

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES NOVEMBER 14-16, 2017**

**NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
NEVADA ROOM, SUITE 400
LAS VEGAS, NV 89102**

**VIDEO CONFERENCE:
DEPARTMENT OF BUSINESS AND INDUSTRY
DIRECTOR'S OFFICE
1830 E. COLLEGE PARKWAY
SUITE 100
CARSON CITY, NV 89706**

NOVEMBER 14, 2017

9:00 A.M.

1-A) Swearing in of new and reappointed Commissioners

Michael Burke, Charles Niggemeyer and James Rizzi were sworn in by Commissioner Williams.

1-B) Introduction of Commissioners in attendance

In Las Vegas: Michael Burke, Ken Williams, James Rizzi, Richard Layton, Doris Woods, Ryan Henderson, Charles Niggemeyer and Deputy Attorney General Asheesh Bhalla as Commission Counsel.

1-C) Introduction of Division Staff in attendance

In Las Vegas: Sharath Chandra, Administrator; Teralyn Thompson, Administration Section Manager; Charvez Foger, Ombudsman; Ingrid Trillo, Education Information Officer; Darik Ferguson, Chief Compliance Audit Investigator; Claudia Rosolen, Commission Coordinator; and Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Sharon Jackson, Deputy Administrator; Christopher Cooke, Compliance Audit Investigator.

2) Public Comment

In Las Vegas: John Radocha, resident in Centennial Hills, commented. Mr. Radocha stated that he attended NRS classes offered by the Division since 2015. Mr. Radocha spoke about retaliation.

In Las Vegas: Sarah Berry commented. Ms. Berry stated classes for reserve study are backward. Ms. Berry stated that 3 of hours finance and the legislative update class should be taken before getting a license and not afterwards.

In Las Vegas: Mike Kosor commented. Mr. Kosor provided the Commission with written public comment and read his comments into the record. Mr. Kosor asked the Commission to investigate his allegations.

In Las Vegas: Rana Goodman from the Nevada Homeowner Alliance PAC (NHA), commented. Ms. Goodman stated that homeowners come to them seeking help in filing complaints against

their associations. Ms. Goodman stated that the process to file a complaint is lengthy and homeowners get frustrated and give up. Ms. Goodman asked the Commission to streamline the process to file complaints and give the homeowners an avenue to get help.

In Las Vegas: Barry Goldstein commented. Mr. Goldstein spoke about NRS 116.31036 that deals with recall election. Mr. Goldstein asked for a change in the language of the statute.

In Las Vegas: Jonathan Friedrich, former Commission for Common-Interest Communities and Condominium Hotels commissioner, commented. Mr. Friedrich gave the Commission a brief update on a lawsuit he filed against an association. Mr. Friedrich thanked the Division for the credential notes in the Division's database.

In Las Vegas: Marcia Kosterka, homeowner at Sun City Anthem, commented. Ms. Kosterka stated that there are currently 42 intervention affidavits filed for Sun City Anthem. Ms. Kosterka stated that in Illinois homeowners come first. Ms. Kosterka stated that the process to file an intervention affidavit is cumbersome and so technical that the average homeowner will give up. Ms. Kosterka asked the Commission to make the process to file complaint easier.

In Las Vegas: Richard Arendt, homeowner at Sun City Anthem, commented. Mr. Arendt asked question about recall election.

7-B) Community Association Solutions

“Changes to the Law That Affect the CAM and Employers in Nevada”

Request: 2 Hours

General

Classroom

Commissioner Layton disclosed that one of the respondents is the community manager for his association. Commissioner Layton stated that this will not affect his ability to be fair and impartial.

Sara Berry presented this course. Ms. Berry stated that the course was denied by the Division and that she wants to appeal the Division's decision.

Ingrid Trillo stated that the class was denied due to the time allocation on some of the topics. Ms. Trillo stated that the Division feels that this should be a 1 hour class instead of the requested 2 hours.

Ms. Berry stated that she could include the insurance ramification on the list of topics.

Ms. Trillo stated that those changes should be submitted to the Division in writing.

Chairman Burke stated that no action will be taken by the Commission and that the amended course will need to be resubmitted to the Division for approval.

4) For possible action: Respondent Leslie White's motion to quash services and vacate (set aside) default judgment

NRED v. Leslie White

Case Nos. 2016-3229; 2016-3078; 2016-3079; 2016-2920; 2016-3363

Type of Respondent: Community Manager

License#: CAM.0000070-SUPR (VOLUNTARY SURRENDER)

Parties Present:

Michelle Briggs was present representing the Division.

Leslie White was present.

Commissioner Williams disclosed that in the past he had business interactions with Ms. White. Commissioner Williams stated that this will not affect his ability to be fair and impartial.

Ms. White stated that Commissioner Williams should recuse himself from voting on her motion.

Commissioner Williams recused himself.

Ms. White spoke in favor of her motion.

Ms. Briggs spoke against the motion.

Chairman Burke stated that Ms. White did not provide any basis to support her request to set aside the default judgment.

Commissioner Rizzi moved to deny Ms. White's motion to quash services and vacate (set aside) default judgment. Commissioner Layton seconded.

Motion carried with Commissioner Williams abstained.

3) For possible action: Respondents Vistana Condominium Owners Association, Larry Fitch, Anthony Knelp, Lynn Williams, and Ardyce Nelson's notice of appeal and appeal NRED v. Vistana Condominium Owners Association, Larry Fitch, Anthony Knelp, Lynn Williams, Ardyce Nelson
Case No. 2015-3373

Type of Respondent: Executive Board

Parties Present:

Michelle Briggs was present representing the Division.

