

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

HOME WARRANTY  
ADMINISTRATOR OF NEVADA,  
INC. dba CHOICE HOME  
WARRANTY, a Nevada corporation,

Appellant(s),

v.

STATE OF NEVADA,  
DEPARTMENT OF BUSINESS  
AND INDUSTRY, DIVISION OF  
INSURANCE, a Nevada  
Administrative agency,

Respondent(s).

Case No. 80218

First Judicial District Court  
No. 17 OC 00269 1B

**OPPOSITION TO EMERGENCY MOTION**

**UNDER NRAP 27(e)**

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State of Nevada, Department of Business and Industry, Division of Insurance (“Division”), through its counsel, Nevada Attorney General, AARON D. FORD; Senior Deputy Attorney General, JOANNA N. GRIGORIEV and Deputy Attorney General, RICHARD P. YIEN, hereby file this Opposition to Appellant Home Warranty Administrator of Nevada Inc.’s (“HWAN”) Emergency Motion Under NRAP 27(e) (“Motion”). This Opposition is made pursuant to NRAP 27 and 8 and is based on the following Memorandum of Points and Authorities and all other documents on file herein.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

HWAN brought its Motion under NRAP 27(e), requesting an expedited stay of the FJDC’s order affirming in part and modifying in part the administrative order issued against HWAN. There is, however, a Motion for Stay, filed by HWAN, currently pending before the First Judicial District Court (“FJDC”). HWAN failed to present a valid reason why this Court should consider HWAN’s Motion requesting a stay before the FJDC had an opportunity to issue its ruling. If the Court does consider HWAN’s Motion on the merits, however, it should deny it, as all elements under NRAP 8(c) weigh in favor of the Division. Lastly, there is no emergency, and if there is, it is of HWAN’s own making.

...

## **II. FACTS AND PROCEDURAL HISTORY**

On November 25, after a hearing on HWAN's Petition for Judicial Review ("PJR"), the FJDC issued an Order (Ex. 2, "PJR Order"), affirming in part and modifying in part the Administrative Order (Ex. 1), issued on December 18, 2017. On November 27, 2019, the Notice of Entry of Order was served on HWAN.

On December 6, 2019, nine (9) days later, HWAN filed a Motion for Stay (Ex.3) in the FJDC, and a Motion for Order Shortening Time ("OST"), making the same argument it is making here, namely, that the automatic stay under NRC 62(a) will expire on December 26, 2019 and therefore, it is an emergency. The FJDC denied HWAN's Motion for OST on December 12, 2019. The Division filed its Opposition to HWAN's Motion for Stay in the FJDC on December 19, 2019 (Ex. 4), and, it is now up to HWAN to file its reply as soon as possible.

On December 18, 2019, the Division received notice that HWAN filed its Motion before this Court. As HWAN's main concern, as expressed in the Motion, appears to be the December 26, 2019 expiration of the automatic thirty (30)-day stay of judgment and the possibility that the FJDC will not issue a ruling prior to that date, counsel for the Division emailed counsel for HWAN on December 18, 2019, offering to stipulate that the Division would not seek to enforce the PJR Order until the FJDC issued its ruling on HWAN's Motion for Stay, even if the December 26, 2019 date passed. HWAN's counsel declined the offer. (Ex. 5).

## **II. ARGUMENT**

### **A. HWAN'S EMERGENCY MOTION UNDER NRAP 27(e) SHOULD BE DENIED**

There is no valid reason why HWAN's motion should be denominated as "emergency" under NRAP 27(e), or heard prior to the FJDC's ruling on the Motion for Stay pending before it. As grounds for claiming the emergency, HWAN asserts that "[w]ithout a shortened briefing schedule, the Division's opposition to the Motion for Stay is due December 19, 2019, HWAN's reply will be due December 27, 2019, one day after the expiration of the automatic stay." (HWAN's Mot. 4). This claim of an emergency is quite disingenuous, in view of the fact that, HWAN did not file its Motion for Stay in the FJDC until December 6, 2019, having been served with the notice of entry of PJR Order on November 27, 2019. Also, when calculating the deadlines that allegedly result in the emergency, HWAN affords itself a full eight (8) days to file a reply to the Division's opposition to Motion for Stay currently pending before the FJDC. (HWAN's Mot. 4). Furthermore, HWAN's counsel declined the Division counsel's offer, which would have effectively eliminated HWAN's concerns. (Ex. 5). Thus, assuming the expiration of the thirty-day stay under NRC 62(a) creates an "emergency," it is of HWAN's own making.

NRAP 27(e)(4) provides that "(4) [i]f the relief sought in the motion was available in the district court, the motion shall state whether all grounds advanced in

support of the motion in the court were submitted to the district court, and, if not, why the motion should not be denied.” *Id.* The relief *is* available in the district court and HWAN’s Motion for Stay is pending before it. HWAN also failed to comply with NRAP 27(e)(4), as none of the grounds asserted before this Court under NRAP 8(c), have been included in the district court’s motion. (*See* Ex. 3, HWAN’s Motion for Stay in FJDC). HWAN’s Motion under NRAP 27(e) should thus be denied.

**B. HWAN’S MOTION FOR STAY SHOULD NOT BE CONSIDERED BY THE COURT AS THERE IS A MOTION FOR STAY PRESENTLY PENDING BEFORE THE FJDC**

NRAP 8(a)(1) requires that a party seeking stay must first apply to the district court. In order to be able to file such a motion directly before the Supreme Court, the moving party must “(i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.” NRAP 8(a)(2)(A)(i) and (ii). Neither requirement has been satisfied by HWAN.

A self-created tight schedule does not constitute an emergency. It also does not show “impracticability” of complying with the requirement to first request a stay from the district court. This requirement “is grounded in the district court’s vastly greater familiarity with the facts and circumstances of the particular case.” *Nelson v Heer*, 121 Nev. 832, 836 122 P.3d 1252, 1254 (2005). Such is the case here, and

HWAN's Motion for Stay is currently pending before the FJDC. HWAN has failed to present any justification for its attempt to circumvent this requirement, and the Court should not consider HWAN's request for stay before the FJDC has had a chance to issue a ruling on the same motion presently pending before it.

**C. IF THE COURT DOES CONSIDER THE MERITS OF HWAN'S REQUEST FOR STAY, IT SHOULD DENY IT**

In deciding whether to issue a stay, the Court generally considers the following factors under NRAP 8(c): “(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” *See also Fritz Hansen A/S v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). In applying these four factors, the Nevada Supreme Court stated that “[w]e have not indicated that any one factor carries more weight than the others, although . . . if one or two factors are especially strong they may counterbalance other weak factors” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). The availability of appeal after final judgment is considered an adequate and speedy

remedy. *See Renown Reg'l. Med. V. Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014).

**a. The Object of HWAN's Appeal Will Not be Defeated.**

The true object of HWAN's appeal is to convince the Court that Nevada law permits it to continue to operate in Nevada using Choice Home Warranty ("CHW"), an unlicensed entity performing the functions of a provider, for which Nevada law requires a certificate of registration ("COR"). (*See* Mot. 8) HWAN is appealing the interpretation of the provisions of chapter 690C of the NRS by the administrative Hearing Officer, upheld by the FJDC. Nothing can happen during the process of appeal that would render the issue of interpretation of the provisions of chapter 690C of the NRS moot. As such, the object of appeal will not be defeated, i.e. rendered moot, if a stay is not granted. *See Mikohn*, 120 Nev. at 253, 89 P.3d at 39. The availability of appeal after final judgment is considered an adequate and speedy remedy. *See Renown* 130 Nev. at 828, 335 P.3d at 202.

**b. HWAN Will Not Suffer Irreparable or Serious Injury if the Stay is Denied.**

HWAN argues that it "will suffer irreparable and serious injury if the stay is denied because it will have to overhaul its operations to self-administer and sell its contracts, thereby destroying its custom and interfering with the legitimate business and profits" (HWAN's Mot. 10). This is not true, as HWAN can still use CHW as

its administrator to perform the functions of an administrator, but not the functions of a provider. To perform the functions of a provider, i.e. issue, sell, or offer for sale, CHW can obtain a COR or HWAN can contract with an entity possessing a COR. *See* NRS 690C.150.

“Irreparable harm” is harm for which compensatory damages would be inadequate. *See Hansen*, 116 Nev. 650, 658, 6 P.3d 982, 987. In *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674, (D.C.Cir.1985), one of the cases *Hansen* relies on, the court explained that:

The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.

*Id.* (emphasis added) (citations omitted). In the present case, HWAN’s potential inconvenience of having to forego the use of unlicensed entity for the performance of the functions for which the law requires a COR, certainly does not constitute irreparable harm that would satisfy this requirement under NRAP 8(c).

**c. HWAN is Unlikely to Prevail on Appeal**

HWAN asserts in its Motion that “[t]he key issue in this appeal is whether HWAN, like any other Nevada service provider, can use a sales agent to sell service contracts on its behalf.” (HWAN’s Mot. 8). NRS 690C.150 provides: “[a] provider



shall not issue, sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of this chapter." NRS 690C.020, in turn, defines "administrator" as a "person who is responsible for administering a service contract that is *issued, sold or offered for sale by a provider.*" (emphasis added).

The Division has argued that the only reasonable and harmonious interpretation of these provisions is, that any person wishing to perform the functions of a provider, i.e. issuing, selling, or offering for sale service contracts in Nevada, must obtain a COR. HWAN's interpretation would lead to absurd results allowing entities to perform the functions for which registration and thus regulatory oversight is required by law, and avoiding registration and regulation by simply affixing a label of an "administrator," "sales agent," or anything other than "provider." It would nullify chapter 690C of the NRS and render NRS 690C.150 nugatory. The tenets of statutory construction do not permit that. *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990) (overruled on other grounds). The administrative Hearing Officer found, among other violations, that HWAN was conducting business in an "unsuitable manner," by allowing CHW, its unlicensed administrator, to perform the functions of a provider for which Nevada law requires a COR. The FJDC agreed.

