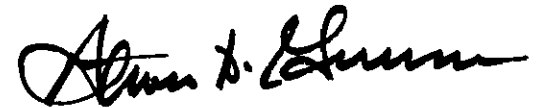


Amended Complaint

Exempt from Arbitration: Requests Declaratory Relief

2016/11/15



CLERK OF THE COURT

**Marquis Aurbach Coffing**  
Avece M. Higbee, Esq.  
Nevada Bar No. 3739  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
ahigbee@maclaw.com  
Attorneys for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiff,

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP., JERRIN CHIU, KB  
HOME SALES – NEVADA INC., DOES I  
through X, and ROES I through X,

Defendants.

Case No.: A-16-744109-C

Dept. No.: XII

**AMENDED COMPLAINT**  
**EXEMPT FROM ARBITRATION:**  
**REQUESTS DECLARATORY RELIEF**

**COMPLAINT**

Plaintiffs, Betty Chan and Asian American Realty and Property Management (“Plaintiffs”) by and through the law firm of Marquis Aurbach Coffing, hereby allege and complain against Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu (“Defendants”) as follows:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff Betty Chan is a resident of the State of Nevada is and was doing business as a licensed real estate broker for her company Asian American Realty & Property Management.

2. Defendant Wayne Wu is a resident of the State of Nevada, is and was doing business in the County of Clark as a real estate agent with Nevada Real Estate Corp.

3. Defendant Judith Sullivan is a resident of the state of Nevada and is the licensed real estate broker for Nevada Real Estate Corp.

7. The transactions which are the subject matter of the instant Complaint occurred in Clark County, Nevada, and therefore, jurisdiction and venue are appropriate with this Court.

15. On or about November 11, 2015, Defendant Chiu emailed Plaintiff Chan regarding his intention to purchase a house and listed out the criteria.

1           16.     On or about November 28, 2015, Defendant Chiu emailed Plaintiff Chan  
2 concerning the location of a particular house he wanted to see.

3           17.     On or about November 29, 2015, Plaintiff Chan responded concerning the  
4 viewing of the particular house.

5           18.     On or about December 29, 2015, Plaintiff Chan prepared for the showing of  
6 homes to the Chiu family by pulling listings around Boca Park area.

7           19.     Five resale homes were targeted to fit Defendant Chiu's criteria and Plaintiff  
8 Chan contacted the listing agents for the resales to set appointments.

9           20.     Plaintiff Chan included the model homes in both a Toll Brothers development and  
10 a KB Home development previously viewed by Plaintiff Chan.

11          21.     Plaintiff Chan checked the status of the listings, printed the information and  
12 arranged a route for the efficient showing of the properties.

13          22.     On or about December 30, 2015, Plaintiff Chan picked up the Chiu family and  
14 showed the resale homes, the Toll Brother models and the KB Homes models.

15          23.     KB Homes offered to compensate brokers for bringing buyers to KB Home  
16 Developments at Buyer's first visit.

17          24.     At the front office of KB Homes, Plaintiff Chan spoke to Cheryl and picked up a  
18 price sheet.

19          25.     Plaintiff Chan then showed the model homes to the Chiu family and Defendant  
20 Chiu liked the first and second model homes.

21          26.     Back at the KB Homes model home office, Plaintiff Chan requested a floor plan  
22 and explained the buying process for a new home including the standards, elevations, prices,  
23 location of the site, etc. to the Chiu family.

24          27.     Plaintiff Chan located a buyer registration card and Defendant Chiu filled in the  
25 buyer portion and Plaintiff Chan filled in the realtor portion.

26          28.     No KB Homes representative was to be found so Plaintiff Chan left the  
27 registration card on the table in the KB Home front office to hurry to get the Chiu family to the  
28 next appointment.



1           29.     Plaintiff Chan emailed Dr. Kwang Chiu the four resale listings that were viewed.

2           30.     On or about December 31, 2015, Dr. Kwang Chiu called Plaintiff Chan and asked  
3 if she could “kick back 1% of the commission” like the other agent offered him.

4           31.     On or about January 5, 2016, Plaintiff Chan followed up with Defendant Chiu  
5 about the KB Home properties.

6           32.     Defendant Chiu did not respond.

7           33.     On or about January 15, 2016, Defendant Chiu admitted that he was using another  
8 agent.

9           34.     On or about January 22, 2016, Plaintiff Chan went to the KB Homes office and  
10 learned that Defendant Chiu had indeed signed a contract on the property shown by Plaintiff  
11 Chan with another agent on January 8, 2016.

12           35.     On or about January 30, 2016, Plaintiff Chan went to the KB Homes office to  
13 address the commission; both KB Homes representatives, Cheryl and Jana, stated that Defendant  
14 Chiu told them Plaintiff Chan introduced him to KB Homes but that he determined to use  
15 another agent.

16           36.     On or about February 1, 2016, KB Homes Sales Manager, Lara McLaughlin,  
17 contacted Plaintiff Chan on two occasions indicating she was looking into the commission  
18 dispute.

19           37.     Plaintiff Chan made efforts to resolve the dispute concerning her involvement in  
20 the transaction and the entitlement to the commission to no avail.

21           38.     On or about May 27, 2016, Defendant Chiu closed on the purchase of a home in  
22 the KB Home community known as 477 Cabral Peak, Las Vegas, Nevada (“Property”).

23           39.     Upon information and belief, before paying a commission to an agent for the sale  
24 of a KB home, KB Homes requires that that agent sign a registration upon the first visit with the  
25 buyer to the property.

26           40.     Upon information and belief, Defendant Wayne Wu signed a registration card at  
27 KB Homes knowing that Defendant Jerrin Chiu had first visited the Property with Plaintiff Chan.

28

43. Plaintiffs were not paid any commission for the sale of the Property.

## FIRST CAUSE OF ACTION

**(Declaratory Relief)**

44. Plaintiffs repeat and reallege the forgoing paragraphs as though fully stated herein.

45. A genuine controversy exists in this matter.

46. Plaintiffs and Defendants Wu, Sullivan and Nevada Real Estate Corp. claim adverse interests in the commission for the sale of the Property.

47. Defendant Chiu sought the assistance of Defendant Wu due to Wu's 1% commission kickback effectively circumventing Plaintiff Chan from the transaction and from the commission.

48. KB Homes offered the payment of a commission to brokers that brought buyers to KB Home Developments to Buyers first visit.

49. Plaintiff Chan brought Defendant Chiu to the KB Homes Development and showed him the model homes to decide which floor plan to purchase.

50. Defendant Chiu utilized another agent, Defendant Wayne Wu to write a contract for the purchase of the Property located in the same KB Homes Development.

51. Plaintiff Chan was the procuring cause of the sale of the Property but did not receive the commission.

52. Plaintiffs request a declaration from the Court that Plaintiffs are entitled to the commission on the sale of the Property.

53. Plaintiffs request a declaration from the court that Defendants Wu, Sullivan and Nevada Real Estate Corp. are not entitled to the commission on the sale of the Property.

54. Plaintiffs request a declaration from the court that Defendant KB Homes breached its obligation to pay the commission to Plaintiffs.

55. Plaintiffs request a declaration from the court that the commission be released from the title company to Plaintiffs and any shortfall be paid by Defendants.

56. As a result of Defendants' actions, Plaintiffs have been forced to retain the services of an attorney to prosecute the instant action and therefore is entitled to reasonable attorneys fees and costs.

## **SECOND CAUSE OF ACTION**

### **(Breach of Contract)**

57. Plaintiff Chan repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

58. KB Homes offered to compensate brokers for selling KB Homes to their buyers upon their first visit.

59. Plaintiff Chan brought Defendant Chiu to the KB Homes community and showed the model homes to Defendant Chiu to decide which floor plan to purchase.

