

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 Gerald Marks,

10 Respondent.

Case No. 2019-409

FILED

FEB 12 2020

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kelly Valadez

11 **COMPLAINT FOR DISCIPLINARY**
12 **ACTION AND NOTICE OF HEARING**

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, Michelle D. Briggs, Esq., Senior Deputy Attorney General, and
16 Karissa D. Neff, Deputy Attorney General, hereby notify Respondent Gerald Marks
17 ("RESPONDENT" or "MARKS") of an administrative hearing before the Commission for
18 Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be
19 held pursuant to Chapters 233B and Chapters 116 and 116A of the Nevada Revised
20 Statutes ("NRS") and Chapter 116 and 116A of the Nevada Administrative Code ("NAC").
21 The purpose of the hearing is to consider the allegations stated below and to determine if
22 an administrative penalty will be imposed on the RESPONDENT pursuant to the
23 provisions of NRS and NAC including, but not limited to, NAC 116A.360.

24 **JURISDICTION AND NOTICE**

25 1. During all relevant times mentioned in this complaint, RESPONDENT held,
26 an active supervisory community manager certificate from the Division (CAM.0000086-
27 SUPR) and is, therefore, subject to the jurisdiction of the Division and the provisions of
28 NRS Chapters 116 and 116A and NAC Chapters 116 and 116A. RESPONDENT'S
certificate is currently in "inactive" status.

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FACTUAL ALLEGATIONS

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2 2. RESPONDENT, at all relevant times, was the owner of MP Association
3 Management, Inc., a Nevada corporation ("MP Management") and was also the manager
4 of the Shadow Wood Homeowner's Association ("Shadow Wood" and/or "Association").

5 3. In 2017, Myra Lay-Beng Yung ("Yung") purchased a condominium in Shadow
6 Wood.

7 4. During Yung's purchase of the condominium, a lawsuit was pending captioned
8 *NY Community Bank v. Shadow Wood*, Clark County Case No. A-12-660328-C (the
9 "Lawsuit").

10 5. The resale package provided by the Association to Yung did not reflect the
11 pending Lawsuit.

12 6. A letter from RESPONDENT provided to Yung in her resale package stated,
13 "there is no pending/current litigation or pending/current judgments."

14 7. On April 17, 2019, Yung filed a complaint with the Division, claiming that the
15 Association failed to properly notify her of the Lawsuit in the resale package provided to
16 her when she purchased her condominium.

17 8. On April 26, 2019, the Division properly notified RESPONDENT that it was
18 opening an investigation based on Yung's complaint.

19 9. In response to the Division, RESPONDENT did not deny that he had failed to
20 disclose the Lawsuit to Yung in her resale package.

21 10. Rather, in his response to the Division, RESPONDENT stated that during the
22 time period of September 8, 2017, that he was ill and not working and that, "the staff at
23 MP Association Management under stressful situations handled to the best of their ability
24 all correspondence between MP Association Management and it's [sic] associations
25 including emails mail and phone messages."

26 11. RESPONDENT also denied having any access to the documentation
27 requested by the Division during its investigation of Yung's complaint and stated that any
28 documents remained with the Association's current management company.

1 12. Board member James Ma ("Ma's) provided an affidavit to the Division
2 regarding the Division's investigation of Yung's complaint.

3 13. Ma's affidavit states that homeowners were not made aware of the Lawsuit
4 until late 2017, despite that the lawsuit had been pending for seven years.

5 **VIOLATIONS OF LAW**

6 14. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary
7 and reasonable care in the performance of his duties by failing to furnish Yung a resale
8 package that stated any pending legal actions against the Association and the status of
9 such litigation in violation of NRS 116.4109.

10 15. RESPONDENT violated NRS 116A.630(2)(a) by failing to comply with state
11 laws.

12 16. RESPONDENT violated NRS 116A.630(10) by failing to cooperate with the
13 Division in resolving the complaint against him.

14 17. RESPONDENT violated NRS 116A.640(2)(b) by impeding or otherwise
15 interfering with an investigation of the Division by providing false or misleading
16 information to an investigator.

17 18. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC
18 116A.355(2)(f)) by committing unprofessional conduct by failing to cooperate with the
19 Division in the investigation of a complaint including, without limitation, failure to produce
20 any document, book or record in the possession or control of the community manager after
21 the Division requests the production of such document, book or record in the course of an
22 investigation of a complaint.

23 19. RESPONDENT violated NAC 116A.355(1)(a)(2) (through NAC
24 116A.355(3)(a)) by committing professional incompetence by demonstrating a significant
25 lack of ability, knowledge or fitness to perform a duty or obligation owed to a client.

