

STATE OF NEVADA

REAL ESTATE COMMISSION
BY: *[Signature]*

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

Case No.: 2016-646

Petitioner,

vs.

COMPLAINT AND NOTICE OF HEARING

KYLE KRCH,

RESPONDENT.

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Peter Keegan, Deputy Attorney General, hereby notifies RESPONDENT KYLE KRCH ("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 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 a real estate broker under License Number B.0056206.LLC, and is therefore subject to the jurisdiction of the Division and the provisions of NRS Chapter 645 and NAC Chapter 645.

FACTUAL ALLEGATIONS

1. RESPONDENT has been licensed as a real estate broker, License Number B.0056206.LLC, since November 23, 2005, and is currently in active status.
2. RESPONDENT has been the broker for KRCH Realty, LLC ("KRCH") at the relevant times mentioned in this Complaint.

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

1 3. Michael Cullum Harding ("Harding") has been licensed as a real estate
2 salesperson, License Number S.0169701, since July 14, 2010, and was associated with
3 KRCH at the relevant times mentioned in this Complaint.

4 4. Jason A. Jairam ("Jairam") has been licensed as a real estate salesperson,
5 License Number S.0170866, since August 16, 2011, and was associated with KRCH at the
6 relevant times mentioned in this Complaint.

7 **WALL CANYON DRIVE**

8 5. On or about September 26, 2012, Geraldine Malone ("Malone") entered into an
9 Exclusive Right to Sell Contract, which engaged RESPONDENT to list and sell real property
10 located at 665 Wall Canyon Drive, Sun Valley, Nevada ("Wall Canyon").

11 6. On or about October 1, 2012, Shayla Gifford ("Gifford") signed an Offer and
12 Acceptance Agreement for Wall Canyon.

13 7. Harding was Gifford's agent.

14 8. Gifford had a preexisting agreement with RESPONDENT and Harding to
15 purchase short sale properties offered by KRCH for an investor group ("the KRCH investor
16 group"), in which she, RESPONDENT, Sandra Krch, Harding, and Jeanette Hirschy were
17 principals.

18 9. On or about October 2, 2012, Malone presented a Counter Offer, which Gifford
19 accepted.

20 10. On or about October 2, 2012, RESPONDENT signed and had Malone sign a
21 Seller's Waiver of Multiple Listing Service ("MLS") Benefits.

22 11. RESPONDENT did not input Wall Canyon into the MLS until October 4, 2012,
23 when he listed the property as pending new/pending short sale.

24 12. On or about October 8, 2012, Malone and Gifford executed a Short Sale
25 Addendum to the Offer and Acceptance Agreement.

26 13. On or about October 9, 2012, RESPONDENT and Harding signed a Short Sale
27 Real Estate Licensee Certification ("Licensee Certification"), as licensees representing their
28 respective clients, for Bank of America.

1 14. In paragraph 3 of the Licensee Certification, RESPONDENT acknowledged and
2 agreed that Wall Canyon has been listed on the MLS "at a listing price intended to generate
3 open market competitive offers to purchase[.]" and that his or her "marketing efforts were in
4 fact and 'in spirit' aimed towards maximizing the selling price of Property from a ready, willing
5 and able buyer[.]" and that he "has not engaged in any conduct that restricts or limits offers
6 from buyers"

7 15. In paragraph 5 of the Licensee Certification, RESPONDENT acknowledged and
8 agreed that he was "not engaging in . . . "flipping . . . (whereby a recently acquired property is
9 resold for a considerable profit with an artificially inflated value within a short period of time), . .
10 . and/or straw buying." RESPONDENT further acknowledged and agreed that he had
11 "disclosed all agreements or understandings relating to the current sale or subsequent sale of
12 Property of which Licensee is aware of should be aware." Finally, in paragraph 5,
13 RESPONDENT acknowledged and agreed that he was "not aware of any other agreements or
14 understandings that call for the subsequent sale of the Property within 30 days of the current
15 sale."

