

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
REGULATORY COUNCIL OF COMMUNITY )  
ASSOCIATION MANAGERS, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 08-1211PL  
 )  
ROBERT DUGGER, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on October 13 and 14, 2008, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Philip Francis Monte  
Charles F. Tunnickliff  
Assistants General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: Albert T. Gimbel, Esquire  
E. Gary Early, Esquire  
Messer, Caparello & Self, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308

## STATEMENT OF THE ISSUES

The issues in this case are whether the Respondent, Robert Dugger, committed the violations alleged in an Amended Administrative Complaint, DPBR Case Number 2002-007094, filed by the Petitioner Department of Business and Professional Regulation on April 11, 2006, and, if so, the penalty that should be imposed.

## PRELIMINARY STATEMENT

On April 11, 2006, a six-count Amended Administrative Complaint was filed with the Department of Business and Professional Regulation in DPBR Case No. 2002-007094 against Respondent, alleging that Respondent had committed violations of Chapter 468, Florida Statutes, and pertinent rules adopted there under. In particular, Petitioner alleged that Respondent, a Florida licensed community association manager had violated the following provisions of Florida law: Section 468.436(1)(a), Florida Statutes, by violating Section 455.227(1)(c), Florida Statutes (Count I); Section 468.436(1)(a), Florida Statutes, by violating Section 455.227(1)(j), Florida Statutes (Count II); Section 468.436(1)(b)5., Florida Statutes, by violating Florida Administrative Code Rule 61-20.503(4)(b) (Count III); Section 458.436(1)(b)5., Florida Statutes, by violating Florida Administrative Code Rule 61-20.503(6)(b) (Count IV); Section 458.436(1)(b)5., Florida Statutes, by violating Florida

Administrative Code Rule 61-20.503(6)(c) (Count V); and Section 458.436(1)(b)5., Florida Statutes, by violating Florida Administrative Code Rule 61-20.503(6)(d) (Count VI).

On or about May 3, 2006, Respondent filed an Amended "Petition for Formal Administrative Hearing Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.210, Florida Administrative Code" requesting a formal hearing to contest the allegations of fact contained in the Amended Administrative Complaint.

Respondent's request for hearing was filed with the Division of Administrative Hearings on March 11, 2008, with a request that it be assigned to an administrative law judge. The request was designated DOAH Case number 08-1211PL and was assigned to the undersigned.

The final hearing of this matter was initially scheduled for May 28 through 30, 2008, by Notice of Hearing entered March 24, 2008. The final hearing was subsequently continued, twice at the request of the parties and once due to Hurricane Fay. By Order Re-Scheduling Hearing by Video Teleconference entered September 15, 2008, the final hearing was scheduled for October 13 and 14, 2008.

On September 22, 2008, the parties filed a Joint Prehearing Stipulation. In the Joint Prehearing Stipulation, Petitioner moved that Counts II, III, and V of the Amended Administrative

Complaint be dismissed. That request was granted at the commencement of the final hearing.

The Joint Prehearing Stipulation also contained certain facts which the parties had stipulated to the accuracy of. To the extent relevant, those stipulated facts have been included in this Recommended Order.

At the final hearing, Petitioner presented the testimony of Miryam Ruiz, Respondent, and Morris Goodwin, Jr. The testimony of Ms. Ruiz was taken by video teleconferencing between Tallahassee and Miami, Florida. All other witnesses appeared in Tallahassee. Petitioner's Exhibits numbered 1 through 25 were admitted without objection. Respondent testified in his own behalf and presented the testimony of Rachel Dugger, Claudette Brinson, Nathaniel G. Miller, and Morris Goodwin, Jr. Respondent's Exhibits numbered 1 through 11 were admitted without objection. Finally, Joint Exhibits 1 through 4 were admitted.

A two-volume Transcript of the final hearing was filed with the Division of Administrative Hearings on October 27, 2008. By agreement of the parties, proposed recommended orders were to be filed on or before December 5, 2008. Respondent filed a Proposed Recommended Order on November 26, 2008. Petitioner filed a Proposed Recommended Order and an Amended Proposed Recommended Order on December 5, 2008. Petitioner's Amended

Proposed Recommended Order and Respondent's Proposed Recommended Order have been fully considered in entering this Recommended Order.

All references to Florida Statutes and the Florida Administrative Code in this Recommended Order are to the versions applicable to this matter unless otherwise indicated.

