

1 **RPLY**

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16 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

17 BETTY CHAN, et al.

18 Appellants,

19 v.

20 WAYNE WU, et al.

21 Appellees.

Case No: 78666

Dist. Ct. No. A-16-744109-C

**REPLY TO PLAINTIFFS-
APPELLANTS' RESPONSE TO
ORDER TO SHOW CAUSE**

22 COME NOW, Respondents Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.,
23 and Jerrin Chiu (hereafter "Appellees" or "Respondents") by and through their counsel of
24 record, MICHAEL A. OLSEN, ESQ., of Blackrock Legal, LLC, and bring this *Reply to*
25 *Plaintiffs-Appellants' Response to Order to Show Cause* (hereafter "Reply"). This Reply is based
26 upon the pleadings papers on file herein, the following memorandum of points and authorities,
27 and any oral argument that may be presented at the time of hearing.

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

BACKGROUND

This matter involves a realtor, Betty Chan (hereafter "Ms. Chan"), who is unwilling to
accept that she is not entitled to a commission on a real estate sale after abandoning the client



1 during the specific time period he had told her he would need help buying a home. A panel of
2 three arbitrators appointed by the Greater Las Vegas Association of Realtors awarded her
3 \$3,448.83 (25%) of a \$13,795.32 commission instead of the full amount. In truth, the full
4 commission should have been awarded to Wayne Wu. Binding arbitration at GLVAR
5 determined that Wayne Wu was the procuring real estate agent for the sale of real property
6 located at located at 477 Cabral Peak Street, Las Vegas, Nevada 89138, APN # 137-34-119-012,
7 (hereinafter “Subject Property”) and awarded him the larger share of the commission.
8

9 Ms. Chan violated ethical and contractual duties owed to GLVAR and Respondents by
10 improperly filing a lawsuit against Respondents, prior to filing for binding arbitration with
11 GLVAR. Ms. Chan had signed an agreement with GLVAR requiring that all disputes between
12 brokers be resolved via binding arbitration, rather than litigation. It was only after being
13 threatened with sanctions by Respondent that Chan filed a Motion to Stay the improperly filed
14 litigation and filed for binding arbitration with the GLVAR.
15

16 Following arbitration and issuance of a binding decision, Ms. Chan continued her
17 litigious activities and sought to overturn the decision of the Arbitration Panel. The district court
18 found the arbitration award to be binding on August 22, 2018 and signed the Order Denying the
19 Motion to Vacate¹ on September 18, 2018. Not taking no for an answer, Ms. Chan again
20 petitioned for the Court to overturn the Arbitration Award and again her request was struck down
21 on October 31, 2018 when the Court granted the Respondents request for Summary Judgment
22 and took their request for an Award of Attorneys’ Fees and Costs under advisement. On March
23 22, 2019, the district court issued the Order Granting Defendant’s Countermotion for Summary
24 Judgment and Attorney Fees and Costs.²
25
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27

28 ¹ **Exhibit “1”** Order Denying Motion to Vacate or Modify Arbitration Award, Sep, 18, 2018.

² Attached as **Exhibit “2”**.

Ms. Chan filed her *Notice of Appeal* on April 22, 2019, appealing the March 22, 2019 Order. Importantly, Ms. Chan did not appeal the September 18, 2018 Order which specifically confirmed the arbitration award. She instead appealed the March 22, 2019 Order which affirmed the September 18, 2018 Order, granted partial summary judgment and awarded fees and costs to Appellees. Though the Court granted summary judgment, it was actually partial summary judgment, as the order did not resolve Appellees' counterclaims for abuse of process and request for declaratory relief. Furthermore, this Court pointed out in the *Order to Show Cause* filed on November 14, 2019, that there was a pending motion for reconsideration which was not resolved at the time Ms. Chan appealed. The motion for reconsideration was filed by Ms. Chan in *pro per* and was never properly served on Respondents or noticed. It was therefore, procedurally deficient. The Court, in an April 17, 2019 minute order directed that there was no basis for reconsideration. Such a motion, were it made after dismissal of this appeal, would be untimely and impossible to be heard by the district court. Moreover there are still pending abuse of process and declaratory relief counterclaims. This Court does not have jurisdiction over this matter, and the appeal should be dismissed.

