

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM  
HOTELS MEETING MINUTES OCTOBER 27-29, 2020**

**VIRTUAL MEETING  
OCTOBER 27, 2020  
9:13 A.M.**

**1-A) Introduction of Commissioners in attendance**

Michael Burke, Charles Niggemeyer, Richard Layton, Tonya Gale, and Phyllis Tomasso.  
Deputy Attorney General Asheesh Bhalla sitting as Commission Counsel.

**1-B) Introduction of Division staff in attendance**

Sharath Chandra, Administrator; Charvez Foger, Ombudsman; Terry Wheaton, Chief Compliance Audit Investigator; Teralyn Lewis, Administration Section Manager; Kelly Valadez, Commission Coordinator; Sonya Meriweather, Senior Mediation Specialist; Monique Williamson, Education and Information Officer; Antonio Brown, Training Program Officer; Christina Pitch, Compliance Audit Investigator; and Margaret Klenk, Auditor.

Deputy Attorney Generals Michelle Briggs and Karissa Neff representing the Division.

**2) Public Comment**

Joel Just, CEO of CAMCO and President of CAMEO, stated that he was in support of the revisions for fees and costs of collections. Mr. Just stated that it had been over a decade since fees and costs had been addressed and numerous collection companies have gone out of business during that time period and most other collection companies have had to reorganize or consolidate to stay in business.

Cameron Clark, President of Nevada Association Services, stated that he echoed what Mr. Just's comments.

**3) Regulation Workshop for Proposed Changes to NAC 116 & 116B**

**Section 1**

Teralyn Lewis read this section into the record.

No public comment.

**Section 2**

Teralyn Lewis read this section into the record.

No public comment.

**Section 3**

Teralyn Lewis read this section into the record.

Michael Randolph, Manager and managing partner of HOA Collections, LLC, stated that over twelve years ago, he was on the council that brought together and proposed LCB File No. R199-09. Mr. Randolph stated that it has been eleven years since his industry has received a raise. Mr. Randolph stated that the fees that are charged through NAC 116.470 were determined back then and that the price of a case of paper and phone services had dramatically increased since then. Mr. Randolph stated that he would like to look at increasing other fees but doesn't know if this is the

time or place to specifically go through that or possibly a future meeting.

Section 4

Teralyn read this section into the record.

No public comment.

Section 5

Teralyn read this section into the record.

Cameron Clark, President of Nevada Association Services, read his letter into the record and provided written public comment.

Mr. Clark stated that removal of the cap makes sense because if all the fees are limited it would create a natural cap on the total amount of fees that a collection company can charge. Mr. Clark stated that tying it to the consumer price index should be considered.

Joel Just, CEO of CAMCO and President of CAMEO, stated that he was in the collections industry when the cap and fee schedule were put together. Mr. Just stated that it has been a decade since the fees and cap have been revisited. Mr. Just stated that the \$1950 cap at the time was a voluntary effort of the collection companies to stem some accusations of gouging in the marketplace. Mr. Just stated as an example, filing fees for Clark County have increased 250 percent in the same time period. Mr. Just stated that a number of fees and costs have to be written off because the cap is exceeded, making it harder to make a living and properly support associations in Nevada.

John Leach, attorney with Leach Kern Gruchow Anderson and Song, stated that to have a line item cap and cumulative cap are inappropriate. Mr. Leach stated that when this was done 10 years ago, he was on the committee and it was simply a compromise with the public. Mr. Leach stated that since that time period, NAC 116 has gone through monumental changes not just with respect to the super-priority but also because there are certain things that the Legislature has identified as being additional work product that must be done which is not addressed in the regulation. Mr. Leach stated that there are documents now that must be prepared and recorded as part of the legislative process to foreclose that are not accounted for in the regulation and needs to be added to the cumulative cap of \$1950.

RodneyThompson, board member with Eldorado, stated on behalf of himself not the entire board, that he was in support for fee increases by the homeowner association collection companies. Mr. Thompson stated that his board had encountered problems selecting companies and problems with companies selected going out of business which has created monumental paperwork. Mr. Thompson stated that he agrees that regulations and fees need to be adjusted.

The workshop closed for public comment.

