

BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA

JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Case Nos. 2015-3615; 2015-2155;
2015-3100; 2015-2207

Petitioner,

vs.

FILED

MAY 10 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

ANTHEM HIGHLANDS COMMUNITY
ASSOCIATION; ROBERT STERN;
CHARLES HERNANDEZ; and RONNIE
YOUNG,

Respondents.

**OPPOSITION TO MOTION TO DISMISS THE COMPLAINT IN ITS ENTIRETY AND
MOTION FOR PRE-HEARING CONFERENCE TO BRING A MORE DEFINITE
COMPLAINT OR, IN THE ALTERNATIVE, TO CLARIFY THE COMPLAINT**

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby files its Opposition to Respondents' Motion to Dismiss the Complaint in its Entirety and its Motion for Pre-Hearing Conference to Bring a More Definite Complaint or, In the Alternative, to Clarify the Complaint pursuant to NAC 116.560(3). This opposition is made and based on the following Memorandum of Point and Authorities as well as any and all pleadings on file herein and any oral argument that may be heard at the time of the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Division filed a complaint against the Respondents, Anthem Highlands Community Association and three of its board members, in December of 2015. The Association governs a master planned community with over 1,500 homes in Henderson, Nevada. The complaint came after years of conflict among board members and prior board

1 members escalated to the point of six months of complete inaction by the Association's
2 board. Over the course of the months of inaction, the Division was spending a
3 disproportionate amount of time dealing with the Association as compared to every other
4 association in the state. There were over 1,000 emails sent to the Division from various
5 homeowners, managers, and board members which included and were copied to multiple
6 employees at the Division. The Division was involved in all aspects of the Association through
7 these emails, including the constant bickering among the board members and prior board
8 members. The Division decided that its efforts to help the Association were not working, and
9 that the best thing for the other 1,500+ owners in the Association who were not part of the
10 infighting and were becoming victims of it was to bring the complaint to this Commission.

11 The hearing was originally scheduled for February 2016, but was continued to June.
12 Before the Commission now are two motions filed on behalf of the Association and the board
13 president, Charles Hernandez; a motion to dismiss the complaint, and a motion for a
14 prehearing conference for a more definite complaint. The motions were not served on the
15 parties, but the Division submits its opposition to both motions. The motions are not
16 supported by the law and are brought only to delay the hearing of the complaint.

17 II. FACTS

18 The complaint, filed on December 31, 2015, was brought against Anthem Highlands
19 Community Association and three of its four board members, Charles Hernandez, Ronnie
20 Young and Robert Stern. The complaint includes the following factual allegations.

21 **May 2015:** Stern and Hernandez have a long history of conflict. Both were elected to
22 the board in May 2015. Also elected at that time was Jody Fassette.

23 **June 2015:** In June of 2015, the Association was in the process of changing
24 community managers and needed to hire a new management company to avoid a lapse in
25 service. On June 3, 2015, Hernandez tried to convince Jody Fassette to vote with him and
26 against Stern at the meeting later that day. With Hernandez was a prior board member,
27 Pennie Puhek, who has a long running feud with Stern. Ms. Fassette was told to vote in favor
28 of a memorandum benefiting a sub-association where Ms. Puhek lives. At the meeting,

1 chaired by Hernandez, he made a motion to approve a new community management
2 company and included approval for a side memorandum to benefit Ms. Puhek's sub-
3 association. Due to concerns about the memorandum, Ms. Fassette refused to vote as
4 previously requested by Hernandez which resulted in no community management company
5 being approved. Out of frustration, Hernandez verbally resigned after the meeting ended, but
6 never submitted a resignation in writing.

7 On June 12, the Association held an emergency meeting to address the management
8 issue again, and again the agenda included the sub-association memorandum as part of the
9 approval of the management company. Ms. Fassette voiced objections to Hernandez about
10 the memorandum being an emergency matter and tried to get clarification of its meaning from
11 him and from the Association's attorney. Neither Hernandez nor the attorney ever addressed
12 Ms. Fassette's concerns regarding the memorandum specifically, but Hernandez did
13 represent to Ms. Fassette that the agenda would be revised to exclude the memorandum.
14 Prior to the meeting, Puhek sent an email to the board threatening to sue them if the
15 memorandum was not approved.

16 At the emergency meeting, Ms. Fassette was surprised to find out Hernandez
17 attended by phone instead of in person and that he had not changed the agenda to remove
18 the memorandum. Hernandez directed Ms. Fassette to chair the meeting. She was
19 uncomfortable doing so especially since the agenda had not been changed.

20 As the chair of the meeting, Ms. Fassette chose to separate the vote of the
21 management company and the memorandum. Ultimately, the sub-association memorandum
22 was tabled and the management company contract was approved, but the meeting was
23 chaotic and contentious, to say the least. Shortly thereafter, Ms. Fassette resigned from the
24 board citing as her reason: threats, intimidation, retaliatory actions based on her voting and
25 public defaming.

26 Less than a week later, Ms. Fassette emailed Hernandez to say she wanted to come
27 back to the board to finish her term and tried to rescind her previous resignation. Ms.
28 Fassette recognized the harm to the Association without a full board. One would think

1 Hernandez would have been grateful to have Ms. Fassette want to return to the board.
2 Instead of agreeing to allow Ms. Fassette to return, he challenged her rescission. Hernandez,
3 acting on his own, requested a legal opinion as to the validity of the resignation and
4 subsequent attempt to rescind. Hernandez also filed a claim against Ms. Fassette with the
5 Division's ADR referee program using the Association's attorney.

