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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.

Desert Garden Homeowners Association,
Inc., Daniel Wright, Larry Hawker, Dawson
Smith, and Bradley Shultis,
Respondents.

Case No. 2019-852

FILED

JUN 22 2020

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kelly Valadez

**COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING**

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of the State of Nevada, Michelle D. Briggs, Senior Deputy Attorney General, and Karissa D. Neff, Deputy Attorney General, hereby notifies RESPONDENTS DESERT GARDEN HOMEOWNERS ASSOCIATION, INC., ("Association"), DANIEL WRIGHT, LARRY HAWKER, DAWSON SMITH, and BRADLEY SHULTIS (collectively, "RESPONDENTS") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

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1 **JURISDICTION AND NOTICE**

2 1. During the relevant times mentioned in this complaint, RESPONDENTS
3 DANIEL WRIGHT, LARRY HAWKER, DAWSON SMITH and BRADLEY SHULTIS
4 served as board members and/or officers of DESERT GARDEN HOMEOWNERS (the
5 "Association"), a common-interest community located in Las Vegas, Nevada.

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

11 **FACTUAL ALLEGATIONS**

12 3. DESERT GARDEN HOMEOWNERS ASSOCIATION, INC. is a 148 unit
13 condominium project located in Las Vegas, Nevada.

14 4. At relevant times mentioned in this Complaint, the Association's board
15 consisted of RESPONDENTS DANIEL WRIGHT, LARRY HAWKER, DAWSON SMITH
16 AND/OR BRADLEY SHULTIS, who collectively also own no less than 115 of the 148 units
17 in the Association.

18 5. From 2011 through 2018, the Association was managed by Eugene Burger
19 Management.

20 6. Beginning in February 2018, the Association was managed by 5STRMGT,
21 LLC, a Nevada limited liability owned by Yvonne Culliver.

22 7. The Division initiated an audit of the Association on December 14, 2018, due
23 to the possibility that the Association's reserve account was underfunded and because the
24 Association failed to conduct a 2017 audit.

25 8. The Division's audit revealed the following:

- 26 • The Board failed to adequately fund the operating and reserve accounts;
- 27 • The 2018 Reserve Study reflected a year end percent funded of -22% due to
28 necessary reserve expenses and the lack of funding to date;

1 • The Association's 2018 Reserve Study showed that prior to the 2018 audit, the
2 Board removed major components of the common elements and the Board and community
3 manager failed to respond to the auditor's request to provide confirmation that the Board
4 followed the statutes and governing documents in the removal of the common elements;

5 • The Board failed to adhere to the approved Reserve Budget or Reserve Study
6 Recommendations;

7 • Specifically, the 2018 Reserve Study recommended a total reserve
8 contribution of \$13,837, the Association budgeted \$106,339, but only contributed \$6,600;
9 and

10 • The 2018 Reserve Study listed \$201,178 in expenditures, the Association
11 Budgeted \$39,180, but only spent \$5,127.

12 9. On August 7, 2019, the Division properly gave notice to the Association that
13 it had opened an investigation regarding the Association and possible violations of
14 NRS/NAC 116 and alleged certain violations and requested responses from each Board
15 member for the following: (1) the Board failed to maintain, repair, and/or replace the
16 common elements of the Association, (2) the Board failed to properly fund the
17 Association's reserve account to properly cover the costs to repair, replace or maintain the
18 major components of the Association, (3) the Board failed to assess common expenses,
19 including the reserves, against all units to fund the repair, replacement, and restoration
20 of the major components of the common elements or other portions that the Association
21 is obligated to maintain, replace, and/or restore or repair, (4) that the Association's bank
22 card improperly granted the Association's manager the authority to sign on the reserve
23 account, (5) the Board failed to impose fines against unit owners and/or their tenants for
24 violations, and (6) the Board failed to conduct the Association's 2017 audit.

25 10. In the Divisions August 7th letter to the Association, the Division also
26 requested that the Board provide documentation that it funded the reserve account
27 appropriately and had funds to repair, replace, and maintain major components,
28 documentation that the Association has been providing maintenance, repairs, and

1 replacements, and documentation that supports how the Board would remedy the
2 violations set forth in the August 7th letter and/or documentation showing the Board
3 complied with all statutes (collectively, the "Requested Documents").

4 11. Yvonne Culliver, the Association's community manager responded to the
5 Division regarding its investigation.