Richard Haskin was present representing Vistana Condominium Owners Association and the board members.

Mr. Haskin spoke in favor of the appeal.

Ms. Briggs stated that the Commission does not have jurisdiction to hear the notice of appeal because it was untimely filed. Ms. Briggs stated that Vistana has filed for judicial review and the case will be heard in court.

Ms. Briggs spoke against the appeal.

Asheesh Bhalla asked to confirm the dates when Vistana filed a notice of appeal with the Division and the date when Vistana filed for judicial review.

Mr. Haskin stated that they followed NAC 116.600 for the appeal with the Division and filed within the 20 days. Mr. Haskin stated that he doesn't have the specific dates with him for the filing with District court but it was 4 days prior the expiration of the deadline.

Mr. Bhalla read NAC 116.630.

Mr. Haskin stated that they filed in accordance with NAC 116.600.

Ms. Briggs stated that NAC 116.600 refers to appeals for decisions made by a separate hearing panel; those decisions can be appeal to the Commission. Ms. Briggs stated that this Commission does not have a hearing panel and the decision on case 2015-3373 was made by the Commission. Ms. Briggs stated the only way to request an appeal, in the sense of reconsideration, is under NAC 116.617 which regulates post-hearing motions, rehearing and reconsiderations.

Chairman Burke stated that this is a motion for reconsideration improperly titled “notice of appeal”. Chairman Burke stated that the Commission does not have jurisdiction to hear the matter.

Chairman Burke moved that this Commission doesn’t have proper basis upon which to hear the pending motion whether as an appeal or reconsideration therefore will move to deny the respondent’s request. Commissioner Williams seconded.

Motion carried.

8-B) For possible action: Discussion and decision to approve minutes of August 29-31, 2017 Commission meeting

Commissioner Layton recused himself from voting on this matter because he was unable to attend the August 29-31, 2017 Commission meeting.

Commissioner Williams moved to approve the minutes of August 29-31, 2017 Commission meeting. Commissioner Niggemeyer seconded.

Motion carried with Commissioner Layton abstained.

**4-A) Disciplinary action: Hearing and possible action by the Commission
NRED v. Pecos Creek Homeowners Association, James Gilmore, Rodolfo Rocha, Omar Guerra, Ofelia Santos, and Patricia Yuen
Case No. 2016-1949**

Type of Respondent: Executive Board

Parties Present:

Michelle Briggs was present representing the Division.

Jonathan Kelly was present representing First Columbia Community Management Inc. (FCCMi).

Ms. Briggs stated that this is a status update.

Mr. Kelly stated that in order to bring the association’s financials in compliance, the association hired a forensic auditor, and is working with a board member that is currently not an owner to clear her situation.

Commissioner Williams asked the situation with the non-homeowner board member.

Mr. Kelly stated that the non-homeowner board member is the daughter of the actual homeowners that lived in the association. Mr. Kelly stated that the homeowner recently passed away and his daughter is in the process of becoming the legal owner of that property.

Ms. Briggs stated that the estate needs to provide a letter stating that the person is authorized to serve as an agent on behalf of the estate.

Mr. Kelly asked how far back they should go with the audits.

Ms. Briggs stated that from 2012 to date should be fine. Ms. Briggs requested to have a copy of the engagement letter for the forensic auditor, a letter from the estate authorizing the non-homeowner to act as an agent, and to have the association back to the next Commission meeting for another follow up.

Commission took no action and this matter will be placed on the next meeting agenda for follow up.

6-B) Disciplinary action: Hearing and possible action by the Commission
NRED v. Palmilla Homeowners Association, Vijay Shetty, Tracy Dalton, William Simpson, James Lee, Renee Snodgrass, Shauna Carson, and Karen Henderson
Case No. 2016-3042

Type of Respondent: Executive Board

Parties Present:

Michelle Briggs was present representing the Division.

Julie Funai was present representing Palmilla Homeowners Association.

Preliminary Matters:

Ms. Briggs stated that this is a status check because the association is deficient in their audits, reserve study and funding of the reserve account.

Ms. Funai stated that since July the association has been working with an auditor to get an audit on the reserve account. Ms. Funai stated that the auditor made significant progress for 2013, 2014 and 2015 but 2016 seems to be particularly spotty information wise.

The Commission took no action and this matter will be placed on the next meeting agenda for follow up.

6-C) Disciplinary action: Hearing and possible action by the Commission
NRED v. Hidden Crest IV Homeowners Association and Anthony Gelsone
Case No. 2016-3329

Type of Respondent: Board Officer and Director

Parties Present:

Michelle Briggs was present representing the Division.

Jason Onello was present on behalf of Hidden Crest IV Homeowners Association and Anthony Gelsone.

Anthony Gelsone was present.

Ms. Briggs stated that this is a status check. Ms. Briggs stated that the association is still in default with registration filing. Ms. Briggs requested the association to hire a community manager, to have an election and to come back to the next Commission meeting for a status update.

Chairman Burke moved that the association to hire a community manager within 2 weeks, conduct a properly noticed election and to come back to the next scheduled Commission meeting for a status updates and provide proof of registration within a week from today's date. Commissioner Rizzi seconded.

Motion carried.