6 **July 2015:** The next board meeting was held on July 22. The four member board was
7 ineffective with items either being tabled or failing with split votes. Hernandez chaired the
8 meeting and stated Ms. Fassette's resignation was "recognized." When Stern objected,
9 Hernandez stated he was out of order. Hernandez stated that the vacancy would not be filled
10 pending the outcome of the claim he filed against Ms. Fassette with the ADR referee
11 program. Hernandez later recognized Stern to speak. Stern raised concerns over Ms.
12 Fassette's resignation. Immediately thereafter, Hernandez abruptly adjourned the meeting
13 without even allowing for final homeowner comments.

14 **August – December 2015:** The Division informed Hernandez that he needed to fill the
15 vacancy in whatever way possible as is evidenced by the letter provided in the motion to
16 dismiss at Ex. G. But he refused to participate in an informal conference with Stern who had
17 filed an intervention affidavit regarding Ms. Fassette. Hernandez eventually did agree to bring
18 Ms. Fassette back to the board on conditions limiting Stern's conduct. Stern and Young
19 would not agree. The board meetings scheduled for October 28, November 16, and
20 December 9 did not take place due to lack of a quorum. The lack of a quorum was caused in
21 part by Ms. Fassette not being allowed to return to her position on the board and by Stern's
22 and Young's failure to attend any further board meetings. Stern and Young would have
23 attended meetings if Ms. Fassette was going to be allowed to come back to the board. The
24 Division filed its complaint in December in an effort to bring an end to the dysfunction.

25 By email dated February 1, 2016, the Association and Hernandez submitted their
26 response to the Division. (See Response to Complaint for Disciplinary Action and Notice of
27 Hearing attached hereto at Exhibit 1) For reasons not included in the response, they did not
28 answer by admitting or denying any of the factual allegations in the complaint, but instead

1 simply reiterated the violations of law and generally denied them. The hearing was originally
2 noticed for the Commission's meeting on February 2-4, 2016, but was continued to June. At
3 the February Commission meeting, Respondent Ronnie Young appeared with the Division to
4 present a partial settlement. This Commission approved the settlement with Mr. Young. The
5 hearing for the remaining respondents is currently scheduled for June 7-9, 2016.

6 III. LEGAL ARGUMENT

7 A. THE MOTION TO DISMISS SHOULD BE DENIED, BECAUSE THE ALLEGATIONS IN 8 THE COMPLAINT SUPPORT A FINDING OF A BREACH OF FIDUCIARY DUTY.

9 The Association and Hernandez bring their motion to dismiss alleging a "distinct lack
10 of evidence supporting the alleged violations." (Motion to Dismiss at 1) As with the answer
11 filed by the Association and Hernandez, the motion does not reference the factual allegations
12 in the complaint. Instead, the motion claims all the Association's problems are the fault of
13 Stern and Young for not attending board meetings. The Association's problems detailed in
14 the factual allegations of the complaint go much further than an association that can't have
15 meetings because two board members refuse to attend.

16 The motion to dismiss does not state under what legal authority it is being filed, but it
17 sounds like a motion to dismiss for failure to state a claim as pages of the motion blame Stern
18 and Young for the Association's problems and claim Hernandez complied with the law. In
19 deciding whether a complaint should be dismissed on a motion alleging there is no claim
20 upon which relief can be granted, a court considers all allegations in the complaint as true.
21 (See Simpson v. Mars, Inc., 113 Nev. 188, 929 P.2d 966, 967 (1997)). Assuming all of the
22 factual allegations are true, Hernandez did breach his fiduciary duty to the Association and
23 the motion should be denied. Hernandez hopes to avoid a hearing on the matter by arguing
24 his defense in a motion to dismiss, but his defense must be presented to this Commission at
25 the hearing, not through a motion adding unsupported facts and theories. The motion itself
26 supports the Division's position that Hernandez should not serve on a board of directors.

27 The motion shows Hernandez still does not understand what is required of him as a
28 board member and as the president. He claims Ms. Fassette could not return to the board,

1 because her resignation could not be withdrawn. Hernandez spends pages of the motion
2 arguing the effectiveness of the resignation. Going so far as to say, it is the issue here. It
3 isn't. Whether or not Ms. Fassette's resignation was effective is irrelevant and not an issue in
4 the complaint. The Division takes no position regarding her resignation and withdrawal. The
5 facts allege Hernandez used Ms. Fassette's resignation as a way to manipulate Stern by
6 putting together terms under which he would agree to allow Ms. Fassette to return to her seat
7 on the board. That was improper. Hernandez contributed to the reasons for Ms. Fassette's
8 resignation in the first place. That was improper. Hernandez tried to convince her to vote with
9 him secretly from other board members. That was improper. Hernandez had no reason not to
10 allow Ms. Fassette to return to the board other than his dislike for Stern. That is acting for
11 reasons of self-interest, gain, prejudice or revenge, and that is improper.

12 Hernandez claims he did not have authority to allow Ms. Fassette to return. But he
13 clearly did think his authority allowed him to unilaterally get a legal opinion regarding Ms.
14 Fassette's resignation and to be headstrong on her inability to withdraw it. So stubborn, he
15 thought it was a good idea to use the Association's attorney to file a claim in ADR against Ms.
16 Fassette with the referee program to get a decision from a referee that her resignation was
17 effective and could not be withdrawn. All the while, he failed to understand what was in the
18 best interests of the Association was to have a full board, not prove a point. The Association
19 had elected Ms. Fassette just a few weeks before her resignation. She wanted to go back to
20 her position to help the Association. But it was more important to Hernandez to prove he was
21 right about her inability to withdraw her resignation and to fight with Stern and Ms. Fassette
22 over it.

