

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No. 2020-033096

FIRSTSERVICE RESIDENTIAL FLORIDA, INC.

Respondent.

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ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation (hereafter, “Petitioner”) files this Administrative Complaint against FirstService Residential Florida, Inc. (hereafter, “Respondent”) and alleges:

1. Petitioner is the state agency charged with regulating the practice of community association management pursuant to section 20.165, Florida Statutes, and chapters 455 and 468, Part VIII, Florida Statutes.
2. At all times material to this complaint, Respondent was a licensed Community Association Management Business (hereafter, “CAB”) within the State of Florida, bearing CAB license number 2893.
3. At all times material to this complaint, Respondent was a CAB for the Edge Condominium No. One Association, Inc. (hereafter, “the Association”).
4. Respondent’s address of record is 2950 N. 28th Terrace, Hollywood, Florida 33020.

## MATERIAL FACTS

5. On or about December 8, 2017, the Respondent entered into a Community Association Management Contract with the Association.

6. Respondent, acting through its employee, Community Association Manager Ms. Gabrielle Leary (“Ms. Leary”), managed the Association’s affairs.

7. The Respondent had also appointed one Ms. Keiana Janae Myers (“Ms. Myers”) as an administrative assistant to Ms. Gabrielle Leary.

8. Ms. Myers was later promoted by the Respondent to the position of an Operations Manager for the Association.

9. At all times material to this complaint, Ms. Myers was never licensed as a Community Association Manager within the State of Florida.

10. Despite knowing that Ms. Myers was not licensed as a Community Association Manager, the Respondent and Ms. Leary permitted Ms. Myers to accept miscellaneous payments/deposits on behalf of the Association for parking spot contracts, pet fees, and other invoices and payments from owners related to building deposits and moving-out fees.

11. Since as early as October 2018, Ms. Myers would accept owners’ payment checks made out to the Association, “white-out” the Association’s name as payee, replace it with her own name and deposit the doctored copy of the check at an ATM, thereby effectuating a scheme of fund withdrawal to her own monetary benefit.

12. Ms. Myers, as an administrative Operations Manager at the Association, operated this scheme to withdraw Association funds from September 2018 through January, 2019.

13. Ms. Myers withdrew and redirected approximately \$15,925.00 in Association funds during her employment with the Respondent.

14. As late as January 2019, a resident payor compared his deposited check with the check image cleared on his bank account and noticed that his payment for \$1,200 was cleared in the Ms. Myers's name as opposed to his intended Payee, i.e. the Association. Thereafter, this resident reported the matter to the Association.

15. On or about January 22, 2019, following the resident's report, the Respondent terminated Ms. Myers from her duties and reimbursed the resident.

16. However, the Respondent did not conduct an internal audit of its financials until May of 2019 when another administrative assistant noticed further inconsistencies in the financials of the Association.

17. At some time in May of 2019, the Respondent and its management confronted Ms. Myers again and recovered Ms. Myer's bank statements to finally discover the magnitude of this scheme.

18. On or about May 21, 2019, Ms. Myers paid \$4,000 in restitution to the Association.

19. On or about July 23, 2020, the Respondent reimbursed the Association for the remaining \$10,725 in deposited Associations funds that were withdrawn by its employee, Ms. Myers.

20. However, no criminal complaint or police report was filed against Ms. Myers by the Respondent or Ms. Leary or the Association for her alleged improper withdrawals of Association funds.

21. Instead, during August of 2020, the Respondent entered into a Payment Plan with Ms. Myers to reimburse itself for the sums misappropriated at the rate of \$500 a month until August 2022.

## COUNT I

22. Petitioner realleges and reincorporates by reference the allegations set for in paragraphs one (1) through twenty-one (21) as though fully set forth herein.

23. Part VIII of Chapter 468, consisting of sections 468.431 - 468.437, Florida Statutes, pertain to the regulation and licensure of Community Association Management.

24. Section 468.431, Florida Statutes, provides the following definitions pertinent to this proceeding:

(2) "Community association management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, determining the number of days required for statutory notices, determining amounts due to the association, collecting amounts due to the association before the filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or by a state agency, drafting meeting notices and agendas, calculating and preparing certificates of assessment and estoppel certificates, responding to requests for certificates of assessment and estoppel certificates, negotiating monetary or performance terms of a contract subject to approval by an association, drafting prearbitration demands, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

(4) "Community association manager" means a natural person who is licensed pursuant to this part to perform community association management services.

Fla. Stat. § 468.431 (2020).

25. Pursuant to Ch. 468, Florida Statutes, a person performing community association management services must possess a community association manager's license. Any natural person or individual who is a community association manager within the meaning of §468.431(3), Florida Statutes, is required by the provisions of §468.432(1), Florida Statutes, to be licensed by the Petitioner, such that:

“A person shall not manage or hold himself out to the public as being able to manage a community association in this state unless he is licensed by the department in accordance with the provisions of this part.”

Fla. Stat. § 468.432(1) (2020).

