

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.

Belcourt Owners Association, Angela
Berliner, Marcia Creamer, Jesse Zambrano,
and John Carter,

Respondents.

Case No. 2018-172

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 BELCOURT OWNERS ASSOCIATION, ANGELA BERLINER, MARCIA CREAMER, JESSE ZAMBRANO, and JOHN CARTER (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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1 being held at least once every 100 days, (2) unit owners were not provided the date, time
2 and place of executive meetings, (3) unit owners were not provided a copy of the agenda
3 prior to the board meetings, and (4) interim financial statements were not being properly
4 maintained and distributed.

5 10. In response to the Division's letter, the Board Members confirmed that the
6 Association holds meetings "as needed," but does not hold a meeting every 100 days.

7 11. The Division confirmed that Board Members conduct business by email on
8 a regular basis as opposed to conducting properly noticed meetings every 100 days.

9 12. The Division confirmed that Board Members do not notice owners of board
10 meetings and do not have agendas for board meetings.

11 13. The Division confirmed that the Association did not maintain or distribute
12 monthly financial statements.

13 14. On August 7, 2018, the Division further requested that the Association
14 provide its interim financial statements from January 2018 through June 2018, bank
15 statements from January 2018 through July 2018, and audio recordings for executive
16 board meeting from January 2017 through July 2018.

17 15. The Board Members were unable to provide the Division with audio
18 recordings of board meetings for 2014 through 2018.

19 16. The Board Members were unable to provide the Division with the requested
20 interim financial statements.

21 17. The Division's review of the bank records provided showed that the
22 Association has a debit card that is used for various retail locations, including, without
23 limitation, Toys R Us, Michael's, LVRJ Advertising, and Smith's.

24 18. Review of the bank records provided showed that almost all checks written
25 on behalf of the Association reflect only one signature.

26 19. Review of the bank records provided also show payments to
27 RESPONDENTS MARCIA CREAMER and ANGELA BERLINER.

28 20. The Division further requested that RESPONDENTS MARCIA CREAMER

1 and ANGELA BERLINER provide a description of what these payments were for along
2 with documentation.

3 21. MARCIA CREAMER provided a response, but failed to provide adequate
4 documentation for the payments.

5 22. Records provided to the Division also showed that the 2018 budget was
6 approved by the board in May 2017 and presented to the owners at the annual meeting
7 in June 2017.

8 23. The records provided to the Division also indicate budgets for 2015, 2016,
9 and 2017 were all approved and presented to owners at the annual meeting in June of
10 the prior year.

11 24. The fiscal year of the Association is the calendar year.

12 25. The Association has 5 board members when the governing documents allow
13 for 3.

14 26. The board members fail to understand basic legal requirements: for
15 example; emailing notices of eligibility to serve and giving owners 10 days to respond,
16 discussing owner violations in an open meeting, reimbursing a board member for airfare
17 to attend a meeting, and having election ballots returned to president's home.

18 27. During the Division's Investigation, board member Eliot Kushner
19 cooperated with the Division and expressed concern over the management of the
20 Association.

21 28. Mr. Kushner questioned board members on their authority and procedures.

22 29. RESPONDENTS ANGELA BERLINER and JESSE ZAMBRANO informed
23 Mr. Kushner that the "board" held an emergency meeting and removed him from the
24 board pursuant to Association Bylaws, Article VIII, Section 5.

25 30. Article VIII, Section 5 of the Association Bylaws applies to officers – not
26 board members.

27 31. Mr. Kushner received no prior notice of an emergency board meeting.
28

1 any conditions resulting from the violation.

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

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

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

9 6. Require the BOARD MEMBERS to hire a community manager who holds a
10 certificate.

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

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

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

20 NOTICE OF HEARING

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

25 THE HEARING WILL TAKE PLACE at the Commission meeting scheduled
26 for December 3-5, 2019, beginning at approximately 9:00 a.m. each day, or until
27 such time as the Commission concludes its business. The Commission meeting
28 will be held at the Nevada State Business Center, 3300 W. Sahara Avenue,

1 Nevada Room, Suite 400, Las Vegas, Nevada 89102 with videoconferencing to
2 Division of Insurance, 1818 E. College Parkway, Ste. 103, Carson City, Nevada
3 89706.

4 **STACKED CALENDAR:** Your hearing is one of several hearings that may
5 be scheduled at the same time as part of a regular meeting of the Commission
6 that is expected to take place on December 3-5, 2019. Thus, your hearing may be
7 continued until later in the day or from day to day. It is your responsibility to
8 be present when your case is called. If you are not present when your hearing
9 is called, a default may be entered against you and the Commission may decide
10 the case as if all allegations in the complaint were true. If you need to negotiate
11 a more specific time for your hearing in advance because of coordination with
12 out of state witnesses or the like, please call Teralyn Lewis, Administration
13 Section Manager, at (702) 486-4036.

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

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

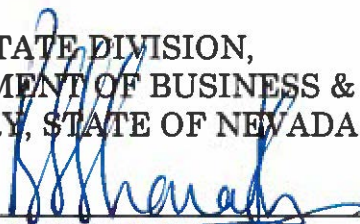
27 You have the right to request that the Commission issue subpoenas to compel
28 witnesses to testify and/or evidence to be offered on your behalf. In making this request,

1 you may be required to demonstrate the relevance of the witness' testimony and/or
2 evidence. Other important rights and obligations, including your obligation to answer the
3 complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including
4 without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC
5 116.635 and NRS Chapter 233B.

6 Note that under NAC 116.575, not less than five (5) working days before a hearing,
7 RESPONDENTS must provide to the Division a copy of all reasonably available
8 documents that are reasonably anticipated to be used to support his position, and a list
9 of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to provide
10 any document or to list a witness may result in the document or witness
11 being excluded from RESPONDENTS' defense. The purpose of the hearing is to
12 determine if the RESPONDENTS have violated the provisions of NRS 116, and to
13 determine what administrative penalty is to be assessed against RESPONDENTS.

14 DATED: October 28, 2019.

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16 REAL ESTATE DIVISION,
17 DEPARTMENT OF BUSINESS &
18 INDUSTRY, STATE OF NEVADA

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