

BEFORE THE REAL ESTATE COMMISSION

FILED

STATE OF NEVADA

JUL 19 2019

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

REAL ESTATE COMMISSION  
BY *Emily Taitte*

Case No. 2018-973

Petitioner,

COMPLAINT AND NOTICE OF  
HEARING

vs.

TODD MANNING ,

Respondent.

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division"), by and through its counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Peter Keegan, Deputy Attorney General, hereby notifies RESPONDENT TODD MANNING ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapter 233B and Chapter 645 of the Nevada Revised Statutes ("NRS") and Chapter 645 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if the RESPONDENT should be subject to an administrative penalty or other discipline authorized by NRS 645 and/or NAC 645, if violations of law are proven.

JURISDICTION

RESPONDENT was at all relevant times mentioned in this Complaint licensed as a real estate broker under License Number B.1001879.CORP, and is therefore subject to the jurisdiction of the Division and the provisions of NRS Chapter 645 and NAC Chapter 645.

PROCEDURAL HISTORY

1. RESPONDENT identifies himself as a Vice President of Investments for Marcus & Millichap ("M&M").

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1           2.     RESPONDENT has been licensed as a real estate broker, License Number  
2 B.1001879.CORP, since November 7, 2016, and is currently in active status

3           3.     On or about July 20, 2018, the Division sent an investigation opening letter to  
4 RESPONDENT, through his counsel, which required RESPONDENT to provide a sworn  
5 statement concerning his involvement with the real estate transactions involving 5091 E.  
6 Bonanza Road, Las Vegas, NV 89706; 7040 South Durango Drive, 7050 South Durango  
7 Drive, and 7070 South Durango Drive, Las Vegas, NV 89113.

8           4.     On or about August 7, 2018, the Division received RESPONDENT's response,  
9 dated August 6, 2018, submitted through his counsel, to the Division's July 20, 2018,  
10 opening letter.

11          5.     The RESPONDENT's August 6, 2018, Response identified that  
12 RESPONDENT was the Broker for Record for Nevada and stated that all marketing,  
13 advertising, and Nevada brokerage activities for 5091 E. Bonanza Road, Las Vegas, NV  
14 89706; 7040 South Durango Drive, 7050 South Durango Drive, and 7070 South Durango  
15 Drive, Las Vegas, NV 89113, were conducted exclusively through RESPONDENT.

16          6.     On or about November 29, 2018, the Division sent RESPONDENT, through  
17 his counsel, Seth M. Mott, Deputy General Counsel for M&M a follow-up investigation  
18 letter concerning RESPONDENT's involvement in the real estate transactions for the  
19 properties located at 7040 South Durango Drive and 7050 South Durango Drive and 7070  
20 South Durango Drive, Las Vegas, NV 89113 ("The Durango Properties"), and specifically  
21 requested a copy of the Representation Agreement between the agent and the seller.

22          7.     On or about January 11, 2019, the Division sent RESPONDENT's counsel a  
23 233B letter, via certified mail, placing RESPONDENT on notice that the Division intended  
24 to commence disciplinary action by filing a formal complaint with the Nevada Real Estate  
25 Commission for violations NRS 645 and NAC 645.

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2 **FACTUAL ALLEGATIONS**

3 **5091 EAST BONANZA ROAD, LAS VEGAS, NV 89110 ("CARL'S JR. PROPERTY")**

4 1. On or about February 20, 2018, the seller and buyer of the Carl's Jr. Property  
5 executed an Agreement of Purchase and Sale and Joint Escrow Instructions which  
6 identified that M&M was representing the seller and entitled M&M to a Commission equal  
7 to 1.5% of the Purchase Price.

8 2. On or about April 11, 2018, RESPONDENT, was identified as the Broker,  
9 B.1001879.CORP, for the sale of the Carl's Jr. Property on a Duties Owed by a Nevada Real  
10 Estate Licensee form that was executed by the seller.

11 3. The April 11, 2018, Duties Owed form included a Supplemental List of  
12 Licensees Party to the Duties Owed, which specified Kevin Boeve CA:01247016 and Neil  
13 Naran, California License CA:0020255126, as a supplemental licensees under Broker Todd  
14 Manning.

15 4. The Supplemental List of Licensees Party to the Duties Owed form identifies  
16 that the additional licensees are subject to NRS 645.252 and NRS 645.254.

17 5. Kevin Boeve and Neil Naran did not possess a Nevada Real Estate License  
18 during the sale and marketing of the Carl's Jr. Property.

19 6. RESPONDENT was identified as the Broker of record on the April 11, 2018,  
20 Consent to Act formed signed by the seller.

