FILED
JUL 19 2019
REAL ESTATE COMMISSION
BY: Evelyn Tattle

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. KEVIN BOEVE , Respondent.	Case No. 2018-561 **COMPLAINT AND NOTICE OF HEARING**

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division"), by and through its counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Peter Keegan, Deputy Attorney General, hereby notifies RESPONDENT KEVIN BOEVE ("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 or other discipline authorized by NRS 645 and/or NAC 645, if violations of law are proven.

JURISDICTION

RESPONDENT engaged in activities which require a license as a real estate broker, real estate broker-salesperson, or real estate salesperson, and/or a permit to engage in property management, issued by the Division and is, therefore, subject to the jurisdiction of the Division and the Commission, and the provisions of NRS and NAC 645.

///

///

PROCEDURAL HISTORY

1. RESPONDENT identifies himself as a Senior Vice President of Investments for Marcus & Millichap ("M&M") of Ontario, CA, License CA: 01247016.

2. On or about April 26, 2018, the Division sent an investigation opening letter to RESPONDENT's counsel, which required RESPONDENT to provide a sworn statement along with a copy of the broker file for a suspected unlicensed sale transaction involving the Carl's Jr. restaurant property located at 5091 Bonanza Road, Las Vegas, Nevada 89110 ("Carl's Jr. Property").

3. On or about May 18, 2018 and May 23, 2018, after granting RESPONDENT an extension, the Division received the RESPONDENT's sworn declaration along with electronic copies of the transaction files for the property in question.

4. On or about July 31, 2018, the Division sent RESPONDENT, through his counsel, a Cease and Desist Order requiring RESPONDENT to cease and desist from engaging in the business of unlicensed real estate transactions in the State of Nevada.

5. On or about October 2, 2018, the Division sent a follow-up investigation letter to RESPONDENT's counsel, which required RESPONDENT to provide the listing agreements for: (1) 7040 South Durango Drive, Las Vegas, NV; (2) 7050 South Durango, Drive Las Vegas, NV 89113; (3) 7070 South Durango Drive, Las Vegas, NV 89113; and (4) 5091 E. Bonanza Road, Las Vegas, NV 89110; as well as the final settlement statement and commission distribution for 7050 South Durango Drive.

6. On or about October 15, 2018, counsel for the RESPONDENT responded to the Division's October 2, 2018, documentation request and indicated no listing agreements existed for the four properties and that "each such transaction was categorized as 'open' meaning that there was never an Exclusive Listing Agreement."

7. On or about November 29, 2018, the Division sent RESPONDENT, through his counsel, Seth M. Mott, Deputy General Counsel for M&M, a follow-up investigation letter concerning RESPONDENT's involvement in the real estate transactions for the properties located at 7040 South Durango Drive; 7050 South Durango Drive; and 7070

South Durango Drive, Las Vegas, NV 89113 ("The Durango Properties"),and specifically requested a copy of the November 4, 2016, Representation Agreement(s) between the agent and the seller.

8. On or about January 11, 2019, the Division sent RESPONDENT's counsel a 233B letter, via certified mail, placing RESPONDENT on notice that the Division intended to commence disciplinary action by filing a formal complaint with the Nevada Real Estate Commission for violations NRS 645 and NAC 645.

FACTUAL ALLEGATIONS

5091 EAST BONANZA ROAD, LAS VEGAS, NV 89110 ("CARL'S JR. PROPERTY")

1. RESPONDENT has never held a Nevada real estate license.

2. On or about February 20, 2018, the seller and buyer of the Carl's Jr. Property executed an Agreement of Purchase and Sale and Joint Escrow Instructions which identified that M&M was representing the seller and entitled M&M to a Commission equal to 1.5% of the Purchase Price.

3. On or about April 11, 2018, Todd Manning, a Nevada licensed Broker, B.1001879.CORP, had the seller of the Carl's Jr. Property execute a Duties Owed by a Nevada Real Estate Licensee form.

4. The April 11, 2018, Duties Owed form included a Supplemental List of Licensees Party to the Duties Owed, which specified RESPONDENT, California License CA: 01247016, as a supplemental licensee under Broker Todd Manning.

5. In accordance with the M&M Commission Booking reflecting a close of escrow date of April 18, 2018, RESPONDENT was issued a net commission of $22,464.00 as the listing agent for the Carl's Jr. Property.

6. M&M prepared an Offering Memorandum for the Carl's Jr. Property.

7. On April 25, 2018, RESPONDENT sent, or caused to be sent, an email including an advertisement indicating the sale of the Carl's Jr. Property had "Just Closed" for $3,120,000/5.00% Cap; RESPONDENT was identified as the agent and his contact information was provided.

