

Marine Thuet
3382 Classic Bay Ln
Las Vegas NV 89117
+1 702-505-0980

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REAL ESTATE COMMISSION
BY Kelly Valadez

To: PHIL W. SU
Senior Deputy Attorney General
555 E. Washington, Ste. 3900
Las Vegas NV 89101
psu@ag.nv.gov

October, 20 2023

RE: Case #2023-81

To whom it may concern,

In response to the complaint and notice of hearing, please accept my response as follows:

Violation #1: 27. RESPONDENT violated NRS 645.633(1)(h) pursuant to NRS 645,252(2) by failing to exercise reasonable skill and care in the management of the Property, in that RESPONDENT did not monitor Las Vegas Invest Real Estate LLC's incoming mail to ensure that the violation, hearing notice, and hearing decision mailings were addressed in a timely manner. >> I deny the allegations. None of the HOA violation notices and hearing notices were ever provided or communicated to me as property manager or even sent to my company. I was only made aware of the fines on 12/7/2022 (see EXHIBIT 1b) and immediately requested explanation and copy of the notices to the HOA. I was first informed of the fines on 12/07/2022 when a fine statement was sent to the owner. When I asked the HOA to provide the violation letters justifying the fines, they sent me copies of letters addressed to the owner and the tenant. I challenged the HOA on their way of communicating and asked why I was not informed as property manager, and the community Manager Teresa Hilton explained (Please refer to EXHIBIT 1): "(...)the violation letters are only emailed to the owner, co-owner and tenant on file", "I have spoken to our corporate office and explained the importance that we need to be able to draw over the email address of any an all property manager, so they to will receive the violation letters sent from SmartWebs." I intend to present this justification to the Real Estate Commission proving that I could not have informed the tenant of something I was not informed myself. When I asked them to prove that such notices were ever mailed out, the association responded that they had no legal obligation to certify the mail and as a consequence, did not have any proof to provide (Please refer to EXHIBIT 1, page 2, response from Association Manager Teresa Hilton about method of delivery not involving receipt, as per NRS 116.31068 Notice to units' owners).

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Community manager Teresa Hilton included a confirmation that the notices were e-mailed to the tenant (receipt generated from her software) (EXHIBIT 1) "See below, noting an email was sent to Nicole (tenant) on July 25, 2022", and I was able to confirm that the tenant's email address was correct. She also mentioned that the owner, however, was not e-mailed such notices. Only the tenant had been. The one certitude I could have, was the fact that the tenant was e-mailed the violation notices.

Violations #2: 28. RESPONDENT violated NRS 645.633(1)(h) pursuant to NAC 645.605(6) and breached her obligation of absolute fidelity to both the Property owner and RESPONDENT'S interests, by failing to take affirmative steps to appeal or address the fines incurred once the unaddressed violation was discovered.

>> I deny the allegations. As soon as I was made aware of the pending fines on the homeowner's account, I immediately took actions to get the fines stopped and I got the violation closed. We asked the tenant to provide access to the unit immediately to replace the broken blinds, which she denied, and said she would have them replaced herself. After many follow ups with her, it took 10 days for the tenant to get the blinds issue addressed and an additional weekly fine incurred in the meantime. The tenant seemed more preoccupied at the time about arguing the fact that she was not made aware, than resolving the situation quickly to get the violation closed. The tenant replaced the broken blinds with blinds that were too short as per the association. So I asked the HOA to stop the fine until we could allow the tenant to get curtains, which they agreed to do, and the tenant eventually put curtains on (EXHIBIT 2, page 3). It is important to mention that the tenant had had broken blinds for over 5 months, failing to report the maintenance issue to property management or address the issue herself (which constitute a violation of her lease agreement and the HOA Rules and regulations which she received a copy of at lease signing) and such blinds were not broken out of normal wear-and-tear but rather misconduct. After that, I investigated the cause of the miscommunication with the HOA and I could not find a reason to dispute the violations and fines incurred: The tenant was only disputing the fact that she never received the violation notices but the HOA did not carry the burden of proving that it was ever mailed to the tenant or homeowner and they were able to provide proof that she, the tenant, did get the such violations notices e-mailed to her. She decided to file a complaint to the Real Estate Division referring to me as the "Association Manager". After reminding her that I was not working for the Association and that I was not the one imposing the fine, I let her know that I could not just simply remove

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the fines from her ledger as the fines were paid by the owner and I did not have the power to waive such fines, and that those fines were imposed as a result of misconduct and failure to report a maintenance issue to management, not allowing us to prevent such fines before they were imposed in the first place. However, I offered the tenant to provide me with a statement or email that I could send to the HOA, explaining why she was disputing the fines and offered to help through the process. The tenant never followed through with my offer (Please refer to EXHIBIT).

I was challenged by the Real Estate Division Investigator Maria Martin, when the tenant first filed the complaint, about the fact that, according to Ms Martin, my role involved filing a complaint with the Ombudsman Bureau against the HOA on behalf of the tenant. First, I am not able to do such a thing as the Ombudsman Bureau complaint can only be filed by the owner of the property. Second, the complaint must contain the CC&R's article that the HOA management violated. I am not able to find any violation on their end: even though I find it regrettable that HOA managements do not certify important communications to owners and tenants, or do not communicate some important correspondences to property managers to avoid fines, there is no failure to comply with their obligations as no communication needs to be certified and proven to have been mailed or communicated. Last, I am not an attorney, nor was I trained to defend tenants or owners. Exercising reasonable skills in this situation meant: 1. Finding out what the fines were about as soon as I was made aware of them, 2. Take actions to close and resolve the violation, 3. Investigating on how the fines were imposed and why no actions were taken before, and 4. Offer to communicate the tenant's complaint or request for fines to be waived to the HOA in order to set a hearing. Defending is not part of my reasonable skills. All the above skills were performed and the only reason the fines were not waived is because the tenant preferred to file a complaint to the REAL ESTATE DIVISION as an intimidation technique into waiving the fines imposed on her ledger and rejecting responsibility when she failed to report a maintenance issues in her unit, instead of working with me and providing me with arguments or a request addressed to the HOA to waive such fines, like I offered to do.

Attending HOA hearings and communication requests for fines to be waived is something I and my team do on, assisting tenants, regardless of the nature of the fines or violations. But I cannot force a tenant to help me help them when they fail to show the minimum effort and that was the case in Ms Fontenette's situation. I kept receiving accusatory emails from Ms Fontenette and complaints specifically directed at me as Property Manager accusing me of

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wrongfully charging her for the fines (even raising the discrimination card because of her disability which I know nothing about) but never have I received any communication from Ms Fontenette providing good faith arguments I could send the HOA in order to get the fines waived.

I have a timeline of only 2 weeks between the day I was first informed of the pending fines and open violation on the owner's account and the time when the violation was closed as complied with by the HOA (It is important to note that this time frame could have been reduced should the tenant have provided access to our maintenance company and allowed us to address the maintenance issue that she originally even failed to report), against 5 months during which the tenant had broken blinds in her unit and failed to report the maintenance issue to me as property manager.

After presenting the irrefutable proof that I was not made aware of the the July 2022 violation on the unit until December 2022 after fines were already imposed, I will show the Real Estate Commission that despite the nature of the fines, tenant's lease agreement and association rules violations, HOA proof that tenant received the communications by email, timeline and behavior of tenant in allowing us to fix the violation when made aware of it, and tenant's failure to provide a request addressed to the HOA to get the fines waived despite my offer to do so, I have exercised best skills and got all issues addressed in a timely manner. I performed as a Property Manager.

Marine Thuet