6-D) Disciplinary action: Hearing and possible action by the Commission
NRED v. Max McCombs; and English Mill Condominiums Homeowners Association
Case No. 2014-1179

Type of Respondent: Board Officer and Director

Parties Present:

Michelle Briggs was present representing the Division.

Max McCombs was present via videoconference from Carson City.

Ms. Briggs stated that Mr. McCombs was ordered by the Commission to solicit 3 association management companies for no less than to oversee the association's meetings and present the financials. Ms. Briggs stated that the order required that the request for proposal be quarterly. Ms. Briggs stated that Mr. McCombs was ordered to bring those bids to the Commission meeting. Ms. Briggs stated that Mr. McCombs provided her a contract but has doubts that the company that is listed on the contract has a license community manager on staff.

Mr. McCombs stated that he reached out to 6 or 7 companies and received 3 bids. Mr. McCombs stated that the board reviewed those bids and is ready to sign an agreement with PMI. Mr. McCombs stated that he has a copy of the draft agreement and he is still doing some final editing. Mr. McCombs stated that it is not signed because he did not know what the procedure is in respect to having the Commission's approval.

Ms. Briggs asked who the community manager was.

Mr. McCombs stated that Robert Hughes is a community manager.

Christopher Cooke stated that PMI is a franchise and Robert Hughes is the CFO or CEO in Reno. Mr. Cooke stated that the Reno PMI is a property management business that doesn't have a certified community manager. Mr. Cooke stated that the PMI in Sparks has a community manager but that company did not have any record of Mr. McCombs reaching out to them.

Mr. McCombs stated that PMI has a provisional community manager and Mr. Hughes has 9 months to get the certification.

Chairman Burke asked if Mr. Hughes is affiliated with a community manager.

Ms. Briggs stated that if Mr. Hughes had a provisional license, Mr. Hughes would have to work under a supervising community manager.

Mr. Cooke stated that according to Division records, Mr. Hughes does not have a provisional certification.

Commissioner Williams stated that he doesn't think that this matter should be brought back. Commissioner Williams stated that the Commission should take a stand and make a decision today.

Mr. McCombs stated that Mr. Hughes will move forward with the process of getting a provisional community manager certificate if the association signs the agreement. Mr. McCombs stated that he would like to hire Mr. Hughes.

Commissioner Layton stated that he only saw general statements for the payment status of the homeowners in spite of the Commission order requesting to hire a management company, have a clear strategy on how to bring delinquent homeowners current, and the production of monthly financial reporting to the Real Estate Division. Commissioner Layton stated that he requested that Mr. McCombs provide a monthly statement for the end of May, a monthly statement for the end of June, and a monthly statement for the end of July. Commissioner Layton stated that he is not sure that the financial statement prepared by the CPA that was given to the Commission is totally accurate.

Commissioner Layton asked where funds that are paid by homeowners go.

Mr. McCombs stated that the association has two accounts and checks are made out to English Mill Condominiums and mailed to a post office box.

Commissioner Layton asked how often Mr. McCombs deposits money.

Mr. McCombs stated that normally once or twice a month.

Commissioner Layton stated that in the operating accounts that Mr. McCombs provided, there were no deposits made in January, February, April and June of 2017 and no deposits were made in the reserve account until July 2017. Commissioner Layton stated that he has concerns about collection procedures, timely deposits and the fulfillments of Commission order.

Ms. Briggs asked for the Commission to find Mr. McCombs and English Mill Condominiums Homeowners Association in default of the settlement agreement and order the association to hire a community manager and that if the association fails to do so by the next Commission meeting to impose a fine to Mr. McCombs personally.

McCombs asked how long it takes to get a provisional community manager certification.

Commissioner Williams stated that a provisional community manager license has a 2 year training period. Commissioner Williams stated Mr. McCombs needs to hire a company that has the proper certifications now.

Commissioner Layton asked for a financial statement through year end prepared by an independent third party. Commissioner Layton stated that it needs to show in detail homeowners that are delinquent by property names and amounts for those that are 3 months or more past due. Commissioner Layton stated Mr. McCombs will have to provide specifically what has been done to try to collect those funds.

McCombs asked who should he provide that information to.

Commissioner Layton stated that this information needs to be provided to the Commission ahead of the next meeting in March.

Commissioner Burke moved to find:

English Mill and Max McCombs in default of the settlement agreement and as means to avoid sanctions against Mr. McCombs personally at the next Commission meeting the following needs to be completed:

- Issue a stand-alone written request for proposal to no less than 3 certified community managers with the same requirements that were issued in the August Commission hearing: on a quarterly basis, to oversee 100 day meetings and the same firm would present financials.
- Provide Ms. Briggs or Mr. Cooke prior to the next Commission meeting financial statement through year-end.
- Provide accounts of homeowners who are 3 months or more delinquent and what steps have been taken to recover against those accounts.
- If the financial statements are not prepared by a licensed CPA in the State of Nevada, the association needs to provide operating and reserve account statements through or for December 2017.
- The association hires a community manager prior to the next Commission meeting and provides the Commission with both, written request for proposal and the contract ahead of the meeting.

Commissioner Layton seconded.

Motion carried.

