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. 2019-409

FILED
FEB 12 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, Esq., Senior Deputy Attorney General, and Karissa D. Neff, Deputy Attorney General, hereby notify 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 held, an active 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. RESPONDENT'S certificate is currently in "inactive" status.

. . .

FACTUAL ALLEGATIONS

2. RESPONDENT, at all relevant times, was the owner of MP Association Management, Inc., a Nevada corporation ("MP Management") and was also the manager of the Shadow Wood Homeowner's Association ("Shadow Wood" and/or "Association").

3. In 2017, Myra Lay-Beng Yung ("Yung") purchased a condominium in Shadow Wood.

4. During Yung's purchase of the condominium, a lawsuit was pending captioned *NY Community Bank v. Shadow Wood*, Clark County Case No. A-12-660328-C (the "Lawsuit").

5. The resale package provided by the Association to Yung did not reflect the pending Lawsuit.

6. A letter from RESPONDENT provided to Yung in her resale package stated, "there is no pending/current litigation or pending/current judgments."

7. On April 17, 2019, Yung filed a complaint with the Division, claiming that the Association failed to properly notify her of the Lawsuit in the resale package provided to her when she purchased her condominium.

8. On April 26, 2019, the Division properly notified RESPONDENT that it was opening an investigation based on Yung's complaint.

9. In response to the Division, RESPONDENT did not deny that he had failed to disclose the Lawsuit to Yung in her resale package.

10. Rather, in his response to the Division, RESPONDENT stated that during the time period of September 8, 2017, that he was ill and not working and that, "the staff at MP Association Management under stressful situations handled to the best of their ability all correspondence between MP Association Management and it's [sic] associations including emails mail and phone messages."

11. RESPONDENT also denied having any access to the documentation requested by the Division during its investigation of Yung's complaint and stated that any documents remained with the Association's current management company.

12. Board member James Ma ("Ma's) provided an affidavit to the Division regarding the Division's investigation of Yung's complaint.

13. Ma's affidavit states that homeowners were not made aware of the Lawsuit until late 2017, despite that the lawsuit had been pending for seven years.

VIOLATIONS OF LAW

14. RESPONDENT violated NRS 116A.630(1)(b) by failing to exercise ordinary and reasonable care in the performance of his duties by failing to furnish Yung a resale package that stated any pending legal actions against the Association and the status of such litigation in violation of NRS 116.4109.

15. RESPONDENT violated NRS 116A.630(2)(a) by failing to comply with state laws.

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

17. RESPONDENT 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.

18. RESPONDENT 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.

19. RESPONDENT 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.

20. RESPONDENT 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.

21. RESPONDENT 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 March 17-19, 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 on March 17-18, 2020 at the Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las Vegas, Nevada 89102, and on March 19, 2020 at the Nevada State Business Center, 3300 W. Sahara Avenue, Tahoe Room, Suite 430, 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 last from March 17-19, 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 because of coordination with out of state witnesses or the like, 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'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: February 11th, 2020.

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

By: _____
Sharath Chandra, Administrator
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
(702) 486-4033

AARON D. FORD
Attorney General

By: _____
Michelle D. Briggs, Esq. (Bar No. 7617)
Senior Deputy Attorney General
Karissa D. Neff, Esq. (Bar No.9133)
Deputy Attorney General
555 E. Washington Avenue, Suite 3900

Las Vegas, Nevada 89101
(702) 486-3894
Attorneys for the Division