

FILED

MAY 17 2024

NEVADA COMMISSION FOR  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

*mgallo*

1 ANS  
2 LEACH KERN GRUCHOW SONG  
3 JOHN E. LEACH, ESQ.  
4 Nevada Bar No. 1225  
5 E-mail: [jleach@lkglawfirm.com](mailto:jleach@lkglawfirm.com)  
6 2525 Box Canyon Drive  
7 Las Vegas, Nevada 89128  
8 Telephone: (702) 538-9074  
9 Facsimile: (702) 538-9113

10 Attorneys for Respondent

11 **BEFORE THE COMMISSION FOR COMMON-INTEREST**  
12 **COMMUNITIES AND CONDOMINIUM HOTELS**  
13 **STATE OF NEVADA**

14 SHARATH CHANDRA, Administrator,  
15 REAL ESTATE DIVISION,  
16 DEPARTMENT OF BUSINESS AND  
17 INDUSTRY, STATE OF NEVADA,

Case No.: 2023-38

Petitioner,

vs.

VILLAGIO COMMUNITY ASSOCIATION.  
(Entity Number C11529-1997),

Respondent.

**ANSWER TO COMPLAINT FOR DISCIPLINARY  
ACTION AND NOTICE OF HEARING**

The Respondent, VILLAGIO COMMUNITY ASSOCIATION (“Respondent”), hereby submits this Answer to the Real Estate Division of the Department of Business and Industry, State of Nevada (“Division”) Complaint for Disciplinary Action and Notice of Hearing (“Complaint”).

**JURISDICTION AND NOTICE**

1. Respondent acknowledges that the Division and the Commission for Common-Interest Communities and Condominium Hotels (“Commission”) has jurisdiction of this matter.

**FACTUAL ALLEGATIONS**

2. Respondent generally acknowledges and admits the factual allegations set forth in Paragraphs 1 through 14, inclusive, of the Complaint.

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1 VIOLATIONS OF LAW

2 3. The Board asserts that the existence of a “due-to” line item in its financials is not  
3 prima facie evidence of a violation of NRS 116.31151(1)(a) and/or (1)(b). Similarly, the losses  
4 experienced in a fiscal year, which are largely attributable to increased insurance expenses that  
5 are not known until after the budget has been adopted and ratified, do not support a violation of  
6 NRS 116.31151(1)(a) and/or (1)(b).

7 DISCIPLINE AUTHORIZED

8 4. Concerning the “Discipline Authorized,” the Respondent acknowledges that the  
9 Commission has the authority to impose the sanctions set forth therein.

10 PROPOSED RESOLUTION/SETTLEMENT

11 On March 30, 2024, Terry Wheaton, the Chief Compliance Audit Investigator, issued a  
12 letter to Respondent, c/o Frankie Stevenson, the Association’s community manager. A copy of  
13 the letter is attached hereto as **Exhibit “1”**. The letter states that the Division has obtained  
14 sufficient evidence to commence a disciplinary action against the Respondent and intends to file  
15 a Complaint with the Commission. The letter also stated that “the Division may be willing to  
16 resolve this matter through a negotiated settlement.”

17 On April 3, 2024, John E. Leach, legal counsel for the Respondent, sent an email  
18 message to Mr. Wheaton acknowledging receipt of the letter and notifying Mr. Wheaton that the  
19 Respondent would like to participate in settlement negotiations. A copy of the email is attached  
20 hereto as **Exhibit “2”**. Mr. Wheaton notified Respondent’s counsel that since the matter had  
21 already gone to the Deputy Attorney General (“AG”), the Respondent would need to contact  
22 Deputy AG Phillip Su.

23 On April 15, 2024, Respondent’s counsel sent an email message to Deputy AG Su  
24 renewing Respondent’s request to participate in settlement negotiations. A copy of the email is  
25 attached hereto as **Exhibit “3”**.

26 On April 19, 2024, the Complaint for Disciplinary Action and Notice of Hearing was  
27 filed with the Commission.  
28

1 On April 29, 2024, Respondent’s counsel sent another email message to Deputy AG Su  
2 renewing the request to engage in settlement negotiations, requesting a continuance of the  
3 June 11, 2024 hearing, and outlining the parameters of a proposed settlement. A copy of the  
4 email is attached hereto as **Exhibit “4”**.

