

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN HUDLER; THE  
COMMONWEALTH COMPANIES, INC.;  
AND NORMAN LEE HOLL,  
Appellants,

vs.

GAIL J. ANDERSON,  
ADMINISTRATOR, REAL ESTATE  
DIVISION, DEPARTMENT OF  
BUSINESS AND INDUSTRY, STATE  
OF NEVADA,  
Respondent.

No. 51046

FILED

SEP 25 2009

THACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a real estate license action. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

BACKGROUND

This case arises out of the purchase and sale of 15 acres of property in Reno, Nevada. Nevada-licensed real estate broker Mary "Missy" McQuattie represented the seller. The buyer was appellant Commonwealth Companies, Inc. Commonwealth is a California-licensed real estate brokerage company owned by Martin Hudler, a California-licensed real estate salesperson. Appellant Norman Lee Holl was the in-house California broker of record for Commonwealth. The purchase agreement lists Holl as the buyer's broker and states that the seller was to pay a brokerage commission to McQuattie and Holl. McQuattie agreed to pay 50 percent of the 6 percent commission to Commonwealth. Commonwealth received \$184,812.57 from the Nevada escrow.

After the close of escrow, McQuattie filed a complaint with the Nevada Real Estate Division (Division). The Division then filed complaints against appellants Hudler, Holl, and Commonwealth with the Real Estate Commission (Commission) alleging that Hudler and Holl engaged in the unlicensed practice of real estate and assisted an unlicensed person in receiving a commission. The Commission found that Hudler, Holl, and Commonwealth committed all the alleged violations and fined them the entire amount of the brokerage commission, jointly and severally. The district court denied the appellants' petition for judicial review.

On appeal, appellants argue the following: (1) they did not engage in the unlicensed practice of real estate because they were not acting "for another;" (2) the Commission erred in finding that Hudler and Holl unlawfully assisted Commonwealth in receiving a commission because they were not acting "for another," and Nevada law allows a Nevada broker to split a commission with an out-of-state broker; (3) there is no legal basis for the fines the Commission imposed; and (4) the findings of fact and conclusions of law of the Commission are insufficient to support its decision.

We conclude that the district court abused its discretion by denying appellants' petition for judicial review because the appellants did not engage in the unlicensed practice of real estate, appellants did not assist Commonwealth in unlawfully receiving a commission, the appellants committed no violations, and the Commission's decision was not supported by substantial evidence. We agree with appellants' arguments and therefore reverse the district court's order denying judicial review.

### Standard of review

This court reviews the evidence presented to the Commission to determine whether the Commission's decision was arbitrary or capricious and thus an abuse of discretion. NRS 233B.135; Installation & Dismantle v. SIIS, 110 Nev. 930, 932, 879 P.2d 58, 59 (1994). On questions of fact, we limit our determination to whether substantial evidence exists in the record to support the Commission's decision. Id., 879 P.2d at 59. Substantial evidence is evidence that a reasonable person could accept as adequate to support a conclusion. Nevada Serv. Employees Union v. Orr, 121 Nev. 675, 679, 119 P.3d 1259, 1261-62 (2005). A reviewing court may decide legal questions without deference to the Commission, but those conclusions of law closely related to the Commission's view of the facts are entitled to deference. Installation & Dismantle, 110 Nev. at 932, 879 P.2d at 59.

### Appellants did not violate NRS 645.235(1)

The Commission found that appellants engaged in activity for which a real estate license is required by practicing real estate and assisting an unlicensed entity in receiving a commission, in violation of NRS 645.235(1). Appellants argue that they did not violate the statute because they did not act "for another" under NRS 645.030 and did not engage in any of the actions prohibited by NRS 645.230(1). We agree with appellants' argument because they were acting as principals, and Commonwealth lawfully received a commission as an out-of-state-brokerage.

