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FILED
OCT 30 2019
NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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

Sharath Chandra, Administrator, Real Estate Division, Department of Business & Industry, State of Nevada, Petitioner, v. Sherryl Baca, Respondent.	CASE NOS. 2018-812 and 2018-660

SHERRYL BACA'S RESPONSE TO COMPLAINT

COMES NOW, Respondent, Sherryl Baca, by and through her attorneys of record, SUE TRAZIG CAVACO, ESQ., of the law firm RESNICK & LOUIS, P.C., hereby responds to Petitioner Real Estate Division, Department of Business & Industry, State of Nevada's Complaint as follows:

I.

PRELIMINARY STATEMENT/MOTION TO DISMISS:

As the Real Estate Division, Department of Business & Industry, State of Nevada ("NRED") is aware, the administrative complaint ("Complaint") including charges against Respondent Sherryl Baca ("Ms. Baca") was filed on July 29, 2019. All included allegations against Ms. Baca stem from actions allegedly undertaken by her from 2008 - 2010 while she

was acting as community manager of South Valley Ranch Homeowners Association ("The HOA"). It is not disputed that Ms. Baca terminated her relationship with The HOA in late 2017 and has undertaken no work on its behalf since that time. It is also not alleged that Ms. Baca absconded with any of The HOA's funds or that The HOA suffered any actual damages as a result of Ms. Baca's complained-of actions.

To the contrary, the Complaint contains allegations of technical violations on Ms. Baca's part. While neither the undersigned nor Ms. Baca are minimizing Nevada's statutes governing property managers, it is important to note that Ms. Baca is currently subject to an Amended Order of the Commission for Common-Interest Communities and Condominiums Hotels, Department of Business and Industry, State Of Nevada ("the Commission") whereunder she is required to take 30 additional hours of continuing education, with at least 10 hours to be ethics credits, as practicable. This Stipulated Amended Order relates to cases 2017-1579 & 2018-136 ("Order"). A true and correct copy of the Order is attached hereto as **Exhibit A** and is incorporated herein by this reference. Those actions contain allegations regarding Ms. Baca's actions from 2014-2018.

The claims against Ms. Baca in the instant Complaint predate the allegations in the complaint that are subject to the Commission's Order.[1] Additionally, both complaints contain claims that Ms. Baca violated similar provisions of NRS116A and NAC 116A. Arguably, if some of the allegations in the instant Complaint were found to be true, it would be unjust to add any additional penalties to Ms. Baca's current 18-month probation and 30-hour additional education requirement. Again, the Commission's Order reprimands Ms. Baca for actions that took place at least four (4) years after the events outlined in the instant Complaint. Clearly, Ms.

[1] The instant Complaint was filed while the first complaint against Ms. Baca that resulted in the Order was still pending.

Baca will obtain all the training and education during this period and pursuant to this Order so as to correct her pattern and practice as a community manager going forward.[2]

Even more importantly, due to the time lapse and lack of availability of the evidence upon which the NRED relies in its Complaint, Ms. Baca is unable to fully defend herself against these current allegations and will not be afforded the right to do proper discovery and confront all witnesses against her. Based upon information and belief, the person who filed the Statement of Fact against Ms. Baca, Lisa Carrion ("Carrion"), is no longer The HOA's property manager. As such, also based upon information and belief, Carrion no longer possess The HOA files and documents in the condition in which she received them from Ms. Baca, if at all.

Additionally, the statement by The HOA's former board president, Ronald Beach, upon which many of the allegations in the Complaint regarding check signing authority rely is unreliable and inadmissible for several reasons. A true and correct copy of said Affidavit is attached hereto as **Exhibit B** and is incorporated herein by this reference. First, when Mr. Beach allegedly completed the Affidavit Form, he noted that he was suffering from stage 4 cancer at the time and was undergoing treatment. With all due respect to Mr. Beach, his testimony is problematic in that he may not have had the requisite legal capacity to testify. See, NRS Chapter 50. Additionally, even assuming arguendo that Mr. Beach had the capacity to present testimony, the testimony presented in his Affidavit Form, as included and relied upon in the Complaint, is unauthenticated and improper. NRS 53.045 specifically requires that Mr. Beach's written testimony be verified by a notary public or if it is intended to be an unsworn declaration, that it be signed under the penalty of perjury AND be dated. Mr. Beach's unverified written statement includes NONE of these requirements. See, **Ex. B**.

