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## 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.

Mountain Gate Homeowners Association, Doris Markham, Lillie Wyatt, Susan South and Robert South,

Respondents.

Case No. 2017-2046

FILED

JAN 25 2019

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, Aaron D. Ford, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby notifies RESPONDENTS MOUNTAIN GATE HOMEOWNERS ASSOCIATION, DORIS MARKHAM, LILLIE WYATT, SUSAN SOUTH, and ROBERT SOUTH (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.

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#### JURISDICTION AND NOTICE

- 1. During the relevant times mentioned in this complaint, RESPONDENTS DORIS MARKHAM, LILLIE WYATT, SUSAN SOUTH, and ROBERT SOUTH served as board members and/or officers of MOUNTAIN GATE HOMEOWNERS ASSOCIATION (the "Association"), a common-interest community located in Las Vegas, Nevada.
- 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and the Commission for Common-Interest Communities pursuant to the provisions of NRS 116.750.

#### FACTUAL ALLEGATIONS

- 3. In 2017, the Division conducted an audit of MOUNTAIN GATE HOMEOWNERS ASSOCIATION (the "Association") based on the annual registration and reserve summary forms provided to the Division.
- 4. Based on the results of the audit, the Division commenced an investigation against the Association for possible violations of NRS 116.
- 5. RESPONDENTS ROBERT SOUTH and SUSAN SOUTH are married and served on the Association's board together in 2015, 2016, and 2017.
- 6. RESPONDENT ROBERT SOUTH performed "handyman" services for the Association since 1999 and was paid during 2015, 2016 and 2017 approximately \$6,950.
- 7. RESPONDENTS ROBERT SOUTH or SUSAN SOUTH signed the checks to RESPONDENT ROBERT SOUTH for his services.
- 8. The second signature on most of the checks to RESPONDENT ROBERT SOUTH was RESPONDENT WYATT.
- 9. RESPONDENT SUSAN SOUTH is a Supervising Community Manager (CAM.0001007-SUPR).

- 10. RESPONDENT SUSAN SOUTH became a community manager in 2005 and a supervising community manager in 2015.
- 11. The Division referred RESPONDENT ROBERT SOUTH'S services to the Nevada Contractor's Board.
- 12. The Nevada Contractor's Board referred the matter to the District Attorney's Office with a recommendation for criminal prosecution for contracting without a license.
- 13. The Association responded to the Division's investigation on behalf of RESPONDENTS SUSAN SOUTH and LILLIE WYATT saying the board approved the services provided by RESPONDENT ROBERT SOUTH.
- 14. At the time of the Division's investigation, RESPONDENT DORIS MARKHAM was no longer on the board and did not respond to requests for a response.

#### VIOLATIONS OF LAW

- 15. RESPONDENTS SUSAN SOUTH, WYATT, AND MARKHAM violated NRS 116.3103 (through NAC 116.405(3)) by committing acts or omissions which amount to incompetence, negligence or gross negligence for hiring a board member to perform work he was not licensed to provide.
- 16. RESPONDENT ROBERT SOUTH violated NRS 116.3103 (through NAC 116.405(3)) by committing acts which amount to incompetence, negligence or gross negligence by performing services for the Association that he was not licensed to provide.
- 17. RESPONDENTS WYATT AND MARKHAM violated NRS 116.3103 (through NAC 116.405(3)) by committing acts or omissions which amount to incompetence, negligence or gross negligence by allowing board members to receive payment from the Association prohibited by NRS 116.31187.
- 18. RESPONDENTS ROBERT SOUTH and SUSAN SOUTH violated NRS 116.3103 (through NAC 116.405(2)) by acting out of reasons of self-interest or gain.

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- 19. RESPONDENTS ROBERT SOUTH and SUSAN SOUTH violated NRS 116.3103 (through NAC 116.405(3)) by committing acts or omissions which amount to incompetence, negligence or gross negligence by violating NRS 116.31187 which prohibits board members and officers from contracting with the Association or otherwise accepting any commission, personal profit or compensation of any kind from the Association for services provided to the Association.
- 20. RESPONDENTS violated NRS 116.31034(13)(b) by allowing RESPONDENTS ROBERT SOUTH and SUSAN SOUTH to continue to serve on the board after the law was changed in 2015 to prohibit board members from being eligible to serve on the board pursuant to NRS 116.31034(10)(a)(2) if they stand to gain any personal profit or compensation of any kind from a matter before the executive board of the Association.

#### 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 RESPONDENTS ARE 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 certificate.
- 7. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.
- 8. Take whatever further disciplinary action as the Commission deems appropriate.

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

#### NOTICE OF HEARING

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

THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for March 12-14, 2019, beginning at approximately 9:00 a.m. each day, or until such time as the Commission concludes its business. The Commission meeting will be held at the Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las Vegas, Nevada 89102 with videoconferencing to Division of Insurance, 1818 E. College Parkway, Carson City, Nevada 89706.

STACKED CALENDAR: Your hearing is one of several hearings that may be scheduled at the same time as part of a regular meeting of the Commission that is expected to take place on March 12-14, 2019. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the

complaint were true. If you need to negotiate a more specific time for your hearing in advance because of coordination with out of state witnesses or the like, please call Samiel Williams, Commission Coordinator, at (702) 486-4606.

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

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

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

Note that under NAC 116.575, not less than five (5) working days before a hearing, RESPONDENTS must provide to the Division a copy of all reasonably available documents that are reasonably anticipated to be used to support his position, and a list of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to provide any document or to list a witness may result in the document or witness

1	being excluded from RESPONDENTS' defense. The purpose of the hearing is
2	determine if the RESPONDENTS have violated the provisions of NRS 116, and
3	determine what administrative penalty is to be assessed against RESPONDENTS.
4	DATED: January <u>25</u> , 2019.
5	DEAL EGMAME DIVIGION
6	REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS &
7	INDUSTRY, STATE OF NEVADA
8	De Magazielle
9	By:SHARATH CHANDRA, Administrator
10	3300 W. Sahara Ave. Ste 350 Las Vegas, Nevada 89102
11	(702) 486-4033
12	AARON D. FORD
13	Attorney General
14	By: MICHELLE D. BRIGGS
15	Senior Deputy Attorney General
16	555 E. Washington Ave. Ste 3900 Las Vegas, Nevada 89101
17	(702) 486-3420
18	Attorneys for Real Estate Division
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### CERTIFICATE OF SERVICE (NRS 116.770)

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I hereby certify that on this <u>6th</u> day of February 2019 I deposited a true and correct copy of the foregoing:

# COMPLAINT AND NOTICE OF HEARING, NOTICE OF DOCUMENTS PRODUCED,

#### And NOTICE OF COMPLAINT AND OBLIGATION TO RESPOND

in the United States Mail, postage pre-paid, in Las Vegas, Nevada, through the State of Nevada mailroom, by certified mail addressed to the following respondents at his last known address as follows

#### Certified No. 7017 1450 0000 8967 9590

Mountain Gate Homeowners Association Leach, Kern, Gruchow, Anderson and Song C/O John Leach 2525 Box Canyon Drive Las Vegas, Nevada 89102

#### Certified No. 7017 1450 0000 8967 9583

Doris Markham 4836 Storm Mountain Street Las Vegas, Nevada 89130

#### Certified No. 7017 1450 0000 8967 9613

Robert South 6548 Sundown Heights Avenue Las Vegas, Nevada 89130

By:

Samiel Williams

Commission Coordinator

3300 W. Sahara Avenue, Suite 350

Las Vegas, NV 89102