

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES DECEMBER 7, 2021**

**VIA IN PERSON AND WEBEX VIRTUAL MEETING
DECEMBER 7, 2021**

Nevada State Business Center
3300 W. Sahara Avenue
4th Floor, Nevada Room
Las Vegas, Nevada 89102

The meeting was called to order at 9:01 A.M.

1-A) Introduction of Commissioners in attendance

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

1-B) Introduction of Division staff in attendance

Sharath Chandra, Administrator; Charvez Foger, Deputy Administrator; Jason Wyatt, Ombudsman; Shareece Bates, Administration Section Manager; Terry Wheaton, Chief Compliance Audit Investigator; Kelly Valadez, Commission Coordinator; Evelyn Pattee, Commission Coordinator; Monique Williamson, Education and Information Officer; and Gary Little, Training Program Officer.

Senior Deputy Attorney General Karissa Neff and Deputy Attorney General Matthew Feeley representing the Division.

2) Public Comment

Larry Wodarski, owner of Incline Property Management, stated that his company services 90 plus associations in Lake Tahoe and Carson Valley. Mr. Wodarski stated that with the growth in number of homeowner associations in both the north and south, Northern Nevada needs to be able to meet that demand with training community managers. Mr. Wodarski stated that a single annual pre-certification class in Northern Nevada is restricting response to this growing demand. Mr. Wodarski stated that when the Commission developed the continuing education class protocol for Zoom classes when COVID hit, this greatly increased the possibilities for training in the northern part of the state and the convenience, proliferation of classes and flexibility resulted in the community managers within his company exceeding the 18-hour requirements. Mr. Wodarski stated that he is confident that if the Northern Nevada candidates were allowed to join the Las Vegas based pre-certification classes via Zoom, this would be just as successful. Mr. Wodarski stated that there is an immediate need to move their assistants through the pre-certification classes and having to wait to attend the one annual pre-certification class that is offered hampers their ability to serve their associations.

Michael Kosor, homeowner in Las Vegas, stated that the assessment of HOA's being good is predicated on owners, not developers, controlling the board. Mr. Kosor stated that dangers exist today in the rights currently granted to community developers by legislators and embodied in the unfettered ability of developers to author declarations. Mr. Kosor stated that CC&Rs are unilateral

constructions of developers for developers, with only marginal regulatory criteria, no regulatory review, no representation by those the declarations affect, and are not buyer negotiable. Mr. Kosor stated that his core issue is that for declarant control, there is a number of maximum units that can be applied to an association that the developer freely picks, that has to have no connection with reality, and that nobody checks to see if that number can be achieved. Mr. Kosor stated that then there is a percentage of units that will be transferred which used to be 75% when the uniform code was adopted, but our legislators changed it to 90% in 2015. Mr. Kosor stated that 10% is the only requirement that a developer has to own and still maintain control of the board, but the developer does not have to own those units, he just has to state that he plans to build, and the Real Estate Division does not monitor declarant control change.

3-A) NRED v. Deborah Anderson, for possible action

Case No. 2020-269

Type of Respondent: CAM.0000272 (Active)

Parties Present

Karissa Neff, Senior Deputy Attorney General, was present representing the Division. Deborah Anderson was not present.

Chairman Burke stated that a stipulation for settlement was provided in the meeting packet.

Chairman Burke asked the Commission if there were any questions regarding the stipulation for settlement. No questions were noted.

Chairman Burke moved to approve the stipulation for settlement. Seconded by Commissioner Bruner. Motion carried.

3-B) NRED v. Cindy Manning, for possible action

Case No. 2020-350

Type of Respondent: CAM.0006917 (Active)

Parties Present

Karissa Neff, Senior Deputy Attorney General was present representing the Division. Cindy Manning was present via Webex.

Preliminary Matters

Ms. Neff stated that this case was initially set to be heard by the Commission during their meeting on August 31, 2021, but a continuance was granted at Ms. Manning's request. Ms. Neff stated that a default was filed on October 6, 2021. Ms. Neff stated that to date Ms. Manning has not been in contact with the Attorney General's office, but on December 1, 2021, Ms. Manning filed an answer and some documents with the Division. Ms. Neff stated that she would request that the Commission treat this case as a default because the whole case is about Ms. Manning's failure to cooperate with the investigation, then subsequently failing to pay a \$500 fine to the Division.

Chairman Burke asked Ms. Manning if she received the complaint.

Ms. Manning answered yes.