#### FINDINGS OF FACT

##### A. The Parties.

1. Petitioner, the Department of Business and Professional Regulation (hereinafter referred to as the "Department"), is the state agency charged with regulating the practice of community association management pursuant to Chapters 455 and 468, Florida Statutes. (Stipulated Fact).

2. Robert Dugger, is and was at the times material to this proceeding a licensed Florida Community Association Manager (hereinafter referred to as a "CAM"), having been issued license number CAM 1148. (Stipulated Fact).

3. At the times material to this proceeding, Mr. Dugger's address of record was 7401 Beach View Drive, North Bay Village, Florida 33141.

##### B. Miramar Gardens.

4. At the times material to this proceeding, Mr. Dugger was employed by Timberlake Group, Inc. (hereinafter referred to

as "Timberlake"). In his capacity with Timberlake, Mr. Dugger served as the CAM for 30 homeowners' associations.

5. In particular, Mr. Dugger served as the CAM for Miramar Gardens Townhouse Homeowners' Association, Inc. (hereinafter referred to as the "Association"). (Stipulated Fact). The Association is made up of approximately 350 homeowner members.

6. The Association was initially created by the Miramar Gardens Townhouse Homeowners Association, Inc., Declaration of Covenants, Conditions and Restrictions adopted on or about December 16, 1975.

7. By-Laws for the Association were also adopted on December 16, 1975. Article X of the By-Laws provides the following homeowners' rights concerning the books and records of the Association:

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles and these By-Laws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

8. Prior to 2001, the Association, along with Vista Verde Townhome Homeowners Association (hereinafter referred to as "Vista Verde"), an adjacent community association, had been placed in receivership and was managed by a civilian board. These events came about due to the dismal state the two

communities were in. Crime was rampant, there were no street signs or lights, common areas and alleys were unkempt, there were abandoned vehicles, and the associations for both areas were essentially non-existent. Miami-Dade County had taken over ownership of many homes in the community by foreclosure.

9. Mr. Dugger became involved early with the reorganization and revitalization of the Association and Vista Verde. In 1997, Mr. Dugger was appointed by the receiver as the CAM for the Association and Vista Verde.

10. At the end of 2000, the Association was ready to govern itself. Toward that end, on or about December 21, 2000, the Association and Timberlake, entered into a Management Agreement (hereinafter referred to as the "Management Agreement"). Pursuant to the Management Agreement, Timberlake was designated as the "Exclusive Managing Agent" for the Association commencing January 1, 2001. Among the duties assumed by Timberlake, are the following:

**2) MAINTENANCE OF ASSOCIATION FILES:** The Manager will collect, organize and maintain in the office of the Manager, all Association information, including but not limited to the Articles of Incorporation, By-Laws, Declaration of, [sic] Covenants, Conditions and Restrictions, site plans, owner lists, correspondence, rules and regulations, blue prints, specifications, corporate minutes, all maintenance and service contracts in effect and the necessary administrative financial information related to the Association.

**8) ASSISTANCE TO THE BOARD OF DIRECTORS:**

The Manager will provide administrative support services to the Board of Directors, to include notifying Directors of Board meetings, circulating minutes of the preceding meeting, as prepared by the Secretary . . . .

11. Timberlake has continued to provide the services of Mr. Dugger as CAM since 2001. During his tenure, street signs and lights have been installed, the common areas have been cleared, and the community has greatly improved. Proposed findings of fact 14 through 19 of Mr. Dugger's Proposed Recommended Order generally describe Mr. Dugger's efforts as CAM, the improvement of the community, and Mr. Dugger's reputation as CAM.

C. Count I: Criminal Violations.

12. During 2003, Mr. Dugger served as a city commissioner for the City of North Bay Village, Florida (hereinafter referred to as the "Village").

13. On or about December 12, 2003, Mr. Dugger was charged with eight criminal violations in an Information issued in case number F03-33076, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The alleged violations arose out of Mr. Dugger's activities as a city commissioner for the Village.



14. Two of the criminal charges, Counts 2 and 8, are of pertinence to this matter: (a) Count 2 alleges a violation of Section 2-11.1(d), Miami-Dade County Code, and Section 125.69, Florida Statutes; and (b) Count 8 alleges a violation of Section 2-11.1(i), Miami-Dade County Code, and Section 125.69, Florida Statutes.

