

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
8 Petitioner,

9 vs.

10 Diamond Creek Homeowners Association,
11 Roy Cooper, and Kim Cooper,

12 Respondents.

Case No. 2017-1826

FILED

MAR 19 2018

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

13 **STIPULATION AND ORDER**
14 **FOR PARTIAL SETTLEMENT OF DISCIPLINARY ACTION**

15 This matter came on for hearing before the Commission for Common-Interest
16 Communities and Condominium Hotels, Department of Business and Industry, State of
17 Nevada (the "Commission"), during a regular agenda on March 6, 2018, at the Nevada
18 State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las Vegas,
19 Nevada 89102 with videoconferencing to Department of Business & Industry, Director's
20 Office, 1830 East College Parkway, Suite 100, Carson City, Nevada 89706 (the
21 "Hearing"). Respondent Roy Cooper appeared. Michelle D. Briggs, Esq., Senior Deputy
22 Attorney General with the Nevada Attorney General's Office, appeared on behalf of the
23 Real Estate Division of the Department of Business and Industry, State of Nevada (the
24 "Division"). Mr. Cooper addressed the Commission regarding his statement and his wife's
25 statement. Mr. Cooper stated that he and his wife already resigned from the board and
26 agreed to not run for the next 10 years. He also agreed to pay a fine of \$250. The Division
27 agreed. The Commission unanimously approved and ordered the stipulated terms. The
28 Association's case will be continued to the June Commission meeting currently scheduled
for 19, 20 and 21. The parties stipulated as follows:

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JURISDICTION AND NOTICE

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2 1. During the relevant times mentioned in this complaint, RESPONDENTS ROY
3 COOPER and KIM COOPER served as board members and/or officers of RESPONDENT
4 DIAMOND CREEK HOMEOWNERS ASSOCIATION (the "Association"), a common-
5 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 the
9 Division, and the Commission for Common-Interest Communities pursuant to the
10 provisions of NRS 116.750.

FACTS AS ALLEGED IN THE COMPLAINT

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12 3. In April 2017, Diamond Creek Homeowners Association (the "Association")
13 submitted an annual registration form to the Division.

14 4. The Association consists of approximately 190 single-family homes within the
15 Mountain's Edge Master Association.

16 5. The Association has an annual budget of approximately \$98,000.

17 6. The Division initiated an audit of the Association's records based on issues
18 with the 2017 registration form.

19 7. The Association's response through their community manager, Kristen Gillis,
20 was incomplete and raised additional concerns; the Division's compliance section initiated
21 an investigation.

22 8. RESPONDENTS did not respond to letters from the Division dated August 18,
23 2017, September 29, 2017, and October 13, 2017.

24 9. RESPONDENTS ROY and KIM COOPER are married and began serving on
25 the Association's board on or about February 23, 2016.

26 10. RESPONDENTS ROY and KIM COOPER purchased the home of the prior
27 board members by deed dated February 25, 2016.
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1 11. The Association's management contract is dated February 25, 2016 and is
2 signed by RESPONDENT ROY COOPER.

3 12. The Association's landscape contract is dated February 23, 2016 and is signed
4 by RESPONDENT ROY COOPER.

5 13. The prior board members were also married.

6 14. The board consisted of only a married couple since 2012.

7 15. RESPONDENT ROY COOPER serves as the Association's president and
8 RESPONDENT KIM COOPER serves as the Association's secretary.

9 16. The Association does not have regular annual elections for its board.

10 17. The Association does not have annual CPA reviews of its financial statements.

11 18. The Association does not have properly noticed and agendized board meetings
12 every 100 days.

13 19. The Association's annual assessment increased for 2017 despite having a
14 surplus of funds in both reserves and operating accounts.

15 20. The Association does not have monthly interim financial statements.

16 **VIOLATIONS OF LAW ALLEGED IN THE COMPLAINT**

17 21. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
18 NRS 116.31034 by serving on the board and as officers when they are ineligible to do so.

19 22. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
20 NRS 116.31034 by failing to have elections in accordance with the statute.

21 23. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
22 NRS 116.31144 by failing to cause the financial statement of the Association to be reviewed
23 by an independent certified public accountant every fiscal year.

24 24. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
25 NRS 116.3103 (through NAC 116.405(5)(a)) by failing to act in good faith and in the best
26 interests of the Association when they impeded the Division's investigation by failing to
27 comply with a request by the Division to provide information and documents.
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1 25. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
2 NRS 116.3103 (through NAC 116.405(5)(c)) by failing to act in good faith and in the best
3 interests of the Association when they impeded the Division's investigation by concealing
4 facts and documents relating to the business of the Association.

5 26. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
6 NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best
7 interests of the Association when they acted for reasons of self-interest.

8 27. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
9 NRS 116.3103 (through NAC 116.405(3)) by committing an act or omission which amounts
10 to incompetence, negligence or gross negligence.

11 28. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
12 NRS 116.3103 (through NAC 116.405(5)(b)) by failing to act in good faith and in the best
13 interests of the Association by supplying false or misleading information to the auditor.

14 29. RESPONDENTS ROY and KIM COOPER knowingly and willfully violated
15 NRS 116.3103 (through NAC 116.405(8)(c)) and NRS 116.31083 by failing to act in good
16 faith and in the best interests of the Association by failing to have board meetings with such
17 frequency as to properly and efficiently address the affairs of the Association and not within
18 every 100 days.

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

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

26 32. RESPONDENTS knowingly and willfully violated NRS 116.3103 (through
27 NAC 116.405(8)(j)) by failing to act in good faith and in the best interests of the Association
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1 by failing to cause the Association to prepare interim and annual financial statements that
2 will allow the Division and the units' owners to determine whether the financial position of
3 the Association is fairly presented in accordance with the provisions of NAC 116.451 to
4 116.461, inclusive.

