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BEFORE THE REAL ESTATE COMMISSION STATE OF NEVADA

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

Petitioner.

VS.

ALLAN N. ROTHSTEIN,

Respondent.

Case No. 2020-359

FILED

JAN 0 5 2023

REAL ESTATE COMMISSION
BY Kully Valader

FIRST AMENDED COMPLAINT AND NOTICE OF HEARING

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division") hereby files its First Amended Complaint and Notice of Hearing pursuant to NAC 645.835. The Complaint and Notice of Hearing filed on February 24, 2022 is hereby amended and restated as follows.

The Division notifies ALLAN N. ROTHSTEIN ("RESPONDENT"), of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapters 233B and Chapter 645 of the Nevada Revised Statutes ("NRS") and Chapter 645 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if RESPONDENT should be subject to an administrative penalty as set forth in NRS 645.633 and/or NRS 645.630 and/or NRS 622.400, and the discipline to be imposed, if violations of law are proven.

JURISDICTION

1. At all relevant times, RESPONDENT was licensed by the Division as a real estate broker (B.1001142.INDV) and held a property manager permit (PM.0164222) from the Division and is therefore subject to the jurisdiction of the Division and the Commission, and the provisions of NRS chapter 645 and NAC chapter 645.

FACTUAL ALLEGATIONS

2. At all relevant times mentioned in this complaint, RESPONDENT'S real estate broker license and property manager permit issued by the Division were in "active" status.

- 3. RESPONDENT was issued a property management permit on July 15, 2009.
- 4. On or about July 30, 2010, Kyle Puntney (the "owner") executed a residential property management agreement with the RESPONDENT'S brokerage at that time, RX Realty, for 11893 Wedgebrook, Las Vegas Nevada 89183 (the "property").
- 5. In 2012, the owner was transferred out of state for work and tasked the RESPONDENT with finding a tenant for the property.
- 6. RESPONDENT left RX Realty and worked on his own after he received his real estate broker license on March 25, 2013.
- 7. After becoming a broker on March 25, 2013, RESPONDENT did not execute new agreements with the owner for property management services but continued providing property management services to the owner for the property.
- 8. On or about April 23, 2020, the owner filed a Statement of Fact with the Division against RESPONDENT in which he alleged that RESPONDENT sexually harassed his tenant, Candy Torres, failed to communicate repairs and was deceitful and dishonest in collection of fees, and that such conduct caused him to be sued by the tenant in federal District Court.
 - 9. The allegations concerned a lease that commenced in 2018.
- 10. At that time, RESPONDENT was operating under his broker's license which listed the address for his brokerage at 755 W. Sunset Road, in Henderson Nevada 89011.
- 11. An investigation by the Division on or about April 30, 2020, showed that an "Any and All Auto Parts" shop was located at that address, and not RESPONDENT'S brokerage.
- 12. RESPONDENT transacted business with clients out of his personal residence in Las Vegas or a nearby Burger King.
- 13. In September of 2018, RESPONDENT found a tenant for the property, Candy Torres ("the tenant"), a single mother of five children who was living in a weekly rental at the time.
- 14. To accommodate the tenant, RESPONDENT and the owner applied for and obtained Section 8 status for the property.
- 15. According to the Housing Assistance Payment Contract, the rent was \$1,475, with \$1,330 paid by voucher from the Southern Nevada Regional Housing Authority (SNRHA) and \$145 paid by the

tenant, and the lease commenced on November 17, 2018.

16. The SNRHA documents provide as follows:

The owner may not accept any other monies from the client. Requiring extra ("side") payments in excess of the family's share of rent as listed above is considered program fraud.

