

1 **BEFORE THE REAL ESTATE COMMISSION**

2 **STATE OF NEVADA**

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

Case No. 2024-749

6 Petitioner,

7 vs.

8 JAMES SHARKEY,
9 (S.0195534 – INACTIVE, BUSB.0007200 –
10 INACTIVE, B – DENIED, PROV.0001300-
11 TSA – CLOSED, TS.3007674-AGEN –
12 CLOSED, TS.3012578-REP – CLOSED,
13 TS.3017714-REP - CLOSED),

12 Respondent.

FILED

FEB 05 2025

REAL ESTATE COMMISSION

BY Kelley Valadez

14 **PETITIONER’S MOTION *IN LIMINE* TO LIMIT**
15 **REPETITIOUS, IRRELEVANT, AND/OR IMMATERIAL WITNESSES**
16 **AND SIMILARLY EXCLUDE EVIDENCE OTHERWISE**
17 **OFFERED TO CONFUSE THE ISSUES AND WASTE TIME**

18 The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY
19 OF THE STATE OF NEVADA (“Division”) by and through its attorneys of record, Aaron D. Ford,
20 Attorney General, and Christal P. Keegan, Deputy Attorney General, hereby moves the Nevada Real
21 Estate Commission (“Commission”) to grant its Motion *in Limine* to Limit Repetitious, Irrelevant, and/or
22 Immaterial Witnesses and Similarly Exclude Evidence Otherwise Offered to Confuse the Issues and
23 Waste Time pursuant to NAC 645.845.

24 Pursuant to NAC 645.840, this Motion is submitted on shortened time as a result of Respondent
25 James Sharkey’s (“Sharkey”) Submission of Witnesses and Exhibits just filed at 8:05 PM on Monday,
26 February 3, 2025. This Motion is made and based upon the attached Memorandum of Points and

26 ...

27 ...

28 ...

1 Authorities, the papers and pleadings on file herein, and any oral argument the Commission may hear on
2 this matter at its scheduled February meetings.

3 DATED this 5th day of February 2025.

4 AARON D. FORD
5 Attorney General

6 By: *epkeegan*
7 CHRISTAL P. KEEGAN (Bar No. 12725)
8 Deputy Attorney General
9 5420 Kietzke Lane, Suite 202
10 Reno, Nevada 89511
11 (775) 687-2141
12 ckeegan@ag.nv.gov

13 *Attorney for Real Estate Division*

1 **DECLARATION OF CHRISTAL P. KEEGAN, ESQ. IN SUPPORT OF**
2 **MOTION *IN LIMINE* TO LIMIT REPETITIOUS, IRRELEVANT, AND/OR IMMATERIAL**
3 **WITNESSES AND SIMILARLY EXCLUDE EVIDENCE OTHERWISE**
4 **OFFERED TO CONFUSE THE ISSUES AND WASTE TIME**

5 I, CHRISTAL PARK KEEGAN, ESQ., declare under penalty of perjury as follows:

6 1. I am an attorney with the Nevada Attorney General's Office, counsel for the Division.
7 I am of legal age, and personally familiar with the facts and circumstances surrounding this matter and
8 am competent to testify as to the contents herein.

9 2. The Division certified mailed its Notice of Documents with Division's Exhibits Bate
10 stamped NRED 000001-000334 on October 2, 2024, later emailed them on January 23, 2025 at 10:54
11 AM, and February 3, 2025 at 1:51 PM and 1:56 PM. *Exhibit 1.*

12 3. The State submitted its witnesses list to Sharkey and/or his counsel representing him at
13 the time, on October 7, 2024 12:05 PM, October 8, 2024 at 9:43 AM, January 23, 2025 at 10:54 AM, and
14 February 3, 2025 at 1:51 PM. *Exhibit 1.*

15 4. Yet, Sharkey's Submission of Witnesses and Exhibits were not filed until February 3,
16 2025 at 8:05 PM, and only available to Division's counsel on the Tuesday before the hearings, February
17 4, 2025 at 7:28 AM, and identified three (3) new witnesses never previously disclosed: (1) Don Houlf,
18 (2) Audrey Sharkey, (3) Amy Elser, and 225 pages of documents RESP000001-000225. *Exhibit 2.*

19 5. Sharkey's Submission of Witnesses also requested subpoena of all State's witnesses.
20 *Exhibit 2.*

21 6. I hereby submit this declaration under penalty of perjury setting forth that a good-faith
22 effort to confer, has been extended to opposing counsel to reconsider calling Witness 3, Amy Elser, as
23 her testimony is repetitious since Broker Nathan Elser is already the State's witness, and that Mrs. Elser
24 has no significant presence in the case, is otherwise just included on group emails as a bystander; and
25 Witness 1, the current Broker Houlf, is immaterial and irrelevant to this Case No. 2024-749, nor is this
26 case about the Respondent's character. *Exhibit 3.*

27 7. At the very least, the State requested opposing counsel consider limiting such witnesses'
28 testimony, specifically to Witness 1, Don Houlf, and Witness 3, Amy Elser, to a reasonable 15 minutes
each. *Exhibit 3.*

1 8. Resultantly, the issues raised in the instant Motion have not been fully resolved, and given
2 the shortened time frame of the approaching hearings on February 11-13, 2025, the Petitioner's counsel
3 has submitted this out of an abundance of caution.