The Nevada Supreme Court has recognized the authority and specialized skill and knowledge of regulatory agencies and, the agencies' authority to interpret the language of a statute that they are charged with administering. *See Int'l Technology Inc. v. Second Judicial District Court*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006) ("as long as th[e] interpretation is reasonably consistent with the language of the statute, it is entitled to deference in the courts."). *See also Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 747, 918 P2d 697, 700 (1996), 112 Nev. 743 747, 918 P2d 697, 700 (citations omitted), *Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P3d 1159, 1165 (2008) (citations omitted). HWAN is highly unlikely to succeed in the appeal of its interpretation which would utterly nullify the statutory scheme.

**d. The Division Will Suffer Irreparable or Serious Injury if the Stay or Injunction is Granted**

As contained in the PJR record, HWAN's administrator, CHW, has been the subject of regulatory actions in California, Washington, Oklahoma, and New Jersey. On October 1, 2019 the Office of the Attorney General in Arizona also filed a consumer fraud lawsuit against CHW. Additionally, since the administrative hearing<sup>1</sup> in Nevada in 2017, fifty six (56) additional consumer complaints have been filed with the Nevada Division of Insurance against HWAN.

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<sup>1</sup> March 8, 2017-December 12, 2019 timeframe.

The administrative Hearing Officer found that “HWAN holds the certificate of registration in Nevada, and nothing more. Since receiving its COR, HWAN has been merely a figurehead enabling an unlicensed entity to engage in the business of service contracts in Nevada under HWAN’s license.” (Administrative Order 25:15-17). With CHW, an unlicensed and unregulated entity performing the functions for which the Nevada legislature requires regulatory oversight and a valid COR, the one-person show that makes up HWAN, presents an inherent danger of harm to the public. Notably, in Nevada, irreparable injury is presumed in statutory enforcement actions. *See State of Nevada ex. Rel. Office of the Attorney General, Bureau of Consumer Protection v. NOS Communications, Inc.*, 120 Nev. 65, 68, 84 P.3d 1052, 1054 (2004).

### **III. CONCLUSION**

For the reasons set forth above, the Division respectfully requests that HWAN’s Emergency Motion Under NRAP 27 (e) be denied.

DATED: December 23, 2019.

AARON FORD  
Attorney General

By: /s/ Joanna N. Grigoriev  
Joanna N. Grigoriev (Bar. No. 5649)  
Senior Deputy Attorney General  
Richard P. Yien (Bar. No. 13035)  
Deputy Attorney General

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on December 23, 2019.

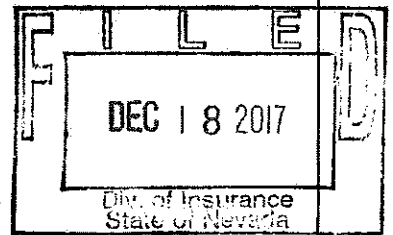
Participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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/s/ Danielle Wright  
Danielle Wright, an employee of the  
Office of the Attorney General

# EXHIBIT 1

# EXHIBIT 1



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. 17.0050

HOME WARRANTY ADMINISTRATOR  
OF NEVADA, INC. dba CHOICE HOME  
WARRANTY,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER OF HEARING OFFICER,  
AND FINAL ORDER OF THE COMMISSIONER<sup>1</sup>**

This matter is before the Nevada Division of Insurance ("Division") on an Order to Show Cause issued by the Commissioner of Insurance ("Commissioner") on May 11, 2017, against Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. The Commissioner, as head of the Division, is charged with regulating the business of insurance in Nevada. NRS 232.820, -.825.2; NRS 679B.120. The Division alleges that Respondent violated various provisions of the Nevada Revised Statutes ("NRS") title 57 ("Insurance Code") and of insurance regulations found under the Nevada Administrative Code ("NAC"). A hearing was scheduled for August 1, 2017, and continued to September 12, 2017. A prehearing conference was held on September 8, 2017, at the office of the Division in Carson City. The hearing was held on September 12, 13, and 14, 2017, at the office of the Division in Carson City. At the close of the hearing, the Parties were ordered to file briefs on a legal issue due on October 30, 2017, and written closing arguments due on November 15, 2017. On November 7, 2017, Respondent filed a motion to strike portions of the Division's brief. The motion was denied, but the Parties were granted five extra pages for their written closing arguments to address any issues from the briefs, and the due date for the written closings was extended to November 17, 2017.

<sup>1</sup> See NRS 679B.360.2-.3 (explaining that "the Commissioner shall make an order on hearing covering matters involved in such hearing" and enumerating what is required in the order); NRS 679B.330.1 (authorizing the Commissioner to appoint a person as a hearing officer for a hearing); and NAC 679B.411 ("The hearing officer shall file a copy of his or her order with the Division" and "[i]f

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## I. FINDINGS OF FACT<sup>2</sup>

### A. HWAN Applications

1. CHW Group, Inc. ("CHW Group") was incorporated in the State of New Jersey in May 2009. Victor Mandalawi ("Mandalawi") and Victor Hakim ("Hakim") set up the company to provide service contracts. Both Hakim and Mandalawi are officers for CHW Group: Hakim is the chief executive officer and Mandalawi is the president. The company operates under the name "Choice Home Warranty," which is registered as a fictitious name in New Jersey. CHW Group uses the brand Choice Home Warranty, to include the website [www.ChoiceHomeWarranty.com](http://www.ChoiceHomeWarranty.com). CHW Group owns the website, through which all service contracts are sold and administered. Hakim has final say or approval on all content on the website. CHW Group's employees handle sales, marketing, claims, finance. CHW Group's sales, marketing, and finance occur at its office located at 1090 King Georges Post Road in Edison, New Jersey; CHW Group's operations, or claims handling, occurs at 2 Executive Drive in Somerset, New Jersey. CHW Group is not registered to do business in Nevada. (Ex. A; Test. Mandalawi; Test. Hakim; Test. Ramirez.)

2. Under the name Choice Home Warranty, CHW Group sold service contracts online, so sales reached consumers nationally, and consumers were purchasing the service contract in states where CHW Group was not licensed. Mandalawi and Hakim were not aware that other states required a license in order to sell this type of product. Choice Home Warranty was named in administrative actions in different states. As a result, Mandalawi created the Home Warranty Administrators name for states that require licensure. Home Warranty Administrator of Nevada, Inc. ("HWAN") was incorporated in Nevada on July 23, 2010. Mandalawi is the only employee for each of the Home Warranty Administrators companies. HWAN's address is 90 Washington Valley Road in Bedminster, New Jersey. (Test. Mandalawi.)

3. On or about July 29, 2010, Mandalawi signed a service contract provider application on

the hearing officer is not the Commissioner, the Commissioner will indicate on the order his or her concurrence or disagreement with the order of the hearing officer").

<sup>2</sup> The hearing transcripts are distinguished by day, not volume number or consecutively numbered pages. Accordingly, the transcripts are distinguished in the citations as "Tr.1" for the hearing transcript

1 behalf of Home Warranty Administrator of Nevada, Inc., which was received by the Division on or  
2 about September 2, 2010. (Ex. 22; Ex. P.) Mandalawi is noted on the application as president of  
3 HWAN. (Ex. 22; Ex. P at 12-14; Ex. C; Test. Mandalawi.)

4 4. On July 29, 2010, HWAN entered into an independent service provider agreement  
5 ("Agreement") with CHW Group. Through the Agreement, CHW Group handles sales, marketing,  
6 operations (claims), and advertising for HWAN service contracts, while HWAN handles regulatory  
7 compliance. CHW Group maintains the service contracts sold to Nevada consumers. According to the  
8 Agreement, CHW Group is responsible for providing the following services:

- 9 • Communicating with potential clients (the "Clients") seeking Warranties and negotiating  
10 the signing of contracts, the form of which shall be previously approved by HWA[N],  
between Clients and HWA[N].
- 11 • Collecting any and all amounts paid by the Clients for the Warranties and distributing  
same to HW[AN] pursuant to the terms of Article 2 hereof;
- 12 • Keeping records of all Warranties
- 13 • Providing customer service to Clients; and
- Inspecting any claims made by Clients regarding goods under a Warranty and, if  
possible, repairing same or causing same to be replaced.

14 (Ex. E.) CHW Group sells service contracts on behalf of HWAN per the Agreement. When CHW  
15 Group sells a contract, CHW Group collects the payment from the consumer, and that money is  
16 eventually paid to HWAN. (Test. Mandalawi; Test. Hakim.)

17 5. According to the 2010 application, an administrator was not designated to be responsible  
18 for the administration of Nevada contracts. (Ex. 22; Ex. P at 1.)

19 6. According to the application's Section II, neither the applicant nor any of the officers  
20 listed in Section I had ever been refused a license or registration or had an existing license suspended or  
21 revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any  
22 state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at  
23 2; Test. Mandalawi.)

24 7. As part of the application, HWAN submitted its proposed contract. (Test. Mandalawi.)

25 8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of  
26 registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of  
27

28 on September 12, 2017, "Tr.2" for the hearing transcript on September 13, 2017, and "Tr.3" for the  
hearing transcript on September 14, 2017.



1 each year. (Ex. U; Ex. 22; Test. Mandalawi.) In the letter, the Division noted that it had reviewed the  
2 service contract #HWAADMIN-8/2/10 that was submitted with the application, and that it was  
3 approved for use. (Ex. U at 1.)

