

FILED

AUG 02 2017

REAL ESTATE COMMISSION
BY *Robert Allred*

1 **Marquis Aurbach Coffing**
2 Scott A. Marquis, Esq.
3 Nevada Bar No. 6407
4 10001 Park Run Drive
5 Las Vegas, Nevada 89145
6 Telephone: (702) 382-0711
7 Facsimile: (702) 382-5816
8 smarquis@maclaw.com
9 Attorneys for Gordon Allred

6 **BEFORE THE REAL ESTATE COMMISSION**

7 **STATE OF NEVADA**

8 SHARAT CHANDRA, Administrator
9 REAL ESTATE DIVISION, DEPARTMENT
10 OF BUSINESS & INDUSTRY,
11 STATE OF NEVADA,

Case No.: 2016-1734

ANSWER TO COMPLAINT

Petitioner,

12 vs.

13
14 GORDON ROBERT ALLRED,

Respondent.

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17 **ANSWER TO COMPLAINT**

18 COMES NOW Respondent GORDON ROBERT ALLRED, by and through his counsel
19 of record, Scott Marquis of Marquis Aurbach Coffing, and in answer to the Complaint would
20 show as follows:

21 **JURISDICTION**

22 Respondent denies the allegations of this paragraph.

23 **FACTUAL ALLEGATION**

24 1. In answer to Paragraph 1 of the Complaint, Respondent admits that he was not
25 licensed by the Division. Respondent lacks knowledge or information sufficient to form a belief
26 as to the truth of the allegations regarding the Division's understanding of the relevant time
27 period, and therefore denies the remaining allegations in Paragraph 1.

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MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 2. In answer to Paragraph 2 of the Complaint, Respondent admits he did not hold a
2 Cooperative Certificate from the Division. Respondent lacks knowledge or information
3 sufficient to form a belief as to the truth of the allegations regarding the Division's understanding
4 of the relevant time period, and therefore denies the remaining allegations in Paragraph 2.

5 3. In answer to Paragraph 3 of the Complaint, Respondent admits the allegations of
6 Paragraph 3.

7 4. In answer to Paragraph 4 of the Complaint, Respondent admits that he was an
8 agent for Marcus & Millichap Real Estate Investment Services, Inc. ("Marcus & Millichap")
9 located in Ontario, California. Otherwise, Respondent denies the remaining allegations in
10 Paragraph 4.

11 5. In answer to Paragraph 5 of the Complaint, Respondent admits that he signed an
12 Interstate Brokerage Cooperation Agreement regarding commercial property located at 1101
13 South Highway 160, Pahrump, Nevada ("Best Western Cooperation Agreement"). Otherwise,
14 Respondent denies the remaining allegations in Paragraph 5.

15 6. In answer to Paragraph 6 of the Complaint, Respondent admits that he signed the
16 Best Western Cooperation Agreement on or about January 27, 2016 and that it has the quoted
17 language. Otherwise, Respondent denies the remaining allegations in Paragraph 6.

18 7. In answer to Paragraph 7 of the Complaint, Respondent admits that the Best
19 Western Cooperation Agreement has the quoted language. Otherwise, Respondent denies the
20 remaining allegations in Paragraph 7.

21 8. In answer to Paragraph 8 of the Complaint, Respondent admits that the referenced
22 Checklist identifies Division Form 542. Otherwise, Respondent denies the remaining allegations
23 in Paragraph 6.

24 9. In answer to Paragraph 9 of the Complaint, Respondent denies the allegations of
25 Paragraph 9.

26 10. In answer to Paragraph 10 of the Complaint, Respondent admits the allegations of
27 Paragraph 10.

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1 11. In answer to Paragraph 11 of the Complaint, Respondent admits that the seller's
2 settlement statement shows a \$249,000.00 commission to "Marcus & Millichap." Otherwise,
3 Respondent denies the remaining allegations of Paragraph 11.

4 12. In answer to Paragraph 12 of the Complaint, Respondent admits that he signed an
5 Interstate Brokerage Cooperation Agreement regarding commercial property located at 650 West
6 Front Street, Battle Mountain, Nevada ("Battle Mountain Cooperation Agreement"). Otherwise,
7 Respondent denies the remaining allegations in Paragraph 12.

8 13. In answer to Paragraph 13 of the Complaint, Respondent states that the
9 allegations are vague, ambiguous and unintelligible as to the time, place, location or other
10 context of the alleged identification and therefore responds that he lacks sufficient information or
11 belief to admit or deny how Marcus & Millichap may have identified Respondent, and on that
12 basis denies the allegations of Paragraph 13.

13 14. In answer to Paragraph 14 of the Complaint, Respondent admits that he signed the
14 Battle Mountain Cooperation Agreement on or about February 10, 2015 and that it has the
15 quoted language. Otherwise, Respondent denies the remaining allegations in Paragraph 14.

16 15. In answer to Paragraph 15 of the Complaint, Respondent admits that the Best
17 Battle Mountain Agreement has the quoted language. Otherwise, Respondent denies the
18 remaining allegations in Paragraph 15.

