

1 BEFORE THE REAL ESTATE COMMISSION

2 STATE OF NEVADA

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

Case No. 2018-377

6 Petitioner,

FILED

7 vs.

JAN 13 2023

8 THELMA FRANCO-YOUNG,

REAL ESTATE COMMISSION

9 Respondent.

BY *Kelley Valadez*

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 THELMA FRANCO-
 13 YOUNG (“RESPONDENT”) of an administrative hearing before the STATE OF NEVADA REAL
 14 ESTATE COMMISSION (“Commission”). The hearing will be held pursuant to Chapters 233B and
 15 Chapter 645 of the Nevada Revised Statutes (“NRS”) and Chapter 645 of the Nevada Administrative
 16 Code (“NAC”). The purpose of the hearing is to consider the allegations stated below and to determine
 17 if the RESPONDENT should be subject to an administrative penalty as set forth in NRS 645.633 and/or
 18 NRS 645.630 and/or NRS 622.400, and the discipline to be imposed, if violations of law are proven.

19 **JURISDICTION**

20 RESPONDENT, at all relevant times mentioned in this Complaint, held herself out and acted as
 21 a person licensed as a Broker-Salesperson under license number B.0029095.LLC, and is therefore subject
 22 to the jurisdiction of the Division and the Commission, and the provisions of NRS chapter 645 and NAC
 23 chapter 645.

24 **FACTUAL ALLEGATIONS**

25 1. On or about January 4, 2013, RESPONDENT submitted a License Change Form to the
 26 Division, which downgraded her license with the Division from a Broker to a Broker-Salesperson. *See*
 27 Division’s Exhibits (“Div.”) 000327-000331.
 28

1 2. Contemporaneously, RESPONDENT also *surrendered* her Property Management Permit
2 to the Division. *See id.*¹

3 3. On or about October 1, 2016, RESPONDENT entered into a Residential Property
4 Management Agreement (the “Agreement”) with Nicole Shinavar (“Complainant”), to manage
5 Complainant’s real property located at 6241 Bellota Drive, Units A, B, C, and D, Las Vegas, Nevada (the
6 “Property”). *See Div. 000007-000018.*

7 4. The purpose of the Agreement was for RESPONDENT to manage Complainant’s
8 Property. *See id.*²

9 5. At all relevant times, RESPONDENT was not licensed to enter into the Agreement, to
10 manage Complainant’s Property. *See Div. 000327-000331.*

11 6. Notwithstanding the absence of such proper licensure, RESPONDENT included her
12 Nevada Broker-Salesman license number *as an alleged “Property Management License Number” on the*
13 *Agreement. See Div. 000007.*

14 7. Under the Agreement, RESPONDENT was to receive a \$220.00 rental fee for each of the
15 four (4) units at the Property, a \$75.00 advertising fee, a thirty percent (30%) leasing fee, a \$200.00 set-
16 up fee, a \$250.00 referral fee, and a \$50.00 renewal fee for her services at the Property. *See Div. 000007-*
17 *000018.*

18 8. The Agreement required that RESPONDENT deposit all rents and security deposits
19 collected into Complainant’s bank account and notify Complainant of all work that needs to be done at
20 the Property along with a monthly accounting of receipts and invoices. *See Div. 000017.*

21 9. The Agreement required that all repairs exceeding \$250 have the owner’s approval except
22 in an emergency. *See Div. 000011-12.*

23 10. RESPONDENT’s files contained a copy of a money order for \$ 500.00 payable to
24 RESPONDENT, associated with the Property, with no proof that it was ever deposited into
25 Complainant’s account. *See Div. 000289.*

26 ¹ While, on April 7, 2016, RESPONDENT had again changed her broker license, transferring it back to JPC (defined herein)
27 as broker, she did not reinstate her property manager license at that time either.

28 ² 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.

1 11. RESPONDENT's files also contained a copy of a Bank of America deposit slip for \$
2 1,225.00, dated June 7, 2017, with a note on the slip that it represents Security Deposit \$ 675.00 for Unit
3 D and \$ 550 for Unit C of the Property, deposited into Complainant's account. *See Div. 000229.*³

4 12. Under the Agreement, "rents collected" and "[a]ll security deposits . . . [are to be]
5 deposited [in]to the owners . . . [Bank of America] account" Div. 000017.⁴

6 13. Yet, there is no uncontroverted and reliable proof that any of the same was actually paid
7 over to Complainant, as required under the Agreement. *See Div. 000229.*⁵

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

10 15. At all relevant times, RESPONDENT and her husband served as JPC's managing
11 members, but did not have contractors' licenses. *See Div. 000323.*