4 9. In 2011, HWAN submitted another service contract for approval. The Division  
5 approved the service contract under the form number HWA-NV-0711. (Test. Mandalawi; Test. Ghan.)

6 10. The service contract shows the Home Warranty Administrators' logo at the top right of  
7 the first page. Under it is the name Choice Home Warranty followed by the text "America's Choice in  
8 Home Warranty Protection," and under the text in finer print it says "Obligor: Home Warranty  
9 Administrator of Nevada, Inc." This first page is a sample letter to the consumer. The first two lines of  
10 the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to  
11 protect your home with a home warranty." The consumer is asked to read the coverage. The letter  
12 includes a toll-free number, (888)-531-5403, and a website, www.ChoiceHomeWarranty.com. Under  
13 the letter in finer print, it states that the contract explains the coverage, limitations, and exclusions.  
14 Then there are two boxes: the box on the left identifies the contract number, contract term, covered  
15 property, property type, rate, and service call fee; the box on the right identifies the coverage plan,  
16 included items, and optional coverage. Under the two boxes is the name Choice Home Warranty and  
17 the address, 510 Thornall Street, Edison, NY 08837, along with the toll-free number (888) 531-5403.  
18 The bottom right of the page contains "HWA-NV-0711" in a finer print, which indicates approval by  
19 the Division in July 2011, and is applied to each page. (Ex. 35; Ex. EE; Test. Ghan; Test. Jain; Test.  
20 Mandalawi.)

21 11. According to Mandalawi, there are no contracts sold to Nevada consumers other than the  
22 Nevada contract authorized in 2011. (Test. Mandalawi.)

23 12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2,  
24 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)

25 13. The renewal applications asked the applicant to identify the pre-approved service  
26 contract form name and form numbers that applicant sells in Nevada. On each application, HWAN  
27 identified form HWA-NV-0711. (Ex. 2, 4, 5, 7, 12, 21; Ex. I.)

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1 14. The renewal applications for the years 2011, 2012, and 2013 asked the following  
2 questions:

- 3 • "Have there been any changes in the executive officers or in the officers responsible  
4 for service contract business since your last application?"
- 5 • "Have you made any changes in the administrator or designated a new administrator  
6 since your last application? Current administrator is listed as:"
- 7 • "Since the last application, has applicant or any of the officers listed in question 1  
ever ... (c) Been refused a license or registration ... or had an existing one  
suspended or revoked by any state ... [or] (d) Been fined by any state or  
governmental agency or authority in any matter regarding service contracts?"

8 On behalf of HWAN, Mandalawi answered "No" to each of the questions. For the current  
9 administrator, Mandalawi wrote "Self." (Ex. 2, 4, 5; Ex. I; Test. Dennis; Test. Mandalawi.)

10 15. The renewal applications for years 2011, 2012, and 2013 were approved. (Ex. Y, Z,  
11 AA; Test. Mandalawi.)

12 16. The renewal applications also ask how many service contracts were sold to Nevada  
13 residents, other information related to revenue, claims paid, and customer complaints, and information  
14 about how complaints are handled. Mandalawi responded to these questions for the renewal  
15 applications for years 2011, 2012, and 2013. (Ex. 2, 4, 5; Ex. I.)

16 17. In 2013, the Division initiated an investigation into Choice Home Warranty, and began  
17 monitoring complaints. The Division also discovered that a company called Choice Home Warranty  
18 had administrative actions against it in several states. (Test. Jain.)

19 18. In email correspondence with Mandalawi related to a consumer complaint, Elena  
20 Ahrens, then-Chief of the Property and Casualty Section, indicated that she wanted to work with  
21 Mandalawi "regarding having an official dba of Choice Home Warranty." She said that she had  
22 stopped the issuance of a cease and desist, and wanted to remedy the situation from occurring in the  
23 future. (Ex. T at 1.) The Division asked HWAN to register the dba Choice Home Warranty because  
24 the Division "thought it was confusing for consumers having just the name Home Warranty of  
25 Nevada." (Test. Mandalawi.) Mandalawi registered the dba "Choice Home Warranty" under HWAN.  
26 (Ex. T at 7-11; Ex. B; Ex. 30-32; Test. Mandalawi.)

27 19. The Division issued a memo to then-Commissioner Scott J. Kipper from Derick Dennis,  
28 Management Analyst, indicating that Mandalawi notified the Division that HWAN filed the dba name,

1 "Choice Home Warranty," in Carson City and Washoe County. A handwritten note on the memo  
2 states, "7/8/14 This was at the request of the Division, recommend approval" with Ahrens' initials "ea."  
3 (Ex. 23 at 3; Ex. Q.) The Division issued a new Certificate of Registration dated July 14, 2014, under  
4 HWAN's same Company ID No. 113194, for Home Warranty Administrator of Nevada, Inc. dba  
5 Choice Home Warranty. (Ex. 23; Ex. T at 39, 51-53; Test. Mandalawi.)

6 20. For the registration years beginning 2014, 2015, and 2016, HWAN filed renewal  
7 applications. The applicant was listed as "Home Warranty Administrator of Nevada, Inc. dba Choice  
8 Home Warranty." (Ex. 7, 12, 21; Ex. I; Test. Mandalawi.)

9 21. The renewal applications for the years 2014, 2015, and 2016 asked the same following  
10 questions:

- 11 • "Have there been any changes in the executive officers or in the officers responsible  
12 for service contract business since your last application?"
- 12 • "Have you made any changes in the administrator or designated a new administrator  
13 since your last application? Current administrator is listed as:"
- 13 • "Since the last application, has applicant or any of the officers listed in question 1  
14 ever... (c) Been refused a license or registration... or had an existing one  
15 suspended or revoked by any state... [or] (d) Been fined by any state or  
governmental agency or authority in any matter regarding service contracts?"

16 On behalf of HWAN, Mandalawi answered "No" to each of the questions. (Ex. 7, 12, 21; Test.  
17 Mandalawi.) For the current administrator, Mandalawi wrote "Self." (Ex. 21)

18 22. The renewal application for 2014, 2015, and 2016 added a request that the applicant  
19 "List all aliases or names under which the company conducts business (Doing Business As). Provide  
20 supporting documentation." On behalf of HWAN, Mandalawi answered "NA" because he believed the  
21 question related to additional fictitious names. (Ex. 7, 12, 21; Ex. I at 12, 16, 20; Test. Mandalawi.)

22 23. The renewal applications for 2014, 2015, and 2016 also ask how many service contracts  
23 were sold to Nevada residents, other information related to revenue, claims paid, and customer  
24 complaints, and information about how complaints are handled. For years 2014, 2015, and 2016,  
25 Mandalawi responded to some of these questions, but left blank the number of customer complaints by  
26 Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18,  
27 23.)

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1       24.     The renewal applications for years 2014 and 2015 were approved. (Ex. BB, CC; Test.  
2 Mandalawi.)

3       25.     At the time the Division received HWAN's 2016 renewal application, the Division  
4 requested additional information because the application was deemed incomplete. Specifically, the  
5 statutory security deposit was not sufficient and questions on the application were left blank. The  
6 Division's requests for information were ignored. As of the date of the hearing, the Division had not  
7 received all of the information requested. (Ex. 33; Ex. L; Ex. DD; Test. Jain.)

8       26.     As a result of this matter, Mandalawi learned that HWAN's COR was inactive. Mary  
9 Strong, Management Analyst III, emailed HWAN on July 21, 2017, explaining that HWAN's COR had  
10 expired and that the 2016 renewal application was denied. No additional explanation was provided. A  
11 printout of HWAN's licensing status with the Division shows that HWAN dba Choice Home Warranty  
12 is inactive as of 11/18/2016. (Ex. O, DD; Test. Mandalawi.)

13       **B. Complaints**

14       27.     In 2009, the Division began receiving complaints about Choice Home Warranty, which  
15 was not registered to sell service contracts in Nevada. (Ex. 28 at 2; Ex. J at 2.)

16       28.     On January 4, 2014, the Division received a complaint from a technician who provided  
17 services to a consumer on behalf of Choice Home Warranty, but "CHW (CHOICE HOME  
18 WARRANTY, CHW GROUP)" refused to pay them the \$20,000 alleged to be owed. The Division  
19 worked out a settlement between Choice Home Warranty and the technician for \$7,296. (Ex. 25; Test.  
20 Kuhlman.)

21       29.     On July 16, 2014, the Division received a consumer complaint against Choice Home  
22 Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning  
23 ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay  
24 \$1,025 for an A/C compressor that the consumer believed should have been covered by the service  
25 contract. The consumer requested the claim denial in writing, but was told by the Choice Home  
26 Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11;  
27 Test. Kuhlman.)

28     ///

1           30.     On November 19, 2014, the Division received a consumer complaint against Choice  
2 Home Warranty alleging Choice Home Warranty improperly denied a claim when the consumer's pipe  
3 broke the same day he had purchased the service contract (policy number 465308123). The consumer  
4 paid \$826 for repair of a broken pipe. The consumer also complained because he felt Choice Home  
5 Warranty's advertisement was deceitful and misleading by claiming that the consumer could get  
6 coverage "today," when the contract requires a thirty-day waiting period. The Division worked out a  
7 settlement between Choice Home Warranty and the consumer for \$500. (Ex. 11; Test. Kuhlman.)

