

FILED

OCT 02 2017

REAL ESTATE COMMISSION
BY *[Signature]*

1 **PET**
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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SHARATH CHANDRA, Administrator, REAL
14 ESTATE DIVISION, DEPARTMENT OF
15 BUSINESS AND INDUSTRY, STATE OF
16 NEVADA,

Case No.: 13-11-05-153

Petitioner,

vs.

SHARON (DYLAN) SHINA,

Respondent.

17 **RESPONDENT SHARON (DYLAN) SHINA'S PETITION FOR REHEARING AND**
18 **REQUEST TO STAY ENFORCEMENT OF THE ORDER FILED SEPTEMBER 15, 2017**

19 COMES NOW, Respondent SHARON (DYLAN) SHINA, by and through his counsel DORIS
20 NEHME-TOMALKA, ESQ. and hereby files his Petition for Rehearing and his Request for a Stay
21 of Enforcement of the September 15, 2017 Order pending a decision being made on the instant
22 Petition. Pursuant to NAC 645.850 (7), a rehearing may be granted by the Commission for any of
23 the following causes or grounds:

- 24 (a) Irregularity in the proceedings in the original hearing;
- 25 (b) Accident or surprise which ordinary prudence could not have guarded against;
- 26 (c) Newly discovered evidence of a material nature which the applicant could not with reasonable
27 diligence have discovered and produced at the original hearing; or
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1 (d) Error in law occurring at the hearing and objected to by the applicant during the earlier
2 hearing.

3 I. PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS

4 On January 10, 2014, an Order Approving Stipulation of Facts and Liability And Disciplinary
5 Order was filed by the Real Estate Commission (hereinafter referred to as the "January 10, 2014
6 Disciplinary Order"). The January 10, 2014 Disciplinary Order followed a hearing which came
7 during a regular agenda meeting on December 11, 2013. At that hearing, Respondent was
8 represented by his then current counsel. The January 10, 2014 Disciplinary Order found that
9 Respondent was subject to discipline pursuant to NRS and NAC Chapters 645, and ordered the
10 following:
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- 12 1. That Respondent shall pay to the Division a total fine of \$115,000.00 by May 12, 2014
13 (which would have been within 90 days after February 11, 2014-the effective date of the
14 Order); and
15
- 16 2. Respondent was required to appear before the Commission if he ever applied for any license
17 from the Division.

18 As for the \$115,000.00 fine, the January 14, 2010 Disciplinary Order stated that the Real Estate
19 Division may institute debt collection proceedings if Respondent failed to pay the entire fine amount
20 by May 12, 2014. Within the January 10, 2014 Disciplinary Order, the Commission did not impose
21 any restrictions on Respondent's ability to continue to work as a realtor, and his license remained in
22 active status just as it has been prior the filing of the Order. Also, the January 10, 2014 Disciplinary
23 Order did not contained any provisions or any language which stated that Respondent would be
24 subjected to any further disciplinary action if he did not pay the fine in full by May 12, 2014, as
25 ordered. The only consequence noted in the Order for Respondent's failure to timely pay the fine
26 in full was that Respondent may be subjected to future debt collection proceedings. The January 14,
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1 2010 Disciplinary Order concluded with the following language, as does just about every
2 disciplinary order form the Real Estate Commission states: the "Commission retains jurisdiction for
3 correcting any errors that may have occurred in the drafting or issuance of the order."

4 Respondent was not able to pay the \$115,000.00 fine in full by May 12, 2014. Three (3) years
5 and eight (8) months have passed since the filing of the January 10, 2014 Disciplinary Order. Upon
6 information and belief, the Division did not institute any debt collection proceedings related to the
7 January 10, 2014 Disciplinary Order.

