

1 **MSTA**  
Edward D. Boyack  
2 Nevada Bar No. 005229  
**BOYACK ORME & ANTHONY**  
3 7432 W. Sahara Ave., Suite 101  
Las Vegas, Nevada 89117  
4 Tel: (702) 562-3415  
Fax: (702) 562-3570  
5 Email: [admin@boyacklaw.com](mailto:admin@boyacklaw.com)  
*Attorney for Defendant*  
6 *Jose Escalona*

**FILED**

**APR 24 2019**

**NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS**

7  
8 **BEFORE THE COMMISSION FOR COMMON-INTEREST**  
9 **COMMUNITIES AND CONDOMINIUM HOTELS**  
10 **STATE OF NEVADA**

11 SHARATH CHANDRA, Administrator, Real  
Estate Division, Department of Business &  
12 Industry, State of Nevada

Case No. 2018-680

13 Petitioner,

14 vs.

**RESPONDENT JOSE ESCALONA'S  
MOTION FOR REHEARING AND/OR  
RECONSIDERATION TO SET ASIDE  
DEFAULT**

15 SHADOW WOOD HOMEOWNERS  
ASSOCIATION, a common-interest  
16 community; and JOSE ESCALONA, an  
individual,

17 Respondents.  
18

19 COMES NOW, Respondent JOSE ESCALONA, by and through his attorney of record  
20 Edward D. Boyack of the firm Boyack Orme & Anthony, and hereby moves this Commission to  
21 set aside the Default entered against Mr. Escalona. The Default was improperly entered against  
22 Mr. Escalona as the notices of the action against him were not sent to his current address. This  
23 Motion is made upon the attached Memorandum of Points and Authorities.

24 DATED this 23<sup>rd</sup> day of April, 2019.

25 **BOYACK ORME & ANTHONY**

26 By: /s/ Edward D. Boyack

27 EDWARD D. BOYACK, ESQ.  
28 Nevada Bar No. 005229

1 7432 W. Sahara Ave, Ste 101  
2 Las Vegas, Nevada 89117  
3 *Attorney for Respondent Jose Escalona*

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 This matter concerns certain allegations against Mr. Escalona, in his capacity as a board  
6 member of the Shadow Wood Homeowners Association.<sup>1</sup> Specifically, Mr. Escalona is accused  
7 of performing various bookkeeping services and payroll services for the Shadow Wood HOA  
8 while he served as a board member for that association. On April 2, 2019, the Commission  
9 entered a Default against Mr. Escalona, evidenced by Findings of Fact, Conclusions of Law, and  
10 Order ("FOF/COL") for that same date.

11 **1. Legal Standard**

12 Pursuant to the provisions of NRS Chapter 116, a respondent to a complaint before the  
13 Commission must be given notice of the proceedings against him:

14 3. The Division shall give the respondent written notice of the date, time  
15 and place of the hearing on the complaint at least 30 days before the date  
of the hearing. The notice must be:

16 (a) Delivered personally to the respondent or mailed to the  
17 respondent by certified mail, return receipt requested, to his or her last  
known address.

(b) Accompanied by:

18 (1) A copy of the complaint; and  
19 (2) Copies of all communications, reports, affidavits and  
depositions in the possession of the Division that are relevant to the  
20 complaint.

*NRS 116.770(3)(a)-(b).*

21 Furthermore, no default can be taken unless the respondent is also given notice of the  
22 Division's intent to take default:

23 6. If the respondent does not file an answer within the time required by  
24 subsection 5, the Division may, after giving the respondent written notice  
25 of the default, request the Commission or the hearing panel to enter a  
finding of default against the respondent. The notice of default must be

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Shadow Wood HOA is a co-respondent in this action, but is not represented by undersigned  
counsel.