26 20. RESPONDENT violated NAC 116A.355(1)(a)(2) (through NAC
27 116A.355(3)(b) by committing professional incompetence by failing to exercise reasonable
28 skill and care with respect to a duty or obligation owed to a client.

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2 21. RESPONDENT violated NAC 116A.355(1)(a)(1) and (2) (through NAC
3 116A.355(4)(g)) by committing unprofessional conduct or professional incompetence by
4 failing to act in the best interests of the Association.

5 **DISCIPLINE AUTHORIZED**

6 Pursuant to the provisions of NAC 116A.360 the Commission has discretion to
7 impose discipline as it deems appropriate, including, but not limited to one or more of the
8 following actions:

- 9 1. Revoke or suspend the certificate;
10 2. Refuse to renew or reinstate the certificate;
11 3. Place the community manager on probation;
12 4. Issue a reprimand or censure to the community manager;
13 5. Impose a fine of not more than \$5,000 for each violation of a statute or
14 regulation;
15 6. Require the community manager to pay restitution;
16 7. Require the community manager to pay the costs of the investigation and
17 hearing;
18 8. Require the community manager to obtain additional education relating to
19 the management of common-interest communities; and
20 9. Take such other disciplinary action as the Commission deems appropriate.

21 The Commission may order one or any combination of the discipline described above.

22 **NOTICE OF HEARING**

23 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider this
24 Administrative Complaint against the above-named RESPONDENT in accordance with
25 Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116 and
26 116A of the Nevada Administrative Code.

27 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled
28 for March 17-19, 2020, beginning at approximately 9:00 a.m. each day, or until

1 such time as the Commission concludes its business. The Commission meeting
2 will be held on March 17-18, 2020 at the Nevada State Business Center, 3300 W.
3 Sahara Avenue, Nevada Room, Suite 400, Las Vegas, Nevada 89102, and on March
4 19, 2020 at the Nevada State Business Center, 3300 W. Sahara Avenue, Tahoe
5 Room, Suite 430, Las Vegas, Nevada 89102, with videoconferencing to Division of
6 Insurance, 1818 E. College Parkway, Ste. 103, Carson City, Nevada 89706.

7 **STACKED CALENDAR:** Your hearing is one of several hearings that may
8 be scheduled at the same time as part of a regular meeting of the Commission
9 that is expected to last from March 17-19, 2020. Thus, your hearing may be
10 continued until later in the day or from day to day. It is your responsibility to be
11 present when your case is called. If you are not present when your hearing is
12 called, a default may be entered against you and the Commission may decide the
13 case as if all allegations in the complaint were true. If you need to negotiate a
14 more specific time for your hearing in advance because of coordination with out
15 of state witnesses or the like, please call Kelly Valadez, Commission Coordinator,
16 at (702) 486-4606.

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

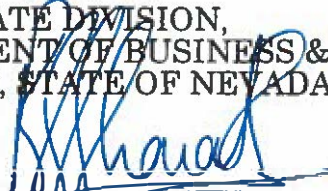
23 As a **RESPONDENT**, you are specifically informed that you have the right to
24 appear and be heard in your defense, either personally or through your counsel of choice.
25 At the hearing, the Division has the burden of proving the allegations in the complaint and
26 will call witnesses and present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

1 matter relevant to the issues involved.

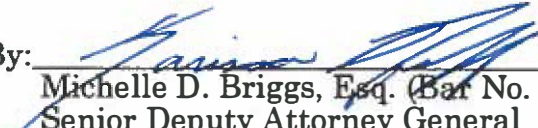
2 You have the right to request that the Commission issue subpoenas to compel
3 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
4 you may be required to demonstrate the relevance of the witness's testimony and/or
5 evidence. Other important rights and obligations, including your obligation to answer the
6 complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter
7 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A. Note that under NAC
8 116A.585, not less than five (5) working days before a hearing, RESPONDENT must
9 provide to the Division a copy of all reasonably available documents that are reasonably
10 anticipated to be used to support his or her position, and a list of witnesses RESPONDENT
11 intends to call at the time of the hearing. Failure to provide any document or to list a
12 witness may result in the document or witness being excluded from RESPONDENT'S
13 defense. The purpose of the hearing is to determine if the
14 RESPONDENT has violated any of the provisions of NRS and NAC Chapters 116 and
15 116A, and to determine what administrative penalty is to be assessed against
16 RESPONDENT, if any, pursuant to NAC 116A.360.

17 DATED: February 11th 2020.

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19 REAL ESTATE DIVISION,
20 DEPARTMENT OF BUSINESS &
INDUSTRY, STATE OF NEVADA

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