

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES AUGUST 31, 2021**

**VIA IN PERSON AND VIRTUAL MEETING
AUGUST 31, 2021**

Nevada State Business Center
3300 W. Sahara Avenue
4th Floor, Nevada Room
Las Vegas, Nevada 89102

VIDEO CONFERENCE TO:

Division of Insurance
1818 College Parkway, Suite 103
Carson City, Nevada 89706

The meeting was called to order at 9:03 A.M.

1-A) Introduction of Commissioners in attendance

Michael Burke, Charles Niggemeyer, Richard Layton, Tonya Gale, Phyllis Tomasso, Patricia Morse Jarman, James Bruner and Deputy Attorney General Justin Taruc sitting as Commission Counsel.

1-B) Introduction of Division staff in attendance

Sharath Chandra, Administrator; Charvez Foger, Deputy Administrator; Shareece Bates, Administration Section Manager; Terry Wheaton, Chief Compliance Audit Investigator; Kelly Valadez, Commission Coordinator; Evelyn Pattee, Commission Coordinator; Annalyn Carrillo, Education and Information Officer; Antonio Brown, Continuing Education Program Specialist; and Gary Little, Training Program Officer.

Senior Deputy Attorney General Karissa Neff representing the Division.

2) Public Comment

Michael Kosor, homeowner in Las Vegas, stated that he has repeatedly appeared before the Commission asking for the Commission to address serious issues affecting thousands of HOA homeowners with no response or inquiries from any of the Commissioners. Mr. Kosor stated that he lives in an association approaching ten thousand units and since conception, the developer has been in control of the board that governs the master association. Mr. Kosor stated that homeowners in this homeowners' association have been denied the ability to elect most of its governing board with some of the board appointees that do not live in the association and are employed by the developer. Mr. Kosor stated that since 2006, his master association's board has contracted with a management company that is owned by the developer, repeatedly renewing the over a million-dollar manager's contract often without seeking competitive bids. Mr. Kosor stated that the majority of those tasked with a fiduciary duty to the association and its owners are conflicted with executing their roles when the interest of the developer comes into opposition with the best interest of the owners. Mr. Kosor stated that his master association's governing situation constitutes numerous issues and ongoing violations of statutes, but the Division does not take action citing that the alleged complaint was not filed in a timely manner. Mr. Kosor stated that he would argue that his

complaints were filed in a timely manner but even if they were not filed timely, the ongoing alleged violations dealing with the continued control of the board by the developer presents an obligation by the Division to act.

Mr. Kosor stated that he had provided the members of the Commission with a copy of a recent filing provided by the Division on July 29, 2021, to the Nevada Supreme Court and asked that the issue underlying the claims and policy made in the filings by the Division be placed on the agenda, but that did not occur. Mr. Kosor stated that the position taken by the Division as it relates to declarant control should be immediately acted upon by the Commission and that there is no reason to have CC&R's until the declarant voluntarily relinquishes its control. Mr. Kosor stated that what the Division argued in Court is a Declaration, a community's constitution, can be changed unilaterally by the declarant without recourse. Mr. Kosor stated that he would ask the Commission to end the ability of a management company that is wholly owned or affiliated with the declarant, to contract unrestricted with the declarant's-controlled board. Mr. Kosor stated that the legislative record that he provided to the Commission makes it clear that Nevada legislators intended associations entering into large contracts obtain competitive bids when practical, which was applicable to his associations manager contract renewal that was not disputed. Mr. Kosor stated that in his seeking and explanation regarding the manager's contract renewal, the Ombudsman's asserts "the HOA should have the option of selecting a vendor based on their previous professional relationship", but this is unsupported by statute or published Division opinion.

Mr. Kosor stated that he would ask the Commission to review proposed changes to Senate Bill 72 that passed during the recent legislative session. Mr. Kosor stated that the change in SB-72 opens a door permitting unrestricted secret meetings by an association's executive board by inviting the board's legal counsel to its meeting.

Mr. Kosor stated that the Division wrongly argues its administrative function and sole discretion, to determine what comes before the Commission for a hearing under NRS 116.765, but as he reads the law, the Division's role is limited to "investigate" and determine if "good cause exist to proceed to a hearing". Mr. Kosor stated that the law does not allow to subvert the Commission's sole authority per statute "to render a final decision on the merit of the complaint" (NRS 116.780). Mr. Kosor stated that the Commission must hold the Division's investigative arm accountable when it asserts a complaint is "unsubstantiated" or "cannot be substantiated" without justification.

Steven Parker, with FirstService Residential who owns a collection company, stated that he is in favor of the proposed increases to the collection fees. Mr. Parker stated that the fees have been set for a number of years and over that period of time, expenses incurred by the collection companies have gone up, whether that be insurance or rent and in particular the expense of hiring associates which has increased payroll by thirty percent.

