

FILED
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REAL ESTATE COMMISSION
Rona Miller

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13 **BEFORE THE REAL ESTATE COMMISSION**
14 **STATE OF NEVADA**

15 SHARATH CHANDRA, Administrator
16 REAL ESTATE DIVISION, DEPARTMENT
17 OF BUSINESS & INDUSTRY,
18 STATE OF NEVADA,

Case No.: 2017-1473

ANSWER TO COMPLAINT

Petitioner,

vs.

19 JOHN ANTHONY GLASS,

Respondent.

20 **ANSWER TO COMPLAINT**

21 COMES NOW Respondent JOHN ANTHONY GLASS, by and through his counsel of
22 record, Scott A. Marquis, Esq., and Patrick C. McDonnell, Esq., of the law firm of Marquis
23 Aurbach Coffing, and in answer to the Complaint would show as follows:

24 **JURISDICTION**

25 Respondent denies the allegations of this paragraph.

26 **FACTUAL ALLEGATION**

27 1. In answer to Paragraph 1 of the Complaint, Respondent admits only that he was
28 not licensed by the Division. Respondent lacks knowledge or information sufficient to form a
belief as to the truth of the allegations regarding the Division's understanding of the relevant time
period, and therefore denies the remaining allegations of paragraph 1.

1 for relief, and do not require a response from the Respondent; however, to the extent a response
2 is required by rule, Respondent denies the allegations 3 with the referenced statutes.

3 **DEFENSES & AFFIRMATIVE DEFENSES**

4 11. The Complaint fails to state a claim against the Respondent upon which relief
5 may be granted.

6 12. The Respondent is not guilty of violating any Order of the Nevada Real Estate
7 Commission, any agreement with the Nevada Real Estate Division, or any provision of NRS 645
8 or any regulation adopted pursuant thereto.

9 13. The Respondent is not guilty of not exercising reasonable skill and care with
10 respect to all parties to the real estate transactions at issue.

11 14. To the extent the Division has failed to produce all communications, reports,
12 affidavits, or depositions in its possession which are relevant to the Complaint, the Complaint
13 and the Division's claims should be barred. To the extent the Division intends to present
14 evidence at the hearing obtained after notice to Respondent, it must show that the evidence was
15 not available after diligent investigation before the time notice was given and the evidence was
16 given or communicated to Respondent immediately after it was obtained.

17 15. To the extent that it seeks to do so by its Complaint, the Division lacks standing to
18 enforce any agreements identified in the Complaint to which Respondent is a party.

19 16. Respondent is not guilty of any violation because the licensing and cooperative
20 certificate scheme promulgated by the Nevada Real Estate Commission and/or the Nevada Real
21 Estate Division, including NAC 645.180, 645.183, and 645.185, violates the United States
22 Constitution's Commerce Clause for essentially the reasons set forth in Respondent's Amended
23 Complaint (which is awaiting approval for filing by the Federal Court in the currently pending
24 lawsuit styled No. 2-16-CV-01299 *Marcus & Millichap Real Estate Investment Services of Nevada,*
25 *Inc. et al. v. Decker et al.*, in the United States District Court for the District of Nevada, Southern
26 Division, a copy of which is attached as **Exhibit 1** (without exhibits).

27 17. Respondent is not guilty of any violation because the Nevada Real Estate
28 Commission ("NREC") and/or the Nevada Real Estate Division ("NRED") promulgated their

1 licensing and cooperative certificate scheme, including NAC 645.180, 645.183, and 645.185,
2 without following the required statutes, rules and regulations, including without limitation:

3 a. NREC failed to comply with the requirements for deliberating only in
4 public meetings pursuant to a duly posted agenda with sufficient opportunity for informed and
5 meaningful participation by the public, and that such public meetings include a discussion of the
6 true purpose and true effect of a proposed regulation.

7 b. NREC and NRED failed to comply with the requirements for Regulation
8 Workshops pursuant to a duly posted agenda with sufficient opportunity for informed and
9 meaningful participation by the public, and with public discussion of the true purpose and true
10 effect of a proposed regulation.

11 c. NREC and NRED failed to comply with the requirements for a Notice of
12 Intent to Act Upon a Regulation that includes the true purpose and need of a proposed regulation,
13 the true estimated economic effect of a proposed regulation, and the true effect on federal law
14 including the United States Constitution.

15 d. NREC failed to comply with the requirements for written minutes of
16 meetings accurately reflecting the basis for actions taken by NREC.

17 e. On information and belief, NREC violated the prohibition on ex parte
18 communications regarding matters pending before NREC.

19 f. NREC failed to comply with the requirement that the purpose of and
20 policy behind a regulatory scheme be discussed in an open meeting and reflected in the written
21 minutes thereof.

22 g. NRED failed to comply with the requirement that its Administrator
23 provide an advisory opinion in appropriate circumstances.

24 h. NREC and NRED failed to comply with the requirement that a regulatory
25 scheme be preceded by and supported by a duly issued and considered Small Business Impact
26 Statement.

27 i. NREC and NRED failed to comply with the requirement under NRS
28 233B.066 that a regulatory scheme be preceded by and supported by a Legislative Review that

1 identifies a true explanation of the need for the regulation, a true description of how public
2 comment was solicited, a true summary of public response, and a true estimate of the economic
3 effect of the regulation on the business which it is to regulate and on the public.

4 j. Respondent is not guilty of any violation because the Nevada Real Estate
5 Commission and/or the Nevada Real Estate Division promulgated their licensing and cooperative
6 certificate scheme, including NAC 645.180, 645.183, and 645.185, without statutory authority
7 and in violation of the NRS 645.605.

8 18. NRED failed to comply with the requirement under NAC 645.680 that the
9 complaint against Respondent be made on a standard form or affidavit.

10 19. NRED failed to adequately investigate the charges against Respondent. For
11 instance, NRED failed to make any attempt to contact any consumers or any of the parties to the
12 transactions identified in the Complaint.

13 20. NRS 645.680 requires that Respondent be provided, at least 30 days prior to any
14 scheduled hearing, copies of all communications, reports, affidavits and depositions in the
15 possession of NRED relevant to the Complaint. NRED and NREC have failed and refused to
16 comply with this provision. On information and belief, NRED and NREC contend that they can
17 produce only those records on which they intend to rely, which is a plain violation of NRS
18 645.680, and which denies Respondent's due process rights.

19 21. NRED and NREC have historically interpreted and enforced NAC 645.185 in a
20 manner that was contradictory to the plain language of the regulation. Namely, they have always
21 precluded out of state brokers from offering real estate for sale in Nevada to a person other than a
22 resident of Nevada, even though NAC 645.185 expressly allowed out of state brokers to offer
23 real estate in Nevada for sale to a person other than a resident of Nevada.

24 22. As historically and currently interpreted by NREC and NRED, the statutes and
25 regulations relating to out of state brokerage activities are so ambiguous as to be unenforceable.

26 23. The Complaint is so ambiguous, uncertain and unintelligible that it fails to put
27 Respondent on adequate notice of the charges against him, and therefore is a denial of
28 Respondent's due process rights.


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DATED this 14th day of March 2018.

MARQUIS AURBACH COFFING

By 
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CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, a true and correct copy of the foregoing instrument was served on the following parties:

Via Email

REAL ESTATE DIVISION
STATE OF NEVADA
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Via Email

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Attorney for Real Estate Division

DATED this 14th day of March, 2018.


An employee of Marquis Aurbach Coffing