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FILED
MAY 17 2024
NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS
mgallo

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

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS AND INDUSTRY, STATE
OF NEVADA,

Case No.: 2023-846

Petitioner,

vs.

TROPICANA SQUARE HOMES
ASSOCIATION,
(Entity Number C2743-1972)

Respondent.

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

The Respondent, TROPICANA SQUARE HOMES 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”) have jurisdiction of this matter.

FACTUAL ALLEGATIONS

2. Respondent generally acknowledges and admits the factual allegations set forth in Paragraphs 1 through 9, inclusive, of the Complaint.

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1 3. With respect to Paragraph 10, Respondent acknowledges that the Form 609
2 Reserve Study Summary Form was not timely filed. However, Form 629 was filed with the
3 Division before the Complaint was filed with the Commission.

4 4. With respect to Paragraph 11, Respondent acknowledges that it failed to file with
5 the Division the Reserve Study Reports within 45 days of the adoption of the Reserve Study.
6 However, the Reserve Study results were filed with the Division before the Complaint was filed
7 with the Commission.

8 VIOLATIONS OF LAW

9 5. With respect to Paragraph 12, the Respondent acknowledges that its reserve
10 account is underfunded. However, it denies a violation of NAC 116.415 which references the
11 contents of the reserve budget and an explanation of the difference between the actual funding
12 and required funding to satisfy the statutory adequate funding requirement.

13 6. With respect to Paragraph 13, the Respondent asserts that it was in compliance
14 with NAC 116.435 prior to the filing of the Complaint with the Commission.

15 7. With respect to Paragraph 14, the Respondent asserts that it was in compliance
16 with NRS 116.31152(4) prior to the filing of the Complaint with the Commission.

17 PROCEDURAL BACKGROUND

18 8. On January 31, 2024, the Division filed the Complaint with the Commission
19 alleging three (3) statutory or code violations related to the Association’s Reserve Account.

20 9. On February 8, 2024, John E. Leach, legal counsel for the Respondent, sent an
21 email message to Deputy Attorney General (“AG”), Christal P. Keegan. A copy of the email
22 message is attached hereto as **Exhibit “1”**. Respondent notified Deputy AG Keegan that two (2)
23 of the three (3) alleged violations had been cured. Respondent further explained that the
24 underfunding had accumulated over many years and requested a continuance of the hearing to be
25 able to meet with the Board and formulate a plan to address the underfunding. Deputy AG
26 Keegan graciously agreed to the continuance, which was submitted to and approved by the
27 Commission. Maria Gallo, the Commission Coordinator, issued an email message on February 8,
28 2024, confirming the continuance. A copy of Ms. Gallo’s email message is attached hereto as

1 Exhibit “2”.

2 DISCIPLINE AUTHORIZED

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

5 PROPOSED RESOLUTION/SETTLEMENT

6 A. Compliance With Nevada Law Through a Funding Plan

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

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

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

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1 B. Impediments to the Funding Plan

2 Currently, there are three (3) major impediments to the implementation of a funding plan:
3 (1) high insurance premiums, (2) large scheduled reserve expenditures and (3) the limit on the
4 amount of the maximum annual increases of assessments.

5 1. Insurance Premiums. Attached hereto as **Exhibit “3”** is a copy of the 2024
6 Budget. The Budget establishes annual assessments payable at \$230.00 per unit, per month and a
7 special reserve assessment (“SRA”) payable at \$30.00 per unit, per month. The Budget reflects
8 insurance premiums totaling \$142,875.00, with the bulk of that amount being \$122,088.00,
9 which is the premium for the liability and fidelity coverage. To be able to cover the 2024
10 insurance premium, the 2024 Budget included an insurance assessment, in addition to the annual
11 assessment and SRA of \$1,081.00 per unit, payable on July 1, 2024. This begs the question
12 whether the property insurance on the units is “reasonably available.” See NRS 116.3113(2).
13 That issue will be addressed as part of the 2025 Budget. In the meantime, the sizeable insurance
14 assessment impedes the ability to increase the SRA.

15 2. Scheduled Reserve Expenditures. The current reserve study was prepared on June
16 15, 2023, and issued by Complex Solutions, Ltd. Included in the Reserve Study is the estimated
17 reserve expenditures for the term of the Reserve Study. The Reserve Study schedules the
18 following reserve expenditures:

| | | |
|----|------|--------------|
| 19 | 2024 | \$211,146.00 |
| 20 | 2025 | \$ 53,580.00 |
| 21 | 2026 | \$ 66,128.00 |
| | 2027 | \$ 56,153.00 |
| | 2028 | \$730,494.00 |

22 As a result, a funding plan must prepare for a sizeable reserve expenditure in 2028.

23 3. The Limit on the Maximum Annual Increase. Article IV, Section 3 of the
24 Declaration provides as follows:

25 Maximum Annual Assessment. Until January 1 of the year
26 immediately following the conveyance of the first Lot to an
27 Owner the maximum Monthly assessment shall be
TWENTY NINE Dollars (\$29.00) per
Lot.

