

Office of the Attorney General
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**BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND
CONDOMINIUM HOTELS STATE OF NEVADA**

ANN M. McDERMOTT, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Petitioner,

vs.

VIRGINIA CITY HIGHLANDS PROPERTY
OWNER'S ASSOCIATION,
And its members of the board of directors
and/or association of officers,

Respondents.

Case No. IN-08-1411

**ORDER APPROVING STIPULATION
FOR SETTLEMENT OF
DISCIPLINARY ACTION**

FILED

DEC 16 2008

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

The parties Stipulation for Settlement ("Stipulation") having come before the
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS, STATE OF
NEVADA ("Commission") on December 3, 2008, and the Commission being fully
apprised in the premises, and good cause appearing to the Commission,

IT IS ORDERED that the Stipulation, executed and attached as Exhibit A, and
incorporated along with the amendment recited on the record, is approved. **IT IS
ORDERED** that Respondents comply with and fully-perform all of the terms of the
Stipulation and this Order.

If Respondent fails to timely fulfill the terms of the Stipulation and Order, then the
Nevada Real Estate Division ("Division") may automatically rescind the Stipulation and
Order, and may proceed in filing a complaint before the Commission.

IT IS FURTHER ORDERED that the Division may institute debt collection
proceedings for failure to pay any fine(s) contained within this Stipulation and Order.

This Order shall become effective on the 16th day of December 2008.

Dated: This 16th day of December, 2008


COMMISSIONER

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AND CONDOMINIUM HOTELS
STATE OF NEVADA**

ANN M. McDERMOTT, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Case No. IN-08-1411

Petitioner,

vs.

FILED

OCT 28 2008

VIRGINIA CITY HIGHLANDS PROPERTY
OWNER'S ASSOCIATION and its
members of the board of directors and/or
association officers,

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Respondents

STIPULATION FOR SETTLEMENT OF DISCIPLINARY ACTION

PARTIES

This Stipulation is entered by and between Petitioner, the Real Estate Division of the Department of Business and Industry, State of Nevada ("the Division"), by and through its Administrator, ANN M. McDERMOTT and Respondents, VIRGINIA CITY HIGHLANDS PROPERTY OWNER'S ASSOCIATION ("Association") and its members of the board of directors and/or association officers (collectively "Respondents")

The Association, at the relevant times mentioned in this Complaint, engaged in activities regulated by NRS Chapter 116 and NAC Chapter 116 and the Commission for Common-Interest Communities and Condominium Motels and are, therefore, subject to the jurisdiction of the Division and the provisions of NRS Chapter 116 and NAC Chapter 116, pursuant to NRS 116.750.

JURISDICTION

At all relevant times, the Association had members of the board of directors and/or association officers as follows: a. Rita M. Lumos (President); b. William Lewis (First Vice President); c. Stephen Morrow (Second Vice President); d. Mary Talent-

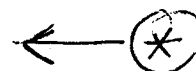
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1 Stewart (Secretary); and e. C. Michael Lupo (Treasurer) (collectively referred to as
 2 "Former Members"). The Association currently has the following members of the board
 3 of directors and/or officers as follows: a. J. Andrew Biederman (President); b. Stephan
 4 A. Morrow (First Vice President); c. Ray Robbins (Second Vice President); d. Mary
 5 Tallent-Stewart (Treasurer); and e. Rita M. Lumos (Secretary). Respondents are
 6 subject to the provisions of NRS Chapter 116 and NAC Chapter 116 (collectively
 7 "Chapter 116") and are subject to the jurisdiction of the Division and the Commission for
 8 Common-Interest Communities and Condominium Hotels ("Commission") pursuant to
 9 NRS 116.750.