5 Compliance With Nevada Law Through a Funding Plan

6 NRS 116.3115(2) provides, in pertinent part, as follows:

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

18 Based on the express language of the statute, an association with an underfunded reserve  
19 account is in compliance with the law, if the association’s board has adopted “a funding plan”  
20 that is “designed in an actuarially sound manner which will ensure that sufficient money is  
21 available when the repair, replacement and restoration of the major components of the common  
22 elements . . . are necessary.” In order to adopt a funding plan that: (a) adequately funds the  
23 reserve, (b) addresses the current “due to/from” financial entry, (c) takes into account the  
24 increase in expenses generally, and (d) complies with the maximum annual assessment increases  
25 permitted by the Declaration<sup>1</sup>, the Board proposes the following funding plan:  
26

27 \_\_\_\_\_  
28 <sup>1</sup> A copy of Section 5.7 of the Declaration which governs the limitations on Annual Assessments is attached hereto  
as **Exhibit “5”**. The maximum annual increase is 25%.

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1. The Board adopts and submits to the Membership an amended 2024 budget that increases the regular assessment from \$200.00 to \$220.00 per unit without garages and \$214.00 to \$234.00 per unit with garages. If the Owners reject the 2024 amended budget, then the Board will impose an SRA in the amount of \$20 per unit per month for the last 6 months of the year.
2. The 2025 Budget will increase the regular assessment from \$220.00 to \$250.00 per unit without garages and \$234.00 to \$264.00 per unit with garages. In addition, a special reserve assessment in the amount of \$25.00 per unit/per month is imposed pursuant to NRS 116.3115(2)(b).<sup>2</sup> If the Owners reject the 2025 budget, then the Board will increase the SRA by an additional \$30 per unit per month to cover the difference.
3. The 2026 Budget will increase the regular assessment from \$250.00 to \$275.00 per unit without garages and \$264.00 to \$289.00 per unit with garages. The special reserve assessment remains in place. If the Owners reject the 2026 Budget, then the Board will increase the SRA by an additional \$25 per unit per month to cover the difference.
4. The 2027-2028 Budget is increased as necessary. At this juncture, it does not appear that an increase would be necessary to address the reserve shortfall. The special reserve assessment remains in place.
5. The 2029 Budget is increased as necessary. At this juncture, it does not appear that an increase would be necessary to address the reserve shortfall. The special reserve assessment is stopped in 2029.

If this funding plan is followed, then at the end of 2028, it is anticipated that the Association's reserve account will be funded at approximately 69.2% and the "due to/from" substantially reduced, if not eliminated. The funding plan incorporates all scheduled reserve expenses, so there is no deferred maintenance. The "due to/from" balance is repaid through increased regular assessments and not the special reserve assessment. The maximum annual increase established in the Declaration is never exceeded to allow for additional regular assessment increases to accommodate other association expenses, i.e., utilities.

As part of the settlement, the Association agrees to return and report the status of the

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<sup>2</sup> NRS 116.3115(2)(b) grants the Board the authority to impose a special reserve assessment "without seeking or obtaining the approval of the units' owners."

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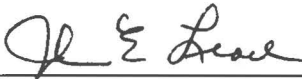
funding plan to the Division or Commission on a regular basis, as determined by the Commission.

The Association believes that if the Commission accepts this funding plan, the Association will be in compliance with NRS 116.3115(2).

Based on the foregoing, the Respondent respectfully requests that the Commission not impose monetary sanctions on the Association.

DATED this 17 day of May, 2024.

LEACH KERN GRUCHOW SONG

By:   
\_\_\_\_\_  
JOHN E. LEACH, ESQ.  
2525 Box Canyon Drive  
Las Vegas, Nevada 89128  
  
Attorneys for Respondent

LEACH KERN GRUCHOW SONG  
2525 Box Canyon Drive, Las Vegas, Nevada 89128  
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

**CERTIFICATE OF SERVICE**

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Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW SONG, hereby certified that on the 17<sup>th</sup> day of May, 2024, she served a true and correct copy of the foregoing, **ANSWER TO COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING**, by:

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

addressed as follows:

Maria Gallo, Commission Coordinator  
Common-Interest Communities  
and Condominium Hotels  
3300 W. Sahara Avenue, Suite 350  
Las Vegas, NV 89102  
*Via Email: mgallo@red.nv.gov*

