

Electronically Filed
Feb 27 2018 02:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 NTC
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13 Attorneys for Plaintiffs

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 JAMES A. BOESIGER, an individual,)
11 MARIA S. BOESIGER, an individual)
12 Plaintiffs,)

Case No.: Case No. A-15-725567-C

13 vs.)

14 DESERT APPRAISALS, LLC a Nevada)
15 Limited-Liability Company, TRAVIS T.)
16 GLIKO, an individual; DOES I-X inclusive)
17 ROE CORPORATIONS XI-XX inclusive)

Defendants.)

[Arbitration Exempt - amount of damages
in excess of \$50,000.00]

18 NOTICE OF APPEAL

19 Notice is hereby given that JAMES A. BOESIGER, and MARIA S. BOESIGER, hereby
20 appeals to the Supreme Court of Nevada from the final decision in favor of Desert Appraisals, LLC
21 entered on the docket on January 26, 2018

22 DATED this 15th day of February, 2018

23 DAVID J. WINTERTON & ASSOCIATES LTD.

24 By: 

25 David J. Winterton Esq.
26 Nevada Bar No.: 004142
27 7881 W. Charleston Blvd., Suite 220
28 Las Vegas, Nevada 89117

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Eric Tran, Esq.
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
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Employee of DAVID J. WINTERTON & ASSOC., LTD.

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-15-725567-C

James Boesiger, Plaintiff(s)
vs.
Desert Appraisals LLC, Defendant(s)

§
§
§
§
§

Location: **Department 24**
Judicial Officer: **Crockett, Jim**
Filed on: **10/02/2015**
Case Number History:
Cross-Reference Case Number: **A725567**

CASE INFORMATION

Statistical Closures
01/19/2018 Summary Judgment

Case Type: **Other Malpractice**
Case Flags: **Appealed to Supreme Court**
Arbitration Exemption Granted

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-15-725567-C
Court Department 24
Date Assigned 07/01/2017
Judicial Officer Crockett, Jim

PARTY INFORMATION

Plaintiff **Boesiger, James A.**

Lead Attorneys
Winterton, David J
Retained
7023630317(W)

Boesiger, Maria S

Winterton, David J
Retained
7023630317(W)

Defendant **Desert Appraisals LLC**

Garin, Joseph P
Retained
702-382-1500(W)





Gliko, Travis T

Garin, Joseph P
Retained
702-382-1500(W)

DATE

EVENTS & ORDERS OF THE COURT












INDEX

10/02/2015	 Complaint Filed By: Plaintiff Boesiger, James A. <i>Complaint</i>	
10/06/2015	 Summons Filed by: Plaintiff Boesiger, James A. <i>Summons</i>	
10/06/2015	 Summons Filed by: Plaintiff Boesiger, James A. <i>Summons</i>	
03/21/2016	 Answer Filed By: Defendant Desert Appraisals LLC <i>Desert Appraisals, LLC and Travis T. Gliko's Answer and Affirmative Defenses to Plaintiffs' Complaint</i>	

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-15-725567-C

11/09/2016	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption - Granted</i>
12/08/2016	 Arbitration File <i>Arbitration File</i>
01/24/2017	 Joint Case Conference Report Filed By: Plaintiff Boesiger, James A. <i>Joint Case Conference Report</i>
03/01/2017	 Arbitration File <i>Arbitration File</i>
03/29/2017	 Scheduling Order <i>Scheduling Order</i>
04/04/2017	 Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial</i>
05/16/2017	 Motion to Strike Filed By: Defendant Desert Appraisals LLC <i>Defendants' Motion to Strike Plaintiffs' Designated Expert Craig Jiu</i>
05/22/2017	 Withdrawal <i>Withdraw of Designation of Expert Witness Craig Jiu</i>
06/16/2017	CANCELED Motion to Strike (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Vacated - per Commissioner</i> <i>Defendants' Motion to Strike Plaintiffs' Designated Expert Craig Jiu</i>
07/01/2017	Case Reassigned to Department 24 <i>Civil Case Reassignment to Judge Jim Crockett</i>
07/18/2017	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial</i>
10/12/2017	 Status Check: Trial Readiness (9:00 AM) (Judicial Officer: Crockett, Jim) 10/12/2017, 10/19/2017
10/25/2017	 Motion for Summary Judgment Filed By: Defendant Desert Appraisals LLC; Defendant Gliko, Travis T <i>Defendants Desert Appraisals, LLC and Travis Gliko's Motion for Summary Judgment</i>
11/17/2017	 Notice of Non Opposition Filed By: Defendant Desert Appraisals LLC; Defendant Gliko, Travis T <i>Notice of Plaintiffs' Non-Opposition to Defendants' Motion for Summary Judgment</i>
11/17/2017	 Affidavit in Support Filed By: Plaintiff Boesiger, James A.; Plaintiff Boesiger, Maria S <i>Affidavit in Support of Opposition to Motion for Summary Judgment</i>
11/17/2017	 Opposition to Motion

