

1 **BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES**
2 **STATE OF NEVADA**

3 GAIL J. ANDERSON, Administrator,
4 REAL ESTATE DIVISION, DEPARTMENT
5 OF BUSINESS & INDUSTRY,
6 STATE OF NEVADA,

7 Petitioner,

8 vs.

9 ROZ BERMAN, CARL WEINSTEIN,
10 SHIRLEY CHERI, RODGER COOPER, MIKE
11 DIXON, BARRY FRIEDMAN, BOB FRANK

12 Respondents.

Case No. IS 09-1801

FILED

MAR 24 2011

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUMS

13 **NOTICE OF COMPLAINT AND NOTICE OF HEARING**
14 **OBLIGATION TO RESPOND**

15 **TO: ROZ BERMAN, CARL WEINSTEIN, SHIRLEY CHERI, RODGER COOPER, MIKE**
16 **DIXON, BARRY FRIEDMAN, and BOB FRANK.**

17 **PLEASE TAKE NOTICE THAT A COMPLAINT HAS BEEN FILED AGAINST YOU**
18 before the Commission for Common-Interest Communities ("Commission") of the Department of
19 Business and Industry, State of Nevada ("the Division"). **This is a formal proceeding that may result**
20 **in fines and/or revocation, suspension, denial of renewal of or conditions being imposed upon you.**

21 Served with this Notice is a copy of the Complaint and Notice of Hearing and a Notice of Documents
22 providing copies of all non-privileged communications, reports, affidavits or depositions in the
23 possession of the Division which may be relevant to the complaint and which may be used as evidence
24 against you.

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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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Respondents.

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NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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, Catherine Cortez Masto, Attorney General of the State of Nevada, and KALI FOX MILLER, Deputy Attorney General, hereby notifies RESPONDENTS ROZ BERMAN, CARL WEINSTEIN, SHIRLEY CHERI, RODGER COOPER, MIKE DIXON, BARRY FRIEDMAN, and BOB FRANK (Collectively referred to as "RESPONDENTS"), and each of them, of an administrative hearing, which is to be held pursuant to Chapters 233B and Chapter 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 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 RESPONDENTS, or any of them, pursuant to the provisions of NRS 116.700 and/or NRS 116.725.

1 Directors, as well as some or all of the RESPONDENTS collectively, when the term
2 "RESPONDENTS" is used, unless otherwise stated.

- 3 2. Each and every allegation contained in the instant Complaint concerning RESPONDENTS
4 pertains to the period of time that the respective RESPONDENTS were on the SCA Board,
5 through any means [to wit: appointment, election or any other means], and during such
6 periods of time that RESPONDENTS represented themselves to be SCA Board Members or
7 fulfilled SCA Board Member duties.
- 8 3. On or about March 27, 2008, RESPONDENTS held a meeting and voted to approve Agenda
9 Item XIV "A" which changed the Restated Declaration of Covenants, Conditions, and
10 Restrictions (CC&R's) and Bylaws of SCA without holding a vote of the unit owners.
- 11 4. RESPONDENTS then did not properly provide a copy of these changes to the governing
12 documents to the unit owners within 30 days.
- 13 5. The unit owners of the SCA were not given an opportunity for input into the important
14 decision of changing their governing documents.
- 15 6. Members have been harmed by not having opportunities for input or changes concerning the
16 important decisions of the SCA.

17
18 **VIOLATIONS OF LAW**

- 19
- 20 1. RESPONDENTS' violated NRS 116.3103(2) by amending the CC&R's of SCA on behalf
21 of the association.
- 22 2. RESPONDENTS violated NRS 116.3106(g) by failing to follow their own Bylaws and
23 requiring a majority vote of unit owners to amend those Bylaws.
- 24 3. RESPONDENTS violated NRS 116.2117(1) by amending the CC&R's of SCA without a
25 majority vote of unit owners.
- 26 4. RESPONDENTS violated NRS 116.12065 by failing to provide proper and timely copies of
27 the changes to the governing documents of SCA.
28

- 1 5. RESPONDENTS violated NRS 116.3103 by performing each of the acts and omissions
2 described in the factual allegations above, both collectively, and with respect to each
3 individual allegation severally.