6 12. In response to the allegation that the Board failed to properly fund the
7 Association's Reserve Account, Ms. Culliver stated, "as of today the HOA currently has
8 \$107,523.53 in their reserve account."

9 13. The 2018 Reserve Study indicates full funding would be approximately
10 \$450,000 in 2019, but this number also assumes significant maintenance, repairs or
11 replacements were already completed.

12 14. In response to the allegation that the Association's bank card improperly
13 granted the Association's manager the authority to sign on the reserve account, Ms.
14 Culliver stated that a new signature card would be submitted, that the boxes on it, had
15 been mismarked, and that the manager has never signed on the reserve account.

16 15. No documentation was ever provided to the Division that the Association's
17 bank card removed the Association's manager from the reserve account.

18 16. In response to the allegation that the Board failed to conduct the
19 Association's 2017 audit, Ms. Culliver responded that the December 2017 audit was
20 completed July 26, 2019, and would be finalized and submitted.

21 17. On August 29, 2019, the Division received an email from Ms. Culliver
22 providing a draft 2017 audit and setting forth the same responses set forth in her prior
23 response to the Division.

24 18. On August 30, 2019, Larry Hawker responded to the Division but did not
25 provide the Division with any of the Requested Documents.

26 19. In his response to the Division, Larry Hawker stated the following:

- 27 • The Board has approved improvements to be done that balances budget
28 requirements and reserves verses maintenance issues. That it was difficult

1 because the Association was still in the mode of building reserves required by
2 state law and that it has taken several years to build up sufficient reserves even
3 after passing a special assessment;

- 4 • The Board is trying to build up the reserves and that when he came on board,
5 there were almost no reserves;
- 6 • The Board is trying to maintain costs and provide essential maintenance and
7 repairs and that the property was old and never properly maintained;
- 8 • That reserves are up significantly;
- 9 • That signature cards have been updated;
- 10 • That fines have been imposed where appropriate and that the Board is taking
11 a more aggressive position on fining owners;
- 12 • That the audit has been completed;
- 13 • That Ms. Culliver submitted the reserve account information; and
- 14 • That the Board is in the process of remedying any issues to comply with statutes
15 it believes it is not in compliance with.

16 20. No other Board member provided a response to the Division.

17 21. No further documents were ever provided to the Division.

18 22. Beginning in 2018 and continuing in 2019, the Association imposed tiered
19 assessments based on size of unit, no such authority exists in the governing documents.

20 **VIOLATIONS OF LAW**

21 23. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS
22 116.3103 (through NAC 116.405(3)) by failing to act on an informed basis, in good faith
23 and in the honest belief that their action was in the best interests of the Association by
24 committing incompetence, negligence or gross negligence by failing to adequately fund
25 the reserve and operating accounts, by failing to timely conduct the Association's 2017
26 audit, and by failing to properly maintain, repair, and/or restore the common elements of
27 the Association.

28 24. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS

1 116.3103 (through NAC 116.405(5)(a) and (c)) by failing to act in good faith and in the
2 best interests of the Association by impeding or otherwise interfering with an
3 investigation of the Division by failing to comply with a request by the Division to provide
4 information or documents and by concealing facts or documents relating to the business
5 of the Association.

6 25. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS
7 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best interests
8 of the Association by acting for reasons of self-interest or gain by personally failing to
9 fund the reserves and failing to make necessary repairs or replacements to the common
10 elements when they collectively own the majority of the units in the Association.

11 26. RESPONDENTS violated NRS 116.31152 by failing to maintain an
12 adequately funded reserve account based on a reserve study.

13 27. RESPONDENTS violated NRS 116.3107 by failing to provide for the
14 maintenance, repair and replacement of the common elements.

15 28. RESPONDENTS violated NRS 116.31153 by permitting the Association's
16 community manager to be a signatory on the Association's reserve account.

17 29. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by
18 failing to act in good faith and in the best interests of the Association when they failed to
19 cause the Association to comply with all state laws and the governing documents of the
20 Association.

21 DISCIPLINE AUTHORIZED

22 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
23 116.790 the Commission has discretion to take any or all of the following actions:

24 1. Issue an order directing RESPONDENT to cease and desist from continuing
25 to engage in the unlawful conduct that resulted in the violation.

26 2. Issue an order directing RESPONDENT to take affirmative action to correct
27 any conditions resulting from the violation.

28 3. Impose an administrative fine of up to \$1,000 for each violation by

1 RESPONDENT.

2 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND
3 WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best
4 interest of the Association, such RESPONDENTS may be removed from his/her position
5 as a director and/or officer.