15. As to Count 2 of the Information, it was more specifically alleged, in pertinent part, as follows:

. . . ROBERT A. DUGGER SR., on or about April 08, 2003, in the County and State aforesaid, being a member of THE NORTH BAY VILLAGE COMMISSION, in Miami-Dade County, did vote on a matter presented to said COMMISSION, to wit: ITEM 7A, AN ORDINANCE AMENDING SECTION 152.029 OF THE NORTH BAY VILLAGE CODE OF ORDINANCES (FIRST READING), when said defendant would or might, directly or indirectly, profit or be enhanced by this action of said COMMISSION on said matter, in violation of Miami-Dade County Code s.2.11.1(d) and s. 125.69, Fla. Stat. . . .

16. As to Count 8 of the Information, it was more specifically alleged, in pertinent part, as follows:

. . . ROBERT A. DUGGER SR., on or about July 01, 2003, in the County and State aforesaid, being a MUNICIPAL OFFICIAL to wit: MEMBER OF THE NORTH BAY VILLAGE COMMISSION, in Miami-Dade County, did fail to comply with the financial disclosure requirements of Chapter 112 (Part III) of the Florida Statutes by failing to DISCLOSE ALL LIABILITIES IN PART E. OF FORM 1 STATEMENT OF FINANCIAL INTERESTS FOR 2002, filed with the City Clerk of THE CITY OF NORTH BAY VILLAGE, in violation of Miami-Dade County

Code s. 2-11.1(i) and s. 125.69, Fla. Stat.  
. . .

17. Counts 2 and 8 were based upon the following allegations of the Complaint/Arrest Affidavit:

Robert A. Dugger was elected Village Commissioner for the City of North Bay Village on November 19, 2002. On September 21, 2002, Mr. Robert Dugger filed his Statement of Financial Interest for the calendar year 2001, as required by Miami-Dade County ordinance. In Part E of the Statement of Financial Interest (this section is designated for Liabilities - major debts-and asks for the name and address of creditor), Mr. Dugger marked N/A in this section.

Commissioner Robert Dugger has substantial indebtedness to Al Coletta that was incurred when Al Coletta assumed the mortgage on one of Dugger's properties and paid off the mortgage on another. Rachael Dugger admitted these debts under oath during her sworn statement. Commissioner Dugger failed to report these debts on his Statement of Financial Interest.

Additionally, on March 15, 2001, a Summary Final Judgement of Foreclosure was ordered and adjudged on behalf International Financial Bank, against Tomin Incorporated, and Robert Dugger and Rachael Dugger personally, in the amount of \$1,154,427.50.

Following the Judgement on March 15, 2001, title of the property in question was acquire by International Finance Bank on Mary [sic] 2, 2001 and sold to a third party on June 1, 2001. The sale amount of the property was \$750,000. A short fall of \$404,427.50 remained after the sale and is still unpaid. Commissioner Dugger also failed to report this debt on his Statement of Financial Interest for the year 2001.

. . . .

Based on Commissioner Robert Dugger's indebtedness to Al Coletta, he had a Conflict of Interest by voting on matters involving Al Coletta, that came before the North Bay Village Commission, each vote is a separate violation of the Miami-Dade Code, Section 2-11.1(d), a second [degree] misdemeanor.

Commissioner Dugger violated the aforementioned Section 2-11.1(d), of the Miami-Dade Code on the following occasions:

1. April 8, 2002, Item 7A, Page 7 of the Regular City Commission Meeting Minutes:

A zoning amendment concerning property owned by Al Coletta. Page 14 of the Regular City Commission Meeting Minutes, Commissioner Dugger voted - yes, for approval of the ordinance.

. . . .

. . . . This action is in violation of Miami-Dade Code, Section 2-11.1(d), a second-degree misdemeanor . . . .

Additionally, Commissioner Dugger is in violation of Section 2-11.1(i)(3), Miami-Dade County Conflict of Interest and Code of Ethics Ordinance. This Section required that candidates for County and municipal office must comply with the filing requirements, under Chapter 112, Florida State Statutes. This is a second-degree misdemeanor. . . .

18. Section 2-11.1(d) of the Miami-Dade County Code, prohibits, in pertinent part, the following:

Additionally, no person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(a) in a manner distinct from the manner in which it would affect the public generally. . . .

19. Section 2-11.1(i)(3), of the Miami-Dade County Code, requires that candidates for County and municipal elective office meet the filing requirements of Chapter 112, Part III, Florida Statutes, "at the same time that candidate files qualifying papers."

20. Section 125.69, Florida Statutes, which provides procedures for the prosecution of county ordinances, states that they are to be prosecuted "in the same manner as misdemeanors are prosecuted."

