

BEFORE THE REAL ESTATE COMMISSION  
STATE OF NEVADA

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

Petitioner,

vs.

EMIGDIO MARTINEZ-PINEDA,

Respondent.

Case No. 2020-544

**FILED**

MAY 08 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 "February Hearing") and continued during the regular agenda set for a three-day stack commencing on May 2, 2023 (the "May Hearing" and, collectively with the February Hearing, the "Hearings"). RESPONDENT Emigdio Martinez-Pineda ("RESPONDENT") appeared at the February Hearing but did not appear at the May Hearing. Louis V. Csoka, Esq., Senior 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") at the Hearings. 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 was at all relevant times mentioned in this Complaint licensed as a Salesperson under license number S.0182069, and associated with United Realty Group, Broker, Pablo Covarrubias, 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 12, 2023, the Division served its Notice of Complaint and Obligation

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2 to Respond on RESPONDENT, at RESPONDENT's address on file with the Division.  
3 Notwithstanding such notice, RESPONDENT failed to respond.

4 2. On February 17, 2023, the Division served its Notice of Default on  
5 RESPONDENT, at RESPONDENT's address on file with the Division. Notwithstanding such  
6 notice, RESPONDENT again failed to respond.

7 3. RESPONDENT then personally appeared at the associated February Hearing.

8 4. At that February Hearing, the Division presented its case-in-chief against  
9 RESPONDENT.

10 5. The matter was then continued to the May Hearing, as the Commission did not  
11 have sufficient available time to conclude the matter at that February Hearing.

12 6. At the February Hearing, the Commission also specifically admonished  
13 RESPONDENT that he must appear at the May Hearing, to present his defense.

14 7. On March 17, 2023, the Division also served a formal Notice of the May Hearing  
15 on Respondent, at the same address on file that all prior Division Notices were served (which  
16 was sufficient for RESPONDENT to appear at the February Hearing).

17 8. On March 22, 2023, the Division's Notice of the May Hearing was returned  
18 "insufficient address, unable to forward". RESPONDENT also failed to appear at the May  
19 Hearing.

20 9. Given RESPONDENT's failure to (1) formally respond to the Division's  
21 Complaint and/or (2) appear at the associated May Hearing, as to which RESPONDENT had  
22 been admonished to appear, as well as Noticed by mail, the Division requested that the  
23 Commission enter a finding of default against RESPONDENT in accordance with NAC  
24 645.810(13).

25 10. Therefore, finding proper service of the Complaint and associated Notices on  
26 RESPONDENT (including the Commission's admonishment to RESPONDENT to appear at  
27 the May Hearing), the Commission entered a finding of default against RESPONDENT.  
28

#### **FACTUAL ALLEGATIONS**

1. On June 22, 2020, the Division received a Statement of Fact from Ysmael

1  
2 Cerna (the "Complainant") against RESPONDENT, regarding Complainant's purchase of real  
3 property located at 3031 East Charleston Boulevard, Las Vegas, Nevada 89104, Assessor's  
4 Parcel Number 139-36-812-010 (the "Property"). **[NRED 000005 - 6, NRED 000076-80,**  
5 **NRED 000100]**

6         2. The Property is a commercial strip mall consisting of seven (7) suites,  
7 designated by letters, as Units "A" through "G." **[NRED 000076-80, NRED 000145]**

8         3. RESPONDENT, acting as Complainant's real estate agent, found the Property  
9 and assisted with the closing. **[NRED 000006, NRED 000100]**

10        4. Complainant has a second-grade education from Mexico; and he cannot read or  
11 write English. **[NRED 000006-8]**

12        5. On or about December 28, 2017, Complainant signed a Commercial Purchase  
13 Agreement, Addendum One, and Waiver, all written in English, and paid \$490,000 in cash at  
14 closing to purchase the Property on December 29, 2017. **[NRED 000088-103, NRED 000195]**

15        6. The Commercial Purchase Agreement for the purchase of the Property  
16 misspelled Complainant's last name as "Cena." **[NRED 000011, NRED 000088]**

17        7. Consequently, the deed for the Property also incorrectly identified Complainant  
18 as "Cena." **[NRED 000011; cf. NRED 000221-NRED 000224]**

19        8. Immediately after the closing, Complainant entered into an oral lease (the "Oral  
20 Lease Agreement") with RESPONDENT regarding the Property. **[NRED 000012]**