5 33. RESPONDENTS violated NRS 116.3114 by failing to properly allocate surplus
6 funds.

7 DISCIPLINE AUTHORIZED

8 Pursuant to the provisions of NRS 116.615, NRS 116.755, NRS 116.785, and NRS
9 116.790, the Commission has discretion to take any or all of the following actions:

10 1. Issue an order directing RESPONDENTS to cease and desist from
11 continuing to engage in the unlawful conduct that resulted in the violation.

12 2. Issue an order directing RESPONDENTS to take affirmative action to
13 correct any conditions resulting from the violation.

14 3. Impose an administrative fine of up to \$1,000 for each violation by
15 RESPONDENTS.

16 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND
17 WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best
18 interest of the Association, such RESPONDENT may be removed from his/her position as
19 a director and/or officer.

20 5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

21 6. Require the BOARD MEMBERS to hire a community manager who holds a
22 certificate.

23 7. Require RESPONDENTS to pay the costs of the proceedings incurred by the
24 Division, including, without limitation, the cost of the investigation and reasonable
25 attorney's fees.

26 8. Take whatever further disciplinary action as the Commission deems
27 appropriate.

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1 The Commission may order one or any combination of the discipline described
2 above. If the Commission finds that the RESPONDENTS knowingly and willfully violated
3 the provisions of NRS or NAC 116, the Commission may order that such RESPONDENT
4 be personally liable for all fines and costs imposed.

5 SETTLEMENT

6 1. RESPONDENTS ROY COOPER and KIM COOPER agree not to serve as a
7 board member or officer of any common-interest community located in the State of Nevada
8 for a period of no less than 10 years from the date of this Order.

9 2. RESPONDENTS ROY COOPER and KIM COOPER agree to pay an
10 administrative fine in the amount of \$250 to the Division no later than 30 days from the
11 date of this Stipulation and Order.

12 3. RESPONDENTS and the Division agree that by entering into this Stipulation
13 and Order, the Division does not concede any defense or mitigation RESPONDENTS may
14 assert and that once this Stipulation and Order is approved and fully performed, the
15 Division will close its file in this matter.

16 4. This Stipulation and Order includes any claims that could have been included
17 in a supplemental or amended complaint arising from the same operative facts, transactions
18 and occurrences in existence as of the effective date of this Stipulation and Order. However,
19 this Stipulation and Order does not include claims arising from facts or circumstances
20 which have been concealed by RESPONDENTS.

21 5. RESPONDENTS agree that if the terms and conditions of this Stipulation and
22 Order are not met, the Division may, at its option, rescind this Stipulation and Order and
23 proceed with prosecuting the Complaint before the Commission.

24 6. RESPONDENTS agree and understand that by entering into this Stipulation
25 and Order, RESPONDENTS are waiving their right to a hearing at which RESPONDENTS
26 may present evidence in their defense, their right to a written decision on the merits of the
27 Complaint, their right to reconsideration and/or rehearing, appeal and/or judicial review,
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1 and all other rights which may be accorded by the Nevada Administrative Procedure Act,
2 the Nevada Common Interest Ownership statutes and accompanying regulations, and the
3 federal and state constitutions. RESPONDENTS understand that this Stipulation and
4 Order and other documentation may be subject to public records laws. The Commission
5 members who review this matter for approval of this Stipulation and Order may be the
6 same members who ultimately hear, consider and decide the Complaint if this Stipulation
7 and Order is either not approved by the Commission or is not timely performed by
8 RESPONDENTS. RESPONDENTS fully understand that they have the right to be
9 represented by legal counsel in this matter at his own expense.

10 7. Each party shall bear its own attorney's fees and costs.

11 8. Stipulation and Order is Not Evidence. Neither this Stipulation and Order nor
12 any statements made concerning this Stipulation and Order may be discussed or introduced
13 into evidence at any hearing on the Complaint, if the Division must ultimately present its
14 case based on the Complaint filed in this matter.

15 9. Release. In consideration of execution of this Stipulation and Order,
16 RESPONDENTS for themselves, their heirs, executors, administrators, successors, and
17 assigns, hereby releases, remises, and forever discharges the State of Nevada, the
18 Department of Business and Industry and the Division, and each of their respective
19 members, agents, employees and counsel in their individual and representative capacities,
20 from any and all manner of actions, causes of action, suits, debts, judgments, executions,
21 claims, and demands whatsoever, known and unknown, in law or equity, that the
22 RESPONDENTS ever had, now have, may have, or claim to have, against any or all of the
23 persons or entities named in this section, arising out of or by reason of the Division's
24 investigation, this disciplinary action, and all other matters relating thereto.

25 10. Indemnification. RESPONDENTS hereby indemnify and hold harmless the
26 State of Nevada, the Department of Business and Industry, the Division, and each of their
27 respective members, agents, employees and counsel in their individual and representative
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1 capacities against any and all claims, suits, and actions brought against said persons and/or
2 entities by reason of the Division's investigation, this disciplinary action and all other
3 matters relating thereto, and against any and all expenses, damages, and costs, including
4 court costs and attorney fees, which may be sustained by the persons and/or entities named
5 in this section as a result of said claims, suits, and actions.

6 11. RESPONDENTS have signed and dated this Stipulation and Order only after
7 reading and understanding all terms herein.



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DATED: March 21 2018.

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

By: 
Sharath Chandra, Administrator

DATED: March 17, 2018.


Roy Cooper

Kim Cooper

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ORDER


IT IS ORDERED that the foregoing Stipulation and Order for Partial Settlement of Disciplinary Action is approved in full.

Dated: March 19, 2018.

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

By: 
Michael Burke, Chairman

Submitted by:
ADAM PAUL LAXALT, Attorney General

By: 
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