21. On July 29, 2005, Mr. Dugger entered a plea of nolo contendere to Counts 2 and 8 of the Information, in case number F03-33076, both second-degree misdemeanor violations of Section 2-11.1 of the Miami-Dade County Code, and Section 125.69, Florida Statutes. (Stipulation of Fact).

22. Mr. Dugger was adjudicated guilty of the violations alleged in Counts 2 and 8, and was ordered to pay \$468.00 in fines and costs.

23. Mr. Dugger was, therefore, adjudicated guilty of having voted on a matter in which he had a conflict of interest because the matter involved an individual to whom he was indebted; and of having failed to fully disclose liabilities on financial disclosure forms he was required to file pursuant to Florida law at the time he qualified to run for public office.

24. Neither of the convictions directly involved Mr. Dugger's practice as a CAM. Nor has the Department made such an argument. Instead, the Department presented expert testimony in support of its position that at least one of the convictions relates to Mr. Dugger's ability to practice as a CAM. That testimony was convincing.

25. All CAMs are involved in a fiduciary relationship with the associations they manage. It takes little expert testimony to support a finding that such a fiduciary relationship requires trust and integrity. CAMs must be trusted to handle association money, maintain the records of the association, and to deal on behalf of the association with potential and existing vendors. The association must be able to assume that a CAM will fully disclose any possible conflict the CAM may have with the association's vendors.

26. Mr. Dugger is responsible for billing, writing checks, paying insurance premiums, and maintaining a payment book for the Association. Paragraph 10 of the Management Agreement specifically provides that Timberlake "shall provide financial management services to the Association . . . ." Paragraph D(11)(a) authorizes Timberlake to "solicit and analyze bids for necessary insurance coverage." Mr. Dugger has similar responsibilities with Vista Verde. Clearly, the Association must be able to trust that Mr. Dugger will carry out all these duties without having any conflict of interest. The Association must be able to assume that Mr. Dugger is acting in its best interest and not his own.

27. In his defense as to the voting of interest conflict charge, Mr. Dugger, prior to the pertinent vote, made disclosure of his relationship with Mr. Coletta, the owner of the property which was the subject of the vote, to the attorney for the City of the Village. The Department failed to prove that Mr. Dugger did not make full disclosure. Mr. Dugger was advised that no conflict existed. Mr. Dugger cast his vote after receiving this advice.

28. Subsequent to the vote, Mr. Dugger sought an opinion from the Miami-Dade County Commission on Ethics & Public Trust (hereinafter referred to as the "Commission"). The Commission,

like the city attorney, opined in writing that no conflict of interest existed.

29. Mr. Dugger entered his plea on the two charges in order to avoid the cost of litigation. The evidence, however, failed to prove why prosecutors agreed to accept a plea on only two of the eight counts.

D. Count IV: Alleged Denial of Access to the Records of the Association.

30. During 2003, Miryam Ruiz lived in Miramar Gardens Township and was a member of the Association. While she had been in arrears for 2001 and 2002, presumably in her association dues, she became current when she paid all outstanding dues in March 2003.

31. On March 14, 2003, during normal business hours, Ms. Ruiz went to the office of Timberlake and requested that she be allowed to inspect certain records of the Association. She made her request verbally and in writing, leaving Petitioner's Exhibit 13 with a Timberlake employee, apparently the receptionist, which listed the documents she wanted to inspect. She was told by the receptionist that she could not see the documents until she had made an appointment to do so.

32. By letter dated Thursday, March 27, 2003, Ms. Ruiz was informed by Mr. Dugger's wife, Rachel, that Ms. Ruiz could

review the documents. She was also told that, "[i]f you would like, call us to make an appointment at your convenience."

33. On the morning of Monday, March 31, 2003, not having received Ms. Dugger's March 27th letter, Ms. Ruiz sent a letter by facsimile to Timberlake stating that she would be at the office at 11:00 a.m. that morning to "pick up" the documents.

34. When Ms. Ruiz arrived at the Timberlake office at 11:00 a.m. she was again told that she could not review the documents because she had no appointment. Ms. Ruiz left the office. Later that day, Ms. Ruiz sent a second facsimile letter addressed to Ms. Dugger. Ms. Ruiz ended the letter by informing Ms. Dugger that she would be at the office the next day, April 1, 2003, "for the inspection and copying of records at 9:30 a.m."

35. On April 1, 2003, Ms. Ruiz returned to the Timberlake office and was again told that the records were not available because no appointment had been made. Ms. Ruiz told the receptionist that she would return on Friday, April 4, 2003, at 9:30 a.m. to inspect the documents. In a letter to Ms. Dugger dated April 1, 2003, she stated that she was confirming the date and time. The evidence failed to prove whether the letter was received prior to April 4, 2003.