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[2] Ms. Baca is currently not working as a community manager and has not been so-employed since the Commission issued its original order stripping her of her license. She continues to search for alternative employment and is unsure as to whether she will ever work in the property management field again.

The interests of the NRED and the Commission in ensuring that licensees follow the rules and do no harm to the public are already served by the conditions/penalties imposed upon Ms. Baca by the existing Order. Prosecuting this Complaint is unnecessary and violative of ms. Baca's fundamental rights to adequately defend herself.

II.

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES:

1. Answering Paragraph 1 of Petitioner's Complaint, Respondent admits the allegation contained therein.

2. Answering Paragraph 2 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

3. Answering Paragraph 3 of Petitioner's Complaint, Respondent admits the allegations contained therein.

4. Answering Paragraph 4 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein

5. Answering Paragraph 5 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

6. Answering Paragraph 6 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

7. Answering Paragraph 7 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

8. Answering Paragraph 8 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

9. Answering Paragraph 9 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

10. Answering Paragraph 10 of Petitioner's Complaint, Respondent admits the allegations contained therein.

11. Answering Paragraph 11 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

12. Answering Paragraph 12 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

13. Answering Paragraph 13 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

14. Answering Paragraph 14 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

15. Answering Paragraph 15 of Petitioner's Complaint, this paragraph states a factual assertion/legal opinion that does not require an admission or denial.

16. Answering Paragraph 16 of Petitioner's Complaint, Respondent admits the allegations contained therein

17. Answering Paragraph 17 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

18. Answering Paragraph 18 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

19. Answering Paragraph 19 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

20. Answering Paragraph 20 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

21. Answering Paragraph 21 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

22. Answering Paragraph 22 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

23. Answering Paragraph 23 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

24. Answering Paragraph 24 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

25. Answering Paragraph 25 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

26. Answering Paragraph 26 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

27. Answering Paragraph 27 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

28. Answering Paragraph 28 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

29. Answering Paragraph 29 of Petitioner's Complaint, Respondent admits the allegation contained therein.

30. Answering Paragraph 30 of Petitioner's Complaint, Respondent admits the allegations contained therein.

31. Answering Paragraph 31 of Petitioner's Complaint, Respondent admits the allegations contained therein.

32. Answering Paragraph 32 of Petitioner's Complaint, Respondent lacks sufficient information upon which to admit or deny the allegations made and, on that basis, deny each and every allegation contained therein.

VIOLATION OF LAW

33. Answering Paragraph 33 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

34. Answering Paragraph 34 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

35. Answering Paragraph 35 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

36. Answering Paragraph 36 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

37. Answering Paragraph 37 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

38. Answering Paragraph 38 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

39. Answering Paragraph 39 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

40. Answering Paragraph 40 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

41. Answering Paragraph 41 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

42. Answering Paragraph 42 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

43. Answering Paragraph 43 of Petitioner's Complaint, Respondent denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Any of Respondent's alleged improper acts or failures to act have not resulted in any

actual harm to any person or The HOA.

SECOND AFFIRMATIVE DEFENSE

Petitioner is not entitled to relief from or against Respondent, as Petitioner has not sustained any loss, injury, or damages that resulted from any act, omission, or breach by Respondent.

THIRD AFFIRMATIVE DEFENSE

Petitioner's claims are barred because Respondent complied with applicable statutes and with the requirements and regulations of the state of Nevada.

FOURTH AFFIRMATIVE DEFENSE

Petitioner is unable to fully defend herself against the instant Complaint because of spoliation of the relevant evidence supporting Petitioner's Complaint.

FIFTH AFFIRMATIVE DEFENSE

Petitioner is unable to fully defend herself against the instant Complaint because of the passage of time from when the alleged acts/omissions/breaches allegedly occurred and the filing of the Petitioner's Complaint.

FIFTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer, and Respondent reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, having fully answered Petitioners' Complaint, Respondent respectfully requests the following relief:

A. That Respondent be found innocent as to all violations charged;

B. That the Complaint be dismissed; and

C. For such other and further relief as the Court deems just and proper.

DATED this 30 day of October, 2019.

RESNICK & LOUIS, P.C.

