

BEFORE THE REAL ESTATE COMMISSION
STATE OF NEVADA

FILED

DEC 16 2022

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

Case Nos. 2020-815

REAL ESTATE COMMISSION

BY Kelly Valadez

Petitioner,

vs.

MALCOLM B. BOOT,

Respondent.

**STIPULATION AND ORDER FOR
SETTLEMENT OF DISCIPLINARY
ACTION**

This Stipulation for Settlement of Disciplinary Action ("Stipulation") is entered into by and between the State of Nevada, Department of Business and Industry, Real Estate Division ("Division"), through its Administrator Sharath Chandra ("Petitioner"), by and through their attorney of record, Phil W. Su, Senior Deputy Attorney General, and Malcolm B. Boot ("RESPONDENT"), by and through his attorney Andrew Pastwick, Esq.

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

SUMMARY OF FACTUAL ALLEGATIONS SET FORTH IN THE COMPLAINT

1. RESPONDENT was at all relevant times mentioned in this Complaint licensed as a Salesperson under license number S.0055504.

2. In and around May 2020, RESPONDENT represented the seller of real property located at 73 Smokestone Court, Las Vegas, Nevada 89110 (the "Property").

3. On May 2, 2020, the buyer and seller, through their agents, entered into a Residential Purchase Agreement for the purchase of the Property.

4. On May 27, 2020, during the final walkthrough, RESPONDENT asked buyers' agent to call buyers to ask if they were interested in selling a built-in desk in the Property's home office to RESPONDENT for \$300.

1 5. The desk is a built-in desk, affixed to the wall of the home office in the Property.

2 6. On June 1, 2020, the parties closed on the transaction and the Property transferred
3 ownership to buyers.

4 7. On Wednesday, June 3, 2020, RESPONDENT emailed Buyers' agent and stated "You
5 said you expect their arrival from Texas could well be today I believe. Which would suit me just fine.
6 Because . . . I have \$300 cash burning a hole in my pocket to hand to you or [buyers] as agreed . . . I can
7 also, if his son has unscrewed it, take the wall unit above the desk, or wait for him to take down that piece
8 in the next few days."

9 8. Later that morning, buyers' agent replies to RESPONDENT that buyers "are not set to
10 arrive till Friday night [June 5, 2020] . . . I will give them your number and have them call you to set up
11 a time where you can get [the desk]."

12 9. RESPONDENT replies to buyers' agent, "No Worries I will Mickey Mouse thing till after
13 Friday. Thanks."

14 10. That same day, RESPONDENT entered the property using a spare key he still possessed
15 and removed the built-in-desk from the Property.

16 11. After buyers' arrival to the Property on June 5, 2020, RESPONDENT returned to the
17 Property to pay buyers \$300 for the desk and demanded that buyers sign a release before RESPONDENT
18 paid them. After buyers' son stepped in, RESPONDENT paid buyers \$300 for the desk, handed over the
19 spare key, and left.

20 12. On July 27, 2020, buyers' agent submitted a complaint to the Division against
21 RESPONDENT, alleging RESPONDENT'S behavior was unethical when he used a spare key to enter
22 the Property to take the desk.

23 13. On September 9, 2020, the Division notified RESPONDENT the Division was in receipt
24 of a complaint against him, and requested he complete Form 652, Affidavit, by September 24, 2020.

25 14. On September 23, 2020, RESPONDENT submitted his Affidavit to the Division,
26 explaining he offered to purchase the desk from buyers for \$300, to which buyers agreed, if the desk was
27 removed before their arrival.

1 15. RESPONDENT admits to entering the Property on June 3, 2020, with a spare key sellers
2 entrusted him with, removing the built-in desk from the wall it was attached to, patching said wall, and
3 returning to the Property to pay buyers for the desk already in RESPONDENT'S possession, and
4 demanding they execute a "receipt to sign for the funds."

5 16. On November 25, 2020, the Division sent RESPONDENT a Notice of Violation with
6 Imposition of Administrative Fine ("Notice of Imposition") via certified mail, noting that the Division
7 Administrator found RESPONDENT in violation of NRS 645.633(1)(i) pursuant to NAC 645.605(1) and
8 NRS 645.252(3)(a) and imposed a \$1,500 administrative fine against RESPONDENT due by December
9 29, 2020.

10 17. On December 17, 2020, RESPONDENT, by and through his attorney, sent the Division
11 notice of his appeal of the Notice of Imposition.

12 **SUMMARY OF VIOLATIONS OF LAW ALLEGED IN THE COMPLAINT**

13 18. RESPONDENT violated NRS 645.633(1)(i) by engaging in conduct which constitutes
14 deceitful, fraudulent or dishonest dealing pursuant to NAC 645.605(1) by failing to protect the public
15 against unethical practices related to real estate when RESPONDENT entered the Property using a key
16 entrusted to him as a real estate salesperson without the buyers' consent and removed a built-in-desk, a
17 fixture, from the Property.

18 **PROPOSED SETTLEMENT**

19 In an effort to avoid the time and expense of litigation these issues before the Commission, the
20 parties desire to compromise and settle the instant controversies upon the following terms and
21 conditions:

22 1. RESPONDENT agrees to pay the Division a total amount of \$4,372.60 ("Amount
23 Due"), consisting of a \$500.00 fine imposed by the Division and the Division's pre-hearing costs and
24 attorneys' fees in the amount of \$3,872.60.