**7-A) Discussion and decision on proposed changes, additions and deletions to NAC 116 and NAC 116B including but not limited to review of public comment from the regulation workshop held October 27, 2020**

Commissioner Niggemeyer stated that he agrees with the increase in fees but unsure how a certain amount is derived and whether it should be capped or not capped.

Chairman Burke stated that he is of the same opinion that when someone has been rate locked for eleven years with no changes and certainly the scale of the economy has changed, it is relevant and timely that these changes be implemented.

Commissioner Gale stated that she agreed. Commissioner Gale stated that there should be something on the side of the collection companies that is better regulated that forces homeowners to want to deal with the management companies instead of sending them to collections. Commissioner Gale stated that if a fee increase could make that possible then it should be done.

Commissioner Layton stated that he agreed with all comments made.

Commissioner Tomasso stated that she agreed, and all points made were valid.

Chairman Burke moved to approve the changes as read into the record regarding changes to NAC 116 and 116B. Commissioner Layton seconded. Motion carried.

**4-A) NRED v. Rosario Orozco, for possible action**

**Case Nos. 2014-3723 & 2014-3453**

**Type of Respondent: Community Manager**

**License#: CAM.0007435 (INACTIVE)**

Rosario Orozco was present.

Michelle Briggs was present representing the Division.

Rosario Orozco stated that she respectfully wanted to petition the Commission for a waiver of the remaining imposed fines assessed to her license in March 2017. Ms. Orozco stated that to date she has made timely monthly payments to the Division which has roughly totaled \$8,500 out of the \$11,000 that was imposed. Ms. Orozco stated that she was placed on a 1-year probation period that she has successfully completed, and the Commission granted Ms. Orozco her full community manager certificate in 2018. Ms. Orozco stated that she has been a licensed community manager in good standing and has submitted paperwork for her supervisory license.

Ms. Briggs stated that the order that Ms. Orozco is asking to amend dealt with serious violations with outrageous cost to the association due to activities Ms. Orozco and the board were engaged in. Ms. Briggs stated that when these cases came before the Commission, Ms. Orozco agreed to a settlement and amount. Ms. Briggs stated that Ms. Orozco did not contest the facts that were laid out and that is why a long payment plan was given. Ms. Briggs stated that the Division wanted revocation based on extortion, but the Commission agreed to allow Ms. Orozco to keep her license. Ms. Briggs stated that Ms. Orozco is still in the industry and working. Ms. Briggs asked the Commission to not amend the order and require Ms. Orozco to complete the payments.

Chairman Burke asked Ms. Orozco if there was a reason for the reconsideration other than to cease making payments.

Ms. Orozco stated that she switched positions, was with a different company as of October 14, 2020 and her salary is not quite the same. Ms. Orozco stated that she understands that \$11,000 was assessed and that she agreed to the terms of 5 years at \$198 per month. Ms. Orozco stated that due to the circumstance of her previous company letting her go, she would be unemployed and was dealing with medical issues at the time.

Commissioner Layton stated that he was on the Commission at the time this case was heard and appreciated Ms. Orozco making the monthly payments and keeping up with the agreement. Commissioner Layton stated that he is concerned about setting a precedent of reducing the fee that the Commission imposed. Commissioner Layton stated at the time he thought the Commission was very lenient with the fees and length of time for payments. Commissioner Layton stated that he is in favor of Ms. Orozco making full payment.

Commissioner Tomasso stated that she agreed that there was not a good enough reason for the Commission to retract their position. Commissioner Tomasso stated that an offense of this nature should not be mitigated, and the fine should stay.

Commissioner Gale agreed with Commissioners Layton and Tomasso.

Commissioner Niggemeyer agreed.

Chairman Burke stated that Ms. Orozco's stipulated to the fine and the payment and should be completed.

Chairman Burke moved to deny the motion for reconsideration. Commissioner Layton seconded. Motion carried.

**5-A) NRED v. The Colony, Luis Villareal, Alan Mehr, Allen Nichols, and Marc Morger, for possible action**

**Case No. 2018-1058**

**Type of Respondent: Board Members**

Michelle Briggs was present representing the Division.

Chryl Christian, community manager for The Colony was present.

Marc Morger was present for The Colony.

