

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 **Wexford Village Homeowners Association,**
10 **Jose A. Malave II, Erika Zumaya, and**
11 **Charles Tharp.**

12 **Respondents.**

Case No. 2020-186

FILED

NOV 04 2021

**NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS**
Kelly Valadery

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

15 The Real Estate Division of the Department of Business and Industry, State of
16 Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of
17 the State of Nevada, and Matthew Feeley, Deputy Attorney General, hereby notifies
18 **RESPONDENTS WEXFORD VILLAGE HOMEOWNERS ASSOCIATION,**
19 **("ASSOCIATION"), JOSE A. MALAVE II ("MALAVE"), ERIKA ZUMAYA ("ZUMAYA")**
20 **and CHARLES THARP ("THARP"), (collectively, "RESPONDENTS"),** of an
21 administrative hearing before the Commission for Common-Interest Communities and
22 Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B
23 and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada
24 Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations
25 stated below and to determine if an administrative penalty will be imposed on the
26 **RESPONDENTS** pursuant to the provisions of NRS and NAC including, but not limited
27 to, NRS 116.785 and NRS 116.790.

28 **JURISDICTION AND NOTICE**

1. During the relevant times mentioned in this complaint, **RESPONDENTS**

1 MALAVE, ZUMAYA, and THARP served on the Board of the ASSOCIATION, a common-
2 interest community located in Clark County, Nevada.

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

8 FACTUAL ALLEGATIONS

9 3. WEXFORD VILLAGE HOMEOWNERS ASSOCIATION ("ASSOCIATION")
10 is an Association located in Clark County, Nevada, consisting of 140 single-family home
11 units.

12 4. Since on or around October 24, 2018, and through the present date, JOSE
13 A. MALAVE II ("MALAVE"), has served on the ASSOCIATION's Board of Directors and
14 as the President.

15 5. Since on or around May 30, 2017, and through the present date, CHARLES
16 THARP ("THARP"), has served on the ASSOCIATION's Board of Directors and as the
17 Treasurer.

18 6. Since at least July of 2021 and through the present date, ERIKA ZUMAYA
19 ("ZUMAYA") has served on the ASSOCIATION's Board of Directors and as the Secretary.

20 7. MALAVE is the previous owner of a unit within the Association, his former
21 unit being located at 5275 Paradise Valley Ave Las Vegas NV 89156 ("Former Unit").

22 8. MALAVE is not the owner of a unit within the Association as he sold and
23 moved away from the Former Unit on or about May 4, 2021.

24 9. The ASSOCIATION's Bylaws, as ratified on September 10, 2001, under
25 Article V, titled Officers and their Duties, at 5.01, states:

26 5.01 Enumeration of Officers. The officers of the Association shall
27 be a president and vice-president, *who shall at all times be*
28 *Directors*, a secretary, and chief financial officer (treasurer) and
such other officers as the Board may from time to time create by

1 resolution. *In order to qualify to serve as an officer of the*
2 *Association, the person must be the owner of a Unit subject*
3 *to the recorded Declaration.*

(emphasis added)

4 10. Nevada Revised Statute (NRS) 116.31034 states in pertinent part:

5 1. Except as otherwise provided in subsection 5 of NRS
6 116.212, not later than the termination of any period of
7 declarant's control, the units' owners shall elect an *executive*
8 *board of at least three members, all of whom must be units'*
9 *owners.* The executive board shall elect the officers of the
10 association. *Unless the governing documents provide*
11 *otherwise, the officers of the association are not required to*
12 *be units' owners.* The members of the executive board and the
13 officers of the association shall take office upon election.

14 ...

15 13. If a person is not eligible to be a candidate for or member of
16 the executive board or an officer of the association pursuant to
17 any provision of this chapter, *the association:*

18 (a) Must not place his or her name on the ballot; and

19 (b) *Must prohibit such a person from serving as a member*
20 *of the executive board or an officer of the association.*

(emphasis added)

21 11. The Division, having begun a previous and separate investigation into the
22 activities of MALAVE, sent a letter to the ASSOCIATION on June 1, 2021, which stated:

23 Please provide a written response to the following additional
24 allegation:

25 Allegation 1: It is alleged that Jose Malave II has continued to
26 serve as a member of the executive board even though he is no
27 longer a unit owner and has not been a unit owner since 5/4/21.

28 12. The Division received an email response from attorney Carolyn Broussard
on behalf of the ASSOCIATION which stated:

Enclosed herein please find Mr. Malave's response to your most recent
June 4, 2021, notice of alleged violation. The enclosed response stated:

"Mr. Malave II has, in fact, sold his property located within the
Wexford Village HOA. He intends to relinquish his position as
President of the Board at the next scheduled Board meeting,
currently scheduled for the third week of June, 2021."

