

BEFORE THE REAL ESTATE COMMISSION
STATE OF NEVADA

FILED

NOV 12 2021

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

Case No. 2020-469

REAL ESTATE COMMISSION
BY *Emily Patten*

Petitioner,

vs.

RICHARD W. BYRD,

Respondent.

COMPLAINT AND NOTICE OF HEARING

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division") hereby notifies RESPONDENT RICHARD W. BYRD ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("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 645.630 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 as a Broker under license number B.1001574.LLC and is therefore subject to the jurisdiction of the Division and the Commission, and the provisions of NRS chapter 645 and NAC chapter 645. RESPONDENT is currently licensed as a broker with license number B.0019254.INDV.

FACTUAL ALLEGATIONS

1. Respondent acted as agent and 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.

2. Respondent is listed as the agent and broker on page 9 of 10 of the Vacant Land Purchase

1 Agreement dated August 29, 2019.

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

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

7 5. The complainant/seller, Carol S. Jones, accepted an offer, made by Respondent, to
8 purchase the Property for a purchase price of \$50,000.00, which an Earnest Money Deposit ("EMD") of
9 \$2,500.00 was required to be deposited within one business day of August 30, 2019, the date the purchase
10 agreement was signed.

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

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

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

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

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

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

23 12. Complainant was issued a check from EMD in the amount of \$1,000.00 on October 21,
24 2019 and RESPONDENT deposited the EMD of \$1,000.00 on November 26, 2019, in compliance with
25 Addendum 2.

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

27 14. On January 30, 2020, RESPONDENT and Complainant signed an addendum
28 ("Addendum 3") extending the Close of Escrow to March 6, 2020, which also provided that \$1,000.00

1 EMD would be released to Complainant, and RESPONDENT would provide an additional \$2,500.00
2 EMD on or before February 7, 2020.

3 15. Complainant was issued a check from EMD in the amount of \$1,000.00 on January 31,
4 2020 in compliance with Addendum 3.

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

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

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

9 19. On March 5, 2020, RESPONDENT and Complainant signed an addendum ("Addendum
10 4") extending the Close of Escrow to April 3, 2020, which also provided that all of the EMD would be
11 released to Complainant, and RESPONDENT would provide an additional \$5,000.00 EMD on or before
12 March 11, 2020.

13 20. Complainant was issued a check from EMD in the amount of \$4,000.00 on March 12,
14 2020, in compliance with Addendum 4 however RESPONDENT failed to provide the additional
15 \$5,000.00 EMD.

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

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

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

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

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

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

28 27. On April 9, 2020, RESPONDENT and Complainant signed an addendum ("Addendum

1 6”) extending the due date for RESPONDENT’s EMD to April 15, 2020.

2 28. RESPONDENT emailed Complainant’s real estate agent on April 9, 2020 alleging that
3 his bank can only transfer funds on Tuesday, Wednesday, and Thursday, stating that he is moving funds
4 from another account, and that “we will get this closed,” and “let’s plan a signing on Monday.”

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

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

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

12 32. RESPONDENT requested that the Close of Escrow be extended for a sixth time.

13 33. On April 22, 2020, RESPONDENT and Complainant signed an addendum (“Addendum
14 8”) extending the Close of Escrow to April 29, 2020, which stated that, in addition to the \$5,000.00 EMD
15 due from Addendum 4 and the \$10,000.00 EMD due from Addendum 7, Respondent would provide an
16 additional \$10,000.00 EMD within two business days.

17 34. RESPONDENT failed to provide the total amount due, that is, \$25,000.00 EMD under
18 Addendum 7.

19 35. RESPONDENT requested that the Close of Escrow be extended for a seventh time.

20 36. On April 29, 2020, RESPONDENT and Complainant signed an addendum (“Addendum
21 9”) extending the Close of Escrow to May 7, 2020, which stated that, in addition to the \$5,000.00 EMD
22 due from Addendum 4, the \$10,000.00 EMD due from Addendum 7, and the \$10,000.00 EMD due from
23 Addendum 8, Respondent would provide an additional \$5,000.00 EMD within two business days.

24 37. RESPONDENT failed to provide the total amount due, that is, \$30,000.00 EMD under
25 Addendum 9.

