

1 **BEFORE THE COMMISSION FOR COMMON-INTEREST**
2 **COMMUNITIES AND CONDOMINIUM HOTELS**
3 **STATE OF NEVADA**

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

8 Petitioner,

9 vs.

10 ANTHEM HIGHLANDS COMMUNITY
11 ASSOCIATION; PENNIE PUHEK, JAMES
12 LAUTH, and CHARLES HERNANDEZ

13 Respondents.

Case No. 2015-291

FILED

APR 25 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

14 **RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF**
15 **HEARING. CASE NO. 2015-291**

16 This Response to Complaint for Disciplinary Action and Notice of Hearing (“Response”) is
17 submitted by BOYACK ORME & TAYLOR, counsel for the Respondent ANTHEM HIGHLANDS
18 COMMUNITY ASSOCIATION (“Anthem”, “Association”), and counsel for Respondent
19 CHARLES HERNANDEZ (“Charlie”) in his capacity as a Board Member for Anthem (collectively,
20 “Respondents”). Respondents JAMES LAUTH (“James”), in his capacity as a Board Member for
21 Anthem, and PENNIE PUHEK (“Pennie”), in her capacity as a Board Member for Anthem, have
22 each retained independent counsel to represent them in this matter, and thus this Response is only
23 intended to apply to those allegations raised against the Respondents indicated above . Furthermore,
24 no response, defense, denial, demurrer, etc. contained herein is intended to bind either James or
25 Pennie to the responses or positions put forth by Respondents, or otherwise to limit the responses
26 or defenses James or Pennie may raise through their own responsive pleadings.

27 The Response is intended to answer the allegations contained with the Division’s Complaint
28 for Disciplinary Action and Notice of Hearing regarding Case No. 2015-291, filed March 24, 2016
29 (“Complaint”).

1 ALLEGATIONS

2 As a prefatory statement, Respondents hereby deny all allegations contained within the
3 Complaint. Respondents believe the allegations to be baseless and without merit, and hereby
4 maintain that the Division is misapplying the law to its own convenient interpretation of the facts
5 as set forth in the Complaint. Furthermore, Respondents believe the Complaint to represent a
6 malicious and targeted vendetta against Anthem as a whole, as illustrated by the facts set forth in the
7 Complaint.

8 Respondents hereby collectively and, where required, individually respond to each allegation
9 of the Complaint under "Violations of Law", as set forth below. The responses are not intended to
10 bind or limit James or Pennie in any way from presenting their own responses; instead, the responses
11 set forth below are intended only to apply to Respondents as required, and/or where the allegations
12 may pertain to Respondents either collectively or individually.

13
14 1. As to the allegation that Pennie knowingly and willfully violated NRS 116.31183 by posting
15 disparaging comments on a community website about a unit owner who had complained
16 about the Association multiple times, Respondents DENY the allegation. NRS 116.31183
17 contains no provision regarding "disparaging comments" and thus the Complaint misstates
18 the law to suit its purposes. Without binding Pennie to any defense she may make on her own
19 behalf, Respondents further maintain that any comments Pennie made were both within her
20 free speech rights as an individual, and were not reflective of her role as a Board member.
21 Accordingly her comments cannot be construed to be retaliation against the unit owner, as
22 required by NRS 116.31183. Finally, Respondents maintain that it is the unit owner, Robert
23 Stern, who misused his position as a Board member to disparage publicly the Anthem
24 Association in his book and related events, and thus Pennie's comments should be protected
25 under the very provisions of the NRS that the Division wrongfully uses here to target her and
26 the Association for disciplinary action.

1 2. As to the allegation that Pennie knowingly and willfully violated NRS 116.3103 (through
2 NAC 116.405(2)) by failing to act in good faith and in the best interests of the Association
3 by acting for reasons of self-interest, gain, prejudice, or revenge when she posted disparaging
4 comments about a unit owner on a community website, Respondents DENY the allegation.
5 As Respondents are informed and believe that this allegation is related to the first allegation,
6 above, Respondents hereby incorporate and repeat the previous response and defenses as to
7 this allegation as well. Furthermore, Respondents maintain that the allegation is vague and
8 ambiguous, and Respondents are unable to form a defense absent a more definitive
9 allegation, or without specific facts to support this allegation.

10 3. As to the allegation that Pennie knowingly and willfully violated NRS 116.3103 (through
11 NAC 116.405(3)) by failing to act in good faith and in the best interests of the Association
12 by committing an act or omission which amounts to incompetence, negligence or gross
13 negligence when she posted disparaging comments about a unit owners on a community
14 website, Respondents DENY the allegation. As Respondents are informed and believe that
15 this allegation is related to the foregoing allegations, above, Respondents hereby incorporate
16 and repeat the previous responses and defenses as to this allegation as well.

17 4. As to the allegation that Pennie knowingly and willfully violated NRS 116.3103 (through
18 NAC 116.405(4)) by failing to act in good faith and in the best interests of the Association
19 by disclosing confidential information relating to an owner's primary residence on a
20 community website, Respondents DENY the allegation. As Respondents are informed and
21 believe that this allegation is related to the prior allegations, above, Respondents hereby
22 incorporate and repeat the previous responses and defenses as to this allegation as well.
23 Furthermore, Respondents maintain that the Complaint lays out no factual allegation to
24 demonstrate that Pennie disclosed any confidential information regarding or relating to an
25 owner's primary residence on a community website. Finally, Respondents maintain that any
26 such "confidential" information that Pennie may have disclosed in her Nextdoor postings
27 was either public information, searchable on the Division's webpage, or had already been set

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CONCLUSION

The Complaint is a demonstration of a Division that is pursuing an unfair and unlawful vendetta against certain Board members, and against the Anthem community as a whole.

Here, the Division attacked Pennie, a homeowner first and Board member second, by conflating her private, free speech actions as a homeowner with her role as a Board member. The Division overstepped its role and authority by attempting to force Charlie and James to take actions contrary to their duties as Board members, and in violation of the CC&Rs, under threat of bringing this very Complaint against them and their Association. Furthermore, no formal Intervention Affidavit was ever filed against the Respondents, thus there is no basis for the Complaint against them individually.

Accordingly, the Respondents DENY all allegations contained in the Complaint.

DATED this 25th day of April, 2016.

BOYACK ORME & TAYLOR

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