BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. THELMA FRANCO-YOUNG, Respondent.	**Case No. 2018-377** FILED MAR 13 2023 REAL ESTATE COMMISSION BY Kelly Valadez

FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing before the Real Estate Commission, Department of Business and Industry, State of Nevada (the "Commission"), during a regular agenda set for a three-day stack commencing on February 21, 2023 (the "Hearing"). RESPONDENT Thelma Franco-Young ("RESPONDENT") did not appear at the Hearing. Louis V. Csoka, 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"). After hearing testimony presented in this matter and for good cause appearing, the Commission now enters its Findings of Fact, Conclusions of Law, and Order against RESPONDENT as follows:

JURISDICTION

RESPONDENT, at all relevant times mentioned in this Complaint, held herself out and acted as a person licensed as a Broker-Salesperson under license number B.0029095.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.

FINDING OF DEFAULT

1. On January 13, 2023, the Division served its Notice of Complaint and Obligation to Respond on RESPONDENT, at RESPONDENT's address on file with the Division. Notwithstanding such notice, RESPONDENT failed to respond.

2. On February 17, 2023, the Division served its Notice of Default on RESPONDENT, at

RESPONDENT's address on file with the Division. Notwithstanding such notice, RESPONDENT again failed to respond. RESPONDENT also failed to appear at the associated Hearing.

3. Given RESPONDENT's failure to respond to the Division's Complaint or to appear at the associated Hearing, the Division requested that the Commission enter a finding of default against RESPONDENT in accordance with NAC 645.810(13).

4. Therefore, finding proper service of the Complaint and proper service of the associated Notices on RESPONDENT, the Commission entered a finding of default against RESPONDENT.

FACTUAL ALLEGATIONS

1. On or about January 4, 2013, RESPONDENT submitted a License Change Form to the Division, which downgraded her license with the Division from a Broker to a Broker-Salesperson.

2. Contemporaneously, RESPONDENT also *surrendered* her Property Management Permit to the Division.

3. On or about October 1, 2016, RESPONDENT entered into a Residential Property Management Agreement (the "Agreement") with Nicole Shinavar ("Complainant"), to manage Complainant's real property located at 6241 Bellota Drive, Units A, B, C, and D, Las Vegas, Nevada (the "Property").

4. The purpose of the Agreement was for RESPONDENT to manage Complainant's Property.[1]

5. At all relevant times, RESPONDENT was not licensed to enter into the Agreement, to manage Complainant's Property.

6. Notwithstanding the absence of such proper licensure, RESPONDENT included her Nevada Broker-Salesman license number *as an alleged "Property Management License Number" on the Agreement.*

7. Under the Agreement, RESPONDENT was to receive a $220.00 rental fee for each of the four (4) units at the Property, a $75.00 advertising fee, a thirty percent (30%) leasing fee, a $200.00 set-up fee, a $250.00 referral fee, and a $50.00 renewal fee for her services at the Property.

[1] Around the same time, Complainant also had RESPONDENT assist her in leasing out Complainant's real property located at 213 Sierra Breeze Ave, Las Vegas, Nevada (the "Sierra Breeze Property"). However, RESPONDENT did not have a formal agreement with Complainant, to manage the Sierra Breeze Property.

8. The Agreement required that RESPONDENT deposit all rents and security deposits collected into Complainant's bank account and notify Complainant of all work that needs to be done at the Property along with a monthly accounting of receipts and invoices.

9. The Agreement required that all repairs exceeding $250 have the owner's approval except in an emergency.

10. RESPONDENT's files contained a copy of a money order for $ 500.00 payable to RESPONDENT, associated with the Property, with no proof that it was ever deposited into Complainant's account.

11. RESPONDENT's files also contained a copy of a Bank of America deposit slip for $ 1,225.00, dated June 7, 2017, with a note on the slip that it represents Security Deposit $ 675.00 for Unit D and $ 550 for Unit C of the Property, deposited into Complainant's account.

