

AUG 31 2016

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

REAL ESTATE COMMISSION
BY *R. H. H. H.*

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Case No.: 2016-1165

Petitioner,

vs.

COMPLAINT AND NOTICE OF HEARING

CONSTANCE ATHAYDE,

Respondent.

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Peter Keegan, Deputy Attorney General, hereby notifies RESPONDENT CONSTANCE ATHAYDE ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapter 233B and Chapter 645 of the Nevada Revised Statutes ("NRS") and Chapter 645 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if the RESPONDENT should be subject to an administrative penalty as set forth in NRS 645.230 and/or NRS 645.235 and/or NRS 622.400, and the discipline to be imposed, if violations of law are proven.

JURISDICTION

RESPONDENT was at all relevant times mentioned in this Complaint unlicensed by the Division to act as a property manager, but did engage in business a property manager and is therefore subject to the jurisdiction of the Division and the provisions of NRS Chapter 645 and NAC Chapter 645.

FACTUAL ALLEGATIONS

1. RESPONDENT is not licensed or permitted by the Division as a Property Manager.

2. On or about July 12, 2015, RESPONDENT entered into a Property Management Agreement for a term of 36 months with Patrick Brady for the property commonly known as 614 Tamsen Road, Fernley, Nevada 89408 ("Property").

3. The Property Management Agreement ("Agreement") included a Management Fee term where RESPONDENT was to be paid a fee of 20% of the first month's gross collections from the tenant and \$75.00 per month thereafter.

4. The Agreement included a term specifying the Duties and Responsibilities of Agent whereby RESPONDENT agreed to accept the following responsibilities as an agent of the Owner:

- a. Manage and maintain the Premises in accordance with the highest professional standards, continue to remain informed regarding both the property and the tenants, and confer fully and regularly with the Owners in the performance of its duties;
- b. Collect and immediately forward on to the Owners any checks for security deposits, overdue rents, late charges, non-sufficient check charges, applications fees, prorated first month's rent and any other incidental charges to tenants with respect to the Premises;
- c. Sign, renew, or cancel lease agreements and rental contracts, identified as agent for the owners, subject to prior written approval by the Owners of any deviation from rent schedule and lease form approved and supplied by Owners;
- d. Exercise best efforts with regard to marketing the property;
- e. Provide a minimum of (3) three maintenance inspections per year, with an eye towards cleanliness and care of the premises; minimal inspection visits are to be made in the spring (late March), Summer (mid-July), and Fall (mid-October), with associated reports, pictures and recommendations forwarded to the Owners;

1 f. Provide copies of all documents to be used by agent for the management of
2 the premises, to include but not to be limited to, tenant applications forms,
3 lease agreements, notice for non-payment, notice for breach of contract, and
4 advertisement flyers;

5 g. When necessary, institute actions to evict tenants and recover possession of
6 the Property, along with rents and any other charges due.

7 5. On or about July 15, 2016, RESPONDENT entered into a residential lease for
8 the Property, which was signed as by RESPONDENT as "Manager, Constance Athayde as
9 Owner's Agent."

10 6. On or about February 23, 2016, the Division received a Complaint regarding
11 RESPONDENT'S failure to evict delinquent tenants and failure to maintain the Property, which
12 Complainant says costs the Owner of the property several thousands of dollars in repairs.

13 7. On or about March 7, 2016, the Division sent RESPONDENT an Opening Letter
14 indicating that a Complaint had been filed against her and requesting an affidavit response on
15 Form 652, which is available on the Division's website, no later than March 21, 2016.

16 8. On or about March 7, 2016, the Division also sent RESPONDENT a Cease and
17 Desist Order, which ordered RESPONDENT to cease and desist all property management
18 activities as she did not hold a Property Management license of permit.

19 9. On April 26, 2016, the Division sent RESPONDENT a follow-up letter to the
20 March 7, 2016, Opening Letter and requested RESPONDENT to provide a response to the
21 allegations contained in the Complaint.

22 10. On or about April 29, 2016, RESPONDENT submitted an email response to the
23 March 7, 2016, Opening Letter wherein RESPONDENT claimed she only assisted the Owner
24 of the Property.

25 11. On August 3, 2016, the Division sent RESPONDENT a 233B Letter indicating
26 that the Division intended to file a complaint for disciplinary action with the Commission for
27 violations of NRS 645.230(1)(b) and NRS 645.235(1)(a).