4 I swear under penalty of perjury that the information contained in this declaration is true
5 and correct.

6 DATED this 5th day of February 2025.

7 AARON D. FORD
8 Attorney General

9 By: epkeegan
10 CHRISTAL P. KEEGAN (Bar No. 12725)
11 Deputy Attorney General
12 5420 Kietzke Lane, Suite 202
13 Reno, Nevada 89511
14 (775) 687-2141
15 ckeegan@ag.nv.gov

16 *Attorney for Real Estate Division*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. LEGAL ARGUMENT**

3 **A. Legal Standard.**

4 While the technical rules of evidence may be relaxed at the discretion of the Commission, there
5 are still rules in administrative proceedings. Pursuant to NAC 645.845(1) such deviation should only
6 occur if it “will aid in determining the facts.” NAC 645.845(2) requires “[a]ny evidence offered at a
7 hearing **must be material and relevant to the issues** of the hearing.” [emphasis added]. NAC
8 645.845(3) provides the Commission with the discretion to “**exclude** inadmissible, incompetent,
9 **repetitious or irrelevant evidence.**” [emphasis added].¹

10 **B. Sharkey’s Witness List is Repetitious, Immaterial and/or Irrelevant and the**
11 **Commission Should Place Reasonable Limitations on these Witnesses.**

12 Sharkey’s submission of witnesses identified three (3) new witnesses, 1) Don Houlf, (2) Audrey
13 Sharkey, and (3) Amy Elser.

14 Sharkey’s counsel has indicated to the State that he intends to call Witness 1, Don Houlf, as he is
15 the current broker for Sharkey and his wife, Audrey Sharkey. Broker Houlf was not the broker any times
16 relevant to this case, and so his testimony is immaterial and irrelevant to the eleven (11) violations of law
17 in Case No. 2025-749 which completely predate him.

18 Sharkey’s counsel has indicated to the State that he intends to call Witness 3, Amy Elser, whom
19 he identified as Nathan Elser’s wife, alleging she is in the parties’ documents and otherwise intends to
20 “be examined as to any of the documents for which she was involved with (i.e., emails, text messages,
21 etc...).” The issue is that Mr. Elser is already on the State’s witness list, further being subpoenaed by
22 opposing counsel (*Exhibit 4*), and can otherwise testify to the same information as his wife, who has no
23 significance in this case, and who’s presence is merely in a bystander capacity of simply being included
24 on group emails. Therefore, Witness 3, Amy Elser’s testimony is not only repetitive, but also appears
25 intended to harass the Broker, Mr. Elser, who is the third Complainant in this Case No. 2024-749.

26 ¹ See also, **NRS 48.025(2)**: Evidence which is not relevant is not admissible; **NRS 48.035(1)**:
27 Although relevant, evidence is not admissible if its probative value is substantially outweighed by the
28 danger of unfair prejudice, of confusion of the issues or of misleading the jury, and (2) Although relevant,
evidence may be excluded if its probative value is substantially outweighed by considerations of undue
delay, waste of time or needless presentation of cumulative evidence.

1 Pursuant to NAC 645.845(3), these witnesses, Witness 1 and Witness 3, can be excluded. But,
2 in the interest of fairness, should the testimony be admitted for the limited purpose of assisting the
3 Commission in its determination of the factual allegations in this Case No. 2024-749, the State suggests
4 the Commission consider ordering Sharkey reasonably limit witness (3) Amy Elser's testimony to 15
5 minutes. Witness (1) Don Houlf should be excluded, but the State refers to the points made
6 in the following section. The State reserves its right to cross examine the witnesses pursuant to
7 NAC 645.810(7).

8 **C. Sharkey's Witness 1 Current Broker Houlf is Immaterial and Irrelevant to**
9 **Determining the Facts of the Case, and the Commission Should Reasonably Limit**
10 **the Scope of Character Witnesses.**

11 This case is not about Sharkey's character. Sharkey's Witness 3, current Broker Don Houlf, is
12 immaterial and irrelevant to determining the facts of the case which concern Sharkey's unlicensed activity
13 and material misrepresentations about licenses when he never had or were expired in accordance with
14 NRS 645.230(1)(a), NRS 645.630(1)(a), NRS 645.633(1)(h), NRS 645.633(1)(i), and NRS 645.633(1)(a)
15 requirements. Therefore, pursuant to NAC 645.845(2) should the testimony intended to be elicited regard
16 Sharkey's character, this character witness can be excluded.