28 (a) From and after January 1 of the year immediately
following the conveyance of the first Lot to an owner,
unless the Members vote as provided in (b), the annual

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assessment may not be increased each year more than 3% above the annual assessment for the previous year or more than the percentage increase over the previous year in the Consumer Price Index published by the United States Department of Labor, Washington, D.C., or a successor index thereto, whichever increase is greater.

(b) From and after January 1, of the year immediately following the conveyance of the first Lot to an owner, the annual assessment may be increased above that provided for in (a) by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose or by absolute majority vote of each class of Members.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum as provided in (a) without a vote of the Members.

The Declaration limits the amount of the maximum annual increase to 3% or the CPI increase over the previous year, whichever is greater. The CPI increase for 2023 was 4.1%.

In order to increase the 2024 Annual Assessments by more than 4.1%, two-thirds (2/3) of the Owners must affirmatively vote in favor of the increase. The statutory budget ratification process does not apply in this instance. See NRS 116.31151(3) (unless a majority of the owners reject the budget it is deemed ratified.)

C. Proposed Funding Plan

Before setting forth the terms of the proposed funding plan, it should be noted that the Respondent recently received \$75,000.00 from the Southern Nevada Water Authority, for a turf conversion project. The Respondent immediately transferred the funds into its Reserve Account. In addition, the Respondent is in negotiations with the City of Henderson (“City”), whereby the City wants to acquire certain property owned by the Respondent. If the parties agreed on the sale, and the sale is approved by the Owners, the proceeds will be deposited into Respondent’s Reserve Account. With this background, the Board proposes the following funding plan:

1. Since the Board has already exceeded the maximum annual increase for Annual Assessments in 2024, it will increase the SRA to \$100.00 per unit, per month effective July 1, 2024.
2. The 2025 Budget will increase the Annual Assessment from \$230.00 per unit, per month to \$250.00 per unit, per month. This exceeds the maximum annual increase established by the Declaration. As a result, the Owners must affirmatively approve the increase. If the Owners reject the 2025 budget increase, a new budget will be prepared within the maximum annual increase and the SRA will be

1 increased to cover the difference. Otherwise, the SRA will remain \$100.00 per
2 unit, per month.

3 3. The 2026 Budget will increase the Annual Assessment from \$250.00 per unit, per
4 month to \$275.00 per unit, per month. It is anticipated this will exceed the
5 maximum annual increase established by the Declaration. As a result, the Owners
6 must affirmatively approve the increase. If the Owners reject the 2026 budget
7 increase, a new budget will be prepared within the maximum annual increase and
8 the SRA will be increased to cover the difference. Otherwise, the SRA will
9 remain \$100.00 per unit, per month.

10 4. The 2027 Budget will increase the Annual Assessment from \$275.00 per unit, per
11 month to \$300.00 per unit, per month. It is anticipated this will exceed the
12 maximum annual increase established by the Declaration. As a result, the Owners
13 must affirmatively approve the increase. If the Owners reject the 2027 budget
14 increase, a new budget will be prepared within the maximum annual increase and
15 the SRA will be increased to cover the difference. Otherwise, the SRA will
16 remain \$100.00 per unit, per month.

17 5. The 2028 Budget will increase the Annual Assessment from \$300.00 per unit, per
18 month to \$325.00 per unit, per month. It is anticipated this will exceed the
19 maximum annual increase established by the Declaration. As a result, the Owners
20 must affirmatively approve the increase. If the Owners reject the 2028 budget
21 increase, a new budget will be prepared within the maximum annual increase and
22 the SRA will be increased to cover the difference. Otherwise, the SRA will
23 remain \$100.00 per unit, per month.

24 If this funding plan is followed, then at the end of 2027, the Association's Reserve
25 Account shall be funded at 46.7% and there will be adequate funding to cover the 2028
26 scheduled reserve expenses of \$730,494.00. The funding plan incorporates the scheduled
27 reserve expenses, so there is no deferred maintenance. The maximum annual increase must be
28 exceeded with Membership approval. However, if the Membership rejects the Annual
Assessment increase, the SRA will be increased to cover the difference.

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

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

3 DATED this 17 day of May, 2024.

4 LEACH KERN GRUCHOW SONG

5 By: 
6 JOHN E. LEACH, ESQ.
7 2525 Box Canyon Drive
8 Las Vegas, Nevada 89128

9 Attorneys for Respondent

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CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), the undersigned, an employee of LEACH KERN GRUCHOW SONG, hereby certified that on the 17th 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:

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

Maria Gallo, Commission Coordinator
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Via Email: mgallo@red.nv.gov

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