Aaron D. Ford, Esq.  
Attorney General  
Christal P. Keegan, Esq.  
Deputy Attorney General  
5420 Kietzke Lane, Suite 202  
Reno, NV 89511  
*Via Email: ckeegan@ag.nv.gov*

/s/ Merlin A. Calimpong  
An employee of LEACH KERN GRUCHOW  
SONG

EXHIBIT "1"

STATE OF NEVADA

JOE LOMBARDO  
Governor



DR. KRISTOPHER SANCHEZ  
Director

SHARATH CHANDRA  
Administrator

CHARVEZ FOGER  
Deputy Administrator

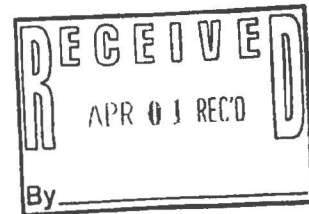
SONYA MERIWEATHER  
Ombudsman

DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

March 30, 2024

Via Certified Mail Return Receipt Requested  
7016 2070 0000 4948 5458

Villagio Community Association  
Fran Dugan and Executive Board  
Pinnacle Community Association Management  
Attn: Francesca Stevenson  
9330 W Sahara Ave Suite 210  
Las Vegas, NV 89117



Re: Case No. 2023-38

Dear Ms. Dugan and Executive Board:

This letter is a follow-up to an investigation by the Division concerning the above-referenced case number. It has been alleged that the executive board:

- Has not adequately funded the association reserves, nor has taken the proper actions to fund the reserves in 2024.
- Approved budgets that fail to meet the obligations of the Association.
- Continue to carry large "due-to" account balances owed from the operating account to the reserve account.

The Division has obtained sufficient evidence to commence a disciplinary action against you and intends to do so by filing a complaint for hearing before the Commission for Common-Interest Communities and Condominium Hotels (the "Commission"). The violations alleged will include, but may not be limited to:

NRS 116.31152  
NRS 116.31151

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**Carson City:** 1818 E. College Parkway, Suite 110 Carson City, Nevada 89706 - Telephone (775) 684-1900 - Fax (775) 687-4868

**Las Vegas:** 3300 W. Sahara Avenue, Suite 325 Las Vegas, Nevada 89102 - Telephone (702) 486-4480 - Fax (702) 486-4520  
[www.red.nv.gov/Content/CIC/Main](http://www.red.nv.gov/Content/CIC/Main) [cicombudsman@red.nv.gov](mailto:cicombudsman@red.nv.gov)



NRS 116.3103  
NAC 116.405

Pursuant to NRS 116.785, if the Commission determines violations of law occurred, it may impose fines of up to \$1,000 per violation. Additionally, the costs of the investigation and hearing, including attorney's fees, may be recovered. Failure to pay these sums in a timely manner may result in the institution of collection proceedings.

Any documentation or other evidence you have to support your compliance with the above provisions should immediately be brought to the undersigned's attention.

Upon consultation with its counsel, the Attorney General, the Division may be willing to resolve this matter through a negotiated settlement. This type of settlement must be presented to and approved by the Commission.

Sincerely,



Terry Wheaton  
Chief Compliance Audit Investigator

\*to BOO (in person) 4/3/24

**EXHIBIT "2"**

**John Leach**

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**From:** John Leach  
**Sent:** Wednesday, April 3, 2024 3:51 PM  
**To:** Terry Wheaton  
**Cc:** Merlin Calimpong  
**Subject:** FW: Villagio Community Association NRED Case No. 2023-38  
**Attachments:** 20240403143956162.pdf

Terry,

Good afternoon. I hope you are doing well.

Our office has been retained by the Villagio Community Association. I was provided with a copy of the letter issued by the NRED. See attached.

The last paragraph on page 2 of the letter states that the Division may be willing to resolve this matter through a negotiated settlement. The Board would like to participate in settlement negotiations to try and resolve this matter. Can we schedule a time next week to discuss this matter and the possible terms of a settlement?

John E. Leach, Esq.

