

1 BEFORE THE REAL ESTATE COMMISSION

2 STATE OF NEVADA

**FILED**

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

Case No. 2020-728

NOV 12 2021

REAL ESTATE COMMISSION

BY *Evelyn Patta*

Petitioner,

7 vs.

8 RICHARD W. BYRD,

9 Respondent.

10 **COMPLAINT AND NOTICE OF HEARING**

11 The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY  
12 OF THE STATE OF NEVADA ("Division") hereby notifies RESPONDENT RICHARD W. BYRD  
13 ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE  
14 COMMISSION ("Commission"). The hearing will be held pursuant to Chapters 233B and Chapter 645  
15 of the Nevada Revised Statutes ("NRS") and Chapter 645 of the Nevada Administrative Code ("NAC").  
16 The purpose of the hearing is to consider the allegations stated below and to determine if the  
17 RESPONDENT should be subject to an administrative penalty as set forth in NRS 645.630 and/or NRS  
18 622.400, and the discipline to be imposed, if violations of law are proven.

19 **JURISDICTION**

20 RESPONDENT was at all relevant times mentioned in this Complaint licensed as a Broker under  
21 license number B.0019254.INDV and B.1001574.LLC is therefore subject to the jurisdiction of the  
22 Division and the Commission, and the provisions of NRS chapter 645 and NAC chapter 645.

23 **FACTUAL ALLEGATIONS**

24 1. In February of 2018, RESPONDENT acted as agent and broker at Fulcrum Real Estate  
25 Services, when he and Complainant, Raymond V. Mielzynski, entered into an oral brokerage agreement  
26 pursuant to NRS 645.005 which states that a brokerage agreement means an oral or written contract  
27 between a client and a broker in which the broker agrees to accept valuable from the client or another  
28 person for assisting, soliciting or negotiating the sale, purchase, option, rental or lease of real property,

1 or the sale, exchange, option or purchase of a business.

2 2. On August 13, 2020, the Division received a Complaint from Complainant stating  
3 pursuant to the brokerage agreement, RESPONDENT agreed to sell Complainant's 15-acre-feet of water  
4 rights at \$7,000.00 per acre-foot, for a total estimated profit to Complainant of \$105,000.00, however  
5 Complainant has only received \$45,000.00 to date.

6 3. RESPONDENT's commission was mutually agreed to be any amount he could sell the  
7 water rights for, in excess of \$7,000.00 per acre-foot.

8 4. On March 7, 2018, Nye County Quitclaim Deed No. 889356 confirms that Complainant  
9 quitclaimed to RESPONDENT, 15 acre-feet of water from 2351 Big Sky Pahrump, Nevada ("the  
10 Property") with a transfer tax value of \$47,745, which is assessed as a percentage of either the sale price  
11 or the fair market value of the property that's changing hands.

12 5. On March 7, 2018, RESPONDENT quitclaimed, Nye County Quitclaim Deed No.  
13 889361, to Cima Custom Homes, LLC in the amount of \$10.00, 2 acre-feet of water from the Property  
14 with a transfer tax value at \$6,366.00, shorting Complainant of \$14,000.00 anticipated profit.

15 6. On April 4, 2018, RESPONDENT, as grantor, gave Jon West, as grantee, 2 acre-feet of  
16 water from the Property, Nye County Water Rights Deed No. 890560, for a sale price of \$2,000.00,  
17 shorting Complainant of \$12,000.00 anticipated profit.

18 7. On May 22, 2018, RESPONDENT conveyed 2 acre-feet of water from the Property to  
19 John and Renata Fair, Nye County Water Rights Deed No. 893042 for a sale price of \$14,000.00

20 8. On June 8, 2018, RESPONDENT, as grantor, conveyed 2 acre-feet of water from the  
21 Property to Holly Cox, grantee, Nye County Water Rights Deed No. 894487, for a sale price of  
22 \$16,000.00.

23 9. On June 18, 2018, RESPONDENT, as grantor, conveyed 2 acre-feet of water from the  
24 Property to Avery D. & Malva R. Snuffer, grantees, Nye County Water Rights Deed No. 894696, for a  
25 sale price of \$15,000.00

26 10. On June 19, 2018, RESPONDENT, as grantor, conveyed 1 acre-foot of water from the  
27 Property to Sonia I. Vergel & Dennis Dyar, grantees, Nye County Water Rights Deed No. 894814, for a  
28 sale price of \$12,000.00.



1 Respondent in full for the sale of his water rights, by failing to sell all shares at the price agreed to by  
2 Complainant, and by failing to account for monies he received on behalf of Complainant.

3 21. RESPONDENT violated NRS 645.310 when he commingled his money with his client's  
4 sales proceeds instead of placing the funds in a trust account and failed to account for all monies he  
5 received on behalf of his client.

6 22. RESPONDENT violated NRS 645.630(1)(f) by failing to account for or to remit money  
7 he received on behalf of his client.

8 23. RESPONDENT violated NRS 645.630(1)(h) by commingling the money of his client with  
9 his own money and converting his client's money for his own personal use.