12 16. On September 8, 2017, JPC invoiced Complainant's Property, Unit C, for \$536.00 and
13 \$335.00, on the same day for contractor services, including, without limitation, repairing garbage
14 disposal, installing new range hood, cutting a hole for installation of dishwasher, and installing
15 dishwasher. *See Div. 000241; see also Div. 000243.*

16 17. Gee Tel Services ("GTS"), a sole proprietorship of Giaonne Laidler, also provided
17 contractor services at the Property without a contractor's license. *See Div. 000319-000321.*

18 18. On August 16, 2017, on August 20, 2017, and on August 22, 2017, GTS invoiced
19 Complainant's Property \$880.00, \$950.00, and \$ 1,193.65, respectively, for work done on Unit C at the
20 Property. *See Div. 000249; see also Div. 000250; Div. 000251.*

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

23
24 ³ *Cf.* Allegation No. 13, *infra*.

25 ⁴ Even if an ultimate deadline as to the same would be contested, the Nevada Supreme Court has recognized the implied
26 covenant of good faith and fair dealing normally attaches to all contracts. *See Hilton Hotels Corporation v. Butch Lewis*
27 *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.

28 ⁵ 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. *See Div. 000136-000144; cf. Div. 000001-000005; 000065; 000074-75; 000111.*

1 20. On October 9, 2017 and October 11, 2017, GTS invoiced \$ 1,030.00 and \$502.00,
2 respectively, for Unit B at the Property. *See* Div. 000203, 000207.

3 21. These invoices were all part of a larger project regarding Unit B, including, without
4 limitation, to patch holes, paint unit, install window blinds, replace light fixture in bathroom, repair door
5 frames, and install switches. *See, e.g.*, Div. 000203, 000206, and 000207.

6 22. On October 12, 2017, JPC also invoiced Complainant's Property, Unit B, for \$870.00 for
7 replacing doors, repairing door casings, replace water valve, install new range hood, install new light
8 fixture over mini bar, and repair cabinet under kitchen sink. *See* Div. 000206.

9 23. There is also a close affiliation between GTS and JPC, as reflected in GTS's Facebook
10 post that advertises JPC. *See* Div. 000322.

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

13 6. Any work to repair or maintain property the value of which is **less than \$1,000**,
including labor and materials, **unless**:

14 (a) A building permit is required to perform the work;

15 (b) The work is of a type performed by a plumbing, electrical, refrigeration, heating
or air-conditioning contractor;

16 (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;

17 (d) **The work is performed as a part of a larger project:**

18 (1) **The value of which is \$500 or more; or**

19 (2) **For which contracts of less than \$500 have been awarded to evade the
provisions of this chapter; or**

20 (e) The work is performed by a person who is licensed pursuant to this chapter or by
an employee of that person.

21 (emphasis added).

22 25. As noted above, RESPONDENT entered into contracts, as well as a series of contracts,
23 for repairs with unlicensed contractors in excess of \$ 1,000.00, thereby failing to meet such handyman
24 exemption from having a licensed contractor.⁶

25
26
27 ⁶ While the Division does not oversee NRS Chapter 624, a violation of another chapter of law constitutes a violation of NRS
28 645.633(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).

1 26. While RESPONDENT stated in Court documents (Summary Eviction proceedings) that
2 tenant Caren Dickson (“Dickson”) moved into Unit D at the Property on June 1, 2017, in the Tenant
3 Ledger, RESPONDENT provided a move in date of June 15, 2017 and only had accounted for a prorated
4 rent of \$ 338.00 to the Complainant. *See Div. 000034; see also Div. 000108-000110.*

5 27. Indeed, RESPONDENT never substantiated the alleged June 15, 2017 move-in date that
6 she had used to provide payment to Complainant, while her sworn statement to the Court clearly
7 established an earlier move-in date for Dickson, as to which she failed to account for the associated funds
8 to Complainant. *See id.*⁷

9 28. In October 2017, the Tenant Ledger for Unit D reflected an invoice of \$361.63 for a
10 refrigerator, but RESPONDENT had not provided an associated receipt for the same. *See Div. 000035.*

11 29. October 14, 2017, RESPONDENT’s Tenant Ledger reflected an invoice from JPC for
12 \$510.92 for parts for a stove and power cord for Unit B at the Property, but the associated Lowe’s receipt
13 showed an actual cost of \$462.31. *See Div. 000199-000201.*

14 30. On October 29, 2017, RESPONDENT’s Tenant Ledger reflected an invoice from JPC for
15 \$344.24 for parts for a replacement dryer for Unit B at the Property, but the associated Lowe’s receipt
16 showed an actual cost of \$300.00. *See Div. 000209-000210.*

17 31. In short, RESPONDENT improperly had charged Complainant for more money than
18 RESPONDENT’s associated actual costs. *See Allegations 28 through 30, supra.*

