

FILED

OCT 17 2016

REAL ESTATE COMMISSION  
BY Richard A. G. Jr.

BEFORE THE REAL ESTATE COMMISSION  
STATE OF NEVADA

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

Case No.: 2016-646

Petitioner,

vs.

KYLE KRCH,

Respondent.

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

Case No.: 2016-1708

Petitioner,

vs.

JASON A. JAIRAM,

Respondent.

JOINT MOTION TO DISMISS

COMES NOW, Respondents KYLE KRCH and JASON A. JAIRAM, by and through their attorney, James M. Walsh, Esq. of Walsh, Baker & Rosevear, and hereby moves the Real Estate Commission of the State of Nevada to dismiss the Complaints in the above entitled matters with prejudice. The basis of Respondent's Motion is that the claims are barred by the doctrines of issue and claim preclusion and the alleged statutory violations are void for vagueness and the Complaints therefore fail to state a claim upon which relief may be granted.

1 The Complaints at issue before the Commission involve three transactions in which Respondents  
2 have been alleged to have committed fraud upon non-parties to real estate transactions; the lenders in a  
3 short sale.

4 The transactions at issue involve real property located at:

- 5 1. 665 Wall Canyon Drive, Sun Valley, Nevada, transaction date of October 2012;
- 6 2. 2745 D'Arcy Street, Sparks, Nevada; transaction date of February 2013;
- 7 3. 11480 Cervino Drive, Reno, Nevada; transaction date of June 2013

8 In all three transactions, it is alleged Respondents violated NRS 645.633(1)(i) and NAC 645.605(1), by  
9 fraudulently representing that the transactions were arm's length and fraudulently misrepresented the  
10 facts of an alleged existing business relationship.

#### 11 PRIOR PROCEEDINGS

12 These matters have been previously before and decided by the Real Estate Commission in *Decker*  
13 *v. Krch, et al.*, Case No. REN 14-05-07-047, and companion cases. A true and correct copy of the  
14 Commission's decision in Case No. REN 14-05-07-047 is attached hereto as **Exhibit 1**. As is evident  
15 from that decision, the matters now before the Commission are identical. Respondents were charged  
16 with violation over the very same sales, 665 Wall Canyon commencing at paragraph 10 of the Decision,  
17 11480 Cervino Drive commencing at paragraph 82, and 2745 D'Arcy Street commencing at paragraph  
18 92. The Commission's findings, as evidenced by the Conclusions of Law commencing at page 9, were  
19 that Respondent had violated NRS 645.633(1)(h) and NAC 645.605(6) with regard to these three  
20 transactions and others for not dealing fairly with the mortgage lenders. See paragraph 5 of the  
21 Conclusions of Law attached as **Exhibit 1**.

22 The Division now files its Complaint against Respondents over the same three transactions,  
23 raising no new facts but now seeking violation of NRS 645.633(1)(i) and NAC 645.605(1).

24 NRS 645.633(1)(i) contains the vague catchall violation of any other conduct which constitutes  
25 deceitful, fraudulent or dishonest dealing. These specific statutory violations could have been brought  
26 in the initial proceedings, but were not. As such, they are barred by the doctrine of issue or claim  
27 preclusion.

## ARGUMENT

The Nevada Supreme Court has been clear and consistent on its statements on issue and claim preclusion, even as they apply to administrative proceedings. In *Holt v. Regional Trustee Services Corp.*, 127 Nev. Adv. 80, 266 P.3d 602, the Court stated at P.604:

