

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. 2018-395

Petitioner,
vs.

FILED

SEP 21 2018

Thomas Kelly,

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Respondent.

**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 Respondent Thomas Kelly ("RESPONDENT" or "KELLY") 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 Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116 and 116A 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 RESPONDENT pursuant to the provisions of NRS and NAC including, but not limited to, NAC 116A.360.

JURISDICTION AND NOTICE

1. During all relevant times mentioned in this complaint, KELLY held, and currently holds, a supervisory community manager certificate from the Division (CAM.000025.SUPR) and is, therefore, subject to the jurisdiction of the Division and the provisions of NRS Chapters 116 and 116A and NAC Chapters 116 and 116A.

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1 **FACTUAL ALLEGATIONS**

2 2. Beginning in December 2017, the Division opened three investigations
3 against Riverwalk Homeowners Association (the "Association") based on complaints filed
4 with the Division and began requesting documents from its community manager,
5 RESPONDENT THOMAS KELLY.

6 3. After receiving three letters from the Division, on or about January 29, 2018,
7 KELLY called the investigator and asked for an extension to February 2, 2018, which was
8 given.

9 4. The Division received no response and sent a fourth letter dated February
10 21, 2018.

11 5. Receiving no response to the fourth letter, the Division opened this
12 investigation against KELLY for impeding the Division's investigation.

13 6. The Division sent letters dated April 5, 2018, June 6, 2018, and September
14 7, 2018 to RESPONDENT to as many addresses as the investigator could find, but
15 received no response.

16 **VIOLATIONS OF LAW**

17 7. KELLY violated NRS 116A.630(10) and NAC 116A.320 by failing to
18 cooperate with the Division in resolving complaints filed with the Division.

19 8. KELLY violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding
20 or otherwise interfering with an investigation of the Division by failing to comply with a
21 request of the Division to provide documents.

22 9. KELLY violated NRS 116A.640(2)(c) and NAC 116A.345(2)(c) by impeding or
23 otherwise interfering with an investigation of the Division by concealing facts or
24 documents relating to the business of a client.

25 10. KELLY violated NAC 116A.355(2)(f) by committing an act of unprofessional
26 conduct by failing to cooperate with the Division in the investigation of a complaint
27 including, without limitation, failure to produce any document, book or record in the
28 possession or control of the community manager after the Division requests the

1 production of such document, book or record in the course of an investigation of a
2 complaint.

3 11. KELLY violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by
4 committing professional incompetence by demonstrating a significant lack of ability,
5 knowledge or fitness to perform a duty or obligation owed to a client.

6 12. KELLY violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by
7 committing professional incompetence by failing to exercise reasonable skill and care with
8 respect to a duty or obligation owed to a client.

9 13. KELLY violated NAC 116A.355(1)(a)(1) and (2) (through NAC
10 116A.355(4)(g)) by committing unprofessional conduct or professional incompetence by
11 failing to act in the best interests of the Association.

12 14. KELLY violated NRS 116A.630(1)(a) and NAC 116A.320 by failing to act as
13 a fiduciary in his relationship with the Association.

14 15. KELLY violated NRS 116A.630(1)(b) and NAC 116A.320 by failing to
15 exercise ordinary and reasonable care in the performance of his duties.

16 16. KELLY violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to comply
17 with state laws.

18 DISCIPLINE AUTHORIZED

19 Pursuant to the provisions of NAC 116A.360 the Commission has discretion to
20 impose discipline as it deems appropriate, including, but not limited to one or more of the
21 following actions:

- 22 1. Revoke or suspend the certificate;
- 23 2. Refuse to renew or reinstate the certificate;
- 24 3. Place the community manager on probation;
- 25 4. Issue a reprimand or censure to the community manager;
- 26 5. Impose a fine of not more than \$5,000 for each violation of a statute or
27 regulation;
- 28 6. Require the community manager to pay restitution;

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

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

13 You have the right to request that the Commission issue subpoenas to compel
14 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
15 you may be required to demonstrate the relevance of the witness's testimony and/or
16 evidence. Other important rights and obligations, including your obligation to answer the
17 complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter
18 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A.

19 Note that under NAC 116A.585, not less than five (5) working days before a hearing,
20 RESPONDENT must provide to the Division a copy of all reasonably available documents
21 that are reasonably anticipated to be used to support his or her position, and a list of
22 witnesses RESPONDENT intends to call at the time of the hearing. Failure to provide
23 any document or to list a witness may result in the document or witness being excluded
24 from RESPONDENT'S defense. The purpose of the hearing is to determine if the

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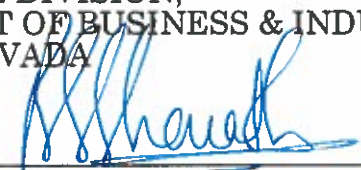
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RESPONDENT has violated any of the provisions of NRS and NAC Chapters 116 and 116A, and to determine what administrative penalty is to be assessed against RESPONDENT, if any, pursuant to NAC 116A.360.

DATED: September 20, 2018.

REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS & INDUSTRY,
STATE OF NEVADA

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