25 2. The Amount Due shall be payable to the Division within thirty-six (36) months of the
26 order approving this settlement.

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TERMS APPLICABLE TO SETTLEMENT

3. RESPONDENT and the Division agree that by entering into this Stipulation, the Division does not concede any defense or mitigation RESPONDENT may assert and that once this Stipulation is approved and fully performed, the Division will close its file in this matter.

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

5. Each party shall bear their own attorney's fees and costs, except as provided above.

6. Approval of Stipulation. Once executed, this Stipulation will be filed with the Commission and will be placed on the agenda for approval at its next public meeting. The Division will recommend to the Commission approval of the Stipulation. RESPONDENT agrees that the Commission may approve, reject, or suggest amendments to this Stipulation that must be accepted or rejected by RESPONDENT before any amendment is effective.

7. Withdrawal of Stipulation. If the Commission rejects this Stipulation or suggests amendments unacceptable to RESPONDENT, RESPONDENT may withdraw from this Stipulation, and the Division may pursue its Complaint before the Commission. This Stipulation then shall become null and void and unenforceable in any manner against either party.

8. Release. In consideration of the execution of this Stipulation, RESPONDENT for himself, his heirs, executors, administrators, successors, and assigns, hereby releases, remises, and forever discharges the State of Nevada, the Department of Business and Industry, and the Division, and

1 each of their respective members, agents, employees, and counsel in their individual and representative
2 capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions,
3 claims, and demands whatsoever, known and unknown, in law or equity, that RESPONDENT ever had,
4 now has, may have, or claim to have against any or all of the persons or entities named in this section,
5 arising out of or by reason of the Division's investigation, this disciplinary action, and all other matters
6 relating thereto.

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

15 10. Default. In the event of default under this Stipulation, RESPONDENT agrees that his
16 licenses and/or permits shall be immediately suspended, and the unpaid balance of the administrative
17 fine and costs, together with any attorneys' fees and costs that may have been assessed, shall be due in
18 full to the Division within ten calendar days of the date of default. Debt collection actions for unpaid
19 monetary assessments in this case may be instituted by the Division or its assignee.

20 11. RESPONDENT has signed and dated this Stipulation only after reading and
21 understanding all terms herein.

22 DATED this 13 day of December, 2022.

DATED this 13 day of December, 2022.

23
24
25 By:

26 
27 MALCOLM B. BOOT
28

NEVADA DEPARTMENT OF BUSINESS
& INDUSTRY, REAL ESTATE DIVISION
By: 

SHARRATH CHANDRA
Administrator

1 Approved to as form:

2 LAW OFFICE OF ANDREW H.
3 PASTWICK, ESQ.

AARON D. FORD
Attorney General

4 By: 

5 Andrew H. Pastwick, Esq.
6 1810 E. Sahara Ave., Ste. 120
7 Las Vegas, NV 89014
8 Attorney for Respondent Malcolm Boot
(702) 866-9978

By: _____

Phil W. Su (Bar. No. 10450)
Senior Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
Attorneys for Real Estate Division

9 ORDER

10 IT IS ORDERED that the foregoing Stipulation and Order for Settlement of Disciplinary
11 Action, submitted by Petitioner and Respondent, is approved in full.

12 IT IS FURTHER ORDERED that the foregoing Stipulation and Order for Settlement of
13 Disciplinary Action shall become effective _____ ("Effective Date").

14 Dated: December __, 2022.

15 REAL ESTATE COMMISSION
16 STATE OF NEVADA

17 By: _____

18 President, Nevada Real Estate Commission

19 Submitted by:

20 AARON FORD, Attorney General

21 By: _____

22 PHIL W. SU (Bar No. 10450)
23 Senior Deputy Attorney General
24 555 E. Washington Ave. #3900
25 Las Vegas, Nevada 89101
26 (702) 486-6635
27 Attorneys for Real Estate Division
28

1 Approved to as form:

2 LAW OFFICE OF ANDREW H.
3 PASTWICK, ESQ.

AARON D. FORD
Attorney General

4 By: _____

5 Andrew H. Pastwick, Esq.
6 1810 E. Sahara Ave., Ste. 120
7 Las Vegas, NV 89014
8 Attorney for Respondent Malcolm Boot
(702) 866-9978

By: /s/ Phil W. Su

Phil W. Su (Bar. No. 10450)
Senior Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
Attorneys for Real Estate Division

9 **ORDER**

10 IT IS ORDERED that the foregoing Stipulation and Order for Settlement of Disciplinary Action,
11 submitted by Petitioner and Respondent, is approved in full.

12 IT IS FURTHER ORDERED that the foregoing Stipulation and Order for Settlement of
13 Disciplinary Action shall become effective December 16, 2022 ("Effective Date").

14 Dated: December 14, 2022.

15 REAL ESTATE COMMISSION
16 STATE OF NEVADA

17 By: _____

18 
President, Nevada Real Estate Commission

19 Submitted by:

20 AARON FORD, Attorney General

21 By: /s/ Phil W. Su

22 PHIL W. SU (Bar No. 10450)
23 Senior Deputy Attorney General
24 555 E. Washington Ave. #3900
25 Las Vegas, Nevada 89101
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