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.

Shadow Wood Homeowners Association and Jose Escalona,

Respondents.

Case No. 2018-680

[F][L][D]

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, Esq., Senior Deputy Attorney General, hereby notifies RESPONDENTS SHADOW WOOD HOMEOWNERS ASSOCIATION AND JOSE ESCALONA ("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, RESPONDENT JOSE ESCALONA was, and currently is, a director of SHADOW WOOD 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 is subject to the jurisdiction of the

8

1

2

3

4

5

6

7

11 12

10

13 14

1516

17

18 19

20

22

21

2324

25

26

27

28

Division, and the Commission for Common Interest Communities pursuant to the provisions of NRS 116.750.

FACTUAL ALLEGATIONS

- 3. RESPONDENT ESCALONA performs bookkeeping services using the name "J.E. & Associates."
- 4. ESCALONA served on the Association's board since at least September 2014, and presently serves as the Association's treasurer.
- 5. During a separate investigation, the Division became aware that ESCALONA was paid by the Association through J.E. & Associates to perform payroll services for the Association.
- 6. From November 2016 to March 2018, J.E. & Associates was paid approximately \$3,450 by the Association for payroll services.
- 7. No Association records reflect J.E. & Associates was hired to provide payroll services.
- 8. J.E. & Associates is not a legal entity or registered fictitious firm name with any government agency in Nevada.
- 9. According to on-line advertising for J.E. & Associates, ESCALONA is the President.
- 10. ESCALONA responded to the Division's investigation stating that he's an employee of J.E. & Associates.
- 11. ESCALONA provided invoices from J.E. & Associates, but did not say who his supervisor was, who prepared the invoices, or who provided the payroll services.
- 12. The address for J.E. & Associates is the same address reported to the Division for board member ESCALONA on annual registration forms.

VIOLATIONS OF LAW

13. RESPONDENT ESCALONA violated NRS 116.31187(1) by receiving compensation from the Association through his business name J.E. & Associates in exchange for services to the Association.

- 14. RESPONDENT ESCALONA violated NRS 116.31034(10)(a)(2) by serving as a board member and officer of the Association when he stood to gain personal profit or compensation of any kind from a matter before the executive board of the Association.
- 15. RESPONDENT ESCALONA violated NRS 116.3103 (through NAC 116.405(2)) by failing to act in the best interests of the Association by acting for reasons of self-interest or gain.
- 16. RESPONDENT ESCALONA violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in the best interests of the Association by committing an act or omission which amounts to incompetence, negligence or gross negligence.
- 17. RESPONDENT ESCALONA violated NRS 116.3103 (through NAC 116.405(5)(c)) failing to act in the best interests of the Association by impeding the Division's investigation by concealing facts and documents regarding his work for 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 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 RESPONDENT 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 RESPONDENT 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 RESPONDENT knowingly and willfully violated the provisions of NRS or NAC 116, the Commission may order that RESPONDENT 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, RESPONDENT 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 RESPONDENT intends 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 being excluded from

| 1 | RESPONDENT'S defense. The purpose of the hearing is to determine if the |
|----|---|
| 2 | RESPONDENT has violated the provisions of Chapter 116, and to determine what |
| 3 | administrative penalty is to be assessed against RESPONDENT. |
| 4 | DATED this <u>25</u> day of January, 2019. |
| 5 | |
| 6 | REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEW ADA |
| 7 | |
| 8 | By: Sharath Chandra, Administrator |
| 9 | 3300 W. Sahara Avenue Las Vegas, Nevada 89104 (702) 486-4033 |
| 10 | AARON D. FORD |
| 11 | Attorney General |
| 12 | By: |
| 13 | Michelle D. Briggs, Esq. |
| 14 | Senior Deputy Attorney General 555 E. Washington Avenue, Suite 3900 Las Vegas, Nevada 89101 |
| 15 | (702) 486-3420 Attorneys for Nevada Real Estate Division |
| 16 | Treeding's for twe vada fical Estate Division |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |

CERTIFICATE OF SERVICE (NRS 116.770)

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 9576 Shadow Wood Homeowners Association C/O Prime Community Management 181 N. Arroyo Grande Parkway, Ste. 125 Henderson, Nevada 89074

Certified No. 7017 1450 0000 8967 9606 Jose Escalona 1515 S. Maryland Pkwy

Las Vegas, Nevada 89104

By:

Samiel D. Williams

Commission Coordinator

3300 W. Sahara Avenue, Suite 350

Las Vegas, NV 89102

26 27

25

28