

1 BEFORE THE COMMISSION FOR COMMON-INTEREST
2 COMMUNITIES AND CONDOMINIUM HOTELS
3 STATE OF NEVADA

4 Sharath Chandra, Administrator, Real
5 Estate Division, Department of Business &
6 Industry, State of Nevada,

7 Petitioner,

8 vs.

9 Diamond Creek Homeowners Association,
10 Roy Cooper, and Kim Cooper,

11 Respondents.

Case No. 2017-1826

FILED

JAN 25 2018

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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

14 The Real Estate Division of the Department of Business and Industry, State of
15 Nevada (the "Division"), by and through its counsel, Adam Paul Laxalt, Attorney
16 General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney
17 General, hereby notifies Respondents Diamond Creek Homeowners Association, Roy
18 Cooper, and Kim Cooper (hereinafter, "RESPONDENTS") of an administrative hearing
19 before the Commission for Common-Interest Communities and Condominium Hotels,
20 State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada
21 Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC").
22 The purpose of the hearing is to consider the allegations stated below and to determine
23 if an administrative penalty will be imposed on the RESPONDENTS pursuant to the
24 provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS
116.790.

25 **JURISDICTION AND NOTICE**

26 1. During the relevant times mentioned in this complaint, RESPONDENTS
27 ROY COOPER and KIM COOPER served as board members and/or officers of
28 RESPONDENT DIAMOND CREEK HOMEOWNERS ASSOCIATION (the

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

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

7 FACTUAL ALLEGATIONS

8 3. In April 2017, Diamond Creek Homeowners Association (the "Association")
9 submitted an annual registration form to the Division.

10 4. The Association consists of approximately 190 single-family homes within
11 the Mountain's Edge Master Association.

12 5. The Association has an annual budget of approximately \$98,000.

13 6. The Division initiated an audit of the Association's records based on issues
14 with the 2017 registration form.

15 7. The Association's response through their community manager, Kristen
16 Gillis, was incomplete and raised additional concerns; the Division's compliance section
17 initiated an investigation.

18 8. RESPONDENTS did not respond to letters from the Division dated August
19 18, 2017, September 29, 2017, and October 13, 2017.

20 9. RESPONDENTS ROY and KIM COOPER are married and began serving
21 on the Association's board on or about February 23, 2016.

22 10. RESPONDENTS ROY and KIM COOPER purchased the home of the prior
23 board members by deed dated February 25, 2016.

24 11. The Association's management contract is dated February 25, 2016 and is
25 signed by RESPONDENT ROY COOPER.

26 12. The Association's landscape contract is dated February 23, 2016 and is
27 signed by RESPONDENT ROY COOPER.

28 13. The prior board members were also married.

1 14. The board consisted of only a married couple since 2012.

2 15. RESPONDENT ROY COOPER serves as the Association's president and
3 RESPONDENT KIM COOPER serves as the Association's secretary.

4 16. The Association does not have regular annual elections for its board.

5 17. The Association does not have annual CPA reviews of its financial
6 statements.

7 18. The Association does not have properly noticed and agendized board
8 meetings every 100 days.

9 19. The Association's annual assessment increased for 2017 despite having a
10 surplus of funds in both reserves and operating accounts.

11 20. The Association does not have monthly interim financial statements.

12 VIOLATIONS OF LAW

13 21. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
14 NRS 116.31034 by serving on the board and as officers when they are ineligible to do so.

15 22. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
16 NRS 116.31034 by failing to have elections in accordance with the statute.

17 23. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
18 NRS 116.31144 by failing to cause the financial statement of the Association to be
19 reviewed by an independent certified public accountant every fiscal year.

20 24. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
21 NRS 116.3103 (through NAC 116.405(5)(a)) by failing to act in good faith and in the best
22 interests of the Association when they impeded the Division's investigation by failing to
23 comply with a request by the Division to provide information and documents.