4 **DISCIPLINE AUTHORIZED**

5 Pursuant to the provisions of NRS 116.615; NRS 116.755; and NRS 116.785 the Commissio
6 has discretion to impose discipline as it deems appropriate, including, but not limited to:

- 7 1. Issue an order directing the RESPONDENTS to cease and desist from continuing to engage
8 in the unlawful conduct that resulted in the violation; and/or
9
10 2. Issue an order directing the RESPONDENTS to take affirmative action to correct any
11 conditions resulting from the violation; and/or
12
13 3. Impose an administrative fine of up to **\$1000 for each violation**, by each Respondent;
14 and/or
15
16 4. IF RESPONDENTS, or any of them, ARE FOUND TO HAVE KNOWINGLY
17 COMMITTED A VIOLATION of Chapter 116 AND it is in the best interest of the HOA,
18 RESPONDENTS, or any of them, may be removed from their positions as directors and/or
19 officers; and/or
20
21 5. Require RESPONDENTS, to pay the costs of investigation and hearing; and/or
22
23 6. Take whatever further disciplinary action as the Commission deems appropriate.

24 The Commission may order one or any combination of the discipline described above.

25 If the Commission finds that the RESPONDENTS, or any of them, knowingly and willfully
26 violated the provisions of Chapter 116, the Commission may order that such RESPONDENT(S) be
27 personally liable for all fines and costs imposed.
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COMPLAINT FOR DISCIPLINARY ACTION
AND NOTICE OF HEARING

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JURISDICTION AND NOTICE

1. At all relevant times RESPONDENTS, and each of them, were members of the Board of Directors of SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC. ("SCA") Common Interest Community located in Henderson, Nevada.
2. RESPONDENTS, and each of them, are subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS"), the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "Chapter 116") and are each subject to the jurisdiction of the Division and the Commission for Common Interest Communities pursuant to the provisions of NRS 116.750.
3. At all relevant times SCA was a common interest community pursuant to the provisions of NRS 116, acting in the form of a Nevada Domestic Non-Profit Coop Corporation, without stock, duly registered with the Nevada Secretary of State.
4. The Office of the Ombudsman received an Intervention Affidavit complaining of the RESPONDENTS' conduct in performing their positions as members of SCA's Board of Directors ("Board") and alleging they had had violated Chapter 116 and SCA's governing documents.
5. On or about September 23, 2008 the Real Estate Division, Office of the Ombudsman sent correspondence to RESPONDENTS concerning the claims raised in the intervention affidavit that it received, Case# IS 09-1801, notifying them that an investigation concerning allegations of Chapter 116 violations.
6. On or about November 10, 2008, the Real Estate Division, Office of the Ombudsman sent correspondence to RESPONDENTS, by certified mail, notifying RESPONDENTS that sufficient evidence had been found for disciplinary action to be commenced, and that such action would be brought before the Commission for Common Interest Communities.

FACTUAL ALLEGATIONS

1. Each and every allegation contained in the instant complaint applies to each and every RESPONDENT, acting in their respective capacities as members of the SCA Board of

1 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider the
2 Administrative Complaint against the above-named Respondent in accordance with Chapters 233B and
3 116 of the Nevada Revised Statutes and Chapter 116 of the Nevada Administrative Code.

4 **THE HEARING WILL TAKE PLACE** on at the Commission meeting scheduled for **April 26**
5 **28, 2011 beginning at 9:00 a.m. each day or until such time as the Commission concludes its**
6 **business.** The Commission meeting will be located at **The Department of Education, 9890 South**
7 **Maryland Parkway, Suite 221, Las Vegas, Nevada 89183.**

8 **STACKED CALENDAR:** Your hearing is one of several hearings that may be scheduled at the
9 same time as part of a regular meeting of the Commission. Thus, your hearing may be continued until
10 later in the day or from day to day. It is your responsibility to be present when your case is called. If
11 you are not present when your hearing is called, a default may be entered against you and the
12 Commission may decide the case as if all allegations in the complaint were true. If you need to
13 negotiate a more specific time for your hearing in advance because of coordination with out of state
14 witnesses or the like, please call Teralyn Thompson, Commission Coordinator, at (702) 486-4606.

