

FILED

SEP 17 2019

REAL ESTATE COMMISSION  
BY *Judy Filler*

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11 *Attorneys for Respondent Kevin Boeve*

12 **BEFORE THE REAL ESTATE COMMISSION**

13 **STATE OF NEVADA**

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

CASE NO. 2018-561

ANSWER TO COMPLAINT

17 Petitioner,

18 vs.

19 KEVIN BOEVE,

20 Respondent.

21 **ANSWER TO COMPLAINT**

22 COMES NOW Respondent KEVIN BOEVE, by and through his counsel of record, and in  
23 answer to the Complaint would show as follows:

24 **JURISDICTION**

25 Respondent denies the allegations of this paragraph. Additionally, Respondent specifically  
26 refers to the Order of the First Judicial District Court for the State of Nevada in and for Carson  
27 City, Case No. 18OC000411B dated March 12, 2019, attached hereto as Exhibit A. In that Order,  
28

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1 among other things, the Court set aside the Commission's and the Division's prior efforts to  
2 discipline real estate agents for the same type of conduct alleged here against Respondent. In  
3 setting aside those prior disciplinary orders, the Court advised the Division and the Commission  
4 that "the Commission cannot discipline Petitioners for engaging or assisting with unlicensed  
5 activity" where, as here, "the Commission requires nonresident Petitioners to have a cooperative  
6 certificate to engage in cooperative brokering, but has unlawfully precluded the nonresident  
7 Petitioners from obtaining such certificates by limiting the types of transactions eligible for  
8 cooperative certificates." (See Paragraph 24 of the Order, emphasis added.) The Division's cease  
9 and desist letter violates this plain language from the District Court. Additionally, Respondent  
10 notes that in legal proceedings before the United States District Court, counsel for the Division  
11 and the Commission have advised the Court unequivocally that the Commission has no jurisdiction  
12 to discipline out of state agents. As a matter of law and equity, the Division and the Commission  
13 should be precluded from denying jurisdiction over out of state agents in one proceeding and  
14 asserting jurisdiction over them in another.

#### 15 PROCEDURAL HISTORY

- 16 1. Respondent admits the allegations of Paragraph 1.
- 17 2. Respondent admits that he received a letter from the Division in or around late  
18 April, 2018. Respondent denies the remaining allegations of Paragraph 2.
- 19 3. Respondent admits that he received an extension and provided a sworn declaration  
20 and transaction files. Respondent lacks personal knowledge of the remaining allegations of  
21 Paragraph 3, and is therefore unable to admit or deny those allegations.
- 22 4. With respect to Paragraph 4, Respondent admits that he received a purported cease  
23 and desist letter from the Division. Respondent denies the remaining allegations of Paragraph 4.  
24 Respondent specifically refers to the Order of the First Judicial District Court for the State of  
25 Nevada in and for Carson City, Case No. 18OC000411B dated March 12, 2019, attached hereto  
26 as **Exhibit A**. In that Order, among other things, the Court set aside the Commission's and the  
27 Division's prior efforts to discipline real estate agents for the same type of conduct alleged here  
28 against Respondent. In setting aside those prior disciplinary orders, the Court advised the Division

1 and the Commission that "the Commission cannot discipline Petitioners for engaging or  
2 assisting with unlicensed activity" where, as here, "the Commission requires nonresident  
3 Petitioners to have a cooperative certificate to engage in cooperative brokering, but has unlawfully  
4 precluded the nonresident Petitioners from obtaining such certificates by limiting the types of  
5 transactions eligible for cooperative certificates." (See Paragraph 24 of the Order, emphasis  
6 added.) The Division's cease and desist letter violates this plain language from the District Court.

7 5. Respondent admits Marcus and Millichap's counsel received a letter from the  
8 Division in or about early October, 2018 that requested the listed documents. Respondent denies  
9 the remaining allegations of Paragraph 5.

10 6. Respondent admits that on or about October 15, 2018, Marcus and Millichap's  
11 counsel responded as stated. Respondent denies the remaining allegations of Paragraph 6.

12 7. Respondent admits that on or about November 29, 2018, Marcus and Millichap's  
13 counsel received the identified letter. Respondent denies the remaining allegations of Paragraph  
14 7.

15 8. Respondent admits his counsel received a letter in or about mid-January, 2019, that  
16 stated the Division's intent commence a disciplinary proceeding. Respondent denies the remaining  
17 allegations of Paragraph 8.

#### 18 FACTUAL ALLEGATIONS

19 1. Respondent admits the factual allegations of Paragraph 1, but denies that such  
20 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
21 finding on the basis of the allegations of Paragraph 1 would exceed the Commission's statutory  
22 authority for the reasons stated by the District Court in Exhibit A.

23 2. Respondent admits the factual allegations of Paragraph 2, but denies that such  
24 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
25 finding on the basis of the allegations of Paragraph 2 would exceed the Commission's statutory  
26 authority for the reasons stated by the District Court in Exhibit A.

27 3. Respondent lacks personal knowledge regarding the allegations of Paragraph 3, and  
28 is therefore unable to admit or deny them. Respondent further denies that such allegations can

1 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
2 basis of the allegations of Paragraph 3 would exceed the Commission's statutory authority for the  
3 reasons stated by the District Court in Exhibit A.