8           31.     On July 12, 2016, the Division received a consumer complaint against Choice Home  
9 Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The  
10 consumer filed a claim with Choice Home Warranty on June 27, 2016, and Choice Home Warranty  
11 sent a technician, who replaced the capacitor. The A/C unit failed again within a few hours. The  
12 technician returned to look at the unit three times and provided all the information Choice had  
13 requested. The A/C unit still had not been fixed. The consumer called Choice Home Warranty  
14 numerous times and was put on hold on every call for extensive periods and, after 45 minutes, the call  
15 would fail. The consumer was told that the claim was rejected because the consumer did not maintain  
16 the unit. The consumer sent Choice Home Warranty proof that he did maintain the unit. The consumer  
17 explained that the situation was a "life or death situation" because his significant other, who is disabled,  
18 suffered from heatstroke because she and their little dog have been left in the house with temperatures  
19 exceeding 100-plus degrees. On or about July 25, 2016, the Division worked out a settlement between  
20 Choice Home Warranty and the consumer for \$1,500. (Ex. 38; Test. Kuhlman.)

21           32.     On October 4, 2016, the Division received a consumer complaint against Choice Home  
22 Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The  
23 consumer filed a claim with Choice Home Warranty on June 8, 2016, and Choice Home Warranty sent  
24 eight technicians and four A/C companies, and all agreed that the A/C compressor and coil needed to  
25 be replaced. Choice Home Warranty denied the claim explaining that it had a photo of the unit from  
26 August 17, 2016 showing that no maintenance had been done on the unit. The consumer asked for a  
27 copy of the photo, but Choice Home Warranty did not provide the photo. The consumer faxed her  
28 maintenance records for the A/C unit, but was told that Choice Home Warranty could not read the

1 records. At the time of the complaint, the consumer was alleged to have endured ten weeks without  
2 A/C in Las Vegas. (Ex. 24; Test. Kuhlman.)

3 33. In all, the Division had received approximately 80 complaints about Choice Home  
4 Warranty. Eliminating duplicates, the total was 62. At the time the Complaint, only 2 complaints were  
5 open. All other complaints had been closed. The Division's concern was that Choice Home Warranty  
6 had a higher ratio of complaints than any other of the 170-plus service contract providers licensed in  
7 Nevada. (Ex. 28; Ex. J, W; Test. Jain.)

8 34. The Division conducted a general search on Choice Home Warranty online, and  
9 discovered numerous complaints by consumers on different websites. (Test. Jain.)

10 35. The Business Consumer Alliance rated Choice Home Warranty with an "F". It notes the  
11 company's website as www.choicehomewarranty, DBAs are CHW Group, Inc., Victor Mandalawi as  
12 president, and Victor Hakim as principal. (Ex. 9.)

13 36. On October 31, 2016, Mike from Henderson, Nevada posted a complaint on the Ripoff  
14 Report claiming Choice Home Warranty in Edison, New Jersey, was attempting to withdraw money  
15 from the consumer's bank account after the contract period ended. (Ex. 14.)

16 37. On July 7, 2016, Stardust from Henderson, Nevada posted a complaint on the Ripoff  
17 Report claiming Choice Home Warranty refused to replace a pool pump because it was not correctly  
18 installed. (Ex. 15.)

19 38. On April 20, 2016, Ira B. from Las Vegas, Nevada, a technician, posted a complaint on  
20 Ripoff Report advising people to stay away from Choice Home Warranty because Choice Home  
21 Warranty does not pay its vendors, and requires vendors to use repair parts according to their terms.  
22 (Ex. 16.)

23 39. On January 14, 2016, Iaappliance from Las Vegas, Nevada posted a complaint on Ripoff  
24 Report that Choice Home Warranty is a huge scam among contractors. The company had completed  
25 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)

26 40. On October 12, 2016, David N. of Las Vegas, Nevada posted a complaint on Yelp.com  
27 that Choice Home Warranty improperly denied his claims on two occasions. The second claim denial  
28 was after a technician came and inspected the microwave and took photos. The consumer included in

1 his complaint the he received an email from Choice Home Warranty that said, "CHW strives to be rated  
2 #1 in the home warranty industry. Help us succeed with your positive feedback and you will receive 1  
3 FREE month of coverage." (Ex. 18 at 2.)

4 41. Choice Home Warranty has been the subject of complaints in other cities—Houston,  
5 Texas, Chicago, Illinois, Overland Park, Kansas, and Titusville, Florida. According to the reports,  
6 Choice Home Warranty in New Jersey denies claims on the basis that the consumers did not maintain  
7 their units, even after consumers provide proof of maintenance. (Ex. 19, 19a, 20, 20a, 39, 40, and 40a.)

8 42. In reviewing complaints, Mandalawi has CHW Group employees participate in the  
9 resolution. Mandalawi distinguishes claims as problems with a system or appliance, and a complaint as  
10 a consumer who is dissatisfied with the claim or outcome. When complaints are received, they are  
11 handled by CHW Group employees. If they are escalated, Mandalawi gets involved. Mandalawi has  
12 final authority on complaints and "want[s] to be sure that CHW Group is adhering to the terms and  
13 conditions of the policy and make[s] sure they are in compliance." Complaint resolution activity is  
14 done at Executive Drive, CHW Group's Somerset location; sales and marketing is done at the King  
15 Georges Post Road in Edison. Mandalawi spends most of his time at the Somerset location. (Test.  
16 Mandalawi; Test. Ramirez.)

17 43. At a meeting of the Parties pending this proceeding, Mandalawi and Hakim reviewed the  
18 records of HWAN to determine how many complaints they have received from the Division since  
19 HWAN's inception. (Test. Mandalawi; Test. Hakim.)

20 44. CHW Group handled the claims for the consumer complaints filed with the Division.  
21 CHW Group documents its communications with the consumers. CHW Group concluded that the  
22 consumers' claims were not covered by the service contracts. (Test. Ramirez.)

23 45. HWAN presented what it named "Customer Testimonials NV DOI Status of HWAN,"  
24 which is 867 pages of positive testimonials of Choice Home Warranty consumers from around the  
25 country, including Nevada. (Ex. M.)

### 26 **C. Regulatory Actions**

27 46. On July 23, 2010, California issued a cease and desist order against Choice Home  
28 Warranty and its officers, along with notices related to a monetary penalty and right to hearing for

1 acting as a provider of home protection contracts without a license. (Ex. 1 at 1–4 of 16.) A final order  
2 was entered on August 19, 2010. On October 12, 2010, the California Insurance Commissioner found  
3 that Choice Home Warranty acted as a home protection company without a license from October 25,  
4 2008 through October 1, 2010, and fined Choice Home Warranty \$3,530,000. In December 2010,  
5 Mandalawi, as president of Choice Home Warranty, entered into an agreement with California agreeing  
6 to take certain actions with regard to their business, and pay a \$10,000 fine. The agreement was  
7 adopted by the California Commissioner on January 6, 2011. (Ex. 1; Ex. G.)

8 47. On July 29, 2010, Oklahoma issued a cease and desist against Choice Home Warranty  
9 for engaging in service warranty contracts without authorization. Despite the order, Choice Home  
10 Warranty continued to engage in the business. The matter was settled on January 2, 2012, with a fine  
11 of \$15,000, and Choice Home Warranty was permitted to continue servicing existing contracts. (Ex. 3;  
12 Ex. H.)

13 48. On February 7, 2014, the Oklahoma Commissioner issued an order alleging that Choice  
14 Home Warranty continued to engage in the business “in a course of unfair and deceptive conduct while  
15 circumventing regulatory authority.” (Ex. 3 at 2.) Choice Home Warranty was fined \$10,000. (Ex. 3.)  
16 On October 21, 2010, the Insurance Commissioner of the State of Washington issued an Order to Cease  
17 and Desist against CHW Group, Inc. doing business as Choice Home Warranty and  
18 www.ChoiceHomeWarranty.com, Victor Mandalawi, President of CHW Group, Inc. (incorporated in  
19 both New York and New Jersey), and others. The Order demanded that all named parties, who are  
20 unlicensed in Washington, cease transacting in the unauthorized business of insurance in Washington,  
21 seeking business in Washington, and soliciting Washington residents to buy unauthorized products  
22 based on the sale of at least 92 service contracts. On January 27, 2011, the Washington Commissioner  
23 issued a Final Order Terminating Proceeding after the named parties filed a stipulation withdrawing  
24 their hearing demand. The Final Order indicated that the Order to Cease and Desist would remain in  
25 effect indefinitely. (Ex. 8 at 3 of 32.)

26 49. On June 9, 2015, CHW Group, Inc. dba Choice Home Warranty, Victor Mandalawi, and  
27 Victor Hakim agreed to a Final Consent Judgment with the New Jersey Attorney General’s Office for  
28 allegations of using deceptive means to deny claims after the New Jersey Division of Consumer Affairs



1 received 1,085 complaints about Choice Home Warranty. The Judgment requires Choice Home  
2 Warranty, Mandalawi, and Hakim to address issues related to improper advertisements, sales  
3 representatives' misrepresentations, terms and conditions of the contract, properly licensed technicians,  
4 fair review of claims, timely payment to technicians, payment in lieu of replacement, refunds, training  
5 of employees handling sales and claims, and future consumer complaints. Choice Home Warranty,  
6 Mandalawi, and Hakim were required to pay a \$779,913.93 fine including consumer restitution, revise  
7 their business practices, pay for an independent compliance monitor to oversee compliance with the  
8 terms of the Judgment, and execute confessions of judgment in the event of a default on the Judgment.  
9 (Ex. 6; Ex. F, X.)

10 **D. Other Evidence Presented at Hearing**

11 50. In 2016, Home Warranty Administrator of Florida, Inc. and Choice Home Warranty  
12 were named defendants in a civil action in New Jersey. That same year, CHW Group, Inc. dba Choice  
13 Home Warranty and Victor Mandalawi were named defendants in a civil complaint in South Carolina.  
14 (Ex. 9, 29; Test. Mandalawi.)

