the
5 Division and included a copy of the final letter sent to the RESPONDENTS.

6 23. Ms. Orozco states that the board decided it would charge an additional \$200 for
7 the towing.

8 24. Ms. Orozco also stated that she advised the board that they needed to follow
9 the hearing process, "but they knew there was no way they would get their fines, if they went
10 through the hearing process."

11 **VIOLATIONS OF LAW**

12 25. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS, and
13 ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC 116.405(3))
14 by failing to act in the best interests of the association by committing an act or omission which
15 amounts to incompetence, negligence or gross negligence.

16 26. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS, and
17 ARDYCE NELSONR knowingly and willfully violated NRS 116.3103 (through NAC
18 116.405(7)) by failing to act in the best interests of the association by failing to cooperate with
19 the Division in resolving complaints filed with the Division.

20 27. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS, and
21 ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC
22 116.405(5)(a)) by failing to act in the best interests of the association by impeding or
23 otherwise interfering with an investigation of the Division by failing to comply with a request
24 by the Division to provide information or documents.

25 28. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS, and
26 ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC
27 116.405(5)(c)) by failing to act in the best interests of the association by impeding or
28 otherwise interfering with an investigation of the Division by concealing facts or documents

1 relating to the business of the association.

2 29. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS, and
3 ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC
4 116.405(8)(l)) by failing to act in the best interests of the association by failing to cause the
5 association to cooperate with the Division in resolving complaints filed with the Division.

6 30. RESPONDENTS violated NRS 116.31031 by directing their manager to impose
7 fines against owners or tenants without notice, an opportunity to cure, or a hearing.

8 31. RESPONDENTS violated NRS 116 84 times by directing the removal of
9 vehicles within the Association without complying with NRS 116.3102(1)(s) or NRS 487.038.

10 **DISCIPLINE AUTHORIZED**

11 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
12 116.790 the Commission has discretion to take any or all of the following actions:

- 13 1. Issue an order directing RESPONDENTS to cease and desist from continuing to
14 engage in the unlawful conduct that resulted in the violation.
- 15 2. Issue an order directing RESPONDENTS to take affirmative action to correct any
16 conditions resulting from the violation.
- 17 3. Impose an administrative fine of up to \$1,000 for each violation by RESPONDENTS.
- 18 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY
19 COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the
20 Association, such RESPONDENTS may be removed from his/her position as a
21 director and/or officer.
- 22 5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.
- 23 6. Require the BOARD MEMBERS to hire a community manager who holds a certificate.
- 24 7. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division,
25 including, without limitation, the cost of the investigation and reasonable attorney's
26 fees.
- 27 8. Take whatever further disciplinary action as the Commission deems appropriate.

28 The Commission may order one or any combination of the discipline described above.

1 If the Commission finds that the RESPONDENTS knowingly and willfully violated the
2 provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be
3 personally liable for all fines and costs imposed.

4 **NOTICE OF HEARING**

5 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider this
6 Administrative Complaint against the above-named RESPONDENTS in accordance with
7 Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116 and
8 116A of the Nevada Administrative Code.

9 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled for
10 November 15-17, 2016, beginning at approximately 9:00 a.m. each day, or until such time as
11 the Commission concludes its business. **The Commission meeting on November 15 and**
12 **16, 2016, will be held at the Nevada State Gaming Control Board, 555 East Washington**
13 **Avenue, Room 2450, Las Vegas, Nevada 89101, with videoconferencing to Nevada**
14 **State Gaming Control Board Meeting Room, 1919 College Parkway, Carson City,**
15 **Nevada 89706. The Commission meeting on November 17, 2016 will be held at the**
16 **Henderson City Hall Council Chambers, 240 South Water Street, Henderson, Nevada**
17 **89015, with no videoconferencing.**

18 **STACKED CALENDAR:** Your hearing is one of several hearings that may be
19 scheduled at the same time as part of a regular meeting of the Commission that is expected
20 to take place on November 15-17, 2016. Thus, your hearing may be continued until later in
21 the day or from day to day. It is your responsibility to be present when your case is called. If
22 you are not present when your hearing is called, a default may be entered against you and
23 the Commission may decide the case as if all allegations in the complaint were true. If you
24 need to negotiate a more specific time for your hearing in advance because of coordination
25 with out of state witnesses or the like, please call Claudia Rosolen, Commission Coordinator,
26 at (702) 486-4606.

27 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is an
28 open meeting under Nevada's open meeting law, and may be attended by the public. After

1 the evidence and arguments, the commission may conduct a closed meeting to discuss your
2 alleged misconduct or professional competence. A verbatim record will be made by a certified
3 court reporter. You are entitled to a copy of the transcript of the open and closed portions of
4 the meeting, although you must pay for the transcription.

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

12 You have the right to request that the Commission issue subpoenas to compel
13 witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
14 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
15 Other important rights and obligations, including your obligation to answer the complaint, you
16 have are listed in NRS Chapter 116 and NAC Chapter 116, including without limitation, NRS
17 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS Chapter 233B.

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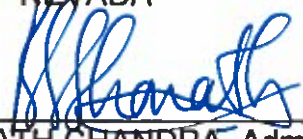
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1 Note that under NAC 116.575, not less than five (5) working days before a hearing,
2 RESPONDENT must provide to the Division a copy of all reasonably available documents
3 that are reasonably anticipated to be used to support his position, and a list of witnesses
4 RESPONDENTS intend to call at the time of the hearing. Failure to provide any document or
5 to list a witness may result in the document or witness being excluded from RESPONDENTS'
6 defense. The purpose of the hearing is to determine if the RESPONDENTS have violated the
7 provisions of Chapter 116, and to determine what administrative penalty is to be assessed
8 against RESPONDENT.

9 DATED this 20 day of September, 2016.

10
11 REAL ESTATE DIVISION
12 DEPARTMENT OF BUSINESS & INDUSTRY
13 STATE OF NEVADA

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