Adam Clarkson, an HOA attorney with the Clarkson Law Group and Vice Chair for the Community Associations Institute's (CAI) Legislative Action Committee, stated that he and CAI were in support of the increase in collections fees because the fees have not kept up with the increase in costs and performance activities. Mr. Clarkson stated that a number of collection companies have gone out of business due to the fact that these fees are not proficient to curate the companies. Mr. Clarkson stated that there has been a big change in the law that has happened and that these fees need to be increased. Mr. Clarkson stated that he would also put forth additional revisions to the language in the provision because the increases only reflect to the cost-of-living increase under CPI, but the increases should be much higher because of the increased liability. Mr.

Clarkson stated that there are provisions that should be revised to clean up some of the liability language and have the provisions stated in the regulations conform to the same language as utilized in the statutes.

Mike Randolph, owner and operator of HOA Collections, stated that in 2010 at a CICCH meeting on Water Street in Henderson, the template was introduced for collection fees that is now known as NAC 116.470, but those fees are no longer equitable today. Mr. Randolph stated that it has been eleven years with no raise in the fees, but the costs of doing business have increased dramatically and he is asking for a raise in fees to cover those escalating costs. Mr. Randolph stated that he would like to see the cap on fees increase or eliminated because there are many times due to court cases, probate cases, bankruptcy cases, or estate issues that more time and work is expended to collect the same amount of debt, yet the fees are capped. Mr. Randolph stated that that collection companies preform a necessary job for associations and the collection companies need to be compensated fairly.

**3-A) NRED v. The Colony, Alan Mehr, Allen Nichols, and Marc Morger, for possible action
Case No. 2018-1058**

Type of Respondent: Board Members

Karissa Neff was present representing the Division.

Chryl Christian, community manager with Performance CAM was present.

Ms. Neff stated that this case is a status update. Ms. Neff stated that the Commission's last order stated that Chryl Christian was to provide a copy of the association's reserve study and the financial status of the association which Ms. Christian provided on June 1, 2021. Ms. Neff stated that the only remaining issue is that the Division would request for this homeowners' association to remain under professional management for a period of at least five years.

Chryl Christian stated that as a professional manager, she agrees that it would be in the best interest of the association to remain under professional management.

Chairman Burke moved that The Colony be under professional management for a period of no less than five years. Seconded by Commissioner Niggemeyer. Motion carried.

**3-B) NRED v. Cindy Manning, for possible action
Case No. 2020-350**

Type of Respondent: CAM.0006917 (Active)

Karissa Neff was present representing the Division.

Chairman Burke stated that this matter has been continued until the next scheduled Commission meeting.

**3-C) NRED v. Srdjan Pantic, for possible action
Case No. 2019-836**

Type of Respondent: Board Member

Karissa Neff was present representing the Division.

Srdjan Pantic was not present.

Ms. Neff stated that Mr. Pantic had requested a continuance from the June 1, 2021 meeting until this meeting which was granted but she has had no other communications with Mr. Pantic since that

request. Ms. Neff stated that a Notice of Default was filed on August 9, 2021. Ms. Neff stated that in the absence of Mr. Pantic being present, this case should move forward as a default.

State's Witness

Kelly Valadez, Commission Coordinator, testified regarding service of complaint.

Chairman Burke stated that based on testimony he finds that the respondent was properly served and given due notice of the hearing and his obligation to respond and has failed to properly respond.

Ms. Neff moved that this case proceed as a default against Mr. Pantic and that the Commission accept all the factual allegations and legal violation in the complaint as true.

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

Chairman Burke stated that the exhibits are admitted.

Ms. Neff stated that this case originated with Epic Management filing a complaint with the Division against Mr. Pantic. Ms. Neff stated that the allegations in the complaint are that Mr. Pantic was being paid approximately \$410,000 and more through Mr. Pantic's two companies, Nevada Property Concepts and Tesla Concepts over the course of a one-year period while he was sitting as President of the association's board.

Ms. Neff stated that Mr. Pantic was not an authorized signer to sign checks on the association's bank accounts. Ms. Neff stated that there are numerous checks written and signed by Mr. Pantic from the associations reserve and operating accounts to Mr. Pantic himself and to his companies totaling \$420,671.04.

Ms. Neff stated that Mr. Pantic responded to the allegations saying that he only owned Nevada Property Concepts, but not Tesla Concepts, and that the board went along with using his company because it was cheaper than using someone else. Ms. Neff stated that in Mr. Pantic's response, he claims that his signature was always legally on deposit with the association to always sign the checks and that everything was approved by the board.

