

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

4 Sharath Chandra, Administrator, Real
5 Estate Division, Department of Business &
6 Industry, State of Nevada,
7 Petitioner,

Case No. 2017-1093

8 vs.

FILED

NOV 17 2017

9 Hillcrest Community Association, Melanie
10 Muldowney, Bernard Hirschboeck, Debbie
11 Cooper, Nancy Meyers and Janet Falgiano,

NEVADA COMMISSION OF *ER*
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

12 Respondents.

13 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

14 This matter came on for hearing before the Commission for Common-Interest
15 Communities and Condominium Hotels, Department of Business and Industry, State of
16 Nevada (the "Commission"), during a regular agenda on November 14, 2017, at the
17 Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las
18 Vegas, Nevada 89102 with videoconferencing to Department of Business & Industry,
19 Director's Office, 1830 East College Parkway, Suite 100, Carson City, Nevada 89706 (the
20 "Hearing"). Respondents Debbie Cooper and Janet Falgiano appeared in person.
21 Respondents Melanie Muldowney, Bernard Hirschboeck, and Nancy Meyers did not
22 appear. Michelle Briggs, Esq., Senior Deputy Attorney General with the Nevada Attorney
23 General's Office, appeared on behalf of the Real Estate Division of the Department of
24 Business and Industry, State of Nevada (the "Division").

25 The Commission heard testimony from Claudia Rosolen regarding service to the
26 Respondents who were not present. The Commission reviewed an email from Kristen
27 Gillis sent earlier that day on behalf of the Hillcrest Community Association (the
28 "Association"). Ms. Briggs also read an email from Respondent Muldowney sent the day
before the Hearing. The Division requested that default be entered against Respondents

1 Melanie Muldowney, Bernard Hirschboeck, Nancy Meyers, and the Association.
2 Respondents Debbie Cooper and Janet Falgiano addressed the Commission and answered
3 questions.

4 The Commission voted unanimously to enter default against Respondents Melanie
5 Muldowney, Bernard Hirschboeck, Nancy Meyers, and the Association. The Commission
6 enters the following Findings of Fact, Conclusions of Law, and Order. Under Nevada
7 Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 116, the
8 Commission has legal jurisdiction and authority over this matter.

9 FINDINGS OF FACT

10 Based on the Commission's finding of a default against RESPONDENTS Melanie
11 Muldowney, Bernard Hirschboeck, Nancy Meyers, and the Association for failing to
12 appear and for failing to respond to the Complaint, pursuant to NRS 116.770 and NAC
13 116.585, the Commission accepted as true all of the following factual allegations:

14 1. In May, 2017, the Division initiated an investigation of the Association
15 based on its 2016 Annual Association Registration form.

16 2. The 2016 registration form was signed by the Association's manager, Kristen
17 Gillis of Harmony Management, LLC.

18 3. The form indicated the annual budget totaled \$87,000, but the last review of
19 the financial statements was done for the fiscal or calendar year of 2010.

20 4. NRS 116.31144(1)(b) requires the Association (based on its annual budget) to
21 have its financial statement reviewed by an independent certified public accountant every
22 fiscal year.

23 5. The Association consists of 145 single family homes.

24 6. The Division received written responses from RESPONDENTS COOPER
25 and FALGIANO and neither knew that reviews of the financials were not being done
26 annually.

27 7. RESPONDENTS COOPER and FALGIANO both complained about the
28 community manager, Kristen Gillis, not responding to their requests for information.

1 8. By email dated May 17, RESPONDENT COOPER notified the Division that
2 she contacted the only CPA the Association paid money to and found out that they had
3 only ever done the Association's taxes, but that they were hired to do the 2016 audit.

4 9. RESPONDENT FALGIANO, who is also the secretary and has served on the
5 board for 10 years, emailed the board members to request an emergency board meeting to
6 discuss the management company in March 2017, but the board's president,
7 RESPONDENT MULDOWNEY and RESPONDENT MEYERS did not respond.

8 10. RESPONDENT FALGIANO reported to the board that she was concerned
9 about the Association's finances.

10 11. RESPONDENT HIRSCHBOECK, COOPER, and FALGIANO met on March
11 9, 2017 and discussed the issues with the management of the Association.

12 12. RESPONDENT FALGIANO prepared a letter dated March 15, 2017 listing
13 all the areas of concern discussed by the three board members including checks being
14 signed without an accompanying invoice and for unknown services.

15 13. RESPONDENT FALGIANO sent the letter to Kristen Gillis, but received no
16 response.

17 14. According to RESPONDENT COOPER, the Association's board met in
18 January 2017 and prior to that in March of 2016.

19 15. The next board meeting was held on June 5, 2017 at the Edge of Town Bar
20 and Grille with the board members in attendance except for RESPONDENT MEYERS.

21 16. RESPONDENTS COOPER and FALGIANO, as well as homeowners who
22 attended, described the meeting as hostile, chaotic, and unprofessional.

23 17. On or about June 23, 2017, Kristen Gillis provided a disk containing some of
24 the documents requested by the Division, but no audits or reviews were provided.

25 18. The Association's 2017 annual registration form is signed by Kristen Gillis
26 and says an audit was performed for the fiscal or calendar year for 2015 and completed on
27 June 27, 2016.