LEGAL ARGUMENT

I. MS. CHAN FILED HER APPEAL PRIOR TO THE RESOLUTION OF A TOLLING MOTION FOR RECONSIDERATION

As this Court wisely pointed out, there was a pending motion for reconsideration at the time Ms. Chan filed her appeal. As explained in AA Primo Builders, LLC, v. Washington, a motion for reconsideration has a tolling effect. Ms. Chan filed her *Motion to Vacate Entry of Order or Motion for Extension of Time to File Reconsideration to the Entry of Order Granting Defendants Counter Motion for Summary Judgment and Attorney Fees and Costs* (hereafter "Reconsideration Motion") on April 1, 2019. She filed an additional *Attachment to Plaintiffs'*

1 *Previous Timely Filed and Served Motion to Vacate Entry of Order or Motion for Extension of*
2 *Time to File Reconsideration to the Entry of Order Granting Defendants Counter Motion for*
3 *Summary Judgment and Attorney Fees and Costs* (hereafter “Supplement”) on April 15, 2019.
4
5 Therefore, only 7 days prior to her *Notice of Appeal*, Ms. Chan was still actively pursuing a
6 motion to vacate or reconsider the March 22, 2019 Order. Ms. Chan claims that her motion does
7 not constitute an attempt to vacate or reconsider the order. Indeed, Ms. Chan does request
8 additional time to locate counsel in her Reconsideration Motion, however she specifically
9 requests that the district court “vacate the entry of order” or alternatively “grant a reconsideration
10 of the Order.”³ Ms. Chan filed her *Notice of Appeal* without awaiting a ruling on her
11 Reconsideration Motion. Her motion for reconsideration was also not properly served or noticed
12 and is thus, procedurally improper. As discussed above, a motion for reconsideration tolls the
13 time for filing an appeal. Instead of waiting for resolution of her request for reconsideration, Ms.
14 Chan opted for appeal. The appeal was premature, and therefore, this Court lacks jurisdiction
15 over the matter.
16

17 **II. NRS 38.247(1)(C) AND NRS 38.247(1)(F) ARE NOT APPLICABLE**

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19 If this Court determines that the motion for reconsideration was resolved, Ms. Chan’s
20 appeal is still inappropriate as the March 22, 2019 Order was not confirming the arbitration
21 award and there are still outstanding claims before the district court. Nevada has adopted the
22 Uniform Arbitration Act of 2000 with a policy “favoring efficient and expeditious enforcement
23 of agreements to arbitrate.”⁴ NRS 38.247(1)(c) & (1)(f), part of the Uniform Arbitration Act of
24 2000, do not apply to the March 22, 2019 order. NRS 38.247(1)(c) allows for the appeal of “[a]n
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27 ³ See *Motion to Vacate Entry of Order or Motion for Extension of Time to File Reconsideration*
28 *to the Entry of Order Granting Defendants Counter Motion for Summary Judgment and Attorney*
Fees and Costs at 2:6-8.

⁴ Tallman v. Eighth Jud. Dist. Ct., 131 Nev. 713, 718, 359 P.3d 113, 117 (Nev. 2015).

1 order confirming or denying confirmation of an arbitration award.” NRS 38.247(1)(f) allows for
2 the appeal of a “final judgment entered pursuant to NRS 38.206 to 38.248, inclusive.” In other
3 words, appeals may be taken for orders confirming an award or if the order is a final order.