Claim and issue preclusion “protect the finality of decisions and prevent the proliferation of litigation, but do not apply unless specific requirements are met.” *Redrock Valley Ranch v. Washoe County*, 127 Nev. . . ., 254 P.3d 641, 646 (2011) (quoting *Littlejohn v. United States*, 321 F.3d 915, 919 (9<sup>th</sup> Cir. 2003)). “Among other requirements, for [claim] preclusion to attach...the subsequent action [must be] based on the same claims or any part of them that were or could have been brought in the first case.” *Id.* (third alteration in original) (quoting *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008)). For “issue preclusion to attach, the issue decided in the prior [proceeding] must be identical to the issue presented in the current [proceeding],” *id.* (alterations in original) (quotation omitted), and have been “actually litigated and determined by a valid and final judgment [in which] the determination [was] essentially to the judgment.” *In re. Sandoval*, 126 Nev. . . ., 232 P.3d 422, 424 (2010) (quoting Restatement (Second) of Judgments § 27 (1982)). Claim and issue preclusion can apply in the administrative context “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” *United States v. Utah Constr. Co.*, 384 U.S. 394, 421-22, 86 S. Ct. 1545, 16 L.Ed.2d 642 (1966), and to defenses and compulsory counterclaims, but “only to defenses which were available in the prior action” (claim preclusion), 18 James Wm. Moore, Moore’s Federal Practice § 131.21[5][a], at 131-53-131-54 (3d ed. 2011), and actually asserted and necessarily decided (issue preclusion), *id.* § 131.21[5][b], at 131-55.

(emphasis added). See also, *Roberts v. Las Vegas Valley Water District*, 849 F. Supp. 1393 (D. Nev. 1994) and *Lopes v. Board of Appeals of Fairhaven*, 27 Mass. App. Ct. 754, 543 N.E.2d 421 (1989), Restatement (Second) of Judgments 83 (1982); *United States v. Utah Constr. Co.*, 384 U.S. 391, 421-22 (1996). Based thereon, the Commission is prohibited from rehearing these matters.

In addition to the outright prohibition of this Commission from hearing these matters based upon the conclusive effects of the prior decision, the matter must be dismissed on the following grounds.

A. **For the Commission to impose such a result under the facts of this case would clearly be an arbitrary and capricious result subject to attack.**

1 Arbitrary and capricious being specifically defined as an exercise of discretion founded on  
2 prejudice or preference rather than reason or contrary to the evidence or established rules of law. *State*  
3 *of Nevada vs. Eighth Judicial District Court*, 127 Nev. Adv. Op. 84 (2011).

4 **B. Respondents did not breach any duty owed to the third party mortgage lender because they**  
5 **are not in a fiduciary relationship with the mortgage lender.**

6 Nevada Revised Statutes 645.252(2) states that “a licensee who acts as an agent in a real estate  
7 transaction... [s]hall exercise reasonable skill and care with respect to all parties to the real estate  
8 transaction.” Nev. Rev. Stat. Ann. § 645.252. Similarly, California law draws a sharp distinction between  
9 fiduciary duties owed by an agent to a principal and the non-fiduciary duties owed to third persons. “In  
10 the specific context of disclosure, the fiduciary obligations of an agent to the principal to ascertain and  
11 disclose the facts that are material to the interest of the principal *are different than those of the broker to*  
12 *a third party* that is not the principal; the common law duty of honesty and fairness to third parties does  
13 not create an affirmative duty to investigate or disclose.” See, *Miller & Starr California Real Estate 3D*,  
14 Section 3:55 (*emphasis added*). The court so held in *Saffie v. Schmeling*, stating that “while the real  
15 estate brokers owe their clients fiduciary duties, they owe third parties who are not their clients, including  
16 the adverse party in a real estate transaction, *only those duties imposed by regulatory statutes.*” *Saffie v.*  
17 *Schmeling*, 224 Cal. App. 4th 563, 568, 168 Cal. Rptr. 3d 766, 769 (2014)(*emphasis added*). A mortgage  
18 lender, i.e. a bank or financial lending institution, is, at best, a third party to a real estate transaction. A  
19 mortgage lender has no fiduciary or contractual relationship with the real estate agent. Respondents owed  
20 the mortgage lender only those duties imposed by statute – in these cases none. Based upon the facts  
21 alleged in the complaint, Respondents did not breach any duties in his dealings with the mortgage lender.

22 **C. The Complaints lack the required precision, guidance and articulable standard of care to**  
23 **assert any violations of any duty against respondents.**

24 NRS 645.633 is a statute that may subject those sanctioned under it with civil penalties and  
25 potential loss of their license. Usually, this doctrine is applied in cases involving criminal liability, but  
26 the void-for-vagueness doctrine has also been applied to cases solely implicating civil liability. See  
27 *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1048-53 (1991)(holding that rules subjecting attorney to  
28 discipline for speech were unconstitutionally vague). *FCC v. Fox Television Stations, Inc.* expanded the

1 scope of the void-for-vagueness doctrine, making it applicable to cases where the fair notice element is  
2 involved:

3 “even when speech is not at issue, the void for vagueness doctrine addresses at least  
4 two connected but discrete due process concerns: first, that regulated parties should  
5 know what is required of them so they may act accordingly; second, precision and  
6 guidance are necessary so that those enforcing the law do not act in an arbitrary or  
discriminatory way.”

