

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES DECEMBER 3, 2019**

**NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
NEVADA ROOM, SUITE 400
LAS VEGAS, NEVADA 89102**

**VIDEO CONFERENCE:
DIVISION OF INSURANCE
1818 E. COLLEGE PARKWAY
CARSON CITY, NEVADA 89706**

DECEMBER 3, 2019

9:10 A.M.

1-A) Introduction of Commissioners in attendance

Michael Burke, James Rizzi, Charles Niggemeyer, Richard Layton, Tonya Gale and Deputy Attorney General Asheesh Bhalla sitting as Commission Counsel.

Doris Woods was not in attendance.

1-B) Swearing in of newly appointed and reappointed commissioners.

Chairman Burke swore in Commissioners Layton and Gale.

1-C) Introduction of Division staff in attendance.

In Las Vegas: Sharath Chandra, Administrator; Teralyn Lewis, Administration Section Manager; Kelly Valadez, Commission Coordinator; Charvez Foger, Ombudsman; Terry Wheaton, Chief Compliance Audit Investigator; Monique Williamson, Education and Information Officer; Antonio Brown, Training Officer; Christy Staffen, Compliance Audit Investigator.

Division Counsel: Michelle Briggs and Karissa Neff.

In Carson City: Perry Faigin, Deputy Administrator.

2) Public Comment

John Radocha commented on when a violation of State law is not a violation of State law regarding NRS 116.

Asheesh Bhalla stopped Mr. Radocha from commenting because his comments were regarding a complaint that he might file with the Division.

Jonathan Friedrich commented on his longstanding legal battle with Rancho Bel Air Property Owners Association. Mr. Friedrich provided written public comment and the Order of Affirmance from the State of Nevada Supreme Court Case No. 74816 which are included with the minutes.

3-A) NRED v. Sherryl Baca, for possible action

Case Nos. 2018-812 & 2018-660

Type of Respondent: CAM.0001439-SUPR

Michelle Briggs was present representing the Division.

Sue Cavaco was present representing Ms. Baca.

Sherryl Baca was present.

Ms. Briggs stated that Ms. Cavaco had a request for certain discovery, depositions and review of documents. Ms. Briggs stated that Ms. Cavaco should go before the Commission to decide if discovery is appropriate pursuant to NAC 116.

Ms. Cavaco stated that she also has a motion to dismiss that she would like to present to the Commission. Ms. Cavaco stated that she and her client were before the Commission at the last meeting regarding an amended order that was placed on the record regarding Ms. Baca's past disciplinary hearing. Ms. Cavaco stated that pursuant to that order Ms. Baca was ordered to pay a fine of \$27,771.70 and take 30 hours of continuing education within 18 months with no less than 10 hours in ethics. Ms. Cavaco stated that Ms. Baca agreed to pay the fine within 45 days and the fine was paid. Ms. Cavaco stated that Ms. Baca has started taking the continuing education classes. Ms. Cavaco stated that this order was related to a complaint that stemmed from 2014. Ms. Cavaco stated that the current complaint is regarding alleged violations from 2008-2010. Ms. Cavaco stated that the complaint is based on an affidavit from Ronald Beach who was the president of the association at the time. Ms. Cavaco stated that Mr. Beach's affidavit is legally unsound because it is not notarized and the affidavit states that Mr. Beach was suffering from end stage cancer. Ms. Cavaco stated that legally Mr. Beach's legal capacity to execute an affidavit is suspect. Ms. Cavaco stated that the allegations stem from Ms. Baca's management of the South Valley Ranch Homeowners Association. Ms. Cavaco stated that there are no allegations that Ms. Baca has absconded with any money of the association. Ms. Cavaco stated that every allegation alleges a violation of some procedural aspect of law. Ms. Cavaco stated that these are similar to the type of allegations that Ms. Baca is subject to in the case that went before the Commission prior.