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-15-725567-C

	Filed By: Plaintiff Boesiger, James A.; Plaintiff Boesiger, Maria S <i>Opposition to Defendants Desert Appraisals, LLC and Travis T. Gliko's Motion for Summary Judgment</i>
12/01/2017	 Reply in Support Filed By: Defendant Desert Appraisals LLC; Defendant Gliko, Travis T <i>Defendants' Reply in Support of Motion for Summary Judgment</i>
12/05/2017	 Motion for Summary Judgment (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Defendants Desert Appraisals, LLC and Travis Gliko's Motion for Summary Judgment</i>
12/06/2017	 Notice of Change of Address <i>Notice of Change of Firm Address</i>
01/09/2018	Pre Trial Conference (9:30 AM) (Judicial Officer: Crockett, Jim)
01/16/2018	 Status Check (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Status Check: Order re: Defendants' Motion for Summary Judgment</i>
01/19/2018	Summary Judgment (Judicial Officer: Crockett, Jim) Debtors: James A. Boesiger (Plaintiff), Maria S Boesiger (Plaintiff) Creditors: Desert Appraisals LLC (Defendant), Travis T Gliko (Defendant) Judgment: 01/19/2018, Docketed: 01/22/2018
01/19/2018	 Order Granting Motion Filed By: Defendant Desert Appraisals LLC; Defendant Gliko, Travis T <i>Order Granting Defendants' Motion for Summary Judgment</i>
01/25/2018	 Notice of Entry of Order Filed By: Defendant Desert Appraisals LLC; Defendant Gliko, Travis T <i>Notice of Entry of Order Granting Defendants' Motion for Summary Judgment</i>
01/26/2018	 Memorandum of Costs and Disbursements Filed By: Defendant Desert Appraisals LLC <i>Defendants' Memorandum of Costs and Disbursements</i>
02/01/2018	CANCELED Calendar Call (9:30 AM) (Judicial Officer: Togliatti, Jennifer) <i>Vacated</i>
02/05/2018	CANCELED Bench Trial (10:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated</i>
02/08/2018	 Motion for Attorney Fees and Costs Filed By: Defendant Desert Appraisals LLC <i>Defendants' Motion for Attorney's Fees and Costs</i>
02/15/2018	 Memorandum of Costs and Disbursements Filed By: Defendant Desert Appraisals LLC <i>Desert Appraisal's Amended Memorandum of Costs</i>
02/16/2018	 Declaration Filed By: Defendant Desert Appraisals LLC; Defendant Gliko, Travis T <i>Declaration of Joseph Garin in Support of Defendants' Motion for Attorneys' Fees and Costs</i>
02/16/2018	 Notice of Appeal

DEPARTMENT 24
CASE SUMMARY
CASE No. A-15-725567-C

Filed By: Plaintiff Boesiger, James A.; Plaintiff Boesiger, Maria S
Notice of Appeal

03/29/2018

Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Crockett, Jim)

DATE

FINANCIAL INFORMATION

Defendant Desert Appraisals LLC

Total Charges 423.00

Total Payments and Credits 423.00

Balance Due as of 2/21/2018 0.00

Defendant Gliko, Travis T

Total Charges 30.00

Total Payments and Credits 30.00

Balance Due as of 2/21/2018 0.00

Plaintiff Boesiger, James A.

Total Charges 270.00

Total Payments and Credits 270.00

Balance Due as of 2/21/2018 0.00

Plaintiff Boesiger, Maria S

Total Charges 54.00

Total Payments and Credits 54.00

Balance Due as of 2/21/2018 0.00

DISTRICT COURT CIVIL COVER SHEET | X

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

JAMES A. BOESIGER, an individual,

MARIA S. BOESIGER, an individual

Defendant(s) (name/address/phone):

DESERT APPRAISALS, LLC a Nevada

Limited-Liability Company

Attorney (name/address/phone):

DAVID WINTERTON AND ASSOCIATES

1140 N. TOWN CENTER DRIVE, SUITE 120

LAS VEGAS, NEVADA 89144

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

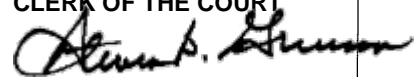
Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input checked="" type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

10/02/2015
Date

Signature of initiating party or representative

See other side for family-related case filings.



LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
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Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Case No.: A-15-725567-C
Dept. No.: XXIV

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants Desert Appraisal, LLC and Travis Gliko's (collectively referred to as "Defendants") Motion for Summary Judgment came before the Court on December 5, 2017 at 9:00 a.m. Eric N. Tran, Esq. appeared on behalf of Defendants; and David Winterton, Esq. appeared on behalf of Plaintiffs James A. Boesiger and Maria S. Boesiger (collectively referred to as "Plaintiffs"). The Court having reviewed the pleadings and papers on file, and oral arguments of counsel, and cause appearing, hereby orders as follows:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

I. FINDINGS OF FACT

1. On September 26, 2013, Plaintiffs entered into a Purchase Agreement to purchase real property located at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141 ("the Property").

2. As part of the agreement, Plaintiffs made an initial offer of \$337,000.00 contingent on Plaintiffs obtaining a loan in the amount of \$325,205.00 from the lender, Guild Mortgage, Inc.

3. After Plaintiffs' initial offer of \$337,000.00 to purchase the Property was accepted by the Seller, Guild Mortgage hired Defendants to conduct an appraisal on the Property.

4. On October 9, 2013, Defendant Gliko conducted an appraisal of the Property.

5. According to the Appraisal Report, Defendant Gliko appraised the Property at \$340,000.00. The Property was also appraised at having 3,002 square feet of gross living area.

6. On October 2, 2015, Plaintiffs filed a Complaint against Defendants asserting claims for (1) Professional Negligence; (2) Breach of Third Party Beneficiary Contract; (3) Negligent Misrepresentation; and (4) Breach of the Statutory Duty to Disclose Material Facts pursuant to NRS 645C.470.

7. Plaintiffs' Complaint stems from Plaintiff Maria Boesiger's belief that "Defendants did an appraisal on the Property that was completely wrong" and that "Defendants used the wrong model to create their appraisal." See Complaint at ¶ 18. The Complaint also alleges that Defendants appraised the Property at 400-500 square feet higher than the actual size of the Property. Id. at ¶ 19. Plaintiffs allege that Defendants' wrong appraisal of the Property resulted in Plaintiffs paying \$337,000.00 for the Property and required Plaintiffs to obtain a larger loan to purchase the Property. Id. at ¶ 20.

1 8. On July 29, 2016, Plaintiffs' served their designation of expert witness
2 naming appraiser Craig Jiu as their expert. Plaintiffs stated that Mr. Jiu was designated
3 to discuss the errors in the Defendants' appraisal. However, Plaintiffs' expert disclosure
4 did not contain an expert report regarding the statements or opinions of Mr. Jiu or the
5 data or other information that Mr. Jiu relied upon. Instead, Plaintiffs' "designation of
6 expert witness Craig Jiu" was a one-page document simply stating that Plaintiffs
7 designated Craig Jiu as an expert. On May 22, 2017, Plaintiffs withdrew their Expert
8 Designation of Craig Jiu after Defendants filed a Motion to Strike Plaintiffs' Expert
9 Designation. The deadline for expert disclosures was June 8, 2017, and Plaintiffs never
10 disclosed another expert to support their case.

11 9. The premise of Plaintiffs' professional negligence claim against
12 Defendants is that Plaintiffs believe Defendants appraised the Property incorrectly
13 because Defendants were unaware that the Clark County Assessor's Office had a
14 different model home and a different square footage listed in its records. See Maria
15 Boesiger's Affidavit attached to Plaintiffs' Opposition at ¶ 13, 14, 15. In this regard,
16 Maria Boesiger's affidavit states as follows:

17 13. Subsequently, the Clark County tax assessment on my
18 home led to the discovery that the actual square footage of the
19 house was significantly smaller than the amount listed in the
20 assessor's record at the time I purchased the house. It was
subsequently revised by the county to reflect the true square
footage.

21 14. The appraiser from the Clark County came to my house and
22 said it was the wrong model and not the one they have on file.
23 He looked very confused by it. Clark County has since changed
the assessment to reflect the lower square footage.

24 15. I was unable to refinance my house and qualify for a less
25 expensive conventional loan because of the overvaluation of the
26 house in the initial appraisal by Travis Gliko before I finalized
the purchase of the home.

27 Id.

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10. However, the Appraisal Report makes it clear that Defendant Travis Gliko was well aware of the discrepancy in the square footage of the Property from the Assessor's Office and the MLS Listing. In this regard, the Appraisal Report clearly states as follows:

SQUARE FOOTAGE DIFFERENCE:

The Assessor and MLS Listing have a documented 3,533 SF of living area for the subject property. This is incorrect as the subject was former model home with the garage converted to office space. It has since been converted back to the original floor plan with a 2-car garage but the Assessor and MLS still have the garage space as living area. The appraiser approx. measurements with the 2 car garage is 3,002SF. This appears to be the correct living square footage as verified with the builders floor plan. Therefore, the appraiser will utilize the appraisers approx measurements within the context of this report.