Ms. Briggs stated that the Commission entered an order as to the board member that admitted liability in this case and continuation with the other board members so they could hire a community manager and become compliant with NRS 116.

Ms. Christian stated that she was with Performance LLC and the current community manager for The Colony. Ms. Christian stated that the current board members are Allen Nichols, Marc Morger and Deborah Martinez. Ms. Christian stated that regarding the financial situation, the association was currently trying to get a reserve study done so that the association can open and start funding a reserve account. Ms. Christian stated that until the reserve study had been completed, the association would not know how much they would need to increase their assessments.

Chairman Burke asked Ms. Christian when she was retained and if the reserve study had been commissioned.

Ms. Christian stated that she was retained on September 1, 2020 and that the association had signed a contract with the reserve study specialist, but it is not completed.

Chairman Burke stated that The Colony was in compliance with the previous order by hiring a community manager and have taken steps to get the ball moving. Chairman Burke asked if the State wanted to continue this matter for further report on the reserve study.

Ms. Briggs stated that she would like to request a status update at the next Commission meeting to know the financial condition of the association in terms of assessments, how much money they have, amount of reserves, how funded they are and to make sure the association maintains management.

Chairman Burke asked the Commission if there were any objections. No objections were noted.

Chairman Burke moved to continue this matter as a status check at the next Commission meeting and that Ms. Christian will provide a written report to Ms. Briggs a week before the date of the next Commission meeting with the status of the reserve study and any data accumulated concerning the reserve study. Commissioner Layton seconded. Motion carried.

**5-B) NRED v. Belcourt Owners Association, Angela Berliner, Marcia Creamer, Jesse Zambrano, and John Carter, for possible action  
Case No. 2018-172**

**Type of Respondent: Board Members**

Michelle Briggs was present representing the Division.

Ms. Briggs stated that there was a stipulation to continue.

The Commission was provided with a copy of the stipulation.

Chairman Burke asked the Commission if there were any objections to the stipulation. No objections were noted.

Chairman Burke moved to approve the stipulation to continue. Commissioner Niggemeyer seconded. Motion carried.

**5-C) NRED v. Eldora Plaza, Inc., Barbara Jackson and Amalia Dominguez, for possible action**

**Case No. 2017-2476**

**Type of Respondent: Board Members**

Karissa Neff was present representing the Division.

John Leach was present representing the respondents.

Ms. Neff stated that there was a stipulation for settlement.

The Commission was provided with a copy of the stipulation for settlement.

Chairman Burke asked the Commission if there were any objections to the stipulation for settlement. No objections were noted.

Commissioner Gale moved to accept the stipulation for settlement. Commissioner Layton seconded. Motion carried.

**5-E) NRED v. Desert Garden Homeowners Association, Inc., Daniel Wright, Larry Hawker, Dawson Smith, and Bradley Shultis, for possible action  
Case No. 2019-852**

**Type of Respondent: Board Members**

Karissa Neff was present representing the Division.

Adam Knecht was present representing the respondents.

Ms. Neff stated that the parties had reached a proposed settlement.

Ms. Neff read the proposed settlement into the record.

**Stipulation for Settlement**

- Desert Garden will present a detailed and comprehensive plan to address the currently delinquent reserve accounts of the association, including but not limited to reasonable timelines to address maintenance expenses, special assessments and monthly assessments. Desert Garden will provide the reserve account recovery plan to the Division by January 1, 2021. The plan will address and remedy the operating fund incurring debt to the reserve fund.
- Desert Garden will present a plan to address the current board members' delinquent assessment accounts by January 1, 2021, specifically a plan to bring those accounts current.
- Desert Garden will not perform collection of tiered monthly assessments.
- Desert Garden will pay costs and fees of the Division in bringing this complaint and conducting its investigation which amounts to \$1,878.92.
- Each board member shall complete 10 hours of Division approved education.
- Desert Garden will acknowledge in the stipulation that it had inadequate reserves, its operating fund was incurring debt to its reserve fund, and that it had been using tiered assessments.

Mr. Knecht stated that Desert Garden agreed with those terms.

Chairman Burke asked the Commission if there were any questions or objections to the proposed settlement. No objections were noted.

Commissioner Layton stated that the 10 hours of education for board members should have a specific date for completion.

Ms. Neff stated that the Division would propose that it be completed within 6 months.