- 16 a. Despite these representations, Gifford, a member of the KRCH investor group,
17 entered into an Exclusive Right to Sell Contract with RESPONDENT for the
18 Wall Canyon property on January 12, 2013, with Hirschy listed as the owner
19 and seller.
- 20 b. On January 13, 2013, an Offer was made by Gloria Deane Cutting to purchase
21 the Wall Canyon property from Hirschy.
- 22 c. On January 14, 2013, less than 30 days after the close of the short sale
23 transaction, a Counteroffer was made by Hirschy that was signed by
24 RESPONDENT and accepted by the buyer, Gloria Dean Cutting.
- 25 d. During the entire period of time which RESPONDENT marketed the Wall
26 Canyon property for sale including the date on which the property entered into
27 contract for sale by Hirschy, the Wall Canyon property remained titled to
28 Gifford and was not transferred to Hirschy until January 31, 2013.

1 16. In paragraph 7 of the Licensee Certification, RESPONDENT acknowledged and
2 agreed that "he or she has disclosed to Bank of America any known relationship to Buyer or
3 ownership interest in Buyer's company, and Licensee representing Seller further
4 acknowledges that he or she has no existing business relationship with Buyer and/or Seller
5 other than the purchase of Property according to the terms and conditions of the purchase
6 contract."

7 17. Finally, in paragraph 8 of the Licensee Certification, RESPONDENT
8 acknowledged and agreed that "any misrepresentation or omission of a material fact may
9 subject the responsible party to civil and/or criminal liability."

10 18. On or about October 10, 2012, Malone and Gifford executed a Short Sale
11 Purchase Contract Addendum for Bank of America. However, the Short Sale Purchase
12 Contract Addendum for Bank of America also contains a hand written date of September 28,
13 2012.

14 19. In paragraph 8 of the Short Sale Purchase Contract Addendum, Gifford
15 acknowledged and agreed that the "property cannot be sold or otherwise transferred within 30
16 days of closing."

17 20. In paragraph 11 of the Short Sale Purchase Contract Addendum, Malone and
18 Gifford acknowledged and agreed "that any misrepresentation or deliberate omission of fact
19 that would induce the Bank of America, Investor or a Mortgage Insurer to agree to the terms of
20 a short payoff that would not have been approved had all facts been known, constitutes Short
21 Sales Fraud and may subject the responsible Party to civil and/or criminal liability."

22 21. On or about December 28, 2012, Malone and Gifford signed a notarized Affidavit
23 of Arm's Length Transaction, wherein they affirmed that "there are no hidden terms or special
24 understandings between the seller or buyer or their agents or mortgagor(s)."

25 22. On or about that same day, the short sale transaction closed, and Gifford, a
26 member of the KRCH investor group, received title to Wall Canyon.

27 23. RESPONDENT and Harding presented the Licensee Certification, Short Sale
28 Purchase Contract Addendum, and Affidavit of Arm's Length Transaction to Bank of America.

1 24. RESPONDENT never disclosed Gifford's or his own relationship with the KRCH
2 investor group to Bank of America during the Wall Canyon short sale transaction.

3 **D'ARCY STREET**

4 25. In January of 2013, Deborine Dolan ("Dolan") engaged RESPONDENT to list
5 and sell real property located at 2745 D'Arcy Street, Sparks, Nevada ("D'Arcy Street").

6 26. On or about February 14, 2013, Jeanette Hirschy ("Hirschy") signed a
7 Residential Offer and Acceptance Agreement for D'Arcy Street.

8 27. Jairam was Hirschy's agent.

9 28. Hirschy had a preexisting agreement with RESPONDENT and Jairam to
10 purchase short sale properties offered by KRCH for an investor group ("the KRCH investor
11 group"), which she, RESPONDENT, Sandra Krch, Harding, and Gifford were principals.

12 29. On or about February 14, 2013, Dolan presented a Counter Offer, which Hirschy
13 accepted.

14 30. Between approximately July 17 and 30, 2013, RESPONDENT Deborine Dolan,
15 Wayne Dolan, and Hirschy, each executed the Affidavit of "Arm's Length Transaction" for
16 Chase Bank.

17 31. Jairam, the Buyer's Agent, did not sign the Affidavit of Arm's Length Transaction;
18 instead, RESPONDENT signed as both the Buyer and Seller's agent.

