

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES NOVEMBER 6, 2018**

**NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
NEVADA ROOM, SUITE 400
LAS VEGAS, NEVADA 89102**

**VIDEO CONFERENCE:
DIVISION OF INSURANCE
1818 E. COLLEGE PARKWAY
CARSON CITY, NEVADA 89706**

NOVEMBER 6, 2018

9:15 A.M.

1-A) Introduction of Commissioners in attendance

In Las Vegas: Michael Burke, James Rizzi, Charles Niggemeyer, Ken Williams, Richard Layton, Ryan Henderson, Doris Woods, and Deputy Attorney General Asheesh Bhalla sitting as Commission Counsel.

1-B) Introduction of Division Staff in attendance

In Las Vegas: Sharath Chandra, Administrator; Teralyn Thompson, Administration Section Manager; Charvez Foger, Ombudsman; Terry Wheaton, Chief Compliance Audit Investigator; Samiel Williams, Commission Coordinator; Monique Williamson, Education and Information Program Officer; Antonio Brown, Training Program Officer and Michelle Briggs, Senior Deputy Attorney General.

In Carson City: Sharon Jackson, Deputy Administrator and Chris Cooke, Compliance Audit Investigator.

1-C) Swearing in of reappointed Commissioner

Chairman Burke swore in re-appointed Commissioner Woods.

2) Public Comment

In Carson City: Sara Berry commented on her concerns with distance learning for pre-licensing classes. Ms. Berry stated that students often ask questions after class or on break and students would lose that opportunity with distance learning. Ms. Berry stated that distance learning for pre-licensing is a bad idea.

In Las Vegas: Michael Kosor, resident of Southern Highlands Community Association, stated that he believes the Commission of Common-Interest Communities and Condominium Hotels has failed in their role to address regulations, advise the Nevada Real Estate Division in what they should be doing, adjudicate and provide an alternate source for homeowners. Mr. Kosor stated that Assembly Bill 192 was a terrible bill. Mr. Kosor stated that a developer can own the management company that controls the association. Mr. Kosor stated that the developer can appoint his employees as representatives on the board. Mr. Kosor asked if that would be

conducive to strong fiduciary on behalf of the association? Mr. Kosor stated that this is a legislative issue, but believes the Commission has a duty to speak out. Mr. Kosor provided the Commission with written public comment.

Mr. Kosor stated that the door to the Commission is being blocked inappropriately by the Nevada Real Estate Division. Mr. Kosor stated that the association handed out over 10,000 ballots for last year's election, but there are less than 8,000 homeowners in that association. Mr. Kosor stated that the statutes are clear regarding one ballot to a unit owner address or alternate address that the unit owner provides. Mr. Kosor stated that some unit owners received three or more ballots.

Marcia Poliandro, Christopher Rees and Melinda Costa; residents of Vistana, commented. Mr. Rees stated that he was shocked that Vistana's board members did not attend the Commission meeting. Mr. Rees stated that he is requesting the Commission to remove the current board members. Mr. Rees stated that there are three homeowners that would like to run for the board. Mr. Rees stated that homeowners in the Vistana community have lost all faith in the current board members. Mr. Rees stated that homeowners do not run against the current board because of the negative backlash. Mr. Rees stated that letters he has sent to the board have been ignored. Mr. Rees stated that the board does not care about the governing documents or NRS 116. Mr. Rees stated that at September's meeting on violations, there were specific unit numbers discussed. Mr. Rees stated that the board is not transparent and does not speak to homeowners. Mr. Rees stated that he has filed five intervention affidavits against the board requesting corrective action. Ms. Costa stated that the rules set forth by the state of Nevada are being completely ignored.

Ms. Costa stated that voices of the homeowners are being completely ignored. Ms. Costa asked that the current board be removed to be replaced by board members that are appropriately educated and that are looking out for the best interest of the community.

Ms. Poliandro stated that she has owned a home in Vistana since 2003. Ms. Poliandro stated that the community needs new board members.