28 19. On or about July 31, 2017, RESPONDENT COOPER and FALGIANO

1 received a copy of a draft 2016 audit from the management company based on financial
2 statements provided by Kristen Gillis to the CPA. The unsigned engagement letter is
3 dated June 27, 2017.

4 20. The board did not hire the CPA to prepare the audit.

5 21. In response to the investigation, RESPONDENT MEYERS provided a signed
6 and notarized blank affidavit to the Division, and RESPONDENTS MULDOWNNEY and
7 HIRSCHBOECK did not provide any response to the Division.

8 22. RESPONDENT MEYERS was removed as an owner of a unit in the
9 Association by quitclaim deed on or about October 24, 2006.

10 23. RESPONDENTS COOPER and FALGIANO informed the Division that
11 "Nevada K" is paid to do parking enforcement, but no such work is performed.

12 24. Nevada K is owned by Kristen Gillis or her son and is paid approximately
13 \$425 per month.

14 25. According to the Association's bank records, the Association also pays "A
15 Family Affair" the address for which is Kristen Gillis's mom, Diana Gillis, who is also a
16 community manager.

17 26. RESPONDENT COOPER stated that she was told A Family Affair cleans an
18 outside walking path that is not part of the Association, but must be maintained by the
19 Association.

20 27. According to the portion of the bank records received by the Division, A
21 Family Affair was paid over \$19,000 from January 2015 through October 2016.

22 28. Checks to A Family Affair and Nevada K are signed by RESPONDENTS
23 MULDOWNNEY and HIRSCHBOECK.

24 CONCLUSIONS OF LAW

25 Based on the foregoing factual findings, the Commission concludes by unanimous
26 vote that the following violations of law are proven:

27 29. RESPONDENTS MULDOWNNEY, MEYERS, and HIRSCHBOECK
28 knowingly and willfully violated NRS 116.3103 (through NAC 116.405(5)(a)) by failing

1 to act in good faith and in the best interests of the Association when they impeded the
2 Division's investigation by failing to comply with a request by the Division to provide
3 information and documents.

4 30. RESPONDENTS MULDOWNNEY, MEYERS, and HIRSCHBOECK
5 knowingly and willfully violated NRS 116.3103 (through NAC 116.405(5)(c)) by failing
6 to act in good faith and in the best interests of the Association when they impeded the
7 Division's investigation by concealing facts and documents relating to the business of
8 the Association.

9 31. RESPONDENTS MULDOWNNEY, MEYERS, and HIRSCHBOECK
10 knowingly and willfully violated NRS 116.3103 (through NAC 116.405(3)) by
11 committing an act or omission which amounts to incompetence, negligence or gross
12 negligence.

13 32. RESPONDENT MEYERS is in violation of NRS 116.31034(1) as she is
14 serving as a board member, but is not an owner of a unit in the ASSOCIATION.

15 33. RESPONDENT ASSOCIATION is in violation of NRS 116.31034(12) as
16 RESPONDENT MEYERS is not an owner of a unit in the Association and is not eligible
17 to serve on the board.

18 34. RESPONDENTS violated NRS 116.31144 by failing to have the
19 Association's financial statement reviewed by a certified public accountant for the tax
20 years 2011, 2012, 2013, 2014, and 2015.

21 35. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(g)) by
22 failing to act in good faith and in the best interests of the Association by failing to
23 maintain current, accurate, and properly documented financial records.

24 36. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(i)) by
25 failing to act in good faith and in the best interests of the Association by failing to cause
26 the Association to establish policies and procedures that are designed to provide
27 reasonable assurances in the reliability of financial reporting.

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ORDER

The Commission being fully apprised in the premises, and good cause appearing to the Commission, by unanimous vote, Orders as follows:

1. RESPONDENTS MULDOWNNEY, MEYERS, and HIRSCHBOECK shall be removed from the board of directors and as officers for the Association and shall not serve as a board member or officer for any other common-interest community in the State of Nevada for a period of no less than 10 years from the date of this Order.

2. Respondents Debbie Cooper and Janet Falgiano are the only remaining board members for the Association and shall appoint a third board member as soon as possible.

3. As prior testimony before the Commission prior to the Hearing indicated the Association's manager is no longer in business, Respondents Debbie Cooper and Janet Falgiano shall take all action necessary to hire a community manager for the Association, hire legal counsel if necessary, hold an election as soon as possible, and cause audits or reviews to be performed as necessary pursuant to NRS 116.31144.

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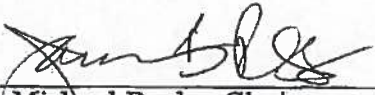
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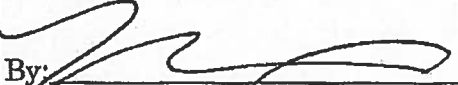
4. The Association shall report back to the Commission with status regarding compliance with this Order at its next regularly scheduled meeting on March 6, 7 and 8, 2018.

Dated: November 17, 2017.

Commission for Common-Interest Communities
and Condominium Hotels, Department of Business
& Industry, State of Nevada

By: 
Michael Burke, Chairman
James Rizzi, Vice-Chairman

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