

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,

Case No. 2016-1949

Petitioner,

vs.

Pecos Creek Homeowners Association,
James Gilmore, Rodolfo Rocha, Omar
Guerra, Ofelia Santos, and Patricia Yuen,

Respondent.

FILED

OCT 10 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, Esq., Senior Deputy Attorney General, hereby notifies Respondents Pecos Creek Homeowners Association, James Gilmore, Rodolfo Rocha, Omar Guerra, Ofelia Santos, and Patricia Yuen (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.

JURISDICTION AND NOTICE

1. During the relevant times mentioned in this complaint, RESPONDENTS JAMES GILMORE, RODOLFO ROCHA, OMAR GUERRA, OFELIA SANTOS, and PATRICIA YUEN were officers or directors of PECOS CREEK HOMEOWNERS

1 ASSOCIATION (the "Association"), a common-interest community located in Las Vegas,
2 Nevada.

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

8 FACTUAL ALLEGATIONS

9 3. PECOS CREEK HOMEOWNERS ASSOCIATION (the "Association") was
10 formed in 1996.

11 4. In January 2014, the Division received an annual registration form for the
12 Association signed by its manager, Jeffery Allan Frederick at PW James Management and
13 Consulting ("PW James").

14 5. According to the registration form, the Association consists of 72 condominium
15 units and never had a reserve study performed.

16 6. The Association's annual budget is approximately \$113,400.

17 7. Mr. Frederick included a note saying the Association could not have a reserve
18 study performed due to annexation issues with 48 other units.

19 8. The Association was referred to the Division's auditor for further review.

20 9. In July of 2015, the Division's auditor sent notice regarding the reserve study
21 to Mr. Frederick, as the Association's manager, and each board member at their addresses
22 provided by Mr. Frederick in 2014.

23 10. Receiving no response to her letter, the auditor referred the matter to the
24 Division's compliance section.

25 11. Beginning in May 2016, the Division investigator sent letters to the
26 Association through PW James and to each board member the Division was aware of.

27 12. The investigator sent two additional letters dated June 14 and June 28.
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1 13. The investigator received a letter from attorney, Bruce Flammey, dated June
2 28, 2016.

3 14. In the letter from Mr. Flammey, he said he represents the Association and
4 challenged the Division's jurisdiction to conduct its investigation.

5 15. The investigator responded to Mr. Flammey's letter and requested a response
6 to the Division's previous letters.

7 16. The investigator sent additional letters on July 26 and August 24.

8 17. By email Mr. Flammey subsequently informed the Division that all the board
9 members resigned, but could not provide a date for when that occurred.

10 18. The investigator never received a response to the allegations or the documents
11 requested in the five letters she sent to PW James and each board member.

12 19. The Association is in default status with the Nevada Secretary of State and
13 with the Division for not having filed an annual registration form since January 2014.

14 20. The Association currently owes the Division \$246.11 for annual registration
15 fees.

16 21. The Association has not had a reserve study performed.

17 22. The Association does not have a reserve account.

18 23. The Association does not have audits for 2013, 2014, or 2015.

19 **VIOLATIONS OF LAW**

20 24. RESPONDENTS JAMES GILMORE, RODOLFO ROCHA, OMAR GUERRA,
21 OFELIA SANTOS, and PATRICIA YUEN 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
24 request by the Division to provide information and documents.

25 25. RESPONDENTS JAMES GILMORE, RODOLFO ROCHA, OMAR GUERRA,
26 OFELIA SANTOS, and PATRICIA YUEN violated NRS 116.3103 (through NAC
27 116.405(5)(a)) by failing to act in the best interests of the Association by failing to cause the
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1 Association to comply with all applicable federal, state and local laws and regulations.

2 26. RESPONDENTS violated NRS 116.31144 by failing to cause the financial
3 statement of the Association to be reviewed by an independent certified public accountant
4 for fiscal years 2013, 2014, and 2015.

5 27. RESPONDENTS violated NRS 116.31152 by failing to cause a study of the
6 reserves to be conducted at least once every 5 years.

7 28. RESPONDENTS violated NRS 116.31158 by failing to provide to the Division
8 the annual registration from since January 2014.

9 **DISCIPLINE AUTHORIZED**

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

12 1. Issue an order directing RESPONDENTS to cease and desist from
13 continuing to engage in the unlawful conduct that resulted in the violation.

14 2. Issue an order directing RESPONDENTS to take affirmative action to
15 correct any conditions resulting from the violation.

16 3. Impose an administrative fine of up to \$1,000 for each violation by
17 RESPONDENTS.

18 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND
19 WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best
20 interest of the Association, such RESPONDENTS may be removed from his/her position
21 as a 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
24 certificate.

25 7. Require RESPONDENTS to pay the costs of the proceedings incurred by the
26 Division, including, without limitation, the cost of the investigation and reasonable
27 attorney's fees.

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1 because of coordination with out of state witnesses or the like, please call Claudia
2 Rosolen, Commission Coordinator, at (702) 486-4606.

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

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


16 You have the right to request that the Commission issue subpoenas to compel
17 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
18 you may be required to demonstrate the relevance of the witness' testimony and/or
19 evidence. Other important rights and obligations, including your obligation to answer the
20 complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including
21 without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC
22 116.635 and NRS Chapter 233B.

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

4 DATED this 7th day of October, 2016.

5 REAL ESTATE DIVISION,
6 DEPARTMENT OF BUSINESS & INDUSTRY,
7 STATE OF NEVADA

8 By: 
9 Sharath Chandra, Administrator
10 2501 East Sahara Avenue
11 Las Vegas, Nevada 89104
12 (702) 486-4033

11 ADAM PAUL LAXALT
12 Attorney General

13 By: 
14 Michelle D. Briggs, Esq.
15 Senior Deputy Attorney General
16 555 E. Washington Avenue, Suite 3900
17 Las Vegas, Nevada 89101
18 (702) 486-3420
19 Attorneys for Nevada Real Estate Division
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