

1 **I. INSTRUCTION AND SUMMARY OF THE RESPONSE**

2 This case is a dispute as to real estate commissions. In a previous order to
3 show cause (dated November 19, 2019), this Court identified a potential
4 jurisdictional defect because the District Court had not yet ruled on an apparent
5 tolling motion. That defect has since resolved, as the District Court has denied the
6 subject motion. Subsequently, Chan and Asian American timely filed an amended
7 notice of appeal.
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10 In its most recent order to show cause (dated March 9, 2020), this Court
11 identified three additional jurisdictional concerns: (1) the order appealed from
12 merely stated that it “affirms” a previous order confirming an arbitration award; (2)
13 the order appealed from does not dispose of certain pending claims; and (3) a non-
14 attorney filed the original notice of appeal for Asian American. These concerns are
15 easily assuaged.
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18 This Court has jurisdiction to consider this appeal. There is no record that the
19 notice of entry of the earlier order was ever served; therefore, the time to appeal that
20 order has not even begun to run yet. It thus follows that the timeliness of the appeal
21 is not an issue.
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23 As to the three specific concerns identified in the second order to show cause,
24 it is clear that none of those potential defects defeat jurisdiction either. First, by
25 stating—incorrectly—that the earlier order had determined that one of the
26 Respondents was the “procuring cause” entitled to the real estate commissions at
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1 issue, the subsequent order disturbed, revised, and substantively changed the
2 parties' legal rights and obligations. In this regard, the subsequent order was not a
3 mere superfluous, recantation of the previous ruling; rather, it was an appealable
4 order. Second, the "finality" restrictions on the appealability of certain orders are
5 inapplicable to the case at bar because this is an appeal from the confirmation of an
6 arbitration award; the pending claims therefore do not defeat this Court's
7 jurisdiction. Finally, the Court should not dismiss American Asian's appeal
8 because its prior counsel withdrew one day before the order appealed from was
9 entered; it scrambled to find a new attorney and had no choice but to have its sole
10 officer file the original notice of appeal; it promptly retained new counsel after the
11 original notice was filed; and counsel recently filed an amended notice on
12 American Asian's behalf.

13 **II. BACKGROUND**

14 This case involves a controversy between real estate agents as to their rights
15 to the commissions arising from the same sale of the same property. The matter
16 went to arbitration. Subsequently, the District Court confirmed the arbitration
17 award. Pertinent procedural matters are set forth below:

- 18 1. On September 18, 2018, the District Court entered its Order Denying
19 Motion to Vacate or Modify Arbitration Award ["Confirmation
20 Order" or "Confirm. Ord."] (See attached ***Exhibit I***). A notice of
21 entry of the Confirmation Order was filed that same day, but there is
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1 no record that the Confirmation Order or its notice of entry were ever
2 served. (See *id.*).

3 2. On March 22, 2019, the District Court entered its Order Granting
4 Defendants Countermotion for Summary Judgment and Attorneys
5 Fees and Costs [“MSJ Order” or “MSJ Ord.”]. (See attached ***Exhibit***
6 2). *As with the Confirmation Order, a notice of entry of the MSJ*
7 *Order was filed that same day; however, there is no record that the*
8 *MSJ Order or its notice of entry were ever served.* (See *id.*).

9 3. Prior to retaining new counsel in the District Court,¹ on April 1, 2019,
10 Appellants filed their Motion to Vacate Entry of Order or Motion for
11 Extension of Time to File Reconsideration to the Entry of Order
12 Granting Defendants’ Countermotion for Summary Judgment and
13 Attorney Fees and Costs [“Motion for Reconsideration” or “Mot.
14 Reconsider”]. (See attached ***Exhibit 3***).

15 4. On April 22, 2019, still without new counsel, Appellants filed their
16 Notice of Appeal [“Original NOA” or “Orig. NOA”].

17 5. On November 14, 2019, this Court entered an Order to Show Cause
18 [“First OSC” or “1st OSC”], in which it noted a potential
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26 ¹ Plaintiffs’ previous counsel withdrew on March 21, 2019, one day before the
27 MSJ Order was entered. (See Order Granting Motion to Withdraw as Counsel of
28 Record (filed in the District Court with separate notice of entry [attached as
Exhibit 9]).

jurisdictional defect arising from the fact that the Motion for Reconsideration was still pending. (*See* 1st OSC at p.1). The Court then directed Appellants “to show cause why this appeal should not be dismissed for lack of jurisdiction.” (*Id.*).

6. On December 16, 2019, in the present action, Appellants filed their Response to Order to Show Cause—and—Alternative Request for Leave and Additional Time to Cure Any Jurisdictional Defendant by Stipulation, Motion, or Order in the District Court.

7. On January 3, 2020, in the case at bar, Defendants-Respondents filed their Reply to Appellants’ Response to Order to Show Cause.

8. On January 7, 2020, in the District Court, Appellants filed their Motion to Formally Resolve Motion for Reconsideration [“Motion to Resolve” or “Mot. Resolve”], in order to address the potential jurisdictional defects identified in the First OSC.

9. On that same date (January 7, 2020), in current appeal, Appellants filed their Notice of Filing in District Court Plaintiffs’ Motion to Formally Resolve Motion for Reconsideration.

10. On March 9, 2020, this Court entered a second Order to Show Cause [“Second OSC” or “2nd OSC”], in which it noted three additional, potential defects. (*See* 2nd OSC at pp.1-2). Once again, the Court

1 directed Appellants “to show cause why this appeal should not be
2 dismissed for lack of jurisdiction.” (*Id.* at p.2).

3 11. On March 10, 2020, the District Court entered its Order on Plaintiffs’
4 Motion to Formally Resolve Motion for Reconsideration
5 [“Reconsideration Order” or “Reconsid. Ord.”], in which it granted
6 the Motion to Resolve and denied the Motion for Reconsideration.
7 (See attached *Exhibit 4*, at p.4). The notice of entry was served and
8 filed that same day. (*See id.*).

9 12. On April 6, 2020, Appellants filed their Amended Notice of Appeal
10 [“Amended NOA” or “Amend. NOA”]. (*See* attached *Exhibit 5*).

11 The present paper constitutes Plaintiffs-Appellants’ Response to Order to
12 Show Cause Entered March 9, 2020. The reasons supporting the Response are set
13 forth below.

14 **III. RESPONSE TO ORDER TO SHOW CAUSE**

15 **A. *The Potential Jurisdictional Defect Identified in the First OSC*** 16 ***Has Resolved Because on March 10, 2020, the District Court*** 17 ***Entered Its Reconsideration Order.***

18 In its First OSC, this Court identified “a potential jurisdictional defect.” (1st
19 OSC at p.1). In this regard, the Court explained: “It appears that the notice of
20 appeal may have been prematurely filed after the filing of a timely tolling motion
21 for reconsideration on April 1, 2019, but before that motion was formally resolved
22 by the district court.” (*Id.*).

1 On March 10, 2020, the District Court entered its Reconsideration Order. In
2 that Order, the District Court granted the Motion to Resolve but denied the
3 Reconsideration Motion. (Reconsider. Ord. at p.4). Because the Reconsideration
4 Order disposed of the Motion for Reconsideration, it resolved the potential
5 jurisdictional defect identified in the First OSC.
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7 ***B. There Is No Record that the Notice of Entry of the Earlier***
8 ***Confirmation Order Was Ever Served; Therefore, the Time to***
9 ***Appeal that Order Has Not Even Begun to Run Yet.***

10 There is no record that the notice of entry of the earlier Confirmation Order
11 was ever served. Therefore, the time to appeal that order has not even begun to run
12 yet. *See* NRAP 4(a)(1) (“[A] notice of appeal must be filed after entry of a written
13 judgment or order, and no later than 30 days after the date that written notice of
14 entry of the judgment or order appealed from is served.” (emphases added)). It thus
15 follows that the timeliness of the appeal is not an issue.
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18 ***C. None of the Potential Defects Identified in the Second OSC***
19 ***Defeat Jurisdiction.***

20 In its Second OSC, this Court notes that in their reply made in connection
21 with the First OSC, Defendants-Respondents have “raise[d] additional jurisdictional
22 concerns.” (2nd OSC at p.1). The Second OSC identified the following concerns:
23 (1) the MSJ Order merely states that it “affirms” the previous Confirmation Order;
24 (2) the MSJ Order does not dispose of all of Defendants-Respondents’
25 counterclaims or Appellants’ claims against Defendant KB Home Sales – Nevada
26 Inc. (“KB Home”); and (3) on her own behalf and on the behalf of Asian American,
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1 Chan filed the Original NOA, but she is not an attorney. As shown below, none of
2 these potential defects defeat jurisdiction.

3 ***1. By stating—incorrectly—that the earlier Confirmation***
4 ***Order had determined that Defendant-Respondent***
5 ***Wayne Wu was the “procuring cause” entitled to the***
6 ***subject real estate commissions, the subsequent MSJ***
7 ***Order disturbed, revised, and substantively changed the***
8 ***parties’ legal rights and obligations; the MSJ Order was***
9 ***therefore not a mere superfluous recantation of the***
10 ***previous ruling and was appealable.***

11 Citing *Campos-Garcia v. Johnson*, 130 Nev. 610, 331 P.3d 890 (2014), the
12 Second OSC states: “[I]t appears that the March 22, 2019, [MSJ Order] may not be
13 appealable under NRS 38.247(1)(c) as an order confirming an arbitration award
14 because that order does not actually confirm an arbitration award. [Rather,] the
15 [MSJ Order] merely states that it affirms the previous ... [Confirmation Order].”
16 (2nd OSC at p.1).

17 *Campos-Garcia* was a tort action. 130 Nev. at 611, 331 P.3d at 891. In that
18 case, the district court entered a judgment on a jury verdict, which awarded the
19 plaintiff damages. Later, the district court granted the plaintiff’s motion for attorney
20 fees and costs, which it included in an “amended judgment.” *Id.* Apart from the
21 award of attorney fees and costs, the “amended judgment” did not alter the original
22 judgment. *Id.*

23 The *Campos-Garcia* Court noted: “[A]n appeal must be taken from an
24 appealable order when first entered; superfluous or duplicative orders and
25 judgments—those filed after an appealable order has been entered that do nothing

1 more than repeat the contents of that order—are not appealable and, generally,
2 should not be rendered.” *Id.* at 611, 331 P.3d at 890 (emphasis added). The Court
3 explained further:

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5 Under NRCP 54(a), the term “[j]udgment” includes “any order
6 from which an appeal lies.” We have consistently explained that the
7 appealability of an order or judgment depends on “what the order or
8 judgment actually does, not what it is called.” Thus, we have
9 recognized that a post-judgment order awarding attorney fees and costs
10 is appealable, even though not termed “judgment” or incorporated into
11 the final judgment. Such post-judgment orders may also be executed
12 on, even if not labeled “judgment.” When district courts, after entering
13 an appealable order, go on to enter a judgment on the same issue, the
14 judgment is superfluous. Because superfluous judgments are
15 unnecessary and confuse appellate jurisdiction, we disapprove of this
16 practice, generally.

17 *Id.* at 611-612, 331 P.3d at 891. Because the *Campos-Garcia* defendant had not
18 separately appealed the “amended judgment,” the Court “dismiss[ed] [the] appeal as
19 to the amended judgment and the related attorney fees and costs award, only.” *Id.* at
20 612, 331 P.3d at 891. The appeal as to the original judgment was allowed to
21 proceed. *See id.*

22 With respect to the appealability of the MSJ Order in the case at bar, it turns
23 on whether it did more than just reiterate the previous Confirmation Order. “The
24 test for determining whether an appeal is properly taken from an amended judgment
25 rather than the judgment originally entered depends upon whether the amendment
26 disturbed or revised legal rights and obligations which the prior judgment had
27 plainly and properly settled with finality.” *Morrell v. Edwards*, 98 Nev. 91, 92-93,
28 640 P.2d 1322, 1324 (1982) (emphasis added). *Cf. Lee v. GNLV Corp.*, 116 Nev.

1 424, 427, 996 P.2d 416, 417 (2000) (“[T]his court has customarily adopted the view
2 that the finality of a district court’s order depends not so much on its label as an
3 ‘order’ or a ‘judgment,’ but on what the ‘order’ or ‘judgment’ substantively
4 accomplishes.” (emphasis added)).
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6 Here, the jurisdictional issue turns on whether that the MSJ Order disturbed,
7 revised, or substantively changed the parties’ legal rights and obligations as set forth
8 in the earlier Confirmation Order. The MSJ Order states: “[T]he September 18,
9 2018 [Confirmation] Order is affirmed wherein [Defendant-Respondent Wayne] Wu
10 was determined the procuring cause and the Arbitration Award was confirmed.”
11 (MSJ Ord. ¶ a, at p.7). The MSJ Order also states that in the “August 22, 2018
12 hearing the Court further found that Wayne Wu was the procuring cause.” (MSJ
13 Ord. ¶ 4, at p.3). Perplexingly, the MSJ Order mischaracterizes the Confirmation
14 Order and hearing transcript.
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18 On its face, the MSJ Order would appear to be a duplicative, “superfluous”
19 judgment because, by its terms, apart from awarding attorney fees and costs, it
20 purports only to reiterate and “affirm” what was already determined in the earlier
21 Confirmation Order. As Respondents have argued, as with the award of attorney
22 fees and costs in *Campos-Garcia*, it would seem as though, on the merits, the MSJ
23 Order did not substantively alter the earlier ruling. Therefore, according to
24 Respondents, the MSJ Order was not appealable under NRS 38.247(1)(c).
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1 Upon closer review, it becomes obvious that Respondents' reasoning is
2 flawed. For starters, Respondents completely ignore their countermotion to
3 recognize Wu as the procuring cause. (*See* Opposition to Motion to Vacate or
4 Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring
5 Cause, for Summary Judgment, and for Attorney Fees (filed in the District Court
6 Aug. 6, 2018) ["Procuring Cause Countermotion" or "Proc. Cause Countermot."]
7 [attached *Exhibit 6*]). In their Procuring Cause Countermotion, Respondents
8 specifically requested the District Court to make a determination that Wu was the
9 legal "procuring cause" entitled to the real estate commissions at issue. (*See id.* at
10 pp.1, 15-22, 28). Respondents' Procuring Cause Countermotion was separate and
11 apart from their countermotion for attorney fees. (*See id.* at pp.24-28).

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13 Appellants hotly contested the Procuring Cause Countermotion. (*See* Reply
14 in Support of Motion to Vacate or Modify Arbitration Awar[d] and
15 Opposition/Motion to Strike Improper Countermotion at pp.3-9 (filed in the District
16 Court Aug. 15, 2018) ["Procuring Cause Opposition" or "Proc. Cause Opp."]
17 [attached *Exhibit 7*]). Among other things, Appellants maintained that there could
18 only be one procuring cause and that Wu was not it. Specifically, Appellants
19 argued:

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21 Nevada law is clear. A broker or agent is only entitled to a
22 commission on a sale for which he or she establishes that he or she is
23 the procuring cause. *Shell Oil Co. v. Ed Hoppe Realty, Inc.*, 91 Nev.
24 576, 580, 540 P.2d 107, 109 (1975); *Flamingo Realty, Inc. v. Midwest*
25 *Development, Inc.*, 110 Nev 984, 989, 879 P.2d 69, 72 (1994);

1 *Carrington v. Ryan*, 109 Nev. 797, 801-02, 858 P.2d 29, 32 (1993);
2 *Morrow v. Barger*, 103 Nev. 247, 253, 737 P.2d 1153, 1157 (1987).

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4 The [Arbitration] Panel exceeded its power because in Nevada
5 and elsewhere, procuring cause is an either/or proposition, not a
6 sliding scale which allows for more than one procuring cause. There is
7 no such thing as partial procuring cause. *See Morrow v. Barger*, 103
8 Nev. 247, 253, 737 P.2d 1153, 1157 (1987) (“If a real estate broker
9 has been a ‘procuring’ or ‘inducing’ cause of a sale, he or she is
10 entitled to the agreed commission irrespective of who makes the
11 actual sale or terms thereof.”); *Bartsas Realty, Inc. v. Leverton*, 82
12 Nev. 6, 9, 409 P.2d 627, 629 (1966) (“Faced with competing brokers,
13 a court must decide which was the ‘procuring’ or ‘inducing’ cause of
14 the sale.”); *Van C. Argiris & Co. v. FMC Corp.* 494 N.E.2d 723, 727
15 (Ill. App. 1986) (“The law is well settled in Illinois that only one
16 commission will become due when a ready, willing and able
17 purchaser has been found, and the commission will be due only to the
18 broker who can show that he was the procuring cause.”); *Briden v.*
19 *Osborne*, 184 S.W.2d 860, 863 (Tex. App. 1944) (“Whether there be
20 but one broker involved, or more than one independent broker, the
one who is the procuring cause of the sale is the one entitled to a
commission.”); *Salamon v. Brooklyn Sav. Bank*, 44 N.Y.S.2d 420, 421
(N.Y. Sup. Ct. 1943) (allowing interpleaded of commission for
determination between competing claimants: “[O]nly one could have
been the procuring cause.”); *Lundburg v. Stinson*, 695 P.2d 328, 335
(Haw. App. 1985) (“When there are many brokers involved in a
transaction, there can be only one ‘procuring cause ...’”).

21 (Procuring Cause Opp. at p.3-5).

22 ***Contrary to the passing statement in the MSJ Order that it was merely***
23 ***affirming the earlier Confirmation Order, the earlier order did not determine that***
24 ***Wu was the procuring cause.*** Rather, the Confirmation Order held only that a
25 determination of procuring case was irrelevant:
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27 ...Plaintiffs/Counterdefendants have attempted to assert the
28 Award should be modified based on statutory and common law

1 grounds, including that the [Arbitration Panel] purportedly exceeded its
2 authority to arbitrate, acted in an arbitrary and capricious manner, [or]
3 demonstrated manifest disregard for the law

4 Notwithstanding, the Court finds that Nevada law does not
5 prohibit splitting a commission between two individuals both claiming
6 to be the procuring cause

7 (Confirm. Ord. ¶¶ 5-6, at pp.2-3). Therefore, in the Confirmation Order, the District
8 Court did not determine who, if anyone, was the “procuring cause.” In fact, in the
9 Confirmation Order, the District Court expressly left open the disposition of
10 Defendants’ counter-motion to recognize Wu as the procuring cause. (MSJ Ord. at
11 pp.1, 3).

12 The transcript relating to the MSJ Order shows likewise. That hearing
13 involved a lengthy discussion and argument concerning the common law doctrine of
14 “procuring cause.” In that context, the District Court expressly stated:
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16 ... I sort of see where the arbiter came out with his decision that he did
17 and, ... absent ... some clear case law saying that there can only be just
18 one procuring cause, that that trumps any other work in the case, it
19 would seem that the arbitrator’s decision was not arbitrary and
20 capricious.

21 (Transcript at 4:2-7 (Aug. 22, 2018) (attached as *Exhibit 8*)). Later in the hearing,
22 the District Court stated similarly: “[I]n terms of Nevada [law] I don’t find anything
23 that says that there can only be one procuring cause.” (*Id.* at 19:21-23). During the
24 hearing, the District Court never said that Wu (or anybody else for that matter) was
25 the procuring cause.
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1 By stating—incorrectly—that the previous Confirmation Order determined
2 that Wu was the “procuring cause,” the MSJ Order was not a mere superfluous,
3 recantation of the previous ruling. Rather, the subsequent MSJ Order disturbed,
4 revised, and substantively changed the parties’ legal rights and obligations. Among
5 other things, by holding that Wu was the procuring cause, the MSJ Order
6 substantively disadvantaged appellants and their legal rights to the real estate
7 commissions. (See Procuring Cause Opp. at p.3-5 and cases therein cited).
8 Accordingly, the MSJ Order was appealable.
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11 **2. *The “finality” restrictions of NRS 38.247(1)(f) are***
12 ***inapplicable to the case at bar because this is an appeal***
13 ***from the confirmation of an arbitration award;***
14 ***therefore, the pending claims do not defeat this Court’s***
15 ***jurisdiction.***

16 Citing *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000), the
17 Second OSC states: “[T]he [MSJ Order] may not be appealable pursuant to NRS
18 3[8].247(1)(f) as a final order entered under NRS 38.206-.248 because appellants’
19 claims against [KB Homes] and respondents’ counterclaims remain pending in the
20 district court.” (2nd OSC at pp.1-2). As discussed in Part III.C(1) above, the MSJ
21 Order is appealable under NRS 38.247(1)(c) because it substantively changes the
22 nature of the Confirmation Order by holding that Wu was the procuring cause. This
23 substantive change materially affects and disadvantages Chan and Asian American
24 in connection with their rights to the real estate commissions. The MSJ Order is
25 appealable under NRS 38.247(1)(c), and there is no jurisdictional defect on that
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1 grounds. Accordingly, the “finality” restrictions of NRS 38.247(1)(f) are
2 inapplicable to the case at bar, and the pending claims do not defeat this Court’s
3 jurisdiction.
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5 **3. *The Court should not dismiss American Asian’s appeal***
6 ***because its prior counsel withdrew one day before the***
7 ***order appealed from was entered; it scrambled to find a***
8 ***new attorney and had no choice but to have its officer***
9 ***file the Original NOA; it promptly retained counsel after***
10 ***the Original NOA was filed; and counsel recently filed***
11 ***the Amended NOA on American Asian’s behalf.***

12 Citing *Guerin v. Guerin*, 116 Nev. 210, 214, 993 P.2d 1256, 1258 (2000), the
13 Second OSC states: “[I]t appears that the [Original NOA] was improperly filed by
14 appellant Betty Chan, a non-attorney, on behalf of appellant Asian American It
15 thus appears that this court lacks jurisdiction over the appeal filed on behalf of Asian
16 American.” (2nd OSC at p.2). Given the facts here, the Court should not dismiss
17 Asian American’s appeal.

