

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,

Petitioner,

vs.

SILVER STATE CONDOMINIUM
OWNERS' ASSOCIATION, INC.
(Entity Number C5957-1985),

Respondents.

Case No. 2024-106

FILED

NOV 22 2024

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

mgallo

RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION

Respondent, Silver State Condominium Owners' Association, Inc., ("Respondent" or "Association"), by and through its attorneys, Sophie A. Karadanis, Esq., of Leach Kern Gruchow Song, hereby respond to the Commission's Complaint for Disciplinary Action ("Complaint") filed October 29, 2024.

JURISDICTION AND NOTICE

Respondent admits the allegations contained in the preliminary paragraph.

FACTUAL ALLEGATIONS

1. Answering Paragraph 1 of the Complaint, Respondent admits

2. Answering Paragraph 2 of the Complaint, Respondent admits.

3. Answering Paragraph 3 of the Complaint, Respondent generally admits the factual allegations, but as to the deadline to respond, Respondent asserts that on March 4, 2024, the Division granted the Association an extension of time to April 1, 2024, to respond to the Division's letter. See EXHIBIT 1.

4. Answering Paragraph 4 of the Complaint, Respondent admits.

///

///

A. Inconsistent 2022 Budget / Financial Information Provided to Unit Owners

5. Answering Paragraph 5 of the Complaint, Respondent admits that the 2022 budget to actual financial information was different than what was presented in the approved and ratified budget. Respondent alleges, however, that the intention was to use the ratified budget, but that it appears items were erroneously not inserted into the management company software which resulted in the 2022 Budget Comparison reports to have incorrect results. The actual expenses were correctly identified in the Budget Comparison and no harm was caused to the Association for this inadvertent error.

6. Answering Paragraph 6 of the Complaint, Respondent admits.

7. Answering Paragraph 7 of the Complaint, Respondent admits to the inconsistencies in the 2022 Budget Comparison set forth in subparagraphs (a) through (h) but confirms that the budget information that was entered into the system matched the ratified budget, lending further support that the information entered was a clerical error.

B. Use of Unlicensed Vendor

8. Answering Paragraph 8 of the Complaint, Respondent admits.

9. Answering Paragraph 9 of the Complaint, Respondent admits.

10. Answering Paragraph 10 of the Complaint, Respondent admits.

11. Answering Paragraph 11 of the Complaint, Respondent admits.

12. Answering Paragraph 12 of the Complaint, Respondent admits.

13. Answering Paragraph 13 of the Complaint, Respondent admits.

14. Answering Paragraph 14 of the Complaint, Respondent admits.

15. Answering Paragraph 15 of the Complaint, Respondent admits Felix Torres was not registered with the Nevada Secretary of State at the time the work was performed. Respondent is unable to respond to the remaining allegations in this paragraph as the documents referenced do not appear to pertain to this allegation.

16. Answering Paragraph 16 of the Complaint, Respondent admits Felix Torres was not licensed with the Nevada State Contractors Board.

C. Inaccurate Reflections in its Accounting Procedures and Failure to Adequately Fund the Reserves

17. Answering Paragraph 17 of the Complaint, Respondent admits.

18. Answering Paragraph 18 of the Complaint, Respondent admits.

19. Answering Paragraph 19 of the Complaint, Respondent admits.

20. Answering Paragraph 20 of the Complaint, Respondent admits.

21. Answering Paragraph 21 of the Complaint, Respondent admits.

22. Answering Paragraph 22 of the Complaint, Respondent admits.

23. Answering Paragraph 23 of the Complaint, Respondent admits.

24. Answering Paragraph 24 of the Complaint, Respondent admits. However, Respondent asserts that there was a catastrophic fire that seriously impacted the Association's funding of the reserve account. First, there was a threat of litigation by a contractor over a contract dispute where the Association could potentially be held liable for almost \$400,000.00. Second, the Association's insurance premium for 2023-2024 (starting in May) went from \$30,000 to approximately \$100,000. The Association incorporated the increased insurance premium into the 2024 budget which resulted in a substantially higher monthly assessment. The monthly assessments for a 2-bedroom condominium went from \$223.12 per month in 2023 to \$286.73 per month in 2024. The monthly assessment for a 3-bedroom condominium went from \$263.72 per month in 2023 to \$338.90 per month in 2024.

