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FILED

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NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS



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

14 Sharath Chandra, Administrator,
15 Real Estate Division, Department of
16 Business & Industry, State of Nevada,

17 Petitioner,

18 vs.

19 Los Verdes Community Association, Ruby
20 Consing, Sayeh Sadegh, Monica Blake, and
21 Mary Baumgartner,

22 Respondents.

Case No. 2018-1481

**RESPONDENT RUBY CONSING'S
ANSWER AND AFFIRMATIVE
DEFENSES**

23 Comes now, Respondent Ruby Consing ("Respondent"), by and through her
24 counsel of record, LIPSON NEILSON P.C., and hereby answers the Complaint for
25 Disciplinary Action and Notice of Hearing ("Answer") as follows:

JURISDICTION AND NOTICE

- 26 1. Respondent, answering Paragraph 1, admits.
27 2. Paragraph 2 states and characterizes legal conclusions to which no
28 response is required.

FACTUAL ALLEGATIONS

3. Respondent, answering Paragraphs 3, 4, and 5, admits.
4. Respondent, answering Paragraphs 6, 7, and 8, is presently without

1 sufficient information to form a belief as to the truth of the allegations and therefore
2 denies the same.

3 5. Respondent, answering Paragraph 9, admits she was informed the
4 Division issued correspondence on October 30, 2018 regarding the Association's
5 interpretation of NRS 116.31036.

6 6. Respondent, answering Paragraph 10, denies each and every allegation
7 contained therein.

8 7. Respondent, answering Paragraph 11, denies she "refused" to step down.
9 Respondent is presently without information to form a belief as to the truth of the
10 remaining allegations and therefore denies the same.

11 8. Respondent, answering Paragraph 12, admits.

12 9. Respondent, answering Paragraphs 13 and 14, is presently without
13 sufficient information to form a belief as to the truth of the allegations and therefore
14 denies the same.

15 10. Respondent, answering Paragraph 15, admits.

16 11. Respondent, answering Paragraph 16, denies each and every allegation
17 contained therein.

18 **VIOLATIONS OF LAW**

19 12. Respondent repeats and incorporates by reference her responses to the
20 preceding Paragraphs as though fully set forth herein.

21 13. Respondent, answering Paragraphs 17, 18, and 19, denies each and
22 every allegation as to herself. Respondent is presently without sufficient information to
23 form a belief as to the truth of the remaining allegations and therefore denies the same.

24 14. Respondent, answering Paragraph 20, denies each and every allegation
25 contained therein.

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1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 After receiving a copy of the Division's October 30, 2018 correspondence,
4 Respondent remained on the Board of Directors of the Los Verdes Community
5 Association based upon the advice of the Association's corporate counsel, the law firm
6 of Boyack Orme & Anthony. Specifically, during the Board's executive session at the
7 October 30, 2018 board meeting, Mr. Boyack advised Respondent that (1) his opinion
8 on the results of the August 2018 recall election were unchanged; and (2) the Division's
9 October 30, 2018 letter had no effect on Respondent's position as board president
10 because Respondent could only be removed by voluntary resignation or by the
11 Commission. Respondent remained on the Board accordingly, however, she has
12 abstained from all voting and other board activities since the October 30, 2018 board
13 meeting took place.

14 **SECOND AFFIRMATIVE DEFENSE**

15 The claims made against Respondent are not ripe because there are two
16 interrelated cases, Case No. 2018-1336 and Case No. 2018-883, still pending
17 investigation with the Division. Resolution of one or both of these cases in Respondent's
18 favor may moot the allegations made against Respondent in this matter. Alternatively,
19 resolution of one or both of these cases may substantially change the factual
20 background and evidence available to the Commission in rendering its decision in this
21 matter.

22 **THIRD AFFIRMATIVE DEFENSE**

23 Respondent has not been a member of the Board since February 22, 2019.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Respondent is not in possession of all evidence necessary to defend against
26 Petitioner's claims, namely, Soleil Association Management negligently or intentionally
27 failed to record the January 14, 2019 board meeting, wherein Ted Boyack of Boyack
28 Orme & Anthony restated his position regarding the Division's October 30, 2018