4 4. Respondent lacks personal knowledge regarding the allegations of Paragraph 4, and  
5 is therefore unable to admit or deny them. Respondent further denies that such allegations can  
6 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
7 basis of the allegations of Paragraph 4 would exceed the Commission's statutory authority for the  
8 reasons stated by the District Court in Exhibit A.

9 5. Respondent admits the factual allegations of Paragraph 5, but denies that such  
10 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
11 finding on the basis of the allegations of Paragraph 5 would exceed the Commission's statutory  
12 authority for the reasons stated by the District Court in Exhibit A.

13 6. Respondent lacks personal knowledge regarding the factual allegations of  
14 Paragraph 6, and is therefore unable to admit or deny them. Respondent further denies that such  
15 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
16 finding on the basis of the allegations of Paragraph 6 would exceed the Commission's statutory  
17 authority for the reasons stated by the District Court in Exhibit A.

18 7. Respondent denies the factual allegations of Paragraph 7, and further denies that  
19 such allegations can form the basis of any disciplinary finding. Among other grounds, any  
20 disciplinary finding on the basis of the allegations of Paragraph 7 would exceed the Commission's  
21 statutory authority for the reasons stated by the District Court in Exhibit A.

22 8. Respondent lacks personal knowledge regarding the allegations of Paragraph 8, and  
23 is therefore unable to admit or deny them. Respondent further denies that such allegations can  
24 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
25 basis of the allegations of Paragraph 8 would exceed the Commission's statutory authority for the  
26 reasons stated by the District Court in Exhibit A.

27 9. Respondent admits the factual allegations of Paragraph 9, but denies that such  
28 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary

1 finding on the basis of the allegations of Paragraph 9 would exceed the Commission's statutory  
2 authority for the reasons stated by the District Court in Exhibit A.

3 10. Respondent admits the factual allegations of Paragraph 10, but denies that such  
4 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
5 finding on the basis of the allegations of Paragraph 10 would exceed the Commission's statutory  
6 authority for the reasons stated by the District Court in Exhibit A.

7 11. Respondent admits the factual allegations of Paragraph 11, but denies that such  
8 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
9 finding on the basis of the allegations of Paragraph 11 would exceed the Commission's statutory  
10 authority for the reasons stated by the District Court in Exhibit A.

11 12. Respondent admits the factual allegations of Paragraph 12, but denies that such  
12 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
13 finding on the basis of the allegations of Paragraph 12 would exceed the Commission's statutory  
14 authority for the reasons stated by the District Court in Exhibit A.

15 13. Respondent admits that in or about late November, 2018, his counsel received a  
16 request from the Division for a copy of a purported Representation Agreement. Respondent denies  
17 the remaining factual allegations of Paragraph 13. Respondent further denies that any such  
18 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
19 finding on the basis of the allegations of Paragraph 13 would exceed the Commission's statutory  
20 authority for the reasons stated by the District Court in Exhibit A.

21 14. Respondent admits that on or about December 4, 2018, Marcus and Millichap's  
22 counsel received the identified letter. Respondent denies the remaining allegations of Paragraph  
23 14, and further denies that such allegations can form the basis of any disciplinary finding. Among  
24 other grounds, any disciplinary finding on the basis of the allegations of Paragraph 14 would  
25 exceed the Commission's statutory authority for the reasons stated by the District Court in Exhibit  
26 A.

27 15. Respondent admits the factual allegations of Paragraph 15, but denies that such  
28 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary

1 finding on the basis of the allegations of Paragraph 15 would exceed the Commission's statutory  
2 authority for the reasons stated by the District Court in Exhibit A.

3 16. Respondent lacks personal knowledge regarding the allegations of Paragraph 16,  
4 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
5 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
6 basis of the allegations of Paragraph 16 would exceed the Commission's statutory authority for the  
7 reasons stated by the District Court in Exhibit A.

8 17. Respondent lacks personal knowledge regarding the allegations of Paragraph 17,  
9 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
10 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
11 basis of the allegations of Paragraph 17 would exceed the Commission's statutory authority for the  
12 reasons stated by the District Court in Exhibit A.

13 18. Respondent lacks personal knowledge regarding the allegations of Paragraph 18,  
14 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
15 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
16 basis of the allegations of Paragraph 18 would exceed the Commission's statutory authority for the  
17 reasons stated by the District Court in Exhibit A.

18 19. Respondent lacks personal knowledge regarding the allegations of Paragraph 19,  
19 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
20 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
21 basis of the allegations of Paragraph 19 would exceed the Commission's statutory authority for the  
22 reasons stated by the District Court in Exhibit A.

23 20. Respondent lacks personal knowledge regarding the allegations of Paragraph 20,  
24 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
25 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
26 basis of the allegations of Paragraph 20 would exceed the Commission's statutory authority for the  
27 reasons stated by the District Court in Exhibit A.

28 21. Respondent lacks personal knowledge regarding the allegations of Paragraph 21,

1 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
2 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
3 basis of the allegations of Paragraph 21 would exceed the Commission's statutory authority for the  
4 reasons stated by the District Court in Exhibit A.