18 The Ninth Circuit has observed: “A notice of appeal is just that – a notice....
19 We fail to see any compelling reason to refuse to recognize a corporation’s notice of
20 appeal, signed and filed by a corporate officer, so long as a lawyer promptly
21 thereafter enters a formal appearance on behalf of the corporation and undertakes the
22 representation.” *Bigelow v. Brady (In re Bigelow)*, 179 F.3d 1164, 1165 (9th Cir.
23 1999); *see also Instituto de Educacion Universal Corp. v. U.S. Dep’t of Educ.*, 209
24 F.3d 18, 22 (1st Cir. 2000) (“[A] corporate officer may sign and file a notice of
25 appeal on behalf of the corporation, as long as the corporation then promptly retains
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1 counsel to take up the cudgels and prosecute the appeal.”). *Cf. Olagues v. Timken*,
2 908 F.3d 200, 202 (6th Cir. 2018) (“[B]ecause a pro se plaintiff cannot represent the
3 interests of a company, we affirm the district court’s decision that [plaintiffs] cannot
4 proceed pro se But we remand to give [plaintiffs] the opportunity to retain
5 counsel and file an amended complaint with counsel.”).

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7 *Guerin* is distinguishable because in that case, the appellant filed a notice of
8 appeal for a trust without ever retaining counsel. Here, one day prior to the District
9 Court’s entering the MSJ Order, it allowed Appellants’ prior counsel to withdraw.
10 (See Order Granting Motion to Withdraw as Counsel of Record (filed in the District
11 Court Mar. 21, 2019) [attached as ***Exhibit 9***]). Appellants were scrambling to find
12 new counsel, and Chan really had no choice but to file the Original NOA on the
13 behalf of herself and Asian American. Chan is the sole director and officer of Asian
14 American. (See Nevada Secretary of State, Entity Information as to Asian American
15 Realty and Property Management (Apr. 6, 2020) [attached as ***Exhibit 10***]). About
16 three weeks after Appellants filed their Original NOA, they found new counsel and
17 were able to have him make a formal appearance in this appeal on their behalves.
18 (Notice of Appearance (filed May 13, 2018)). Given the reasoning in *Bigelow* and
19 *Instituto*, the Court should not dismiss Asian American’s appeal simply because, at
20 the time the Original NOA was filed, it had not yet found new counsel.
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1 In addition, on April 6, 2020, counsel for Chan and Asian American filed the
2 Amended NOA. The Amended NOA should cure any defect as to Asian
3 American's lacking counsel at the time the Original NOA was filed.
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5 It would also appear that this Court may, in its discretion, allow counsel's
6 prompt appearance to cure any defect of the Original NOA as it relates to Asian
7 American. *See Manrique v. United States*, __ U.S. __, __, 137 S. Ct. 1266, 1274,
8 197 L. Ed. 2d 599, 608 (2017) ("The court of appeals may, in its discretion,
9 overlook defects in a notice of appeal other than the failure to timely file a notice.").
10 Appellants hereby request the Court to do just that.
11

12 **IV. REQUEST FOR RELIEF**

13
14 WHEREFORE, Plaintiffs-Appellants BETTY CHAN ("Chan") and ASIAN
15 AMERICAN REALTY & PROPERTY MANAGEMENT ("Asian American")
16 hereby request this Court as follows:
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- 18 A. to allow counsel's prompt appearance in this matter after the original
19 notice of appeal was filed to cure any defect of that notice as it relates
20 to Asian American;
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22 B. not to dismiss this appeal;
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24 C. to reinstate the briefing schedule; and

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1 D. to grant Plaintiffs-Appellants all such other and further relief to which
2 they may justly deserve at law or in equity.
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4 DATED: April 6, 2020.

5 Respectfully submitted,
6

7 **FRIZELL LAW FIRM**
8 400 N. Stephanie St., Suite 265
9 Henderson, Nevada 89014
10 Telephone (702) 657-6000
11 Facsimile (702) 657-0065

12 By: /s/ R. Duane Frizell
13 **R. DUANE FRIZELL, ESQ.**
14 Nevada Bar. No 9807
15 DFrizell@FrizellLaw.com
16 *Attorney for Plaintiffs-Appellants*
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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on April 6, 2020, I served a true and correct copy of the forgoing ***PLAINTIFFS-APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE ENTERED MARCH 9, 2020***, together with any and all exhibits and attachments, via the Supreme Court's Electronic Filing System to the following:

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

/s/ R. Duane Frizell
R. DUANE FRIZELL, ESQ.
Nevada Bar. No 9807
Attorney for Plaintiffs-Appellants

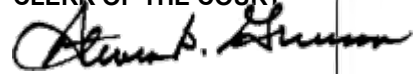
EXHIBITS

- Exhibit 1 Order Denying Motion to Vacate or Modify Arbitration Award
(filed in District Court Sept. 18, 2018; *no record of service*)
[“Confirmation Order” or “Confirm. Ord.”]
- Exhibit 2 Order Granting Defendants Countermotion for Summary Judgment
and Attorneys Fees and Costs
(filed in District Court Mar. 22, 2019; *no record of service*)
[“MSJ Order” or “MSJ Ord.”]
- Exhibit 3 Plaintiffs’ Motion to Vacate Entry of Order or Motion for Extension
of Time to File Reconsideration to the Entry of Order Granting
Defendants’ Countermotion for Summary Judgment and Attorney
Fees and Costs
(filed in District Court Apr. 1, 2019)
[“Motion for Reconsideration” or “Mot. Reconsider”]
- Exhibit 4 Order on Plaintiffs’ Motion to Formally Resolve Motion for
Reconsideration
(filed in District Court Mar. 10, 2020; notice of entry filed and served
Mar. 20, 2020)
[“Reconsideration Order” or “Reconsid. Ord.”]
- Exhibit 5 Plaintiffs Amended Notice of Appeal
(filed in District Court Apr. 6, 2020)
[“Amended NOA” or “Amend. NOA”]
- Exhibit 6 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
(filed in District Court Aug. 6, 2018)
(*exhibits omitted*)
[“Procuring Cause Countermotion” or “Proc. Cause Countermot.”]
- Exhibit 7 Reply in Support of Motion to Vacate or Modify Arbitration Awar[d]
and Opposition/Motion to Strike Improper Countermotion
(filed in District Court Aug. 15, 2018)
(*exhibits omitted*)
[“Procuring Cause Opposition” or “Proc. Cause Opp.”]

1	Exhibit 8	Transcript (Aug. 22, 2018)
2	Exhibit 9	Order Granting Motion to Withdraw as Counsel of Record
3		(filed in District Court Mar. 21, 2019)
4	Exhibit 10	Nevada Secretary of State, Entity Information as to Asian American
5		Realty and Property Management
6		(Apr. 6, 2020)
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EXHIBIT 1

EXHIBIT 1



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
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.)	NOTICE OF ENTRY OF ORDER
)	
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 18th day of
September, 2018. A copy of said Order is attached hereto as Exhibit "1".

DATED this 18th day of September, 2018.

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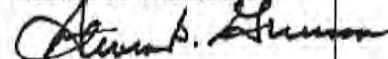
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/s/Thomas R. Grover, Esq.
MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
GOODSELL & OLSEN, LLP
10155 W. Twain Ave., Suite 100

EXHIBIT 1

**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.comroman@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 ///

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

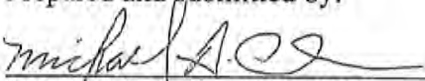
- 15 a. That the *Motion to Vacate or Modify Arbitration Award* is DENIED.
- 16 b. That pursuant to NRS 38.241(4) and NRS 38.242(2) the Arbitration Award of the
17 GLVAR arbitration panel is CONFIRMED.
- 18 c. That the Counter-Motion seeking summary judgment and an award of attorney
19 fees is taken 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

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 *kal*

Prepared and submitted by:


MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
ROMAN C. HARPER, ESQ.
Nevada Bar No. 14374
GOODSELL & OLSEN, LLP
*Attorneys for Wayne Wu, Judith Sullivan,
Nevada Real Estate Corp. and Jerrin Chiu*

Approved by:

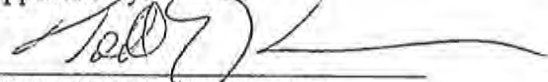
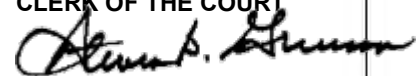

TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
MAXIMILIANO COUVILLIER, ESQ.
Nevada Bar No. 7661
KENNEDY & COUVILLIER, PLLC
*Attorneys for Betty Chan and Asian
American Realty & Property Management*

EXHIBIT 2

EXHIBIT 2



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

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

9 BETTY CHAN and ASIAN AMERICAN) Case No: A-16-744109-C
10 REALTY & PROPERTY MANAGEMENT,)
11) Dept. No: XX
12 Plaintiffs/Counterdefendants,)
13 v.)
14)
15 WAYNE WU, JUDITH SULLIVAN,)
16 NEVADA REAL ESTATE CORP., JERRIN)
17 CHIU, KB HOME SALES – NEVADA INC.,)
18)
19 Defendants/Counterclaimants.)

16 **NOTICE OF ENTRY OF ORDER**

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

21 DATED this 22nd day of March, 2019.



22 MICHAEL A. OLSEN, ESQ.
23 Nevada Bar No. 6076
24 THOMAS R. GROVER, ESQ.
25 Nevada Bar No. 12387
26 **BLACKROCK LEGAL, LLC**
27 10155 W. Twain Ave., Suite 100
28 Las Vegas, NV 89147

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EXHIBIT "1"

Steven D. Grierson

ORDER

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

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

1 11. The Court hereby ORDERS attorney's fees in the amount of \$21,435.00. The
2 Court finds this amount is reasonable and actually incurred by Defendants in enforcing the
3 arbitration award. The Court is awarding attorney fees after the entry of the arbitration award and
4 Plaintiffs' filing of its Motion to Vacate or Modify Arbitration Award, starting on July 25, 2018.
5 The Court declines to award fees requested on the invoices dated December 31, 2016, January
6 31, 2017, and February 28, 2017, as the redactions made to Plaintiffs' counsel's billing records
7 prevent the Court from determining if those fees were reasonable and necessary. The Court has
8 reviewed the remaining fees and finds they were reasonable and appropriate for litigating the
9 matter and in keeping with attorney fees for such work in Southern Nevada. The Court further
10 finds that the Brunzell factors have been met for the reasons stated in Defendant's Counter-motion
11 for Attorney Fees and Costs as set forth below.
12

13
14 12. When determining an award of attorneys' fees and costs, Nevada courts have long
15 relied upon the factors in *Brunzell v. Golden Gate Nat'l Bank*. These four factors analyze (1) the
16 qualities of the advocate: his ability, his training, education, experience, professional standing
17 and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time
18 and skill required, the responsibility imposed and the prominence and character of the parties
19 where they affect the importance of litigation; (3) the work actually performed by the lawyer: the
20 skill, time and attention given to the work; (4) the result: whether the attorney was successful and
21 what benefits were derived.
22
23

24 13. **Brunzell Factor #1:** "the qualities of the advocate: his ability, his training,
25 education, experience, professional standing and skill". Counsel for Defendants, Michael A.
26 Olsen, Esq. is a founding partner of his firm and has been a member of the State Bar of Nevada
27 for over twenty years. He is a graduate of Utah State University and BYU's J. Reuben Clark Law
28 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

IT IS HEREBY ORDERED, AJUDICATED, AND DECREED:

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

IT IS SO ORDERED this 19 ^{MARCH} ~~FEBRUARY~~ 2019.


DISTRICT COURT JUDGE ^{SS}
ERIC JOHNSON


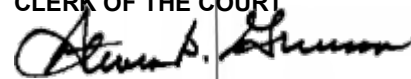
Prepared and submitted by:

MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
GOODSELL & OLSEN, LLP
*Attorneys for Wayne Wu, Judith Sullivan,
Nevada Real Estate Corp. and Jerrin Chiu*

EXHIBIT 3

EXHIBIT 3



MOTION

Betty Chan and Asian American Realty and Property Management
(Name)

4651 Spring Mountain Road
(Address)

Las Vegas, NV89102
(City, State, Zip)

702-222-0078
(Telephone)

aarpm09@gmail.com
(E-mail Address)

☐ Plaintiff/ ☐ Defendant, In Proper Person

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Betty Chan and Asian American Realty and
Property Management

Plaintiffs/Counterdefendants,

vs.

Wayne Wu, Judith Sullivan, Nevada Real Estate Corp
Jerrin Chiu, KB Homes Sales-Nevada Inc,

Defendant(s)/Counterclaimants.

Case No.: A-16-744109-C

Dept. No.: xx

MOTION to Vacate entry of Order or Motion for extension of time to file reconsideration to the entry of Order Granting DefendantsCounter Motion For Summary Judgment and Attorney Fees and Costs

Plaintiff/Counterdefendants Betty Chan and Asian American Realty and Property Management appear in Proper Person submit this Motion based on the following:

1) The hearing took place back in October 31 2018 and the Court find for the Defendants and Court directed Defendants'Counsel to draft the proposed order and to circulate it to Counsel prior to submission to chambers.(Exhibit 1)

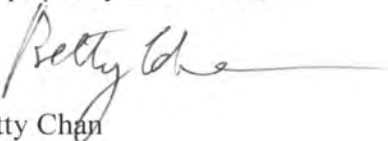
2) Without any explanation or reasons, Defendant Counsel never produced the draft order for 5 months. As soon as the Plaintiff's Counsel was granted withdrawal, then Defendant Counsel conveniently seized the opportunity to submit the Order without circulating to Plaintiff's former counsel or Plaintiff herself in ProSe. With the experience of the Denfendant's Counsel as illustrated in the Order there is no reason he would not know that Plaintiff should be informed.

If that was not an intentional misconduct, then what else?

1 3) Plaintiff's due process right is now severely prejudiced and deprived of any fair
2 chance to review and object. Further, Plaintiff is entitled to have the notice and review with her
3 attorney. At this time, Plaintiff does not have any legal representation to help achieve that
4 purpose to explain, to correct and to advise any legal deficiency to the Plaintiff.
5 4) Under such circumstances, Plaintiff Betty Chan and Asian American Realty and Property
6 Management respectfully requests this Court to vacate the entry of order so Plaintiff can have a
7 month to locate an attorney to review before the entry of order as originally ordered by the Court.
8 Or in the alternative Plaintiff is requesting the Court to grant a reconsideration of the Order and
9 allow extension of reconsideration time beyond the 10 day period so that I can locate a
10 replacement attorney and put this reconsideration on hold until then if the request is granted.
11

12 Dated this April 1, 2019
13

14 Respectfully Submitted,
15

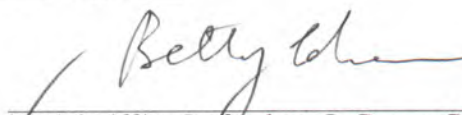
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Betty Chan
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CERTIFICATE OF MAILING

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on April 1 2019
I placed a true and correct copy of the above **MOTION to reconsider Order Granting
Defendants Countermotion FOR Summary Judgment and Attorney Fees and Costs**
in the United States Mail at Las Vegas, Nevada, with first-class postage prepaid, addressed to the
following:

Michael A Olsen Esq _____
10155 W Twain Ave., #100 _____
Las Vegas, NV 89147 _____

DATED: April 1 _____, 2019.



☒ Plaintiff/ ☐ Defendant, In Proper Person (Signature)

From: Sullivan, Skyler [mailto:Dept20LC@clarkcountycourts.us]
Sent: Friday, November 30, 2018 2:03 PM
To: Michael Cristalli <mcristalli@gcmaslaw.com>; 'olsenlaw@lvcm.com' <olsenlaw@lvcm.com>;
Janiece Marshall <jmarshall@gcmaslaw.com>
Subject: A744109 Chan v. Wu Motion for Attorney's Fees

Good Afternoon,

Please be advised that the Court will be issuing a Minute Order in the above matter. The Motion for Attorney's Fees has been GRANTED. The Court's reasoning will be contained in the Minute Order. Counsel for the Defendants is directed to prepare a proposed order and circulate it to counsel prior to submission to chambers. Please let me know if you have any further questions or concerns.

Thank you,

Skyler Sullivan

Law Clerk to the Honorable Eric Johnson

Eighth Judicial District Court, Department XX

702.671.4437 (phone)

702.671.4439 (fax)

Dept20LC@clarkcountycourts.us

Exhibit 1

EXHIBIT 4

EXHIBIT 4

Case Number: A-16-744109-C

1 true and correct copy of same is attached hereto.
2

3 DATED this March 10, 2020.

4 **FRIZELL LAW FIRM**
5 400 N. Stephanie St., Suite 265
6 Henderson, Nevada 89014
7 Telephone: (702) 657-6000

8 By: /s/ R. Duane Frizell
9 R. DUANE FRIZELL, ESQ.
10 Nevada Bar No. 9807
11 *Attorneys for Plaintiffs/*
12 *Counter-Defendants*
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CERTIFICATE OF SERVICE

I hereby certify that I am a citizen of the United States and am employed in Clark County, Nevada, where this service occurs. I am over the age of eighteen years and not a party to the within entitled action; my business address is 400 N. Stephanie St., Suite 265, Henderson, Nevada 89014.

On March 10, 2020, I served the foregoing ***NOTICE OF ENTRY OF ORDER ON PLAINTIFFS' MOTION TO FORMALLY RESOLVE MOTION FOR RECONSIDERATION AND TO CERTIFY JUDGMENT AS FINAL —AND— COUNTERMOTION FOR SUMMARY JUDGMENT ON ABUSE OF PROCESS CLAIM*** on interested party(ies) in this action, as follows:

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/Counterclaimants
Wayne Wu, Judith Sullivan, Nevada Real
Estate Corp., and Jerrin Chiu

JANICE M. MICHAELS, ESQ.
Nevada State Bar No. 6062
WOOD SMITH HENNING & BERMAN, LLP
2881 Business Park Court, Suite 200
Las Vegas, Nevada 89128
Attorney for Defendant
KB Home Sales-Nevada Inc.

By causing a full, true and correct copy thereof to be sent, together with any and all exhibits and other attachments, by the following indicated method(s):

by mailing in a sealed, first-class postage-prepaid envelope, addressed to the above listed individuals, and deposited with the United State Postal Service;

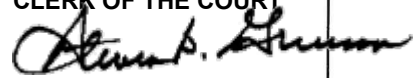
X by electronic service through the Eighth Judicial District e-file/e-serve service;

by hand delivery;

by faxing to the attorney at his/her last known fax number;

by electronic mail to the last known e-mail address of the attorney/the party.

/s/ Aiqin Niu
Aiqin Niu, an employee of
Frizell Law Firm, PLLC



ORDR

R. DUANE FRIZELL, ESQ.
Nevada Bar No. 9807
FRIZELL LAW FIRM
400 N. Stephanie St., Suite 265
Henderson, Nevada 89014
Office (702) 657-6000
Facsimile (702) 657-0065
dfrizell@frizelllaw.com
*Attorney for Plaintiffs/
Counter-Defendants*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN
AMERICAN REALTY &
PROPERTY MANAGEMENT,

Plaintiffs,

vs.

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

Defendants.

§ CASE NO: A-16-744109-C

§ DEPT NO: 20

§ **Hearing Date: 1/22/2020**

§ **Hearing Time: 8:30 a.m.**

And All Related Claims

**ORDER ON PLAINTIFFS' MOTION TO FORMALLY RESOLVE MOTION FOR
RECONSIDERATION AND TO CERTIFY JUDGMENT AS FINAL
—AND—
COUNTERMOTION FOR SUMMARY JUDGMENT
ON ABUSE OF PROCESS CLAIM**

On January 22, 2020, the Court heard Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (filed Jan. 7, 2020) [the "Motion to Resolve"] and Defendants' Countermotion for Summary Judgment on Abuse of Process Claim (filed Jan. 16, 2020) [the "Countermotion"]. Having reviewed the Motion to Resolve, the Countermotion, and the other pleadings and papers on file in this action, and having considered the arguments of counsel at the hearing, the Court finds just, good, and sufficient cause for GRANTING in part and DENYING in part the Motion to Resolve and for DENYING in all respects the

1 Countermotion. In this connection, the Court hereby enters the following Findings, Conclusions,
2 and Order:

3 **FINDINGS OF FACT**

4 The Court hereby makes the following FINDINGS OF FACT:

5 1. On March 22, 2019, the Court ruled upon a separate countermotion and entered
6 its Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and
7 Costs ("MSJ Order").

8 2. On April 1, 2019, Plaintiffs, who were representing themselves *pro se* at the time,
9 filed their Motion to Vacate Entry of Order or Motion for Extension of Time to File
10 Reconsideration to the Entry of Order Granting Defendants Counter Motion for Summary
11 Judgment and Attorney Fees and Costs ("Motion for Reconsideration").

12 3. In their Motion for Reconsideration, Plaintiffs sought only an extension of time to
13 find a new attorney who could review this Court's MSJ Order and then file an actual motion for
14 reconsideration on the merits. Plaintiffs requested two alternative means to achieve this end: (1)
15 vacate the Summary Judgment Order for one month or (2) extend the time to file a motion for
16 reconsideration on the merits. (Id.). Here are Plaintiffs' exact words:

17 ... Plaintiff Betty Chan and Asian American Realty and Property Management
18 respectfully requests this Court to vacate the entry of order so Plaintiff can have a month
19 to locate an attorney to review before the entry of order as originally ordered by the
20 Court. Or in the alternative Plaintiff is requesting the Court to grant a reconsideration of
21 the Order and allow extension of reconsideration time ... so that [Plaintiffs'] can locate a
22 replacement attorney and put this reconsideration on hold until then if the request is
23 granted.

24 4. The Court never ruled on the Motion for Reconsideration.

25 5. In the MSJ Order, this Court ruled "[t]hat the September 18, 2018 Order is
26 affirmed wherein Wu was determined the procuring cause and the Arbitration Award was
27 confirmed."

6. On April 22, 2019, Plaintiffs, who were still representing themselves *pro se*, filed their Notice of Appeal in this action.

7. When Plaintiffs filed their appeal, the counterclaim for abuse of process of Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu (collectively “Defendants”) was still pending and had not yet been adjudicated.

8. On November 14, 2019, in the appeal, the Supreme Court issued an Order to Show Cause (“OSC”) as to why the appeal should not be dismissed because of the pending Motion for Reconsideration, which this Court had not “formally resolved.”

9. In the OSC, the Supreme Court stated that all that is required to cure the potential jurisdictional defect is “a written, file-stamped order resolving” the Motion for Reconsideration.

10. To the extent the foregoing Findings of Fact may be characterized as Conclusions of Law, they are hereby deemed to be such Conclusions.

