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. Desert Garden Homeowners Association, Inc., Daniel Wright, Larry Hawker, Dawson Smith, and Bradley Shultis, Respondents.	Case No. 2019-852

FILED
JUN 2 2 2020
NEVADA COMMISSION FOR COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
Kelly Valadez

COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of the State of Nevada, Michelle D. Briggs, Senior Deputy Attorney General, and Karissa D. Neff, Deputy Attorney General, hereby notifies RESPONDENTS DESERT GARDEN HOMEOWNERS ASSOCIATION, INC., ("Association"), DANIEL WRIGHT, LARRY HAWKER, DAWSON SMITH, and BRADLEY SHULTIS (collectively, "RESPONDENTS") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

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JURISDICTION AND NOTICE

1. During the relevant times mentioned in this complaint, RESPONDENTS DANIEL WRIGHT, LARRY HAWKER, DAWSON SMITH and BRADLEY SHULTIS served as board members and/or officers of DESERT GARDEN HOMEOWNERS (the "Association"), a common-interest community located in Las Vegas, Nevada.

2. RESPONDENTS are subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and the Commission for Common-Interest Communities pursuant to the provisions of NRS 116.750.

FACTUAL ALLEGATIONS

3. DESERT GARDEN HOMEOWNERS ASSOCIATION, INC. is a 148 unit condominium project located in Las Vegas, Nevada.

4. At relevant times mentioned in this Complaint, the Association's board consisted of RESPONDENTS DANIEL WRIGHT, LARRY HAWKER, DAWSON SMITH AND/OR BRADLEY SHULTIS, who collectively also own no less than 115 of the 148 units in the Association.

5. From 2011 through 2018, the Association was managed by Eugene Burger Management.

6. Beginning in February 2018, the Association was managed by 5STRMGT, LLC, a Nevada limited liability owned by Yvonne Culliver.

7. The Division initiated an audit of the Association on December 14, 2018, due to the possibility that the Association's reserve account was underfunded and because the Association failed to conduct a 2017 audit.

8. The Division's audit revealed the following:

- The Board failed to adequately fund the operating and reserve accounts;
- The 2018 Reserve Study reflected a year end percent funded of -22% due to necessary reserve expenses and the lack of funding to date;

- The Association's 2018 Reserve Study showed that prior to the 2018 audit, the Board removed major components of the common elements and the Board and community manager failed to respond to the auditor's request to provide confirmation that the Board followed the statutes and governing documents in the removal of the common elements;
- The Board failed to adhere to the approved Reserve Budget or Reserve Study Recommendations;
- Specifically, the 2018 Reserve Study recommended a total reserve contribution of $13,837, the Association budgeted $106,339, but only contributed $6,600; and
- The 2018 Reserve Study listed $201,178 in expenditures, the Association Budgeted $39,180, but only spent $5,127.

9. On August 7, 2019, the Division properly gave notice to the Association that it had opened an investigation regarding the Association and possible violations of NRS/NAC 116 and alleged certain violations and requested responses from each Board member for the following: (1) the Board failed to maintain, repair, and/or replace the common elements of the Association, (2) the Board failed to properly fund the Association's reserve account to properly cover the costs to repair, replace or maintain the major components of the Association, (3) the Board failed to assess common expenses, including the reserves, against all units to fund the repair, replacement, and restoration of the major components of the common elements or other portions that the Association is obligated to maintain, replace, and/or restore or repair, (4) that the Association's bank card improperly granted the Association's manager the authority to sign on the reserve account, (5) the Board failed to impose fines against unit owners and/or their tenants for violations, and (6) the Board failed to conduct the Association's 2017 audit.

10. In the Divisions August 7th letter to the Association, the Division also requested that the Board provide documentation that it funded the reserve account appropriately and had funds to repair, replace, and maintain major components, documentation that the Association has been providing maintenance, repairs, and

replacements, and documentation that supports how the Board would remedy the violations set forth in the August 7th letter and/or documentation showing the Board complied with all statutes (collectively, the "Requested Documents").

11. Yvonne Culliver, the Association's community manager responded to the Division regarding its investigation.

12. In response to the allegation that the Board failed to properly fund the Association's Reserve Account, Ms. Culliver stated, "as of today the HOA currently has $107,523.53 in their reserve account."

13. The 2018 Reserve Study indicates full funding would be approximately $450,000 in 2019, but this number also assumes significant maintenance, repairs or replacements were already completed.

14. In response to the allegation that the Association's bank card improperly granted the Association's manager the authority to sign on the reserve account, Ms. Culliver stated that a new signature card would be submitted, that the boxes on it, had been mismarked, and that the manager has never signed on the reserve account.

15. No documentation was ever provided to the Division that the Association's bank card removed the Association's manager from the reserve account.

16. In response to the allegation that the Board failed to conduct the Association's 2017 audit, Ms. Culliver responded that the December 2017 audit was completed July 26, 2019, and would be finalized and submitted.

17. On August 29, 2019, the Division received an email from Ms. Culliver providing a draft 2017 audit and setting forth the same responses set forth in her prior response to the Division.

18. On August 30, 2019, Larry Hawker responded to the Division but did not provide the Division with any of the Requested Documents.