15 51. As part of the Division's investigation, it obtained a copy of Home Warranty  
16 Administrator of South Carolina, Inc.'s application with the State of South Carolina submitted by  
17 Mandalawi. The application included a biographical affidavit, which requested information about  
18 Mandalawi's background. To the question, "Are you operating, acting, or have acted as a controlling  
19 person for any other service contract provider or service contract related company?", Mandalawi  
20 responded yes. To the question, "Have you or a service contract provider or service contract related  
21 company in which you were, or are a controlling person, ever been disciplined by a state regulatory  
22 body?", Mandalawi responded yes. To the question, "Have you or a service contract provider or  
23 service contract related company for which you were, or are a controlling person, ever been subject to a  
24 cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial,  
25 administrative, regulatory or disciplinary action?", Mandalawi responded yes.

26 Attached to the biographical affidavit is Mandalawi's résumé. According to it, Mandalawi is  
27 the President of Home Warranty Administrators, which "is currently licensed / registered in Arizona,  
28 Florida, Illinois, New York, Nevada, Oklahoma, and Texas." Mandalawi has held this position since

1 2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has  
2 held this position since 2008. (Ex. 41 at 14.)

3 Mandalawi presented a letter to the South Carolina Department of Insurance explaining his  
4 "Yes" responses to the questions on the biographical affidavit. In the letter, Mandalawi introduces  
5 himself as president of Home Warranty Administrator of South Carolina, Inc., and all of its affiliates,  
6 which includes HWAN, and president of Choice Home Warranty. Through the letter, Mandalawi  
7 explains that

8 Choice Home Warranty (CHW) was the subject of a cease and desist letter in California,  
9 Oklahoma, and Washington. In California, CHW entered into a consent order, in  
10 Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service  
Warranty License, and in Washington CHW is complying with all terms of the cease and  
desist.

11 CHW has been doing business for roughly two years and our home state of New Jersey  
12 does not require companies, such as ours, to be licensed. During the course of its  
13 activities, CHW discovered that all states are not created equal when it came to licensing  
14 requirements for service contracts. In fact, the very definition of the words "service  
contracts" changes from state to state. To address this newly discovered issue, CHW  
developed the Home Warranty administrators ("HWA") brand. That is, in order to  
address every state's particular requirements, a separate HWA was created for that state.

15 (Ex. 41 at 15-16; Test. Mandalawi.)

16 52. Choice Home Warranty has a landing page, which is a webpage that consumers land on  
17 when they click a particular email or internet link to Choice Home Warranty. The landing page is part  
18 of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code.  
19 Choice Home Warranty provides some general information and invites people to call them at (888)  
20 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address,  
21 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the  
22 bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions,  
23 other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)

24 53. On August 21, 2017, Felecia Casci, Supervising Legal Secretary at the Division,  
25 received an email from 'CHOICE Warranty (enews@choicehomewarranty.com)' with the subject,  
26 "VIP Offer: \$50 Off & 1 Month Free" in her personal email account. Choice Home Warranty,  
27 identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again,"  
28 offering \$50 off and one month free. According to the email, Choice Home Warranty plans are subject

1 to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd,  
2 Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice  
3 Home Warranty in 2017. Nothing in the solicitation identified HWAN as the party selling the service  
4 contract. (Ex. 27; Test. Casci.)

5 54. On August 16, 2017, Casci received another email from "CHOICE Warranty  
6 (enews@choicehomewarranty.com)" with the subject, "We Appreciate You Felecia" in her personal  
7 email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay  
8 for Covered Home Repairs Again," offering \$75 off and one month free. According to the email,  
9 Choice Home Warranty plans are subject to terms and conditions. Choice Home Warranty identifies its  
10 address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The  
11 advertisement is copyrighted to Choice Home Warranty in 2017. (Ex. 27; Test. Casci.)

12 55. The Division discovered that some service contracts issued by HWAN were not  
13 approved for use. In the unapproved service contract's letter to the consumer, the first two lines of the  
14 letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect  
15 your home with a CHW Warranty." Again in the second paragraph, there is a reference to CHW  
16 Warranty. Under the two boxes is the name Choice Home Warranty and the address, 1090 King  
17 Georges Post Road, Edison, NJ 08837, along with the toll-free number (888) 531-5403. There is no  
18 service contract form number on the bottom of the page indicating approval by the Division. The font  
19 of the contract is reduced such that the contract is 4 pages long instead of the 5 ½ pages in the approved  
20 service contract. (Ex. 37; Test. Ghan.)

21 56. When Hakim acknowledged that CHW Group is not licensed to sell, solicit, or offer for  
22 sale service contracts in Nevada, he explained that "Pursuant to section 690C.120.2, administrators are  
23 not required to be licensed to sell service contracts in Nevada." (Test. Hakim.)

24 57. The setup for HWAN in Nevada is the same setup Mandalawi uses for all of the Home  
25 Warranty Administrators companies. All of these entities have a contract with CHW Group, and all of  
26 the entities use the website www.choicehomewarranty.com to sell their service contracts. All of the  
27 entities use substantially the same contract and terms of service. All of the businesses use CHW  
28 Group's services as provided in agreements similar to the Agreement HWAN has with CHW Group.

1 This creates efficiencies in managing the product being sold across the country, with the nuances of  
2 different states' requirements identified in the service contract sent to consumers. (Test. Mandalawi.)

3 58. Since HWAN became licensed in Nevada, CHW Group has continually provided  
4 services to HWAN through the Agreement. CHW Group has tracked its claims statistics. According  
5 to its claims statistics, 23,889 customers have purchased a service contract through Choice Home  
6 Warranty in Nevada since 2011. (Ex. K; Test. Hakim.)

7 59. In some years, the Division communicated with Mandalawi by telephone or email when  
8 items were not provided with HWAN's applications. (Test. Mandalawi.)

## 9 **II. CONCLUSIONS OF LAW**

10 In its Amended Complaint, the Division seeks administrative action against Respondent for  
11 (1) falsifying material facts in its applications; (2) engaging in unfair practices in settling claims;  
12 (3) conducting business in an unsuitable manner; and (4) failing to make records available to the  
13 Commissioner upon request. The Division also seeks a cease and desist order because the Commissioner  
14 refused to renew Respondent's 2016 COR. The Division bears the burden of showing, by a preponderance  
15 of the evidence, that Respondent violated these provisions of the Insurance Code. In hearings for the  
16 Division, "The hearing officer shall liberally construe the pleadings and disregard any defects which do not  
17 affect the substantial rights of any party." NAC 679B.245.

### 18 **A. Jurisdiction**

19 The Commissioner is charged with regulating the business of service contracts, which includes  
20 but is not limited to promulgating regulations, reviewing provider records, investigating complaints and  
21 alleged violations of law, and conducting examinations. NRS 679B.120.3 & -.5, 690C.300, -.310 & -  
22 .320. Service contracts are regulated under the Insurance Code pursuant to chapter 690C.

### 23 **B. Statement of Law**

24 In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless  
25 the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter  
26 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the  
27 terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for  
28 the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a  
Nevada resident who may enforce the rights under a service contract. NRS 690C.060. An  
administrator "means a person who is responsible for administering a service contract that is issued,  
sold or offered for sale by a provider." NRS 690C.020.

1 A provider who wishes to issue, sell or offer for sale service contracts in this state must  
2 submit to the Commissioner: A registration application on a form prescribed by the  
3 Commissioner; . . . A copy of each type of service contract the provider proposes to issue,  
sell or offer for sale; [and] The name, address and telephone number of each  
administrator with whom the provider intends to contract . . . .

4 NRS 690C.160.1(a), (c)–(d).

5 A certificate of registration is valid for 1 year after the date the Commissioner issues the  
6 certificate to the provider. A provider may renew his or her certificate of registration if,  
before the certificate expires, the provider submits to the Commissioner an application on  
7 a form prescribed by the Commissioner, [among other things].

8 NRS 690C.160.3.

9 Providers are required to comply with certain requirements to ensure the provider is financially  
10 viable. NRS 690C.170. A provider has limitations on the name of its business, and may not use the  
11 name of another provider. NRS 690C.200.1(b). A provider's service contract must comply with  
12 certain provisions. For example, a service contract must be "understandable and printed in a typeface  
13 that is easy to read." NRS 690C.260.1(a). A service contract must also "[i]nclude the name and  
14 address of the provider and, if applicable: The name and address of the administrator. . . ."  
15 NRS 690C.260.1(d)(1). A provider is prohibited from making "a false or misleading statement" or  
16 "intentionally omit[ting] a material statement." NRS 690C.260.2.

17 When a provider receives a claim, it must address the claim within a reasonable amount of time.  
18 If a claim "relates to goods that are essential to the health and safety of the holder", emergency  
19 provisions must be included in the contract. NAC 690C.110.1(c). Related to claims, certain activities  
20 are considered unfair practices:

- 21 (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy  
provisions relating to any coverage at issue.
- 22 (b) Failing to acknowledge and act reasonably promptly upon communications with  
respect to claims arising under insurance policies.
- 23 (c) Failing to adopt and implement reasonable standards for the prompt investigation and  
processing of claims arising under insurance policies.
- 24 . . . .
- (e) Failing to effectuate prompt, fair and equitable settlements of claims in which  
25 liability of the insurer has become reasonably clear.
- 26 . . . .
- (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the  
27 insurance policy, with respect to the facts of the insured's claim and the applicable  
law, for the denial of the claim or for an offer to settle or compromise the claim.

28 . . . .

NRS 686A.310.1.

1 Generally, no other provision of the Insurance Code applies except as otherwise provided in  
2 NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include  
3 trade practices, examinations, hearings, certain prohibitions, process, and advertising.  
4 NRS 690C.120.1. Also, “[a] provider, person who sells service contracts, administrator or any other  
5 person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter  
6 680A of NRS to issue, sell, offer for sale or administer service contracts.” NRS 690C.120.2.

