

SHARATH CHANDRA,  
ADMINISTRATOR, NEVADA REAL  
ESTATE DIVISION,

Appellant

Vs.

MELANI SCHULTE; AND WILLIAM R.  
SCHULTE

Respondent

APPEALS CASE NO: 75477

Lower Ct. Case No. ~~FD-12742820~~  
Feb 27 2020 10:21 p.m.  
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Elizabeth A. Brown  
Clerk of Supreme Court

From the Eighth Judicial District Court, Clark County  
The HONORABLE CHERYL, B. MOSS, District Court Judge  
District Court Case No., D-12-458809-D

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**PETITION FOR RECONSIDERATION EN BANC**

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## **PETITION FOR REHEARING**

COMES NOW, MELANI SCHULTE, by and through her attorney of record, AMBERLEA DAVIS of the Law Offices of Amberlea Davis, and hereby petitions this Court for en banc reconsideration of the panel's dismissal of their appeal. On December 16, 2019, the court entered an order granting Appellant's Appeal and reversing the lower court's decision. On February 14, 2020, this same panel denied Respondent's Petition for Rehearing. The panel decision is inconsistent with precedent, contrary to public policy and implicates the right to due process and equal protection under the laws of the United States and Nevada which are guaranteed by the respective constitutions.

Dated this 27<sup>th</sup> day of February, 2020

Respectfully submitted:

By: /s/ Amberlea Davis  
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## **POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Reconsideration by the full court is necessary to maintain uniformity of the court's jurisprudence and uphold public policy rights of due process and equal protection of the laws which are guaranteed by our constitution. In this case, the decision of the panel violates these rights by ignoring the plain meaning of the statute and ignoring principles of due process and equal protection, depriving Respondent/Petitioner of her constitutional right to equal protection of the law. Under these circumstances, reconsideration by the full court and dismissal of the appeal is warranted.

### **II. ARGUMENT**

Under NRAP 40A, en banc reconsideration is appropriate when “(1) reconsideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue.” Here, because the panel decision to reverse the decision of the appellate court is at odds with the plain meaning of the statute and existing case law and implicates serious constitutional and public policy concerns, en banc reconsideration is necessary.

#### **A. The Panel's Decision is Contrary to the plain meaning of the statute.**

Instead of correctly applying the strict “plain meaning” rule to NRS 645.844 which provides that any person who obtains a final judgment against any licensee upon grounds of fraud, misrepresentation or deceit may file a verified petition against the real estate recovery fund. The statute further states that, “Upon the hearing on the petition, the petitioner must show that the Petitioner is not the spouse of the debtor..” The meaning is clear. Nowhere in the statute does it state the person cannot be a former spouse. Nor does it state anywhere that the person could not be a spouse at the time of the wrongdoing. Simply put, this court found ambiguity where none existed. See Respondent’s Responding Brief page 9, subsection B. Further, the court misinterpreted the legislative intent to bar recovery by a former spouse.

The statutory language was not ambiguous or capable of two reasonable interpretations. Simply because a clever person can come up with more than one interpretation of a statute does not make it ambiguous, the interpretation must be reasonable. Bonner Cty. v. Cunningham, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (Ct. App. 2014). The statute reads:

Upon the hearing on the petition, the petitioner must show that:

(a) The petitioner is not the spouse of the debtor, or the personal representative of that spouse.

Brief page 10-11.

There is no room for interpretation here. The statute specifically states that “Upon the hearing”. It does not, as it would have if it were the intent of the legislature to do so, state that the petitioner must show that they were not the spouse of the debtor at any time, or at the time of the alleged wrongdoing, only that they are not the spouse “Upon the hearing”. There is no room for misinterpretation. It is not reasonable to bar former spouses from recovery under any circumstance. Nor is it reasonable to allow a non-spouse who is in a relationship with a fraudulent broker to recover but a spouse cannot recover. This is utterly irrational, yet this court’s ruling makes it possible.

The Court’s application of the California case, Powers v. Fox 195 Cal. Rptr. 130, 147 Cal.App.3d 371(Cal.App.,1983),was misplaced as the spouse in Powers was directly involved in the fraudulent acts. Brief page 12. There were no allegations by Appellant that MELANI in any way was involved with the acts of WILLIAM SCHULTE.

