

1 BEFORE THE REAL ESTATE COMMISSION

2 STATE OF NEVADA

FILED

NOV 14 2019

3 SHARATH CHANDRA, Administrator,
4 REAL ESTATE DIVISION,
5 DEPARTMENT
6 OF BUSINESS & INDUSTRY,
7 STATE OF NEVADA,

Case No. 2018-1272

REAL ESTATE COMMISSION

BY *Evelyn Patten*

8 Petitioner,

STIPULATION FOR SETTLEMENT OF

9 vs.

DISCIPLINARY COMPLAINT

10 CESAR A. TALAVERA,

11 Respondent.

12 This Stipulation for Settlement of Disciplinary Action ("Stipulation") is entered into
13 by and between the State of Nevada, Department of Business and Industry, Real Estate
14 Division ("Division"), through its Administrator Sharath Chandra ("Petitioner") and Cesar
15 A. Talavera ("RESPONDENT").

16 JURISDICTION

17 RESPONDENT was at all relevant times mentioned in this Complaint, licensed as a real
18 estate broker salesperson under License Number BS.0045231, and is therefore subject to
19 the jurisdiction of the Division and the provisions of NRS Chapter 645 and NAC Chapter
20 645.

21 PROCEDURAL HISTORY

- 22 1. RESPONDENT is a real estate broker, License Number BS.0045231, has
23 been licensed since August 1, 2000, and is currently in active status.
- 24 2. RESPONDENT holds the distinction of Vice President Investments and
25 Broker Salesperson, for Marcus & Millichap Real Estate Investment Services of Nevada,
26 Inc.
- 27 3. On or about September 4, 2018, the Division received a complaint and
28 statement of facts against the RESPONDENT alleging RESPONDENT misrepresented the
status of the titles for mobile homes at a mobile home park he marketed.

1 4. On or about September 6, 2018, the Division sent an investigation-opening
2 letter to RESPONDENT, which required RESPONDENT to provide a sworn statement
3 along with a copy of the broker file for the sales transaction in question no later than
4 September 20, 2018.

5 5. On or about October 2, 2018, after granting RESPONDENT extensions, the
6 Division received the RESPONDENT's sworn declaration in response to the Division's
7 opening letter.

8 6. On or about November 6, 2018, the Division's investigator sent
9 RESPONDENT a Notice of Violation with Imposition of Administrative Fine, which
10 imposed a \$17,500.00 fine for thirty-four (34) alleged violations of NRS 645.252(1)(a)
11 pursuant to NRS 645.258(1)(a) & (b) & (c) as well as NRS 645.633(1)(h).

12 7. On or about December 3, 2018, counsel for the RESPONDENT sent the
13 Division a written request for appeal of the Notice of Violation with Imposition of
14 Administrative Fine.

15 8. On or about January 17, 2019, the Division sent RESPONDENT's counsel a
16 233B letter, via certified mail, placing RESPONDENT on notice that the Division intended
17 to commence disciplinary action by filing a formal complaint with the Nevada Real Estate
18 Commission for violations NRS 645 and NAC 645.

19 FACTUAL ALLEGATIONS

20 9. On March 8, 2018, RESPONDENT entered into an Exclusive Right to sell
21 Agreement with the seller of the Las Vegas Mobile Home Park located at 3975 E. Lake
22 Mead Blvd., Las Vegas, Nevada 89115, APN# 140-19-701-003 ("the Property").

23 10. The Exclusive Right to Sell Agreement states that "ALL PARK OWNED
24 HOMES & NOTE INVENTORY ARE INCLUDED IN THE SALES PRICE[.]" The
25 Agreement further states that it was "for the express purpose of selling the Property
26 through the 10X auction."
27
28

1 11. The Exclusive Right to Sell Agreement sets the Commission for the
2 RESPONDENT at 3% of the purchase price, less the portion of the commission payable to
3 Ten-X Auction pursuant to Ten-X's Auction Representation Agreement.

4 12. The Offering Memorandum utilized by RESPONDENT to market the
5 property indicates that the Property is a Las Vegas Mobile Home Park that includes 34
6 used manufactured homes owned by the park.

7 13. RESPONDENT did not provide any information demonstrating that any of
8 the park owned homes were converted to real property.

9 14. The Offering Memorandum also contains financial information regarding the
10 rent rolls park owned homes included with the Property, and states that "POH [Park
11 Owned Home] revenue has NOT been included in underwriting."

12 15. The Offering Memorandum contains a section of market comparable(s), which
13 identifies several mobile home parks in Nevada prospective buyers can compare to the
14 Property.

15 16. The Offering Memorandum also contains a section regarding Manufactured
16 Housing trends and Market analysis.

