

FEB 14 2010

REAL ESTATE COMMISSION
Robert H. ...

BEFORE THE REAL ESTATE COMMISSION
STATE OF NEVADA

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

Case No. 2017-1239

Petitioner,

vs.

GAVIN M. ERNSTONE,

Respondent.

COMPLAINT AND NOTICE OF HEARING

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 Keith E. Kizer, Senior Deputy Attorney General, hereby notifies RESPONDENT GAVIN M. ERNSTONE ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE 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 by the Division as a Broker under license numbers B.1000642.LLC and B.1001429.INDV, and as a Property Manager under permit number PM.0163784.BKR, and is therefore subject to the jurisdiction of the Division and the Commission and the provisions of NRS chapter 645 and NAC chapter 645.

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1 **FACTUAL ALLEGATIONS**

2 **GENERAL FACTUAL ALLEGATIONS**

3 1. RESPONDENT has been licensed as a Broker under license number B.1000642.LLC,
4 since May 26, 2010, which is currently in active status.

5 2. RESPONDENT has been licensed as a Broker under license number B.1001429.INDV,
6 since July 23, 2014, which is currently in active status.

7 3. RESPONDENT has been licensed as a Property Manager under permit number
8 PM.0163784.BKR, since May 27, 2008, which is currently in active status.

9 4. In or about February 2014, Scott E. and Amie G. Yancey (the "Yanceys") purchased
10 real property located at 43 Morning Glow Lane, Las Vegas, Nevada (the "Property") from Howard
11 Hughes Properties, Inc. ("Hughes").

12 5. The Yanceys purchased the Property for approximately \$675,000.00.

13 6. The Property was subject to a transfer fee to Hughes if the property was sold before a
14 residence was constructed thereon.

15 7. The Yanceys never constructed a residence on the Property.

16 8. On or about October 31, 2016, RESPONDENT listed the Property for sale on behalf of
17 the Yanceys.

18 9. At that time, RESPONDENT listed the Property for sale for \$999,000.00.

19 10. The Yanceys, through RESPONDENT, sold the Property in or about March 2017.

20 11. RESPONDENT prepared the Vacant Land Purchase Agreement.

21 12. The Vacant Land Purchase Agreement states that the Yanceys sold the Property for only
22 \$250,000.00.

23 13. However, Addendum #2 to Purchase Agreement ("Addendum") required Buyers to
24 purchase "architectural plans" from the Yanceys for an additional \$690,000.00.

25 14. The Addendum required the "Sales of plans to be handled outside of escrow...."

26 15. The Addendum required the Buyer, the Yanceys and RESPONDENT to not disclose the
27 contents thereof.

28 16. RESPONDENT prepared the Addendum.

1 17. In or about March or April 2017, RESPONDENT received a commission of
2 approximately \$56,400.00 (\$28,200.00 for representing the Yanceys, and \$28,200.00 for representing
3 the Buyer) as a result of the Property sale.

4 18. RESPONDENT's \$56,400.00 commission is the equivalent of a 6% commission of a
5 \$940,000 Property sale.

6 19. Hughes contacted RESPONDENT to obtain an explanation as to the difference between
7 the Property's listing price and its alleged sales price.

8 20. RESPONDENT, through his attorney, admitted "Hughes would be entitled to a
9 percentage of profit made by a transfer" if the Yanceys and RESPONDENT reported a profit on the
10 Property sale.

11 21. Because of the falsified sales price, Hughes failed to receive approximately \$130,000.00
12 to which it was entitled as a transfer fee.

13 22. The State of Nevada Declaration of Value Form also identified a "Total Value/Sales
14 Price" of only \$250,000.00.

15 23. The falsified sales price resulted in the underpayment of Real Property Transfer Tax to
16 the State of Nevada.

17 24. On or about May 25, 2017, Hughes filed a Statement of Fact with the Division
18 complaining about RESPONDENT's conduct.

19 VIOLATIONS

20 RESPONDENT has committed the following violations of law:

21 25. RESPONDENT violated NRS 645.633(1)(h) and/or (i), pursuant to NAC 645.525, by
22 participating in the naming of a false consideration in the Purchase Agreement.

23 26. RESPONDENT violated NRS 645.633(1)(h) and/or (i), pursuant to NAC 645.605(6), by
24 breaching his obligation to deal fairly with all parties to a real estate transaction.

25 27. RESPONDENT violated NRS 645.633(1)(h) and/or (i), pursuant to NAC 645.605(1), by
26 failing to do his utmost to protect the public against misrepresentation or unethical practices related to
27 real estate.

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1 **DISCIPLINE AUTHORIZED**

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

5 29. Additionally, under NRS Chapter 622, the Commission is authorized to impose costs of
6 the proceeding upon RESPONDENT, including investigative costs and attorney's fees, if the
7 Commission otherwise imposes discipline on RESPONDENT.

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

10 **NOTICE OF HEARING**

11 **PLEASE TAKE NOTICE** that a disciplinary hearing has been set to consider the
12 Administrative Complaint against the above-named Respondent in accordance with Chapters 233B and
13 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

14 **THE HEARING WILL TAKE PLACE** on March 20, 2018, commencing at 9:00 a.m., or
15 as soon thereafter as the Commission is able to hear the matter, and each day thereafter
16 commencing at 9:00 a.m. through March 22, 2018, or earlier if the business of the Commission is
17 concluded. The Commission meeting will be held on March 20, 2018, at the Nevada State
18 Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada
19 89102. The meeting will continue on March 21, 2018 at the Nevada State Business Center, 3300
20 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102, commencing at 9:00
21 a.m., and on March 22, 2018, should business not be concluded, starting at 9:00 a.m. at the
22 Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas,
23 Nevada 89102.

24 **STACKED CALENDAR:** Your hearing is one of several hearings scheduled at the same
25 time as part of a regular meeting of the Commission that is expected to last from March 20
26 through March 22, 2018, or earlier if the business of the Commission is concluded. Thus, your
27 hearing may be continued until later in the day or from day to day. It is your responsibility to be
28 present when your case is called. If you are not present when your hearing is called, a default

1 may be entered against you and the Commission may decide the case as if all allegations in the
2 complaint were true. If you have any questions please call Rebecca Hardin, Commission
3 Coordinator (702) 486-4074.

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

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

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

20 The purpose of the hearing is to determine if the Respondent has violated NRS 645 and/or
21 NAC 645 and if the allegations contained herein are substantially proven by the evidence

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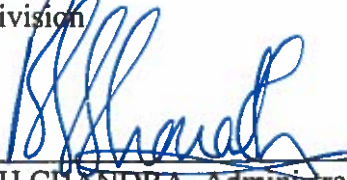
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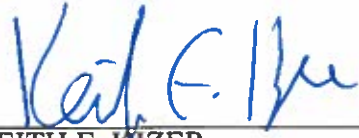
1 presented and to further determine what administrative penalty, if any, is to be assessed against the
2 Respondent, pursuant to NRS 645.235, 645.633 and/or 645.630.

3 DATED this 14 day of February, 2018.

4 State of Nevada
5 Department of Business and Industry
6 Real Estate Division

7 By: 
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