

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.

Green Valley Country Club Estates  
Homeowners Association, Michael Hayden,  
Darla Hayden, Gerard Capra, and Charles  
Damus,

Respondents.

Case No. 2016-2462

**FILED**

**MAY 16 2018**

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 Respondent Green Valley Country Club Estates Homeowners Association, Michael Hayden, Darla Hayden, Gerard Capra, and Charles Damus (hereinafter, "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, Michael Hayden, Darla Hayden, Gerard Capra, and Charles Damus served as board members and/or officers of RESPONDENT Green Valley Country Club Estates Homeowners Association (the "Association"), a common-interest community located in Henderson, Nevada.

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

#### 6                                   FACTUAL ALLEGATIONS

7           3.     In May, 2016, the Division received an intervention affidavit from a board  
8 member in Green Valley Country Club Estates Homeowners Association (the  
9 "Association") against another board member, RESPONDENT CHARLES DAMUS.

10          4.     The complainant alleged the board member since 2013 was allowing the  
11 Association to pay family members of the board's former president and treasurer.

12          5.     The Division expanded its investigation to include the board's former  
13 president, RESPONDENT MICHAEL HAYDEN, and treasurer, RESPONDENT  
14 DARLA HAYDEN.

15          6.     According to annual registration filings from 2013 to 2016,  
16 RESPONDENTS MICHAEL HAYDEN, DARLA HAYDEN, CHARLES DAMUS, and  
17 GERARD CAPRA served as board members for the Association.

18          7.     The Association consists of approximately 129 units and has an annual  
19 budget of approximately \$26,000.

20          8.     The Association was self-managed until February 2018.

21          9.     The Association's bank records reveal that "HEH Operational and  
22 Financial Consulting" (hereinafter "HEH") received approximately \$17,041.81 in 2013  
23 through 2015.

24          10.    Checks paid to HEH were signed by RESPONDENTS MICHAEL  
25 HAYDEN and DARLA HAYDEN, who are married.

26          11.    HEH is owned by the HAYDENS' son and is located in San Diego,  
27 California.

28          12.    The Association paid for a P.O. Box in San Diego, California.

1        13.    The HAYDENS' daughter, Katie Jager also received payments from the  
2 Association with checks signed by the HAYDENS in 2013 and 2014 totaling  
3 approximately \$2,720.

4        14.    According to invoices provided during the investigation, HEH's services  
5 included communicating with the Division regarding required forms, preparing and  
6 mailing delinquent assessment notices, filing sales tax return, updating the reserve  
7 account in the bank, maintaining financial records, preparing financial records,  
8 preparing owner accounts, and contracting for new reserve study.

9        15.    Invoices from Katie Jager Bookkeeping Services just state the month and  
10 year with payment due of \$150 per month.

11       16.    The HAYDENS both responded to the Division that the board approved  
12 the hiring of HEH and Ms. Jager, and the board approved all invoices from them.

13       17.    RESPONDENT MICHAEL HAYDEN responded to the Division saying  
14 with regard to the allegation that undisclosed family members were providing services  
15 to the Association:

16       The expenses were approved by the Board and it was neither hidden nor  
17 questioned. This was a cost driven decision as we only collect \$200/year/home in  
18 HOA fees. When shopping the market for a CPA to do the work, there was no way  
to afford regular management companies.

19       18.    The Association's CC&R's at Section 18(f) state with regard to the limit on  
20 assessments:

21       ...nor exceed in any one year the sum of \$200.00 for each lot; and provided  
22 further that the limitations and conditions in the paragraph above shall not  
apply to charges for special services rendered...

23       19.    RESPONDENT DAMUS stated to the Division that he did not know "the  
24 existence or identity of HEH" or Katie Jager.

25       20.    RESPONDENT CAPRA stated to the Division that he did not know of any  
26 familial relationship between the Association's vendors and the HAYDENS, and that he  
27 and RESPONDENT DAMUS tried to request meetings of the board but they were  
28 "continually cancelled and rescheduled."

21.    The Association has no contracts with HEH or Katie Jager.

22. The Association does not have minutes or audio from board meetings in 2013 to 2016.

23. The Association has no bids for services provided.

24. RESPONDENT DAMUS stated to the Division that RESPONDENT MICHAEL HAYDEN maintained all the records for the Association in 2013 through 2015.