7 *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317, 183 L. Ed. 2d 234 (2012). The Division’s  
8 complaint satisfies neither of these requirements. The complaint fails to allege a standard of care, nor  
9 does it allege a duty owed to the lenders by Respondents based on an articulated standard of care. NRS  
10 645.633(1)(i) prohibits “any other conduct which constitutes deceitful, fraudulent or dishonest dealing”,  
11 but does not define it.

12 A fraud claim requires proof of nine elements: (1) a representation; (2) its falsity; (3) its  
13 materiality; (4) the speaker’s knowledge of its falsity or ignorance of its truth; (5) the speaker’s intent  
14 that it be acted upon by the recipient in a manner reasonably contemplated; (6) the hearer’s ignorance of  
15 the falsity of the representation; (7) the hearer’s reliance on the truth of the representations; (8) the right  
16 to rely on it; and (9) consequent and proximate injury. See, *Pac. Maxon, Inc. v. Wilson*, 96 Nev. 867,  
17 619 P.2d 816 (1980); *Sanguinetti v. Strecker*, 94 Nev. 200, 577 P.2d 4004 (1978); *Lubbe v. Barba*, 91  
18 Nev. 596, 540 P.2d 115 (1995); *Barmettler v. Reno Air Inc.*, 114 Nev. 441, 956 P.2d 138 (1998).

19 The Division fails to allege any acts or omissions which meet these requirements, let alone any  
20 specific misconduct committed by Respondents that violates any prohibited statutory conduct. The  
21 complaint and statutes lacks the requisite precision and guidance necessary to overcome a void-for-  
22 vagueness challenge. Courts take care to emphasize “a fundamental principle of our legal system is that  
23 laws which regulate persons or entities must give fair notice of conduct that is forbidden or required...  
24 [t]his requirement of clarity in regulation is essential to the protections provided by the Due Process  
25 Clause of the Fifth Amendment.” *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317, 183 L.  
26 Ed. 2d 234 (2012)(quoting *United States v. Williams*, 553 U.S. 285, 304, 128 S. Ct. 1830, 170 L.Ed.2d  
27 650 (2008)). The failure to articulate any concrete and unambiguous prohibited conduct renders the  
28 statute void-for-vagueness and requires dismissal of the Complaint.

1 **CONCLUSION**

2 Based upon the foregoing, it is respectfully requested that the Complaints as to Respondents be  
3 dismissed with prejudice.

4 **Affirmation Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document does not contain the social  
6 security number of any person.

7 DATED this 28<sup>th</sup> day of September, 2016.

8 **WALSH, BAKER & ROSEVEAR**

9   
10 JAMES M. WALSH, ESQ.

11 Nevada State Bar No. 796

12 9468 Double R Boulevard, Suite A

13 Reno, Nevada 89521

14 (775) 853-0883

15 Attorneys for Respondents

16 Kyle Krch and Jason A. Jairam  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 I, the undersigned, declare under penalty of perjury, that I am an employee of WALSH, BAKER  
3 & ROSEVEAR that I am over the age of eighteen (18) years, and that I am not a party to, nor interested  
4 in, this action. On this date, I caused to be served a true and correct copy of the foregoing document on  
all parties to this action by:

5 ✓

6 Placing an original or true copy thereof in a sealed envelope placed for collection and  
7 mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary  
8 course of business practices;

9 addressed as follows:

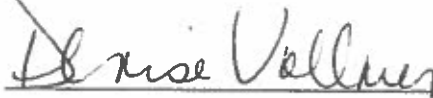
10 Peter K. Keegan  
11 Deputy Attorney General  
12 100 North Carson Street  
13 Carson City, NV 89701  
14 Attorneys for Real Estate Division

15 Sharath Chandra, Administrator  
16 State of Nevada Dept. of Business & Industry  
17 Real Estate Division  
18 2501 East Sahara Avenue  
19 Las Vegas, Nevada 89104-4137

20 Real Estate Division State of Nevada (Original)  
21 1830 East College Pkwy, #120  
22 Carson City, Nevada 89706  
23 Attn: Legal Administrative Officer

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed this 20 day of September, 2016.