Chairman Burke asked Ms. Manning why she did not file a timely answer to the complaint.

Ms. Manning stated that she filed an answer to the complaint, but the issue was that she failed to do

an address change on her renewal, and she did not receive several of the notices because she was working from home under COVID and medical restrictions. Ms. Manning stated that when she called the Division about her renewal, she was told there was a \$500 fine, and she would need to appear before the Commission.

Ms. Neff stated that Ms. Manning did receive the complaint because she requested the continuance and then Ms. Manning waited until days before this hearing to file an answer. Ms. Neff stated that Ms. Manning had some responsibility to check her mail with her employer and to update her address with the Division.

Chairman Burke stated that Ms. Manning is here now, has provided an answer to the complaint and asked the Commission if the case should be heard.

Commissioner Tomasso stated that the case should be heard.

Commissioner Gale stated that she agreed the case should be heard.

Commissioners Jarman, Niggemeyer, Layton, and Bruner stated that they agree.

Chairman Burke stated that the default would be set aside, and the Commission would hear the case.

Opening Statements

Ms. Neff gave her opening statement.

Ms. Manning gave her opening statement.

Chairman Burke moved that the notice of documents produced by the State be admitted into evidence. Seconded by Commissioner Layton. Motion carried.

State's Witness

Christina Pitch testified.

Ms. Manning had no questions for Ms. Pitch.

The witness was dismissed.

State's Witness

Cindy Manning testified.

Chairman Burke asked if there was any objection to admitting the documents 1-30 provided by Ms. Manning. No objections were noted.

Chairman Burke moved to admit the Respondent's documents 1-30.

The Commission asked questions of Ms. Manning.

The witness was dismissed.

Closing Statements

Ms. Neff gave her closing statement.

Ms. Manning gave her closing statement.

Commissioner Jarman stated that the information provided by the Division was complete and thorough and that Ms. Manning was woefully derelict in her duties as a community manager. Commissioner Jarman stated that it was Ms. Manning's responsibility to stay on track and respond to the Division's concerns and Ms. Manning consistently offered excuses, although valid at one time, but are not valid now. Commissioner Jarman stated that she feels the fine should be higher with a time limit to pay.

Commissioner Layton stated that Ms. Manning has a responsibility as a licensee to know what the rules are regarding maintaining your address. Commissioner Layton stated that if for some reason Ms. Manning was not working in the office, that there should have been some means of communicating with an assistant or the office to have documents filed with the Division. Commissioner Layton stated that it certainly seems that it would be a high priority if the association had any letters or correspondence from the Division and there is a responsibility to Ms. Manning to facilitate those procedures so that it is working smoothly. Commissioner Layton stated that Ms. Manning should be responsible for paying a fine and the costs of the investigation.

Chairman Burke stated that the January to May period of bury your head in the sand and hope all is well by Ms. Manning is highly concerning. Chairman Burke stated that as a board member or a member of an HOA that has retained a community manager, you look to the community manager to make sure everything is right with the ship and Ms. Manning did not do that.

Commissioner Gale stated that as community managers, we are taught to have back up documentation for everything and Ms. Manning has not done that. Commissioner Gale stated that a community manager should have certified mail receipts or emails because you cannot depend on casual conversations anymore.

Commissioner Niggemeyer stated that Ms. Manning has been a community association manager since 2011 and should have been able to draw on experience, on procedures, and been familiar with the laws and requirements. Commissioner Niggemeyer stated that he cannot believe that the management company that Ms. Manning works for would not have been in contact with her when the company is receiving the correspondence from the Division.

Chairman Burke stated that this is not a punishment for working from home or because of medical issues, but if this happens and you are not on medical leave and there are nine associations relying on you, then you have to have stops, backstops and double backstops to make sure things are not falling through the cracks.

Commissioner Tomasso stated that there was a need of delegation of someone to fill a need and Ms. Manning's company probably had those resources if Ms. Manning had wished to use them. Commissioner Tomasso stated that board members rely on their community managers to know the statutes.

Chairman Burke moved that the factual allegations as pled in paragraphs 1-21 of the complaint have been proven. Seconded by Commissioner Tomasso. Motion carried.

Chairman Burke moved that the violations of law as pled in paragraphs 22-27 of the complaint have been proven. Seconded by Commissioner Gale. Motion carried.

Recommended Discipline

Ms. Neff presented:

- \$1,000 fine and \$2,162.49 for fees and costs payable in full within 60 days.

