

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 Highlands Road Association, Charles A.  
10 Lane, Eric Mortara, Cathy Lynch, and,  
11 Barbara Small,

12 Respondents.

Case No. 2021-807  
(Combined with Case Nos. 2021-808 and  
2021-810)

**FILED**

JUN 02 2022

NEVADA COMMISSION FOR  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

*Kelley Valadez*

13 **STIPULATION AND ORDER**

14 **FOR SETTLEMENT OF DISCIPLINARY ACTION**

15 This matter came on for hearing before the Commission for Common-Interest  
16 Communities and Condominium Hotels, State of Nevada (the "Commission"), during a  
17 regular agenda on May 31, 2022 (the "Hearing"). Highlands Road Association (the  
18 "ASSOCIATION"), Charles A. Lane (LANE), Eric Mortara (MORTARA), Cathy Lynch  
19 (LYNCH), and Barbara Small (SMALL) (collectively "RESPONDENTS"), appeared  
20 through their counsel Sheila Van Duyne, Esq.; and Matthew Feeley, Esq., Deputy Attorney  
21 General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate  
22 Division of the Department of Business and Industry, State of Nevada (the "Division").  
23 RESPONDENT and counsel for the Division presented settlement terms to the  
24 Commission. The Commission approved and ordered the following stipulated terms, based  
25 upon the Complaint filed and summarized herein:

26 **JURISDICTION AND NOTICE**

27 1. During the relevant times mentioned in this complaint, RESPONDENTS  
28 LANE, MORTARA, LYNCH, and SMALL served on the Board of the ASSOCIATION, a  
common-interest community located in Washoe County, Nevada.

2. RESPONDENTS are subject to the provisions of Chapter 116 of each the

1 Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”)  
2 (hereinafter collectively referred to as “NRS 116”) and are subject to the jurisdiction of the  
3 Division, and the Commission for Common-Interest Communities pursuant to the  
4 provisions of NRS 116.750.

5 **FACTUAL ALLEGATIONS SET FORTH IN THE COMPLAINT**

6 3. HIGHLANDS ROAD ASSOCIATION (“ASSOCIATION”) is an Association  
7 located in Washoe County, Nevada, consisting of 28 single-family units.

8 4. As of at least April 15, 2021, CHARLES A. LANE (“LANE”), has served on the  
9 ASSOCIATION’s Board of Directors and as the President.

10 5. As of at least April 15, 2021, ERIC MORTARA (“MORTARA”), has served on  
11 the ASSOCIATION’s Board of Directors and as the Vice President.

12 6. As of at least April 15, 2021, BARBARA SMALL (“SMALL”), has served on  
13 the ASSOCIATION’s Board of Directors and as the Treasurer.

14 7. As of at least April 15, 2021, CATHY LYNCH (“LYNCH”) has served on the  
15 ASSOCIATION’s Board of Directors and as the Secretary.

16 8. Based on a May 2021 Complaint from a unit owner within the ASSOCIATION  
17 (the “COMPLAINANT”), the Division began an investigation into the activities of the  
18 ASSOCIATION.

19 9. Through the investigation, the Division learned the ASSOCIATION was  
20 established on September 7, 1978, and at that time reflected the name “Mogul Highlands  
21 Homeowners Association.”

22 10. An amended Declaration was recorded in December 1984 under the name  
23 Mogul Highlands and reflects a Homeowners Association may become necessary to benefit  
24 lot owners.

25 11. Another amendment was made in March of 1993. The current Board  
26 President, LANE signed this amendment as read and approved.

27 12. In 1992, the ASSOCIATION prepared Articles of Incorporation calling the  
28 Association “Highlands Road Association” though the Division found no evidence that the

1 1992 Articles of Incorporation were signed or recorded.

2 13. The Division's Ombudsman's Office sent a letter of instruction to the  
3 ASSOCIATION on May 4, 2021, and again on July 8, 2021 noting that the Association  
4 needed to comply with the governing documents and NRS 116. Additionally, the  
5 Ombudsman's Office suggested training and provided the contact information for the  
6 Northern Nevada Training Officer. Presently, the ASSOCIATION has not contacted the  
7 Northern Nevada Training Office regarding any training.

8 14. The COMPLAINANT's alleged that they were denied, upon request, a copy of  
9 the audio from an ASSOCIATION meeting.