23 The fact of the matter is: If he said he would allow her to return, and he put her return
24 on the agenda, it would have happened. It would have happened at the board's meeting in
25 July; but instead, Hernandez used his ADR filing to avoid dealing with the vacancy since it
26 was unresolved. At the meeting, he "recognized" her resignation and adjourned the meeting
27 out of frustration with Stern without allowing a final owner comment period. All of this conduct
28 is improper.

1 The complaint alleges facts that if proven by a preponderance of the evidence at the
2 hearing of this matter will support violations of NRS 116.3103. Whether or not Stern and
3 Young attended meetings, the board, without a fifth member, was not going to accomplish
4 anything. This was made abundantly clear at the July 22 meeting. The Division even warned
5 Hernandez that the vacancy on the board had to be resolved. The Division did not tell
6 Hernandez to appoint Ms. Fassette, but he was told he needed to do something to fill the
7 vacancy. Hernandez did nothing. He could have circulated a written consent appointing Ms.
8 Fassette to the board without condition. He could have put her appointment on an agenda
9 and told Stern and Young she would be appointed back to the board if they attended. He
10 could have met with the ombudsman's office to resolve the issue in an informal conference
11 as he is required to do as a board member. Instead, he let Stern and Young refuse to attend
12 meetings, doing nothing to help the situation.

13 **1. The Motion to Dismiss shows Hernandez's decision making was based on his**
14 **personal feelings and not on what was best for the Association.**

15 Hernandez claims that if he had agreed to allow Ms. Fassette, who he calls "fickle", to
16 return to the board he would just be "encouraging the bad, unlawful behavior of Board
17 members such as Stern and Young to paralyze the Association whenever they do not get
18 their way." (Motion to Dismiss at 7) This way of thinking further illustrates how Hernandez's
19 personal feelings control his decision making process. He actually thinks allowing Ms.
20 Fassette to return after she was mistreated by him would only encourage bad behavior by
21 Stern and Young. He's so focused on his own feelings about Stern and Young that he fails to
22 see the bigger picture - how having a full board would benefit the Association. And that with a
23 full board, Stern and Young not attending meetings would not have mattered, and there
24 would be no way for them to "paralyze" the Association.

25 Hernandez even accuses Ms. Fassette of breaching her fiduciary duty to the
26 Association because she did not respond to Hernandez's ADR referee claim. The obligation
27 of a board member to participate in an informal conference with the ombudsman stems from
28 NAC 116.405(7) which requires board members to cooperate with the Division in resolving

1 complaints filed with the Division. Ms. Fassette was willing to participate in an informal
2 conference, because she wanted to be appointed to the board to help the Association. She
3 had no obligation to continue a fight with Hernandez over her resignation and withdrawal.

4 **2. Hernandez fails to see his obligations as President put him in the position to**
5 **avoid or at least to resolve the Association's dysfunction.**

6 Consistent with Hernandez's arguments that everyone but him is to blame for the
7 Association's problems, he questions why his fellow board member, Ken Brensinger, is not a
8 respondent as well. It is true Brensinger sided with Hernandez, just as Young sided with
9 Stern. Hernandez alleges by not including the fourth board member, the complaint denies
10 him due process. Hernandez fails to understand that his actions as president contributed to if
11 not caused the Association's impasse.

12 As president, Hernandez set the agenda for the meetings, and he chaired the
13 meetings. He included non-emergency matters on an emergency meeting agenda. He had
14 the authority to call for a motion regarding Ms. Fassette's request to withdraw her resignation
15 or for a motion to appoint her to the board at the July meeting. Not only did he not request a
16 motion, he unilaterally decided her resignation was accepted and postponed filling the
17 vacancy due to his own ADR filing. Hernandez uses his presidential authority when it pleases
18 him – to avoid a motion regarding Ms. Fassette, to set agendas, and to get a legal opinion
19 about the resignation that was less than meaningless – but yet argues he is just another
20 board member who has no individual authority to help the Association. The Division is no
21 more pleased with Brensinger taking Hernandez's side on every issue, than it is with
22 Hernandez, but the simple fact is: Hernandez deliberately thwarted Ms. Fassette's return to
23 the board, refused to conference with the ombudsman to settle the dispute, and abused his
24 authority.

25 Hernandez contributed to and helped further the inaction of the board by not agreeing
26 to allow Ms. Fassette to return to the board and by not doing anything about the vacancy. As
27 a result, the Association could not transact business. Even if Stern and Young agreed to
28 attend to meetings without Ms. Fassette, the situation would not have improved. The July

1 22nd meeting made that clear. Whether a quorum was present or not, the Association was not
2 going to be productive without a full board. Hernandez showing up for a meeting he knew
3 Stern and Young would not attend only means he went to the meeting. It does not mean he
4 acted in the best interests of the Association, because he knew what he needed to do, and
5 he refused to do it.

6
7 **B. THE MOTION FOR A PREHEARING CONFERENCE IS UNTIMELY AND REQUESTS**
8 **RELIEF THAT IS NOT AVAILABLE AT A PREHEARING CONFERENCE.**

9 Hernandez claims the "allegations are too indefinite, ambiguous, and lacking in
10 specifically in order to prepare adequately for the hearing scheduled for June." (Motion for
11 Prehearing Conference at 1) Hernandez's motion for a prehearing conference requests a
12 motion definite complaint. In fact, the complaint alleges very specific factual allegations
13 detailing Hernandez's bad behavior. (See Complaint for Disciplinary Action and Notice of
14 Hearing attached hereto at Exhibit 2) The factual allegations are also detailed in this
15 opposition. Hernandez failed to respond to any of the factual allegations in his response to
16 the complaint. (See Ex. 1) But he did answer the complaint. Now he requests a prehearing
17 conference just over a month before the hearing. If he needed clarification, he needed to say
18 so before he responded to the complaint.

