

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 Petitioner,

8 vs.

9 Sherryl Baca,

10 Respondent.

Case Nos. 2018-812 and 2018-660

FILED

JUL 29 2019

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS



11 **COMPLAINT FOR DISCIPLINARY**
12 **ACTION AND NOTICE OF HEARING**

13 The Real Estate Division of the Department of Business and Industry, State of
14 Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of
15 the State of Nevada, and Michelle D. Briggs, Esq., Senior Deputy Attorney General,
16 hereby notifies Respondent Sherryl Baca ("RESPONDENT" or "BACA") of an
17 administrative hearing before the Commission for Common-Interest Communities and
18 Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B
19 and Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116
20 and 116A of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to
21 consider the allegations stated below and to determine if an administrative penalty will
22 be imposed on the RESPONDENT pursuant to the provisions of NRS and NAC including,
23 but not limited to, NAC 116A.360.

24 **JURISDICTION AND NOTICE**

25 1. During all relevant times mentioned in this complaint, BACA held a
26 supervisory community manager certificate from the Division (CAM.0001439-SUPR) and
27 is, therefore, subject to the jurisdiction of the Division and the provisions of NRS
28 Chapters 116 and 116A and NAC Chapters 116 and 116A.

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1 **FACTUAL ALLEGATIONS**

2 2. On or about May 15, 2018, the Division received a Statement of Fact against
3 RESPONDENT SHERRYL BACA filed by the manager of South Valley Ranch
4 Homeowners Association (the "Association"), Lisa Carrion.

5 3. On or about October 1, 2017, Ms. Carrion took possession of the Association
6 files provided by BACA, the Association's prior manager.

7 4. Ms. Carrion alleged documents turned over to her from BACA were not in
8 any order and that documents were missing.

9 5. The complaint states the Association's records included records from other
10 associations managed by BACA.

11 6. Ms. Carrion said she was investigating – at the board's request –
12 construction defect work done in 2010 based on proceeds the Association received from a
13 lawsuit.

14 7. On or about April 4, 2018, Ms. Carrion prepared a list of the missing items
15 and sent it to BACA by certified mail.

16 8. BACA did not respond to Ms. Carrion.

17 9. At this same time, Association board members contacted the Division about
18 checks signed by BACA for construction defect repairs, her authority to sign checks and
19 their concern that the costs were excessive.

20 10. The Association approved a settlement amount of \$675,000 in 2010 while
21 BACA was the Association's manager.

22 11. The Association's construction defect account shows a deposit of \$350,000 in
23 August 2010.

24 12. The Division opened two separate investigations based on the two
25 complaints.

26 13. The Association's records do not include a management contract for the
27 years the construction defect funds were used.

28 14. The Association's records include a management agreement from 2008 which

1 expired on June 30, 2009 and contained an automatic annual renewal.

2 15. In 2009, NRS 116A.620 was enacted which prohibits management contracts
3 from containing an automatic renewal provision.

4 16. The 2008 management contract allowed BACA to sign checks for “utilities,
5 taxes, insurance premiums, contract fees, minor repairs, supplies and other regularly
6 recurring expenses.”

7 17. The Association’s records include a management contract from 2014 and
8 2017, neither contract allows BACA to sign checks and specifically requires signatures of
9 2 board members.

10 18. The Division subpoenaed bank records, but the bank could not provide all
11 the records requested.

12 19. In 2011 and 2012, BACA signed checks from the Association’s construction
13 defect account, including one that was only signed by her.

14 20. In 2011, 2012 and 2013, BACA signed checks from the Association’s
15 operating account.

16 21. The Association has only draft minutes for 2010, 2011 and 2013.

17 22. Based on the draft minutes in 2010, a contractor, Robert Orlando, was hired
18 to paint 26 mailboxes.

19 23. The Association paid Robert Orlando over \$63,000 from the construction
20 defect funds.

21 24. The address on the check to Robert Orlando is BACA’s office address.

22 25. Due to a lack of records, current board members are unable to determine the
23 extent of the construction defect work and whether unfinished repair work should be part
24 of future repairs.

25 26. The current board is also concerned about construction defect funds being
26 used for non-construction defect repairs.

27 27. Funds from the construction defect account were paid to a contractor in
28 2013, although the board never discussed hiring the vendor according to the draft

1 minutes from 2013 and the charges do not appear to be for construction defects.

2 28. The Division sent letters to BACA dated May 18, 2018, June 6, 2018, and
3 June 26, 2018 before BACA first responded on June 29, 2018 about the missing
4 Association records.

5 29. BACA's affidavit provided on or about August 1, 2018 states that the
6 procedure for construction defect checks was that the construction manager approved the
7 invoices and once approved "our company would cut the checks and sent those checks
8 back to the construction manager for signing and disbursement. I would go in and sign
9 the check and a board member would go in separately and sign the check."