60. Plaintiff Chan and Defendant Chiu filled out a registration card providing their information to KB Homes.

61. Plaintiff Chan was the procuring cause of the sale of the Property to Defendant Chiu.

62. Defendant purchased the Property which is located in the same KB Homes community.

63. KB Homes failed to pay Plaintiffs the commission for the sale of the Property.

64. KB Homes breached its obligation to pay a commission to Plaintiffs.

65. As a result of KB Homes' action, Plaintiff Chan has been damaged in excess of \$10,000.

66. It has been necessary for Plaintiff Chan to retain the services of an attorney and to incur attorney's fees and costs to prosecute this action, and therefore, Plaintiff is entitled to reimbursement for those attorney's fees and costs incurred herein.

**THIRD CAUSE OF ACTION****(Unjust Enrichment)**

67. Plaintiffs repeat, reallege, and incorporate each and every paragraph contained above as though fully set forth herein.

68. Plaintiff Chan was the procuring cause for the purchase of the Property by Defendant Chiu.

69. Defendant Wu interfered with the change of events set in motion by Plaintiff Chan by offering to kickback 1% of the commission to Defendant Chiu.

70. Defendant Chiu circumvented Plaintiff Chan's ability to complete the transaction when Defendant Chiu agreed to use Defendant Wu.

71. Upon information and belief, Defendant Wu and Defendant Chiu made misrepresentations to KB Homes concerning the initial showing of the Property.

72. Plaintiff Chan did not receive a commission despite being the procuring cause of the sale of the Property to Defendant Chiu.

73. Defendant Wu's receipt of any commission would be unjust.

74. Plaintiff Chan is entitled to the payment of the commission.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For damages in excess of \$10,000, plus interest.

2. For prejudgment and post judgment interest;

3. For a declaration that KB Homes breached the contract;

4. For a declaration that Plaintiffs are entitled to the commission on the sale of the

Property;

///

///

///

1  
2 5. For a declaration that Defendants Wu, Sullivan and Nevada Real Estate Corp. are  
3 not entitled to the commission on the sale of the Property;

4 6. For attorney's fees and costs; and

5 7. For any and other such relief as the Court deems just and proper.

6 Dated this 15<sup>m</sup> day of November, 2016.

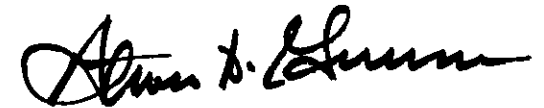
7  
8 MARQUIS AURBACH COFFING

9  
10 By 

Avece M. Higbee, Esq.  
Nevada Bar No. 3739  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Plaintiff

## Answer and Counterclaim

2016-12-06



CLERK OF THE COURT

1    **ANS**  
2    MICHAEL A. OLSEN, ESQ.  
3    Nevada Bar No. 6076  
4    THOMAS R. GROVER, ESQ.  
5    Nevada Bar No. 12387  
6    **Goodsell & Olsen, LLP**  
7    10155 W. Twain Ave., Suite 100  
8    Las Vegas, Nevada 89147  
9    Tel: (702) 869-6261  
10    Fax: (702) 869-8243  
11    *Attorneys for Defendants/Counterclaimants*  
12    *Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.*  
13    *and Jerrin Chiu*

8                                    **DISTRICT COURT**  
9                                    **CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN	)	Case No: A-16-744109-C
REALTY & PROPERTY MANAGEMENT,	)	
	)	Dept. No: XII
Plaintiff,	)	
v.	)	
	)	
WAYNE WU, JUDITH SULLIVAN,	)	<b>ANSWER AND COUNTERCLAIM</b>
NEVADA REAL ESTATE CORP., JERRIN	)	
CHIU, KB HOME SALES – NEVADA INC.,	)	
DOES I through X, and ROES I through X,	)	
	)	
Defendants.	)	

16                    COMES NOW, Defendants, WAYNE WU (hereinafter “Mr. Wu” or “Wu”), JUDITH  
17 SULLIVAN (hereafter “Ms. Sullivan” or “Sullivan”), NEVADA REAL ESTATE CORP.  
18 (hereafter “NREC”) and JERRIN CHIU (hereafter “Mr. Chiu” or “Chiu”), by and through their  
19 attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP, and, in answer to  
20 Plaintiff’s Complaint on file herein, state as follows:

21                                    **JURISDICTION**

22                    1.        Answering paragraph 1 of the Complaint, answering Defendants are without  
23 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
24 the allegations contained in said paragraph in their entirety.

25                    2.        Answering paragraph 2 of the Complaint, answering Defendants admit the same.

1           3.       Answering paragraph 3 of the Complaint, answering Defendants admit the same.

2           4.       Answering paragraph 4 of the Complaint, answering Defendants admit the same.

3           5.       Answering paragraph 5 of the Complaint, answering Defendants are without  
4 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
5 the allegations contained in said paragraph in their entirety.

6           6.       Answering paragraph 6 of the Complaint, answering Defendants are without  
7 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
8 the allegations contained in said paragraph in their entirety.

9           7.       Answering paragraph 7 of the Complaint, answering Defendants are without  
10 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
11 the allegations contained in said paragraph in their entirety.

12                               **GENERAL ALLEGATIONS**

13           8.       Answering paragraph 8 of the Complaint, answering Defendant Chiu admits using  
14 Betty Chan (hereafter “Ms. Chan” or “Chan”) as his real estate agent in 2013, Defendants Wu,  
15 Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged  
16 therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

17           9.       Answering paragraph 9 of the Complaint, answering Defendants deny the same.

18           10.      Answering paragraph 10 of the Complaint, answering Defendant Chiu admits that  
19 Defendant Chan showed him some homes but he did not buy one at that time. Answering  
20 Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the  
21 matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph  
22 in their entirety.

23           11.      Answering paragraph 11 of the Complaint, answering Defendant Chiu admits that  
24 Dr. Kwang Chiu contacted Plaintiff Chan on or about March 2015 to make an appointment for  
25 him and his son, Defendant Jerrin Chiu to see homes in 2015 but they did not purchase a home.



1 Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth  
2 of the matters alleged therein, and upon said grounds, deny the allegations contained in said  
3 paragraph in their entirety.

4 12. Answering paragraph 12 of the Complaint, answering Defendant Chiu admits that  
5 Dr. Kwang Chiu contacted Plaintiff Chan to make an appointment for him and his son,  
6 Defendant Jerrin Chiu to see homes in December 2015. Answering Defendants Wu, Sullivan  
7 and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and  
8 upon said grounds, deny the allegations contained in said paragraph in their entirety.

9 13. Answering paragraph 13 of the Complaint, answering Defendant Chiu admits that  
10 Chan agreed to show some homes to Defendant Chiu in December of 2015 but that over a  
11 several day period of time Chan failed and refused to answer or respond to multiple telephone  
12 calls seeking further assistance in pursuing the purchase of a home. As a result of Plaintiff  
13 Chan's refusal to respond, Defendant Chiu was forced to seek the services of another realtor.  
14 Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth  
15 of the matters alleged therein, and upon said grounds, deny the allegations contained in said  
16 paragraph in their entirety.

17 14. Answering paragraph 14 of the Complaint, answering Defendant Chiu admits  
18 that Plaintiff Chan requested updated financial information at some time in 2015 for loan pre-  
19 approval; answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to  
20 the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in  
21 said paragraph in their entirety.

22 15. Answering paragraph 15 of the Complaint, answering Defendant Chiu admits to  
23 telling Plaintiff Chan the criteria for a new home. Answering Defendants Wu, Sullivan and  
24 NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon  
25 said grounds, deny the allegations contained in said paragraph in their entirety.

1           16.     Answering paragraph 16 of the Complaint, answering Defendant Chiu admits to  
2 informing Plaintiff Chan about a home (or homes) he was interested in looking at in a particular  
3 area. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the  
4 truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said  
5 paragraph in their entirety.

6           17.     Answering paragraph 17 of the Complaint, answering Defendant Chiu admits that  
7 Plaintiff Chan initially responded to his request for information regarding homes he had located  
8 and wanted to see. Answering Defendants Wu, Sullivan and NREC are without sufficient  
9 knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the  
10 allegations contained in said paragraph in their entirety.

