

FILED

JUL 29 2020

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

REAL ESTATE COMMISSION

BY *Evelyn Patten*

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

Case No. 2019-641

Petitioner,

**COMPLAINT AND NOTICE OF
HEARING**

vs.

KATHRYN L. MINER,

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 KATHRYN L. MINER ("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

At all times relevant, RESPONDENT held a real estate broker-salesperson license, B.0001157.LLC. RESPONDENT engaged in activities which require a license as a real estate broker, real estate broker-salesperson, or real estate salesperson, and/or a permit to engage in property management, issued by the Division and is, therefore, subject to the jurisdiction of the Division and the Commission, and the provisions of NRS and NAC 645.

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PROCEDURAL HISTORY

1. On or about June 10, 2019, the Division received a decision of the Board of Directors for the Reno/Sparks Association of Realtors, Inc. ("RSAR"), which affirmed the Decision of the of Ethics Panel of the Professional Standards Committee from the RSAR, finding that RESPONDENT and her broker salesperson, Linda Hartman ("Hartman"), BS.0017739, violated the RSAR Code of Ethics.

2. On or about June 17, 2019, the Division sent an investigation-opening letter to the RESPONDENT, requiring her to provide a sworn statement responding to the RSAR Decision, along with a complete copy of the broker's transaction file for the property in question.

3. On or about June 17, 2019, the Division also sent an investigation-opening letter to Hartman, which required Hartman to provide a sworn statement addressing the RSAR Decision.

4. On or about July 2, 2019, the Division received the RESPONDENT's sworn affidavit and broker's transaction file.

5. On or about July 3, 2019, the Division received Hartman's sworn affidavit.

6. On or about October 16, 2019, the Division sent RESPONDENT an NRS 233B letter indicating that the Division's investigation had obtained sufficient evidence to commence disciplinary action by filing a complaint with the Nevada Real Estate Commission ("Commission").

FACTUAL ALLEGATIONS

1. At all times relevant, RESPONDENT held a real estate broker's license, B.0001157.LLC

2. RESPONDENT has been a licensee since 1981.

3. On or about April 24, 2018, the sellers of the property located at 2531, 2533 Orovado St., Reno, NV 89512 ("the Property"), signed an Exclusive Right to Sell Contract for the Property granting Trans-Action Realty 500 as the Broker of record.

1 4. The Property was input into the Northern Nevada Regional Multiple Listing
2 Service ("MLS") on April 24, 2018.

3 5. The sellers of the Property signed a Residential Offer and Acceptance
4 Agreement presented by their broker of record, Trans-action Realty 500, in the amount of
5 \$80,000.00, on April 25, 2018.

6 6. The day of input, on April 24, 2018, the MLS status showed the Property as
7 "Pending-no show."

8 7. On or about May 3, 2018, Hartman prepared a Residential Offer and
9 Acceptance Agreement for the Property, in the amount of \$139,000.00, which was signed
10 by the buyer and seller.

11 8. In Hartman's s sworn affidavit response to the Division she attested that she
12 "did not put an expiration date on the contract."

13 9. Hartman allowed her client to take the Residential Offer and Acceptance
14 Agreement, dated May 3, 2018, with him, knowing that it was possible that he would
15 present the offer directly to the seller who was a party to an exclusive listing agreement.

16 10. In Hartman's sworn affidavit response to the Division, she attested that she
17 pulled the Property upon the MLS and told her client that the client's offer would need to
18 be a backup offer.

19 11. The Residential Offer and Acceptance Agreement dated May 3, 2018, does
20 not state that it is a backup offer.

21 12. As part of Hartman's sworn affidavit response to the Division, Hartman's
22 client attested, in an undated statement, that "[w]e were not aware the property was
23 listed until I met with [the sellers] that night to give them the offer."

24 13. The May 3, 2018, Offer and Acceptance Agreement prepared by Hartman
25 misstates that the buyer was paying cash for the Property.

26 14. Hartman's buyer client obtained two mortgages, both on June 5, 2018,
27 secured by the Property, for the purchase of the Property.