5 22. Respondent lacks personal knowledge regarding the allegations of Paragraph 22  
6 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
7 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
8 basis of the allegations of Paragraph 22 would exceed the Commission's statutory authority for the  
9 reasons stated by the District Court in Exhibit A.

10 23. Respondent lacks personal knowledge regarding the allegations of Paragraph 23,  
11 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
12 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
13 basis of the allegations of Paragraph 23 would exceed the Commission's statutory authority for the  
14 reasons stated by the District Court in Exhibit A.

15 24. Respondent admits the factual allegations of Paragraph 24, but denies that such  
16 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
17 finding on the basis of the allegations of Paragraph 24 would exceed the Commission's statutory  
18 authority for the reasons stated by the District Court in Exhibit A.

19 25. Respondent admits the factual allegations of Paragraph 25, but denies that such  
20 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
21 finding on the basis of the allegations of Paragraph 25 would exceed the Commission's statutory  
22 authority for the reasons stated by the District Court in Exhibit A.

23 26. Respondent admits the factual allegations of Paragraph 26, but denies that such  
24 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
25 finding on the basis of the allegations of Paragraph 26 would exceed the Commission's statutory  
26 authority for the reasons stated by the District Court in Exhibit A.

27 27. Respondent admits the factual allegations of Paragraph 27, but denies that such  
28 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary

1 finding on the basis of the allegations of Paragraph 27 would exceed the Commission's statutory  
2 authority for the reasons stated by the District Court in Exhibit A.

3 28. Respondent lacks personal knowledge regarding the allegations of Paragraph 28,  
4 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
5 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
6 basis of the allegations of Paragraph 28 would exceed the Commission's statutory authority for the  
7 reasons stated by the District Court in Exhibit A.

8 29. Respondent lacks personal knowledge regarding the allegations of Paragraph 29,  
9 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
10 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
11 basis of the allegations of Paragraph 29 would exceed the Commission's statutory authority for the  
12 reasons stated by the District Court in Exhibit A.

13 30. Respondent lacks personal knowledge regarding the allegations of Paragraph 30,  
14 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
15 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
16 basis of the allegations of Paragraph 30 would exceed the Commission's statutory authority for the  
17 reasons stated by the District Court in Exhibit A.

18 31. Respondent lacks personal knowledge regarding the allegations of Paragraph 31,  
19 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
20 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
21 basis of the allegations of Paragraph 31 would exceed the Commission's statutory authority for the  
22 reasons stated by the District Court in Exhibit A.

23 32. Respondent lacks personal knowledge regarding the allegations of Paragraph 32,  
24 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
25 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
26 basis of the allegations of Paragraph 32 would exceed the Commission's statutory authority for the  
27 reasons stated by the District Court in Exhibit A.

28 33. Respondent lacks personal knowledge regarding the allegations of Paragraph 33,



1 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
2 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
3 basis of the allegations of Paragraph 33 would exceed the Commission's statutory authority for the  
4 reasons stated by the District Court in Exhibit A.

5 34. Respondent lacks personal knowledge regarding the allegations of Paragraph 34,  
6 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
7 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
8 basis of the allegations of Paragraph 34 would exceed the Commission's statutory authority for the  
9 reasons stated by the District Court in Exhibit A.

10 35. Respondent denies the factual allegations of Paragraph 35, and further denies that  
11 such allegations can form the basis of any disciplinary finding. Among other grounds, any  
12 disciplinary finding on the basis of the allegations of Paragraph 35 would exceed the Commission's  
13 statutory authority for the reasons stated by the District Court in Exhibit A.

14 36. Respondent admits that he received a net commission of \$19,800. Respondent  
15 denies the remaining allegations of Paragraph 36, and further denies that such allegations can form  
16 the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the basis  
17 of the allegations of Paragraph 34 would exceed the Commission's statutory authority for the  
18 reasons stated by the District Court in Exhibit A.

19 37. Respondent admits the factual allegations of Paragraph 37, but denies that such  
20 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
21 finding on the basis of the allegations of Paragraph 37 would exceed the Commission's statutory  
22 authority for the reasons stated by the District Court in Exhibit A.

23 38. Respondent denies the factual allegations of Paragraph 38, and further denies that  
24 such allegations can form the basis of any disciplinary finding. Among other grounds, any  
25 disciplinary finding on the basis of the allegations of Paragraph 38 would exceed the Commission's  
26 statutory authority for the reasons stated by the District Court in Exhibit A.

27 39. Respondent admits the factual allegations of Paragraph 39, but denies that such  
28 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary

1 finding on the basis of the allegations of Paragraph 39 would exceed the Commission's statutory  
2 authority for the reasons stated by the District Court in Exhibit A.

3 40. Respondent admits the factual allegations of Paragraph 40, but denies that such  
4 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
5 finding on the basis of the allegations of Paragraph 40 would exceed the Commission's statutory  
6 authority for the reasons stated by the District Court in Exhibit A.

7 41. Respondent lacks personal knowledge regarding the allegations of Paragraph 41,  
8 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
9 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
10 basis of the allegations of Paragraph 41 would exceed the Commission's statutory authority for the  
11 reasons stated by the District Court in Exhibit A.

