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NEVADA COMMISSION FOR  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

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6 **BEFORE THE COMMISSION FOR COMMON-INTEREST**  
7 **COMMUNITIES AND CONDOMINIUM HOTELS**  
8 **STATE OF NEVADA**

9 Sharath Chandra, Administrator, Real Estate  
10 Division Department of Business and  
11 Industry State of Nevada,

Case No.: 2023-771

11 Petitioner,

**ANSWER TO COMPLAINT FOR  
DISCIPLINARY ACTION**

12 vs.

13 Bordeaux Homeowners Association, Inc., a  
14 Nevada non-profit corporation,

15 Respondent,

16 The respondent, Bordeaux Homeowners Association, Inc., hereby submits this answer  
17 to the Real Estate Division of the Department and Industry, State of Nevada ("Division")  
18 Complaint for disciplinary action and notice of hearing:  
19

20 **JURISDICTION AND NOTICE**

21 Respondent acknowledges that the Division and the Commission for Common-Interest  
22 Communities and Condominium Hotels has jurisdiction over both the association and the  
23 subject matter at issue herein.

24 **FACTUAL ALLEGATIONS**

25 Respondent generally admits the factual allegations set forth in paragraphs 1 through 19  
26 of the complaint.  
27  
28

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1 **VIOLATIONS OF LAW**

2 The board acknowledges that it violated NRS 116.31144 by failing to have a CPA audit  
3 performed annually for the years 2021 and 2022.

4 The board acknowledges that it violated NRS 116.3115(2)(b) by admission for having  
5 a low reserve funding.

6 The board acknowledges that it violated NRS 116.31152(1)(a), (b), and/or (c) by having  
7 low reserve funding, and by making a transfer from the Reserve fund to the Operating account  
8 for operating expenses.

9 The board acknowledges that it violated NRS 116.31153 for failing on at least 73  
10 occasions to have two approved signatures on its checks.

11 The board acknowledges that it violated NRS 116.31083(8), (9)(a), (b), (c), (d), and/or  
12 (e), and/or (11) for failing to include in its minutes the substance of all matters proposed,  
13 discussed or decided at meetings.

14 The board acknowledges that it violated NRS 116.3103 by failing its fiduciary duties  
15 with regard to the Association's missing records.

16 **PROPOSED RESOLUTION/SETTLEMENT**

17 The association admits that it has committed certain violations as enumerated above,  
18 most of which can be attributed to the number of management changes the association suffered  
19 between 2022 until last year. In this regard, the association has been managed by 4  
20 management companies from 2022 to today. Importantly, the association did not terminate  
21 these contracts, but instead, the management companies all terminated their contracts, most of  
22 which can be directly attributed to harassment from unit owners. Fortunately, the association  
23 has undertaken several projects that are intended to negate all such abuse. Indeed, the current  
24 climate at the association has changed, with current management expressing no concerns. In  
25 other words, the association anticipates no further complications due to these changes in  
26 management.

27 In relation to violation of NRS 116.31144 for failing to have a CPA audit performed  
28 annually for the years 2021 and 2022, the association wishes the Commission to note that the

1 board was under the impression these audits were in process, but that accounting firms were  
2 declining to perform the Association's audits. Even as early as February of this year, it was  
3 finally disclosed that several had declined due to prior board member practices (which instituted  
4 threats of lawsuits to prompt the firm's immediate attention). Nevertheless, when the board  
5 learned that they were not in process, it took steps to get the audits done and that was in process  
6 when the association received notice of an investigation. Indeed, the current board was able to  
7 get Hilburn & Lein, a reputable HOA accounting firm that had formerly declined, to perform  
8 the audits. Unfortunately, even then the audits took longer than anticipated due to Hilburn and  
9 Lien suffering unanticipated employee turnover.

10 The foregoing explanation notwithstanding, the association's audits are complete, and  
11 they are attached hereto as **Exhibit 1**. Please note, the 2023 audit is currently being performed  
12 by Hilburn & Lien. It is unknown if it will be complete by the time of the hearing on this matter.  
13 If it is, the association shall bring copies of its 2023 audit.

14 In relation to violations of NRS 116.31152(1)(a), (b), and/or (c) for having a low reserve  
15 funding, the association wishes the Commission to know the board recognized its reserves were  
16 low and had taken action to address the issue prior to notice of an investigation, expressing this  
17 issue is of importance to the association. Nevertheless, it is also important for the Commission  
18 to know that the current situation was due, in part, to prior boards prioritizing low assessments  
19 over reserve funding. On top of that, the association has suffered an alarming amount of  
20 unexpected reserve maintenance, which issue was exasperated by the historically high increased  
21 costs of inflation the last several years. For example, the association's pool and spa project  
22 required the pool to be completely rebuilt, including the shower stalls and deck surface. Even  
23 then, when all the repairs were made, it was discovered the pool was leaking, which caused  
24 additional repairs. The project went over what was budgeted based on the reserve study by more  
25 than double.