=====  
Please copy the following members of my staff on your original or return correspondence to ensure prompt processing:  
--Merlin Calimpong, Legal Assistant: [mcalimpong@lkglawfirm.com](mailto:mcalimpong@lkglawfirm.com) (General HOA messages and calendaring, HOA billing inquiries, and HOA bid requests)  
--Yalonda Dekle, Legal Assistant: [ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com) (HOA Litigation matters and Litigation inquiries)  
--Mareve Batemon, Collections Supervisor: [mbatemon@lkglawfirm.com](mailto:mbatemon@lkglawfirm.com) and [lvcollections@lkglawfirm.com](mailto:lvcollections@lkglawfirm.com) (HOA Collections)



Las Vegas Office:  
2525 Box Canyon Drive

**EXHIBIT "3"**

**John Leach**

---

**From:** John Leach  
**Sent:** Monday, April 15, 2024 11:12 AM  
**To:** psu@ag.nv.gov  
**Cc:** Merlin Calimpong  
**Subject:** FW: Villagio Community Association NRED Case No. 2023-38  
**Attachments:** 2024.03.30 NRED Letter.pdf

Mr. Su.

Good morning. I hope you had a pleasant weekend.

I am legal counsel for the Villagio Community Association. The Association is in receipt of the NRED letter confirming this matter has been submitted to the Commission.

I reached out to Mr. Wheaton to see if we could discuss a resolution of this matter (see the message below). He referred me to you.

I would like to renew my request to discuss a possible resolution of this matter. The subject of the claim is something I have discussed with Ombudsman Meriweather and Mr. Wheaton on previous occasions.

Please let me know if there is a convenient time that we might be able to discuss this matter.

John E. Leach, Esq.

=====  
Please copy the following members of my staff on your original or return correspondence to ensure prompt processing:  
--Merlin Calimpong, Legal Assistant: [mcalimpong@lkglawfirm.com](mailto:mcalimpong@lkglawfirm.com) (General HOA messages and calendaring, HOA billing inquiries, and HOA bid requests)  
--Yalonda Dekle, Legal Assistant: [ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com) (HOA Litigation matters and Litigation inquiries)  
--Mareve Batemon, Collections Supervisor: [mbatemon@lkglawfirm.com](mailto:mbatemon@lkglawfirm.com) and [lvcollections@lkglawfirm.com](mailto:lvcollections@lkglawfirm.com) (HOA Collections)





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Website: [www.lkglawfirm.com](http://www.lkglawfirm.com)

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**From:** Terry Wheaton <[TWheaton@red.nv.gov](mailto:TWheaton@red.nv.gov)>  
**Sent:** Friday, April 5, 2024 1:58 PM  
**To:** John Leach <[JLeach@lkglawfirm.com](mailto:JLeach@lkglawfirm.com)>  
**Subject:** RE: Villagio Community Association NRED Case No. 2023-38

This matter has already gone to the DAG. You will have to contact DAG Phil.

**From:** John Leach <[JLeach@lkglawfirm.com](mailto:JLeach@lkglawfirm.com)>  
**Sent:** Wednesday, April 3, 2024 3:51 PM  
**To:** Terry Wheaton <[TWheaton@red.nv.gov](mailto:TWheaton@red.nv.gov)>  
**Cc:** Merlin Calimpong <[MCalimpong@lkglawfirm.com](mailto:MCalimpong@lkglawfirm.com)>  
**Subject:** FW: Villagio Community Association NRED Case No. 2023-38

Terry,

Good afternoon. I hope you are doing well.

Our office has been retained by the Villagio Community Association. I was provided with a copy of the letter issued by the NRED. See attached.

The last paragraph on page 2 of the letter states that the Division may be willing to resolve this matter through a negotiated settlement. The Board would like to participate in settlement negotiations to try and resolve this matter. Can we schedule a time next week to discuss this matter and the possible terms of a settlement?

John E. Leach, Esq.