17 But, in the interest of fairness, should the character testimony be admitted for the limited purpose
18 of assisting the Commission in its determination of appropriate disciplinary action pursuant to NRS
19 645.630 and NRS 645.633, the State requests the Commission place reasonable limitations on the
20 character Witness 1, Don Houlf, to 15 minutes. The State reserves its right to recall its witnesses for
21 rebuttal pursuant to NAC 645.810(8).

22 **D. Sharkey's Exhibits are Repetitive, and Irrelevant, and the Commission Should Exclude**
23 **their Exhibits.**

24 The State notes, that upon review, the exhibits provided were reasonably available to Sharkey and
25 could have been reasonably anticipated to be used in support of his defense at any time during the
26 Division's investigation, when he filed his Answer back on November 1, 2024, and anytime thereafter.

27 Further, Sharkey exhibits are repetitive and can be excluded as such cumulative evidence confuses
28 the issues, wastes time, and otherwise prejudices the State's case in padding their set of documents to
create the appearance their defense has merit, specifically:

- 1 • RESP-000003 is already in the Division's Documents NRED 000264;
- 2 • RESP-000005 is already in the Division's Documents NRED 000257;
- 3 • RESP-000012 is already in the Division's Documents NRED 000190;
- 4 • RESP-000013 is already in the Division's Documents NRED 000187;
- 5 • RESP-000014 is already in the Division's Documents NRED 000187;
- 6 • RESP-000017 to 000020 is already in the Division's Documents NRED 000250 to 000252;
- 7 • RESP-000033 is already in the Division's Documents NRED 000262;
- 8 • RESP-000034 to 000035 is already in the Division's Documents Appendix NRED 000331 to 000332;
- 9 • RESP-000054 is already in the Division's Documents NRED 000261;
- 10 • RESP-000058 to 000067 is already in the Division's Documents NRED 000308 to 000317;
- 11 • RESP-000068 is already in the Division's Documents NRED 000297;
- 12 • RESP-000069 is already in the Division's Documents NRED 000298;
- 13 • RESP-000070 is already in the Division's Documents NRED 000299;
- 14 • RESP-000071 is already in the Division's Documents NRED 000300 but appears to be altered, as it omits the salutation "Hi Leo";
- 15 • RESP-000192 is already in the Division's Documents NRED 000265;
- 16 • RESP-000193 is a duplicate of their own documents RESP-000192;
- 17 • RESP-000201 is a duplicate of their own documents RESP-000196;
- 18 • RESP-000202 is a duplicate of their own documents RESP-000197;
- 19 • RESP-000203 is a duplicate of their own documents RESP-000198;
- 20 • RESP-000204 is a duplicate of their own documents RESP-000199; and
- 21 • RESP-000205 is a duplicate of their own documents RESP-000200.

22 Sharkey's exhibits also include irrelevant evidence that have nothing to do with this
 23 administrative disciplinary hearing Case No. 2024-749, and can be excluded, specifically:

- 24 • RESP-000001 to 000002, blank Form 508, and includes an irrelevant highlight to Home Office requirements;
- 25 • RESP-000006 to 000007, Women's Business Enterprise National Counsel Certification;
- 26 • RESP-000036 is an email regarding an unrelated case, A-24-900887-C;
- 27 • RESP-000045 to 000050, blank Forms 507, 512, and 505;
- 28 • RESP-000073 to 000075, photographs and selfies with random individuals not relevant to this case;
- RESP-000112, 000115 and 000221, text messages regarding a property not relevant to this case "112 Weisbrook";
- RESP-000117 to 000122, photographs relating to Michael T. Martin Memorial Scholarship;
- RESP-000138, Business License C25-Contractor issued at times not relevant to this case issued: January 27, 2025; and
- RESP-000214 to 000217 are emails regarding an irrelevant license denial appeal case S-LDS-25-004;

29 Lastly, RESP-000037 should be excluded because it is evidence of compromise offers.

30 NRS 48.105.

31 ...

32 ...

33 ...

1 **II. CONCLUSION**

2 The State requests the Commission consider its Motion in its preliminary matters as permitted by
3 NAC 645.810(1)(f) so that the hearing is conducted expeditiously and to ensure the fairness of all parties.

4 DATED this 5th day of February 2025.

5 AARON D. FORD
6 Attorney General

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