6-F) Disciplinary action: Hearing and possible action by the Commission

NRED v. Helen Amanda Davis

Case No. 2016-3771

Type of Respondent: Community Manager

License#: CAM.0001226-SUPR (ACTIVE)

6-G) Disciplinary action: Hearing and possible action by the Commission

NRED v. Helen Amanda Davis

Case No. 2016-3832

Type of Respondent: Community Manager

License#: CAM.0001226-SUPR (ACTIVE)

6-H) Disciplinary action: Hearing and possible action by the Commission

NRED v. Helen Amanda Davis

Case No. 2017-290

Type of Respondent: Community Manager

License#: CAM.0001226-SUPR (ACTIVE)

Parties Present:

Michelle Briggs was present representing the Division.

Helen Amanda Davis was not present.

State's Witness:

Claudia Rosolen testified regarding proof of service.

Ms. Briggs stated that she spoke with Ms. Davis about this hearing.

Chairman Burke moved to find Helen Amanda Davis in default for case 2016-3771, 2016-3832, 2017-290 for failure to appear for the hearing. Commissioner Williams seconded.

Motion carried.

Chairman Burke moved that for cases 2016-3771, 2016-3832, and 2017-290 to find the validity and truth of the facts pleaded and the violations of law. Commissioner Layton seconded.

Motion carried.

Commissioner Rizzi moved for:

- Davis's community manager certificate to be revoked for a period of no less than ten years from the date of the Order, but in no event sooner than all fines imposed by the Commission are paid in full.
- Davis shall pay an administrative fine to the Division in the total amount of \$44,064.60 which includes a fine of \$35,000 for the violations of law and \$9,064.60 representing the total amount due for the Division's attorney's fees and costs no later than 90 days from the date of the Order.
- Davis shall pay restitution to Pecos Creek Homeowners Association in the amount of \$10,600 within 90 days from the date of the Order.
- Davis shall pay restitution to Palmilla Homeowners Association in the amount of \$9,000 within 90 days from the date of the Order.
- The Division may institute debt collection proceedings for failure to timely pay the total fine, including action to reduce this Order to a judgment. Further, if collection goes through the State of Nevada, then Davis shall also pay the costs associated with collection.

Commissioner Layton seconded.

Motion carried.

6-I) Disciplinary action: Hearing and possible action by the Commission

NRED v. Hillcrest Community Association, Melanie Muldowney, Bernard Hirschboeck, Debbie Cooper, Nancy Meyers and Janet Falgiano

Case No. 2017-1093

Type of Respondent: Board Officer and Director

Parties Present:

Michelle Briggs was present representing the Division.

Janet Falgiano and Debbie Cooper were present.

Melanie Muldowney, Bernard Hirschboeck, and Nancy Meyers were not present.

Ms. Briggs asked the respondents if they were aware of Diana Gillis' email requesting a continuance. Ms. Briggs stated that Ms. Gillis is the community manager and emailed the request to Division staff this morning.

Ms. Briggs asked the Commission to deny Ms. Gillis' request for a continuance and to take action against the board members that are not present. Ms. Briggs stated that she is not requesting any fines to be imposed, but would request a default and the removal of those board members from the board.

Commissioner Layton asked if there was any evidence that those board members could not be present today for any justifiable reason.

Ms. Briggs stated that Melanie Muldowney contacted the Commission Coordinator about this hearing, but she did not ask for a continuance.

Chairman Burke asked Ms. Falgiano and Ms. Cooper if they have heard from the other board members.

Ms. Falgiano and Ms. Cooper stated that they have not heard from the other board members in regards to this matter.

State's Witness:

Claudia Rosolen testified regarding proof of service.

Ms. Briggs read into the record the email that Ms. Muldowney sent to the Division about not receiving the documents for this matter.

Chairman Burke move to find Melanie Muldowney, Bernard Hirschboeck, Nancy Meyers, and Hillcrest Community Association to be in default. Commissioner Williams seconded.

Motion carried.

Chairman Burke move to find the factual allegations and violations of law are proven and taken as true and correct against Melanie Muldowney, Bernard Hirschboeck, Nancy Meyers, and Hillcrest Community Association. Commissioner Williams seconded.

Motion carried.

Chairman Burke move for Melanie Muldowney, Bernard Hirschboeck, Nancy Meyers to be removed from the board of directors and as officers for the Association and shall not be able to serve on any board in the State of Nevada for a period of no less than 10 years from the date of the Order. Commissioner Williams seconded.

Motion carried.

Commissioner Williams moved for Ms. Cooper and Ms. Falgiano to be the existing board members, to appoint a third board member as soon as possible, to conduct a meeting to decide if the association wants legal advice, get managements bids, have an election, once the election is done get bids to audit the financials. Commissioner Williams moved for the association to report back to the Commission at the next Commission meeting. Chairman Burke seconded.

Motion carried.

6-K) Disciplinary action: Hearing and possible action by the Commission
NRED v. Joseph Bitsky

Case No. 2017-435

Type of Respondent: Board Officer

Parties Present:

Michelle Briggs was present representing the Division.

Joseph Bitsky was not present.

State's Witness:

Claudia Rosolen testified regarding proof of service.

Chairman Burke move to find Joseph Bitsky to be in default in case 2017-435. Commissioner Williams seconded.

Motion carried.

Chairman Burke move to find that the factual allegation and violations of law are proven and taken as true and correct as against Joseph Bitsky. Commissioner Williams seconded.

Motion carried.

Chainman Burke moved to: Mr. Bitsky be instructed to have no contact with any homeowners or anybody of the board, to solicit them or direct money or communicate with them in any fashion or way and that Mr. Bitsky be fine \$1,000 as a result of his prior violations and that if deemed feasible by Commission Counsel that the \$1,000 fine and the prior administrative sanction, totaling \$64,584.39 be reduced to a judgment by the State of Nevada through District Court. Commissioner Williams seconded.

