

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,

5                                   Petitioner,

6   vs.

7   James Melvin Fennell,

8                                   Respondent.

Case No. 2019-1083

**FILED**

NOV 20 2020

NEVADA COMMISSION FOR  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

*Kelly Valadez*

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

13           This matter came on for hearing before the Commission for Common-Interest  
14   Communities and Condominium Hotels, State of Nevada (the "Commission"), during a  
15   regular agenda on October 27, 2020, via telephone and video, with no physical public  
16   location (as permitted by the Governor's Declaration of Emergency, Directive 006, as  
17   thereafter extended) (the "Hearing"). The Respondent, JAMES MELVIN FENNELLS  
18   ("FENNELLS" and/or "RESPONDENT"), did not appear personally or through counsel and  
19   did not answer the complaint. Karissa D. Neff, Esq., Deputy Attorney General with the  
20   Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the  
21   Department of Business and Industry, State of Nevada (the "Division").

22           Ms. Neff presented testimony from Kelly Valadez, the Commission coordinator,  
23   regarding service of the notice of the Complaint, hearing and documents on  
24   RESPONDENT. The Commission, having determined that RESPONDENT was properly  
25   served with the complaint but that he failed to timely respond as required by NRS  
26   116.770(5), voted in favor of entering RESPONDENT's default and making a decision  
27   based on the allegations in the complaints pursuant to NAC 116A.595(13).

28           The Commission, having considered the evidence introduced by the Division and

1 being fully advised, enters the following Findings of Fact, Conclusions of Law, and Order.  
2 Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter  
3 116A, the Commission has legal jurisdiction and authority over this matter.

#### 4 FINDINGS OF FACT

5 Based on a preponderance of the evidence in the record and the documents  
6 admitted at the Hearing, the Commission unanimously voted to find the following factual  
7 allegations were proven:

8 1. RESPONDENT obtained his provisional community manager license from  
9 the Division in December of 2018, license CAM.009222-PROV, said license now on  
10 inactive status.

11 2. After RESPONDENT received his provisional community association  
12 manager license, RESPONDENT began working as a provisional community association  
13 manager for Braewood Heritage Association Inc. ("Association").

14 3. RESPONDENT's supervisory community association manager was Deborah  
15 Whitworth (Whitworth), who holds license CAM.0007273-SUPR and owns TPGLV, LLC,  
16 a Nevada limited liability company d/b/a The Property Group.

17 4. Whitworth was RESPONDENT's supervising community association  
18 manager from April 1, 2019 until RESPONDENT resigned from his position as the  
19 Association's provisional community association manager in July of 2019.

20 5. On August 7, 2019, Kathleen Matthews, the president of the Association,  
21 filed a police report against RESPONDENT, alleging in part, that RESPONDENT had  
22 misappropriated cash from the Association and had taken checks made payable to and/or  
23 from the Association.

24 6. On September 26, 2019, the Division received a Statement of Fact filed  
25 against RESPONDENT by Whitworth, alleging that RESPONDENT had fraudulently  
26 endorsed Association checks, deposited them into his personal account, and had taken  
27 homeowner cash payments due to the Association.

28 7. The Association provided documentation to the Division that

1 RESPONDENT intercepted checks written from the Association to other persons/entities,  
2 intercepted checks written from the Association to vendors, intercepted checks from title  
3 companies to the Association for real estate closing to cover capitalization, transfer fees,  
4 and credits to new owner's accounts, and took money due to the Association for resale  
5 packages/demand letters.

6 8. On October 1, 2019, the Division properly notified RESPONDENT it had  
7 opened an investigation based on the complaint filed with the Division and requested that  
8 RESPONDENT provide a response to certain allegations.

9 9. On October 16, 2019, RESPONDENT responded to the Division's  
10 investigation.

11 10. In his October 16<sup>th</sup> response to the Division, RESPONDENT stated he  
12 wanted to acknowledge his mistake, that he had apologized to the Association's president,  
13 treasurer, and Whitworth, and that he had mistakenly taken a check payable from the  
14 Association to Showcase Landscape Services ("Showcase") in the amount of \$1,505.00  
15 and had sent the Association a money order in the amount of \$1,505.00.

