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FILED

NOV 30 2021

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kerry Valadez

8 **BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND**
9 **CONDOMINIUM HOTELS, STATE OF NEVADA**
10

11 SHARATH CHANDRA, ADMINISTRATOR,
REAL ESTATE DIVISION, DEPARTMENT OF
12 BUSINESS & INDUSTRY, STATE OF
NEVADA,
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Petitioner,
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vs.
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16 WEXFORD VILLAGE HOMEOWNERS
ASSOCIATION; JOSE A. MALAVE II, ERIKA
17 ZUMAYA, AND CHARLES THARP,
18

Respondents.
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Case No.: 2020-186

Hearing Date: 12/7-9/2021

Hearing Time: 9:00 a.m.

25 **RESPONDANTS' PREHEARING STATEMENT**

26 Defendants, Wexford Village Homeowners Association ("HOA"), JOSE Malave II, Erika Zumaya
27 and Charles Tharp, by and through the undersigned attorney of record, Carolyn Broussard, Esq. of the law
28 firm of S. Denise McCurry, hereby submits their Prehearing Statement in preparation for the hearing on the
above referenced matter.

RESPONDENTS' HEARING BRIEF - I

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2 I.

3 STATEMENT OF FACTS

4 As background to this matter, as this tribunal may know, it must be noted that a former Board
5 Member and resident of the HOA, who is no longer a member of the HOA Board, appears to have
6 worked with the community management company to wrongfully appropriate the HOA's funds. In
7 response, on March 29, 2019, the prior community management company was terminated by the new
8 Board. Further, Respondent Malave was elected to the HOA Board, as its President. All this was done
9 in an effort to place the HOA on the right footing, subsequent to such prior malfeasance. Unfortunately,
10 subsequent to the former Board Member leaving his position, it appears the former Board Member may
11 have thereafter continued to make complaints with the NRED and otherwise, in retaliation for his no
12 longer being an HOA Board member.

13 Prior to being elected as Board President, Mr. Malave purchased his residence and lived in the
14 community beginning November 23, 2002. He was an original owner in this community. Mr. Malave is
15 a truck driver by profession, and as a result, has no legal education, and is not adept in interpreting case
16 law or statutes, including but not limited to NRS 116. Mr. Malave, in an attempt to act in the best
17 interests of the HOA, following their recent experience, managed the HOA as a self-managed
18 association, without the benefit of a community manager. As such, although well intended, Mr. Malave
19 may have committed minor infractions in his attempt to get this association back in the black. In fact,
20 the HOA is currently in a healthy financial condition, as Mr. Malave exits his position as Board
21 President.

22 As well, the Committee may also be aware, that subsequent to the above noted prior malfeasance
23 of the prior Board, the HOA, with Malave has President, also lodged various complaints with the NRED
24 in order to retrieve monies misappropriated by the prior Board Member and/or management company.
25 However, those issues remain largely unaddressed by the NRED. In the meantime, the NRED
26 simultaneously undertook numerous inquiries and investigations of Mr. Malave and the HOA.

27 Based on the Committee's review of the 600+ documents attached to the complaint in this case,
28 the NRED has engaged in a myriad of inquiries into Mr. Malave and the Board, and appears to have all

1 but ignored the prior malfeasance of the prior Board Member and community manager. So much so,
2 that as a direct result of the NRED's continuous and incessant inquiries into the actions of Mr. Malave
3 and the HOA, Mr. Malave decided it just was not worth it to continue living in this HOA any longer.
4 Therefore, on May 3, 2021, Mr. Malave sold his home located within the HOA. As just one of the
5 plethora of examples illustrating the NRED's constant inquiries and investigations into Mr. Malave,
6 merely days after Mr. Malave sold his property, the NRED began inquiry into Mr. Malave's status as
7 owner. Such a swift response to a change of ownership within an HOA community by the NRED is
8 either suspect, or, less likely, can be translated to the agency's lack of a sufficient workload; and reveals
9 the nature of the agency's pursuit of Mr. Malave and the HOA in this case.