4 Neither of these circumstances are present in this matter.

5
6 **a. The March 22, 2019 Order is not “an order confirming or denying an
7 arbitration award.”**

8 The arbitration award was confirmed in the September 18, 2018 Order, which specifically
9 stated that “the Arbitration Award of the GLVAR arbitration panel is confirmed.”⁵ At that same
10 hearing, the court deferred on ruling on Defendants’ counter-motion for summary judgment and
11 for an award of attorney’s fees. Therefore, the Arbitration Award was confirmed in the
12 September 18, 2018 order, **not in the March 22, 2019 Order**. The March 22, 2019 Order, the
13 order being appealed, simply states that “the September 18, 2018 Order is affirmed wherein Wu
14 was determined the procuring cause and the Arbitration Award was confirmed.”⁶ The only issues
15 before the Court on October 31, 2018 were the motion for summary judgment and the
16 Defendants’ request for an award of attorney’s fees. The issue of whether the GLVAR
17 Arbitration panel committed error or whether the Court should deny the award had already been
18 adjudicated and finalized by the September 18, 2018 Order.

19
20
21 Ms. Chan is actually appealing an order confirming an order. She cannot, 6 months after
22 entry of the order confirming the arbitration award, now seek to appeal the validity of that order
23 before the Supreme Court of Nevada. This order does not fall under the statutory language
24 allowing for appeals of orders “confirming or denying an arbitration award.”⁷ Therefore, the
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28 ⁵ **Exhibit “1”** at 3:16-17.

⁶ **Exhibit “2”** at 7:2-3.

⁷ NRS 38.247(1)(c).

claims must be dismissed as the court lacks jurisdiction under NRS 38.247(1)(c) to review an order which only affirms an order confirming an arbitration award.

b. The March 22, 2019 Order is not a Final Order.

Only final orders are appealable under NRS 38.247(1)(f). NRAP 3A(b)(1) states that an appeal can be taken from “[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” The Supreme Court of Nevada has discussed what constitutes a final order for the purposes of an appeal. In Lee v. GNLV Corp., the Supreme Court of Nevada explained that “a final judgment has been described as one that disposes of the issues presented in the case, determines the costs, and leaves nothing for the future consideration of the court.”⁸ In other words, a final order resolves all issues present in the litigation. Such an order “disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court.”⁹ In a footnote in Lee v. GNLV Corp., the Supreme Court of Nevada gave litigants the following warning: “We caution litigants, however, that orders granting partial summary judgment, *see* NRCP 56, **which are generally not appealable absent a certification of finality pursuant to NRCP 54(b)**, are to be distinguished from summary judgment orders that dispose of all issues and parties.”¹⁰ To appeal an order of partial summary judgment, the court must certify the order pursuant to NRCP 54(b). Importantly, the Supreme Court in Lee states that they determine “the finality of an order or judgment by looking to what the order or judgment actually *does*, not what it is called.”¹¹

⁸ Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416. 418 (Nev. 2000), internal quotation omitted.

⁹ *Id.*

¹⁰ Lee v. GNLV Corp., 116 Nev. 424, 428, 996 P.2d 416. 418 (Nev. 2000), footnote 4.

¹¹ Lee v. GNLV Corp., 116 Nev. 424, 428, 996 P.2d 416. 418 (Nev. 2000), citing Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994), internal quotations omitted.

1 Pursuant to NRCP 54(b), in matters containing more than one claim for relief, including
2 counterclaims, “the court may direct entry of a final judgment as to one or more, but fewer than
3 all, claims or parties only if the court expressly determines that there is no just reason for
4 delay.”¹² A court may expressly direct that an order is final as to fewer claims. If a court does not
5 make this explicit, an order “that adjudicates fewer than all the claims or the rights and liabilities
6 of fewer than all the parties does not end the action as to any of the claims or parties and may be
7 revised at any time before the entry of a judgment adjudicating all the claims and all the parties’
8 rights and liabilities.”¹³ In other words, unless the court expressly directs that its order is final as
9 to certain claims, such an order is not final and does not end the action as to any of the claims.
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11
12 The order that Ms. Chan is appealing is not a final order disposing of all “all the issues
13 presented in the case.”¹⁴ Furthermore, the Court never certified that order’s finality pursuant to
14 NRCP 54(b). Despite the order stating that it is granting summary judgment, it is essentially an
15 order granting partial summary judgment, as it only adjudicates defendants’ request for summary
16 judgment as to the order as well as the request for attorney’s fees. Defendants initiated a
17 counterclaim for abuse of process and declaratory relief, neither of which has been settled
18 through summary judgment. As discussed by the Supreme Court of Nevada in Lee, the title of
19 the order is not dispositive, rather the effect of the order. The March 22, 2019 Order serves as an
20 order granting partial summary judgment, as defendants’ counterclaims are still unresolved.
21 Appellants, in their docketing statement, even list “Defendant’s claims (Abuse of process and
22 declaratory relief) against Plaintiffs” as one of the claims, yet state that the disposition of these
23 claims was reached on September 18, 2019 and March 22, 2019.¹⁵ However, the district court
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27 ¹² NRCP 54(b).

