

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES FEBRUARY 2, 2021**

**VIRTUAL MEETING
FEBRUARY 2, 2021
9:09 A.M.**

1-A) Introduction of Commissioners in attendance

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

1-B) Swearing in of newly appointed Commissioner

Chairman Burke swore in Commissioners Patricia Morse Jarman and Chuck Niggemeyer.

Commissioner Niggemeyer swore in Chairman Burke.

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; Gary Little, Training Program Officer; and Christy Staffen, Compliance Audit Investigator.

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

2) Public Comment

Joel Just, CEO of CAMCO and CEO of Nevada Association Services, stated that he was in support of raising the collection fees. Mr. Just stated that there have been four or five homeowner association (HOA) collections companies that had gone out of business in the last three years and he had been noticed that another one is about to be sold. Mr. Just stated that it was time to raise some of the fees and get fees associated with steps that have been added in Nevada statute that are on the fee schedule.

Cameron Clark, President of Nevada Association Services, stated that along with Mr. Just, he is in support of this review. Mr. Clark stated that the Commission had been provided a letter that was submitted in late October of 2020 referencing the need to review the fee schedule and many collection services on behalf of associations have gone out of business and the awareness of another collection service on behalf of HOAs trying to sell is a sign of a definite need to review these fees and costs. Mr. Clark stated that new legislation has been brought about that require extra steps that unless there is a way of compensating the collection services on behalf of the HOA client, things can get very dire. Mr. Clark stated that they have the support of many managers and other professionals in the industry. Mr. Clark stated that the cap puts a burden on the association and the collection service to continue to perform services that cost extra monies that are not able to be returned.

Adam Clarkson, a HOA attorney with the Clarkson Law Group, stated that he is in support of the petition to enhance and increase collection fees and agrees with the comments made by Mr. Just and Mr. Clark. Mr. Clarkson stated that he would request with respect to the proposed language and

changes, some of the new fees appear to be lower than they should be for work that is associated with that and would recommend them being higher. Mr. Clarkson recommended a lot of the other suggested fees being higher across the board. Mr. Clarkson stated that a concern was that clarification should be added into section 3. Mr. Clarkson stated that when the regulation was originally adopted, management companies did not have an express allowance to be able to do collections. Mr. Clarkson stated that management companies have been added into the statute to be able to perform collections prior to the default, which would mean that management companies would be taking on a number of items that are listed in the individually delineated fees. Mr. Clarkson stated that currently the limitation is a \$200 aggregate limit which is notably less than the individualized fees and presumably under current law it was not contemplated that this \$200 limit would apply to these individualized fees.

Louise Pena, retired community manager and member of an HOA community, stated that she was in support of Joel Just, Cameron Clark and Adam Clarkson with the increase the fees for collections. Ms. Pena stated that she would hate to see any more collection agencies have to close because they are not getting the proper fees and affordability for them to stay open.

3-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 are two separate settlements in this matter, one for the association and one for the board members.

The Commission was provided with a copy of the two settlements.

Chairman Burke moved to approve the settlements for both the board members and association. Commissioner Layton seconded. Motion carried.

3-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.

Cheryl Christian, community manager with Performance CAM, was present.

Ms. Briggs stated that this case is a status update. Ms. Briggs stated that at the last Commission meeting, the board had hired a community manager and that community manager was to appear today before the Commission to present financial information. Ms. Briggs stated that a report on the financial condition of the association was supposed to be provided a week before this meeting and was not received. Ms. Briggs stated that the status of the association is not in good standing because it had not filed its annual paperwork.

Ms. Christian stated that Form 562 had been submitted to the Division as well as the payment, but a notice was received that the Division had received the payment but not the form. Ms. Christian stated that she would be faxing the form to the Division.