6 5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

7 6. Require the BOARD MEMBERS to hire a community manager who holds a
8 certificate.

9 7. Require RESPONDENTS to pay the costs of the proceedings incurred by the
10 Division, including, without limitation, the cost of the investigation and reasonable
11 attorney's fees.

12 8. Take whatever further disciplinary action as the Commission deems
13 appropriate.

14 The Commission may order one or any combination of the discipline described
15 above. If the Commission finds that the RESPONDENTS knowingly and willfully
16 violated the provisions of NRS or NAC 116, the Commission may order that
17 RESPONDENTS be personally liable for all fines and costs imposed.

18 **NOTICE OF HEARING**

19 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider
20 this Administrative Complaint against the above-named RESPONDENTS in accordance
21 with Chapters 233B and 116 of the Nevada Revised Statutes and Chapter 116 of the
22 Nevada Administrative Code.

23 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled
24 for August 4-6, 2020, beginning at approximately 9:00 a.m. each day, or until
25 such time as the Commission concludes its business. The Commission meeting
26 will be held as a virtual meeting with the Commission and Respondents
27 participating through Webex. Upon receiving this Notice, the Respondents will
28 need to contact the Commission Coordinator at (702) 486-4606 or

1 kvaladez@red.nv.gov to provide an email address to receive the virtual meeting
2 invitation.

3 **STACKED CALENDAR:** Your hearing is one of several hearings that may
4 be scheduled at the same time as part of a regular meeting of the Commission
5 that is expected to take place on August 4-6, 2020. Thus, your hearing may be
6 continued until later in the day or from day to day. It is your responsibility to
7 be present when your case is called. If you are not present when your hearing
8 is called, a default may be entered against you and the Commission may decide
9 the case as if all allegations in the complaint were true. If you need to negotiate
10 a more specific time for your hearing in advance, please call Kelly Valadez,
11 Commission Coordinator, at (702) 486-4606.

12 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is
13 an open meeting under Nevada's open meeting law, and may be attended by the public.
14 After the evidence and arguments, the commission may conduct a closed meeting to
15 discuss your alleged misconduct or professional competence. You are entitled to a copy of
16 the transcript of the open and closed portions of the meeting, although you must pay for
17 the transcription.

18 As a **RESPONDENT**, you are specifically informed that you have the right to
19 appear and be heard in your defense, either personally or through your counsel of choice.
20 At the hearing, the Division has the burden of proving the allegations in the complaint
21 and will call witnesses and present evidence against you. You have the right to respond
22 and to present relevant evidence and argument on all issues involved. You have the right
23 to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses
24 on any matter relevant to the issues involved.

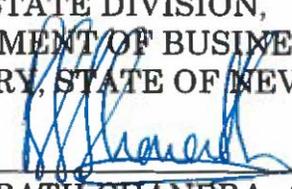
25 You have the right to request that the Commission issue subpoenas to compel
26 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
27 you may be required to demonstrate the relevance of the witness' testimony and/or
28 evidence. Other important rights and obligations, including your obligation to answer the

1 complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including
2 without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC
3 116.635 and NRS Chapter 233B.

4 Note that under NAC 116.575, not less than five (5) working days before a hearing,
5 RESPONDENTS must provide to the Division a copy of all reasonably available
6 documents that are reasonably anticipated to be used to support his position, and a list
7 of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to provide
8 any document or to list a witness may result in the document or witness
9 being excluded from RESPONDENTS' defense. The purpose of the hearing is to
10 determine if the RESPONDENTS have violated the provisions of NRS 116, and to
11 determine what administrative penalty is to be assessed against RESPONDENTS.

12 DATED this 19th day of June, 2020.

13
14 REAL ESTATE DIVISION,
15 DEPARTMENT OF BUSINESS &
16 INDUSTRY, STATE OF NEVADA

17 By: 
18 SHARATH CHANDRA, Administrator
19 3300 W. Sahara Ave. Ste 350
20 Las Vegas, Nevada 89102
21 (702) 486-4033

22 AARON D. FORD
23 Attorney General

24 By: */s/ Karissa Neff*

25 MICHELLE D. BRIGGS (Bar No. 7617)
26 Senior Deputy Attorney General
27 Karissa D. Neff (Bar No. 9133)
28 Deputy Attorney General
555 E. Washington Ave. Ste 3900
Las Vegas, Nevada 89101
(702) 486-3420
Attorneys for Real Estate Division