CONCLUSIONS OF LAW

The Court hereby makes the following CONCLUSIONS OF LAW:

A. As explained in the Supreme Court's OSC, the appeal may have been prematurely taken because of the Motion for Reconsideration, which Plaintiffs filed when they were representing themselves *pro se*. This Court may resolve issues relating to any such prematurity.

A premature notice of appeal does not divest the district court of jurisdiction.... If ... a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

NRAP 4(a)(6). Thus, this Court may resolve the issue of appealability.

B. The Court concludes that it has jurisdiction and may rule upon the Motion for Reconsideration, and to that extent, Plaintiffs' Motion to Resolve should be GRANTED.

C. The Court concludes that, in substance and form, Plaintiffs' Motion for Reconsideration lacks merit, presents no new facts or law, and is therefore DENIED.

1 D. Because an appeal has been taken, the Court concludes that it does not have
2 jurisdiction to adjudicate Defendants' counterclaim for abuse of process. *See Foster v. Dingwall*,
3 126 Nev. 49, 52, 228 P.3d 453, 454-455 (2010) ("This court has repeatedly held that the timely
4 filing of a notice of appeal "divests the district court of jurisdiction to act and vests jurisdiction
5 in this court.""). Accordingly, Defendants' Countermotion should be DENIED.

6 E. Because the Court may not adjudicate Defendants' counterclaim for abuse of
7 process, it also concludes that it may not certify the MSJ Order as being final as to all of
8 Plaintiffs' and Defendants' claims and counterclaims under NRCP 54(b). *See Foster*, 126 Nev.
9 at 52, 228 P.3d at 454-455. Therefore, to the extent that Plaintiffs' Motion seeks to have this
10 Court so certify the MSJ Order, such Motion should be DENIED.

11 F. To the extent the foregoing Conclusions of Law may be characterized as Findings
12 of Fact, they are hereby deemed to be such Findings.

13 ORDER

14 IT IS THEREFORE ORDERED as follows:

15 i. Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify
16 Judgment as Final (filed Jan. 7, 2020) ["Motion to Resolve"] is hereby GRANTED in part and
17 DENIED in part, as follows:

18 a. Plaintiffs' Motion to Resolve is GRANTED to the extent that it requests
19 this Court to rule upon Plaintiff's previous Motion to Vacate Entry of
20 Order or Motion for Extension of Time to File Reconsideration to the
21 Entry of Order Granting Defendants Counter Motion for Summary
22 Judgment and Attorney Fees and Costs (filed Apr. 1, 2019) ["Motion for
23 Reconsideration"]; and

24 b. in all other respects, Plaintiff's Motion to Resolve is DENIED.

25 ii. Plaintiffs' Motion for Reconsideration is in all respects hereby DENIED.

1 iii. Defendants' Countermotion for Summary Judgment on Abuse of Process Claim
2 (filed Jan. 16, 2020) [the "Countermotion"] is in all respects hereby DENIED.

3 IT IS SO ORDERED.

4 Date: 2-14, 2020

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8 DISTRICT COURT JUDGE
9 Case No. A-16-744109-C

10 ERIC JOHNSON

11 *Submitted by:*

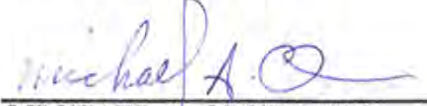
12 **FRIZELL LAW FIRM**
13 400 N. Stephanie St., Suite 265
14 Henderson, Nevada 89014

15 By: 
16 **R. DUANE FRIZELL, ESQ.**
17 Nevada Bar. No 9807
18 Attorney for Plaintiffs

19 Date: 2-10-2020

20 *Approved:*

21 **BLACKROCK LEGAL, LLC**
22 10155 W. Twain Ave., Suite 100
23 Las Vegas, NV 89147

24 By: 
25 **MICHAEL A. OLSEN, ESQ.**
26 Nevada Bar No. 6076
27 Attorney for Plaintiffs

28 Date: 2/7/20

EXHIBIT 5

EXHIBIT 5

*Attorney for Plaintiffs/
Counter-Defendants*

- 1 2. The District Court's Order on Plaintiffs' Motion to Formally Resolve Motion for
2 Reconsideration and to Certify Judgment as Final (filed Mar. 10, 2020; notice of
3 entry served and filed Mar. 10, 2019); and
4 3. All prior court judgments, orders, rulings, and decisions which the District Court
5 has already entered in this action and as to which Plaintiffs are aggrieved parties
6 as of the date indicated below.
7

8 DATED: April 6, 2020.

9 Respectfully submitted,

10 **FRIZELL LAW FIRM**
11 400 N. Stephanie St., Suite 265
 Henderson, Nevada 89014

12 By: /s/ R. Duane Frizell
13 **R. DUANE FRIZELL, ESQ.**
14 Nevada Bar No. 9807
15 Attorney for Plaintiffs/
16 Counter-Defendants
17
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CERTIFICATE OF SERVICE

I certify that on April 6, 2020, I caused the foregoing ***PLAINTIFFS' AMENDED NOTICE OF APPEAL*** to be served upon the following parties:

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/Counterclaimants

Wayne Wu, Judith Sullivan, Nevada Real

Estate Corp., and Jerrin Chiu

JANICE M. MICHAELS, ESQ.

Nevada State Bar No. 6062

WOOD SMITH HENNING & BERMAN, LLP

2881 Business Park Court, Suite 200

Las Vegas, Nevada 89128

Attorney for Defendant

KB Home Sales-Nevada Inc.

By causing a full, true and correct copy thereof to be sent, together with any and all exhibits and other attachments, by the following indicated method(s):

by mailing in a sealed, first-class postage-prepaid envelope, addressed to the above listed individuals, and deposited with the United State Postal Service;

X by electronic service through the Eighth Judicial District e-file/e-serve service;

by hand delivery;

by faxing to the attorney at his/her last known fax number;

by electronic mail to the last known e-mail address of the attorney/the party.

/s/ R. Duane Frizell

R. DUANE FRIZELL, ESQ.

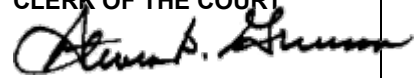
Nevada Bar No. 9807

Attorney for Plaintiffs/

Counter-Defendants

EXHIBIT 6

EXHIBIT 6



OPP
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
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: XII

) Plaintiffs/Counterdefendants,

) v.

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

) 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**

COMES NOW, Defendants and Counterclaimants, WAYNE WU (“Wu”), JUDITH SULLIVAN (“Sullivan”), NEVADA REAL ESTATE CORP. (“NREC”) and JERRIN CHIU (“Chiu”), by and through their attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP, submit their *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* and state as follows:

///

///

BACKGROUND

This dispute arose when Betty Chan failed to meet the expectations of a potential client, who was forced to hire another agent to help him find and purchase a house. Unfortunately, Ms. Chan has exceeded expectations in fulfilling her promises to use litigation as a means to impose unwarranted punishment on the defending parties by way of excessive legal fees and costs. The underlying commission at issue in this litigation should rightfully be paid to Wayne Wu, the agent that guided the buyer through the decision-making process and ultimately helped him obtain his home. Because Ms. Chan has used litigation as a weapon to force needless costs on her adversary out of spite, attorney fees should be awarded to the defending parties.

I. JERRIN CHIU ATTEMPTS TO USE BETTY CHAN TO PURCHASE A HOUSE DURING A SHORT WINDOW AROUND THE NEW YEAR

On November 2, 2015, Dr. Jerrin Chiu emailed BETTY CHAN (“Chan”), officer and registered agent of ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT, a corporation (“AAPM”), expressing interest in searching for a home to purchase while Dr. Chiu’s parents were in town to visit in late December. In the November 2, 2015 email, Dr. Chiu provided Chan with a relative price range, desired location, and expressed that he and his parents would be available to look at homes from December 30, 2015 to January 1, 2016. He noted that this might infringe on family time over the holidays.¹ Chan, with no objection to the days indicated by Dr. Chiu, agreed to show him and his parents some options.²

A few weeks later, Dr. Chiu contacted Chan again, confirming that she would accompany Dr. Chiu and his parents as they looked for a house. Chan confirmed the appointment. Dr. Chiu and Dr. Chiu’s father, Dr. Kwang Chiu (“Kwang”) sought out Chan because she spoke Mandarin Chinese, making it easier to communicate with Dr. Chiu’s parents. Dr. Chiu was also familiar

¹ **Exhibit “A”**.

² **Exhibit “B”**.

1 with Chan because Dr. Chiu had used Chan as a real estate agent before in 2013 when he
2 purchased a condo.

3 Chan admits that she did nothing to actually prepare for Dr. Chiu's home search until the
4 day before he was supposed to begin viewing properties.³ Nonetheless, on December 30, 2015
5 Chan began to show Dr. Chiu and his parents some potential options to meet Dr. Chiu's
6 conditions. Neither Dr. Chiu nor his parents ever entered into any form of written agreement
7 with Chan. Chan showed them several previously-owned homes. Chan tried to persuade Dr. Chiu
8 to purchase one of the previously-owned homes, but Dr. Chiu and his parents were not
9 interested.⁴

10 As the day progressed, Chan began to rush through showings. "We then went to Toll
11 Brothers. . . . We did not finish all the models. We were already very late for the 4th resale
12 appointment and also late for KB"⁵

13 Unsurprising, this rush continued as Chan took Dr. Chiu and his parents to Tevare at
14 Summerlin, a housing development by KB Home Sales – Nevada, Inc. ("KB Home
15 Development"). There, Chan showed Dr. Chiu and his parents three model home floor plans:
16 Model 1 (a single-story home); Model 2 (a two-story home); and Model 3 (another two-story
17 home). During this visit to the KB Home Development, Chan also showed Dr. Chiu a few empty
18 lots where the model home floor plans could be erected. It is important to note that the floor plan
19 and lot combination ultimately purchased by Chiu was not presented to him by Chan but rather
20 by the later retained agent, Wu.

21
22 ³ Exhibit 2 of Motion to Vacate, P0011, Betty Chan Statement, "The Preparation."

23 ⁴ Chan attached documents to show a proposed route. The proposed route covered several
24 homes, none of which ultimately appealed to Chiu as demonstrated by his failure to purchase the
25 same. Thus, the options Chan unsuccessfully proposed to sell to Dr. Chiu included property at
Cannon Falls Avenue, Escondido Canyon Street, Asilo Blanco Avenue, Dove Meadow Way, and
Wonderful Day Drive.

⁵ Exhibit 2 of Motion to Vacate, P0011, Betty Chan Statement, "The Showing."

During the December 30th visit to KB Home Development, Chan pressured Dr. Chiu to purchase Lot 37 and to choose the Model 3 floorplan. Chan preferred Lot 37, claiming it would give Dr. Chiu a better view of the Vegas Strip. However, Dr. Chiu was not interested in having a view of the Vegas Strip, preferring to have a view of the mountains. He was also uninterested in the KB Home options because the development was outside the area he wanted to live, something he told Chan before the visit.

Additionally, Dr. Chiu disliked the Model 3 floorplan and expressed his distaste for the layout. Dr. Chiu initially held some mild interest in the Model 2 floorplan, however Chan's persistent pitch to sell Dr. Chiu a previously-built home or her preferred combination of Lot 37 with the Model 3 floorplan, left Chiu, at the end of the day, uninterested and confused.

Moreover, Chan was unwilling to let Dr. Chiu's interests govern the schedule. "I told Buyer Jerrin that we had [an] appointment with another property at 1:30 pm and [were] already late so we needed to hurry."⁶ Thus, Chan whisked Dr. Chiu and his parents away from the KB Home Development. Chan concluded the day with an email whose subject line read "3 properties we saw today." Chan's summary of the day identified only "3 properties that [Dr. Chiu] [was purportedly] interested" in purchasing: listings 1594880, 1594035, and 1592526 (hereafter "Three Resale Properties").⁷ None of these met Dr. Chiu's needs or were purchased by him.

II. CHAN BECOMES NON-RESPONSIVE AFTER THE RUSHED AND INCOMPLETE SHOWINGS OF DECEMBER 30, 2015

Despite Dr. Chiu's expressed desire to finalize his home selection within a tight timeframe, Chan became unresponsive after the initial rushed day of showings. This occurred despite Dr. Chiu's attempts to reach Chan. According to Chan, her non-responsive attitude during the exact time frame Dr. Chiu needed to make his decision was due to her pursuit of personal affairs, including going to see "fireworks" with her family. During arbitration, Chan

⁶ Exhibit 2 of Motion to Vacate, P0012, Betty Chan Statement, "KB Home."

⁷ P0051, **Exhibit "O"**; see also Exhibit 2 of Motion to Vacate, P0059-62.

1 admitted that she failed and refused to respond to Dr. Chiu's calls over the New Year's holiday,
2 preferring instead to spend time with her visiting daughter.⁸

3 On December 31, 2015, Dr. Chiu and his parents—unaccompanied by the Chan who had
4 abandoned them, and was not returning calls—returned to the KB Home Development. They
5 called Chan at approximately 10:50 a.m., to express their desire to look at more options before
6 Dr. Chiu's parents left town. Chan did not answer.

7 While waiting for Chan to return their call, Dr. Chiu and his parents, without the
8 assistance of any broker, met with a KB Home representative and were informed that if they did
9 not make a deposit towards a lot before the end of the day, they would be subject to the
10 development-wide price increase of \$3,000.00.

11 Even though he had not yet decided to purchase a KB Home, Dr. Chiu—unable to
12 contact Chan—decided to make a fully refundable earnest deposit of \$10,000.00 with KB Home
13 to avoid the price increase on the KB Home lots. The deposit was made because it was fully
14 refundable for fourteen (14) days. Therefore Dr. Chui, made the deposit with KB Homes based
15 on the representation that the refund could be returned for fourteen days should he opt not to
16 purchase from KB Homes.⁹

17 Notwithstanding the refundable deposit, Chiu was concerned with the KB Development's
18 poor reputation and several poor online reviews regarding homes built by KB Homes. Thus, on
19 January 1, 2016 and due to Chan's non-responsive behavior, Dr. Chiu posted a question on the
20 city-data.com website forum inquiring about the integrity of homes built by KB Homes.¹⁰

21 On January 2, 2016, Kwang called Chan several times without answer and left a message.
22 Chan had previously been made aware that time was of the essence for Dr. Chiu and she knew
23

24 ⁸ Exhibit 2 of Motion to Vacate, P0013–14, Betty Chan Statement, "Follow up."

25 ⁹ Affidavit of Jerrin Chiu, **Exhibit "C"**.

¹⁰ A true and correct copy of the January 1, 2016 post is attached hereto as **Exhibit "D"**.

1 that Kwang and his wife had to return to California in two days and needed an agent to help them
2 explore housing options and find a home to purchase.

3 On January 3, 2016, Kwang called Chan again and left another message. Dr. Chiu's
4 parents had to leave, yet he still had not identified a house to purchase. Chan did not respond.
5 Despite the urgency Dr. Chiu had expressed in identifying a house to purchase, Chan admits that
6 she had no contact with Dr. Chiu from December 30, 2015 to January 5, 2016, the very days Dr.
7 Chiu had indicated they needed help locating a home.¹¹

8 **III. DR. CHIU SEARCHES FOR SOMEONE TO ANSWER HIS QUESTIONS SO HE**
9 **CAN PURCHASE A HOUSE**

10 Frustrated that Chan failed and refused to respond to their calls and messages and running
11 out of time to consider options together, Dr. Chiu and his parents began searching for other real
12 estate agents that could guide them through a purchase. Kwang started the search by calling a
13 few different agents, but none answered. Kwang remembered a former acquaintance who worked
14 in the Vegas area as a broker, Wayne Wu ("Wu"). Kwang located Wu's number in a local
15 newspaper and called Wu at approximately 1:40 p.m. on January 3, 2016.

16 Kwang recommended Wu to Chiu because of his expertise in architecture, ability to
17 speak Mandarin, and his knowledge of the Chinese tradition of feng shui. Moreover, Wu was
18 responsive to concerns and willing to accommodate his schedule to Dr. Chiu's short timeline
19 even though he had no prior notice.

20 On January 7, 2016, Dr. Chiu met with Wu at the KB Home Development. Dr. Chiu
21 expressed his frustrations in dealing with Chan, her forceful nature in trying to convince him to
22 buy one of the Three Resale Properties, her pushing him (in the alternative) to purchase a KB
23 Homes Model 3 floorplan, a plan Dr. Chiu was not impressed with, and her failure to respond to
24 phone calls and voice messages.

25

¹¹ See Exhibit 2 of Motion to Vacate, P0013-14, Betty Chan Statement, "Follow up."

1 Wu listened to Dr. Chiu's criteria and began to identify properties that could potentially
2 satisfy Dr. Chiu's objectives. Thus, he suggested Lot 43 and the Model 2 floorplan, a
3 combination that had never even been suggested by Chan. Wu explained the implications of
4 building the Model 2 floorplan on Lot 43, including how the combination would be effective at
5 bringing in natural light with an impressive view of the mountains in conformity with principles
6 of feng shui.

7 Dr Chiu found Wu's analysis convincing; Wu was also able to satisfy his concerns about
8 KB Homes quality and access to the development, even though he initially deemed it to be
9 outside his desired area. Based on Wu's recommendation, Chiu purchased Lot 43 with the Model
10 2 floorplan on January 8, 2016.¹² Wu is the broker that procured the sale and the ONLY listed
11 Broker on the purchase agreement¹³ and the addendum.¹⁴ There is no mention of Chan in any of
12 the closing documents.

13 **IV. CHAN USES THREATS AND DECEPTION TO ATTEMPT TO OBTAIN WU'S** 14 **COMMISSION**

15 Chan recognizes that she knew at least by January 15, 2015 that Dr. Chiu had been forced
16 to find another real estate agent to meet his needs.¹⁵ After waiting another week, Chan decided to
17 go to KB Homes and attempt to unilaterally obtain the Commission for herself by claiming that
18 Dr. Chiu had signed a registration card appointing her as agent.¹⁶ Ms. Chan could not produce
19 the card and KB Homes was unable to locate such a document, which did not deter Chan from
20 trying to obtain Wu's Commission by threatening Dr. Chiu.

21
22 ¹² **Exhibit "C"**.

23 ¹³ A true and correct copy of the purchase agreement is attached hereto as **Exhibit "E"**.

24 ¹⁴ A true and correct copy of the addendum to the purchase agreement is attached hereto as
25 **Exhibit "F"**.

¹⁵ Exhibit 2 of Motion to Vacate, P0014-15, Betty Chan Statement, at "The Other Agent's
Intrusion."

¹⁶ See Exhibit 2 of Motion to Vacate, P0015, Betty Chan Statement, "Registration Card."

Chan next hired Jeffrey R. Hall, Esq. of Hutchison & Steffen to send a demand letter to First American Title on March 24, 2016. Chan demanded she be paid Wu's Commission and claimed that "Mr. Chiu signed a broker registration identifying Ms. Chan as his agent on [December 31, 2015]." ¹⁷ But Chan's drive has really always been about punishing Wu for providing services to the client she abandoned.

Honestly from day one i met you my focus is not the commission, i felt insulted and humiliated, **another agent dared challenge me** and he really do not know who I am. I have been really sad more than i am angry. Last night i read many court cases. Even though **my card has disappeared**, it wont hurt me winning. I liked to teach them a lesson. Life is not about money. So happen **i do have few hundred thousand in hand that i can use**. If they are willing to go along with me to spend equal amount of money, **then I will be very happy to play their game**. I got my direction last nite, so i felt peaceful now. All i need KB to understand I don't hate kb for this, and i need them to **work with me on my plan**. Jana, i dont blame you either and take care of yourself. ¹⁸

Unaware of Chan's ulterior motives, Wu, through counsel, requested a copy of the purported registration card from Chan's attorney on June 17, 2016. This request was renewed on June 21, 2016. Counsel for Chan responded: "I asked my client for the document referred to. She's been out of town and advised that she'd need a week to get back and go through her files." Chan never had the registration card, which she knew and admitted as early as February 2016, four months earlier. Apparently, her counsel figured out the same. After the week Chan purportedly needed to get home and find the document, Wu suddenly received notice that her counsel "no longer represent[ed] Betty Chan in this matter." ¹⁹ Mr. Hall had withdrawn as counsel.

Pursuant to Mr. Hall's confirmation that Chan was unrepresented, Chan was contacted directly requesting the purported registration card on June 29, 2016. Chan's response was to

¹⁷ **Exhibit "H"**; compare **Exhibit "I"** (showing Chan knew she did not have a registration card on February 5, 2016).

¹⁸ **Exhibit "I"**.

¹⁹ Email Chain between Laura Meyers, Michael A. Olsen, Esq., and Jeffrey Hall, Esq, attached hereto as **Exhibit "J"**.

1 inform that she had retained counsel that was currently out of town, but would follow up after
2 having a chance to review the file.²⁰

3 **V. CHAN USES THE DISTRICT COURT, GLVAR, AND TWO ADDITIONAL LAW**
4 **FIRMS TO CHALLENGE PAYMENT OF WU'S COMMISSION**

5 On September 27, 2016, Chan—now represented by Avece M. Higbee, Esq. of Marquis
6 Aurbach Coffing—committed an ethical violation of the GLVAR rules by filing a *Complaint* in
7 the Eighth Judicial District Court, prior to submitting the matter to GLVAR for mediation and
8 possible arbitration as required by rule.²¹ Ms. Chan caused Dr. Chiu and Wu to incur thousands
9 of dollars in attorney's fees and costs by initiating this litigation, in direct violation of her
10 obligation to submit to arbitration. The claims listed in the *Complaint* (declaratory relief, breach
11 of contract, and unjust enrichment) certainly were intended to extort payment of the Commission
12 to Chan.²²

13 Chan did not simply sue Wu. She also filed a frivolous action against Nevada Real Estate
14 Corp. (the real estate company where Wu works), Judith Sullivan (designated Realtor® and
15 officer of Nevada Real Estate Corp.), Dr. Chiu (the buyer), and KB Homes (the property
16 developer/seller). Again the filing before this Court is directly in violation of Chan's obligation
17 to submit this matter to GLVAR for binding arbitration. It was only after Defendants sought to
18 dismiss this action that Chan filed a Motion to Stay, pending the outcome of the binding
19 arbitration. Now, that she is not happy with the finding of the panel of 3 arbitrators, following a
20 nearly 4 hour arbitration, she is attempting to take another bite at the apple.

21 ²⁰ Email Chain between Laura Meyers, paralegal and Betty Chan, attached hereto as **Exhibit**
22 **"K"**.