Ms. Cavaco stated that at the time that Ms. Baca ceased being the community manager for the South Valley Ranch Homeowners Association, Nicklin Management took over the account. Ms. Cavaco stated that since that time, the community management company has changed. Ms. Cavaco stated that the chain of custody for the documents referred to in the complaint is broken. Ms. Cavaco stated that it would be difficult to recreate something from 2010.

Ms. Cavaco stated that the stale allegations in the complaint that are based upon an unsound affidavit and the fact that Ms. Baca is already under an order of the Commission and that the violations from that complaint and the current complaint are the same make it unreasonable to go forward with the current complaint. Ms. Cavaco requested that the Commission dismiss the complaint.

Ms. Briggs stated that the complaint involves a different association than the prior complaint and was known to Ms. Baca and her attorney prior to the entering into the settlement in August 2019.

Ms. Briggs stated that there is no reason to dismiss the complaint because Ms. Baca is under another order. Ms. Briggs stated that the facts of the complaint show Ms. Baca's behavior in handling one association was how she did business with all associations. Ms. Briggs stated that if every association that Ms. Baca managed filed a complaint, it is the Commission's job to discipline Ms. Baca regardless of what discipline Ms. Baca has already had.

Ms. Briggs stated Ms. Cavaco has not identified any reason to dismiss the complaint. Ms. Briggs stated that regarding Mr. Beach, cancer is not any indication of mental incapacity. Ms. Briggs stated that it would be up to the Commission to decide if Mr. Beach was credible. Ms. Briggs stated that the allegations are being referred to as stale because Ms. Baca failed to keep records for 10 years pursuant to the law.

Ms. Cavaco responded to Ms. Briggs' opposition.

Chairman Burke asked if it admitted that at the time Ms. Baca entered into the stipulation for the prior case, Ms. Baca and her attorney were aware of the current complaint.

Ms. Cavaco stated that she and Ms. Baca were aware of the current complaint. Ms. Cavaco stated that she is Ms. Baca's newest attorney. Ms. Cavaco stated that when she got Ms. Baca's case, Ms. Cavaco felt that she needed to fix the situation the best way possible. Ms. Cavaco stated that a decision was made to do what was needed to get Ms. Baca her license back before dealing with the current complaint.

Chairman Burke stated that a motion to dismiss is brought forward when there is a failure to state a claim against your client. Chairman Burke stated that is not Ms. Cavaco's argument nor is it that any type of limitations period has passed within which to bring the claim. Chairman Burke stated that the matter regarding Mr. Beach's affidavit is a factual issue and can be dealt with when arguing the complaint.

Commissioner Rizzi stated that while he has sat on the Commission, a case has never been dismissed due to previous disciplinary action.

Chairman Burke motioned that the motion to dismiss be denied. Seconded by Commissioner Rizzi. Motion carried.

Ms. Cavaco stated that the second matter is a request for a continuance to do discovery. Ms. Cavaco stated that Ms. Briggs was agreeable to the request for continuance. Ms. Cavaco stated that she would like to conduct three depositions: Lisa Carrion, the person most knowledgeable of Nicklin Community Management regarding the subject association and the person most knowledgeable of Taylor Management regarding the subject association.

Ms. Cavaco stated that she is requesting document subpoenas for Nicklin Community Management. Ms. Cavaco stated that she would like a copy of any and all management agreements between Nicklin Community Management and South Valley Ranch; a copy of Nicklin Community Management's entire file related to the management of the subject association; copies of all documents that Nicklin Community Management received from Ms. Baca's management company at the time Nicklin Community Management took over; copies of all the documents that Nicklin Community Management provided Taylor Management; all

correspondence in Nicklin Community Management's possession regarding the subject association; all correspondence related to any community with the Real Estate Division or the Commission; and any correspondence regarding Ms. Baca or Ms. Baca's former management company. Ms. Cavaco stated that she is requesting the same documents from Taylor Management.