26 To overcome the shortfall, including to pay back amounts owed to the reserve fund, the  
27 board undertook a funding plan by adopting a budget for 2023 and 2024 that increased  
28 assessments to allow the association to contribute \$4,000 each month to that account. Please

1 see **Exhibit 2**. Additionally, as part of that plan, last November the association imposed a  
2 reserve assessment of \$2,000 per unit. However, because many of the association's members  
3 are on a fixed income, the association allowed its members to pay the assessment over the  
4 course of 2024. Notably, the assessment and increases in funding are intended to not only bring  
5 the reserve account to an acceptable level by the end of 2025, but it shall also zero out the due-to  
6 amount owed from operating to reserves, discussed in greater detail below. The foregoing  
7 notwithstanding, the association represents that there are currently sufficient funds in the  
8 reserve account to conduct all required maintenance and repairs in a timely manner. In other  
9 words, there will be no deferred maintenance due to the reserves being underfunded.

10 In relation to violations of NRS 116.31152(1)(a), (b), and/or (c) for a transfer from  
11 reserves to operating that resulted in a "pay-to" amount owed to reserves, the association wishes  
12 to the Commission to know the association addressed zeroing out this amount through the  
13 imposition of the special assessment. Before leaving this issue, the association wishes for the  
14 Commission to know that when the transfer was made, the association's board questioned  
15 whether the transfer was appropriate. Indeed, it even sought the advice of legal counsel, which  
16 advised the board that the proposed solution was to transfer funds. As such, the board believed  
17 it was legal. Now that it is better informed, it would not make such a transfer in the future but  
18 instead would seek to adopt a new budget or pass a special assessment.

19 In relation to violation of NRS 116.31153 for failing to have two signatures on each  
20 check, the association wishes for the Commission to know that it agrees that 72 checks did not  
21 have both signatures, but that all 72 of those expenses were reviewed and approved by the  
22 board through its management company's (BBCM) website. Nevertheless, the association did  
23 not note that the appropriate signatures were being placed on the checks. However, when this  
24 was brought to the association's attention during a management change, the issue has not been  
25 repeated. In other words, the association has not re-violated this provision since BBCM  
26 terminated its contract with the association. Since then, all checks have had two signatures  
27 placed on them and this shall be the practice moving forward in perpetuity. Finally, in relation  
28 the state's concerns regarding the association's current compliance with automatic electronic

1 payments, the association wishes to inform the Commission it does not currently make any  
2 electronic transfers, but instead issues checks to pay all vendors.

3 In relation to violation of NRS 116.31083(8), (9)(a), (b), (c), (d), and/or (e), and/or (11)  
4 for failing to include in its minutes the substance of all matters proposed, discussed or decided  
5 at meetings and violations of NRS 116.3103 for failing to have all association records, the  
6 association wishes the Commission to know that in regards to NRS 116.31083, the violation  
7 arises not out of the minutes not having this information or not being done, but instead because  
8 the association's former management companies refuse to provide the approved minutes to the  
9 association. This issue is due to the numerous management changes, with each management  
10 company stating they provided records the association does not have. To resolve this, the  
11 association is currently using its legal counsel to send demands for the information. This has  
12 not rectified the problem to date. As such, it may be necessary for the association to request  
13 the Commission issue subpoenas, which it is authorized to do under NRS 116.660.  
14 Alternatively, the association may determine it best to use the recordings of the meetings in  
15 conjunction with the minutes that were provided in each respective board packet, to have the  
16 current board review and adopt appropriate minutes based on that review. If so, those shall be  
17 provided at the continued hearing.

18 In relation to the missing records, the association notes this is largely due to the number  
19 of changes in management, creating a gap in the association having control of all its records.  
20 This is and has been an issue with management companies for some time. In fact, the problem  
21 was significant enough to cause the 2023 legislature to adopt AB309, which amended NAC  
22 116A.620 to allow the Commission to adopt new regulations to require managers to ensure  
23 that records are better transferred when a management agreement expires or is terminated. To  
24 date, a moratorium has prevented adoption of these regulations, however, the need for this  
25 change in law should not be ignored in relation to the association's failure to have its records,  
26 because this change in law expresses the association is not alone in this problem. The  
27 foregoing notwithstanding, the association shall obtain its records to completely rectify the gap  
28 in its record-keeping. Notably, the association may need the Commission's assistance. To

1 date, the association has been forced to play proverbial pinball with former management  
2 companies, all of whom claim another company has the records. Accordingly, if the  
3 association is unable to obtain all records by the next Commission hearing date, the  
4 Association requests the Commission to continue the hearing on this matter to the next  
5 scheduled time, to allow the association to return and request the Commission issue subpoenas  
6 to assist the association with obtaining its missing records.

7 **CONCLUSION**

8 Respondent understands that this matter is placed on a stacked calendar to be heard on  
9 June 11-13, 2024, and shall attend said hearing. Based upon the foregoing admissions,  
10 representations, and noted remedial actions, including the fact that most of the issues were  
11 being addressed when an investigation was opened, the association requests that the  
12 Commission not impose monetary sanctions on the association, but instead leave the matter  
13 open until such time as the association has resolved all outstanding issues, such as obtaining  
14 its records.

15 Dated this 30th day of May, 2024.

16  
17 THE LAW OFFICE OF MICHAEL W. MCKELLEB, PLLC

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**CERTIFICATE OF SERVICE**

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I hereby certify that on the 30th day of May 2024, a true and correct copy of the foregoing **Answer** was served handed to the Office of the Ombudsman.

Morgan Mazur  
An employee of the Law Firm of Michael W. McKelleb Esq., PLLC.

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