By: _____
SUE TRAZIG CAVACO, ESQ.
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scavaco@rlattorneys.com
8925 West Russell Road, Suite 220
Las Vegas, NV 89148
Attorneys for Sherryl Baca

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **SHERRYL BACA'S RESPONSE TO COMPLAINT** was served this 30th day of October 2019, by:

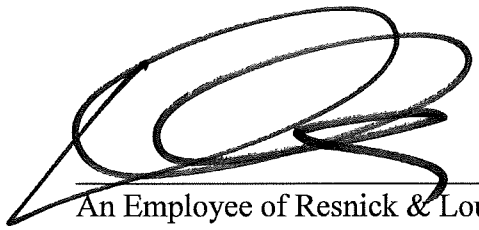
[ ] **BY U.S. MAIL**: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

[ ] **BY FACSIMILE**: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

[ ] **BY PERSONAL SERVICE**: by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

[X] **BY ELECTRONIC SERVICE**: by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

Michelle D. Briggs, Esq.
Senior Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101



An Employee of Resnick & Louis, P.C.

EXHIBIT A

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

Sharath Chandra, Administrator, Real Estate Division, Department of Business & Industry, State of Nevada, Petitioner, vs. Sherryl Baca, Respondent.	Case Nos. 2017-1579 and 2018-136

FILED

OCT 03 2019

NEVADA COMMISSION OF COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

STIPULATED AMENDMENT TO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division") and RESPONDENT SHERRYL BACA, through their respective undersigned attorneys, hereby stipulate and agree to amend the Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry, State of Nevada (the "Commission") Findings of Fact, Conclusions of Law, and Order filed June 27, 2019 ("June Order") as follows.

1. BACA'S community manager certificate shall be on probation and shall be demoted to community manager from supervising community manager for 18 months from July 1, 2019. BACA may reapply to the Division for a supervising community manager certificate at the expiration of the probation term.

2. BACA shall pay an administrative fine to the Division in the total amount of $27,771.70 – which includes a fine of $24,000 for the violations of law and $3,771.70 representing the total amount due for the Division's attorney's fees and costs – no later than 45 days from the date this Stipulated Amendment to Findings of Fact, Conclusions of Law, and Order ("Stipulated Amendment") is signed.

3. BACA shall take 30 hours of continuing education which shall not be applied to any educational hours required to maintain her certificate. The education required by

this section shall be completed in 18 months and shall include no less than 10 hours regarding ethics as may be available in the Las Vegas Valley during this time period. If 10 ethics credits are not offered during this 18 month period locally, BACA'S requirement regarding ethics courses will be limited to the amount of credits actually available to her. Under these circumstances, BACA may substitute non-ethics courses to reach her 30 hours without penalty.

4. Sections 1 and 2 of the Order section of the Commission's June Order are deleted. All other provisions of the June Order are in full force and effect.

AARON D. FORD, Attorney General

Michelle D. Briggs
Senior Deputy Attorney General
555 E. Washington Ave. Ste 3900
Las Vegas, Nevada 89101

Attorneys for Real Estate Division

Sue Trazig Cavaco
RESNICK & LOUIS
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148

Attorneys for Respondent

ORDER

The foregoing STIPULATED AMENDMENT TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER is hereby approved and ordered by the Commission.

Dated: September 26th, 2019.

Commission for Common-Interest Communities and Condominium Hotels, Department of Business & Industry, State of Nevada

By: _____
Michael Burke, Chairman

this section shall be completed in 18 months and shall include no less than 10 hours regarding ethics as may be available in the Las Vegas Valley during this time period. If 10 ethics credits are not offered during this 18 month period locally, BACA'S requirement regarding ethics courses will be limited to the amount of credits actually available to her. Under these circumstances, BACA may substitute non-ethics courses to reach her 30 hours without penalty.

4. Sections 1 and 2 of the Order section of the Commission's June Order are deleted. All other provisions of the June Order are in full force and effect.

AARON D. FORD, Attorney General

Michelle D. Briggs
Senior Deputy Attorney General
555 E. Washington Ave. Ste 3900
Las Vegas, Nevada 89101

Attorneys for Real Estate Division

Sue Trazig Cavaco
RESNICK & LOUIS
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148

Attorneys for Respondent

ORDER

The foregoing STIPULATED AMENDMENT TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER is hereby approved and ordered by the Commission.

Dated: September _____, 2019.