D. Failure to inform the Division Regarding Changes to its Management Company

25. Answering Paragraph 25 of the Complaint, Respondent admits it erroneously attached the wrong document to its response and that it mistakenly did not submit Form 623.

26. Answering Paragraph 26 of the Complaint, Respondent admits it erroneously attached the wrong document to its response and that it mistakenly did not submit Form 623.

27. Answering Paragraph 27 of the Complaint, Respondent admits that Form 623 (NRED 000141) states it was received by the Division on July 18, 2024. Respondent further alleges that the Form 623 it had as part of its records when submitting its response, indicated that the form

1 was signed by the community manager on January 26, 2024 (NRED 000142), and it was believed
2 at that time that the Community Manager had submitted it.

3 **E. Failure to Cooperate with the Division and Impeded or Otherwise**
4 **Interfered with its Investigation.**

5 28. Answering Paragraph 24 of the Complaint, Respondent responds as follows:

6 a. Respondent admits that it did not provide responsive documents to this
7 request. Respondent alleges that the basis for not providing the requested documents was
8 Respondent's incorrect belief that the Division had mistakenly identified the request pertaining to
9 Western Nevada Management since that company had not managed the Association for years.
10 Respondent recognizes it was in error. Respondent intended to supplement its response but
11 unfortunately failed to do so. However, in response to the request, the Meeting Minutes are
12 attached as EXHIBIT 2 and copies of the most recent (2021-2022) Western Nevada Management
13 contract is attached as EXHIBIT 3.

14 b. Respondent admits that it did not provide responsive documents to this
15 request. Respondent's counsel alleges there was a misunderstanding regarding the existence of
16 these payments and as a result, the response was in error. Respondent further alleges that the
17 invoice was properly coded to be withdrawn from the reserve account, but for reasons unknown,
18 the prior management company, Western Nevada Management, incorrectly paid King Bee
19 Construction from the operating account instead. Attached as EXHIBIT 4 is a copy of the invoice.
20 Because of the length of time that has passed, the Respondent cannot opine as to why this was
21 done. However, the Association has engaged a new management company to ensure payments
22 are properly taken from the reserves, if applicable, in the future.

23 c. Respondent admits that it did not provide the 2022 and 2023 audits because
24 they were not available at the time. Respondent was in error for not supplementing its response.
25 The 2022 audits is attached as EXHIBIT 5. The 2023 Audit is anticipated to be completed by the
26 end of November and Respondent will amend this response once same is available.

27 d. Respondent admits that it did not properly address the financial information
28 requested. Respondent further alleges that it mistakenly reviewed and referred to the incorrect

1 financial information when providing its response and as a result, reference is made to
2 Respondent's Response which states: "Please provide the version of the budget to which you refer
3 and explain from whom and in what context it was obtained, so we may better address this
4 allegation. However, based on my review of the proposed and ratified budgets, this claim is
5 without merit." NAC 00427. As such, it is clear Respondent's counsel erroneously thought the
6 inquiry was comparing the proposed budget to the ratified budget, which is why Respondent
7 responded the way it did. The Division did not provide to the Association the documents to which
8 it referred and the Association's inaccurate response and position was in error due to it referring
9 to the wrong documents. Respondent further alleges, following a review of the correct documents,
10 it appears the management company software resulted in the 2022 Budget Comparison reports to
11 have incorrect results and because what was entered into the system matched the ratified budget,
12 it appears that the information entered was a clerical error.

13 29. Answering Paragraph 29 of the complaint, Respondent admits.

14 30. Answering Paragraph 30 of the complaint, Respondent admits.

15 VIOLATIONS OF LAW

16 31. Answering Paragraph 31 of the Complaint, Violation #1, Respondent admits its
17 violation of NRS 116.3103(1), through its fiduciary shortcomings when it failed to provide
18 accurate information to the unit owners and to the Division, failed to fund the daily operation of
19 the Association adequately, and/or make adjustments to its funding plan.

