

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

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

7 Petitioner,

8 vs.

9 Sherryl Baca,

10 Respondent.

Case Nos. 2017-1579 and 2018-136

FILED

JUL 08 2019

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

11 **OPPOSITION TO NOTICE OF APPEAL AND**
12 **REQUEST FOR REHEARING AND RECONSIDERATION**

13 The Real Estate Division of the Department of Business and Industry, State of
14 Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of
15 the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby files
16 its Opposition to Notice of Appeal and Request for Rehearing and Reconsideration in
17 accordance with NAC 116A.637.

18 **INTRODUCTION**

19 The complaint against Sherryl Baca (BACA) was filed with this Commission on
20 September 21, 2018. The hearing was continued at the request of BACA's attorney, so it
21 was not heard at the Commission's November 2018 hearing. BACA also received additional
22 time to answer the complaint. An answer to the complaint was filed on December 13, 2018.
23 The Commission held a hearing on the complaint on March 12, 2019. At the hearing in
24 March, both sides presented evidence in the form of documents and testimony and gave
25 closing arguments. During deliberation, Commission Williams thought time should be
26 provided to have BACA provide the inventory list based on her representation that all
27 signed minutes were provided to the new manager. The Commission ordered BACA to
28 provide the inventory list to the Division's attorney not later than 30 days before the next
hearing date which was already set for June 4-6, 2019. BACA did not provide the inventory
list or any other documents to the Division's attorney 30 days before the next Commission

1 meeting. BACA and her attorney failed to appear when the case was called on June 4, 2019.
2 The Division's attorney explained to the Commission that BACA requested a continuance
3 of the hearing on May 28, 2019 (6 days before the hearing), but it was denied by the
4 Commission's secretary. The Division's attorney informed the Commission that BACA's
5 attorney requested that her hearing take place on June 5, 2019 to accommodate his
6 schedule. The Commission decided to move forward with its deliberation stage and make
7 its decision.

8 There are no facts set forth in BACA's appeal that satisfy the burden for a rehearing
9 or reconsideration. BACA's attorney makes unfounded disparaging remarks about the
10 Division counsel, but as the Commission knows, they are not true. Nothing was
11 misrepresented to the Commission. The appeal fails to satisfy the standard for a rehearing
12 or reconsideration and must be denied.

13 LEGAL ARGUMENT

14 A. BACA HAS NOT PROVIDED A LEGAL BASIS FOR REHEARING OR 15 RECONSIDERATION.

16 BACA's appeal provides untrue statements and faulty legal authority to support her
17 appeal. BACA's appeal states it is based on NRS 116.615 and 675. These statutes concern
18 hearing panels. The Commission heard the case, not a hearing panel. BACA could have
19 requested a rehearing or reconsideration based on the standard set forth in NAC 116A.637.
20 NAC 116A.637(4) requires:

21 A motion for rehearing or reconsideration must:

22 (a) State with particularity the point of law or fact which, in the opinion of
23 the moving party, the Commission has overlooked or misconstrued, or the
change of law or circumstances forming the basis of the motion; and

24 (b) Contain every argument in support of the motion that the moving party
25 desires to present.

26 Subsection (9) provides the only grounds upon which rehearing or reconsideration of
the order can be based.

27 Subsection 9 provides as follows:

28 A motion for rehearing or reconsideration may be based only on one of the

1 following causes or grounds:

2 (a) Newly discovered or available evidence of a material nature which the
3 moving party could not with reasonable diligence have discovered and
4 produced at the original hearing before the Commission.

5 (b) Error in the hearing or in the decision that would be grounds for
6 reversal of the decision.

7 (c) A change of substantive law.

8 (d) The need in the public interest for further consideration of the issues
9 or evidence, or both.

10 BACA fails to address these factors because her appeal is not based on the correct
11 legal authority. Regardless, none of the factors could be satisfied. Instead, BACA's appeal
12 is based on untrue statements about alleged misrepresentations the Division's counsel
13 made to the Commission. Untrue statements do not support a rehearing or reconsideration.

14 BACA claims the Commission decided the case on a default standard because she
15 did not attend the hearing in June. The findings of fact and conclusions of law and order
16 say nothing about the Commission making its decision based on a default. The Commission
17 was told that BACA did not provide the inventory list to the Division's counsel 30 days
18 before the hearing. BACA's appeal does not dispute that.¹ The Commission had already
19 heard the testimony provided by the parties and closed the hearing, so there is no way the
20 case was decided on a default basis. In fact, the record – the contradictory statements and
21 the documents provided by BACA – all support the findings of the Commission.

22 BACA alleges that all documents were provided, so the violations were minor and
23 technical and do not justify the penalty imposed. All the documents requested by the
24 Division were not provided. The Division's investigation began in January 2016 as an audit
25 of an association she managed. Her failure to adequately respond to requests for documents
26 for over a year and a half resulted in a case being opened against her. BACA's disregard
27 for the Division and its investigation of an association she managed continued through
28 2017 and into 2018. BACA's claims that she could no longer respond since the association
had a new manager was only because she failed to provide the documents within a year
and half while she was the manager. The violations are not technicalities and are not

¹ Exhibit H to the appeal includes the Division's emails to BACA's attorney from April 17 and May 2 requesting that he respond.

1 minor. BACA claims since she was not embezzling money she should not be sanctioned.
2 That is simply not supportable. She received payment from the association even when she
3 was not under a written contract and she did not provide all the services she was required
4 to provide as a community manager.² Only someone with no regard for the obligation they
5 owe their clients would think her violations are technical and minor.

