

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
6 OF BUSINESS AND INDUSTRY, STATE
7 OF NEVADA,

8 Petitioner,

9 vs.

10 VISTA DEL SUR TOWNHOUSE
11 ASSOCIATION
12 (Entity Number 1094-1985),

13 Respondents.

Case No. 2023-394

FILED

NOV 14 2024

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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14 **RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION**

15 Respondent, Visa Del Sur Townhouse Association, (“Respondent” or “Association”), by
16 and through its attorneys, Donna A. Zanetti, Esq., of Leach Kern Gruchow Song, hereby respond
17 to the Commission's Complaint for Disciplinary Action (“Complaint”) filed October 17, 2024.

18 **JURISDICTION AND NOTICE**

19 Respondent admits the allegations contained in the preliminary paragraph.

20 **FACTUAL ALLEGATIONS**

21 1. Answering Paragraph 1 of the Complaint, Respondent admits that the Division
22 conducted an audit for the Association.

23 **A. Delinquent CPA Reviews and Audits**

24 2. Answering Paragraph 2 of the Complaint, Respondent admits that in response to
25 the Division’s January 22, 2023 [sic] letter it stated that it only had CPA audits for 2014 and 2017.
26 Respondent alleges that a correction is required to that statement in that it has final audits or
27 reviews for the periods ending February 28, 2014; 2015; 2016 and 2017. Respondent alleges that
28 it has since completed the 2022 and 2023 audits. Respondent further alleges that it has contracted
with a CPA and signed audit Engagement Letters for the years ending February 28, 2018; 2019;
2020; and 2021 and when these audits are finalized it will have 10 years of audits, that being the

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1 record retention period required by NRS 116.31175(7). See **EXHIBITS 1-10**, CPA Audits,
2 Reviews and Signed Engagement Letters for years ending 2014 through 2023.

3 3. Answering Paragraph 3 of the Complaint, Respondent admits that its budget
4 requires it to have a CPA Review or CPA Audit performed annually.

5 4. Answering Paragraph 4 of the Complaint, Respondent admits that in response to
6 the Division’s October 12, 2023 letter it admitted that audits had not been done.

7 5. Answering Paragraph 5 of the Complaint, Respondent admits that in response to
8 the Division’s January 22, 2023 [sic] letter it claimed the Board approved the Engagement Letter
9 for its 2022 Audit. Respondent alleges that the 2022 Audit has since been issued. See **EXHIBIT**
10 **9**.

11 6. Answering Paragraph 6 of the Complaint, Respondent admits that in response to
12 the Division’s January 22, 2023 [sic] letter it stated that it anticipated that it would approve the
13 Engagement Letter for the 2023 Audit. Respondent alleges that the 2023 Audit has since been
14 issued. See **EXHIBIT 10**.

15 7. Answering Paragraph 7 of the Complaint, Respondent admits that in response to
16 the Division’s January 22, 2023 [sic] letter it stated that the Association felt like it was the
17 responsibility of their prior management company to have had the audits completed. However,
18 Respondent acknowledges that the Association’s Board of Directors is responsible under NRS 116
19 and NAC 116.405(8)(a) for causing the Association to comply with all applicable federal, state
20 and local laws and regulations and the governing documents of the association, which would
21 include ensuring that the annual audit or review occurs.

22 **B. Low Reserve Funding**

23 8. Answering Paragraph 8 of the Complaint, Respondent admits that in response to
24 the Division’s October 12, 2023 letter it stated that “the reserve fund is extremely under funded.”
25 Respondent alleges that it has since had a full reserve study with site visit completed for Fiscal
26 Year 3/1/25-2/28/26. See **EXHIBIT 11**. Respondent further alleges that it is following the reserve
27 funding plan in the full reserve study because at its meeting on October 23, 2024, the Board
28 approved a special reserve assessment in the recommended amount of \$184,800. See **EXHIBIT**

1 12, Board Meeting Minutes Draft, 10/23/24. Respondent alleges that due to its fiscal year, the
2 Association will start preparing its annual budget in December 2024, the Board will approve the
3 annual budget in January 2025 and the budget ratification meeting will be held in late January or
4 early February 2025 for the Fiscal Year which starts March 1, 2025 and that the Board understands
5 its obligation to budget for and make an annual transfer (exclusive of the special reserve
6 assessment) sufficient to fund reserves in accordance with the funding plan in the 2025 reserve
7 study and subsequent updates.

8 9. Answering Paragraph 9 of the Complaint, Respondent admits that in response to
9 the Division's January 22, 2023 [sic] letter it stated that it "currently has \$48,584.09 in their reserve
10 account" but that the [2023] reserve study [update] shows the year-end balance should be
11 \$170,504.56 (or approximately 28.89% funded).