17 17. On April 25, 2018, the seller and buyer executed a Duties Owed by Nevada
18 Real Estate Licensee Form, which identified RESPONDENT as the licensee, but did not
19 specify whether or not the seller and buyer understood and authorized, the RESPONDENT
20 "may, in the future act for two or more parties who have interests adverse to each other."

21 18. On April 25, 2018, the seller and the buyer also executed a Consent to Act
22 Form, which identified RESPONDENT as the licensee.

23 19. On April 25, 2018, a Purchase and Sale Agreement with Joint Closing
24 Instructions, naming RESPONDENT as the Listing Broker, was submitted as the winning
25 bid/offer, through Tex-X, LLC on behalf of the buyer in the amount of \$1,680,000.00.

26 20. The April 25, 2018, Purchase and Sale Agreement with Joint Closing
27 Instructions included a legal description of the Property, which expressly excepts "any
28 mobile/manufactured home located thereon." The Purchase and Sale Agreement stated

1 that RESPONDENT represented the Seller, and that Buyer was unrepresented in the
2 transaction.

3 21. On May 8, 2019, the RESPONDENT emailed the buyer regarding the titles
4 for the park owned homes and stated “[t]he seller cam [sic] to Vegas today and has some of
5 the titles, I will pick them up tomorrow and mail them to you.”

6 22. On May 24, 2018, the RESPONDENT prepared, or caused to be prepared, an
7 Addendum to the Purchase and Sale Agreement with Joint Closing Instructions dated April
8 25, 2018.

9 23. The May 24, 2018 Addendum specifies that “Marcus & Millichap is not a
10 licensed mobile home dealer as required by NRS 118B and is not receiving any
11 compensation for the transfer of the park-owned homes. Furthermore, Marcus & Millichap
12 has agreed to reduce its fee based upon the estimated value of the 34 park-owned homes
13 being transferred to the Buyer. Broker and Seller shall have no liability for damages,
14 losses, causes of action, or other claims (including attorneys’ fees and other defense costs)
15 arising from or asserted in connection with the park-owned homes. The \$20,000 credit
16 releases Seller and Marcus and Millichap from all liability incurred as a result of the
17 transfer of the park-owned homes.”

18 24. The May 24, 2019, Addendum was unsigned by the buyer and seller.

19 25. Nevada Revised Statutes Chapter 489 governs the licensure of dealers of
20 manufactured homes, mobile homes, and similar vehicles.

21 26. Pursuant to NRS 489.331, “[a] licensed real estate broker and his or her
22 licensed salespersons may, without applying for or obtaining any license issued pursuant
23 to the provisions of this chapter, sell used manufactured homes and used mobile homes
24 when the sale is in connection with the sale of a fee simple interest in real property and the
25 used manufactured home or used mobile home is situated on the real property sold.”

26 27. Pursuant to NRS 645.258(1), “[i]n any transaction involving a used
27 manufactured home or used mobile home that has not been converted to real property
28

1 pursuant to NRS 361.244, a licensee shall provide to the purchaser” a completed copy of
2 Form 610, the Nevada Real Estate Division’s Manufactured Home Disclosure Form.

3 28. The RESPONDENT did not provide copies of the Nevada Real Estate
4 Division’s Manufactured Home Disclosure Form 610 for the 34 park-owned used
5 manufactured homes identified in the Offering Memorandum as included in the sale of the
6 Property.

7 VIOLATIONS ALLEGED

8 The Division alleges that RESPONDENT committed the following violations of law:

9 1. The Division alleges that RESPONDENT violated NRS 645.633(1)(b) and NRS
10 645.252(1)(a) pursuant to NRS 645.258(1) thirty-four times by failing to provide the seller
11 with Form 610, the Used Manufactured/Mobile Home Disclosure, which contains material
12 and relevant facts that the RESPONDENT should have known relating to the Property
13 and that were required to be produced to the Nevada Real Estate Division.

14 2. The Division alleges that RESPONDENT violated NRS 645.633(1)(h) by failing
15 to demonstrate an understanding of the rights and responsibilities of a real estate broker
16 salesperson pursuant to the laws regulating the sale of used manufactured homes or mobile
17 homes in the State of Nevada.

18 DISCIPLINE AUTHORIZED

19 The Division alleges that:

20 3. Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to
21 impose an administrative fine of up to \$10,000 per violation against a licensee and further
22 to suspend, revoke or place conditions on the license of a licensee if the licensee is found
23 guilty of certain enumerated acts.

24 4. Pursuant to NRS 645.314, the Division is authorized to request its investigative
25 costs where the investigation was undertaken for disciplinary purposes.