Chairman Burke moved to approve the settlement as read into the record with the addition that the education be completed within 6 months. Commissioner Layton seconded. Motion carried.

**5-F) NRED v. James Melvin Fennell, for possible action  
Case No. 2019-1083**

**Type of Respondent: CAM.0009222-PROV (INACTIVE)**

Karissa Neff was present representing the Division.

James Fennell was not present.

State's Witness

Kelly Valadez testified regarding service of the complaint.

Chairman Burke moved to find Mr. Fennell in default for failing to respond to a properly served complaint. Commissioner Gale seconded. Motion carried.

Chairman Burke moved to admit the factual allegations in paragraph 1 through paragraph 21. Commissioner Layton seconded. Motion carried.

Chairman Burke moved to find that Mr. Fennell had violated the laws as pled in paragraphs 22-29 of the complaint. Commissioner Layton seconded. Motion carried.

Ms. Neff asked that the documents produced be admitted into evidence.

Chairman Burke moved to admit the documents into the record. Commissioner Gale seconded. Motion carried.

#### Disciplinary Recommendation

Ms. Neff stated that the Division was requesting that \$9,300.05 be paid as restitution to the association within 60 days, that Mr. Fennell pay the Division's fees and costs of \$1,935.97 within 60 days and that Mr. Fennell's license be revoked with no reapplication for a ten-year period.

Commissioner Layton stated that in his time on the Commission, that the precedent had always been to impose a fine and he thought it was appropriate to impose a \$5,000 fine for each of the 8 violations.

Commissioner Gale stated that she agreed with a fine for the violations.

Commissioner Tomasso stated that she agreed.

Chairman Burke moved that Mr. Fennell be imposed a fine of \$5,000 for each of the 8 violations for a total amount of \$40,000 to be paid within 60 days, that Mr. Fennell's license be revoked and not be reinstated until and unless Mr. Fennell appears before the Commission. Mr. Fennell must repay the fees and costs of the Division in the amount of \$1935.97 within 60 days and repay to the association \$9,350 within 60 days. Commissioner Gale seconded. Motion carried.

#### **5-D) NRED v. Sherryl Baca, for possible action**

**Case No. 2018-660 and 2018-812**

**Type of Respondent: CAM.0001439-SUPR**

Michelle Briggs was present representing the Division.

Sue Cavaco was present representing Sherryl Baca.

Sherryl Baca was present.

Ms. Cavaco stated that she would like to invoke the exclusionary rule for witnesses under NAC 116A.595(1)(d).

Joe Tommila was removed from the meeting and placed into the virtual lobby.

#### State's Witness

Gina D'Alessandro testified.

Ms. Cavaco cross-examination of Ms. D'Alessandro.

Ms. Briggs re-directed Ms. D'Alessandro.

The Commission had no questions for Ms. D'Alessandro.

The witness was dismissed.

State's Witness

Gudjon Jonsson testified.

Ms. Cavaco cross-examined Mr. Jonsson.

The Commission had no questions for Mr. Jonsson.

The witness was dismissed.

State's Witness

Dave Penn testified.

Ms. Cavaco cross-examined Mr. Penn.

The Commission had no questions for Mr. Penn.

The witness was dismissed.

Chairman Burke stated that Commissioner Layton had a prior commitment for tomorrow's hearing and stated he was fine with a delayed start time for the hearing to allow all Commissioners to be present. Chairman Burke asked if there was any objection to starting the meeting at 10:00 a.m.

Ms. Cavaco asked if there would be a quorum without the presence of Commissioner Layton if the meeting were to begin at 9:00 a.m. Ms. Cavaco stated that she and her client had no objection to a start time of 10:00 a.m. but wanted to make sure that her client had a full and clear opportunity for her case to be heard and be able to present her case seeing how there are some serious allegations against her.

Commissioner Tomasso stated that she was fine with a delayed start of 10:00 a.m. because she felt all of the Commissioners should be present.

Chairman Burke stated that there would be a quorum without Commissioner Layton. Chairman Burke stated that the meeting on Wednesday, October 28, 2020 would begin at 10:00 a.m. with Commissioner Layton present to give all parties the benefit of having all 5 Commissioners present.