8. The Division's investigation of RESPONDENT's M&M website reflected 18 Nevada closed transactions.

7040 S. DURANGO DR. - ("THE PAD AT DURANGO")

9. On or about March 22, 2017, the seller executed the Purchase Agreement for 7040 South Durango Drive, Las Vegas, NV 89113 (APN 176-04-310-004) and accepted the buyer's purchase offer of $6,100.000.00.

10. On or about March 22, 2017, RESPONDENT executed the Purchase Agreement attesting that "[a]gent accepts and agrees to the foregoing. AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF NEVADA."

11. The Purchase Agreement for 7040 South Durango contains a dual agency disclosure in paragraph 22b.

12. The Purchase Agreement contains a section on the signature page titled, "SELLER'S ACCEPTANCE AND AGREEMENT TO PAY COMMISSION[,]" which states as follows:"[s]eller affirms its agreement to pay to Agent a real estate brokerage commission pursuant to the terms of that certain Representation Agreement between Agent and Seller dated November 4, 2016, which shall remain in full force and effect."

13. On or about November 19, 2018, the Division's investigator requested RESPONDENT, through his counsel, to provide a copy of the Representation Agreement between the Agent and Seller dated November 4, 2018.

14. On December 4, 2018, counsel for the RESPONDENT responded to the Division's November 19, 2018 request again indicated that "there was never an Exclusive Listing Agreement" and that each such transaction was categorized as 'open[.]'"

15. The Purchase Agreements for the Durango Properties each identify the same seller, Durango Arby Plaza, LLC.

16. M&M through its affiliate prepared an Offering Memorandum for The Pad at Durango, which reflects that "all property showings are by appointment only[,]" and the property is "Exclusively Represented by Pablo Rodriguez[,]" a senior associate of M&M.

17. On March 21, 2017, the buyer signed, and on March 22, 2017, the seller signed a Duties Owned By A Nevada Real Estate Licensee form, prepared by, or caused to be prepared by, Pablo Rodriguez, who was Nevada licensed salesperson affiliated with M&M at the time, S.0175422,

18. The Duties Owed form indicates that the buyer and seller understand that the licensee "may, in the future act for two of more parties who have interests adverse to each other."

19. The Duties Owned form failed to identify the listing broker.

20. On March 21, 2017, the buyer signed, and on March 22, 2017, the seller signed a Consent to Act form prepared by M&M identifying the licensee in the real estate transaction as Richard Bird, Nevada Broker License B.1000924.CORP.

21. Division records indicate Richard Bird's Nevada Broker's License, B.1000924.CORP, was voluntarily placed on dormant status on June 9, 2014, and remains dormant.

22. Division records indicate Richard Bird was associated with M&M from February 14, 2014, through June 9, 2014.

23. The Consent to Act form fails to identify the address of the subject property.

24. In accordance with the M&M Commission Booking statement reflecting a close of escrow date of August 18, 2017, RESPONDENT was paid a net commission of $45,750.00, for acting in the capacity of both the listing agent and buying agent.

7050 S. DURANGO DR. – ("STARBUCKS")

25. On or about May 11, 2017, the seller executed the Purchase Agreement for 7050 South Durango Drive, Las Vegas, NV 89113 (APN 176-04-310-005), accepting the buyer's purchase offer of $2,750,000.00.

26. The Purchase Agreement contains the RESPONDENT's unsigned signature block attesting that "[a]gent accepts and agrees to the foregoing. AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF NEVADA."

///

27. The Purchase Agreement contains a section on the signature page titled, "SELLER'S ACCEPTANCE AND AGREEMENT TO PAY COMMISSION[,]" which states as follows: "[s]eller affirms its agreement to pay to Agent a real estate brokerage commission pursuant to the terms of that certain Representation Agreement between Agent and Seller dated November 4, 2016, which shall remain in full force and effect."

28. On May 9, 2017, the buyer signed, and on May 11, 2017, the seller signed a Duties Owned By A Nevada Real Estate Licensee form, prepared by or caused to be prepared by, Pablo Rodriguez, who was Nevada licensed salesperson affiliated with M&M at the time, S.0175422.

29. The Duties Owed form failed to indicate whether the buyer and seller understood that the licensee "may, or may not, in the future act for two of more parties who have interests adverse to each other."

30. The Duties Owned form failed to identify the listing broker.

31. On May 9, 2017, the buyer signed, and on May 11, 2017, the seller signed a Consent to Act form prepared by M&M identifying the licensee in the real estate transaction as Richard Bird, Nevada Broker License B.1000924.CORP.

