

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 The Colony, Luis Villareal, Alan Mehr,
10 Allen Nichols, and Marc Morger,

11 **Respondents.**

Case No. 2018-1058

FILED

FEB 12 2020

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kelly Valadez

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

14 The Real Estate Division of the Department of Business and Industry, State of
15 Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of
16 the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby
17 notifies RESPONDENTS THE COLONY, LUIS VILLAREAL, ALAN MEHR, ALLEN
18 NICHOLS, and MARC MORGER (hereinafter, collectively "RESPONDENTS") of an
19 administrative hearing before the Commission for Common-Interest Communities and
20 Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B
21 and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada
22 Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations
23 stated below and to determine if an administrative penalty will be imposed on the
24 RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited
25 to, NRS 116.785 and NRS 116.790.

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1 **JURISDICTION AND NOTICE**

2 1. During the relevant times mentioned in this complaint, RESPONDENTS
3 LUIS VILLAREAL, ALAN MEHR, ALLEN NICHOLS, and MARC MORGER served as
4 board members and/or officers of THE COLONY (herein after, the "Association"), a
5 common-interest community located in Las Vegas, Nevada.

6 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the
7 Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC")
8 (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of
9 the Division, and the Commission for Common-Interest Communities pursuant to the
10 provisions of NRS 116.750.

11 **FACTUAL ALLEGATIONS**

12 3. The Association is a self-managed, planned community consisting of 108
13 units built in 1975 to 1980. The units share vertical boundaries in 4 unit clusters.

14 4. The Association has an annual budget of approximately \$228,000.

15 5. The Division initiated an investigation when annual registrations indicated
16 financials were not being audited.

17 6. The Association's president, RESPONDENT LUIS VILLAREAL, is also
18 listed as the declarant for the project.

19 7. RESPONDENT BOARD MEMBERS responded to the Division's
20 investigation indicating that a prior board member embezzled funds from the Association
21 in 2009.

22 8. The Association does not contribute to a reserve fund.

23 9. The Association does not have a reserve study.

24 10. The Association does not have interim financials or audited financials.

25 11. The Association's annual registrations indicate some financials were
26 reviewed, but they were not.

27 12. Annual registration forms listed a reserve study from 2014, but no such
28 reserve study exists.

VIOLATIONS OF LAW

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2 13. RESPONDENTS violated NAC 116.451 by failing to prepare and distribute
3 interim financial statements.

4 14. RESPONDENTS violated NRS 116.31144 by failing to cause the financial
5 statement of the Association to be audited by an independent certified public accountant
6 every fiscal year.

7 15. RESPONDENTS violated NRS 116.3115 by failing to have adequate
8 reserves.

9 16. RESPONDENTS violated NRS 116.31152 by failing to have a reserve study
10 performed every five years.

11 17. RESPONDENTS violated NAC 116.415 by failing to prepare interim
12 financial statements.

13 18. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by
14 failing to act in good faith and in the best interests of the Association when they
15 committed an act or omission which amounts to incompetence, negligence or gross
16 negligence by supplying false information regarding reserves and audits to the Division.

17 19. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by
18 failing to act in good faith and in the best interests of the Association when they failed to
19 cause the Association to comply with all state laws.

20 20. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(g)) by
21 failing to maintain current, accurate and properly documented financial records.

22 21. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(i)) by
23 failing to establish policies and procedures that are designed to provide reasonable
24 assurances in the reliability of financial reporting, including, without limitation, proper
25 maintenance of accounting records, documentation of the authorization for receipts and
26 disbursements, verification of the integrity of the data used in making business decisions,
27 facilitation of fraud detection and prevention, and compliance with the applicable laws
28 and regulations governing financial records.

1 violated the provisions of NRS or NAC 116, the Commission may order that
2 RESPONDENTS be personally liable for all fines and costs imposed.

3 **NOTICE OF HEARING**

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

8 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled
9 for March 17-19, 2020, beginning at approximately 9:00 a.m. each day, or until
10 such time as the Commission concludes its business. On March 17 and 18, the
11 Commission meeting will be held at the Nevada State Business Center, 3300 W.
12 Sahara Avenue, Nevada Room, Suite 400, Las Vegas, Nevada 89102 with
13 videoconferencing to Division of Insurance, 1818 E. College Parkway, Ste. 103,
14 Carson City, Nevada 89706. On March 19, the Commission meeting will be held
15 at the Nevada State Business Center, 3300 W. Sahara Avenue, Tahoe Room,
16 Suite 400, Las Vegas, Nevada 89102 with videoconferencing to Division of
17 Insurance, 1818 E. College Parkway, Ste. 103, Carson City, Nevada 89706.

18 **STACKED CALENDAR:** Your hearing is one of several hearings that may
19 be scheduled at the same time as part of a regular meeting of the Commission
20 that is expected to take place on March 17-19, 2020. Thus, your hearing may be
21 continued until later in the day or from day to day. It is your responsibility to
22 be present when your case is called. If you are not present when your hearing
23 is called, a default may be entered against you and the Commission may decide
24 the case as if all allegations in the complaint were true. If you need to negotiate
25 a more specific time for your hearing in advance because of coordination with
26 out of state witnesses or the like, please call Kelly Valadez, Commission
27 Coordinator, at (702) 486-4606.

28 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is

1 an open meeting under Nevada's open meeting law, and may be attended by the public.
2 After the evidence and arguments, the commission may conduct a closed meeting to
3 discuss your alleged misconduct or professional competence. You are entitled to a copy of
4 the transcript of the open and closed portions of the meeting, although you must pay for
5 the transcription.

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

13 You have the right to request that the Commission issue subpoenas to compel
14 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
15 you may be required to demonstrate the relevance of the witness' testimony and/or
16 evidence. Other important rights and obligations, including your obligation to answer the
17 complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including
18 without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC
19 116.635 and NRS Chapter 233B.

20 Note that under NAC 116.575, not less than five (5) working days before a hearing,
21 RESPONDENTS must provide to the Division a copy of all reasonably available
22 documents that are reasonably anticipated to be used to support his position, and a list
23 of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to provide
24 any document or to list a witness may result in the document or witness

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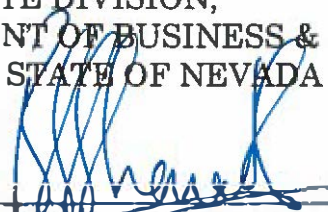
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1 being excluded from RESPONDENTS' defense. The purpose of the hearing is to
2 determine if the RESPONDENTS have violated the provisions of NRS 116, and to
3 determine what administrative penalty is to be assessed against RESPONDENTS.

4 DATED: February 11th, 2020.

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6 REAL ESTATE DIVISION,
7 DEPARTMENT OF BUSINESS &
8 INDUSTRY, STATE OF NEVADA

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