28 ¹³ NRCP 54(b).

¹⁴ ¹⁴ Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416. 418 (Nev. 2000).

¹⁵ See Appellants’ *Docketing Statement Civil Appeals* at Page 9.

1 never made a determination as to the defendant's abuse of process claim. Additionally, the Court
2 never adjudicated Appellants' claim for breach of contract against defendant KB Home Sale –
3 Nevada Inc. Therefore, not all the claims have been determined. Without a certification pursuant
4 to NRCP 54(b), this order is not a final order and therefore, cannot be appealed pursuant to NRS
5 38.247(1)(f).
6

7 **III. MS. CHAN CANNOT APPEAL THE SUFFICIENCY OF THE GLVAR**
8 **ARBITRATION AWARD**

9 Appellants missed the deadline for appealing the District Court's determination affirming
10 the arbitration award issued by GLVAR. Specifically, Appellants are appealing the findings of
11 the *Order Granting Defendant's Countermotion for Summary Judgment and Attorney's Fees and*
12 *Costs* filed on March 22, 2019. This order affirmed the September 18, 2018 order, granted the
13 *Countermotion for Summary Judgment* and the *Motion for Attorney's Fees and Costs*.
14 Unfortunately for Appellants, they can only appeal whether the court erred in granting the
15 Respondents' *Countermotion for Summary Judgment* and their *Motion for Attorney's Fees and*
16 *Costs*. The deadline to appeal the District Court's decision on the appropriateness of the GLVAR
17 arbitration award and the various questions of law related thereto, had passed.
18

19 Respondents filed their *Countermotion to Recognize Wu as the Procuring Cause, for*
20 *Summary Judgment and for Attorney Fees* on August 6, 2018 pursuant to NRS 38.239. The
21 action confirming the arbitration award, as Wu as the procuring cause, was a separate action
22 from the district court action filed by Ms. Chan. Once the district court confirmed the arbitration
23 award, the judgment was final as to the award's sufficiency. The issue then became whether the
24 result of arbitration rendered the declaratory action Ms. Chan filed in district court moot as there
25 was no longer a need for declaratory relief. It was in the district court case whereby Respondents
26 asserted their counterclaims against Ms. Chan. The result of the binding arbitration wiped out
27
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1 Ms. Chan's claims in the district court case, but did not nullify the abuse of process claim
2 initiated by Respondents. This is an important distinction, as it shows that the order confirming
3 the arbitration award is final, as to that claim, but the entire case, itself, was not disposed of by
4 that order.