19 32. On or about November 15, 2017, Complainant gave her 30-day termination notice to
20 RESPONDENT, after she discovered Unit D was rented to a previously evicted tenant. *See Div. 000002,*
21 *000178.*

22 33. Shortly thereafter a tenant in Unit B, placed by RESPONDENT and not noticed to
23 Complainant, caused a fire that gutted Unit B and made two adjacent units uninhabitable. *See Div.*
24 *000002.*

25 34. In short, RESPONDENT also engaged in mismanagement, by renting out the units to
26 Tenants that did not and would not have received Complainant’s approval. *See Allegations 32 through*
27 *33, supra.*

28 ⁷ *Cf. Allegation No. 35 (A), infra.*

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

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

4 (B) information relative to RESPONDENT's response to the investigator that she has "the permit
5 to manage properties." *See* Div. 000131; *see also* Div. 000134.

6 36. Respondent reinstated her Property Management Permit with the Division, on or about
7 April 16, 2018, *only after* the Division noticed RESPONDENT of its investigation. *See* Div. 000326.

8 VIOLATIONS OF LAW

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

11 2. RESPONDENT violated NRS 645.310(4), by accepting funds on behalf of the owner that
12 were made payable to herself and by failing to maintain a trust account for Complainant's funds,
13 including rent.

14 3. RESPONDENT violated NRS 645.630(1)(f), by failing, within a reasonable time, to
15 account for or to remit any money which came into her possession and which belonged to the
16 Complainant.

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

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

21 6. RESPONDENT violated NRS 645.633(1)(h), by engaging in gross negligence or
22 incompetence, specifically, RESPONDENT failed to utilize a properly licensed contractor at the
23 Property, consistent with NRS Chapter 624, or otherwise meet the sole relevant exemptions in NRS
24 624.031(6)(d), in her contracting practices with unlicensed contractors at the Property.

25 7. RESPONDENT violated NRS 645.633(1)(i), by engaging in conduct which constitutes
26 deceitful, fraudulent or dishonest dealing, including by charging Complainant more for repairs than
27 reflected in the associated receipts.

28 8. RESPONDENT violated NRS 645.635(6), by violating NAC 645.680(3), when she failed

1 to disclose all facts and documents pertinent to the investigation to the members of the Division's staff
2 conducting the investigation.

3 **DISCIPLINE AUTHORIZED**

4 Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to impose an
5 administrative fine of up to \$10,000 per violation against RESPONDENT and further to suspend, revoke
6 or place conditions on the license of RESPONDENT. The Commission may impose any combination of
7 those actions.

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

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

13 **NOTICE OF HEARING**

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

17 **THE HEARING WILL TAKE PLACE on February 21, 2023, commencing at**
18 **9:00 a.m., or as soon thereafter as the Commission is able to hear the matter, and**
19 **each day thereafter commencing at 9:00 a.m. through February 23, 2023, or**
20 **earlier if the business of the Commission is concluded. The Commission meeting**
21 **will be held on February 21, 2023, at the Nevada State Business Center, 3300 West**
22 **Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102. The meeting**
23 **will continue on February 22, 2023 at the Nevada State Business Center, 3300**
24 **West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102,**
25 **commencing at 9:00 a.m., and on February 23, 2023, should business not be**
26 **concluded, starting at 9:00 a.m. at the Nevada State Business Center, 3300 West**
27 **Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102**

1 **STACKED CALENDAR: Your hearing is one of several hearings scheduled at**
2 **the same time as part of a regular meeting of the Commission that is expected to**
3 **last from February 21, 2023, through February 23, 2023, or earlier if the business**
4 **of the Commission is concluded. Thus, your hearing may be continued until later**
5 **in the day or from day to day. It is your responsibility to be present when your**
6 **case is called. If you are not present when your hearing is called, a default may**
7 **be entered against you and the Commission may decide the case as if all**
8 **allegations in the complaint were true. If you have any questions please call**
9 **Kelly Valadez, Commission Coordinator (702) 486-4606.**

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

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

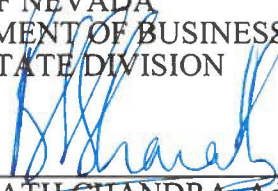
22 You have the right to request that the Commission issue subpoenas to compel witnesses to testify
23 and/or evidence to be offered on your behalf. In making the request, you may be required to demonstrate
24 the relevance of the witness’ testimony and/or evidence. Other important rights you have are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

26 The purpose of the hearing is to determine if the Respondent has violated NRS 645 and/or NAC
27 645 and if the allegations contained herein are substantially proven by the evidence presented and
28

1 to further determine what administrative penalty is to be assessed against the RESPONDENT, if any,
2 pursuant to NRS 645.235, 645.633 and or 645.630.

3 DATED: January 13, 2023.

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

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