See Defendants' Appraisal Report at Exhibit C to Defendants' Motion for Summary Judgment at DA00076 (bold underline emphasis added).

11. The Appraiser Report was also made directly and solely for the benefit of the Lender Guild Mortgage. For example, the front of the Appraisal Report states that the appraisal is for "Guild Mortgage." See Defendants' Motion for Summary Judgment at **Exhibit C** to Appraisal Report at DA000066. The second page of the Appraisal Report states "the purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property." See Id. at DA000067. The Appraiser Report also states the intended user and intended use is as follows:

Intended Use: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

Intended User: The Intended user for this appraisal report is the lender/client.

Id. at DA000070.

The Appraisal Report then identified the lender/client as follows:

LENDER/CLIENT

Name Solidifi

Company Name Guild Mortgage

Id. at DA000072

The Supplemental Addendum portion of the Appraisal Report states the intended user is as follows:

INTENDED USER:

The Intended User of this appraisal report is the Lender/Client. The Intended Use is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to the state Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and the Definition of Market Value. **No additional intended Users are identified by this appraiser.**

Id. at DA000076 (bold emphasis added).

12. Nowhere in the Appraisal Report does it clearly state the intended beneficiaries are the Plaintiffs. On the contrary, as emphasized above, the Appraiser Report clearly states that "no addition intended users are identified by this appraiser."

Id. at DA00076.

II. CONCLUSIONS OF LAW

13. In order to establish a prima facie case of negligence, a plaintiff must establish four elements: "(1) the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages." Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc., 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009).

14. When a claim of negligence is based on an allegation that a professional was negligent, the plaintiff must show that the professional's conduct fell below the standard of care associated with that profession. See Redden v. SCI Colo. Funeral Servs., Inc., 38 P.3d 75, 80-81 (Colo.2001). For those practicing a profession involving specialized knowledge or skill, the applicable standard of care generally requires the actor to possess a standard minimum of special knowledge and ability and to exercise

1 reasonable care in a manner consistent with members of the profession in good
2 standing. Hice v. Lott, 223 P.3d 139, 143 (Colo. App. 2009).

3 15. This means that a plaintiff in a professional malpractice action is required
4 to provide expert testimony to establish defendant's standard of care because ordinary
5 persons are not conversant with it. Daniel, Mann, Johnson & Mendenhall v. Hilton
6 Hotels Corp., 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982); Tommy L. Griffin
7 Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 570 S.E.2d
8 197, 203 (S.C.Ct.App. 2002); Hice, 223 P.3d at 143.

9 In Nevada, the general rule governing the admissibility of expert testimony is
10 NRS. 50.275, which states:

11 If scientific, technical or other specialized knowledge will
12 assist the trier of fact to understand the evidence or to
13 determine a fact in issues, a witness qualified as an expert
14 by special knowledge, skill, experience, training, or
15 education may testify to matters within the scope of such
16 knowledge.

16 The Nevada Supreme Court discussed NRS 50.275 in Hallmark v. Eldridge,
17 shedding light on various aspects of the statute. Hallmark v. Eldridge, 124 Nev. 492,
18 189 P.3d 646, 650 (2008). In Hallmark, the Court held that before a person may testify
19 as an expert pursuant to NRS 50.275, the District Court must first determine whether he
20 or she is qualified in an area of scientific, technical, or other specialized knowledge. Id.,
21 124 Nev. at 499, 189 P.3d at 651. In determining whether a person is properly
22 qualified, the court should consider the following factors: "(1) formal schooling and
23 academic degrees, (2) licensure, (3) employment experience, and (4) practical
24 experience and specialized training." Id.

25 Expert testimony is unnecessary only in such cases where the relevant standard
26 of care does not require specialized or technical knowledge. See Am. Family Mut. Ins.
27 Co. v. Allen, 102 P.3d 333, 343 (Colo.2004); see also White v. Jungbauer, 128 P.3d
28 263, 264 (Colo.App.2005) (expert testimony is not required if the subject matter of a

professional negligence claim lies within the ambit of common knowledge of ordinary persons).; Daniel, 98 Nev.at 115, 642 P.2d at 1087.

NOW THEREFORE, IT IS HEREBY ORDERED:

16. With respects to Plaintiffs' causes of action for Professional Negligence, in this case, Plaintiffs' failure to disclose an expert is fatal to their case as an expert is necessary to establish the duty of care, and Defendants' breach of the duty of care. Likewise, Plaintiffs cannot simply rely on statements made by Plaintiff Marie Boesiger because Ms. Boesiger is not qualified to provide any testimony regarding the duty of care or Defendants' breach of the duty of care.