20 32. Answering Paragraph 32 of the Complaint, Violation #2, Respondent admits its
21 violation of NRS 116.3108(6) (as there were no Meeting Minutes to support the Board was
22 proceeding in a legitimate manner to complete the roof work repair)

23 33. Answering Paragraph 33 of the Complaint, Violation #3, Respondent admits its
24 violation of NRS 116.3115(1), failure to accurately reflect the "Due-To" from the Operating
25 Account to the Reserves Account for proper accounting procedures to be met.

26 34. Answering Paragraph 34 of the Complaint, Violation #4 – Respondent admits its
27 violation of NRS 116.3115(2)(b), failing to adequately fund its Reserves and maintain its budget
28 in accordance with the Reserve Study.

1 35. Answering Paragraph 35 of the Complaint, Violation #5, Respondent admits its
2 violation of NRS 116.31151(1), failure to create, retain and/or maintain proper and accurate record
3 keeping.

4 36. Answering Paragraph 36 of the Complaint, Violation #6, Respondent admits its
5 violation of NRS 116.31151(1)(b), failure to adequately fund the Reserves as indicated by the
6 Reserve Studies.

7 37. Answering Paragraph 37 of the Complaint, Violation #7, Respondent admits its
8 violation of NRS 116.31152(1)(c), failure, at least annually, to make adjustments to its funding
9 plan necessary to provide adequate funding for the required reserves.

10 38. Answering Paragraph 38 of the Complaint, Violation #8, Respondent admits its
11 violation of NRS 116.31175(2), failure to make available to the Division its books and records.

12 39. Answering Paragraph 39 of the Complaint, Violation #9, Respondent admits its
13 violation of NAC 116.385(2), failure to report changes to its community management company to
14 the Division within thirty days.

15 40. Answering Paragraph 40 of the Complaint, Violation #10, Respondent admits to a
16 violation of NAC 116.405(5), by not complying with the Division's requests to provide
17 information or documents. Respondent further alleges that Respondent's lack of response was not
18 intentionally misleading but negligence on its part by not following up and providing responsive
19 information.

20 41. Answering Paragraph 41 of the Complaint, Violation #11, Respondent admits a
21 violation of NAC 116.405(5), by not providing information regarding the payments to King Bee
22 Construction. Respondent further alleges that Respondent's lack of response was not intentionally
23 misleading but negligence on its part by not following up and providing responsive information.

24 42. Answering Paragraph 42 of the Complaint, Violation #12, Respondent admits its
25 violation of NAC 116.405(8)(d), failure to obtain at least three bids from reputable vendors with
26 proper licensing prior to the roof repair work.

27 ///

28 ///

43. Answering Paragraph 43 of the Complaint, Violation #13, Respondent admits its violation of NAC 116.405(8)(g), lacking its duties when it failed to maintain current, accurate and/or properly documented financial records.

44. Answering Paragraph 44 of the Complaint, Violation #14, Respondent admits its violation of NAC 116.405(8)(i), failure to demonstrate any established policies and procedures designed to provide reasonable assurances in the reliability of its financial reporting.

45. Answering Paragraph 45 of the Complaint, Violation #15, Respondent admits its violation of NAC 116.405(8)(k), failure to make the requested financial records of the Association available for inspection by the Division.

46. Answering Paragraph 46 of the Complaint, Violation #16, Respondent admits its violation of NAC 116.415, failure to have proper recordkeeping and regularly transferring reserves.

DISCIPLINE AUTHORIZED

With respect to the "Discipline Authorized," Respondent acknowledges that the Commission has the authority to impose sanctions set forth therein.

LIST OF WITNESSES

1. Terry Wheaton, Chief Compliance Audit Investigator
State of Nevada Department of Business and Industry
Real Estate Division
3300 West Sahara Avenue, Suite 350
Las Vegas, NV 89102

Relevance of Testimony: Mr. Wheaton will testify as to the investigation conducted and the information included and not included in the review by the Division. Mr. Wheaton will review the exhibits provided with the Response and detail the conclusions reached by the Division.

