

1 BEFORE THE COMMISSION FOR COMMON-INTEREST
2 COMMUNITIES AND CONDOMINIUM HOTELS
3 STATE OF NEVADA

4 Sharath Chandra, Administrator,
5 Real Estate Division, Department of
6 Business & Industry, State of Nevada,
7 Petitioner,

8 vs.

9 Belcourt Owners Association, Angela
10 Berliner, Marcia Creamer, Jesse Zambrano,
11 and John Carter,

12 Respondents.

Case No. 2018-172

FILED

FEB 04 2021

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kelly Valadez

13 **PARTIAL STIPULATION AND ORDER**
14 **FOR SETTLEMENT OF DISCIPLINARY ACTION**

15 The Real Estate Division of the Department of Business and Industry, State of
16 Nevada (the "Division"), through its Administrator, Sharath Chandra, and Respondent
17 Belcourt Owners Association (the "Association") enter into this PARTIAL STIPULATION
18 AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION ("Stipulation and
19 Order") as follows.

20 **JURISDICTION AND NOTICE**

21 During the relevant times mentioned in this complaint, Respondents Angela
22 Berliner, Marcia Creamer, Jesse Zambrano, and John Carter served as board members
23 and/or officers of the Association, a common-interest community located in Henderson,
24 Nevada.

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

1 11. The Division confirmed that the Association did not maintain or distribute
2 monthly financial statements.

3 12. On August 7, 2018, the Division further requested that the Association
4 provide its interim financial statements from January 2018 through June 2018, bank
5 statements from January 2018 through July 2018, and audio recordings for executive
6 board meeting from January 2017 through July 2018.

7 13. The Board Members were unable to provide the Division with audio
8 recordings of board meetings for 2014 through 2018.

9 14. The Board Members were unable to provide the Division with the requested
10 interim financial statements.

11 15. The Division's review of the bank records provided showed that the
12 Association has a debit card that is used for various retail locations, including, without
13 limitation, Toys R Us, Michael's, LVRJ Advertising, and Smith's.

14 16. Review of the bank records provided showed that almost all checks written
15 on behalf of the Association reflect only one signature.

16 17. Review of the bank records provided also show payments to
17 RESPONDENTS MARCIA CREAMER and ANGELA BERLINER.

18 18. The Division further requested that RESPONDENTS MARCIA CREAMER
19 and ANGELA BERLINER provide a description of what these payments were for along
20 with documentation.

21 19. MARCIA CREAMER provided a response, but failed to provide adequate
22 documentation for the payments.

23 20. Records provided to the Division also showed that the 2018 budget was
24 approved by the board in May 2017 and presented to the owners at the annual meeting
25 in June 2017.

26 21. The records provided to the Division also indicate budgets for 2015, 2016,
27 and 2017 were all approved and presented to owners at the annual meeting in June of
28 the prior year.

1 35. RESPONDENTS violated NRS 116.31083(2) by failing to provide no less
2 than 10 days prior notice to owners of meetings of the board.

3 36. RESPONDENTS violated NRS 116.31083(6) by failing to have an agenda
4 for all of its board meetings.

5 37. RESPONDENTS ANGELA BERLINER, JESSE ZAMBRANO, MARCIA
6 CREAMER, and JOHN CARTER violated NRS 116.31083 by holding an emergency
7 meeting when no emergency existed as defined in NRS 116.31083(13).

8 38. RESPONDENTS ANGELA BERLINER, JESSE ZAMBRANO, MARCIA
9 CREAMER, and JOHN CARTER violated NRS 116.31083 and NRS 116.31085 by holding
10 an emergency meeting to remove a board member in executive session stating on the
11 agenda that the matter was relating to "personnel."

12 39. RESPONDENTS violated NRS 116.31083 by failing to maintain copies of
13 audio recordings from executive board meetings.

14 40. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by
15 failing to act in good faith and in the best interests of the Association when they
16 committed an act or omission which amounts to incompetence, negligence or gross
17 negligence by failing to comply with Nevada law.