Howard McCarley, resident of Southern Highlands, stated that Southern Highlands has a community Facebook page independent of the homeowner's association. Mr. McCarley stated that he found a comment on the Facebook page that stated that a perspective homeowner was given a link to download over a hundred pages right before their home was closing. Mr. McCarley stated that the Facebook comment explained there is no way anyone can digest that much information during the closing activities. Mr. McCarley stated that the Facebook comment continued to say, "as a minimum there should be some advice provided by the agent to the buyer to help get clearance from the home owners association (HOA) regarding any outstanding violations." Mr. McCarley stated that he is concerned by the reliance on agents regarding the HOA resale package. Mr. McCarley stated that most of the packages are written in dense legal terms, the spreadsheets covering the budget and reserves require a working knowledge of accounting principles. Mr. McCarley stated that real estate agents are neither accountants or attorneys and the best advice offered is to consult a professional. Mr. McCarley stated that the process is flawed. Mr. McCarley offered some ideas for the future to inform buyers as part of the resale process what declarant control means and how many units have been transferred at the current time. Mr. McCarley stated that the perspective buyer needs to be made aware of how

close the community is to self-management. Mr. McCarely stated that the perspective buyer needs to be provided a glossary of terms and define terms that are not commonly used. Mr. McCarely stated that the perspective buyer needs to be provided with a plain language coversheet that details how the current board is constituted, job titles and affiliations. Mr. McCarely stated that there does not appear to be an effort to protect the rights of unit owners in common-interest communities. Mr. McCarely stated that CCR's being put in place restrict the ownership rights of residents regarding common areas and impose on homeowner's liability duties that are more appropriately assigned elsewhere.

Christopher Paetsch stated that he has been a manager since 2005 and is currently a supervising community manager. Mr. Paetsch stated that in April of 2005 the Commission adopted LCB File No. R129-04 that provided language to change NAC 116 to limit a supervising community manager to supervise only three provisional community managers at one time. Mr. Paetsch stated that same language was removed from the law in August 2006. Mr. Paetsch stated that the reason the language was removed was because there were not enough supervising community managers. Mr. Paetsch stated that he would like the Commission to put that language back in the law. Mr. Paetsch stated that he has a rental property in a community where the board does not care about the law. Mr. Paetsch stated that he filed a complaint against the board. Mr. Paetsch stated that he had his home on the market at the time of the complaint. Mr. Paetsch stated that the Real Estate Division responded with a letter that said, "you are no longer an aggrieved party as of the sale of the unit therefore do not meet the requirements NRS 116.760 for filing a complaint". Mr. Paetsch stated that the language in NRS 116.760 does not specify that you must be a homeowner to file a complaint. Mr. Paetsch stated that he is an aggrieved party because at the time he was part of a homeowner's association with a board that was not following the law. Mr. Paetsch stated that he is concerned about the response from the Real Estate Division.

3-A-2) Administrator's report on pending litigation

Sharath Chandra presented a report on pending litigation Mr. Chandra reported on Vistana Condominium Owners Association Case Number A17763350J

- August 2017-The Commission heard the disciplinary case against Vistana Case # 2015-3373.
- October 19, 2017-Vistana filed a petition for judicial review; board members are challenging the personal fines assessed against them.
- November 2017-The Commission denied Vistana's appeal of the Commission's decision.
- February 2, 2018-Vistana filed a brief in District Court.
- March 2, 2018-The Division filed its response to the brief.
- April 4, 2018-Vistana filed a reply brief.
- April 25, 2018-The Division's motion to submit newly discovered evidence was granted.
- Pending Decision-Vistana filed a writ to challenge the court's order allowing newly discovered evidence and filed a motion to stay the court's order.
- The Supreme Court granted Vistana's motion to stay and all briefs to the Supreme Court has been filed.
- July 23, 2018- The Division filed its response to the writ.
- August 14, 2018-The Supreme Court issued an order to Vistana to file a reply to the Division's answer within five days. No reply was filed. Currently the Division is waiting for an Order from the Supreme Court on the petition.