- 17. According to the SNRHA contract, tenant was responsible to pay for air conditioning and electric, and landlord was responsible for all other utilities, including water, sewer, and trash.
- 18. On or about November 23, 2018, at his residence, RESPONDENT had tenant sign a Residential Lease Agreement, a Hold Harmless Agreement, Consent to Act, Lease Addendum for Illegal Activity, Smoke Detector Agreement, Standard Sign Placement Agreement, Rent Receipt Agreement and Direct Consent for Sexual Intercourse and or Fellatio or Cunnilingus (the "sex contract").
 - 19. RESPONDENT included the sex contract with the lease documents for tenant to sign.
 - 20. RESPONDENT also had the tenant sign a Duties Owed form.
- 21. The lease agreement provides for a late fee of \$85, plus \$75 per day, with no grace period and that such amounts shall be considered rent.
- 22. RESPONDENT left a "For Rent" sign on the property during the lease term in exchange for a one-day grace period according to the Standard Sign Placement Agreement.
- 23. RESPONDENT had tenant sign an Addendum to the lease agreement dated November 23, 2018 which states that the tenant agrees to pay for all utilities, including, without limitation, gas, water, and sewer.
- 24. On or about December 13, 2018 and without notifying the owner, RESPONDENT sent the tenant an email saying rent and signed lease for the property has not been received and he threatened to serve an eviction notice.
- 25. On or about December 28, 2018, RESPONDENT sent an email to the tenant stating late charges in the amount of \$1,285 were due.
- 26. On or about December 31, 2018, RESPONDENT sent an email to the tenant with water bills for her to pay for the months of November and December.
- 27. On or about January 18, 2019, the tenant sent RESPONDENT an email stating "I found the power bill Nov/Dec... it was for \$171.03 you made me pay 300+ \$ why?"

- 28. The tenant also questioned RESPONDENT for billing her \$55 per month for trash service when the service cost is \$44.73 every three months.
- 29. On or about February 8, 2019, RESPONDENT emailed the tenant that late fees are additional rent per the lease agreement and billed her for water, sewer, and trash.
- 30. RESPONDENT pursued eviction proceedings against tenant stating over a \$1,000 in rent is due for January and February.
- 31. Tenant answered an eviction proceeding in February saying RESPONDENT'S attitude toward her changed when she refused to be with him sexually.
 - 32. Tenant sought legal advice from Nevada Legal Services regarding the eviction.
- 33. By email dated March 2, 2019, tenant wrote to RESPONDENT that she was writing as she was standing outside his home. She wrote that she "came to pay the rent for March 2019 and the 1,051.00 that you say I owed you. Allan you did not want to take my payment and I asked you to please give me a document stating that you didn't want to take that amount unless I payed [sic] you \$ 4485. I asked you to explain to me one by one how you came to this absurd amount -and again you did not want to write anything because this way, there would be no proof that I came... I tried to come to a settlement and your words were *IF YOU DON'T HAVE THE 4485.00 GET THE [F***] OUT OF MY HOUSE."
- 34. The five-day notices served on or about February 12th and 13th, 2019 stated \$1,007 and \$1,057 was due respectively.
- 35. RESPONDENT by email apologized for raising his voice to the tenant, but never explains how the amount due came to \$4,485.
- 36. RESPONDENT never notified the owner of his efforts to evict the tenant, that he had her sign a sex contract or that he was charging her for utilities prohibited by the SNRHA contract.
 - 37. RESPONDENT told owner rental payments were delayed at times due to clerical errors.
- 38. On April 8, 2019, tenant sued RESPONDENT and the owner alleging multiple violations of law including the federal Fair Housing Act, the Nevada Fair Housing Law, wrongful eviction, deceptive trade practices, and invasion of privacy.
- 39. The owner was forced to hire an attorney to defend himself in the lawsuit and ultimately settled with tenant.

- 40. Tenant's lease expired in November 2019 and tenant vacated the property.
- 41. RESPONDENT kept \$900 of the last two months' rent for unexplained charges.
- 42. RESPONDENT did not perform a walk-through of the property prior to the tenant leaving and the owner incurred over \$40,000 worth of damages to the property.
- 43. By letter dated April 24, 2020, the Division requested that RESPONDENT provide a written response in the form of an affidavit to the allegations in the statement of fact and provide a copy of the transaction file.
- 44. RESPONDENT provided the transaction file, including the signed sex contract, but did not provide an affidavit form responding to the allegations against him.
- 45. The lease agreement provided by RESPONDENT was not dated and did not state a commencement date or ending date. RESPONDENT'S signature is dated November 17, 2018 and tenant's signature is dated November 23, 2018.
- 46. The owner's attorney provided the Division's investigator documents from the federal litigation.
- 47. The Division received a copy of the lease agreement with tenant containing handwritten notes dating the lease as of November 17, 2018 and including a term of November 17, 2018 to November 30, 2019. The signatures of RESPONDENT and tenant are both dated November 23, 2018.
- 48. By letter dated October 4, 2021, the Division sent follow up correspondence in which the investigator gave RESPONDENT until October 19, 2021, to respond to the allegations with a signed affidavit.
- 49. On or about October 4, 2021, RESPONDENT informed the Division's investigator by phone that he was working out of his home, he met his clients either at his home or Burger King across the street and that he asked the tenant to sign the sex contract.
 - 50. RESPONDENT did not provide a signed affidavit regarding the allegations against him.
- 51. On or about October 18, 2021, the Division notified RESPONDENT that the matter was being referred to the Commission for disciplinary action.

