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. 2018-812 and 2018-660

FILED

JUL 29 2019

NEVADA COMMISSION OF COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

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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 Sherryl Baca ("RESPONDENT" or "BACA") 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, BACA held a supervisory community manager certificate from the Division (CAM.0001439-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.

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FACTUAL ALLEGATIONS

2. On or about May 15, 2018, the Division received a Statement of Fact against RESPONDENT SHERRYL BACA filed by the manager of South Valley Ranch Homeowners Association (the "Association"), Lisa Carrion.

3. On or about October 1, 2017, Ms. Carrion took possession of the Association files provided by BACA, the Association's prior manager.

4. Ms. Carrion alleged documents turned over to her from BACA were not in any order and that documents were missing.

5. The complaint states the Association's records included records from other associations managed by BACA.

6. Ms. Carrion said she was investigating – at the board's request – construction defect work done in 2010 based on proceeds the Association received from a lawsuit.

7. On or about April 4, 2018, Ms. Carrion prepared a list of the missing items and sent it to BACA by certified mail.

8. BACA did not respond to Ms. Carrion.

9. At this same time, Association board members contacted the Division about checks signed by BACA for construction defect repairs, her authority to sign checks and their concern that the costs were excessive.

10. The Association approved a settlement amount of $675,000 in 2010 while BACA was the Association's manager.

11. The Association's construction defect account shows a deposit of $350,000 in August 2010.

12. The Division opened two separate investigations based on the two complaints.

13. The Association's records do not include a management contract for the years the construction defect funds were used.

14. The Association's records include a management agreement from 2008 which

expired on June 30, 2009 and contained an automatic annual renewal.

15. In 2009, NRS 116A.620 was enacted which prohibits management contracts from containing an automatic renewal provision.

16. The 2008 management contract allowed BACA to sign checks for "utilities, taxes, insurance premiums, contract fees, minor repairs, supplies and other regularly recurring expenses."

17. The Association's records include a management contract from 2014 and 2017, neither contract allows BACA to sign checks and specifically requires signatures of 2 board members.

18. The Division subpoenaed bank records, but the bank could not provide all the records requested.

19. In 2011 and 2012, BACA signed checks from the Association's construction defect account, including one that was only signed by her.

20. In 2011, 2012 and 2013, BACA signed checks from the Association's operating account.

21. The Association has only draft minutes for 2010, 2011 and 2013.

22. Based on the draft minutes in 2010, a contractor, Robert Orlando, was hired to paint 26 mailboxes.

23. The Association paid Robert Orlando over $63,000 from the construction defect funds.

24. The address on the check to Robert Orlando is BACA's office address.

25. Due to a lack of records, current board members are unable to determine the extent of the construction defect work and whether unfinished repair work should be part of future repairs.

26. The current board is also concerned about construction defect funds being used for non-construction defect repairs.

27. Funds from the construction defect account were paid to a contractor in 2013, although the board never discussed hiring the vendor according to the draft

minutes from 2013 and the charges do not appear to be for construction defects.

28. The Division sent letters to BACA dated May 18, 2018, June 6, 2018, and June 26, 2018 before BACA first responded on June 29, 2018 about the missing Association records.

29. BACA's affidavit provided on or about August 1, 2018 states that the procedure for construction defect checks was that the construction manager approved the invoices and once approved "our company would cut the checks and sent those checks back to the construction manager for signing and disbursement. I would go in and sign the check and a board member would go in separately and sign the check."

30. In response to the final notice by the Division, BACA provided a letter dated January 25, 2019 that says her contract gave her authority to sign checks and the procedure was that she would sign first and then provide them to a board member for the second signature.

31. BACA states:

> This procedure as well as proof of my authority to sign checks for the community can be validated by any of the board members who served while I was managing the community.

32. The Association's former president, Ronald Beach, who served while BACA was the manager, provided the following statement to the Division:

> Generally speaking our community manager Sherryl Baca, was, by board consent, not supposed to sign any checks.

VIOLATIONS OF LAW

33. BACA violated NRS 116A.630(1)(a) and NAC 116A.320 by failing to act as a fiduciary in her relationship with the Association.

34. BACA violated NRS 116A.630(1)(b) and NAC 116A.320 by failing to exercise ordinary and reasonable care in the performance of her duties.

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

36. BACA violated NRS 116.630(6)(a) by failing to ensure at all times that the financial transactions of the Association were current, accurate and properly documented.

37. BACA violated NRS 116A.640(2)(b) and NAC 116A.345(2)(b) by impeding or otherwise interfering with an investigation of the Division by supplying false or misleading information to an investigator of the Division.

38. BACA 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.

39. BACA violated NRS 116A.620 and NAC 116A.325 by performing community management services for the Association without a signed management contract from 2010 to 2014.

40. BACA violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(i)) by committing unprofessional conduct by exceeding the authority granted to her by the Association.

41. BACA 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.

42. BACA 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.

43. BACA 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 September 17-19, 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 Division of Insurance at 1818 East College Parkway, Suite 103, Carson City, Nevada 89706, with video conferencing at the Nevada State Business Center at 3300 West Sahara Ave., Fourth Floor, Nevada Room, Las Vegas, Nevada 89102.

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 September 17-19, 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 Jan Unger, 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. The proceeding will be audio recorded. 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: July 29, 2019.

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

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