7 The Commissioner is authorized to observe the conduct of a service contract provider to ensure  
8 that “business is not conducted in an unsuitable manner.” NRS 679B.125.2.

9 “[U]nsuitable manner” means conducting [] business in a manner which:

- 10 1. Results in a violation of any statute or regulation of this State relating to insurance;
- 11 2. Results in an intentional violation of any other statute or regulation of this State; or
- 12 3. Causes injury to the general public,  
13 ↳ with such frequency as to indicate a general business practice.

14 NAC 679B.0385.

### 15 C. Respondent

16 In order to address the Division’s allegations, the Hearing Officer must make a determination  
17 about the parties involved in this matter because many of the issues presented in this hearing hang on  
18 who the service contract provider is. Relying on the use of the different names by Respondent’s  
19 witnesses, who interact with or on behalf of Respondent through a contract, and who would most be  
20 familiar with the entities, the Hearing Officer relies on the names used in the hearing as follows:

- 21 • Home Warranty Administrator of Nevada, Inc. is HWAN
- 22 • Choice Home Warranty is CHW Group, Inc., CHW, and Choice Home Warranty  
23 Group
- 24 • Home Warranty Administrators is an affiliate of companies with the name Home  
25 Warranty Administrator of [State]

26 In this case, HWAN is the legal entity that has been authorized to be a service contract provider  
27 in Nevada. HWAN contracted with CHW Group, or Choice Home Warranty, as administrator of  
28 HWAN’s service contracts. In 2014, the Division requested HWAN to register the fictitious name,  
Choice Home Warranty.

The evidence is clear that Choice Home Warranty is CHW Group. Respondents have argued  
this throughout the case. (Resp’t’s Prehr’g Stmt 3–4.) During the hearing, Mandalawi, Hakim, and  
Ramirez referred to CHW Group as Choice Home Warranty. Mandalawi and Hakim both testified that

1 HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for  
2 such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns  
3 the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and  
4 administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group  
5 employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in  
6 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice  
7 Home Warranty. The names are listed in his résumé as two separate companies. At the time the South  
8 Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not  
9 registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW  
10 Group, Inc.

11 When an entity registers a dba, or fictitious name, the entity creates a name under which it will  
12 operate. This does not create a new company or change the entity's legal status. Registering a dba  
13 cannot make one company liable for the acts of another company, even if the two companies share the  
14 same name—it is a legal impossibility. Further, NRS 690C.200.1(b) prohibits a provider from using a  
15 name that is the name of another provider. Choice Home Warranty, under CHW Group, is another  
16 provider even if it is not a Nevada-registered provider. Why the Division requested HWAN to register  
17 the dba Choice Home Warranty is unknown, as it makes the arrangement of these businesses confusing  
18 at best. Registering Choice Home Warranty as HWAN's dba did not make HWAN and CHW Group  
19 one legal entity for purposes of regulation. Accordingly, it is the Hearing Officer's position that Choice  
20 Home Warranty as discussed in this matter should not be treated as a fictitious name of HWAN, but  
21 instead as a separate company under CHW Group. For purposes of this Order, the Hearing Officer  
22 relies on this distinction between HWAN and Choice Home Warranty: HWAN is one legal entity, and  
23 Choice Home Warranty is CHW Group, an incorporated entity that is separate from HWAN.

#### 24 **D. The Division Claims Respondent Made False Entries of Material Facts in Its Applications**

##### 25 **1. Administrative Actions Against Choice Home Warranty**

26 The Division claims that by failing to disclose other states' administrative actions against  
27 Choice Home Warranty on its Nevada renewal applications, Respondent engaged in acts that constitute  
28 the unlawful making of false entry of material fact in violation of NRS 686A.070. The Hearing Officer

1 disagrees.

2 Respondent argues that it is legally and factually impossible for HWAN to have made false  
3 misrepresentations in its renewal applications because the *renewal* applications do not ask for  
4 regulatory information about any of the officers of the applicant, and the Hearing Officer agrees. The  
5 Division's questions in each of the renewal applications do not ask whether any of the applicant's  
6 officers have had actions taken against them; rather, the questions ask whether any of the *new* officers  
7 identified in the renewal application have had actions taken against them. If the Division wanted to  
8 know whether any of applicant's officers had administrative actions taken against them in other states,  
9 the Division should have asked that question. The Division's intent regarding the questions on its own  
10 renewal application is not clear, and it would be improper to hold applicants responsible for failing to  
11 disclose information about which the Division never asked.

12 For the renewal applications submitted for 2011, 2012, and 2013, the service contract provider  
13 that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc.  
14 HWAN is incorporated in Nevada, creating an independent legal entity. As its own legal entity,  
15 HWAN is responsible for the acts of its business. At no time during this period was HWAN named in  
16 any administrative action in any other state. Therefore, it cannot be said that HWAN made a false entry  
17 on the renewal applications for these years by not reporting administrative actions against Choice  
18 Home Warranty.

19 For the renewal applications submitted for 2014 and 2015, the service contract provider that  
20 submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. dba  
21 Choice Home Warranty. As explained in Section C above, however, Choice Home Warranty is CHW  
22 Group. It is a legal impossibility for HWAN to also be CHW Group even if HWAN registered a dba  
23 called Choice Home Warranty. HWAN did not violate Nevada law by failing to disclose  
24 administrative actions taken against CHW Group in other states. CHW Group is HWAN's  
25 administrator, and none of the applications asked whether the administrator or its officers have been the  
26 subject of administrative actions in other states. To that end, HWAN was not required to report  
27 administrative actions against Choice Home Warranty in its 2014 and 2015 renewal applications.

28 ///



## 2. Applications Filed with the Division

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, the evidence shows that Respondent did make a false entry of material fact in its applications. All the applications presented at the hearing ask the applicant to disclose the name of the administrator. For all of the renewal applications Mandalawi submitted on behalf of HWAN, the administrator is noted as "self," and this was not true. "Self" means that the service contract provider—HWAN in this case—was administering all of the claims. According to the testimony of Mandalawi, Hakim, and Ramirez, Choice Home Warranty (which is CHW Group) is the administrator for HWAN. Respondent argues that this fact was disclosed in HWAN contract HWA-NV-0711, which was provided to the Division in 2011. Even if the disclosure is sufficient to say the Division was on notice in 2011 (when the HWAN contract was approved) that Choice Home Warranty was the administrator, every renewal application submitted indicated the contrary. When asked on the renewal applications whether there were any changes to the administrator or a newly designated administrator, in each renewal application, Mandalawi responded that there was no change—the administrator was "self," which is HWAN. If CHW Group was the administrator, then "self" was not an accurate response to the question on the applications. Claims administration is a material part of service contracts and, therefore, a material fact, required by NRS 690C.160.3. As such, HWAN misstated a material fact in its application. For each application year starting in 2011 that HWAN reported "self" as the administrator, is one violation of NRS 686A.070. (Five counts.)

Additionally, HWAN indicated in its applications filed starting in 2011 that it was using the service contract HWA-NV-0711 that was approved by the Division. On at least one occasion, there is evidence that HWAN used a service contract that, in fact, was not approved by the Division. Service contracts must comply with certain provisions of the Insurance Code and, therefore, must be approved before they are used. The application year 2015 did not disclose the use of an unapproved form. The service contract is a material part of the service contract provider application and, therefore, a material fact of the application. As such, HWAN misstated another material fact in its 2015 renewal application, in violation of NRS 686A.070. (One count.)

///

1       **E. The Division Claims Respondent Has Engaged in Unfair Practices in Settling Claims**

2       The Division alleges that the number of complaints against Respondent show that Respondent  
3 has engaged in unfair practices in settling claims in violation of NRS 686A.310 and had, thereby, acted  
4 in an unsuitable manner. NRS 679B.125.2. Respondent argues that the number of complaints does not  
5 amount to unfair practices in settling claims, and that it believes it provides Nevada customers sterling  
6 service.

7       In this case, the evidence shows that the Division received at least 63 individual consumer  
8 complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the  
9 complaints, five were presented at the hearing: three complaints from 2014 and two complaints from  
10 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers  
11 believed were covered, or that Choice Home Warranty did not pay the technician who provided  
12 services on the appliance. When the Division got involved, HWAN agreed to cover or settle the  
13 complaints. The Division's evidence says the claims were covered; Respondent's evidence says the  
14 claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's  
15 involvement does not mean that Respondent admitted that the claims were covered. As presented, the  
16 Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling  
17 claims.

18       **F. The Division Claims Respondent Has Failed to Make Its Records Available**

19       The Division claims that Respondent failed to make available information requested by the  
20 Commissioner in violation of NRS 690C.320.2. The Division sought information about HWAN's  
21 claims and open contracts in Nevada. Respondent argues that the Division presented no evidence to  
22 support this claim.

23       The evidence shows that the Division made several requests of Respondent through Mandalawi,  
24 including to Mandalawi's email address of record. Respondent acknowledges having communicated  
25 with the Division via email or telephone on other occasions, as evident through the testimony and  
26 exhibits. The parties both state that the requested information was produced, but only after a subpoena  
27 was issued, which was at least six months after the renewal application was received. Moreover, this  
28 information relating to how many open contracts and claims Respondent had in Nevada was requested

1 in the renewal application, but Respondent did not respond to those questions. The law is clear that,  
2 upon the Commissioner's request, "[a] provider shall . . . make available" records concerning any  
3 service contract issued, sold, or offered for sale available. NRS 690C.320.2. Thus, Respondent  
4 violated NRS 690C.320.2 when it did not produce such information when requested. (One count.)

