

BEFORE THE REAL ESTATE COMMISSION
STATE OF NEVADA

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

Petitioner,

vs.

RICHARD W. BYRD,

Respondent.

Case No. 2020-469

FILED

DEC 30 2021

REAL ESTATE COMMISSION
BY *Evelyn Patten*

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came on for a hearing before the Nevada Real Estate Commission, Department of Business and Industry, State of Nevada (the "Commission"), during a regular agenda on December 14, 2021 and December 15, 2021 (the "Hearing"). RESPONDENT RICHARD W. BYRD (hereinafter, "RESPONDENT") appeared in person, *pro se*. Henry H. Kim, Esq., Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

Based on the evidence presented at the Hearing, the Commission enters the following Findings of Fact, Conclusions of Law, and Order. Under Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 645, the Commission has jurisdiction over this matter.

FINDINGS OF FACT

1. Based on a preponderance of the evidence in the record and testimony presented at the Hearing, the Commission made the following findings of fact: Respondent acted as an agent and a broker at America's Choice Realty, a Nevada limited liability company, when he entered into an agreement to purchase land on behalf of his company, Gamebyrd West LLC.

1 2. Respondent is listed as the agent and broker on page 9 of 10 of the Vacant
2 Land Purchase Agreement dated August 29, 2019.

3 3. Complainant's agent was Gaylan Bryant, license number BS.0057528, and
4 Gaylan Bryant's broker was J. Michael Griffin, license number B.0047454.CORP with
5 Classic Realty.

6 4. On May 26, 2020, the Division received a complaint against RESPONDENT
7 alleging that he failed to deposit \$30,000.00, earnest money, which he agreed to do through
8 addendums, for extending the closing date for vacant land located at 6220 E. Gamebird
9 Road, Pahrump, NV 89048 (the "Property").

10 5. The complainant/seller, Carol S. Jones, accepted an offer, made by
11 Respondent, to purchase the Property for a purchase price of \$50,000.00, which an Earnest
12 Money Deposit ("EMD") of \$2,500.00 was required to be deposited within one business day
13 of August 30, 2019, the date the purchase agreement was signed.

14 6. The Close of Escrow was scheduled for October 21, 2019.

15 7. On September 3, 2019, RESPONDENT and Complainant signed an
16 addendum ("Addendum 1"), which amended the title company to Fidelity National Title
17 with escrow officer Kim Williams.

18 8. RESPONDENT emailed Complainant's agent on September 4, 2019, stating
19 that he would make the EMD "later today or first thing tomorrow morning."

20 9. RESPONDENT deposited the EMD of \$2,500.00, a month late, on October 1,
21 2019.

22 10. RESPONDENT requested that the Close of Escrow be extended.

23 11. On October 18, 2019, RESPONDENT and Complainant signed an addendum
24 ("Addendum 2") extending the Close of Escrow to January 31, 2020, which also provided
25 that \$1,000.00 EMD would be released to Complainant, and RESPONDENT would provide
26 an additional \$1,000.00 EMD on or before November 30, 2019.

1 12. Complainant was issued a check from EMD in the amount of \$1,000.00 on
2 October 21, 2019 and RESPONDENT deposited the EMD of \$1,000.00 on November 26,
3 2019, in compliance with Addendum 2.

4 13. RESPONDENT requested that the Close of Escrow be extended for a second
5 time.

6 14. On January 30, 2020, RESPONDENT and Complainant signed an addendum
7 (“Addendum 3”) extending the Close of Escrow to March 6, 2020, which also provided that
8 \$1,000.00 EMD would be released to Complainant, and RESPONDENT would provide an
9 additional \$2,500.00 EMD on or before February 7, 2020.

10 15. Complainant was issued a check from EMD in the amount of \$1,000.00 on
11 January 31, 2020 in compliance with Addendum 3.

12 16. On January 31, 2020, RESPONDENT emailed Nancy Weyrick at the title
13 company stating that he will submit the additional EMD by next week.

14 17. RESPONDENT deposited the EMD of \$2,500.00, late, on February 14, 2020.

15 18. RESPONDENT requested that the Close of Escrow be extended for a third
16 time.

17 19. On March 5, 2020, RESPONDENT and Complainant signed an addendum
18 (“Addendum 4”) extending the Close of Escrow to April 3, 2020, which also provided that
19 all of the EMD would be released to Complainant, and RESPONDENT would provide an
20 additional \$5,000.00 EMD on or before March 11, 2020.

21 20. Complainant was issued a check from EMD in the amount of \$4,000.00 on
22 March 12, 2020, in compliance with Addendum 4 however RESPONDENT failed to provide
23 the additional \$5,000.00 EMD.

24 21. On March 18, 2020, RESPONDENT texted Complainant’s agent stating his
25 transaction coordinator John Carter is pulling money out, possibly that afternoon, and
26 RESPONDENT will write a check to the title company assuring that “...we’ll have plenty
27 of money to get this thing closed okay.”