#### **6-A) Administrator's Report**

Sharath Chandra presented this report. Mr. Chandra stated that the Division is still closed to the public. Mr. Chandra stated that the Ombudsman's office is offering all their services in an online format including education. Mr. Chandra stated that from a budgeting perspective, there



had been no change in revenue. Mr. Chandra stated that real estate is doing better than anticipated in this economy with licensees, real estate practitioners, homeowner associations and development growing. Mr. Chandra stated that the Division will continue to update the Commission on the Task Force and any potential bill draft requests that will be presented in the legislative process.

**6-B-1) Ombudsman's Report on Intervention Affidavits**

**6-B-2) Ombudsman's Report on Informal Conferences**

**6-B-3) Ombudsman's Report on number and types of associations registered within the State**

**6-B-4) Ombudsman's Report on Auditor's report**

**6-B-5) Ombudsman's Report on Alternative Dispute Resolution Program**

**6-B-6) Ombudsman's Report on Education and Training Officers' report**

**6-B-7) Ombudsman's Report on Compliance section report**

Charvez Foger provided the Commission with these reports in the meeting packet. Mr. Foger stated that the comparative analysis from a year ago to the current time period was provided as suggested by Commissioner Layton during the last Commission meeting.

Mr. Foger stated that the Ombudsman's office had hired a new investigator and an administrative assistant III. Mr. Foger stated that the Ombudsman's staff is working 3 days in the office and telecommuting 2 days a week. Mr. Foger stated that the Education section has been shining with their virtual classes and that the virtual classes will continue even after the pandemic.

**6-C) Licensee and board member discipline report**

Teralyn Lewis provided the Commission with this report in the meeting packet.

**7-B) Discussion regarding the State of Nevada Controller's Office debt collection process for fines issued by the Commission.**

Commissioner Niggemeyer reported on this item. Commissioner Niggemeyer stated that this issue would depend if the legislature had any interest in a bill draft request. Commissioner Niggemeyer stated that his suggestion would be to table the issue until the 2021 legislative session was over and then to make changes to regulation.

**7-C) Discussion regarding Commissioner's speaking engagement requests.**

The Commission stated that there was nothing to report.

**7-D) Discussion and decision to approve minutes of August 4-5, 2020 Commission meeting.**

Chairman Burke moved to approve the minutes from August 4-5, 2020. Commissioner Gale seconded. Motion carried.

**9) Public Comment**

Mike Randolph, manager of HOA collections, stated that it sounded like the change to NAC 116.470 that was approved was the one fee, item Q, which is the escrow demand pay-off, but all the rest were left alone. Mr. Randolph asked if there would be an opportunity to bring in and suggest changes to NAC 116.470. Mr. Randolph stated that this matter was relegated to the Commission back in 2009 but if the issue has to wait until after the legislative session is over, it will be another year before receiving any assistance with the fees. Mr. Randolph stated that hopefully they would be able to get on the agenda for the next Commission meeting to suggest changes that the industry finds appropriate for the Commission to review.

**10) Adjournment**

Meeting recessed at 5:00 p.m. on October 27, 2020.

**VIA VIRTUAL MEETING**

**OCTOBER 28, 2020**

**10:10 A.M.**

**1-A) Introduction of Commissioners in attendance**

Michael Burke, Charles Niggemeyer, Richard Layton, Tonya Gale, Phyllis Tomasso and Deputy Attorney General Asheesh Bhalla sitting as Commission Counsel.

**1-C) Introduction of Division staff in attendance**

Sharath Chandra, Administrator; Charvez Foger, Ombudsman; Terry Wheaton, Chief Compliance Audit Investigator; Teralyn Lewis, Administration Section Manager; Kelly Valadez, Commission Coordinator; Monique Williamson, Education and Information Officer; Antonio Brown, Training Program Officer; Christy Staffen, Compliance Audit Investigator, Chris Reed, Compliance Audit Investigator, and Gary Little, Training Program Officer.

Deputy Attorney Generals Michelle Briggs and Karissa Neff representing the Division.

**2) Public Comment**

No public comment.

**5-D) NRED v. Sherryl Baca, for possible action**

**Case No. 2018-660 and 2018-812**

**Type of Respondent: CAM.0001439-SUPR (ACTIVE)**

Michelle Briggs was present representing the Division.