1 correspondence and Respondent's position on the board. Respondent has requested
2 that Soleil Association Management produce the recording device for electronic
3 imaging, but Soleil Association Management has not complied.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 The complaint for disciplinary action fails to state a claim against Respondent
6 upon which relief can be granted.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Respondent denies that by reason of act, omission, fault, conduct or liability on
9 Respondent's part, whether negligent, careless, unlawful or whether as alleged or
10 otherwise, Petitioner, or any of the individuals whose interests it represents, was injured
11 or damaged as alleged, or in any other manner whatsoever.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 Respondent is informed and believes, and thereon alleges, that it is not legally
14 responsible in any fashion with respect to the damages and injuries claimed by
15 Petitioner and/or the individuals whose interests it represents; however, if Respondent
16 is subjected to any liability to Petitioner, or the individuals whose interests it represents,
17 it will be due, in whole or in part, to the breach of contract, omissions, activities,
18 carelessness, recklessness, or negligence of others, including but not limited to the
19 Association's community management company, Soleil Association Management, and
20 the law firm of Boyack Orme & Anthony; wherefore any recovery obtained by Petitioner
21 against Respondent should be reduced in proportion to the respective negligence, fault,
22 and legal responsibility of all other parties, persons, or entities who contributed to or
23 caused any such injury or damage, in accordance with the laws of comparative
24 negligence.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Respondent is informed and believes, and thereon alleges, that if the individuals
27 whose interests Petitioner represents suffered or sustained any loss, damage, or
28 detriment, the same is directly and proximately caused and contributed to, in whole or in

1 part, breach of warranty, breach of contract, or the acts, omissions, activities,
2 recklessness, negligence, and/or intentional misconduct of the individuals themselves,
3 thereby completely or partially barring its recovery herein.

4 **NINTH AFFIRMATIVE DEFENSE**

5 Respondent is informed and believes, and thereon alleges, that Petitioner failed
6 to name and/or join all necessary and indispensable parties in this Complaint.

7 **TENTH AFFIRMATIVE DEFENSE**

8 Respondent is informed and believes, and thereon alleges, that Petitioner's
9 claims are reduced, modified, and/or barred because of changed circumstances.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 Pursuant to the Nevada Rules of Civil Procedure, all affirmative defenses may
12 not have been alleged herein insofar as sufficient facts were not available to this
13 Respondent after reasonable inquiry, and therefore, Respondent reserves the right to
14 amend this Answer to allege additional affirmative defenses, if subsequent investigation
15 so warrants.

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PRAYER FOR RELIEF

WHEREFORE, Respondent prays for relief as follows:

1. For a declaration that Respondent acted pursuant to and in compliance with the applicable provisions of NRS 116; Alternatively, that Respondent acted in reliance on the advice and guidance of legal counsel; and
2. For all claims and allegations against Respondent to be dismissed; and
3. For such other relief as the Commission deems just and proper.

DATED this 8th day of April, 2019.

LIPSON NEILSON P.C.

/s/ Megan H. Hummel

By:

Kaleb D. Anderson, Esq. (Bar No. 7582)
Megan H. Hummel, Esq. (Bar No. 12404)
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Ruby Consing*

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2019, I sent a true and correct copy of the foregoing **RESPONDENT RUBY CONSING'S ANSWER AND AFFIRMATIVE DEFENSES** via electronic mail, addressed to the following parties:

Los Verdes Community Association c/o Edward Boyack, Esq. 7432 W. Sahara Ave. Ste 101 Las Vegas, NV 89117 <u>ted@boyacklaw.com</u>	Los Verdes Community Association c/o Alexander P. Williams, Esq. Alverson Taylor & Sanders 6605 Grand Montecito Pkwy., Suite 200 Las Vegas, NV 89149 <u>awilliams@alversontaylor.com</u>
Soleil Association Management Attn: Shelley Leobold 7200 Las Vegas Blvd., Suite A Las Vegas, NV 89119 <u>sleobold@soleilam.com</u>	Timothy Elson The Law Offices of Timothy Elson 8965 S. Eastern Ave., Suite 382 Las Vegas, NV 89123 <u>Timothy.Elson@gmail.com</u>

And via first-class mail, postage prepaid, to the following parties:

Sayeh Sadegh 4823 S. Torrey Pines Dr., Unit 201 Las Vegas, NV 89103	Mary Baumgartner 4823 S. Torrey Pines Dr., Unit 101 Las Vegas, NV 89103
Monica Blake P.O. Box 475233 San Francisco, CA 94147-5233	Michelle Briggs, Esq. Senior Deputy Attorney General 555 E Washington Ave, Suite 3900 Las Vegas, Nevada 89101
COMMISSION FOR COMMON- INTEREST COMMUNITIES AND CONDOMINIUM HOTELS 3300 W. Sahara Avenue, Suite 350 Las Vegas, Nevada 89102 Attn: Legal Administrative Officer	

/s/ Renee M. Rittenhouse

An Employee of LIPSON NEILSON P.C.