21        9. Under the Oral Lease Agreement, RESPONDENT leased Units C, F, and G (the  
22 "Leased Units") for a term of two (2) years, from January 2018 to December 2019. **[NRED**  
23 **000012-13, NRED 000025]**

24        10. The parties agreed that, in lieu of making monthly rental payments,  
25 RESPONDENT would reimburse Complainant for all associated water, sewer, garbage,  
26 common electric, property insurance, and property taxes ("Property Expenses"), and make  
27 and pay for complete renovation and repair expenses associated with the Leased Units (the  
28 "Renovation Work"). **[NRED 000006, NRED 000012, NRED 000025]**

       11. RESPONDENT took possession of the Leased Units in January 2018. **[NRED**

1  
2 **000015]**

3 12. RESPONDENT operated a cellular telephone store out of Unit C, subleased  
4 Unit F for rental income without Complainant's permission, and used Unit G for storage.

5 **[NRED 000015, NRED 000028]**

6 13. RESPONDENT failed to comply with the terms of the Oral Lease Agreement by  
7 failing to pay the Property Expenses or complete the Renovation Work. **[NRED 000006]**

8 14. In conducting minimal Renovation Work for the Leased Units, RESPONDENT  
9 failed to pull permits or use licensed contractors. **[NRED 000006]**

10 15. In November 2018, Complainant transferred the Property to his company YCC  
11 LLC. **[NRED 000006, NRED 000228-NRED 000230]**

12 16. In April 2019, Complainant loaned RESPONDENT \$100,000, but  
13 RESPONDENT refused to provide a note or deed of trust until February 2020. **[NRED**  
14 **000006]**

15 17. When the 2-year lease under the Oral Lease Agreement expired on December  
16 31, 2019, RESPONDENT refused to vacate the Leased Units. **[NRED 000017]**

17 18. In or about February of 2020, Complainant learned RESPONDENT was  
18 attempting to obtain a mortgage loan on the Property in the amount of \$980,000.00 from  
19 Velocity Mortgage Capital, with RESPONDENT listing himself as the primary applicant for the  
20 Property. **[NRED 000006, NRED 000017-18]**

21 19. In or around March 2020, Complainant initiated civil eviction proceedings in the  
22 Justice Court for each of the three Leased Units ("Eviction Actions"). **[NRED 000019]**

23 20. In the Eviction Actions, RESPONDENT presented the Court with a Commercial  
24 Lease Agreement, dated July 20, 2018 ("July 2018 Lease Agreement"), purportedly signed by  
25 Complainant on behalf of YCC LLC, even though YCC LLC was not the owner the Property  
26 until November 2018. **[NRED 000201-212, NRED 000013]**

27 21. The July 2018 Lease Agreement states that RESPONDENT: (1) would not pay  
28 rent for the lease term from July 20, 2018 to January 1, 2021; (2) has the right to purchase the  
Leased Units for \$250,000; and (3) does not have to pay the purchase price until 36 months

1  
2 after ownership is transferred to him. **[NRED 000201-212]**

3 22. The Eviction Actions were stayed due to the Covid 19 eviction moratorium.  
4 **[NRED 000006]**

5 23. Complainant hired an attorney and sought injunctive relief in District Court.  
6 **[NRED 000006]**

7 24. The District Court granted a temporary restraining order on May 8, 2020,  
8 prohibiting RESPONDENT from entering the Leased Units. **[NRED 000043-44]**

9 25. The District Court found RESPONDENT in contempt of court for violating the  
10 temporary restraining order by order filed May 29, 2020. **[NRED 000043-44]**

11 26. Following a full trial on the merits, the District Court, among other things, found  
12 the following **[NRED 000007-041]**:

13 a. RESPONDENT breached his fiduciary duty to Complainant by entering  
14 into a conflict of interest by taking an interest in Complainant's transaction to  
15 purchase the Property without disclosing that conflict in writing per NAC  
16 645.637, and thereafter by failing to pay the utilities, insurance, property taxes,  
17 and renovation/repair expenses when they became due, failing to vacate the  
18 Property when the Oral Lease Agreement's term expired, permitting individuals  
19 to use the Property without Complainant's knowledge or consent, attempting to  
20 obtain a loan on the Property despite never having any ownership interest in the  
21 Property, and failing to otherwise provide payments to Complainant in exchange  
22 for occupying and using the Property.

23 b. RESPONDENT breached his fiduciary duty by failing to put his  
24 agreement in writing, failing to provide him with a "Duties Owed" form for the  
25 original purchase, and failing to disclose in writing that he would be acquiring an  
26 interest in the Property.