VIOLATIONS OF LAW

RESPONDENT committed the following violations of law:

- 1. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation of absolute fidelity to his principal's interest when he directed tenant to sign the sex contract as part of the lease agreement documents.
- 2. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation of absolute fidelity to his principal's interest by violating the terms of the SNRHA contract regarding tenant's responsibility for payment of utilities.
- 3. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation of absolute fidelity to his principal's interest by violating the terms of the SNRHA contract by charging late fees as additional rent.
- 4. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation of absolute fidelity to his principal's interest by pursuing eviction proceedings without notice to the owner and for amounts exceeding the amount of rent due from tenant pursuant to the SNRHA contract.
- 5. RESPONDENT violated NRS 645.633(1)(h) through NAC 645.605(1) by failing to protect the public against fraud, misrepresentation or unethical practices related to the lease transaction with tenant when he directed tenant to sign the sex contract as part of the lease agreement documents.
- 6. RESPONDENT violated NRS 645.633(1)(h) through NAC 645.605(1) by failing to protect the public against fraud, misrepresentation or unethical practices related to the lease transaction with tenant by violating the terms of the SNRHA contract when he charged the tenant additional rent through late fees.
- 7. RESPONDENT violated NRS 645.633(1)(h) through NAC 645.605(1) by failing to protect the public against fraud, misrepresentation or unethical practices related to the lease transaction with tenant by violating the terms of the SNRHA contract when he charged the tenant for water, trash and sewer utility services.
- 8. RESPONDENT violated NRS 645.633(1)(h) for failing to have a complete copy of the lease agreement for the property in his transaction file provided to the Division which amounts to gross negligence or incompetence in performing his property management responsibilities.
 - 9. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his

obligation to deal fairly with all parties to a real estate transaction by directing tenant to sign the sex contract as part of the lease agreement documents.

- 10. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation to deal fairly with all parties to a real estate transaction by demanding payment of utilities from tenant in violation of the SNRHA contract.
- 11. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation to deal fairly with all parties to a real estate transaction by demanding payment for late fees as additional rent from tenant in violation of the SNRHA contract.
- 12. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation to deal fairly with all parties to a real estate transaction by entering into an agreement with tenant to keep a "For Rent" sign on the property during the lease term.
- 13. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation to deal fairly with all parties to a real estate transaction when he pursued eviction proceedings for amounts exceeding the amount of rent due from tenant pursuant to the SNRHA contract.
- 14. RESPONDENT violated NRS 645.633(1)(i) through NAC 645.605(6) by breaching his obligation to deal fairly with all parties to a real estate transaction when he failed to provide detail for payments he demanded from the tenant.
- 15. RESPONDENT violated NRS 645.633(1)(h) and NRS 645.510 by conducting real estate management activities from a place of business other than his designated place of business according to his real estate broker license issued by the Division, when he had tenant sign the lease documents at his personal residence, which amounts to gross negligence or incompetence in performing acts for which the person is required to hold a license pursuant to NRS 645.
- 16. RESPONDENT violated NRS 645.252(2) when he failed to exercise reasonable skill and care with respect to all parties in a real estate transaction when he pursued eviction proceedings against Tenant claiming rent due was more than allowed under SNRHA contract.
- 17. RESPONDENT violated NRS 645.252(2) when he failed to exercise reasonable skill and care with respect to all parties in a real estate transaction when he refused to accept rent and demanded additional rent when tenant tried to pay rent after eviction notices were served.