Ms. Briggs stated that Ms. Cavaco's request is excessive and unnecessary. Ms. Briggs stated that Ms. Cavaco can depose Ms. Carrion as the complainant but to ask for Nicklin Community Managements' and Taylor Managements' management contract is not relevant to the allegations against Ms. Baca. Ms. Briggs stated that she does not have a problem with Ms. Cavaco reviewing the association files that Taylor Management has that belong to the association.

Ms. Cavaco stated that some of the allegations against Ms. Baca have to do with the nature of Ms. Baca's management contracts. Ms. Cavaco stated that it is relevant to see the new management contracts to see if those contracts mimic the management contracts that Ms. Baca had with the association. Ms. Cavaco stated that she has no right to review Taylor Management's documents without a subpoena. Ms. Cavaco stated that once she views the documents, Ms. Cavaco will have questions and the only way Taylor Management is required to speak to her is by a deposition subpoena.

Chairman Burke stated that it is fair to ask for the depositions and subpoenas. Chairman Burke stated that Ms. Cavaco draft a proposed subpoena and provide it to Chairman Burke to review and approve.

Chairman Burke stated that since there was no discrepancy on the subpoena for deposition for Ms. Carrion; the most knowledgeable person at Nicklin Community Management; and the most knowledgeable person at Taylor Management; Ms. Cavaco can proceed.

Chairman Burke stated that this case would be brought back before the Commission at the second meeting scheduled for 2020.

**3-B) NRED v. Greenridge Homeowners Association, Leslie Holland, Diane Leyva, Joshua Schaper, Carline Roks, Dave Reid & Janet Meyers, for possible action
Case No. 2018-993**

Type of Respondent: Board Members

Michelle Briggs was present representing the Division.

Ms. Briggs stated that this matter was previously settled with the attorney for Greenridge Homeowners Association, but Janet Meyers was not available for that settlement and this matter is only regarding Ms. Meyers individually.

Janet Meyers was not present.

State's Witness

Teralyn Lewis testified regarding service of the complaint.

Chairman Burke moved to find Ms. Meyers in default and failure to respond to the complaint. Seconded by Commissioner Rizzi. Motion carried.

Chairman Burke moved that factual allegations 3 through 13 regarding Ms. Meyer are deemed to be true. Seconded by Commissioner Rizzi. Motion carried.

Commissioner Rizzi moved that violations of law paragraphs 14 through 22 are deemed to be proven. Seconded by Commissioner Niggemeyer. Motion carried.

Disciplinary Recommendation

Ms. Briggs stated that the Division is requesting that Ms. Meyers not be allowed to serve as an officer or board member for 5 years.

Chairman Burke moved that Ms. Meyers is not allowed to serve as an officer or board member for no less than 5 years. Seconded by Commissioner Rizzi. Motion carried.

3-C) NRED v. Thomas Kelly, for possible action

Case No. 2018-395

Type of Respondent: CAM.0000025.SUPR

Michelle Briggs was present representing the Division.

Thomas Kelly was not present.

Ms. Briggs stated that this item is a status check. Ms. Briggs stated that Mr. Kelly has not completed the education requirements but paid the fine. Ms. Briggs stated that she spoke with Mr. Kelly's attorney, John Leach. Ms. Briggs stated that Mr. Leach was going to talk to Mr. Kelly.

Ms. Briggs stated that Mr. Kelly's education was due on October 2, 2019. Ms. Briggs stated that Mr. Kelly was in default of the stipulation and order. Ms. Briggs stated that the Commission could give Mr. Kelly more time to complete the education and if Mr. Kelly does not, the Division will pursue the complaint.

Commissioner Rizzi moved that the Commission allow Mr. Kelly until the first meeting in 2020 to complete the education portion of the settlement or be deemed in violation of the settlement. Seconded by Commissioner Layton. Motion carried.