36. When Ms. Ruiz arrived at the Timberlake office on April 4, 2003, she was again denied access to the documents and



was told by Ms. Dugger that she had no appointment because the date and time suggested by Ms. Ruiz had not been confirmed by Timberlake. Ms. Ruiz left the office.

37. The following day, April 5, 2003, Ms. Ruiz sent a letter by certified mail addressed to Mr. Dugger describing the events leading up to that moment and asking what it would take for her to be allowed to inspect the records. Mr. Dugger did not respond to this letter.

38. In response to Ms. Ruiz' April 5th letter, a letter dated April 22, 2003, was sent by Ms. Dugger. That letter indicated that the records would be available for inspection at 1:00 p.m. on Tuesday, May 6, 2003. The letter, which was postmarked May 2, 2003, ten days after the date of the letter, was not received by Ms. Ruiz prior to May 6th.

39. Sometime during the month of May 2003, approximately two months after first attempting to review the records of the Association, Ms. Ruiz was finally allowed to inspect the records.

40. Ms. Ruiz, without doubt, had the right to review the records of the Association she had requested. Pursuant to the Management Agreement, Mr. Dugger was required to collect, organize and maintain the records of the Association. The Management Agreement also required that Mr. Dugger was to assist the Board of Directors in their enforcement of the provisions of

the "Association documents and rules and regulations . . . ."  
Pursuant to Article X of the By-Laws of the Association, also  
quoted, supra, gives Association members the right to inspect  
and copy all Association documents

41. The right to inspect association documents is not an  
unfettered one. In light of the duty and responsibility of a  
CAM to "maintain" records, it is not unreasonable for a CAM to  
set reasonable safeguards for a member's review of those  
records. The Department did not produce evidence to refute the  
evidence presented by Mr. Dugger concerning the reasonableness  
of a CAM insisting on being present during the inspection of  
documents.

42. The evidence also failed to prove that, given the fact  
that Mr. Dugger is the CAM for as many as 30 associations, he is  
not always available at his office to supervise a review of  
documents.

43. The procedure followed with regard to reviews of the  
Association's had been announced at an Association meeting.  
Members were told that anyone who wished to review records could  
contact the Timberlake office and make an appointment so  
Mr. Dugger could be present during an inspection, or that a copy  
of a document could be obtained upon payment for the document.

44. It is clear that not all of the requests to Timberlake  
made by Ms. Ruiz were totally reasonable: (a) her first request

on April 14, 2003, was without any notice; (b) her notice of March 31, 2003, gave only three hours notice; (c) her request for review on April 1, 2003, gave only one day notice; and (d) her request for review on April 4, 2003, gave only 3 days notice.

45. While Ms. Ruiz eventually was allowed to review the documents, it took approximately two months after her initial request had been made. It is also clear that, although she did not always give reasonable notice for appointments she announced, Mr. Dugger (and his employees) could and should have done more to remedy the situation. Mr. Dugger first became aware of the request on March 14, 2003. It took 13 days to respond to that request. When Ms. Ruiz mailed a certified letter to Mr. Dugger dated April 5, 2003, it was not until May 2, almost a month later that a letter in response to that letter was post-marked.

46. Based upon the foregoing, while neither Ms. Ruiz nor Mr. Dugger did much to ameliorate the situation, for at least part of the two months it took Ms. Ruiz to obtain access to the records of the Association, Mr. Dugger "denied" Ms. Ruiz access to the records of the Association.

E. Count VI: Alleged Failure to Maintain Association Records.

47. Pursuant to the Management Agreement entered into by Mr. Dugger with Miramar Gardens, at paragraph D(2), quoted, supra, Mr. Dugger agreed to collect, organize, and maintain all Association documents in the offices of Timberlake.

48. Beginning in 2001, the minutes of meetings of the Association (held jointly with the meeting of Vista Verde) were usually taken by Claudette Brinson, president of the Association. On occasions, they were taken by others.

49. Minutes taken by Ms. Brinson were written by hand and, after the meeting, were taken home with her. On some occasions, Ms. Brinson would ensure that her hand-written minutes were typed at various locations, including Mr. Dugger's office. When typed at Mr. Dugger's office, a copy was retained by Mr. Dugger and maintained with the records of the Association.