17. With respects to Plaintiffs' causes of action for Negligent Misrepresentation and Breach of the Statutory Duty to Disclose Material Facts, these claims also fail as they are derivative of Plaintiffs' Professional Negligence claim.

18. With respects to Plaintiffs' cause of action for Breach of Third Party Beneficiary, this claim fails because the Appraisal Report clearly and unequivocally state that the Lender Guild Mortgage is the only intended beneficiary. The Appraisal Report also clearly state that "[n]o additional intended Users are identified by this appraiser." In addition, because Plaintiffs are not intended beneficiaries to the Appraisal Report, Plaintiffs do not even have standing as there was never ever a duty owed to Plaintiffs which is dispositive of this entire case.

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19. Defendants' Motion for Summary Judgment is hereby **GRANTED** in its entirety.

Dated this 12 day of January, 2018.


DISTRICT COURT JUDGE JIM CROCKET

Submitted by:

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ. (Bar No. 6653)
ERIC N. TRAN, ESQ. (Bar No. 11876)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendants

Approved as to form and content:

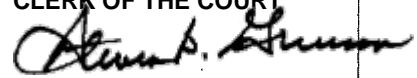
DAVID J. WINTERTON & ASSOC., LTD.

Submitted for review/No Response

By: _____

DAVID J. WINTERTON, ESQ. (Bar No. 4142)
7881 W. Charleston Blvd., Suite 220
Las Vegas, NV 89117

Attorneys for Plaintiffs



LIPSON NEILSON, P.C.
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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Case No.: A-15-725567-C
Dept. No.: XXIV

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

1 Please take notice that on the 19th day of January, 2018, an Order Granting
2 Defendants' Motion for Summary Judgment was entered in the above-captioned matter. A
3 copy of said Order is attached hereto and made part hereof.

4 Dated this 25th day of January, 2018.

5 LIPSON NEILSON, P.C.

6
7 */s/ Eric N. Tran*

8 By: _____
9 JOSEPH P. GARIN, ESQ. (Bar No. 6653)
10 ERIC N. TRAN, ESQ. (Bar No. 11876)
11 9900 Covington Cross Drive, Suite 120
12 Las Vegas, Nevada 89144

13 *Attorneys for Defendants*
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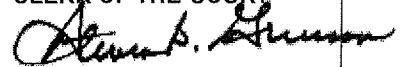
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 25th day of January, 2018, I electronically served the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

David J. Winterton, Esq.
DAVID J. WINTERTON & ASSOC.
1140 N. Town Center Dr., Ste. 120
Las Vegas, NV 89144
david@davidwinterton.com
Attorneys for Plaintiffs

/s/ Kim Glad

An Employee of LIPSON NEILSON P.C.



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jgarin@lipsonneilson.com
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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Case No.: A-15-725567-C
Dept. No.: XXIV

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants Desert Appraisal, LLC and Travis Gliko's (collectively referred to as "Defendants") Motion for Summary Judgment came before the Court on December 5, 2017 at 9:00 a.m. Eric N. Tran, Esq. appeared on behalf of Defendants; and David Winterton, Esq. appeared on behalf of Plaintiffs James A. Boesiger and Maria S. Boesiger (collectively referred to as "Plaintiffs"). The Court having reviewed the pleadings and papers on file, and oral arguments of counsel, and cause appearing, hereby orders as follows:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

I. FINDINGS OF FACT

1. On September 26, 2013, Plaintiffs entered into a Purchase Agreement to purchase real property located at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141 ("the Property").

2. As part of the agreement, Plaintiffs made an initial offer of \$337,000.00 contingent on Plaintiffs obtaining a loan in the amount of \$325,205.00 from the lender, Guild Mortgage, Inc.

3. After Plaintiffs' initial offer of \$337,000.00 to purchase the Property was accepted by the Seller, Guild Mortgage hired Defendants to conduct an appraisal on the Property.

4. On October 9, 2013, Defendant Gliko conducted an appraisal of the Property.

5. According to the Appraisal Report, Defendant Gliko appraised the Property at \$340,000.00. The Property was also appraised at having 3,002 square feet of gross living area.

6. On October 2, 2015, Plaintiffs filed a Complaint against Defendants asserting claims for (1) Professional Negligence; (2) Breach of Third Party Beneficiary Contract; (3) Negligent Misrepresentation; and (4) Breach of the Statutory Duty to Disclose Material Facts pursuant to NRS 645C.470.

7. Plaintiffs' Complaint stems from Plaintiff Maria Boesiger's belief that "Defendants did an appraisal on the Property that was completely wrong" and that "Defendants used the wrong model to create their appraisal." See Complaint at ¶ 18. The Complaint also alleges that Defendants appraised the Property at 400-500 square feet higher than the actual size of the Property. Id. at ¶ 19. Plaintiffs allege that Defendants' wrong appraisal of the Property resulted in Plaintiffs paying \$337,000.00 for the Property and required Plaintiffs to obtain a larger loan to purchase the Property. Id. at ¶ 20.