Mr. Chandra reported on Margaret Thayer Case# 2016-1608:

- November 2017 the Commission heard the disciplinary matter regarding Margret Thayer. The Division's complaint against Ms. Thayer was for performing community management services for an association without a certificate from the Division. Ms. Thayer stipulated to the fact at the hearing and her contract was admitted. The Commission found her in violation of the law.
- Ms. Thayer filed a petition for judicial review on December 28, 2017 against the Division. The petition challenges the Commission's findings that Ms. Thayer performed the duties of a community manager without a certificate from the Division.
- The court granted the Division's motion to dismiss the petition for judicial review on April 10, 2018 for failing to name the Commission for Common-Interest Communities and Condominium Hotels as a party to the petition.
- Ms. Thayer filed an appeal with the Supreme Court. The case was assigned to the settlement program but was found not to qualify.
- The case proceeded with a scheduling order; Thayer's opening brief was due October 1, 2018.
- Ms. Thayer informed Division's counsel that Ms. Thayer was willing to dismiss the case. The stipulation for dismissal with prejudice was agreed upon and filed on November 2, 2018. Ms. Thayer has paid the outstanding fines.

3-A-1) Administrator's report on personnel

Sharath Chandra presented this report. Mr. Chandra stated that there is a budget request for a training officer in Northern Nevada. Mr. Chandra stated that there is a request for a technology package.

Mr. Chandra stated that the Division is fully staffed.

Mr. Chandra stated that there are two Bill Draft Requests (BDR) in process. Mr. Chandra stated that the BDR that affects the Commission for Common-Interest Communities and Condominium Hotels is NRS 116A language regarding background checks. Mr. Chandra stated he second BDR addresses the Dodd-Frank Act requirements for appraisers.

Mr. Chandra stated that the Director of Business and Industry C.J. Manthe has now been appointed to the Public Utilities Commission. Mr. Chandra stated that Deputy Director Terry Reynolds is now the Interim Director.

Commissioner Williams asked Mr. Chandra if the fingerprint check is a requirement of the Federal Bureau of Investigations (FBI) why the Division used a BDR.

Mr. Chandra responded that the Division must use a BDR as a mechanism to make changes to statute.

Commissioner Williams stated that the Real Estate Division is limited to two BDR's and Commissioner Williams would have liked to use one of the BDR's.

3B) Ombudsman's report:

Charvez Foger presented the Commission with this report.

3-B-1) Ombudsman's report on Intervention Program

Charvez Foger presented the Commission with this report.

3-B-2) Ombudsman's report on Informal Conferences

Charvez Foger presented the Commission with this report.

3-B-3) Ombudsman's report on Alternative Dispute Resolution filings and subsidy claims

Charvez Foger presented the Commission with this report.

3-B-4) Ombudsman's report on Homeowner Association and Compliance Audits

Charvez Foger presented the Commission with this report.

3-B-5) Ombudsman's report on Program Training Officer's Report

Charvez Foger presented the Commission with this report.

3-B-6) Ombudsman's report on number and types of associations registered within the State

Charvez Foger presented the Commission with this report.

3-B-7) Ombudsman's report on Compliance Section's report

Terry Wheaton presented the Commission with this report.

Chairman Burke asked for the definition of active cases.

Mr. Wheaton responded that all cases that are currently under investigation are active cases. Commissioner Williams asked Mr. Wheaton to explain the cases that have been open from months to one year and one year to two years.

Mr. Wheaton explained some of those cases received administrative fines and the case remains open until the administrative fine is paid. Mr. Wheaton stated that cases that involve fraud require more time to retrieve documents requested.

Mr. Wheaton stated that Christopher Cooke, compliance investigator in Northern Nevada, will be retiring at the end of November.

3C) Licensee and Board Member Discipline Report

Teralyn Thompson presented the Commission with this report.

Commissioner Williams asked Ms. Thompson what it means when a fine is reduced to a judgment.

Chairman Burke stated that the conversion process is when they fail to pay the sanctions ordered and is reduce it to a monetary judgement that can be enforced throughout the state and eventually domesticate in other states if need be.

3D) Administrative Sanction Report

Teralyn Thompson stated that there was nothing to report.

4A) Discussion regarding the State of Nevada Controller's Office debt collection process for fines issued by the Commission

Commissioner Williams stated that there was no change in the report he received from the Controller's Office regarding the pursuit of delinquencies.

Commissioner Williams stated that there is still a state agency that is looking into a BDR to NRS 353C.150 to include the word "agency" to move forward in judgements.

