

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 67 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 ROGER P. CROTEAU, ESQ.
Nevada Bar No.: 4958
2 ROGER P. CROTEAU & ASSOCIATES, LTD
2810 W. Charleston Blvd., Ste. 67
3 Las Vegas, Nevada 89102
(702) 254-7775
4 (702) 228-7719 (facsimile)
5 croteaulaw@croteaulaw.com
Attorneys for Respondent

FILED

JUN 13 2023

REAL ESTATE COMMISSION

BY Kelly Valadez

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

9 SHARATH CHANDRA, Administrator, REAL
10 ESTATE DIVISION, DEPARTMENT OF
11 BUSINESS AND INDUSTRY, STATE OF
NEVADA,

Petitioner

Case No 2020-962

ANSWER TO COMPLAINT

14 vs.

15 MARK HALL

16 Respondent

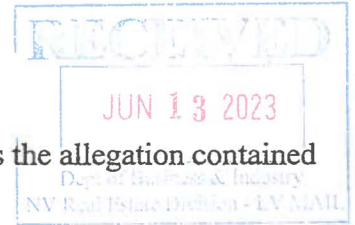
18 Respondent Mark Hall (“Respondent”), Broker license number B.0042782.LLC and
19 Credential Number PM.0142782.BRK, by and through his counsel of record Roger P. Croteau,
20 Esq., of Roger P. Croteau & Associates, Ltd., hereby submits his answer to the Complaint filed
21 with the Real Estates Division of the Department of Business and Industry of the State of Nevada,
22 as follows:

JURISDICTION

25 No response by Respondent is required as all paragraphs recite the applicable law.

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FACTUAL ALLEGATIONS



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1. Answering paragraph 1 of the Complaint, Respondent admits the allegation contained therein.
2. Answering paragraph 2 of the Complaint, Respondent admits the allegation contained therein.
3. Answering paragraph 3 of the Complaint, Respondent admits the allegation contained therein.
4. Answering paragraph 4 of the Complaint, Respondent denies the allegation to the extent that NRED 0208 is an "All Work Orders – Summary" dated December 1, 2010.
5. Answering paragraph 5 of the Complaint, Respondent denies the allegation, as on June 21, 018, 702AC sent a Service Order to SMART that was unsigned by a SMART representative as a "recommendation" of \$885.00.
6. Answering paragraph 6 of the Complaint, Respondent admits that SMART billed the Owner the approved bill for services.
7. Answering paragraph 7 of the Complaint, Respondent admits the contentions based on NRED 0054, denies as vague the contention based upon NRED 0065, and admits that on the All Work Orders Summary dated January 1, 2019, Sydney Nicole Gardner approved a charge of \$279.00 to be billed to the Owners.
8. Answering paragraph 8 of the Complaint, Respondent denies the allegation as vague based upon the material presented as NRED 0065.
9. Answering paragraph 9 of the Complaint, Respondent denies the allegation as to the term "rent ready" and NRED 0066, and admits the remainder.