10 15. LANE provided an affidavit that indicated that there are no recordings of any  
11 ASSOCIATION meetings, as he was not aware of the requirement, however, "[t]he other  
12 officers and I are now aware of the regulation that Executive Committee meetings "shall"  
13 be recorded..."

14 16. The COMPLAINANT alleged that they were denied, upon request, a copy of  
15 the homeowner ratified operating budget.

16 17. LANE provided an affidavit that indicated that "in the +25 years the HRA has  
17 been in existence, there has never been a ratified budget..."

18 18. The COMPLAINANT alleged that they were denied, upon request, a copy of  
19 certain documents which would include financial statements of the association and a  
20 budget of the association.

21 19. LANE provided affidavit that indicated that "in the +25 years the HRA has  
22 been in existence, there has never been a ratified budget..." and that "[t]he other officers  
23 and I are aware of the requirement and process for establishing an operating budget  
24 ratified by the general membership as required by the regulations under NRS 116.31151  
25 and the need to establish a fiscal year. We are working towards those goals."

26 20. RESPONDENTS LYNCH, SMALL, and MORTARA also provided affidavits,  
27 however they also did not indicate the existence of any audio recordings of meetings, the  
28 existence of any ratified budgets, or the past keeping of proper financial records.

1           21. On September 15, 2021, the Division sent a letter to the ASSOCIATION and  
2 specifically LANE, advising LANE that “[t]he Division has obtained sufficient evidence to  
3 commence a disciplinary action against you and intends to do so by filing a complaint for  
4 hearing before the Commission for Common-Interest Communities and Condominium  
5 Hotels (the "Commission").

6                           **VIOLATIONS OF LAW ALLEGED IN THE COMPLAINT**

7           22. RESPONDENTS violated NRS 116.31083(5)(a) and NRS 116.31083(8) in that  
8 the ASSOCIATION has never caused any meeting of the executive board to be audio  
9 recorded; additionally, and as such, RESPONDENTS have never provided any such  
10 recording to a unit owner.

11           23. RESPONDENTS violated NRS 116.31151(3) by failing to, within 60 days after  
12 adoption of any proposed budget for the common-interest community, provide a summary  
13 of the proposed budget to each unit’s owner and set a date for a meeting of the units’ owners  
14 to consider ratification of the proposed budget.

15           24. RESPONDENTS violated NRS 116.31175 in that the ASSOCIATION failed  
16 to maintain financial statements of the association and budgets of the association as  
17 required pursuant to NRS 116.31151, and as such failed to provide said documents to unit  
18 owners upon request.

19                           **DISCIPLINE AUTHORIZED**

20           Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS  
21 116.790 the Commission has discretion to take any or all of the following actions:

- 22           A. Issue an order directing RESPONDENTS to cease and desist from continuing to  
23 engage in the unlawful conduct that resulted in the violation.
- 24           B. Issue an order directing RESPONDENTS to take affirmative action to correct  
25 any conditions resulting from the violation.
- 26           C. Impose an administrative fine of up to \$1,000 for each violation by  
27 RESPONDENTS.
- 28           D. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY

1 COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest  
2 of the Association, such RESPONDENTS may be removed from his/her position  
3 as a director and/or officer.

4 E. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

5 F. Require the BOARD MEMBERS to hire a community manager who holds a  
6 certificate.

7 G. Require RESPONDENTS to pay the costs of the proceedings incurred by the  
8 Division, including, without limitation, the cost of the investigation and  
9 reasonable attorney's fees.

10 H. Take whatever further disciplinary action as the Commission deems appropriate.

11 The Commission may order one or any combination of the discipline described above. If the  
12 Commission finds that the RESPONDENTS knowingly and willfully violated the  
13 provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be  
14 personally liable for all fines and costs imposed.

#### 15 SETTLEMENT

16 1. RESPONDENTS neither admit nor deny any of the allegations set forth in  
17 the complaint in this matter.

18 2. RESPONDENTS shall pay the Division an administrative fine in the amount  
19 of \$750.00 ("Amount Due"). The Amount Due shall be paid in full within thirty days of the  
20 entry of this Order.