19 Not only is the motion for prehearing conference untimely, the motion requests this
20 Commission make the complaint more clear. As quoted in the motion, NAC 116.557 provides
21 the purposes of a prehearing conference. The purpose of the prehearing conference is not to
22 revise the complaint. The prehearing conference is to settle procedural issues to make the
23 hearing more streamlined. To the extent, Hernandez wants to discuss with the Division ways
24 to streamline the hearing, he can do so, but a prehearing conference is simply not necessary.
25 Furthermore, the complaint does not need to be amended.

26 The complaint must include notice as provided in NRS 233B.121(2) which states:

27 The notice must include:

- 28 (a) A statement of the time, place and nature of the hearing.
(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.
(c) A reference to the particular sections of the statutes and regulations

1 involved.

2 (d) A short and plain statement of the matters asserted.

3 As stated above, the complaint must only provide "a short and plain statement of the
4 matters to be asserted." (NRS 233B.121(2)(d)). The complaint meets the notice requirements
5 detailed in NRS 233B.121(2). The conduct of Hernandez that the Division intends to prove by
6 a preponderance of the evidence is explicit.

7 Hernandez does not need clarification of the facts alleged in detail in the complaint. He
8 could provide a response to each of the facts alleged and discuss with the Division what facts
9 he may stipulate to if he wants to streamline the hearing process. But his objective is not to
10 simplify the hearing or determine the contested facts of the case. He simply wants to delay
11 the hearing of this matter. There is no need for a prehearing conference and no need to
12 revise the complaint. The motion for a prehearing conference is untimely, inappropriate and
13 should be denied.

14 IV. CONCLUSION

15 The motions filed by the Association and Hernandez are not supported by the law,
16 were not properly served on the parties, are untimely, and appear to be brought only to delay
17 the hearing. For all the foregoing reasons, the Division respectfully requests that both
18 motions be denied, and more importantly that the hearing take place without delay.

19 DATED this 10th day of May, 2016.

20 ADAM PAUL LAXALT
Attorney General

21 By: 

22 MICHELLE D. BRIGGS
23 Senior Deputy Attorney General
24 555 E. Washington Ave. Ste 3900
25 Las Vegas, Nevada 89101
26 (702) 486-3420
27 Attorneys for Real Estate Division
28

EXHIBIT 1

EXHIBIT 1

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CLERK OF THE COURT
LAS VEGAS, NEVADA

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RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF
HEARING

This Response is submitted by BOYACK ORME & TAYLOR, counsel for the Respondent ANTHEM HIGHLANDS COMMUNITY ASSOCIATION ("Anthem"), and counsel for Respondent CHARLES HERNANDEZ in his capacity as a Board Member for Anthem. As of the time of this Response, Respondents ROBERT STERN and RONNIE YOUNG have indicated that they will retain separate counsel to represent them in this matter.

The Complaint for Disciplinary Action and Notice of Hearing ("Complaint"), filed December 31, 2015, makes several allegations, titled as "Violations of Law" ("Violations"). See Complaint at 7-8. Each of these are repeated and addressed below.

VIOLATION 1

This Violation alleges that "RESPONDENTS STERN, YOUNG, and HERNANDEZ knowingly and willfully violated NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best interests of the Association by acting for reasons of self-interest, gain, prejudice,

1 or revenge.” *Id.*

2 NRS 116.3103 imposes upon Board members a fiduciary duty- specifically, to “act on an
3 informed basis, in good faith and in the honest belief that their actions are in the best interest of the
4 association.” NRS 116.3103(1). Furthermore, NRS 116.3103(2) imposes only four restrictions
5 against Board members: they may not amend the declaration; they may not terminate the common-
6 interest community; they may not elect members of the Board (other than to fill vacancies, subject
7 to the declaration); and they may not determine the qualifications, powers, duties or terms of office
8 for Board members. The only positive duty imposed by NRS 116.3103 (other than fiduciary duty)
9 is that Board members shall adopt budgets for the Association. NRS 116.3103(3).

10 The Complaint is word so as to suggest a breach of a fiduciary duty- a breach which was
11 calculated “for reasons of self-interest, gain, prejudice, or revenge.” No other facts, circumstances,
12 or allegations are present to suggest what the Commission believes constituted a breach, what motive
13 Respondent Hernandez may have been acting under (self-interest, gain, prejudice, or revenge), or
14 any other indicia of the exact violation. In fact, the Complaint fails to tie this nebulous language to
15 any of the Factual Allegations contained therein.

16 Without more information, Respondent Hernandez is unable to respond with specificity to
17 this Violation. Substantively, Respondent Hernandez denies the allegations suggested in this
18 Violation by maintaining that at all times he acted in Anthem’s best interests, and that any decisions
19 or omissions he made were done so in good faith, and on an informed basis. As to the language of
20 both NRS 116.3103 and NAC 116.405(2), specifically, Respondent Hernandez maintains that he did
21 not commit any of the four proscribed behaviors contained in NRS 116.3103(2). Finally, Respondent
22 Hernandez maintains that any violation of NRS 116.3103(3)—failure to adopt a budget—is due to
23 Anthem’s inability to reach a quorum to conduct business, owing to Respondents Stern and Young’s
24 lack of appearance/participation.

25
26 **VIOLATION 2**

1 Violation 2 alleges that "RESPONDENTS, STERN, YOUNG and HERNANDEZ knowingly
2 and willfully violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in good faith and
3 in the best interests of the Association by committing an act or omission which amounts to
4 incompetence, negligence or gross negligence." See Complaint at 8.

