

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,

8 vs.

9 Thomas Kelly,

10                  Respondent.

Case Nos. 2018-395

**FILED**

APR 01 2019

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS



11                   **STIPULATION AND ORDER FOR  
12                   SETTLEMENT OF DISCIPLINARY ACTION**

13                  Petitioner, Real Estate Division of the Department of Business and Industry, State of  
14 Nevada (the "Division"), through its Administrator, Sharath Chandra, and Respondent,  
15 Thomas Kelly enter into this STIPULATION AND ORDER FOR SETTLEMENT OF  
16 DISCIPLINARY ACTION ("Stipulation and Order") as follows.

17                   **JURISDICTION**

18                  1.       During all relevant times mentioned in the complaint, KELLY held, and  
19 currently holds, a supervisory community manager certificate from the Division  
20 (CAM.000025.SUPR) and is, therefore, subject to the jurisdiction of the Division and the  
21 provisions of NRS Chapters 116 and 116A and NAC Chapters 116 and 116A.

22                   **FACTUAL ALLEGATIONS ALLEGED IN THE COMPLAINT**

23                  2.       Beginning in December 2017, the Division opened three investigations against  
24 Riverwalk Homeowners Association (the "Association") based on complaints filed with the  
25 Division and began requesting documents from its community manager, RESPONDENT  
26 THOMAS KELLY.

27                  3.       After receiving three letters from the Division, on or about January 29, 2018,  
28 KELLY called the investigator and asked for an extension to February 2, 2018, which was  
given.

1 4. The Division received no response and sent a fourth letter dated February 21,  
2 2018.

3 5. Receiving no response to the fourth letter, the Division opened this  
4 investigation against KELLY for impeding the Division's investigation.

5 6. The Division sent letters dated April 5, 2018, June 6, 2018, and September 7,  
6 2018 to RESPONDENT to as many addresses as the investigator could find, but received no  
7 response.

8 **VIOLATIONS OF LAW**  
9 **ALLEGED IN THE COMPLAINT**

10 7. KELLY violated NRS 116A.630(10) and NAC 116A.320 by failing to cooperate  
11 with the Division in resolving complaints filed with the Division.

12 8. KELLY violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding or  
13 otherwise interfering with an investigation of the Division by failing to comply with a  
14 request of the Division to provide documents.

15 9. KELLY violated NRS 116A.640(2)(c) and NAC 116A.345(2)(c) by impeding or  
16 otherwise interfering with an investigation of the Division by concealing facts or documents  
17 relating to the business of a client.

18 10. KELLY violated NAC 116A.355(2)(f) by committing an act of unprofessional  
19 conduct by failing to cooperate with the Division in the investigation of a complaint  
20 including, without limitation, failure to produce any document, book or record in the  
21 possession or control of the community manager after the Division requests the production  
22 of such document, book or record in the course of an investigation of a complaint.

23 11. KELLY violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by  
24 committing professional incompetence by demonstrating a significant lack of ability,  
25 knowledge or fitness to perform a duty or obligation owed to a client.

26 12. KELLY violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by  
27 committing professional incompetence by failing to exercise reasonable skill and care with  
28 respect to a duty or obligation owed to a client.

1           13.   KELLY violated NAC 116A.355(1)(a)(1) and (2) (through NAC 116A.355(4)(g))  
2 by committing unprofessional conduct or professional incompetence by failing to act in the  
3 best interests of the Association.

4           14.   KELLY violated NRS 116A.630(1)(a) and NAC 116A.320 by failing to act as a  
5 fiduciary in his relationship with the Association.

6           15.   KELLY violated NRS 116A.630(1)(b) and NAC 116A.320 by failing to exercise  
7 ordinary and reasonable care in the performance of his duties.

8           16.   KELLY violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to comply  
9 with state laws.

10   **DISCIPLINE AUTHORIZED**

11           Pursuant to the provisions of NAC 116A.360 the Commission has discretion to impose  
12 discipline as it deems appropriate, including, but not limited to one or more of the following  
13 actions:

- 14           1.    Revoke or suspend the certificate;
- 15           2.    Refuse to renew or reinstate the certificate;
- 16           3.    Place the community manager on probation;
- 17           4.    Issue a reprimand or censure to the community manager;
- 18           5.    Impose a fine of not more than \$5,000 for each violation of a statute or  
19 regulation;
- 20           6.    Require the community manager to pay restitution;
- 21           7.    Require the community manager to pay the costs of the investigation and  
22 hearing;
- 23           8.    Require the community manager to obtain additional education relating to the  
24 management of common-interest communities; and
- 25           9.    Take such other disciplinary action as the Commission deems appropriate.

26           The Commission may order one or any combination of the discipline described above.

27   **SETTLEMENT**

- 28           17.   KELLY shall pay an administrative fine in the amount of \$5,000. Payment of

1 the fine shall be due 30 days from the date this Stipulation and Order is signed by the  
2 Commission. The fine shall bear interest at the rate of 5.5% per annum beginning on the  
3 day after it becomes due. KELLY shall be in default of the terms of this Stipulation and  
4 Order if the fine is not paid in full within 90 days from the date this Stipulation and Order  
5 is signed by the Commission.

6 18. KELLY shall complete 10 hours of continuing education in courses approved by  
7 the Commission within 6 months from the date this Stipulation and Order is signed by the  
8 Commission.