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

22 42. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(c)) by
23 failing to act in good faith and in the best interests of the Association when they failed to
24 hold meetings of the board with such frequency as to properly and efficiently address the
25 affairs of the Association.

26 43. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(g)) by
27 failing to maintain current, accurate and properly documented financial records.

28 44. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(i)) by

1 failing to establish policies and procedures that are designed to provide reasonable
2 assurances in the reliability of financial reporting, including, without limitation, proper
3 maintenance of accounting records, documentation of the authorization for receipts and
4 disbursements, verification of the integrity of the data used in making business decisions,
5 facilitation of fraud detection and prevention, and compliance with the applicable laws
6 and regulations governing financial records.

7 45. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(j)) by
8 failing to prepare interim and annual financial statements that will allow the Division,
9 the executive board, the units' owners and the accountant or auditor to determine
10 whether the financial position of the association is fairly presented in accordance with
11 the provisions of NAC 116.451 to 116.461, inclusive.

12 SETTLEMENT

13 1. The Association agrees to maintain professional community management
14 for a period of no less than 10 years from the date this Stipulation and Order is signed by
15 the Commission.

16 2. The Association agrees not to allow Respondents Angela Berliner, Marcia
17 Creamer, Jesse Zambrano, and John Carter to serve on the board of directors or as an
18 officer of the Association for a period of no less than 10 years from the date this
19 Stipulation and Order is signed by the Commission.

20 3. The Association agrees not to use any kind of credit or debit card and further
21 that assessments may only be used for expenses permitted by NRS 116 and the governing
22 documents for the Association. Specifically, unless the Association's governing documents
23 are amended to provide otherwise, the Association shall not use assessments for parties,
24 gifts or awards.

25 4. The Association and the Division agree that by entering into this Stipulation
26 and Order, the Division does not concede any defense or mitigation the Association may
27 assert and that once this Stipulation and Order is approved and fully performed, the
28 Division will close its file in this matter as to the Association.

1 5. The Association agrees that if the terms and conditions of this Stipulation
2 and Order are not met, the Division may, at its option, rescind this Stipulation and Order
3 and proceed with prosecuting the Complaint before the Commission.

4 6. The Association agrees and understands that by entering into this
5 Stipulation and Order, the Association is waiving its right to a hearing at which the
6 Association may present evidence in its defense, its right to a written decision on the
7 merits of the Complaint, its right to reconsideration and/or rehearing, appeal and/or
8 judicial review, and all other rights which may be accorded by the Nevada Administrative
9 Procedure Act, the Nevada Uniform Common-Interest Ownership Act and accompanying
10 statutes and regulations, and the federal and state constitutions. The Association
11 understand that this Stipulation and Order and other documentation may be subject to
12 public records laws. The Commission members who review this matter for approval of
13 this Stipulation and Order may be the same members who ultimately hear, consider and
14 decide the Complaint if this Stipulation and Order is either not approved by the
15 Commission or is not timely performed by the Association. The Association fully
16 understand that it has the right to be represented by legal counsel in this matter at its
17 own expense.

18 7. Each party shall bear its own attorney's fees and costs.

19 8. Stipulation and Order is Not Evidence. Neither this Stipulation and Order
20 nor any statements made concerning this Stipulation and Order may be discussed or
21 introduced into evidence at any hearing on the Complaint, if the Division must ultimately
22 present its case based on the Complaint filed in this matter.

23 9. Release. In consideration of execution of this Stipulation and Order, the
24 Association for itself, its heirs, executors, administrators, successors, and assigns, hereby
25 releases, remises, and forever discharges the State of Nevada, the Department of
26 Business and Industry and the Division, and each of its respective members, agents,
27 employees and counsel in their individual and representative capacities, from any and all
28 manner of actions, causes of action, suits, debts, judgments, executions, claims, and

1 demands whatsoever, known and unknown, in law or equity, that the Association ever
2 had, now has, may have, or claim to have, against any or all of the persons or entities
3 named in this section, arising out of or by reason of the Division's investigation, this
4 disciplinary action, and all other matters relating thereto.