12 10. Answering Paragraph 10 of the Complaint, Respondent admits that in response to
13 the Division's January 22, 2023 [sic] letter it stated that the [2023] reserve study [update] shows
14 the year-end balance to be 100% funded and it should be \$653,549.72 (or approximately 7.43%
15 funded).

16 11. Answering Paragraph 11 of the Complaint, Respondent admits that in response to
17 the Division's January 22, 2023 [sic] letter it stated in a response to the Division that it had spent
18 \$255,000 on repairs.

19 **C. Failure to Adequately Contribute to Reserve Account**

20 12. Answering Paragraph 12 of the Complaint, Respondent admits that NRED's audit
21 concluded that its records revealed increased due-to reserve balances year-over-year. Respondent
22 alleges that the 2022-2023 Audit determined that reserves owed the operating account and that the
23 due-to reserves balance was an error, stating in pertinent part: "Interfund Receivables and
24 Payables: *As of February 28, 2022, the Association's reserve fund owed the operating fund*
25 *\$16,359.*" (emphasis added) See **EXHIBIT 9**, page 8. Respondent alleges that management has
26 corrected the error as of the August 31, 2024 financial statement. See **EXHIBIT 13**, Balance Sheet.

27 13. Answering Paragraph 13 of the Complaint, Respondent admits that in response to
28 the Division's January 22, 2023 [sic] letter it stated that starting with the new budget the Board

1 had increased their assessment to be able to increase the amount deposited into the reserve account.

2 14. Answering Paragraph 14 of the Complaint, Respondent admits that in response to
3 the Division’s January 22, 2023 [sic] letter it stated that the [2023] reserve study stated an annual
4 transfer of \$125,000 and it planned on transferring that amount to the reserves. Respondent alleges
5 that as of the September 30, 2024 financial statement, it has no due-to-reserves balance and that
6 the Association is making progress on its annual transfer of \$125,000 comprised of a special
7 reserve assessment and its contribution to reserves via the annual assessment. See **EXHIBIT 14**.

8 15. Answering Paragraph 15 of the Complaint, Respondent admits that in response to
9 the Division’s January 22, 2023 [sic] letter it stated the Board intends not to proceed with any
10 improvements until the reserve account is built up.

11 16. Answering Paragraph 16 of the Complaint, Respondent admits that on or about
12 October 12, 2023, the Division sent the RESPONDENT its first request for information letter with
13 a deadline to respond by October 26, 2023.

14 17. Answering Paragraph 17 of the Complaint, Respondent admits that on or about
15 January 22, 2024, the Division sent the RESPONDENT a follow-up to its original request for
16 information.

17 18. Answering Paragraph 18 of the Complaint, Respondent admits that on or about
18 February 23, 2024, the Division issued a Letter of Instruction regarding its responsibility to
19 maintain compliance.

20 19. Answering Paragraph 19 of the Complaint Respondent admits that on or about
21 August 2, 2024, the Division informed the Association that the case would be forwarded to the
22 Commission on the outstanding violations.

23 **VIOLATIONS OF LAW**

24 20. Answering Paragraph 20 of the Complaint, Respondent admits to the violation of
25 NRS 116.31133(1)(b) and/or (c) in that its reviews/audits were not timely completed but asserts it
26 has taken affirmative steps to resolve this violation by signing engagement letters for the missing
27 audits and completing the 2021-22 audit and the 2022-23 audit at the time of this Answer so that
28 when the audits are complete it will have 10 years of audits in the Association’s records. See

1 **EXHIBITS 1-10.**

2 21. Answering Paragraph 21 of the Complaint, Respondent admits to the violation of
3 NRS 116.31152 of having low reserve funding but asserts it has taken affirmative steps to resolve
4 this issue by commissioning a full reserve study with site visit for FY 2025-26, and then levying a
5 special reserve assessment in the amount recommended by the reserve study. See **EXHIBITS 11**
6 **and 12.** Respondent asserts that it will take affirmative steps when preparing its 2025-2026 budget
7 to budget for an annual transfer sufficient to fund reserves according to the new 2025 reserve study
8 and to propose a budget containing this amount for Owner ratification.

9 22. Answering Paragraph 22 of the Complaint, Respondent acknowledges that the
10 financial statements submitted to the Division showed a violation of NRS 116.31152(b) for failing
11 to adequately address its due-to-reserve balance owned but asserts that it has taken affirmative
12 steps to resolve this issue by having management make the adjusting journal entries required per
13 the 2022-2023 audit which included correcting the “due-to-reserves balance to a “due-to-operating
14 balance.” Respondent further asserts that in the course of conducting its audit NRED did not
15 identify that the Association was withdrawing reserve funds to pay for operating expenses. Upon
16 information and belief, the error with the due to/from account was simple human error exacerbated
17 by changes in management companies and managers.

