28

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.

Silverstone Ranch Community Association, Thomas Masson, Chrisa Chen, Colleen Malany, Katrina Yoa-Townsend, Frank Anderson, and William Walter.

Respondents.

Case No. 2018-1322

FILED

MAY 2 2 2020

NEVADA COMMISSION FOR COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

Keley Valader

PARTIAL STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION

Petitioner, Real Estate Division, Department of Business & Industry, State of Nevada (the "Division") through its Administrator, Sharath Chandra, and Silverstone Ranch Community Association (hereinafter, "ASSOCIATION" or "RESPONDENT") enter into this PARTIAL STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION ("Stipulation and Order") as follows.

JURISDICTION AND NOTICE

During the relevant times mentioned in this complaint, Thomas Masson, Chrisa Chen, Colleen Malany, Katrina Yoa-Townsend, Frank Anderson, and William Walter served as members and/or officers of Silverstone Ranch Community Association (the "Association"), a common-interest community located in Las Vegas, Nevada.

RESPONDENTS are subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and the Commission for Common-Interest Communities pursuant to the provisions of NRS 116.750.

3 4

5 6

7

8 9

10

11

- 12
- 13
- 14
- 15

16

17

18

19

20

21 22

23

24

25 26

27

28

FACTUAL ALLEGATIONS IN THE COMPLAINT

- On or around September 1, 2018, Rosario Romano ("Complainant") 1. submitted an Intervention Affidavit to the Division claiming in part, that the Association failed to provide him with a copy of a \$380,000 settlement agreement that the Association entered into and/or failed to provide him with the terms of the settlement.
- 2. On September 1, 2018, Complainant submitted a letter to the Division specifying that on December 5, 2017, the Clark County District Court approved a class action settlement agreement in a lawsuit commonly known as the Higher Ground Lawsuit, requiring the Association to pay the plaintiffs \$380,000 in settlement funds (the "Settlement Agreement")
- 3. Complainant also stated that the Association paid a total of \$17,065 dollars in legal expenses related to the settlement of the Higher Ground Lawsuit.
- 4. Complainant stated that he had made numerous written requests to the Association requesting financial records related to the payment of the settlement along with requests for a copy of the Settlement Agreement.
- 5. On November 20, 2018, the Division properly notified the Association regarding Complainant's complaint and requested notarized, written responses to the allegations set forth in the Division's November 20th letter.
- On December 7, 2018, the Division received a response from the 6. Association's attorney, John E. Leach of Leach Kern Gruchow Anderson Song, stating in part, that the Association only has an obligation to allow owners to review records filed with a court.
- 7. In his letter, Mr. Leach proceeded to state that because the Settlement Agreement was not a record *filed* with the court, the Association was not obligated to produce it to Complainant.
- 8. Mr. Leach also stated that filing the Settlement Agreement with the court would make it a public record, violating the Settlement Agreement's confidentiality

provision.

9. In his December 7th letter to the Division, Mr. Leach stated:

Based on the language of the aforementioned statutes, production of settlement agreement is not necessary and appropriate. Therefore, the Association does not intend to do so as it is not going to breach the terms of the settlement agreement.

10. After this case was referred to the Attorney General's Office to pursue disciplinary action, the Division obtained a copy of the Settlement Agreement that had been filed with the court on August 28, 2017, as part of the parties' Joint Motion for Preliminary Approval of Class Settlement as Set Forth in the Settlement Agreement, Approval of Class Notification and Entry of Scheduling Order.

11. NRS 116.31088(4) requires:

If any civil action in which the association is a party is settled, the executive board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting of the executive board after the settlement has been reached. The executive board may not approve a settlement which contains any terms and conditions that would prevent the executive board from complying with the provisions of this subsection.

- 12. Despite the Settlement Agreement being filed with the court on August 28, 2017, for court approval, the Settlement Agreement was not on the agenda of Association's Board meeting set for October 10, 2017.
- 13. Minutes obtained from the October 10, 2017 meeting failed to expressly reference the Settlement Agreement.
- 14. Despite the agenda and the minutes not mentioning the Settlement Agreement, the Association claimed it satisfied the requirements of disclosure when the president responded to an owner during the homeowner's forum at the beginning of the meeting which is part of the audio from the October 10, 2017 meeting.
- 15. Based on the audio from the October 20, 2017, the president's comments on the Settlement Agreement did not fully disclose the terms and conditions of the Settlement Agreement as required by statute.

- 16. The Settlement Agreement terms and conditions were not disclosed to the homeowners until a year later, at the October 10, 2018 Board meeting.
- 17. On February 28, 2019, the Division sent the Association a letter stating that the Division viewed the Settlement Agreement as a record of the Association and that it must be made available for inspection.
- 18. On August 21, 2019, the Association was properly notified by the Division that the Division intended to commence disciplinary action against the Board by filing a complaint for hearing before the Commission for Common Interest Communities and Condominium Hotels.

VIOLATIONS OF LAW ALLEGED IN THE COMPLAINT

- 19. Respondents violated NRS 116.31175(1), (2) by failing to disclose the Settlement Agreement and the financial records pertaining to the payment of the settlement, to Complainant.
- 20. Respondents violated NRS 116.31088(4) by failing to disclose the terms and conditions of the Settlement Agreement at the next regularly scheduled meeting of the executive board of directors.

