

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

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

Petitioner,

vs.

WILLIAM G. WITHELDER,

Respondent.

Case No. 2017-1839

FILED

OCT 04 2019

REAL ESTATE COMMISSION
BY *Zuley Patten*

COMPLAINT AND NOTICE OF HEARING

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division") hereby notifies WILLIAM G. WITHELDER ("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 Salesperson under license number BS.0059099 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 Broker Salesperson under license number BS.0059099 since January 5, 2004, and said license is currently on active status.

2. In late 2005, Delbert and Darlene Moore (the "Moore's") approached RESPONDENT to look at properties in the Falcon Ridge golf community located in Mesquite, Nevada.

1 3. After looking at properties, RESPONDENT and Mr. Moore went to RESPONDENT's house
2 which is also located in the Falcon Ridge community on Clark County Assessor's Parcel No. 001-07-
3 410-021, more commonly known as 484 Calais Dr., Mesquite, NV 89027 (the "Property").

4 4. Mr. Moore inquired whether he could purchase the Property from RESPONDENT.

5 5. RESPONDENT agreed to sell the Property to the Moores for a purchase price of \$975,000
6 dollars.

7 6. During the sale of the Property, RESPONDENT claims that he disclosed to the Moores that he
8 was a licensed real estate agent but was entering into the sale of the Property on his own behalf and was
9 not represented by his broker at the time, Premier Properties of Mesquite, Inc., a Nevada corporation
10 ("Premier").

11 7. RESPONDENT claims that no agents were used on his or the Moores' behalf.

12 8. The Moores claim that prior to the sale of the Property closing, RESPONDENT represented to
13 them that the pool on the Property had inadvertently been built outside the rear property line and was
14 encroaching upon the adjacent golf course.

15 9. The Moores allege that RESPONDENT assured them that the encroachment issue had been
16 remedied through a lot line adjustment.

17 10. RESPONDENT'S broker at the time, Premier, claims that it did not represent
18 RESPONDENT in the transaction with the Moores and that Premier did not receive any compensation
19 for the sale of the Property.

20 11. Ultimately the parties closed the sale of the Property and the deed from RESPONDENT
21 to the Moores was recorded on May 2, 2006.

22 12. On or around April of 2017, the Moores decided to sell the Property to a subsequent
23 purchaser.

24 13. During the 2017 transaction, the Moores discovered that the lot line of the Property had
25 not been adjusted as they claim RESPONDENT had represented to them, and that as a result, the pool
26 area of the Property still encroached upon the adjacent golf course.

1 14. The Moores allege that they then paid approximately \$2,364.15 to have the Property
2 surveyed to create a new legal description to effectuate the lot line adjustment so that they could complete
3 the sale of the Property in 2017 to the subsequent purchasers.

4 15. The Moores sale of the Property to the subsequent buyers closed and the deed was
5 recorded on July 6, 2017.

6 16. The Moores allege that following the 2017 sale of the Property, they contacted
7 RESPONDENT regarding his representation to them that the line adjustment had been effectuated prior
8 to their purchase of the Property.

9 17. The Moores allege RESPONDENT told them to contact Premier regarding the issue.

10 18. The Moores allege they subsequently sent a demand letter to the title company and
11 Premier but that they received no response.

12 19. On August 10, 2017 the Moores filed a complaint with the Division alleging
13 RESPONDENT misrepresented to them that the encroachment issue on the Property had been resolved
14 by a lot line adjustment prior to their purchase of the Property.

15 20. On August 21, 2017, the Division properly informed RESPONDENT by certified mail
16 that it had opened an investigation regarding the Moores' complaint.

17 21. In response to the Division's investigation, RESPONDENT claims that during his
18 negotiation with the Moores for the sale of the Property, he mentioned there was a lot line "being made
19 on the rear of the property."

20 22. RESPONDENT further claimed that he was unaware at that time, that the properties on
21 either side of him were also being considered for lot line adjustments.

22 23. In his response to the Division, RESPONDENT claimed that each one of the other
23 properties had "their adjustments recorded" but that his "property went UNRECORDED."

24 24. RESPONDENT stated in his response to the Division that he believes the Moores'
25 encroachment issue was an issue that should have been resolved with their title company and that he was
26 also a "victim of the unrecording and shortcomings of the Title Company."

27 25. RESPONDENT, as a real estate agent, should have known that the preparation of a deed
28 bearing a new legal description, with his signature, and recorded at his direction would have been

1 necessary to effectuate the lot line adjustment on the Property prior to his sale of the Property to the
2 Moores.

3 26. Having not executed any documents to effectuate the lot line adjustment, RESPONDENT,
4 as a real estate agent, at the very least, should have inquired regarding the status and procedure for
5 completing the lot line adjustment and informed the Moores of the same prior to his sale of the Property
6 to the Moores.

7 VIOLATIONS

8 RESPONDENT has committed the following violations of law:

9 27. RESPONDENT violated NRS 645.633(1)(i) by misrepresenting to the Moores that the lot
10 line adjustment on the Property had been effectuated prior to the sale of the Property when it had not.

11 28. RESPONDENT violated NRS 645.633(1)(i) by telling the Moores to speak to his broker,
12 Premier, regarding the unresolved lot line adjustment in 2017 because RESPONDENT knew that he
13 handled the 2006 transaction on his own behalf and not through Premier.

14 DISCIPLINE AUTHORIZED

15 29. Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to impose an
16 administrative fine of up to \$10,000 per violation against RESPONDENT and further to suspend, revoke
17 or place conditions on the license of RESPONDENT.

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

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

23 NOTICE OF HEARING

24 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider the
25 Administrative Complaint against the above-named Respondent in accordance with Chapters 233B and
26 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

27 **THE HEARING WILL TAKE PLACE on November 5, 2019, commencing at 9:00 a.m., or**
28 **as soon thereafter as the Commission is able to hear the matter, and each day thereafter**

1 commencing at 9:00 a.m. through November 7, 2019, or earlier if the business of the Commission
2 is concluded. The Commission meeting will be held on November 5, 2019, at the Nevada State
3 Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102.
4 The meeting will continue on November 6, 2019 at the Nevada State Business Center, 3300 West
5 Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102, commencing at 9:00 a.m.,
6 and on November 7, 2019, should business not be concluded, starting at 9:00 a.m. at Nevada State
7 Business Center, 3300 West Sahara Avenue, 4th Floor – Tahoe Room, Las Vegas, Nevada 89102.

8 **STACKED CALENDAR:** Your hearing is one of several hearings scheduled at the same
9 time as part of a regular meeting of the Commission that is expected to last from November 5, 2019
10 through November 7, 2019, or earlier if the business of the Commission is concluded. Thus, your
11 hearing may be continued until later in the day or from day to day. It is your responsibility to be
12 present when your case is called. If you are not present when your hearing is called, a default may
13 be entered against you and the Commission may decide the case as if all allegations in the complaint
14 were true. If you have any questions please call Evelyn Pattee, Commission Coordinator (702) 486-
15 4074.

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

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

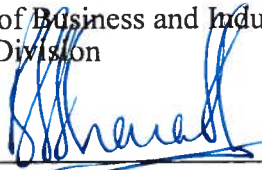
27 You have the right to request that the Commission issue subpoenas to compel witnesses to testify
28 and/or evidence to be offered on your behalf. In making the request, you may be required to demonstrate

1 the relevance of the witness' testimony and/or evidence. Other important rights you have are listed in
2 NRS 645.680 through 645.990, NRS Chapter 233B, and NAC 645.810 through 645.875.


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

7 DATED this 2nd day of October, 2019.

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

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