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1 15. Hartman did not prepare an addendum to the May 3, 2018, purchase
2 agreement reflecting the correct financing terms.

3 16. The June 3, 2018, RSAR Decision reflects that Hartman testified during the
4 Ethics Panel Hearing that she had worked with her client on previous properties and
5 knew that he would have no issues with getting the loans.

6 17. RESPONDENT incorrectly attested in her sworn affidavit response to the
7 Division that the loans obtained by Hartman's buyer client were personal and would not
8 encumber the Property.

9 18. Hartman's client obtained two separate loans, each secured by a Deed of
10 Trust, to purchase the property.

11 19. Hartman's client was informed by the seller of the Property in question that
12 he had already accepted an offer to purchase the Property when Hartman's client
13 personally presented the seller with the Residential Offer and Acceptance Agreement
14 prepared by Hartman.

15 20. On or about May 2, 2018, the sellers contacted their listing agent and
16 explained that they wanted to rescind their acceptance of the April 24, 2018, Offer and
17 Acceptance Agreement because "[o]n Monday the 30th of April a friend of ours (John
18 Stempeck) presented us with an offer on the Orovada duplex for \$139,000.00."

19 21. On May 3, 2018, the sellers accepted the offer prepared by Hartman.

20 22. The May 3, 2018, purchase agreement listed the earnest money deposited
21 was to be made payable to Western Title Company.

22 23. The June 3, 2018, RSAR Decision reflects that during the RSAR Ethics
23 Panel Hearing, Hartman's client testified that after acceptance of the May 3, 2018, offer,
24 the title company was changed to Capital Title Company at the direction of Hartman.

25 24. On May 11, 2018, Hartman generated and submitted an Escrow
26 Cancellation Instructions and Addendum to Western Title Company for the first offer.

27 25. The Escrow Cancellation Instructions and Addendum became effective on
28 June 13, 2018, the date of the final party's signature.

1 26. The May 3, 2018, purchase agreement was never amended to reflect the new
2 title company information.

3 27. The June 3, 2018, RSAR Decision reflects that Hartman testified before the
4 RSAR Ethics Hearing Panel of the Professional Standards Committee that she did not
5 contact the listing agent for the Property prior to writing the Residential Offer and
6 Acceptance Agreement, despite knowing the property was in escrow.

7 28. In Hartman's sworn affidavit to the Division, she attested that she spoke to
8 the listing agent on the phone during the transaction.

9 29. The June 3, 2018, RSAR Decision reflects that Hartman testified to the
10 RSAR Ethics Hearing Panel of the Professional Standards Committee that she did not
11 communicate with the listing agent for the Property throughout the transaction between
12 the listing agent's client and Hartman's client.

13 30. The RSAR Ethics Hearing Panel of the Professional Standards Committee
14 found "clear, strong and convincing evidence" Hartman "communicated directly" with the
15 seller of the Property during the transaction.

16 31. The RSAR Ethics Hearing Panel decision was affirmed by the RSAR Board
17 of Directors on June 3, 2019, and RESPONDENT received a Letter of Reprimand and was
18 fined \$5,000.00.

19 32. As part of the RSAR Board of Director's decision, the decision of the Ethic's
20 Panel was submitted to the Division.

21 33. Hartman failed to notify the Division that she was acting as the managing
22 broker for Miner Realty.

23 34. Hartman advertised that she is the managing broker for Miner Realty.

24 35. RESPONDENT failed to oversee and supervise Hartman.

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1 **VIOLATIONS ALLEGED**

2 RESPONDENT has committed the following violations of law:

3 1. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(11)(c)
4 for falsely stating to an investigator of the Division that the loans obtained by Hartman's
5 client to purchase the property in question would not encumber the property.

6 2. RESPONDENT violated NAC 645.600(1) and (2)(a), (b), and (e) for failing to
7 supervise activities of Hartman involving the transaction and documents for the purchase
8 of the transaction in question. RESPONDENT also failed to supervise Hartman's
9 misleading advertising in which she identified herself as the managing broker of Miner
10 Realty of Nevada.

