

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. 2019-415

5 Petitioner,
6 vs.

FILED

OCT 30 2019

7 Rand Terkel,

8 Respondent.

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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,
14 hereby notifies RESPONDENT RAND TERKEL ("RESPONDENT" or "TERKEL") 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
17 and Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116
18 and 116A of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to
19 consider the allegations stated below and to determine if an administrative penalty will
20 be imposed on RESPONDENT pursuant to the provisions of NRS and NAC including, but
21 not limited to, NAC 116A.360.

22 **JURISDICTION AND NOTICE**

23 1. During all relevant times mentioned in this complaint, RESPONDENT
24 RAND TERKEL held, a supervising community manager certificate from the Division
25 (CAM.0000230-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.

27 2. TERKEL'S supervising community manager certificate expired on August
28 31, 2019 due to non-renewal.

1 **FACTUAL ALLEGATIONS**

2 3. Encanto Homeowners Association ("Encanto") is a planned community
3 located in Las Vegas, Nevada that has 83 units consisting of single family dwellings.

4 4. From approximately the summer of 2018 through March of 2019, Encanto
5 was managed by Rand Community Association Management, LLC, a Nevada limited
6 liability company ("Rand Management").

7 5. TERKEL was the owner and manager of Rand Management.

8 6. On or around January 1, 2019, RESPONDENT informed Encanto's board
9 members that Rand Management would no longer manage Encanto because Rand
10 Management was going out of business effective March 1, 2019.

11 7. Epic Association Management ("Epic") was succeeding Rand Management as
12 Encanto's community manager.

13 8. On or around March 4, 2019, TERKEL provided Epic with certain
14 homeowner's association items and documents to assist Epic in its succession as
15 Encanto's new community manager.

16 9. Tonya Gale, on behalf of Epic, signed and acknowledged the receipt of
17 certain items and documents provided by TERKEL on March 4, 2019, on a document
18 titled *Encanto HOA Transition* ("Transition List").

19 10. The Transition List provided by TERKEL failed to include all of Encanto's
20 association files and documents.

21 11. On or around March 21, 2019, Jeanine Rego ("Rego"), Accounting Supervisor
22 for Epic, emailed TERKEL and requested that he provide specific files and documents
23 (the "Requested Documents") that TERKEL failed to provide Epic.

24 12. TERKEL responded to Rego but stated that he had been locked out of his
25 software program that he had used to manage Encanto and did not have access to any of
26 the records.

27 13. On April 17, 2109, Epic filed a complaint with the Division alleging that
28 TERKEL had failed to provide Epic with the Requested Documents within the 30-day

1 period as required by Nevada law when a community management company succeeds a
2 prior community manager.

3 14. On May 9th, 2019, the Division notified TERKEL by certified mail that it was
4 opening an investigation regarding Epic's complaint.

5 15. The Division requested that TERKEL provide the Division with certain
6 documents including all homeowner account ledgers, homeowner violation ledgers, 2018
7 and 2019 detailed general ledgers, aged receivables as of 2/28/19, prepaids as of 2/28/19,
8 December 2018 and January 2019 financials, and a list of homeowners in collection, and
9 contact information for the respective collection companies (the "Division Requested
10 Documents").

11 16. On May 17, 2019, TERKEL responded to the Division claiming that he had
12 provided all association files that Rand Management had in its possession to Epic, but
13 that TERKEL was unable to provide the Division Requested Documents because
14 TERKEL's access to the software system he had used during the management of Encanto
15 was terminated due to his nonpayment.

16 17. TERKEL'S access to the software system was terminated as of February 25,
17 2019.

18 18. To date, TERKEL has failed to provide the Division with the Division
19 Requested Documents.

20 19. Despite TERKEL'S claim that he is unable to access the software system
21 Rand Management used during management of Encanto, TERKEL was required to have
22 those documents in his possession that would have been required to be generated in
23 performing his community manager duties for Encanto prior to his going out of business.

24 VIOLATIONS OF LAW

25 1. TERKEL violated NRS 116A.620(6) and NAC 116A.325(6) by failing to
26 provide Encanto's successor community manager with all books, records and other papers
27 within 30 days of the termination of Rand Management's community management
28 agreement.