6 BACA alleges NRS 116.760 requires a complaint be filed against her before the
7 Division can investigate. NRS 116.760 does not apply to community managers. NAC
8 116A.350(5) provides that the administrator “may initiate an investigation, audit or
9 inspection of the records of any community manager.” The Division does not need a
10 complaint by a homeowner to investigate a community manager.

11 **B. THE AMENDMENT TO THE COMPLAINT WAS NOT MATERIAL AND WAS IN**
12 **BACA’S FAVOR.**

13 As was told to the Commission in June, the amendment to the complaint was based
14 on the investigator’s review of the boxes provided to the new manager. This was noticed to
15 BACA’s attorney in the email provided to him on April 17, 2019 in BACA’s Exhibit H – to
16 which BACA’s attorney did not respond. Where the complaint originally stated no minutes
17 were signed – it was changed to specify the missing minutes were from 2014, 2015, and
18 2016. This change made the allegation more specific and was in BACA’s favor. It was not a
19 material change. It was made to address the concern of Commissioner Williams during
20 deliberation when he requested the inventory list be provided to see if a binder of all signed
21 minutes was provided to the new manager as BACA had stated. BACA’s appeal admits the
22 change to the factual allegation did not change any violations of law and the violations of
23 law do not specifically address that factual allegation. The amendment did not open the
24 hearing for new testimony or evidence. It was nothing more than a change to conform to
25 the evidence.

26 BACA knew in September 2018 that the Division alleged the association had no
27 signed minutes. She did not provide any signed minutes and she had an opportunity to

28 ² For example, preparing minutes, keeping accurate records, ensuring financial transactions are accurate, having audits prepared timely.

1 present evidence based on that allegation during the March 2019 hearing. She has no right
2 to add additional testimony or documents (none of which are signed minutes) to dispute
3 that allegation after the hearing. The Division's counsel was acting in good faith by making
4 that change to the complaint to accurately reflect the facts. NAC 116A.575(2) allows the
5 Commission to grant a continuance if the amendment "materially alters the complaint."
6 Clearly the amendment was not material and no continuance was required. The
7 Commission considered the amendment and decided to proceed. This does not support a
8 rehearing or reconsideration.

9 **C. EVIDENCE PROVIDED AFTER THE HEARING WAS CLOSED COULD NOT**
10 **BE CONSIDERED.**

11 BACA was to provide all documents and list of witnesses no later than 5 working
12 days before the hearing. NAC 116A.585. The hearing took place in March. BACA was given
13 the opportunity to provide all evidence to defend herself in March. Closing arguments were
14 made by both sides in March. The hearing was closed and the Commission was
15 deliberating. The Commission continued the deliberation for the sole purpose of getting the
16 inventory list no later than 30 days before the next hearing. This did not mean the hearing
17 was reopened and BACA could ignore the order of the Commission and provide any
18 document she wanted, whenever she wanted. BACA was afforded a hearing and an
19 opportunity to present evidence and testimony. The transcribed audio could have been
20 provided in March. It was not. She was not entitled to add evidence after the hearing except
21 as specifically requested by the Commission. She failed to comply with the Commission's
22 request. BACA argues her affidavit and transcribed meeting audio provided to the
23 Commission Coordinator on May 28 should have been considered by the Commission,
24 without providing any legal authority. The additional evidence was not provided timely
25 and it was not provided to the Division's counsel. The Commission was under no obligation
26 to admit the evidence.

27 BACA seems to miss the point of the Division's complaint. She argues transcribed
28 audio satisfies the issue that the association's records do not include signed meeting

1 minutes. It does not. The issue is that minutes and legal requirements were not followed.
2 BACA should have had the minutes done and signed in the ordinary course – not years
3 later. The allegation does not mean the meetings did not take place. It is just one factor to
4 show how the records of the association were wholly inadequate.³ And they still are. The
5 lack of signed minutes also discredits BACA's testimony in March when she told the
6 Commission that the minutes were provided to the new manager – he was just looking in
7 the wrong place. Providing transcribed audio does not support her testimony, and it makes
8 her testimony sound disingenuous. Nowhere in the affidavit from BACA's counsel does he
9 say he or BACA talked to the new manager to review the records to locate the signed
10 minutes. If the issue was just that the new manager was looking in the wrong place that
11 would seem to be the only logical place to look for the minutes.

12 BACA's appeal does not state any newly discovered evidence, errors in the hearing
13 or decision, change to the law, or any need in the public interest to reconsider the matter.
14 Her appeal must be denied.

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³ Her contract was expired for years. She signed hundreds of checks without contract authority to do so. Audits were not done timely.

1 CONCLUSION

2 The Commission's findings are supported by the facts and the documents in the
3 record. BACA's allegations of misrepresentations to the Commission are untrue. BACA had
4 already submitted an answer to the allegation the association had no signed minutes and
5 she testified about it. She was not entitled to answer again when the allegation was revised
6 to narrow the years minutes were missing. The Division respectfully requests that the
7 appeal be denied.

8 DATED: July 8, 2019.

9 AARON D. FORD
Attorney General


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11 By: _____
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17 Attorneys for the Division
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 8th day of July, 2019, I served the OPPOSITION TO
3 NOTICE OF APPEAL AND REQUEST FOR REHEARING AND
4 RECONSIDERATION, by email and by causing to be delivered to the Department of
5 General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

6 Michael J. Nuñez
7 Murchison & Cumming, LLP
8 350 South Rampart Boulevard, Suite 320
9 Las Vegas, NV 89145
10 mnunez@murchisonlaw.com

11 
12 _____
13 Michele Caro,
14 An employee of the Office of the Attorney General
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