Sue Cavaco was present representing Sherryl Baca.

Sherryl Baca was present.

**State's Witness**

Joe Tommila testified.

Ms. Cavaco cross-examined Mr. Tommila.

The witness was dismissed.

Ms. Briggs stated that the State rested their case.

**Respondent's Witness**

Sherryl Baca testified.

Ms. Cavaco stated that she wanted to clarify if State's Exhibit 17 had been admitted into evidence or whether she needed to lay a foundation for all the exhibits.

Chairman Burke stated that no exhibits had been admitted other than the Ron Beech affidavit and no exhibits had been objected to other than the Respondent's Exhibit 17 which is the Ruff affidavit. Chairman Burke stated that since no motions had been made to admit exhibits, he was working under the understanding that all exhibits were being admitted except for the Ruff declaration.

Chairman Burke stated that for simplification purposes that anything that has not been objected to should be admitted into evidence. Chairman Burke stipulated that all Respondent's Exhibits be

admitted except for Respondent's Exhibit 17 which is the Isabella Ruff declaration and that all State's Exhibits be admitted.

Ms. Briggs stated that she agreed.

Respondent's Witness

Sherryl Baca testified.

Ms. Briggs cross-examined Ms. Baca.

Ms. Cavaco redirected Ms. Baca.

Chairman Burke asked if the Commission had any questions for Ms. Baca.

The Commission had no questions.

The witness was dismissed.

**8) Discussion and decision on date, time place, and agenda items for upcoming meeting(s) including setting the meeting calendar for 2021.**

- February 2-4, 2021
- June 1-3, 2021
- August 31 – September 2, 2021
- December 7-9, 2021

**9) Public Comment**

Louise Pena stated that she had been in attendance for two days and as a homeowner and a community manager, the meeting has been very enlightening and interesting. Ms. Pena thanked the Commission for the time they spend helping homeowners.

**10) Adjournment**

Meeting recessed at 4:50 p.m. on October 28, 2020.

**VIA VIRTUAL MEETING  
OCTOBER 29, 2020  
9:00 A.M.**

**1-A) Introduction of Commissioners in attendance**

Michael Burke, Richard Layton, Tonya Gale, Phyllis Tomasso and Deputy Attorney General Asheesh Bhalla sitting as Commission Counsel.

**1-C) Introduction of Division staff in attendance**

Sharath Chandra, Administrator; Charvez Fogar, Ombudsman; Terry Wheaton, Chief Compliance Audit Investigator; Teralyn Lewis, Administration Section Manager; Kelly Valadez, Commission Coordinator; Monique Williamson, Education Information Officer; Antonio Brown, Training Program Officer; Christy Staffen, Compliance Audit Investigator; Chris Reed, Compliance Audit Investigator; and Gary Little, Training Program Officer.

Deputy Attorney Generals Michelle Briggs and Karissa Neff representing the Division.

**2) Public Comment**

No public comment.

**5-D) NRED v. Sherryl Baca, for possible action**

**Case No. 2018-660 and 2018-812**

**Type of Respondent: CAM.0001439-SUPR (ACTIVE)**

Michelle Briggs was present representing the Division.

Sue Cavaco was present representing Sherryl Baca.

Sherryl Baca was present.

Ms. Briggs stated that she would like to make an amendment to the complaint in favor Ms. Baca in accordance with NAC 116A.575(1). Ms. Briggs stated that amendment would be on page 3, paragraph 21 of the complaint. Ms. Briggs stated that she wanted to change the word “only” to “mainly”.

Ms. Cavaco stated that she did not object.

Chairman Burke stated that the change is made to paragraph 21 to now read, “the Association mainly has draft minutes of 2010, 2011 and 2013”.

**Closing Statements**

Ms. Briggs gave her closing statement.

Ms. Cavaco gave her closing statement.