50. Ms. Brinson's testimony at hearing as to whether Mr. Dugger was given a copy of all minutes was in conflict. She initially testified that she had provided him with a copy of all minutes. When recalled by Mr. Dugger, she testified that on some occasions, when she did not have the minutes typed at Mr. Dugger's office, while maintaining a copy at her home, she did not always provide him with a copy. While the latter testimony was more convincing and has been credited, the bottom

line is that Mr. Dugger did not maintain a copy of the minutes from all meetings of the Association.

51. At hearing, Mr. Dugger admitted that when he was served an Investigative Subpoena Duces Tecum issued by the Department on or about August 30, 2004, he realized that he did not have all the records the subpoena sought. In particular, Mr. Dugger did not have all of the documents requested in item number 5 of the subpoena: "[t]he minutes of all meetings of the board of directors and of the members of Miramar Gardens Townhouse Homeowners Association, Inc." Mr. Dugger, therefore, contacted Ms. Brinson and asked her if she could provide a copy of the minutes of Association meetings that he did not have. She was not able to do so within the time Mr. Dugger had to respond to the subpoena.

52. In a letter to the Department dated September 17, 2004, Mr. Dugger indicted the following with regard to the minutes requested in item number 5 of the subpoena: "The Minutes in our possession. Original minute meetings are in the hands of the Receiver, which were retained for his records. Some additional minutes are in the hands of Board members, which we will attempt to locate."

53. During calendar year 2002, minutes had been kept for meetings held during February, March, April, May, June, July, October, and December. During calendar year 2003, minutes had

been kept for meetings held during January, February, March, May, June, July, August, September, October, and November. Finally, during calendar year 2004, minutes were kept for meetings held in January, February, March, April, July, August and September. Mr. Dugger at the time of responding to the Department's subpoena did not have minutes for all of these meetings. For example, for 2002 he only had minutes for the meetings held in February, March, and June, and for 2003, he only had minutes for the meetings held in January and December.

54. While Ms. Brinson adequately explained why she was not always able to provide a copy of meeting minutes to Mr. Dugger, Mr. Dugger did not provide an adequate explanation as to why he had not made sure that he obtained a copy of all minutes so that he could fulfill his obligation under the Management Agreement.

55. No evidence was presented to suggest that Mr. Dugger's failure to maintain all minutes was the result of bad faith or any intent on the part of Mr. Dugger to circumvent the rules of the Department or the requirements of the Management Agreement.

F. Prior Discipline Against Mr. Dugger's CAM License.

56. Mr. Dugger's CAM license was disciplined in DBPR Case Number 00-02226, pursuant to a Stipulation entered into by the Department and Mr. Dugger which was accepted by Final Order entered on April 9, 2001.

57. The Stipulation provides that Mr. Dugger "neither admits or denies the . . . facts alleged in the Administrative Complaint . . . ."

CONCLUSIONS OF LAW

A. Jurisdiction.

58. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

B. The Burden and Standard of Proof.

59. In the Amended Administrative Complaint, the Department seeks to impose penalties against Mr. Dugger, including suspension or revocation of his license and/or the imposition of an administrative fine. The Department, therefore, has the burden of proving the allegations of the Amended Administrative Complaint by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Nair v. Department of Business & Professional Regulation, 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

60. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA

1989), the court defined "clear and convincing evidence" as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

C. The Charges Against Mr. Dugger.

61. The remaining charges in this matter involve alleged violations of Sections 468.436(1)(a), and 468.436(1)(b)5., Florida Statutes.

62. Section 468.436(1)(a), Florida Statutes, provides that disciplinary action may be taken against the license of a CAM if it is found that the CAM has violated any provision of Section 455.227(1), Florida Statutes. In Count I of the Amended Administrative Complaint, it is alleged that Mr. Dugger violated Section 468.436(1)(a), Florida Statutes, by violating Section 455.227(1)(c), Florida Statutes.

63. Section 468.436(1)(b)5., Florida Statutes, provides that disciplinary action may be taken against the license of a CAM if it is found that the CAM is guilty of "[c]ommitting acts of gross misconduct or gross negligence in connection with the



profession." Florida Administrative Code Rule 61-20.503, defines "Standards of Professional Conduct" applicable to CAMs and provides that the violation of any of those standards constitutes an "act of gross misconduct or gross negligence."

64. In Count IV of the Amended Administrative Complaint, it is alleged that Mr. Dugger violated Section 468.436(1)(b)5., by having violated Florida Administrative Code Rule 61-20.503(6)(b). In Count VI of the Amended Administrative Complaint, it is alleged that Mr. Dugger violated Section 468.436(1)(b)5., by having violated Florida Administrative Code Rule 61-20.503(6)(d).