23 ²¹ Arbitration Manual, Article 17, page 13 ("Realtors shall submit the dispute to arbitration in
24 accordance with the policies of the Board rather than litigate the matter."); Part Ten – Arbitration
25 of Disputes, Section 53(a) The Award, page 150 ("The award shall be in writing and signed by
the arbitrators or a majority of them, shall state only the amount of the award, and, when so
signed and transmitted to each of the parties, shall be valid and binding and shall not be subject
to review or appeal.").

²² See Complaint, ¶¶ 54–55; 64; 74, **Exhibit "L"**.

1 On November 15, 2016, Chan submitted her *Amended Complaint*, alleging, without any
2 evidence, that Dr. Chiu sought out Wu in order to exclude Chan from the transaction because Wu
3 offered a “commission kick-back.” Chan further alleged that because Chan was the first to
4 introduce Dr. Chiu to the KB Home Development, Wu was not entitled to the subsequent
5 commission received, regardless of her abandonment and dereliction.²³ Wu’s testimony during
6 arbitration directly refuted Chan’s unfounded allegations about him giving some kind of “kick
7 back.”

8 On December 6, 2016, Wu and Sullivan submitted their *Answer and Counterclaim* and
9 asserted that Dr. Chiu and Chan never entered a written agreement and that there was never a
10 meeting of the minds regarding the core terms of her representation. Dr. Chiu also asserted that
11 there was never any written or verbal agreement setting forth the terms of any agreement
12 between the parties. Wu and Sullivan further asserted that Chan fraudulently represented to Dr.
13 Chiu and to First American Title Company that she possessed a broker registration card
14 identifying her as Dr. Chiu’s agent without being able to produce any such document upon
15 challenge.²⁴ Wu and Sullivan also noted that Chan had failed to bring this matter before the
16 GLVAR as is required of Realtors®.

17 On January 13, 2017, Chan, through counsel, filed her *Motion for Stay Pending*
18 *Arbitration* stating that Chan “submitted a claim for arbitration with the Greater Las Vegas
19 Association of Realtors® pursuant to the Code of Ethics and Arbitration Manual for the National
20 Association of Realtors®. In the event of disputes between Realtors®, Realtors® must submit
21 the dispute to arbitration in accordance with the policies of GLVAR.”²⁵ However, Chan only
22 remembered the arbitration policy over a year after Dr. Chiu entered a contract to purchase his
23 home and months after having improperly filed the instant lawsuit.

24 ²³ See Chan’s *Amended Complaint*, **Exhibit “M”**.

25 ²⁴ See **Exhibit “M”**; **Exhibit “H”**.

²⁵ See *Motion for Stay Pending Arbitration*, at 3:10–12.

1 Ten days after the Motion for Stay, Chan's second counsel, Avece Higbee, Esq.,
2 submitted her *Motion to Withdraw as Counsel of Record for Plaintiffs Betty Chan and Asian*
3 *American Realty & Property Management*. The motion requested that Avece Higbee, Esq. be
4 permitted to withdraw because of "differences with Plaintiffs concerning action to be taken"
5 going forward in the matter.

6 Wu and Sullivan opposed the motion and requested the Complaint be dismissed or
7 summary judgment be granted. Notwithstanding, Chan represented to the Court that there were
8 claims and parties that might remain unaffected by the potential arbitration. Accordingly, the
9 Court decided to stay the A-Case pending the outcome of arbitration to evaluate whether there
10 were any claims against any parties that should still be adjudicated after arbitration was
11 completed.

12 On May 1, 2017, the District Court held a status check due to Chan's failure to provide
13 any evidence that she had filed for arbitration. Because the named plaintiffs in the A-Case
14 included a corporation, representation by counsel was required.²⁶ Chan retained Todd E.
15 Kennedy, of Black & Lobello, her third law firm to handle the status check.

16 **VI. CHAN REPUDIATES RESULT OF BINDING ARBITRATION**

17 On July 10, 2017, Respondents were finally made aware of a filing with the Arbitration
18 Board. Of course, Chan did not recur to arbitration initially as required of all members of the
19 GLVAR. Notwithstanding, she did eventually submit to arbitration as she should have from the
20 outset. To initiate arbitration, Chan submitted her *Request and Agreement to Arbitrate (Member)*
21 (hereafter "Agreement to Arbitrate"). In the Agreement to Arbitrate, Chan recognized that "by
22 becoming and remaining a member of the Greater Las Vegas Association of Realtors®" she had
23 "previously consented to arbitration through the Association under its Rules and regulations."²⁷

24
25 ²⁶ EDCR 7.42(b) ("A corporation may not appear in proper person.").

²⁷ **Exhibit "Q"**, P0001.

Further, Chan acknowledged that she sought arbitration of a “dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics” between her and Wu.²⁸ She claimed that there was “due, unpaid and owing to [her] . . . the sum of \$13,795.32.”²⁹ And the scope of the arbitration was clearly laid out by Chan in the Agreement to Arbitrate.

I request and consent to arbitration through the Association in accordance with the Code of Ethics and Arbitration Manual (alternatively, “in accordance with the professional standards procedures set forth in the bylaws of the Board”). **I agree to abide by the arbitration award** and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, **I agree to pay that party costs and reasonable attorney’s fees incurred obtaining such confirmation and enforcement.**³⁰

Pursuant to the Agreement to Arbitrate, an arbitration was held before the GLVAR on or about April 17, 2018. Following the nearly four hour arbitration the panel of arbitrators asked each counsel if they had been given the opportunity to fully and fairly present their entire case. Counsel for both parties responded in the affirmative. Because of a cover letter error in the original transmission of the *Award of Arbitrators* (hereafter “Award”) on April 20, 2018, the deadlines for challenges were extended to reflect re-transmission of the Award on April 27, 2018.

The award must be paid no later than 5:00 p.m. on May 7, 2018, either directly to the Respondent or to the Greater Las Vegas Association of REALTORS®. The funds will be deposited in a GLVAR escrow account and are held by GLVAR pending the outcome of a procedural review and/or legal challenge. A request for procedural review must be filed

²⁸ **Exhibit “Q”**, P0001, ¶ 3.

²⁹ **Exhibit “Q”**, P0001, ¶ 4.

³⁰ **Exhibit “Q”**, P0001, ¶ 5 (emphasis added).

1 within twenty (20) days of the award. Alternatively, a notice of legal challenge must be
2 received within that same twenty (20) day period.³¹

3 Notwithstanding her consent to the arbitration and the rules governing the same, Chan
4 has since repudiated the Award. On May 17, 2018, the last day for Chan to seek procedural
5 review of the arbitration, she defiantly declared “I will not engage [in] a procedur[al] review with
6 GLVAR”³² After a diatribe of purported procedural deficiencies—which Chan refused to
7 actually raise before the GLVAR—Chan openly criticized the GLVAR.

8 I am totally disappointed GLVAR has not changed a bit since my first arbitration 25 years
9 ago. For whatever happened in the arbitration hearing, I could not trust GLVAR would be
10 capable of providing a professional hearing any more. As such, I resort to legal action to
11 fight for my obligations. I want that to be a known public record.³³

12 Now, after refusing to follow proper procedure by filing a procedural review with
13 GLVAR and after allowing several more months to elapse, Chan has filed her present motion to
14 vacate award on June 18, 2018.

15 LEGAL ANALYSIS

16 Understanding the difficulties facing her in avoiding the result of arbitration, Chan now
17 seeks to overturn the Award. Quickly glossing over the actual standard that governs review of
18 arbitration awards, Chan hopes to garner support for her campaign to inflict unnecessary
19 litigation expenses on the Defendants, all without mentioning her “burden of proving, by clear
20 and convincing evidence, the statutory or common-law ground relied upon for challenging the
21 award.”³⁴

22 I. CHAN HAS FAILED TO MEET ANY STANDARD ALLOWING REVIEW OF 23 THE ARBITRATION AWARD

24 ³¹ Exhibit “R”.

25 ³² Exhibit “S”.

³³ Exhibit “S”.

³⁴ See Health Plan of Nevada, Inc. v. Rainbow Medical, LLC, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004).

1 In order to effectively challenge an arbitration award a party must demonstrate (1)
2 applicable statutory grounds provided in NRS 38.241; (2) that the award was arbitrary,
3 capricious, or unsupported by the agreement; or (3) that the arbitrator manifestly disregarded the
4 law.³⁵

5 Statutory grounds to vacate an arbitration award may apply if a contesting party
6 demonstrates by clear and convincing evidence that an “arbitrator exceeded his or her powers.”³⁶
7 This burden proves to be quite high as “Courts presume that arbitrators are acting within the
8 scope of their authority.”³⁷

9 However, allegations that an arbitrator misinterpreted the agreement or made factual or
10 legal errors do not support vacating an award as being in excess of the arbitrator's
11 powers. Arbitrators do not exceed their powers if their interpretation of an agreement, even
12 if erroneous, **is rationally grounded in the agreement**. The question is whether the
13 arbitrator had the authority under the agreement to decide an issue, not whether the issue
14 was correctly decided. Review under excess-of-authority grounds is limited and only
15 granted in very unusual circumstances. An award should be enforced so long as the
16 arbitrator is arguably construing or applying the contract. **If there is a colorable**
17 **justification for the outcome, the award should be confirmed**.³⁸

18 NRS 38.241 may also allow review of an arbitration award when the contesting party
19 demonstrates by clear and convincing evidence that the “award was procured by corruption,
20 fraud or other undue means.”³⁹ However, the contesting party must meet this burden by
21 demonstrating that the arbitration award was obtained by intentional misrepresentations related
22 to the arbitration proceedings.⁴⁰

23 As to common law grounds, to establish that an award was arbitrary, capricious, or
24 unsupported by the agreement to arbitrate, the contesting party must establish, by clear and
25

22 ³⁵ Clark County Education Association v. Clark County School District, 122 Nev. 337, 341–42;
131 P.3d 5, 8 (2006).

23 ³⁶ NRS 38.241(1)(d).

24 ³⁷ Health Plan of Nevada, Inc., 120 Nev. at 697, 100 P.3d at 178.

25 ³⁸ Health Plan of Nevada, Inc., 120 Nev. at 697–98, 100 P.3d at 178 (emphasis added) (citations
omitted).

³⁹ NRS 38.241(1)(a).

⁴⁰ See, e.g., Sylver v. Regents Bank, NA, 129 Nev. Adv. Op. 30, 300 P.3d 718 (2013).

1 convincing evidence, that the award “was unsupported by substantial evidence.”⁴¹ “The
2 arbitrary-and-capricious standard does not permit a reviewing court to vacate an arbitrator’s
3 award based on misinterpretation of the law.”⁴²

4 Similarly, manifest disregard of the law “limits the reviewing court’s concern to whether
5 the arbitrator consciously ignored or missed the law.”⁴³ Thus, when reviewing an arbitration
6 award under the common law, “neither standard permits a reviewing court to consider the
7 arbitrator’s interpretation of the law.”⁴⁴ “When searching for a manifest disregard for the law, a
8 court should attempt to locate arbitrators who appreciate the significance of clearly governing
9 legal principles but decide to ignore or pay no attention to those principles.”⁴⁵

10 Thus, “Nevada recognizes both common-law grounds and statutory grounds for
11 examining an arbitration award. **However, the scope of judicial review of an arbitration**
12 **award is limited and is nothing like the scope of an appellate court’s review of a trial**
13 **court’s decision.**”⁴⁶

14 Because Chan, who now complains that the Award was not a proper interpretation of the
15 law, has failed to demonstrate clear and convincing evidence that any of these standards have
16 been met, the Award must be confirmed.

17 **A. The GLVAR Did Not Exceed Its Power, Nor Was the Award Obtained by Fraud**

18 The issue presented to the GLVAR by way of Chan’s Agreement to Arbitrate, contrary to
19 Chan’s post hoc simplification, was who was entitled to \$13,795.32 pursuant to a “dispute
20 arising out of the real estate business.”⁴⁷ Although procuring cause was certainly briefed by the
21 parties, the GLVAR was not bound exclusively to make a determination of procuring cause, but

22 ⁴¹ Clark County Education Association, 122 Nev. at 341–42; 131 P.3d at 8.

23 ⁴² Clark County Education Association, 122 Nev. at 343–44; 131 P.3d at 9.

24 ⁴³ Clark County Education Association, 122 Nev. at 342; 131 P.3d at 9.

24 ⁴⁴ Clark County Education Association, 122 Nev. at 342; 131 P.3d at 9.

25 ⁴⁵ Clark County Education Association, 122 Nev. at 344; 131 P.3d at 10 (citation omitted).

⁴⁶ Health Plan of Nevada, Inc., 120 Nev. at 695, 100 P.3d at 176.

⁴⁷ **Exhibit “Q”**, at ¶¶ 3–4.

1 rather had broad authority to arbitrate the issue of who should be entitled to any portion of the
2 \$13,795.32 pursuant to the Arbitration Manual as demonstrated by Chan's Agreement to
3 Arbitrate.

4 The Arbitration Manual lists a number of issues that may be subject to arbitration,
5 including disputes where multiple brokers claim to be owed money from a commission.⁴⁸ The
6 Arbitration Manual recognizes that brokers may claim that they have a right to commission
7 proceeds due to the procuring cause standard.⁴⁹

8 The Nevada Supreme Court has determined how "a court . . . decide[s] which [broker]
9 was the 'procuring' or 'inducing' cause of the sale."⁵⁰ To be the procuring cause of a sale, the
10 broker's conduct must be more than merely trifling.⁵¹ "Merely introducing the eventual
11 purchaser is not . . . enough."⁵² A broker cannot be the procuring cause when it is shown that
12 they have "abandoned efforts or been helplessly ineffective."⁵³ Courts have also held that merely
13 introducing or alerting a prospective buyer that a property is available is usually insufficient to
14 constitute a procuring cause.⁵⁴ Several jurisdictions have held that the broker's efforts must be
15 the **predominating cause** of the sale.⁵⁵ Clearly, given the division of the commission in this
16 case the Arbitrators found Wayne Wu to be both the procuring cause and the predominating
17 cause of the sale.

18
19
20 ⁴⁸ *Code of Ethics and Arbitration Manual*, Standard of Practice 17-4(1).

21 ⁴⁹ *Code of Ethics and Arbitration Manual*, Standard of Practice 17-4(1).

22 ⁵⁰ Bartsas Realty, Inc. v. Leverton, 82 Nev. 6, 9, 409 P.2d 627, 629 (1966) (citations omitted).

23 ⁵¹ Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 629.

24 ⁵² Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 629.

25 ⁵³ Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 630; see also Levy Wolf Real Estate Brokerage, Inc. v. Lizza Industries, Inc., 500 N.Y.S. 2d 37, 118 A.D.2d 688 (N.Y. App. Div. 1986).

⁵⁴ See United Farm Agency of Alabama, Inc. v. Green, 466 So. 2d 118 (Ala. 1988); Greene v. Hellman, 51 N.Y.2d 197, 412 N.E.2d 1301 (1980).

⁵⁵ See Carmichael v. Agur Realty Co., 574 So. 2d 603 (Miss. 1990); Ham v. Morris, 711 S.W.2d 187 (Mo. 1986); A N Associates, Inc. v. Quotron Systems, Inc., 605 N.Y.S. 2d 178, 159 Misc. 2d 515, (Civ. Ct. N.Y. Cnty. 1993); Vincent v. Weber, 13 Ohio Misc. 280, 232 N.E. 2d 671 (Mun. Ct. 1965).

Notwithstanding the authority to determine that one broker has acted as the procuring cause, the Arbitration Manual explicitly confers authority to split an award.

While awards are generally for the full amount in question (which may be required by state law), in exceptional cases, awards may be split between the parties (again, except where prohibited by state law). Split awards are the exception rather than the rule and should be utilized only when Hearing Panels determine that the transaction would have resulted only through the combined efforts of both parties. It should also be considered that questions of representation and entitlement to compensation are separate issues.⁵⁶

The authority of the GLVAR to split a commission adds an additional layer of complexity to an arbitration proceeding determining the amounts of money to be allocated to each party. "It is for the arbitrators to determine which issues were actually 'necessary' to the ultimate decision."⁵⁷

Thus, an arbitration decision is final and conclusive *because the parties have agreed that it be so*. By ensuring that an arbitrator's decision is final and binding, courts simply assure that the parties receive the benefit of their bargain.

Moreover, "[a]rbitrators, unless specifically required to act in conformity with rules of law, may base their decision upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a party might successfully have asserted in a judicial action."

...
Parties who stipulate in an agreement that controversies that may arise out of it shall be settled by arbitration, may expect not only to reap the advantages that flow from the use of that nontechnical, summary procedure, but also to find themselves bound by an award reached by paths neither marked nor traceable and not subject to judicial review.⁵⁸

Arbitrators wield significant power to craft an award considering all legal, factual, and equitable nuances in a matter. The GLVAR relies on this authority in providing arbitration decisions.

The National Association's Professional Standards Committee has consistently taken the position that arbitration awards should not include findings of fact or rationale for the arbitrators' award among the reasons for this are the fact that arbitration awards are not

⁵⁶ *Code of Ethics and Arbitration Manual*, Appendix II to Part Ten: Arbitration Guidelines (Suggested Factors for Consideration by a Hearing Panel in Arbitration), at 158.

⁵⁷ *Hall v. Superior Court*, 18 Cal. App. 4th 427, 436, 22 Cal. Rptr. 2d 376, 381 (1993).

⁵⁸ *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 10-11, 832 P.2d 899, 903-04 (1992).

1 appealable on the merits but generally only on the limited procedural bases established in
2 the governing state arbitration statute; that the issues considered by Hearing Panels are
3 often myriad and complex, and the reasoning for an award may be equally complex and
4 difficult to reduce to writing; and that the inclusion of written findings of fact or rationale
5 (or both) would conceivably result in attempts to use such detail as “precedent” in
6 subsequent hearings which might or might not involve similar facts.⁵⁹

7 Despite the authoritative finality that this gives to their decision, in the specific case of
8 the GLVAR a process for procedural review is nonetheless provided to the parties.

9 After the award has been transmitted to each of the parties, they have twenty (20) days to
10 request procedural review of the arbitration hearing procedure by the Board of Directors.
11 The non-prevailing party shall also have the same twenty (20) days following transmittal
12 of the award to notify the Professional Standards Administrator that a legal challenge to
13 the validity of the award has been initiated.

14 If no such procedural review is requested, the award becomes **final and binding following**
15 **the twenty (20) day period**. However, if procedural review is requested, the award is not
16 considered final and binding until after the Board of Directors has concluded that the
17 hearing was conducted in a manner consistent with the Board’s procedures and the parties
18 had been afforded due process.⁶⁰

19 In addition to the explicit provisions of the Arbitration Manual, the April 27, 2018 letter
20 communicating the Award put the parties on notice that “A request for procedural review must
21 be filed within twenty (20) days of the award. Alternatively, a notice of legal challenge must be
22 received within that same twenty (20) day period.”

23 In this matter, Chan explicitly refused to seek any procedural review of the Award before
24 the GLVAR. This even though Chan was advised that she had the right to raise any challenges
25 that she felt affected her due process or the fairness of the award. Of course, a procedural review
by the GLVAR would have done little to advance Chan’s plan to make defendants continue to
incur thousands of dollars in legal fees and costs. Nonetheless, Chan has waived the opportunity

⁵⁹ Arbitration Manual, at Appendix II to Part Ten: Arbitration Guidelines (Suggested Factors for Consideration by a Hearing Panel in Arbitration), Sample Fact Situation Analysis, page 162; see also Arbitration Manual, Appendix V to Part Ten: Arbitration Hearing Checklist, (33), page 174 (“The award shall be in writing and signed by the arbitrators or a majority of them, and shall state only the amount of the award, and when transmitted to each of the parties shall not be subject to review or appeal.”).

⁶⁰ Arbitration Manual, at Part Ten – Arbitration of Disputes, Section 53(c), page 150.

1 to seek review of the Award, which became final and binding when Chan failed to bring a good
2 faith challenge through the procedural review process provided by the GLVAR.

3 By any means, Chan's claim that the GLVAR exceeded its power relies on her faulty
4 reasoning that because "there is no contract between the two competing brokers" the arbitration
5 was merely an ethical formality requiring the GLVAR to engage exclusively in a procuring cause
6 analysis.⁶¹ As demonstrated by the Agreement to Arbitrate executed by Chan, the scope of the
7 arbitration conferred on the GLVAR the authority to address the distribution of \$13,795.32 in
8 conformity with the Arbitration Manual. After substantial briefing and documentation was
9 submitted to the GLVAR, a hearing was conducted and the GLVAR reached clear findings.

10 The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable
11 dispute between Betty Chan, Asian American Realty [Complainant] and Wayne Wu and
12 Judith Sullivan, Nevada Real Estate Corp [Respondent] certify that on April 17th, 2018,
13 we heard the evidence of the parties and having heard all the evidence and arguments of
14 the parties, a majority of the panel finds there is due and owing \$3,448.83 to be paid by
15 Respondent to Complainant and the remaining \$10,346.49 be paid to Respondent from title
16 company.⁶²

17 In conformity with GLVAR policy as established by the Arbitration Manual, the Award
18 followed the binding principles and clearly pronounced the award of the Hearing Panel. Yet
19 Chan now argues that the only issue before the GLVAR was regarding procuring cause and
20 attempts to demonstrate that the final decision was a legal misinterpretation. Even if Chan could
21 demonstrate by clear and convincing evidence that the only issue before the GLVAR was to
22 determine procuring cause, which she cannot, a misinterpretation of the law is not a valid basis to
23 challenge an arbitration award under NRS 38.241. The GLVAR's Award was rationally based in
24 the Agreement to Arbitrate and considered issues authorized by the Arbitration Manual. Thus,
25 the Award must be confirmed.

⁶¹ See Motion to Vacate, at 9:21–24.

⁶² **Exhibit "R"**.

1 To the extent that this Court is willing to entertain a modification of the Award to
2 eliminate division of the \$13,795.32, said amount should be awarded entirely to Wu. Procuring
3 cause analysis would favor Wu, as implicitly indicated by the award. Although the GLVAR
4 decided to exercise its discretionary, equitable authority to divide the commission, it awarded a
5 much larger amount to Wu. Specifically, the Award orders that seventy-five percent (75%) of the
6 \$13,795.32 be awarded to Wu.