12. Under the Agreement, "rents collected" and "[a]ll security deposits . . . [are to be] deposited [in]to the owners . . . [Bank of America] account . . . ."[2]

13. Yet, there is no uncontroverted and reliable proof that any of the same was actually paid over to Complainant, as required under the Agreement.[3]

14. RESPONDENT used her husband, an unlicensed contractor, operating under JayPC Investments, LLC ("JPC"), to undertake repairs at the Property.

15. At all relevant times, RESPONDENT and her husband served as JPC's managing members, but did not have contractors' licenses.

16. On September 8, 2017, JPC invoiced Complainant's Property, Unit C, for $536.00 and $335.00, on the same day for contractor services, including, without limitation, repairing garbage disposal, installing new range hood, cutting a hole for installation of dishwasher, and installing dishwasher.

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[2] Even if an ultimate deadline as to the same would be contested, the Nevada Supreme Court has recognized the implied covenant of good faith and fair dealing normally attaches to all contracts. *See Hilton Hotels Corporation v. Butch Lewis Productions*, Inc. 107 Nev. 226, 808 P.2d 919 (1991) (stating that the "reasonable expectations of the dependent party is determined by the various factors and general circumstances"). Here, with the contemporaneous requirement for monthly accounting of receipts and invoices, a failure to remit any such funds to RESPONDENT for years would clearly not be within the reasonable expectations of the parties.

[3] While RESPONDENT provided ex post facto reconciliation records to the Division purporting to absorb such tenant revenues into certain repair expenses, Complainant had disavowed having received or having been credited for any of the same.

17. Gee Tel Services ("GTS"), a sole proprietorship of Giaonne Laidler, also provided contractor services at the Property without a contractor's license.

18. On August 16, 2017, on August 20, 2017, and on August 22, 2017, GTS invoiced Complainant's Property $880.00, $950.00, and $ 1,193.65, respectively, for work done on Unit C at the Property.

19. The three invoices were part of a larger project to paint the interior of Unit C, patch walls, remove carpeting and install new flooring.

20. On October 9, 2017 and October 11, 2017, GTS invoiced $ 1,030.00 and $502.00, respectively, for Unit B at the Property.

21. These invoices were all part of a larger project regarding Unit B, including, without limitation, to patch holes, paint unit, install window blinds, replace light fixture in bathroom, repair door frames, and install switches.

22. On October 12, 2017, JPC also invoiced Complainant's Property, Unit B, for $870.00 for replacing doors, repairing door casings, replace water valve, install new range hood, install new light fixture over mini bar, and repair cabinet under kitchen sink.

23. There is also a close affiliation between GTS and JPC, as reflected in GTS's Facebook post that advertises JPC.

24. NRS 624.031(6) allows for the so called "handyman exemption" from having a contractor's license and provides as follows:

> 6. Any work to repair or maintain property the value of which is **less than $1,000**, including labor and materials, **unless**:
> (a) A building permit is required to perform the work;
> (b) The work is of a type performed by a plumbing, electrical, refrigeration, heating or air-conditioning contractor;
> (c) The work is of a type performed by a contractor licensed in a classification prescribed by the Board that significantly affects the health, safety and welfare of members of the general public;
> **(d) The work is performed as a part of a larger project:**
> **(1) The value of which is $500 or more; or**
> **(2) For which contracts of less than $500 have been awarded to evade the provisions of this chapter**; or
> (e) The work is performed by a person who is licensed pursuant to this chapter or by an employee of that person.

(emphasis added).

25. As noted above, RESPONDENT entered into contracts, as well as a series of contracts, for repairs with unlicensed contractors in excess of $ 1,000.00, thereby failing to meet such handyman exemption from having a licensed contractor.[4]

26. While RESPONDENT stated in Court documents (Summary Eviction proceedings) that tenant Caren Dickson ("Dickson") moved into Unit D at the Property on June 1, 2017, in the Tenant Ledger, RESPONDENT provided a move in date of June 15, 2017 and only had accounted for a prorated rent of $ 338.00 to the Complainant.

27. In October 2017, the Tenant Ledger for Unit D reflected an invoice of $361.63 for a refrigerator, but RESPONDENT had not provided an associated receipt for the same.

