BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. MARK A. HALL, (B.0042782.LLC; PM.0142782.BRK) Respondent.	**Case No. 2021-220** FILED AUG 29 2023 REAL ESTATE COMMISSION BY Kelley Valadez

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, Phil W. Su, Esq., and Mark A. Hall, ("RESPONDENT") by and through his attorneys of record, Roger P. Croteau, Esq. and Christopher L. Benner, Esq.

RESPONDENT was at all relevant times mentioned in this Complaint licensed as a Broker under license number B.0042782.LLC and holds a Property Management Permit under Credential Number PM.0142782.BRK and is therefore subject to the jurisdiction of the Division and the Commission, and the provisions of NRS chapter 645 and NAC chapter 645.

SUMMARY OF FACTUAL ALLEGATIONS SET FORTH IN COMPLAINT

1. On March 10, 2021, the Division received a complaint against RESPONDENT from RESPONDENT's former employee, Echo Wood ("Complainant"), alleging overcharging property owners and commingling funds. **NRED 0012.**

2. RESPONDENT is the Broker and owner of Southwestern Management And Realty Team ("SMART").

3. SMART maintained a Chase Bank Owners Trust Account, ending in 9887, wherein SMART maintained all property owners' monies of properties managed by SMART. **NRED 0031.**

4. SMART also maintained a Bank of Nevada Tenant Trust account, which appears to be another account maintaining the funds of several SMART property owners. **NRED 0250-0329.**

5. RESPONDENT owns 3155 Casey Drive #203, Las Vegas, NV 89120 (the "Casey Property"). **NRED 0093-0102.**

6. The Residential Property Agreement dated August 1, 2019 (the "RPA") for the Casey Property between RESPONDENT and RESPONDENT's wife, as property owners, and RESPONDENT as broker for SMART, was on a Great Las Vegas Association of Realtors form revised in November 2019. **NRED 0060-0071.**

7. RESPONDENT did not provide another property management agreement for the Casey Property.

8. RESPONDENT leased the Casey Property to the first tenant from June 3, 2019, to September 30, 2019, and the second tenant from December 27, 2019, to March 31, 2021. **NRED 0080-0082.**

9. On March 2, 2020, the second tenant of the Casey Property executed SMART's Additional Terms and Conditions Addendum, a SMART's Rent Payments informational form, SMART's Lease Renewals form, and initialed SMART's Tenants House Rules form. **NRED 0085-0091.**

10. On May 11, 2020, RESPONDENT received a distribution from SMART's Owner's Trust Account in the amounts of $1,075.00 and $1,235.00. **NRED 0014.**

11. RESPONDENT's Statement of Account for the Casey Property provide that as of June 3, 2019, through March 31, 2021, SMART collected the rental monies for the Casey Property, deposited those funds into SMART's Owners Trust Account, and distributed said funds to RESPONDENT. **NRED 0030-0031; 0080-0082.**

12. RESPONDENT's Trust Account Reconciliations for the Chase Bank Owner Trust Account show RESPONDENT had personal funds in the Owners Trust Account with funds of other property owners. **NRED 0182; 0212; 0243.**

13. RESPONDENT's Trust Account Reconciliations for the Nevada Bank Tenant Trust Account show RESPONDENT had personal funds in the account with funds of other property owners. **NRED 0263; 0283; 0303; 0323.**

14. On June 17, 2020, the City of Henderson issued a utility refund check made out to SMART for $210.08. **NRED 0019.**

15. On June 22, 2020, RESPONDENT emailed Complainant, regarding a NV Energy Check for the property located at 2912 Ivorybill Way, North Las Vegas, NV 89084, to inform her that "this check came in the mail this morning. We are depositing it to the BON Gen Acct today." **NRED 0016-0019.**

16. The NV Energy Check was made out "To The Order of Southwestern Management Team LLC for $62.80, and was a "CREDIT BALANCE REFUND." **NRED 0017.**

17. On July 10, 2020, Complainant received an email from SMART Admin stating "This refund check came in the mail today from NV Energy. I will be putting it in the General Account here shortly." **NRED 0018.**

18. On March 10, 2021, the Division sent RESPONDENT correspondence, noting that it received a complaint against RESPONDENT and RESPONDENT's wife, and requested the complete transaction/broker file for the Casey Property and trust account reconciliations due by March 24, 2021. **NRED 0010.**

19. On April 16, 2021, RESPONDENT, through his attorney, emailed the Division a complete transaction/broker file for the Casey Property, and explained that former employees, including Complainant were responsible for the property owners' utilities, tenant account balances, owner's account balances, and financial recordkeeping, among other responsibilities, and because of his disability, i.e. a visual impairment, RESPONDENT relied on former employees and was not aware of any of the financial irregularities or utility accounts. **NRED 0028-0037.**

20. Further, RESPONDENT argues he and his wife retained SMART, a separate legal entity, to manage their property; thus RESPONDENT did not commingle any funds, as the funds in the Owner's Trust Account do not belong to SMART, rather they are RESPONDENT's personal funds. **NRED 0028-0037.**

SUMMARY OF ALLEGED VIOLATIONS OF LAW

21. RESPONDENT violated NRS 645.310(3) when he commingled his personal funds with those funds of property owners managed by RESPONDENT's brokerage.

