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. Yun (Jack) Lin, Respondent.	Case No. 2023-227 FILED JUL 25 2024 NEVADA COMMISSION FOR COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

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") on Tuesday, June 11, 2024, and Wednesday, June 12, 2024. (the "Hearing") Respondent Yun (Jack) Lin ("RESPONDENT") appeared in-person on his own behalf. Phil W. Su, Senior Deputy Attorney General, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

This matter was a continuation of proceedings that occurred at the Commission's March 5-7, 2024, hearing stack, which was postponed after the Division's direct examination of investigator Khalid Tatum had concluded due to an issue with the availability of a mandarin Chinese translator for RESPONDENT. RESPONDENT cross-examined substitute investigator Christina Pitch, then the Division played an audio recording from the February 21, 2023, San Severo HOA executive board session. Thereafter, RESPONDENT presented testimony from three witnesses and testified on his own behalf.

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

Commission, having heard testimony and reviewed the evidence presented in this matter and for good cause appearing, hereby enters the following Findings of Fact, Conclusions of Law, and Order as follows:

FINDINGS OF FACT

Based on a preponderance of the evidence in the record and the documents admitted at the Hearing, the Commission hereby finds that the following factual allegations were proven:

JURISDICTION AND NOTICE

1. During the relevant times mentioned in this complaint, RESPONDENT served as a member, director, and/or officer of the Board of Directors (hereinafter "Board") of San Severo Homeowners Association ("Association"), a common-interest community located in Las Vegas, Nevada.

2. RESPONDENT is subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "NRS 116") and is subject to the jurisdiction of the Division, and the Commission for Common-Interest Communities pursuant to the provisions of NRS 116.750.

FACTUAL ALLEGATIONS

1. At all relevant times herein, the Association is comprised of a 344-unit community located in Las Vegas, Nevada. **[NRED0001-0009].**

2. On or about March 29, 2023, COMPLAINANT Kathy Shimizu ("Complainant"), Director at large/President of the Association and upon behalf of fellow Director-at-large/Secretary Treasurer, David Brummer, sent the Division a Form 530 Intervention Affidavit ("IA") alleging that the Association's third Director-at-large, RESPONDENT Yun (Jack) Lin, only sought election to the board "to get his own personal driveway extension ARC Application approved." **[NRED0010-0016].**

3. The IA further alleges that RESPONDENT engaged in actions "in complete disregard for his fiduciary duty obligations, acting outside the scope of his authority, for

self-interest, gain, prejudice, revenge, intentionally hindering the Board from conducting business, and costing the Association substantial legal fees." **[NRED0010-0016].**

4. Attached to the IA were twenty-eight (28) exhibits consisting of correspondence between the Association's community manager and/or its retained counsel and RESPONDENT from November 19, 2020, (prior to RESPONDENT'S election to the Board) through March 1, 2023. **[NRED0017-0263].**

5. On a November 23, 2020, correspondence (erroneously dated November 19, 2019) consisted of a cease and desist letter from association counsel Cheri A. Hauser, Esq., to RESPONDENT regarding his alleged harassment of board members and management staff attributable to the Board's rejection of his proposed ARC for a driveway extension, noting that although he could not install a driveway extension, he could install two paver strips 25-30" wide in Sierra Blend color. **[NRED0024-0027].**

6. On a March 8, 2021, correspondence from association counsel Matthew Grode, Esq., he further addressed RESPONDENT'S continued harassment of directors and management, and referenced a February 25, 2020, incident where the Association was forced to call the police for assistance based upon RESPONDENT'S refusal to leave a meeting where he was being disruptive. **[NRED0028-0031].**

7. The March 8, 2021, letter from Attorney Grode also gave notice to Respondent that he was required to attend a hearing being held by video-conference set for March 23, 2021, to address his history of harassment, pursuant to NRS 116.31185. **[NRED0028-0031].**

8. RESPONDENT was elected as a director-member of the board on May 18, 2021. **[NRED0003].**

9. RESPONDENT engaged in a subsequent series of lengthy email communications with association counsel William Wright, Esq., from August to September of 2021, regarding RESPONDENT'S disputes with board operations and community management. **[NRED0036-0082].**

10. On September 9, 2021, RESPONDENT filed an Alternative Dispute

Resolution ("ADR") claim form with the Division's Ombudsman's office, claim no. 2022-045, and retaining Attorney Duane Frizell, Esq., to represent him personally. **[NRED0083-0184].**

