# BEFORE THE REAL ESTATE COMMISSION

### STATE OF NEVADA

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

Case No. 2017-1299



OCT 04 2019



Petitioner,

VS.

MICHAEL C. GONYEA,

Respondent.

# COMPLAINT AND NOTICE OF HEARING

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division") hereby notifies MICHAEL C. GONYEA ("RESPONDENT"), of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapters 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 645.633 and/or NRS 645.630 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, licensed as Broker under license numbers B.0026907.LLC and is therefore subject to the jurisdiction of the Division and the Commission, and the provisions of NRS chapter 645 and NAC chapter 645.

### FACTUAL ALLEGATIONS

1. RESPONDENT has been licensed as a Broker under license number B.0026907.LLC since April 25, 2008 and said license is currently on active status.

- 2. At all relevant times, RESPONDENT was a broker for Andrew Garcia Property Management, LLC, a Nevada limited liability company, doing business as Real Property Management Exclusive (the "Company").<sup>1</sup>
- 3. Andrew Garcia was a managing member of the Company and is a licensed salesperson under license number S.0068150.LLC, said license being currently active.
- 4. In January of 2019, the Company's former bookkeeper, Mary Rosalyn Stehli ("Stehli"), pled guilty to embezzling over \$300,000 dollars from the Company's client trust accounts for the time period from approximately May 11, 2014 through July 31, 2016.
- 5. Stehli appeared to have embezzled the money by moving money from the Client Trust Security Deposit Account to the Client Trust Rental Account by entering journal entry corrections.
- 6. RESPONDENT was responsible for the supervision and maintenance of the Company's trust accounts, including the accounts from which Stehli embezzled funds.
- 7. RESPONDENT's Client Trust Account Reconciliations were due to the Division on or before April 30, 2017.
- 8. On May 4, 2017, the Division opened case number 2017-1040 against RESPONDENT when RESPONDENT failed to timely submit the Client Trust Account Reconciliations.
- 9. Not until after the Division opened case number 2017-1040 against RESPONDENT did RESPONDENT notify the Division regarding Stehli's embezzlement.
- 10. Thereafter, the Division made several requests to RESPONDENT to obtain further documents, information, and the Client Trust Account Reconciliations.
- 11. Each time, RESPONDENT failed to respond to the Division leading to subsequent cases being brought against him.
- 12. Although RESPONDENT did not respond to the Division's requests to obtain documents or regarding the Division's subsequent actions, the owner of the Company, Garcia, did respond and/or paid any fine the Division imposed against RESPONDENT.

<sup>&</sup>lt;sup>1</sup> RESPONDENT has since closed the Real Property Management Exclusive brokerage as of September 16, 2019, and is now the broker of Renew Property Management, effective September 16, 2019.

- 13. RESPONDENT also failed to notify the DIVISION of Garcia's journal entries made to the Company's client trust to replace the money embezzled by Stehli, totaling \$142,885.84 ("Deposited Money").
- 14. Only following the Division's inquiry regarding the Deposited Money journal entries, did Garcia (not RESPONDENT) inform the Division.
- 15. RESPONDENT has been listed as the broker of the Company from May 9, 2011 to May 1, 2011 and from May 18, 2011 to September 16, 2019.
- 16. RESPONDENT only became listed on the Client Trust Bank accounts on December 11, 2018 as a signatory after being notified by the DIVISION that he was in violation of Nevada law.
- 17. RESPONDENT permitted Company employee Brenda Leong to be an authorized signor on the Company's bank account even though she was not a licensee.
- 18. RESPONDENT permitted Company employee Yvonne Cubas to be an authorized signor on the Company's bank account even though she was not a licensee.
- 19. RESPONDENT permitted Garcia to sign Company checks on 17 occasions without RESPONDENT's signature.
  - 20. RESPONDENT failed to designate bank accounts as trust accounts.
- 21. RESPONDENT failed to properly supervise Stehli when she embezzled funds from the Company.
- 22. Even following Stehli's embezzlement, RESPONDENT failed to maintain an accurate accounting of the client rental trust accounts.
- 23. RESPONDENT provided a faulty Trust Account Reconciliation to the Division showing a balance when there was not.
- 24. On April 16, 2019 the Division properly notified RESPONDENT by certified mail of its intent to bring a complaint against RESPONDENT.

#### **VIOLATIONS**

RESPONDENT has committed the following violations of law:

25. RESPONDENT violated NAC 645.600(1) by failing to supervise the Company's employees, including, Stehli, and her handling of the Company's money.

- 26. RESPONDENT violated NAC 645.655(5) by failing to maintain a custodial or trust account to which he was a signatory until December of 2018.
- 27. RESPONDENT violated NAC 645.655(6) by permitting Brenda Leong (a non-licensee) to be a signatory on the Company's bank accounts.
- 28. RESPONDENT violated NAC 645.655(6) by permitting Yvonne Cubas (a non-licensee) to be a signatory on the Company's bank accounts.
- 29. RESPONDENT violated NAC 645.655(6) by permitting Garcia (a salesperson) to be a signatory on trust account and permitting him to sign checks on 17 separate occasions without RESPONDENT's signature.
- 30. RESPONDENT violated NRS 645.310(4) by failing to designate the Company's bank accounts as trust accounts.
- 31. RESPONDENT violated NRS 645.310(5) by failing to maintain an accurate accounting of client trust rental accounts.
- 32. RESPONDENT violated NAC 645.605(11)(c) by providing the Division with a faulty Trust Account Reconciliation showing a balance when there was not.

# DISCIPLINE AUTHORIZED

- 33. Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to impose an administrative fine of up to \$10,000 per violation against RESPONDENT and further to suspend, revoke or place conditions on the license of RESPONDENT.
- 34. 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.
- 35. 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 November 5, 2019, commencing at 9:00 a.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 November 7, 2019, or earlier if the business of the Commission is concluded. The Commission meeting will be held on November 5, 2019, at the Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102. The meeting will continue on November 6, 2019 at the Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102, commencing at 9:00 a.m., and on November 7, 2019, should business not be concluded, starting at 9:00 a.m. at Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Tahoe Room, Las Vegas, Nevada 89102.

STACKED CALENDAR: Your hearing is one of several hearings scheduled at the same time as part of a regular meeting of the Commission that is expected to last from November 5, 2019 through November 7, 2019, or earlier if the business of the Commission is concluded. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the complaint were true. If you have any questions please call Evelyn Pattee, Commission Coordinator, at (702) 486-4074.

YOUR RIGHTS AT THE HEARING: except as mentioned below, the hearing is an open meeting under Nevada's open meeting law, and may be attended by the public. After the evidence and arguments, the commission may conduct a closed meeting to discuss your alleged misconduct or professional competence. You are entitled to a copy of the transcript of the open and closed portions of the meeting, although you must pay for the transcription.

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

You have the right to request that the Commission issue subpoenas to compel witnesses to testify and/or evidence to be offered on your behalf. In making the request, you may be required to demonstrate the relevance of the witness' testimony and/or evidence. Other important rights you have are listed in NRS 645.680 through 645.990, NRS Chapter 233B, and NAC 645.810 through 645.875.

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

DATED this \_\_\_\_\_ day of October, 2019.

State of Nevada

Department of Business and Industry

Real Estate Division

By:\_

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