

FILED

SEP 04 2024

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS



1 **ANS**
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10 Attorneys for Respondents

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

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

Case No.: 2023-384

18 Petitioner,

19 vs.

20 MANTOVA COMMUNITY ASSOCIATION,
21 CHARLES WRIGHT, PAMELIA LOWRY,
22 and TRICIA YOST,
23 (Entity Number C18509-2002)

24 Respondents.

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

27 The Respondents, MANTOVA COMMUNITY ASSOCIATION, CHARLES WRIGHT,
28 PAMELIA LOWRY, and TRICIA YOST (collectively “Respondents”), hereby submit this
29 Answer to the Real Estate Division of the Department of Business and Industry, State of Nevada
30 (“Division”) Complaint for Disciplinary Action and Notice of Hearing (“Complaint”).

31 JURISDICTION AND NOTICE

32 1. Respondents acknowledge that the Division and the Commission for Common-
33 Interest Communities and Condominium Hotels (“Commission”) have jurisdiction over this
34 matter.

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1 FACTUAL ALLEGATIONS

2 1. Respondents generally acknowledge and admit the factual allegations set forth in
3 Paragraphs 1 through 7, inclusive, of the Complaint.

4 2. Concerning Paragraph 8, Respondents deny that they allowed owners and family
5 members of owners to be employed or to contract with the Respondent Association to provide
6 services, and that some of those services required a license that the contractors did not have. The
7 audit pages cited in the Complaint (CCIC 0009-0010) do not include any references to these
8 allegations.

9 3. Respondents generally acknowledge and admit the factual allegations set forth in
10 Paragraphs 9 through 14, inclusive, of the Complaint.

11 VIOLATIONS OF LAW

12 1. Concerning Paragraph 1, Respondents acknowledge that they failed to timely
13 perform the required Reserve Study. Attached hereto as **Exhibit 1** is a copy of the Minutes of the
14 December 26, 2023, Board Meeting at which the recent Reserve Study was approved by the
15 Board.

16 2. Concerning Paragraph 2, the Respondents acknowledge that the Association
17 failed to timely submit a reserve study form (Form 609) to the Division. Attached hereto as
18 **Exhibit 2** are the email exchanges between the community manager and Investigator Tatum and
19 the draft and final submittal of Form 609 to the Division.

20 3. Concerning Paragraphs 3, 4, and 5, the Respondent acknowledges that its reserve
21 account was underfunded. Attached hereto as **Exhibit 3** is a copy of the proposed funding plan
22 which the Board believes is consistent with NRS 116.3115(2). The specifics of the funding plan
23 will be discussed in more detail below.

24 4. Concerning Paragraph 6, the Respondent acknowledges that between
25 approximately January 9, 2021, and April 10, 2021, the Board implemented a practice of using
26 the Respondent's Staples account to purchase Visa gift cards for maintenance supplies needed to
27 complete projects that were in progress. The Respondent's records confirm that gift cards were
28 purchased on the following dates and in the following amounts:

1	January 9, 2021	\$200 Visa Card
2	February 7, 2021	\$200 Visa Card
3	February 27, 2021	\$100 Visa Card
4	March 6, 2021	\$100 and \$200 Visa Cards
5	March 13, 2021	\$200 and \$200 Visa Cards
6	April 10, 2021	\$200 Visa Cards

7 Based on the foregoing, Visa gift cards totaling \$1,200 were purchased. The NRED Audit
8 confirmed that the Respondents produced records confirming the purchase of the Visa gift cards.
9 The Visa gift cards were utilized by the Board members for the sole purpose of purchasing keys,
10 postage, fuel for a pressure washer, and paint and related maintenance materials for their staff to
11 complete ongoing projects for which they were having a difficult time obtaining the materials
12 from their normal vendor. The practice immediately ceased in April 2021 and has not been
13 repeated. Thus, while the Respondents acknowledge this violation occurred, they believe that it
14 was remedied over three (3) years ago. Attached hereto as **Exhibit 4** are the receipts totaling
15 \$1,070.71. The Respondents, with the assistance of community management, have been unable
16 to locate the other receipts for the remaining \$129.29. The receipts confirm the use of the Visa
17 gift cards for Association purposes.