8 Respondent did not apply for any new licenses from the Division. However, after January 10,
9 2014, Respondent continued to work as a licensed realtor, and he continued to renew his license and
10 active status with the Real Estate Division. Respondent was able to renew his license without
11 incident, and with each renewal he proceeded, the Division did not raise any issues or concerns
12 regarding Respondent having continued to work as a realtor. Since January 10, 2014, Respondent's
13 license has been in active status. Respondent's "active status" means that he has been in good
14 standing with the Division and was allowed to engage in the real estate business following the filing
15 of the January 10, 2014 Disciplinary Order. NAC 645.010. Although NAC 645.695 permits the
16 Administrator to recommend both a fine and a suspension or revocation of a licensee's license, no
17 such provision for suspension or revocation was set forth in the January 10, 2014 Disciplinary Order
18 following the hearing.

19 On September 15, 2017, an Amended Order Approving Stipulation of Facts and Liability And
20 Disciplinary Order filed by the Real Estate Commission (hereinafter referred to as the "September
21 15, 2017 Amended Disciplinary Order"). This Amended Order, while purporting to correct "an
22 error" that had allegedly occurred in the drafting of the January 10, 2014 Disciplinary Order, actually
23 modified all of the disciplinary actions which had been previously imposed on the Respondent
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1 almost four (4) years prior. The "September 15, 2017 Amended Disciplinary Order now orders the
2 following:

- 3 1. That Respondent's license is REVOKED effective October 19, 2017;
- 4 2. That the fine of \$115,000.00 which Respondent was previously ordered to pay in full by May
5 12, 2014 is now due to be paid on a monthly installment plan, with an initial payment of
6 \$1,916.47 due by January 17, 2018 and \$1,916.67 every month thereafter until paid in full.
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8 As was ordered back in January of 2014, Respondent was again ordered to appear before the
9 Commission if he ever applies for any license from the Division. Further, the September 15, 2017
10 Amended Disciplinary Order contained the Commission's standard boilerplate language that the
11 "Commission retains jurisdiction for correcting any errors that may have occurred in the drafting or
12 issuance of the order."
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14 Upon contacting the Division, Respondent's counsel was advised that the revocation of
15 Respondent's license and the implementation of a payment plan (on an already past due amount and
16 a lapsed payment deadline) is being carried out pursuant to the language in the January 10, 2014
17 Disciplinary Order which allows the Commission to correct an error. Presumably, the Commission
18 is now alleging that in the January 10, 2014 Disciplinary Order, 1) it intended to revoke
19 Respondent's license effective February 11, 2014 but did not do so because it committed an error in
20 the drafting of that Order, and that 2) it intended to require Respondent to pay fine in a predetermined
21 sum certain every thirty (30) until paid in full but did not do so because it committed an error in the
22 drafting of the Order. Essentially, these "error corrections" are being made almost 3 years and 8
23 months after the initial disciplinary order.
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25 On its face, and given the lack of any proceedings having taken place in the past three (3) plus
26 years, it appears that the issuance of the September 15, 2017 Amended Disciplinary Order has been
27 issued to 1) punish Respondent for not yet paying the fine in full, and 2) to extend the Division's
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1 deadline to institute an debt collection proceedings by converting an already lapsed payment due
2 date into a 60 month payment plan starting in January of 2018.

