

FILED

MAY 17 2024

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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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 Declaration¹, the Board proposes the following funding plan:
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27 _____
28 ¹ 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).² 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

² 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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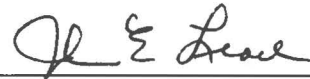
funding plan to the Division or Commission on a regular basis, as determined by the Commission.

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

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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 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:

Maria Gallo, Commission Coordinator Common-Interest Communities and Condominium Hotels 3300 W. Sahara Avenue, Suite 350 Las Vegas, NV 89102 <i>Via Email: mgallo@red.nv.gov</i>	Aaron D. Ford, Esq. Attorney General Christal P. Keegan, Esq. Deputy Attorney General 5420 Kietzke Lane, Suite 202 Reno, NV 89511 <i>Via Email: ckeegan@ag.nv.gov</i>
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/s/ Merlin A. Calimpong
An employee of LEACH KERN GRUCHOW
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