

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

3 Sharath Chandra, Administrator,
4 Real Estate Division, Department of
Business & Industry, State of Nevada,

Case No. 2018-952

5 Petitioner,

FILED

6 vs.

OCT 30 2019

7 Gerald Marks,

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

8 Respondent.

9
10 **COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING**

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

22 **JURISDICTION AND NOTICE**

23 1. During all relevant times mentioned in this complaint, RESPONDENT
24 GERALD MARKS held a supervisory community manager certificate from the Division
25 (CAM.0000086-SUPR) and is, therefore, subject to the jurisdiction of the Division and the
26 provisions of NRS Chapters 116 and 116A and NAC Chapters 116 and 116A. MARKS
27 certificate status is currently inactive.

28 ...

FACTUAL ALLEGATIONS

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2 2. In July of 2018, the Division received a complaint alleging MARKS
3 misrepresented information provided to the Division regarding Morgyn Ridge Homeowners
4 Association (the "Association").

5 3. The complaint was filed by a board member of the Association.

6 4. He alleged MARKS provided inaccurate information on the Reserve Study
7 Summary form.

8 5. On August 28, 2018, the Division properly gave notice to MARKS that it
9 opened an investigation to determine whether MARKS provided inaccurate information on
10 the Reserve Study Summary form submitted to the division on February 12, 2018.

11 6. At the time, MARKS owned MP Association Management, Inc., a Nevada
12 corporation and managed the Association.

13 7. The Association consists of 157 condominium units.

14 8. On or about February 12, 2018, MARKS submitted the Association's Reserve
15 Study Summary Form 609 to the Division based on the Association's most recent reserve
16 study dated January 23, 2018.

17 9. MARKS reported the "Required reserve account balance at end of current
18 fiscal year based upon this reserve study" was \$190,150.

19 10. MARKS reported the "Projected reserve account balance at the end of current
20 fiscal year end" was \$200,836.

21 11. The board member questioned MARKS on the numbers provided in the form
22 and provided a portion of the reserve study entitled "Useful Information to Assist with
23 filling out: Nevada Reserve Study Summary Form 609."

24 12. This form states that the "Required reserve account balance at end of current
25 fiscal year based upon this study" is \$856,163.

26 13. The reserve study states that the Association is 22% funded.

27 14. MARKS responded to the board member that the Association uses threshold
28 funding and no change to the Association's Reserve Study Summary Form 609 was

1 necessary.

2 15. In response to the Division's investigation, MARKS provided a statement
3 saying the Association uses threshold funding and that he completed the form correctly.

4 16. On September 12, 2018, the Division requested evidence that the Association
5 adopted threshold funding, as well as information on reserved maintenance performed and
6 deferred.

7 17. On October 5, 2018, the Association's attorney, Edward Boyack, responded on
8 behalf of MARKS, but instead of providing the requested records, he objected to the
9 investigation and the complaint.

10 18. The Division responded and ultimately, Mr. Boyack provided a letter stating
11 MARKS would correct Form 609 and provide minutes and audio where the board discussed
12 the funding method.

13 19. MARKS has not provided an updated Form 609 and he has not provided any
14 evidence that the Association adopted a threshold funding plan.

15 20. The Association's board did not adopt threshold funding as alleged by
16 MARKS.

17 VIOLATIONS OF LAW

18 1. MARKS violated NRS 116A.630(1)(a) by failing to act as a fiduciary in his
19 relationship with the Association when he misrepresented the Association's required
20 reserve funding under penalties of perjury.

21 2. MARKS violated NRS 116A.630(1)(b) by failing to exercise ordinary and
22 reasonable care in the performance of his duties.

23 3. MARKS violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to comply
24 with state laws.

25 4. MARKS violated NRS 116A.630(10) by failing to cooperate with the Division
26 in resolving the complaint against him.

27 5. MARKS violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding or
28 otherwise interfering with an investigation of the Division by failing to comply with a

1 request of the Division to provide documents.

2 6. MARKS violated NRS 116A.640(2)(b) by impeding or otherwise interfering
3 with an investigation of the Division by providing false or misleading information to an
4 investigator.

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

8 8. MARKS violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(f)) by
9 committing unprofessional conduct by failing to cooperate with the Division in the
10 investigation of a complaint including, without limitation, failure to produce any document,
11 book or record in the possession or control of the community manager after the Division
12 requests the production of such document, book or record in the course of an investigation
13 of a complaint.

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

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

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

23 **DISCIPLINE AUTHORIZED**

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

- 27 1. Revoke or suspend the certificate;
28 2. Refuse to renew or reinstate the certificate;

1 case as if all allegations in the complaint were true. If you need to negotiate a
2 more specific time for your hearing in advance because of coordination with out
3 of state witnesses or the like, please call Teralyn Lewis, Administration Section
4 Manager, at (702) 486-4036.

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

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

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

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

5 DATED: October, 28, 2019.

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7 REAL ESTATE DIVISION,
8 DEPARTMENT OF BUSINESS &
9 INDUSTRY, STATE OF NEVADA

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