21 7. In accordance with the M&M Commission Booking Statement reflecting a  
22 close of escrow date of April 18, 2018, Kevin Boeve and Neil Naran were paid commissions  
23 from the sale of the Carl's Jr. Property as listing agents.

24 8. The April 18, 2018, M&M Commission Booking Statement for the Carl's Jr.  
25 Property identifies a \$3,000.00 Out of State Broker Fee was paid the Nevada Regional  
26 Manager.

27 9. RESPONDENT is identified as the Out of State RM on the April 18, 2018,  
28 M&M Commission Booking Statement for the Carl's Jr. Property.

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1           10. On or about November 6, 2017, RESPONDENT, Neil Naran, and Cody  
2 Cannon, signed a Marcus & Millichap Interstate Brokerage Cooperation Agreement - Turf  
3 Agreement, as the Broker of Record for the Carl's Jr. Property.

4           11. The Turf Agreement identifies RESPONDENT as the Broker of Record  
5 ("BOR"), Cody Cannon as the Out-of-State Regional Manager, and Neil Naran as the Out-  
6 of-State Licensee.

7           12. Section 2b) of Turf Agreement states that the "BOR will be compensated by  
8 Marcus & Millichap pursuant to separate agreement and in accordance with Marcus &  
9 Millichap's policies and procedures."

10           13. Section 2c) of the Turf Agreement states that "NO OUT-OF-STATE  
11 ADVERTISING INFORMATION SHALL BE INCLUDED ON ANY  
12 MARKETING/ADVERTISING MATERIALS. ALL MARKETING MATERIALS MUST BE  
13 APPROVED BY IN-STATE RM AND OUT-OF-STATE RM/BOR PRIOR TO ANY  
14 MARKETING/ADVERTISING MATERIALS BEING DISTRIBUTED. THE BOR'S NAME  
15 SHALL BE INCLUDED IN ALL ADVERTISING/MARKETING MATERIALS AND ALL  
16 ADVERTISING/MARKETING SHALL BE CONDUCTED IN ACCORDANCE WITH THE  
17 LAWS OF NEVADA."

18           14. On April 25, 2018, Kevin Boeve sent, or caused to be sent, an email including  
19 an advertisement indicating the sale of the Carl's Jr. Property had "Just Closed" for  
20 \$3,120,000/5.00% Cap, both Kevin Boeve and Neil Naran were identified as the agents for  
21 the transaction and their contact information was provided without any reference to  
22 RESPONDENT as the Broker of Record.

23           15. RESPONDENT assisted Kevin Boeve and Neil Naran in the unlicensed  
24 marketing and sale of Carl's Jr. Property, which closed on April 18, 2018.

25           16. RESPONDENT failed to supervise Kevin Boeve and Neil Naran during the  
26 marketing and sale of the Carl's Jr. Property, which closed on April 18, 2018.

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1           26.    On March 21, 2017, the buyer signed, and on March 22, 2017, the seller signed  
2 a Duties Owned By A Nevada Real Estate Licensee form, prepared by, or caused to be  
3 prepared by, Pablo Rodriguez, who was Nevada licensed salesperson affiliated with M&M  
4 at the time, S.0175422,

5           27.    The Duties Owed form indicates that the buyer and seller understand that the  
6 licensee "may, in the future act for two of more parties who have interests adverse to each  
7 other."

8           28.    The Duties Owned form failed to identify the listing broker.

9           29.    On March 21, 2017, the buyer signed, and on March 22, 2017, the seller signed  
10 a Consent to Act form prepared by M&M identifying the licensee in the real estate  
11 transaction as Richard Bird, Nevada Broker License B.1000924.CORP.

12           30.    Division records indicate Richard Bird's Nevada Broker's License,  
13 B.1000924.CORP, was voluntarily placed on dormant status on June 9, 2014, and remains  
14 dormant.

15           31.    Division records indicate Richard Bird was associated with M&M from  
16 February 14, 2014, through June 9, 2014.

17           32.    The Consent to Act form fails to identify the address of the subject property.

18           33.    In accordance with the M&M Commission Booking Statement reflecting a  
19 close of escrow date of August 18, 2017, Kevin Boeve was paid a net commission of  
20 \$45,750.00, for acting in the capacity of both the listing agent and buying agent.

21           34.    RESPONDENT assisted Kevin Boeve in the unlicensed marketing and sale of  
22 7040 South Durango Drive, Las Vegas, Nevada 89113, which closed on August 18, 2017.

23           35.    RESPONDENT failed to supervise Kevin Boeve and Pablo Rodriguez during  
24 the marketing and sale of 7040 South Durango which closed on August 18, 2017.