10 30. In response to the final notice by the Division, BACA provided a letter dated
11 January 25, 2019 that says her contract gave her authority to sign checks and the
12 procedure was that she would sign first and then provide them to a board member for the
13 second signature.

14 31. BACA states:

15 This procedure as well as proof of my authority to sign checks for the
16 community can be validated by any of the board members who served while I
was managing the community.

17 32. The Association's former president, Ronald Beach, who served while BACA
18 was the manager, provided the following statement to the Division:

19 Generally speaking our community manager Sherryl Baca, was, by board
20 consent, not supposed to sign any checks.

21 VIOLATIONS OF LAW

22 33. BACA violated NRS 116A.630(1)(a) and NAC 116A.320 by failing to act as a
23 fiduciary in her relationship with the Association.

24 34. BACA violated NRS 116A.630(1)(b) and NAC 116A.320 by failing to exercise
25 ordinary and reasonable care in the performance of her duties.

26 35. BACA violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to comply
27 with state laws.

28 36. BACA violated NRS 116.630(6)(a) by failing to ensure at all times that the
financial transactions of the Association were current, accurate and properly documented.

1 37. BACA violated NRS 116A.640(2)(b) and NAC 116A.345(2)(b) by impeding or
2 otherwise interfering with an investigation of the Division by supplying false or
3 misleading information to an investigator of the Division.

4 38. BACA violated NRS 116A.640(2)(c) and NAC 116A.345(2)(c) by impeding or
5 otherwise interfering with an investigation of the Division by concealing facts or
6 documents relating to the business of the Association.

7 39. BACA violated NRS 116A.620 and NAC 116A.325 by performing community
8 management services for the Association without a signed management contract from
9 2010 to 2014.

10 40. BACA violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(i)) by
11 committing unprofessional conduct by exceeding the authority granted to her by the
12 Association.

13 41. BACA violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by
14 committing professional incompetence by demonstrating a significant lack of ability,
15 knowledge or fitness to perform a duty or obligation owed to a client.

16 42. BACA violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by
17 committing professional incompetence by failing to exercise reasonable skill and care with
18 respect to a duty or obligation owed to a client.

19 43. BACA violated NAC 116A.355(1)(a)(1) and (2) (through NAC 116A.355(4)(g))
20 by committing unprofessional conduct or professional incompetence by failing to act in
21 the best interests of the Association.

22 **DISCIPLINE AUTHORIZED**

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

- 26 1. Revoke or suspend the certificate;
- 27 2. Refuse to renew or reinstate the certificate;
- 28 3. Place the community manager on probation;

1 were true. If you need to negotiate a more specific time for your hearing in advance
2 because of coordination with out of state witnesses or the like, please call Jan Unger,
3 Commission Coordinator, at (702) 486-4606.

4 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is an
5 open meeting under Nevada's open meeting law, and may be attended by the public.
6 After the evidence and arguments, the commission may conduct a closed meeting to
7 discuss your alleged misconduct or professional competence. The proceeding will be audio
8 recorded. You are entitled to a copy of the transcript of the open and closed portions of the
9 meeting, although you must pay for the transcription.

10 As a RESPONDENT, you are specifically informed that you have the right to
11 appear and be heard in your defense, either personally or through your counsel of choice.
12 At the hearing, the Division has the burden of proving the allegations in the complaint
13 and will call witnesses and present evidence against you. You have the right to respond
14 and to present relevant evidence and argument on all issues involved. You have the right
15 to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses
16 on any matter relevant to the issues involved.

17 You have the right to request that the Commission issue subpoenas to compel
18 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
19 you may be required to demonstrate the relevance of the witness's testimony and/or
20 evidence. Other important rights and obligations, including your obligation to answer the
21 complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter
22 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A. Note that under NAC
23 116A.585, not less than five (5) working days before a hearing, RESPONDENT must
24 provide to the Division a copy of all reasonably available documents that are reasonably
25 anticipated to be used to support his or her position, and a list of witnesses
26 RESPONDENT intends to call at the time of the hearing. Failure to provide any
27 document or to list a witness may result in the document or witness being excluded from
28 RESPONDENT'S defense. The purpose of the hearing is to determine if the

1 RESPONDENT has violated any of the provisions of NRS and NAC Chapters 116 and
2 116A, and to determine what administrative penalty is to be assessed against
3 RESPONDENT, if any, pursuant to NAC 116A.360.

4 DATED: July 29 2019.

5 REAL ESTATE DIVISION,
6 DEPARTMENT OF BUSINESS & INDUSTRY,
7 STATE OF NEVADA

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