12 42. Respondent lacks personal knowledge regarding the allegations of Paragraph 42,  
13 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
14 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
15 basis of the allegations of Paragraph 42 would exceed the Commission's statutory authority for the  
16 reasons stated by the District Court in Exhibit A.

17 43. Respondent lacks personal knowledge regarding the allegations of Paragraph 43,  
18 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
19 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
20 basis of the allegations of Paragraph 43 would exceed the Commission's statutory authority for the  
21 reasons stated by the District Court in Exhibit A.

22 44. Respondent lacks personal knowledge regarding the allegations of Paragraph 44,  
23 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
24 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
25 basis of the allegations of Paragraph 44 would exceed the Commission's statutory authority for the  
26 reasons stated by the District Court in Exhibit A.

27 45. Respondent lacks personal knowledge regarding the allegations of Paragraph 45,  
28 and is therefore unable to admit or deny them. Respondent further denies that such allegations can

1 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
2 basis of the allegations of Paragraph 45 would exceed the Commission's statutory authority for the  
3 reasons stated by the District Court in Exhibit A.

4 46. Respondent lacks personal knowledge regarding the allegations of Paragraph 46  
5 and is therefore unable to admit or deny them. Respondent further denies that such allegations can  
6 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the  
7 basis of the allegations of Paragraph 46 would exceed the Commission's statutory authority for the  
8 reasons stated by the District Court in Exhibit A.

9 47. Respondent admits the factual allegations of Paragraph 47, but denies that such  
10 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
11 finding on the basis of the allegations of Paragraph 47 would exceed the Commission's authority  
12 for the reasons stated by the District Court in Exhibit A.

13 48. Respondent admits the factual allegations of Paragraph 48, but denies that such  
14 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary  
15 finding on the basis of the allegations of Paragraph 48 would exceed the Commission's statutory  
16 authority for the reasons stated by the District Court in Exhibit A.

17 **VIOLATIONS ALLEGED**

- 18 1. Respondent denies the allegations in Paragraph 1.

19 **DISCIPLINE AUTHORIZED**

20 2. Paragraph 2 states legal conclusions and does not require a response from the  
21 Respondent; however, to the extent a response is required by rule, Respondent denies the  
22 allegations of Paragraph 2.

23 3. Paragraph 3 states legal conclusions and does not require a response from the  
24 Respondent; however, to the extent a response is required by rule, Respondent denies the  
25 allegations of Paragraph 3.

26 4. Paragraph 4 states legal conclusions and do not require a response from the  
27 Respondent; however, to the extent a response is required by rule, Respondent denies the  
28 allegations of Paragraph 4.



1           8.       Respondent is not guilty of any violation because the licensing and cooperative  
2 certificate scheme promulgated by the Commission and/or the Division, including NAC 645.180,  
3 645.183, and 645.185, violates the United States Constitution's Commerce Clause.

4           9.       Respondent is not guilty of any violation because the Commission and/or the  
5 Division promulgated their licensing and cooperative certificate scheme, including NAC 645.180,  
6 645.183, and 645.185, without following the required statutes, rules and regulations, including  
7 without limitation:

8           a.       The Commission failed to comply with the requirements for deliberating only in  
9 public meetings pursuant to a duly posted agenda with sufficient opportunity for informed and  
10 meaningful participation by the public, and that such public meetings include a discussion of the  
11 true purpose and true effect of a proposed regulation.

12           b.       The Commission and the Division failed to comply with the requirements for  
13 Regulation Workshops pursuant to a duly posted agenda with sufficient opportunity for informed  
14 and meaningful participation by the public, and with public discussion of the true purpose and true  
15 effect of a proposed regulation.

16           c.       The Commission and the Division failed to comply with the requirements for a  
17 Notice of Intent to Act Upon a Regulation that includes the true purpose and need of a proposed  
18 regulation, the true estimated economic effect of a proposed regulation, and the true effect on  
19 federal law including the United States Constitution.

20           d.       The Commission failed to comply with the requirements for written minutes of  
21 meetings accurately reflecting the basis for actions taken by the Commission.

22           e.       On information and belief, the Commission violated the prohibition on ex parte  
23 communications regarding matters pending before the Commission.

24           f.       The Commission failed to comply with the requirement that the purpose of and  
25 policy behind a regulatory scheme be discussed in an open meeting and reflected in the written  
26 minutes thereof.

27           g.       The Division failed to comply with the requirement that its Administrator provide  
28 an advisory opinion in appropriate circumstances.

1           h.       The Commission and the Division failed to comply with the requirement that a  
2 regulatory scheme be preceded by and supported by a duly issued and considered Small Business  
3 Impact Statement.

4           i.       The Commission and the Division failed to comply with the requirement under  
5 NRS 233B.066 that a regulatory scheme be preceded by and supported by a Legislative Review  
6 that identifies a true explanation of the need for the regulation, a true description of how public  
7 comment was solicited, a true summary of public response, and a true estimate of the economic  
8 effect of the regulation on the business which it is to regulate and on the public.