10 Due to the transgressions of the previous Board Member and management company, it has been
11 difficult, and next to impossible to recruit or retain Board members, who are unwilling to serve in these
12 unpaid positions. Further, also due to the prior issues of malfeasance by the prior Board Member and
13 management company, it has been extremely difficult to retain a new community management
14 company, in light of the history at this HOA.

15 Further, as of the date of this brief, Mr. Malave has acted with due diligence and in the best
16 interests of the HOA, and in spite of all the hurdles in retaining a new management company and Board
17 members, he has selected Taylor Association Management as the HOA's new community manager, and
18 has resigned from his position as Board President. As this Committee is aware, Taylor Association
19 Management is a duly certified community manager. Further, in spite of all the difficulties in retaining
20 Board members for this community in these unpaid positions, the Board currently is comprised of three
21 Board Members as follows: Charles Tharp; Erika Zumaya and Cynthia Torres.

22 II.

23 ISSUES

24 A. Malave's Ineligibility to Act as Board Member and Officer.

25 Mr. Malave, in good faith, believed that he could remain an officer of the HOA after he sold his
26 property pursuant to NRS 116.31034. Due to this good faith belief, Mr. Malave continued in his position
27 in order to ensure a seamless transition from him to a new community manager and Board. Given the
28 circumstances, it was difficult to find a replacement community manager, and Mr. Malave did not want

1 to risk the fruits of his numerous hours of unpaid labor. Thus, while Mr. Malave's remaining as an
2 officer after he sold his home, may have been a technical violation, Mr. Malave did not possess the
3 requisite intent to violate the statute. On the contrary, Mr. Malave's intent was always to act in the best
4 interests of the HOA and community in which he lived for almost two decades.

5 B. Malave's Alleged Failure to Act in the Best Interests of the HOA by Failing to Keep
6 Accurate Financial Records and Failure to Act in the Best Interests of the HOA by Making
7 Purchases Using Association Funds without Board Approval.

8 Mr. Malave purchased equipment and services for the benefit of the community, often online to
9 obtain the best pricing. Online purchases are not amenable to payment through checks, and therefore,
10 payment was made using petty cash. The HOA has a policy and procedures in place for the use of petty
11 cash, by means of the HOA's Petty Cash Resolution Policy which was adopted on September 3, 2002
12 (CICC0041). Such Policy and Procedures for Petty Cash allowed the use of petty cash for vendors,
13 automatic payments, and small quick purchases, in order to protect the assets in the HOA and the
14 HOA's operating account.

15 During the course of its numerous inquiries, the NRED previously listed items purchased by Mr.
16 Malave on behalf of the HOA which were incorrect. Mr. Malave only purchased two laptops for the
17 benefit of the HOA. One was purchased in July of 2019 for administrative work and runs the common
18 area gate system. Failure to purchase such laptop in a timely manner would have resulted in the HOA
19 incurring substantial fines had the gate remained inoperative. Therefore, time was of the essence for that
20 purchase. The other laptop was purchased in December of 2019, after Mr. Malave's personal computer
21 crashed. This computer is used for Board administrative purposes, and belongs to the Wexford Village
22 HOA, and remains with the HOA upon Mr. Malave's resignation. It is to be noted that prior to the
23 purchase of this new computer, Mr. Malave had been using his personal computer to do administrative
24 work for the Wexford Village HOA. Receipts for the items purchased are attached to this briefing, and
25 those items have been disclosed to the Board collectively.

1 C. Malave's Alleged Failure to Act in the Best Interests of the HOA by Failing to Establish
2 Policies and Procedures Designed to Provide Reasonable Assurances of Reliability in
3 Financial Reporting.

4 Mr. Malave purchased equipment for the benefit of the community, often online to obtain the
5 best pricing, and reported these purchases to the Board collectively. The HOA had a policy and
6 procedures in place for the use of petty cash, by means of the HOA's Petty Cash Resolution Policy
7 which was adopted on September 3, 2002 (CICC0041). Such Policy and Procedures for Petty Cash
8 allowed the use of petty cash for vendors, automatic payments, and small quick purchases, in order to
9 protect the assets of the HOA and the HOA's operating account.