11           18.     Answering paragraph 18 of the Complaint, answering Defendants are without  
12 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
13 the allegations contained in said paragraph in their entirety.

14           19.     Answering paragraph 19 of the Complaint, answering Defendants are without  
15 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
16 the allegations contained in said paragraph in their entirety.

17           20.     Answering paragraph 20 of the Complaint, answering Defendants admit that  
18 Defendant Chiu viewed model homes in both a Toll Brothers development and a KB Home  
19 development; however, answering Defendants are without sufficient knowledge as to the truth of  
20 the matters otherwise alleged in paragraph 20 of the Complaint, and upon said grounds, deny the  
21 allegations contained in said paragraph in their entirety.

22           21.     Answering paragraph 21 of the Complaint, answering Defendants are without  
23 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
24 the allegations contained in said paragraph in their entirety.

25     / / /

22. Answering paragraph 22 of the Complaint, answering Defendant Chiu admits to seeing homes with Plaintiff Chan on or about December 30, 2015. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

23. Answering paragraph 23 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

24. Answering paragraph 24 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

25. Answering paragraph 25 of the Complaint, answering Defendant Chiu admits to touring the model homes and expressing interest in a couple of the layouts. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

26. Answering paragraph 26 of the Complaint, answering Defendant Chiu denies the same. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

27. Answering paragraph 27 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

28. Answering paragraph 28 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

1           29.     Answering paragraph 29 of the Complaint, answering Defendants are without  
2 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
3 the allegations contained in said paragraph in their entirety.

4           30.     Answering paragraph 30 of the Complaint, answering Defendants are without  
5 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
6 the allegations contained in said paragraph in their entirety.

7           31.     Answering paragraph 31 of the Complaint, answering Defendant Chiu admits that  
8 after several days of being non-responsive to his calls, resulting in having to replace Ms. Chan  
9 with another realtor, Ms. Chan finally reached out to him. Defendant Chiu is uncertain of the  
10 date of the contact. Answering Defendants Wu, Sullivan and NREC are without sufficient  
11 knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the  
12 allegations contained in said paragraph in their entirety.

13          32.     Answering paragraph 32 of the Complaint, answering Defendants are without  
14 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
15 the allegations contained in said paragraph in their entirety.

16          33.     Answering paragraph 33 of the Complaint, answering Defendant Chiu admits to  
17 informing Ms. Chan that due to her non-responsiveness he had to retain another realtor.  
18 Defendant Chiu cannot recall the exact date of the communication. Answering Defendants Wu,  
19 Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged  
20 therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

21          34.     Answering paragraph 34 of the Complaint, answering Defendants are without  
22 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
23 the allegations contained in said paragraph in their entirety.

24     ///

25     ///

1           35.     Answering paragraph 35 of the Complaint, answering Defendants are without  
2 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
3 the allegations contained in said paragraph in their entirety.

4           36.     Answering paragraph 36 of the Complaint, answering Defendants are without  
5 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
6 the allegations contained in said paragraph in their entirety.

7           37.     Answering paragraph 37 of the Complaint, answering Defendants are without  
8 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
9 the allegations contained in said paragraph in their entirety.

10          38.     Answering paragraph 38 of the Complaint, answering Defendants admit the same.

11          39.     Answering paragraph 39 of the Complaint, answering Defendants are without  
12 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
13 the allegations contained in said paragraph in their entirety.

14          40.     Answering paragraph 40 of the Complaint, answering Defendants deny the same.

15          41.     Answering paragraph 41 of the Complaint, answering Defendants admit the same.

16          42.     Answering paragraph 42 of the Complaint, answering Defendants admit the same.

17          43.     Answering paragraph 43 of the Complaint, answering Defendants are without  
18 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
19 the allegations contained in said paragraph in their entirety.

20                   **FIRST CAUSE OF ACTION**

21                   **(Declaratory Relief)**

22          44.     Answering paragraph 44 of the Complaint, answering Defendants repeat the  
23 answers to each and every allegation previously set forth.

24          45.     Answering paragraph 45 of the Complaint, answering Defendants state that it  
25 calls for a legal conclusion and therefore deny the same.

1           46.     Answering paragraph 46 of the Complaint, answering Defendants admit the same.

2           47.     Answering paragraph 47 of the Complaint, answering Defendants deny the same.

3           48.     Answering paragraph 48 of the Complaint, answering Defendants are without  
4 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
5 the allegations contained in said paragraph in their entirety.

6           49.     Answering paragraph 49 of the Complaint, answering Defendants deny the same.

7           50.     Answering paragraph 50 of the Complaint, answering Defendants Chiu and Wu  
8 admit that after Chan refused to respond to Chiu, Chiu hired Wu to act as his realtor in making  
9 an offer and in securing the purchase of a KB Homes property. Answering Defendants Sullivan  
10 and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and  
11 upon said grounds, deny the allegations contained in said paragraph in their entirety.

12           51.     Answering paragraph 51 of the Complaint, answering Defendants state that this  
13 paragraph calls for a legal conclusion and deny the same.

14           52.     Answering paragraph 52 of the Complaint, answering Defendants deny the same.

15           53.     Answering paragraph 53 of the Complaint, answering Defendants deny the same.

16           54.     Answering paragraph 54 of the Complaint, answering Defendants are without  
17 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
18 the allegations contained in said paragraph in their entirety.

19           55.     Answering paragraph 55 of the Complaint, answering Defendants deny the same.

20           56.     Answering paragraph 56 of the Complaint, answering Defendants deny the same.

21                   **SECOND CAUSE OF ACTION**

22                   **(Breach of Contract)**

23           57.     Answering paragraph 57 of the Complaint, answering Defendants repeat the  
24 answers to each and every allegation previously set forth.

25     ///

1           58.     Answering paragraph 58 of the Complaint, answering Defendants are without  
2 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
3 the allegations contained in said paragraph in their entirety.

4           59.     Answering paragraph 59 of the Complaint, answering Defendants deny the same.

5           60.     Answering paragraph 60 of the Complaint, answering Defendants are without  
6 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
7 the allegations contained in said paragraph in their entirety.

8           61.     Answering paragraph 61 of the Complaint, answering Defendants state that this  
9 paragraph calls for a legal conclusion and deny the same.

10          62.     Answering paragraph 62 of the Complaint, answering Defendants admit that  
11 Defendant Chiu purchased a KB Homes property.

12          63.     Answering paragraph 63 of the Complaint, answering Defendants are without  
13 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
14 the allegations contained in said paragraph in their entirety.

15          64.     Answering paragraph 64 of the Complaint, answering Defendants are without  
16 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny  
17 the allegations contained in said paragraph in their entirety.

18          65.     Answering paragraph 65 of the Complaint, answering Defendants deny the same.

19          66.     Answering paragraph 66 of the Complaint, answering Defendants deny the same.

20                   **THIRD CAUSE OF ACTION**

21                   **(Unjust Enrichment)**

22          67.     Answering paragraph 67 of the Complaint, answering Defendants repeat the  
23 answers to each and every allegation previously set forth.

24          68.     Answering paragraph 68 of the Complaint, answering Defendants state that the  
25 paragraph calls for a legal conclusion and deny the same.

69. Answering paragraph 69 of the Complaint, answering Defendant Wu denies the same. Answering Defendants Chiu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

70. Answering paragraph 70 of the Complaint, answering Defendants deny the same.

71. Answering paragraph 71 of the Complaint, answering Defendants deny the same.

72. Answering paragraph 72 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

73. Answering paragraph 73 of the Complaint, answering Defendants deny the same.

74. Answering paragraph 74 of the Complaint, answering Defendants deny the same.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiffs have failed to state a claim against Defendants upon which relief can be granted.

#### **Second Affirmative Defense**

Plaintiffs' claims against Defendants are barred in whole or in part by the doctrines of estoppel and waiver.

#### **Third Affirmative Defense**

Plaintiffs are guilty of unclean hands.