9           j.       Respondent is not guilty of any violation because the Commission and/or the  
10 Division promulgated their licensing and cooperative certificate scheme, including NAC 645.180,  
11 645.183, and 645.185, without statutory authority and in violation of the NRS 645.605.

12           10.     The Division failed to comply with the requirement under NAC 645.680 that the  
13 complaint against Respondent be made on a standard form or affidavit or, in the alternative, the  
14 Division failed to produce such form or affidavit to Respondent, in violation of the Division's  
15 statutory duties and in violation of Respondent's due process rights.

16           11.     The Division failed to adequately investigate the charges against Respondent. For  
17 instance, the Division either failed to make any attempt to contact any consumers or any of the  
18 parties to the transactions identified in the Complaint, or it contacted such consumers and parties  
19 but wrongfully withheld that information from Respondent.

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

26           13.     The Division and the Commission have historically interpreted and enforced NAC  
27 645.185 in a manner that was contradictory to the plain language of the regulation. Namely, they  
28 have always precluded out of state brokers from offering real estate for sale in Nevada to a person

1 other than a resident of Nevada, even though NAC 645.185 expressly allowed out of state brokers  
2 to offer real estate in Nevada for sale to a person other than a resident of Nevada.

3 14. As historically and currently interpreted by the Commission and the Division, the  
4 statutes and regulations relating to out of state brokerage activities are so ambiguous as to be  
5 unenforceable.

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

9 16. The Commission denied Respondent his due process rights by failing to comply  
10 with NRS 233B.121(4), 233B.127(3) and 645.235(4).

11 17. The Commission should be barred from adjudicating this proceeding because it has  
12 demonstrated that it has not been and cannot be impartial as to current and former Marcus &  
13 Millichap agents such as Respondent.

14 18. The Commission has a conflict of interest with respect to this proceeding. Among  
15 other things, the Commissioners are defendants in a related lawsuit pending before the Ninth  
16 Circuit Court of Appeal, and are directly adverse to Marcus & Millichap in that proceeding.

17 19. The Commission has a conflict of interest with respect to this proceeding because,  
18 among other things, the Commissioners have a personal financial interest in the outcome of the  
19 proceeding. To the extent the Commission and the Division succeed in their effort to exclude out-  
20 of-state agents from sharing commissions for Nevada real estate transactions, the Commissioners  
21 as in-state agents will and/or anticipate that they will derive personal financial gains.

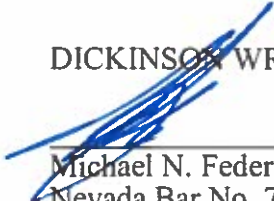
22 20. The Commission should be barred from adjudicating this proceeding because it has  
23 demonstrated its inability to exercise its duty of discretion and instead merely rubber stamps the  
24 decisions of the Division.

25 21. The Commission should be barred from adjudicating these proceedings because it  
26 is being legally advised by attorneys who have a conflict of interest. The Commission's counsel,  
27 the Nevada Attorney General, represents the Commission and the Division in this proceeding, and  
28 in the related state and federal court proceedings. As such, the Commission's counsel acts as

1 counsel for both the prosecution and the adjudicative body simultaneously, thereby depriving  
2 Respondent of a fair and impartial proceeding.

3 DATED this 17<sup>th</sup> day of September 2019.

4  
5 DICKINSON WRIGHT PLLC

6  
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Fax: (415) 433-5530  
16 *Attorneys for Respondent Kevin Boeve*




**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 17<sup>th</sup> day of September 2019, he caused a copy of the foregoing **ANSWER TO COMPLAINT** to be transmitted via hand delivery addressed to:

REAL ESTATE DIVISION  
STATE OF NEVADA  
Attn: Evelyn Pattee, Commission Coordinator  
3300 W. Sahara Avenue, Suite 350  
Las Vegas, Nevada 89102

And a copy placed in the U.S. Mail, postage prepaid and via email addressed to:

Peter K. Keegan  
Deputy Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
Email: [pkeegan@ag.nv.gov](mailto:pkeegan@ag.nv.gov)  
*Attorney for Real Estate Division*



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An Employee of Dickinson Wright PLLC

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# EXHIBIT A

1 IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
2 IN AND FOR CARSON CITY

3 ALVIN MANSOUR,

4 Petitioner and Plaintiff,

5 vs.

6 SHARATH CHANDRA, ADMINISTRATOR,  
7 REAL ESTATE DIVISION, DEPARTMENT OF  
8 BUSINESS AND INDUSTRY, STATE OF  
9 NEVADA; and NEVADA REAL ESTATE  
10 COMMISSION, STATE OF NEVADA,

11 Respondents and Defendants.

Case No.: 18OC000411B (Consolidated)

Dept. No.: 1

2019 MAR 12 AM 10:15  
ALBERT COMPTON  
CLERK

2019 MAR 12 AM 10:15

12 ORDER DENYING RESPONDENT'S MOTION TO DISMISS AND  
13 MOTION FOR PARTIAL DISMISSAL AND SETTING ASIDE  
14 AND REMANDING PETITIONERS' DISCIPLINARY DECISIONS