21 3. RESPONDENTS, through counsel, represent that they have the required  
22 majority amount of ASSOCIATION members (over 80% of the membership) and have  
23 recorded documents terminating any existence of a common-interest community in accord  
24 with the provisions of NRS 116.2118. RESPONDENTS also hereby represent and affirm  
25 that the Highlands Road Association, NV Business ID NV20011511723, does not own any  
26 real estate, common area or units, within the community which needs to be sold. The  
27 entity also had no creditors or debts which remained unpaid as of the date of the  
28 termination. As of this time, the Owners in this community have also recorded documents

1 formally establishing an NRS 116.1209(3) Road Association evidenced by agreement of the  
2 Owners. The NRS 116.1209(3) Road Association is taking steps to work with the  
3 remaining lot owners in an effort to determine and clarify membership within the Road  
4 Association going forward. The terminated Association and the now formally existing Road  
5 Association are working to make sure all Owners that do wish to transfer their previously  
6 paid assessments to the Road Association are able to complete that process for purposes  
7 of moving forward with Road Association work including the maintenance and  
8 snowplowing on the two roadways. Any parties that do not wish to participate in the Road  
9 Association are begin provided with a timeline to make their choice of not participating  
10 formalized. After that process is complete, the Road Association intends to retain a  
11 financial company to assist with the formal distribution of any amounts that may have  
12 been paid into the Association that non-members may claim they are due given the formal  
13 termination of any existing Association coupled with the formal recordation of a document  
14 evidencing the NRS 116.1209(3) Road Association. The Association wants to give the few  
15 Owners that failed to send in their ballots adequate time to make a decision regarding  
16 these matters.

17 4. The Division agrees to close Case Nos. 2021-807, 2021-808 and 2021-810  
18 against RESPONDENTS.

19 5. RESPONDENTS and the Division agree that by entering into this Stipulation  
20 and Order, the Division does not concede any defense or mitigation RESPONDENTS may  
21 assert and that once this Stipulation and Order is approved and fully performed, the  
22 Division will close its file in this matter and this matter will be resolved in full.

23 6. RESPONDENTS agree that if the terms and conditions of this Stipulation and  
24 Order are not met, the Division may, at its option, rescind this Stipulation and Order and  
25 proceed with prosecuting the Complaint before the Commission.

26 7. RESPONDENTS agree and understand that by entering into this Stipulation  
27 and Order, RESPONDENTS are waiving their right to a hearing at which RESPONDENTS  
28 may present evidence in their defense, their right to a written decision on the merits of the

1 Complaint, their right to reconsideration and/or rehearing, appeal and/or judicial review,  
2 and all other rights which may be accorded by the Nevada Administrative Procedure Act,  
3 the Nevada Common Interest Ownership statutes and accompanying regulations, and the  
4 federal and state constitutions. RESPONDENTS understand that this Stipulation and  
5 Order and other documentation may be subject to public records laws. The Commission  
6 members who review this matter for approval of this Stipulation and Order may be the  
7 same members who ultimately hear, consider and decide the Complaint if this Stipulation  
8 and Order is either not approved by the Commission or is not timely performed by  
9 RESPONDENTS.

10 8. Each party shall bear their own attorney's fees and costs, except as otherwise  
11 set forth herein.

12 9. Stipulation and Order is Not Evidence. Neither this Stipulation and Order  
13 nor any statements made concerning this Stipulation and Order may be discussed or  
14 introduced into evidence at any hearing on the Complaint, if the Division must ultimately  
15 present its case based on the Complaint filed in this matter.

16 10. Release. In consideration of execution of this Stipulation and Order,  
17 RESPONDENTS for themselves, their heirs, executors, administrators, successors, and  
18 assigns, hereby release, remise, and forever discharge the State of Nevada, the Department  
19 of Business and Industry and the Division, and each of their respective members, agents,  
20 employees and counsel in their individual and representative capacities, from any and all  
21 manner of actions, causes of action, suits, debts, judgments, executions, claims, and  
22 demands whatsoever, known and unknown, in law or equity, that RESPONDENTS ever  
23 had, now have, may have, or claims to have, against any or all of the persons or entities  
24 named in this section, arising out of or by reason of the Division's investigation, this  
25 disciplinary action, and all other matters relating thereto.