Chairman Burke asked if the Controller's Office has the right to dictate how the collection agency proceeds.

Commissioner Williams stated that he is unsure of the collection protocol.

Chairman Burke asked if the Commission can request the Controller appear at a Commission meeting.

Commissioner Williams stated that the Controller has appeared at the Commission hearing in the past. Commissioner Williams stated that the Controller allowed his staff to speak. Commissioner Williams stated that the Controller's staff has been very helpful, but their hands are tied with the State's process. Commissioner Williams stated that until the judgements are filed, these fines will linger.

Chairman Burke recommends keeping this topic on the agenda until there is some improvement shown on the debt collection process.

Commissioner Williams stated that he will ask for more detailed report the next time he requests it from the Controller's Office.

4B) For possible action: Discussion and decision to approve minutes of August 28, 2018 Commission meeting.

Commissioner Rizzi stated that there is a typo on page 8 of the August 28, 2018 minutes. Commissioner Rizzi stated that agenda item 5g should be agenda item 5b.

Commissioner Rizzi moved to approve the August 28, 2018 meeting minutes with corrections. Seconded by Commissioner Layton. Motion carried.

4C) Discussion regarding Commissioners' speaking engagement requests.

None

5A) NRED v. Diana Gillis, for possible action

Case No. 2017-2111

Type of Respondent: Community Manager

License#:CAM.0001821 (VOLUNTARY SURRENDER)

Parties Present

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Ms. Gillis was not present.

Ms. Briggs stated that Ms. Gillis did not answer the complaint and asked that failure to appear be accepted as a default and allegations in the complaint be accepted as true.

Chairman Burke moved that Ms. Gillis be found in default and that the factual allegations 2 through 13 be found as true. Seconded by Commissioner Rizzi. Motion carried.

Chairman Burke moved that Ms. Gillis be found in violation of the violations of law stated in paragraphs 14 through 26 of the complaint. Seconded by Commissioner Williams. Motion carried.

Ms. Briggs gave the recommended discipline:

- Revocation of community manager certificate for 10 years but no less than when all fines and costs pursuant to this order are paid;
- Fine of \$13,000 and costs of the hearing of \$2,542.21; and,
- Restitution to the association in the amount of \$8,209.50.

Chairman Burke moved to accept the Division's recommendations for discipline to be paid within 30 days. Seconded by Commissioner Rizzi. Motion carried.

Chairman Burke amends the motion to include Ms. Gillis must pay all fines, costs and restitution on or before January 1, 2019. Seconded by Commissioner Rizzi. Motion carried.

5B) NRED v. Vistana Condominium Owners Association, Larry Fitch, Anthony Kneip, Lynn Williams & Ardyce Nelson, for possible action

Case No. 2015-3373

Type of Respondent: Board Directors

Parties Present

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Daniel Hansen, attorney representing the association and individual respondents, was present.

Opening Statements

Ms. Briggs gave an opening statement.

Mr. Hansen gave an opening statement.

Commissioner Williams asked if Ardyce Nelson is restricted to her home and if she is able to serve on the board.

Mr. Hansen responded that Ms. Nelson can attend the meetings held in the clubhouse.

Ms. Briggs stated that the September 2017 Commission order stated that Mr. Kneip, Mr. Williams and Ms. Nelson had one year to complete nine hours of board education offered by the Division. Ms. Briggs stated that the classes that were taken were not all offered by the Division. Ms. Briggs stated that at the March 2018 Commission meeting, it was represented to the Commission that all board members had completed the education that was ordered. Ms. Briggs stated that it was on reliance of the fact that all education had been completed, that board members were allowed to make payments on the fine ordered. Ms. Briggs stated that the board members are not in compliance.

Commissioner Williams asked Ms. Briggs for the Division's recommendation.

Ms. Briggs stated that the Commission should remove these individuals from the board.

Mr. Hansen stated that the board was told to take courses and the board took courses. Mr. Hansen stated that the courses that were not directly offered by the Division; were offered by sponsors approved by the Real Estate Division for continuing education. Mr. Hansen stated that the order did not specify which courses were supposed to be taken.