32. Division records indicate Richard Bird's Nevada Broker's License, B.1000924.CORP, was voluntarily placed on dormant status on June 9, 2014, and remains dormant.

33. Division records indicate Richard Bird was associated with M&M from February 14, 2014, through June 9, 2014

34. The Consent to Act form fails to identify the address of the subject property.

35. The Fidelity National Title Order to Pay Commission dated August 23, 2017, and signed by the seller and RESPONDENT reflects that $82,500.00 was paid to M&M with RESPONDENT listed as the agent contact.

36. In accordance with the M&M Commission Booking statement reflecting a close of escrow date of August 25 2017, which erroneously identifies the property address

as 7070 South Durango Drive, Las Vegas, Nevada 89113, the RESPONDENT was paid a net commission of $19,800.00.

7070 S. DURANGO DR. - ("SHOPS AND GYM AT DURANGO")

37. On or about June 2, 2017, the seller executed the Purchase Agreement for 7070 South Durango Drive, Las Vegas, NV 89113 (APN 176-04-301-010), accepting the buyer's purchase offer of $18,000,000.00.

38. Paragraph 21.1 of the Purchase Agreement identifies that the RESPONDENT represents the seller.

39. The Purchase Agreement contains the RESPONDENT's signature attesting that "[a]gent accepts and agrees to the foregoing. AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES OF NEVADA."

40. The Purchase Agreement contains a section on the signature page titled, "SELLER'S ACCEPTANCE AND AGREEMENT TO PAY COMMISSION[,]" which states as follows: "[s]eller affirms its agreement to pay to Agent a real estate brokerage commission pursuant to the terms of that certain Representation Agreement between Agent and Seller dated November 4, 2016, which shall remain in full force and effect."

41. On or about June 2, 2017, the seller signed a Duties Owned By A Nevada Real Estate Licensee form, prepared by or caused to be prepared by, Pablo Rodriguez, who was Nevada licensed salesperson affiliated with M&M at the time, S.0175422.

42. The Duties Owed form failed to indicate whether the seller understood that the licensee "may, or may not, in the future act for two of more parties who have interests adverse to each other."

43. The Duties Owned form failed to identify the listing broker.

44. On or about June 2, 2017, the seller signed a Consent to Act form prepared by M&M identifying the licensee in the real estate transaction as Richard Bird, Nevada Broker License B.1000924.CORP.

45. Division records indicate Richard Bird's Nevada Broker's License, B.1000924.CORP, was voluntarily placed on dormant status on June 9, 2014, and remains dormant.

46. Division records indicate Richard Bird was associated with M&M from February 14, 2014, through June 9, 2014.

47. M&M prepared an Offering Memorandum for the Shops and Gym at Durango.

48. In accordance with the M&M Commission Booking statement reflecting a close of escrow date of August 30, 2017, RESPONDENT was paid a net commission of $27,247.50, as the seller's agent.

VIOLATIONS ALLEGED

RESPONDENT has committed the following violations of law:

1. RESPONDENT violated NRS 645.230(1)(a) and NRS 645.235(1)(a) four times by engaging in real estate sales transactions in the State of Nevada without a license or cooperative certificate.

DISCIPLINE AUTHORIZED

2. Pursuant to NRS 645.235(2), the Commission is empowered to impose an administrative fine of up to the amount of any gain or economic benefit derived from the violation or $5,000.00, which ever amount is greater, per violation against RESPONDENT.

3. Pursuant to NRS 645.314, the Division is authorized to request its investigative costs where the investigation was undertaken for disciplinary purposes.

4. Additionally, under NRS 622.400, 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.

5. 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 August 20-22, 2019, 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 August 22, 2019, or earlier if the business of the Commission is concluded. The Commission meeting will be held each day at the Nevada Division of Insurance, 1818 East College Parkway, suite 103, Carson City, Nevada 89706.

STACKED CALENDAR: Your hearing is one of several hearings scheduled at the same time as part of a regular meeting of the Commission that is expected to last from August 20-22, 2019 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 Evelyn Pattee Commission Coordinator (702) 486-4074.

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. A verbatim record will be made by a certified court reporter. 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, if any, is to be assessed against the Respondent.

DATED this 19 day of July, 2019.

STATE OF NEVADA
Department of Business and Industry
Real Estate Division

By: _____
SHARATH CHANDRA, Administrator
3300 W. Sahara Avenue, Ste. 350
Las Vegas, Nevada 89102

DATED this 17th day of July, 2019.

AARON D. FORD
Attorney General

By: _____
PETER K. KEEGAN
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1153
Attorneys for Real Estate Division