2. Kevin J. Berg
Associa Sierra North
10509 Professional Circle, Suite 200
Reno, NV 89521

///

1 Relevance of Testimony: Mr. Berg will address the exhibits included in this Response and
2 provide relevant testimony regarding the allegations made by the Division.

- 3
4 3. Paige Boesen
5 Associa Sierra North
6 10509 Professional Circle, Suite 200
7 Reno, NV 89521

8 Relevance of Testimony: Ms. Boesen will address the exhibits included in this Response
9 and provide relevant testimony regarding the allegations made by the Division.

- 10 4. Larry Kain
11 c/o Leach Kern Gruchow Song
12 5421 Kietzke Lane, Suite 200
13 Reno, NV 89511

14 Relevance of Testimony: Mr. Kain is a board member and will address the exhibits
15 included in this Response and provide relevant testimony regarding the allegations made by the
16 Division.

- 17 5. Rick Mayer
18 c/o Leach Kern Gruchow Song
19 5421 Kietzke Lane, Suite 200
20 Reno, NV 89511

21 Relevance of Testimony: Mr. Mayer is a board member and will address the exhibits
22 included in this Response and provide relevant testimony regarding the allegations made by the
23 Division.

24 6. Respondent reserves the right to call other witnesses regarding this matter,
25 including any Respondent or other individual with relevant information.

26 **PROPOSED RESOLUTION/SETTLEMENT**

27 The Board and the Association's community manager are committed to resolving the
28 violations identified in the complaint.

///

1 ***A. Inconsistent financial information reported.***

2 The Board and management have been advised of the importance of ensuring the accuracy
3 of all financial information. The Board recognizes that errors were made when its then-
4 management company failed to input all correct information into the software causing
5 inconsistencies and incorrect information in the 2022 budget to actual financials. While the actual
6 expenses were accurately represented, and there was no real harm to the Association, the
7 Association is cognizant that all financial information should be accurate. To address and resolve
8 the errors and inaccuracies by the former management company, the Association engaged a new
9 management company, Equus, in February 2023. The Association engaged Associa Sierra North
10 as its management company for 2024 to assist with accurate financial reporting.

11 ***B. Unlicensed vendors.***

12 The Board and management are informed and committed to following its standard
13 procedures when retaining vendors, which includes obtaining bids, confirming on the Nevada State
14 Contractor's Board website that a particular vendor is properly licensed prior to entering into any
15 contract, approving of a vendor at a properly noticed meeting, and obtaining evidence of the
16 contractor's general liability insurance and workers compensation insurance.
17

18 The violation identified in the Complaint was a singular and unique circumstance outside
19 the normal course and the work was done without prior approval by the Board. A unit owner's
20 listing agent coordinated the roof repairs with the unlicensed vendor so they could be completed
21 on an expedited basis so escrow could close. The listing agent passed Mr. Torres's invoice to the
22 Association and the Association ended up paying the invoice only because Mr. Torres was
23 threatening litigation. There have been no further incidents either before or after Mr. Torres,
24 wherein the Association engaged a vendor that did not have the proper license.
25

26
27 ///
28

1 *C. Accounting Procedures and Funding the Reserves.*

2 On December 21, 2021, there was a catastrophic fire that impacted three Units. This fire
3 caused least two significant consequences that impacted the Associations funding of the Reserve
4 account. Due to the fire, the Association's insurance premium for 2023-2024 (starting in May)
5 went from \$30,000 to approximately \$100,000. The insurance premium needed to be paid in full
6 by September 2023. The Association was only able to meet this deadline by a combination of using
7 excess cash from the Association's operating account and suspending transfers to
8 reserves. Thereafter, the Association incorporated the increased insurance premium into the 2024
9 budget which resulted in a substantially higher monthly assessment. The monthly assessments for
10 a 2-bedroom condominium went from \$223.12 per month in 2023 to \$286.73 per month in 2024.
11 The monthly assessment for a 3-bedroom condominium went from \$263.72 per month in 2023 to
12 \$338.90 per month in 2024. *See* EXHIBIT 6, 2023 Financials and EXHIBIT 7, 2024 Budget.
13
14