10 ALLEGED OFFENSES

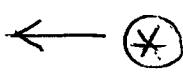
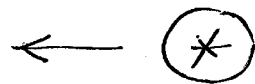
- 11 1. At all relevant times the Association's Former Members were officers and
 12 members of the board of directors and/or association officers for the Association,
 13 located in Virginia City, Nevada.
- 14 2. The Association was, at all relevant times, a common-interest community
 15 pursuant to the provisions of NRS 116, in the form of a Nevada Domestic Non-
 16 Profit Corporation, without stock, duly registered with the Nevada Secretary of
 17 State and the Office of the Ombudsman for Common-Interest Communities.
- 18 3. On or about October 24, 2007, Debra Gravenstein submitted to the Division an
 19 Ombudsman Intervention Affidavit ("Affidavit") alleging violations of Chapter 116
 20 by the Association's Former Members.
- 21 4. The Division responded to this Affidavit on or about February 27, 2008, via a
 22 certified letter to the Association and the Former Member (President) Rita M.
 23 Lumos by Compliance Investigator II, Christopher Cooke.
- 24 5. Ms. Lumos replied to the request for information sent by Investigator Cooke by
 25 way of an affidavit dated March 17, 2008 with an attached letter dated March 14,
 26 2008.
- 27 6. The Division believes, and therefore alleges, that on or about June 28, 2007, the
 28 Association's Former Members held a meeting, with all Former Members of the

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- 1 Association present, to discuss roads and/or road construction and/or how to
- 2 improve the road construction process, all of which was under the Association's
- 3 custody and/or control and within their jurisdiction powers.
- 4 7. On or about June 24, 2007, Debra Gravenstein, also a member of the
- 5 Association, advised Ms. Lumos via e-mail that the proposed meeting of June 28,
- 6 2007 would not be legal under NRS chapter 116.
- 7 8. On or about June 24, 2007, Ms. Lumos replied to Debra Gravenstein by stating,
- 8 inter alia, that "Debi, I appreciate your concern, but I do not agree with it. As I
- 9 pointed out, this is not a regular meeting, no decisions will be made. There won't
- 10 be an agenda. It is a discussion with the road people and hopefully some
- 11 construction folks about our road construction."
- 12 9. The Division believes, and therefore alleges, that although the meeting set forth
- 13 in paragraph 6 was held, no notice was sent and/or given to unit owners as
- 14 required by NRS 116.31083(2).
- 15 10. The Division believes, and therefore alleges, that although the meeting set forth
- 16 in paragraph 6 was held, no agenda was provided to the unit owners specifying
- 17 the topics to be discussed and/or the time and/or place of the meeting in violation
- 18 or NRS 116.31083(4).
- 19 11. The Division believes, and therefore alleges, that a section entitled "Road
- 20 Report" was listed as a discussion/action item on multiple agendas of the
- 21 Association prior to the meeting set forth in paragraph 6, including, but not
- 22 necessarily limited to the following agendas: January 9, 2007, February 13,
- 23 2007, March 13, 2007, April 10, 2007, May 8, 2007, and June 12, 2007.
- 24 12. The Division believes, and therefore alleges, that the Association and its Former
- 25 Members were aware that discussions of road conditions and/or repairs such as
- 26 occurred in the meeting specified in paragraph 6, required compliance with the
- 27 applicable provisions of NRS 116.31083.
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ALLEGED VIOLATIONS OF LAW

By holding a meeting, with the full membership of the Association present, to discuss roads and/or road construction and/or how to improve the road construction process, all of which was under the Association's custody and/or control and within their jurisdictional powers without providing notice to unit owners and without providing an agenda with topics to be discussed and/or listing the time and location of said meeting, all of which occurred on June 28, 2007, the Association's Former Members were in violation of NRS 116.31083(2) and/or NRS 116.31083(4) and is subject to discipline as specified in NRS 116.785. No "workshops" are authorized because when a quorum of the Association meets to discuss matters within their custody or control notice and agendas must be provided as set forth herein.



SETTLEMENT

The Division was prepared to put on a case based on the Complaint filed with the Nevada Commission for Common-Interest Communities and Condominium Hotels (the "Commission") alleging the above offenses, and the Division is authorized under NRS 116.785 for each violation of NRS 116.31083 to seek the imposition of a fine of up to \$1,000.00 for each offense alleged. The Association and Respondents (current members) were prepared to defend any such Complaint; however, the parties desire to compromise and settle the instant controversy upon the following terms and conditions:

- 1 Respondents agree to pay to the Division the sum of TWO HUNDRED AND FIFTY DOLLARS (\$250.00) in administrative fines within one (1) month after the effective date of the Commission's order approving this settlement agreement in resolution of the instant matter.
- 2 Respondents agree that "workshops" are not authorized where a quorum of the Association meets to discuss matters within their custody or control unless proper notice, agendas, and any other requirements of NRS Chapter 116 and/or the regulations promulgated thereto are met.