26 

27 Denise Vollmer, an employee of  
28 Walsh, Baker & Rosevear

**INDEX OF EXHIBITS**

<b>EX. NO.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
1	Decision in Real Estate Commission State of Nevada Case No. REN 14-05-07-047	11



# **EXHIBIT 1**

# **EXHIBIT 1**

FILED

JUN 16 2015

BEFORE THE REAL ESTATE COMMISSION  
STATE OF NEVADA

REAL ESTATE COMMISSION  
BY *[Signature]*

JOSEPH R. DECKER, Administrator,  
REAL ESTATE DIVISION, DEPARTMENT  
OF BUSINESS & INDUSTRY,  
STATE OF NEVADA,

Case No. REN 14-05-07-047

Petitioner,

vs.

DECISION

KYLE KRCH,

Respondent.

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

This matter came on for hearing before the Nevada Real Estate Commission, State of Nevada ("Commission") on Tuesday, May 5, 2015, and Wednesday, May 6, 2015, at the Gaming Control Board, Hearing Room, 1919 College Parkway, Carson City, Nevada. Respondent Kyle Krch ("RESPONDENT") appeared and testified under oath at the hearing. RESPONDENT was represented by legal counsel, Matthew B. Hippler, Esq. Keith E. Kizer, Deputy Attorney General, appeared and prosecuted the Complaint on behalf of petitioner Joseph R. Decker, Administrator of the Real Estate Division, Department of Business & Industry, State of Nevada ("Division").

The matter having been submitted for decision based upon the allegations of the Complaint, the Commission now enters its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

The Commission, based upon the evidence presented during the hearing, finds that there is substantial evidence in the record to establish each of the following Findings of Fact:

1. RESPONDENT has been licensed as a real estate broker, license number B.0056206.LLC, since November 23, 2005, and is currently in active status.

2. RESPONDENT is subject to the jurisdiction of the Division and the Commission and the provisions of NRS chapter 645 and NAC chapter 645.

1           3.     RESPONDENT was the broker for Krch Realty LLC at the relevant times  
2 mentioned in the Complaint.

3           4.     Sandra Krch has been licensed as a real estate broker-salesperson, license  
4 number BS.0143619.MGR, since June 29, 2011, was licensed as a real estate salesperson,  
5 license number S.0070017, from February 15, 2006 to June 29, 2011, and was associated  
6 with Krch Realty at the relevant times mentioned in the Complaint.

7           5.     Anita Spencer ("Spencer") has been licensed as a real estate salesperson,  
8 license number S.0069280, since January 13, 2006, and was associated with Krch Realty at  
9 the relevant times mentioned in the Complaint.

10          6.     Jason A. Jairam ("Jairam") has been licensed as a real estate salesperson,  
11 license number S.0170866, since August 16, 2011, and was associated with Krch Realty at  
12 the relevant times mentioned in the Complaint.

13          7.     Michael Cullum Harding ("Harding") has been licensed as a real estate  
14 salesperson, license number S.0169701, since July 14, 2010, and was associated with Krch  
15 Realty at the relevant times mentioned in the Complaint.

16          8.     With respect to properties he was contracted to sell, RESPONDENT facilitated  
17 potential buyers in return for the buyers using Krch Realty in their attempts to buy those  
18 properties.

19          9.     RESPONDENT's actions resulted in many multiple representations for Krch  
20 Realty.

21          10.    On or about September 26, 2012, Geraldine Malone entered into an Exclusive  
22 Right to Sell Contract, which engaged RESPONDENT to list and sell real property located at  
23 665 Wall Canyon Drive, Sun Valley, Nevada.

24          11.    RESPONDENT had Malone sign a Multiple Listing Service ("MLS") waiver.

25          12.    On or about October 1, 2012, Shayla Gifford ("Gifford") offered to buy the Wall  
26 Canyon Property, and Malone accepted the offer.

27          13.    Harding was Gifford's agent.

28          ...