### Appellants did not act as unlicensed real estate brokers in violation of NRS 645.235(1)(a)

NRS 645.235(1) allows the Commission to impose a fine or other penalty against anyone who knowingly "[e]ngages or offers to engage

in any activity for which a license . . . is required . . . or [a]ssists or offers to assist another” in doing so. NRS 645.230(1)(a) makes it unlawful to act as a real estate broker without a license from the Division. A real estate broker is “a person who, for another and for compensation or with the intention or expectation of receiving compensation: . . . purchases, . . . or negotiates or offers, attempts or agrees to negotiate the sale, . . . or lists or solicits prospective purchasers, . . . of, any real estate or the improvements thereon . . .” NRS 645.030(1)(a) (emphasis added).

Generally, a broker can share a commission with a purchaser, even if the broker’s principal was unaware of it. Banner v. Elm, 248 A.2d 452, 455 (Md. 1968). Real estate brokers act as a broker and must have a license when they act for another and for compensation. Stout v. Edmonds, 225 Cal. Rptr. 345, 347 (Ct. App. 1986). However, when they are acting as principals regarding their own property, they are not acting for another and any “commission” received in such a situation is really a reduction in the purchase price. Id.; accord Gower v. Strout Realty, Inc., 289 S.E.2d 880, 882 (N.C. Ct. App. 1982) (allowing California-licensed broker to buy North Carolina property as a principal and take a “commission” as a reduction in the purchase price). We conclude that the appellants were acting as principals, not brokers.

#### Conduct of Mr. Hudler, Mr. Holl, and Commonwealth

Hudler was acting as a principal of the buyer in this transaction. He signed the letter of intent as the president of Commonwealth. Commonwealth was the initial purchaser at that point. After the purchase agreement was assigned to Arrow Creek Partners, LLC, he then signed the purchase agreement as a managing member. Hudler is a principal of Commonwealth and Arrow Creek. He is the sole owner of Commonwealth and a managing member of Arrow Creek.

Since McQuattie agreed to split her commission with Hudler, it constituted a reduction of the purchase price. This is not a licensing violation. Thus, applying the statute to Hudler does not serve its purpose of protecting the public in its dealings with real estate professionals. Loomis v. Lange Financial Corp., 109 Nev. 1121, 1127, 865 P.2d 1161, 1164 (1993). Therefore, we conclude that substantial evidence does not support the conclusion that Hudler was acting as a broker for the buyer, Arrow Creek. Rather, Hudler was acting as the buyer, and therefore he did not violate NRS 645.030(1)(a).

Holl is the in-house broker of record for Commonwealth and Hudler's employee. He also is a principal. Therefore, Holl was not acting for another and did not violate NRS 645.030(1)(a). In addition, Commonwealth received the real estate commission, not Holl.

The Commission found that Commonwealth, through its agents, practiced real estate without a Nevada license. We conclude that because Holl and Hudler were not representing another in this transaction, they did not violate NRS 645.030(1)(a). Therefore, Commonwealth did not violate this statute through the conduct of Holl and Hudler.

In summary, substantial evidence does not support the Commission's determination that Hudler, Holl, and Commonwealth violated NRS 645.235(1)(a), and the Commission abused its discretion in so finding.

Hudler and Holl did not assist an unlicensed person in receiving a commission in violation of NRS 645.235(1)(b)

The Commission found that Hudler assisted Holl and Holl assisted Commonwealth in receiving a commission in Nevada when neither Holl nor Commonwealth was licensed in Nevada. We disagree.

Holl and Commonwealth did not receive compensation for their services as real estate brokers

NRS 645.235(1)(b) authorizes the Commission to fine a person for assisting or offering to assist another in violating paragraph (a) by engaging in any activity for which a real estate license is required. To act as a real estate broker, one must act "for another and for compensation." NRS 645.030(1). As discussed above, Hudler and Holl were not acting for another, and therefore were not acting as real estate brokers. Rather, they were acting as principals of the buyer. The funds Commonwealth received were in essence a reduction of the purchase price. Hudler did not assist Holl and Holl did not assist Commonwealth in receiving a commission because they were not acting as brokers and did not receive compensation for acting as brokers. Therefore, we conclude that substantial evidence does not support the Commission's determination that Hudler and Holl violated NRS 645.235(1)(b), and the Commission abused its discretion in this regard.