19 32. The Affidavit of "Arm's Length Transaction" required that every party and agent
20 involved in the short sale transaction truthfully sign the affidavit. Specifically, the Affidavit
21 states that "[t]he Lender and/or Servicer, in consideration of the representations made below
22 by the Seller, the Buyer, and their respective agents agrees to accept less than the amount
23 owed to resolve its Loan . . . on the express condition that the Seller, the Buyer, and their
24 respective agents (including without limitation, real estate agents, escrow agents, and title
25 agents) each truthfully represents, affirms, and states that to the best of each signatory's
26 knowledge and belief."

1 33. In paragraph 2 of the Affidavit of "Arm's Length Transaction," RESPONDENT
2 represented, affirmed, and stated that "[n]o Buyer or agent of the buyer is a family member or
3 business associate of the Seller, the borrower, or the mortgagor."

4 34. In paragraph 3 of the Affidavit of "Arm's Length Transaction," RESPONDENT
5 represented, affirmed, and stated that "[n]o Buyer or agent of the Buyer shares a business
6 interest with the Seller, the borrower, or the mortgagor."

7 35. In paragraph 4 of the Affidavit of "Arm's Length Transaction," RESPONDENT
8 represented, affirmed, and stated that "[t]here are no hidden terms or hidden agreements or
9 special understandings between the Seller and the Buyer or among their respective agents
10 that are not reflected in the Agreement or the escrow instructions associated with this
11 transaction."

12 36. In paragraph 12 of the Affidavit of "Arm's Length Transaction," RESPONDENT
13 represented, affirmed, and stated that "any misrepresentation made by him or her may subject
14 him or her to civil liability."

15 37. On or about July 30, 2013, the short sale transaction closed, and Hirschy, a
16 member of the KRCH investor group, received title to D'Arcy Street.

17 38. RESPONDENT never disclosed Hirschy's, or his own, relationship with the
18 KRCH investor group to Chase Bank during the D'Arcy Street short sale transaction.

19 **CERVINO DRIVE**

20 39. On or about June 12, 2013, Stephanie Tobey ("Tobey") engaged
21 RESPONDENT to list and sell real property located at 11480 Cervino Drive, Reno, Nevada
22 ("Cervino Drive").

23 40. On or about that same day, RESPONDENT had Tobey signed a KRCH
24 document regarding "Full Disclosure of the Investor Purchasing your home via Short Sale"
25 ("KRCH Disclosure").

26 41. The KRCH Disclosure provides that RESPONDENT has a financial interest in
27 the investor group that will be purchasing Cervino Drive and hopes to earn a profit from
28 reselling Cervino Drive in the future.

1 42. On or about June 14, 2013, Hirschy signed a Residential Offer and Acceptance
2 Agreement for Cervino Drive.

3 43. Jairam was Hirschy's agent.

4 44. On or about June 14, 2013, Tobey presented a Counter Offer to Hirschy.

5 45. Hirschy accepted the Counter Offer on or about June 17, 2013.

6 46. On or about December 17 and 18, 2013, RESPONDENT Tobey, Hirschy, and
7 Lori Silva, the escrow agent, each executed, in the presence of a notary, the Short Sale
8 Affidavit for Bayview Loan Servicing, LLC.

9 47. Jairam, the Buyer's Agent, did not sign the Short Sale Affidavit; instead,
10 RESPONDENT signed as both the Buyer and Seller's agent.

11 48. The Short Sale Affidavit required that every party and agent sign the Affidavit
12 under the penalty of perjury. Specifically, the Affidavit states that "[t]his Short Sale Affidavit
13 ('Affidavit') is given by the Seller(s), Buyer(s), Agent(s), and Facilitator to the Servicer and the
14 Investor of the mortgage loan secured by the Property ("Mortgage") in consideration for the
15 mutual and respective benefits to be derived from the short sale of the Property."

16 49. In paragraph "(a)" of the Short Sale Affidavit, RESPONDENT represented,
17 warranted, and agreed "under the pains and penalties of perjury" that "[t]he sale of the
18 Property is an 'arm's length' transaction, between Seller(s) and Buyer(s) who are unrelated
19 and unaffiliated by family, marriage, or commercial enterprise."