18 DISCIPLINE AUTHORIZED

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

21 PROPOSED RESOLUTION/SETTLEMENT

22 A. Compliance With Nevada Law Through a Funding Plan

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

24 (b) The association shall establish adequate reserves, funded on
25 a reasonable basis, for the repair, replacement and restoration of
26 the major components of the common elements and any other
27 portion of the common-interest community that the association is
28 obligated to maintain, repair, replace and restore. . . . The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements and any other portion of

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the common-interest community that the association is obligated to maintain, repair, replace or restore over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore are necessary. . . .

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

B. Impediments to the Funding Plan

Currently, there are two (2) major impediments to the implementation of a funding plan: (1) high insurance premiums, and (2) large scheduled reserve expenditures.

1. Insurance Premiums. Attached hereto as **Exhibit 5** is a copy of the 2024 Budget. The Budget establishes annual assessments payable at the rate of \$680.00 per unit, per month for the 18 Villas and \$740.00 per unit, per month for the 105 condominium units. The Budget reflects insurance premiums totaling \$156,684 (\$133,176 for the condominiums and \$23,508 for the villas), with the bulk of that amount \$156,192.00) being the premium for the liability and property coverage. This begs the question of whether the property insurance on the units is “reasonably available.” See NRS 116.3113(2). That issue will be addressed as part of the 2025 Budget.

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1 2. Scheduled Reserve Expenditures. The current reserve study was prepared on June
2 15, 2023, and issued by Complex Solutions, Ltd. Included in the Reserve Study is the estimated
3 reserve expenditures for the term of the Reserve Study. The Reserve Study schedules the
4 following reserve expenditures:

5	2024	\$217,138.00
6	2025	\$459,889.00
7	2026	\$523,130.00
	2027	\$107,255.00
	2028	\$283,524.00

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9 3. No Limitation on the Maximum Annual Increase. After reviewing the Declaration
10 of Covenants, Conditions, and Restriction and Reservation of Easements for Mantova, it has been
11 determined that there is no maximum annual increase for assessments from one year to the next.
12 Article VII, Section 7.4 establishes a method whereby the Association may adopt a supplemental
13 annual assessment if the amount initially budgeted for is inadequate. Section 7.4.1 of the
14 Declaration provides as follows:

15 **Supplemental Annual Assessments.** If the Board
16 determines that the Association's essential functions may be
17 properly funded by an Annual Assessment in an amount
18 less than the Annual Assessment levied in any year, it may
19 levy such lesser Annual Assessment. If the Board
20 determines that the estimate of total charges for the current
21 year is or will become inadequate to meet all Common
22 Expenses, it shall immediately determine the approximate
23 amount of the inadequacy. The Board may levy a
24 supplemental Annual Assessment reflecting a revision of
25 the total charges to be assessed against each Condominium.
26 in accordance with the following procedures:

27 The Board shall determine the approximate amount of the
28 shortfall and shall provide a summary thereof to all of the
Owners with the Board's recommendation for a
supplemental Assessment to meet such shortfall and shall
set a date for a meeting of the Owners which is not less
than fourteen (14) days nor more than thirty (30) days after
the mailing of the summary. Unless at that meeting a
majority of all Owners votes to reject the proposed
supplemental Assessment, the proposed supplemental
Assessment shall be deemed ratified by the Owners,
whether or not a quorum is present at such meeting, and
shall become a supplemental Assessment against, and
allocated equally to, the Owners of the Condominiums
(including Declarant). The Board may, in its discretion,
provide for payment of any supplemental Assessment in
any number of installments or provide that it is payable in

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one (1) installment within such time period as the Board deems reasonable.

Article XIII, Section 13.2.2 (xi) of the Declaration requires first Mortgagee approval if the Assessments are increased by more than 25% over the previously assessed amount. However, the first Mortgagee consent is limited to the first Mortgagees who have “requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees.” Since no first Mortgagees have requested approval, first Mortgagee approval for an Assessment increase that exceeds 25% is not required.