5 Respondent Hernandez maintains that this Violation is ambiguous and without specificity
6 sufficient to form a cogent response to, as with Violation 1. Accordingly, Respondent Hernandez
7 repeats and maintains his defenses put forth in response to Violation 1, and with the following
8 remarks.

9 NAC 116.405(3) makes actionable any failure of duty by an executive Board member
10 stemming from an act or omission amounting to incompetence, negligence, or gross negligence. The
11 wording of Violation 2 ties NAC 116.405(3) to NRS 116.3103, which again refers to a generalized
12 fiduciary duty, four proscribed behaviors, and a positive duty to adopt a budget. Without more
13 information or specific allegations, Respondent Hernandez is unsure whether the Complaint alleges
14 a breach of fiduciary duty generally (and if so, what acts or omissions constituted such a breach), that
15 Respondent Hernandez committed one of the four proscribed actions, or that Respondent Hernandez
16 was somehow singularly responsible and accountable for the failure to adopt a budget. Furthermore,
17 Respondent Hernandez is unsure what acts or omissions, if any, the Complaint is alleging constituted
18 incompetence, negligence, or gross negligence.

19 Without more information, Respondent Hernandez is unable to respond to Violation 2, other
20 than to repeat and maintain his substantive denial, and to remind the Commission that without proper
21 quorum no business could be conducted, thus Respondent Hernandez's ability to meet his duty was
22 substantially impaired.

23 24 VIOLATION 3

25 Violation 3 alleges that the above-named Respondents "knowingly and willfully violated
26 NRS 116.3103 (through NAC 116.405(8)(a)) by failing to act in good faith and in the best interests
27

1 of the Association by failing to cause the Association to comply with all applicable federal, state and
2 local laws and regulations and the governing documents of the Association.” See Complaint at 8.

3 Again, the Complaint fails to specify the grounds for this allegation by citing to any facts or
4 circumstances to support this alleged violation. Without such information, Respondent Hernandez
5 is unable to respond to this allegation other than to repeat and maintain his defense to the prior
6 Violations, above, and substantively and categorically to deny the allegation. As to a knowing and
7 willful failure to comply with federal, state, and local laws, and with the governing documents,
8 Respondent Hernandez repeats his defense that Anthem was unable to achieve a quorum to conduct
9 business, despite Respondent Hernandez’s presence and willingness to do so at every scheduled
10 Board meeting.

11
12 **VIOLATION 4**

13 This Violation states that the above-named Respondents “knowingly and willfully violated
14 NRS 116.3103 (through NAC 116.405(8)©) by failing to act in good faith and in the best interests
15 of the Association by failing to cause the Association to hold meetings of the Executive Board with
16 such frequency as to properly and efficiently address the affairs of the Association.” See Complaint
17 at 8.

18 Again, the Complaint fails to specify the grounds for this allegation by citing to any facts or
19 circumstances to support this alleged violation. Without such information, Respondent Hernandez
20 is unable to respond to this allegation other than to repeat and maintain his defense to the prior
21 Violations, above, and substantively and categorically to deny the allegation. As to a knowing and
22 willful failure to hold meetings as required, Respondent Hernandez repeats his defense that Anthem
23 was unable to achieve a quorum to conduct business, despite Respondent Hernandez’s presence and
24 willingness to do so at every scheduled Board meeting.

25
26 **VIOLATION 5**

1 This allegation states that the above-named Respondents “knowingly and willfully violated
2 NRS 116.31083(1) by failing to have a meeting of the Board at least once each quarter, and not less
3 than once every 100 days.” *See* Complaint at 8.

4 Respondent Hernandez repeats and maintains his defense to each Violation above, and
5 incorporates the same as to Violation 5. Furthermore, Respondent Hernandez maintains that the lack
6 of meetings of the Board stem from the Board’s inability to reach quorum due to Respondents Stern
7 and Young’s refusal to attend. At all times, Respondent Hernandez was present for scheduled
8 meetings and prepared to conduct business. Any inability to hold meetings for the benefit of the
9 Association, and as required by law, was not owing to any failure or refusal on Respondent
10 Hernandez’s part.

11
12 VIOLATION 6

13 This Violation alleges that the above-named Respondents “knowingly and willfully violated
14 NRS 116.31083(6) by failing to have a meeting of the Board at least once every quarter, and not less
15 than once every 100 days, to review financial statements, revenues and expenses, operating and
16 reserve accounts, or financial statements.” *See* Complaint at 8.

17 Respondent Hernandez repeats and maintains his defense to each Violation above, and
18 incorporates the same as to Violation 6.

19
20 VIOLATION 7

21 This Violation alleges that the above-named Respondents “knowingly and willfully violated
22 NRS 116.31151(1) by failing to prepare and distribute to each unit’s owner a copy of the operating
23 and reserve budget not less than 30 days or more than 60 days before the beginning of the
24 Association’s fiscal year.” *See* Complaint at 8.

25 Respondent Hernandez repeats and maintains his defense to each Violation above, and
26 incorporates the same as to Violation 7. Furthermore, Respondent Hernandez maintains that without
27

1 quorum, a budget cannot be drafted, prepared, and adopted as required by NRS Chapter 116,
2 generally. Quorum was impossible due to the refusal to attend of Respondents Stern and Young. At
3 all times, Respondent Hernandez was present for meetings and stood ready to conduct business on
4 behalf of the Association, as required and directed by Nevada law.