1 delivered personally to the respondent or mailed to the respondent by  
2 certified mail, return receipt requested, to his or her last known address.  
3 *NRS 116.770(6).*

4 Mere mailing is not enough, but the respondent must actually have notice of the  
5 proceedings against him:

6 13. Upon presentation of evidence that the respondent received notice of  
7 the hearing and has not filed an answer within the time prescribed  
8 pursuant to NRS 116.770, his or her default may be entered and a decision  
9 may be issued based upon the allegations of the complaint.  
10 *NAC 116.585(13).*

11 The Commission's FOF/COL in this matter may be appealed pursuant to NAC  
12 116.617(9)(a)-(b), based on either "Newly discovered or available evidence of a material nature  
13 which the moving party could not with reasonable diligence have discovered and produced at the  
14 original hearing before the Commission," or "Error in the hearing or in the decision that would  
15 be grounds for reversal of the decision."

## 16 2. Argument

17 Here, Mr. Escalona never received notice of the complaint against him. Furthermore, he  
18 did not receive any notice of the default against him, and only received the FOF/COL.

19 The apparent notice of the complaint was sent to a business address on Maryland Pkwy.  
20 On or about February 8, 2019. *See Ex. A- FOF/COL and Mailings.* However, the Division  
21 received this notice back as returned mail on February 19, 2019. *Id.* Stamped on the envelope  
22 was the notice that the address was "VACANT." Accordingly, Mr. Escalona never received the  
23 notice of the complaint against him. Mr. Escalona also has not been provided with any evidence  
24 that he was sent notice of default, prior to the Commission's entering of the FOF/COL against  
25 him.

26 Furthermore Mr. Escalona believes that the notice purporting to be the complaint against  
27 him would have been deficient in that it did not contain the disclosures required by NRS  
28 116.770(3)(b)(2). The copy of the notice provided to Mr. Escalona (Ex. A) shows a single  
envelope of U.S. Certified Mail for which standard postage was paid. It is difficult to conceive  
that this mailing contained "Copies of all communications, reports, affidavits and depositions in  
the possession of the Division that are relevant to the complaint" as required by the statute.



**EXHIBIT A**

**STEVE SISOLAK**  
*Governor*

STATE OF NEVADA



**MICHAEL J BROWN**  
*Director*

**SHARATH CHANDRA**  
*Administrator*

DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
[www.red.nv.gov](http://www.red.nv.gov)

April 2, 2019

**Certified No. 7018 1130 0001 8302 3846**  
Prime Community Management  
181 N. Arroyo Grande Parkway, Ste. 125  
Henderson, Nevada 89074

**Certified No. 7018 1130 0001 8302 3853**  
Jose Escalona  
6835 W. Torino Ave.  
Las Vegas, Nevada 89139

Re: NRED v. SHADOW WOOD HOMEOWNERS ASSOCIATION AND JOSE ESCALONA  
Case No: 2018-680

Enclosed herewith you will find the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER entered by the Nevada Commission for Common-Interest Communities and Condominium Hotels at the meeting held March 12, 2019 in Las Vegas, Nevada.

1. Mr. Escalona is removed from the association's board and as an officer and may not serve as a board member or officer for any common-interest community in the State of Nevada for a period of no less than ten (10) years from the date of the order, but in no event sooner than all fines and restitution imposed by the Commission are paid in full.
2. Mr. Escalona shall pay fines and costs to the Division in the amount of four thousand nine hundred sixty-two dollars and eighty-seven cents (\$4,962.87) which includes a fine of twenty-five hundred dollars (\$2,500.00) and two thousand four hundred sixty-two dollars and eighty-seven cents (\$2,462.87) in attorney's fees and costs.
3. Mr. Escalona shall pay restitution to the association in the amount of three thousand four hundred fifty dollars (\$3,450.00).

**FINE, COSTS AND RESTITUTION DUE DATE: JUNE 1, 2019**

Submit your payment to the address below. Checks or money orders are to be made payable to the "Nevada Real Estate Division".

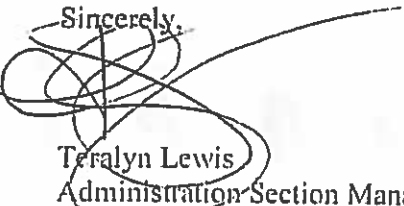
Nevada Real Estate Division  
3300 West Sahara Avenue, Suite 350  
Las Vegas, Nevada 89102

There are two copies of this letter enclosed, one copy is marked "Remittance Copy" and should be returned with your check or money order to the Nevada Real Estate Division. The purpose of the remittance copy is to assure proper posting of fines to your disciplinary file.