65. Being penal in nature, Section 468.436, Florida Statutes, "must be construed strictly, in favor of the one against whom the penalty would be imposed." Munch v. Department of Professional Regulation, Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992).

D. Count I; Violation of Section 468.436(1)(a), Florida Statutes, by violating Section 455.227(1)(c), Florida Statutes.

66. Section 455.227(1)(c), Florida Statutes, provides the following:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

. . . .

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

67. The Department has alleged that Mr. Dugger has been "convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession" by having been adjudicated guilty of Counts 2 and 8 of the Information.

68. Obviously, neither of the convictions relate to, or arose out of, Mr. Dugger's practice as a CAM. The issue, therefore, is whether the convictions relate to Mr. Dugger's ability to practice as a CAM. The testimony in support of the Department's position was convincing as to the relation of Mr. Dugger's adjudication of guilt as to Count 2 and its relation to his ability to practice as a CAM.

69. Mr. Dugger's integrity must be above reproach in order for him to effectively carry out his fiduciary and contractual responsibilities to the Association and the other 29 associations he represents. The adjudication of guilt as to Count 2 of the Information raises questions about Mr. Dugger's ability to do so.

70. Mr. Dugger's efforts to ensure that there was no voting conflict of interest may, when viewed alone, justify a finding that his conviction of Count 2 of the Information does not constitute a breach of trust and his fiduciary duty to the Association and, therefore, does not relate to his ability to practice his profession. It must be recalled, however, that Mr. Dugger was charged with more than the one count for which he was ultimately convicted. It must also be remembered that the statute turns, not on whether an individual is actually guilty of an offense, but simply on whether there a CAM was convicted or found guilty of, or entered a plea of nolo contendere to the crime. Clearly there was such a conviction in this case. Mr. Dugger's efforts do not, therefore, support a finding that the Department has not met its burden of proof. His efforts, however, clearly mitigate against any harsh penalty being imposed on Mr. Dugger for this violation.

71. As to the adjudication of guilt on Count 8 of the Information, little in the way of evidence was presented to support the Department's position that the offense involves Mr. Dugger's ability to practice as a CAM. Nor has the Department explained in its post-hearing submittal how Count 8 relates to his ability to practice as a CAM.

72. Based upon the foregoing, it is found that the Department has proved clearly and convincingly that Mr. Dugger

violated Section 468.436(1)(a), Florida Statutes, by having violated Section 455.227(1)(c), Florida Statutes, due to his adjudication of guilt as to Count 2 of the Information. The Department failed to do so, however, as to his conviction of Count 8.

E. Count IV; Violation of Section 468.436(1)(b)5., Florida Statutes, by violating Florida Administrative Code Rule 61-20.503(6)(b).

73. Florida Administrative Code Rule 61-20.503(6)(b) provides the following standard of professional conduct with regards to "records":

A licensee or registrant shall not deny access to association records, for the purpose of inspecting or photocopying the same, to a person entitled to such by law, to the extent and under the procedures set forth in the applicable law.

74. Clearly, Ms. Ruiz was denied access to documents of the Association which she was entitled to inspect, at least for close to two weeks. It is also clear, however, that not all of the requests made by Ms. Ruiz were totally reasonable. Ultimately, despite the fact that Ms. Ruiz did not always give reasonable notice for appearances she made at the offices of Timberlake, Mr. Dugger could and should have done more to remedy the situation. Mr. Dugger first became aware of the request on March 14, 2003. It took 13 days to respond to that request.

When Ms. Ruiz mailed a certified letter to Mr. Dugger dated April 5, 2003, it took until May 2, almost a month later, for Timberlake to respond to that letter.

75. Based upon the foregoing, while neither Ms. Ruiz nor Mr. Dugger did much to ameliorate the situation, for at least part of the two months it took Ms. Ruiz to obtain access to the records of Miramar Gardens, Mr. Dugger "denied" Ms. Ruiz access. It is, therefore, concluded that the Department proved clearly and convincingly that Mr. Dugger violated Section 458.436(1)(b)5., Florida Statutes, by violating Florida Administrative Code Rule 61-20.503(6)(b) as alleged in Count IV.

F. Count VI; Section 458.436(1)(b)5., Florida Statutes, by violating Florida Administrative Code Rule 61-20.503(6)(d).

76. Florida Administrative Code Rule 61-20.503(6)(d). provides the following standard of professional conduct with regards to "records":

A licensee or registrant shall not, to the extent charged with the responsibility of maintaining records, fail to maintain his or its records, and the records of any applicable community association, in accordance with the laws and documents requiring or governing the records.