22. RESPONDENT violated NRS 645.310(4) when he failed to deposit utility refund checks to the appropriate property owners, and instead deposited the utility refund checks into the RESPONDENT's brokerage general operating account.

23. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(11)(c) and (11)(d) by engaging in conduct that constitutes deceitful, fraudulent or dishonest by providing the Division with a false RPA for the Casey Property with a date of August 1, 2019, when the RPA Form was revised in November of 2019.

24. RESPONDENT violated NRS 645.630(1)(e) when he failed to maintain a property management agreement for the Casey Property.

25. RESPONDENT violated NRS 645.6056(1)(a) when RESPONDENT acted as a property manager for the Casey Property, by collecting and distributing rental monies from tenants and managing the property, without first obtaining a properly executed property management agreement.

PROPOSED SETTLEMENT

By entering into this settlement agreement, the RESPONDENT does not admit, and opposes those factual and legal assertions as set forth by RESPONDENT's Answer to Complaint filed on June 13, 2023, and does not admit liability in any manner before the Division or before any other entity or in any other capacity, but for the sole purposes of this settlement does not contest, the above violations. Accordingly, in an effort to avoid the time and expense of litigating these issues before the Commission, as well as any possible further legal appeals from any such decision, and the parties desire to compromise and settle the instant controversy upon the following terms and conditions:

1. RESPONDENT agrees to pay the Division a total amount of $14,373.50 ("Amount Due"), consisting of a $10,000.00 administrative fine imposed by the Division, the Division's pre-hearing costs and fees in the amount of $380.00, and pre-hearing attorney's fees in the amount of $3,993.50.

a. The Amount Due shall be payable to the Division in full within sixty (60) days of the date of the order approving this settlement.

b. No grace period is permitted. If the payment is not actually received by the Division on or before its due date, it shall be construed as an event of default by Respondent.

2. RESPONDENT agrees to voluntarily surrender his Property Management PM.0142782.BRK to the Division within five (5) business days from the date of the order approving this settlement. RESPONDENT further agrees that he will not re-apply for a Property Management permit with the Division for a period of five (5) years from the date of the order approving this settlement.

3. RESPONDENT and the Division agree that by entering into 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.

4. RESPONDENT and the Division agree that by entering into this Stipulation, the RESPONDENT does not admit liability, or concede any defense or mitigation, as to the claims asserted herein, and that no term of this settlement agreement shall serve as any factual or legal determination in any other matter before the Division, or before any other state or federal entity or be presented as evidence in any state or federal judicial court and/or entity.

5. The Division agrees not to pursue any other or greater remedies or fines in connection with RESPONDENT'S alleged conduct referenced herein. The Division further agrees that unless RESPONDENT fails to make timely payment, the Division will not bring any claim or cause directly or indirectly based upon any of the facts, circumstances, or allegations discovered during the Division's investigation and prosecution of this case.

6. RESPONDENT agrees and understands that by entering into this Stipulation RESPONDENT is waiving his right to a hearing at which RESPONDENT may present evidence in his defense, his right to a written decision on the merits of the complaint, his 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 he has the right to be represented by legal counsel in this matter at his own expense.

7. RESPONDENT shall bear his own attorney's fees and costs.

8. 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 may be considered effective.

9. 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.

10. Stipulation is Not Evidence. Neither this Stipulation nor any statements made concerning this Stipulation may be discussed or introduced into evidence at any hearing on the Complaint, if the Division must ultimately present its case based on the Complaint filed in this matter.

11. Release. In consideration of the execution of this Stipulation, RESPONDENT for himself, his 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 of this action, this disciplinary action, and all matters related 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, RESPONDENT agrees that all of his active licenses and permits issued by the Division shall be immediately suspended, and 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. Debt collection actions for unpaid monetary assessments in this case may be instituted by the Division or its assignee. RESPONDENT agrees that the foregoing suspensions shall continue until the unpaid monetary assessments are paid in full.

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

DATED this 18th day of August 2023.

By: _____
MARK A. HALL
Respondent

DATED this 18 day of August 2023.

NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION

By: _____
SHARATH CHANDRA
Administrator

Approved as to form:

ROGER P. CROTEAU & ASSOCIATES

By: _____
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ORDER APPROVING STIPULATION

Case No. 2021-220

The Stipulation for Settlement of Disciplinary Action having come before the Real Estate Commission, Department of Business and Industry, State of Nevada, during its regular agenda on August 22-24, 2023, and the Commission being fully apprised in the premises, and good cause appearing,

IT IS ORDERED that the above Stipulation for Settlement of Disciplinary Action is approved in full.

Dated: this 29 day of August, 2023.

REAL ESTATE COMMISSION
STATE OF NEVADA

By: _____
Vice President, Nevada Real Estate Commission