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 HOPELS

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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JURISDICTION AND NOTICE

- 1. During the relevant times mentioned in this complaint, RESPONDENTS ANGELA BERLINER, MARCIA CREAMER, JESSE ZAMBRANO, and JOHN CARTER served as board members and/or officers of BELCOURT OWNERS ASSOCIATION (the "Association"), a common-interest community located in Henderson, 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. BELCOURT OWNERS ASSOCIATION is a self-managed, planned community consisting of 101 units.
 - 4. The Association has an annual budget of \$19,695.
- 5. In 2017, the Association failed to submit its annual registration form with the Division and also submitted a check to the Division with only one signature.
- 6. The Division sent notice to the Association on February 12, 2018, that it was opening an investigation regarding the Association's failure to properly register the Association in 2017, and also regarding the Association's improper submittal of a sole signed check to the Division.
- 7. RESPONDENT MARCIA CREAMER responded to the Division stating that she submitted the annual list to the Secretary of State's Office and did not know annual registration with the Division was necessary.
- 8. CREAMER also stated that only one board member of the Association signs checks when the amount is under \$1,000.
- 9. On June 20, 2018, the Division sent notice to the Association that it was continuing its investigation and requested a response from Board Members to the Division's allegations regarding the following: (1) executive board meetings were not

being held at least once every 100 days, (2) unit owners were not provided the date, time and place of executive meetings, (3) unit owners were not provided a copy of the agenda prior to the board meetings, and (4) interim financial statements were not being properly maintained and distributed.

- 10. In response to the Division's letter, the Board Members confirmed that the Association holds meetings "as needed," but does not hold a meeting every 100 days.
- 11. The Division confirmed that Board Members conduct business by email on a regular basis as opposed to conducting properly noticed meetings every 100 days.
- 12. The Division confirmed that Board Members do not notice owners of board meetings and do not have agendas for board meetings.
- 13. The Division confirmed that the Association did not maintain or distribute monthly financial statements.
- 14. On August 7, 2018, the Division further requested that the Association provide its interim financial statements from January 2018 through June 2018, bank statements from January 2018 through July 2018, and audio recordings for executive board meeting from January 2017 through July 2018.
- 15. The Board Members were unable to provide the Division with audio recordings of board meetings for 2014 through 2018.
- 16. The Board Members were unable to provide the Division with the requested interim financial statements.
- 17. The Division's review of the bank records provided showed that the Association has a debit card that is used for various retail locations, including, without limitation, Toys R Us, Michael's, LVRJ Advertising, and Smith's.
- 18. Review of the bank records provided showed that almost all checks written on behalf of the Association reflect only one signature.
- 19. Review of the bank records provided also show payments to RESPONDENTS MARCIA CREAMER and ANGELA BERLINER.
 - 20. The Division further requested that RESPONDENTS MARCIA CREAMER

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

- 21. MARCIA CREAMER provided a response, but failed to provide adequate documentation for the payments.
- 22. Records provided to the Division also showed that the 2018 budget was approved by the board in May 2017 and presented to the owners at the annual meeting in June 2017.
- 23. The records provided to the Division also indicate budgets for 2015, 2016, and 2017 were all approved and presented to owners at the annual meeting in June of the prior year.
 - 24. The fiscal year of the Association is the calendar year.
- 25. The Association has 5 board members when the governing documents allow for 3.
- 26. The board members fail to understand basic legal requirements: for example; emailing notices of eligibility to serve and giving owners 10 days to respond, discussing owner violations in an open meeting, reimbursing a board member for airfare to attend a meeting, and having election ballots returned to president's home.
- 27. During the Division's Investigation, board member Eliot Kushner cooperated with the Division and expressed concern over the management of the Association.
 - 28. Mr. Kushner questioned board members on their authority and procedures.
- 29. RESPONDENTS ANGELA BERLINER and JESSE ZAMBRANO informed Mr. Kushner that the "board" held an emergency meeting and removed him from the board pursuant to Association Bylaws, Article VIII, Section 5.
- 30. Article VIII, Section 5 of the Association Bylaws applies to officers not board members.
 - 31. Mr. Kushner received no prior notice of an emergency board meeting.

32. The emergency meeting was held in executive session for the stated purpose of "Personnel."

VIOLATIONS OF LAW

- 33. RESPONDENTS violated NRS 116.31151 by adopting a budget more than 60 days before the beginning of the fiscal year of the Association.
- 34. RESPONDENTS violated NRS 116.31153 by failing to have two signatures on all checks of the Association.
- 35. RESPONDENTS violated NAC 116.451 by failing to prepare and distribute interim financial statements.
- 36. RESPONDENTS violated NRS 116.31083(1) by failing to have board meetings once every 100 days.
- 37. RESPONDENTS violated NRS 116.31083(2) by failing to provide no less than 10 days prior notice to owners of meetings of the board.
- 38. RESPONDENTS violated NRS 116.31083(6) by failing to have an agenda for all of its board meetings.
- 39. RESPONDENTS ANGELA BERLINER, JESSE ZAMBRANO, MARCIA CREAMER, and JOHN CARTER violated NRS 116.31083 by holding an emergency meeting when no emergency existed as defined in NRS 116.31083(13).
- 40. RESPONDENTS ANGELA BERLINER, JESSE ZAMBRANO, MARCIA CREAMER, and JOHN CARTER violated NRS 116.31083 and NRS 116.31085 by holding an emergency meeting to remove a board member in executive session stating on the agenda that the matter was relating to "personnel."
- 41. RESPONDENTS violated NRS 116.31083 by failing to maintain copies of audio recordings from executive board meetings.
- 42. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the Association when they committed an act or omission which amounts to incompetence, negligence or gross negligence by failing to comply with Nevada law.

- 43. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by failing to act in good faith and in the best interests of the Association when they failed to cause the Association to comply with all state laws and the governing documents of the Association.
- 44. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(c)) by failing to act in good faith and in the best interests of the Association when they failed to hold meetings of the board with such frequency as to properly and efficiently address the affairs of the Association.
- 45. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(g)) by failing to maintain current, accurate and properly documented financial records.
- 46. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(i)) by failing to establish policies and procedures that are designed to provide reasonable assurances in the reliability of financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records.
- 47. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(j)) by failing to prepare interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive.

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 of the Nevada Revised Statutes and Chapter 116 of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for December 3-5, 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, Ste. 103, 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 December 3-5, 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 Teralyn Lewis, Administration Section Manager, at (702) 486-4036.

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. 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 being excluded from RESPONDENTS' defense. The purpose of the hearing is to determine if the RESPONDENTS have violated the provisions of NRS 116, and to determine what administrative penalty is to be assessed against RESPONDENTS.

DATED: October 28, 2019.

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REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEWADA

By:_

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