Ms. Neff stated that with respect to the Division's request to Mr. Pantic to provide documentation of the work he performed, Mr. Pantic's response was that he did not have any and that it was with the former management company.

Chairman Burke asked what the divide was paid to Nevada Property Concepts and Tesla Concepts.

Ms. Neff stated that Tesla Concepts received \$143,918.75 and Nevada Property Concepts received \$11,368.35.

Chairman Burke stated that BS NRED 00039 showed a new ledger with Nevada Property Concepts receiving \$251,384.94 and Tesla Concepts receiving \$14,999.

Commissioner Bruner asked if any other board members had statements regarding the validity of the construction issues.

State's witness

David Bashaw testified.

The Commission asked questions of Mr. Bashaw.

The witness was dismissed.

Chairman Burke moved that Mr. Pantic is in default and that the factual allegations as plead in the complaint in paragraphs 1 through 29, and the violations of law in paragraphs 30 through 33 have been proven. Seconded by Commissioner Niggemeyer. Motion carried with one abstention from Commissioner Gale because she owns Epic Management.

Division's Recommendation for Discipline

Ms. Neff stated that the Division is recommending \$1000 for each of the four violations of law, and the Division's attorney fees and costs in the amount of \$3,465.40 payable within 60 days of the date of the order.

Chairman Burke moved that the respondent pay \$1000 for each of the four violation of law and the Division's attorney fees and costs of \$3,465.40 payable within 60 days of the date of the order.

Commissioner Bruner stated that he would like for the homeowners' association to be reimbursed.

Chairman Burke stated that since there was a settlement that was already entered into for \$77,000, the Commission cannot trump that.

Commissioner Layton stated that the respondent should not be able to serve on a board for ten years, pay the Division's fine with fees and costs and include the payment to the Contractor's board of \$77,000.

Chairman Burke amended his motion to include that the respondent will pay a \$4000 fine, the Division's fees and costs of \$3,465.40 within 60 days of the date of the order and that Mr. Pantic not serve on any board in the State of Nevada for a period of no less than ten years or until such time that he pays the restitution fine to the HOA, whichever occurs latter. Seconded by Commissioner Layton. Motion carried with one abstention from Commissioner Gale.

3-D) NRED v. Denise Vargas aka Denise Johnson, for possible action

Case No. 2019-817

Type of Respondent: CAM.0007333-SUPR (Active)

Karissa Neff was present representing the Division.

Denise Vargas was not present.

Ms. Neff stated that this case is related to the prior case just heard and a notice of default was filed on May 25, 2021. Ms. Neff stated that this case was continued from the June 1, 2021 Commission meeting at Ms. Vargas' request. Ms. Neff stated that although she had prior discussions for settlement, she had received an email from Ms. Vargas that has been provided in the meeting packet where Ms. Vargas stated that she had no intention of appearing at the Commission meeting to defend herself.

Ms. Neff stated that she will offer proof of notice but would like to admit the email as an exhibit

showing that Ms. Vargas was aware of the hearing and voluntarily not participating in her defense.

Chairman Burke stated that he would admit the email dated August 30, 2021 to Ms. Neff from Ms. Vargas.

Chairman Burke stated that Ms. Vargas had notice of this hearing and opted not to respond or appear.

Chairman Burke moved that Ms. Vargas is in default. Seconded by Commissioner Niggemeyer. Motion carried with one abstention from Commissioner Gale because she is the owner of Epic Management.

Chairman Burke moved that the factual allegations as pled in paragraphs 1 through 17 in the complaint have been proven. Seconded by Commissioner Niggemeyer. Motion carried with one abstention from Commissioner Gale.

Chairman Burke moved that the violations of law as pled in paragraphs 18 through 29 in the complaint have been proven.

Commissioner Layton stated that he would like to state for the record that the violations of law jump from 25 to 29 and there is no 26, 27, or 28.

Chairman Burke moved that the violations of law as pled in paragraphs 18 through 25 and paragraph 29 have been proven. Seconded by Commissioner Niggemeyer. Motion carried with one abstention from Commissioner Gale.

Ms. Neff moved to admit the documents produced in this case bates stamped 1-432 be admitted into evidence.

Chairman Burke stated that the documents are admitted.

Division's Recommendation for Discipline

Ms. Neff stated that the Division is recommending \$5,000 for each of the nine violations for a total fine of \$45,000, plus the attorney's fees and costs in the amount of \$2,790.40, to be paid within 90 days of the date of the order, and that the respondent's license be revoked for a period of five years without reapplying until the total fine, fees, and costs are paid.

Chairman Burke moved that Ms. Vargas pay \$5,000 for each violation for a total fine of \$45,000, pay the Division's fees and costs in the amount of \$2,790.40, and that the fine, fees and costs are to be paid within 90 days, and that Ms. Vargas' license be revoked for a period of no less than 5 years or until such time that she has paid the fine, fees and costs, whichever period is longer. Seconded by Commissioner Layton. Motion carried with one abstention from Commissioner Gale.

