

FILED

BEFORE THE REAL ESTATE COMMISSION JAN 29 2021

STATE OF NEVADA

REAL ESTATE COMMISSION
BY *Emily Patton*

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

Case No. 2019-823

Petitioner,

vs.

Nicholas Devitte,

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 Nicholas Devitte ("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 NAC 645.695, and the discipline to be imposed, if violations of law are proven.

JURISDICTION

RESPONDENT, at all relevant times mentioned in this Complaint, was licensed by the Division as a broker. He is therefore subject to the jurisdiction of the Division and the Commission and the provisions of NRS chapter 645 and NAC chapter 645.

FACTUAL ALLEGATIONS

1. RESPONDENT was licensed by the Division as a broker under license number B.0144565.LLC, issued on September 22, 2017, said license being in "active" status at the time of filing this Complaint.
2. On July 19, 2019, the Division received a complaint from Esrin Caad ("Complainant") stating that his adult daughter, Brenda Allen-Caad (also referred to as Brenda Caad-Allen) (hereinafter "Cadd-

1 Allen”), had entered into a purchase agreement to sell his residential property, Clark County Assessor’s
2 Parcel No. 139-16-410-092, commonly known as 2519 West Street, North Las Vegas, NV 89032
3 (“Property”), without his knowledge or consent for a fraction of its value.

4 3. Complainant stated in his complaint that he was elderly, left his Property to receive medical
5 treatment, and had been paying Cadd-Allen to upkeep the Property.

6 4. Complainant stated that Cadd-Allen had no legal right to the Property.

7 5. During its investigation the Division obtained an Exclusive Authorization and Right to Sell,
8 Exchange or Lease Brokerage Listing Agreement (“Listing Agreement”) commencing on April 22, 2019
9 granting Forever Home Realty (RESPONDENT’s brokerage) the right to sell the Property for a listing
10 price of \$60,000.00, entered into between Caad-Allen as seller and Forever Home Realty as broker.

11 6. The Listing Agreement was signed by RESPONDENT on behalf of Forever Home Realty
12 brokerage and by his real estate agent Shaun McDonald (“McDonald”).

13 7. The purchase price of \$60,000.00 set forth in the Listing Agreement was below value according
14 to estimates which valued the Property between \$128,793.00 and \$186,576.00.

15 8. On April 22, 2019, Caad-Allen entered into a purchase agreement to sell the Property to Cap
16 Solutions, LLC for \$60,000.00 on Complainant’s behalf that had a closing date of May 24, 2019.

17 9. An MLS sheet provided by the Complainant dated June 20, 2019 listed the Property as under
18 contract/no showings and contingent/pending/sold with an acceptance date of May 22, 2019.

19 10. After receiving Complainant’s complaint with the Division, the Division opened an investigation
20 and properly notified RESPONDENT of it on July 24, 2019.

21 11. McDonald responded to the Division’s investigation and stated in part, Complainant instructed
22 him to speak to Caad-Allen who had power of attorney over the Property, that he did so, and set up a
23 meeting with Caad-Allen on April 20, 2019, where Caad-Allen provided him proof she had power of
24 attorney.

25 12. McDonald further stated in his response to the Division that he then proceeded to create a listing
26 agreement for the Property, determined the Property needed to proceed as a short sale, that he found a
27 buyer for the Property, and proceeded to open escrow and a short sale file.

28 13. The power of attorney obtained by the Division during its investigation was signed by

1 Complainant on March 22, 2018, and gave power of attorney to Caad-Allen over certain matters of
2 Complainant's, but did not give Caad-Allen power of attorney over Complainant's real property.

3 14. A subsequent power of attorney was obtained by the Division during its investigation signed by
4 Complainant and was dated May 24, 2019, with an effective date of May 24, 2019, that purported to give
5 Caad-Allen power of attorney for all matters specified in the power of attorney document, including
6 power of attorney over real property.

7 15. At the time RESPONDENT's brokerage entered into the Listing Agreement with Caad-Allen and
8 accepted an offer on the Property, RESPONDENT had no power of attorney that authorized his brokerage
9 or agent to proceed with the transaction to sell the Property on the owner's (Complainant's) behalf
10 through Caad-Allen.

