

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.

James Melvin Fennell,

Respondent.

Case No. 2019-1083

FILED

SEP 24 2020

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kelly Valsadey

**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, and Karissa D. Neff, Deputy Attorney General, hereby notifies RESPONDENT James Melvin Fennell ("FENNELL") ("RESPONDENT") 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 Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116 and 116A 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 RESPONDENT pursuant to the provisions of NRS and NAC including, but not limited to, NAC 116A.360.

JURISDICTION AND NOTICE

During all relevant times mentioned in this complaint, RESPONDENT held a provisional community manager certificate from the Division (CAM.0009222-PROV) and is, therefore, subject to the jurisdiction of the Division and the provisions of NRS Chapters

1 116 and 116A and NAC Chapters 116 and 116A. RESPONDENT'S certificate is currently
2 in "inactive" status.

3 FACTUAL ALLEGATIONS

4 1. RESPONDENT obtained his provisional community manager license from the
5 Division in December of 2018, license CAM.009222-PROV, said license now on inactive
6 status.
7

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

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

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

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

24 6. On September 26, 2019, the Division received a Statement of Fact filed against
25 RESPONDENT by Whitworth, alleging that RESPONDENT had fraudulently endorsed
26 Association checks, deposited them into his personal account, and had taken homeowner
27 cash payments due to the Association.
28

7. The Association provided documentation to the Division that RESPONDENT

1 intercepted checks written from the Association to other persons/entities, intercepted
2 checks written from the Association to vendors, intercepted checks from title companies to
3 the Association for real estate closing to cover capitalization, transfer fees, and credits to
4 new owner's accounts, and took money due to the Association for resale packages/demand
5 letters.
6

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

10 9. On October 16, 2019, RESPONDENT responded to the Division's investigation.
11

12 10. In his October 16th response to the Division, RESPONDENT stated he wanted
13 to acknowledge his mistake, that he had apologized to the Association's president,
14 treasurer, and Whitworth, and that he had mistakenly taken a check payable from the
15 Association to Showcase Landscape Services ("Showcase") in the amount of \$1,505.00
16 and had sent the Association a money order in the amount of \$1,505.00.
17

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

21 12. On October 17, 2019, the Division notified RESPONDENT it had received
22 documentation supporting that certain Association checks were endorsed by him and
23 deposited into his personal bank account, totaling approximately \$9,330.05 in Association
24 funds and had also received documentation that cash transactions were not applied to
25 owners' accounts.
26

27 13. In the Division's October 17th letter, the Division requested RESPONDENT
28 provide documentation supporting that he re-paid the Association \$1,505.00 through

1 money orders as the Association claimed they did not receive the funds, as well as provide
2 any evidence he had repaid the checks to Showcase and Brundage.

3 14. On November 15, 2019, the Division received RESPONDENT's response.

4 15. RESPONDENT stated that he did not recall taking any cash that should have
5 been applied to any homeowner's account.
6

7 16. With respect to checks that were missing from resale packages, he claimed
8 that he tried to reach out to the bank but was unable to obtain copies of the checks because
9 the account was closed.

10 17. He also claimed it was his understanding that because he was preparing
11 resale packages, he was to be compensated for his work with the money from the title
12 companies.
13

14 18. With respect to the money orders he claimed to have made to the Association,
15 RESPONDENT stated he could not provide proof they were sent because he did not send
16 them certified mail and did not request a signed receipt.

17 19. Whitworth also responded to the Division's investigation.
18

19 20. Whitworth stated at no time did she tell RESPONDENT that funds paid for
20 resale/demands would be RESPONDENT's compensation and that RESPONDENT was
21 employed by and paid by the Association- not through her company.

22 21. On July 10, 2020, the Division properly notified RESPONDENT it was
23 commencing a disciplinary action against him before the Commission.
24

25 VIOLATIONS OF LAW

26 22. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a
27 fiduciary to the Association in the performance of his duties as a provisional community
28 association manager.

23. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and reasonable care in the performance of his duties as a provisional association community manager.