Chairman Burke amended his motion and moved that: Mr. Bitsky be instructed not to have any contact with any homeowners or any board member, or communicate with them in any fashion or way, that Mr. Bitsky be fine \$1,000, that Mr. Bitsky reimburse the Division for costs in the amount of \$1,816.50 and that if deemed feasible by Commission Counsel that the \$1,000 fine, costs in the amount of \$1,816.50 and the prior administrative sanction totaling \$64,584.39 be reduced to a judgment by the State of Nevada through District Court. Commissioner Layton seconded.

Motion carried.

Chairman Burke moved for Commission Counsel to explore possible options and the feasibility and availability of reducing the Commission's orders in which monetary fines, sanctions, restitution orders of any fashion whether or not of set order can be reduced to a judgment by the State of Nevada through District Court. Commissioner Williams seconded.

Motion carried.

6-L) Disciplinary action: Hearing and possible action by the Commission

NRED v. Jeffrey Allan Frederick

Case No. 2017-599

Type of Respondent: Community Manager

License#: CAM.0007580 (REVOKED)

Parties Present:

Michelle Briggs was present representing the Division.

Jeffrey Allan Frederick was not present.

State's Witness:

Claudia Rosolen testified regarding proof of service.

Chairman Burke move to find Jeffrey Allan Frederick to be in default in case 2017-599. Commissioner Layton seconded.

Motion carried.

Chairman Burke move to find factual allegations and violations of law are proven and taken as true and correct against Jeffrey Allan Frederick in case 2017-599. Commissioner Layton seconded.

Motion carried.

Chairman Burke moved for the following:

- Frederick's community manager certificate is revoked for a period of no less than ten years from the date of this Order, but in no event sooner than all fines imposed by the Commission are paid in full.
- Frederick shall pay an administrative fine to the Division in the total amount of \$14,053.93 which includes a fine of \$12,000 for the violations of law and \$2,053.93 representing the total amount due for the Division's attorney's fees and costs – no later than 60 days from the date of the Order.
- The Division may institute debt collection proceedings for failure to timely pay the total fine, including action to reduce this Order to a judgment. Further, if collection goes through the State of Nevada, then Frederick shall also pay the costs associated with collection.

Commissioner Layton seconded.

Motion carried.

8-A) Discussion regarding the State of Nevada Controller's Office debt collection process for fines issued by the Commission

Commissioner Williams stated that his meeting with the Controller's Office on the collection process with specifics on overdue debt collection had a positive outcome. Commissioner Williams stated that he learned a great deal on the issues that the Controller's Office has and the Controller's Office learned about the concerns that the Commission has.

Commissioner Williams stated that the Controller's Office doesn't write things off per se but will move the oldest accounts off the books. Commissioner Williams stated that before an account is written off each Commission has a contact with the Controller's Office. Commissioner Williams stated that the Controller's Office was still doing the collection process on excels spreadsheets but are now moving to an automated process.

8-C) Discussion regarding Commissioners' speaking engagement requests

Commissioner Williams stated that he taught a class on behalf of the Commission which was previously approved by the Commission.

9-A-1) Administrator's Report: Personnel

Sharath Chandra presented this report. Mr. Chandra stated that Director Breslow has moved on to the Public Utilities Commission and the new Director for Business and Industry is C. J. Manthe. Mr. Chandra stated that it has been 6 months since the Division has moved to the new location and most of the kinks have been worked out.

Mr. Chandra stated that the Division is focusing on outreach to Northern and rural Nevada.

9-B-1) Ombudsman's Report on intervention

Charvez Foger presented this report. Mr. Foger stated that year to date the number of intervention affidavits received is 49.

9-B-2) Ombudsman's Report on informal conferences

Charvez Foger presented this report. Mr. Foger stated that there was a 79% resolution rate for 2016 and currently the informal conference resolution rate for FY 2017 is 81%.

9-B-3) Ombudsman's Report on alternative dispute resolution filings and subsidy claims

Charvez Foger presented this report. Mr. Foger stated that the number of alternative dispute resolution (ADR) filed year to date is 96. Mr. Foger stated that the number of request for mediation year to date is 89.

9-B-4) Ombudsman's Report on homeowner association and compliance audits

Charvez Foger presented this report. Mr. Foger stated that year to date 60 associations was reviewed for possible audits. Mr. Foger stated that 11 audits were initiated, 5 completed and resolved and 10 audits were referred to the Compliance section.

9-B-5) Ombudsman's Report on Program Training Officer's Report

Charvez Foger presented this report. Mr. Foger stated that he and the training officer are meeting with people that are having issues with their associations in rural areas of Nevada. Mr. Foger stated that year to date they presented 31 classes with a total of 322 attendees.

9-B-6) Ombudsman's Report on number and types of associations registered with the State

Charvez Foger presented this report. Mr. Foger stated that the current number of registered associations is 3,194 with 534,270 units. Mr. Foger stated that the total number of new units registered is 707.

9-B-7) Compliance Section's report

Darik Ferguson presented this report. Mr. Ferguson stated that year to date the total number of cases concerning community managers was 47 and 43 were closed. Mr. Ferguson stated that year to date the number of cases opened against boards was 29 and 38 were closed. Mr. Ferguson stated the current number of community manager cases is 18 and 12 cases involving boards.