27 c. By clear and convincing evidence, RESPONDENT forged Complainant's  
28 signature on the July 2018 Lease Agreement and presented it to the Justice  
Court and the District Court.

d. RESPONDENT engaged in fraud while acting in a fiduciary capacity as  
Complainant's real estate agent.

1  
2 e. RESPONDENT'S testimony was not credible.

3 f. RESPONDENT was ordered to pay punitive damages in the amount of  
4 \$10,000.

5 g. RESPONDENT was ordered to pay actual damages to Complainant in  
6 the amount of \$94,632, plus attorneys' fees.

7 27. At the present time, the outstanding judgment amount is now at \$265,584.28,  
8 plus post-judgment interest, from the date of the judgment forward. **[NRED 000231-NRED**  
9 **000233]** (legal counsel for Complainant explaining that they have only collected a few  
10 thousand dollars from RESPONDENT in garnishments, but RESPONDENT made no actual  
11 payments towards the judgment).

12 28. During the Division's investigation, RESPONDENT'S broker, Pablo Covarrubias,  
13 provided the Division with the transaction file and stated he told RESPONDENT to have his  
14 agreement with Complainant in writing. **[NRED 000071-195]**

#### 15 **VIOLATIONS OF LAW**

16 1. RESPONDENT violated NRS 645.633(1)(i), by engaging in conduct which  
17 constitutes deceitful, fraudulent or dishonest dealing through NAC 645.605(6), by breaching  
18 his obligation of absolute fidelity to his client's interest, by fraudulently alleging he has an  
19 interest in his client's Property in court proceedings.

20 2. RESPONDENT violated NRS 645.633(1)(i), by engaging in conduct which  
21 constitutes deceitful, fraudulent or dishonest dealing through NAC 645.605(6), by breaching  
22 his obligation of absolute fidelity to his client's interest, by leasing his client's Property without  
23 paying for his use of the Property and refusing to vacate the Property.

24 1. RESPONDENT violated NRS 645.633(1)(i), by engaging in conduct which  
25 constitutes deceitful, fraudulent or dishonest dealing through NAC 645.605(6), by breaching  
26 his obligation of absolute fidelity to his client's interest by subleasing Unit F without his client's  
27 knowledge or consent.

28 27. RESPONDENT violated NRS 645.633(1)(i), by engaging in conduct which

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2 constitutes deceitful, fraudulent or dishonest dealing, through NAC 645.605(1), by failing to  
3 protect the public against fraud, misrepresentation or unethical practices related to real estate,  
4 when he attempted to obtain a mortgage loan on the Property in the amount of \$980,000.00  
5 from Velocity Mortgage Capital, with RESPONDENT listing himself as the primary applicant  
6 for the Property.

7  
8 28. RESPONDENT violated NRS 645.633(1)(h), by engaging in gross negligence or  
9 incompetence through NAC 645.605(7), by failing to ensure that the agreement for the lease  
10 of the Property between his client and RESPONDENT is contained in a written agreement  
11 that has been signed by all parties and that RESPONDENT'S real estate broker and each  
12 party to the real estate transaction has a copy of the same.

13  
14 29. RESPONDENT violated NRS 645.252(2), by failing to exercise reasonable skill  
15 and care with respect to all parties to the real estate transaction, by misspelling his client's  
16 name on the Commercial Purchase Agreement, and thereby causing the deed to be recorded  
17 under the wrong name.

18  
19 30. RESPONDENT violated NRS 645.252(3), by failing to provide his client with the  
20 Duties Owed form prepared pursuant to NRS 645.193.

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23  
24 **ORDER**

25  
26 1. RESPONDENT shall pay to the Division: (A) a fine of \$ 70,000.00 and (B) the  
27 Division's costs in this matter in the amount of \$12,296.70, which is a total amount of  
28 \$82,296.70 ("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 Salesperson License.

3. If RESPONDENT fails to comply with the terms of this Order, including with  
regard to his 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

1  
2 through the State of Nevada, then RESPONDENT shall also pay the costs associated with  
3 collection.

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

6 6. This Order shall become effective on the 7<sup>th</sup> day of June 2023.

7 DATED this 8<sup>th</sup> day of May, 2023.  
8

9 REAL ESTATE COMMISSION  
10 STATE OF NEVADA

11 By: David Tomic  
12 Vice President, Nevada Real Estate Commission  
13

14 Submitted by:  
15 AARON D. FORD  
16 Attorney General

17 By: /s/ Louis V. Csoka  
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