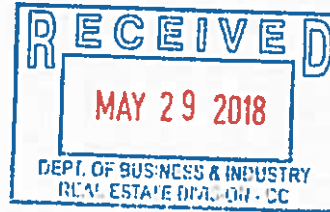


FILED

MAY 29 2018

REAL ESTATE COMMISSION  
*[Signature]*

1 Dan R. Reaser  
Nevada State Bar No. 1170  
2 Allen J. Wilt  
Nevada State Bar No. 4798  
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6 Attorneys for Respondents



7 **BEFORE THE REAL ESTATE COMMISSION**

8 **STATE OF NEVADA**

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA,	Case No.: 2016-2903
Petitioner,	
vs.	
GAURAB REJA,	
Respondent.	

16 **RESPONDENT REJA'S MOTION TO DISMISS**

17 Respondent Gaurab Reja, ("Respondent"), acting by and through his legal counsel  
18 Fennemore Craig, P.C., submits this motion to dismiss pursuant to Section 645.840 of the  
19 Nevada Administrative Code.

20 **I. INTRODUCTION AND SUMMARY OF RELEVANT FACTS**

21 Mr. Reja is a New York-licensed Salesperson affiliated with Marcus & Millichap Real  
22 Estate Investment Services Inc. (the "Company") in New York, New York. The Complaint and  
23 Notice of Hearing filed against Mr. Reja on February 15, 2018, (the "Complaint"), asserts two  
24 potential grounds for disciplinary action. First, the Complaint alleges a violation of NRS  
25 645.230(1)(a), which makes it unlawful "for any person . . . to engage in the business of, act in  
26 the capacity of, advertise or assume to act as, a . . . (a) Real estate broker, real estate broker-  
27 salesperson or real estate salesperson within the State of Nevada" without first obtaining the  
28

1 appropriate license from the Nevada Real Estate Division (the "Division" or "NRED").

2 Second, the Complaint also claims that Mr. Reja is subject to discipline under NRS  
3 645.235(1)(a), which provides that the Nevada Real Estate Commission (the "Commission" or  
4 "NREC") may "impose an administrative fine against any person who *knowingly* . . . [e]ngages  
5 or offers to engage in any activity for which a license, permit, certificate or registration or any  
6 type of authorization is required pursuant to this chapter, or any regulation adopted pursuant  
7 thereto," without holding the required license, permit, certificate or registration or has not been  
8 given the required authorization.

9 The only factual bases stated in the Complaint are that Mr. Reja signed a document  
10 entitled "Interstate Brokerage Cooperation Agreement – Turf State", with respect to property  
11 located at 2341 Comstock Drive, Las Vegas, Nevada (the "Academy of Excellence"). The  
12 Complaint also states that "advertising" for the Academy of Excellence included Mr. Reja's  
13 name. The Complaint does not allege that any buyer or seller was harmed in the Academy of  
14 Excellence transaction, and no buyer, seller, or consumer made any complaint regarding Mr.  
15 Reja or the Academy of Excellence transaction.

## 16 II. DISCUSSION AND ANALYSIS

### 17 A. THE COMPLAINT FAILS TO ALLEGE FACTS SUFFICIENT TO FIND 18 THAT REJA ACTED AS A BROKER-SALESPERSON OR SALESPERSON

19 The Complaint fails to allege facts sufficient to support the allegations that Mr. Reja  
20 "engag[ed] in the business of, act[ed] in the capacity of, or advertis[ed] or assum[ed] to act" as a  
21 real estate broker-salesperson or real estate salesperson within the State of Nevada without first  
22 obtaining the appropriate license. Where a complaint fails to plead an essential element of the  
23 alleged violation, the complaint must be dismissed.<sup>1</sup> The definitions of a real estate broker-  
24 salesperson or real estate salesperson both require that the individuals be performing the  
25 activities of a real estate broker *while associating with a licensed Nevada broker*.<sup>2</sup> The  
26 Complaint does not include any statements or allegations that Mr. Reja ever associated or  
27

28 <sup>1</sup> See Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985).

1 attempted to associate with a Nevada licensed real estate broker. Thus, without any allegations  
2 as to this required element of the definitions of a real estate broker-salesperson or real estate  
3 salesperson, the Complaint fails as a matter of law with respect to any allegations that Mr. Reja  
4 violated NRS 645.230(1)(a) and/or NRS 645.235(1)(a) by “engaging in the business of, acting in  
5 the capacity of, or advertising or assuming to act” as a real estate broker-salesperson or real  
6 estate salesperson. Consequently, the Complaint’s only remaining potential basis for discipline  
7 is that Mr. Reja engaged in the activities of a real estate broker, as defined in NRS 645.030.

8 **B. THE COMPLAINT FAILS TO ALLEGE FACTS**  
9 **SUFFICIENT TO FIND THAT REJA ACTED AS A REAL ESTATE BROKER**

10 The Complaint also fails to assert sufficient facts to find that Mr. Reja violated NRS  
11 645.230(1)(a) and/or NRS 645.235(1)(a) by “engaging in the business of, acting in the capacity of,  
12 or advertising or assuming to act as a real estate broker . . .”<sup>3</sup> Because the Complaint does not  
13 plead each of the necessary elements for acting as a real estate broker, the Complaint must be  
14 dismissed and this matter cannot proceed to hearing.<sup>4</sup>

15 NRS 645.030 defines a “real estate broker” as, a “person who, for another and *for*  
16 *compensation or with the intention or expectation of receiving compensation*” performs certain  
17 specified duties relating to the sale, purchase, lease, or management of real property.<sup>5</sup>  
18 Receiving or expecting to receive compensation is a fundamental element of this definition;  
19 unless the activities listed in NRS 645.030 are undertaken for compensation (or the expectation  
20 of it), the individual cannot be found to have acted as a real estate broker.