7 The reason is clear: the GLVAR found Wu to be the predominating cause of the sale, and
8 accordingly awarded him with a predominating share of the commission. Because he was the
9 predominating cause of the sale, should the Court be inclined to limit the award of the
10 \$13,795.32 to one individual, clearly the GLVAR in reviewing the facts concluded that Wu was
11 the procuring cause. Although the GLVAR decided to give a nominal twenty-five percent (25%)
12 portion of the funds to Chan, Wu asserts a counter-motion that any revision of the Award on
13 grounds related to procuring cause must order the full \$13,795.32 be distributed to him.

14 **B. The GLVAR's Award Is Not Arbitrary and Capricious, Nor Was It Obtained by**
15 **Fraud**

16 Chan falls woefully short of her burden to establish by clear and convincing evidence that
17 the Award was not supported by substantial evidence as required to demonstrate that it was
18 arbitrary and capricious. Although "the scope of judicial review of an arbitration award is limited
19 and is nothing like the scope of an appellate court's review of a trial court's decision,"⁶³ a party
20 seeking to fulfill their burden of proof in challenging an arbitration award must cite to a record.
21 Merely referring to previous briefing is not sufficient to allow review of a matter.⁶⁴
22
23
24

25 ⁶³ Health Plan of Nevada, Inc., 120 Nev. at 695, 100 P.3d at 176.

⁶⁴ See Thomas v. State, 120 Nev. 37, 43, 83 P.3d 818, 822 (2004).

GLVAR arbitration proceedings establish a method for parties to preserve a record. “The Board shall have a court reporter present at the hearing or shall record the hearing. Parties may, at the Board’s discretion, record the hearing or utilize a court reporter at their own expense.”⁶⁵

Use of the record is important in part due to the inability of a party to defeat an arbitration award by raising arguments not previously raised. “Failure to raise the claim before the arbitrator, however, waives the claim for any future judicial review.”⁶⁶

Any other conclusion is inconsistent with the basic purpose of private arbitration, which is to finally decide a dispute between the parties. Moreover, we cannot permit a party to sit on his rights, content in the knowledge that should he suffer an adverse decision, he could then raise the illegality issue in a motion to vacate the arbitrator's award. A contrary rule would condone a level of “procedural gamesmanship” that we have condemned as “undermining the advantages of arbitration.”⁶⁷

Like her attempt to invoke a statutory basis to challenge the Award, Chan attempts to meet her burden of clear and convincing evidence under the arbitrary and capricious standard by claiming the GLVAR was confined to a finding of procuring cause. “By failing to do so, and indeed splitting the commission, the Panel has acted arbitrarily, manifestly disregarded the law, and their action is unsupported by agreement.”⁶⁸

Just as she did before the GLVAR, Chan recites a purported laundry list of things she did in her efforts to obtain a commission. She likewise ignores all the substantial evidence produced to the GLVAR to demonstrate that it was Wu that actually assisted Dr. Chiu in determining which house to purchase when Chan disappeared after pushing one of Three Resale Properties on Dr. Chiu.

Indeed, Chan fails to even cite to the record of the hearing or offer any explanation that can disturb the presumption that the Award was based on substantial evidence and must be

⁶⁵ Arbitration Manual, at Part Seven – Arbitration General Provisions, Section 31. Conduct of Hearing, page 137.

⁶⁶ Moncharsh v. Heily & Blase, 3 Cal. 4th 1, 31, 832 P.2d 899, 918 (1992).

⁶⁷ Moncharsh, 3 Cal. 4th at 30, 832 P.2d at 917.

⁶⁸ Motion to Vacate, at 11:3–5.

1 affirmed. Nor does Chan provide any citation to any record to demonstrate any fraudulent
2 conduct in the arbitration proceedings, which are also presumed to have proceeded in the normal
3 course. Chan cannot point to a procedural challenge wherein she alleged any irregularity because
4 she intentionally refused to pursue any such challenge.

5 Notwithstanding her failure to cite the underlying record, Chan has identified language in
6 a contract to which she is not a party in an effort to undermine the Award with arguments she did
7 not raise before the GLVAR although it was available to Chan at that time.⁶⁹ This new argument
8 is not properly before the Court as it raises issues waived by Chan in the arbitration itself. Chan
9 must not be allowed to continue the procedural gamesmanship that she has manifested
10 throughout these proceedings in an attempt to drive up the costs. To the extent Chan felt any of
11 the arguments she now raises for the first time had any merit, these should have been raised
12 before the GLVAR, not waived by waiting to use the arguments after the binding arbitration
13 Award was entered.

14 Moreover, the arbitration was not limited in scope as suggested by Chan despite her
15 Agreement to Arbitrate; it was within the authority of the GLVAR to hear all evidence regarding
16 the real estate dispute that arose between the parties and adjudicate the dispute accordingly. The
17 GLVAR did review all the evidence and heard arguments from the parties. It had substantial
18 evidence before it to find that Wu worked with Dr. Chiu to identify and complete a real estate
19 transaction that would meet Dr. Chiu's needs. Because Chan has failed to show any proof that
20 the GLVAR lacked substantial evidence she has not met her burden of clear and convincing
21 evidence and the Award must be affirmed nor demonstrated any fraud in the arbitration
22 proceeding. The Award must be confirmed.

23 C. The GLVAR Did Not Manifestly Disregard the Law

24
25 ⁶⁹ See Motion to Vacate, at 13:14 – 24 (recognizing that Chan was not a party to the agreement which she now uses for the first time in her ongoing procedural gamesmanship).

1 Again relying on her overly narrow focus on procuring cause, Chan claims that “the
2 Award manifestly disregards the law . . . because it . . . makes an implicit finding that cannot
3 exist: more than one procuring cause.”⁷⁰ Chan fails to demonstrate that the Award actually relies
4 on the implication that she urges be deduced based on her post hoc simplification of the
5 arbitration proceedings. As the procuring cause, the GLVAR awarded the majority (75%) of the
6 \$13,795.32 to Wu, but also exercised its authority under the Arbitration Manual to split the
7 Award and provide Chan with the nominal remainder.

8 And the GLVAR’s decision to do so is not subject to review where, as is this case here,
9 nothing has been done to meet the burden of proving by clear and convincing evidence that the
10 GLVAR was attempting to flaunt and openly disregard legal authority. Although Chan insists
11 that the GLVAR can be implied to have misinterpreted the law, mere misinterpretations of the
12 law do not constitute manifest disregard for the law for purposes of overturning the Award. As
13 such the Award must be confirmed.

14 **II. COUNTERMOTION FOR SUMMARY JUDGMENT**

15 Chan, a member of the GLVAR, was required to “submit the dispute to arbitration in
16 accordance with the polices of the [GLVAR] rather than litigate the matter.” Not only was Chan
17 required to submit to arbitration rather than litigate this matter before the District Court, such
18 arbitration was binding. By filing her Complaint with this Court, Chan deliberately violated
19 Local, State, and National codes of ethics. Chan ignored the mandate to arbitrate the matter
20 before the GLVAR, wasting both this Court’s time and resources. Not only did Chan waste this
21 Court’s resources and time, but Chan has also filed this matter before the Court to harass and
22 unnecessarily drive up Defendants’ cost of defense.

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⁷⁰ Motion to Vacate, at 12:3–4.

1 A party is entitled to summary judgment when there are no genuine issues of material
2 fact in dispute and the moving party is entitled to summary judgment as a matter of law.⁷¹ In
3 Wood v. Safeway, Inc., 121 P.3d 1026 (2005), the Nevada Supreme Court stated that a factual
4 dispute is “genuine” when the evidence is such that a rational trier of fact could return a verdict
5 for the nonmoving party.⁷² Once the moving party has shown that there is no genuine dispute as
6 to material facts, the burden shifts to the nonmoving party to set forth specific facts
7 demonstrating the existence of a genuine issue for trial or have summary judgment entered
8 against that party.⁷³ In meeting this burden, the nonmoving party, “is not entitled to build a case
9 on the gossamer threads of whimsy, speculation and conjecture.”⁷⁴

10 The Award represents the final, binding resolution of the entire real estate dispute
11 between the parties in this matter. The Award necessarily precludes any additional review of this
12 case except under NRS 38.241 or the two common law grounds. Because Chan has failed to
13 justify any relief under any of these standards, the Award must stand. And since no material facts
14 are or can be disputed in light of the Award, summary judgment should be granted in favor of
15 Defendants and against Plaintiff.

16 **III. COUNTERMOTION THAT FEES BE AWARDED AGAINST CHAN PURSUANT**
17 **TO EDCR 7.60(B) AND THE AGREEMENT TO ARBITRATE**

18 Defendants request that the Court award its attorneys’ fees related to this litigation.
19 EDCR 7.60(b) allows the Court to “impose upon an attorney or a party any and all sanctions
20 which may, under the facts of the case, be reasonable, including the imposition of fines, costs or
21 attorney's fees when an attorney or a party without just cause” “[p]resents to the court a motion
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24 ⁷¹ NRCP 56.

25 ⁷² See also NRCP 56.

⁷³ NGA #2, LLC v. Rains, 113 Nev. 1151, 1156, 946 P.2d 163, 166 (1997).

⁷⁴ Collins v. Union Federal Savings and Loan Association, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (citations omitted).

or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted” or “[s]o multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.”⁷⁵

Moreover, in the Agreement to Arbitrate Chan explicitly agreed that “In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, **I agree to pay that party costs and reasonable attorney’s fees incurred obtaining such confirmation and enforcement.**”⁷⁶

“[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount”⁷⁷ Nevada courts have long relied upon the factors in Brunzell v. Golden Gate Nat’l Bank to determine reasonability of fees, including:

(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 the 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.⁷⁸

Any attorney fee award must be based on a Brunzell analysis.

A. Brunzell Factor #1: “the qualities of the advocate: his ability, his training, education, experience, professional standing and skill”⁷⁹

Counsel for Petitioner, 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, and Mr. Olsen’s abilities have been honed through, among other experience, regular appearances in the Eighth Judicial District Court on contested matters.

⁷⁵ EDCR 7.60(b)(1), (3).

⁷⁶ **Exhibit “Q”**, P0001, ¶ 5 (emphasis added).

⁷⁷ Shuette v. Beazer Homes Holding Corp., 121 Nev. 837, 864, 124 P.3d 530 (2005).

⁷⁸ Brunzell v. Golden Gate Nat’l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

⁷⁹ Brunzell, 85 Nev. at 349.

Roman C. Harper, Esq. is a graduate of the University of North Carolina and BYU's J. Reuben Clark Law School.

B. Brunzell Factor #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 the litigation”⁸⁰

This matter has involved unnecessary briefing and research, motion practice before this Court before Chan made any attempt to arbitrate this matter, followed by refusal by Chan to comply with the Award. Chan completely disregarded the requirement of seeking procedural review of the Award before the GLVAR, and now seeks to prolong this matter further by continuing litigation before this Court without any legal basis to do so.

The time expended to oppose the current motion to vacate and litigate before this court at all would not have been required had Chan followed her ethical duty to arbitrate and complied with GLVAR procedures subsequent to the Award. Yet Chan has demonstrated absolute resolve in making these proceedings as expensive and harmful to the Defendants as she possibly can.⁸¹ Individuals with a right to a commission like Wu should not be forced to incur legal fees and costs that far exceed the commission to protect their right to the same. Nor should Chan be permitted to use the judiciary as an indiscriminate weapon against anyone who dare contradict her.

C. Brunzell Factor #3: “the work actually performed by the lawyer: the skill, time and attention given to the work”⁸²

Chan's attempt to obtain funds to which she is not entitled and litigate against Defendants has required investment of a substantial amount of time and effort to prepare and provide a proper defense, including against motion practice unwarranted under the GLVAR ethical rules

⁸⁰ Brunzell, 85 Nev. at 349.

⁸¹ **Exhibit “I”** (“So happen i do have few hundred thousand in hand that i can use. If they are willing to go along with me to spend equal amount of money, then I will be very happy to play their game.”).

⁸² Brunzell, 85 Nev. at 349.

1 binding on Chan. Now, Plaintiff seeks to set aside the arbitration Award because it ruled against
2 her. Defendants' counsel have been required to invest numerous hours in defending against the
3 improper attempts to use this Court to deprive Wu of funds that should be properly distributed to
4 him.

5 **D. Brunzell Factor #4: "the result: whether the attorney was successful and
6 what benefits were derived"**⁸³

7 Defendants have already been successful in demonstrating to the GLVAR that they were
8 entitled to the majority of the funds at issue in this matter. Specifically, \$10,346.49 of
9 \$13,795.32 was awarded to Wu. Defendants also prevailed previously in demonstrating that
10 arbitration was required and that Chan had failed to proceed with arbitration instead of filing the
11 complaint that initiated this action. Chan specifically acknowledged in the Agreement to
12 Arbitrate that fees and costs incurred to enforce the Award against her would be payable by her.

13 While "good judgment would dictate that each of these factors be given consideration by
14 the trier of fact and that no one element should predominate or be given undue weight,"⁸⁴ each
15 factor strongly supports an award of attorneys' fees and costs in favor of Defendants. Thus,
16 Defendants request an award of attorney fees and costs pursuant to EDCR 7.60(b) and the
17 Agreement to Arbitrate.

18 **CONCLUSION**

19 This Court should deny Chan's Motion to Vacate, confirm the Award, and enter
20 summary judgment in this matter. The Award properly disposed of the underlying issues in this
21 matter in accordance with the Arbitration Manual and the Agreement to Arbitrate submitted by
22 Chan to the GLVAR. Chan has done nothing to demonstrate that any statutory or common law
23 grounds exist, let alone by clear and convincing evidence, to justify vacating the Award. To the
24 extent any modification to the Award is warranted, it should be modified to award the entire

25 ⁸³ Brunzell, 85 Nev. at 349.

⁸⁴ Brunzell, 85 Nev. at 349–50.

1 \$13,795.32 to Wu as he was the procuring cause of the underlying real estate transaction.

2 Finally, Chan should be ordered to pay the fees, unnecessarily caused by her, which she also
3 agreed to pay by way of the Agreement to Arbitrate.

4
5 WHEREFORE, Defendants request the following relief:

- 6 1. That this Court deny Plaintiff's *Motion to Vacate or Modify Arbitration*
7 *Award*;
- 8 2. That this Court enter an Order Granting Summary Judgment;
- 9 3. That this Court award Defendants the fees and costs they have been forced
10 to incur by Chan; and
- 11 4. For such other and further relief as the Court deems just and proper.

12 DATED this 6th day of AUGUST 2018.

13
14 /s/ Roman C. Harper, Esq.

15 MICHAEL A. OLSEN, ESQ.

16 Nevada Bar No. 6076

17 ROMAN C. HARPER, ESQ.

18 Nevada Bar No. 14374

19 **GOODSELL & OLSEN, LLP**

20 10155 W. Twain Ave., Suite 100

21 Las Vegas, Nevada 89147

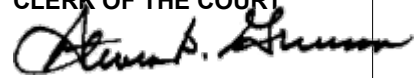
22 *Attorneys for Defendants/Counterclaimants*

23 *Wayne Wu, Judith Sullivan, Nevada Real Estate*

24 *Corp. and Jerrin Chiu*

EXHIBIT 7

EXHIBIT 7



RPLY

Todd E. Kennedy, Esq.
Nevada Bar No. 6014
Maximiliano D. Couvillier III, Esq.
Nevada Bar No. 7661
KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd.
Las Vegas, NV 89120
Tel: (702) 605-3440
Fax: (702) 625-6367
tkennedy@kclawnv.com
mcouvillier@kclawnv.com
Attorneys for Laboratory Medicine Consultants, Ltd.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiffs,

v.

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

Defendants.

And Related Counterclaims.

Case No.: A-16-744109-C

Dept.: XX

**REPLY IN SUPPORT OF MOTION TO
VACATE OR MODIFY ARBITRATION
AWARDS AND OPPOSITION/MOTION
TO STRIKE IMPROPER
COUNTERMOTION**

Date of Hearing: August 22, 2018

Time: 8:30 a.m.

INTRODUCTORY COMMENT

This matter was stayed, at Plaintiffs' (hereafter "Chan") request, for the licensed relator parties to participate in the Greater Las Vegas Association of Realtors binding arbitration process to determine procuring cause. The purpose of that arbitration was, clearly, to determine which of the two agents involved was the procuring cause of the underlying home sale under Nevada

1 law and entitled to the buyer's agent's commission being paid by KB Homes.¹ The arbitration
2 took place and the GLVAR entered an award which not only failed in its entire purpose
3 (determining the procuring cause) but entered an award that is a legal impossibility: awarding
4 part of the commission to Wu and part to Chan.

5
6 Chan properly and timely notified the GLVAR that she intended to pursue a challenge to
7 the obviously defective award in Court.² Further, Chan timely exercised her right under Nevada
8 law to pursue a petition to the Court to vacate or modify the award, providing points and
9 authorities explaining why the award was defective and must be modified or vacated.

10 Defendants Wu, Sullivan and Nevada Real Estate Corp. ("Wu")³ did not seek
11 confirmation of the award pursuant to NRS Ch. 38. Instead, they have filed a rogue "counter-
12 motion for summary judgment" which is not an appropriate countermotion under E.D.C.R. 2.20.
13 If what Wu was actually seeking was court *confirmation* of the award, Wu should have so moved
14 rather than clutter the docket with improper, unnecessary and procedurally deficient counter-
15 motions. But even that would be unnecessary and wasteful in light of Chan's motion, because
16 the end result of the matter before the court is limited to an order (1) modifying the award; (2)
17 vacating the award or (3) confirming the award. NRS 38.241(4) (providing that if the court
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19

20 ¹ The purpose and issue to be arbitrated was plainly stated even in the Motion to Stay filed Jan
21 13, 2017.

22 ² In a document filled with rhetoric and invective against Chan but lacking legal basis or
23 authority, Defendants also seem to suggest that Chan failed to follow GLVAR procedure.
24 Except that is wholly untrue. The GLVAR procedure provides that she can pursue a procedural
25 review OR file a "legal challenge" in court. See Motion Exhibit 5 (Letter from GLVAR clearly
26 stating that a party wishing to challenge the award may file an internal GLVAR "procedural
27 review" or "alternatively" provide notice of seeking a legal challenge (under which the time
28 frames provided by NRS Ch. 38 clearly apply)). Chan elected the latter. Exh. 7.

³ Defendant Wayne Wu is the agent who usurped Chan's client, never disclosed he was not the
first agent to show the KB homes to the buyer, Mr. Chiu, and wrongfully claims to be the
procuring cause. Sullivan and Nevada Real Estate Corp. is the broker under whom he works.

denies a motion to vacate, it “shall confirm the award unless a motion to modify or correct the award is pending.”). As such, it is Wu, not Chan, that is filing unnecessary, improper and wasteful motions (in this instance, counter-motions) with this court.

ARGUMENT

A. Nevada Law Is Clear, When Two Brokers Claim A Commission, Entitlement Is Decided By Determining Procuring Cause And The Panel Exceeded Its Authority By Never Actually Deciding Procuring Cause and Then Splitting The Commission

Wu suggests that the issue submitted to arbitration was not “procuring cause” but, rather, whatever the Panel wanted to decide. Nevada law is clear. A broker or agent is only entitled to a commission on a sale for which he or she establishes that he or she is the procuring cause. *Shell Oil Co. v. Ed Hoppe Realty, Inc.*, 91 Nev. 576, 580, 540 P.2d 107, 109 (1975); *Flamingo Realty, Inc. v. Midwest Development, Inc.*, 110 Nev 984, 989, 879 P.2d 69, 72 (1994); *Carrington v. Ryan*, 109 Nev. 797, 801-02, 858 P.2d 29, 32 (1993); *Morrow v. Barger*, 103 Nev. 247, 253, 737 P.2d 1153, 1157 (1987).

Wu argues that arbitrators may abandon and *not even decide* the very issue presented to them because the GLVAR (and/or its national association) has an “Arbitration Manual” that grants them unfettered authority to ignore controlling law. But the GLVAR does not have the power to override Nevada law. And it is patent from the GLVAR ethics rules that when there are two competing brokers⁴, the issue to be decided is procuring cause, which *by operation of Nevada law*, decides who is entitled to a commission and who is not.

Wu relies heavily on commentary in the Association of Realtor’s Arbitration Manual to suggest that the panel did not need to determine “procuring cause” and did not exceed its

⁴ See Motion Exhibit 1, at Standard of Practice 17-4 (providing that arbitration is to determine procuring cause when two competing brokers dispute entitlement).

1 authority by effectively ignoring that core determination and splitting the baby by ruling both
2 were entitled to a portion of the commission.

3 Again, neither the GLVAR nor its national association have the power to dictate or
4 change or ignore *the law*. The GLVAR is not the Nevada Legislature or a judge. They have no
5 policy making power, nor any power to alter or change the law. Manifestly, if the Panel fails to
6 meet its charge of determining *the* procuring cause and enters an award that cannot exist because
7 there can only be one procuring cause, that Panel has exceeded its authority.⁵

9 The Panel exceeded its power because in Nevada and elsewhere, procuring cause is an
10 either/or proposition, not a sliding scale which allows for more than one procuring cause. There
11 is no such thing as partial procuring cause. See *Morrow v. Barger*, 103 Nev. 247, 253, 737 P.2d
12 1153, 1157 (1987) (“If a real estate broker has been a “procuring” or “inducing” cause of a sale,
13 he or she is entitled to the agreed commission irrespective of who makes the actual sale or terms
14 thereof.”); *Bartsas Realty, Inc. v. Leverton*, 82 Nev. 6, 9, 409 P.2d 627, 629 (1966) (“Faced with
15 competing brokers, a court must decide which was the ‘procuring’ or ‘inducing’ cause of the
16 sale.”); *Van C. Argiris & Co. v. FMC Corp.* 494 N.E.2d 723, 727 (Ill. App. 1986) (“The law is
17 well settled in Illinois that only one commission will become due when a ready, willing and able
18 purchaser has been found, and the commission will be due only to the broker who can show that
19 he was the procuring cause.”); *Briden v. Osborne*, 184 S.W.2d 860, 863 (Tex. App. 1944)
20 (“Whether there be but one broker involved, or more than one independent broker, the one who
21 is the procuring cause of the sale is the one entitled to a commission.”); *Salamon v. Brooklyn Sav.*

25 ⁵ Wu declares there is no clear and convincing evidence of exceeding authority. But the only
26 evidence necessary is the showing of the dispute, what issue (procuring cause) was submitted for
27 decision, and the legal impossibility of the award.