- 1        14. RESPONDENT did not input the Wall Canyon Property into the MLS until
- 2        October 4, 2012, when he listed the property as pending new/pending short sale.
- 3        15. On or about December 28, 2012, the sale on the Wall Canyon Property closed
- 4        for a final purchase price of \$51,000, resulting in Krch Realty, via RESPONDENT and
- 5        Harding, receiving both sides of the sales commission.
- 6        16. On or about January 12, 2013, Jeannette Hirschy ("Hirschy") entered into an
- 7        Exclusive Right to Sell Contract, which engaged RESPONDENT to list and sell the Wall
- 8        Canyon Property.
- 9        17. Gifford transferred the Wall Canyon Property to Hirschy.
- 10       18. On or about January 13, 2013, Hirschy sold the Wall Canyon Property for
- 11       \$90,000, approximately \$39,500 more than the purchase price.
- 12       19. For that resale, RESPONDENT was Hirschy's agent, so RESPONDENT
- 13       received the seller's commission on that sale.
- 14       20. RESPONDENT and Harding each received \$27,148.98 from the proceeds of the
- 15       Hirschy resale, in addition to sales commissions.
- 16       21. On or about September 4, 2012, Hector and Melissa Vazquez entered into an
- 17       Exclusive Right to Sell Contract, which engaged RESPONDENT to list and sell real property
- 18       located at 7412 Picasso Drive, Sun Valley, Nevada.
- 19       22. RESPONDENT had the Vazquezes sign an MLS waiver.
- 20       23. On or about September 12, 2012, Gifford offered to buy the Picasso Drive
- 21       Property, and the Vazquezes accepted the offer.
- 22       24. Harding acted as the agent for Gifford.
- 23       25. RESPONDENT did not input the Picasso Drive Property into the MLS until
- 24       September 20, 2012, when he listed the property as pending new/pending short sale.
- 25       26. On or about December 28, 2012, the sale on the Picasso Drive Property closed
- 26       with a final purchase price of \$123,000, resulting in Krch Realty, via RESPONDENT and
- 27       Harding, receiving both sides of the sales commission.
- 28       ...

1 27. On or about January 12, 2013, Hirschy entered into an Exclusive Right to Sell  
2 Contract, which engaged RESPONDENT to list and sell the Picasso Drive Property.

3 28. Gifford transferred the Picasso Drive Property to Hirschy.

4 29. On or about January 17, 2013, Hirschy sold the Picasso Drive Property for  
5 \$164,000, approximately \$41,000 more than the purchase price.

6 30. For that resale, RESPONDENT was Hirschy's agent, so RESPONDENT  
7 received the seller's commission on that sale.

8 31. On or about June 11, 2012, Joseph Munoz entered into an Exclusive Right to  
9 Sell Contract, which engaged RESPONDENT to list and sell real property located at 1379  
10 Tioga Way, Reno, Nevada.

11 32. RESPONDENT inputted the Tioga Way Property into the MLS as pending  
12 new/short sale.

13 33. On or about November 20, 2012, Gifford offered to buy the Tioga Way Property,  
14 and Munoz accepted the offer.

15 34. Jalram was Gifford's agent.

16 35. On or about January 17, 2013, the sale on the Tioga Way Property closed with a  
17 final purchase price of \$111,000, resulting in Krch Realty, via RESPONDENT and Jalram,  
18 receiving both sides of the sales commission.

19 36. On or about February 8, 2013, Hirschy entered into an Exclusive Right to Sell  
20 Contract, which engaged RESPONDENT to list and sell the Tioga Way Property for \$195,000.

21 37. Gifford transferred the Tioga Way Property to Hirschy.

22 38. On or about March 8, 2013, Hirschy sold the Tioga Way Property for \$162,500,  
23 approximately \$51,500 more than the purchase price.

24 39. For that resale, RESPONDENT was Hirschy's agent, so RESPONDENT  
25 received the seller's commission on that sale.

26 40. RESPONDENT and Harding each received proceeds from the Hirschy resale,  
27 RESPONDENT receiving \$61,594.88 and Harding receiving \$32,604.31, in addition to sales  
28 commissions.

1 41. On or about February 1, 2013, Arthur Peppard entered into an Exclusive Right to  
2 Sell Contract, which engaged RESPONDENT to list and sell real property located at 15081  
3 Limonite Court, Reno, Nevada.

