

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. 2019-89

Petitioner,

vs.

Vistana Condominium Owners
Association, Carlos Aguirre, Victor Chill,
John Rhodes and Linda Williams,

Respondents.

FILED

OCT 29 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 VISTANA CONDOMINIUM OWNERS ASSOCIATION, CARLOS AGUIRRE, VICTOR CHILL, JOHN RHODES, AND LINDA WILLIAMS (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.

JURISDICTION AND NOTICE

1. During the relevant times mentioned in this complaint, RESPONDENTS CARLOS AGUIRRE, VICTOR CHILL, JOHN RHODES, AND LINDA WILLIAMS served as board members and/or officers of VISTANA CONDOMINIUM OWNERS ASSOCIATION (the "Association"), a common-interest community located in Las Vegas, Nevada.

1 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the
2 Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”)
3 (hereinafter collectively referred to as “NRS 116”) and are subject to the jurisdiction of
4 the Division, and the Commission for Common-Interest Communities pursuant to the
5 provisions of NRS 116.750.

6 **FACTUAL ALLEGATIONS**

7 3. In 2017, the Commission ordered findings of fact and conclusions of law in
8 Case No. 2015-3373 involving the VISTANA CONDOMINIUM OWNERS
9 ASSOCIATION (the “Association”) and board members Larry Fitch, Anthony Kneip,
10 Lynn Williams and Ardyce Nelson (“2017 Order”).

11 4. The 2017 Order, among other items, imposes personal fines against each of
12 the board members in the amount of \$5,128.40 to be paid on or before January 1, 2018,
13 and required education. No fines were ordered against the Association.

14 5. On October 19, 2017, the Association and the board members filed a
15 petition for judicial review to challenge the 2017 Order in court.

16 6. The petition for judicial review challenges the Commission’s findings of
17 “knowing and willful” violations by the board members.

18 7. NRS 116.785 provides that the Association is responsible for fines imposed
19 against the board members unless the Commission finds the violations were knowing
20 and willful.

21 8. The board members failed to meet the January 1st deadline to pay the fine.

22 9. By order of the Commission filed March 13, 2018, the 2017 Order was
23 amended to allow the board members to pay \$100 each month.

24 10. By order of the Commission filed July 6, 2018, the 2017 Order was
25 amended again to provide a late fee for any payment made after the 10th of each month.
26 The order also requires confirmation of the completion of 9 hours of education to the
27 Division no later than September 1, 2018.

28 11. By order of this Commission filed December 4, 2018, board members, Lynn

1 Williams, Ardyce Nelson and Anthony Kneip, were removed from the board for failing to
2 comply with the 2017 Order.

3 12. The Association held an election in November 2018 at which
4 RESPONDENT CARLOS AGUIRRE was elected.

5 13. RESPONDENT CARLOS AGUIRRE served on the board prior to the
6 election as an appointee in May 2018.

7 14. After the November 2018 election and the removal of board members by
8 the Commission, the board consisted of three members, RESPONDENTS VICTOR
9 CHILL and CARLOS AGUIRRE, as well as Frank Falcone.

10 15. At a board meeting on December 13, 2018, RESPONDENTS VICTOR
11 CHILL and CARLOS AGUIRRE voted to appoint RESPONDENTS LINDA WILLIAMS
12 and JOHN RHODES to the board.

13 16. RESPONDENT LINDA WILLIAMS is the wife of removed board member,
14 Lynn Williams.

15 17. In January 2019, the Division received an intervention affidavit filed by a
16 homeowner who objected to the appointment of RESPONDENT LINDA WILLIAMS,
17 because the Association's attorney was and still is representing her husband in the
18 petition for judicial review challenging the 2017 Order.

19 18. NRS 116.31034(10)(a)(2) provides that "[a] person may not be a candidate
20 for or member of the executive board or an officer of the association if...The person
21 stands to gain any personal profit or compensation of any kind from a matter before the
22 executive board of the association."

23 19. NRS 116.31034(13) provides that "[i]f a person is not eligible to be a
24 candidate for or member of the executive board or an officer of the association pursuant
25 to any provision of this chapter, the association: (a) Must not place his or her name on
26 the ballot; and (b) Must prohibit such a person from serving as a member of the
27 executive board or an officer of the association."

28 20. The Division requested a response from the RESPONDENTS to the

1 allegation that they were in violation of NRS 116.31034.

2 21. RESPONDENTS provided affidavits saying RESPONDENT LINDA
3 WILLIAMS does not vote on matters involving her husband, Lynn Williams.

4 22. RESPONDENT LINDA WILLIAMS stated that she recuses herself from
5 any matters involving her husband and provided minutes from a meeting where she
6 recused herself.

7 23. RESPONDENT LINDA WILLIAMS provided minutes from the board's
8 April 2019 meeting at which RESPONDENTS CHILL, AGUIRRE and RHODES voted
9 to approve payment for an invoice from Lynn Williams for reimbursement of mileage in
10 the amount of \$959.20.