19 16. In answer to Paragraph 16 of the Complaint, Respondent admits that there is an
20 unsigned draft memorandum that has the quoted language. Otherwise, Respondent denies the
21 remaining allegations in Paragraph 16.

22 17. In answer to Paragraph 17 of the Complaint, Respondent admits that he signed an
23 Interstate Brokerage Cooperation Agreement regarding property located at 4300 West Tropicana
24 Avenue, Las Vegas, Nevada ("Casino Site Cooperation Agreement"). Otherwise, Respondent
25 denies the remaining allegations in Paragraph 17.

26 18. In answer to Paragraph 18 of the Complaint, Respondent admits that draft
27 versions of marketing materials for the Casino Site may identify Respondent. Respondent lacks
28 information and belief sufficient to determine what the Division means by "the exclusive land

1 offering advertisement" and therefore denies the remaining allegations of Paragraph 18.

2 19. In answer to Paragraph 19 of the Complaint, Respondent admits that draft
3 versions of marketing materials for the Casino Site may identify Respondent. Respondent lacks
4 information and belief sufficient to determine what the Division means by "other
5 advertisements" and therefore denies the remaining allegations of Paragraph 19.

6 20. In answer to Paragraph 20 of the Complaint, Respondent states that the
7 allegations are vague, ambiguous and unintelligible as to the time, place, location or other
8 context of the alleged identification and therefore responds that he lacks sufficient information or
9 belief to admit or deny how Marcus & Millichap may have identified Respondent, and on that
10 basis denies the allegations of Paragraph 20.

11 21. In answer to Paragraph 21 of the Complaint, Respondent admits that he signed the
12 Casino Site Cooperation Agreement on or about February 9, 2015 and that it has the quoted
13 language. Otherwise, Respondent denies the remaining allegations in Paragraph 21.

14 22. In answer to Paragraph 22 of the Complaint, Respondent admits that the Casino
15 Site Cooperation Agreement has the quoted language. Otherwise, Respondent denies the
16 remaining allegations of Paragraph 22.

17 23. In answer to Paragraph 23 of the Complaint, Respondent admits that the
18 memorandum has the quoted language. Otherwise, Respondent denies the remaining allegations
19 in Paragraph 23.

20 24. In answer to Paragraph 24 of the Complaint, Respondent states that the
21 allegations are vague, ambiguous and unintelligible as to the circumstances of the alleged
22 entitlement and therefore responds that he lacks sufficient information or belief to admit or deny
23 the allegations, and on that basis denies the allegations of Paragraph 24.

24 25. In answer to Paragraph 25 of the Complaint, Respondent admits the allegations of
25 Paragraph 25.

26 **VIOLATIONS**

27 26. In answer to Paragraph 26 of the Complaint, Respondent denies the allegations
28 contained therein.

DISCIPLINE AUTHORIZED

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2 27. The allegations contained in Paragraph 27 of the Complaint state legal
3 conclusions and do not require a response from the Respondent; however, to the extent a
4 response is required by rule, Respondent denies the allegations that are inconsistent with the
5 referenced statutes.

6 28. The allegations contained in Paragraph 28 of the Complaint state legal
7 conclusions and do not require a response from the Respondent; however, to the extent a
8 response is required by rule, Respondent denies the allegations that are inconsistent with the
9 referenced statutes.

10 29. The allegations contained in Paragraph 29 of the Complaint requests disciplinary
11 action and do not require a response from the Respondent; however, to the extent a response is
12 required by rule, Respondent denies the allegations contained therein.

DEFENSES & AFFIRMATIVE DEFENSES

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14 30. The Complaint fails to state a claim against the Respondent upon which relief
15 may be granted.

16 31. The Respondent is not guilty of violating any Order of the Nevada Real Estate
17 Commission, any agreement with the Nevada Real Estate Division, or any provision of NRS 645
18 or any regulation adopted pursuant thereto.

19 32. The Respondent is not guilty of not exercising reasonable skill and care with
20 respect to all parties to the real estate transactions at issue.

21 33. To the extent the Division has failed to produce all communications, reports,
22 affidavits, or depositions in its possession which are relevant to the Complaint, the Complaint
23 and the Division's claims should be barred. To the extent the Division intends to present
24 evidence at the hearing obtained after notice to Respondent, it must show that the evidence was
25 not available after diligent investigation before the time notice was given and the evidence was
26 given or communicated to Respondent immediately after it was obtained.

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1 34. To the extent that it seeks to do so by its Complaint, the Division lacks standing to
2 enforce any agreements identified in the Complaint to which Respondent is a party.

3 35. Respondent is not guilty of any violation because the licensing and cooperative
4 certificate scheme promulgated by the Nevada Real Estate Commission and/or the Nevada Real
5 Estate Division, including NAC 645.180, 645.183, and 645.185, violates the United States
6 Constitution's Commerce Clause for essentially the reasons set forth in Respondent's complaint
7 in the currently pending lawsuit styled No. 2-16-CV-01299 *Marcus & Millichap Real Estate*
8 *Investment Services of Nevada, Inc. et al. v. Decker et al.*, in the United States District Court for the
9 District of Nevada, Southern Division, a copy of which is attached as **Exhibit 1**.