10 Receipts for the Mr. Malave's purchases for the benefit and in the best interests of the HOA, are
11 attached to this briefing, and those items have been disclosed to the Board collectively.

12
13 **III.**

14 **WITNESSES**

- 15 1. Jose Malave, III;
16 2. Charles Tharp;
17 3. Erika Zulema;
18 4. Cynthia Torres; and
19 5. Any and all witnesses called by any part to this matter.

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21 **IV.**

22 **EXHIBITS**

- 23 1. Petty Cash Resolution Policy which was adopted on September 3, 2002 (CICC0041).
24 2. Amazon Receipt dated 7/13/19 for Laptop Protection Policy - \$53.99.
25 3. Amazon Receipt dated 2/24/20 for Power Extension Cable and Camera Wall Bracket -
26 \$37.91.
27 4. Amazon Receipt dated 12/19/19 for Apple MacBook Pro - \$349.00.
28 5. Amazon Receipt dated 7/13/19 for ASUS Touchscreen Laptop - \$589.00.

1 6. Amazon Receipt dated 2/24/20 for Wireless Smart Camera Night Vision - \$76.48.

2 7. Amazon Receipt dated 9/11/19 for iPhone Case - \$9.49.

3 8. Ebay Receipt dated 2/17/20 for Iphone - \$243.00.

4 9. Amazon Receipt dated 8/24/20 for Guard Shack A/C - \$379.30.

5 10. Amazon Receipt dated 5/1/20 for Partial Refund for Guard Shack A/C.

6 11. Receipt for Tracfone dated 7/14/20.

7 12. Receipt for Intelligent Office dated 11/7/19.

8 13. Sworn Affidavit of Jose Malave.

9 14. Letter of Resignation from Jose Malave.

10 15. Any and all documents submitted by any party to this proceeding.

11 The foregoing purchases were made for the benefit of the community, in the best interests of the
12 community, and the property remains with the community upon Mr. Malave's resignation.

13 V.

14 **CONCLUSION**

15 As of the date of the December 7-9, 2021 hearing, Mr. Malave has resigned. Therefore, a cease
16 and desist order, and his removal from office are not necessary and have become moot.

17 Similarly, as Mr. Malave and the HOA has now employed the services of a certified community
18 manager, Taylor Association Management, the imposition of injunctive relief requiring the board to
19 appoint a community manager is no longer necessary and has become moot.

20 Because Mr. Malave did not knowingly violate the NRS or NAC 116, and as a lay person, has
21 always intended to act in the best interests of the community, no fines must be levied in this case, as the
22 requisite intent is a lacking element.

23 As the NRED appears to have been led by the prior Board Member and or community manager
24 who committed malfeasance, to incessantly pursuit this HOA and Mr. Malave, requiring the HOA or
25 Mr. Malave to pay the costs of any such investigations and reasonable attorney's fees would inequitable,
26 unjustified, subject to appeal. Therefore, such penalties against Mr. Malave must not be imposed.

1 As Mr. Malave, sincerely and good faith believed himself to be acting in the best interests of the
2 association, with the ultimate result being his leaving the HOA in a situation of solvency, he must not be
3 held personally responsible damages in light of the countless hours of work he performed and donated,
4 free of charge.

5 DATED: November 30, 2021

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7 BY:



8 CAROLYN M. BROUSSARD, ESQ.
9 Attorney for Respondents
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2 **CERTIFICATE OF SERVICE**

3 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of
4 and that on the 30 day of November, 2021, I served a true and correct copy of the above and
5 foregoing **RESPONDENTS' PREHEARING STATEMENT** on the parties addressed as shown below:
6

7 xx *Via Email*

8
9 Sharath Chandra
10 Administrator
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20 SHERRI J. LECKY, An Employee of the LAW OFFICES
21 OF S. DENISE MCCURRY