Ms. Christian stated that Pacific Coastal had been hired to do the reserve study, but it had not been completed at this time. Ms. Christian stated that at the end of December the association only had \$25,000 in their operating account. Ms. Christian stated that a reserve account was opened that currently has \$10,000. Ms. Christian stated that since the reserve study has not been completed it would be hard for her to tell the Commission how much the association should have in their reserves, but from her being in the industry, Ms. Christian stated that the reserve account should be well over half a million dollars. Ms. Christian stated that she was proposing a reserve assessment of \$500 per home from 108 homes, as well as raising their regular assessment from \$200 to \$225. Ms. Christian stated that she was trying to be gentle due to the current pandemic and people not working. Ms. Christian stated that the last thing that she would want to do is send all homeowners into delinquency, but the association has no money and a lot of work needs to be done.

Ms. Briggs stated that she would like to keep this under the jurisdiction of the Commission for now and ask that this case be continued and receive status updates from Ms. Christian on the board's approval with the funding plan, the reserve study and moving forward what is being done.

Ms. Christian stated that the association has a board meeting scheduled on February 24, 2021 and would follow up with Ms. Briggs if the board adopts the budget that is being proposed.

Chairman Burke moved to continue this matter until the next scheduled Commission meeting on June 1, 2021 and that the HOA provide a written status update to Ms. Briggs no later than one week prior to the June 1-3, 2021 meeting. Commissioner Gale seconded. Motion carried.

**3-C) 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.

Ms. Neff stated that this matter has been fully resolved. Ms. Neff stated that there was an approved settlement from the last Commission meeting that had been signed and complied with so this case can be removed from the agenda.

**3-D) NRED v. Ruby Chang, for possible action
Case No. 2019-1100**

Type of Respondent: Unlicensed activity

Karissa Neff was present representing the Division.

Ruby Chang was not present.

State's Witness

Kelly Valadez testified regarding service of the complaint.

Chairman Burke moved that evidence has been presented that Ms. Chang was properly served at her last known address and failed to timely respond to the complaint and as such he would hold her in default. Commissioner Layton seconded. Motion carried.

Chairman Burke moved that the factual allegations as pled in paragraphs 1-12 of the complaint have been deemed admitted. Commissioner Niggemeyer seconded. Motion carried.

Chairman Burke moved that the violation of law pled in paragraph 13 of the complaint and based on the admitted facts, Ms. Chang is in violation of NRS 116A.400(1). Commissioner Niggemeyer seconded. Motion carried.

Karissa Neff stated that she would like to admit the exhibits into evidence that were produced in this case.

Chairman Burke moved that exhibits marked 0001-0069 are deemed admitted. Commissioner Gale seconded. Motion carried.

Disciplinary Recommendation

Ms. Neff stated that NRS 116A.900 gives the Commission the discretion to impose the greater of \$10,000 or the amount of the economic benefit derived. Ms. Neff stated that the evidence presented in the documents has tax forms from 2016 and 2017 that showed Ms. Chang was compensated \$14,300 for providing community management services to the association while being unlicensed. Ms. Neff stated that the Division would request that the Commission issue a fine in at least that amount plus award the Division its fees and costs of \$941.67.

Commissioner Gale moved to fine Ms. Chang in the amount of \$14,300 plus the Division's fees and costs of \$941.67 payable within 6 months. Commissioner Layton seconded. Motion carried.

3-E) NRED v. Kristin Putinta, for possible action

Case No. 2019-1061

Type of Respondent: Community Manager

License No.: CAM.0006957-SUPR (Active)

Karissa Neff was present representing the Division

Kristin Putinta was not present.

State's Witness

Kelly Valadez testified regarding service of the complaint.

Chairman Burke moved that the evidence has proven that Ms. Putinta has been properly served, that she failed to timely respond to the complaint, and she is therefore in default. Commissioner Niggemeyer seconded. Motion carried with one abstention from Commissioner Gale because the respondent is Commissioner Gale's sister.

Chairman Burke moved that the factual allegations in paragraphs 1-18 as pled in the complaint have been deemed admitted. Commissioner Layton seconded. Motion carried with one abstention from Commissioner Gale.

Chairman Burke moved that the violations of law as pled in paragraphs 19-26 have been proven. Commissioner Niggemeyer seconded. Motion carried with one abstention from Commissioner Gale.

