

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

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

5 Petitioner,

6 vs.

7 Highlands Road Association, Charles A.
8 Lane, Eric Mortara, Cathy Lynch, and,
Barbara Small,

9 Respondents.

Case No. 2021-807

(Combined with Case Nos. 2021-808 and
2021-810)

10
11 **STIPULATION AND ORDER**

12 **FOR SETTLEMENT OF DISCIPLINARY ACTION**

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

24 **JURISDICTION AND NOTICE**

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

28 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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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.

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4 DATED this ____ day of May, 2022

DATED this ____ day of May, 2022.

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

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

By: _____
SHARATH CHANDRA
Administrator

11
12 _____
Charles A. Lane

13
14 _____
Eric Mortara

15
16 _____
Cathy Lynch

17
18 _____
Barbara Small

19 Approved as to form:

20 AARON D. FORD
21 Attorney General

22 By: /s/ Matthew Feeley
23 MATTHEW FEELEY, Esq.
24 Deputy Attorney General
25 555 E. Washington Avenue, Suite 3900
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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 ____, 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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