18 **DISCIPLINE AUTHORIZED**

19 With respect to the “Discipline Authorized,” Respondent acknowledges that the
20 Commission has the authority to impose sanctions set forth therein.

21 **PROPOSED RESOLUTION/SETTLEMENT**

22 **A. Continued Submission of Requested Documents.**

23 The Board and management have been advised of the importance of ensuring that the
24 annual audits are completed in a timely manner in accordance with Nevada law. As part of a
25 settlement, the Association will provide the Division or the Commission with copies of the issued
26 audits for the years ending February 28, 2018; 2019; 2020; and 2021 as those audits are completed.
27 Once these audits are completed the Association will have 10 years of audits consistent with NRS
28 116.31175(7). The Association offers to provide the Division or the Commission with copies of

1 the signed engagement letters and subsequently issued audits for the next five years beginning
2 with FY 2024-25 as further evidence of its intent to comply going forward.

3 **B. Compliance with Nevada Law through a Funding Plan.**

4
5 NRS 116.3115(2) provides, in pertinent part, as follows (emphasis added):

6 (b) The association shall establish adequate reserves, funded on a reasonable
7 basis, for the repair, replacement and restoration of the major components of the
8 common elements and any other portion of the common-interest community that
9 the association is obligated to maintain, repair, replace or restore. . . *The*
10 *association may comply with the provisions of this paragraph through a funding*
11 *plan that is designed to allocate the costs for the repair, replacement and*
12 *restoration of the major components of the common elements* and any other
13 portion of the common-interest community that the association is obligated to
14 maintain, repair, replace or restore *over a period of years if the funding plan is*
15 *designed in an actuarially sound manner which will ensure that sufficient money*
16 *is available when the repair, replacement and restoration of the major*
17 *components of the common elements* or any other portion of the common-interest
18 community that the association is obligated to maintain, repair, replace or restore
19 are necessary. . .

20 Based on the express language of the statute, an association with an underfunded reserve
21 account is in compliance with the law, if the association’s board has adopted a “funding plan” that
22 is “designed in an actuarially sound manner which will ensure that sufficient money is available
23 when the repair, replacement, and restoration of the major components of the common elements .
24 . . are necessary.” The objective of a funding plan is to: (a) adequately fund the reserve account,
25 (b) address any current “due to/from” financial accounting entry, (c) address the scheduled reserve
26 study expenditures, and (d) comply with the maximum annual assessment increases permitted by
27 the Declaration.

28 The Association has completed its full reserve study for FY 2025-26 and has levied a
special reserve assessment in the amount recommended in the reserve study. See **EXHIBITS 11**
and 12. Due to the Association’s fiscal year, which starts on March 1, the Association has not
started the budget process for FY 25-26. However, as part of this settlement, the Association
proposes to provide the Division or the Commission with a copy of the 2025-26 Board approved
budget and Owner ratified budget (if different) on or before March 1, 2025.

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1 As part of this settlement, the Association proposes that for a period of five years
2 commencing with the 2025-26 Fiscal Year, it supply the Division or Commission with (a) a copy
3 of its annual reserve update, (b) the Board approved budget and Owner ratified budget (if different)
4 for the upcoming fiscal year; and (c) its year end unaudited financial statement so that the Division
5 or Commission can verify that the Association is budgeting for reserve assessments pursuant to its
6 reserve study funding plan and is collecting and depositing the reserve assessments into its reserve
7 account. Receipt of the financial statements should also provide notice to the Division or
8 Commission regarding any future issues with “due-to-reserve” balances, which at the time of this
9 Answer have been corrected pursuant to the August 2024 balance sheet.

10 Based on its earnest attempt to come into compliance with the statutory audit requirements
11 and the steps taken to adequately fund reserves, the Association asks that the Commission not
12 impose fines or the costs of its investigation.

13 Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that the
14 *Response to Complaint for Disciplinary Action*, filed in the above-entitled case (Case No. 2023-
15 394) does not contain the social security number of any person.

16 DATED this 14th day of November, 2024.

17 LEACH KERN GRUCHOW SONG

18
19 By: /s/ Donna A. Zanetti Esq.
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21 Nevada Bar No. 12904
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CERTIFICATE OF SERVICE

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Pursuant to NRCF 5(b), the undersigned, an employee of LEACH KERN GRUCHOW SONG, hereby certified that on 14th of November, 2024, she served a true and correct copy of the foregoing, RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION, by:

- Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Reno, Nevada
- Personal Delivery
- Facsimile
- Federal Express/Airborne Express/Other Overnight Delivery
- Reno Messenger Service
- Electronic Service – via E-Mail

Addressed as follows:

Aaron D. Ford, Esq.
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/s/ Jacquelyn Leuener
JACQUELYN LEUENER