Chairman Burke stated that page 6 of the September 19, 2017 order states in paragraph 3 that respondent board members currently seated or re-elected shall complete 9 hours of board education offered by the Division no later than August 30, 2018 and shall verify completion of this education with the Commission.

Commissioner Woods stated that based on the September 19, 2017 order, the respondents are not in compliance.

Commissioner Williams asked if Vistana's appeal will affect the decision made by the Commission today.

Asheesh Bhalla stated that the appeal will not affect the decision.

Chairman Burke stated that it was reported that Vistana failed to file a reply brief in the appeal.

Ms. Briggs stated that Vistana filed a writ petition which isn't an appeal because there was no final order. Ms. Briggs stated that the Supreme Court asked Vistana to respond to the Division's answer to the writ and Vistana refused to do so. Ms. Briggs stated that the petition for judicial review is based on the personal fines. Ms. Briggs stated that she does not feel the association should be paying for the board members to challenge the Commission's order.

Commissioner Williams requested a recommendation from Ms. Briggs of how to remove the existing board members without disrupting the association.

Ms. Briggs stated that there are two board members that are not a part of the complaint. Ms. Briggs stated there is an election pending.

Commissioner Woods asked the date of the upcoming election.

Mr. Hansen stated he was unsure of the exact date.

Commissioner Henderson questioned how many payments have been made on the personal fines.

Ms. Briggs stated that the exact amount is reflected in the report provided to the Commission.

Chairman Burke stated that his issue the language “offered by the Division”.

Mr. Hansen stated that the board members believed they were in compliance.

Chairman Burke stated Christopher Rees, a homeowner in Vistana, has information on the upcoming election.

Mr. Rees stated that the upcoming election is being held on November 8, 2018.

Chairman Burke asked how many positions were up for election.

Mr. Rees stated that there are two positions up for election.

Chairman Burke asked if any of the respondents in this case are up for election.

Mr. Rees stated Lynn Williams is up for re-election.

Chairman Burke asked Mr. Rees if he gained this information through personal knowledge and from the ballot received.

Mr. Rees stated that yes. Mr. Rees stated that the nominees are Lynn Williams and Carlos Aguilera.

Mr. Hansen stated that it would be impossible for the respondents to know the intent of the Commission when ordering the education courses.

Mr. Hansen stated that the Gibbs Giden law firm was not made aware that their clients were not in compliance when notified by the Division.

Commissioner Layton asked Ms. Briggs if she met with the respondents and specifically offered them Division classes.

Ms. Briggs stated that the Division offered the courses. Ms. Briggs stated the respondents contacted the Division to request an extension on the August 2018 deadline. Ms. Briggs stated the training officer at the Division offered to provide courses to the respondents. Ms. Briggs stated that the respondents knew they were to take courses offered by the Division.

Commissioner Layton asked Monique Williamson, former Training Officer current Education and Information Officer, to testify.

Monique Williamson stated that she was communicating with the attorney by email.

Ms. Williamson stated that the attorney asked what classes could be taken to meet the requirement. Ms. Williamson stated that at the time of the communication the deadline had already past. Ms. Williamson stated that the Division was willing to extend the deadline and travel to the respondent's location to provide classes that were geared toward their needs.

Ms. Williamson stated that the attorney stated he would make his client aware of the Division's offer. Ms. Williamson stated that the only board member that contacted the Division was Lynn Williams. Ms. Williamson stated that Mr. Williams took one course provided by the Division to fulfill his requirements.

Mr. Hansen stated that the courses that were taken were approved by the Nevada Real Estate Division. Mr. Hansen stated that it was never made clear that the courses must be given by the Division. Mr. Hansen requested the Commission provide more time to the respondents to complete the required education.

Commissioner Layton stated that the fact that the respondents are not present has a significant meaning.

Mr. Hansen stated that if the Commission would like to continue the hearing, the respondents can be present at the next hearing.

Commissioner Williams moved that the three respondents be removed from the board. Seconded by Commissioner Henderson.

Mr. Bhalla stated that a time frame should be included to be clear for the record.

Commissioner Williams amended the motion and moved that the board members be immediately removed from the board and the two existing board members to conduct business as usual until the upcoming election is held. Seconded by Commissioner Henderson.