1 *Bank*, 44 N.Y.S.2d 420, 421 (N.Y. Sup. Ct. 1943) (allowing interpleaded of commission for
2 determination between competing claimants: “[O]nly one could have been the procuring
3 cause.”); *Lundburg v. Stinson*, 695 P.2d 328, 335 (Haw. App. 1985) (“When there are many
4 brokers involved in a transaction, there can be only one ‘procuring cause ...’”).

5
6 Wu’s only response to this compelling and uncontradicted *legal authority* is to quote
7 extensively from the “Arbitration Manual.”⁶ But this only proves Chan’s point. The Arbitration
8 Manual excerpts cannot change the law and how it is to be applied. Wu’s citation to the
9 Arbitration Manual suggesting a split award may be possible does not change or otherwise
10 supplement the law regarding procuring cause. Indeed, the quoted excerpt clearly states a
11 caveat to the speculation that such a result may be allowed: “except where prohibited by state
12 law.” Wu has failed to cite to a single *legal* authority that would allow the determination of joint
13 procuring causes and a split award in Nevada.⁷ The Arbitration Manual is simply wrong legally
14 (and to the extent it matters at all, it makes clear that an award cannot be contrary to law).
15 Rather than supporting Wu, the quoted excerpt underscores that the Panel here did not follow the
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19 ⁶ Wu does cite to basic cases on procuring cause and declares that Chan must have abandoned
20 the project and the panel must have decided Wu was the procuring and predominating cause.
21 But Wu’s assumptions and factual argument is *apropos* of nothing. The Panel award splits the
22 commission without explanation. Since Nevada law precludes entitlement to a commission
23 without the claimant showing they were the procuring cause, Chan necessarily was the procuring
24 cause and there was *no* interruption or abandonment finding by the Panel.

25 ⁷ Wu cites to several non-Nevada cases which apply a “predominating cause” standard. There
26 does not appear to be any actual difference but to the extent there is, Nevada obviously applied
27 *procuring cause*, and, as such, the cases are not persuasive authority since they are not applying
28 the proper standard. Interestingly, *Carmichael v. Agur Realty Co., Inc.*, 574 So.2d 603, 609
(Miss. 1991) notes that while a claimant to a commission must be a procuring cause “how much
of a cause he must be is a function of contract.” Hence, even Wu’s cited cases demonstrate that,
because Wu’s contract with KB and Chiu required him as a threshold matter to have
accompanied Wu on his first visit as well as being the first agent to bring him there, he cannot be
the procuring case under the clear contract applying to this case.

1 law (or even its own procedures) because it entered an award that cannot legally exist, thereby
2 going beyond its authority.

3 **B. The Award Must Be Vacated or Modified Because The Award Is Not Supported By**
4 **The Applicable Contract And The Panel Acted Arbitrarily And In Disregard For**
5 **The Law**

6 Wu's primary response on this point is to argue (improperly) the facts of the case (from
7 his perspective) and raise a straw-man argument that the decision was supported by "substantial
8 evidence." Wu either mistakenly misunderstands Chan's point or is intentionally
9 mischaracterizing it.

10 Chan has established that when two competing brokers claim a commission, entitlement
11 is determined by deciding who is the procuring cause and that as a matter of law, there can be
12 only one procuring cause. As part of this showing in the Motion, Chan also demonstrated that
13 Wu cannot possibly be the procuring cause because *the very agreement that they executed with*
14 *KB Homes* (that provides for a commission) makes it exceedingly clear as a matter of law that
15 Wu cannot be the procuring cause because the contract expressly precludes payment of a
16 commission *to him* if he was not the first agent/broker to bring Chiu to the development (which
17 he indisputably was not because Chan was). See D0054 (paragraphs 2-3).

18 Thus, Chan's motion is not to re-argue the case or whatever factual determinations the
19 Panel made in reaching its improper award. Rather, the award is defective because the Panel did
20 not determine procuring cause (contrary to law) and entered an award that is a legal impossibility
21 (contrary to law) and violates the very agreement that provides for a cooperating broker
22 commission *at all*. Problematic here is that the Panel was made up of long-time and
23 experienced brokers. It is obvious they knew what they were to decide and that there can only be
24 one procuring cause. The GLVAR ethics rules also make it clear that the issue is procuring
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1 cause. Indeed, the Arbitration Manual expressly says that there is only one procuring cause, but
2 suggests there may be exceptions, but then limits that power to being only if allowed *by the law*.
3 Simply put, the law does not allow to do what Panel did, the Panel knew as well, and the
4 Arbitration Manual precludes this split award unless specifically authorized by state law, which
5 it is not. That the Arbitration Manual recognizes that splitting a commission cannot be done if
6 not allowed by law establishes all that is necessary to show arbitrary action by the Panel and
7 manifest disregard for the law.
8

9 Were that not enough, the Arbitration Manual further admits that GLVAR arbitrators are
10 *encouraged* to violate the law (unless they are told expressly to follow it). Wu quotes another
11 excerpt attempting to support the Panel's actions which encourages the Panel to make a decision
12 "upon broad principles of justice and equity, and in doing so *may expressly or impliedly reject a*
13 *claim that a party might successfully have asserted in a judicial action.*" Opp. At p 17 ll. 13-14
14 (emphasis added). Hence, this particular organization, and the Panel, have expressly admitted to
15 manifest disregard for the law as a matter of GLVAR policy by admitting they can and will (as
16 here) enter awards as they see fit *regardless of what might be the compelled result under the law*.
17 The Court should take this opportunity to make it exceedingly clear to the GLVAR and its
18 arbitrators that they are not the law unto themselves, that they must follow Nevada law, and their
19 internal operating manuals inviting arbitrary action and disregard for the law through improper
20 result-driven adjudication in derogation of Nevada law is not acceptable.
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23 As noted, in attempting to argue the Panel did not act arbitrarily or contrary to the
24 agreement, Wu extensively argues the facts (at least those he believes supports his claim to being
25 the procuring cause). But Wu again misses the issue. Each side has conflicting views of the
26 facts and who did what which resulted in Chiu purchasing the property in question and which
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properly was for the Panel to sort through and decide in reaching a procuring cause determination. Chan's primary issue with the Panel decision is primarily that the Panel acted contrary to law an in excess of its power by failing to actually do that and determine who was *the* procuring cause (instead entering an award that cannot legally stand).

Moreover, regardless of the facts about what Wu may have done to help select tile, carpet and other things *after* Chan introduced Chiu to the property *and* he sufficiently determined to buy to place a \$10,000 deposit down (the very next day), and regardless of the fact that it was a short time between his viewing with Chan that Chiu signed the final contract (while Chiu deceived Chan and delayed her to buy Wu time to "close the deal" Chan had started without interference) as well as the alleged but unsubstantiated claim that Chan somehow abandoned Chiu,⁸ the Panel acted arbitrarily and contrary to the operative contract. The three-party cooperating broker agreement with KB Homes expressly and conclusively precludes Wu from receiving *any part* of a commission unless he was the first broker to bring Chiu to the property. It is undisputed that he was not.

Hence, it *does not matter* what Wu did, or did not do. *See Morrow v. Barger*, 103 Nev. 247, 253, 737 P.2d 1153, 1157 (1987) ("If a real estate broker has been a "procuring" or "inducing" cause of a sale, he or she is entitled to the agreed commission irrespective of who makes the actual sale or terms thereof."); *Clark County Educ. Ass'n v. Clark County School*

⁸ This was the flagship position of Wu. It is based upon Chiu's claim that he and/or his father were calling Chan but she was not responding. Of course, this alleged failure to respond—if it happened at all—lasted all of a couple of days (over the New Year holiday). There is no actual evidence of these calls beyond self-serving statements and Chan received only one message on January 3, 2016. Chan was not allowed to play the voicemail by the Panel but did tell the panel what was said: Mr. Chiu's father called her and, in a very calm voice (i.e., not someone upset because they could not reach her) that she must be on vacation and asked her to call him. *See* Supplemental Chan Declaration, attached as Reply Exhibit 8 at ¶2.

1 *Dist.* 122 Nev. 337, 131 P.3d 5 (2006). *See also Carrigan*, 109 Nev. at 799, 858 P.2d at 31
2 (contract terms regarding commission entitlement prevail).⁹ Here, Wu (and Chiu) contracted
3 with the party paying the cooperating broker commission and created an overarching threshold
4 requirement for Wu to be the procuring cause; since he was not the first to show Chiu the
5 development, Wu *could not be entitled* to any part of the commission (Wu may seek some
6 compensation from Chiu eventually, but he contractually waived any right to the KB Homes
7 paid commission). The Panel manifestly disregarded this contract and the law by allowing him
8 any portion of the commission at all. Moreover, this contractual provision renders Wu's factual
9 arguments wholly *moot*; he failed to meet the one threshold requirement necessary for *him* to
10 have any commission entitlement. While a separate point, this further shows why there is fraud
11 here. Wu and his star witness, Chiu, contracted with KB establishing that Wu could only have a
12 right to some or all of a commission if he were the first agent to bring Wu to the property and
13 was with him the first time Wu visited the property. Wu and Chiu know this was not the case.
14 That Wu is claiming entitlement to a commission at all is necessarily fraudulent in light of this
15 clear limitation *he agreed to*.

16 **C. Although It Is Difficult To Follow Defendants' Point, Defendants Continue To**
17 **Erroneously Charge Chan Of Violating Arbitration Obligations Or Procedure**

18 Throughout the Opposition, Wu continues to claim Chan has acted inappropriately in
19 filing a lawsuit before proceeding to arbitration against Wu under GLVAR ethics requirements.
20 Wu also charges Chan of doing something incorrectly by not pursuing "procedural review" with
21 the GLVAR but, instead, pursuing her right under Nevada law to seek modification or vacation
22 of the award judicially.
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26 _____
27 ⁹ Even Wu's cited cases hold that what qualifies for being the procuring cause can be limited by
28

1 Attacking Chan and her procedural choices is not a new endeavor for Wu. Indeed, in
2 response to Chan's Motion to Stay this proceeding so that the arbitration could be pursued, Wu
3 made essentially the same incorrect arguments that Chan violated the GLVAR rules by filing
4 suit or otherwise acted improperly procedurally and therefore, should be denied a right to be
5 heard. *See Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss*
6 *with Prejudice or in the Alternative for Summary Judgment*, filed Feb. 2, 2017.¹⁰ The Court
7 rejected Wu's procedural complaints and request for summary judgment and denied Wu's
8 countermotion in an order entered March 30, 2017. Wu again raised similar arguments before
9 the Panel, this time arguing Chan should be thrown out of court because she commenced a
10 litigation and then sought arbitration, and because they argued, she did not timely seek
11 arbitration. That motion also failed and was denied by the Panel.

12 Here, Wu repeats his often-made charges of procedurally incorrect conduct. But Wu is
13 wrong, just as they have been the other times they have made this argument.¹¹ Chan acted
14 procedurally correct. The GLVAR notice provides two avenues for challenging the award. First
15 there is a limited "procedural review" which is an evaluation of procedure and due process. The
16 other alternative is the "legal challenge" which necessarily is what is taking place before this
17 Court. Chan gave timely notice to the GLVAR and timely filed her motion. There is no basis
18 for whatever complaint Wu is attempting to make.¹²

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22 _____
23 contract. *Carmichael v. Agur Realty Co., Inc.*, 574 So.2d 603, 609 (Miss. 1991).

24 ¹⁰ Like here, Wu again used a counter-motion improperly to seek summary judgment declaring himself
25 the "procuring cause." *Id.*

26 ¹¹ It is, of course, improper to repeatedly seek reconsideration.

27 ¹² Indeed, Wu's criticisms are curious since Wu filed a *counterclaim* in this action (rather than moving to
28 compel arbitration which would have been the procedurally correct route). If Wu is held to the same

As for Wu's often repeated lament of the bringing of a court action, there is nothing wrong with that as well. Chan had several parties she (through prior counsel) elected to sue. While there was, through GLVAR membership, an obligation to arbitrate with Wu, such obligation did not exist for Chui or KB Homes. Chan had every reason to commence a court action because there would be no arbitration involving them—or claims Chan had asserted that were not subject to arbitration--and it was important all parties were on notice of her claims.¹³ To avoid argument of failing to bring all of her claim, or failing to name a necessary party, Chan also included Wu in the suit, but properly moved the Court to stay so arbitration could proceed. What Wu decries as abuse is simply procedurally wise lawyering. In any event, these issues have been raised previously and rejected. They unnecessary impose cost and time consumption, and confuse the issues actually before the Court and serve no purpose with respect to the actual issues to be decided other than to serve Wu's desire to cast dirt.

These issues do raise an important issue regarding the arbitration itself. As is evident, members of the GLVAR are required to adhere to their rules to be members. The standards and rules make it clear that a member who does not submit such disputes to mandatory binding arbitration would be subject to penalties by the organization. As such, Chan had no choice but to execute the request and agreement to arbitrate, which necessarily was extracted by the coercive requirements that a member must agree to arbitrate or suffer the consequences. NRS 597.995 renders void arbitration agreements lacking "specific authorization for the provision which

standard he advocates against Chan, Wu should be determined to have acted improperly, multiplied proceedings, acted frivolously and should have judgment against them entered.

¹³ KB Homes caused the commission to be held in escrow as a result until the dispute resolved. It has since been transferred to the GLVAR.

1 indicates that the person has affirmatively agreed to the provision.”¹⁴ This evidences that the
2 policy of Nevada is that an obligation to arbitrate should not be unwittingly made or coerced.
3 Here, as is clear, the GLVAR arbitration was coerced through the threat of penalties and
4 sanctions if Chan did not submit the claim to them for arbitration. While she signed a request
5 and agreement to arbitrate, it was only because she believed there was no choice.
6

7 **D. The “Counter-Motion” For Summary Judgment Is Procedurally Improper And**
8 **Moot**

9 The sole points and authorities offered by Wu as part of the “counter-motion” (aside from
10 the rhetoric and invective disparaging Chan) is comprised of exactly one paragraph, in which Wu
11 says that summary judgment should be granted because of the arbitration award. No case
12 authority is cited (beyond summary judgment standards).

13 This “counter-motion” is a non-sequitur and, at best, incorrectly characterized and
14 premature. NRS Ch. 38 prescribes what is to happen after an arbitration concludes with an
15 award. The prevailing party has the right to ask a court to “confirm” it. NRS 38.329. Only
16 *after* an order confirming an award has been entered does the Court then have authorization to
17 enter a judgment on the award. NRS 38.243. It is procedurally improper to move for entry of
18 judgment prior to the determination of Chan’s motion since no award has yet to be confirmed.
19 Even then, the Motion fails to identify what, exactly, would be subject to summary judgment.
20 Chan asserted more than one claim, and the Motion to Stay makes it clear there were claims
21 against non-arbitrating parties, and Wu for his contractual interference, which were not subject to
22 arbitration and were reserved for later litigation after procuring cause was determined.
23
24

25 ¹⁴ Nevada case law also shows hostility to forced arbitration where the obligation to arbitrate was
26 not freely and knowingly consented to in advance. *See Burch v. Second Jud. Dist. Ct.*, 118 Nev.
27 438 (2002) (adhesion arbitration provision found unenforceable).
28

Moreover, it is axiomatic that the Court should not be independently considering “summary judgment” on anything submitted to binding arbitration because the Court’s power is limited to accepting the decision, modifying it, or vacating it.¹⁵

Additionally, pursuant to E.D.C.R. 2.20, a “counter-motion” is only authorized as part of a response to a motion if it is related to the “same subject matter.” Here, the motion at hand is challenging the arbitration award and seeking that it be vacated or modified. NRS Ch. 38 makes it clear what the available “counter-motions” that would be the same subject matter, and a only a motion to confirm the award under NRS 38.239 would fit. Wu’s “motion for summary judgment” is a non-sequitur and, whatever is being sought, is not proper because one does not grant “summary judgment” on an arbitration award. It is either confirmed, modified or vacated. But as to confirmation, the countermotion is also moot and improper. If the Court grants Chan’s motion in any way, then there can be no confirmation of the award. But pursuant to NRS 38.241 and 38.242, there was no basis for a countermotion; those statutes already mandate confirmation of the award if Chan’s motion is denied.

Because what Wu is seeking to accomplish through this entirely superfluous countermotion is not entirely clear (unless the goal is to simply add complexity and use the “counter-motion” device improperly to obtain the “last word”), in an abundance of caution and to show that there are ample issues of material fact concerning procuring cause, as well as ample issues requiring discovery under NRCP 56(f) such that denying summary judgment is appropriate here, attached is the declaration submitted by Chan the first time Wu sought

¹⁵ Wu seems to be inviting the Court to enter judgment that *he* was *the* procuring cause and entitled to the entire commission. Wu cannot do this, of course. He failed to bring a timely motion to modify or vacate the award and, while there are ample grounds why Wu cannot be the

summary judgment on procuring cause as well as her supplemental declaration attached as Exhibit 8. To the extent it is needed, this amply demonstrates the existence of a question of material fact regarding the procuring cause (inherently a factual question) and the many subjects or which discovery would produce evidence material to the question of procuring cause. This would include depositions of KB Homes which would confirm the contractual limitation against Wu ever being considered a procuring cause and entitled to a commission paid by KB.¹⁶ To the extent needed, Chan submits there are questions of fact precluding summary judgment and that alternatively, it should be denied pursuant to NRCP 56(f) so discovery may proceed for formal discovery to take place (the matter was stayed prior to commencement of discovery).¹⁷

E. Defendants' Countermotion For Attorneys' Fees Is Unwarranted And Itself Frivolous

Wu seeks an award of attorneys' fees pursuant to two grounds. First, Wu cites to E.D.C.R. 7.60(b) and alleges an entitlement to fees declaring Chan's motion "frivolous, unnecessary, or unwarranted" or "so multiplies the proceedings in a case as to increase costs unreasonably and vexatiously." It is astonishing that Wu would make such a motion in light of Defendants' own clearly improper counter-motion for summary judgment. NRS Ch. 38 *expressly authorizes* Chan's motion to vacate or modify the arbitration award post arbitration. It states the proper standards and cites supporting case authority for the arguments raised. Generally the standard would be lacking any legal or factual support whatsoever. It was done

procuring cause and the panel acted improperly in awarding him even part of the commission, he certainly has failed to establish that he rather than Chan is the procuring cause.

¹⁶ See *Carrigan, supra* (procuring cause is a question of fact).

¹⁷ The discovery would necessarily entail obtaining the evidence from KB Homes, Wu, Chiu and Chiu's father regarding the alleged "abandonment" dispute as Chan believes discovery would reveal this to be a fabrication.

1 timely, and while the Court will decide whether to grant it or not, is *far* from frivolous or
2 vexatious.¹⁸

3 The second ground is based upon the agreement to arbitrate Chan was compelled to
4 execute to commence the arbitration (which, as Wu likes to point out, was compulsory and
5 potentially subjected Chan to penalties if she did not execute the agreement). Wu quotes the
6 following provision in the agreement as entitling Wu to fees:

8 In the event I do not comply with the award and it is necessary for any party to
9 obtain judicial confirmation and enforcement of the award against me, I agree to
pay that party costs and reasonable attorney's fees incurred obtaining such
confirmation and enforcement.

10 Opp./Counter-motion, at p. 25. First, of course, a contractual attorneys fees provision is a
11 collateral matter and such requests are not properly made as a counter-motion under E.D.C.R.
12 2.20. They are sought after entry of final judgment as a post-judgment matter. Second, Chan
13 has not failed to comply with the award. Chan has properly challenged the award as allowed and
14 expressly authorized by the GLVAR procedures and Nevada law. Third, Wu has not sought
15 judicial confirmation (and any effort by him for "enforcement" necessarily must come after the
16 Court rules on Chan's motion and then there is some failure to comply). While Chan has filed,
17 as is her right, her Motion asking for the award to be modified and/or vacated, which if denied
18 would result in an order confirming the award, that is a result of Chan taking action, not Wu
19 moving to confirm.

20 As such, the provision simply is not applicable here under these circumstances by its very

21
22
23
24 ¹⁸ It is sadly becoming somewhat common for parties to append unnecessary, improper or duplicative
25 "counter-motions" to responses to motions to manufacture a basis to file the "last word" as a "reply" in
26 support of their "counter-motion" but what really is a sur-reply to the underlying motion to deprive the
moving party to their right to the last word. Of course, any reply submitted by Wu here would be
untimely and should be stricken and not considered on that basis because it was due 5 days prior to the
hearing.

1 terms.

2 Finally, while the fees counter-motion cites Brunzell, they have provided no actual
3 evidence in support of the request for fees or under which the Court could evaluate the request.
4 No affidavit has been submitted supporting the request. No time records have been submitted.
5 The “counter-motion” is meritless to begin with, but must also be denied as a result of the failure
6 to attach any evidence supporting fees.
7

8 **KENNEDY & COUVILLIER**

9
10 /s/ Todd E. Kennedy

11 _____
12 Todd E. Kennedy, Esq.
13 Nevada Bar No. 6014
14 3271 E. Warm Springs Rd.
15 Las Vegas, NV 89120
16 Tel: (702) 605-3440
17 Fax: (702) 625-6367
18 tkennedy@kclawnv.com

19 *Attorneys for Plaintiffs*

20 **CERTIFICATE OF SERVICE**

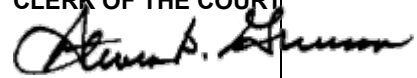
21 I certify that I served the foregoing reply in support of Plaintiff’s motion to modify or
22 vacate the arbitration award and opposition to the countermotions for summary judgment and
23 fees on August 15, 2018, on all counsel of record in the action pursuant to the Court’s efile and
24 serve service.
25

26 /s/ Todd E. Kennedy

27 _____
28 An employee of Kennedy & Couviller

EXHIBIT 8

EXHIBIT 8



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BETTY CHAN,
Plaintiff,

vs.

WAYNE WU,
Defendant.

CASE NO. A-16-744109-C
DEPT. XX

BEFORE THE HONORABLE ERIC JOHNSON,
DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 22, 2018

**RECORDER'S TRANSCRIPT OF HEARING
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff: TODD E. KENNEDY, ESQ.

For the Defendant: MICHAEL A. OLSEN, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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Las Vegas, Nevada, Wednesday, August 22, 2018

[Case called at 10:33 a.m.]