- 1 10. Answering paragraph 10 of the Complaint, Respondent admits that on January 16, 2019,
2 Jeff Gardner and Sydney Nicole Gardner authorized an invoice for \$249.00; Respondent
3 denies the remainder.
- 4 11. Answering paragraph 11 of the Complaint, Respondent admits that on April 22, 2019, GSE
5 Handyman Services invoiced "Southwest Management, Jeff Gardner,
6 jeff@managevegas.com, for \$150.00, and denies the remainder.
- 7
8 12. Answering paragraph 12 of the Complaint, Respondent admits that on the All Work
9 Orders-Summary dated October 24, 2020, Jeff Gardner and Shannon Lynn Gardner, Jeff
10 Gardner's wife, approved an invoice in the amount of \$227.14 related to certain repairs;
11 Respondent denies the remainder of paragraph 12.
- 12
13 13. Answering paragraph 13 of the Complaint, Respondent admits the allegation.
- 14 14. Answering paragraph 14 of the Complaint, Respondent admits that on the All Work Orders-
15 Summary dated December 1, 2010, Shannon Lynn Gardner approve an invoice to the owner
16 in the amount of \$139.00, and denies as vague the remainder of the allegation.
- 17 15. Answering paragraph 15 of the Complaint, Respondent admits the allegation.
- 18 16. Answering paragraph 16 of the Complaint, Respondent admits that SMART by and through
19 Shannon, Jeffrey, and Sydney Nicole Gardner caused an invoice to be sent to the Owner for
20 \$895.00; Respondent denies the remainder of paragraph 16.
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22 17. Answering paragraph 17 of the Complaint, Respondent admits the allegation.
- 23 18. Answering paragraph 18 of the Complaint, Respondent admits that SMART by and through
24 Shannon, Jeffrey, and Sydney Nicole Gardner caused an invoice to be sent to the Owner for
25 \$426.49; Respondent denies the remainder of paragraph 18.
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27 19. Answering paragraph 19 of the Complaint, Respondent admits that GSE Handyman
28 Services charged \$300.00 for labor with no parts.

1 20. Answering paragraph 20 of the Complaint, Respondent admits that the All Work Orders
2 Summary dated October 24, 2020, provided that Sydney Nicole Gardner authorized and
3 prepared an invoice for the replacement of a garbage disposal, and Jeffrey Gardner and
4 Shannon Lynn Gardner authorized an invoice for the replacement of a water valve on
5 November 20, 2019, that included replacement parts; Respondent denies the remainder of
6 paragraph 20.

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8 21. Answering paragraph 21 of the Complaint, Respondent denies the allegation.

9 22. Answering paragraph 22 of the Complaint, Respondent denies the allegation.

10 23. Answering paragraph 23 of the Complaint, Respondent admits the allegation.

11 24. Answering paragraph 24 of the Complaint, Respondent admits that on December 10, 2019,
12 Jeffrey Gardner, Sydney Nicole Gardner, and/or Shannon Gardner caused an invoice to be
13 created in the amount of \$394.76 for labor and parts; Respondent denies the remainder of
14 paragraph 24.

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16 25. Answering paragraph 25 of the Complaint, Respondent admits that the All Work Orders
17 Summary dated October 1, 2010, provided that Echo Wood and Sydney Nicole Gardner
18 caused an invoice to be created in the amount of \$394.76 for parts and labor; Respondent
19 denies the remainder of paragraph 25.

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21 26. Answering paragraph 26 of the Complaint, Respondent admits to allegations set forth;
22 Respondent denies as to NRED 0017 setting forth the information.

23 27. Answering paragraph 27 of the Complaint, Respondent admits that Jeffrey Gardner, Sydney
24 Nicole Gardner and/or Shannon Gardner caused an invoice to be created in the amount of
25 \$349.10 for parts and labor; Respondent denies the remainder of paragraph 27 and NRED
26 0018.