#### **Fourth Affirmative Defense**

Plaintiffs' claims are, in whole or in part, in violation of the statute of frauds or the doctrine of laches and are therefore, barred, void or otherwise unenforceable.

#### **Fifth Affirmative Defense**

Defendants allege that Plaintiffs have waived any right of recovery from Defendants.



**Sixth Affirmative Defense**

Defendants lacked the requisite specific intent necessary for Plaintiffs to sustain their claims against Defendants.

**Seventh Affirmative Defense**

Plaintiffs have failed to mitigate their damages, if any.

**Eighth Affirmative Defense**

Plaintiffs have failed to satisfy conditions precedent to bringing any action against these answering Defendants.

**Ninth Affirmative Defense**

Plaintiffs' claims for relief are barred by the Doctrines of Estoppel, Estoppel by Fraud, and equitable relief.

**Tenth Affirmative Defense**

Defendants acted in good faith in all of their dealings with Plaintiffs.

**Eleventh Affirmative Defense**

Plaintiffs' claims for relief are barred by the Doctrines of mutual mistake, impossibility and/or impracticability.

**Twelfth Affirmative Defense**

Plaintiffs lack privity of contract with Defendants.

**Thirteenth Affirmative Defense**

There is no contract between the parties.

**Fourteenth Affirmative Defense**

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein.

///

///

**Fifteenth Affirmative Defense**

Plaintiffs had neither a contract with Defendants nor were the procuring cause of the purchase of property by Defendant Chiu.

**Sixteenth Affirmative Defense**

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein in so far as sufficient facts are not available after reasonable inquiry upon the filing of this Answer; Defendants, therefore, reserve the right to amend this Answer to allege additional Affirmative Defenses as subsequent investigation warrants.

**COUNTER CLAIM**

**First Claim for Relief**

**(Abuse of Process)**

Defendants-Counterclaimants Wu, Chiu, Sullivan and NREC (collectively hereinafter “Defendants or Counterclaimants”), by and through their attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP complains of Plaintiff Betty Chan, an individual as follows:

1. Counter-defendant Chan is well aware that she failed to follow standard practice and procedure when she neglected to require Counterclaimant Chiu to enter into a written agreement for Chan to act as Chiu’s real estate agent or broker.

2. Counter-defendant Chan is also aware that there was never any meeting of the minds between Chan and Defendant Chiu regarding the core terms of her representation (including commission) nor was there any written or verbal agreement setting forth the terms of any agreement between the parties.

3. Counter-defendant Chan has fraudulently represented to Chiu and to First American Title Company that she was in possession of a broker registration card identifying her

1 as Mr. Chiu's agent. Upon being challenged to produce said document, Chan has been unable to  
2 do so.

3 4. Counter-defendant Chan is well aware that her own failure to respond to  
4 Counterclaimant Chiu's calls and requests for information resulted in Counterclaimant Chiu  
5 seeking the services of another realtor, Counterclaimant Wayne Wu.

6 5. Counter-defendant Chan is further aware that Counterclaimant Wu is the only  
7 realtor listed on the closing documents and is listed as the realtor of record.

8 6. Finally, Counter-defendant Chan is aware that Counterclaimant Wu did all of the  
9 work in procuring and closing the sale of the subject property.

10 7. Plaintiff Chan instituted this lawsuit not because she has a good faith claim to the  
11 commission on the sale of the subject property but for the ulterior purpose of extorting  
12 Counterclaimant Wu into sharing a portion, or all of his commission, with Plaintiffs solely to  
13 avoid incurring the legal fees and costs of defending this frivolous lawsuit.

14 8. In fact, the very filing of Counter-Defendant's Complaint is in direct violation of  
15 the ethical rules she voluntarily undertook to uphold when she became a member of the Greater  
16 Las Vegas Association of Realtors (hereafter "GLVAR") requiring that any and all legitimate  
17 disputes regarding commissions be handled by way of arbitration before the GLVAR. The  
18 purpose of this filing is solely to harass, abuse process and unnecessarily drive up the costs of  
19 this litigation.

20 9. None of the purposes in paragraphs 7 and 8 above are proper in the regular  
21 conduct of instituting a lawsuit.

22 10. As a result of Counter-defendant's actions, Counterclaimants have been forced to  
23 retain the services of an attorney to prosecute the instant action and therefore is entitled to  
24 reasonable fees and costs.

25 ///

**Second Claim for Relief****(Declaratory Relief)**

11. Counterclaimants repeat and reallege the foregoing paragraphs as though fully stated herein.

12. Counterclaimants and Counter-defendants claim adverse interest in the commission for the sale of the subject property.

13. As set forth above, Counterclaimant Wu is the only listed broker of record, is the listed broker in all closing documents and procured and closed the sale on the subject property.

14. Counterclaimants therefore request an Order of this Court declaring that Counterclaimants Wu, Sullivan and NREC are entitled to the full commission on the sale of the subject property, currently held by First American Title Company.

15. Counterclaimants further request an Order declaring that the commission be released from the title company to Counterclaimants and that Counter-defendants pay any shortfall in commissions along with all attorney's fees and costs associated with this action.

**PRAYER FOR RELIEF**

Wherefore, Counterclaimants pray for judgment against Counter-defendants as follows:

1. For damages in excess of \$10,000.00;
2. For Prejudgment and Postjudgment interest;
3. For Declaratory relief as set forth herein;
4. For an award of Counterclaimant's attorney's fees and costs;
5. For such other and further relief as the Court deems just and proper.

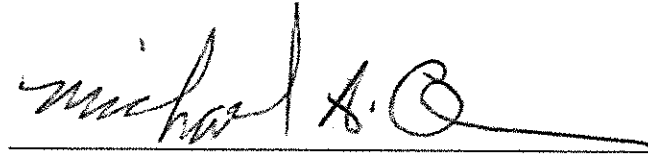
///

///

///

///

DATED this 6<sup>th</sup> day of December, 2016.



MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

**GOODSELL & OLSEN, LLP**

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

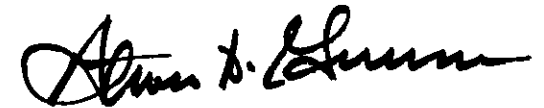
*Attorneys for Defendants/Counterclaimants*

*Wayne Wu, Judith Sullivan, Nevada Real Estate*

*Corp. and Jerrin Chiu*

Amended Reply to Counterclaim

2017-02-10



CLERK OF THE COURT

**RPLY**  
**Marquis Aurbach Coffing**  
Avece M. Higbee, Esq.  
Nevada Bar No. 3739  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
ahigbee@maclaw.com  
Attorneys for Plaintiff/  
Counterdefendant, Betty Chan  
and Asian American Realty &  
Property Management

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiff,

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP., JERRIN CHIU, KB  
HOME SALES – NEVADA INC., DOES I  
through X, and ROES I through X,

Defendants.

Case No.: A-16-744109-C  
Dept. No.: XII

WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP., JERRIN CHIU, KB  
HOME SALES – NEVADA INC.,

Counterclaimants,

vs.

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Counterdefendant.

**AMENDED REPLY TO COUNTERCLAIM**

Plaintiff/Counterdefendant Betty Chan (“Chan” or “Counterdefendant”), by and through the law firm of Marquis Aurbach Coffing, her attorneys of record, hereby submits her Amended Reply to Counterclaimants’ Counterclaim as follows:

**FIRST CLAIM FOR RELIEF**

**(Abuse of Process)**

1. In answering Paragraphs 1 and 2 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

2. In answering Paragraph 3 of Counterclaimants' Counterclaim, Counterdefendant admits that the document has not been produced and denies the remaining allegations contained therein.

3. In answering Paragraph 4 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

4. In answering Paragraph 5 of Counterclaimants' Counterclaim, Counterdefendant is without sufficient information to form an opinion as to the truth of the allegations contained therein, and therefore, denies the same.

5. In answering Paragraphs 6 and 7 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

6. In answering Paragraphs 8 of Counterclaimants' Counterclaim, the allegation is a legal conclusion rather than a factual allegation; therefore Chan is without knowledge to form a belief and therefore denies the same.