11 16. Complainant stated in his complaint to the Division that on May 24, 2019, Caad-Allen and "some
12 real estate people" came to his bedside and may have had him sign something but could not recall what
13 it was.

14 17. Complainant stated that on or around June 13, 2019, he first learned from his attorney that the
15 Property was sold, pending approval of the short sale.

16 18. On June 26, 2019, Complainant, through his attorney, filed a complaint in the Eighth Judicial
17 District Court to stop the sale of the Property.

18 19. The sale of the Property did not close.

19 20. McDonald stated in his response to the Division's investigation, that after he received a letter
20 from Complainant's attorney, he discontinued the process of selling the Property and removed the listing.

21 21. RESPONDENT responded to the Division's investigation.

22 22. RESPONDENT stated that Complainant was in hospice and had given power of attorney to Caad-
23 Allen, that the Property was in default and had no equity, and Caad-Allen had executed a purchase
24 contract with buyer Tyson Delacruz to begin the short sale process with the bank.

25 23. RESPONDENT further stated that the Property had not been sold and that he would withdraw the
26 listing.

27 24. The Division properly notified RESPONDENT on November 14, 2019 that it intended to
28 commence disciplinary action against him by filing a complaint for hearing before the Nevada Real Estate

1 Commission.

2 **VIOLATIONS**

3 25. RESPONDENT violated NRS 645.252(1)(a) by failing to disclose to the parties to the transaction
4 that Caad-Allen had no authority to list and sell the Property because Complainant had not given her
5 power of attorney to do so, which RESPONDENT knew, or should have known, through the exercise of
6 reasonable care and diligence.

7 26. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605 (1), and (2) by engaging
8 in dishonest, deceitful, or fraudulent conduct by failing to protect the public against fraud,
9 misrepresentation or unethical practices, and by failing to ascertain all pertinent facts by listing the
10 Property for sale below market value when he knew, or should have known, the transaction was being
11 done without the owner's knowledge or consent.

12 27. RESPONDENT violated NRS 645.635(1) by offering the Property for sale without the knowledge
13 and authorization of Complainant.

14 28. RESPONDENT violated NRS 645.660(3) because he knew, or should have known, that
15 McDonald improperly listed the Property for sale below market value without the owner's knowledge or
16 consent.

17 **DISCIPLINE AUTHORIZED**

18 1. Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to impose an
19 administrative fine of up to \$10,000 per violation against RESPONDENT and further to suspend, revoke
20 or place conditions on the license of RESPONDENT.

21 2. 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 3. 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 this Administrative
3 Complaint against the above-named RESPONDENTS in accordance with Chapters 233B and 645 of the
4 Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

5 THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for March 2-4,
6 2021, beginning at approximately 9:00 a.m. each day, or until such time as the Commission concludes
7 its business.

8 If the Governor's Emergency Directive 006 - suspending physical location requirements - is
9 extended through the date of the meeting, then the hearing will be held via virtual meeting. The
10 Commission uses WebEx for its meetings. To join the hearing go to the Webex.com website and put in
11 the Access code and Attendee ID:

12 **TUESDAY, MARCH 2, 2021** Meeting number (Access code): 146 676 5037

13 Password (Attendee ID): MmWZJAfa752 (66995232752 from phones and video systems)

14 **WEDNESDAY, MARCH 3, 2021** Meeting number (Access code): 146 959 4482

15 Password (Attendee ID): qPvqu3Jm2R5 (77878356275 from phones and video systems)

16 **THURSDAY, MARCH 4, 2021 Meeting number** (Access code): 146 731 0977

17 Password (Attendee ID): vRfvSmer725 (87387637725 from phones and video systems)

18 If you do not have internet access, you may attend by phone at 1-844-621-3956 using the access
19 codes and attendee IDs listed above. Some mobile devices may ask attendees to enter a numeric attendee
20 ID provided above. If Emergency Directive 006 is not extended and the meeting is held in person, then
21 the meeting will be located at the following locations:

22 Nevada State Business Center
23 Real Estate Division
24 3300 West Sahara Avenue, 4th Floor Nevada Room
25 Las Vegas, NV 89102

26 If you would like an email containing this information, before the hearing, please contact Evelyn
27 Pattee, Commission Coordinator, at (702) 486-4074 or epattee@red.nv.gov.
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By: */s/ Karissa Neff*

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