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- 1 28. Answering paragraph 28 of the Complaint, Respondent admits that \$120.00 was billed for
2 labor.
- 3 29. Answering paragraph 29 of the Complaint, Respondent admits that Jeffrey Gardner, Sydney
4 Nicole Gardner and/or Shannon Gardner caused an invoice to be created in the amount of
5 \$267.19 for parts and labor; Respondent denies the remainder of paragraph 29.
- 6 30. Answering paragraph 30 of the Complaint, Respondent admits the allegation.
- 7 31. Answering paragraph 31 of the Complaint, Respondent admits that on December 7, 2020,
8 Jeffrey Gardner and Sydney Nicole Gardner caused an invoice to be created in the amount
9 of \$450.00 for parts and labor; Respondent denies the remainder of paragraph 31.
- 10 32. Answering paragraph 32 of the Complaint, Respondent admits the allegation.
- 11 33. Answering paragraph 33 of the Complaint, Respondent admits that the All Work Orders
12 Summary dated October 20, 2020, Sydney Nicole Gardner caused an invoice to be created
13 in the amount of \$497.14 for parts and labor; Respondent denies the remainder of paragraph
14 33.
- 15 34. Answering paragraph 34 of the Complaint, Respondent admits the allegation.
- 16 35. Answering paragraph 35 of the Complaint, Respondent admits the allegation.
- 17 36. Answering paragraph 36 of the Complaint, Respondent admits that the All Work Orders -
18 Summary dated April 1, 2017, noted that on July 1, 2020, Echo Wood cause to be created
19 an invoice in the amount of \$560.00; Respondent denies the remainder of paragraph 36.
- 20 37. Answering paragraph 37 of the Complaint, Respondent admits the allegation.
- 21 38. Answering paragraph 38 of the Complaint, Respondent admits that on July 16, 2020, Echo
22 Wood, Sydney Nicole Gardner, and/or Shannon Gardner created an invoice for the
23 replacement of all locks ASAP in the amount of \$169.00; Respondent denies the remainder
24 of paragraph 38.
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- 1 39. Answering paragraph 39 of the Complaint, Respondent admits in part and denies in part the
2 allegation, denying the allegation as provided is not complete and therefore misleading.
- 3 40. Answering paragraph 40 of the Complaint, Respondent admits as authorized through the
4 respective Residential Property Management Agreements between SMART and its client.
- 5 41. Answering paragraph 41 of the Complaint, Respondent admits that SMART filed a criminal
6 police report with the Las Vegas Metropolitan Police Department; Respondent denies the
7 remainder of paragraph 41 as being incomplete and misleading.
- 8
- 9 42. Answering paragraph 42 of the Complaint, Respondent admits the allegation.
- 10 43. Answering paragraph 43 of the Complaint, Respondent admits that SMART filed a
11 complaint against Shannon Gardner, and Brett Openchowski as licensees for all matters
12 cited in the Complaint and denies the remaining allegation as incomplete and misleading.
- 13
- 14 44. Answering paragraph 44 of the Complaint, Respondent admits the allegation.
- 15 45. Answering paragraph 45 of the Complaint, Respondent denies the “Sworn Declaration,” the
16 “Affidavit Form” and signature pager (NRED 0028-29) does not state the substance of this
17 allegation; therefore, Respondent denies this allegation.
- 18
- 19 46. Answering paragraph 46 of the Complaint, Respondent admits the factual information, but
20 denies that NRED 0031 is applicable to this allegation.
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- 22 47. Answering paragraph 47 of the Complaint, Respondent admits the allegation.
- 23 48. Answering paragraph 48 of the Complaint, Respondent admits the allegation.
- 24 49. Answering paragraph 49 of the Complaint, Respondent admits the allegation.

VIOLATIONS OF LAW

- 25 50. Answering paragraph 50 of the Complaint, Respondent denies the allegation.
- 26
- 27 51. Answering paragraph 51 of the Complaint, Respondent denies the allegation.
- 28

DISCIPLINE AUTHORIZED

No response by Respondent is required as all paragraphs recite the applicable law.

AFFIRMATIVE DEFENSES

First Affirmative Defense

In all cases cited herein, the Owner of the unit managed by SMART approved the scope of work, and the amount of the charges.

Second Affirmative Defense

The Owner(s) of each of the respective Properties execute a Residential Property Management and Broker Agreement approved by the Division ("Management Agreement").

Third Affirmative Defense

The Management Agreement(s) provide the contractual rights, obligation, and duties between SMART and the respective Owner(s).

Fourth Affirmative Defense

The Management Agreement(s) scope of service provides that SMART is the exclusive agent to "lease and manage" the Property.

Fifth Affirmative Defense

Section 2(B) of the Management Agreement provides that "...Broker/Designate Property Manager is authorized to act with such additional power as may be necessary to carry out the spirit and intent of the Agreement...."

Sixth Affirmative Defense

Section 2(A)-(J) of the Management Agreement provides the fees and charges for the Management Services.