11 24. The Williams live in Long Beach, California, and the Association paid Mr.
12 Williams \$0.545 per mile for his travel to Las Vegas to "Testify @ NRED hearing,"
13 attend "Training for NRED," and attend "meeting with Attorney."

14 25. Mr. Williams's invoice to the Association is dated September 21, 2018 and
15 says it is for mileage "required to testify in state Court and to attend the mandated
16 training required by NRED."

17 26. The Association's agenda for its April 11, 2019 board meeting lists under
18 New Business: "Approval of Lynn Williams to be Legal Consultant for Vistana."

19 27. Prior to the appointment of RESPONDENT LINDA WILLIAMS, on
20 December 13, 2018, the board voted to "acquire a second opinion from legal counsel
21 regarding the Association continuing to fund the previous Board members appeal of the
22 NRED Decision."

23 28. No such opinion was acquired.

24 29. RESPONDENT LINDA WILLIAMS ran for election in 2019.

25 30. RESPONDENT LINDA WILLIAMS stated on her nomination form dated
26 August 4, 2019 that she does not have a potential conflict of interest.

27 **VIOLATIONS OF LAW**

28 31. RESPONDENT LINDA WILLIAMS is in violation of NRS

1 116.31034(10)(a)(2) as she is not eligible to serve on the Association's board.

2 32. RESPONDENTS are in violation of NRS 116.31034(13) by allowing
3 RESPONDENT WILLIAMS to serve on the Association's board even though she is not
4 eligible to serve.

5 33. RESPONDENT LINDA WILLIAMS violated NRS 116.31034(9) by failing
6 to disclose her conflict of interest concerning the Association's payment of attorneys'
7 fees for her husband's pending petition for judicial review.

8 34. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by
9 failing to act in good faith and in the best interests of the Association when they
10 committed an act or omission which amounts to incompetence, negligence or gross
11 negligence.

12 35. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by
13 failing to act in good faith and in the best interests of the Association when they failed
14 to cause the Association to comply with all state laws.

15 DISCIPLINE AUTHORIZED

16 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
17 116.790 the Commission has discretion to take any or all of the following actions:

18 1. Issue an order directing RESPONDENT to cease and desist from
19 continuing to engage in the unlawful conduct that resulted in the violation.

20 2. Issue an order directing RESPONDENT to take affirmative action to
21 correct any conditions resulting from the violation.

22 3. Impose an administrative fine of up to \$1,000 for each violation by
23 RESPONDENT.

24 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND
25 WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best
26 interest of the Association, such RESPONDENTS may be removed from his/her position
27 as a director and/or officer.

28 5. Order an audit of the ASSOCIATION, at the expense of the

1 ASSOCIATION.

2 6. Require the BOARD MEMBERS to hire a community manager who holds a
3 certificate.

4 7. Require RESPONDENTS to pay the costs of the proceedings incurred by
5 the Division, including, without limitation, the cost of the investigation and reasonable
6 attorney's fees.

7 8. Take whatever further disciplinary action as the Commission deems
8 appropriate.

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

13 **NOTICE OF HEARING**

14 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider
15 this Administrative Complaint against the above-named RESPONDENT in accordance
16 with Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters
17 116 and 116A of the Nevada Administrative Code.

18 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled for
19 December 3-5, 2019, beginning at approximately 9:00 a.m. each day, or until such time as
20 the Commission concludes its business. The Commission meeting will be held at the
21 Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las
22 Vegas, Nevada 89102 with videoconferencing to Division of Insurance, 1818 E. College
23 Parkway, Ste. 103, Carson City, Nevada 89706.

24 **STACKED CALENDAR:** Your hearing is one of several hearings that may be
25 scheduled at the same time as part of a regular meeting of the Commission that is
26 expected to take place on December 3-5, 2019. Thus, your hearing may be continued until
27 later in the day or from day to day. It is your responsibility to be present when your case
28 is called. If you are not present when your hearing is called, a default may be entered

1 against you and the Commission may decide the case as if all allegations in the complaint
2 were true. If you need to negotiate a more specific time for your hearing in advance
3 because of coordination with out of state witnesses or the like, please call Teralyn Lewis,
4 Administration Section Manager, at (702) 486-4036.

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

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

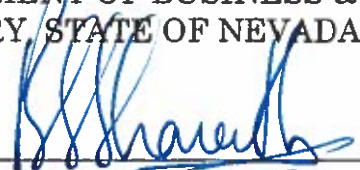
18 You have the right to request that the Commission issue subpoenas to compel
19 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
20 you may be required to demonstrate the relevance of the witness' testimony and/or
21 evidence. Other important rights and obligations, including your obligation to answer
22 the complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including
23 without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC
24 116.635 and NRS Chapter 233B.

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

1 to provide any document or to list a witness may result in the document or witness
2 being excluded from RESPONDENTS' defense. The purpose of the hearing is to
3 determine if the RESPONDENTS have violated the provisions of NRS 116, and to
4 determine what administrative penalty is to be assessed against RESPONDENTS.

5 DATED: October 28, 2019.

6 REAL ESTATE DIVISION,
7 DEPARTMENT OF BUSINESS &
8 INDUSTRY, STATE OF NEVADA

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