BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA, Petitioner, vs. BORDEAUX HOMEOWNERS ASSOCIATION, INC. (Entity Number E0266622005-3), Respondent.	Case No. 2023-771

FILED

JUN 20 2024

NEVADA COMMISSION FOR COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

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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 set on a three-day stack beginning at 9:00 am on June 11, 2024 (the "Hearing."). Michael W. McKelleb, with The Law Office of Michael W. McKelleb, appeared on behalf of Bordeaux Homeowners Association, Inc. ("RESPONDENT") with new community association manager Tamara Nelson (CAM.0000306). Christal P. Keegan, Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

Since the RESPONDENT admitted to the Division's factual allegations and violations of law in its Complaint filed April 24, 2024, the parties made statements regarding the RESPONDENT's Proposed Resolution/Settlement in its Answer filed May 30, 2024.

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FINDINGS OF FACT

Based on a preponderance of the evidence in the record, the documents admitted at the Hearing, and by stipulation of the parties, the Commission voted, to find all the following factual allegations were proven:

1. On or about November 14, 2023, the Division opened an investigation against the RESPONDENT pursuant to its audit findings, with a deadline to respond by November 28, 2023. *Exhibit B, CICC 021 – 024.*

2. Untimely, on or about January 2, 2024, the RESPONDENT Board President Peter Merolo, Treasurer/Secretary Madelyn Scamorza, and Director Jonathan Portillo Robinsons, provided the Division with its response. *Exhibit C, CICC 026 – 029.*

3. The RESPONDENT'S last CPA audit was completed for 2020. *Exhibit A, CICC 009.*

4. RESPONDENT admitted the Association's budgets were not performed. *Exhibit C, CICC 026.*

5. As of December 31, 2022, the RESPONDENT'S Reserve account was poorly funded at 22.1%. *Exhibit A, CICC 009.*

6. RESPONDENT admitted the Association's reserves were low. *Exhibit C, CICC 026.*

7. Beginning from about May 2021 through January 2022, approximately seventy-three check images from the Operating and Reserve accounts did not display two approved signers but instead contained the image "Signature on File". *Exhibit A, CICC 012.*

8. RESPONDENT thought this was acceptable and admitted its mistaken understanding. *Exhibit C, CICC 027.*

9. RESPONDENT represented to the Division that it had provided all its minutes from its Open and Executive sessions for 2021 and 2022. *Exhibit C, CICC 027.*

10. But the RESPONDENT did not provide the 2021 and 2022 minutes for the annual unit owners and budget ratification meetings. *Exhibit A, CICC 014.*

11. RESPONDENT then admitted it had not provided all the minutes. *Exhibit C, CICC 027.*

12. RESPONDENT admitted its alleged numerous management transitions have caused a deficit in its records. *Exhibit C, CICC 028.*

13. RESPONDENT supplied the Division with numerous unsigned draft minutes, and in some instances without detail of Executive Board actions, and/or without being put to vote. *Exhibit C, CICC 048 – 106.*

14. At RESPONDENT'S meeting minutes for its Open Meeting on November 22, 2022, indicated under New Business discussed, ratification of an emailed vote for a pool landscape enhancement project - "GEL for $1,478.00" - when the project was already complete. *Exhibit C, CICC103.*

15. The minutes did not regularly include the amounts approved, nor all Executive Board member actions regarding petty cash approval and/or election details. *Exhibit A, CICC 014.*

16. At RESPONDENT'S Regular Session Meeting on August 18, 2021, without any proof nomination forms were sent, the Board approved the appointment of Gita Saval for the Director's seat with an undetermined expiration term. *Exhibit C, CICC 064.*

17. RESPONDENT supplied the Division with financials for March and April of 2023, but did not include statements of Association's accounts, including but not limited to:

- Operating and Reserve;
- Front & Back Check Images;
- 2021 and 2022 Bank Signature Cards;
- Some Interim Financial Statements;
- 2020 and 2021 CPA Audits;

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- From 2021 through April 30, 2023, all invoices and receipts for disbursements made from the Operating and Reserve Accounts; and/or
- Board member reimbursements and petty cash receipts.

Exhibit A, CICC 008.

18. On or about March 17, 2022, RESPONDENT reversed $40,149.42 in Reserve contributions, which was transferred to the Operating account to be used for operating expenses. *Exhibit B, CICC 009.*

19. Accordingly, on or about February 20, 2024, the Division noticed the RESPONDENT the case would proceed formally before the Commission. *Exhibit D, CICC 220 – 222.*

CONCLUSIONS OF LAW

Based on the foregoing factual findings and the preponderance of the evidence, the Commission voted, that all the following violations of law occurred:

20. RESPONDENT violated NRS 116.31144 by admission for failing to have a CPA audit performed annually.

21. RESPONDENT violated NRS 116.3115(2)(b) by admission for having a low reserve funding.

22. RESPONDENT violated NRS 116.31152(1)(a), (b), and/or (c) by admission on two counts:

a. For having a low reserve funding, and/or

b. Making a large transfer from the Reserve fund to the Operating account for operating expenses.

23. RESPONDENT violated NRS 116.31153 for failing on at least 73 occasions to demonstrate two approved signers on its checks.

24. RESPONDENT violated NRS 116.31083(8), (9)(a), (b), (c), (d), and/or (e), and/or (11) for failing to include in its minutes the substance of all matters proposed, discussed or decided at meetings.

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25. RESPONDENT violated NRS 116.3103 by failing its fiduciary duties with regard to the Association's missing or omitted documents and records.

ORDER

The Commission, being fully apprised in the premises and good cause appearing, ORDERS as follows:

1. RESPONDENT shall pay the costs of the investigation and the hearing in the amount of $3,929.98 which are actual, reasonable, and necessary within 30 days of entry of Order.

2. RESPONDENT shall provide a status report at the September 10-12, 2024 Commission Meetings on the following:

   a. Confirm the draft CPA Audits for 2021 and 2022 have been accepted and ratified by the Board;

   b. 2023 CPA Audit;

   c. Status of minutes recreated or obtained; and

   d. Status of the funding plan as presented.

3. If payment is not actually received by the Division on or before its due date, it shall be a default by RESPONDENT. In the event of default, the unpaid balance of the administrative fine and costs, together with any attorney's fees and costs that may have been assessed, shall be due in full to the Division within ten (10) calendar days of the date of default, and the Division may obtain a judgment for the amount owed, including collection fees and costs;

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4. The Commission retains jurisdiction for correcting any errors that may have occurred in the drafting and issuance of this document.

DATED this 20th day of June, 2024.

COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS, DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA

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