1 22. On March 21, 2020, RESPONDENT stated that John Carter had to write a
2 check to himself, deposit it into his other account, and will figure out how to wire it on
3 Monday.

4 23. On March 23, 2020, Complainant's agent texted RESPONDENT asking
5 "Emd?", and RESPONDENT replied "he's working on it nothing else to do...will get it as
6 soon as we can..."

7 24. RESPONDENT requested that the Close of Escrow be extended for a fourth
8 time.

9 25. On April 3, 2020, RESPONDENT and Complainant signed an addendum
10 ("Addendum 5") extending the Close of Escrow to April 9, 2020.

11 26. RESPONDENT requested additional time to make the EMD payment stating,
12 via email on April 3, 2020, that his bank required three business days to complete a wire
13 transfer.

14 27. On April 9, 2020, RESPONDENT and Complainant signed an addendum
15 ("Addendum 6") extending the due date for RESPONDENT's EMD to April 15, 2020.

16 28. RESPONDENT emailed Complainant's real estate agent on April 9, 2020
17 alleging that his bank can only transfer funds on Tuesday, Wednesday, and Thursday,
18 stating that he is moving funds from another account, and that "we will get this closed,"
19 and "let's plan a signing on Monday."

20 29. RESPONDENT requested that the Close of Escrow be extended for a fifth
21 time.

22 30. On April 15, 2020, RESPONDENT and Complainant signed an addendum
23 ("Addendum 7") extending the Close of Escrow to April 22, 2020, which stated that
24 RESPONDENT would provide an additional \$10,000.00 EMD, in addition to the \$5,000.00
25 EMD due from Addendum 4 within two business days, and those funds would be released
26 to Complainant.

27 31. RESPONDENT failed to provide the total amount due, that is, \$15,000.00
28 EMD under Addendum 7.

1 Based on the foregoing findings of fact and the preponderance of the evidence, the
2 Commission concludes that RESPONDENT has committed the following violations of law:

3 1. RESPONDENT violated NRS 645.252(2) as he acted as an agent in a real
4 estate transaction and failed to exercise reasonable skill and care with respect to all parties
5 to the real estate transaction by failing to deposit earnest money as agreed to in the
6 purchase agreement and its numerous addendums.

7 2. RESPONDENT violated NRS 645.630(a) as he made material
8 misrepresentations by promising additional sums of earnest money to extend the close of
9 escrow and then refused to pay agreed upon sums.

10 3. RESPONDENT violated NRS 645.630(1)(b) as he made false promises of
11 character likely to influence, persuade or induce by falsely promising to deposit additional
12 sums of earnest money to persuade and induce the Complainant to extend the close of
13 escrow.

14 4. RESPONDENT violated NRS 645.633(1)(i) as his conduct constituted
15 deceitful, fraudulent, or dishonest dealing as Respondent failed to deal fairly with
16 Complainant when he prepared and signed the Notice of Cancellation of Purchase
17 Agreement and stated he would not pay Complainant the \$30,000.00 in Earnest Money
18 that he failed to deposit with Fidelity National Title Company as he agreed in multiple
19 addendums to the purchase agreement; Pursuant to NAC 645.605(6) as he breached his
20 obligation to deal fairly with all parties of a real estate transaction.

21 **ORDER**

22 The Commission being fully apprised in the premises, and good cause appearing to
23 the Commission, ORDERS as follows:

24 1. RESPONDENT shall pay an administrative fine in the amount of \$15,000.00,
25 along with the Division's administrative costs in the amount of \$2,032.40, for a total
26 amount of \$17,032.40 due to the Division ("Amount Due"). RESPONDENT shall pay the
27 Amount Due to the Division within one (1) year of the effective date of this Order.

28 2. The Division may institute debt collection proceedings for failure to timely pay

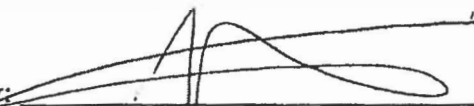
1 the Amount Due, including an action to reduce this Order to a judgment. Further, if
2 collection goes through the State of Nevada, then RESPONDENT shall also pay the costs
3 associated with collection.

4 3. The Commission retains jurisdiction for correcting any errors that may have
5 occurred in the drafting and issuance of this document.

6 4. This Order shall become effective on the 29th day of January, 2022.

7
8 DATED this 30th day of December, 2021

9
10 REAL ESTATE COMMISSION
11 STATE OF NEVADA

12
13 By: 
14 Vice-President, the Nevada Real Estate Commission

15 Submitted by:
16 AARON D. FORD
17 Attorney General

18 By: /s/ Henry H. Kim
19 HENRY H. KIM
20 Deputy Attorney General
21 555 E. Washington Ave., Suite 3900
22 Las Vegas, Nevada 89101
23 Telephone: (702)486-3095
24 Email: hkim@ag.nv.gov
25 Attorneys for the Nevada Real Estate Division
26
27
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