SETTLEMENT

- 1. The Association agrees that the allegations of fact and law in the complaint are true and that the Association will comply with records requests from homeowners in a timely fashion, per NRS 116.31175, and will notice homeowners of the settlement of a civil action, per NRS 116.31088, by placing the matter on the agenda for disclosure of the terms and conditions in compliance with the law.
- 2. The Association agrees not to enter into any settlement agreement which contains a confidentiality clause that could result in the Association violating any provision of NRS Chapter 116.
- 3. The Association agrees to have the Division present a class on board member fiduciary duty and records at a board meeting to be scheduled with the Division within 6 months from the date of this Stipulation and Order. The 6-month period may

9

12

17

18 19

20

21

22 23

24

25

26

27 28 be extended by the Division should circumstances require.

- The Association and the Division agree that by entering into this 4. Stipulation and Order, the Division does not concede any defense or mitigation the Association may assert and that once this Stipulation and Order is approved and fully performed, the Division will close its file in this matter.
- 5. The Association agrees that if the terms and conditions of this Stipulation and Order are not met, the Division may, at its option, rescind this Stipulation and Order and proceed with prosecuting the Complaint before the Commission.
- The Association agrees and understands that by entering into this Stipulation and Order, the Association is waiving its right to a hearing at which the Association may present evidence in its defense, its right to a written decision on the merits of the Complaint, its right to reconsideration and/or rehearing, appeal and/or judicial review, and all other rights which may be accorded by the Nevada Administrative Procedure Act, the Nevada Uniform Common-Interest Ownership Act and accompanying statutes and regulations, and the federal and state constitutions. The Association understand that this Stipulation and Order and other documentation may be subject to public records laws. The Commission members who review this matter for approval of this Stipulation and Order may be the same members who ultimately hear, consider and decide the Complaint if this Stipulation and Order is either not approved by the Commission or is not timely performed by the Association. The Association fully understand that it has the right to be represented by legal counsel in this matter at its own expense.
 - 7. Each party shall bear its own attorney's fees and costs.
- 8. Stipulation and Order is Not Evidence. Neither this Stipulation and Order nor any statements made concerning this Stipulation and Order may be discussed or introduced into evidence at any hearing on the Complaint, if the Division must ultimately present its case based on the Complaint filed in this matter.
 - 9. Release. In consideration of execution of this Stipulation and Order, the

members, agents, employees and counsel in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever, known and unknown, in law or equity, that the other party ever had, now has, may have, or claim to have, against any or all of the persons or entities named in this section, arising out of or by reason of the Division's investigation, this disciplinary action, and all other matters relating thereto.

- 10. Indemnification. The parties hereby indemnify and hold each other harmless, and each of their respective members, agents, employees and counsel in their individual and representative capacities, against any and all claims, suits, and actions brought against said persons and/or entities by reason of the Division's investigation, this disciplinary action and all other matters relating thereto, and against any and all expenses, damages, and costs, including court costs and attorney fees, which may be sustained by the persons and/or entities named in this section as a result of said claims, suits, and actions.
- 11. The Association has signed and dated this Stipulation and Order only after reading and understanding all terms herein.

DATED: May 30, 2020.

REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA

Bv:

Sharath Chandra, Administrator

DATED: May 18, 2020.

SILVERSTONE RANCH COMMUNITY ASSOCIATION

Name: TEL

Pacsine

Title: TRESIDE AT

ORDER

1	IT IS ORDERED that the foregoing Partial Stipulation and Order for Settlement	
2		
3	of Disciplinary Action is approved in full.	
4	Dated: May . 2020.	
5	o COM	MISSION FOR COMMON-INTEREST MUNITIES AND CONDOMINIUM ELS, DEPARTMENT OF BUSINESS
6	6 & IN	DUSTRY, STATE OF NEVADA
7	7	
8	8 By:_	Michael Burke, Chairman
9	9	Michael Burke, Chairman
10	Submitted by:	
11	HAROND. FURD	
12	Attorney General	
13		William Wright
14	Senior Deputy Attorney General	Marquis Aurbach Coffing 10001 Park Run Dr.
15	Ulas Vegas, Nevada 89101	Las Vegas, Nevada 89145
16		(702) 207·6085 Attorneys for the Association
17	7	
18	8	
19	9	
20	0	
21	1	
22	2	
23	3	
24	4	4
25	5	
26	6	
27	7	
28	8	
	1	
	Page 7 of 7	

ORDER IT IS ORDERED that the foregoing Partial Stipulation and Order for Settlement of Disciplinary Action is approved in full. Dated: May 20 2020. COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA

Michael Burke, Chairman

Submitted by:

AARON D. FORD Attorney General

By:

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21 22

23

24

25

26

27

28

Michelle D. Briggs Senior Deputy Attorney General 555 E. Washington Ave. Ste 3900 Las Vegas, Nevada 89101 (702) 486-3420 Attorneys for Real Estate Division William Wright Marquis Aurbach Coffing 10001 Park Run Dr.

Las Vegas, Nevada 89145 (702) 207-6085

Attorneys for the Association