19. In his response to the Division, Larry Hawker stated the following:

- The Board has approved improvements to be done that balances budget requirements and reserves verses maintenance issues. That it was difficult

because the Association was still in the mode of building reserves required by state law and that is has taken several years to build up sufficient reserves even after passing a special assessment;

- The Board is trying to build up the reserves and that when he came on board, there were almost no reserves;
- The Board is trying to maintain costs and provide essential maintenance and repairs and that the property was old and never properly maintained;
- That reserves are up significantly;
- That signature cards have been updated;
- That fines have been imposed where appropriate and that the Board is taking a more aggressive position on fining owners;
- That the audit has been completed;
- That Ms. Culliver submitted the reserve account information; and
- That the Board is in the process of remedying any issues to comply with statutes it believes it is not in compliance with.

20. No other Board member provided a response to the Division.

21. No further documents were ever provided to the Division.

22. Beginning in 2018 and continuing in 2019, the Association imposed tiered assessments based on size of unit, no such authority exists in the governing documents.

VIOLATIONS OF LAW

23. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS 116.3103 (through NAC 116.405(3)) by failing to act on an informed basis, in good faith and in the honest belief that their action was in the best interests of the Association by committing incompetence, negligence or gross negligence by failing to adequately fund the reserve and operating accounts, by failing to timely conduct the Association's 2017 audit, and by failing to properly maintain, repair, and/or restore the common elements of the Association.

24. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS

116.3103 (through NAC 116.405(5)(a) and (c)) by failing to act in good faith and in the best interests of the Association by impeding or otherwise interfering with an investigation of the Division by failing to comply with a request by the Division to provide information or documents and by concealing facts or documents relating to the business of the Association.

25. RESPONDENT BOARD MEMBERS knowingly and willfully violated NRS 116.3103 (through NAC 116.405(2)) by failing to act in good faith and in the best interests of the Association by acting for reasons of self-interest or gain by personally failing to fund the reserves and failing to make necessary repairs or replacements to the common elements when they collectively own the majority of the units in the Association.

26. RESPONDENTS violated NRS 116.31152 by failing to maintain an adequately funded reserve account based on a reserve study.

27. RESPONDENTS violated NRS 116.3107 by failing to provide for the maintenance, repair and replacement of the common elements.

28. RESPONDENTS violated NRS 116.31153 by permitting the Association's community manager to be a signatory on the Association's reserve account.

29. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(a)) by failing to act in good faith and in the best interests of the Association when they failed to cause the Association to comply with all state laws and the governing documents of the Association.

DISCIPLINE AUTHORIZED

Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS 116.790 the Commission has discretion to take any or all of the following actions:

1. Issue an order directing RESPONDENT to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.

2. Issue an order directing RESPONDENT to take affirmative action to correct any conditions resulting from the violation.

3. Impose an administrative fine of up to $1,000 for each violation by

RESPONDENT.

4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the Association, such RESPONDENTS may be removed from his/her position as a director and/or officer.

5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

6. Require the BOARD MEMBERS to hire a community manager who holds a certificate.

7. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.

8. Take whatever further disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above. If the Commission finds that the RESPONDENTS knowingly and willfully violated the provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be personally liable for all fines and costs imposed.

NOTICE OF HEARING

PLEASE TAKE NOTICE, that a disciplinary hearing has been set to consider this Administrative Complaint against the above-named RESPONDENTS in accordance with Chapters 233B and 116 of the Nevada Revised Statutes and Chapter 116 of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for August 4-6, 2020, beginning at approximately 9:00 a.m. each day, or until such time as the Commission concludes its business. The Commission meeting will be held as a virtual meeting with the Commission and Respondents participating through Webex. Upon receiving this Notice, the Respondents will need to contact the Commission Coordinator at (702) 486-4606 or

kvaladez@red.nv.gov to provide an email address to receive the virtual meeting invitation.

STACKED CALENDAR: Your hearing is one of several hearings that may be scheduled at the same time as part of a regular meeting of the Commission that is expected to take place on August 4-6, 2020. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the complaint were true. If you need to negotiate a more specific time for your hearing in advance, please call Kelly Valadez, Commission Coordinator, at (702) 486-4606.

YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an open meeting under Nevada's open meeting law, and may be attended by the public. After the evidence and arguments, the commission may conduct a closed meeting to discuss your alleged misconduct or professional competence. You are entitled to a copy of the transcript of the open and closed portions of the meeting, although you must pay for the transcription.

As a RESPONDENT, you are specifically informed that you have the right to appear and be heard in your defense, either personally or through your counsel of choice. At the hearing, the Division has the burden of proving the allegations in the complaint and will call witnesses and present evidence against you. You have the right to respond and to present relevant evidence and argument on all issues involved. You have the right to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant to the issues involved.

You have the right to request that the Commission issue subpoenas to compel witnesses to testify and/or evidence to be offered on your behalf. In making this request, you may be required to demonstrate the relevance of the witness' testimony and/or evidence. Other important rights and obligations, including your obligation to answer the

complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS Chapter 233B.

Note that under NAC 116.575, not less than five (5) working days before a hearing, RESPONDENTS must provide to the Division a copy of all reasonably available documents that are reasonably anticipated to be used to support his position, and a list of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to provide any document or to list a witness may result in the document or witness being excluded from RESPONDENTS' defense. The purpose of the hearing is to determine if the RESPONDENTS have violated the provisions of NRS 116, and to determine what administrative penalty is to be assessed against RESPONDENTS.

DATED this 19th day of June, 2020.

REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS &
INDUSTRY, STATE OF NEVADA

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