BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

FILED

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REAL ESTATE COMMISSION

BY Kelley Valadez

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. THELMA FRANCO-YOUNG, Respondent.	Case No. 2018-377 **STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION**

This Stipulation for Settlement of Disciplinary Action ("Stipulation") is entered into by and between the State of Nevada, Department of Business and Industry, Real Estate Division ("Division"), through its Administrator Sharath Chandra ("Petitioner"), by and through their attorney of record, Louis V. Csoka, Senior Deputy Attorney General, and Thelma Franco-Young ("RESPONDENT").

RESPONDENT at all relevant times mentioned in this Complaint conducted activities for which a license or permit is required by NRS Chapter 645 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 SET FORTH IN COMPLAINT

1. On or about January 4, 2013, RESPONDENT submitted a License Change Form to the Division, which downgraded her license with the Division from a Broker to a Broker-Salesperson.

2. Contemporaneously, RESPONDENT also *surrendered* her Property Management Permit to the Division.[1]

3. On or about October 1, 2016, RESPONDENT entered into a Residential Property Management Agreement (the "Agreement") with Nicole Shinavar

[1] While, on April 7, 2016, RESPONDENT had again changed her broker license, transferring it back to JPC (defined herein) as broker, she did not reinstate her property manager license at that time either.

("Complainant"), to manage Complainant's real property located at 6241 Bellota Drive, Units A, B, C, and D, Las Vegas, Nevada (the "Property").

4. The purpose of the Agreement was for RESPONDENT to manage Complainant's Property.[2]

5. At all relevant times, RESPONDENT was not licensed to enter into the Agreement, to manage Complainant's Property.

6. Notwithstanding the absence of such proper licensure, RESPONDENT included her Nevada Broker-Salesman license number *as an alleged "Property Management License Number" on the Agreement.*

7. Under the Agreement, RESPONDENT was to receive a $220.00 rental fee for each of the four (4) units at the Property, a $75.00 advertising fee, a thirty percent (30%) leasing fee, a $200.00 set-up fee, a $250.00 referral fee, and a $50.00 renewal fee for her services at the Property.

8. The Agreement required that RESPONDENT deposit all rents and security deposits collected into Complainant's bank account and notify Complainant of all work that needs to be done at the Property along with a monthly accounting of receipts and invoices.

9. The Agreement required that all repairs exceeding $250 have the owner's approval except in an emergency.

10. RESPONDENT's files contained a copy of a money order for $ 500.00 payable to RESPONDENT, associated with the Property, with no proof that it was ever deposited into Complainant's account.

11. RESPONDENT's files also contained a copy of a Bank of America deposit slip for $ 1,225.00, dated June 7, 2017, with a note on the slip that it represents Security Deposit $ 675.00 for Unit D and $ 550 for Unit C of the Property, deposited into Complainant's account.[3]

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[2] Around the same time, Complainant also had RESPONDENT assist her in leasing out Complainant's real property located at 213 Sierra Breeze Ave, Las Vegas, Nevada (the "Sierra Breeze Property"). However, RESPONDENT did not have a formal agreement with Complainant, to manage the Sierra Breeze Property.

[3] *Cf.* Allegation No. 13, *infra.*

12. Under the Agreement, "rents collected" and "[a]ll security deposits . . . [are to be] deposited [in]to the owners . . . [Bank of America] account . . . ."[4]

13. Yet, there is no uncontroverted and reliable proof that any of the same was actually paid over to Complainant, as required under the Agreement.[5]

14. RESPONDENT used her husband, an unlicensed contractor, operating under JayPC Investments, LLC ("JPC"), to undertake repairs at the Property.

15. At all relevant times, RESPONDENT and her husband served as JPC's managing members, but did not have contractors' licenses.

16. On September 8, 2017, JPC invoiced Complainant's Property, Unit C, for $536.00 and $335.00, on the same day for contractor services, including, without limitation, repairing garbage disposal, installing new range hood, cutting a hole for installation of dishwasher, and installing dishwasher.

17. Gee Tel Services ("GTS"), a sole proprietorship of Giaonne Laidler, also provided contractor services at the Property without a contractor's license.

18. On August 16, 2017, on August 20, 2017, and on August 22, 2017, GTS invoiced Complainant's Property $880.00, $950.00, and $ 1,193.65, respectively, for work done on Unit C at the Property.

