

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,

Case No. 2019-100

FILED

JUN 20 2019

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

7 Petitioner,
8 vs.
9 Russell Powers,
10 Respondent.

11 **STIPULATION AND ORDER**

12 **FOR SETTLEMENT OF DISCIPLINARY ACTION**

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

17 During all relevant times mentioned in this complaint, POWERS held, and currently
18 holds, a community manager certificate from the Division (CAM.0000030) and is, therefore,
19 subject to the jurisdiction of the Division and the provisions of NRS Chapters 116 and 116A
20 and NAC Chapters 116 and 116A.

21 **STIPULATED FACTS**

22 1. The Division received a complaint against Mountain Gate Homeowners
23 Association (the "Association") alleging that a board member participated in opening
24 ballots for an election and that the ballots were opened outside the meeting room.

25 2. RESPONDENT RUSSELL POWERS worked for Prime Community
26 Management, LLC ("Prime"), and was the community manager for the Association.

27 3. POWERS attended the Association's December 2017 election meeting.

28 4. A homeowner who attended the election meeting observed POWERS allow a
board member access to the unopened ballots by allowing her to observe the opening and
counting of the ballots.

1 5. The opening and counting of the ballots was done in a hallway adjoining the
2 room where the meeting was taking place.

3 6. Once the ballots were opened and counted, the board member entered the
4 meeting room and the results were read aloud.

5 7. The Division initiated an investigation against POWERS.

6 8. The Association's attorney responded on behalf of POWERS saying owners
7 could have left the meeting room and entered the hallway to watch the opening and
8 counting of the ballots.

9 9. No explanation was provided for why the ballots were opened and counted in
10 the hallway outside the meeting.

11 10. The Association's attorney also said volunteers were solicited and only two
12 people volunteered resulting in a board member assisting in the opening and counting of
13 the ballots.

14 11. Two homeowners participated in and one director observed the opening and
15 counting of the ballots.

16 12. The complainant provided the Division with a recording of the meeting.

17 13. Multiple owners are heard in the audio asking questions about Association
18 issues relating to landscaping and maintenance.

19 14. POWERS is heard in the audio responding to owner questions while the
20 ballots are being opened and counted outside the meeting room.

21 15. The complainant is heard in the audio questioning whether a current board
22 member is allowed to participate in the opening and counting of the ballots.

23 16. The board member says the law only applies to candidates, and POWERS is
24 not heard responding at all.

25 17. Prior to filing a complaint with the Division, the homeowner questioned Prime
26 regarding allowing the board member to observe the opening and counting of the ballots.

27 18. Community Manager April Parsons, president of Prime, responded that
28 POWERS was "unaware" of the law, but "[h]e is aware now and this will not occur in the

1 future.”

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

3 19. POWERS violated NRS 116A.630(1)(b) by failing to exercise ordinary and
4 reasonable care in the performance of his duties for the Association.

5 20. POWERS violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to
6 comply with state laws.

7 21. POWERS violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(a)(3)) by
8 committing an act of unprofessional conduct by allowing a board member to participate in
9 the opening and counting of the ballots for an election in violation of NRS 116.31034(15)(f).

10 22. POWERS violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(a)(3)) by
11 committing an act of unprofessional conduct by allowing the opening and counting of the
12 ballots for an election outside the meeting of the association in violation of NRS
13 116.31034(15)(e).

14 23. POWERS violated NAC 116A.355(1)(a)(1) and (2) (through NAC
15 116A.355(4)(f)) by committing acts of unprofessional conduct and professional
16 incompetence by failing to keep informed of current statutes and regulations relating to
17 common-interest communities and relating to other areas in which he attempts to provide
18 guidance.

19 24. POWERS violated NAC 116A.355(1)(a)(3) by committing negligence or gross
20 negligence by allowing an election of the Association's board to take place in violation of
21 NRS 116.31034(15).

22 25. POWERS violated NAC 116A.355(3)(a) by committing acts of professional
23 incompetence by demonstrating a significant lack of ability, knowledge or fitness to perform
24 a duty or obligation owed to the Association.

25 26. POWERS violated NAC 116A.355(3)(b) by committing acts of professional
26 incompetence by failing to exercise reasonable skill and care with respect to a duty or
27 obligation owed to the Association.

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DISCIPLINE AUTHORIZED

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

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

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

SETTLEMENT

1. RESPONDENT shall pay an administrative fine in the amount of \$500 to the Division within 30 days of the date of this Stipulation and Order.