9-C) Licensee and board member discipline report

Teralyn Thompson presented this report. Ms. Thompson updated the Commission on changes to the disciplinary report since the last Commission meeting.

9-D) Administrative sanction report

Teralyn Thompson stated that there was nothing to report for this agenda item.

10) For possible action: Discussion and decision on date, time, place, and agenda items for upcoming meeting(s)

Teralyn Thompson presented the dates for the 2018 Commission meetings:

- March 6-8, 2018 in the South.
- June 19-21, 2018 in the South.
- August 28-30, 2018 in the North.
- November 6-8, 2018 in the South.

The Commission accepted the proposed meeting dates for 2018.

11) Public Comment

In Las Vegas: Tim Stebbins, Henderson resident and director of the Nevada Homeowner Alliance PAC (NHA), commented. Mr. Stebbins commented on a case that went in front of the Commission earlier in the day.

12) Commissioner Comments

None.

13) For possible action: Adjournment

The meeting recessed at 4:30 p.m. on November 14, 2017.

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NOVEMBER 15, 2017

9:00 A.M.

1-B) Introduction of Commissioners in attendance

In Las Vegas: Michael Burke, Ken Williams, James Rizzi, Richard Layton, Doris Woods, Ryan Henderson, Charles Niggemeyer and Deputy Attorney General Asheesh Bhalla as Commission Counsel.

1-C) Introduction of Division Staff in attendance

In Las Vegas: Sharath Chandra, Administrator; Teralyn Thompson, Administration Section Manager; Charvez Foger, Ombudsman; Ingrid Trillo, Education Information Officer; Darik Ferguson, Chief Compliance Audit Investigator; Claudia Rosolen, Commission Coordinator; and Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cooke, Compliance Audit Investigator.

2) Public Comment

None.

7-A) Leach Johnson Song & Gruchow

“What’s That Aroma? Marijuana in the Common-Interest Community”

Commissioner Rizzi disclosed that his company is in ongoing litigation with Mr. Leach's law firm and will abstain from voting on this matter.

Commissioner Niggemeyer disclosed that he was at an event where this particular course was presented. Commissioner Niggemeyer stated that this will not affect his ability to be fair and impartial.

Commissioner Layton disclosed that Mr. Leach has business dealing with his association. Commissioner Layton stated that this will not affect his ability to be fair and impartial.

John Leach presented this course. Mr. Leach stated that the course was denied by the Division and that he wants to appeal the Division's decision. Mr. Leach stated that he taught this course in October and provided the Commission the course material and a survey that attendees of the course filled out at the end of the class.

Ingrid Trillo asked if the request for approval is for law or general credits and if Mr. Leach is asking for retroactivity for those who already attended the class.

Mr. Leach stated that he will leave those decisions to the good judgment of the Division.

Commissioner Williams stated that those who already took the class knew it was not an approved course and would not receive continuing education credits for it. Commissioner Williams stated that he would have a problem with making the course retroactive.

Ms. Trillo stated that the class was denied due to the gray area on the topic. Ms. Trillo stated that that Federal law is against the use of marijuana but the State of Nevada allows it. Ms. Trillo stated that the Division felt that the approval or denial of the course should be a Commission decision.

Chairman Burke asked if this class would place some community managers in a precarious position. Chairman Burke asked what the class is instructing.

Mr. Leach stated that associations usually get into more trouble under the fiduciary duties standards by doing nothing. Mr. Leach stated he is trying to be cautious and educate people on the laws and to make sure that people understand that there is a conflict and go by case by case basis.

Chairman Burke asked if the instructor discusses the potential liabilities if the Federal Government decides to pursue an action.

Mr. Leach stated that this is a one hour class and there is no time to do so.

Asheesh Bhalla asked if the sponsor considered putting a brief legal disclosure at the beginning of the presentation stating that this is not legal advice and that the class is an educational session regarding trends in the industry.

Mr. Leach stated that he would be delighted to accommodate the request.

Chairman Burke stated that if the class is presented not as legal advice but regulatory education, that will make the Commission more comfortable.

Commissioner Niggemeyer stated that if this topic is not addressed it will become a problem. Commissioner Niggemeyer stated that educating community managers and board members is a good way to go. Commissioner Niggemeyer stated that feedback that he received from the industry is for information requests on this subject matter.

Chairman Burke asked why this topic is different than how an association handles cigarette smoke and why this topic would require new educational classes on marijuana laws.

Mr. Leach stated that because of the newly adopted laws by the State of Nevada and the risk that associations would incur by doing nothing when dealing with issues involving this topic.

Commissioner Williams moved to approve the class. Commissioner Niggemeyer seconded.

Chairman Burke asked to amend the motion to include a legal disclosure slide in the beginning of the presentation for the class stating that the class is not for legal advice but for regulatory education. Commissioner Williams seconded.

Motion carried 5 to 1 with Commissioner Henderson opposed and Commissioner Rizzi abstained.

4-F) Disciplinary action: Hearing and possible action by the Commission
NRED v. Cimarron Ridge Association, Richard Shinn, Maggie Shinn and Jason Bishop
Case No. 2017-1368

Type of Respondent: Board Officer and Director

Parties Present:

Michelle Briggs was present representing the Division.

Christopher Lund was present representing Richard Shinn and Maggie Shinn.

Richard Shinn was present.

In Carson City: Thomas McGrath was present representing Cimarron Ridge Association

Stephanie Swain from Regal Management was present.

Jason Bishop was not present.