77. Pursuant to the Management Agreement, Mr. Dugger was unequivocally charged with the responsibility to "collect, organize and maintain in [Mr. Dugger's office] all Association

information, including but not limited to . . . corporate minutes . . . ."

78. The evidence proved clearly and convincingly that Mr. Dugger failed to "collect, organize, and maintain" minutes of meetings of the Association consistent with his responsibility under the Management Agreement.

79. Based upon the foregoing, the Department proved clearly and convincingly that Mr. Dugger violated Section 468.436(1)(b)5., Florida Statutes, by having violated Florida Administrative Code Rule 61-20.503(6)(d)., as alleged in Count VI of the Amended Administrative Complaint. Mr. Dugger's argument that he did not commit this violation because the Association failed to provide him with a copy of the minutes ignores the fact that his responsibility under the Management Agreement also included the duty to "collect" those minutes.

G. The Appropriate Penalty.

80. The only issue remaining for consideration is the appropriate disciplinary action which should be taken by the Department against Mr. Dugger for the violations that have been proved. To resolve this issue it is necessary to consult the "disciplinary guidelines" of Florida Administrative Code Rule 61-20.010. Those guidelines effectively place restrictions and limitations on the exercise of the Department's disciplinary authority in this case. See Parrot Heads, Inc. v. Department of

Business and Professional Regulation, 741 So. 2d 1231, 1233 (Fla. 5th DCA 1999)("An administrative agency is bound by its own rules . . . creat[ing] guidelines for disciplinary penalties."); and § 455.2273(5), Fla. Stat.

81. The Department has proved that Mr. Dugger violated Section 468.436(1)(a), Florida Statutes, by violating Section 455.227(1)(c), Florida Statutes as alleged, in part, in Count I of the Amended Administrative Complaint. The penalty guideline for this violation ranges from a suspension of one year, a \$1,000.00 fine, and costs, to revocation, a \$5,000.00 fine, and costs.

82. The Department also proved that Mr. Dugger committed two violations of Section 468.436(1)(b)5., Florida Statutes. These are Mr. Dugger's second and third violations of this provision. The penalty guideline for a single violation of this statutory provision ranges from a \$2,500.00 fine and costs, to revocation, a \$5,000.00 fine, and costs.

83. In addition to considering the adopted penalty ranges, Florida Administrative Code Rule 61-20.010(2), provides for a consideration of certain aggravating and mitigating circumstances:

- (a) Danger to the public;
- (b) Physical or financial harm resulting from the violation;
- (c) Prior violations committed by the subject;

- (d) Length of time the registrant or licensee has practiced;
- (e) Deterrent effect of the penalty;
- (f) Correction or attempted correction of the violation;
- (g) Effect on the registrant's or licensee's livelihood;
- (h) Any efforts toward rehabilitation;
- (i) Any other aggravating or mitigating factor which is directly relevant under the circumstances.

84. The Department has recognized in its post-hearing submittal, the contribution that Mr. Dugger made to the Association during troubling times and his relationship with the leadership of the Association and Vista Verde.

85. As an aggravating factor, the Department has argued that Ms. Ruiz was "needlessly put to undue aggravation and frustration for simply attempting to review the Association records of *her* community." While this suggestion has some merit, this aggravating circumstance is mitigated by Ms. Ruiz' own actions, which were not always reasonable.

86. As to Count I of the Amended Administrative Complaint, an additional mitigating factor not considered by the Department is the effort that Mr. Dugger made to avoid committing the violation for which he was ultimately adjudicated guilty.

87. Finally, as to Count VI of the Amended Administrative Complaint, while Mr. Dugger failed to maintain records he was suppose to have been collecting, those minutes had been



prepared, were maintained by the President of the Association and were ultimately available.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation enter a final order finding that Mr. Dugger committed the violations described in this Recommended Order and imposing the following penalties:

1. A stayed suspension of his license for six months, with the stay being lifted should Mr. Dugger be found to have committed any additional violation with regard to his CAM license within two years of the issuance of the final order in this case;
2. An administrative fine in the amount of \$1,500.00;
3. Attendance at continuing education classes in records maintenance in an amount to be determined by the Department; and
4. Payment of the costs of this matter.

DONE AND ENTERED this 22nd day of January, 2009, in  
Tallahassee, Leon County, Florida.



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LARRY J. SARTIN  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 22nd day of January, 2009.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.