BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. BOBBY FLEMING, (S.0172698) Respondent.	**Case No. 2021-771**

FILED

MAR 0 3 2023

REAL ESTATE COMMISSION

BY

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing before the Real Estate Commission, Department of Business and Industry, State of Nevada (the "Commission"), during a regular agenda set for a three-day stack commencing February 21, 2023 (the "Hearing"). RESPONDENT BOBBY FLEMING (hereinafter, "RESPONDENT") did not appear in person, through counsel, or otherwise. Christal Park Keegan, Esq., Deputy Attorney General with the Nevada Attorney General's Office, appeared on behalf of the Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division").

Mrs. Keegan advised the Commission that RESPONDENT was aware of his attendance at the hearing, that the parties were working on settlement terms but did not have a signed settlement, that the RESPONDENT was reminded on several occasions that his appearance was required, and that he had not provided an Answer, and as such, the Division wanted to proceed with a default pursuant to NAC 645.810(1).

Shareece Bates testified regarding notice sent to the RESPONDENT. The Commission found appropriate service of the notice of the Hearing, the complaint, Notice of the Complaint, and Notice of Documents was made.

After hearing testimony presented in this matter and for good cause appearing, the Commission now enters its Findings of Fact, Conclusions of Law, and Order by default against RESPONDENT as follows:

RESPONDENT is a licensed Salesperson under NRS Chapter 645, under license number S.0172698, and is therefore subject to the jurisdiction of the Division and the Commission and the provisions of NRS Chapter 645 and NAC Chapter 645.

FINDINGS OF FACT

The Commission, by unanimous vote, based upon evidence presented during the Hearing, enters a finding of the following facts by default:

1. At all times relevant to this Complaint, RESPONDENT associated with the brokerage The Brokerage, A Real Estate Firm. NRED 000002 – NRED 000003.

2. RESPONDENT entered into an Exclusive Authorization and Right to Sell, Exchange, or Lease Brokerage Listing Agreement ("ER") commencing on May 3, 2021, but signed 25 days later on May 28, 2021, with Seller Erika Ferrell for the real property located at 8555 Rumsfield Court, Las Vegas, NV 89131-5282 (the "Property") with a list price of $410,000. NRED 000160 – NRED 000169.

3. RESPONDENT failed to present the Duties Owed to his client as soon as practicable as the ER commencement date began a week (7 days) prior to the Duties Owed being signed by his Seller. NRED 000159.

4. On or about June 1, 2021, RESPONDENT listed the Property on the Las Vegas Realtors Multiple Listing Service ("MLS") at $405,000 not pursuant to the Seller's instruction to list at $410,000. NRED 000157 – NRED 000158.

5. On June 3, 2021, RESPONDENT instructed his Seller to transmit $400 for a broker's fee to RESPONDENT'S ex-wife in exchange for a lease back. NRED 000028 – NRED 000032.

6. RESPONDENT is alleged to have himself completed the incomplete portions of the Seller's Real Property Disclosure dated June 5, 2021. NRED 000129 – NRED 000133, and NRED 000106.

7. On May 29, 2021, a Residential Purchase Agreement ("RPA") was entered into for the Property between Buyers, Trent and Elizabeth Leavitt, and Seller, for $415,000 but RESPONDENT failed to change the listing status Pending, Under Contract No Show pursuant to Seller's instructions until 10 days later (on June 11, 2021). NRED 000135 – NRED 000158.

8. RESPONDENT represented Request for Repairs outside of Due Diligence, which pressured Seller to concede a $2,000 credit at closing. NRED 000107 – NRED 000108, and NRED 000022, and NRED 000138 – NRED 000151.

9. RESPONDENT represented the receipt of Resale Package outside of the 15 calendar days prescribed by the RPA which gave Buyers' the ability to cancel the RPA in full without penalty. NRED 000109 – NRED 000110. NRED 0000143.

10. On June 22, 2021, instructions to Pay Commission demonstrate instructions contrary to Seller's written commission instruction for a total of 2% of the gross selling price, and that 2% offered to the cooperating broker, and included an additional cost of $500 from Seller. NRED 000092, and NRED 000160 – NRED 000169.

11. On July 1, 2021, a Commission Distribution Authorization Form signed by RESPONDENT and his broker identify RESPONDENT's take home pay as $5,247.00 of the total Commission paid to the brokerage ($6,225.00). NRED 000088.

12. On July 20, 2021, Seller allegedly texted RESPONDENT: "I take it you decided not to send me the remaining $800 you owe me." RESPONDENT replied "Lol already got fired lost license so not sure what else you mean" but RESPONDENT still had an active license salesperson license. NRED 000026, and NRED 000002.

13. The Division informed RESPONDENT a Complaint was received and despite numerous requests for a response RESPONDENT never responded (letters dated July 26, 2021, August 23, 2021, and October 11, 2021). NRED 000005 - NRED 000015.

CONCLUSIONS OF LAW

Based on the foregoing findings of facts by default, the Commission concludes by unanimous Vote, that RESPONDENT has committed the following violations of law by default:

14. RESPONDENT violated NRS 645.633(1)(i) by engaging in deceitful, fraudulent and/or dishonest dealings when he extracted monies from his Seller, including but not limited to, the $400 for

a broker's fee for a lease back, and instructing his Seller to pay the brokerage admin, who is actually RESPONDENT'S ex-wife.

15. RESPONDENT violated NRS 645.254(1) when he failed to exercise reasonable skill and care to carry out the terms of the brokerage agreement.

16. RESPONDENT violated NRS 645.254(3) by failing to list the Property at the price pursuant to Seller's instruction.

17. RESPONDENT violated NRS 645.633(1)(i) pursuant to NRS 645.280, for instructing the Seller to remit payment to RESPONDENT'S ex-wife who is not a licensed real estate broker, broker-salesperson or salesperson.

18. RESPONDENT violated NRS 645.633(1)(h) pursuant to NAC 645.605(11)(b) by failing to supply a written response to the Division despite multiple requests to do so.

ORDER

19. RESPONDENT shall pay an administrative fine to the Division in amount of $50,000 along with the Division's costs and attorney's fees in the amount $3,441.07, for a total amount of $53,441.07 due to the Division ("Amount Due"). The Amount Due shall be payable to the Division within 30 days of the effective date of this Order.

20. If payment is not actually received by the Division on or before its due date, it shall be a default by RESPONDENT. In the event of default, the unpaid balance of the administrative fine and costs, together with any attorney's fees and costs that may have been assessed, shall be due in full to the Division within ten calendar days of the date of default, and the Division may obtain a judgment for the amount owed, including collection fees and costs.

21. RESPONDENT'S license shall be immediately revoked.

22. The Commission retains jurisdiction for correcting any errors that may have occurred in the drafting and issuance of this document.

23. This Order shall become effective on the 3rd day of March 2023.

DATED this 3rd day of March, 2023.

REAL ESTATE COMMISSION
STATE OF NEVADA

By: Spiridon Filios
President, Nevada Real Estate Commission

Submitted by:

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