5
6 CONCLUSION

7 Respondent Hernandez substantively and categorically denies each of the Violations put forth
8 in the Complaint. Respondent Hernandez maintains that at all times he acted in the best interest of
9 the Association, in accordance with his duty as a fiduciary and under all applicable Nevada law.
10 Respondent Hernandez's duty was impaired by—and any prohibited acts, or other omissions alleged
11 in the Complaint were owing to—the inability to reach a quorum during Board meetings. This lack
12 of quorum stemmed from events beyond Respondent Hernandez's foreseeability or control, and thus
13 Respondent Hernandez maintains that he was under no duty, and had no ability, to correct the
14 deficiencies.

EXHIBIT 2

EXHIBIT 2

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**BEFORE THE COMMISSION FOR COMMON-INTEREST
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JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Petitioner,

vs.

ANTHEM HIGHLANDS COMMUNITY
ASSOCIATION; ROBERT STERN;
CHARLES HERNANDEZ; and RONNIE
YOUNG,

Respondents.

Case Nos. 2015-3615; 2015-2155;
2015-3100; 2015-2207

FILED

DEC 31 2015 *pe*

NEVADA COMMISSION OF
COMMON INTEREST COMMUNIT'
CONDOMINIUM HOTELS

**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, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby notifies Respondents ANTHEM HIGHLANDS COMMUNITY ASSOCIATION; ROBERT STERN; CHARLES HERNANDEZ; and RONNIE YOUNG (hereinafter, collectively "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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1 Association for failing to comply with NRS 116.31088.

2 11. The Division also investigated the issue of the use of Association funds and
3 issued a letter of instruction to the board advising them that a trip to the Nevada Legislature is
4 not a common expense.

5 12. RESPONDENTS STERN and HERNANDEZ ran for and were elected to the
6 board on May 27, 2015, also elected to the board at this time was Jody Fassette and Ken
7 Brensinger. RESPONDENT YOUNG was already on the board.

8 13. On or about May 31, 2015, Pennie Puhek contacted Ms. Fassette to discuss
9 Association issues.

10 14. Ms. Puhek was part of the investigations the Division concluded with a letters of
11 instruction and was a member of the Association's board when issues addressed by the ICA
12 were originally brought to the Division and has a long history of conflict with RESPONDENT
13 STERN.

14 15. The Association was to consider a memorandum of understanding with a sub-
15 association, Earlstone Homeowners Association ("Earlstone").

16 16. Ms. Puhek is a member of the board for Earlstone.

17 17. Ms. Fassette agreed to meet with Ms. Puhek on June 3, 2015 in a public place.

18 18. RESPONDENT HERNANDEZ and board member Brensinger were also
19 present, but Ms. Fassette was not told prior that they would be there.

20 19. Ms. Puhek, with Mr. Brensinger and HERNANDEZ, tried to convince Ms.
21 Fassette to vote in favor of the Earlstone memorandum.

22 20. Ms. Fassette was concerned about the terms of the memorandum and wanted
23 to see supporting documentation, so she could make an informed decision.

24 21. At the meeting later on June 3, board members RESPONDENTS STERN,
25 HERNANDEZ and YOUNG, as well as Ms. Fassette and Mr. Brensinger were present.

26 22. At the meeting, RESPONDENT HERNANDEZ made a motion to approve First
27 Service as the community manager effective September 1, subject to a committee of the
28 board to interview and approve a manager. The motion also included approval of the

1 Earlstone memorandum.

2 23. The motion failed.

3 24. Immediately after the June 3rd meeting Mr. Brensinger and RESPONDENT
4 HERNANDEZ verbally resigned, but never submitted a resignation in writing and continued to
5 act as members of the board.

6 25. On June 5, Ms. Puhek emailed the Association's board members threatening
7 legal action if the Earlstone memorandum is not approved.

8 26. An emergency meeting was called for June 12, 2015 to discuss and take action
9 on a new management contract.

10 27. Ms. Fassette emailed RESPONDENT HERNANDEZ, the board president, on
11 June 10 after she received the revised agenda for the emergency meeting.

12 28. The original agenda had not included the Earlstone memorandum, but the
13 revised agenda included the memorandum and tied it to the approval of the management
14 contract.

15 29. Ms. Fassette's email states:

16 I do not believe this falls under the emergency meeting criteria as the Earlstone
17 Memorandum is not an emergency.

18 30. Ms. Fassette went on to explain her issues with the Earlstone memorandum in
19 detail and asked for clarification.

20 31. Ms. Fassette also emailed the Association's attorney with her issues regarding
21 the Earlstone memorandum.

22 32. Ms. Fassette claims RESPONDENT HERNANDEZ told her the main issue was
23 the management agreement and that he would remove the Earlstone memorandum from the
24 agenda for the emergency meeting.

25 33. RESPONDENT HERNANDEZ did not remove the Earlstone memorandum from
26 the agenda, and instead phoned into the emergency meeting forcing Ms. Fassette to chair
27 the meeting.

28 34. Ms. Fassette was not comfortable voting in favor of the Earlstone

1 memorandum.

2 35. During the meeting, the board created a committee consisting of
3 RESPONDENT HERNANDEZ and Ms. Fassette to interview and hire a manager.

4 36. Ms. Puhek is heard throughout the meeting yelling for a point of order as is
5 RESPONDENT STERN.

6 37. RESPONDENT STERN objects to having the Earlstone memorandum
7 addressed as it is not an emergency.

8 38. Mr. Brensinger says RESPONDENT STERN is not recognized by the chair
9 which seems to change from RESPONDENT HERNANDEZ to Ms. Fassette at various times.

10 39. The meeting is chaotic and ultimately the board continued the matter of the
11 Earlstone memorandum.

12 40. As a result of the June 12, 2015 meeting, Jody Fassette submitted her
13 resignation citing as her reason "threats, litigation intimidation from more than one individual,
14 retaliatory actions for voting/not voting a certain way and public defaming."