Chairman Burke moved that Ms. Manning pay a fine in the amount of \$1,000 and repay the Division's investigative fees and costs of \$2,162.49 for a total of \$3,162.49 payable within 60 days of the date of the order. Failure to pay the fine and the Division's fees and costs within the 60 days will result in an immediate suspension of Ms. Manning's CAM certificate. Seconded by Commissioner Layton. Motion carried.

4-A) NRED v. Srdjan Pantic, for possible action

Case No. 2019-836

Type of Respondent: Board Member

Parties Present

Karissa Neff was present representing the Division.

Srdjan Pantic was present.

Commissioner Gale stated that she had to recuse herself from this case because she was part of the initial complaint.

Ms. Neff stated that this case was initially noticed for the Commission meeting scheduled for June 1-3, 2021. Ms. Neff stated that on May 13, 2021, Mr. Pantic requested a continuance claiming there was a delay in him receiving the complaint and its' accompanying documents because Mr. Pantic had moved from an address on Spencer St. to an address on Tangerine Rose and requested that the Division update his address. Ms. Neff stated that on May 24, 2021, the Division sent a certified letter to Mr. Pantic at the Tangerine Rose address stating that the Division had granted his request for a continuance and the letter was signed for by someone at his address. Ms. Neff stated that on July 16, 2021, the Division sent a certified letter to the Tangerine Rose address notifying Mr. Pantic that his case would be heard during the scheduled Commission meeting for August 31 – September 2, 2021. Ms. Neff stated that on August 9, 2021, a notice of default was sent by certified mail to Mr. Pantic to the Tangerine Rose address. Ms. Neff stated that Mr. Pantic's case was heard by the Commission during the Commission meeting held on August 31, 2021, where Mr. Pantic was not present. Ms. Neff stated that the result of Mr. Pantic's case was that the Commission ordered a fine in the amount of \$4,000 plus attorney fees and costs in the amount of \$3,465.40, with the total to be paid within 60 days of the date of the order and on October 21, 2021, the Division sent Mr. Pantic a copy of the order by certified mail to the Tangerine Rose address. Ms. Neff stated that Mr. Pantic claims to have not received the notice of the Commission meeting scheduled for August 31 - September 2, 2021, and was not aware that the hearing was taking place. Ms. Neff stated that the process to request a rehearing was emailed to Mr. Pantic and NAC 116A.637(4) specifically requires Mr. Pantic to file a motion stating why he is entitled to a rehearing and Mr. Pantic has failed to do that, so procedurally Ms. Neff stated that it is not proper to grant the petition for rehearing.

Mr. Pantic stated that everything that Ms. Neff stated is true. Mr. Pantic stated that he changed his address when he submitted his paperwork in 2019 but somehow paperwork continues to be mailed to the old address on Spencer. Mr. Pantic stated that the resident now living at the Spencer address

contacted him when the complaint was mailed to the Spencer address, and Mr. Pantic was able to pick it up and contacted the Division to change his address and requested the continuance. Mr. Pantic stated that the Division told him that he would receive a notice for the hearing but never did. Mr. Pantic stated that there is only himself, his wife and baby living at his new address, and he does not know why he would not receive certain mailings. Mr. Pantic stated that he went to the post office and spoke with a supervisor regarding not receiving any notices left to inform him that he had mail to be picked up at the post office but did not receive any help. Mr. Pantic stated that he receives emails every day from USPS regarding future deliveries and has never received any notification of the certified mails. Mr. Pantic stated that he cares and that it is in his best interest to show up before the Commission and present himself, but he never received the notice of the hearing date. Mr. Pantic stated that he is asking the Commission for a chance to present himself with a witness from the Board that would testify on his behalf.

Ms. Neff stated that only the initial complaint was sent to the Spencer address and after Mr. Pantic requested the continuance, all documents were mailed to the updated address by certified mail.

Mr. Pantic stated that what Ms. Neff stated was correct and he truthfully did not receive the one important notice containing the date of the hearing.

Commissioner Niggemeyer moved to stay the order and grant the respondent's petition for a rehearing until the next Commission meeting. Seconded by Commissioner Bruner. Motion carried with one abstention from Commissioner Gale.

3-C) NRED v. Wexford Village Homeowners Association, Jose Malave II, Erika Zumaya and Charles Tharp, for possible action
Case No. 2020-186
Type of Respondent: Board Member

Parties Present

Matthew Feeley was present representing the Division.
Carolyn Broussard, Esq. was present representing the Homeowners Association.
Charles Tharp was present.
Erika Zumaya was present via Webex video.
Jose Malave II was present via Webex video and via telephone.