2. RESPONDENT shall complete 6 hours of continuing education approved by the Commission in areas of board member fiduciary duty and elections to be completed within 6 months from the date of this Stipulation and Order. The hours of continuing education agreed to as part of this Stipulation and Order may not be applied to any educational requirement to maintain RESPONDENT'S certificate for renewal purposes.

3. RESPONDENT and the Division agree that by entering into this Stipulation and Order, the Division does not concede any defense or mitigation RESPONDENT may assert and that once this Stipulation and Order is approved and fully performed, the

1 Division will close its file in this matter.

2 4. RESPONDENT agrees that if the terms and conditions of this Stipulation and
3 Order are not met, the Division may, at its option, rescind this Stipulation and Order and
4 proceed with prosecuting the Complaint before the Commission.

5 5. RESPONDENT agrees and understands that by entering into this Stipulation
6 and Order, RESPONDENT is waiving his right to a hearing at which RESPONDENT may
7 present evidence in his defense, his right to a written decision on the merits of the
8 Complaint, his right to reconsideration and/or rehearing, appeal and/or judicial review, and
9 all other rights which may be accorded by the Nevada Administrative Procedure Act, the
10 Nevada Uniform Common-Interest Ownership Act and accompanying regulations, and the
11 federal and state constitutions. RESPONDENT understands that this Stipulation and
12 Order and other documentation may be subject to public records laws. The Commission
13 members who review this matter for approval of this Stipulation and Order may be the
14 same members who ultimately hear, consider and decide the Complaint if this Stipulation
15 and Order is either not approved by the Commission or is not timely performed by
16 RESPONDENT. RESPONDENT fully understands that he has the right to be represented
17 by legal counsel in this matter at his own expense.

18 6. Each party shall bear its own attorney's fees and costs.

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

23 8. Release. In consideration of execution of this Stipulation and Order,
24 RESPONDENT for himself, his heirs, executors, administrators, successors, and assigns,
25 hereby releases, remises, and forever discharges the State of Nevada, the Department of
26 Business and Industry and the Division, and each of his respective members, agents,
27 employees and counsel in their individual and representative capacities, from any and all
28 manner of actions, causes of action, suits, debts, judgments, executions, claims, and

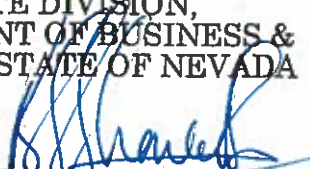
1 demands whatsoever, known and unknown, in law or equity, that the RESPONDENT ever
2 had, now have, may have, or claim to have, against any or all of the persons or entities
3 named in this section, arising out of or by reason of the Division's investigation, this
4 disciplinary action, and all other matters relating thereto.

5 9. Indemnification. RESPONDENT hereby indemnifies and holds harmless the
6 State of Nevada, the Department of Business and Industry, the Division, and each of their
7 respective members, agents, employees and counsel in their individual and representative
8 capacities against any and all claims, suits, and actions brought against said persons and/or
9 entities by reason of the Division's investigation, this disciplinary action and all other
10 matters relating thereto, and against any and all expenses, damages, and costs, including
11 court costs and attorney fees, which may be sustained by the persons and/or entities named
12 in this section as a result of said claims, suits, and actions.

13 10. RESPONDENT has signed and dated this Stipulation and Order only after
14 reading and understanding all terms herein.

15 DATED: 6/03/, 2019.

16 REAL ESTATE DIVISION,
17 DEPARTMENT OF BUSINESS &
18 INDUSTRY, STATE OF NEVADA

19 By: 
20 Sharath Chandra, Administrator
21 3300 W. Sahara Avenue, Suite 350
22 Las Vegas, Nevada 89104
23 (702) 486-4033

24 DATED: 5/31/, 2019.

25 
26 Russell Powers
27
28

1 **ORDER**

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

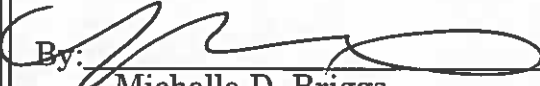
4 Dated: June 4, 2019.

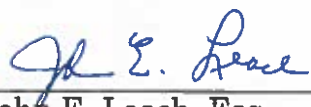
5 Commission for Common-Interest
6 Communities and Condominium Hotels,
7 Department of Business & Industry,
8 State of Nevada

9 By: 
Michael Burke, Chairman

10 Submitted by:

11 AARON FORD, Attorney General

12 By: 
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