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. Gerald Marks, Respondent.	Case No. 2018-952

FILED

OCT 30 2019

NEVADA COMMISSION OF COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

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, and Michelle D. Briggs, Esq., Senior Deputy Attorney General, hereby notifies RESPONDENT GERALD MARKS ("RESPONDENT" or "MARKS") 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 Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116 and 116A 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 RESPONDENT pursuant to the provisions of NRS and NAC including, but not limited to, NAC 116A.360.

JURISDICTION AND NOTICE

1. During all relevant times mentioned in this complaint, RESPONDENT GERALD MARKS held a supervisory community manager certificate from the Division (CAM.0000086-SUPR) and is, therefore, subject to the jurisdiction of the Division and the provisions of NRS Chapters 116 and 116A and NAC Chapters 116 and 116A. MARKS certificate status is currently inactive.

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FACTUAL ALLEGATIONS

2. In July of 2018, the Division received a complaint alleging MARKS misrepresented information provided to the Division regarding Morgyn Ridge Homeowners Association (the "Association").

3. The complaint was filed by a board member of the Association.

4. He alleged MARKS provided inaccurate information on the Reserve Study Summary form.

5. On August 28, 2018, the Division properly gave notice to MARKS that it opened an investigation to determine whether MARKS provided inaccurate information on the Reserve Study Summary form submitted to the division on February 12, 2018.

6. At the time, MARKS owned MP Association Management, Inc., a Nevada corporation and managed the Association.

7. The Association consists of 157 condominium units.

8. On or about February 12, 2018, MARKS submitted the Association's Reserve Study Summary Form 609 to the Division based on the Association's most recent reserve study dated January 23, 2018.

9. MARKS reported the "Required reserve account balance at end of current fiscal year based upon this reserve study" was $190,150.

10. MARKS reported the "Projected reserve account balance at the end of current fiscal year end" was $200,836.

11. The board member questioned MARKS on the numbers provided in the form and provided a portion of the reserve study entitled "Useful Information to Assist with filling out: Nevada Reserve Study Summary Form 609."

12. This form states that the "Required reserve account balance at end of current fiscal year based upon this study" is $856,163.

13. The reserve study states that the Association is 22% funded.

14. MARKS responded to the board member that the Association uses threshold funding and no change to the Association's Reserve Study Summary Form 609 was

necessary.

15. In response to the Division's investigation, MARKS provided a statement saying the Association uses threshold funding and that he completed the form correctly.

16. On September 12, 2018, the Division requested evidence that the Association adopted threshold funding, as well as information on reserved maintenance performed and deferred.

17. On October 5, 2018, the Association's attorney, Edward Boyack, responded on behalf of MARKS, but instead of providing the requested records, he objected to the investigation and the complaint.

18. The Division responded and ultimately, Mr. Boyack provided a letter stating MARKS would correct Form 609 and provide minutes and audio where the board discussed the funding method.

19. MARKS has not provided an updated Form 609 and he has not provided any evidence that the Association adopted a threshold funding plan.

20. The Association's board did not adopt threshold funding as alleged by MARKS.

VIOLATIONS OF LAW

1. MARKS violated NRS 116A.630(1)(a) by failing to act as a fiduciary in his relationship with the Association when he misrepresented the Association's required reserve funding under penalties of perjury.

2. MARKS violated NRS 116A.630(1)(b) by failing to exercise ordinary and reasonable care in the performance of his duties.

3. MARKS violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to comply with state laws.

4. MARKS violated NRS 116A.630(10) by failing to cooperate with the Division in resolving the complaint against him.

5. MARKS violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding or otherwise interfering with an investigation of the Division by failing to comply with a

request of the Division to provide documents.

6. MARKS violated NRS 116A.640(2)(b) by impeding or otherwise interfering with an investigation of the Division by providing false or misleading information to an investigator.

7. MARKS violated NRS 116A.640(2)(c) and NAC 116A.345(2)(c) by impeding or otherwise interfering with an investigation of the Division by concealing facts or documents relating to the business of the Association.

8. MARKS violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(f)) by committing unprofessional conduct by failing to cooperate with the Division in the investigation of a complaint including, without limitation, failure to produce any document, book or record in the possession or control of the community manager after the Division requests the production of such document, book or record in the course of an investigation of a complaint.

9. MARKS violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by committing professional incompetence by demonstrating a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client.

10. MARKS violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by committing professional incompetence by failing to exercise reasonable skill and care with respect to a duty or obligation owed to a client.

11. MARKS violated NAC 116A.355(1)(a)(1) and (2) (through NAC 116A.355(4)(g)) by committing unprofessional conduct or professional incompetence by failing to act in the best interests of the Association.

DISCIPLINE AUTHORIZED

Pursuant to the provisions of NAC 116A.360 the Commission has discretion to impose discipline as it deems appropriate, including, but not limited to one or more of the following actions:

1. Revoke or suspend the certificate;

2. Refuse to renew or reinstate the certificate;

3. Place the community manager on probation;

4. Issue a reprimand or censure to the community manager;

5. Impose a fine of not more than $5,000 for each violation of a statute or regulation;

6. Require the community manager to pay restitution;

7. Require the community manager to pay the costs of the investigation and hearing;

8. Require the community manager to obtain additional education relating to the management of common-interest communities; and

9. Take such other disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above.

NOTICE OF HEARING

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

THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for December 3-5, 2019, 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 at the Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las Vegas, Nevada 89102 with videoconferencing to Division of Insurance, 1818 E. College Parkway, Ste. 103, Carson City, Nevada 89706.

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 December 3-5, 2019. 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 because of coordination with out of state witnesses or the like, please call Teralyn Lewis, Administration Section Manager, at (702) 486-4036.

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's testimony and/or evidence. Other important rights and obligations, including your obligation to answer the complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A. Note that under NAC 116A.585, not less than five (5) working days before a hearing, RESPONDENT must provide to the Division a copy of all reasonably available documents that are reasonably anticipated to be used to support his or her position, and a list of witnesses RESPONDENT intends 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 RESPONDENT'S

defense. The purpose of the hearing is to determine if the RESPONDENT has violated any of the provisions of NRS and NAC Chapters 116 and 116A, and to determine what administrative penalty is to be assessed against RESPONDENT, if any, pursuant to NAC 116A.360.

DATED: October, 28, 2019.

REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS &
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