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

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

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

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

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

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

DISCIPLINE AUTHORIZED

Pursuant to the provisions of NAC 116A.360 the Commission has discretion to impose discipline as it deems appropriate, including, but not limited to one or more of the following actions:

1. Revoke or suspend the certificate;
2. Refuse to renew or reinstate the certificate;
3. Place the community manager on probation;
4. Issue a reprimand or censure to the community manager;
5. Impose a fine of not more than \$5,000 for each violation of a statute or regulation;
6. Require the community manager to pay restitution;
7. Require the community manager to pay the costs of the investigation and hearing;
8. Require the community manager to obtain additional education relating to the management of common-interest communities; and
9. Take such other disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above.

NOTICE OF HEARING

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

THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for October 27-29, 2020, beginning at approximately 9:00 a.m. each day, or until such time as the Commission concludes its business.

If the Governor's Emergency Directive 006 – suspending physical location requirements is extended through the date of the meeting, then the hearing will

1 be held via teleconference and video conference with the Commission and
2 Respondents participating through Webex. To join the hearing, go to the
3 website Webex.com and enter the Meeting ID and Password:

4 Tuesday, October 27, 2020 – Meeting Number (Access Code): 146 747 1420
5 Meeting Password: Pk59MmncUA8 (75596662 from phones and video systems)

6 Wednesday, October 28, 2020 – Meeting Number (Access Code): 146 358 3813
7 Meeting Password: SWgtmM2c2d8 (79486622 from phones and video systems)

8 Thursday, October 29, 2020 – Meeting Number (Access Code): 146 816 5796
9 Meeting Password: 6cC8gPkM3hV (62284756 from phones and video systems)

10 If you do not have internet access, you may attend by phone at (844) 621-3956.

11 Some mobile devices may ask attendees to enter a numeric meeting password
12 provided above.

13 If Emergency Directive 006 is not extended and the meeting is held in
14 person, then the meeting will be located at the following locations:

15
16 Nevada State Business Center
17 Real Estate Division
18 3300 West Sahara Avenue, Suite 350
19 Las Vegas, Nevada 89102

20 If you would like an email containing this information, before the
21 hearing, please contact Kelly Valadez, Commission Coordinator, at (702) 486-
22 4606 or kvaladez@red.nv.gov.

23 STACKED CALENDAR: Your hearing is one of several hearings that may
24 be scheduled at the same time as part of a regular meeting of the Commission
25 that is expected to take place on October 27-29, 2020. Thus, your hearing may
26 be continued until later in the day or from day to day. It is your responsibility
27 to be present when your case is called. If you are not present when your hearing
28

1 is called, a default may be entered against you and the Commission may decide
2 the case as if all allegations in the complaint were true. If you need to negotiate
3 a more specific time for your hearing in advance, please call Kelly Valadez,
4 Commission Coordinator, at (702) 486-4606.

5
6 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is
7 an open meeting under Nevada's open meeting law and may be attended by the public.
8 After the evidence and arguments, the commission may conduct a closed meeting to
9 discuss your alleged misconduct or professional competence. You are entitled to a copy of
10 the transcript of the open and closed portions of the meeting, although you must pay for
11 the transcription.
12

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

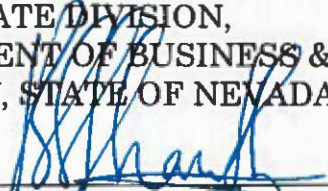
21 You have the right to request that the Commission issue subpoenas to compel
22 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
23 you may be required to demonstrate the relevance of the witness's testimony and/or
24 evidence. Other important rights and obligations, including your obligation to answer the
25 complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter
26 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A.
27

28 Note that under NAC 116A.585, not less than five (5) working days before a

1 Note that under NAC 116A.585, not less than five (5) working days before a
2 hearing, RESPONDENT must provide to the Division a copy of all reasonably available
3 documents that are reasonably anticipated to be used to support his or her position, and
4 a list of witnesses RESPONDENT intends to call at the time of the hearing. Failure to
5 provide any document or to list a witness may result in the document or witness being
6 excluded from RESPONDENT'S defense. The purpose of the hearing is to determine if
7 the RESPONDENT has violated any of the provisions of NRS and NAC Chapters 116 and
8 116A, and to determine what administrative penalty is to be assessed against
9 RESPONDENT, if any, pursuant to NAC 116A.360.
10

11 DATED this 23 day of September, 2020.
12

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

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