1 8. On July 29, 2016, Plaintiffs' served their designation of expert witness
2 naming appraiser Craig Jiu as their expert. Plaintiffs stated that Mr. Jiu was designated
3 to discuss the errors in the Defendants' appraisal. However, Plaintiffs' expert disclosure
4 did not contain an expert report regarding the statements or opinions of Mr. Jiu or the
5 data or other information that Mr. Jiu relied upon. Instead, Plaintiffs' "designation of
6 expert witness Craig Jiu" was a one-page document simply stating that Plaintiffs
7 designated Craig Jiu as an expert. On May 22, 2017, Plaintiffs withdrew their Expert
8 Designation of Craig Jiu after Defendants filed a Motion to Strike Plaintiffs' Expert
9 Designation. The deadline for expert disclosures was June 8, 2017, and Plaintiffs never
10 disclosed another expert to support their case.

11 9. The premise of Plaintiffs' professional negligence claim against
12 Defendants is that Plaintiffs believe Defendants appraised the Property incorrectly
13 because Defendants were unaware that the Clark County Assessor's Office had a
14 different model home and a different square footage listed in its records. See Maria
15 Boesiger's Affidavit attached to Plaintiffs' Opposition at ¶ 13, 14, 15. In this regard,
16 Maria Boesiger's affidavit states as follows:

17 13. Subsequently, the Clark County tax assessment on my
18 home led to the discovery that the actual square footage of the
19 house was significantly smaller than the amount listed in the
20 assessor's record at the time I purchased the house. It was
subsequently revised by the county to reflect the true square
footage.

21 14. The appraiser from the Clark County came to my house and
22 said it was the wrong model and not the one they have on file.
23 He looked very confused by it. Clark County has since changed
the assessment to reflect the lower square footage.

24 15. I was unable to refinance my house and qualify for a less
25 expensive conventional loan because of the overvaluation of the
26 house in the initial appraisal by Travis Gliko before I finalized
the purchase of the home.

27 Id.

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10. However, the Appraisal Report makes it clear that Defendant Travis Gliko was well aware of the discrepancy in the square footage of the Property from the Assessor's Office and the MLS Listing. In this regard, the Appraisal Report clearly states as follows:

SQUARE FOOTAGE DIFFERENCE:

The Assessor and MLS Listing have a documented 3,533 SF of living area for the subject property. This is incorrect as the subject was former model home with the garage converted to office space. It has since been converted back to the original floor plan with a 2-car garage but the Assessor and MLS still have the garage space as living area. The appraiser approx. measurements with the 2 car garage is 3,002SF. This appears to be the correct living square footage as verified with the builders floor plan. Therefore, the appraiser will utilize the appraisers approx measurements within the context of this report.

See Defendants' Appraisal Report at Exhibit C to Defendants' Motion for Summary Judgment at DA00076 (bold underline emphasis added).

11. The Appraiser Report was also made directly and solely for the benefit of the Lender Guild Mortgage. For example, the front of the Appraisal Report states that the appraisal is for "Guild Mortgage." See Defendants' Motion for Summary Judgment at **Exhibit C** to Appraisal Report at DA000066. The second page of the Appraisal Report states "the purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property." See Id. at DA000067. The Appraiser Report also states the intended user and intended use is as follows:

Intended Use: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

Intended User: The Intended user for this appraisal report is the lender/client.

Id. at DA000070.

1 The Appraisal Report then identified the lender/client as follows:

2 LENDER/CLIENT

3 Name Solidifi

4 Company Name Guild Mortgage

5 Id. at DA000072

6 The Supplemental Addendum portion of the Appraisal Report states the intended
7 user is as follows:

8 **INTENDED USER:**

9 The Intended User of this appraisal report is the
10 Lender/Client. The Intended Use is to evaluate the property
11 that is the subject of this appraisal for a mortgage finance
12 transaction, subject to the state Scope of Work, purpose of
13 the appraisal, reporting requirements of this appraisal report
14 form, and the Definition of Market Value. **No additional**
15 **intended Users are identified by this appraiser.**

16 Id. at DA000076 (bold emphasis added).

17 12. Nowhere in the Appraisal Report does it clearly state the intended
18 beneficiaries are the Plaintiffs. On the contrary, as emphasized above, the Appraiser
19 Report clearly states that "no addition intended users are identified by this appraiser."