10 24. RESPONDENT violated NRS 645.633(1)(h) (through NAC 645.605(6)) as he was  
11 grossly negligent or incompetent in performing acts as a real estate broker by breaching his obligation of  
12 absolute fidelity to his client when he failed to pay his client the money he collected on his behalf.

13 25. RESPONDENT violated NRS 645.633(1)(i) (through NAC 645.605(6)) by engaging in  
14 conduct which constitutes deceitful, fraudulent or dishonest dealing by breaching his obligation of  
15 absolute fidelity to his client when he failed to pay his client the money he collected on his behalf.

16 26. RESPONDENT violated NRS 645.550 when he conducted business from a courthouse  
17 and not the location designated in his license.

#### 18 **DISCIPLINE AUTHORIZED**

19 Pursuant to NRS 645.630, the Commission is empowered to impose an administrative fine up to  
20 \$10,000 per violation and suspend, revoke or place conditions on your license if warranted.

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

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

1 **NOTICE OF HEARING**

2 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider the  
3 Administrative Complaint against the above-named Respondent in accordance with Chapters 233B and  
4 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

5 **THE HEARING WILL TAKE PLACE on December 14, 2021 commencing at**  
6 **9:00 a.m., or as soon thereafter as the Commission is able to hear the matter, and**  
7 **each day thereafter commencing at 9:00 a.m. through December 16, 2021 or**  
8 **earlier if the business of the Commission is concluded. The Commission meeting**  
9 **will be held on December 14, 2021, at the Nevada State Business Center, 3300 West**  
10 **Sahara Avenue, 4<sup>th</sup> Floor – Nevada Room, Las Vegas, Nevada 89102. The meeting**  
11 **will continue on December 15, 2021 at the Nevada State Business Center, 3300**  
12 **West Sahara Avenue, 4<sup>th</sup> Floor – Nevada Room, Las Vegas, Nevada 89102,**  
13 **commencing at 9:00 a.m., and on December 16, 2021, should business not be**  
14 **concluded, starting at 9:00 a.m. at the Nevada State Business Center, 3300 West**  
15 **Sahara Avenue, 4<sup>th</sup> Floor – Tahoe Room, Las Vegas, Nevada 89102**

16 **STACKED CALENDAR: Your hearing is one of several hearings scheduled**  
17 **at the same time as part of a regular meeting of the Commission that is expected**  
18 **to last from December 14, 2021, through December 16, 2021, or earlier if the**  
19 **business of the Commission is concluded. Thus, your hearing may be continued**  
20 **until later in the day or from day to day. It is your responsibility to be present**  
21 **when your case is called. If you are not present when your hearing is called, a**  
22 **default may be entered against you and the Commission may decide the case as**  
23 **if all allegations in the complaint were true. If you have any questions please**  
24 **call Evelyn Pattee, Commission Coordinator (702) 486-4074.**

25 **YOUR RIGHTS AT THE HEARING:** except as mentioned below, the hearing is an open meeting  
26 under Nevada’s open meeting law and may be attended by the public. After the evidence and arguments,  
27 the commission may conduct a closed meeting to discuss your alleged misconduct or professional  
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1 competence. A verbatim record will be made by a certified court reporter. You are entitled to a copy of  
2 the transcript of the open and closed portions of the meeting, although you must pay for the transcription.

3 As the Respondent, you are specifically informed that you have the right to appear and be heard  
4 in your defense, either personally or through your counsel of choice. At the hearing, the Division has the  
5 burden of proving the allegations in the complaint and will call witnesses and present evidence against  
6 you. You have the right to respond and to present relevant evidence and argument on all issues involved.  
7 You have the right to call and examine witnesses, introduce exhibits, and cross-examine opposing  
8 witnesses on any matter relevant to the issues involved.

9 You have the right to request that the Commission issue subpoenas to compel witnesses to testify  
10 and/or evidence to be offered on your behalf. In making the request, you may be required to demonstrate  
11 the relevance of the witness' testimony and/or evidence. Other important rights you have are listed in  
12 NRS 645.680 through 645.990, NRS Chapter 233B, and NAC 645.810 through 645.875.

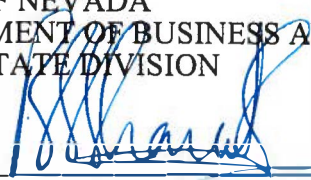
13 The purpose of the hearing is to determine if the Respondent has violated NRS 645 and/or NAC 645 and  
14 if the allegations contained herein are substantially proven by the evidence presented and to further  
15 determine what administrative penalty is to be assessed against the RESPONDENT, if any,

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1 pursuant to NRS 645.235, 645.633 and or 645.630.

2 DATED this 4 day of November, 2021.

3 STATE OF NEVADA  
4 DEPARTMENT OF BUSINESS AND INDUSTRY  
5 REAL ESTATE DIVISION

6 By:   
7 SHARATH CHANDRA, Administrator  
8 3300 West Sahara Avenue, Suite 350  
9 Las Vegas, Nevada 89102

10 AARON D. FORD  
11 Attorney General

12 By: /s/ Susan L. Valladolid  
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