

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

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

Case Nos. 2017-1579 and 2018-136

5 Petitioner,

6 vs.

FILED

APR 30 2019

7 Sherryl Baca,

8 Respondent.

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

9
10 **AMENDED AND RESTATED COMPLAINT
11 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 files this Amended and Restated Complaint and Notice of Hearing pursuant to NAC
15 116.565 as follows. Respondent Sherryl Baca ("RESPONDENT" or "BACA") is notified of
16 the continuation of the hearing regarding this Complaint before the Commission for
17 Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be
18 held pursuant to Chapters 233B and Chapters 116 and 116A of the Nevada Revised
19 Statutes ("NRS") and Chapter 116 and 116A of the Nevada Administrative Code ("NAC").
20 The purpose of the hearing is to consider the allegations stated below and to determine if
21 an administrative penalty will be imposed on the RESPONDENT pursuant to the
22 provisions of NRS and NAC including, but not limited to, NAC 116A.360.

23 **JURISDICTION AND NOTICE**

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

28 ...

1 **FACTUAL ALLEGATIONS**

2 2. In January 2016, the Division's auditor requested documents from
3 RESPONDENT BACA as the manager for Cottonwood on Alexander Homeowners
4 Association (the "Association") for an audit.

5 3. The Association appeared to be underfunded in its reserves based on annual
6 registration filings, but no documents were provided by BACA as requested by the auditor.

7 4. The Division investigated the Association and requested certain financial
8 information.

9 5. Based on records provided by BACA, the Division requested additional
10 records, including her management contract with the Association.

11 6. After the second letter requesting the management contract, BACA requested
12 additional time to respond and was given until January 18, 2017.

13 7. The Division received no further response from BACA and sent two additional
14 letters to the Association through BACA.

15 8. In March through May, 2017, the Division sent emails and letters to BACA
16 requesting that she send her management contract.

17 9. BACA emailed the investigator saying she would provide the management
18 contract the first week of April. She did not.

19 10. In July 2017, the Division opened an investigation against BACA for impeding
20 the Division's investigation of the Association (Case No. 2017-1579) by failing to provide
21 her management contract.

22 11. The Division sent letters dated July 13, 2017, August 8, 2017, December 5,
23 2017, and March 29, 2018.

24 12. In July 2017, the Association hired a new manager. The new manager could
25 not find any management contracts in the Association's records.

26 13. The Association's records indicate BACA signed 259 checks from the
27 Association's operating and construction defect accounts in 2014, 2015, and 2016.

28 14. The Division opened a new investigation against BACA regarding her

1 authority to sign checks on behalf of the Association (Case No. 2018-136).

2 15. The Association's records also showed the 2014 and 2015 audits were ordered
3 in September 2016, and completed in June 2017.

4 16. None of the Association's regular board meeting minutes from 2014, 2015, and
5 2016 are signed.

6 17. The Division received an affidavit from BACA on March 30, 2018 saying:

7 Community Management & Sales has a continuous management contract in
8 place with Cottonwood on Alexander since 2004. We have been unable to
locate the signed contracts for the years 2014, 2015, and 2016...

9 18. The Division sent additional letters requesting the "continuous management
10 contract."

11 19. On May 25, 2018, BACA provided an additional affidavit and a copy of her
12 contract from 2006.

13 20. The 2006 contract states:

14 This Agreement shall commence on November 1, 2006 and continue in effect
15 until October 31, 2007 following which is [sic] shall automatically renew for
16 one (1) year periods, unless either party notifies the other of its intent to
terminate the contract at least thirty (30) days before the end of the one (1)
year term.

17 21. In 2009, NRS 116A.620 was enacted which prohibits management contracts
18 from containing an automatic renewal provision.

19 VIOLATIONS OF LAW

20 1. BACA violated NRS 116A.620 and NAC 116A.325 by performing community
21 management services for the Association without a signed management contract from 2010
22 to 2017.

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

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

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

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

3 6. BACA violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding or
4 otherwise interfering with an investigation of the Division by failing to comply with a
5 request of the Division to provide documents.

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

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

15 9. BACA violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(i)) by
16 committing unprofessional conduct by exceeding the authority granted to her by the
17 Association.

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

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

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

27 ...

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 above.

18 **NOTICE OF HEARING**

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

23 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled for June
24 4-6, 2019, beginning at approximately 9:00 a.m. each day, or until such time as the
25 Commission concludes its business. On June 4 and 5, 2019, the Commission meeting will
26 be held at the Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite
27 400, Las Vegas, Nevada 89102 with videoconferencing to Division of Insurance, 1818 E.
28 College Parkway, Carson City, Nevada 89706. On June 6, 2019, the Commission meeting

1 will be held at the Nevada State Business Center, 3300 W. Sahara Avenue, Tahoe Room,
2 Fourth Floor, Las Vegas, Nevada 89102, with videoconferencing to Division of Insurance,
3 1818 E. College Parkway, Carson City, Nevada 89706.

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

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

19 As a **RESPONDENT**, you are specifically informed that you have the right to appear
20 and be heard in your defense, either personally or through your counsel of choice. At the
21 hearing, the Division has the burden of proving the allegations in the complaint and will
22 call witnesses and present evidence against you. You have the right to respond and to
23 present relevant evidence and argument on all issues involved. You have the right to call
24 and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any
25 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 RESPONDENT
7 intends to call at the time of the hearing. Failure to provide any document or to list a
8 witness may result in the document or witness being excluded from RESPONDENT'S
9 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: April 29, 2019.

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

17 By: 

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

22 AARON D. FORD
23 Attorney General

24 By: 

25 Michelle D. Briggs, Esq.
26 Senior Deputy Attorney General
27 555 E. Washington Avenue, Suite 3900
28 Las Vegas, Nevada 89101
(702) 486-3420
Attorneys for the Division