The Court continued its incorrect application of statutory law by finding NRS 645 barred the single property real estate entities from collecting from the fund. NRS 645.0445(1)(a) is enacted to eliminate the need for one to obtain a license if they are managing only their own properties. It is not intended to bar recovery by the entities when the properties were managed by a broker who committed fraud whether the broker was the spouse of the property manager or

not. The Court, without any facts or evidence to support this claim, assumed that the properties fit the definition of NRS 645.0445 and could have been managed by an individual, however, this was not true as the number of the properties and the corporate form mandated the properties be managed by a broker. The properties retained an entity to manage the properties for them, place money in a broker's trust, and said funds were comingled with third party properties. Brief page 13.

Reading NRS 645.0445 to bar recovery from a broker simply because he could have managed the property without being a broker and that a spouse cannot pursue a claim against the fund is a ludicrous interpretation that will simply act to encourage fraudulent acts by one spouse against the other and leave the spouse with no recourse. This is clearly not the intent of the statute.

Therefore, the court should allow a rehearing on the reversal of the lower court's decision.

**B. The Panel's Decision is Violates public policy principles of Due Process and Equal Protection guaranteed under the Constitution.**

By reversing the decision of the lower court, the Panel has undermined the public policies of Due Process, guaranteed by the Fifth Amendment of the United States Constitution and Section 8 of the Nevada Constitution, as well as Equal Protection of the laws guaranteed by the 14<sup>th</sup> amendment to the United States Constitution.

The Due Process Clause of the Fifth Amendment includes equal protection components, and Fifth Amendment equal protection claims are treated the same as Fourteenth Amendment equal protection claims. See Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975) ("While the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process. This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment." (citations and internal quotation marks omitted)). "The liberty protected by the Fifth Amendment's Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws." Windsor, 133 S. Ct. at 2695. Hirschfield v. Office of Pers. Mgmt. (Fed. Cir. 2018). Further, the Supreme Court of the United States has been extremely sensitive when it comes to basic civil rights. Skinner v. State of Oklahoma, 316 U.S. 535 541-42 62 S.Ct 1110, 1113-1114, 86 L.Ed. 1655. Even laws with history and tradition on their side are stricken if they have an invidious classification. Levy v. Louisiana, 391 U.S. 6, 88 S.Ct 1509, 20 L.Ed. 2d 436 (1968).

The plain meaning of the statute, as stated above, is to allow recovery from the fund by a former spouse of a broker but not a current spouse at the time of the hearing on the recovery of the fund. While this walks a thin line with due process

and equal protection, the interpretation by the Court makes it more invidious. The Court's interpretation denies recovery by a spouse simply because they were a spouse without regard to the circumstances of the wrongdoing or the status of marriage at the time of the claim hearing. Thus a spouse whom had no knowledge of the wrongdoing of the broker-spouse and subsequently divorced the spouse is denied the same protections as a spouse who divorces the broker-spouse prior to wrongdoing, even if it is just one day before. This interpretation is violative of due process and equal protection of the laws.

### III. CONCLUSION AND RELIEF REQUESTED

Therefore, the court should reconsider the reversal of the lower court's decision en banc and affirm the lower court's decision.

DATED this 27<sup>th</sup> day of February, 2020

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CERTIFICATE OF COMPLIANCE

I hereby certify that this petition for reconsideration en banc complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) as it has been prepared using Microsoft Word in 14 point font, Times new Roman style.

I further certify that this brief complies with the type-volume limitations of NRAP 40A(d) because it is proportionately spaced, has a typeface of 14 points and contains 1,685 words.

Dated this 27<sup>th</sup> day of February, 2020.

LAW OFFICE OF AMBERLEA DAVIS

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**CERTIFICATE OF SERVICE**

I hereby certify I am over the age of 18 and not a party to this action. On February 27, 2020, I served a true and correct copy of the Petition for Reconsideration, en banc by electronic service through eflex on:

Donald J. Bordelove  
David Pope via eflex  
Aaron Ford via eflex  
Keith Kizer via eflex  
Office of the Attorney General  
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Las Vegas, NV 89101

A copy was not mailed to William R. Schulte as he is recently deceased.

          /s/ Amberlea Davis            
An employee of Amberlea Davis