15 THIS MATTER came before the Court on February 14, 2019, for hearing on the Motion  
16 to Dismiss and the Motion for Partial Dismissal (the "Dismissal Motions") filed on June 29,  
17 2018 and October 26, 2018, respectively, by the Respondents, NEVADA REAL ESTATE  
18 DIVISION and Administrator SHARATH CHANDRA, of the NEVADA REAL ESTATE  
19 DIVISION, (collectively, the "Division").<sup>1</sup> The Division was represented by Brandee  
20 Mooneyhan and Melissa Flatley, Deputy Attorneys General for the State of Nevada. The  
21 consolidated Petitioners and Plaintiffs, ALVIN MANSOUR, KEVIN MANSOUR, GORDON  
22 ROBERT ALLRED, PERRY WHITE and NENAD ZIVKOVIC (the "Mansour Petitioners"),  
23 TODD MANNING ("Manning"), ANTHONY D'AMBROSIA, JOHN GLASS, GLEN  
24 KUNOFSKY, EDWARD OTOCKA, GAURAB REJA, JAMES VENTURA, and PERRY WHITE  
25 (the "D'Ambrosia Petitioners" and collectively with Manning and the Mansour Petitioners the  
26 "Petitioners"), were represented by Katherine Hoffman of Fennemore Craig, P.C. and Jill Rowe  
of Cooper White & Cooper, *pro hac vice*.

27 <sup>1</sup> Respondent and Defendant Nevada Real Estate Commission (the "Commission") joined in the  
28 Motion to Dismiss filed June 29, 2018, but did not join in the Motion for Partial Dismissal filed October 26,  
2018.

1           The Petitioners filed Responses and Oppositions to the Dismissal Motions on July 16,  
2 2018 and November 13, 2018 (the "Oppositions"). The Division filed Replies in Support of the  
3 Dismissal Motions on July 27, 2018 and November 27, 2018 (the "Replies").

4           The Court, after considering the papers and pleadings on file, including the Petitioners'  
5 Petitions for Judicial Review (the "Petitions"),<sup>2</sup> the Complaints for Declaratory Relief filed by  
6 Manning and D'Ambrosia Petitioners (the "Complaints"), the Dismissal Motions, the  
7 Oppositions, the Replies, and the oral argument of counsel at the hearing, and good cause  
8 appearing therefore, makes and enters the following decision and order:

9           1.       Petitioners White and Manning are Nevada real estate professionals licensed by  
10 the Division. The remaining Petitioners are real estate professionals licensed in other United  
11 States jurisdictions.

12           2.       The Division commenced disciplinary proceedings against each of the Mansour  
13 Petitioners, which were the subject of contested case hearings before the Commission on  
14 December 5-6, 2017. Following the hearings, the Commission served decisions on January 26,  
15 2018, finding each of the Mansour Petitioners violated NRS 645.230 and/or NRS 645.235 and  
16 imposing professional discipline (the "Mansour Decisions").

17           3.       The Division commenced a disciplinary proceeding against Manning, which was  
18 the subject of a contested case hearing before the Commission on March 20-21, 2018. Following  
19 the hearing, the Commission served a decision on April 12, 2018, finding Manning violated NRS  
20 645.235(1)(b) and imposing professional discipline (the "Manning Decision").

21           4.       The Division commenced disciplinary proceedings against each of the  
22 D'Ambrosia Petitioners, which was the subject of a contested case hearing before the  
23 Commission on June 12-14, 2018. Following the contested case, the Commission served  
24 decisions on July 30, 2018, finding each of the D'Ambrosia Petitioners violated NRS 645.230  
25 and/or NRS 645.235 and imposing professional discipline (together with the Mansour Decisions  
26 and the Manning Decision, the "Decisions").

27 \_\_\_\_\_  
28           <sup>2</sup>       The Commission did not file a notice of intent to participate in the Petitions under NRS  
233B.130(3).

1           5.       During the contested case proceedings before the Commission, Petitioners each  
2 raised as a defense to the alleged violations of NRS 645.230 and/or NRS 645.235 that the method  
3 and mode of concurrent application and administration of NRS 645.230 and/or NRS  
4 645.235(1)(a) in conjunction with the application and administration of the regulatory system  
5 prescribed by NAC 645.180, NAC 645.183 and NAC 645.185 (the "Cooperative Certification  
6 Regulatory Framework") exceeds the Commission's statutory authority and violates the  
7 Petitioners' Constitutional rights.

8           6.       Specifically, the Petitioners asserted that imposing discipline for unlicensed  
9 brokering activities or assisting unlicensed brokering activities under NRS 645.230 and/or  
10 645.235 was unlawful where the Commission's regulations prohibited the Petitioners from  
11 obtaining a cooperative certificate in violation of the United States Constitution and Nevada  
12 statutes. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al. v. Gordon Robert Allred*,  
13 Case No. 2016-1734, *Transcript of Proceedings* at 38:11-20, 67:20-68:2 (Nev. Real Estate Comm'n  
14 December 5, 2017); *Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R. Manning*, Case  
15 No. 2017-2079, *Transcript of Proceedings* at 11:11-18, 41:2-5 (Nev. Real Estate Comm'n March 20,  
16 2018); *Sharath Chandra Adm'r Real Estate Div., et al. v. Anthony D. D'Ambrosia*, Case No.  
17 2016-2901, *Motion to Dismiss* at pp. 8-13 (Nev. Real Estate Comm'n filed May 29, 2018).