THE COURT: Betty Chan versus Wayne Wu, Case Number A744109. Counsel, please note your appearances for the record.

MR. KENNEDY: Good morning, Your Honor, Todd Kennedy on behalf of the Plaintiffs Betty Chan and Asian American Realty.

THE COURT: Counsel, why don't you go ahead since -- re-note yourself for the record.

MR. OLSEN: Michael Olsen on behalf of the Defendants Wayne Wu, Jerin Chiu, Judith Sullivan, and Nevada Real Estate.

THE COURT: Okay. We're here on Plaintiff Counterclaimants Wayne Wu's, et cetera, Opposition to Motion to Vacate -- oh, let's see. Plaintiffs' Reply in Support in Motion to Vacate or Modify Arbitration Award and Opposition to -- Motion to Strike Improper Countermotion. Defendant and Counterclaimants Wayne Wu, et cetera, Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney's Fees.

Let me just -- let me -- since this was an arbitration done by -- oh, I can't remember the formal name, but essentially the realtors --

MR. OLSEN: Yeah, it's GLVAR, the Greater Las Vegas --

THE COURT: Yeah.

MR. OLSEN: -- Realtor's Association.

THE COURT: Realtor's Association. I'm looking, do we agree

1 that the standard review of this is arbitrary and capricious, unsupported
2 by the agreement or amounts to manifest disregard for the law?

3 MR. KENNEDY: Yes, Your Honor.

4 MR. OLSEN: By clear and convincing evidence, yes.

5 MR. KENNEDY: We disagree with that, Your Honor.

6 THE COURT: You disagree with that, okay. All right.

7 MR. KENNEDY: Yeah, I haven't seen a case that applies that
8 to each and every element of the statute or to the common law grounds,
9 but, Your Honor, our position is it's clearly established under the order
10 and the relevant information as clear and convincing in any event.

11 THE COURT: All right. well, I mean, if, you know, in terms of
12 the issue of arbitrary and capricious, I guess -- I don't know, we can
13 argue the procuring cause here, but I tried to do some research on my
14 own yesterday that -- on this issue that there can only be one and that's
15 where I haven't found anything too definitive on that and in fact, I did find
16 a couple cases where they found an individuals was a procuring cause
17 and then found that they could share in the commission.

18 They didn't make a specific ruling, you know, it was just sort of
19 one of the things where they said we find so and so is -- was a procuring
20 cause and -- that consequently could share in the ruling -- or share in the
21 commission and those cases that I did -- the two or -- the couple that I
22 did find, it wasn't really clear, you know, if they were saying procuring
23 cause, you -- it makes it sharable or that under sort of the agreements
24 that they were working with that they could share.

25 But, you know, certainly this started out with Betty Chan and

1 then sort of moved to Mr. Wu and you can make a pretty good argument
2 that but for either one of them that there wouldn't have been a sale. So I
3 sort of see where the arbiter came out with his decision that he did and,
4 you know, absent, you know, some clear case law saying that there can
5 only be just one procuring cause, that that trumps any other work in the
6 case, it would seem that the arbitrator's decision was not arbitrary and
7 capricious.

8 And so, with that sort of general thought in mind, I'll let you go.

9 MR. KENNEDY: Sure, Your Honor, and context is important
10 here. Ms. Chan was hired by Mr. Chiu to show her -- show him homes
11 in the area and she did that on -- in December of 2015. They went to a
12 number of resale homes and she convinced him to go to this KB home
13 sale.

14 And whatever she did -- and, Your Honor, I -- we're not here to
15 argue the facts because that's what arbitration panels do, we're here to
16 argue what the law allows. You know, whatever she did, the next day,
17 Mr. Chiu put down \$10,000 of a deposit on that piece of property.

18 Now, over the next few days he then -- a handful of days later
19 he signed a contract with KB Homes to actually purchase that lot. So,
20 one thing, we have a very compressed timeframe here. You don't have
21 months and months and months going on in between where there's
22 some sort of cutoff between one procuring cause. And I'll get to the
23 issue, the legal analysis, but I want to make sure we have some context
24 here. And of course Mr. Wu and Mr. Chiu signed a contract with KB
25 Homes.

1 Now, KB /Homes is a seller, KB Homes is the one paying the
2 commission. They signed a contract, Your Honor, and that's why where
3 we get to arbitrary, they -- the standard's really arbitrary and/or manifest
4 disregard of the law.

5 They signed a contract. Mr. Chiu signed it, Mr. Wu signed it.
6 It says we don't pay -- we will not pay broker commission unless you
7 were the first broker to show our community to that client. That is -- in
8 the record it's part of Exhibit 3, at Document D-0054, Paragraph 2. It's
9 incredibly clear.

10 Mr. Chiu -- Mr. Wu himself agreed by contract with the party
11 paying, I do not get -- I recognize that you will not -- and I'm not entitled
12 to a commission if I didn't -- was not the first -- if I was not with Mr. Chiu
13 when he first saw the community. It was undisputed he was not, Ms.
14 Chan was.

15 So, first thing you have here is when we're talking about
16 procuring cause and the legal issue is you have a -- and Nevada law's
17 very clear, if you have a contract that talks about who and when
18 someone's entitled to a commission, those control over the common law
19 analysis of procuring cause. You have a contract that says Mr. Wu
20 could never receive this commission. And that's where we get the
21 problem with the split commission, Your Honor. They've obviously
22 decided Ms. Chan had responsibility here.

23 And I believe the panel was acting like mediators as opposed
24 to arbitrators and said well, this is -- yeah, we'll do this. In fact, if you
25 look at their arbitration manual, they're encouraged to enter what they

1 think is a fair result, notwithstanding the law, which of course is
2 effectively an admission they're going to manifestly disregard the law.

3 But the main point there, Your Honor, is Mr. Wu could not
4 receive any of this commission, he signed a contract saying hey, I know
5 I can't be considered the procuring cause here, that's really what it's --
6 what it -- that's really what it means is one, we're not going to pay you
7 any commission to you unless you are the person who was with Mr.
8 Chiu the first time he was there, there's only one person left, it's Ms.
9 Chan.

10 Now, in terms of the legal issue of okay, procuring cause, I do
11 believe the law is -- is fairly clear. Nevada's never specifically taken this
12 issue up, but if you look at the *Morrow* case, which it's pretty clear, which
13 talks about -- and let me see -- let me make sure if I quote it correctly to
14 Your Honor, the -- if a real estate broker has been the procuring or
15 inducing cause of a sale, he or she is entitled to the agreed commission
16 irrespective who makes the actual sale or terms there -- or terms
17 thereof.

18 Again, Your Honor we obviously have to interpret a little bit,
19 but that case makes it pretty clear, there can only be one and it doesn't
20 matter, we -- what happens is you -- just because someone else finished
21 the sale doesn't mean they are the procuring cause. And that case
22 specifically provides, look, if you're the procuring cause, you're the
23 procuring cause and that someone else stepped in and did stuff, doesn't
24 make them also a procuring cause.

25 And of course, Your Honor, the only party --

1 THE COURT: But if -- I mean -- and I take -- but I sort of take
2 it from this that the arbitration panel saying if Mr. Wu didn't step in, there
3 wouldn't have been a sale and so that's why he's entitled to a substantial
4 amount -- I mean, I'm not -- I mean, we can argue whether or not he --
5 what, you know, amount he did, but I -- that's what I essentially read is
6 they're saying is he's -- you know, but for him stepping in, there wouldn't
7 be a sale and his stepping in is worth --

8 MR. KENNEDY: Well -- and, Your Honor --

9 THE COURT: 70 -- I guess 75 percent of the commission, so
10 I mean -- or the sale. So, I -- you know, the -- I -- you know, in the
11 case -- you know, when we're looking at these cases, I mean -- like I
12 said, I haven't found anything that said, you know, someone who doesn't
13 step -- who steps in later and makes a material contribution to the
14 completion of the sale is not entitled to anything if they're not the first
15 one to put the buyer and seller together.

16 MR. KENNEDY: Well, Your Honor, the -- I think the -- my
17 response to that is that -- there is no case law I've been able to find,
18 absent some contract allowing the splitting of commissions that allows
19 for multiple procuring causes. I mean, if you look at the *Bartis Realty*
20 case, these are Nevada cases.

21 THE COURT: And I'll agree with you. I mean, I couldn't find
22 any case --

23 MR. KENNEDY: And --

24 THE COURT: -- that had multiple procuring causes. At the --

25 MR. KENNEDY: And he --

1 THE COURT: And at the same time I haven't found any case
2 that said that being the procuring cause absolutely precludes anyone
3 else from getting any proceeds from the --

4 MR. KENNEDY: I think, Your Honor, that's the --

5 THE COURT: A portion of the commission.

6 MR. KENNEDY: -- a necessary import of the case law. In
7 Nevada, as well as elsewhere it says look, we -- when you have
8 competing brokers saying I'm the procuring cause, I'm the person
9 entitled to it, the Court uses procuring cause to determine which one
10 gets it and which one does not.

11 There is no -- when there's no stat -- case law authority saying
12 you can split, then you've got -- it's an either/or proposition and that's the
13 way the cases come down. And of course here we have a contract that
14 irregardless of what -- we don't know what those arbitrators were saying
15 because they didn't enter any findings.

16 But what we do know is what they entered was an illegal
17 impossibility. Even their own arbitration manual, and this was quoted in
18 the Opposition, says hey, you know, there may be some occasion where
19 you would split it, but only if allowed under that State's law and you
20 should follow the law. The law here just simply does not allow for this
21 splitting of a commission.

22 And then you add in that contract. The one thing they couldn't
23 do, even if they thought he had some benefit -- he provided some benefit
24 there is KB Homes is the party who is paying and agreed to pay the
25 commission. They said we won't pay a commission. And Mr. Wu

1 signed an agreement committing to this, I'm not entitled to a commission
2 unless I was the first -- I was with Mr. Chiu when he came here first and
3 we all know that's not the case.

4 So that's what we're really stuck with, Your Honor, is we have
5 a panel who made a decision which necessarily recognizes Chan as a
6 procuring cause because they wouldn't have given her -- they couldn't
7 have given her anything if she wasn't a procuring cause and awards her
8 at least some of the commission.

9 But where it needs to be modified or vacated is it splits the
10 commission in an illegal impossibility and gives it to someone who's
11 contractually barred by the act -- the party actually paying the
12 commission from receiving it. That is where you get to arbitrary conduct
13 because they have not followed the controlling contract. The contract
14 that provides for a commission, it all says we can't get one here, under
15 these facts, as everyone agrees.

16 So they -- it has to be either modified or vacated because the
17 only other person who had any procuring cause involved here, which
18 they've already found because they've awarded her something, is Ms.
19 Chan.

20 And that's really where we're at because it, again, is the
21 contract. But also again, Your Honor the law -- and if you look at other
22 jurisdictions, they're very clear, they've actually had the issue come in
23 front of them. You only have one. You can have lots of real -- you can
24 have lots of brokers, realtors involved, but when it comes down to
25 deciding who gets the commission, it's got to be one.

1 And those are the cases -- those are the only cases cited by
2 any party to you.

3 THE COURT: Okay. All right.

4 MR. OLSEN: Your Honor, thank you. Your Honor, of course
5 these arbitrators -- you had three -- a panel of three arbitrators,
6 professional real estate agents. We conducted an arbitration over four
7 hours where all of the facts and all of the evidence was vetted. The
8 credibility of the witnesses was tested, which became quite an issue in
9 this case I would say.

10 They had an ability to take in all of the evidence, which the
11 Court does not have that advantage, especially since be -- the Plaintiff
12 has not attached a transcript of the proceeding for the Court to
13 determine whether there's been a manifest disregard of the law or
14 arbitrary and capricious ruling.

15 Your Honor, throughout the course of that four hours, not one
16 time have I ever heard this argument about the contract between KB and
17 Wayne Wu. This is the first time I've heard it and therefore the Court
18 must disregard it. It's a new argument being made after the arbitration.

19 There's another three reasons that that argument doesn't fly.
20 It's the first time it's been raised, number one.

21 Number two, they're not in privity in that contract. Ms. Chan is
22 not in privity of that contract. KB Homes is not here saying that Wayne
23 Wu is not entitled to his commission. In addition, Your Honor, at the
24 arbitration hearing, the evidence taken and the testimony given by Mr.
25 Wu was he didn't know that Dr. Chiu had gone to the Tavares

1 Development with another agent.

2 By the way, Your Honor, when Ms. Chan took Dr. Chiu to the
3 Tavares Development, Mr. Chiu testified that they never even looked at
4 the lot and home combination that he ultimately purchased. She was
5 pushing a different model and a different lot than what he ultimately
6 decided to purchase.

7 He also testified that he was concerned about KB Homes,
8 their quality. He was concerned about the location. He had all kinds of
9 reservations, he was not ready to buy. Why did he go back the next
10 day? Well, he made multiple calls to Ms. Chan, who wasn't returning the
11 calls, and testified at the arbitration she turned her phone off so she
12 could spend time with her daughter for the holidays, despite the fact that
13 she'd been told that they only had four days at the end of the year to
14 look at homes while Dr. Chiu's parents were in town, so time was of the
15 essence.

16 She testified, I turned off my phone and -- so he -- they can't
17 get ahold of her. He goes back to look at the development and they say
18 hey, we're jacking the prices on all these lots, if you want to hold the
19 price, you have to put a deposit down, it's fully refundable. That's the
20 only reason he put any deposit down at all, he still hadn't made up his
21 mind.

22 In fact, the day after that he puts a question out on a blog site
23 asking about the quality of KB Homes. He's still concerned about that.
24 So, Your Honor, that argument doesn't fly.

25 Let me go to the standard of review real quick because there

1 is a case directly on point and it is binding on this court. The case is
2 *Health Plan of Nevada versus Rainbow Medical*. It's a 2004 case and
3 it's on point because it's -- it deals --

4 THE COURT: What's the citation?

5 MR. OLSEN: -- with the exact same two issues; whether
6 there's been an excess -- the arbitrators exceeded their power and
7 whether there was a manifest disregard of the law.

8 Here's what the Supreme Court said: Nevada recognizes
9 both common-law grounds and statutory grounds for examining an
10 arbitration award. However, the scope of judicial review of an arbitration
11 award is limited and is nothing like the scope of an appellate court's
12 review of a trial court's decision. The party seeking to attack the validity
13 of an arbitration award has the burden of proving, by clear and
14 convincing evidence, the statutory or common-law ground relied upon
15 for challenging the award.

16 They go on and very specifically address what is required to
17 have an arbitration award set aside based on excessing authority.

18 It says: The courts presume that arbitration -- arbitrators are
19 acting within the scope of their authority. Parties moving to vacate an
20 award on the ground that an arbitrator exceeded his or her authority
21 have the burden of demonstrating by clear and convincing evidence how
22 the arbitrator exceeded that authority. Absent such a showing, courts
23 will assume that the arbitrator acted within the scope of his or her
24 authority and confirm the award.

25 Arbitrators -- this is very critical.

1 Arbitrators exceed their powers when they address issues or
2 make awards outside the scope of the governing documents.

3 There's not even an allegation of that.

4 However, allegations an arbitrator misinterpreted the
5 agreement or made factual or legal errors do not support vacating an
6 award as being in excess of the arbitrator's powers. Arbitrators do not
7 exceed their powers if their interpretation of an agreement, even if
8 erroneous, is rationally grounded in the agreement. The question is
9 whether the arbitrator had the authority under the agreement to decide
10 an issue.

11 In other words, under the arbitration agreement, did they have
12 authority to act?

13 Not whether the issue was correctly decided. Review under
14 excess-of-authority grounds is limited and only granted in very unusual
15 circumstances. An award should be enforced so long as the arbitrator is
16 arguably construing or applying the contract. If there is a colorable
17 justification for the outcome, the award should be confirmed.

18 Now, as to manifest disregard they also state: Manifest
19 disregard of the law goes beyond whether the law was correctly
20 interpreted, it encompasses a conscious disregard of applicable law.

21 What does that mean, Your Honor? Well, Your Honor, you
22 just stated that you looked this over yesterday and I'm glad you did
23 because I've looked at it extensively and I've read all the cases cited by
24 Counsel. Nevada -- under Nevada law -- there are a handful --
25 Counsel's correct on one thing, there are handful of states who had

1 taken the next step in procuring cause and they have said you can only
2 have one.

3 And there -- a couple that said you can't split the commission.
4 Nevada is not one of those states. In fact, I'm really glad that Counsel
5 cited the *Morrow* case because the *Morrow* case not only refutes that
6 you can only have one, the *Morrow* case brings up the concept of
7 predominate cause. That opens the door to split commission.

8 The *Morrow* case, quoting: A finding of procuring cause
9 requires that the broker demonstrate conduct that is more than mere
10 trifling. In non-exclusive brokerage situations -- which is what we have
11 here; in fact, there's no contract between Ms. Chan and Dr. Chiu --
12 merely introducing the eventual purchaser is not enough.

13 To constitute the predominating cause of the sale, it is not
14 enough that the broker contributes indirectly or incidentally to the sale by
15 imparting information which tends to arouse interest. The broker must
16 set in motion a chain of events which, without break in their continuity,
17 cause the buyer and seller to come to terms.

18 Well, Your Honor, applying this standard, that's clearly Mr.
19 Wu. Ms. Cahn merely showed him the development. Mr. Wu overcame
20 all of the concerns about KB Homes' quality, he negotiated the contract,
21 he put the lot and the home together with a view of the mountains. Ms.
22 Chan wanted to emphasize a view of the strip, which Dr. Chiu was not
23 interested in. He's the one that got the deal done and that's reflective in
24 the arbitrator's award.

25 Now, very importantly, Your Honor, Counsel just made an

1 attempt to shift the burden to my client to show that there's no case law
2 that allows splitting of commission. Well, it's not my client's burden.

3 Here's what the manual says. By the way, it's undisputed that
4 Ms. Chan signed an arbitration agreement that said she agreed to
5 arbitrate in accordance with the manual. That's significant because the
6 manual says this: While awards are generally for the full amount in
7 question -- no doubt -- (which may be required by state law).

8 Whoever wrote the manual is smart enough to know that in
9 some states, yeah, it may be required that the commission goes to one
10 or the other. Again, Nevada's not one of those states.

11 In exceptional cases, awards may be split between the parties
12 (again, except where prohibited by state law).

13 It's their burden to show this court a case -- a Nevada law
14 case that says you can't split commission. Or you can't have more than
15 one procuring cause. And in all of their briefing and in all of my review of
16 Nevada case law, I can't find that, Your Honor.

17 So, the arbitrators were merely acting under the agreed upon
18 contract, under the manual -- they weren't thumbing their nose at the
19 state or at the legislature, as Counsel suggests in his Reply. They're
20 saying, except if there's a law that says we can't split commission, we
21 can and that's what they did here.

22 So, Your Honor, with regard to that issue, procuring cause,
23 there's a whole bunch of other arguments I could make about
24 abandonment. There's a ton of case law out there that if you abandon
25 the process, if you don't return phone calls when you know the client's

1 only going to be in town for four days, you can't turn around and claim
2 the commission.

3 And I think Ms. Chan needs to be a little bit careful here what
4 she's asking for because if this Court is inclined to find that procuring
5 cause means that you can only one, then it should go to Mr. Wu
6 because he's the one that did all the work. He's the one whose name is
7 on the contract, he's the one that resolved all the concerns, he's the one
8 that put the lot and the home together that gave Dr. Chiu the views he
9 wanted, and he's the one that closed the deal.

10 All she did is spend one rushed day running around looking at
11 multiple properties and introduce him to the Tavares Development.
12 That's it.

13 So if there's one cause, if we're going to modify, then let's give
14 it to Mr. Wu because he put all the hours in to get the deal closed.

15 THE COURT: All right. Thank you.

16 MR. KENNEDY: Well, Your Honor --

17 THE COURT: Short response.

18 MR. KENNEDY: We're certainly not here to argue the facts,
19 although Counsel spent most of the time arguing about the facts,
20 criticizing me for not attaching a transcript, but he then talked about a
21 bunch of facts, of course which -- for which Counsel has no support.

22 If you'd like to know what really happened, Your Honor, I invite
23 you to read Ms. Chan's declarations attached to our Reply, which belie
24 everything -- nearly everything. That says -- what -- you know, it's -- you
25 have disputed facts about who did what.

1 The reason I didn't attach the transcript, Your Honor, is
2 because one, a transcript was not made, they did a recording. I would
3 have -- my client would have to pay -- we're talking about a \$14,000
4 case and --

5 THE COURT: I'm not --

6 MR. KENNEDY: -- it doesn't matter what the testimony is.

7 THE COURT: -- criticizing you for not tran -- a transcript.

8 MR. KENNEDY: Importantly, Your Honor -- you know, again,
9 the contract -- you know, saying that Ms. Chan wasn't a party to the
10 contract, it's because they conspired to exclude here. Mr. Chiu signed
11 that agreement. Their star witness, in fact, represented by Counsel
12 knew who the first person was to take him to that property and it was
13 Ms. Chan.

14 He signed that contract and actively committed fraud against
15 KB Homes because if he had said no, I had another person there, we
16 know what KB Homes would say well, that broker's entitled to the
17 commission. But Ms. Chan was never given the opportunity because
18 they lied to her about what they were doing. That's also part of the
19 record.

20 So -- and it's not whether she was a party to the contract.
21 That contract, as the Nevada Supreme Court has said, applies to the
22 determination of procuring cause. Mr. Wu contractually said, I am not
23 the procuring cause, unless I was the first person to bring it there.
24 That's part of the agreement. That's a contract KB Homes has said you
25 don't get any commission.

1 That's where we end up with and that's why you have an
2 arbitration decision splitting the baby, giving it to somebody who
3 contractually cannot have it. And that's why you do get to this arbitrary
4 standard and that's why you do get to the manifest disregard.

5 And I'd like to talk about that a little bit. It's interesting, you
6 know, what -- you know, the -- I guess the concept is well, that which
7 has been prohibited must be allowed. Well, Nevada case law talks about
8 procuring cause and says you need to decide when you have two
9 people saying I'm entitled to the commission, you decide which one's the
10 procuring cause. I think that tells us what the standard is. There's going
11 to be one.