Commissioner Woods disclosed that Ms. Swain's Management Company works for her association. Commissioner Woods stated that this will not affect her ability to be fair and impartial.

Asheesh Bhalla asked if any of the parties involved in this matter had reservations with Commissioner Woods participating in this matter.

Michelle Briggs asked if Mr. McGrath is representing Jason Bishop.

Mr. McGrath stated that Mr. Bishop hired his own attorney and he has not have spoken with him, but Mr. McGrath is aware that Mr. Bishop's attorney was not available to appear today.

Ms. Briggs stated that the Division had reached a settlement with Richard Shinn and Maggie Shinn. Ms. Briggs stated that the Division is requesting a continuance for Cimarron Ridge Association part of the matter to the March meeting. Ms. Briggs stated that they agreed to the factual allegations 3, 4, 5, 6, 7, and 9 and violation of law paragraph 13 and in exchange for that Richard Shinn and Maggie Shinn agreed to step down from the board and not serve on an association's board or as an officer for 5 years.

Chairman Burke asked if Mr. and Ms. Shinn understood and were in favor of the obligations under the terms of the stipulation.

Richard Shinn and Maggie Shinn agreed with the stipulation.

Mr. Shinn stated that his wife stepped down from the board in 2016 and that he resigned from the board.

Chairman Burke moved to accept the settlement agreement for Richard Shinn and Maggie Shinn in which factual allegation paragraphs 3, 4, 5, 6, 7, and 9 are accepted as true and correct and that Richard Shinn and Maggie Shinn admit to violation of law paragraph 13. Commissioner Williams seconded.

Motion carried.

Chairman Burke moved to accept Richard Shinn and Maggie Shinn agreement to step down from the board and not serve on an association's board or as an officer for 5 years. Commissioner Rizzi seconded.

Motion carried.

Chairman Burke stated that the hearing for Cimarron Ridge Association and Jason Bishop is continued to the next scheduled Commission meeting.

12) Commissioner Comments

Commissioner Williams asked if it is State policy to recommend management companies.

Mr. Foger stated that the State does not provide recommendations.

Commissioner Williams asked why one of the respondents in a case that was heard by the Commission stated that the State made a recommendation for a specific management company.

Sonya Meriweather stated that she and the training officer meet with the person in question and they did not recommend a specific management company to him. Ms. Meriweather stated that the State does not make recommendations on management companies. Ms. Meriweather stated

that the State will direct anyone whom is seeking a management company to the State's website where all the management companies that are licensed to conduct business in Nevada are listed.

11) Public Comment

In Las Vegas: Tim Stebbins, Henderson resident and director of the Nevada Homeowner Alliance PAC (NHA), commented. Mr. Stebbins stated that the course on marijuana should be available to homeowners as well.

13) For possible action: Adjournment

The meeting recessed at 10:00 am. on November 15, 2017.

**NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
NEVADA ROOM, SUITE 400
LAS VEGAS, NV 89102**

**VIDEO CONFERENCE:
DEPARTMENT OF BUSINESS AND INDUSTRY
DIRECTOR'S OFFICE
1830 E. COLLEGE PARKWAY
SUITE 100
CARSON CITY, NV 89706**

1-B) Introduction of Commissioners in attendance

In Las Vegas: Michael Burke, Ken Williams, James Rizzi, Richard Layton, Doris Woods, Ryan Henderson, Charles Niggemeyer and Deputy Attorney General Asheesh Bhalla as Commission Counsel.

1-C) Introduction of Division Staff in attendance

In Las Vegas: Teralyn Thompson, Administration Section Manager; Charvez Foger, Ombudsman; Ingrid Trillo, Education Information Officer; Darik Ferguson, Chief Compliance Audit Investigator; Claudia Rosolen, Commission Coordinator; and Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Sharon Jackson, Deputy Administrator; Christopher Cooke, Compliance Audit Investigator.

2) Public Comment

In Las Vegas: Jan Porter, supervisory community manager, commented. Ms. Porter provided the Commission with written comment about NAC 116.470 as it relates to the fees allowed in a collection action. Ms. Porter asked the Commission to address the language in that section to reflect Clark County fee increase.

5) For possible action: Respondent Margaret Thayer's petition for compliance with subpoena

NRED v. Margaret Thayer

Case No. 2016-628

Type of Respondent: Unlicensed Community Manager

Parties Present:

Michelle Briggs was present representing the Division.

Joseph Garin and Angela Ochoa were present representing Margaret Thayer.

Margaret Thayer was present.

Chad Clement was present representing Los Padros Community Association a non-party to the petition.

Commissioner Williams stated that one of the attorneys present for this agenda item is actively representing him. Commissioner Williams recused himself from voting on this matter.

Ms. Ochoa spoke in favor of the motion.

Mr. Clement stated that he is present to preserve the attorney client privilege for the board of Los Padros Community Association.

Ms. Briggs spoke against the motion.

Chairman Burke stated that the Commission does not have authority to order the production of documents. Chairman Burke stated that the Commission can petition the Court to order the production of documents.

Asheesh Bhalla stated that if Ms. Thayer was copied in the email in question and the attorney client privilege was broken then the email is no longer privileged. Mr. Bhalla asked why Ms. Thayer doesn't have the email if she was copied on it.

Ms. Ochoa stated that Ms. Thayer was terminated and that is why they don't have access to that specific email.

Chairman Burke asked if Ms. Thayer was using the association domain for her emails.

Ms. Ochoa stated that Ms. Thayer was using Los Padros email.