Opening Statements

Mr. Feeley gave his opening statement.
Ms. Broussard gave her opening statement.

Chairman Burke moved to admit the State's exhibits BS CICC0001-CICC0653 into evidence. Seconded by Commissioner Tomasso. Motion carried.

State's Witness

Christina Pitch testified.

Ms. Broussard cross-examined Ms. Pitch

The witness was dismissed.

Chairman Burke moved to admit the respondent's exhibits 1-22 into evidence. Seconded by

Commissioner Gale. Motion carried.

State's Witness

Charles Tharp testified.

Ms. Broussard cross-examined Mr. Tharp.

Mr. Feeley re-examined Mr. Tharp.

Ms. Broussard re-cross-examined Mr. Tharp.

The Commission asked questions of Mr. Tharp.

The witness was dismissed.

State's Witness

Erika Zumaya testified.

Ms. Broussard cross-examined Ms. Zumaya.

The witness was dismissed.

State's Witness

Jose Malave testified.

Ms. Broussard cross-examined Mr. Malave.

Mr. Feeley re-examined Mr. Malave.

The witness was dismissed.

Closing Statements

Mr. Feeley gave his closing statement.

Ms. Broussard gave her closing statement.

Commissioner Jarman stated that Mr. Malave did commit some infractions, however, this is a community that is in dire straits and the intentions were more honorable than not in an attempt to try and piece together a community and keep it together.

Commissioner Tomasso stated that the violation of staying on the board after Mr. Malave sold his home has been proven by the State, but she is having trouble agreeing with the phrase that Mr. Malave and the rest of the board members failed to act in the best interest of the association. Commissioner Tomasso stated that she feels that the association was lucky to have these 3 board members willing to do what they have done, and that the board has acted in the best interest of the association.

Commissioner Gale stated that Mr. Malave was doing everything he could to better the association, but as soon as the association received the first letter from the Division that stated Mr. Malave was not allowed to be on the board anymore, and then getting a cease-and-desist letter and not doing anything is the problem. Commissioner Gale stated that she understands that the board wanted to do

what was in the best interest of the association, but it should not have taken from May or June until now to hire a new management company. Commissioner Gale stated that if the association was going to be a self-managed association, then the board should have taken the time to become more educated on their responsibilities. Commissioner Gale stated that fining the association in their current situation is not the best option, but better guidance, education, and an understanding that the board cannot do what they have done again.

Commissioner Niggemeyer stated that the terms officers versus directors on boards is a problem because they are used interchangeably all the time and they are not interchangeable. Commissioner Niggemeyer stated that when the letters from the Division went out, especially the cease-and-desist letter, why did no one from the board respond to the Division that there was a problem and ask if Mr. Malave could stay on the board until a replacement could be found. Commissioner Niggemeyer stated that there is nothing that will replace education and the Division has free classes, as well as other organizations throughout the state.

Commissioner Bruner stated that he believes the board members had the best intent of the association, and he does not support a fine violation. Commissioner Bruner stated that Mr. Malave expressed the challenges that the association was facing trying to hire a new HOA management company and finding a new board member, and Commissioner Bruner agreed that there should have been some correspondence with the Division. Commissioner Bruner stated that he agrees that further education would be helpful, and the new management company should be able to offer guidance.

Commissioner Layton stated that it was clear that the law was violated, but after hearing all the testimony, the board members acted to the best of their ability in the interest of the community. Commissioner Layton stated that one of the recommendations of the Division is that Mr. Malave not be able to serve on a board for five years, but Mr. Malave is someone that should be on a board because he is passionate about what he does. Commissioner Layton stated that he does not see the need to fine Mr. Malave, but Mr. Malave certainly needs further education to understand what he is doing.

Chairman Burke stated that he agrees that there is a technical violation because Mr. Malave stayed on the board when he should not have. Chairman Burke stated that there is evidence in the record prior to the hearing regarding the petty cash allegation that presumably was in possession of the Division, and this should not have been before the Commission. Chairman Burke stated that he agrees that education should be required before Mr. Malave serves on a board again.

Chairman Burke moved that the factual allegations in paragraphs 3-14 have been proven; however factual allegation in paragraph 15 has not been proven. Seconded by Commissioner Gale. Motion carried.