4 42. On or about February 1, 2013, Hirschy offered to buy the Limonite Court  
5 Property, and Peppard accepted the offer.

6 43. Jalram was Hirschy's agent.

7 44. RESPONDENT inputted the Limonite Court Property into the MLS as pending  
8 new/short sale.

9 45. On or about April 17, 2013, the sale on the Limonite Court Property closed with  
10 a final purchase price of \$114,000, resulting in Krch Realty, via RESPONDENT and Jalram,  
11 receiving both sides of the sales commission.

12 46. On or about July 12, 2013, Hirschy entered into an Exclusive Right to Sell  
13 Contract, which engaged RESPONDENT to list and sell the Limonite Court Property for  
14 \$159,000.

15 47. On or about July 18, 2013, Hirschy resold the Limonite Court Property for  
16 \$167,000, approximately \$53,000 more than her purchase price.

17 48. For that resale, RESPONDENT was Hirschy's agent, so RESPONDENT  
18 received the seller's commission on that sale.

19 49. Sandra Krch and Harding each received \$53,305.56 from the proceeds of the  
20 Hirschy resale.

21 50. On or about September 25, 2012, Michael Juriaan and Jessica Sambrano  
22 entered into an Exclusive Right to Sell Contract, which engaged RESPONDENT to list and  
23 sell real property located at 7868 Anchor Point Drive, Reno, Nevada.

24 51. RESPONDENT had Juriaan and Sambrano sign an MLS waiver.

25 52. On or about November 15, 2012, Owen Lawson offered to buy the Anchor Point  
26 Property, and Juriaan and Sambrano accepted the offer.

27 53. Krch Realty represented Lawson and Juriaan and Sambrano.

28 ...

- 1           54. On or about February 12, 2013, the sale on the Anchor Point Property closed  
2 with a final purchase price of \$114,000, resulting in Krch Realty receiving both sides of the  
3 sales commission.
- 4           55. On or about July 30, 2012, George Buddy, Jr. entered into an Exclusive Right to  
5 Sell Contract, which engaged RESPONDENT to list and sell real property located at 2376  
6 Dodge Drive, Sparks, Nevada.
- 7           56. RESPONDENT had Buddy sign an MLS waiver.
- 8           57. On or about October 2, 2012, Hirschy offered to buy the Dodge Drive Property,  
9 and Buddy accepted the offer.
- 10          58. Jairam was Hirschy's agent.
- 11          59. RESPONDENT did not input the Dodge Drive Property into the MLS until  
12 October 8, 2012, when he listed the property as pending new/short sale.
- 13          60. On or about February 28, 2013, the sale on the Dodge Drive Property closed for  
14 a final purchase price of \$127,000, resulting in Krch Realty, via RESPONDENT and Jairam,  
15 receiving both sides of the sales commission.
- 16          61. On or about March 1, 2013, Hirschy entered into an Exclusive Right to Sell  
17 Contract, which engaged RESPONDENT to list and sell the Dodge Drive Property for  
18 \$170,000.
- 19          62. On or about March 13, 2013, Hirschy resold the Dodge Drive Property for  
20 \$158,000, approximately \$31,000 more than her purchase price.
- 21          63. For that resale, RESPONDENT was Hirschy's agent, so RESPONDENT  
22 received the seller's commission on that sale.
- 23          64. RESPONDENT and Harding each received \$51,275.16 from the proceeds of the  
24 Hirschy resale, in addition to sales commissions.
- 25          65. On or about September 19, 2012, Steven and Billie Wozniak entered into an  
26 Exclusive Right to Sell Contract, which engaged RESPONDENT to list and sell real property  
27 located at 6331 Park Place, Reno, Nevada.
- 28 ...

1           66. On or about September 21, 2012, Gifford offered to buy the Park Place Property,  
2 and the Wozniaks accepted the offer.

3           67. Harding was Gifford's agent.

4           68. RESPONDENT did not input the Park Place Property into the MLS until October  
5 4, 2012, when he listed the property as pending new/short sale.

6           69. On or about January 24, 2013, the sale on the Park Place Property closed with a  
7 final purchase price of \$140,000, resulting in Krch Realty, via RESPONDENT and Harding,  
8 receiving both sides of the sales commission.