26 38. On May 4, 2020, RESPONDENT signed a Notice of Cancellation of Purchase Agreement,
27 Cancellation of Escrow, and Release of Earnest Money Deposit, which stipulated that RESPONDENT
28 agrees to release all monies in escrow and in possession of the title company as of May 4, 2020, and no

1 other pledged or committed funds will be paid however Complainant did not sign the Notice of
2 Cancellation.

3 39. On May 11, 2020, Complainant signed an addendum (“Addendum 10”), which stated that
4 escrow will be cancelled and the remaining EMD, that is \$30,000.00 to be deposited into escrow and
5 released to Complainant however RESPONDENT did not sign the addendum.

6 40. RESPONDENT alleges that he “lacked a normal state of mind” to enter into real estate
7 contracts while he was hospitalized with COVID-19 from March 7, 2020 through the cancellation of the
8 sale prompting some of his requests to extend the close of escrow as communicated to Complainant’s
9 agent, and does not recall pledging a remaining balance of \$30,000.00 EMD.

10 VIOLATIONS OF LAW

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

15 42. RESPONDENT violated NRS 645.630(a) as he made material misrepresentations by
16 promising additional sums of earnest money to extend the close of escrow and then refused to pay agreed
17 upon sums.

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

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

1 **DISCIPLINE AUTHORIZED**

2 Pursuant to NRS 645.630, the Commission is empowered to impose an administrative fine up to
3 \$10,000 per violation and suspend, revoke or place conditions on your license if warranted.

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

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

9 **NOTICE OF HEARING**

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

13 **THE HEARING WILL TAKE PLACE on December 14, 2021 commencing at 9:00**
14 **a.m., or as soon thereafter as the Commission is able to hear the matter, and each**
15 **day thereafter commencing at 9:00 a.m. through December 16, 2021 or earlier if**
16 **the business of the Commission is concluded. The Commission meeting will be**
17 **held on December 14, 2021, at the Nevada State Business Center, 3300 West**
18 **Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102. The meeting**
19 **will continue on December 15, 2021 at the Nevada State Business Center, 3300**
20 **West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102,**
21 **commencing at 9:00 a.m., and on December 16, 2021, should business not be**
22 **concluded, starting at 9:00 a.m. at the Nevada State Business Center, 3300 West**
23 **Sahara Avenue, 4th Floor – Tahoe Room, Las Vegas, Nevada 89102**

24 **STACKED CALENDAR: Your hearing is one of several hearings scheduled**
25 **at the same time as part of a regular meeting of the Commission that is expected**
26 **to last from December 14, 2021, through December 16, 2021, or earlier if the**
27 **business of the Commission is concluded. Thus, your hearing may be continued**
28 **until later in the day or from day to day. It is your responsibility to be present**

1 **when your case is called. If you are not present when your hearing is called, a**
2 **default may be entered against you and the Commission may decide the case as**
3 **if all allegations in the complaint were true. If you have any questions please**
4 **call Evelyn Pattee, Commission Coordinator (702) 486-4074.**

5 YOUR RIGHTS AT THE HEARING: except as mentioned below, the hearing is an open meeting
6 under Nevada's open meeting law and may be attended by the public. After the evidence and arguments,
7 the commission may conduct a closed meeting to discuss your alleged misconduct or professional
8 competence. A verbatim record will be made by a certified court reporter. You are entitled to a copy of
9 the transcript of the open and closed portions of the meeting, although you must 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 the
12 burden of proving the allegations in the complaint and will call witnesses and present evidence against
13 you. You have the right to respond and to present relevant evidence and argument on all issues involved.
14 You have the right to call and examine witnesses, introduce exhibits, and cross-examine opposing
15 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 testify
17 and/or evidence to be offered on your behalf. In making the request, you may be required to demonstrate
18 the relevance of the witness' testimony and/or evidence. Other important rights you have are listed in
19 NRS 645.680 through 645.990, NRS Chapter 233B, and NAC 645.810 through 645.875.

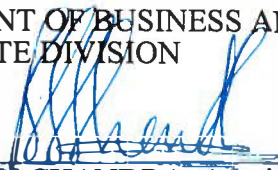
20 The purpose of the hearing is to determine if the Respondent has violated NRS 645 and/or NAC 645 and
21 if the allegations contained herein are substantially proven by the evidence presented and to further
22 determine what administrative penalty is to be assessed against the RESPONDENT, if any, pursuant to
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NRS 645.235, 645.633 and or 645.630.

DATED this 4 day of November, 2021.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

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