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- 1 3. The Division agrees not to pursue any other or greater remedies or fines in
2 connection with the conduct referenced herein.
- 3 4. Respondents and the Division agree that by entering into this Stipulation, the
4 Division does not concede any defense or mitigation Respondents may assert, and
5 the parties agree that the Division will not publicize the instant disciplinary matter,
6 except as set forth below, and that once this Stipulation is approved and fully
7 performed, the Division will close its file in this matter. Respondents understand
8 that the public records law may require the Division to make available for inspection
9 this Stipulation and related documents. Respondents also understand that the
10 Division may share the content of this Stipulation and related documents with any
11 governmental or professional organization or member of the public.
- 12 5. Respondents agree that if the administrative fine is not paid within the time
13 allowed above, debt collection actions for the unpaid administrative fines may be
14 instituted by the Division. Alternatively, if the fine is not paid, the Division may, at
15 its option, rescind this Stipulation and proceed with filing and prosecuting a
16 Complaint before the Commission
- 17 6. Respondents agree and understand that by entering into this Stipulation,
18 Respondents are waiving their rights to a hearing at which Respondents may
19 present evidence in their defense and to be represented by counsel, to judicial
20 review of any adverse decision by the Commission, and to present their defense
21 to a Commission which has had no prior familiarity with the instant matter. The
22 Commission members who review this matter for approval of this Stipulation may
23 be the same members who ultimately hear the Division's Complaint if this
24 Stipulation is either not approved by the Commission or is not timely performed
25 by Respondent.
- 26 7. The Division reserves the right to publish a summary of this Stipulation and the
27 facts and law related thereto in the "Community Insights" publication
- 28 8. Each party shall bear its own attorney's fees and costs.

1 9. Even if an attorney is present on behalf of the Respondents, at least one of the
 2 Respondents must attend the Commission meeting wherein this Stipulation will be
 3 presented to the Commission, and the Respondents recognize that the
 4 Commission has the authority to ask questions regarding the issues set forth
 5 herein.

6 10. This agreement may be signed in counterparts and a facsimile signature or copy of
 7 an original signature shall be deemed as valid as an original. The Respondents
 8 shall timely forward all original signature pages to the Division.

9 Stipulation is Not Evidence. Neither this Stipulation nor any statements made
 10 concerning this Stipulation may be discussed or introduced into evidence at the hearing of
 11 the Complaint, if the Division must ultimately put on a case based on the Complaint filed in
 12 this matter.

13 Release. In consideration of execution of this Stipulation, the Respondents for
 14 themselves, the Association, their heirs, executors, administrators, successors, and
 15 assigns, hereby releases, remises, and forever discharges the State of Nevada, the
 16 Department of Business and Industry of the State of Nevada, the Division, and the
 17 Nevada Attorney General, and each of their members, agents, and employees in their
 18 individual and representative capacities, from any and all manner of actions, causes of
 19 action, suits, debts, judgments, executions, claims, and demands whatsoever, known
 20 and unknown, in law or equity, that the Respondents ever had, now has, may have, or
 21 claim to have against any or all of the persons or entities named in this section, arising
 22 out of or by reason of the Division's and/or Attorney General's investigation, into this
 23 disciplinary action, and all other matters relating thereto

24 Indemnification. Respondents hereby indemnify and holds harmless the State of
 25 Nevada, the Department of Business and Industry of the State of Nevada, the Division,
 26 and the Nevada Attorney General and each of their members, agents, and employees
 27 in their individual and representative capacities against any and all claims, suits, and
 28 actions brought against said persons and/or entities by reason of the Division's

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1 investigation, this disciplinary action and all other matters relating thereto, and against
2 any and all expenses, damages, and costs, including court costs and attorney fees,
3 which may be sustained by the persons and/or entities named in this section as a result
4 of said claims, suits, and actions.

5 **NOTICE OF RIGHTS WAIVED**

6 The parties hereto have reached a resolution in this matter, subject to the
7 approval of the Commission. Accordingly, the Division has not filed a complaint in this
8 matter. The Respondents are advised of the following rights and waive the same.