Chairman Burke moved that regarding Mr. Malave the Division has proven the violation of law in paragraph 16, but as to the respondents Zumaya, Tharp and Wexford Village Homeowners, the violations of law in paragraphs 16-20 have not been proven. Seconded by Commissioner Tomasso. Motion carried.

Chairman Burke moved that Mr. Malave not be able to serve as a board member or officer of any homeowner's association until such time as he has completed 18 hours of education provided by the Real Estate Division and provide proof of the education taken; Mr. Malave shall return any and all

possessions of the Wexford Village Homeowners Association to Mr. Tharp within five business days and should Mr. Tharp not receive those items, Mr. Tharp will immediately notify the Division. Seconded by Commissioner Layton. Motion carried.

The Commission made the recommendation for the other board members of the Wexford Village Homeowners Association to take classes offered by the Real Estate Division.

Monique Williamson, Education and Information Officer with the Real Estate Division, stated that free classes offered by the Division and are located on the Division's website at www.red.nv.gov, on the Ombudsman's page under program training which contains self-paced slide show presentations or live training classes with an instructor two to three times a month in the evening through Teams.

5-A) Administrator's report

Sharath Chandra presented this report. Mr. Chandra stated that Division is working on enhancing the technology used by the Division and its licensees. Mr. Chandra stated that there was a fifteen-dollar fee increase to licensees allowed during the last legislative session and by utilizing the fee increase it will allow for better technology and the ongoing cost of maintenance.

6-D) Discussion regarding SB-72 and language for possible regulation changes regarding Health, Safety and Welfare.

Commissioner Layton stated that the proposed language provided by the Division is excellent.

Commissioner Tomasso stated that the proposed changes are a good start, but she has some concerns. Commissioner Tomasso stated that in the proposed language provided by the Division needs to be juggled a little by switching paragraphs 1 and 4. Commissioner Tomasso stated that in paragraph 4, definitions are very important, and the intent is a very key factor when talking about crimes and violations, and intent needs to be talked about in paragraph 4.

Commissioner Tomasso stated that she does not like the wording in 4(1) and states that the statute clearly says that you cannot hold owners or tenants responsible for the actions of an invitee unless the owner or tenant planned it, participated in it, or could have stopped it and did not.

Commissioner Gale stated that she feels the meaning in the last two paragraphs are if you are trying to cause harm to unit's owner, resident or their invitee, so not an invitee coming and causing the harm but if you are trying to cause harm to anyone in that community.

Commissioner Tomasso stated that in the definition provided for the word threat is the intention to inflict evil, injury or damage so we cannot remove intent and it has to be part of the act and really cannot include carelessness and you cannot legislate stupidity. Commissioner Tomasso stated that care and neglect should be removed and strongly believes that intent should be in the language.

Commissioner Tomasso stated that in paragraph 1, the word if should not start the sentence. Commissioner Tomasso stated that community managers and attorneys have told their HOAs that when you begin a sentence with the word if, it means you have a choice and not something that says you must.

Commissioner Gale stated that putting a maximum on a fine is great, however, if there is any kind of damage that is done to the association, that should be included.

5-B) Ombudsman's summary report

Jason Wyatt provided the Commission with these reports in the meeting packet.

5-C) CIC Compliance caseload report and summary

Terry Wheaton provided the Commission with these reports in the meeting packet.

5-D) Education and Information Officer Report

Monique Williamson provided the Commission with this report in the meeting packet.

5-E) Licensee and board member discipline report

Shareece Bates provided the Commission with this report in the meeting packet.

6-A) Discussion regarding Commissioners speaking engagement requests.

The Commission stated that there was nothing to report.

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

Commissioner Niggemeyer stated that things are being reorganized and he will have a new formatted report at the next scheduled Commission meeting.

6-C) Discussion and decision to approve minutes of the August 31, 2021 Commission meeting.

Commissioner Niggemeyer moved to approve the August 31, 2021 meeting minutes. Seconded by Commissioner Layton. Motion carried.

7) Discussion and decision on date, time, place and agenda items for upcoming meeting(s) including setting the meeting calendar for 2022.

- March 1-3, 2022
- May 31-June 2, 2022
- September 13-15, 2022
- December 6-8, 2022

8) Public Comment

None.

8) Adjournment

Meeting recessed at 4:58 p.m. on December 7, 2021.

Minutes prepared by: _____

Kelly Valadez
Commission Coordinator