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VIOLATIONS

RESPONDENT has committed the following violations of law:

12. RESPONDENT violated NRS 645.230(1)(b) and NRS 645.235(1)(a) by engaging in any activity for which a license, permit, certificate, or registration of any type of authorization is required pursuant to this chapter, because RESPONDENT does not hold the required license, permit, certificate, or registration or has not been given the required authorization.

DISCIPLINE AUTHORIZED

13. Pursuant to NRS 645.235(2), the Commission has the authority to impose an administrative fine up to \$5,000.00 for each violation of NRS 645.235.

14. Additionally, under NRS Chapter 622, the Commission is authorized to impose costs of the proceeding upon RESPONDENT, including investigative costs and attorney's fees, if the Commission otherwise imposes discipline on RESPONDENT.

15. Therefore, the Division requests that the Commission take such disciplinary action as it deems appropriate under the circumstances.

NOTICE OF HEARING

PLEASE TAKE NOTICE that a disciplinary hearing has been set to consider the Administrative Complaint against the above-named RESPONDENT in accordance with Chapters 233B and 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE on October 5, 2016, commencing at 1:00 p.m., or as soon thereafter as the Commission is able to hear the matter, and each day thereafter commencing at 9:00 a.m. through October 7, 2016, or earlier if the business of the Commission is concluded. The Commission meeting will be held on October 5, 2016, at the Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada 89701. The meeting will continue on October 6, 2016, at the Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada 89701, commencing at 9:00 a.m., and on October 7, 2016, should business not be concluded,

1 starting at 9:00 a.m. at the Legislative Building, 401 South Carson Street, Room 2134,
2 Carson City, Nevada 89701.

3 **STACKED CALENDAR:** Your hearing is one of several hearings scheduled at the
4 same time as part of a regular meeting of the Commission that is expected to last from
5 October 5 through October 7, 2016, or earlier if the business of the Commission is
6 concluded. Thus, your hearing may be continued until later in the day or from day-to-
7 day. It is your responsibility to be present when your case is called. If you are not
8 present when your hearing is called, a default may be entered against you and the
9 Commission may decide the case as if all allegations in the complaint were true. If you
10 have any questions, please call Rebecca Hardin, Commission Coordinator, at (702) 486-
11 4074.

12 **YOUR RIGHTS AT THE HEARING:** except as mentioned below, the hearing is an
13 open meeting under Nevada's Open Meeting Law, and may be attended by the public. After
14 the evidence and arguments, the Commission may conduct a closed meeting to discuss your
15 alleged misconduct or professional competence. A verbatim record will be made by a certified
16 court reporter. You are entitled to a copy of the transcript of the open and closed portions of
17 the meeting, although you must pay for the transcription.

18 As the Respondent, you are specifically informed that you have the right to appear and
19 be heard in your defense, either personally or through your counsel of choice. At the hearing,
20 the Division has the burden of proving the allegations in the complaint and will call witnesses
21 and present evidence against you. You have the right to respond and to present relevant
22 evidence and argument on all issues involved. You have the right to call and examine
23 witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant
24 to the issues involved.

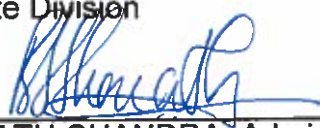
25 You have the right to request that the Commission issue subpoenas to compel
26 witnesses to testify and/or evidence to be offered on your behalf. In making the request, you
27 may be required to demonstrate the relevance of the witnesses' testimony and/or evidence.
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1 Other important rights you have are listed in NRS 645.680 through 645.990, NRS Chapter
2 233B, and NAC 645.810 through 645.920.

3 The purpose of the hearing is to determine if the Respondent has violated NRS 645
4 and/or NAC 645 and if the allegations contained herein are substantially proven by the
5 evidence presented and to further determine what administrative penalty, if any, is to be
6 assessed against the Respondent, pursuant to NRS 645.235, 645.633 and/or 645.630.

7 DATED this 29th day of AUGUST, 2016.

8 State of Nevada
9 Department of Business and Industry
10 Real Estate Division

11 By: 
12 SHARATH CHANDRA, Administrator
13 2501 East Sahara Avenue
14 Las Vegas, Nevada 89104-4137
15 Telephone: (702) 486-4033

16 DATED this 29th day of August, 2016.

17 ADAM PAUL LAXALT
18 Attorney General

19 By: 
20 PETER KEEGAN
21 Deputy Attorney General
22 100 North Carson Street
23 Carson City, Nevada 89701
24 Telephone: (775) 684-1153
25 Attorneys for Real Estate Division
26
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