7. In answering Paragraph 9 and 10 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein

**SECOND CLAIM FOR RELIEF**

**(Declaratory Relief)**

8. In answering paragraph 11, Counterdefendant repeats and incorporates by reference the responses to all previous paragraphs, as if fully set forth herein.

9. In answering Paragraph 12 of Counterclaimants' Counterclaim, Counterdefendant admits that she claims the entire interest in the commission but is without sufficient information to form an opinion as to the truth of the remaining allegations contained therein, and therefore, denies the same.



10. In answering Paragraphs 13, 14 and 15 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Counterclaimants have failed to state a claim against Counterdefendant upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Counterclaimants' claims against Counterdefendant are barred in whole or in part by the doctrines of estoppels and waiver.

#### **THIRD AFFIRMATIVE DEFENSE**

Counterclaimants are guilty of unclean hands.

#### **FOURTH AFFIRMATIVE DEFENSE**

Counterclaimants have waived any right to recovery from Counterdefendant.

#### **FIFTH AFFIRMATIVE DEFENSE**

Counterclaimants' have failed to mitigate their damages.

#### **SIXTH AFFIRMATIVE DEFENSE**

Counterclaimants' have failed to satisfy conditions precedent to bringing any action against these answer Counterdefendants.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Counterclaimants' claims for relief are barred by the Doctrines of Estoppel, Estoppel by Fraud, and equitable relief.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Counterdefendant acted in good faith in all of her dealings with Counterclaimants.

#### **NINTH AFFIRMATIVE DEFENSE**

Plaintiff/Counterdefendant had no ulterior purpose in bringing action against Counterclaimants.

#### **TENTH AFFIRMATIVE DEFENSE**

Counterdefendant's claims are proper in the regular course of proceedings.

**ELEVENTH AFFIRMATIVE DEFENSE**

Counterdefendant had a contract with Counterclaimant Chiu and Counterclaimant Wu could not represent Counterclaimant Chiu.

**TWELVETH AFFIRMATIVE DEFENSE**

Counterclaimants Wu, Sullivan and NRED were not the procuring cause of the purchase of property by Counterclaimant Chiu.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Counterdefendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Pursuant to NRCPC 11, all possible affirmative defenses may not have been alleged herein in so far as sufficient facts are not available after reasonable inquiry upon the filing of this Reply; Counterdefendant, therefore, reserves the right to amend this Reply to allege additional Affirmative Defenses as subsequent investigation warrants.

**PRAYER FOR RELIEF**

WHEREFORE, Counterdefendant prays for the following relief against Counterclaimants:

1. That Counterclaimants take nothing by way of their Counterclaim and that the same be dismissed with prejudice;
2. For an award of reasonable attorney fees and costs of suit; and
3. For any further relief as the Court deems to be just and proper.

Dated this 10<sup>th</sup> day of February, 2017.

MARQUIS AURBACH COFFING

By

Avee M. Higbee, Esq.

Nevada Bar No. 3739

10001 Park Run Drive

Las Vegas, Nevada 89145

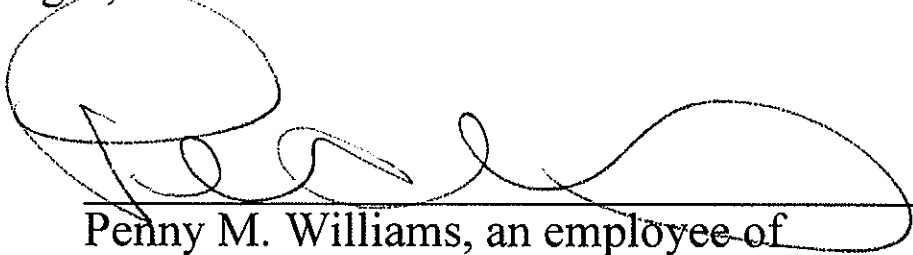
Attorneys for Plaintiff/Counterdefendant

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **AMENDED REPLY TO COUNTERCLAIM** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 10 day of February, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

**Goodsell & Olson**

Michael A. Olsen, Esq.  
Thomas R. Grover, Esq.  
10155 W. Twain Ave., Suite 100  
Las Vegas, Nevada 89147

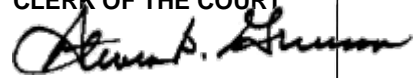


Penny M. Williams, an employee of  
Marquis Aurbach Coffing

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Notice of Entry of Order

2018-09-18



NEOJ  
MICHAEL A. OLSEN, ESQ.  
Nevada Bar No. 6076  
ROMAN C. HARPER, ESQ.  
Nevada Bar No. 14374  
**Goodsell & Olsen, LLP**  
10155 W. Twain Ave., Suite 100  
Las Vegas, Nevada 89147  
Tel: (702) 869-6261  
Fax: (702) 869-8243  
[mike@goodsellolsen.com](mailto:mike@goodsellolsen.com)  
[roman@goodsellolsen.com](mailto:roman@goodsellolsen.com)  
*Attorneys for Defendants/Counterclaimants*  
*Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.*  
*and Jerrin Chiu*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN	)	Case No: A-16-744109-C
REALTY & PROPERTY MANAGEMENT,	)	
	)	Dept. No: XX
Plaintiffs/Counterdefendants,	)	
v.	)	<b>NOTICE OF ENTRY OF ORDER</b>
	)	
WAYNE WU, JUDITH SULLIVAN,	)	
NEVADA REAL ESTATE CORP., JERRIN	)	
CHIU, KB HOME SALES – NEVADA INC.,	)	
	)	
Defendants/Counterclaimants.	)	

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the **ORDER DENYING MOTION TO VACATE OR  
MODIFY ARBITRATION AWARD** was entered on the Court's record on the 18<sup>th</sup> day of  
September, 2018. A copy of said Order is attached hereto as Exhibit "1".

DATED this 18<sup>th</sup> day of September, 2018.

///

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

/s/Thomas R. Grover, Esq.  
MICHAEL A. OLSEN, ESQ.  
Nevada Bar No. 6076  
THOMAS R. GROVER, ESQ.  
Nevada Bar No. 12387  
**GOODSELL & OLSEN, LLP**  
10155 W. Twain Ave., Suite 100

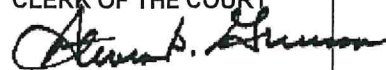
Exhibit 1

Order Denying Motion to Vacate or Modify Arbitration Award

2018-09-18

## **EXHIBIT 1**



**ORD**

MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

ROMAN C. HARPER, ESQ.

Nevada Bar No. 14374

**Goodsell & Olsen, LLP**

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

Tel: (702) 869-6261

Fax: (702) 869-8243

[mike@goodsellolsen.com](mailto:mike@goodsellolsen.com)[roman@goodsellolsen.com](mailto:roman@goodsellolsen.com)*Attorneys for Defendants/Counterclaimants**Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.**and Jerrin Chiu***DISTRICT COURT  
CLARK COUNTY, NEVADA**BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,

v.

WAYNE WU, JUDITH SULLIVAN,  
NEVADA REAL ESTATE CORP., JERRIN  
CHIU, KB HOME SALES - NEVADA INC.,

Defendants/Counterclaimants.

Case No: A-16-744109-C

Dept. No: XX

**ORDER DENYING MOTION TO  
VACATE OR MODIFY  
ARBITRATION AWARD****APPEARANCES**

Michael A. Olsen, Esq. of Goodsell & Olsen, LLP, on behalf of Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants.

Todd E. Kennedy, Esq. of Kennedy & Couvillier, PLLC on behalf of Betty Chan and Asian American Realty & Property Management, Plaintiffs/Counterdefendants.