15 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is an open
16 meeting under Nevada's open meeting law, and may be attended by the public. After the evidence and
17 arguments, the commission may conduct a closed meeting to discuss your alleged misconduct or
18 professional competence. A verbatim record will be made by a certified court reporter. You are
19 entitled to a copy of the transcript of the open and closed portions of the meeting, although you must
20 pay for the transcription.

21 As a **RESPONDENT**, you are specifically informed that you have the right to appear and be
22 heard in your defense, either personally or through your counsel of choice. At the hearing, the Division
23 has the burden of proving the allegations in the complaint and will call witnesses and present evidence
24 against you. You have the right to respond and to present relevant evidence and argument on all issues
25 involved. You have the right to call and examine witnesses, introduce exhibits, and cross-examine
26 opposing witnesses on any matter relevant to the issues involved.

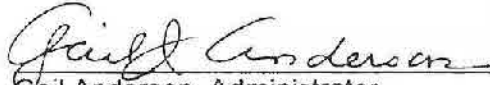
27 You have the right to request that the Commission issue subpoenas to compel witnesses to
28 testify and/or evidence to be offered on your behalf. In making this request, you may be required to


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1 demonstrate the relevance of the witness' testimony and/or evidence. Other important rights and
2 obligations, including your obligation to answer the complaint, you have are listed in NRS 16.770
3 through 16.780, NRS Chapter 233B, and NAC 16.500 through NAC 116.595 and NRS Chapters 116
4 and 116A and NAC 116.

5 Note that under NAC 116.575 (2005), not less than five (5) working days before a hearing,
6 RESPONDENTS, and each of them, must provide to the Division a copy of all reasonably available
7 documents that are reasonably anticipated to be used to support his or her position, and a list of
8 witnesses RESPONDENTS, and each of them, intend to call at the time of the hearing. Failure to
9 provide any document or to list a witness may result in the document or witness being excluded from a
10 Respondent's defense. The purpose of the hearing is to determine if the RESPONDENTS or any of
11 them have violated the provisions of Chapter 116, and to determine what administrative penalty is to be
12 assessed against a Respondent, if any, pursuant to NRS 116.725.

13
14 DATED this 23 day of March 2011

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18 Gail Anderson, Administrator
19 REAL ESTATE DIVISION
20 DEPARTMENT OF BUSINESS & INDUSTRY
21 STATE OF NEVADA
22 2501 East Sahara Avenue
23 Las Vegas, Nevada 89104-4137

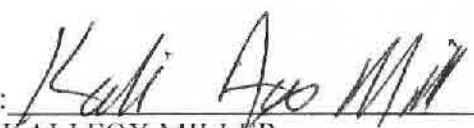
24
25 CATHERINE CORTEZ MASTO
26 Attorney General
27 
28 Kali Fox Miller, Esq.
Deputy Attorney General
555 East Washington, # 3900
Las Vegas, Nevada 89101
Attorney for Real Estate Division

1 TO: BOB FRANK
2 2374 Sandstone Drive
3 Henderson, NV 89052
4 **Via Certified and Regular United States Mail**

5 Attached are copies of non-privileged communications, reports, affidavits or depositions in
6 possession of the Commission of Common Interest Communities of the Department of Business and
7 Industry, State of Nevada (Division), which may be relevant to the complaint in the above-captioned
8 proceeding. Certain of these documents are exclusive of those that may be attached to and incorporated
9 into the Complaint, if any. The documents are numbered 24, 25, 13-23, 26-31, and 32. These
10 documents may be used at the time of hearing on this matter.

11 DATED this 23 day of March, 2011.

12 CATHERINE CORTEZ MASTO
13 Attorney General

14 By: 
15 KALI FOX MILLER
16 Deputy Attorney General
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