9 YOUR RIGHTS AT A HEARING: You have the right to dispute the allegations,
10 not to enter into this Stipulation and to require that the Division file an administrative
11 complaint. Except as mentioned below, any hearing would be an open meeting under
12 Nevada's open meeting law, and may be attended by the public. After the evidence, if a
13 complaint were filed, and arguments, the Commission may conduct a closed meeting to
14 discuss your alleged misconduct or professional competence. A verbatim record would
15 be made by a certified court reporter. You would be entitled to a copy of the transcript
16 of the open and closed portions of the meeting, although you must pay for the
17 transcription.

18 As Respondents, you are specifically informed that you have the right to appear
19 and be heard in your defense, either personally or through your counsel of choice. At
20 any hearing, the Division would have the burden of proving the allegations in the
21 complaint and will call witnesses and present evidence against you. You would have
22 the right to respond and to present relevant evidence and argument on all issues
23 involved. You would have the right to call and examine witnesses, introduce exhibits,
24 and cross-examine opposing witnesses on any matter relevant to the issues involved.
25 You would have the right to request that the Commission issue subpoenas to compel
26 witnesses to testify and/or evidence to be offered on your behalf. In making this
27 request, you may be required to demonstrate the relevance of the witness' testimony
28 and/or evidence. Other important rights and obligations, including your obligation to

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1 answer the complaint, you have are listed in NRS 116.770 through 116.780, NRS
2 Chapter 233B, and NAC 116.550 through NAC 116.635.

3 Note that under NAC 116.575, not less than five working days before a hearing,
4 Respondent must provide to the Division a copy of all reasonably available documents
5 that Respondent reasonably anticipates will be utilized to support his or her position and
6 a list of witnesses Respondent intends to call at the time of the hearing. Failure to
7 provide any document pursuant to this section may result in exclusion of the document.

8 The purpose of any hearing would be to determine if the Respondents have
9 violated NRS 116.31083 and if the allegations contained herein are substantially proven
10 by the evidence presented and to further determine what, if any, administrative penalty
11 is to be assessed against the Respondents, or any of them, pursuant to NRS 116.785.

12 **POTENTIAL SANCTIONS IF THERE IS A HEARING**

13 Pursuant to NRS 116.785 for each violation of NRS 116.31083 the Commission
14 is empowered to impose an administrative fine of not more than \$1,000 and take other
15 remedial and disciplinary action specified in that section.

16 If the Commission finds that any of the Respondents has knowingly and willfully
17 committed a violation and if it is in the best interests of the Association, then the
18 Commission may order that Respondent removed from their office or position.

19 If the Commission takes any disciplinary action pursuant to NRS 116.785, the
20 Commission may order the Respondents to pay the costs of the proceedings incurred

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1 by the Division, including, without limitation, the cost of the investigation and
2 reasonable attorney's fees.

3 If there is a hearing the Division would request that the Commission take such
4 disciplinary action as it deems appropriate under the circumstances.

5 **IT IS SO STIPULATED.**

6 DATED this 23rd day of September, 2008.

NEVADA REAL ESTATE DIVISION

7
8
9 By:

ANN M. McDERMOTT, Administrator
REAL ESTATE DIVISION
DEPARTMENT OF BUSINESS & INDUSTRY
STATE OF NEVADA
2501 East Sahara Avenue
Las Vegas, Nevada 89104-4137
(702) 486-4033

10
11
12 DATED this 23rd day of September, 2008.

13
14
15 By:

J. ANDREW BIEDERMAN, President
Respondent

16
17 DATED this 23rd day of September, 2008.

18
19 By:

STEPHAN A. MORROW, 1st Vice President
Respondent

20
21 DATED this 23rd day of September, 2008.

22
23 By:

RAY ROBBINS, 2nd V. President
Respondent

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DATED this 23rd day of September, 2008.

By: Rita M. Lumos
RITA M. LUMOS, Secretary
Respondent

DATED this 23rd day of September, 2008.

By: Mary Talient-Stewart
MARY TALLENT-STEWART, Treasurer
Respondent

Approved as to form:
CATHERINE CORTEZ MASTO
Attorney General

By: Robert J. Bryant
ROBERT J BRYANT
Deputy Attorney General
Attorneys for the Division

Reviewed By:

By: Quyent Pham, Esq.
QUYENT PHAM, Esq.
Hampton & Hampton
Attorneys for the Respondents