Chairman Burke moved to deny the petition for compliance with subpoena. Commissioner Rizzi seconded.

Motion carried with Commissioner Williams abstained.

6-E) Disciplinary action: Hearing and possible action by the Commission

NRED v. Margaret Thayer

Case No. 2016-628

Type of Respondent: Unlicensed Community Manager

Parties Present:

Michelle Briggs was present representing the Division.

Joseph Garin and Angela Ochoa were present representing Margaret Thayer.

Margaret Thayer was present.

Ms. Briggs made an opening statement.

Mr. Garin made an opening statement.

Ms. Briggs responded to Mr. Garin opening statement.

Mr. Garin responded to Ms. Briggs.

State's Witness:

Christina Pitch testified.

Mr. Garin asked for a 10 minutes continuance to potentially stipulate to the facts with Ms. Briggs.

Ms. Briggs stated that the Division and respondent stipulated that the following factual allegations are admitted:

- 3;

- 4 with the change that the number of units is 1,358 and an annual budget of over \$4.9 million;
- 5;
- 6 to read: The complainant states that Thayer was hired as the Association's "Chief Operating Officer" and "General Manager";
- 7; 8; 9; 10;
- 11 to read: Mr. Northfield stopped working for the Association on April 30, 2012 and no other community manager was hired until March 2016;
- 12 to read: According to Thayer's contract, her job duties include "management of the Association's financial affairs in accordance with the provisions of policies adopted by the Board," and she assists and advises "the Board in all matters of administration";
- 13 to read: "She was hired by the Board and directed by the Board to perform specific job duties which include, without limitation." Ms. Briggs stated that the list of duties under # 13 remains unaltered;
- 14-18;
- 19 to read: In response to the investigation, Thayer stated that the Association is self-managed and does not need a community manager based on advice from counsel for the Association;
- 20; 21;
- 22 to read: Thayer continued to perform under the terms of her employment contract without the supervision of a community manager, but at the direction and instruction of the Board;
- 23;

Ms. Briggs stated that additional factual allegations that are not listed in the original complaint were admitted:

- After Gerald Northfield quit, the Board, Mark Dzarnoski and board counsel; investigated whether they needed a community association manager to supervise Thayer.
- Thayer relied on that advice.
- Thayer did not ask the Division if she needed a community manager certificate to perform under the contract.
- Complainant Mark Dzarnoski, who does not practice in homeowner associations law, moved to make Thayer a signor on the Association's operating account in March 2012.

Ms. Briggs stated that State's Exhibits #4, the employment agreement, was stipulated to be admitted into the record.

Chairman Burke moved to accept the stipulated facts. Commissioner Layton seconded.

Motion carried.

Commissioner Rizzi moved to find violation of law #24 as true. Commissioner Layton seconded.

Motion carried with Chairman Burke opposed.

Commissioner Williams moved for Ms. Thayer to pay an administrative fine to the Division in the total amount of \$19,597.85 – which includes a fine of \$10,000 for the violation of law and \$9,597.85 representing the total amount due for the Division’s attorney’s fees and costs. Commissioner Layton seconded.

Motion carried with 4 to 3 with Chairman Burke, Commissioner Henderson and Commissioner Rizzi opposed.

12) Commissioner Comments

Commissioner Layton stated that some cases need to come in front of the Commission multiple times because what is stipulated should be done. Commissioner Layton stated that there are cases that could be reported to Division Counsel and she could provide a written report to present to the Commission instead of having people coming and testify every time. Commissioner Layton asked for other Commissioners' input on this matter.

Commissioner Williams asked if Commissioner Layton is looking for a process that is similar to what was done for the approval of education courses.

Chairman Burke suggested that the Commission could request to appear or present written documentation showing compliance with the order ahead of time in order to streamline the process.

Ms. Briggs stated that the reason why those cases keep reappearing is because of a particular management company. Ms. Briggs stated that the Division is trying to figure out if there are significant problems for those associations like recuperating their records and financials. Ms. Briggs stated that she wanted to make sure that the Commission was aware of the extent of the situation.

Commissioner Layton asked if the Division and the rest of the Commission would feel comfortable having a written report from the Division for cases that are complying and only requires status updates.

Commissioner Rizzi agrees with Commissioner Layton’s suggestion.

Chairman Burke stated that this would have to be on a case by case basis.

Commissioner Layton asked if there is a way for a Commissioner to join a meeting by phone or videoconference in the event that they cannot be present in person. Commissioner Layton stated that the Division had pointed out a logistic issue related to exhibits or handouts that are presented during the meeting. Commissioner Layton would like to have this item up for consideration.

Commissioner Williams stated that Ms. Porter has brought up a real issue during the public comment that needs to be addressed.

Commissioner Williams stated that he was asked to write an article about ethics for an industry newspaper/magazine and would like to have the Commission permission.

Chairman Burke move to allow Commissioner Williams request to write an article about ethics.

Commissioner Rizzi seconded.

Commissioner Layton stated that he was asked to write an article about his experience as a Commissioner and would like to have the Commission permission.

Chairman Burke move to allow Commissioner Layton and Commissioner Williams to write those articles. Commissioner Rizzi seconded.

Motion carried.

11) Public Comment

None.

13) For possible action: Adjournment

The meeting recessed at 1:46 pm. on November 16, 2017.

Respectfully Yours,

Claudia Rosolen
Commission Coordinator

NOT APPROVED BY COMMISSION