Ms. Briggs requested a length of time for the removal.

Commissioner Williams withdrew his motion and amended motion.

Chairman Burke moved that Anthony Kneip, Lynn Williams and Ardyce Nelson be immediately removed from the board, the respondents not be re-elected until such time that they have completed 9 hours of continuing education offered directly by the Real Estate Division and have paid all fines as set forth in our September 19, 2017 order and subsequently amend in the Commission's March 2018 order. Seconded by Commissioner Layton.

Commissioner Rizzi requested clarity in the type of educational courses.

Commissioner Williams stated that courses directly that are administrated by the Real Estate Division.

Motion failed 0 to 7. Chairman Burke moved that Anthony Kneip, Lynn Williams and Ardyce Nelson be immediately removed from the board at Vistana, that they may not run for re-election until such time that they have paid their fines in total as specified in our September 2017 order and subsequently amended in our March 2018 order and that the respondents shall complete the

nine hours of board education classes offered by the Division and as specified by the Real Estate Division. Seconded by Commissioner Layton. Motion passed.

Chairman Burke stated the contact person is Monique Williamson with the Real Estate Division.

5C) NRED v. Pecos Creek Homeowners Association, Rodolfo Rocha, Omar Guerra and Ofelia Santos, for possible action

Case No. 2016-1949

Type of Respondent: Executive Board

Parties Present

Senior Deputy Attorney General Michelle Briggs was present representing the Division. Pecos Creek Homeowners Association's Treasurer Lacaramioara Stoian was present.

Ms. Stoian stated that the association has a new management company.

Chairman Burke asked Ms. Briggs if she had any communication with the respondents.

Ms. Briggs stated that the new management company contacted her last week. Ms. Briggs stated the annual registration was updated. Ms. Briggs stated the association completed the Secretary of State filing. Ms. Briggs stated that an audit was submitted. Ms. Briggs stated that the outstanding issues are a funding plan and reserve study.

Ms. Stoian stated that she tried to speak to the board but was not acknowledged. Ms. Stoian stated that she was threatened. Ms. Stoian stated that Pecos Creek does not have a functioning board. Ms. Stoian asked the Commission for permission to add two board members.

Phillip Michaelson, community manager with Griswold Real Estate Management, stated that he was hired on November 1, 2018 to manage Pecos Creek Homeowners Association.

Chairman Burke asked Mr. Michaelson if he witnessed threats amongst the board members.

Mr. Michaelson stated that there was a lively discussion by homeowners that wanted to speak about topics that were not on the agenda.

Chairman Burke asked Mr. Michaelson if he could provide a status on the reserve study.

Mr. Michaelson stated that he is unaware of the status on the reserve study.

Chairman Burke asked Ms. Stoian when the prior manager, Mr. Kelly, resign.

Ms. Stoian stated that Mr. Kelly resigned on October 31, 2018.

Commissioner Layton stated that the audit received is insufficient.

Chairman Burke stated that the respondents are in compliance with item three of the order. Chairman Burke stated that the respondents are not in compliance of item four of the order. Chairman Burke asked Ms. Briggs for recommendations for failure to comply.

Ms. Briggs stated that fines can be imposed on the board members not in attendance. Ms. Briggs stated that she would like to see those board members removed. Ms. Briggs stated that the fact that an emergency meeting was held and the only item on the agenda was to hire a new manager, shows proof that the board was not trying to comply with the Commission's June 2018 order regarding additional board members.

Mr. Michaelson stated that Sherryl Baca explained to him that the meeting notification had an incorrect date. Mr. Michaelson stated that Ms. Baca sent out a notice for an emergency meeting with the only an agenda item to hire a new manager.

Ms. Stoian stated that there was a reserve study specialist hired but Ms. Baca and Mr. Dionne disregarded the information provided.

Mr. Michaelson stated that the reserve study from McCaffery was dated December 31, 2017. Mr. Michaelson stated that a full study with an onsite inspection was performed on April 17, 2017. Mr. Michaelson stated that Ms. Baca sent him an email with excerpts from a reserve study. Mr. Michaelson stated that those excerpts were supposed to be the board's assumption of how the board were going to fund the reserve study.