20 Id. at DA00076.

21 **II. CONCLUSIONS OF LAW**

22 13. In order to establish a prima facie case of negligence, a plaintiff must
23 establish four elements: "(1) the existence of a duty of care, (2) breach of that duty, (3)
24 legal causation, and (4) damages." Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.,
25 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009).

26 14. When a claim of negligence is based on an allegation that a professional
27 was negligent, the plaintiff must show that the professional's conduct fell below the
28 standard of care associated with that profession. See Redden v. SCI Colo. Funeral
Servs., Inc., 38 P.3d 75, 80-81 (Colo.2001). For those practicing a profession involving
specialized knowledge or skill, the applicable standard of care generally requires the
actor to possess a standard minimum of special knowledge and ability and to exercise

1 reasonable care in a manner consistent with members of the profession in good
2 standing. Hice v. Lott, 223 P.3d 139, 143 (Colo. App. 2009).

3 15. This means that a plaintiff in a professional malpractice action is required
4 to provide expert testimony to establish defendant's standard of care because ordinary
5 persons are not conversant with it. Daniel, Mann, Johnson & Mendenhall v. Hilton
6 Hotels Corp., 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982); Tommy L. Griffin
7 Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 570 S.E.2d
8 197, 203 (S.C.Ct.App. 2002); Hice, 223 P.3d at 143.

9 In Nevada, the general rule governing the admissibility of expert testimony is
10 NRS. 50.275, which states:

11 If scientific, technical or other specialized knowledge will
12 assist the trier of fact to understand the evidence or to
13 determine a fact in issues, a witness qualified as an expert
14 by special knowledge, skill, experience, training, or
15 education may testify to matters within the scope of such
16 knowledge.

17 The Nevada Supreme Court discussed NRS 50.275 in Hallmark v. Eldridge,
18 shedding light on various aspects of the statute. Hallmark v. Eldridge, 124 Nev. 492,
19 189 P.3d 646, 650 (2008). In Hallmark, the Court held that before a person may testify
20 as an expert pursuant to NRS 50.275, the District Court must first determine whether he
21 or she is qualified in an area of scientific, technical, or other specialized knowledge. Id.,
22 124 Nev. at 499, 189 P.3d at 651. In determining whether a person is properly
23 qualified, the court should consider the following factors: "(1) formal schooling and
24 academic degrees, (2) licensure, (3) employment experience, and (4) practical
25 experience and specialized training." Id.

26 Expert testimony is unnecessary only in such cases where the relevant standard
27 of care does not require specialized or technical knowledge. See Am. Family Mut. Ins.
28 Co. v. Allen, 102 P.3d 333, 343 (Colo.2004); see also White v. Jungbauer, 128 P.3d
263, 264 (Colo.App.2005) (expert testimony is not required if the subject matter of a

professional negligence claim lies within the ambit of common knowledge of ordinary persons).; Daniel, 98 Nev.at 115, 642 P.2d at 1087.

NOW THEREFORE, IT IS HEREBY ORDERED:

16. With respects to Plaintiffs' causes of action for Professional Negligence, in this case, Plaintiffs' failure to disclose an expert is fatal to their case as an expert is necessary to establish the duty of care, and Defendants' breach of the duty of care. Likewise, Plaintiffs cannot simply rely on statements made by Plaintiff Marie Boesiger because Ms. Boesiger is not qualified to provide any testimony regarding the duty of care or Defendants' breach of the duty of care.

17. With respects to Plaintiffs' causes of action for Negligent Misrepresentation and Breach of the Statutory Duty to Disclose Material Facts, these claims also fail as they are derivative of Plaintiffs' Professional Negligence claim.

18. With respects to Plaintiffs' cause of action for Breach of Third Party Beneficiary, this claim fails because the Appraisal Report clearly and unequivocally state that the Lender Guild Mortgage is the only intended beneficiary. The Appraisal Report also clearly state that "[n]o additional intended Users are identified by this appraiser." In addition, because Plaintiffs are not intended beneficiaries to the Appraisal Report, Plaintiffs do not even have standing as there was never ever a duty owed to Plaintiffs which is dispositive of this entire case.

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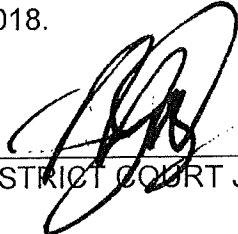
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19. Defendants' Motion for Summary Judgment is hereby **GRANTED** in its entirety.

Dated this 12 day of January, 2018.


DISTRICT COURT JUDGE JIM CROCKET

Submitted by:

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ. (Bar No. 6653)
ERIC N. TRAN, ESQ. (Bar No. 11876)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Attorneys for Defendants

Approved as to form and content:

DAVID J. WINTERTON & ASSOC., LTD.