**Commission Deliberations**

Commissioner Tomasso stated that there was no evidence presented that challenged the veracity of the statements of Mr. Beech who served as president or Mr. Jonsson who served as treasurer. Commissioner Tomasso stated that she believes that those statements are factual and truthful in that Ms. Baca was not given the ability to sign checks on any other bank account other than the

operating account. Commissioner Tomasso stated that the bank signature cards presented by the respondent served to underscore Ms. Baca's intent to deceive and the absence of the Ms. Baca trying to show any copies of any contracts giving Ms. Baca the authority to sign checks leaves Commissioner Tomasso to assume that Ms. Baca did not have that authority. Commissioner Tomasso stated that even though the signature card offered by the respondent further indicates that Ms. Baca was never allowed to sign checks on the construction defect account, yet the card is signed by Ms. Baca acknowledging that fact. Commissioner Tomasso stated that on all three signature cards with one exception, the names of the signees are all type written on the cards which indicates that these signature cards were prepared before the board of directors meeting except for the construction defect account on which the last entry is the name of the respondent and handwritten on the card. Commissioner Tomasso stated that leads her to the believe that it was entered at a later time after the meeting and before the cards were presented to the bank presumably by the respondent. Commissioner Tomasso stated that it appears that if all of this happened with no knowledge on the part of the Ms. Baca, that it seems highly irresponsible of the Commission to allow Ms. Baca to continue as a community manager at any time in the future in a position of trust for any homeowner in the State of Nevada.

Commissioner Layton stated that Ms. Baca indicated that she had no documents that related to the association to provide but Ms. Baca had a management contract that is an agreement with the association. Commissioner Layton stated that Ms. Baca had the responsibility to maintain a copy of her management contract, but Ms. Baca stated that she did not have the contract. Commissioner Layton stated that could have helped the investigation.

Commissioner Layton stated that in transferring the documents from one management company to another, there was a list prepared in the transfer of documents. Commissioner Layton stated that Ms. Baca indicated that she prepared this list that should have been provided and Ms. Baca should have kept a copy of the list because that was a record for Ms. Baca's company of what was provided to Nicklin. Commissioner Layton stated that the list would have specified what documents were transferred to Nicklin and could have been provided to the investigator when the Division was requesting certain records.

Commissioner Layton stated that Ms. Baca testified that a lot of the documents concerning the construction defect case provided by the vendors doing the work were kept by Mr. Beech and Mr. Beech maintained them for his records. Commissioner Layton stated that those were not Mr. Beech's documents and belonged to the association. Commissioner Layton stated that those documents should have been maintained by Ms. Baca for the association and therefore by letting one board member have them, Ms. Baca did not perform her responsibility as a manager to the association.

Commissioner Layton stated that when the law was changed in 2009 requiring a management contracts, a new agreement should have been processed at that time and there is no record that one was done which is in violation of the law. Commissioner Layton stated that in State's Exhibit 13, the contract that was signed in 2008 and 2009 which was prepared by Ms. Baca or an attorney on her behalf. Commissioner Layton stated that the contract specifically has the word "sign", in section 5 under discernments. Commissioner Layton stated that in the later contracts presented the word "sign" was deliberately removed which indicates that some kind of discussion must have taken place. Commissioner Layton stated that he believed that it would have been removed by either Ms. Baca or an attorney that prepared the contract and Ms. Baca should have gone over any changes to the contract and reasons changes were made.

Commissioner Gale stated that as a manager Commissioner Gale feels like she has more knowledge of what Ms. Baca went through in transitioning communities and personality conflicts with board member. Commissioner Gale stated that there are some things in the factual allegations that have been proven. Commissioner Gale stated that when transitioning, lists of documents and being able to respond back to people with where documents can be located and in which boxes is a huge issue that should be done. Commissioner Gale stated that she holds on to her management contracts as any manager should in case it is needed for reference.

Commissioner Gale stated that regarding the construction defect signing of the checks, the signature cards are very clear that the manager should not have been signing on those checks. Commissioner Gale stated that the meeting minutes that say what happened in the meeting with regard to the construction defect funds and contracts signed had a lot of missing information that should have been very detailed. Commissioner Gale stated that as a community manager it is hard for to understand, especially in this digital age, why there are no documents when documents could have been scanned in.

Chairman Burke stated that in reviewing the contracts, he noticed the same things as Commissioner Layton which was the removal of a specific word which is intentional and not just happenstance. Chairman Burke stated that he did not find the testimony of Mr. Orlando credible regarding the coordination of his address with Ms. Baca's address.