This matter came on for hearing on August 22, 2018 before the Honorable Eric Johnson regarding Plaintiffs/Counterdefendants' *Motion to Vacate or Modify Arbitration Award* (hereafter "Motion to Vacate"), and Defendants/Counterclaimants' *Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees* (hereafter "Countermotion"). The Court

1 having read and considered the papers and pleadings on file, having heard oral arguments made  
2 at the time of hearing, and good cause appearing, therefore the Court makes the following  
3 findings of fact and conclusions of law:

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. Because Betty Chan, Wayne Wu, and Judith Sullivan are all Realtors, the parties  
6 recognize that the underlying dispute in this matter involving commission funds totaling  
7 \$13,795.32 was required to be submitted to the Greater Las Vegas Association of Realtors  
8 (hereafter "GLVAR") for binding arbitration. Plaintiff/Counterdefendant Betty Chan submitted  
9 her *Request and Agreement to Arbitrate (Member)* (hereafter "Agreement to Arbitrate") to the  
10 GLVAR seeking arbitration of the dispute.

11 2. The Agreement to Arbitrate contained express consent to arbitrate the dispute  
12 between the parties through the GLVAR in accordance with the *Code of Ethics and Arbitration*  
13 *Manual* subscribed to by Realtors.

14 3. This matter proceeded to an arbitration before a GLVAR arbitration panel on  
15 April 17, 2018.

16 4. Plaintiffs/Counterdefendants have brought their Motion to Vacate seeking to  
17 overturn or modify the arbitration award (hereafter "Award") that was duly entered by the  
18 GLVAR arbitration panel on April 27, 2018. The Award determined, that of the \$13,795.32 in  
19 total commission, \$3,228.83 was to be paid to Betty Chan and that the remaining \$10,346.49 was  
20 to be paid to Defendant/Counterclaimant Wayne Wu.

21 5. Specifically, Plaintiffs/Counterdefendants have attempted to assert the Award  
22 should be modified based on statutory and common law grounds, including that the GLVAR  
23 purportedly exceeded its authority to arbitrate, acted in an arbitrary and capricious manner,  
24 demonstrated manifest disregard for the law, or that the Award was procured by fraud.  
25

1           6.       Notwithstanding, the Court finds that Nevada law does not prohibit splitting a  
2 commission between two individuals both claiming to be the procuring cause and therefore  
3 Plaintiffs/Counterdefendants have failed to meet their burden of demonstrating clear and  
4 convincing evidence of a violation under any of the standards asserted in the Motion to Vacate  
5 that would justify modifying or vacating the Award.

6       ///

7       ///

8       ///

9       ///

10       ///

11       ///

12       ///

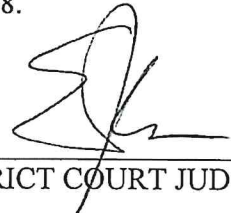
13       ///

14       **IT IS HEREBY ORDERED, AJUDICATED, AND DECREED:**

- 15           a.       That the *Motion to Vacate or Modify Arbitration Award* is DENIED.
- 16           b.       That pursuant to NRS 38.241(4) and NRS 38.242(2) the Arbitration Award of the  
17 GLVAR arbitration panel is CONFIRMED.
- 18           c.       That the Counter-Motion seeking summary judgment and an award of attorney  
19 fees is taken under advisement, with supplemental briefing to be filed by the  
20 Defendants/Counterclaimants by September 5, 2018;
- 21           d.       That Plaintiffs/Counterclaimants shall have until September 19, 2018 to submit  
22 any responsive briefing regarding the Counter-Motion as supplemented.
- 23           e.       AND THAT a hearing on the Countermotion for Summary Judgment and for  
24 Attorney's fees shall be held on October 10, 2018 at 8:30 a.m.
- 25

1 f. It is further ordered that the stay ordered by the Court pending resolution of the  
2 arbitration is lifted.

3 IT IS SO ORDERED this 14 <sup>SEPT</sup> of ~~AUGUST~~ 2018.

4  
5   
6 DISTRICT COURT JUDGE

ERIC JOHNSON *km*

7 Prepared and submitted by:

8 

MICHAEL A. OLSEN, ESQ.

9 Nevada Bar No. 6076

10 ROMAN C. HARPER, ESQ.

Nevada Bar No. 14374

**GOODSELL & OLSEN, LLP**

11 *Attorneys for Wayne Wu, Judith Sullivan,*  
12 *Nevada Real Estate Corp. and Jerrin Chiu*

13  
14 Approved by:

15 

16 TODD E. KENNEDY, ESQ.

Nevada Bar No. 6014

17 MAXIMILIANO COUVILLIER, ESQ.

Nevada Bar No. 7661

18 **KENNEDY & COUVILLIER, PLLC**

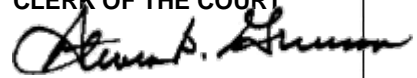
19 *Attorneys for Betty Chan and Asian*

*American Realty & Property Management*

Notice of Entry of Order

2019-03-22





1 **NEOJ**

2 MICHAEL A. OLSEN, ESQ.

3 Nevada Bar No. 6076

4 THOMAS R. GROVER, ESQ.

5 Nevada Bar No. 12387

6 **BLACKROCK LEGAL, LLC**

7 10155 W. Twain Ave. Ste. 100

8 Las Vegas, Nevada 89147

9 Tel: (702) 855-5658

10 Fax: (702) 869-8243

11  
12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 BETTY CHAN and ASIAN AMERICAN ) Case No: A-16-744109-C

16 REALTY & PROPERTY MANAGEMENT, )

17 ) Dept. No: XX

18 Plaintiffs/Counterdefendants, )

19 v. )

20 WAYNE WU, JUDITH SULLIVAN, )

21 NEVADA REAL ESTATE CORP., JERRIN )

22 CHIU, KB HOME SALES – NEVADA INC., )

23 Defendants/Counterclaimants. )

24  
25 **NOTICE OF ENTRY OF ORDER**

26 PLEASE TAKE NOTICE that the **ORDER GRANTING DEFENDANTS**  
27 **COUNTERMOTION FOR SUMMARY JUDGMENT AND ATTORNEY FEES AND**  
28 **COSTS** was entered on the Court's record on the 22nd day of March, 2019. A copy of said  
Order is attached hereto as Exhibit "1".

DATED this 22nd day of March, 2019.



MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

**BLACKROCK LEGAL, LLC**

10155 W. Twain Ave., Suite 100

Las Vegas, NV 89147

Exhibit 1

Order Granting Defendants Countermotion for Summary  
Judgment and Attorney Fees and Costs

2019-03-22



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT “1”**



*Steven D. Grierson*

**ORDR**

MICHAEL A. OLSEN, ESQ.

Nevada Bar No: 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

**BLACKROCK LEGAL, LLC**

10155 W. Twain Ave., Suite 100

Las Vegas, NV 89147

Telephone (702) 855-5658

Facsimile (702) 869-8243

[mike@blackrocklawyers.com](mailto:mike@blackrocklawyers.com)

[tom@blackrocklawyers.com](mailto:tom@blackrocklawyers.com)

*Attorneys for Defendants/Counterclaimants*

*Wayne Wu, Judith Sullivan, Nevada*

*Real Estate Corp. and Jerrin Chiu*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,  
v.

WAYNE WU, JUDITH SULLIVAN,  
NEVADA REAL ESTATE CORP., JERRIN  
CHIU, KB HOME SALES – NEVADA INC.,

Defendants/Counterclaimants.

) Case No: A-16-744109-C

) Dept. No: XX

) **ORDER GRANTING**

) **DEFENDANTS**

) **COUNTERMOTION FOR**

) **SUMMARY JUDGMENT AND**

) **ATTORNEY FEES AND COSTS**

**APPEARANCES**

- Michael A. Olsen, Esq. of Goodsell & Olsen, LLP, on behalf of Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants (hereinafter “Defendants”).
- Janiece S. Marshall, Esq. of Gentile Cristalli Miller Armeni Savarese on behalf of Betty Chan and Asian American Realty & Property Management, Plaintiffs/Counterdefendants (hereinafter “Plaintiffs”).

1 This matter came on for hearing on October 31, 2018 before the Honorable Eric Johnson  
2 presiding on the Defendants *Countermotion for Summary Judgment, and for Attorney Fees [and*  
3 *costs]* (hereafter “Countermotion”) and Plaintiffs *Opposition to recognize Wu as the Procuring*  
4 *Cause, for Summary Judgment, and for Attorney Fees*. The Court having read and considered the  
5 papers and pleadings on file, having heard oral arguments made at the time of hearing, and good  
6 cause appearing, therefore the Court makes the following findings of fact and conclusions of  
7 law:  
8

9 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

10  
11 1. The underlying dispute in this matter involves realtor commission funds totaling  
12 \$13,795.32 for the real estate transaction on January 8, 2016 for the purchase of the home  
13 located at 477 Cabral Peak Street, Las Vegas, Nevada 89138, APN # 137-34-119-012 by Dr.  
14 Jerrin Chiu. This matter came before a GLVAR arbitration panel on April 17, 2018. The  
15 arbitration panel heard all evidence and arguments of the parties and found that Wu (respondent)  
16 was to be paid the \$10,346.49 of the commission funds due from the sale and Betty Chan  
17 (complainant) was to be paid \$3448.83.  
18

19 **A. COUNTERMOTION FOR SUMMARY JUDGMENT GRANTED**

20 2. This matter initially came on for hearing on August 22, 2018 before the  
21 Honorable Eric Johnson regarding Plaintiffs *Motion to Vacate or Modify Arbitration Award*  
22 (hereafter “Motion to Vacate”), and Defendants *Opposition to Motion to Vacate or Modify*  
23 *Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary*  
24 *Judgment, and for Attorney Fees* (hereafter “Countermotion”).  
25

26 3. During the August 22, 2018 hearing, this Court denied Plaintiffs Motion to Vacate  
27 or Modify Arbitration award finding: “that Nevada law does not prohibit splitting a commission  
28 between two individuals both claiming to be the procuring cause and therefore

1 Plaintiffs/Counterdefendants have failed to meet their burden of demonstrating clear and  
2 convincing evidence of a violation under any of the standards asserted in the Motion to Vacate  
3 that would justify modifying or vacating the Award.” *See September 18, 2108 Order Denying*  
4 *Motion to Vacate or Modify Arbitration Award.*

5  
6 4. During that same August 22, 2018 hearing the Court further found that Wayne  
7 Wu was the procuring cause and: “That pursuant to NRS 38.241(4) and NRS 38.242(2) the  
8 Arbitration Award of the GLVAR arbitration panel is CONFIRMED; and That the Counter-  
9 Motion seeking summary judgment and an award of attorney fees is taken under advisement,  
10 with supplemental briefing to be filed by the Defendants/Counterclaimants by September 5,  
11 2018.” *Id.* The Court hereby affirms its Order dated on or about September 18, 2018 Denying  
12 Plaintiffs Motion to Vacate or Modify Arbitration Award and finding Wu to be the procuring  
13 cause. The Court further notes the allowable time frame for Plaintiffs to file a Motion to  
14 Reconsider the September 18, 2018 Order has passed.

15  
16  
17 5. The Court set the remaining Countermotion for Summary Judgment and For  
18 Attorney’s fees and Costs to be heard on October 31, 2018, at which time all supplemental  
19 briefing regarding the Defendants Countermotion for Summary Judgment and for Attorney’s  
20 fees and costs, along with the Opposition to the same, was considered.

21  
22 6. NRCP 56(c) provides that summary judgment shall be rendered if “the pleadings,  
23 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if  
24 any, show that there is no genuine issue as to any material fact and that the moving party is  
25 entitled to judgment as a matter of law.” The Nevada Supreme Court stated that a factual dispute  
26 is “genuine” when the evidence is such that a rational trier of fact could return a verdict for the  
27 nonmoving party. *Wood v. Safeway, Inc.*, 121 P.3d 1026 (2005). Once the moving party has  
28 shown that there is no genuine dispute as to material facts, the burden shifts to the nonmoving



1 party to set forth specific facts demonstrating the existence of a genuine issue for trial or have  
2 summary judgment entered against that party. In meeting this burden, the nonmoving party, "is  
3 not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." *Id.*

4  
5 7. The Arbitration Panel's award resolved all disputes the plaintiffs had against these  
6 defendants, Wu, Sullivan, Nevada Real Estate Corp and Chiu. For the reasons stated above the  
7 award is confirmed and Wu is confirmed as the procuring cause. This resolves the Plaintiff's  
8 request for declaratory relief and claim of unjust enrichment. Because there are no genuine issues  
9 as to any material fact left to be decided against these defendants in this case, summary judgment  
10 in favor of the defendants is proper.  
11

#### 12 **B. COUNTERMOTION FOR ATTORNEY FEES AND COSTS GRANTED**

13 8. Defendants requested the Court award them their attorney fees and costs. After  
14 considering the pleadings and arguments of counsel, attorney fees and cost are awarded in the  
15 amounts of \$920.83 for costs and \$21,435.00 for legal fees.  
16

17 9. The Court finds that the Defendants fees are reasonable and were actually  
18 incurred in the confirmation and enforcement of the award of the Arbitration Panel. The Court  
19 finds that the contractual provision contained in the Arbitration Agreement signed by both  
20 Plaintiff and Defendant provided that "In the event [a party does] not comply with the award and  
21 it is necessary for any party to obtain judicial confirmation and enforcement of the award against  
22 me, [the party] agree[s] to pay that party costs and reasonable attorney's fees incurred in  
23 obtaining such confirmation and enforcement."  
24

25 10. The Court further finds that provision was reasonable and enforceable. As costs  
26 were never challenged, the Court hereby ORDERS costs in the amount of \$920.83 pursuant to  
27 Defendants' Memorandum of Costs and Disbursements, which was unopposed.  
28

11. The Court hereby ORDERS attorney's fees in the amount of \$21,435.00. The Court finds this amount is reasonable and actually incurred by Defendants in enforcing the arbitration award. The Court is awarding attorney fees after the entry of the arbitration award and Plaintiffs' filing of its Motion to Vacate or Modify Arbitration Award, starting on July 25, 2018. The Court declines to award fees requested on the invoices dated December 31, 2016, January 31, 2017, and February 28, 2017, as the redactions made to Plaintiffs' counsel's billing records prevent the Court from determining if those fees were reasonable and necessary. The Court has reviewed the remaining fees and finds they were reasonable and appropriate for litigating the matter and in keeping with attorney fees for such work in Southern Nevada. The Court further finds that the Brunzell factors have been met for the reasons stated in Defendant's Countermotion for Attorney Fees and Costs as set forth below.

12. When determining an award of attorneys' fees and costs, Nevada courts have long relied upon the factors in *Brunzell v. Golden Gate Nat'l Bank*. These four factors analyze (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

13. **Brunzell Factor #1:** "the qualities of the advocate: his ability, his training, education, experience, professional standing and skill". Counsel for Defendants, Michael A. Olsen, Esq. is a founding partner of his firm and has been a member of the State Bar of Nevada for over twenty years. He is a graduate of Utah State University and BYU's J. Reuben Clark Law School. His abilities as an advocate have been recognized through numerous awards and honors,

1 and Mr. Olsen's abilities have been honed through, among other experience, regular appearances  
2 in the Eighth Judicial District Court on contested matters.