Submitted for review/No Response

By: _____

DAVID J. WINTERTON, ESQ. (Bar No. 4142)
7881 W. Charleston Blvd., Suite 220
Las Vegas, NV 89117

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Malpractice

COURT MINUTES

October 12, 2017

A-15-725567-C James Boesiger, Plaintiff(s)
vs.
Desert Appraisals LLC, Defendant(s)

**October 12, 2017 9:00 AM Status Check: Trial
Readiness**

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT: Winterton, David J Attorney

JOURNAL ENTRIES

- Court noted the absence of Defense Counsel and inquired as to whether Mr. Winterton has had contact. Mr. Winterton advised he was not able to reach them but noted he had another hearing. COURT ORDERED, matter CONTINUED for both parties to be present. Mr. Winterton to advise opposing Counsel of the continued date.

10/19/17 9:00 AM STATUS CHECK: TRIAL READINESS

*CLERK'S NOTE: Minute order sent via e-mail by way of e-service list./kh 10-12-17

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Malpractice

COURT MINUTES

October 19, 2017

A-15-725567-C James Boesiger, Plaintiff(s)
vs.
Desert Appraisals LLC, Defendant(s)

**October 19, 2017 9:00 AM Status Check: Trial
Readiness**

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

PARTIES

PRESENT: Winterton, David J Attorney

JOURNAL ENTRIES

- Eric Tran, Esq., present on behalf of the Defendant.

Court noted discovery closed on 09/27/17 and this is the first status check for trial readiness. Upon Court's inquiry, Mr. Winterton stated this trial will take about 2 days, may 3. Court agreed that trial will take 3 days on the outside. Mr. Winterton stated he has a long trial set for 3 weeks in February. Court stated counsel can stipulate or in the alternative wait until the Pre-Trial Conference and if counsel's case goes forward it can be discussed at that time. Mr. Tran stated they anticipate filing a Motion for Summary Judgment and a Motion to Strike.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Malpractice

COURT MINUTES

December 05, 2017

A-15-725567-C James Boesiger, Plaintiff(s)
vs.
Desert Appraisals LLC, Defendant(s)

**December 05, 2017 9:00 AM Motion for Summary
Judgment**

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT: Tran, Eric N. Attorney
Winterton, David J Attorney

JOURNAL ENTRIES

- Court noted there was a notice of non-opposition filed and an opposition filed thereafter. Court stated its review of the pleadings, arguments as stated, its findings, and inclination. Arguments by Mr. Winterton in opposition to the motion. COURT FINDS, there is no genuine issue of material fact; third-party beneficiary law eliminates Plaintiff's case in all respects, and stated its further findings. Further arguments by Mr. Winterton. COURT ORDERED, Defendant's motion for summary judgment GRANTED. Mr. Tran to prepare the order along with findings of fact and conclusions of law, within TEN days per EDCR 7.21.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Malpractice

COURT MINUTES

January 09, 2018

A-15-725567-C James Boesiger, Plaintiff(s)
vs.
Desert Appraisals LLC, Defendant(s)

January 09, 2018 9:30 AM Pre Trial Conference

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT: Tran, Eric N. Attorney

JOURNAL ENTRIES

- Court noted on this case the motion for summary judgment was granted on 12/5/17 and Counsel was asked to prepare findings of fact and conclusions of law along with the order. Mr. Tran advised he was not aware that there would be no transcript unless requested and had to go off his notes; advised it has now been submitted to Plaintiff's Counsel for approval as to form and content. COURT ORDERED, matter SET for status on the order.

1/16/18 9:00 AM STATUS CHECK: ORDER RE: MOTION FOR SUMMARY JUDGMENT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Malpractice

COURT MINUTES

January 16, 2018

A-15-725567-C James Boesiger, Plaintiff(s)
vs.
Desert Appraisals LLC, Defendant(s)

January 16, 2018 9:00 AM Status Check

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No one present. Court noted the order was received and signed on 1/12/18, and ORDERED,
matter CONTINUED for status on the filing.

CONTINUED TO: 2/13/18 9:00 AM



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT**

**DAVID J. WINTERTON, ESQ.
7881 W. CHARLESTON BLVD., SUITE 220
LAS VEGAS, NV 89117**

**DATE: February 21, 2018
CASE: A-15-725567-C**

**RE CASE: JAMES A. BOESIGER; MARIA S. BOESIGER vs. DESERT APPRAISALS, LLC;
TRAVIS T. GLIKO**

NOTICE OF APPEAL FILED: February 16, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

JAMES A. BOESIGER; MARIA S.
BOESIGER,

Plaintiff(s),

vs.

DESERT APPRAISALS, LLC; TRAVIS T.
GLIKO,

Defendant(s),

Case No: A-15-725567-C

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 21 day of February 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk