

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

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

7 Petitioner,

8 vs.

9 Sherryl Baca,

10 Respondent.

Case Nos. 2018-812 and 2018-660

FILED

NOV 03 2020

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

Kelly Valadez

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

12 This matter came on for hearing before the Commission for Common-Interest
13 Communities and Condominium Hotels, Department of Business and Industry, State of
14 Nevada (the "Commission"), during a regular agenda on October 27, 28 and 29, 2020, via
15 video conference with no physical public location (as permitted by the Governor's
16 Declaration of Emergency, Directive 006, as extended by Directive 026 and 029) (the
17 "Hearing"). Michelle D. Briggs, Esq., Senior Deputy Attorney General with the Nevada
18 Attorney General's Office, appeared on behalf of the Real Estate Division of the
19 Department of Business and Industry, State of Nevada (the "Division"). Sue Cavaco of
20 Resnick & Louis, P.C. appeared with and on behalf of RESPONDENT, SHERRYL BACA.
21 The Hearing on this matter began on August 4, 2020 and was continued on August 5,
22 2020 prior to resuming at Ms. Baca's request due an accident her attorney reported Ms.
23 Baca was in that day.

24 Based on the evidence presented at the Hearing, the Commission enters the
25 following Findings of Fact, Conclusions of Law, and Order. Under Nevada Revised
26 Statutes (NRS) and Nevada Administrative Code (NAC) Chapters 116 and 116A, the
27 Commission has jurisdiction over this matter.

28 **FINDINGS OF FACT**

 Based on a preponderance of the evidence in the record and testimony presented at
the Hearing and in August, the Commission voted 4-0 to find the following factual

1 allegations were proven:

2 1. On or about May 15, 2018, the Division received a Statement of Fact against
3 RESPONDENT SHERRYL BACA filed by the manager of South Valley Ranch
4 Homeowners Association (the "Association"), Lisa Carrion.

5 2. On or about October 1, 2017, Ms. Carrion took possession of the Association
6 files provided by BACA, the Association's prior manager.

7 3. Ms. Carrion alleged documents turned over to her from BACA were not in
8 any order and that documents were missing.

9 4. The complaint states the Association's records included records from other
10 associations managed by BACA.

11 5. Ms. Carrion said she was investigating – at the board's request –
12 construction defect work done in 2010 based on proceeds the Association received from a
13 lawsuit.

14 6. On or about April 4, 2018, Ms. Carrion prepared a list of the missing items
15 and sent it to BACA by certified mail.

16 7. BACA did not respond to Ms. Carrion.

17 8. At this same time, Association board members contacted the Division about
18 checks signed by BACA for construction defect repairs, her authority to sign checks and
19 their concern that the costs were excessive.

20 9. The Association approved a settlement amount of \$675,000 in 2010 while
21 BACA was the Association's manager.

22 10. The Association's construction defect account shows a deposit of \$350,000 in
23 August 2010.

24 11. The Division opened two separate investigations based on the two
25 complaints.

26 12. The Association's records do not include a management contract for the
27 years the construction defect funds were used.

28 13. The Association's records include a management agreement from 2008 which

1 expired on June 30, 2009 and contained an automatic annual renewal.

2 14. In 2009, NRS 116A.620 was enacted which prohibits management contracts
3 from containing an automatic renewal provision.

4 15. The 2008 management contract allowed BACA to sign checks for "utilities,
5 taxes, insurance premiums, contract fees, minor repairs, supplies and other regularly
6 recurring expenses."

7 16. The Association's records include a management contract from 2014 and
8 2017, neither contract allows BACA to sign checks and specifically requires signatures of
9 2 board members.

10 17. The Division subpoenaed bank records, but the bank could not provide all
11 the records requested.

12 18. In 2011 and 2012, BACA signed checks from the Association's construction
13 defect account, including one that was only signed by her.

14 19. In 2011, 2012 and 2013, BACA signed checks from the Association's
15 operating account.

16 20. The Association has mainly draft minutes for 2010, 2011 and 2013.

17 21. Based on the draft minutes in 2010, a contractor, Robert Orlando, was hired
18 to paint 26 mailboxes.

19 22. The Association paid Robert Orlando over \$63,000 from the construction
20 defect funds.

21 23. The address on the check to Robert Orlando is BACA's office address.

22 24. Due to a lack of records, current board members are unable to determine the
23 extent of the construction defect work and whether unfinished repair work should be part
24 of future repairs.

25 25. The current board is also concerned about construction defect funds being
26 used for non-construction defect repairs.

27 26. Funds from the construction defect account were paid to a contractor in
28 2013, although the board never discussed hiring the vendor according to the draft

1 minutes from 2013 and the charges do not appear to be for construction defects.

2 27. The Division sent letters to BACA dated May 18, 2018, June 6, 2018, and
3 June 26, 2018 before BACA first responded on June 29, 2018 about the missing
4 Association records.

5 28. BACA's affidavit provided on or about August 1, 2018 states that the
6 procedure for construction defect checks was that the construction manager approved the
7 invoices and once approved "our company would cut the checks and sent those checks
8 back to the construction manager for signing and disbursement. I would go in and sign
9 the check and a board member would go in separately and sign the check."

10 29. In response to the final notice by the Division, BACA provided a letter dated
11 January 25, 2019 that says her contract gave her authority to sign checks and the
12 procedure was that she would sign first and then provide them to a board member for the
13 second signature.

14 30. BACA states:

15 This procedure as well as proof of my authority to sign checks for the
16 community can be validated by any of the board members who served while I
was managing the community.

17 31. The Association's former president, Ronald Beach, who served while BACA
18 was the manager, provided the following statement to the Division:

19 Generally speaking our community manager Sherryl Baca, was, by board
20 consent, not supposed to sign any checks.

21 CONCLUSIONS OF LAW

22 Based on the foregoing factual findings and the preponderance of the evidence, the
23 Commission voted 4-0 that the following violations of law occurred:

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

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

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

1 4. BACA violated NRS 116.630(6)(a) by failing to ensure at all times that the
2 financial transactions of the Association were current, accurate and properly documented.

3 5. BACA violated NRS 116A.620 and NAC 116A.325 by performing community
4 management services for the Association without a signed management contract from
5 2010 to 2014.

6 6. BACA violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(i)) by
7 committing unprofessional conduct by exceeding the authority granted to her by the
8 Association.

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

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

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

18 **ORDER**

19 The Commission being fully apprised in the premises, and good cause appearing to
20 the Commission, by a 4-0 vote, ORDERS as follows:

21 1. BACA'S community manager certificate is revoked for a period of no less
22 than two years from the date of this Order, but in no event sooner than all fines imposed
23 by the Commission are paid in full.

24 2. If BACA applies in the future for a community manager certificate, such
25 application will have to be approved by the Commission, and BACA will have to take the
26 precertification classes required for initial licensure and satisfy any other requirements
27 for licensure applicable at that time.

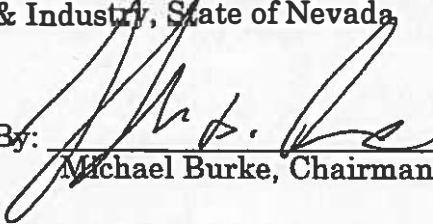
28 3. BACA shall pay an administrative fine to the Division in the total amount of

1 \$57,196.79 – which includes a fine of \$36,000 for the violations of law and \$21,196.79
2 representing the total amount due for the Division’s attorney’s fees and costs – no later
3 than 60 days from the date of this Order.

4 4. The Division may institute debt collection proceedings for failure to timely
5 pay the total fine, including action to reduce this Order to a judgment. Further, if
6 collection goes through the State of Nevada, then BACA shall also pay the costs
7 associated with collection.

8 Dated: November 2ND, 2020.

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

11
12 By: 
Michael Burke, Chairman

13 Submitted by:

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15 Attorney General

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