

BOARD MISCONDUCT

Vegas trio punished

A Nevada governing board made an unprecedented ruling when it removed an entire Las Vegas homeowners association board for rules violations and misconduct late last year.

The Commission for Common-Interest Communities and Condominium Hotels, which serves as an advisory board for the Nevada Real Estate Division (NRED), found that Autumn Chase Homeowners Association President Joseph Bitsky, his wife Barbara and board member Hellen Murphy were guilty of willfully violating more than 200 state laws, including failure to conduct board elections or prepare financial statements. The Bitskys also were found guilty of using \$10,000 of association funds for personal use.

Marilyn Brainard, a member of the commission and former member of CAI's Board of Trustees, says many Autumn Chase residents were intimidated by Bitsky, who had been president since 2003 and had a documented history of bad behavior—including once attempting to prevent residents from leaving an association meeting.

"He was such an abusive individual," says Brainard. "Those homeowners were treated very poorly."

After a two-year investigation that was launched when residents submitted a complaint to the NRED, the commission ruled in October that the Bitskys owed nearly \$160,000 in fines, attorneys fees and restitution to the association. Murphy was not given a financial penalty because the commission believed she may have been a victim of elder abuse committed by the Bitskys. All three individuals are barred from ever serving on a Nevada association board.

Brainard says while "most boards are doing a great job," this case highlights the importance of residents educating themselves on how a board should run and learning what remedies are available if a board doesn't seem to be following the rules.

In November, Autumn Chase elected a new board under the supervision of the NRED's Ombudsman for Owners in Common-Interest Communities.

"I feel it is better to take a position of caution to enhance controlled access to the community until we see what (if any) negative repercussions may occur because of the results of the election."

BILL STANLEY, president of the homeowners association at the Cottages of Woodstock, a residential community for people 55 and over in Woodstock, Ga., wrote in an e-mail to residents before Election Day, reported *The New York Times*. Concerned about civil unrest after national elections, Stanley closed the community's gates at 6 p.m. on Nov. 6.



SMOKING

In-unit bans

San Rafael became the 16th California municipality to ban smoking in multi-unit residential buildings—and ninth to do so inside units—when it passed an ordinance in October.

David Swedelson, a Los Angeles attorney, says while he personally feels these bans are good, he believes it will be interesting not only to see how they influence condominium associations, but also to watch what happens with them.

"I'm thinking more and more associations will start going totally no smoking (by choice)," says Swedelson. "We'd love it if municipalities did it for us, but I'm concerned about the enforcement aspect of it and whether (the municipalities) expect the association to get involved in it."

Swedelson is slightly concerned these bans could pit non-smoking neighbors against smoking neighbors and cause residential disputes, but he's also interested in seeing if these bans would hold up in court.

John Hanna, a California attorney and CCAL member, wonders if the government has the right to dictate a person's desire to smoke inside a home.

"You could argue this is Big Brother going too far," says Hanna. "On the other hand, secondhand smoke is a definite health issue. I think the government probably has an interest in enforcing these laws based upon public health."

Regardless of any potential controversy, smoking bans are sure to remain a hot topic, and Swedelson and Hanna believe these California bans could influence residential smoking bans in other states. **CG**