

vs.

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,

retitione.

Silverstone Ranch Community Association, Thomas Masson, Chrisa Chen, Colleen Malany, Katrina Yoa-Townsend, Frank Anderson, and William Walter,

Respondents.

Case No. 2018-1322



APR 15 2020

NEVADA COMMISSION FOR COMMON INTEREST COMMUNITIES AND CONDOMINIUM MOTELS

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, Michelle D. Briggs, Senior Deputy Attorney General, and Karissa D. Neff, Deputy Attorney General, hereby notifies RESPONDENTS Silverstone Ranch Community Association ("Association"), Thomas Masson, Chrisa Chen, Colleen Malany, Katrina Yoa-Townsend, Frank Anderson, and William Walter (collectively, the "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 Thomas Masson, Chrisa Chen, Colleen Malany, Katrina Yoa-Townsend, Frank Anderson, and William Walter served as members and/or officers of Silverstone Ranch Community Association (the "Association"), a common-interest community located in Las Vegas, 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. On or around September 1, 2018, Rosario Romano ("Complainant") submitted an Intervention Affidavit to the Division claiming in part, that the Association failed to provide him with a copy of a \$380,000 settlement agreement that the Association entered into and/or failed to provide him with the terms of the settlement.
- 4. On September 1, 2018, Complainant submitted a letter to the Division specifying that on December 5, 2017, the Clark County District Court approved a class action settlement agreement in a lawsuit commonly known as the Higher Ground Lawsuit, requiring the Association to pay the plaintiffs \$380,000 in settlement funds (the "Settlement Agreement")
- 5. Complainant also stated that the Association paid a total of \$17,065 dollars in legal expenses related to the settlement of the Higher Ground Lawsuit.
- 6. Complainant stated that he had made numerous written requests to the Association requesting financial records related to the payment of the settlement along with requests for a copy of the Settlement Agreement.

7. On November 20, 2018, the Division properly notified the Association regarding Complainant's complaint and requested notarized, written responses to the allegations set forth in the Division's November 20th letter.

- 8. On December 7, 2018, the Division received a response from the Association's attorney, John E. Leach of Leach Kern Gruchow Anderson Song, stating in part, that the Association only has an obligation to allow owners to review records *filed* with a court.
- 9. In his letter, Mr. Leach proceeded to state that because the Settlement Agreement was not a record *filed* with the court, the Association was not obligated to produce it to Complainant.
- 10. Mr. Leach also stated that filing the Settlement Agreement with the court would make it a public record, violating the Settlement Agreement's confidentiality provision.
 - 11. In his December 7th letter to the Division, Mr. Leach stated:

Based on the language of the aforementioned statutes, production of settlement agreement is not necessary and appropriate. Therefore, the Association does not intend to do so as it is not going to breach the terms of the settlement agreement.

- 12. After this case was referred to the Attorney General's Office to pursue disciplinary action, the Division obtained a copy of the Settlement Agreement that had been filed with the court on August 28, 2017, as part of the parties' Joint Motion for Preliminary Approval of Class Settlement as Set Forth in the Settlement Agreement, Approval of Class Notification and Entry of Scheduling Order.
 - 13. NRS 116.31088(4) requires:

If any civil action in which the association is a party is settled, the executive board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting of the executive board after the settlement has been reached. The executive board may not approve a settlement which contains any terms and conditions that would prevent the executive board from complying with the provisions of this subsection.

- 14. Despite the Settlement Agreement being filed with the court on August 28, 2017, for court approval, the Settlement Agreement was not on the agenda of Association's Board meeting set for October 10, 2017.
- 15. Minutes obtained from the October 10, 2017 meeting failed to expressly reference the Settlement Agreement.
- 16. Despite the agenda and the minutes not mentioning the Settlement Agreement, the Association claimed it satisfied the requirements of disclosure when the president responded to an owner during the homeowner's forum at the beginning of the meeting which is part of the audio from the October 10, 2017 meeting.
- 17. Based on the audio from the October 20, 2017, the president's comments on the Settlement Agreement did not fully disclose the terms and conditions of the Settlement Agreement as required by statute.
- 18. The Settlement Agreement terms and conditions were not disclosed to the homeowners until a year later, at the October 10, 2018 Board meeting.
- 19. On February 28, 2019, the Division sent the Association a letter stating that the Division viewed the Settlement Agreement as a record of the Association and that it must be made available for inspection.
- 20. On August 21, 2019, the Association was properly notified by the Division that the Division intended to commence disciplinary action against the Board by filing a complaint for hearing before the Commission for Common Interest Communities and Condominium Hotels.

VIOLATIONS OF LAW

- 21. RESPONDENTS violated NRS 116.31175(1), (2) by failing to disclose the Settlement Agreement and the financial records pertaining to the payment of the settlement to Complainant.
- 22. RESPONDENTS violated NRS 116.31088(4) by failing to disclose the terms and conditions of the Settlement Agreement at the next regularly scheduled meeting of the executive board of directors.

DISCIPLINE AUTHORIZED

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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 RESPONDENTS to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.
- 2. Issue an order directing RESPONDENTS 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.
- IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND 4. 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 May 19-21, 2020, 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 May 19-21, 2020. 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 Kelly Valadez, Commission Coordinator, at (702) 486-4606.

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.

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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 this day of April, 2020.

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

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