Seventh Affirmative Defense

Section 11(A) of the Management Agreement provides as follows:

1 Ordinary/Emergency Maintenance Repair. Broker/Designated Property Manage
2 shall make or cause to be made, through contracted services, employees or
3 otherwise, all ordinary repairs and replacements reasonably necessary to preserve
4 the Property in a habitable condition and for the operating efficiency of the
5 Property, and all alteration required to comply with lease requirements,
6 governmental regulation or insurance requirements. Any cost exceeding \$300.00
7 must be approved by Owner in advance, with the following exceptions (1) in an
8 emergency where repairs are immediately necessary for the preservation and
9 safety of the Property, (2) to avoid the suspension of any essential service to the
10 Property, (3) to avoid danger or life of property, or (4) to comply with federal,
11 state or local law.

12 **Eighth Affirmative Defense**

13 Section 11(A) directs SMART to make or cause to be made all ordinary repairs and
14 replacements through SMART “employees or otherwise.”

15 **Ninth Affirmative Defense**

16 Section 11(A) only limits SMART’s ability to charge a fee for repairs or maintenance for
17 SMART’s “assist[ing] in scheduling work to repair or maintain the subject property pursuant to
18 Nevada Revised Statute 624.031(11).

19 **Tenth Affirmative Defense**

20 The allegation complained hereof are barred by the statute of limitation set forth in NRS
21 645.685(3).

22 **Eleventh Affirmative Defense**

23 Respondent did not breach the respective Management Agreement(s).

24 **Twelfth Affirmative Defense**

25 The Respondent is visually disabled and detrimentally relied upon SMART’s employees
26 conducting the business of SMART honestly and consisted with the Division’s requirements.

27 **Thirteenth Affirmative Defense**

28 GSE Handyman Services (“GSE”) was a co-conspirator with Jeff Gardner and upon
information and belief, Shannon Gardner, Echo Woods, and Sydney Gardner, of the fraud and theft

1 perpetuated upon SMART, the Respondent, and Cynthia Call as alleged in the response to the
2 Division's request for records. Attached hereto and incorporated here by reference is the
3 Declaration of Adam Gallegos setting forth certain fraudulent action perpetrated by him as the
4 principal of GSE.

5 **Fourteenth Affirmative Defense**

6 GSE's activities and Jeff Gardner and Sydney Gardner's involvement herewith in their
7 preparation of Owner invoices involved GSE in the allegations set forth in paragraphs 9, 10, 11, 12,
8 19, 20, 21, 28, 29, 30, 31, 32, and 33 of the Complaint.

10 **Fifteenth Affirmative Defense**

11 The Respondent and/or SMART did not violate NRS 645.633(1)(h) pursuant to NAC
12 645.605(1) as set forth in the Complaint.

14 **Sixteenth Affirmative Defense**

15 Respondent and/or SMART did not violate NRS 645.633(1)(i) pursuant to NAC 645.605(6)
16 as set forth in the Complaint.

17 **Seventeenth Affirmative Defense**

18 Respondent was and is not "grossly negligent or incompetent" as a Broker for SMART.

20 **Eighteenth Affirmative Defense**

21 Respondent did not engage in any conduct knowingly and intentionally that was deceitful,
22 fraudulent or dishonest.

23 **Nineteenth Affirmative Defense**

24 Respondent has no interest in any vendor that provided services and/or repairs to the
25 Properties.

27 **Twentieth Affirmative Defense**

28 Respondent has complied with the mandates of NAC 645.605(6) and NAC 645.605(1).

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CERTIFICATE OF SERVICE

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I hereby certify that on June 9, 2023, I served the foregoing document by way of U.S. Mail
and Certified Mail as follows:

REAL ESTATE DIVISION
STATE OF NEVADA
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
Attn: Legal Administrative Office

Phil W. Su, Esq.
Senior Deputy Attorney General
555 E. Washington, Ste. 3900
Las Vegas, Nevada 89101

/s/Christopher L. Benner
An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.