

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

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS &
INDUSTRY, STATE OF
NEVADA,

Petitioner,

vs.

VISTANA CONDOMINIUM OWNERS
ASSOCIATION, LARRY FITCH,
ANTHONY KNELP, LYNN WILLIAMS;
and ARDYCE NELSON,

Respondents.

Case No. 2015-3373

FILED

SEP 19 2017

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry, State of Nevada (the "Commission"), during a regular agenda on August 29 and 30, 2017, at the Legislative Building, 401 South Carson Street, Room 3137, Carson City, Nevada 89701, with video conferencing to: Grant Sawyer Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada 89101 (the "Hearing"). Vistana Condominium Owners Association, Larry Fitch, Anthony Knelp, Lynn Williams and Ardyce Nelson (the "Respondents") were represented by their attorney of record, Richard Haskin. Anthony Knelp appeared in person. Peter Keegan, Esq., Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"). Commissioner Layton did not attend the Hearing.

After hearing the allegations, the respective arguments, and having considered the evidence introduced by the parties, including the testimony of Anthony Knelp and Lynn Blaylock for the Respondents and Christina Pitch for the Division, and being fully advised, the Commission enters the following Findings of Fact, Conclusions of Law, and

1 Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)
2 Chapter 116, the Commission has legal jurisdiction and authority over this matter.

3 **FINDINGS OF FACT**

4 The Commission, by a vote of 6-0, based on the evidence presented during the
5 Hearing, finds that by a preponderance of the evidence in the record the following facts
6 have been proven:

7 1. During the relevant times mentioned in the complaint, RESPONDENTS
8 LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS; and ARDYCE NELSON were
9 directors of VISTANA CONDOMINIUM OWNERS ASSOCIATION (the "Association"), a
10 common-interest community located in Las Vegas, Nevada.

11 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the
12 Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC")
13 (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the
14 Division, and the Commission for Common-Interest Communities pursuant to the
15 provisions of NRS 116.750.

16 3. In 2014, the Division received statements of fact against the community
17 manager for VISTANA CONDOMINIUM OWNERS ASSOCIATION (the "Association").

18 4. The complainants alleged the manager was unlawfully towing vehicles
19 within the Association.

20 5. In August of 2014, the Association completed a repaving project for its
21 parking areas.

22 6. Any vehicles parked within the repaving area were towed to a different
23 location within the Association.

24 7. The tow truck company billed the Association \$75 for each vehicle.

25 8. People looking to get their vehicles back were told by the Association's
26 manager to pay \$275 in exchange for the location of their car.

27 9. Some owners paid \$275 to find out where their car was, some owners
28 negotiated a lower fee, and some owners found their relocated cars on their own.

1 10. During its investigation, the Division requested that the Association and its
2 board members respond to allegations of potential violations of law and to provide
3 documents regarding the towing of the vehicles.

4 11. The Division received one affidavit from a board member, Robert Rijke, who
5 said he did not know about the towing and did not participate in any action to approve
6 the towing of cars in the Association.

7 12. The Division did not receive an adequate response to its requests from any
8 other board member and opened an investigation against the Association and its board
9 members.

10 13. The Division sent the Association and the Respondent board members three
11 separate letters requesting a response to the allegation that the towing was unlawful and
12 requested Association records.

13 14. The Division received no response to the three letters.

14 15. According to meeting minutes from a board meeting in August of 2015, the
15 manager informed the board that 30 vehicles had been towed for the resurfacing project
16 in 2014, and the Association collected a total of \$4,375 which was placed in the
17 Association's operating account.

18 16. The Division received the minutes from the Association through a separate
19 investigation.

20 17. According to the tow truck company's records, there were 84 vehicles towed
21 at the direction of the Association.

22 18. The tow truck company used by the Association was sanctioned by the
23 Nevada Transportation Authority (NTA) which found it had violated three separate
24 regulations multiple times for a total of 178 counts.

25 19. In the proceedings before the NTA, the tow truck company, Quality Towing,
26 argued that the tows were consensual since the Association was the agent for the owners
27 of the vehicles.