19. The three invoices were part of a larger project to paint the interior of Unit C, patch walls, remove carpeting and install new flooring.

20. On October 9, 2017 and October 11, 2017, GTS invoiced $ 1,030.00 and $502.00, respectively, for Unit B at the Property.

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[4] Even if an ultimate deadline as to the same would be contested, the Nevada Supreme Court has recognized the implied covenant of good faith and fair dealing normally attaches to all contracts. *See Hilton Hotels Corporation v. Butch Lewis Productions*, Inc. 107 Nev. 226, 808 P.2d 919 (1991) (stating that the "reasonable expectations of the dependent party is determined by the various factors and general circumstances"). Here, with the contemporaneous requirement for monthly accounting of receipts and invoices, a failure to remit any such funds to RESPONDENT for years would clearly not be within the reasonable expectations of the parties.

[5] While RESPONDENT provided ex post facto reconciliation records to the Division purporting to absorb such tenant revenues into certain repair expenses, Complainant had disavowed having received or having been credited for any of the same.

21. These invoices were all part of a larger project regarding Unit B, including, without limitation, to patch holes, paint unit, install window blinds, replace light fixture in bathroom, repair door frames, and install switches.

22. On October 12, 2017, JPC also invoiced Complainant's Property, Unit B, for $870.00 for replacing doors, repairing door casings, replace water valve, install new range hood, install new light fixture over mini bar, and repair cabinet under kitchen sink.

23. There is also a close affiliation between GTS and JPC, as reflected in GTS's Facebook post that advertises JPC.

24. NRS 624.031(6) allows for the so called "handyman exemption" from having a contractor's license and provides as follows:

> 6. Any work to repair or maintain property the value of which is **less than $1,000**, including labor and materials, **unless**:
> (a) A building permit is required to perform the work;
> (b) The work is of a type performed by a plumbing, electrical, refrigeration, heating or air-conditioning contractor;
> (c) The work is of a type performed by a contractor licensed in a classification prescribed by the Board that significantly affects the health, safety and welfare of members of the general public;
> **(d) The work is performed as a part of a larger project:**
> **(1) The value of which is $500 or more; or**
> **(2) For which contracts of less than $500 have been awarded to evade the provisions of this chapter**; or
> (e) The work is performed by a person who is licensed pursuant to this chapter or by an employee of that person.
>
> (emphasis added).

25. As noted above, RESPONDENT entered into contracts, as well as a series of contracts, for repairs with unlicensed contractors in excess of $ 1,000.00, thereby failing to meet such handyman exemption from having a licensed contractor.[6]

26. While RESPONDENT stated in Court documents (Summary Eviction proceedings) that tenant Caren Dickson ("Dickson") moved into Unit D at the Property on

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[6] While the Division does not oversee NRS Chapter 624, a violation of another chapter of law constitutes a violation of NRS 645.633(1)(h) for gross negligence or incompetence. Here, RESPONDENT entered into contracts, as well as a series of contracts, for repairs with unlicensed contractors in excess of $ 1,000.00, thereby failing to meet the relevant exemption in NRS 624.031(6)(d) relative to contractor activity that is otherwise *de minimis* (i.e., does not normally require licensure, under NRS Chapter 624, if it does not reach the statutory threshold alone nor in a series of related transactions).

June 1, 2017, in the Tenant Ledger, RESPONDENT provided a move in date of June 15, 2017 and only had accounted for a prorated rent of $ 338.00 to the Complainant.

27. Indeed, RESPONDENT never substantiated the alleged June 15, 2017 move-in date that she had used to provide payment to Complainant, while her sworn statement to the Court clearly established an earlier move-in date for Dickson, as to which she failed to account for the associated funds to Complainant.[7]

28. In October 2017, the Tenant Ledger for Unit D reflected an invoice of $361.63 for a refrigerator, but RESPONDENT had not provided an associated receipt for the same.

29. October 14, 2017, RESPONDENT's Tenant Ledger reflected an invoice from JPC for $510.92 for parts for a stove and power cord for Unit B at the Property, but the associated Lowe's receipt showed an actual cost of $462.31.

30. On October 29, 2017, RESPONDENT's Tenant Ledger reflected an invoice from JPC for $344.24 for parts for a replacement dryer for Unit B at the Property, but the associated Lowe's receipt showed an actual cost of $300.00.

