

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

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

Case No. 2023-314

Petitioner,

FILED

vs.

JUL 11 2024

DAVID MICHAEL TORTIA,
BS.0146142,

REAL ESTATE COMMISSION

BY Kelly Valadez

Respondent.

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 DAVID MICHAEL TORTIA ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapter 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 645.806 (3), and the discipline to be imposed, if violations of law are proven.

JURISDICTION

RESPONDENT, at all relevant times mentioned in this Complaint, was actively licensed as a Broker-Salesperson (BS.0146142). RESPONDENT is, therefore, subject to the jurisdiction of the Division and the Commission, and the provisions of NRS Chapter 645 and NAC Chapter 645. As of the date of this Complaint, RESPONDENT'S broker's license is in "active" status.

FACTUAL ALLEGATIONS

1. At all times relevant to this Complaint, RESPONDENT was registered as a broker-salesperson with Coldwell Banker- Premier Realty, under the supervision of Broker Robert H. Hamrick [NRED0001-0003].

1 2. At all times relevant, RESPONDENT also served as principal of Mokelumne Investments,
2 LLC, through which he made real estate investment proposals to COMPLAINANTS Vianey Cabrera and
3 Judith Maceo (collectively, the COMPLAINANTS). [NRED 0004-0006].

4 3. On April 20, 2023, the Division received a Statement of Fact from COMPLAINANTS
5 Vianey Cabrera and Judith Maceo (collectively, the COMPLAINANTS), alleging that they had remitted
6 a total of \$135,000.00 to Mokelumne Investments, LLC to jointly purchase five investment properties on
7 behalf of the COMPLAINANTS and Mokelumne Investments, LLC. [NRED0004-0012].

8 4. The investment properties were:

- 9 • 7931 Villa Pintura, Las Vegas, NV 89131;
- 10 • 3021 Savona Circle, Las Vegas, NV, 89128;
- 11 • 4009 Coleman, North. Las Vegas, NV 89032;
- 12 • 4296 Aspen Street, Las Vegas, NV89107; and
- 13 • 4730 San Rafael, Las Vegas, NV 89120,

14 for each of which RESPONDENT represented Mokelumne Investments, LLC and the
15 COMPLAINANTS in the real estate transactions. [NRED0004-0012].

16 5. The \$135,000.00 in funds were remitted to RESPONDENT from December 14, 2020,
17 through March 1, 2021, a total of seven payments via zelle, cashier's check, or bank wire. [NRED0016-
18 0094].

19 6. On February 17, 2023, RESPONDENT entered into a promissory note agreement with
20 COMPLAINANTS for \$200,000.00, which purported to account for the funds invested with
21 RESPONDENT and expected profit from those investments. [NRED0014-0015].

22 7. The RESPONDENT has failed to submit any payments under the promissory note to the
23 COMPLAINANTS. [NRED0006; 0095].

24 8. The COMPLAINANTS further allege that instead of repaying the note, RESPONDENT
25 invested in an investment property at 4045 Abernethy Forest Place, Las Vegas, NV 89104. [NRED 0006].

26 9. The COMPLAINANTS further allege that RESPONDENT intentionally misrepresented
27 purchases of the properties by sending them "bogus" Deeds of Trust for the 7931 Villa Pintura and 3021
28

1 Savona properties, along with "Straight Notes" for both properties, prepared by RESPONDENT himself,
2 rather than by any Trustee. [NRED0006; 0018-0021; 0030-0034; 0096-0098].

3 10. On April 28, 2023, the Division issued an open investigation letter to RESPONDENT
4 regarding the Statement of Fact and requesting his response via affidavit. [NRED0099].

5 11. That same day, the Division issued an open investigation letter to RESPONDENT'S
6 broker of record at Coldwell Banker- Premier Realty, Robert H. Hamrick. [NRED0100].

7 12. On May 16, 2023, RESPONDENT submitted a responsive affidavit, asserting that, for
8 various reasons, three of the contemplated investment properties did not close and that he entered into
9 the promissory agreement in good faith and intended to comply with the settlement, but had not yet made
10 any payments to COMPLAINANTS upon the advice of his attorney. [NRED0101-102].

11 13. On May 16, 2023, Broker Robert H. Hamrick submitted a responsive affidavit, asserting
12 that he was unaware of the investment relationship between RESPONDENT and COMPLAINANTS
13 until contacted by the Division; that the Complainants were investors, rather than clients of Coldwell
14 Bank- Premier Realty; and that the brokerage was not in receipt of the 4296 Aspen transaction
15 documentation since it did not proceed past negotiations. [NRED0103-0104].