5
6 NRAP 4(a)(1) provides that a party may appeal a judgment or order "no later than 30
7 days after the date that written notice of entry of the judgment or order appealed from is served."
8 In this instance, the *Order Denying Motion to Vacate or Modify Arbitration Award* was filed and
9 served on or about September 18, 2018. Appellant did not file her *Notice of Appeal* until April
10 22, 2019, well beyond the 30 day time limit granted by NRAP 4(a)(1). Thus, all appeals
11 addressing the sufficiency of the GLVAR arbitration award or procedure cannot stand on appeal,
12 as they were not appealed in a timely manner. The *Order Denying Motion to Vacate or Modify*
13 *Arbitration Award* was automatically affirmed once the 30 days to appeal had lapsed. Therefore,
14 the majority of the claims addressing the GLVAR arbitration should be dismissed as they are not
15 timely. This includes the following alleged issues on appeal:
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- 18 1. Whether Nevada law allows for more than one buyers' agent to be the procuring
19 agent of a sale of property and thereby be required to split commissions with other
20 buyers' agents;¹⁶
- 21 2. Whether the arbitration award was arbitrary and capricious, unsupported by
22 applicable agreements, and/or based on a manifest disregard for the law;¹⁷
- 23 3. Whether the arbitration panel and District Court erred in disregarding a manifestly
24 fraudulent document that gave rise to a competing buyers' agent claim to
25 commissions;¹⁸
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28 ¹⁶ See Appellants' *Docketing Statement Civil Appeals* at Page 4.

¹⁷ See Appellants' *Docketing Statement Civil Appeals* at Page 4.

1 4. Whether the District Court erred by affirming the arbitration award on the basis of
2 insufficient and/or flawed findings of fact and conclusions of law;¹⁹ and

3 5. Whether the arbitration panel exceeded its authority in making its award.²⁰

4 All of these findings were determined by the September 18, 2018 Order and should have been
5 appealed within 30 days thereof. They were not, and therefore Ms. Chan cannot appeal on these
6 issues. This Court lacks jurisdiction to entertain such an untimely appeal.
7

8 **IV. THE APRIL 1, 2019 MINUTE ORDER IS NOT DISPOSITIVE AS TO THE**
9 **COUNTERCLAIMS**

10 Ms. Chan points to dicta in the April 1, 2019 Minute Order as proof that the district court
11 determined that “there [was] nothing pending in this litigation.”²¹ Minute orders and oral
12 pronouncements, like the April 1, 2019 Minute Order are not dispositive and are ineffective for
13 making any determination in a civil case. This Court, in Div. of Child & Family Servs. V. Eighth
14 Judicial Dist. Court, examined whether oral pronouncements from the bench, clerk’s minute
15 orders and unfiled written orders have any dispositive effect on the outcome of case. This Court
16 determined that “[b]efore the court reduces its decision to writing, signs it, and files it with the
17 clerk, the nature of the judicial decision is impermanent.”²² Therefore, “a court’s oral
18 pronouncement from the bench, **the clerk’s minute order**, and even an unfiled written order are
19 ineffective for **any purpose**.”²³ Therefore, the April 1, 2019 Minute Order cannot be relied upon
20 as ruling on Respondents’ counterclaims. There is no order resolving the abuse of process claim
21 nor the declaratory relief claim and Ms. Chan cannot use the minute order to show otherwise.
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25 ¹⁸ Id.

26 ¹⁹ Id.

27 ²⁰ Id.

28 ²¹ See April 1, 2019 *Minute Order* attached as Exhibit “3” to Ms. Chan’s *Plaintiffs-Appellants’ Response to Order to Show Cause*.

²² Div. of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 451. 92 P.3d 1239, 1243 (2004).

²³ Id., internal quotations omitted, emphasis added.

1 Her appeal is, therefore, premature as counterclaims are still pending and dismissal is
2 appropriate.

3 **V. APPELLANTS CANNOT CURE THEIR JURISDICTIONAL DEFECTS**

4 Appellants request time to cure the jurisdictional defects in their appeal. Unfortunately,
5 there are defects that cannot be cured. First, the order appealed from is not an order confirming
6 or denying an arbitration award, as required by NRS 38.247(1)(c). Nor is the order a final order
7 as there are counterclaims pending which have not been resolved by a written, signed and
8 entered order. No amount of time will cure these jurisdictional problems. Appellees are not
9 interested in stipulating to allow Ms. Chan to keep her inappropriate appeal going. She has
10 caused Appellees to incur thousands in legal fees and endure years of stress all for the sake of her
11 pride and self-inflated ego. Appellees intend on pursuing their abuse of process claim against
12 Ms. Chan pending the dismissal of this appeal. Any extension of time will just be delaying the
13 inevitable.