15 41. By email dated June 18, 2015, Ms. Fassette notified RESPONDENT
16 HERNANDEZ that she wished to finish her term on the board.

17 42. RESPONDENT HERNANDEZ initiated a few letters from the Association's
18 attorney regarding Ms. Fassette's resignation and the effectiveness of it.

19 43. On June 30, RESPONDENT STERN posted to the Association's community
20 blog that he "will not be attending any board meetings until it is absolutely clear that
21 competent armed security is in place."

22 44. On July 2, RESPONDENT STERN posted to the same blog that "trained
23 professionals with the necessary permits and training have decided that they will attend the
24 open board meetings to provide security." He goes on to say he will attend the July 22
25 meeting of the board.

26 45. By letter dated July 8, Ms. Fassette states that her resignation was given under
27 duress and explains the situation she felt she was in.

28 46. By email dated July 19 to other board members, Ms. Fassette and Ms. Puhek,

1 RESPONDENT STERN states:

2 The clock is set and the final reel is unwinding. Get the popcorn and snow
3 cones. It is time to really protect the children and their parents from the enemies
4 within the Community. Most of the audience has figured it out and fearful that
5 the evil doers may prevail. Midsummers Nightmare. Coming to your local
6 theater July 22.

6 47. RESPONDENT HERNANDEZ refused to allow Ms. Fassette to return to her
7 position on the board, so RESPONDENT STERN filed an intervention affidavit against him.

8 48. RESPONDENT HERNANDEZ refused to attend an informal conference with
9 the Ombudsman's office to resolve the complaint.

10 49. At the July 22 meeting, several items were postponed and several items failed
11 due to split votes with only 4 board members.

12 50. RESPONDENT STERN made a motion to terminate the Association's attorney
13 as general counsel.

14 51. The Association's attorney represented the Association against RESPONDENT
15 STERN in the ICA matter referred back to the referee program and was not yet concluded.

16 52. RESPONDENT YOUNG supported the motion.

17 53. The motion passed with a "yes" vote from Mr. Brensinger who tried to take back
18 his vote saying he was confused about the motion and an argument ensued.

19 54. The same motion was brought up for a second vote and failed.

20 55. RESPONDENT STERN asserted Mr. Brensinger was not allowed to take back
21 his vote and treated the second vote as a motion to reconsider.

22 56. RESPONDENT HERNANDEZ, chairing the meeting, did not call for a vote
23 regarding Ms. Fassette's request to return to her seat on the board and no action was taken
24 to fill her vacancy.

25 57. By email dated September 9, Ms. Fassette asks RESPONDENT HERNANDEZ
26 and Mr. Brensinger to allow her to come back to the board as "a four person board is a
27 detriment to this community."

28 58. The Association had a meeting scheduled for September 23, but the meeting

1 did not occur due to a lack of a quorum with RESPONDENTS STERN and YOUNG not in
2 attendance.

3 59. By letter dated October 5, the Division notified RESPONDENT HERNANDEZ
4 that all efforts need to be taken to put an end to the board's current impasse.

5 60. Also by letter dated October 5, RESPONDENT STERN was notified that while
6 the intervention affidavit filed against him for failing to attend board meetings was being
7 closed due to the complainant's refusal to attend an informal conference, the Division
8 reserved the right to re-open the case if RESPONDENT STERN continued to fail to attend
9 future board meetings.

10 61. On or about October 6, 2015, Mr. Brensinger and RESPONDENT
11 HERNANDEZ signed an agreement whereby they would agree to bring Ms. Fassette back to
12 the board on certain conditions.

13 62. Ms. Fassette also signed the agreement, but RESPONDENT STERN and
14 YOUNG did not.

15 63. RESPONDENT STERN requested different terms of Ms. Fassette's return to
16 the board.

17 64. The board meetings scheduled for October 28, November 16, and December 9
18 did not take place due to a lack of a quorum as RESPONDENTS STERN and YOUNG did
19 not attend.

20 65. A meeting scheduled for December 28, requested by RESPONDENT STERN
21 with the agenda set by RESPONDENT STERN, did not happen due to a lack of a quorum
22 with RESPONDENTS STERN and YOUNG not in attendance.

23 66. The board has not met since the meeting on July 22, 2015.

24 67. The board has not addressed owner violations or adopted a budget for 2016.

25 68. The Association's fiscal year begins January 1.

26 **VIOLATIONS OF LAW**

27 69. RESPONDENTS STERN, YOUNG and HERNANDEZ knowingly and willfully
28 violated NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the

1 best interests of the Association by acting for reasons of self-interest, gain, prejudice, or
2 revenge.

3 70. RESPONDENTS STERN, YOUNG and HERNANDEZ knowingly and willfully
4 violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in good faith and in the
5 best interests of the Association by committing an act or omission which amounts to
6 incompetence, negligence or gross negligence.

7 71. RESPONDENTS STERN, YOUNG and HERNANDEZ knowingly and willfully
8 violated NRS 116.3103 (through NAC 116.405(8)(a)) by failing to act in good faith and in the
9 best interests of the Association by failing to cause the Association to comply with all
10 applicable federal, state and local laws and regulations and the governing documents of the
11 Association.

12 72. RESPONDENTS STERN, YOUNG and HERNANDEZ knowingly and willfully
13 violated NRS 116.3103 (through NAC 116.405(8)(c)) by failing to act in good faith and in the
14 best interests of the Association by failing to cause the Association to hold meetings of the
15 executive board with such frequency as to properly and efficiently address the affairs of the
16 Association.

17 73. RESPONDENTS knowingly and willfully violated NRS 116.31083(1) by failing to
18 have a meeting of the board at least once each quarter, and not less than once every 100
19 days.

