**BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS**

**STATE OF NEVADA**

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| SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA,<br><br>Petitioner,<br><br>vs.<br><br>DEL REY ESTATES HOMEOWNERS ASSOCIATION,<br>(Entity Number C11413-1995)<br><br>Respondent. | Case No. 2023-929 |

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."). Henry H. Kim, with Gordon Rees Scully Mansukhani, appeared on behalf of Del Rey Estates Homeowners Association ("RESPONDENT") with new Board President Dean Allen. The complainant Jon Margalit was present. 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 15, 2024, the parties made statements regarding the RESPONDENT'S Proposed Resolution/Settlement in its Answer filed May 28, 2024. Additional information was provided by Board President Mr. Allen. Complainant Mr. Margalit also made a statement.

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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 1, 2023, the Division received a homeowner complaint against the RESPONDENT executive board. *Exhibit 2, CIC 010.*

2. Therefore, on or about November 16, 2023, the Division opened an investigation against the RESPONDENT, with a deadline to respond by December 1, 2023. *Exhibit 3, CIC 036-038.*

3. On December 1, 2023, RESPONDENT failed to respond to the Division. *Exhibit 3, CIC 039-041.*

4. Therefore, on or about December 5, 2023, in the Division's second attempt to the RESPONDENT, it extended the deadline to respond by December 19, 2023. *Exhibit 3, CIC 039-041.*

5. On or about December 27, 2023, RESPONDENT Brian K. Berman as its Board President finally remitted his untimely response to the Division. *Exhibit 4, CIC 047-051.*

6. At all times relevant, RESPONDENT'S Board was comprised of three (3) members, Board President Berman, Secretary Dean Allen, and Treasurer John Hernandez. *Exhibit 1, CIC 002, and Exhibit 4, CIC 068.*

7. At all times relevant, President Berman was also acting as the RESPONDENT'S attorney and custodian of records. *Exhibit 1, CIC 002, Exhibit 4, CIC 072.*

8. RESPONDENT President Berman represented that the Association is run by him and Secretary Allen. *Exhibit 4, CIC 068.*

9. RESPONDENT President Berman represented Treasurer Hernandez moved to Georgia and "has not been involved with association affairs in a number of years." *Exhibit 4, CIC 068.*

10. At all times relevant, the RESPONDENT President Berman admitted "there has not been an annual meeting in a number of years" but claimed "it is not for want of trying". *Exhibit 4, CIC 050.*

11. In a letter to the homeowners dated February 20, 2018, RESPONDENT President Berman indicated the last four annual meetings were attempted, claiming quorum prevented it from holding elections and conducting official business. *Exhibit 4, CIC 050.*

12. As a result, RESPONDENT President Berman stated: "I have basically given up trying." *Exhibit 4, CIC 050.*

13. RESPONDENT President Berman advised the Division "that there are no meeting minutes, no election records, no financial statements and no budgets from the requested timeframe [January 1, 2020, to present]." *Exhibit 4, CIC 064.*

14. RESPONDENT President Berman admitted "[t]here has never been a reserve study." *Exhibit 4, CIC 065.*

15. RESPONDENT President Berman reasoned its 25-year history established that a professionally prepared reserve study was an entirely unnecessary expenditure. *Exhibit 4, CIC 065.*

16. Despite missing from RESPONDENT'S bank statements, President Berman produced a check copy of Check #1080 dated March 3, 2021, to "Brian Berman, Chtd." with President Berman as the sole signatory. *Exhibit 5, CIC 314.*

17. RESPONDENT President Berman represented to the Division that he only reimbursed himself for "$22.30 reimbursement for postage" and "a reimbursement for the Association's Nevada Secretary of State annual filings." *Exhibit 5, CIC 073.*

18. But carbon copy of duplicate Check #1068 dated February 20, 2019, to "Brian K. Berman" indicated otherwise. *Exhibit 5, CIC 324.*

19. The carbon copy of duplicate check #1075 dated July 1, 2020, to "Dean Allen" with "void" written in black ink contradicts other evidence of a note that it was paid: "pd 7/1/20". *Exhibit 5, CIC 331, and CIC 304.*

20. Subsequently, a carbon copy of duplicate check #1077 dated July 2, 2020, was made to "Dean Allen". *Exhibit 5, CIC 333.*

21. Other carbon copies of duplicate checks (#s1083 dated July 31, 2021, to "Brian K. Berman" and check #1093 dated June 15, 2023, to "Brian K. Berman") do not indicate the requisite number of signatures. *Exhibit 5, CIC 339, and CIC 349.*

22. RESPONDENT'S letters demonstrate Berman signed in his capacity as President but utilized his law firm's letterhead. *Exhibit 4, CIC 062-063.*

## 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:

23. RESPONDENT violated NRS 116.31083(1) by admission for failing to adhere to all meeting requirements, including failing to conduct annual meetings, hold elections, and/or keep records of board decisions.

24. RESPONDENT violated NRS 116.3108(1), (3), (4), (5), and/or (6) by admission for failing to adhere to all annual meeting requirements, including notices, meeting minutes, agendas, financial statements, or budgets and/or election records.

25. RESPONDENT violated NRS 116.31153 by failing on numerous occasions to have the requisite number of signatures required to withdraw association funds.

26. RESPONDENT violated NRS 116.31151 by admission for failing to adhere to the requirement to prepare budgets.

27. RESPONDENT violated NRS 116.3115 by admission for never doing a reserve study over the course of 25 years.

28. RESPONDENT violated NRS 116.3103(1) by and through President Berman's for misusing his law firm's letterhead in communications.

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## 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 $3,818.34 which are actual, reasonable, and necessary within 60 days of entry of Order.

2. RESPONDENT shall perform a reserve study by a licensed reserve study specialist, and such requirement may be stayed until the next Commission meeting if the Association determines it is a limited-purpose association for exemption purposes.

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

   a. Bank statements from December 31, 2023 to August 2024;

   b. Draft budget for 2025; and

   c. Tax return filings for years 2022 and 2023.

4. All three (3) board members must be present and appear at the September 10-12, 2024 Commission Meetings.

5. 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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6. 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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