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

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

5 4. TERKEL violated NRS 116A.630(10) and NAC 116A.320 by failing to
6 cooperate with the Division in resolving complaints filed with the Division.

7 5. TERKEL violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding
8 or otherwise interfering with an investigation of the Division by failing to comply with a
9 request of the Division to provide documents.

10 6. TERKEL violated NRS 116A.630(6)(a) and (b) by failing to ensure that the
11 financial documents of Encanto were current, accurate and properly documented and
12 designed to provide reasonable assurances in the reliability of the financial reporting.

13 7. TERKEL violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(f)) by
14 committing unprofessional conduct by failing to cooperate with the Division in the
15 investigation of a complaint including, without limitation, failure to produce any
16 document, book or record in the possession or control of the community manager after the
17 Division requests the production of such document, book or record in the course of an
18 investigation of a complaint.

19 8. TERKEL violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by
20 committing professional incompetence by demonstrating a significant lack of ability,
21 knowledge or fitness to perform a duty or obligation owed to a client.

22 9. TERKEL violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by
23 committing professional incompetence by failing to exercise reasonable skill and care with
24 respect to a duty or obligation owed to a client.

25 10. TERKEL violated NAC 116A.355(1)(a)(1) and (2) (through NAC
26 116A.355(4)(g)) by committing unprofessional conduct or professional incompetence by
27 failing to act in the best interests of the Association.

28

1 **DISCIPLINE AUTHORIZED**

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

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

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

19 **NOTICE OF HEARING**

20 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider
21 this Administrative Complaint against the above-named RESPONDENT in accordance
22 with Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116
23 and 116A of the Nevada Administrative Code.

24 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled
25 for December 3-5, 2019, beginning at approximately 9 a.m. each day, or until
26 such time as the Commission concludes its business. The Commission meeting
27 will be held at the Nevada State Business Center, 3300 W. Sahara Avenue,
28 Nevada Room, Suite 400, Las Vegas, Nevada 89102 with videoconferencing to

1 Division of Insurance, 1818 E. College Parkway, Ste. 103, Carson City, Nevada
2 89706.

3 **STACKED CALENDAR:** Your hearing is one of several hearings that may
4 be scheduled at the same time as part of a regular meeting of the Commission
5 that is expected to take place on December 3-5, 2019. Thus, your hearing may be
6 continued until later in the day or from day to day. It is your responsibility to
7 be present when your case is called. If you are not present when your hearing is
8 called, a default may be entered against you and the Commission may decide
9 the case as if all allegations in the complaint were true. If you need to negotiate
10 a more specific time for your hearing in advance because of coordination with
11 out of state witnesses or the like, please call Teralyn Lewis, Administration
12 Section Manager, at (702) 486-4036.

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

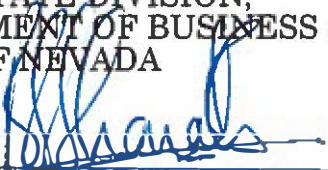
19 As a **RESPONDENT**, you are specifically informed that you have the right to
20 appear and be heard in your defense, either personally or through your counsel of choice.
21 At the hearing, the Division has the burden of proving the allegations in the complaint
22 and will call witnesses and present evidence against you. You have the right to respond
23 and to present relevant evidence and argument on all issues involved. You have the right
24 to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses
25 on any matter relevant to the issues involved.

26 You have the right to request that the Commission issue subpoenas to compel
27 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
28 you may be required to demonstrate the relevance of the witness's testimony and/or


1 evidence. Other important rights and obligations, including your obligation to answer the
2 complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter
3 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A. Note that under NAC
4 116A.585, not less than five (5) working days before a hearing, RESPONDENT must
5 provide to the Division a copy of all reasonably available documents that are reasonably
6 anticipated to be used to support his or her position, and a list of witnesses
7 RESPONDENT intends to call at the time of the hearing. Failure to provide any
8 document or to list a witness may result in the document or witness being excluded from
9 RESPONDENT'S defense. The purpose of the hearing is to determine if the
10 RESPONDENT has violated any of the provisions of NRS and NAC Chapters 116 and
11 116A, and to determine what administrative penalty is to be assessed against
12 RESPONDENT, if any, pursuant to NAC 116A.360.

13 DATED: October 28, 2019.

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

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