9           70. On or about January 26, 2013, Hirschy entered into an Exclusive Right to Sell  
10 Contract, which engaged RESPONDENT to list and sell the Park Place Property for \$167,950.

11           71. Gifford transferred the Park Place Property to Hirschy.

12           72. On or about March 6, 2013, Hirschy sold the Park Place Property for \$167,999,  
13 approximately \$27,999 more than the purchase price.

14           73. For that resale, RESPONDENT was Hirschy's agent, so RESPONDENT  
15 received the seller's commission on that sale.

16           74. On or about June 10, 2013, Charles and Valeria Nelson entered into an  
17 Exclusive Right to Sell Contract, which engaged Krch Realty to list and sell real property  
18 located at 1270 Butler, Reno, Nevada.

19           75. On or about June 10, 2013, Jeffrey Veasley offered to buy the Butler Property,  
20 and the Nelsons accepted the offer.

21           76. Spencer was the agent for both Veasley and the Nelsons.

22           77. Spencer did not input the Butler Property into the MLS until June 12, 2013, when  
23 she listed the property as pending new/short sale.

24           78. On or about December 23, 2013, the sale on the Butler Property closed for a  
25 final purchase price of \$50,000, resulting in Krch Realty receiving both sides of the sales  
26 commission.

27           79. On or about April 22, 2014, Veasley entered into an Exclusive Right to Sell  
28 Contract, which engaged RESPONDENT to list and sell the Butler Property for \$109,900.



1 80. On or about April 26, 2014, Veasley resold the Butler Property for \$109,900,  
2 approximately \$59,900 more than his purchase price.

3 81. For that resale, Spencer was Veasley's agent, and another Krch Realty realtor  
4 was the buyer's agent, so Krch Realty received the buyer's and seller's commission on that  
5 sale.

6 82. On or about June 12, 2013, Stephanie Tobey entered into an Exclusive Right to  
7 Sell Contract, which engaged RESPONDENT to list and sell real property located at 11480  
8 Cervino Drive, Reno, Nevada.

9 83. RESPONDENT had Tobey sign an MLS waiver.

10 84. On or about June 14, 2013, Hirschy offered to buy the Cervino Drive Property,  
11 and Tobey accepted the offer.

12 85. Jairam was Hirschy's agent.

13 86. RESPONDENT did not input the Cervino Drive Property into the MLS until June  
14 14, 2013, when he listed the property as pending new/short sale.

15 87. On or about December 27, 2013, the sale on the Cervino Drive Property closed  
16 for a final purchase price of \$247,500, resulting in Krch Realty, via RESPONDENT and  
17 Jairam, receiving both sides of the sales commission.

18 88. On or about January 11, 2014, Hirschy entered into an Exclusive Right to Sell  
19 Contract, which engaged RESPONDENT to list and sell the Cervino Drive Property for  
20 \$290,000.

21 89. On or about January 30, 2014, Hirschy resold the Cervino Drive Property for  
22 \$274,500, approximately \$27,000 more than her purchase price.

23 90. For that resale, Hirschy's agent was RESPONDENT, so RESPONDENT  
24 received the seller's commission on that sale.

25 91. Sandra Krch and Harding each received approximately \$88,162.74 from the  
26 proceeds of the Hirschy resale.

27 ...

28 ...

1 92. On or about January 29, 2013, Deborine Dolan entered into an Exclusive Right  
2 to Sell Contract, which engaged RESPONDENT to list and sell real property located at 2745  
3 D'Arcy Street, Sparks, Nevada.

4 93. RESPONDENT had Dolan sign an MLS waiver.

5 94. On or about February 14, 2013, Hirschy offered to buy the D'Arcy Street  
6 Property, and Dolan accepted the offer.

7 95. Jairam was Hirschy's agent.

8 96. RESPONDENT did not input the D'Arcy Street Property into the MLS until  
9 February 15, 2013, when he listed the property as pending new/short sale.

10 97. On or about July 30, 2013, the sale on the D'Arcy Street Property closed for a  
11 final purchase price of \$214,500, resulting in Krch Realty, via RESPONDENT and Jairam,  
12 receiving both sides of the sales commission.