31. In short, RESPONDENT improperly had charged Complainant for more money than RESPONDENT's associated actual costs.

32. On or about November 15, 2017, Complainant gave her 30-day termination notice to RESPONDENT, after she discovered Unit D was rented to a previously evicted tenant.

33. Shortly thereafter a tenant in Unit B, placed by RESPONDENT and not noticed to Complainant, caused a fire that gutted Unit B and made two adjacent units uninhabitable.

34. In short, RESPONDENT also engaged in mismanagement, by renting out the units to Tenants that did not and would not have received Complainant's approval.

35. During the Division's investigation, RESPONDENT failed to produce her entire file upon the Division's request, which included:

[7] *Cf.* Allegation No. 35 (A), *infra.*

(A) the lease for tenant Dickson, so the Division could verify Dickson's move in dates, and

(B) information relative to RESPONDENT's response to the investigator that she has "the permit to manage properties."

36. Respondent reinstated her Property Management Permit with the Division, on or about April 16, 2018, *only after* the Division noticed RESPONDENT of its investigation.

VIOLATIONS OF LAW ALLEGED IN THE COMPLAINT

1. RESPONDENT violated NRS 645.230(1)(b), by engaging in property management, without the requisite licensure from the Division.

2. RESPONDENT violated NRS 645.310(4), by accepting funds on behalf of the owner that were made payable to herself and by failing to maintain a trust account for Complainant's funds, including rent.

3. RESPONDENT violated NRS 645.630(1)(f), by failing, within a reasonable time, to account for or to remit any money which came into her possession and which belonged to the Complainant.

4. RESPONDENT violated NRS 645.630(1)(g), by failing to submit to the Division an annual accounting of the trust account as required in NRS 645.310.

5. RESPONDENT violated NRS 645.630(1)(h), by commingling the moneys of Complainant with her own, as well as by otherwise converting the same for her own personal use.

6. RESPONDENT violated NRS 645.633(1)(h), by engaging in gross negligence or incompetence, specifically, RESPONDENT failed to utilize a properly licensed contractor at the Property, consistent with NRS Chapter 624, or otherwise meet the sole relevant exemptions in NRS 624.031(6)(d), in her contracting practices with unlicensed contractors at the Property.

7. RESPONDENT violated NRS 645.633(1)(i), by engaging in conduct which constitutes deceitful, fraudulent or dishonest dealing, including by charging Complainant more for repairs than reflected in the associated receipts.

8. RESPONDENT violated NRS 645.633(1)(6), by violating NAC 645.680(3), when she failed to disclose all facts and documents pertinent to the investigation to the members of the Division's staff conducting the investigation.

SETTLEMENT

By entering into this settlement agreement, the RESPONDENT neither admits nor denies the allegations above. In an effort to avoid the time and expense of litigating these issues before the Commission, the parties desire to compromise and settle the instant controversy upon the following terms and conditions:

1. RESPONDENT shall pay the Division a total amount of $ 12,481.70 ("Amount Due"), consisting of a $ 5,000.00 fine imposed by the Division and the Division's pre-hearing costs and attorneys' fees in the amount of $ 7,481.70.

2. The pre-hearing costs and attorney's fees in the amount of $7,481.70 shall be payable to the Division as follows:

(A) within 30 days of the approval of this settlement by the Commission, RESPONDENT shall pay $ 2,000.00; and

(B) On or before March 1, 2024, RESPONDENT shall pay $ 5,481.70.

3. RESPONDENT shall pay the Division the fines in the amount of $ 5,000.00 as follows: Beginning November 1, 2023, and due the first day of each month thereafter until paid in full, RESPONDENT shall make to the Division payments in the amount of $138.89 for 35 months, with one (1) additional final payment of $138.85. Notwithstanding the foregoing, RESPONDENT may pay more due towards the Amount Due at any time.

4. RESPONDENT shall voluntarily surrender her property management permit within 30 days of the approval of this settlement by the Commission, and shall agree to not re-apply for such permit for at least 10 years.