12 I believe, Your Honor -- and unless this Court's going to now
13 create new Nevada law, until the Supreme Court were to say no -- you
14 know, it's not the law to say, well, it hasn't been expressly prohibited.
15 The law says there's one procuring cause, that's why we do all these
16 things.

17 So, unless there is some law that says there can be more than
18 one, you should only -- they should only be deciding one. And that
19 manual, I know Counsel thinks it helps him, but I think it helps me.
20 When you have a provision that says, you know, well sometime -- you
21 generally apply the full amount in question, which may be required by
22 state law. And it constantly states follow the law, follow the law.

23 What we know is, there is no law that authorizes them to split
24 it here. Their own manual told them to follow the law. But more
25 importantly and where we get to manifest disregard, if we're going to use

1 that manual for anything, let's use it as them admitting that they engage
2 in manifest disregard.

3 Arbitrary -- and this is another portion quoted by Counsel.

4 Arbitrators, unless specifically required to act in conformity
5 with the rules of the law.

6 They always are. And their own provisions, their own manual
7 says hey, follow the state law on the subject.

8 May base their decisions on broad principles of justice and
9 equity and doing -- so expressly or impliedly reject a claim that party
10 might successfully have asserted in a judicial action.

11 What does that tell us? That the court -- the association of
12 realtors are telling their arbitrators, do what you want, even if that party
13 would -- in court would have won. You can disregard that, you can
14 disregard those arguments and do what you feel is fair.

15 Your Honor, even arbitrators are supposed to follow the law,
16 not -- they're not mediators. It's not an equitable claim. They're
17 supposed to follow the law. The law says that Mr. Wu certainly cannot
18 have a part of this commission.

19 Thank you, Your Honor.

20 THE COURT: Okay. As I said, I actually even tried to look a
21 little bit yesterday on my own in terms of this issue. And in terms of
22 Nevada I don't find anything that says that there can only be one
23 procuring cause. And what little I found seems to suggest that, you
24 know, the procuring cause definitely entitles a person to receipt of a
25 portion of the commission.

1 Maybe it entitles it all, but at this point all I see is that it entitles
2 a portion of the commission.

3 Additionally, you know, and in looking at the arbitration
4 decision, which doesn't give a lot of information in that regard, but I
5 mean, it is -- you know, what -- you know -- these issues that are noted
6 in terms of who was the first to show the -- I mean, is it sufficient to show
7 the development or is it necessary to show the house and the lot in order
8 to be technically considered the procuring cause?

9 You know, whether or not, you know, there was a fraud
10 scheme to deprive Ms. Chan of her commission because of Mr. Wu's
11 relationship to the buyer? I -- those are all issues that are fact intensive
12 and get -- went before the arbitration board.

13 And I think that there's nothing in the law that precludes them
14 in Nevada from dis -- to discerning that Mr. Wu, which is clearly what
15 they decided was Mr. Wu was the primary force behind this. If you were
16 to go with the idea of predominant cause over procuring cause, then Mr.
17 Wu would arguably be entitled to the whole amount.

18 But I can't say that I find that the arbitrator's decision is
19 arbitrary or capricious and I can't say it is in manifest disregard for the
20 law and so I am going to deny the motion to Vacate or Modify the
21 Arbitration Award.

22 Do you want to prepare an order?

23 MR. OLSEN: I will prepare an order, Your Honor.

24 Given that, can -- may I proceed on our counterclaim because
25 we have asked for summary judgment and we've asked for attorney's

1 fees on our counter petition -- or counter motion?

2 And I can be very brief.

3 THE COURT: Go ahead and let me see what -- go ahead.

4 MR. OLSEN: Your Honor, let me just address attorney's fees
5 very quickly. It is undisputed between the parties that as a requirement
6 to join the GLVAR, you have to agree that all matters in dispute between
7 brokers will be handled by binding arbitration in front of the GLVAR.

8 Counsel has argued well, she was coerced into that. No, she
9 wasn't. She doesn't have to become a member of GLVAR, but in
10 choosing to do so, she agreed to be bound by arbitration. And the
11 manual is very clear.

12 It says: If the dispute is not resolved through mediation or if
13 mediation is not required, realtors shall submit the dispute to arbitration
14 in accordance with the policies of the board, rather than litigate the
15 matter.

16 So, Your Honor, I'm asking for attorney's fees in sort of two
17 different chunks. We have had to incur attorney's fees beyond the value
18 of this commission because we have had to fight this battle on two
19 fronts; one in District Court and another in the arbitration.

20 So, all the attorney's fees that we had to incur before we even
21 got to arbitration should be paid back because she violated her
22 contractual and ethical duty by filing litigation, without filing for arbitration
23 with the Greater Las Vegas Realtor's Association.

24 In addition to that, in the actual contract itself it says: In the
25 event I do not comply with the award and it is necessary for any party to

1 obtain judicial confirmation and enforcement of the award against me, I
2 agree to pay that party costs and reasonable attorney's fees incurred in
3 obtaining such confirmation and enforcement.

4 That's what we're doing here today.

5 THE COURT: Okay.

6 MR. OLSEN: That's what we're here for.

7 THE COURT: Are you prepared to respond today or -- I have
8 been focusing more on the --

9 MR. KENNEDY: Your Honor, I can respond --

10 THE COURT: -- well what I felt was the primary --

11 MR. KENNEDY: -- today, it was in my Reply Brief.

12 THE COURT: I saw it was in your Reply Brief.

13 MR. KENNEDY: Yeah, and it's simple. These are not proper
14 counter motions, number one, so they should be denied summarily.
15 They are not related to the subject matter.

16 Number two, this would be the third or the fourth time that
17 Counsel has tried to argue yeah, well you had to arb -- you had to
18 arbitrate this. We did. We did, Your Honor.

19 It -- what -- it is not improper when you have multiple parties,
20 some of which are not bound to arbitration, to bring a claim in court
21 when you are trying to assert your claims. There's lots of reasons to do
22 it, including the fact that -- and I wasn't the party that brought the claims.
23 The party that brought the claims had moved the court to stay -- let's
24 remember, it was Ms. Chan that brought the action and then asked the
25 Court to stay so they could go arbitrate with those people who are

1 members of the GVLAR [sic].

2 And then they filed a response, they filed a Motion for
3 Summary Judgment, one, trying to get the Court to say not procuring
4 cause, but also saying hey, you violated these obligations.

5 It's funny, Counsel said well, Ms. Chan wasn't compelled to do
6 this, she wasn't coerced into arbitrating, she chose to do it. And then
7 say but oh -- but she had a contractual obligation to do this.

8 But it doesn't matter, Your Honor. She did what a prudent
9 litigant would do, which is I have multiple claims against multiple parties.
10 I don't want to be accused of leaving someone out. She brought her
11 action, she moved to have it stayed so she could the arbitration and
12 that's what happened here.

13 So that issue should -- it -- that issue -- not only has it been
14 raised before Judge Leavitt, it was raised to the arbitration panel, it's
15 now been raised to you. If anyone should be getting fees, it should be
16 my client for having to third time address that argument. But we're not
17 asking for that, Your Honor, because that's what lawyers do, we raise
18 our arguments we make -- and you make a decision.

19 The second one, Your Honor, yes, there is a provision that
20 says if someone doesn't comply. There's no evidence of non-
21 compliance. That commission is sitting with the GVLAR [sic] because
22 GVLAR [sic] said it had to be there.

23 Took some time to get it there because the escrow company
24 said well, we need an instruction -- we finally -- we did do an instruction,
25 my client looked -- we finally agreed to give them instruction, but we're

1 not a party to that escrow, we're simply claiming it. But we ultimately
2 did. It got there. No one's failed to comply with it, we have a statutory
3 right to come to Your Honor and raise our arguments as to why it should
4 be done. That's not failing to comply. Due process allows me to do that
5 and it shouldn't be awarded.

6 And the main -- the operative language of -- in that language,
7 Your Honor, is if we don't comply, they have to come to court for
8 confirmation. They have to come to court to enforce it. I'm the one that
9 filed the motion, Your Honor. I'm the one that says I don't think this is
10 right. I think we should have to go back and there should be changes to
11 this.

12 Nobody has filed a Motion for Confirmation except what's
13 styled as a Countermotion for Summary Judgment, which makes no
14 sense. You don't move for summary judgment on an arbitration award,
15 you move to confirm. They never did. I did.

16 The other thing is, it was a useless motion. By operation of
17 statute, if I ask you to vacate an award or I ask you to modify an award
18 and you deny that motion, the statute says well, that then is confirmation
19 of the award. They didn't make that motion, they shouldn't be entitled to
20 that. I had a statutory right to challenge it and I'm the one that did all
21 that work. The -- by the very terms of that statute there is no basis for
22 attorney's fees.

23 And, Your Honor, finally, the -- they aren't -- they talked about
24 the standards for attorney's fees, but they didn't attach anything so this
25 one needs to be denied for failure of proof. There simply is nothing in

1 there that they put in except talking about the standards for an award of
2 attorney's fees, but they didn't attach any billing records or anything like
3 that.

4 But there's no basis for attorney's fees here. Both those
5 motions should be denied because your order denying our motion is
6 going to end up confirming the award, but that is not something they
7 were forced to bring and it doesn't fall within that provision that would
8 entitle them to claim fees here.

9 MR. OLSEN: Your Honor, if I could just be -- very briefly.

10 THE COURT: Sure.

11 MR. OLSEN: They didn't file the Motion for Stay until we filed
12 our Answer and Counterclaim against them alleging that they are in
13 violation of the guidelines of GLVAR. And we had sent a threatening
14 letter informing them that they had agreed to arbitrate rather than litigate,
15 numb -- that's number one.

16 Number two, of course we wouldn't have to file a Motion to
17 Confirm our Arbitration Award if she had released the funds to us. I
18 mean, this provision in the contract only comes into play if the award is
19 being challenged, as it is here today. And they've lost on that and
20 contractually they're bound to pay our attorney's fees for having to be
21 here today.

22 THE COURT: All right.

23 MR. KENNEDY: Your Honor, if I could have one moment, my
24 client --

25 THE COURT: Sure.

1 MR. KENNEDY: -- indicates she needed to tell me something.

2 THE COURT: Sure.

3 If you want to step out in the anteroom, go ahead.

4 MR. KENNEDY: Oh, okay, thank you.

5 [Pause in proceedings]

6 MR. KENNEDY: Thank you, Your Honor, I apologize for that.

7 THE COURT: Oh, that's okay.

8 MR. KENNEDY: My client has asked whether or not she
9 could address the Court and I said I simply can throw it up to the Judge
10 and it's up to you.

11 THE COURT: Well, I mean, I -- we need to work through the
12 attorneys.

13 MR. KENNEDY: I understand, Your Honor, I had to ask.

14 THE COURT: I appreciate that. No. I mean, if there's
15 something that your client wants, you feel appropriate to pass on to me
16 I'll be glad to hear it from you as the attorney in this case, but that's -- I
17 don't feel it's appropriate otherwise.

18 All right. I -- as I said I'm denying the Motion to Vacate or
19 Modify the Arbitrary Award. I'm -- that was where I had put most of my
20 time in terms of focusing on this. Let me -- I'll take under advisement the
21 Motion for Attorney's fees.

22 But did you submit -- I can't remember -- I don't remember
23 seeing any billing records from you.

24 MR. OLSEN: I -- we haven't submitted the billing records yet,
25 Your Honor. In the event there was an award, we would -- I mean, I

1 can -- I'll supplement and make it easy. I'll supplement and --

2 THE COURT: All right. I was going to say, I can't order
3 reasonable attorney's fees when I don't know --

4 MR. KENNEDY: Well --

5 THE COURT: If I was to order them -- I'm not saying I am, but
6 I'm saying I can't order them unless I --

7 MR. KENNEDY: Well, Your Honor, and --

8 THE COURT: -- know what they are.

9 MR. KENNEDY: And, again, we approached this because it
10 was -- we felt it was an improper request not tied to the actual subject
11 matter of the motion which was confirming, as well as improperly -- if
12 they're going to submit anything else, I'd like an opportunity to respond
13 to that.

14 THE COURT: That's fine.

15 MR. OLSEN: That's fine.

16 THE COURT: That's fine. You --

17 MR. OLSEN: We'll just submit --

18 THE COURT: All right, then what I'm --

19 MR. OLSEN: -- the invoices.

20 THE COURT: Rather than take under advisement, I'm going
21 to continue the Motion for Attorney's Fees.

22 MR. OLSEN: Okay.

23 THE COURT: I'll give you a chance to -- how long do you
24 need to get -- to file a supplement?

25 MR. OLSEN: I -- give us two weeks.

1 THE COURT: All right.

2 MR. OLSEN: It'll be sooner than that, but.

3 THE COURT: All right. I'll give you two weeks to file that and
4 how -- do you want two weeks to file a response?

5 MR. KENNEDY: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. OLSEN: Your Honor, with regard to our Motion for
8 Summary Judgment, I -- the only reason we raised it is because there's
9 only three causes of action and one of them is declaratory relief which
10 has been determined by the arbitration award.

11 The other is unjust enrichment, which has been determined by
12 the arbitration award.

13 And the third is a breach of contract claim against KB Homes.
14 KB isn't even here. They admit that they don't have the registration
15 card.

16 THE COURT: Is KB Homes a --

17 MR. OLSEN: KB Homes is a --

18 THE COURT: -- party?

19 MR. OLSEN: -- seller. Yeah. Yeah, they got sued as well,
20 Your Honor.

21 THE COURT: Oh, that's right.

22 MR. OLSEN: Unfortunately. Everybody got sued.

23 THE COURT: Oh, okay, they did get sued. I'm -- apolog -- all
24 right.

25 MR. OLSEN: Everybody got sued. So there's this breach of

1 contract claim hanging out there against KB Homes; based on what
2 contract, I have no idea.

3 THE COURT: I'll bring -- I'll look at the -- why don't you talk
4 with Counsel in terms of the Motion for Summary Judgment because
5 that seems like at this point in time the litigation should be able to be --

6 MR. KENNEDY: Well, Your Honor, our position would be if
7 they're going to bring a Motion for Summary Judgment on claims that --
8 you know, anything -- anything not pertaining to the arbitration, it should
9 be done by a separate motion, a properly supported one and -- that sort
10 of thing. We can certainly talk and try and find a way to avoid doing that,
11 but I don't think it's appropriately done as a countermotion here --

12 MR. OLSEN: Well, and this --

13 MR. KENNEDY: -- about what claim -- about other claims that
14 weren't subject to the arbitration.

15 MR. OLSEN: And this is why we need fees, Your Honor. I
16 mean, we're winning the battle and losing the financial war here.

17 THE COURT: I understand what you're saying and I am
18 sympathetic to the fees issue. So.

19 All right. You got two weeks, we'll -- and so I'll give you two
20 weeks to file anything. Additionally, you want to file as to your Motion for
21 Summary Judgment and for attorney's fees.

22 MR. OLSEN: Okay.

23 THE COURT: You have two weeks after that to respond. I
24 don't think you need a Reply, but do you want a Reply?

25 MR. OLSEN: I won't.

1 THE COURT: All right.

2 THE CLERK: Do you want a Reply?

3 THE COURT: He said no.

4 MR. OLSEN: I do not want a Reply.

5 THE COURT: All right. So do two, two, and then set this for a
6 hearing a week after.

7 THE CLERK: Okay. So Mr. Olsen to supplement by
8 September 5th.

9 MR. OLSEN: Okay.

10 THE CLERK: Mr. Kennedy to file by September 19th. And
11 we'll have a hearing September 26th at 10:30.

12 MR. OLSEN: I'm out of town on the 26th, could we do it --

13 THE CLERK: Okay.

14 MR. OLSEN: -- a week later than that?

15 THE CLERK: It'll have to go two weeks.

16 MR. OLSEN: Is that okay with you, Todd?

17 THE CLERK: Go to September 10th.

18 MR. OLSEN: Okay. Thank you.

19 THE CLERK: I mean -- I'm sorry, October 10th.

20 MR. OLSEN: Okay. Yep --

21 THE CLERK: At 8:30.

22 MR. OLSEN: -- October 10th.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you, guys.

25 Are you going to submit an order on the --

1 MR. OLSEN: I will. I'll submit an order on the confirmation of
2 the arbitration award and the scheduling order basically.

3 THE COURT: Okay. Very good.

4 MR. OLSEN: I'll run it by Counsel.

5 [Proceeding concluded at 11:15 a.m.]

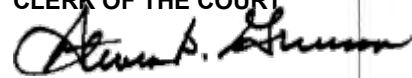
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 _____
Brittany Mangelson
Independent Transcriber

EXHIBIT 9

EXHIBIT 9



1 **NEOJ**

2 GENTILE CRISTALLI

3 MILLER ARMENI SAVARESE

4 MICHAEL V. CRISTALLI

5 Nevada Bar No. 6266

6 E-mail: mcristalli@gcmaslaw.com

7 JANIECE S. MARSHALL

8 Nevada Bar No. 4686

9 E-mail: jmarshall@gcmaslaw.com

10 410 South Rampart Boulevard, Suite 420

11 Las Vegas, Nevada 89145

12 Tel: (702) 880-0000

13 Fax: (702) 778-9709

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 BETTY CHAN and ASIA AMERICAN
17 REALTY & PROPERTY MANAGEMENT,

18 Plaintiffs,

19 vs.

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

23 Defendants.

CASE NO. A-16-744109-C
DEPT. XX

Hearing Date: February 11, 2019
Hearing Time: In Chambers

24 **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO WITHDRAW AS**

25 **COUNSEL OF RECORD**

26 PLEASE TAKE NOTICE that on the 21ST day of March, 2019, the Court entered an Order
27 Granting Motion to Withdraw as Counsel of Record. A true and correct copy of said Petition and
28 Order is attached hereto.

DATED this 21st day of March, 2019.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE



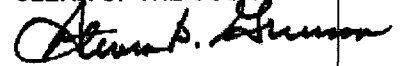
MICHAEL V. CRISTALLI
Nevada Bar No. 6266
JANIECE MARSHALL
Nevada Bar No. 4686
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145
Tel: (702) 880-0000

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Michael A. Olsen
GOODSELL & OLSEN
10155 W. Twain Ave. Suite 100
Las Vegas, Nevada 89147
Attorneys for Defendants

Betty Chan
Asian American Realty
and Property Management
4651 Spring Mountain Road
Las Vegas, NV 89102
Plaintiff in Proper Person

An employee of
GENTILE CRISTALLI
MILLER ARMENI SAVARESE



1 **ORD**

2 GENTILE CRISTALLI
3 MILLER ARMENI SAVARESE
4 MICHAEL V. CRISTALLI
5 Nevada Bar No. 6266
6 E-mail: mcristalli@gcmaslaw.com
7 JANIECE S. MARSHALL
8 Nevada Bar No. 4686
9 E-mail: jmarshall@gcmaslaw.com
10 410 South Rampart Boulevard, Suite 420
11 Las Vegas, Nevada 89145
12 Tel: (702) 880-0000
13 Fax: (702) 778-9709

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 BETTY CHAN and ASIA AMERICAN
11 REALTY & PROPERTY MANAGEMENT,

12 Plaintiffs,

13 vs.

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

Defendants.

CASE NO. A-16-744109-C
DEPT. XX

Hearing Date: February 11, 2019
Hearing Time: In Chambers

17 **ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL OF RECORD**

18 On February 11, 2019, the Court considered Gentile Cristalli Miller Armeni
19 Savarese's ("GCMAS") Motion to Withdraw as Counsel for Plaintiffs Betty Chan and Asia
20 American Realty & Property Management (the "Motion"), the Motion being unopposed¹ and it
21 appearing to this Court that good cause exists for the withdrawal of GCMAS as counsel for Betty
22 Chan and Asia American Realty & Property Management and appearing to this Court that the
23 withdrawal can be accomplished without adversely affecting the interests of the clients, this
24 Court vacated the hearing date and orders.

25 ...

26
27 ¹ On February 19, 2019, Plaintiff Betty Chan on behalf of herself and Plaintiff Asian American Realty and Property
28 Management moved for reconsideration of this Court's Order vacating the hearing date and granting the Motion to Withdraw.

IT IS HEREBY ORDERED that GCMAS's Motion to Withdraw as Counsel is GRANTED as unopposed, pursuant to EDCR 2.20, EDCR 2.23(c), and that GCMAS is withdrawn as counsel of record for Betty Chan and Asia American Realty & Property Management. All future correspondence to should be mailed to Betty Chan as follows:

Betty Chan
Asian American Realty & Property Management
4651 Spring Mountain Rd.
Las Vegas, NV 89102
Tel: 702-222-0078

IT IS SO ORDERED.

Dated this 18 day of ~~February~~, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted,

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

MICHAEL V. CRISTALLI
Nevada Bar No. 6266
JANIECE S. MARSHALL
Nevada Bar No. 4886
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145

EXHIBIT 10

EXHIBIT 10

ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

ASIAN AMERICAN REALTY AND PROPERTY MANAGEMENT

Entity Number:

C2326-1993

Entity Type:

Domestic Corporation (78)

Entity Status:

Active

Formation Date:

03/03/1993

NV Business ID:

NV19931033160

Termination Date:

Perpetual

Annual Report Due Date:

3/31/2021

REGISTERED AGENT INFORMATION**Name of Individual or Legal Entity:**

BETTY CHAN

Status:

Active

CRA Agent Entity Type:**Registered Agent Type:**

Non-Commercial Registered Agent

NV Business ID:**Office or Position:****Jurisdiction:****Street Address:**

4651 SPRING MOUNTAIN ROAD #B1, LAS VEGAS, NV, 89102, USA

Mailing Address:**Individual with Authority to Act:****Fictitious Website or Domain Name:****OFFICER INFORMATION**☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
President	Betty Yuk Lan CHAN	4651 Spring Mountain Road, Las Vegas, NV, 89102, USA	02/05/2020	Active
Secretary	Betty Yuk Lan CHAN	4651 SPRING MT RD #B1, Las Vegas, NV, 89102, USA	02/05/2020	Active
Treasurer	Betty Yuk Lan CHAN	4651 SPRING MT RD #B1, Las Vegas, NV, 89102, USA	02/05/2020	Active
Director	Betty Yuk Lan CHAN	4651 SPRING MT RD #B1, Las Vegas, NV, 89102, USA	02/05/2020	Active

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CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	25,000	1.000000000000

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Number of No Par Value Shares:

0

Total Authorized Capital:

25,000

Filing History

Name History

Mergers/Conversions

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