11. On February 23, 2022, Attorney Frizell withdrew as counsel for RESPONDENT. **[NRED0202-0203].**

12. On April 21, 2022, RESPONDENT filed a small claims suit against the Association, seeking refund of a fine imposed against him for beginning driveway construction without Association approval, and that the Court order the Association to allow him to construct the driveway. **[NRED0204-0205].**

13. On August 15, 2022, the Association's motion to dismiss the small claims matter was granted without prejudice**. [NRED0221-0222].**

14. On August 20, 2022, RESPONDENT informed the Association and its counsel, Attorney Wright, of his intention to construct a front driveway without prior Architectural approval, due to ongoing drainage issues with his yard that he alleges are due to the delay in approving the driveway improvement. **[NRED 0223-0237].**

15. According to Attorney Wright, RESPONDENT has caused the Association to incur in excess of $20,000.00 in attorney's fees with his lawsuits and actions against board members and management and caused the Association's insurance carrier to drop their Directors and Officers (D&O) liability coverage, resulting in a doubling of premiums. **[NRED256].**

16. On or about February 21, 2022, RESPONDENT'S disruptive behavior (by refusing to stop reading an email regarding his personal issues with the executive board) during a director's board meeting caused him to be escorted from the meeting. **[Exhibit #2 Audio recording of February 21, 2023, board meeting].**

17. On April 13, 2023, the Division's Investigator, Khalid Tatum, sent the RESPONDENT an initial Request for Information, indicating that it had initiated an investigation against him under Case No. 2023-227 and asking for a written response and information regarding the allegations set forth in the IA. **[NRED0263-0264].**

18. On or about April 26, 2023, RESPONDENT sent Investigator Tatum a response to the initial Request for Information, denying the allegations and asserting uneven application of the governing documents regarding his driveway ARC Application, retaliation against him by the Association, and that the Association and its manager hindered his investigation of allegations of election fraud in 2018. **[NRED0265-335].**

19. On or about June 23, 2023, the Division sent RESPONDENT an NRS 233B letter notifying him that it obtained sufficient evidence to commence disciplinary action by filing a complaint as a result of its investigation. **[NRED0336-0337].**

CONCLUSIONS OF LAW

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

20. RESPONDENT violated NRS 116.3103 pursuant to NAC 116.405(1) and breached his fiduciary duty to the Association by causing the Association to incur substantial legal and service expenses related to addressing his repeated lengthy communications with Association counsel regarding his personal interests and disputes with the Association, and his actions, including initiation of claims and litigation against the association, that resulted in the Association's loss of existing D&O insurance coverage.

21. RESPONDENT violated NRS 116.3103 pursuant to NAC 116.405(2) and breached his fiduciary duty to the Association by engaging in repeated disruptive acts while sitting as a board member in sole furtherance of his personal interests, including, but not limited to, his repeated and persistent efforts to challenge his prior ARC Application denials and his disruptive actions at the February 21, 2023, board meeting that led to him being escorted from that meeting.

22. RESPONDENT violated NRS 116.3103 through NAC 116.405(3)(c) and breached his fiduciary duty to the Association by using his position as a Board Director to intentionally hinder the ability of the executive board to conduct business.

23. RESPONDENT violated NRS 116.3103 through NRS 116.31038(6) and

breached his fiduciary duty to the Association by his disruptive actions at the February 21, 2023, board meeting that led to him being escorted from that meeting and for that meeting to be prematurely concluded.

ORDER

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

1. RESPONDENT is hereby removed from his position as director/officer of San Severo Homeowners Association.

2. RESPONDENT is prohibited from serving on any executive board as defined by NRS 116.045, for a period of ten (10) years from the effective date of this Order.

3. RESPONDENT shall pay to the Division a total amount of $9,977.83, of which constitutes the Division's prehearing costs and attorney's fees. The total amount is payable within twelve (12) months of the effective date of this Order.

4. The total amount due reflects that no administrative fine has been assessed by the Commission to RESPONDENT for committing the above-stated violations of law.

5. If payment of the total amount due is not actually received by the Division on or before its due date, it shall be construed as 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.

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

DATED this 25th day of July, 2024.

COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

By: _____
PHYLLIS TOMASSO
Chairperson of the Commission

Submitted by:

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