10 36. Respondent is not guilty of any violation because the Nevada Real Estate
11 Commission ("NREC") and/or the Nevada Real Estate Division ("NRED") promulgated their
12 licensing and cooperative certificate scheme, including NAC 645.180, 645.183, and 645.185,
13 without following the required statutes, rules and regulations, including without limitation:

14 a. NREC failed to comply with the requirements for deliberating only in
15 public meetings pursuant to a duly posted agenda with sufficient opportunity for informed and
16 meaningful participation by the public, and that such public meetings include a discussion of the
17 true purpose and true effect of a proposed regulation.

18 b. NREC and NRED failed to comply with the requirements for Regulation
19 Workshops pursuant to a duly posted agenda with sufficient opportunity for informed and
20 meaningful participation by the public, and with public discussion of the true purpose and true
21 effect of a proposed regulation.

22 c. NREC and NRED failed to comply with the requirements for a Notice of
23 Intent to Act Upon a Regulation that includes the true purpose and need of a proposed regulation,
24 the true estimated economic effect of a proposed regulation, and the true effect on federal law
25 including the United States Constitution.

26 d. NREC failed to comply with the requirements for written minutes of
27 meetings accurately reflecting the basis for actions taken by NREC.

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1 e. On information and belief, NREC violated the prohibition on ex parte
2 communications regarding matters pending before NREC.

3 f. NREC failed to comply with the requirement that the purpose of and
4 policy behind a regulatory scheme be discussed in an open meeting and reflected in the written
5 minutes thereof.

6 g. NRED failed to comply with the requirement that its Administrator
7 provide an advisory opinion in appropriate circumstances.

8 h. NREC and NRED failed to comply with the requirement that a regulatory
9 scheme be preceded by and supported by a duly issued and considered Small Business Impact
10 Statement.

11 j. NREC and NRED failed to comply with the requirement under NRS
12 233B.066 that a regulatory scheme be preceded by and supported by a Legislative Review that
13 identifies a true explanation of the need for the regulation, a true description of how public
14 comment was solicited, a true summary of public response, and a true estimate of the economic
15 effect of the regulation on the business which it is to regulate and on the public.

16 k. NRED failed to comply with the requirement under NAC 645.680 that the
17 complaint against Respondent be made on a standard form or affidavit.

18 l. NRED failed to adequately investigate the charges against Respondent.
19 For instance, NRED failed to make any attempt to contact any consumers or any of the parties to
20 the transactions identified in the Complaint.

21 m. NRS 645.680 requires that Respondent be provided, at least 30 days prior
22 to any scheduled hearing, copies of *all* communications, reports, affidavits and depositions in the
23 possession of NRED relevant to the Complaint. NRED and NREC have failed and refused to
24 comply with this provision. On information and belief, NRED and NREC contend that they can
25 produce only those records on which they intend to rely, which is a plain violation of NRS
26 645.680, and which denies Respondent's due process rights.

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n. NRED and NREC have historically interpreted and enforced NAC 645.185 in a manner that was contradictory to the plain language of the regulation. Namely, they have always precluded out of state brokers from offering real estate for sale in Nevada to a person other than a resident of Nevada, even though NAC 645.185 expressly allowed out of state brokers to offer real estate in Nevada for sale to a person other than a resident of Nevada.

37. Respondent is not guilty of any violation because the Nevada Real Estate Commission and/or the Nevada Real Estate Division promulgated their licensing and cooperative certificate scheme, including NAC 645.180, 645.183, and 645.185, without statutory authority and in violation of the NRS 645.605.

38. As historically and currently interpreted by NREC and NRED, the statutes and regulations relating to out of state brokerage activities are so ambiguous as to be unenforceable.

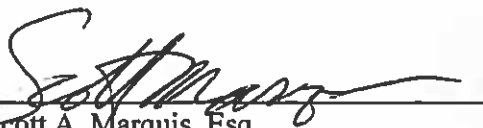
39. The Complaint is so ambiguous, uncertain and unintelligible that it fails to put Respondent on adequate notice of the charges against him, and therefore is a denial of Respondent's due process rights.

AFFIRMATION

40. Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the personal information of any person as defined in NRS 603A.040.

DATED this 2nd day of August, 2017.

MARQUIS AURBACH COFFING

By 
Scott A. Marquis, Esq.
Nevada Bar No. 6407
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney for Gordon Allred

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

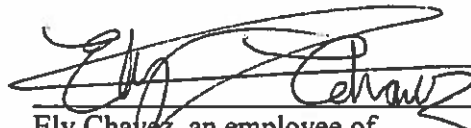
CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, a true and correct copy of the foregoing instrument was served on the following parties:

Via Email
REAL ESTATE DIVISION
STATE OF NEVADA
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
Attn: Rebecca Hardin, Commission Coordinator
Telephone: (702) 486-4074
Facsimile: (702) 486-4067
rhardin@red.nv.gov

Via Email
Keith A. Kizer
Senior Deputy Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3326
kkizer@ag.nv.gov
Attorney for Real Estate Division

DATED this 2nd day of August, 2017.


Ely Chavez, an employee of
Marquis Aurbach Coffing