Please note that Division staff does not have the authority to extend the due date for your fine or education requirements that have been ordered by the Commission. If you find that you are unable to meet the required due date, you will need to request in writing that you be placed on the agenda for a Commission hearing in which the respondent will be allowed to request an extension from the Commission. This request should be made several months prior to the due date.

Please contact me if you have questions regarding this matter.

Sincerely,



Teralyn Lewis  
Administration Section Manager  
Telephone: (702) 486-4036  
Email: Teralyn.Lewis@red.nv.gov

Cc: Sharath Chandra, Administrator  
Compliance  
Michelle Briggs, Senior Deputy Attorney General

STEVE SISOLAK  
Governor

STATE OF NEVADA



MICHAEL J BROWN  
Director

SHARATH CHANDRA  
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
www.red.nv.gov

April 2, 2019

Certified No. 7018 1130 0001 8302 3846  
Prime Community Management  
181 N. Arroyo Grande Parkway, Ste. 125  
Henderson, Nevada 89074

**RESTITUTION COPY**

Certified No. 7018 1130 0001 8302 3853  
Jose Escalona  
6835 W. Torino Ave.  
Las Vegas, Nevada 89139

Re: NRED v. SHADOW WOOD HOMEOWNERS ASSOCIATION AND JOSE ESCALONA  
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Nevada Real Estate Division  
3300 West Sahara Avenue, Suite 350  
Las Vegas, Nevada 89102

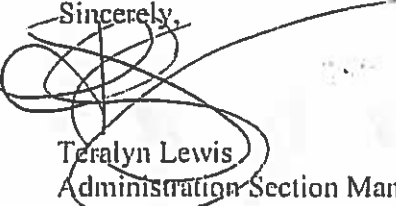


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Please contact me if you have questions regarding this matter.

Sincerely,



Teralyn Lewis  
Administration Section Manager  
Telephone: (702) 486-4036  
Email: Teralyn.Lewis@red.nv.gov

Cc: Sharath Chandra, Administrator  
Compliance  
Michelle Briggs, Senior Deputy Attorney General

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

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

Petitioner,

vs.

Shadow Wood Homeowners Association  
and Jose Escalona,

Respondents.

Case No. 2018-680

**FILED**

APR 02 2019

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry, State of Nevada (the "Commission"), during a regular agenda on March 12, 2019, at the Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las Vegas, Nevada 89102 with videoconferencing to Division of Insurance, 1818 East College Parkway, Suite 103, Carson City, Nevada 89706 (the "Hearing"). The RESPONDENT, JOSE ESCALONA, did not appear or submit an answer to the Complaint. Michelle D. Briggs, Esq., Senior Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"). The Association's president, James Ma, contacted Division counsel, but could not attend. Teralyn Lewis, Administration Section Manager for the Division, testified regarding the notices sent to ESCALONA. The Commission voted unanimously to find ESCALONA in default. The Commission enters the following Findings of Fact, Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 116, the Commission has legal jurisdiction and authority over this matter.

**FINDINGS OF FACT**

Based on the Commission's finding of a default against ESCALONA for failing to appear and failing to answer the Complaint, the Commission accepted as true all of the

1 following factual allegations by unanimous vote:

2 1. RESPONDENT ESCALONA performs bookkeeping services using the name  
3 "J.E. & Associates."

4 2. ESCALONA served on the Association's board since at least September 2014,  
5 and presently serves as the Association's treasurer.

6 3. During a separate investigation, the Division became aware that ESCALONA  
7 was paid by the Association through J.E. & Associates to perform payroll services for the  
8 Association.

9 4. From November 2016 to March 2018, J.E. & Associates was paid approximately  
10 \$3,450 by the Association for payroll services.

11 5. No Association records reflect J.E. & Associates was hired to provide payroll  
12 services.

13 6. J.E. & Associates is not a legal entity or registered fictitious firm name with any  
14 government agency in Nevada.