Ms. Neff asked that the documents produced in this case BS 00001-01259 be admitted into

evidence.

Chairman Burke moved that the exhibits 00001-01259 be admitted into evidence. Commissioner Niggemeyer seconded. Motion carried with one abstention from Commissioner Gale.

Disciplinary Recommendation

Ms. Neff stated that the Division requested that Ms. Putinta be ordered to pay \$5,286.99 in restitution to the association incurred from attorney fees and audits performed, her supervisory community manager certificate be revoke for a ten year period and she can only apply if she has paid all imposed fines and restitution in full, that a fine of \$4,000 for each of the eight violations of law be imposed for a total of \$32,000 plus the Division's fees and costs of \$1,980.33.

Commissioner Niggemeyer asked what the reasoning was behind asking for the \$4,000 per violation of law instead of the maximum \$5,000.

Ms. Neff stated that the Division was asking for at least \$4,000 per violation but the Commission could do more, consideration was given to the number of violations and the reality of this money being repaid.

Commissioner Niggemeyer stated that when there is a case with fraud, the Commission needs to be stern and he would like to see the \$4000 raised to \$5,000 for each of the violations of law.

Commissioner Layton stated that he agreed with Commissioner Niggemeyer.

Commissioner Tomasso stated that she agreed with Commissioners Layton and Niggemeyer that this is a serious offense, and the Commission needs to maintain a little retribution.

Commissioner Jarman asked if there is the possibility that the \$40,000 would be collected.

Chairman Burke stated that it is probably unlikely, and he didn't know if the \$2000 restitution had been paid in the criminal investigation.

Ms. Neff stated that based on her conversations with the HOA, the restitution in the criminal investigation had not been paid yet.

Commissioner Jarman stated that she agrees with \$5,000 for each of the violations of law.

Chairman Burke moved that Ms. Putinta is ordered to pay \$5,286.99 as restitution to the HOA, that the amount of \$40,000 in fines be levied against her representing \$5,000 for each of the 8 violations of law, that the Division's fees and costs be repaid in the amount of \$1,980.33, that her supervisory community manager certificate be revoked for a period of no less than 10 years or until such time thereafter that all fines and restitution have been paid in full, and that all fines and restitution shall be paid within 1 year. Commissioner Layton seconded. Motion carried with one abstention from Commissioner Gale.

3-F) NRED v. Michael Sosebee, for possible action

Case No. 2019-9

Type of Respondent: Community Manager

License No.: CAM.0006957-SUPR (Active)

Commissioner Burke stated that this case has been continued until the next scheduled Commission meeting.

4) Petition for rehearing: for possible discussion and possible action by the Commission

NRED v. James Melvin Fennell

Case No. 2019-1083

Type of Respondent: Provisional Community Manager

License#: CAM.0009222-PROV (Revoked)

Karissa Neff was present representing the Division.

James Melvin Fennell was not present.

Chairman Burke stated that since Mr. Fennell failed to appear, no action will be taken.

4-A) Administrator's Report

Sharath Chandra presented this report. Mr. Chandra stated that the legislature was currently in session and there was one Division bill regarding NRS 116. Mr. Chandra stated that during the last legislative session the legislature required the Division and the Director of Business and Industry to create a task force to consider items for future recommendation to the Commission or to the legislature for changes to NRS 116 and 116A. Mr. Chandra stated that the task force had three recommendations that formed the basis for a statutory request that the Division was sponsoring. Mr. Chandra stated that there were a couple of other bills that the Division is also tracking, and if any of those bills make it before any of the committees, the Commission will be updated.

Mr. Chandra stated that everything at the Division is still virtual and that it doesn't look like it will be returning to a normal process anytime in the foreseeable future. Mr. Chandra stated that projection for opening is in line with the school district, other State agencies and when vaccine rates are high enough. Mr. Chandra stated that staff is in the office to answer phones and conduct business. Mr. Chandra stated that there are a couple of investigator positions open that are in the process of being filled.