25. RESPONDENT MICHAEL HAYDEN listed himself as the Custodian of Records in 2013 and 2015.

26. RESPONDENT DAMUS stated to the Division that RESPONDENTS MICHAEL AND DARLA HAYDEN "acted unilaterally without consulting the other board members, and without properly noticed board meetings."

27. RESPONDENT MICHAEL HAYDEN stated to the Division that all 2013-2016 contracts and bids were “lost as emails, and in the closing of the website and data warehouse.”

28. RESPONDENT DARLA HAYDEN stated to the Division that she "was never responsible for any of the records."

29. The Association's Treasurer's report from the end of 2015 reflects cash – in excess of reserves – totaling approximately \$88,000.

## VIOLATIONS OF LAW

30. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by committing an act or omission which amounts to incompetence, negligence or gross negligence.

31. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by failing to cause the Association to comply with all applicable state laws.

32. RESPONDENTS violated NRS 116.31175 by failing to maintain the Association's records for 10 years.

33. RESPONDENTS violated NRS 116.31083 by failing to maintain all minutes of board meetings.

34. RESPONDENTS violated NRS 116.31083 by failing to hold meetings of the board every 100 days.

35. RESPONDENTS MICHAEL HAYDEN and DARLA HAYDEN violated NRS 116.31084(2) by failing to disclose their familial relationship with vendors of the Association.

36. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(g)) by failing to act in good faith and in the best interests of the Association by failing to maintain current, accurate, and properly documented financial records.

37. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(i)) by failing to act in good faith and in the best interests of the Association by failing to cause the Association to establish policies and procedures that are designed to provide reasonable assurances in the reliability of financial reporting.

**DISCIPLINE AUTHORIZED**

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

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

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

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

4. IF RESPONDENT IS FOUND TO HAVE KNOWINGLY AND WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the Association, such RESPONDENTS may be removed from his/her position as a director and/or officer.

5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

6. Require the BOARD MEMBERS to hire a community manager who holds a

1 certificate.

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

5 8. Take whatever further disciplinary action as the Commission deems  
6 appropriate.

7 The Commission may order one or any combination of the discipline described  
8 above. If the Commission finds that the RESPONDENTS knowingly and willfully  
9 violated the provisions of NRS or NAC 116, the Commission may order that  
10 RESPONDENTS be personally liable for all fines and costs imposed.

#### 11 NOTICE OF HEARING

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

16 THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for  
17 June 19-21, 2018, beginning at approximately 9:00 a.m. each day, or until such time as  
18 the Commission concludes its business. The Commission meeting will be held at the  
19 Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las  
20 Vegas, Nevada 89102 with videoconferencing to Department of Business & Industry,  
21 Director's Office, 1830 East College Parkway, Suite 100, Carson City, Nevada 89706.

22 STACKED CALENDAR: Your hearing is one of several hearings that may be  
23 scheduled at the same time as part of a regular meeting of the Commission that is  
24 expected to take place on June 19-21, 2018. Thus, your hearing may be continued until  
25 later in the day or from day to day. It is your responsibility to be present when your  
26 case is called. If you are not present when your hearing is called, a default may be  
27 entered against you and the Commission may decide the case as if all allegations in the  
28 complaint were true. If you need to negotiate a more specific time for your hearing in

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

3 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is  
4 an 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  
8 open 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  
11 choice. At the hearing, the Division has the burden of proving the allegations in the  
12 complaint and will call witnesses and present evidence against you. You have the right  
13 to respond and to present relevant evidence and argument on all issues involved. You  
14 have the right to call and examine witnesses, introduce exhibits, and cross-examine  
15 opposing witnesses on any matter relevant to the issues involved.

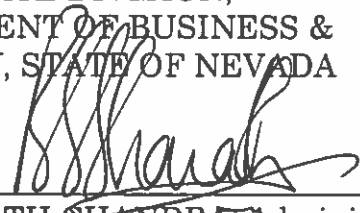
16 You have the right to request that the Commission issue subpoenas to compel  
17 witnesses to testify and/or evidence to be offered on your behalf. In making this  
18 request, you may be required to demonstrate the relevance of the witness' testimony  
19 and/or evidence. Other important rights and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

23 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  
26 of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to  
27 provide any document or to list a witness may result in the document or witness being  
28 excluded from RESPONDENTS' defense. The purpose of the hearing is to determine if

1 the RESPONDENTS have violated the provisions of NRS 116, and to determine what  
2 administrative penalty is to be assessed against RESPONDENTS.

3 DATED: May 16, 2018.

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

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