5. RESPONDENT shall downgrade her real estate broker license to a broker-

salesperson license within 90 days of the approval of this settlement by the Commission, and shall agree to not re-apply for such permit for at least 5 years. Notwithstanding the foregoing, RESPONDENT may be permitted to extend the time period for downgrading her broker license by an additional 90 days, to allow RESPONDENT additional time to receive commissions from transactions that would assist her to pay the Amount Due hereunder.

6. RESPONDENT and the Division agree that by entering this Stipulation, the Division does not concede any defense or mitigation RESPONDENT may assert and that once this Stipulation is approved and fully performed, the Division will close its file in this matter.

7. RESPONDENT agrees and understands that by entering into this Stipulation, RESPONDENT is waiving her right to a hearing at which RESPONDENT may present evidence in her defense, her right to a written decision on the merits of the complaint, her rights to reconsideration and/or rehearing, appeal and/or judicial review, and all other rights which may be accorded by the Nevada Administrative Procedure Act, the Nevada Real Estate Brokers and Salespersons statutes and accompanying regulations, and the federal and state Constitutions. RESPONDENT understands that this Agreement and other documentation may be subject to public records laws. The Commission members who review this matter for approval of this Stipulation may be the same members who ultimately hear, consider, and decide the Complaint if this Stipulation is either not approved by the Commission or is not timely performed by RESPONDENT. RESPONDENT fully understands that she has the right to be represented by legal counsel in this matter at her own expense.

8. Each party shall bear their own attorney's fees and costs, except as provided above.

9. Approval of Stipulation. Once executed, this Stipulation will be filed with the Commission and will be placed on the agenda for approval at its next public meeting. The Division will recommend to the Commission approval of the Stipulation. RESPONDENT agrees that the Commission may approve, reject, or suggest amendments to this

Stipulation that must be accepted or rejected by RESPONDENT before any amendment is effective.

10. Withdrawal of Stipulation. If the Commission rejects this Stipulation or suggests amendments unacceptable to RESPONDENT, RESPONDENT may withdraw from this Stipulation, and the Division may pursue its Complaint before the Commission. This Stipulation then shall become null and void and unenforceable in any manner against either party.

11. Release. In consideration of the execution of this Stipulation, RESPONDENT for herself, her heirs, executors, administrators, successors, and assigns, hereby releases, remises, and forever discharges the State of Nevada, the Department of Business and Industry, and the Division, and each of their respective members, agents, employees, and counsel in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever, known and unknown, in law or equity, that RESPONDENT ever had, now has, may have, or claim to have against any or all of the persons or entities named in this section, arising out of or by reason of the Division's investigation, this disciplinary action, and all other matters relating thereto.

12. Indemnification. RESPONDENT hereby agrees to indemnify and hold harmless the State of Nevada, the Department of Business and Industry, Petitioner, the Division, and each of their respective members, agents, employees, and counsel, in their individual and representative capacities, against any and all claims, suits, and actions brought against said persons and/or entities by reason of the Division's investigation, this disciplinary action, and all other matters relating thereto, and against any and all expenses, damages, and costs, including court costs and attorney fees, which may be sustained by the persons and/or entities named in this section as a result of said claims, suits, and actions.

13. Default. In the event of default under this Stipulation, RESPONDENT agrees that her license shall be immediately suspended, and the unpaid balance of the

administrative fine and costs, together with any attorneys' 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. Debt collection actions for unpaid monetary assessments in this case may be instituted by the Division or its assignee.

14. RESPONDENT has signed and dated this Stipulation only after reading and understanding all terms herein.

DATED this 22nd day of August, 2023

By: _____
THELMA FRANCO-YOUNG

DATED this 22 day of August, 2023

NEVADA DEPARTMENT OF BUSINESS & INDUSTRY, REAL ESTATE DIVISION

By: _____
SHARATH CHANDRA
Administrator

AARON D. FORD
Attorney General

By: _____
Louis V. Csoka (Bar. No. 7667)
Senior Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
Attorneys for Real Estate Division

ORDER

IT IS ORDERED that the foregoing Stipulation and Order for Settlement of Disciplinary Action, submitted by Petitioner and Respondent, is approved in full.

Dated: August 29, 2023.

REAL ESTATE COMMISSION
STATE OF NEVADA

By: _____
Vice President, Nevada Real Estate Commission

Submitted by:

AARON FORD, Attorney General

By:
/s/ Louis V. Csoka
_____
Louis V. Csoka (7667)
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