## 5 **G. Respondent Has Conducted Business in an Unsuitable Manner**

### 6 **1. Complaints Against Respondent**

7 The Division claims that, given the number of consumer complaints in Nevada, media reports,  
8 and findings by other states, constitutes a pattern of behavior that Respondent is operating in an  
9 unsuitable manner, and that Respondent's practices cause injury to the general public with such  
10 frequency as to indicate a general business practice, in violation of NRS 690C.325.1(b) and  
11 NRS 679B.125.2.

12 The evidence shows a number of consumer complaints posted online. These reports include  
13 complaints by Nevadans, but the Division made no effort to verify the substance of the complaints.  
14 This evidence, while consistent with the consumer complaints received by the Division, does not  
15 substantiate that Respondent is operating in an unsuitable manner because the substance of the reports  
16 was not vetted. This evidence tends to corroborate that there may be a problem with claims handling.  
17 These violations are troubling, and may warrant further review to determine whether Respondent's  
18 claims handling is appropriate. However, this evidence regarding claims handling does not show that  
19 Respondent is violating Nevada laws or causing injury to the general public "with such frequency as to  
20 indicate a general business practice."

### 21 **2. HWAN's Association with CHW Group**

22 With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate  
23 entities, as argued by Respondent, the Hearing Officer concludes that Respondent conducted business  
24 in an unsuitable manner by allowing an unregistered entity to engage in the business of service  
25 contracts in Nevada.

26 Respondent argues that the Division violated its due process rights in claiming that HWAN  
27 allowed CHW Group to operate without a license because Respondent "never received proper notice of  
28 the Division's argument that CHW Group, Inc. is one and the same with HWAN." (HWAN's Closing

1 Arg. 4.) Respondent further argues that this Order should find “that HWAN and CHW are separate  
2 entities and that CHW has not used HWAN to avoid its own licensing.’ (Id. at 7.) The Hearing Officer  
3 finds Respondent’s arguments to be contradictory and unsupported.

4 Based on the Amended Complaint, it is clear that the Division considered HWAN and Choice  
5 Home Warranty to be one-and-the-same entity. When the Division claimed that Respondent should  
6 have disclosed that Choice Home Warranty had been disciplined in other states, Respondent argued in  
7 its prehearing statement that no such duty existed because HWAN and Choice Home Warranty are two  
8 separate entities because Choice Home Warranty is CHW Group. Facts about how Respondent  
9 operates were presented during the hearing, and it was Respondent’s witnesses who explained who the  
10 different entities, and their respective roles, are. Respondent brought as witnesses the CEO of CHW  
11 Group and the COO of CHW Group, in addition to Mandalawi, President of both HWAN and CHW  
12 Group, who all spoke proficiently about the entities and clearly distinguished them. It was  
13 Respondent’s position that Choice Home Warranty was CHW Group, and Respondent presented  
14 considerable evidence to support its position. Respondent cannot claim that HWAN and Choice Home  
15 Warranty are two separate entities and, in the same breath, conclude that Respondent had no notice of  
16 the Division’s position that HWAN and Choice Home Warranty were considered one and the same  
17 entity to avoid responsibility for violations of law that resulted from the very conclusion they  
18 advocated. Therefore, it cannot be said that Respondent had no notice of the Division’s argument that  
19 CHW Group is one and the same with HWAN.

20 Respondent also argues that the Division is equitably estopped from taking action against it  
21 because the Division knew that CHW Group and HWAN were selling contracts in Nevada. There is no  
22 evidence that the Division knew that CHW Group and Choice Home Warranty were the same. The  
23 record likewise shows no evidence that the Division was aware that CHW Group was selling contracts  
24 in Nevada, only that Choice Home Warranty was selling contracts in Nevada. The Division asked  
25 HWAN to register Choice Home Warranty as a dba because, after a discussion with Mandalawi, “[i]t  
26 was identified that Choice and HWAN were one and the same entity, that Choice was not selling  
27 illegally because HWAN was a licensed entity in Nevada.” (Test. Jain.) Respondent argues that it  
28 detrimentally relied upon the Division’s representation that in exchange for HWAN’s use of the

1 fictitious name, the Division released the legal right to initiate an adversarial action that HWAN and  
2 CHW Group are the same entity. How a fictitious name registration amounts to detrimental reliance is  
3 unclear. The Commissioner's obligation under the Insurance Code is to protect Nevadans in the  
4 business of service contracts. The Commissioner cannot ignore her charge under the law—when an  
5 entity is violating a law that harms Nevadans, the Commissioner must act.

6 Respondent claims that the Division is estopped from taking action against Respondent because  
7 the Division made express representations to HWAN relative to HWAN's relationship with CHW  
8 Group, and that HWAN relied on these in conducting its operations. There is no evidence in the record  
9 that HWAN had to or did change its operations as a result of the dba registered in Nevada. More  
10 importantly, there is no evidence that the Division knew that Choice Home Warranty was CHW Group  
11 or of the contract between HWAN and CHW Group. Even if in 2011 the Division approved a contract  
12 in 2011 that indicated that Choice Home Warranty was administering the contract, contract  
13 administration is not approval to issue, sell, or offer for sale service contracts. Moreover, after that  
14 contract was approved in 2011, Respondent indicated that it was itself administering its service  
15 contracts, which was not true.

16 Based on the presentation of Mandalawi and Hakim, CHW Group, Inc. is the legal entity that  
17 controls and operates all the content, data, contracts, information, processing, management, claims,  
18 marketing, advertising, and sales of all products sold through HWAN, while HWAN manages  
19 regulatory compliance. Respondent claims this creates efficiencies in managing the product being sold  
20 across the country, with the nuances of different states' requirements identified in the service contract  
21 issued to consumers. According to Hakim, an administrator is permitted to issue, sell, and offer for sale  
22 or administer service contracts without a certificate of registration pursuant to NRS 690C.120.2.  
23 Hakim is incorrect.

24 Nevada law clearly prohibits the issuance, sale, or offering for sale service contracts unless the  
25 provider has been issued a certificate of registration. NRS 690C.150. The provision Hakim incorrectly  
26 relies on, NRS chapter 690C section 120 subsection 2, involves a certificate of authority issued  
27 pursuant to NRS chapter 680A, which is a certificate issued to *insurance companies* to operate in  
28 Nevada. A certificate of registration and a certificate of authority are two different things. What NRS

1 690C.120.2 says is that a certificate of authority is not required in the business of service contracts and,  
2 so, anyone involved in service contracts is not required to obtain a certificate of authority. It most  
3 certainly does not say that an administrator may issue, sell, or offer to sell service contracts without  
4 proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter  
5 690C a nullity.

6 By definition, an administrator should not be engaged in issuing, selling, or offering to sell  
7 service contracts. Hakim, Mandalawi, and Ramirez all testified that Choice Home Warranty handles all  
8 sales, advertising, and marketing for HWAN. As Hakim stated, his interest in HWAN is that HWAN  
9 continue to operate, "because if [HWAN is] not operating in the State of Nevada, then Choice Home  
10 Warranty is not operating in the State of Nevada." (Tr3. 98:9-16.) This is a reflection of CHW  
11 Group's intent to operate in Nevada using HWAN for "regulatory compliance." This intent is further  
12 reflected in the service contract that was sold in Nevada that identified CHW Warranty as the  
13 company—a service contract that was not approved for use in Nevada.

14 Based on the evidence, it is clear that "regulatory compliance" as stated by Mandalawi means  
15 that HWAN holds the certificate of registration in Nevada, and nothing more. Since receiving its COR,  
16 HWAN has been merely a figurehead, enabling an unlicensed entity to engage in the business of  
17 service contracts in Nevada under HWAN's license. CHW Group has engaged in the business of  
18 service contracts without a license, which is a violation of NRS 690C.150, and skirted regulation by the  
19 Division, which is a danger to the public. This activity has been occurring since at least 2010, when  
20 HWAN was first licensed. With the sale of over 69,000 service contracts, it is undeniable that it is  
21 Respondent's practice to allow CHW Group to issue, sell, and offer for sale service contracts in  
22 Nevada, thereby avoiding regulation for each contract sold in Nevada. HWAN's practice has occurred  
23 with such frequency as to indicate a general business practice, which amounts to conducting business in  
24 an unsuitable manner, in violation of NRS 690C.325 and 679B.125.

25 **H. The Division Requests a Cease and Desist Order to Prevent Respondent from Engaging in**  
26 **the Business of Service Contracts Without a Certificate of Registration**

27 In the Amended Complaint, the Division indicates that Respondent filed a renewal application  
28 for 2016, and that the Commissioner is authorized to refuse to renew a provider's certificate of

1 registration ("COR"). The Division requested a cease and desist be issued. In arguing that  
2 Respondent's 2016 COR was properly denied the Division appears to be claiming that Respondent is  
3 improperly engaging in the business of service contracts. Respondent argues that it had no notice of the  
4 facts underlying the Division's position that it did not appropriately renew its COR in 2016.  
5 Mandalawi believed that the issue of the 2016 renewal application would be considered in this hearing  
6 and that, until then, HWAN could continue operating in Nevada. (Test. Mandalawi.) The Hearing  
7 Officer finds that the Division did not properly notify Respondent that the 2016 renewal application  
8 was denied.

9 In Nevada, certificates of registration for service contract providers expire one year after the  
10 COR is issued. NRS 690C.160.3. Nothing in Nevada law grants the Division authority to allow a  
11 provider to continue operating after the expiration of a COR, but a provider may submit a renewal  
12 application to receive a new COR to continue operating. It is unclear how the automatic expiration of a  
13 COR after one year would require notice to the provider for due process purposes when the law clearly  
14 makes the COR available for one year and no longer. However, when a provider timely submits a  
15 renewal application that is denied, then the Division must issue a notice to the provider about the  
16 denial, providing an explanation for the denial and an opportunity for the provider to request a hearing  
17 on the propriety of the denial. A hearing on such denials are heard within 30 days.