Chairman Burke stated that NRS 116A.630(10) it states the obligation of a community manager to cooperate with the Division and Ms. Baca did not cooperation. Chairman Burke stated that he is in agreeance with the other Commissioners but takes issue with the way that the Division investigated this case. Chairman Burke stated that he doesn't think that Ms. Baca complied with her requirements, but the Division should be a little more pointed in making statements of exactly what the licensee's obligation are when requesting information for an investigation. Chairman Burke stated that both parties missed the mark on their initial responses.

Chairman Burkes moved that the Division has met its burden by the preponderance of the evidence of the factual allegations as pled and amended in paragraphs 2-32 of the complaint. Commissioner Gale seconded. Motion carried.

Commissioner Layton stated that regarding the violations of law, violations 33-36 and 39-43 have been proven. Commissioner Layton stated that he has concerns and is not clear about violation 37 regarding false or misleading information and violation 38 regarding concealing facts.

Chairman Burke stated that regarding violation 37, there was not direct testimony given on false statements provided and misleading was very weak. Chairman Burke stated that he believes that the information in violation 37 has not been proven.

Commissioner Gales agreed with Chairman Burke.

Chairman Burke stated that violation 38 was not proven and violation 41 is a gray area. Chairman Burke stated that he does not think violation 41 has been proven regarding Ms. Baca's professional incompetence or lack of ability but more a lack of full cooperation.

Commissioner Gale stated that violation 41 was difficult for her because in reviewing the association's meeting minutes and the overall handling of the construction with regards to not being

noted in the meeting minutes and not properly followed up would demonstrate a lack of ability and knowledge to perform Ms. Baca's job.

Commissioner Layton stated that he felt violation 41 was proven because no new contract was issued when the Legislature required it. Commissioner Layton stated that in Ms. Baca's testimony, Ms. Baca stated that many of the construction defect documents were given to someone else to keep and Ms. Baca did not require those documents to be kept by the association.

Commissioner Tomasso stated that she does not feel that all of this can be attributed to a lack of ability or knowledge. Commissioner Tomasso stated that there was some intent because Ms. Baca has been in this industry too long to have not known how to properly handle records when dealing with vast sums of money.

Chairman Burke moved that the violations of law in paragraphs 33 through 36, 39, 40, 42 and 43 have been proven. Commissioner Gale seconded. Motion carried.

Chairman Burke moved that the violations of law in paragraphs 37 and 38 have not been proven. Commissioner Layton seconded. Motion carried 3 to 1 with Commissioner Tomasso opposed and Commissioner Niggemeyer not present.

Commissioner Layton moved that the violations of law in paragraph 41 has been proven. Commissioner Gale seconded. Motion carried.

#### Discipline Recommendations

Ms. Briggs stated that Ms. Baca is under an order of discipline by this Commission from last year where her supervising community manager certificate was revoked but she is still a community manager.

Ms. Briggs stated that the Division would recommend revocation of Ms. Baca's certificate, a fine in the amount of \$36,000 due within 60 days, and Division's fees and costs of \$21,196.79 payable within 60 days.

Commissioner Tomasso stated that the revocation should have a specified time because 1 year would not be long enough.

Commissioner Layton stated that what Ms. Baca did was serious enough to kick her out of the industry, but it was serious. Commissioner Layton stated that he did not know if 1 year would be sufficient but a period of 5 years or somewhere in the middle.

Commissioner Gale stated that 1 year would not be enough and 5 years was too much. Commissioner Gale suggested 2 or 3 years for revocation. Commissioner Gale stated that Ms. Baca should be required to take the 60-hour pre-licensing class to get her license back.

Chairman Burke stated that he would also suggest that payment of the fine and costs be paid prior to Ms. Baca reapplying for her certificate.

Chairman Burke moved that Sherryl Baca's certificate be revoked for a period of no less than 2 years, that Ms. Baca is not allowed to apply for until and unless Ms. Baca has completed the 60-hour pre-licensing education, paid a fine of \$36,000 payable within 60 days and the Division's fees



and costs of \$21,196.79 payable within 60 days. Commissioner Layton seconded. Motion carried.

**9) Public Comment**

No public comment.

**10) Adjournment**

Meeting adjourned at 10:30 a.m. on October 29, 2020.