15 7. According to on-line advertising for J.E. & Associates, ESCALONA is the  
16 President.

17 8. ESCALONA responded to the Division's investigation stating that he's an  
18 employee of J.E. & Associates.

19 9. ESCALONA provided invoices from J.E. & Associates, but did not say who his  
20 supervisor was, who prepared the invoices, or who provided the payroll services.

21 10. The address for J.E. & Associates is the same address reported to the Division  
22 for board member ESCALONA on annual registration forms.

### 23 CONCLUSIONS OF LAW

24 Based on the foregoing factual findings, the Commission concludes by unanimous  
25 vote that the following violations of law occurred:


26 11. RESPONDENT ESCALONA violated NRS 116.31187(1) by receiving  
27 compensation from the Association through his business name J.E. & Associates in exchange  
28 for services to the Association.




1 collection.

2 Dated: March 29, 2019.

3 Commission for Common-Interest Communities  
4 and Condominium Hotels, Department of Business  
& Industry, State of Nevada

5  
6 By:   
James Rizzi, Vice Chairman

7 Submitted by:  
8 AARON D. FORD  
9 Attorney General

10 By:   
11 Michelle D. Briggs, Esq.  
12 Senior Deputy Attorney General  
13 555 E. Washington Avenue, Suite 3900  
14 Las Vegas, Nevada 89101  
15 (702) 486-3420  
16 Attorneys for Nevada Real Estate Division

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2019 FEB 6 2019



Jose Escalona  
1515 S Maryland Pkwy  
Las Vegas, Nevada 89104

See Reverse for Instructions



7012 1450 0000 8967 9606

**VACANT**

**RECEIVED**  
FEB 10 2019  
DEPT OF BUSINESS & INDUSTRY  
Real Estate Division - LV

**RECEIVED**  
FEB 10 2019  
DEPT OF BUSINESS & INDUSTRY  
Real Estate Division - LV

**RECEIVED**  
FEB 10 2019  
DEPT OF BUSINESS & INDUSTRY  
Real Estate Division - LV

Master  
US POSTAGE \$010.69



ZIP 89101  
3-51255216

4835 W. Torino Ave  
Las Vegas, NV 89139

Jose Escalona  
1515 S Maryland Pkwy  
Las Vegas, Nevada 89104

3820

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
OMBUDSMAN OFFICE - COMMON INTEREST  
AND CONDOMINIUM HOTELS  
3300 W. Sahara Avenue, Suite 325  
Las Vegas, Nevada 89102-3203

Return Service Requested

**CERTIFIED MAIL**



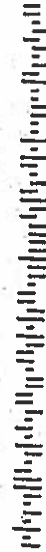
7038 1130 0001 8302 3853

Master  
04/09/2019  
FIRST-CLASS MAIL  
\$006.80  
ZIP 89101  
011E12550316

LN  
4/5

Jose Escalona  
6835 W. Torino Ave.  
Las Vegas, Nevada 89139

113 BRDFNMP 89139



1 Edward D. Boyack  
Nevada Bar No. 005229  
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5 *Attorney for Defendant*  
*Jose Escalona*

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ASSOCIATION, a common-interest  
15 community; and JOSE ESCALONA, an  
16 individual,

17 Respondents.

Case No. 2018-680

**CERTIFICATE OF MAILING OF  
RESPONDENT JOSE ESCALONA'S  
MOTION FOR REHEARING AND/OR  
RECONSIDERATION TO SET ASIDE  
DEFAULT**

18  
19 I HEREBY CERTIFY that on the 22<sup>nd</sup> day of April, 2019, service of the foregoing,

20 **RESPONDENT JOSE ESCALONA'S MOTION FOR REHEARING AND/OR**

21 **RECONSIDERATION TO SET ASIDE DEFAULT** was made on this date, via electronic

22 mail and U. S. mail to the address below:

23 Department of Business & Industry  
24 State of Nevada  
3300 W. Sahara Avenue Ste 350  
25 Las Vegas, NV 89102-3203

26 */s/ Carmen Eassa*

27 An Employee of Boyack Orme & Anthony