Commission for Common-Interest Communities and Condominium Hotels, Department of Business & Industry, State of Nevada

By: _____
Michael Burke, Chairman

EXHIBIT B

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
Administrative Office

RECEIVED
JUL 24 2018
Dept of Bus
Real Estat istry

Affidavit Form

STATE OF NEVADA
County of Clark

Affidavit of _____
Date _____
Time Taken _____ O'Clock
City _____ State _____

Ronald C. Baca deposes and says:
Name

I freely and voluntarily give this affidavit to Gina D'Alessandro who is known to me as Compliance Audit Investigator II for the Nevada Real Estate Division.

Begin typing statement here.

I personally did not hire vendors, it was a board decision. I do remember the vote by the board to hire Jack for painting. Checks; any check I signed was by my hand. I never, ever signed a check without an invoice. Also as a side note I personally check the work that was done.

One thing that might be noted here when we recieved the check for wall damages, it was voted upon by the board and another account was opened for the specific use of wall repair.

Any checks made out to Landcrafter were to cover work they did over and above their contract, i.e. Tree removal, water leaks and repair of the sprinkler system.

Generally speaking our community managers Sherry/ Baca, was, by board consent, not supposed to sign any checks.

Continue statement here.

I can recall that I think Friday I had her sign a small check for what reason I cannot recall, [illegible] and check #[illegible] I did the [illegible] and after [illegible]

[illegible]

Board member to sign the check didn't happen and the invoice needed to be paid.

On a personal note not to be disclosed.
At the present time I am diagnosed with stage 4 Cancer and undergoing treatment, I am at this time physically restrained from many activities, so please take that into consideration. I am perfectly satisfied with the time I spent on the board and have nothing to hide. I will cooperate with you within my physical constraints. *(Use additional pages if necessary)*

I have read the foregoing affidavit consisting of ____ pages, and it is true and correct to the best of my knowledge and belief.

I AGREE THAT IF REQUESTED BY THE NEVADA REAL ESTATE DIVISION, I WILL VOLUNTARILY APPEAR AS A WITNESS IN ANY PROCEEDING RELATING TO THE ABOVE MATTER WITHOUT THE NECESSITY OF BEING SERVED WITH A SUBPOENA.

Subscribed before me this _____ day of _____, 20____ in the

County of _____

State of _____,

_____
Signature of Notary

Ronald C Beach
Signature

Name Ronald C. Beach

Address 624 Bullwhip Ct.

Henderson NV 89011
City State Zip

Area Code 702 Phone 425-2696

B. Opposition To Plaintiff's Objections To Defendant's Request For Judicial Notice; Countermotion For Leave To Cure Illegibility To Any Extent Necessary

1) The Court Should Take Judicial Notice Of The Documents Attached To Defendant's September 27, 2019 Request For Judicial Notice Because They Are Eminently Reliable Ancient Public Documents

Plaintiff's objection to Defendant's request for judicial notice is flatly wrong in stating that Nevada law does not sanction courts taking judicial notice of public records, such as those procured from a County Recorder's Office. In fact, Nevada law recognizes that courts may take judicial notice of public records by way of NRS 47.130 (permitting judicial notice of facts "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"). *See Yellow Cab of Reno v. Second Judicial Dist. Court of Nev.*, 127 Nev. 583, 591 n.4 (2011) (taking judicial notice of the 2000 U.S. Census, a public record).

Plaintiff contends that Defendant has failed to supply the requisite information for the Court to take judicial notice because the documents in question are "illegible"- rendering said documents "inadmissible hearsay." Plaintiff's exaggerated contentions of "illegibility" aside, such considerations are in actuality, not quite relevant to the present analysis. All four items for which Plaintiff seeks judicial notice are ancient documents, three being from the late 1920s and one being from 1949, all well over 20 years of age. *See* **Exhibit BB**, [Defendant's Request for Judicial Notice (Pleading Only)]. NRS 52.095 and its federal analog, FRE 901(8), provide for the *automatic authentication* of ancient documents if "they (A) are in a condition that creates no suspicion about their authenticity; (B) were in a place where, if authentic, they would likely be; and (C) are at least 20 years old when offered." *Tombstone, City of v. United States*, 2015 U.S. Dist. LEXIS 188559, 10 (D. Ariz. 2015). The documents offered by Defendant for judicial notice meet every one of these criteria. Examining the copies attached to the subject request for judicial notice, there is nothing about their condition that is cause for concern. The font, format, print