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.

The Colony, Luis Villareal, Alan Mehr, Allen Nichols, and Marc Morger,

Respondents.

Case No. 2018-1058

FILED

MAY 28 2020

NEVADA COMMISSION FOR COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

Kelly Valadez

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada (the "Commission"), during a regular agenda on May 19, 2020, via telephone and video with no physical public location (as permitted by the Governor's Declaration of Emergency, Directive 006, as amended by Directives 016 and 018) (the "Hearing"). Respondent Allen Nichols appeared by phone, no other Respondents appeared. Michelle D. Briggs, Senior Deputy Attorney General, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

The Commission acknowledged receiving a sworn statement in response to the Complaint from Respondent Luis Villareal dated March 9, 2020. The Division requested that its documents Bates Numbered 1-124 be admitted into the record. Mr. Nichols did not object and the documents were admitted into evidence. Mr. Nichols informed the Commission that the board members for The Colony have not changed. The Commission decided to continue the case as to Alan Mehr (who previously received a continuance), Allen Nichols and Marc Morger. Based on Mr. Villareal's statement and the documents admitted into the record, the Commission enters the following Findings of Fact,

Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 116, the Commission has legal jurisdiction and authority over this matter.

FINDINGS OF FACT

Based on a preponderance of the evidence, the Commission finds the following factual allegations were found to be true:

1. The Association is a self-managed, planned community consisting of 108 units built in 1975 to 1980. The units share vertical boundaries in 4 unit clusters.

2. The Association has an annual budget of approximately $228,000.

3. The Division initiated an investigation when annual registrations indicated financials were not being audited.

4. The Association's president, RESPONDENT LUIS VILLAREAL, is also listed as the declarant for the project.

5. RESPONDENT BOARD MEMBERS responded to the Division's investigation indicating that a prior board member embezzled funds from the Association in 2009.

6. The Association does not contribute to a reserve fund.

7. The Association does not have a reserve study.

8. The Association does not have interim financials or audited financials.

9. The Association's annual registrations indicate some financials were reviewed, but they were not.

10. Annual registration forms listed a reserve study from 2014, but no such reserve study exists.

CONCLUSIONS OF LAW

Based on the foregoing factual findings, the Commission concludes by unanimous vote that the following violations of law are proven:

11. RESPONDENTS violated NAC 116.451 by failing to prepare and distribute interim financial statements.

12. RESPONDENTS violated NRS 116.31144 by failing to cause the financial statement of the Association to be audited by an independent certified public accountant every fiscal year.

13. RESPONDENTS violated NRS 116.3115 by failing to have adequate reserves.

14. RESPONDENTS violated NRS 116.31152 by failing to have a reserve study performed every five years.

15. RESPONDENTS violated NAC 116.415 by failing to prepare interim financial statements.

16. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the Association when they committed an act or omission which amounts to incompetence, negligence or gross negligence by supplying false information regarding reserves and audits to the Division.

17. 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.

18. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(g)) by failing to maintain current, accurate and properly documented financial records.

19. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(i)) by failing to establish policies and procedures that are designed to provide reasonable assurances in the reliability of financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records.

20. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(8)(j)) by failing to prepare interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine

whether the financial position of the association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive.

ORDER

The Commission being fully apprised in the premises, and good cause appearing to the Commission, by unanimous vote, Orders as follows:

1. RESPONDENT LUIS VILLAREAL is responsible for the violations of law.
2. The Association shall hire a community manager on or before July 15, 2020.
3. The Association's community manager shall report to the Commission at its August 4-6, 2020 meeting.
4. The Commission reserves the right to impose additional discipline.

Dated: May 27th, 2020.

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

By: _____
Michael Burke, Chairman

Submitted by:

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