3-D) NRED v. Gerald Marks, for possible action

Case No. 2018-952

Type of Respondent: CAM.0000086-SUPR

3-E) NRED v. Gerald Marks, for possible action

Case No. 2018-978

Type of Respondent: CAM.0000086-SUPR

Karissa Neff was present representing the Division. Ms. Neff stated that she spoke to Mr. Marks last week and Mr. Marks requested a continuance until the next Commission meeting due to illness. Ms. Neff stated that the Division has no opposition to Mr. Marks' request.

The Commission agreed to continue these cases until the next scheduled 2020 meeting.

3-F) NRED v. Rand Terkel, for possible action

Case No. 2019-415

Type of Respondent: CAM.0000230-SUPR

Karissa Neff was present representing the Division.

Rand Terkel was not present.

Ms. Neff stated that she was contacted by Mr. Terkel's counsel. Ms. Neff stated that no settlement had been reached and Mr. Terkel had not responded to the complaint.

Commissioner Gale recused herself from this matter on the basis of being the complainant of this matter.

State's Witness

Teralyn Lewis testified regarding service of the complaint.

Chairman Burke moved to find Mr. Terkel in default for failing to timely respond to the complaint issued by the Division. Seconded by Commissioner Rizzi. Motion carried with Commissioner Gale abstaining.

Chairman Burke moved to find the factual allegations in paragraphs 3 through 19 deemed to be true. Seconded by Commissioner Layton. Motion carried with Commissioner Gale abstaining.

Ms. Neff requested to have State's exhibits NRED 00001-00079 admitted into the record. The Commission admitted those exhibits into the record.

Chairman Burke moved that based on the factual allegations that were deemed proven as well as the admitted exhibits, find Mr. Terkel in violation of law as pled in paragraphs 1 through 10 on pages 3 and 4 of the complaint. Seconded by Commissioner Rizzi. Motion carried with Commissioner Gale abstaining.

Disciplinary Recommendation

Ms. Neff stated that the Division recommends a one-year revocation of Mr. Terkel's certificate unless Mr. Terkel provides the documents to the Division sooner. Ms. Neff stated that the recommendation is a fine of \$10,000 plus costs of \$2,307.86 due within 60 days.

Commissioner Rizzi moved to revoke Mr. Terkel's certificate for a period of one year and pay a fine of \$10,000 plus costs of \$2,307.86 due within 60 days. Seconded by Commissioner Layton. Motion carried with Commissioner Gale abstaining.

3-G) NRED v. Vistana Condominium Owners Association, Carlos Aguirre, Victor Chill, John Rhodes & Linda Williams, for possible action

Case No. 2019-89

Type of Respondent: Board Members

Chairman Burke stated that this case has been continued until the next Commission meeting in 2020.

4-A) Administrator's Report

Sharath Chandra provided the Commission with this report. Mr. Chandra stated that the Division's biggest challenge has been to get Commission positions filled. Mr. Chandra stated that the Governor's Office is getting caught up with appointments.

Mr. Chandra introduced Kelly Valadez as the new Commission Coordinator.

4-B-1) Ombudsman's Report on Intervention Affidavits

4-B-2) Ombudsman's Report on Informal Conferences

4-B-3) Ombudsman's Report on number and types of associations registered within the State

4-B-4) Ombudsman's Report on auditor report

4-B-5) Ombudsman's Report on alternative dispute resolution program

4-B-6) Ombudsman's Report on education and training officer's report

4-B-7) Ombudsman's Report on Compliance section report

Charvez Foger provided the Commission with these reports in the meeting packet.

Mr. Foger stated that there is a new position in Carson City for a Training Officer. Mr. Foger introduced the new Compliance Audit Investigator who will be located in Carson City, Christy Staffen.

4-C) Licensee and board member discipline report

Teralyn Lewis provided the Commission with this report in the meeting packet.

4-D) Administrative sanction report

Teralyn Lewis stated that there was nothing to report.

5-A) Discussion regarding the State of Nevada Controller's Office debt collection process for fines issued by the Commission.