Mr. Chandra stated that the Division is in the budgetary process and the Division had not seen a significant drop in revenues in the common-interest communities (CIC) area. Mr. Chandra stated that the advantage for CIC is that it is self-funded so the revenue that CIC brings in is used to maintain the reserve and the funding for CIC. Mr. Chandra stated that real estate is one of the brighter spots in the economy with developments coming through the pipeline with new HOAs coming online showing continued growth in those areas.

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

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

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

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

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

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

5-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 Education section is continuing to do everything virtually and would

probably stay with the virtual format for this year. Mr. Foger stated that the training program officers in Reno and Las Vegas are teaching at least two virtual classes a week and the website has been updated. Mr. Foger stated that there are two vacant positions that will hopefully get filled in the next month.

5-C) Licensee and board member discipline report

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

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

Commissioner Niggemeyer stated that this matter has been tabled until the legislature is finished and then at that time, the best way to proceed will be for the Division and Commission to begin developing a regulation.

6-B) Discussion regarding Commissioners speaking engagement requests.

The Commission stated that there was nothing to report.

6-C) 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 the fees and costs have been set by the Commission in the past and they are asking the Commission to help explore ways in which the fees can be raised so that collection companies can stay in business. Mr. Clark stated that they are following the consumer price index and would propose automatic increases so this would not have to be an agenda item every year.

Chairman Burke asked how much on average the fees would increase.

Mr. Clark stated that it varies fee to fee, but 10 percent in some cases and a little bit more in others. Mr. Clark stated that a revised schedule of fees was submitted to the Commission in October 2020.

Commissioner Niggemeyer asked who made the changes to the proposed amendment to NAC 116.470 that was submitted and if those changes in red reflected the consumer price index increases.

Mr. Clark stated that the submitted changes were made by Joel Just, Brandon Wood and himself and the changes reflected the consumer price index. Mr. Clark stated that they had partnered with John Leach and consultation with other members of the industry.

Chairman Burke stated that it seemed like a reasonable request to obtain market value for necessary items that have to be paid to have someone to do certain tasks and currently with items below market, people are bailing on items that need to occur.

Mr. Clark stated that the sooner that something like this can be adopted the better. Mr. Clark stated that there are a number of upfront costs that associations pass on to the collection services that are reimbursed but the amount that it costs along with the rise in the costs of business has definitely shifted since the original schedule was adopted.

Sharath Chandra stated that NRS 233B.100 allows the opportunity to petition the Commission and this is an item that requires significant discussion and deliberation. Mr. Chandra stated that the

Commission should propose a motion that allows the Division to bring this in front of the Commission during the next regulation proposal. Mr. Chandra stated that when legislative session is over the Division will have to create and amend regulations and have workshops that will include public comment. Mr. Chandra stated that at that point the Commission could look at the intricacies of whether the cap is necessary, whether the costs need to be increased and does it need to be lined up with the cost price index or not.

Teralyn Lewis stated that the workshop process could be started but we could not adopt such a regulation until next year because the Legislative Council Bureau will not give the Commission a regulation file for adoption until next year. Ms. Lewis stated that the next scheduled Commission meeting is June 1-3, 2021 after legislative session is over and the Commission could begin discussing language for this change and workshops could be held so that when the time comes, the Commission will be ready for adoption.

Chairman Burke moved to go forward in the rule making process to consider the changes concerning NAC 116.470. Commissioner Niggemeyer seconded. Motion carried.

6-D) Discussion and decision to approve minutes of the October 27-29, 2020 Commission meeting.

Commissioner Layton moved to approve the October 27-29, 2020 meeting minutes. Chairman Burke seconded. Motion carried with one abstention from Commissioner Jarman because she was not part of the Commission at that time.

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

The next Commission meeting is scheduled for June 1-3, 2021.

8) Public Comment

Jennifer Agnew stated that she had been in attendance all day and holds a DECAL for Community Associations Institute purposes.

Michael Parson stated that he had been in attendance all day.

8) Adjournment

Meeting adjourned at 10:32 a.m. on February 2, 2021.

Minutes prepared by: 
Kelly Valadez
Commission Coordinator