18           7.       The Commission refused to hear evidence and arguments offered by Petitioners  
19 regarding the alleged invalidity of the Cooperative Certification Regulatory Framework and  
20 declined to evaluate or consider Petitioners' defense that the Cooperative Certification  
21 Regulatory Framework exceeds the Commission's statutory authority and violates their  
22 Constitutional rights. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al. v. Gordon*  
23 *Robert Allred*, Case No. 2016-1734, *Transcript of Proceedings* at 5:19-6:15 (Nev. Real Estate  
24 Comm'n December 6, 2017); *Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R.*  
25 *Manning*, Case No. 2017-2079, *Transcript of Proceedings* at 41:2-5 (Nev. Real Estate Comm'n  
26 March 20, 2018); *Sharath Chandra Adm'r Real Estate Div., et al. v. Anthony D. D'Ambrosia*,  
27 Case No. 2016-2901, *Transcript of Proceedings* at 118:18-119:5 (Nev. Real Estate Comm'n June  
28 13, 2018) (denying Motion to Dismiss).



1 from filing a declaratory relief complaint under NRS 233B.110 to challenge regulations as  
2 exceeding an agency's authority or violating Nevada statutes. Nevada Attorney for Injured  
3 Workers v. Nevada Self-Insurers Ass'n, 126 Nev. 74, 83 n.7, 225 P.3d 1265, 1270 (2010).  
4 Consequently, that Petitioners have challenged the Commission's Decisions by filing the  
5 Petitions under NRS 233B.130 does not bar them from challenging the validity of the  
6 Cooperative Certification Regulatory Framework through the Complaints filed pursuant to  
7 NRS 233B.110.

8 12. Second, the Nevada Administrative Procedure Act (the "Act") does not prohibit  
9 this Court from considering the Petitions and Complaints together. The Nevada Rules of Civil  
10 Procedure ("NRCP") apply to the adjudication of the Complaints, *see* NRS 233B.110(3), and to  
11 the Petitions to the extent the NRCP do not conflict with the Act, *see* NRCP 81(a). The Division  
12 has not identified any authority in the Act or the NRCP which precludes Petitioners from filing  
13 the Petitions and Complaints together.

14 13. Third, a declaratory judgment under NRS 233B.110 cannot be rendered until  
15 after Petitioners "request the agency to pass upon the validity" of the Cooperative Certification  
16 Regulatory Framework. NRS 233B.110(1). This statute does not specify a required method or  
17 process for making such a request, nor does NRS 233B.110 obligate a plaintiff to file a petition to  
18 amend or repeal the regulation at issue. During their disciplinary hearings, Manning and the  
19 D'Ambrosia Petitioners requested that the Commission hear arguments and evidence that the  
20 Cooperative Certification Regulatory Framework exceeded the Commission's statutory  
21 authority and violated the Constitution, and find that the Cooperative Certification Regulatory  
22 Framework was invalid. Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R. Manning,  
23 Case No. 2017-2079, *Transcript of Proceedings* at 11:11-18 (Nev. Real Estate Comm'n March 20,  
24 2018); Sharath Chandra Adm'r Real Estate Div., et al. v. Anthony D. D'Ambrosia, Case No.  
25 2016-2901, *Motion to Dismiss* at pp. 8-13 (Nev. Real Estate Comm'n filed May 29, 2018).  
26 Accordingly, Manning and the D'Ambrosia Petitioners have satisfied the requirement the  
27 Commission be asked to "pass upon the validity" of the Cooperative Certification Regulatory  
28 Framework.





1           20.     During their contested case hearings, the Commission deprived the Petitioners of  
2 the opportunity to present arguments and evidence related to their claims that the Cooperative  
3 Certification Regulatory Framework is unconstitutional, and/or exceeds the Commission's  
4 authority and violates Nevada statutes. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al.*  
5 *v. Gordon Robert Allred*, Case No. 2016-1734, *Transcript of Proceedings* at 5:19-6:15 (Nev. Real  
6 Estate Comm'n December 6, 2017); *Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R.*  
7 *Manning*, Case No. 2017-2079, *Transcript of Proceedings* at 41:2-5 (Nev. Real Estate Comm'n  
8 March 20, 2018); *Sharath Chandra Adm'r Real Estate Div., et al. v. John Glass*, Case No. 2017-  
9 1473, *Transcript of Proceedings* at 60:5-63:11 (Nev. Real Estate Comm'n June 12, 2018).

10           21.     The Commission did not evaluate or consider this alleged invalidity of the  
11 Cooperative Certification Regulatory Framework in rendering the Decisions because the  
12 Commission incorrectly concluded that such arguments are irrelevant to the disciplinary  
13 proceedings for unlicensed brokering activities or assisting unlicensed brokering activities in  
14 violation of NRS 645.230 and/or 645.235. *See, Todd R. Manning v. Sharath Chandra, Adm'r Real*  
15 *Estate Div., et al.*, Case No. 18OC000411B (Consolidated), *Division Reply in Support of Motion to*  
16 *Dismiss* (Nev. First Jud. Dist. Ct. filed July 27, 2018), at p. 2; *Anthony D. D'Ambrosia v. Sharath*  
17 *Chandra, Adm'r Real Estate Div., et al.*, Case No. 18OC000411B (Consolidated), *Division Reply in*  
18 *Support of Motion for Partial Dismissal* (Nev. First Jud. Dist. Ct. filed November 27, 2018), at p. 3.

