

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

Sharath Chandra, Administrator,
Real Estate Division, Department of
Business & Industry, State of Nevada,

Petitioner,

vs.

James Melvin Fennell,

Respondent.

Case No. 2019-1083

FILED

NOV 20 2020

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Kelly Valadez

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada (the "Commission"), during a regular agenda on October 27, 2020, via telephone and video, with no physical public location (as permitted by the Governor's Declaration of Emergency, Directive 006, as thereafter extended) (the "Hearing"). The Respondent, JAMES MELVIN FENNELL ("FENNELL" and/or "RESPONDENT"), did not appear personally or through counsel and did not answer the complaint. Karissa D. Neff, Esq., Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

Ms. Neff presented testimony from Kelly Valadez, the Commission coordinator, regarding service of the notice of the Complaint, hearing and documents on RESPONDENT. The Commission, having determined that RESPONDENT was properly served with the complaint but that he failed to timely respond as required by NRS 116.770(5), voted in favor of entering RESPONDENT's default and making a decision based on the allegations in the complaints pursuant to NAC 116A.595(13).

The Commission, having considered the evidence introduced by the Division and

1 being fully advised, enters the following Findings of Fact, Conclusions of Law, and Order.
2 Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter
3 116A, the Commission has legal jurisdiction and authority over this matter.

4 FINDINGS OF FACT

5 Based on a preponderance of the evidence in the record and the documents
6 admitted at the Hearing, the Commission unanimously voted to find the following factual
7 allegations were proven:

8 1. RESPONDENT obtained his provisional community manager license from
9 the Division in December of 2018, license CAM.009222-PROV, said license now on
10 inactive status.

11 2. After RESPONDENT received his provisional community association
12 manager license, RESPONDENT began working as a provisional community association
13 manager for Braewood Heritage Association Inc. ("Association").

14 3. RESPONDENT's supervisory community association manager was Deborah
15 Whitworth (Whitworth), who holds license CAM.0007273-SUPR and owns TPGLV, LLC,
16 a Nevada limited liability company d/b/a The Property Group.

17 4. Whitworth was RESPONDENT's supervising community association
18 manager from April 1, 2019 until RESPONDENT resigned from his position as the
19 Association's provisional community association manager in July of 2019.

20 5. On August 7, 2019, Kathleen Matthews, the president of the Association,
21 filed a police report against RESPONDENT, alleging in part, that RESPONDENT had
22 misappropriated cash from the Association and had taken checks made payable to and/or
23 from the Association.

24 6. On September 26, 2019, the Division received a Statement of Fact filed
25 against RESPONDENT by Whitworth, alleging that RESPONDENT had fraudulently
26 endorsed Association checks, deposited them into his personal account, and had taken
27 homeowner cash payments due to the Association.

28 7. The Association provided documentation to the Division that

1 RESPONDENT intercepted checks written from the Association to other persons/entities,
2 intercepted checks written from the Association to vendors, intercepted checks from title
3 companies to the Association for real estate closing to cover capitalization, transfer fees,
4 and credits to new owner's accounts, and took money due to the Association for resale
5 packages/demand letters.

6 8. On October 1, 2019, the Division properly notified RESPONDENT it had
7 opened an investigation based on the complaint filed with the Division and requested that
8 RESPONDENT provide a response to certain allegations.

9 9. On October 16, 2019, RESPONDENT responded to the Division's
10 investigation.

11 10. In his October 16th response to the Division, RESPONDENT stated he
12 wanted to acknowledge his mistake, that he had apologized to the Association's president,
13 treasurer, and Whitworth, and that he had mistakenly taken a check payable from the
14 Association to Showcase Landscape Services ("Showcase") in the amount of \$1,505.00
15 and had sent the Association a money order in the amount of \$1,505.00.

16 11. RESPONDENT also acknowledged that he had taken a second check from
17 Showcase in the amount of \$1,630.00 and one payable Brundage Electric Inc.
18 ("Brundage") in the amount of \$1,190.00 and stated these amounts would be repaid in the
19 coming weeks.

20 12. On October 17, 2019, the Division notified RESPONDENT it had received
21 documentation supporting that certain Association checks were endorsed by him and
22 deposited into his personal bank account, totaling approximately \$9,330.05 in Association
23 funds and had also received documentation that cash transactions were not applied to
24 owners' accounts.

25 13. In the Division's October 17th letter, the Division requested RESPONDENT
26 provide documentation supporting that he re-paid the Association \$1,505.00 through
27 money orders as the Association claimed they did not receive the funds, as well as provide
28 any evidence he had repaid the checks to Showcase and Brundage.