16 14. Broker Hamrick also provided transaction files for the following properties: 4009
17 Coleman; 4730 San Rafael (both buyer and seller); 7931 Villa Pintura; and 4045 Abernethy Forest Place.
18 [NRED0105-0369]

19 15. On October 4, 2023, the Division mailed an NRS 233B letter via certified mail to
20 RESPONDENT, stating the Division's intent to file a complaint with the Commission for violations of
21 NRS 645.633(1)(h) pursuant to NAC 645.605(1) and NRS 645.633(1)(i) pursuant to NAC 645.605(1).
22 [NRED0297-0300].

23 VIOLATIONS OF LAW

24 RESPONDENT has committed the following violations of law:

25 1. RESPONDENT violated NRS 645.633(1)(h) pursuant to NAC 645.605(1) by engaging
26 in gross negligence and/or incompetence by failing to do his utmost to protect the public against fraud,
27 misrepresentation or unethical practices related to real estate, when he failed to abide by the terms of his
28 February 2023 promissory note.

1 2. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1) by willfully
2 and/or knowingly engaging in deceitful, fraudulent and dishonest dealing when he failed to abide by the
3 terms of his February 2023 promissory note.

4 3. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1) by willfully
5 and/or knowingly engaging in deceitful, fraudulent and dishonest dealing by making intentionally vague
6 and misleading representations regarding the significance of exemplar Deeds of Trust and Notes prepared
7 by RESPONDENT, rather than by any Trustee, for the 7931 Villa Pintura and 3021 Savona properties.

8 **DISCIPLINE AUTHORIZED**

9 Pursuant to NRS 645.630, the Commission is empowered to impose an administrative fine of up
10 to \$10,000 per violation and suspend, revoke, or place conditions on RESPONDENT'S license if
11 warranted.

12 Additionally, under NRS 622.400, the Commission is authorized to impose costs of the
13 proceeding upon RESPONDENT, including investigative costs and attorney's fees, if the Commission
14 otherwise imposes discipline on RESPONDENT.

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

17 **NOTICE OF HEARING**

18 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider the
19 Administrative Complaint against the above-named Respondent in accordance with Chapters 233B and
20 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

21 **THE HEARING WILL TAKE PLACE on August 13, 2024, commencing at 9:00 a.m., or as**
22 **soon thereafter as the Commission is able to hear the matter, and each day thereafter commencing**
23 **at 9:00 a.m. through August 15, 2024, or earlier if the business of the Commission is concluded.**
24 **The Commission meeting will be held on August 13, 2024, at the Nevada Division of Insurance,**
25 **1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, with video conference to the**
26 **Nevada State Business Center 3300 West Sahara Avenue, 4th Floor, Nevada Room, Las Vegas,**
27 **Nevada 89102. The meeting will continue on each day thereafter commencing at 9:00 a.m. through**
28 **August 15, 2024, until the business of the Commission is concluded.**

1 **STACKED CALENDAR:** Your hearing is one of several hearings scheduled at the same
2 time as part of a regular meeting of the Commission that is expected to last from August 13, 2024,
3 through August 15, 2024, or earlier if the business of the Commission is concluded. Thus, your
4 hearing may be continued until later in the day or from day to day. It is your responsibility to be
5 present when your case is called. If you are not present when your hearing is called, a default may
6 be entered against you and the Commission may decide the case as if all allegations in the complaint
7 were true. If you have any questions, please call Kelly Valadez, Commission Coordinator, at (702)
8 486-4606.

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

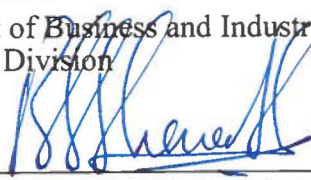
14 As the Respondent, you are specifically informed that you have the right to appear and be heard
15 in your defense, either personally or through your counsel of choice. At the hearing, the Division has the
16 burden of proving the allegations in the complaint and will call witnesses and present evidence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

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

24 The purpose of the hearing is to determine if the Respondent has violated NRS 645 and/or NAC
25 645 and if the allegations contained herein are substantially proven by the evidence presented and
26 to further determine what administrative penalty is to be assessed against the RESPONDENT, if any,
27 pursuant to NRS 645.235, 645.633 and or 645.630.

28 DATED the 9 day of July, 2024.

1 State of Nevada
2 Department of Business and Industry
3 Real Estate Division

4 By: 
5 SHARATH CHANDRA, Administrator
6 3300 West Sahara Avenue, Suite 350
7 Las Vegas, Nevada 89102

8 AARON D. FORD
9 Attorney General

10 By: /s/ Phil W. Su
11 PHIL W. SU (Bar No. 10450)
12 Senior Deputy Attorney General
13 555 E. Washington Ave. #3900
14 Las Vegas, Nevada 89101
15 psu@ag.nv.gov
16 (702) 486-3655
17 *Attorneys for Real Estate Division*