C. Proposed Funding Plan

With this background, the Board proposes the following funding plan:

1. On January 27, 2024, the Board imposed a Special Reserve Assessment (“SRA”) in the amount of \$13,420 per unit. The SRA was payable \$7,000 due from the Owner to the Association on or before March 1, 2024. The installment was deemed to be past due on March 31, 2024. Thereafter, the balance of the SRA (\$6,420 per unit), was payable in monthly installments of \$321.00 per month, per unit.
2. Due to the sizable SRA imposed that runs through December 31, 2025, the Board does not project an increase in the regular assessment or the SRA in 2025.
3. In 2026, the Board projects a 5% increase in the Regular Assessment with the entire amount of the increase to be transferred to the Association’s Reserve Account. Thus, to the extent any increase is needed to address other items in the Budget, the Budget will have to be increased higher. However, at least 5% of the increase will go to the Reserve Assessment. Since there is no maximum annual increase there is no direct impediment to the increase in the regular assessment.
4. In 2026, a new SRA will be instituted in the amount of \$200.00 per unit, per month. This is a reduction of \$121.00 per month but does extend the SRA through 2028.
5. In 2027, the Board does not project an increase in the Regular Assessment to be transferred to the Reserve Account. The SRA will remain the same at \$200.00 per unit, per month.
6. In 2028, the Board projects another 5% increase in the Regular Assessment with the entire 5% to be transferred to the Reserve Account. Thus, to the extent any increase is needed to address other items in the Budget, the Budget will have to be increased higher. However, at least 5% of the increase will go to the Reserve Assessment. Since there is no maximum annual increase there is no direct impediment to the increase in the regular assessment. In 2028, the SRA would remain the same.

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2 7. In order to retire the “Due To/From” which is currently in the amount of
3 \$505,870.25, the Board intends to transfer more than the recommended amount in
4 the Reserve Study. Thus, to the extent that the transfer to the Reserve Account
5 exceeds the annual amount recommended by the Reserve Specialist, the
6 difference will be applied to the Due to/From to reduce it. For example, in 2025,
7 the Reserve Study projects \$309,096.00 to be contributed to the Reserve Account.
8 However, based on the proposed funding plan, the Association anticipates
transferring \$713,796.00. If the Board succeeds in making the \$713,796.00
transfer to the Reserve Account, then it would be able to reduce the “Due
To/From” by \$404,700.00 in 2025. This practice will continue until the “Due
To/From” is retired. It is anticipated that the “Due To/From” will be retired by the
end of 2026.

9 If this funding plan is followed, then at the end of 2028, the Association’s Reserve
10 Account shall be funded at 66.5% funded, the “Due To/From” will be retired and there will be no
11 deferred maintenance on the major components of the Common Elements. As such, the
12 Respondents respectfully submit that the funding plan would satisfy the requirements of NRS
13 116.3115(2)(b) and address the alleged violations of the law identified by the Division.


14 As part of the settlement, the Respondent agrees to return and report the status of the
15 funding plan to the Division or Commission on a regular basis as determined by the
16 Commission.

17 In summary, the Respondents believe that if the Commission accepts this funding plan,
18 the Respondent Association will be in compliance with NRS 116.3115(2).

19 Based on the foregoing, the Respondents respectfully request that the Commission not
20 impose monetary sanctions on the Respondents.

21 DATED this 4 day of September, 2024.

22 LEACH KERN GRUCHOW SONG

23 By: 
24 JOHN E. LEACH, ESQ.
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26 Las Vegas, Nevada 89128

27 Attorneys for Respondents
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW
3 SONG, hereby certified that on the 4th day of September, 2024, she served a true and correct
4 copy of the foregoing, ANSWER TO COMPLAINT FOR DISCIPLINARY ACTION AND
5 NOTICE OF HEARING, by:

- 6 _____ Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Las Vegas,
7 Nevada
8 _____ Personal Delivery
9 _____ Facsimile
10 _____ Federal Express/Airborne Express/Other Overnight Delivery
11 _____ Las Vegas Messenger Service
12 X Electronic Service – via E-mail

13 addressed as follows:

14 Aaron D. Ford, Esq.
15 Attorney General
16 Phil W. Su, Esq.
17 Senior Deputy Attorney General
18 5420 Kietzke Lane, Suite 202
19 Reno, NV 89511
20 Via Email: psu@ag.nv.gov

Maria Gallo, Commission Coordinator
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3300 W. Sahara Avenue, Suite 350
Las Vegas, NV 89102
Via Email: mgallo@red.nv.gov

21 _____
22 /s/ Merlin Calimpong
23 An employee of LEACH KERN GRUCHOW
24 SONG
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