Commissioner Niggemeyer reported on this item. Commissioner Niggemeyer provided the Commission with a report from the Controller's Office. Commissioner Niggemeyer stated that he and former Commissioner Williams met with the Controller's Office in Carson City after the last meeting. Commissioner Niggemeyer stated that the Controller's Office will do collections through the court system but right now the threshold is a million dollars to start.

Commissioner Layton stated that he does not agree with the million-dollar threshold.

Chairman Burke stated that this agenda item should be placed on the Commission's next meeting agenda.

5-B) Discussion regarding Commissioners' speaking engagement requests.

Commissioner Niggemeyer stated that he is teaching a class for another agency that he works with in the North in February 2020. Commissioner Niggemeyer stated that the class has nothing to do with the Commission.

5-C) For possible action: Discussion and decision to approve minutes of September 17, 2019 Commission meeting.

Commissioner Niggemeyer stated that Commissioner Henderson's attendance was not placed in the minutes.

Commissioner Layton moved to approve the minutes with the one correction. Seconded by Chairman Burke. Motion carried with Commissioner Gale abstaining because she was not present at the meeting.

6) For possible action: Discussion and decision on date, time, place and agenda items for upcoming meeting(s) including setting meeting dates for 2020.

- March 17-19, 2020
- May 19-21, 2020
- August 4-6, 2020 in the north
- October 27-29, 2020

7) Public Comment

No public comment.

8) For possible action: Adjournment

The meeting adjourned on December 3, 2019 at 11:00 a.m.

December 3, 2019

At the Quarterly Meeting of the Common Interest Community Commission

Mr. Chairman and Members of the Commission

First for those who do not know of me I was a former Commissioner on this Commission who uncovered corruption by previous commissioners that led to there being removed by ~~the~~ Governor Sandervol.

I am here today to inform you and the other Commissioners of the results of a longstanding legal battle with the Rancho Bel Air Property Owners Association.

This fraud and corruption started back in 1977 and continued until 2014. The Nevada Real Estate Division's Office of the Ombudsman's failure to question the activity of the developer Barry Becker and the Rancho Bel Air Board allowed the fraud to persist. Fortunately for me Ms. Sonia Merryweather an employee of the Ombudsman's Office, made detailed Credential Notes which helped prove the wrongdoings of the Association when this corruption went to trial.

After an 8 day trial which ended on June 29, 2017 the jury found in my favor that the Association had committed both fraud and misrepresentation. Prior to that Judge Bill Kepthart had issued Summary Judgement in my favor that my home was never in an association even though I had been unknowingly paying monthly assessments for 10 years and being subject to the CC&Rs of Rancho Bel Air Unit 2 from the time I purchased my home in 2003 until discovering otherwise.

Upon discovering the fraud the State Real Estate Division required Rancho Bel Air Unit 2 to repeal the Corporate Certificate of Unit 1. It was found Unit 1 never had any CC&Rs..

I filed an Intervention Affidavit with The Office of the Ombudsman prior to going to trial. It was rejected until the trial concluded and I was informed in writing to refile after the trial. Upon conclusion of the trial I did refile only to be told GO AWAY and my complaint would not be heard. This did not come as a surprise as the normal response was to be denied or told your complaint is unsubstantiated. This has been the normal response for years from the Ombudsman's office.

The Association having been beaten in Court then filed an Appeal in the Nevada Supreme Court which on Friday November 22, issued their decision. In a crushing 5 to 2 decision which upheld the District Court and jury 's decision I had slayed the dragon. In the decision the Supreme Court used strong language against the Association and their attorney which included "seeks to turn the rule on its head" and states "to adopt this novel rule".

Currently there ^{ARE} many other owners in what was Rancho Bel Air Unit 1 seeking help from the Office of the Ombudsman that will not help or intercede on their behalf.

This is what I find disgraceful and unjustified as this office was created to help and assist homeowners as per NRS 116.750.

I request that this statement be made a part of the Minutes of this meeting along with a copy of the Nevada Supreme Court ORDER OF AFFIRMANCE.

Submitted by JONATHAN FRIEDRICH