25                           **7050 S. DURANGO DR. - ("STARBUCKS")**

26           36.    On or about May 11, 2017, the seller executed the Purchase Agreement for  
27 7050 South Durango Drive, Las Vegas, NV 89113 (APN 176-04-310-005), accepting the  
28 buyer's purchase offer of \$2,750,000.00.

1           37.    The Purchase Agreement contains the two unsigned signature blocks, one for  
2 Pablo Rodriguez, and the second for Kevin Boeve, attesting that “[a]gent accepts and agrees  
3 to the foregoing. AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT  
4 SERVICES OF NEVADA.”

5           38.    Kevin Boeve did not possess a Nevada Real Estate License during the sale and  
6 marketing of 7050 South Durango.

7           39.    The Purchase Agreement contains a section on the signature page titled,  
8 “SELLER’S ACCEPTANCE AND AGREEMENT TO PAY COMMISSION[,]” which states  
9 as follows: “[s]eller affirms its agreement to pay to Agent a real estate brokerage  
10 commission pursuant to the terms of that certain Representation Agreement between  
11 Agent and Seller dated November 4, 2016, which shall remain in full force and effect.”

12           40.    On May 9, 2017, the buyer signed, and on May 11, 2017, the seller signed a  
13 Duties Owed By A Nevada Real Estate Licensee form, prepared by or caused to be  
14 prepared by, Pablo Rodriguez, who was Nevada licensed salesperson affiliated with M&M  
15 at the time, S.0175422.

16           41.    The Duties Owed form failed to indicate whether the buyer and seller  
17 understood that the licensee “may, or may not, in the future act for two of more parties who  
18 have interests adverse to each other.”

19           42.    The Duties Owed form failed to identify the listing broker.

20           43.    On May 9, 2017, the buyer signed, and on May 11, 2017, the seller signed a  
21 Consent to Act form prepared by M&M identifying the licensee in the real estate  
22 transaction as Richard Bird, Nevada Broker License B.1000924.CORP.

23           44.    Division records indicate Richard Bird’s Nevada Broker’s License,  
24 B.1000924.CORP, was voluntarily placed on dormant status on June 9, 2014, and remains  
25 dormant.

26           45.    Division records indicate Richard Bird was associated with M&M from  
27 February 14, 2014, through June 9, 2014

28           46.    The Consent to Act form fails to identify the address of the subject property.

1           47.    The Fidelity National Title Order to Pay Commission dated August 23, 2017,  
2 and signed by the seller and Kevin Boeve reflects that \$82,500.00 was paid to M&M with  
3 Kevin Boeve listed as the agent contact.

4           48.    In accordance with the M&M Commission Booking Statement reflecting a  
5 close of escrow date of August 25 2017, which erroneously identifies the property address  
6 as 7070 South Durango Drive, Las Vegas, Nevada 89113, the Kevin Boeve was paid a net  
7 commission of \$19,800.00, Pablo Rodriguez was paid a net commission of \$16,500.00, and  
8 William Melton was paid a net commission of \$9,900.00.

9           49.    A search of the Nevada Real Estate Division's License Database reveals  
10 William Melton does not possess a Nevada Real Estate sales license, and did not possess a  
11 sales license during the sale and marketing of 7050 South Durango.

12           50.    RESPONDENT assisted Kevin Boeve in the unlicensed marketing and sale of  
13 7050 South Durango Drive, Las Vegas, Nevada 89113, which closed on August 25, 2017.

14           51.    RESPONDENT failed to supervise Kevin Boeve and Pablo Rodriguez during  
15 the marketing and sale of 7050 South Durango which closed on August 25, 2017.

16                   **7070 S. DURANGO DR. - ("SHOPS AND GYM AT DURANGO")**

17           52.    On or about June 2, 2017, the seller executed the Purchase Agreement for  
18 7070 South Durango Drive, Las Vegas, NV 89113 (APN 176-04-301-010), accepting the  
19 buyer's purchase offer of \$18,000,000.00.

20           53.    Paragraph 21.1 of the Purchase Agreement identifies that Kevin Boeve and  
21 Pablo Rodriguez represent the seller.

22           54.    The Purchase Agreement contains the Kevin Boeve and Pablo Rodriguez's  
23 signature attesting that "[a]gent accepts and agrees to the foregoing. AGENT: MARCUS &  
24 MILLICHAP REAL ESTATE INVESTMENT SERVICES OF NEVADA."

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1           55. The Purchase Agreement contains a section on the signature page titled,  
2 "SELLER'S ACCEPTANCE AND AGREEMENT TO PAY COMMISSION[,]" which states  
3 as follows: "[s]eller affirms its agreement to pay to Agent a real estate brokerage  
4 commission pursuant to the terms of that certain Representation Agreement between  
5 Agent and Seller dated November 4, 2016, which shall remain in full force and effect."