26 5. Additionally, pursuant to NRS 622.400, the Commission is authorized to impose
27 costs of the proceeding upon RESPONDENT, including investigative costs and attorney’s
28 fees, if the Commission otherwise imposes discipline on RESPONDENT.

1 5. The Division agrees not to pursue any other or greater remedies or fines in
2 connection with RESPONDENT's alleged conduct referenced herein. The Division further
3 agrees that unless RESPONDENT fails to make timely payment, the Division will not
4 bring any claim or cause directly or indirectly based upon any of the facts, circumstances,
5 or allegations discovered during the Division's investigation and prosecution of this case.

6 6. RESPONDENT agrees and understands that by entering into this
7 Stipulation, RESPONDENT is waiving his right to a hearing at which RESPONDENT may
8 present evidence in defense, waiving his right to a written decision on the merits of the
9 complaint, waiving his rights to reconsideration and/or rehearing, appeal and/or judicial
10 review, and all other rights which may be accorded by the Nevada Administrative
11 Procedure Act, the Nevada Real Estate Brokers and Salespersons statutes and
12 accompanying regulations, and the federal and state Constitutions. RESPONDENT
13 understands that this Agreement and other documentation may be subject to public records
14 laws. The Commission members who review this matter for approval of this Stipulation
15 may be the same members, who ultimately hear, consider, and decide the Complaint if this
16 Stipulation is either not approved by the Commission or is not timely performed by
17 RESPONDENT. RESPONDENT fully understands that he has the right to be represented
18 by legal counsel in this matter at his own expense.

19 7. Each party shall bear its own attorney's fees and costs.

20 8. Approval of Stipulation. This Stipulation is subject to approval by the
21 Commission at a public meeting.

22 9. Release. In consideration of the execution of this Stipulation, the Division and
23 the RESPONDENT, for themselves, their heirs, executors, administrators, successors,
24 employees, officers and assigns, hereby release, remise, and forever discharge each other,
25 and each of their respective members, agents, employees, and counsel in their individual
26 and representative capacities, from any and all manner of actions, causes of action, suits,
27 debts, judgments, executions, claims, and demands whatsoever, known and unknown, in
28 law or equity, that the Division or RESPONDENT ever had, now has, may have, or claim

1 to have against any or all of the persons or entities named in this section, arising out of,
2 relating to the facts and circumstances of the Division's investigation, this disciplinary
3 action, and all other matters relating thereto.

4 10. Indemnification. RESPONDENT hereby indemnifies and holds harmless the
5 State of Nevada, the Department of Business and Industry, the Division, and each of their
6 respective members, agents, employees, and counsel, in their individual and representative
7 capacities, against any and all claims, suits, and actions brought against said persons
8 and/or entities by reason of the Division's investigation, this disciplinary action, and all
9 other matters relating thereto, and against any and all expenses, damages, and costs,
10 including court costs and attorney fees, which may be sustained by the persons and/or
11 entities named in this section as a result of said claims, suits, and actions.

12 The parties have signed and dated this Stipulation only after reading and
13 understanding all terms herein.

14 DATED this 29th day of October 2019.

DATED this 30 day of October 2019.

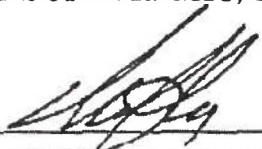
15 NEVADA DEPARTMENT OF BUSINESS
16 & INDUSTRY, REAL ESTATE DIVISION

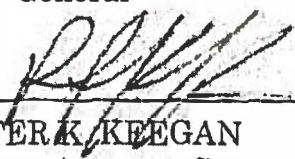
17 
18 By: _____
19 CESAR TALAVERA
Respondent

17 
18 By: _____
19 SHARATH CHANDRA
Administrator

20
21 Approved as to form:
22 DICKINSON WRIGHT, PLLC

20
21 Approved as to form:
22 AARON D. FORD
Attorney General

23 
24 By: _____
25 MICHAEL N. FEDER
Attorney for the Respondent

23 
24 By: _____
25 PETER K. KEEGAN
26 Deputy Attorney General
27 Attorney for the Real Estate Division
28

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STATE OF NEVADA

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

Case No. 2018-1272

Petitioner,

vs.

CESAR A. TALAVERA,

Respondent.

ORDER APPROVING STIPULATION

The Stipulation for Settlement of Disciplinary Action having come before the Real Estate Commission, Department of Business and Industry, State of Nevada, during its regular agenda on November 5, 2019, and the Commission being fully apprised of terms and good cause appearing,

IT IS HEREBY ORDERED, that the Stipulation for Settlement of Disciplinary Action in this matter is approved in full.

This Order shall become effective on the 14th day of December 2019.

NEVADA REAL ESTATE COMMISSION

By: [Signature]

[Print Name] David Reiss

Commission President