5 10. Indemnification. The Association hereby indemnifies and holds harmless
6 the State of Nevada, the Department of Business and Industry, the Division, and each of
7 their respective members, agents, employees and counsel in their individual and
8 representative capacities against any and all claims, suits, and actions brought against
9 said persons and/or entities by reason of the Division's investigation, this disciplinary
10 action and all other matters relating thereto, and against any and all expenses, damages,
11 and costs, including court costs and attorney fees, which may be sustained by the persons
12 and/or entities named in this section as a result of said claims, suits, and actions.

13 11. The Association has signed and dated this Stipulation and Order only after
14 reading and understanding all terms herein.

15
16 DATED: February _____, 2021.

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

17
18
19 By: _____
Sharath Chandra, Administrator

20
21 DATED: _____, 2021.

BELCOURT OWNERS ASSOCIATION

22 By: _____
23 Name: Harvey F. Bernabeu
24 Title: PRESIDENT
25
26
27
28

1 demands whatsoever, known and unknown, in law or equity, that the Association ever
2 had, now has, may have, or claim to have, against any or all of the persons or entities
3 named in this section, arising out of or by reason of the Division's investigation, this
4 disciplinary action, and all other matters relating thereto.

5 10. Indemnification. The Association hereby indemnifies and holds harmless
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7 their respective members, agents, employees and counsel in their individual and
8 representative capacities against any and all claims, suits, and actions brought against
9 said persons and/or entities by reason of the Division's investigation, this disciplinary
10 action and all other matters relating thereto, and against any and all expenses, damages,
11 and costs, including court costs and attorney fees, which may be sustained by the persons
12 and/or entities named in this section as a result of said claims, suits, and actions.

13 11. The Association has signed and dated this Stipulation and Order only after
14 reading and understanding all terms herein.

15
16 DATED: February 1, 2021.

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

17
18
19 By: 
Sharath Chandra, Administrator

20
21 DATED: _____, 2021.

BELCOURT OWNERS ASSOCIATION

22 By: _____

23 Name: _____

24 Title: _____

1 ORDER

2 IT IS ORDERED that the foregoing Partial Stipulation and Order for Settlement
3 of Disciplinary Action is approved in full.

4 Dated: February ____, 2021.

5 COMMISSION FOR COMMON-INTEREST
6 COMMUNITIES AND CONDOMINIUM
7 HOTELS, DEPARTMENT OF BUSINESS
8 & INDUSTRY, STATE OF NEVADA

9 By: _____
Michael Burke, Chairman

10 Submitted by:

11 AARON D. FORD
12 Attorney General

13 By: Michelle D. Briggs
14 Michelle D. Briggs
15 Senior Deputy Attorney General
16 555 E. Washington Ave. Ste 3900
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18 (702) 486-3809
19 Attorneys for Real Estate Division

20 By: _____
21 Kurt Bonds
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24 Las Vegas, Nevada 89149
25 (702) 384-7000
26 Attorneys for the Association

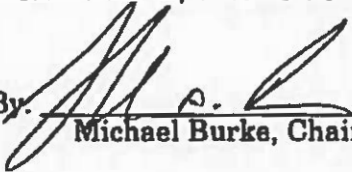
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ORDER

IT IS ORDERED that the foregoing Partial Stipulation and Order for Settlement of Disciplinary Action is approved in full.

Dated: February 4, 2021.

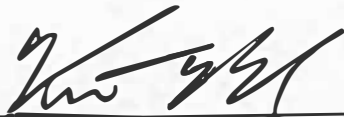
**COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM
HOTELS, DEPARTMENT OF BUSINESS
& INDUSTRY, STATE OF NEVADA**

By: 
Michael Burke, Chairman

Submitted by:

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