20 50. In paragraph "(d)" of the Short Sale Affidavit, RESPONDENT represented,
21 warranted, and agreed "under the pains and penalties of perjury" that "[t]here are no
22 agreements, understandings or contracts relating to the current sale or subsequent sale of the
23 Property that have not been disclosed to the Servicer."

24 51. In paragraph "(g)" of the Short Sale Affidavit, RESPONDENT represented,
25 warranted, and agreed "under the pains and penalties of perjury" that he understood that a
26 misrepresentation may subject the person making the misrepresentation to civil and/or
27 criminal liability.

28

1 fraudulently misrepresenting the fact that that he had an existing business relationship with
2 the prearranged Buyer, Hirschy.

3 60. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1), by
4 fraudulently misrepresenting that the sale of Cervino Drive was an arm's length transaction,
5 which is evidenced by the KRCH Disclosure presented to and signed by the Seller, Stephanie
6 R. Tobey, but withheld from Bayview Loan Servicing, LLC.

7 61. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1), by
8 presenting the Cervino Drive Short Sale Affidavit to Bayview Loan Servicing, LLC, while
9 fraudulently misrepresenting the fact that he had an existing business relationship with the
10 prearranged Buyer, Hirschy.

11 **DISCIPLINE AUTHORIZED**

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

15 63. Additionally, under NRS Chapter 622, the Commission is authorized to impose
16 costs of the proceeding upon RESPONDENT, including investigative costs and attorney's
17 fees, if the Commission otherwise imposes discipline on RESPONDENT.

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

20 **NOTICE OF HEARING**

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

25 **THE HEARING WILL TAKE PLACE on October 5, 2016, commencing at 1:00 p.m.,**
26 **or as soon thereafter as the Commission is able to hear the matter, and each day**
27 **thereafter commencing at 9:00 a.m. through October 7, 2016, or earlier if the business**
28 **of the Commission is concluded. The Commission meeting will be held on**

1 October 5, 2016, at the Legislative Building, 401 South Carson Street, Room 2134,
2 Carson City, Nevada 89701. The meeting will continue on October 6, 2016, at the
3 Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada 89701,
4 commencing at 9:00 a.m., and on October 7, 2016, should business not be concluded,
5 starting at 9:00 a.m. at the Legislative Building, 401 South Carson Street, Room 2134,
6 Carson City, Nevada 89701.

7 **STACKED CALENDAR:** Your hearing is one of several hearings scheduled at the
8 same time as part of a regular meeting of the Commission that is expected to last from
9 October 5 through October 7, 2016, or earlier if the business of the Commission is
10 concluded. Thus, your hearing may be continued until later in the day or from day to
11 day. It is your responsibility to be present when your case is called. If you are not
12 present when your hearing is called, a default may be entered against you and the
13 COMMISSION may decide the case as if all allegations in the Complaint were true. If
14 you have any questions please call Rebecca Hardin, Commission Coordinator (702)
15 486-4074.

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

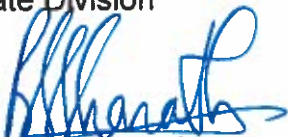
22 As the RESPONDENT, you are specifically informed that you have the right to appear
23 and be heard in your defense, either personally or through your counsel of choice. At the
24 hearing, the Division has the burden of proving the allegations in the Complaint and will call
25 witnesses and present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

1 You have the right to request that the Commission issue subpoenas to compel
2 witnesses to testify and/or evidence to be offered on your behalf. In making the request, you
3 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
4 Other important rights you have are listed in NRS 645.680 through 645.990, NRS Chapter
5 233B, and NAC 645.810 through 645.920.

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

10 DATED this 25th day of August, 2016.

11 State of Nevada
12 Department of Business and Industry
13 Real Estate Division

14 By: 
15 SHARATH CHANDRA, Administrator
16 2501 East Sahara Avenue
17 Las Vegas, Nevada 89104-4137
18 (702) 486-4033

19 DATED this 22nd day of August, 2016.

20 ADAM PAUL LAXALT
21 Attorney General

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