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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,

Case No. 2020-544

FILED

JAN 12 2023

REAL ESTATE COMMISSION

BY Kelley Valadez

Petitioner,

vs.

EMIGDIO MARTINEZ-PINEDA,

Respondent.

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COMPLAINT AND NOTICE OF HEARING

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division") hereby notifies RESPONDENT EMIGDIO MARTINEZ-PINEDA ("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 the 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

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.

FACTUAL ALLEGATIONS

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

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

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

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

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

11 5. On or about December 28, 2017, Complainant signed a Commercial Purchase
12 Agreement, Addendum One, and Waiver, all written in English, and paid \$490,000 in cash
13 at closing to purchase the Property on December 29, 2017. [NRED 000088-103, NRED
14 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
18 Complainant as “Cena.” [NRED 000011; cf. NRED 000221-NRED 000224]

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

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

1 11. RESPONDENT took possession of the Leased Units in January 2018. [NRED
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
7 by failing to pay the Property Expenses or complete the Renovation Work. [NRED 000006]

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

10 15. In November 2018, Complainant transferred the Property to his company
11 YCC 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
20 for the Property. [NRED 000006, NRED 000017-18]

21 19. In or around March 2020, Complainant initiated civil eviction proceedings in
22 the 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
24 Commercial Lease Agreement, dated July 20, 2018 ("July 2018 Lease Agreement"),
25 purportedly signed by Complainant on behalf of YCC LLC, even though YCC LLC was not
26 the owner the Property until November 2018. [NRED 000201-212, NRED 000013]

27 21. The July 2018 Lease Agreement states that RESPONDENT: (1) would not
28 pay rent for the lease term from July 20, 2018 to January 1, 2021; (2) has the right to

1 purchase the Leased Units for \$250,000; and (3) does not have to pay the purchase price
2 until 36 months 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
10 the 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,
12 found the following [NRED 000007-041]:

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

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

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

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

3 e. RESPONDENT'S testimony was not credible.

4 f. RESPONDENT was ordered to pay punitive damages in the amount of
5 \$10,000.

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

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

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

16 VIOLATIONS OF LAW

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

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

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

1 4. RESPONDENT violated NRS 645.633(1)(i), by engaging in conduct which
2 constitutes deceitful, fraudulent or dishonest dealing, through NAC 645.605(1), by failing
3 to protect the public against fraud, misrepresentation or unethical practices related to real
4 estate, when he attempted to obtain a mortgage loan on the Property in the amount of
5 \$980,000.00 from Velocity Mortgage Capital, with RESPONDENT listing himself as the
6 primary applicant for the Property.

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

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

16 7. RESPONDENT violated NRS 645.252(3), by failing to provide his client with
17 the Duties Owed form prepared pursuant to NRS 645.193.

18 **DISCIPLINE AUTHORIZED**

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

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

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

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1 **NOTICE OF HEARING**

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

6 **THE HEARING WILL TAKE PLACE** on February 21, 2023, commencing at
7 **9:00 a.m.**, or as soon thereafter as the Commission is able to hear the matter, and
8 each day thereafter commencing at 9:00 a.m. through February 23, 2023, or
9 earlier if the business of the Commission is concluded. The Commission meeting
10 will be held on February 21, 2023, at the Nevada State Business Center, 3300 West
11 Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102. The meeting
12 will continue on February 22, 2023, at the Nevada State Business Center, 3300
13 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102,
14 commencing at 9:00 a.m., and on February 23, 2023, should business not be
15 concluded, starting at 9:00 a.m. at the Nevada State Business Center, 3300 West
16 Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102

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

26 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is an
27 open meeting under Nevada’s open meeting law, and may be attended by the public. After
28 the evidence and arguments, the Commission may conduct a closed meeting to discuss your

1 alleged misconduct or professional competence. A verbatim record will be made by a
2 certified court reporter. You are entitled to a copy of the transcript of the open and closed
3 portions of the meeting, although you must pay for the transcription.

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

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

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1 The purpose of the hearing is to determine if the Respondent has violated NRS 645
2 and/or NAC 645 and if the allegations contained herein are substantially proven by the
3 evidence presented and to further determine what administrative penalty is to be assessed
4 against the RESPONDENT, if any, pursuant to NRS 645.235, 645.633 and/or 645.630.

5 DATED: January 11, 2023.

6 STATE OF NEVADA
7 DEPARTMENT OF BUSINESS AND INDUSTRY
8 REAL ESTATE DIVISION

9 By: 
10 SHARATH CHANDRA, Administrator
11 3300 West Sahara Avenue, Suite 350
12 Las Vegas, Nevada 89102

13 AARON D. FORD
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15 By: /s/ Louis V. Csoka
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