6           56. On or about June 2, 2017, the seller signed a Duties Owned By A Nevada Real  
7 Estate Licensee form, prepared by or caused to be prepared by, Pablo Rodriguez, who was  
8 Nevada licensed salesperson affiliated with M&M at the time, S.0175422.

9           57. The Duties Owed form failed to indicate whether the seller understood that  
10 the licensee "may, or may not, in the future act for two of more parties who have interests  
11 adverse to each other."

12           58. The Duties Owned form failed to identify the listing broker.

13           59. On or about June 2, 2017, the seller signed a Consent to Act form prepared by  
14 M&M identifying the licensee in the real estate transaction as Richard Bird, Nevada Broker  
15 License B.1000924.CORP.

16           60. Division records indicate Richard Bird's Nevada Broker's License,  
17 B.1000924.CORP, was voluntarily placed on dormant status on June 9, 2014, and remains  
18 dormant.

19           61. Division records indicate Richard Bird was associated with M&M from  
20 February 14, 2014, through June 9, 2014.

21           62. In accordance with the M&M Commission Booking Statement reflecting a  
22 close of escrow date of August 30, 2017, Kevin Boeve was paid a net commission of  
23 \$27,247.50, and Pablo Rodriguez was paid a net commission of \$22,706.25.

24           63. RESPONDENT assisted Kevin Boeve in the unlicensed marketing and sale of  
25 7070 South Durango Drive, Las Vegas, Nevada 89113, which closed on August 30, 2017.

26           64. RESPONDENT failed to supervise Kevin Boeve and Pablo Rodriguez during  
27 the marketing and sale of 7070 South Durango which closed on August 30, 2017.

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## VIOLATIONS ALLEGED

RESPONDENT has committed the following violations of law:

1. RESPONDENT violated NRS 645.235(1)(a) four times, by assisting unlicensed, Neil Naran and Kevin Boeve to conduct real estate sales transactions in the State of Nevada without a license, involving the sales of (1) 5091 East Bonanza Road, Las Vegas, NV on April 17, 2018; (2) 7040 South Durango Drive, Las Vegas, NV on August 17, 2017; (3) 7050 South Durango Drive, Las Vegas, NV on August 25, 2017; and (4) 7070 South Durango Drive, Las Vegas, NV on August 30, 2017.

2. RESPONDENT violated NAC 645.600(1) and NRS 645.660(1) three times by failing to supervise the activities of Pablo Rodriguez during the sale of (1) 7040 S. Durango Drive, Las Vegas, NV on August 17, 2017; (2) 7050 S. Durango Drive, Las Vegas, NV on August 25, 2017; and (3) 7070 S. Durango Drive, Las Vegas, NV on August 30, 2017.

## DISCIPLINE AUTHORIZED

3. Pursuant to NRS 645.235(2), the Commission is empowered to impose an administrative fine of up to the amount of any gain or economic benefit derived from the violation or \$5,000.00, whichever amount is greater, per violation against RESPONDENT.

4. Pursuant to NRS 645.660(2), the Commission may suspend, revoke, or deny the renewal of the license of a real estate broker and may assess a civil penalty of not more than \$5,000 against the broker if it appears he or she has failed to maintain adequate supervision of a salesperson or broker-salesperson associated with the broker and that person commits an unlawful act or violates any of the provisions of this chapter.

5. Pursuant to NRS 645.314, the Division is authorized to request its investigative costs where the investigation was undertaken for disciplinary purposes.

6. Additionally, under NRS 622.400, 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.

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

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## 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 August 20-22, 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 August 22, 2019, or earlier if the business of the Commission is concluded. The Commission meeting will be held each day at the Nevada Division of Insurance, 1818 East College Parkway, suite 103, Carson City, Nevada 89706.

**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 August 20-22, 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 (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. A verbatim record will be made by a certified court reporter. 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

1 hearing, the Division has the burden of proving the allegations in the complaint and will  
2 call witnesses and present evidence against you. You have the right to respond and to  
3 present relevant evidence and argument on all issues involved. You have the right to call  
4 and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any  
5 matter relevant to the issues involved.

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

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


15 DATED this 19 day of July, 2019.

16 STATE OF NEVADA  
17 Department of Business and Industry  
18 Real Estate Division

19 By:   
20 SHARATH CHANDRA, Administrator  
21 3300 W. Sahara Avenue, Ste. 350  
22 Las Vegas, Nevada 89102

23 DATED this 18<sup>th</sup> day of July, 2019.

24 AARON D. FORD  
25 Attorney General

26 By:   
27 PETER K. KEEGAN  
28 Deputy Attorney General  
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