19           22.     The Commission's determination that the validity of the Cooperative  
20 Certification Regulatory Framework is irrelevant to Petitioners' disciplinary proceedings is  
21 clearly erroneous, and for the reasons discussed below, such evidence is material to the  
22 Decisions.

23           23.     Each of the nonresident Petitioners was disciplined for engaging in the activities  
24 of a broker "without first obtaining the appropriate license or certificate" by cooperating with a  
25 Nevada-licensed Petitioner to offer Nevada property for sale. *See, e.g., Sharath Chandra Adm'r*  
26 *Real Estate Div., et al. v. John Glass*, Case No. 2017-1473, *Decision* at pp. 1-2 (Nev. Real Estate  
27 Comm'n July 31, 2018). The Nevada-licensed Petitioners were correspondingly disciplined for  
28 assisting this conduct. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R.*

1 Manning, Case No. 2017-2079, Decision at pp. 2-3 (Nev. Real Estate Comm'n April 12, 2018).  
2 The Cooperative Certification Regulatory Framework precludes the nonresident Petitioners  
3 from obtaining cooperative certificates allowing them to cooperate with the Nevada-licensed  
4 Petitioners to sell Nevada property. See NAC 645.185(11).

5 24. Whether the Cooperative Certification Regulatory Framework's limitation on  
6 cooperative certificates unlawfully prohibits the nonresident Petitioners from obtaining "the  
7 appropriate license or certificate" is relevant to determining if the Commission may discipline  
8 Petitioners under NRS 645.230 and/or NRS 645.235. Put another way, if the Commission  
9 determines that the Cooperative Certification Regulatory Framework improperly denied the  
10 nonresident Petitioners the ability to obtain a certificate authorizing them to engage in  
11 cooperative brokering with the Nevada-licensed Petitioners, this determination must be  
12 considered in administering discipline for engaging in broker activities without the appropriate  
13 license or certificate, or for assisting such activities. It appears to this Court that if the  
14 Commission requires the nonresident Petitioners to have a cooperative certificate to engage in  
15 cooperative brokering, but has unlawfully precluded the nonresident Petitioners from obtaining  
16 such certificates by limiting the types of transactions eligible for cooperative certificates, then  
17 the Commission cannot discipline Petitioners for engaging in or assisting with unlicensed  
18 activity.

19 25. Based on the Commission's clearly erroneous determination as to the relevancy  
20 of the alleged invalidity of the Cooperative Certification Regulatory Framework, the  
21 Commission wrongfully denied Petitioners the opportunity to present arguments and evidence  
22 on this issue during their contested case hearings. See, e.g., Sharath Chandra Adm'r Real Estate  
23 Div., et al. v. Gordon Robert Allred, Case No. 2016-1734, *Transcript of Proceedings* at 5:19-6:15  
24 (Nev. Real Estate Comm'n December 6, 2017); Sharath Chandra Adm'r Real Estate Div., et al.  
25 v. Todd R. Manning, Case No. 2017-2079, *Transcript of Proceedings* at 60:5-64:23 (Nev. Real  
26 Estate Comm'n March 21, 2018); Sharath Chandra Adm'r Real Estate Div., et al. v. John Glass,  
27 Case No. 2017-1473, *Transcript of Proceedings* at 60:5-63:11 (Nev. Real Estate Comm'n June 12,  
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1 2018). Consequently, there were "good reasons" for Petitioner's failure to present this evidence  
2 to the Commission. See NRS 233B.131(2).

3 26. For the forgoing reasons, Decisions are set aside and remanded to the  
4 Commission for further proceedings in accordance with NRS 233B.131(2)-(3).

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7 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

8 27. The Division's Dismissal Motions are DENIED.

9 28. The Decisions are set aside and remanded to the Commission with instructions  
10 to (i) hear Petitioners' evidence and arguments with respect to whether the Cooperative  
11 Certification Regulatory Framework exceeds the Commission's statutory authority, and/or  
12 violates the United States Constitution's dormant commerce clause and/or Petitioners' rights of  
13 association and free speech under the First and Fourteenth Amendments; (ii) determine the  
14 validity of the Cooperative Certification Regulatory Framework; and (iii) apply that  
15 determination to the Decisions consistent with this Order. Pending such remand, the Petitions  
16 are stayed.

17 29. The Complaints are stayed pending completion of the Commission proceedings  
18 required by paragraph 28.

19 IT IS SO ORDERED this 11<sup>th</sup> of March, 2019.

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22 DISTRICT COURT JUDGE  
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1 CERTIFICATE OF MAILING


2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District  
3 Court, and that on this 12<sup>th</sup> day of March, 2019, I deposited for mailing, postage paid, at Carson  
4 City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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