26 11. Indemnification. RESPONDENTS hereby indemnify and hold harmless the  
27 State of Nevada, the Department of Business and Industry, the Division, and each of their  
28 respective members, agents, employees and counsel in their individual and representative

1 capacities against any and all claims, suits, and actions brought against said persons and/or  
2 entities by reason of the Division's investigation, this disciplinary action and all other  
3 matters relating thereto, and against any and all expenses, damages, and costs, including  
4 court costs and attorney fees, which may be sustained by the persons and/or entities named  
5 in this section as a result of said claims, suits, and actions.

6 12. The Division may institute debt collection proceedings for failure to timely  
7 pay the Amount Due, including an action to reduce this Order to a judgment. Further, if  
8 collection goes through the State of Nevada, then RESPONDENTS shall also pay the costs  
9 associated with collection.

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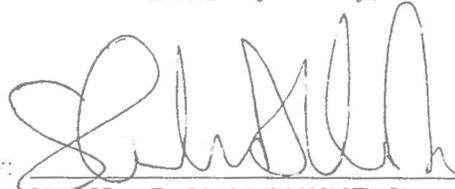
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1 13. RESPONDENTS have signed and dated this Stipulation and Order, or  
2 instructed their attorney to do so, only after reading and understanding all terms herein.

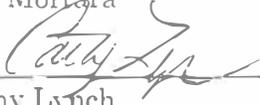
3  
4 DATED this 28<sup>th</sup> day of May, 2022

DATED this \_\_\_\_ day of May, 2022.

5  
6  
7 By:   
8 SHEILA D. VAN DUYNE, Esq.  
9 Van Duyne Law Group  
10 1188 California Ave.  
11 Reno NV 89509  
12 Attorney for RESPONDENTS

NEVADA DEPARTMENT OF BUSINESS  
& INDUSTRY, REAL ESTATE DIVISION  
By: \_\_\_\_\_  
SHARATH CHANDRA  
Administrator

13 \_\_\_\_\_  
14 Charles A. Lane

15 \_\_\_\_\_  
16 Eric Mortara  
  
17 Cathy Lynch

18 \_\_\_\_\_  
19 Barbara Small

20 Approved as to form:

21 AARON D. FORD  
22 Attorney General

23 By: /s/ Matthew Feeley  
24 MATTHEW FEELEY, Esq.  
25 Deputy Attorney General  
26 555 E. Washington Avenue, Suite 3900  
27 Las Vegas, NV 89101  
28 Attorneys for the Division

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20 AARON D. FORD  
21 Attorney General

22 By: /s/ Matthew Feeley  
23 MATTHEW FEELEY, Esq.  
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25 555 E. Washington Avenue, Suite 3900  
26 Las Vegas, NV 89101  
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18 Cathy Lynch

19 *Barbara M. Small*  
20 \_\_\_\_\_  
21 Barbara Small

22 Approved as to form:

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24 Attorney General

25 By:  /s/ Matthew Feeley  
26 MATTHEW FEELEY, Esq.  
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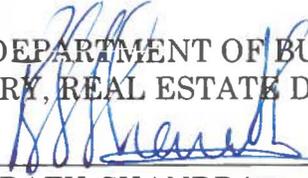
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3  
4 DATED this \_\_\_\_ day of May, 2022

DATED this 31 day of May, 2022.

5  
6 NEVADA DEPARTMENT OF BUSINESS  
& INDUSTRY, REAL ESTATE DIVISION

7 By: \_\_\_\_\_

By:  \_\_\_\_\_

8 SHEILA D. VAN DUYNE, Esq.  
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23 Attorney General

24 By: /s/ Matthew Feeley \_\_\_\_\_

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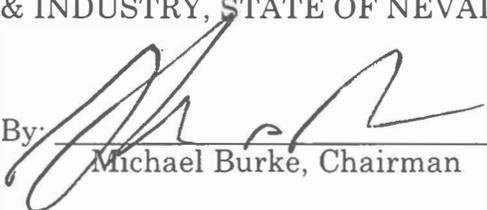
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**ORDER**

**IT IS ORDERED** that the foregoing Stipulation and Order for Settlement of Disciplinary Action is approved in full.

Dated: May 31, 2022.

COMMISSION FOR COMMON-INTEREST  
COMMUNITIES AND CONDOMINIUM  
HOTELS, DEPARTMENT OF BUSINESS  
& INDUSTRY, STATE OF NEVADA

By:   
Michael Burke, Chairman

Submitted by:

AARON D. FORD  
Attorney General

By: */s/ Matthew Feeley*

\_\_\_\_\_  
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