9 19. The Division agrees not to pursue any other or greater remedies or fines in  
10 connection with KELLY'S alleged conduct referenced herein.

11 20. KELLY and the Division agree that once this Stipulation is approved and fully  
12 complied with by KELLY, the Division will close this matter.

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

18 22. KELLY agrees that if the terms and conditions of this Stipulation and Order  
19 are not met, the Division may, at its option, rescind this agreement and proceed with  
20 prosecuting the Complaint before the Commission.

21 23. KELLY agrees and understands that by entering into this Stipulation and  
22 Order, KELLY is waiving his right to a hearing at which KELLY may present evidence in  
23 his defense, his right to a written decision on the merits of the Complaint, his right to  
24 reconsideration and/or rehearing, appeal and/or judicial review, and all other rights which  
25 may be accorded by the Nevada Administrative Procedure Act, the Nevada Uniform  
26 Common-Interest Ownership Act and accompanying regulations, and the federal and state  
27 constitutions. KELLY understands that this Stipulation and Order and other  
28 documentation may be subject to public records laws. The Commission members who review

1 this matter for approval of this Stipulation and Order may be the same members who  
2 ultimately hear, consider and decide the Complaint if this Stipulation and Order is not  
3 performed by KELLY.

4 24. Each party shall bear its own attorney's fees and costs.


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

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

19 27. Indemnification. RESPONDENT KELLY hereby indemnifies and holds  
20 harmless the State of Nevada, the Department of Business and Industry, the Division, and  
21 each of their respective members, agents, employees and counsel in their individual and  
22 representative capacities against any and all claims, suits, and actions brought against said  
23 persons and/or entities related to the Release set forth above, including against any and all  
24 expenses, damages, and costs, including court costs and attorney fees, which may be  
25 sustained by the persons and/or entities named in this section as a result of said claims,  
26 suits, and actions.

27 28. KELLY has signed and dated this Stipulation only after reading and  
28 understanding all terms herein.

1 Real Estate Division,  
2 Department of Business & Industry,  
3 State of Nevada

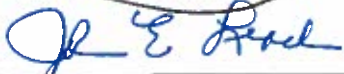
  
Thomas Kelly

3 By: \_\_\_\_\_  
4 Sharath Chandra, Administrator

5 Approved by:

6 AARON FORD  
7 Attorney General

8 By: \_\_\_\_\_  
9 Michelle D. Briggs  
10 Senior Deputy Attorney General  
11 555 E. Washington Ave. Ste 3900  
12 Las Vegas, Nevada 89101  
13 (702) 486-3420  
14 Attorneys for Real Estate Division

By:   
John E. Leach, Esq.  
Leach, Kern, Gruchow  
2525 Box Canyon Drive  
Las Vegas, Nevada 89128  
Attorney for Thomas Kelly

14 IT IS ORDERED that the foregoing STIPULATION AND ORDER FOR  
15 SETTLEMENT OF DISCIPLINARY ACTION is approved in full.

16  
17 DATED: March \_\_\_\_\_, 2019.

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

22 By: \_\_\_\_\_  
23 Michael Burke, Chairman  
24  
25  
26  
27  
28

1 DATED: March 20, 2019.

DATED: March \_\_\_\_, 2019.


2 Real Estate Division,  
3 Department of Business & Industry,  
4 State of Nevada

Thomas Kelly

5 By:   
Sharath Chandra, Administrator

6 Approved by:

7 AARON FORD  
8 Attorney General

9 By:   
10 Michelle D. Briggs  
11 Senior Deputy Attorney General  
12 555 E. Washington Ave. Ste 3900  
Las Vegas, Nevada 89101  
(702) 486-3420  
Attorneys for Real Estate Division

By: \_\_\_\_\_  
John E. Leach, Esq.  
Leach, Kern, Gruchow  
2525 Box Canyon Drive  
Las Vegas, Nevada 89128  
Attorney for Thomas Kelly

13  
14  
15 IT IS ORDERED that the foregoing STIPULATION AND ORDER FOR  
16 SETTLEMENT OF DISCIPLINARY ACTION is approved in full.

17  
18 DATED: March \_\_\_\_, 2019.

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

23 By: \_\_\_\_\_  
24 Michael Burke, Chairman

1 DATED: March 20, 2019.

DATED: March \_\_, 2019.


2 Real Estate Division,  
3 Department of Business & Industry,  
4 State of Nevada

Thomas Kelly

5 By:   
Sharath Chandra, Administrator

6 Approved by:

7 AARON FORD  
8 Attorney General

9 By:   
10 Michelle D. Briggs  
11 Senior Deputy Attorney General  
12 555 E. Washington Ave. Ste 3900  
13 Las Vegas, Nevada 89101  
14 (702) 486-3420  
15 Attorneys for Real Estate Division

By: \_\_\_\_\_  
16 John E. Leach, Esq.  
17 Leach, Kern, Gruchow  
18 2525 Box Canyon Drive  
19 Las Vegas, Nevada 89128  
20 Attorney for Thomas Kelly

21 IT IS ORDERED that the foregoing STIPULATION AND ORDER FOR  
22 SETTLEMENT OF DISCIPLINARY ACTION is approved in full.

23 DATED: March 22, 2019.

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

28 By:  VICE CHAIR  
for Michael Burke, Chairman