13 98. On or about August 9, 2013, Hirschy entered into an Exclusive Right to Sell  
14 Contract, which engaged RESPONDENT to list and sell the D'Arcy Street Property for  
15 \$329,000.

16 99. On or about August 12, 2013, Hirschy resold the D'Arcy Street Property for  
17 \$335,000, approximately \$120,500 more than her purchase price.

18 100. For that resale, RESPONDENT was Hirschy's agent, so RESPONDENT  
19 received the seller's commission on that sale.

20 101. Sandra Krch and Harding each received \$49,714.63 from the proceeds of the  
21 Hirschy resale.

#### 22 CONCLUSIONS OF LAW

23 The Commission, based upon the preponderance of the evidence, makes the following  
24 legal conclusions:

25 1. RESPONDENT received proper notice of the hearing pursuant to NRS Chapters  
26 645 and 233B and NAC Chapter 645.

27 2. Pursuant to NAC 645.860, the Commission finds that the following charges  
28 specified in the Complaint are true and supported by substantial evidence.

1 3. RESPONDENT violated NRS 645.633(1)(h), pursuant to NAC 645.605(6) and/or  
2 NRS 645.252(2), on eight occasions by not dealing fairly with the above sellers.

3 4. RESPONDENT violated NRS 645.633(1)(l) pursuant to NAC 645.605(6) and/or  
4 NRS 645.252(2), on eight occasions by not representing the above sellers with absolute  
5 fidelity.

6 5. RESPONDENT violated NRS 645.633(1)(h), pursuant to NAC 645.605(6) and/or  
7 NRS 645.252(2), on eight occasions by not dealing fairly with the above sellers' mortgage  
8 lenders.

9 6. RESPONDENT violated NRS 645.252(1)(c) and/or NAC 645.840(1)(a) on six  
10 occasions by failing to disclose in writing that he had an interest in the transaction or was  
11 acquiring, leasing or disposing of the property for himself or for a member, firm, or entity with  
12 which he has such a relationship.

13 7. RESPONDENT violated NAC 645.600(1) on nine occasions by failing to  
14 maintain adequate supervision of Spencer, Jairam and Harding.

15 ORDER

16 IT IS HEREBY ORDERED that RESPONDENT shall pay a total fine in the amount of  
17 \$102,000.00 to the Division within 180 days of the effective date of the Order, which is the result  
18 of the following: \$1,000 fine for each of the eight violations set forth in Conclusion of Law #3,  
19 \$1,000 fine for each of the eight violations set forth in Conclusion of Law #4, \$1,000 fine for each  
20 of the eight violations set forth in Conclusion of Law #5, \$10,000 fine for each of the six violations  
21 set forth in Conclusion of Law #6, and \$2,000 fine for each of the nine violations set forth in  
22 Conclusion of Law #7.

23 IT IS FURTHER ORDERED that RESPONDENT shall pay hearing and investigative  
24 costs in the amount of \$10,128.67 to the Division within 180 days of the effective date of the  
25 Order. Failure to timely pay the total fine and costs shall be construed as an event of default by  
26 RESPONDENT. In the event of default, RESPONDENT's license shall be immediately  
27 suspended. The suspension of his license shall continue until the total fine and costs are paid  
28 in full. The Division may institute debt collection proceedings for failure to timely pay the total

1 fine and costs.

2 IT IS FURTHER ORDERED that RESPONDENT shall attend three hours of ethics, three  
3 hours of agency, three hours of contracts, and six hours of broker management within 180 days  
4 of the effective date of the Order. The hours must be live education and will not count towards  
5 RESPONDENT's continuing education requirements. Failure to timely complete the required  
6 courses shall be construed as an event of default by RESPONDENT. In the event of default,  
7 RESPONDENT's license shall be immediately suspended. The suspension of his license shall  
8 continue until the continuing education is completed.

9 The Commission retains jurisdiction for correcting any errors that may have occurred in  
10 the drafting and issuance of this Decision.

11 This Order shall become effective on the 16<sup>th</sup> day of July, 2015.

12 DATED this 16 day of June, 2015.

13 REAL ESTATE DIVISION  
14 STATE OF NEVADA

15  
16 By: [Signature]  
17 President, Nevada Real Estate Commission  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28