3       14.     **Brunzell Factor #2:** "the character of the work to be done: its difficulty, its  
4 intricacy, its importance, time and skill required, the responsibility imposed and the prominence  
5 and character of the parties where they affect the importance of the litigation" This matter  
6 involved complex legal issues including a determination of procuring cause and whether the  
7 Arbitration Panel exceeded its authority pursuant to Nevada statute. Because the Plaintiff elected  
8 to contest the validity of the Arbitration award it became incumbent on Defendant to defend the  
9 award and have it confirmed by the Court. Defendant was successful in confirming and  
10 enforcing the Arbitration Award.  
11

12       15.     **Brunzell Factor #3:** "the work actually performed by the lawyer: the skill, time  
13 and attention given to the work". The Plaintiffs attempt to set aside the Arbitration Award and to  
14 further litigate against the Defendants has required investment of a substantial amount of time  
15 and effort to prepare and provide a proper defense, including against motion practice initiated by  
16 the Plaintiffs. The fees and costs awarded were reasonably incurred in defending the actions  
17 taken by Plaintiffs in this matter as set forth in detail above.  
18

19       16.     **Brunzell Factor #4:** "the result: whether the attorney was successful and what  
20 benefits were derived". Defendants were ultimately successful in upholding and enforcing the  
21 Arbitration Award, recognizing Wu as the procuring cause and thereby securing summary  
22 judgment in favor of the Defendants.  
23

24       17.     While "good judgment would dictate that each of these factors be given  
25 consideration by the trier of fact and that no one element should predominate or be given undue  
26 weight," each factor strongly supports an award of attorneys' fees and costs in the favor of  
27 Defendants.  
28




1                   **IT IS HEREBY ORDERED, AJUDICATED, AND DECREED:**

- 2                   a.       That the September 18, 2018 Order is affirmed wherein Wu was determined the  
3                   procuring cause and the Arbitration Award was confirmed.  
4  
5                   b.       That the *Countermotion for Summary Judgment* is GRANTED  
6  
7                   c.       That the *Motion for Attorney's Fees and Costs* is GRANTED and that Attorney's  
8                   fees in the amount of \$21,435.00 and Costs in the amount of \$920.83 are hereby awarded  
9                   to Defendants.

10                   IT IS SO ORDERED this 19 of <sup>MARCH</sup>~~FEBRUARY~~ 2019.

11  
12  
13                     
14                   DISTRICT COURT JUDGE <sup>SS</sup>  
15                   ERIC JOHNSON

16  
17                   Prepared and submitted by:

18                     
19                   MICHAEL A. OLSEN, ESQ.  
20                   Nevada Bar No. 6076  
21                   THOMAS R. GROVER, ESQ.  
22                   Nevada Bar No. 12387  
23                   **GOODSELL & OLSEN, LLP**  
24                   Attorneys for Wayne Wu, Judith Sullivan,  
25                   Nevada Real Estate Corp. and Jerrin Chiu  
26  
27  
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BETTY CHAN, et al.  
Plaintiffs-Appellants,  
vs.

WAYNE WU, et al.  
Defendants-Appellees.

No. 78666

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Jun 03 2019 01:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.



1. Judicial District Eighth Department 20  
County Clark Judge Hon. Eric Johnson  
District Ct. Case No. A-16-744109-C

**2. Attorney filing this docketing statement:**

Attorney R. Duane Frizell, Esq. Telephone 702-657-6000  
Firm Frizell Law Firm  
Address 400 N. Stephanie St., Suite 265  
Henderson, NV 89014

Client(s) Betty Chan and Asian American Realty & Property Management

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Michael A. Olsen, Esq. Telephone 702-855-5658  
Firm Blackrock Legal, LLC  
Address 10155 W. Twain Ave., Suite 100  
Las Vegas, NV 89147

Client(s) Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None, other than the appeal of District Court Case No. A-16-744109-C identified above.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Plaintiffs-Appellants filed this action stating claims arising from real estate commissions they were wrongly denied. Upon Plaintiffs-Appellants' motion, the District Court stayed the case and the matter proceeded to arbitration. Arbitration was held before the Greater Las Vegas Real Estate Association (GLVAR). The arbitration panel found in favor of both Plaintiffs and Defendants; they divided the commissions between them, with Plaintiff taking the lesser share (approximately 25%) and one of the Defendants taking the greater share (approximately 75%).

After arbitration, the stay was lifted, and the case proceeded in District Court. Plaintiffs moved to vacate the arbitration award on a number of legal and factual grounds. Defendants opposed and filed a countermotion for, among other things, summary judgment affirming the arbitration award and granting them attorney fees and court costs. Ultimately, the District Court denied Plaintiffs' motion, granted Defendants' countermotion, and awarded Defendants attorney fees and costs (which came to almost twice the total commissions).

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether Nevada law allows for more than one buyers' agent to be the procuring agent of a sale of property and thereby be required to split commissions with other buyers' agents.
2. Whether the arbitration award was arbitrary and capricious, unsupported by applicable agreements, and/or based on a manifest disregard for the law.
3. Whether the arbitration panel and District Court erred in disregarding a manifestly fraudulent document that gave rise to a competing buyers' agent's claim to commissions.
4. Whether the District Court erred by affirming the arbitration award on the basis of insufficient and/or flawed findings of fact and conclusions of law.
5. Whether the arbitration panel exceeded its authority in making its award.
6. Whether the District Court erred by awarding Defendants attorney fees on the basis of insufficient and/or flawed findings of fact and conclusions of law. (Rights reserved to amend)

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Whether Nevada law allows for more than one buyers' agent to be the procuring agent (cause) of a sale of property and thereby required to split commissions with other buyers' agents.

This appears to be a matter of first impression, which would impact upon real estate agents throughout the state.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Whether Nevada law allows for more than one buyers' agent to be the procuring cause of a sale and thereby required to split commissions with other buyers' agents.

This appears to be a "[m]atter[] raising as a principal issue a question of first impression involving the . . . Nevada . . . common law," which is presumptively retained by the Supreme Court. NRAP 17(a)(11).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

None perceived at this time.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** 3/22/2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

**17. Date written notice of entry of judgment or order was served** 3/22/2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing N/A

☐ NRCP 52(b)      Date of filing N/A

☐ NRCP 59      Date of filing N/A

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** 4/22/2019 (4/21/2019 was a Sunday)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:  
N/A

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1) and NRAP 26(a)(1)(C)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRS 38.247(1)(c), NRS 38.247(1)(f)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The judgments/orders appealed from "order(s) confirming or denying confirmation of an [arbitration] award." NRS 38.247(1)(c).

It is also a "final judgment entered pursuant to [the Uniform Arbitration Act of 2000]." NRS 38.247(1)(f); see also NRAP 3A(b)(1).

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiffs-Appellants Betty Chan and Asian American Realty & Property Management

Defendants-Appellees Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

KB Home Sales-Nevada Inc. is not a party to this appeal because it never filed an answer or other responsive pleading in the District Court. Forthwith, Plaintiffs-Appellants will be seeking an express determination from the District Court to certify that "there is no just reason for delay" of the appeal of this matter and that the judgment is final. NRCP 54(b).

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Appellants' claims (declaratory relief and/or unjust enrichment) against Wu, Sullivan, Chiu, and Nevada Real Estate Corp. [DISP. 9/18/2018 and 3/22/2019]

Appellants' claim (breach of contract) against KB Home Sales - Nevada Inc. [NO DISP.]

Defendants' claims (abuse of process and declaratory relief) against Plaintiffs [DISP. 9/18/2018 and 3/22/2019]

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

Appellants' claim (breach of contract) against KB Home Sales - Nevada Inc.



(b) Specify the parties remaining below:

KB Home Sales - Nevada Inc.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The judgments/orders appealed from "order(s) confirming or denying confirmation of an [arbitration] award." NRS 38.247(1)(c). It is also a "final judgment entered pursuant to [the Uniform Arbitration Act of 2000]." NRS 38.247(1)(f); see also NRAP 3A(b)(1).

Alternatively, if NRS 38.247 is determined to be inapplicable, Plaintiffs-Appellants seek leave for an express determination from the District Court to certify that "there is no just reason for delay" of the appeal of this matter and that the judgment is final. NRCP 54(b).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order


## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Betty Chan and Asian American Realty  
Name of appellant

R. Duane Frizell, Esq.  
Name of counsel of record

6/3/2019  
Date

  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 3rd day of June, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

MICHAEL A. OLSEN, ESQ.

Nevada State Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada State Bar No. 12387

KEITH D. ROTSONG, ESQ.

Nevada State Bar No. 14944


BLACKROCK LEGAL, LLC

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

Attorneys for Defendants-Appellees Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu

Dated this 3rd day of June, 2019

  
Signature