Commissioner Woods asked Mr. Michaelson if Ms. Baca and Mr. Dionne signed his management contract.

Mr. Michaelson stated that Ms. Baca and Mr. Dionne signed his contract.

Ms. Stoian stated that she was not included in the new management process.

Chairman Burke asked Mr. Michaelson if he spoke to Ms. Baca before attending the Commission meeting today.

Mr. Michaelson stated that he did not speak to Ms. Baca before the meeting.

Chairman Burke asked Mr. Michaelson how he knew to attend this meeting today.

Mr. Michaelson stated that he felt attending the meeting today would be proper as the new manager.

Chairman Burke asked Mr. Michaelson if he had spoken to any of the board members about the compliance of the Commission's order.

Mr. Michaelson stated that he had briefly spoken to Ms. Baca before the November 2018 meeting. Mr. Michaelson stated that the conversation consisted of what items on the Commission's order had been complied with.

Chairman Burke asked Mr. Michaelson if the board had plans for an election.

Mr. Michaelson stated that within the next two weeks a nomination form with a welcome letter will be sent out.

Chairman Burke asked what the reason Mr. Kelly resigned as the community manager.

Ms. Stoian stated that she witnessed Mr. Kelly being threatened by Mr. Dionne and managing the community was too complicated.

Chairman Burke stated that he is of the opinion that neither Ms. Baca or Mr. Dionne should remain on the board.

Commissioner Henderson asked Ms. Briggs for a recommendation on the personal fine amount.

Ms. Briggs stated a fine of \$500 each.

Commissioner Williams moved that Sherryl Baca and Andrew Dionne are in default of the August 30, 2018 Commission Order; that Ms. Baca and Mr. Dionne be immediately removed from the board; that Ms. Baca and Mr. Dionne be fined \$1,000.00 to be paid by January 1, 2019 and that Ms. Stoian and the management company immediately begin the new election process.

Commissioner Williams amends the motion to include the stipulation Mr. Dionne and Ms. Baca shall not be eligible for re-election for three years; once the new board members are in place, Ms. Stoian provide the funding plan and address the reserve deficiency and report on the reserve study at the next Commission meeting.

Chairman Burke seconded the motion with the amendment that all fines be paid by Mr. Dionne and Ms. Baca before becoming a board member. Motion passed.

5D) NRED v. Hillside Home Owners Association, Sourav Hazra, Roy Whitmore, Kyle Hagmaier, George Smith & Ramiro Ramirez, for possible action
Case No. 2018-766

Type of Respondent: Executive Board

Commissioner Niggemeyer recused himself because he has a family member that lives in the association. Commissioner Niggemeyer stated that his family member has discussed the associations issues with him.

Parties Present

Senior Deputy Attorney General Michelle Briggs was present representing the Division. Adam Clarkson and John Aylor, counsel representing the association and individual respondents were present.

Opening Statements

Ms. Briggs gave an opening statement.
Mr. Clarkson gave an opening statement.
Ms. Briggs gave a rebuttal.
Mr. Clarkson gave a rebuttal.

State Exhibits 1 were admitted into record.

State's Witness

Christina Pitch testified.

Ms. Briggs examined the witness.

Mr. Clarkson cross-examined the witness.

State's Witness

Levi Dickson testified.

Ms. Briggs examined the witness.

Ms. Briggs continued her examination of the witness.

Mr. Clarkson cross-examined the witness.

State's Witness

Lisa Kemp testified.

Ms. Briggs examined the witness.

Mr. Clarkson cross-examined the witness.

Closing Statements

Ms. Briggs gave a closing statement.

Mr. Clarkson gave a closing statement.

Commissioner Henderson asked Mr. Clarkson the process of voting in a homeowner's association election.

Mr. Clarkson stated that each association election is different. Mr. Clarkson stated that he represented an association where each vote was verified by a cross-check through county records. Mr. Clarkson stated that some associations don't have any challenges.

Commissioner Henderson stated that he does not feel that same effort is being made to identify other unit owners. Commissioner Henderson stated that sending the quick claim deed to the lender was malicious.

Chairman Burke asked Mr. Clarkson if the quick claim deed provided by Ms. Kemp to Mr. Dickson was legally binding.