- 18. RESPONDENT violated NRS 645.252(2) when he failed to exercise reasonable skill and care with respect to all parties in a real estate transaction when he directed tenant to sign the sex contract as part of the lease agreement documents.
- 19. RESPONDENT violated NRS 645.633(1)(h) and NRS 645.3205 by dealing with a party to a real estate transaction in a manner that is deceitful, fraudulent or dishonest.
- 20. RESPONDENT violated NRS 645.633(1)(h) and NRS 645.6056(1) when he acted as a property manager for the property without having obtained a property management agreement signed by the owner of the property after RESPONDENT left RX Realty.
- 21. RESPONDENT violated NRS 645.633(1)(h) through NAC 645.605(11)(b) by impeding or attempting to impede the Division's investigation by failing to supply a written response to the Division's investigator.

DISCIPLINE AUTHORIZED

- 1. Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to impose an administrative fine of up to \$10,000 per violation against RESPONDENT and further to suspend, revoke or place conditions on the license of RESPONDENT.
- Additionally, under NRS Chapter 622, the Commission is authorized to impose costs of the proceeding upon RESPONDENT, including investigative costs and attorney's fees, if the Commission otherwise imposes discipline on RESPONDENT.
- 3. Therefore, the Division requests that the Commission take such disciplinary action as it deems appropriate under the circumstances.

NOTICE OF HEARING

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

THE HEARING WILL TAKE PLACE on February 21, 2023, commencing at 9:00 a.m., or as soon thereafter as the Commission is able to hear the matter, and each day thereafter commencing at 9:00 a.m. through February 23, 2023, or earlier if the business of the Commission

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27 28 is concluded. The Commission meeting will be held at the Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102.

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

YOUR RIGHTS AT THE HEARING: except as mentioned below, the hearing is an open meeting under Nevada's open meeting law and may be attended by the public. After the evidence and arguments, the commission may conduct a closed meeting to discuss your alleged misconduct or professional competence. You are entitled to a copy of the transcript of the open and closed portions of the meeting, although you must pay for the transcription.

As the RESPONDENT, you are specifically informed that you have the right to appear and be heard in your defense, either personally or through your counsel of choice. At the hearing, the Division has the burden of proving the allegations in the complaint and will call witnesses and present evidence against you. You have the right to respond and to present relevant evidence and argument on all issues involved.

You have the right to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant to the issues involved.

You have the right to request that the Commission issue subpoenas to compel witnesses to testify and/or evidence to be offered on your behalf. In making the request, you may be required to demonstrate the relevance of the witness' testimony and/or evidence. Other important rights you have are listed in NRS 645.680 through 645.990, NRS Chapter 233B, and NAC 645.810 through 645.920. The purpose of the hearing is to determine if the Respondent has violated NRS 645 and/or NAC 645 and if the allegations contained herein are substantially proven by the evidence presented and to further determine what

administrative penalty is to be assessed against the RESPONDENT, if any, pursuant to NRS 645.633 or
645.630.
DATED: January <u>5</u> , 2023.
State of Nevada
Department of Business and Industry Real Estate Division
By: IV LANDRA, Administrator
3300 West Sahara Avenue, Suite 350 Las Vegas, Nevada 89102
AARON D. FORD Attorney General
By: / s /Michelle Briggs MICHELLE BRIGGS (Bar. No. 7617)
Chief Deputy Attorney General 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101 (702) 486-7629
Attorneys for Real Estate Division

Certificate of Service (NRS 645.680)

I certify that on the 5th day of January 2023, I deposited a copy of the foregoing:

CASE # 2020-359 FIRST AMENDED COMPLAINT AND NOTICE OF HEARING

in the United States Mail, postage pre-paid, in Las Vegas, Nevada, through the State of Nevada mailroom, certified mail addressed to the following respondent at their last known address as follows:

Certified Mail No.: 7020 1290 0001 3945 6151

Andrew Wasielewski 8275 S. Eastern Avenue # 200-818 Las Vegas, NV 89123

Certified Mail No.: 7020 1290 0001 3945 6168

Allan N. Rothstein 8616 Canyon View Drive Las Vegas, NV 89117

> Kelly Valadez Commission Coordinator