20 74. RESPONDENTS knowingly and willfully violated NRS 116.31083(6) by failing to
21 have a meeting of the board at least once every quarter, and not less than once every 100
22 days, to review financial statements, revenues and expenses, operating and reserve
23 accounts, or financial statements.

24 75. RESPONDENTS knowingly and willfully violated NRS 116.31151(1) by failing to
25 prepare and distribute to each unit's owner a copy of the operating and reserve budget not
26 less than 30 days or more than 60 days before the beginning of the Association's fiscal year.

27 **DISCIPLINE AUTHORIZED**

28 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS

1 116.790 the Commission has discretion to take any or all of the following actions:

- 2 1. Issue an order directing RESPONDENTS to cease and desist from continuing to
- 3 engage in the unlawful conduct that resulted in the violation.
- 4 2. Issue an order directing RESPONDENTS to take affirmative action to correct any
- 5 conditions resulting from the violation.
- 6 3. Impose an administrative fine of up to \$1,000 for each violation by RESPONDENTS.
- 7 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY
- 8 COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the
- 9 Association, such RESPONDENTS may be removed from his/her position as a
- 10 director and/or officer.
- 11 5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.
- 12 6. Require the BOARD MEMBERS to hire a community manager who holds a certificate.
- 13 7. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division,
- 14 including, without limitation, the cost of the investigation and reasonable attorney's
- 15 fees.
- 16 8. Take whatever further disciplinary action as the Commission deems appropriate.

17 The Commission may order one or any combination of the discipline described above.
18 If the Commission finds that the RESPONDENTS knowingly and willfully violated the
19 provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be
20 personally liable for all fines and costs imposed.

21 NOTICE OF HEARING

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

26 THE HEARING WILL TAKE PLACE on February 2-4, 2016 beginning at 9:00 a.m.
27 each day or until such time as the Commission concludes its business. The Commission
28 meeting on February 2, 2016, will be located at the Department of Business and

1 Industry, 2501 E. Sahara Avenue, 2nd Floor Conference Room, Las Vegas Nevada
2 89104, with videoconferencing to the Department of Business and Industry, Director's
3 Office, 1830 East College Parkway, Suite 100, Carson City, Nevada 89706. The
4 Commission meeting on February 3, 2016, will be located at the Nevada Department of
5 Employment Training and Rehabilitation, 2800 East St. Louis Avenue, Conference
6 Room A-C, Las Vegas, Nevada 89104, with videoconferencing to the Nevada
7 Department of Employment Training and Rehabilitation, 500 East Third Street, Carson
8 City, Nevada 89713. The Commission meeting on February 4, 2016, will be located at
9 the Department of Business and Industry, 2501 E. Sahara Avenue, 2nd Floor
10 Conference Room, Las Vegas Nevada 89104, with no videoconferencing.

11 **STACKED CALENDAR:** Your hearing is one of several hearings that may be
12 scheduled at the same time as part of a regular meeting of the Commission that is expected
13 to take place on February 2-4, 2016. Thus, your hearing may be continued until later in the
14 day or from day to day. It is your responsibility to be present when your case is called. If you
15 are not present when your hearing is called, a default may be entered against you and the
16 Commission may decide the case as if all allegations in the complaint were true. If you need
17 to negotiate a more specific time for your hearing in advance because of coordination with
18 out of state witnesses or the like, please call Claudia Rosolen, Commission Coordinator, at
19 (702) 486-4606.

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

26 As a **RESPONDENT**, you are specifically informed that you have the right to appear
27 and be heard in your defense, either personally or through your counsel of choice. At the
28 hearing, the Division has the burden of proving the allegations in the complaint and will call

1 witnesses and present evidence against you. You have the right to respond and to present
2 relevant evidence and argument on all issues involved. You have the right to call and
3 examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter
4 relevant to the issues involved.

5 You have the right to request that the Commission issue subpoenas to compel
6 witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
7 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
8 Other important rights and obligations, including your obligation to answer the complaint, you
9 have are listed in NRS Chapter 116 and NAC Chapter 116, including without limitation, NRS
10 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS Chapter 233B.

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Office of the Attorney General
555 E Washington Ave. Suite 3900
Las Vegas, Nevada 89101

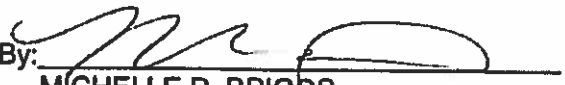
1 Note that under NAC 116.575, not less than five (5) working days before a hearing,
2 RESPONDENT must provide to the Division a copy of all reasonably available documents
3 that are reasonably anticipated to be used to support his position, and a list of witnesses
4 RESPONDENTS intend to call at the time of the hearing. Failure to provide any document or
5 to list a witness may result in the document or witness being excluded from RESPONDENTS'
6 defense. The purpose of the hearing is to determine if the RESPONDENTS have violated the
7 provisions of Chapter 116, and to determine what administrative penalty is to be assessed
8 against RESPONDENT.

9 DATED this 31st day of December, 2015.

11 REAL ESTATE DIVISION
12 DEPARTMENT OF BUSINESS & INDUSTRY
13 STATE OF NEVADA

14 By: 
15 JOSEPH (J.D.) DECKER, Administrator
16 2501 East Sahara Avenue
17 Las Vegas, Nevada 89104
18 (702) 486-4033

17 ADAM PAUL LAXALT
18 Attorney General

19 By: 
20 MICHELLE D. BRIGGS
21 Senior Deputy Attorney General
22 555 E. Washington Ave. Ste 3900
23 Las Vegas, Nevada 89101
24 (702) 486-3420
25 Attorneys for Real Estate Division
26
27
28