28. October 14, 2017, RESPONDENT's Tenant Ledger reflected an invoice from JPC for $510.92 for parts for a stove and power cord for Unit B at the Property, but the associated Lowe's receipt showed an actual cost of $462.31.

29. On October 29, 2017, RESPONDENT's Tenant Ledger reflected an invoice from JPC for $344.24 for parts for a replacement dryer for Unit B at the Property, but the associated Lowe's receipt showed an actual cost of $300.00.

30. On or about November 15, 2017, Complainant gave her 30-day termination notice to RESPONDENT, after she discovered Unit D was rented to a previously evicted tenant.

31. Shortly thereafter a tenant in Unit B, placed by RESPONDENT and not noticed to Complainant, caused a fire that gutted Unit B and made two adjacent units uninhabitable.

32. During the Division's investigation, RESPONDENT failed to produce her entire file upon the Division's request, which included:

(A) the lease for tenant Dickson, so the Division could verify Dickson's move in dates, and

(B) information relative to RESPONDENT's response to the investigator that she has "the permit to manage properties."

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[4] While the Division does not oversee NRS Chapter 624, a violation of another chapter of law constitutes a violation of NRS 645.633(1)(h) for gross negligence or incompetence. Here, RESPONDENT entered into contracts, as well as a series of contracts, for repairs with unlicensed contractors in excess of $ 1,000.00, thereby failing to meet the relevant exemption in NRS 624.031(6)(d) relative to contractor activity that is otherwise *de minimis* (i.e., does not normally require licensure, under NRS Chapter 624, if it does not reach the statutory threshold alone nor in a series of related transactions).

33. Respondent reinstated her Property Management Permit with the Division, on or about April 16, 2018, *only after* the Division noticed RESPONDENT of its investigation.

VIOLATIONS OF LAW

1. RESPONDENT violated NRS 645.230(1)(b), by engaging in property management, without the requisite licensure from the Division.

2. RESPONDENT violated NRS 645.310(4), by failing to maintain a trust account for Complainant's funds, including rent.

3. RESPONDENT violated NRS 645.630(1)(g), by failing to submit to the Division an annual accounting of the trust account as required in NRS 645.310.

4. RESPONDENT violated NRS 645.630(1)(h), by commingling the moneys of Complainant with her own, as well as by otherwise converting the same for her own personal use.

5. RESPONDENT violated NRS 645.633(1)(h), by engaging in gross negligence or incompetence, specifically, RESPONDENT failed to utilize a properly licensed contractor at the Property, consistent with NRS Chapter 624, or otherwise meet the sole relevant exemptions in NRS 624.031(6)(d), in her contracting practices with unlicensed contractors at the Property.

6. RESPONDENT violated NRS 645.633(1)(b), by violating NAC 645.680(3), when she failed to disclose all facts and documents pertinent to the investigation to the members of the Division's staff conducting the investigation.

ORDER

1. RESPONDENT shall pay to the Division: (A) a fine of $ 75,000.00 and (B) the Division's costs in this matter in the amount of $7,592.41, which is a total amount of $82,592.41 ("Amount Due"). The Amount Due shall be payable to the Division, within 90 days of the effective date of this Order.

2. Any and all licenses, permits, and certificates that RESPONDENT holds through the Division are hereby revoked, including RESPONDENT's Broker-Salesperson and Property Management Licenses.

3. If RESPONDENT fails to comply with the terms of this Order, including with regard to her payment of the administrative fine, RESPONDENT shall be in default of this Order.

4. The Division may institute debt collection proceedings for failure to timely pay the total fine, including action to reduce this Order to a judgment. Further, if collection goes through the State of Nevada, then RESPONDENT shall also pay the costs associated with collection.

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

6. This Order shall become effective on the 12th day of April, 2023.

DATED this 13th day of March, 2023.

REAL ESTATE COMMISSION
STATE OF NEVADA

By: Spiridon Filios
President, Nevada Real Estate Commission

Submitted by:

AARON D. FORD
Attorney General

By: /s/ Louis V. Csoka

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