Commonwealth lawfully received a share of the commission

Under NRS 645.280, a real estate broker can share a commission with a broker licensed in another state. Although a real estate broker must have a Nevada license or cooperative agreement to sue to recover a commission in Nevada courts, there is no such requirement for merely receiving a commission. Beggs v. Lowe, 89 Nev. 547, 549-50, 516 P.2d 467, 468 (1973). The seller of the property authorized the escrow agent to pay the commission to Commonwealth.

This case is similar to Adams Realty Corp. v. Realty Center Invest., 719 P.2d 291 (Ariz. Ct. App. 1986). In Adams, a California-licensed broker represented the purchaser of an Arizona property. Id. at 293. The listing broker was licensed in Arizona and the two brokers

agreed to split the commission equally. Id. The listing broker then argued that it was entitled to the entire commission because the purchasing broker was not licensed in Arizona. Id. Arizona, like Nevada, requires brokers to be licensed to sue for a commission and has a statutory provision that allows out-of-state brokers to collect a commission from transactions in Arizona. Id. at 294. The Arizona Court of Appeals held that the statute's explicit exception allowed out-of-state licensed brokers to collect a commission when they brokered a deal with an Arizona-licensed broker. Id. It held that this furthers the public policy of encouraging interstate real estate transactions. Id. at 295.

Similarly, in this case, McQuattie, a Nevada-licensed broker, agreed to divide a commission with Commonwealth, a California-licensed broker. NRS 645.280 specifically allows out-of-state licensed brokers to receive commissions from transactions in Nevada with Nevada-licensed brokers. Further, the statute allows Nevada-licensed brokers to pay the out-of-state brokers' commissions. Therefore, appellants lawfully received the commission under NRS 645.280 since the seller authorized the escrow agent to pay the commissions to both McQuattie and Commonwealth.

The Commission erred in fining appellants

The Commission erred in fining Hudler, Holl, and Commonwealth. Generally, a fine is a "civil penalty payable to the public treasury." Martinez v. State of Nevada, 120 Nev. 200, 203, 88 P.3d 825, 827 (2004) (internal quotations omitted). Under NRS 645.235, the Commission may impose a fine "or any other remedy or penalty" for knowingly acting as a broker without a license or assisting another in doing so. Because appellants were acting as principals, as discussed above, they did not commit any violations, and therefore, the Commission erred in imposing a fine.

The Commission's findings of fact and conclusions of law are sufficient, but its decision is not supported by substantial evidence


Pursuant to NRS 645.235(5), the Commission's decisions are subject to judicial review under NRS Chapter 233B, which requires that any adverse decision include findings of fact and conclusions of law and that the decision be supported by substantial evidence. NRS 233B.125. The purpose of this statute is to provide minimum due process, and findings must be prepared with sufficient detail to permit judicial review. State, Dep't of Commerce v. Hyt, 96 Nev. 494, 496, 611 P.2d 1096, 1098 (1980). Even if the Commission does not make explicit findings of fact to support a conclusion, if the conclusion gives notice of the facts on which the Commission relied, then this court can imply the necessary factual findings if substantial evidence supports the conclusion. State, Dep't of Commerce v. Soeller, 98 Nev. 579, 586, 656 P.2d 224, 228 (1982).

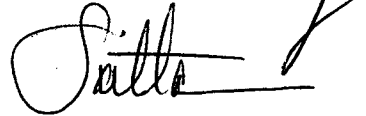
The form of the Commission's findings of facts and conclusions of law is adequate because the Commission explicitly made the findings in writing regarding each appellant. However, as discussed above, the conclusions are not supported by substantial evidence. Appellants were not acting for another and therefore were not practicing real estate without a license in violation of NRS 645.030(1)(a). Also, since appellants were acting as principals, they did not violate NRS 645.030(1)(b) by assisting Commonwealth in receiving a commission. Finally, there was no legal basis for the Commission to assert personal liability against Hudler and Holl. Therefore, the Commission erred in fining the appellants. Accordingly, we


REVERSE the district court's order denying the petition for judicial review and REMAND this matter to the district court with



instructions to remand this case to the Commission for further proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Robert H. Perry, District Judge  
Paul F. Hamilton, Settlement Judge  
Molof & Vohl  
Attorney General Catherine Cortez Masto/Carson City  
Washoe District Court Clerk