13. MALAVE did not relinquish his position in June, 2021. As of a Registration
Filing Addendum dated July 29, 2021, MALAVE is listed as a current board member and

1 as President.

2 14. On September 22, 2021, the Division sent another letter, addressed to the
3 ASSOCIATION, ATTN: MALAVE, ZUMAYA, and THARP, stating:

4 This letter is a follow-up to an investigation by the Division concerning the
5 above-referenced case number. It is alleged that the executive board:

6 Has continued to allow Jose Malave II to serve as a member of the executive
7 board and officer of the Association even though Malave has not been a unit
8 owner since on or about May 4, 2021. In addition, the board has refused to
9 appoint to fill Malave's unexpired term, and has governed the Association
10 with only two valid board members;

11 ...
12 The Division has obtained sufficient evidence to commence a disciplinary
13 action against you and intends to do so by filing a complaint for hearing
14 before the Commission for Common-Interest Communities and
15 Condominium Hotels (the "Commission").

16 15. MALAVE has made purchases with Association funds without board
17 approval. These purchases include, but are not limited to, the following:

- 18 a) ASUS 15.6" Q504UA-BI5T26 2-in-1 Touchscreen FHD 1080p Laptop
19 purchased with petty cash in July 2019; \$589.00 and Protection Plan
- 20 b) Three additional laptops purchased in November and December 2019;
- 21 c) iPhone 6s Plus Case, Harsel Defender Series Heavy Duty Tree Camo High
22 Impact purchase in Sept. 2019;
- 23 d) 5/1/20 WWW. RocketLaw for \$39.99;
- 24 e) 5/26/20 TracFone for \$30.30;
- 25 f) Multiple TracFone purchases;
- 26 g) Intelligent Office purchase in November 2019;
- 27 h) Ebay 2.17.20 iPhone 6 plus 64gb AT&T \$243.00
- 28 i) Apple MacBook Pro MC700LL/A 13.3-inch Laptop, Intel Core i5 2.3GHz,
4GB RAM 320GB HDD - \$349.00 - 12/20/19
- j) Walmart 8.21.19 receipt for 26m Nighthawk Mountain Bike - \$124.00
- k) Cell phone service plans;
- l) "Office supplies" that were purchased in Alameda, CA in February 2020;
- m) "Office supplies" that were purchased in San Leandro, CA in March 2020;
- n) "Office supplies" shipped to San Lorenzo, CA in February and September
2020;
- o) Portable A/C purchased August 2020;
- p) Security Cameras purchased in February 2020; and
- q) Warrantly shipped to San Lorenzo, CA

1 **VIOLATIONS OF LAW**

2 16. RESPONDENTS violated NRS 116.31034(1) in that MALAVE is not eligible
3 to be a Board Member or officer of the Association (pursuant to Section 5.01 of the Bylaws)
4 as he is not a unit owner.

5 17. RESPONDENTS violated NRS 116.31034(13) by failing to prohibit
6 MALAVE from serving as a member of the executive board or an officer of the association
7 despite his ineligibility to do so.

8 18. RESPONDENT MALAVE violated NRS 116.3103 (through NAC 116.405(1))
9 by failing to act in the best interests of the Association when he acted outside the scope
10 of his authority granted in the Association's Bylaws when he served as an officer for the
11 Association while he was no longer a unit owner.

12 19. RESPONDENT MALAVE violated NRS 116.3103 (through NAC 116.405(1))
13 by failing to act in the best interests of the Association when he acted outside the scope
14 of his authority by making purchases using Association funds without Board approval.

15 20. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(g) and (i))
16 by failing to act in the best interests of the Association by failing to maintain current,
17 accurate and properly documented financial records and failing to establish policies and
18 procedures designed to provide reasonable assurances in the reliability of financial
19 reporting, including, without limitation, proper maintenance of accounting records,
20 documentation of the authorization for receipts and disbursements, verification of the
21 integrity of the data used in making business decisions, facilitation of fraud detection and
22 prevention, and compliance with the applicable laws and regulations governing financial
23 records.

24 **DISCIPLINE AUTHORIZED**

25 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
26 116.790 the Commission has discretion to take any or all of the following actions:

27 1. Issue an order directing RESPONDENTS to cease and desist from
28 continuing to engage in the unlawful conduct that resulted in the violation.

1 Commission meeting will be held at the Nevada State Business Center, 3300 W.
2 Sahara Avenue, Nevada Room, 4th Floor, Las Vegas, Nevada 89102.

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 December 7-9, 2021. 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 4 th day of November, 2021.

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

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

20 AARON D. FORD
21 Attorney General

22 By: *161 Matthew Feeley*

23 _____
24 Matthew Feeley (Bar No. 13336)
25 Deputy Attorney General
26 555 E. Washington Ave. Ste 3900
27 Las Vegas, Nevada 89101
28 (702) 486-3420
Attorneys for Real Estate Division