16 11. RESPONDENT also acknowledged that he had taken a second check from  
17 Showcase in the amount of \$1,630.00 and one payable Brundage Electric Inc.  
18 ("Brundage") in the amount of \$1,190.00 and stated these amounts would be repaid in the  
19 coming weeks.

20 12. On October 17, 2019, the Division notified RESPONDENT it had received  
21 documentation supporting that certain Association checks were endorsed by him and  
22 deposited into his personal bank account, totaling approximately \$9,330.05 in Association  
23 funds and had also received documentation that cash transactions were not applied to  
24 owners' accounts.

25 13. In the Division's October 17<sup>th</sup> letter, the Division requested RESPONDENT  
26 provide documentation supporting that he re-paid the Association \$1,505.00 through  
27 money orders as the Association claimed they did not receive the funds, as well as provide  
28 any evidence he had repaid the checks to Showcase and Brundage.



1 to comply with state laws.

2 25. RESPONDENT violated NRS 116A.640(4) by misappropriating Association  
3 money for his own personal use.

4 26. RESPONDENT violated NRS 116A.640(2)(b) and NAC 116A.345(2)(b) by  
5 impeding or otherwise interfering with an investigation of the Division by supplying false  
6 information to the investigator.

7 27. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC  
8 116A.355(2)(c)) by committing unprofessional conduct by engaging in deceitful,  
9 fraudulent or dishonest conduct.

10 28. RESPONDENT violated NAC 116.355(1)(a)(2) (through NAC  
11 116A.355(3)(a) and (b) by committing professional incompetence by demonstrating a  
12 significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a  
13 client and failing to exercise reasonable skill and care with respect to a duty or obligation  
14 owed to a client.

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

18 **ORDER**

19 The Commission, being fully apprised in the premises and good cause appearing,  
20 ORDERS as follows:

21 1. RESPONDENT's provisional community manager certificate is hereby  
22 revoked for a period of no less than ten years. RESPONDENT shall not be permitted to  
23 reapply for a certificate from the Division following the ten-year revocation period until  
24 all fines and restitution imposed by the Commission are paid in full.

25 2. Following the revocation period, should RESPONDENT apply for a  
26 certificate from the Division, RESPONDENT shall be required to submit a new  
27 application and comply with all Division requirements at that time. The Division shall  
28 deny RESPONDENT's application and refer the application denial to the Commission

1 pursuant to NAC 116A.135.

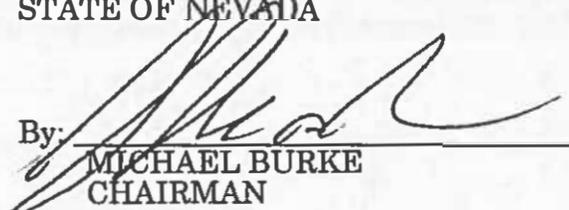
2 3. RESPONDENT shall pay to the Division a total fine of \$41,935.97. The total  
3 fine reflects an administrative fine of \$40,000 dollars against RESPONDENT for  
4 committing the violations of law, plus \$1,935.97 for the Division's attorney's fees and  
5 costs. The total fine shall be paid in full no later than 60 days from the date of this Order.

6 4. RESPONDENT shall also pay the Association \$9,350 dollars in restitution  
7 no later than 60 days from the date of this Order.

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

12 DATED this 17<sup>th</sup> day of November, 2020.

13 COMMISSION FOR COMMON-INTEREST  
14 COMMUNITIES AND CONDOMINIUM HOTELS  
15 DEPARTMENT OF BUSINESS & INDUSTRY  
16 STATE OF NEVADA

17 By:   
18 MICHAEL BURKE  
19 CHAIRMAN

20 Submitted by:

21 AARON D. FORD  
22 Attorney General

23 By: *Isl Karissa Neff*

24 KARISSA D. NEFF, ESQ.  
25 Deputy Attorney General  
26 555 East Washington Avenue, Suite 3900  
27 Las Vegas, Nevada 89101  
28 Attorneys for Real Estate Division