Mr. Clarkson stated that the association is not taking a position on what is binding between Mr. Dickson and Ms. Kemp. Mr. Clarkson stated that the quick claim deed doesn't operate as notice to the association.

Chairman Burke stated that the mortgage loan is not binding to the association, but the association is taking a position.

Mr. Clarkson stated that the intention was if the mortgage holder stated Mr. Dickson was not an owner, the Division would close the case.

Commissioner Rizzi stated that contacting the mortgage company was harassment.

Commissioner Williams asked the Ombudsman for the process when an advisory opinion is requested.

Charvez Foger explained the process of receiving an advisory opinion.

Chairman Burke asked Ms. Briggs for the State's position on the self-nomination not completed by Mr. Dickson.

Ms. Briggs stated that the letter sent to Mr. Dickson from the association stated Mr. Dickson will not be recognized as a unit owner; therefore Mr. Dickson has no reason to complete a self-nomination form.

Chairman Burke stated that he believes this is a form of harassment and a threat.

Commissioner Woods stated that the letter was sent to both Ms. Kemp and Mr. Dickson when there is no evidence that Ms. Kemp has done anything abusive.

Commissioner Woods moved to find that factual allegations three to twenty-two have been proven. Commissioner Rizzi seconds. Motion passed 5 to 2 with Commissioner Williams opposed and Commissioner Niggemeyer abstained.

Commissioner Rizzi moved that violations of law twenty-three through twenty-nine were proven. Seconded by Commissioner Layton. Motion passed 5 to 2 with Commissioner Williams opposed and Commissioner Niggemeyer abstained.

Chairman Burke asks Ms. Briggs for the State's recommendation for discipline.

Ms. Briggs stated that the association be ordered to accept an unrecorded deed unless the association has evidence that the grantor did not provide the deed. Ms. Briggs stated that Mr. Dickson be treated as a unit owner and afford all rights of a unit owner. Ms. Briggs stated that a fine be given to the association, not the individual board members, in the amount of \$2,000 plus the costs of the hearing in the amount of \$5,102.00.

Commissioner Layton stated that fining the association for relying on their legal professional sends the wrong message.

Commissioner Williams stated that when a board uses a professional, the board should not be fined for following the advice of the professional.

Chairman Burke stated that no fine should be issued to the association. Chairman Burke stated that this case is subject to statutory interpretation.

Commissioner Rizzi moves that unrecorded deeds be accepted by the association, that Levi Dickson be recognized as a unit owner, no fine be given to the association but the costs of the hearing in the amount of \$5,102.00 be paid to the Real Estate Division by January 1, 2019. Seconded by Commissioner Henderson. Motion passed 5 to 2 with Commissioner Layton opposed and Commissioner Niggemeyer abstained.

6) FOR POSSIBLE ACTION: DISCUSSION AND DECISION ON DATE, TIME, PLACE, AND AGENDA ITEMS FOR UPCOMING MEETING(S).

Commissioner Williams stated that he would like the State Controller agenda item on the next meeting agenda.

Chairman Burke stated that he would like the process of how complaints are chosen to be heard by the Commission be placed as an agenda item.

Teralyn Thompson presented the dates for the 2019 Commission meetings. The Commission agreed to the following dates

- March 12-14, 2019 in the South.
- June 4-6, 2019 in the South.
- September 17-19, 2019 in the North.
- December 3-5, 2019 in the South.

7) Public Comment

In Las Vegas: Tim Stebbins, a resident of Sun City Anthem, commented on the board relying on professional opinions. Mr. Stebbins stated that the board has a responsibility to consider the opinion of the professional based on the facts. Mr. Stebbins stated that the board needs to be cautious and not automatically accept the opinion of the professional.

Levi Dickson commented regarding the difficulty of filing a complaint with the Division. Mr. Dickson stated that it might be helpful if an education person could oversee the complaints and explain the process to the complainant.

Commissioner Layton commented on asphalt replacement in the reserve study and funding.

8) For possible action: Adjournment

Meeting adjourned on November 6, 2018 at 4:21 p.m.

Respectfully,

Samuel Williams
Commission Coordinator