28 20. Finding no such agency relationship existed, the NTA order states:

1 Vistana destroyed any possible claim of agency when it acted decidedly
2 contrary to the vehicle owners' interests by concealing the location of the
3 relocated vehicles and demanding a "ransom" be paid in an amount nearly
4 fourfold the amount Vistana was charged by Quality for the relocations. The
Authority declines to extend the term "agent" in the towing context to
include a hostile, "adverse" purported agent such as the HOA in this matter.

5 21. The Division sent a final letter to the RESPONDENTS to notify them that a
6 complaint would be filed with the Commission.

7 22. The Association's manager, Rosario Orozco, provided a sworn affidavit to the
8 Division.

9 23. Ms. Orozco states that the board decided it would charge an additional \$200
10 for the towing.

11 24. Ms. Orozco also stated that she advised the board that they needed to follow
12 the hearing process, "but they knew there was no way they would get their fines, if they
13 went through the hearing process."

14 CONCLUSIONS OF LAW

15 Based on the foregoing factual findings, the Commission concludes by a 6-0 vote
16 that the following violations of law occurred:

17 25. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS,
18 and ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC
19 116.405(3)) by failing to act in the best interests of the association by committing an act
20 or omission which amounts to incompetence, negligence or gross negligence.

21 26. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS,
22 and ARDYCE NELSONR knowingly and willfully violated NRS 116.3103 (through NAC
23 116.405(7)) by failing to act in the best interests of the association by failing to cooperate
24 with the Division in resolving complaints filed with the Division.

25 27. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS,
26 and ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC
27 116.405(5)(a)) by failing to act in the best interests of the association by impeding or
28

1 otherwise interfering with an investigation of the Division by failing to comply with a
2 request by the Division to provide information or documents.

3 28. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS,
4 and ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC
5 116.405(5)(c)) by failing to act in the best interests of the association by impeding or
6 otherwise interfering with an investigation of the Division by concealing facts or
7 documents relating to the business of the association.

8 29. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS,
9 and ARDYCE NELSON knowingly and willfully violated NRS 116.3103 (through NAC
10 116.405(8)(l)) by failing to act in the best interests of the association by failing to cause
11 the association to cooperate with the Division in resolving complaints filed with the
12 Division.

13 30. RESPONDENTS violated NRS 116.31031 by allowing their manager to
14 impose fines against owners or tenants without an opportunity to cure, or a hearing.

15 31. RESPONDENTS violated NRS 116 84 times by allowing the removal of
16 vehicles within the Association without complying with NRS 116.3102(1)(s) or NRS
17 487.038.

18 ORDER

19 The Commission being fully apprised in the premises, and good cause appearing to
20 the Commission, by a 6-0 vote, Orders as follows:

21 1. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS,
22 and ARDYCE NELSON shall each, individually pay an administrative fine totaling
23 \$5,128.40 to the Division on or before January 1, 2018. The fine due from each board
24 member Respondent is comprised of a fine for the violations of law totaling \$2,500, plus
25 costs of \$10,513.58 (representing the total amount due for the Division's attorney's fees and
26 costs, divided equally among the four board member Respondents).

27 2. RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS,
28 and ARDYCE NELSON shall report to the Commission no later than the Commission's

1 March 2018 meeting with the status of their payment of the administrative fine.

2 3. RESPONDENT board members currently seated or re-elected shall complete 9
3 hours of board education classes offered by the Division no later than August 30, 2018 and
4 shall verify completion of this education requirement with the Commission.

5 4. Failure of RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN
6 WILLIAMS, and ARDYCE NELSON to satisfy the requirements of this Order will result in
7 removal from the Association's board.

8 5. The Association shall make full restitution to the owners of vehicles
9 improperly towed during the August 2014 resurfacing project, and shall report its progress
10 to the Commission no later than the Commission's March 2018 meeting.

11 6. The Division may institute debt collection proceedings against
12 RESPONDENTS LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS, and ARDYCE
13 NELSON for failure to timely pay the total fine. Further, if collection goes through the State
14 of Nevada, then such RESPONDENT(S) shall also pay the costs associated with collection.

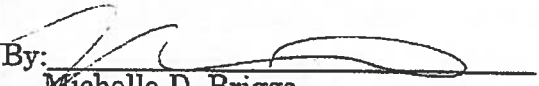
15 Dated: September 19TH, 2017.

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

18
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Michael Burke, Chairman

20 Submitted by:

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