24 25. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
25 NRS 116.3103 (through NAC 116.405(5)(c)) by failing to act in good faith and in the best
26 interests of the Association when they impeded the Division's investigation by
27 concealing facts and documents relating to the business of the Association.

28 26. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated

1 NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best
2 interests of the Association when they acted for reasons of self-interest.

3 27. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
4 NRS 116.3103 (through NAC 116.405(3)) by committing an act or omission which
5 amounts to incompetence, negligence or gross negligence.

6 28. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
7 NRS 116.3103 (through NAC 116.405(5)(b)) by failing to act in good faith and in the best
8 interests of the Association by supplying false or misleading information to the auditor.

9 29. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
10 NRS 116.3103 (through NAC 116.405(8)(c)) and NRS 116.31083 by failing to act in good
11 faith and in the best interests of the Association by failing to have board meetings with
12 such frequency as to properly and efficiently address the affairs of the Association and
13 not within every 100 days.

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

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

22 32. RESPONDENTS knowingly and willfully violated NRS 116.3103 (through
23 NAC 116.405(8)(j)) by failing to act in good faith and in the best interests of the
24 Association by failing to cause the Association to prepare interim and annual financial
25 statements that will allow the Division and the units' owners to determine whether the
26 financial position of the Association is fairly presented in accordance with the provisions
27 of NAC 116.451 to 116.461, inclusive.

28 33. RESPONDENTS violated NRS 116.3114 by failing to properly allocate

1 surplus funds.

2 DISCIPLINE AUTHORIZED

3 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
4 116.790 the Commission has discretion to take any or all of the following actions:

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

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

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

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

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

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

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

22 8. Take whatever further disciplinary action as the Commission deems
23 appropriate.

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

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1 **NOTICE OF HEARING**

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

6 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled for
7 March 6-8, 2018, beginning at approximately 9:00 a.m. each day, or until such time as
8 the Commission concludes its business. The Commission meeting will be held at the
9 Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las
10 Vegas, Nevada 89102 with videoconferencing to Department of Business & Industry,
11 Director's Office, 1830 East College Parkway, Suite 100, Carson City, Nevada 89706.

12 **STACKED CALENDAR:** Your hearing is one of several hearings that may be
13 scheduled at the same time as part of a regular meeting of the Commission that is
14 expected to take place on March 6-8, 2018. Thus, your hearing may be continued until
15 later in the day or from day to day. It is your responsibility to be present when your
16 case is called. If you are not present when your hearing is called, a default may be
17 entered against you and the Commission may decide the case as if all allegations in the
18 complaint were true. If you need to negotiate a more specific time for your hearing in
19 advance because of coordination with out of state witnesses or the like, please call
20 Teralyn Thompson, Administration Section Manager, at (702) 486-4036.

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

27 **As a RESPONDENT**, you are specifically informed that you have the right to
28 appear and be heard in your defense, either personally or through your counsel of

1 choice. At the hearing, the Division has the burden of proving the allegations in the
2 complaint and will call witnesses and present evidence against you. You have the right
3 to respond and to present relevant evidence and argument on all issues involved. You
4 have the right to call and examine witnesses, introduce exhibits, and cross-examine
5 opposing witnesses on any matter relevant to the issues involved.

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

13 NAC 116.575, not less than five (5) working days before a hearing, RESPONDENTS
14 must provide to the Division a copy of all reasonably available documents that are
15 reasonably anticipated to be used to support his position, and a list of witnesses
16 RESPONDENTS intend to call at the time of the hearing. Failure to provide any
17 document or to list a witness may result in the document or witness being excluded
18 from RESPONDENTS' defense. The purpose of the hearing is to determine if

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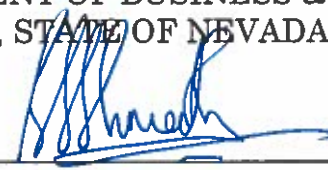
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1 the RESPONDENTS have violated the provisions of NRS 116, and to determine what
2 administrative penalty is to be assessed against RESPONDENTS.

3 DATED: January 24, 2018.

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

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