11 **DISCIPLINE AUTHORIZED**

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

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

17 3. Additionally, under NRS 622.400, the Commission is authorized to impose
18 costs of the proceeding upon RESPONDENT, including investigative costs and attorney's
19 fees, if the Commission otherwise imposes discipline on RESPONDENT.

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

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1 **NOTICE OF HEARING**

2 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider this
3 Administrative Complaint against the above-named RESPONDENTS in accordance with
4 Chapters 233B and 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada
5 Administrative Code.

6 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled for
7 September 1-3, 2020, beginning at approximately 9:00 a.m. each day, or until such time
8 as the Commission concludes its business.

9 If the Governor's Emergency Directive 006 - suspending physical location
10 requirements - is extended through the date of the meeting, then the hearing will be held
11 via virtual meeting. The Commission uses WebEx for its meetings. To join the hearing go
12 to the Webex.com website and put in the Access code and Attendee ID:

13 **TUESDAY, SEPTEMBER 1, 2020** Meeting number (Access code): 146 276 8028
14 Password (Attendee ID): MgCrCbJq662 (64272257662 from phones and video systems)

15 **WEDNESDAY, SEPTEMBER 2, 2020** Meeting number (Access code): 146 650 1911
16 Password (Attendee ID): 2rGzteBYY24 (27498329924 from phones and video systems)

17 **THURSDAY, SEPTEMBER 3, 2020** Meeting number (Access code): 146 520 3582
18 Password (Attendee ID): umV3mJJ2gP2 (86836552472 from phones and video systems)

19 If you do not have internet access, you may attend by phone at 1-844-621-3956
20 using the access codes and attendee IDs listed above. Some mobile devices may ask
21 attendees to enter a numeric attendee ID provided above. If Emergency Directive 006 is
22 not extended and the meeting is held in person, then the meeting will be located at the
23 following locations:

24 Nevada State Business Center
25 Real Estate Division
26 3300 West Sahara Avenue, Suite 350
Las Vegas, NV 89102

27 If you would like an email containing this information, before the hearing, please contact
28 Evelyn Pattee, Commission Coordinator, at (702) 486-4074 or epatepattee@red.nv.gov.

1 **STACKED CALENDAR:** Your hearing is one of several hearings scheduled
2 at the same time as part of a regular meeting of the Commission that is
3 expected to last from September 1st through September 3, 2020, but may end
4 earlier if the business of the Commission is concluded. Thus, your hearing may
5 be continued until later in the day or from day to day. It is your responsibility
6 to be present when your case is called. If you are not present when your
7 hearing is called, a default may be entered against you and the Commission may
8 decide the case as if all allegations in the complaint were true. If you have any
9 questions please call Evelyn Pattee Commission Coordinator (702) 486-4074.

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

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

23 You have the right to request that the Commission issue subpoenas to compel
24 witnesses to testify and/or evidence to be offered on your behalf. In making the request,
25 you may be required to demonstrate the relevance of the witness' testimony and/or
26 evidence. Other important rights you have are listed in NRS 645.680 through 645.990,
27 NRS Chapter 233B, and NAC 645.810 through 645.920.
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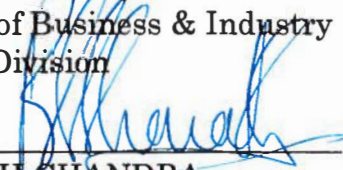
1 The purpose of the hearing is to determine if the RESPONDENT has violated NRS
2 645 and/or NAC 645 and if the allegations contained herein are substantially
3 proven by the evidence presented and to further determine what administrative penalty,
4 if any, is to be assessed against the RESPONDENT.


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6 DATED this 28 day of July, 2020.

DATED this 21st day of July, 2020.

7 STATE OF NEVADA,
8 Department of Business & Industry
9 Real Estate Division

AARON D. FORD
Attorney General

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