1 14. On November 15, 2019, the Division received RESPONDENT's response.

2 15. RESPONDENT stated that he did not recall taking any cash that should
3 have been applied to any homeowner's account.

4 16. With respect to checks that were missing from resale packages, he claimed
5 that he tried to reach out to the bank but was unable to obtain copies of the checks because
6 the account was closed.

7 17. He also claimed it was his understanding that because he was preparing
8 resale packages, he was to be compensated for his work with the money from the title
9 companies.

10 18. With respect to the money orders he claimed to have made to the
11 Association, RESPONDENT stated he could not provide proof they were sent because he
12 did not send them certified mail and did not request a signed receipt.

13 19. Whitworth also responded to the Division's investigation.

14 20. Whitworth stated at no time did she tell RESPONDENT that funds paid for
15 resale/demands would be RESPONDENT's compensation and that RESPONDENT was
16 employed by and paid by the Association- not through her company.

17 21. On July 10, 2020, the Division properly notified RESPONDENT it was
18 commencing a disciplinary action against him before the Commission.

19 **CONCLUSIONS OF LAW**

20 Based on the foregoing factual findings and the preponderance of the evidence, the
21 Commission unanimously voted that the following violations of law occurred:

22 22. RESPONDENT violated NRS 116A.630(1)(a) by failing to act as a fiduciary
23 to the Association in the performance of his duties as a provisional community association
24 manager.

25 23. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary
26 and reasonable care in the performance of his duties as a provisional association
27 community manager.

28 24. RESPONDENT violated NRS 116A.630(2)(a) and NAC 116A.320 by failing

1 to comply with state laws.

2 25. RESPONDENT violated NRS 116A.640(4) by misappropriating Association
3 money for his own personal use.

4 26. RESPONDENT violated NRS 116A.640(2)(b) and NAC 116A.345(2)(b) by
5 impeding or otherwise interfering with an investigation of the Division by supplying false
6 information to the investigator.

7 27. RESPONDENT violated NAC 116A.355(1)(a)(1) (through NAC
8 116A.355(2)(c)) by committing unprofessional conduct by engaging in deceitful,
9 fraudulent or dishonest conduct.

10 28. RESPONDENT violated NAC 116.355(1)(a)(2) (through NAC
11 116A.355(3)(a) and (b) by committing professional incompetence by demonstrating a
12 significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a
13 client and failing to exercise reasonable skill and care with respect to a duty or obligation
14 owed to a client.

15 29. RESPONDENT violated NAC 116A.355(1)(a)(1) and (2) through NAC
16 116A.355(4)(g) by committing unprofessional conduct and/or professional incompetence
17 by failing to act in the best interests of the Association.

18 **ORDER**

19 The Commission, being fully apprised in the premises and good cause appearing,
20 ORDERS as follows:

21 1. RESPONDENT's provisional community manager certificate is hereby
22 revoked for a period of no less than ten years. RESPONDENT shall not be permitted to
23 reapply for a certificate from the Division following the ten-year revocation period until
24 all fines and restitution imposed by the Commission are paid in full.

25 2. Following the revocation period, should RESPONDENT apply for a
26 certificate from the Division, RESPONDENT shall be required to submit a new
27 application and comply with all Division requirements at that time. The Division shall
28 deny RESPONDENT's application and refer the application denial to the Commission

1 pursuant to NAC 116A.135.

2 3. RESPONDENT shall pay to the Division a total fine of \$41,935.97. The total
3 fine reflects an administrative fine of \$40,000 dollars against RESPONDENT for
4 committing the violations of law, plus \$1,935.97 for the Division's attorney's fees and
5 costs. The total fine shall be paid in full no later than 60 days from the date of this Order.

6 4. RESPONDENT shall also pay the Association \$9,350 dollars in restitution
7 no later than 60 days from the date of this Order.

8 5. The Division may institute debt collection proceedings for failure to timely
9 pay the total fine, including action to reduce this Order to a judgment. Further, if
10 collection goes through the State of Nevada, then RESPONDENT shall also pay the costs
11 associated with collection.

12 DATED this 17TH day of November, 2020.

13 COMMISSION FOR COMMON-INTEREST
14 COMMUNITIES AND CONDOMINIUM HOTELS
15 DEPARTMENT OF BUSINESS & INDUSTRY
16 STATE OF NEVADA

17 By: 
18 MICHAEL BURKE
19 CHAIRMAN

20 Submitted by:

21 AARON D. FORD
22 Attorney General

23 By: *Isl Karissa Neff*

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