21 There is absolutely no allegation in the Complaint that Mr. Reja received, or expected to  
22 receive any commission or other compensation in connection with the Academy of Excellence  
23 transaction. The alleged violations relating to this property fail as a matter of law because a real  
24 estate broker is, by definition, someone who engages in the statutory activities “for  
25

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26 <sup>2</sup> Nev. Rev. Stat. 645.035 & .040.

27 <sup>3</sup> Gaurab Reja, Complaint, Case No. 2016-2903 (Feb. 15, 2018) at para. 15.

28 <sup>4</sup> See Edgar, 101 Nev. at 228.

1 compensation or with the intention or expectation of receiving compensation." Absent such  
2 factual allegations, the Complaint is facially defective and all alleged violations of NRS  
3 645.230(1)(a) and/or NRS 645.235(1)(a) must be dismissed.

4 **C. THE COMPLAINT FAILS TO ALLEGE**  
5 **A REQUIRED ELEMENT OF NRS 645.235(1)(A)**

6 In addition to failing to plead necessary elements of the definitions of a real estate  
7 broker-salesperson, real estate salesperson, and real estate broker, the Complaint also fails to  
8 allege an essential element of NRS 645.235(1)(a), which requires that the person "knowingly"  
9 engaging in activities requiring a license. This additional defect further necessitates dismissal of  
10 the Complaint.<sup>5</sup>

11 The Complaint sets out only a handful of factual allegations relating to Mr. Reja's  
12 involvement with the Academy of Excellence property. With respect to the allegation that Mr.  
13 Reja executed a document entitled "Brokerage Cooperation Agreement – Turf State", the the  
14 Complaint makes no assertions whatsoever regarding what this documents is, what it means, or  
15 what Mr. Reja agreed to by signing it.<sup>7</sup> The act of signing this document, without more, does  
16 not violate Nevada law, and the Complaint fails to allege any other details or specific  
17 information about the document or Mr. Reja's activities which would establish that executing  
18 this document is a violation of NRS 645.230(1)(a) and/or NRS 645.235(1)(a).<sup>8</sup>

19 As such, it appears that the alleged violations are premised on the claim in paragraph 11  
20 that certain "advertising" stated that the properties were listed by Mr. Reja. Notably, the  
21 Complaint makes *no* claim that Mr. Reja requested the advertising, supervised the creation of

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22 <sup>5</sup> NEV. REV. STAT. § 645.030 (emphasis added).

23 <sup>6</sup> See Edgar, 101 Nev. at 228.

24 <sup>7</sup> The only detail from the document included in the Complaint is that the agreement states  
25 that Mr. Reja should not put his name on marketing materials for Nevada properties. This directive  
26 complies with NRED and NREC's apparent interpretation of statutes and regulations, and certainly does  
not suggest that signing this agreement constitutes unlawfully acting as a Nevada broker.

27 <sup>8</sup> To the extent that NRED believes that executing these documents alone constitutes  
28 grounds for discipline, it has utterly failed to allege with particularity the connection between these  
agreements and NRS 645.230(1)(a) and/or NRS 645.235(1)(a), and due process requires a more definite  
statement as to the basis for discipline.

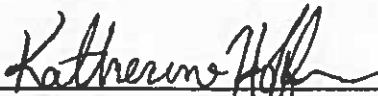
1 advertising, or even knew the advertising existed. Without any allegations as to Mr. Reja's  
2 knowledge about the purported advertising, the Complaint fails to allege a necessary element of  
3 NRS 645.235(1)(a), which imposes liability only where the person "knowingly" engages in  
4 activities requiring a license. Without such an allegation, the Complaint fails to state a cause of  
5 action under NRS 645.235(1)(a) and these claims must be dismissed.

6 **III. CONCLUSION**

7 The Complaint's sparse factual allegations, even if presumed true, are insufficient to  
8 establish any violations of NRS 645.230(1)(a) and/or NRS 645.235(1)(a) because NRED has failed  
9 to plead the necessary elements to establish that Mr. Reja engaged in conduct that satisfies the  
10 definitions of a real estate broker-salesperson, real estate salesperson, or real estate broker.  
11 Additionally, the Complaint does not allege that Mr. Reja had any knowledge of the  
12 "advertising" for the Academy of Excellence, which is a required element of any violation  
13 under NRS 645.235(1)(a). For these reasons, the Complaint must be dismissed.

14 DATED and respectfully submitted this 29th day of May, 2018.

15 FENNEMORE CRAIG, P.C.

16 

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23 *Attorneys for Respondent*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **RESPONDENT REJA'S MOTION TO DISMISS**  
3 was submitted for filing with the Nevada Real Estate Commission on the 29<sup>th</sup> day of May, 2018.  
4 I further certify that I served a copy of this document by mailing a true and correct copy thereof,  
5 postage prepaid to the following:

6 Sharath Chandra, Administrator  
7 Department of Business and Industry  
8 Nevada Real Estate Division  
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11 *For the Nevada Real Estate Division*

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14 State of Nevada  
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28 Las Vegas, Nevada 89101  
*Counsel for the Nevada Real Estate Commission*

DATED this 29<sup>th</sup> day of May, 2018.

  
An Employee of Fennemore Craig, P.C.