3 NRS 645.647(2) allows the Commission may revoke the license of a person who has failed to
4 pay money which the person owes to the Commission or to the Division. The term “money” is not
5 specifically defined within that statute. Throughout NRS and NAC Chapter 645, when the statutes
6 and codes refer to renewal costs and applications costs, they refer to the term “fees.” When
7 referenced is made to fines, the term “fines” is used. Despite the specific terminology references to
8 fees and fines, NRS 645.647 simply uses the term “money.” The application of NRS 645.647(2) to
9 suspend or revoke a person’s license for a non-payment of fines is essentially an additional
10 “disciplinary action,” but one which is carried out against Respondent years after the initial
11 disciplinary action.
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14 The September 15, 2017 Amended Disciplinary Order fails to cite any reference whatsoever that
15 the new amended disciplinary actions being taken against Respondent are based on an allegation
16 that he has failed to pay money which he owed to the Commission. If the amended disciplinary
17 actions are in fact based on an allegation that Respondent has failed to pay money which he owed,
18 then Respondent is being punished without being afforded his due process rights to have a hearing
19 on these new matters and allegations.
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21 Respondent submits that the September 15, 2017 Amended Disciplinary Order is not merely a
22 correction of the January 10, 2014 Disciplinary Order, but instead, it is a new Order that contains
23 brand new disciplinary measures which had not been in place for almost the past four (4) years.
24 Pursuant to NRS 645.685, “no proceeding to suspend, revoke or deny the renewal of any license or
25 registration of an owner-developer may be maintained unless it is commenced by the giving of notice
26 to the licensee, permittee or owner-developer within 5 years after the date of the act charged, ...” In
27 this case, the Commission has suddenly and unilaterally issued a new Order under the guise of it
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1 being an Amended Order which for the first time revokes Respondent's license, and it does so more
2 than 5 years after the date of the acts with which Respondent was initially charged. At no time
3 between January 10, 2014 and September 14, 2017 did the Division ever place Respondent on notice
4 that if he failed to pay the \$115,000.00 in full by May 12, 2014 that his license would be
5 automatically revoked. The January 10, 2014 Disciplinary Order did not state that payment in full
6 by May 12, 2014 was a condition for Respondent to be able to keep and./or to renew his license. As
7 stated hereinabove, the Division allowed Respondent to renew his license two (2) times since the
8 filing of the January 10, 2014 Disciplinary Order.
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10 **II. STAY OF ENFORCEMENT OF THE AMENDED ORDER**

11 Pursuant to NAC 645.850 (6), "if a petition for rehearing is filed and the Commission is not
12 scheduled to meet before the effective date of the penalty, the Division may stay enforcement of the
13 decision appealed from. When determining whether a stay is to be granted, the Division shall
14 determine whether the petition was timely filed and whether it alleges a cause or ground which may
15 entitle the licensee to a rehearing."
16

17 Respondent respectfully requests that the Division stay enforcement of the September 15, 2017
18 Amended Disciplinary Order. This Petition for Rehearing and for a Stay of Enforcement is being
19 timely filed. The order being appealed was received after September 21, 2017. This Petition is
20 being file on October 2, 2017 (the first business day after October 1, 2017).
21

22 Moreover, the September 15, 2017 Amended Disciplinary Order has caught Respondent by
23 surprise. While Respondent may have expected the Division to institute a debt collection proceeding
24 if he did not pay the fine which was imposed by the Commission, he did not expect that out of the
25 blue he would get an amended order almost 4 years year revoking his license in less than thirty (30)
26 days from his receipt of the amended order. As such, Respondent has good cause to ask the Division
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1 to impose a temporary stay of the enforcement of the September 15, 2017 Amended Disciplinary
2 Order.

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4 **III. CONCLUSION**

5 Based on the above, Respondent respectfully disagrees with the Commission's position that the
6 Commission can drastically change the disciplinary measures which were taken against him
7 approximately 3 years and 8 months earlier, and to do so simply because the initial disciplinary order
8 contains language which gives the Commission jurisdiction to correct an error that may have
9 occurred in the drafting or issuance of the order. Nothing in the amended order references or cites
10 any errors which were allegedly made either in the drafting or in the issuance of the previous order.
11 Nothing in the amended order references or cites any new facts or evidence considered by the
12 Commission in issuing the amended order. As sated above, Respondent has been able to renew
13 his license since January 10, 2014. He had paid his renewal fees/dues, and the Division has been
14 accepting those fees/dues from him, without incident. Receipt of the amended order which suddenly
15 revokes Respondent license has resulted in a surprise to Respondent which ordinary prudence could
16 not have guarded against, especially in light of the passage of time since the filing of the initial order
17 and given that Respondent has been gainfully employed a realtor for several years since the filing of
18 the January 10, 2014 Order.
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20 Dated this 1st day of October, 2017.

/s/ Doris Nehme-Tomalka

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