14 **CONCLUSION**

15 Ms. Chan failed to appeal the order confirming the arbitration award entered on
16 September 18, 2018. Any aspects of her appeal challenging the arbitration award must be
17 dismissed due to her untimely appeal. Additionally, NRS 38.247 is not applicable to this matter
18 because Ms. Chan is not appealing a decision confirming an arbitration award nor is it appealing
19 a final order. Ms. Chan even filed her appeal prior to resolution of a motion for reconsideration
20 which she initiated. She relies on a minute order to show that the counterclaims against her were
21 resolved. These faults are fatal to her appeal and should result in dismissal thereof. There is no
22 amount of time that will allow Ms. Chan to cure these defects. Appellants' actions have
23 contravened the fundamental goal of arbitration: to effectuate "efficient and expeditious
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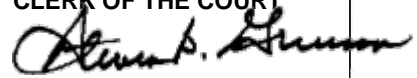
1 enforcement of agreements to arbitrate.”²⁴ Even if this action is dismissed, Ms. Chan will
2 continue to fight against enforcement of the arbitration award entered in early 2018. That award
3 gave Ms. Chan a portion of the arbitration award, yet this was not enough for Ms. Chan. She
4 wants it all and will continue to fight, despite now incurring legal fees far in excess of the
5 commission on the Subject Property. Her pride has caused all of this litigation to spiral out of
6 control and she must not be permitted to prolong this matter any longer.
7

8 DATED this 2nd day of JANUARY 2020.
9

10 By: /s/Keith D. Routsong, Esq.
11 MICHAEL A. OLSEN, ESQ.
12 Nevada Bar No. 6067
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²⁴ Tallman v. Eighth Jud. Dist. Ct., 131 Nev. 713, 718, 359 P.3d 113, 117 (Nev. 2015).

EXHIBIT “1”



ORD

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Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.

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**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

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

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IT IS HEREBY ORDERED, AJUDICATED, AND DECREED:

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

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

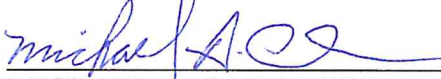
IT IS SO ORDERED this 14 ^{SEPT} of ~~AUGUST~~ 2018.


DISTRICT COURT JUDGE

ERIC JOHNSON

KM

Prepared and submitted by:



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Approved by:



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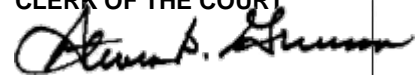
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EXHIBIT “2”



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**DISTRICT COURT
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BETTY CHAN and ASIAN AMERICAN
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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:
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10 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

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.*

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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.

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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.
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19 20 16. **Brunzell Factor #4:** "the result: whether the attorney was successful and what
21 benefits were derived". Defendants were ultimately successful in upholding and enforcing the
22 Arbitration Award, recognizing Wu as the procuring cause and thereby securing summary
23 judgment in favor of the Defendants.
24

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

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.

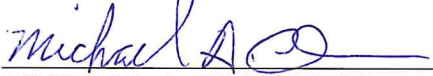
4 b. That the *Countermotion for Summary Judgment* is GRANTED

5 c. That the *Motion for Attorney's Fees and Costs* is GRANTED and that Attorney's
6 fees in the amount of \$21,435.00 and Costs in the amount of \$920.83 are hereby awarded
7 to Defendants.
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10 IT IS SO ORDERED this 19 ^{MARCH} of ~~FEBRUARY~~ 2019.

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14 _____
15 DISTRICT COURT JUDGE SS
16 ERIC JOHNSON

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
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 2nd, 2020 the **REPLY TO PLAINTIFFS-
APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE** was served by depositing a
copy of the same in the U.S. Mail, postage prepaid, addressed to:

R. Duane Frizell, Esq.
400 N. Stephanie St. Suite 265
Henderson, NV 89014

/S/Christine Manning

An Employee of BLACKROCK LEGAL