26. Section 468.436 (2), Florida Statutes, provides that a violation of Section 455.227(1), Florida Statutes, shall constitute as a ground for discipline for a community association manager licensee.

27. Section 455.227(1), Florida Statutes, provides the following as a ground for discipline:

“(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.

...

“(p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them.”

Fla. Stat. §§ 455.227(1) (j), (p) (2020).

28. Respondent permitted Ms. Myers to collect and/or accept miscellaneous payments/deposits on behalf of the Association for parking spot contracts, pet fees, and other invoices and payments from owners related to building deposits and moving-out fees despite the

knowledge that Ms. Myers was not licensed by Petitioner to engage in the practice of community association management.

29. Based on the facts set forth above, Respondent violated subsection 468.436(2), Florida Statutes, by violating Section 455.227(1)(j), (p), Florida Statutes, by aiding, employing, improperly delegating to and/or procuring services of Ms. Myers, an unlicensed individual, in managing the Association as it related to collecting and/or accepting payments and making improper withdrawals and deposits of Association funds.

### COUNT II

30. Petitioner realleges and reincorporates by reference the allegations set for in paragraphs one (1) through twenty-one (21) as though fully set forth herein.

31. Rule 61E14-2.001(2)(b), F.A.C., states that a licensee shall only “[d]eposit or disburse funds received by the community association manager or management firm on behalf of the association for the specific purpose or purposes designated by the board of directors, community association management contract or the governing documents of the association.”

32. Based on the facts above, Respondent violated Section 719.104(2)(b), Florida Statutes, through rule 61E13-2.001(2)(b), F.A.C., by permitting its employee/agent, Ms. Myers, to improperly handle, withdraw and deposit Association funds for unauthorized and inappropriate purposes.

### COUNT III

33. Petitioner realleges and reincorporates by reference the allegations set for in paragraphs one (1) through twenty one (21) though fully set forth herein.

34. Section 468.4334(1), Florida Statutes, states, in part, that a community association manager “shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently”

35. Based on the foregoing, Respondent violated section 468.4334(1), Florida Statutes, by failing to diligently and skillfully perform the duties of community association management.

#### COUNT IV

36. Petitioner realleges and reincorporates by reference the allegations set for in paragraphs one (1) through twenty-one (21) as though fully set forth herein.

37. Section 468.436(2)(b)(2), Florida Statutes, states, in part, that “[v]iolation of any lawful order or rule rendered or adopted by the department or the council” constitutes grounds for which disciplinary actions may be taken.

38. Rule 61E14-2.001(2)(a), Florida Administrative Code, states that a licensee shall comply with the requirements of the governing documents by which a community association is created or operated.

39. Based on the foregoing, Respondent violated section 468.436(2)(b)(2), Florida Statutes, through rule 61E14-2.001(2)(a), Florida Administrative Code, by failing to properly act as a fiduciary and a liaison between the Association and its member residents, by permitting improper and undetected withdrawal of funds by Ms. Myers.

#### COUNT V

40. Petitioner re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through twenty one (21) as if fully set forth herein.

41. Section 468.436(2)(b)5., Florida Statutes, states that a licensee is subject to discipline for “[c]ommitting acts of gross misconduct or gross negligence in connection with the profession.”

42. Specifically, Rule 61E14-2.001(2)(c), Florida Administrative Code provides that a community association manager shall “[p]erform all community association management services required by the licensee’s contract to professional standards and to the standards established by Section 468.4334(1), Florida Statutes.”

43. Based upon the foregoing, Respondent violated Section 468.436(2)(b)5., Florida Statutes, and R. 61E14-2.001(2)(c), Florida Administrative Code, by failing to properly manage its agents and employees in the management of the Association and handling its financial obligations.

WHEREFORE, Petitioner respectfully requests that the Department of Business and Professional Regulation enter an order imposing one or more of the penalties: revocation of licensure, suspension of licensure, imposition of an administrative fine of five thousand dollars (\$5,000.00) per count for this complaint, corrective action, assessment of costs related to the investigation and prosecution of the case excluding costs associated with an attorney’s time, or any other relief that the Department is authorized to impose pursuant to Chs. 455 and 468, Florida Statutes, and the rules promulgated thereunder.

**[Signature page to follow]**

Signed this 14<sup>th</sup> day of December, 2020.

**HALSEY BESHEARS**, Secretary  
Department of Business and  
Professional Regulation

By: /s/ Suhail Chhabra  
**Suhail Chhabra**  
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PC Found: 12/10/2020

By: DBPR

### NOTICE OF RIGHTS

Please be advised mediation under section 120.573, Florida Statutes, is not available for administrative disputes involving this type of agency action.

Please be advised Respondent has the right to request a hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Any request for an administrative proceeding to challenge or contest the charges contained in the administrative complaint must conform to rule 28-106.2015, Florida Administrative Code. Rule 28-106.111, Florida Administrative Code, provides in part if Respondent fails to request a hearing within 21 days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.

### NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to section 455.227(3)(a), Florida Statutes, the Board, or the Department when there is no Board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time, against Respondent in addition to any other discipline imposed.