=====

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--Mertin Calimpong, Legal Assistant: [mcalimpong@lkglawfirm.com](mailto:mcalimpong@lkglawfirm.com) (General HOA messages and calendaring, HOA billing inquiries, and HOA bid requests)  
--Yalonda Dekle, Legal Assistant: [ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com) (HOA Litigation matters and Litigation inquiries)  
--Mareve Batemon, Collections Supervisor: [mbatemon@lkglawfirm.com](mailto:mbatemon@lkglawfirm.com) and [lvcollections@lkglawfirm.com](mailto:lvcollections@lkglawfirm.com) (HOA Collections)



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Website: [www.lkglawfirm.com](http://www.lkglawfirm.com)

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Reno, NV 89511  
Phone: (775) 324-5930  
Fax: (775) 324-6173

EXHIBIT "4"



## John Leach

---

**From:** John Leach  
**Sent:** Monday, April 29, 2024 8:30 AM  
**To:** psu@ag.nv.gov  
**Cc:** Merlin Calimpong  
**Subject:** Villagio Community Association NRED Case No. 2023-38  
**Attachments:** NRED Complaint for Disciplinary Action.pdf; 2024.03.30 NRED Letter.pdf; RE: Villagio Community Association NRED Case No. 2023-38; FW: Villagio Community Association NRED Case No. 2023-38

Mr. Su,

Good morning.

On Friday, my client was served with the Complaint for Disciplinary action in the above-referenced matter.

On April 1, 2024, the Association received a letter from the NRED essentially stating that the investigation conducted resulted in sufficient evidence of a violation to submit the matter to the Commission. A copy of the NRED letter is attached hereto. The last paragraph on page 2 of the letter states that the NRED may be willing to resolve this matter through a negotiated settlement.

As a result, I immediately sent a message to Terry Wheaton, the Director of Compliance requesting the opportunity to engage in settlement negotiations. Mr. Wheaton said I needed to contact you directly. A copy of the email exchange is attached hereto.

On April 15, 2024, I sent a message to you again inquiring about engaging in settlement negotiations. A copy of the email is attached hereto. As of today, I have not received a response to my message.

This matter has been scheduled for the June 11-13 calendar. I am respectfully requesting that this matter be continued until the September calendar. I am working with the Board and management to adopt a funding plan “designed in an actuarially sound manner” as required by NRS 116.3115(2) (b). At this juncture, the plan will include an amended 2024 budget that increases the regular assessment for the balance of the year. In 2025-2026, the regular assessment must also be increased by a significant amount. In addition to the increase in the regular assessment, a special reserve assessment must be imposed for at least 4 years (2025-2028). I believe that if this plan is religiously followed, the reserve account will be adequately funded by the end of 2028. Please note that this plan also

accounts for the scheduled repairs to the major components of the community as determined by the reserve study specialist in each year.

Since amending a budget includes a budget ratification process for the owners, the plan is not likely to be implemented until at least July 1, 2024. For this reason, I have requested a continuance. In the meantime, I would like the opportunity to speak with you and the NRED representatives about the plan and its implementation. I want to make sure the NRED believes it is actuarially sound before implementing the plan.

John E. Leach, Esq.

=====

Please copy the following members of my staff on your original or return correspondence to ensure prompt processing:

- Mertin Calimpong, Legal Assistant: [mcalimpong@lkglawfirm.com](mailto:mcalimpong@lkglawfirm.com) (General HOA messages and calendaring, HOA billing inquiries, and HOA bid requests)
- Yalonda Dekle, Legal Assistant: [ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com) (HOA Litigation matters and Litigation inquiries)
- Mareve Batemon, Collections Supervisor: [mbatemon@lkglawfirm.com](mailto:mbatemon@lkglawfirm.com) and [lvcollections@lkglawfirm.com](mailto:lvcollections@lkglawfirm.com) (HOA Collections)



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Fax: (775) 324-6173

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EXHIBIT "5"

**Section 5.7 Limitations on Annual Assessment Increases.** The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined pursuant to Section 5.7(a) or (b), below, unless first approved by the vote of Members representing at least a majority of the total voting power of the Association.

(a) **Maximum Authorized Annual Assessment for Initial Year.** Until the first day of the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the annual Maximum Authorized Annual Assessment, prorated for the number of months remaining in said first Fiscal Year, shall be as follows: \$ \_\_\_\_\_ (together with an additional \$ \_\_\_\_\_ for any Garage appurtenant thereto).

(b) **Maximum Authorized Annual Assessment for Subsequent Fiscal Years.** Beginning with the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Maximum Authorized Annual Assessment in any Fiscal Year shall not exceed one hundred twenty-five percent (125%) of the Maximum

Authorized Annual Assessment in effect for the immediately preceding Fiscal Year (i.e., the Maximum Authorized Annual Assessment shall not be increased by more than 25% in any one Fiscal Year).