4-A) Administrator's Report

Sharath Chandra presented this report. Mr. Chandra stated that administratively there has been some changes in management with Charvez Foger becoming the Deputy Administrator for the Real Estate Division, Jason Wyatt hired as the new Ombudsman, and Shareece Bates as the Administration Section Manager.

Mr. Chandra stated that out of the last legislative session there was a bill that made some changes to statute pertaining to health, safety, and welfare violations that requires the Commission to adopt regulations establishing language and standards to determine whether a violation in fact poses a risk to the health, safety, or welfare of residents of a common-interest community. Mr. Chandra stated that there could be a tiered system for the fine amounts to ensure equity across all health and safety violations, so that violations of similar egregiousness are treated uniformly.

Mr. Chandra stated that another topic that needs to be discussed is the increase in fees for collection companies. Mr. Chandra stated that the legislature did not want to address that topic during this time while the economy was still recovering and being in the middle of a pandemic. Mr. Chandra stated that when the Division proposes any regulation changes to the fee increases, more information will be provided to the Commission so they can make an informed decision. Mr. Chandra stated that historically, caps are a good idea because they limit what can be done but he can see where increases in expenses over time have created an undue burden in certain areas, but an overall cap is something that the Commission will have to consider and find the necessary balance.

Mr. Chandra stated that there should be some draft language for proposed regulation changes by the next Commission meeting for the Commission to consider and then discuss moving forward with the public hearing process that includes public comment, small business impact statements, and surveys during a future meeting.

5-B) Pursuant to NRS 233B.100 discussion and decision regarding a petition for adoption, filing, amendment or repeal of NAC 116.470 regarding costs of collecting any past due obligation of a unit's owner submitted by Cameron Clark.

Cameron Clark stated that there has been discussion regarding the removal of the cap on fees and the fee schedule and there has been opinion about caps being a good thing but the problem with this is that no one who regulates these things has come to the business owners and asked how they operate their business off the fees they are allowed to charge under the current NAC. Mr. Clark stated that there is an urgent response needed to this matter because the cost of business is going up and there is no sign of the cost of business ever decreasing. Mr. Clark stated that the cap remaining in place is a detriment to Nevada communities and further delay will only hamper the competence and execution needed for the associations dealing with the rising delinquencies within their communities. Mr. Clark stated that if a HOA cannot call upon the necessary and legally regulated resources to assist them in recovering their much-needed funds then Nevada communities will have no other recourse than to keep raising the assessments and that is not a good thing for homeowners. Mr. Clark stated that HOA's are required to get at least three proposals when hiring service providers and if the delay continues to remove the cap and adopt proposed fees schedule, there will be less and less choices on the market by the time that decisions are made. Mr. Clark stated that the increases being requested are modest in comparison to the rising costs of business.

4-B-1) Ombudsman's Report on Intervention Affidavits

4-B-2) Ombudsman's Report on Informal Conferences

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

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

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

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

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

Charvez Foger provided the Commission with these reports in the meeting packet.

4-C) Licensee and board member discipline report

Shareece Bates provided the Commission with this report in the meeting packet.

5-A) Discussion regarding Commissioners speaking engagement requests.

The Commission stated that there was nothing to report.

5-C) Discussion and decision to approve minutes of the June 1, 2021 Commission meeting.

Commissioner Niggemeyer moved to approve the minutes of the June 1, 2021 Commission meeting. Seconded by Chairman Burke. Motion carried.

5-D) Discussion and decision regarding election of officers for FY22.

Commissioner Layton moved that Chairman Burke remain as chair. Seconded by Commissioner Niggemeyer. Motion carried.

Chairman Burke moved that Commissioner Niggemeyer serve as vice-chair. Seconded by Commissioner Tomasso. Motion carried.

Commissioner Tomasso moved that Commissioner Layton serve as secretary. Seconded by Commissioner Gale. Motion carried.

6) Discussion and decision on date, time, place and agenda items for upcoming meeting(s).

The next Commission meeting is scheduled for December 7-9, 2021.

Commissioner Niggemeyer stated that he would like an agenda item to discuss the Controller's Office debt collection process for fines issued by the Commission.

Commissioner Tomasso stated that she thought there should be an agenda item to discuss SB-72 and proposed language changes for regulations.

Ms. Bates stated that the Commission's 2022 meeting calendar would be set during the next Commission meeting.

7) Public Comment

None.

8) Adjournment

Meeting recessed at 11:45 a.m. on August 31, 2021.

Minutes prepared by: _____

Kelly Valadez
Commission Coordinator