15 Additionally, when the Association opened a claim with its insurance company, Protocol
16 Insurance Services, for the fire damage, the Association entered into a contract with CRBR for the
17 demolition work. A dispute arose by and between the Association and CRBR regarding the agreed-
18 upon scope of work. There was a serious threat of litigation that CRBR was going to pursue a
19 breach of contract claim and seek expectation damages, being the available insurance proceeds,
20 which totaled almost \$400,000. If a monetary judgment was awarded against the Association, that
21 would have required a large special assessment to the membership. It would have been a significant
22 financial burden on the members if they were faced with not only a reserve assessment but also a
23 special assessment to satisfy a money judgment.
24

25 For these reasons, the Board determined to forgo a reserve assessment in 2023, in order to
26 cushion the financial shock to owners.
27
28

1 In addition, in 2021 to 2022, the Association had significant expenses related to water leak
2 issues throughout the community and expenses related to the fire and related reconstruction. In
3 2021, expenses relating to building repairs and related legal fees totaled \$23,433.86. In 2022,
4 expenses relating to building repairs and related legal expenses totaled \$33,548.59. These
5 extraordinary expenses negatively impacted the Association's financial condition.

6
7 The Association is in the process of obtaining a new reserve study. But as part of that
8 process, the Association needs to complete the following evaluations in order for the Reserve
9 Study Specialist, Better Reserve Consultants, LLC, to proceed: Roofs, Exterior Siding and Trim,
10 Painting, Asphalt, Sewer System and Infrastructure. Information on the estimated remaining useful
11 life of each component and the accurate prices are needed in order to provide adequate funding for
12 the future. Therefore, the Association has engaged Seth Padovan Consulting, LLC, to complete
13 the referenced evaluations. Once completed, an accurate reserve study can be completed.
14 Thereafter, the Association is prepared to implement an assessment increase and a special reserve
15 assessment as recommended by Better Reserve Consultants, LLC. Respondent intends to amend
16 this Answer to include a copy of the completed reserve study and funding plan once available,
17

18 Audits: The Board and management have been advised of the importance of ensuring that
19 the annual audits are completed in a timely manner in accordance with Nevada law. As part of a
20 settlement, the Association is prepared to supply future audits upon receipt for to the Division or
21 Commission on a regular basis, as determined by the Commission.
22

23 ///

24 ///

25 ///

26 ///

27 ///

LEACH KERN GRUCHOW SONG
5421 Kietzke Lane, Suite 200, Reno, Nevada 89511
Telephone: (775) 324-5930 – Facsimile (775) 324-6173

AFFIRMATION

Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that the *Response to Complaint for Disciplinary Action*, filed in the above-entitled case (Case No. 2024-106 does not contain the social security number of any person.

DATED this 30th day of November, 2024.

LEACH KERN GRUCHOW SONG

By: /s/ Sophie A. Karadanis, Esq.
SOPHIE A. KARADANIS, ESQ.
Nevada Bar No. 12006
5421 Kietzke Lane, Ste. 200
Reno, Nevada 89511
Tel: (775) 324-5930
Fax: (775) 324-6173
E-mail: skaradanis@lkglawfirm.com

LEACH KERN GRUCHOW SONG
5421 Kietzke Lane, Suite 200, Reno, Nevada 89511
Telephone: (775) 324-5930 – Facsimile (775) 324-6173

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW SONG, hereby certified that on 21st of August, 2024, she served a true and correct copy of the foregoing, RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION, by:

_____ Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Reno, Nevada

_____ Personal Delivery

_____ Facsimile

_____ Federal Express/Airborne Express/Other Overnight Delivery

_____ Reno Messenger Service

 x Electronic Service – via E-Mail

Addressed as follows:

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

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

/s/ Michelle Goodell
MICHELLE GOODELL