18 In this case, Respondent timely filed a renewal application on or about November 7, 2016, to  
19 obtain a new COR. When the Division found the renewal application to be incomplete, the Division  
20 should have promptly notified Respondent that the renewal application was not complete and,  
21 therefore, denied so that Respondent would know that it was not approved to continue operating in  
22 Nevada. Notice of the denial was finally provided on or about July 21, 2017, almost eight months after  
23 HWAN submitted the application. The denial also provided no information as to why the renewal  
24 application was denied, nor did it notify Respondent that it could appeal the decision through a hearing  
25 request. Thus, the Hearing Officer finds that for the service contracts sold up until the date of this  
26 Order, Respondent cannot be found to have sold without a valid COR in violation of Nevada law since  
27 the Division did not properly notify Respondent of the denial with an explanation of the denial or of the  
28 opportunity for a hearing on the denial, which would have been adjudicated within 30 days of a hearing

1 request and prevented 13 months of Respondent selling service contracts without a COR.

2        Nonetheless, the registration expired as a matter of law on November 18, 2016. Therefore, as of  
3 the date of this Order, Respondent is on notice that it must apply for a renewal of its certificate of  
4 registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the  
5 date of this Order. The Division must issue its determination on the application no later than 15  
6 business days after receipt of the complete application. As a result, the Division cannot take action  
7 against Respondent for issuing, selling, or offering for sale service contracts without a certificate of  
8 registration from the date of this Order plus 45 days.<sup>3</sup>

9                                    **ORDER OF THE HEARING OFFICER**

10        Based on the foregoing Findings of Fact and Conclusions of Law, the preponderance of the  
11 evidence presented at hearing shows that Respondent has violated the provisions of the Insurance Code  
12 complained of by the Division. Accordingly, the Hearing Officer HEREBY ORDERS that:

- 13        1. Respondent be fined \$30,000, the maximum fine of \$5,000 allowed under NRS 686A.183.1(a),  
14        for each of six violations of making a false entry of material fact in a record or statement in  
15        violation of NRS 686A.070;
- 16        2. Respondent be fined \$500, an administrative fine authorized pursuant to NRS 690C.325.1 in  
17        lieu of a revocation, for failing to make its records available to the Commissioner upon request;
- 18        3. Respondent be fined \$50 for each act or violation,<sup>4</sup> for conducting business in an unsuitable  
19        manner by allowing an unregistered entity to issue and offer service contracts in Nevada, and to  
20        sell 23,889 service contracts in Nevada through Respondent's certificate of registration, for a  
21        total of \$1,194,450; and

22        ///

23        ///

24        ///

25        ///

26        \_\_\_\_\_


27        <sup>3</sup> This ruling does not prevent the Division from taking action for other violations in connection with  
28        the service contracts issued, sold, or offered for sale, during this period if any are later discovered.

<sup>4</sup> Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is \$1,000 per act or violation.



- 1 4. If Respondent wishes to continue engaging in the business of service contracts in Nevada,  
2 Respondent may apply for a certificate of registration as provided in this Order.  
3 5. All administrative fines imposed in this Order are due no later than 30 days from the date of this  
4 Order.

5 So ORDERED this 18<sup>th</sup> day of December 2017.

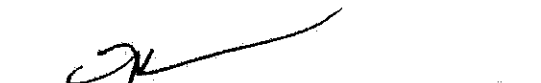
6  
7   
8 Alexia M. Emmermann  
9 Hearing Officer

10 **FINAL ORDER OF THE COMMISSIONER**

11 Based on the record in this administrative hearing and having reviewed the Hearing Officer's  
12 Findings of Fact and Conclusion of Law in this matter, Cause No. 16.0126, I concur with the Hearing  
13 Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of  
14 Law, and Order of the Hearing Officer as the Final Order in this matter.

15 IT IS SO ORDERED.

16 DATED this 18<sup>th</sup> day of December, 2017.

17  
18   
19 BARBARA D. RICHARDSON  
20 Commissioner of Insurance  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this date served the **FINDINGS OF FACT,**  
3 **CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER**  
4 **OF THE COMMISSIONER,** in **CAUSE NO. 17.0050,** via electronic mail and by mailing a  
5 true and correct copy thereof, properly addressed with postage prepaid, certified mail return  
6 receipt requested, to the following:

7 Kirk B. Lenhard, Esq.  
8 Brownstein Hyatt Farber Schreck, LLP  
9 100 North City Parkway, Suite 1600  
10 Las Vegas, NV 89106  
11 E-MAIL: [klenhard@bhfs.com](mailto:klenhard@bhfs.com)  
12 CERTIFIED MAIL NO. 7017 1070 0000 8962 9357

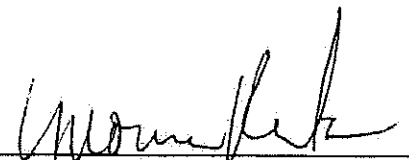
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14 Lori Grifa, Esq.  
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18 and copies of the foregoing were sent via electronic mail to:

19 Richard Yien, Deputy Attorney General  
20 Nevada Attorney General's Office  
21 E-MAIL: [ryien@ag.nv.gov](mailto:ryien@ag.nv.gov)

22 DATED this 18<sup>th</sup> day of December, 2017.

23   
24 Employee of the State of Nevada  
25 Department of Business and Industry  
26 Division of Insurance  
27  
28

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<p>1. Article Addressed to:</p> <p>KIRK B. LENHARD, ESQ.            BROWNSTEIN HYATT FARBER SCHRECK, LLP            100 NORTH CITY PARKWAY, SUITE 1600            LAS VEGAS, NV 89106</p>		<p>B. Received by (Printed Name) <u>Bidion Toxla</u> C. Date of Delivery</p>	
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# EXHIBIT 2

# EXHIBIT 2

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7 *Attorney for the Division of Insurance*

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8 IN THE FIRST JUDICIAL DISTRICT COURT OF  
9 THE STATE OF NEVADA IN AND FOR CARSON CITY

10 HOME WARRANTY ADMINISTRATOR OF  
11 NEVADA, INC., DBA CHOICE HOME  
WARRANTY, a Nevada Corporation

12 Petitioner,

13 vs.

14 STATE OF NEVADA, DEPARTMENT OF  
15 BUSINESS AND INDUSTRY-DIVISION OF  
INSURANCE, a Nevada administrative agency,

16 Respondent.

Case No. 17-OC-00269-1B

Dept. No. I

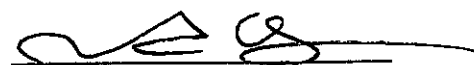
17 NOTICE OF ENTRY OF ORDER

18 Please take notice that the ORDER AFFIRMING IN PART, AND MODIFYING IN  
19 PART, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING  
20 OFFICER, AND FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN  
21 THE MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA  
22 CHOICE HOME WARRANTY was signed by Judge James T. Russell on November 25,  
23 2019, a conformed copy of which is attached hereto as Exhibit 1.

24 DATED November 26, 2019

25 AARON D. FORD  
Attorney General

26 By:



27 RICHARD PAILI YIEN  
Deputy Attorney General


28 *Attorney for the Division of Insurance*

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on November 26, 2019, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada a true and correct copy of the NOTICE OF ENTRY OF ORDER, addressed to the following:

Constance L. Akridge, Esq.  
Sydney R. Gambee, Esq.  
Brittany L. Walker, Esq.  
Holland & Hart, LLP  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, NV 89134

DATED November 26, 2019

  
Susan Messina, An Employee of the  
Office of the Attorney General

# EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES (Excluding tabs)
1	Order Affirming In Part, And Modifying In Part, Findings Of Fact, Conclusions Of Law, Order Of The Hearing Officer, And Final Order Of The Commissioner In Cause No. 17.0050 In The Matter Of Home Warranty Administrator Of Nevada, Inc Dba Choice Home Warranty	4



# EXHIBIT 1

# EXHIBIT 1

1 AARON D. FORD  
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2 JOANNA N. GRIGORIEV  
Senior Deputy Attorney General  
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555 E. Washington Ave. #3900  
4 Las Vegas, NV 89101  
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5 RICHARD PAULI YIEN  
Deputy Attorney General  
6 Nevada Bar No. 13035  
Office of the Attorney General  
7 100 N. Carson Street  
Carson City, NV 89701  
8 E-mail: ryien@ag.nv.gov  
*Attorneys for Respondent*  
9 *Nevada Division of Insurance*

REC'D & FILED

2019 NOV 25 AM 7:47

AUGREY ROWLATT  
CLERK

BY

DEPUTY

10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR CARSON CITY**

12 HOME WARRANTY ADMINISTRATOR OF  
NEVADA, INC. dba CHOICE HOME  
13 WARRANTY, a Nevada corporation,  
14 Petitioner,

Case No.: 17 OC 00269 1B

Dept. No.: 1

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF  
BUSINESS AND INDUSTRY, DIVISION  
17 OF INSURANCE, a Nevada administrative  
18 agency,

19 Respondents.

20 **ORDER AFFIRMING IN PART, AND MODIFYING IN PART, FINDINGS OF**  
21 **FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING OFFICER, AND**  
22 **FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN THE**  
23 **MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA**  
**CHOICE HOME WARRANTY**

24 This matter came on for hearing on November 7, 2019 on Home Warranty  
25 Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial  
26 Review of the Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final  
27 Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order  
28 17.0050"), filed by the Petitioner on December 22, 2017.

1       **A. Standard of Review**

2       The standard of review of an administrative decision is codified in NRS 233B.135. It  
3       provides in pertinent parts:

4       ...  
5       2. The final decision of the agency shall be deemed reasonable and  
6       lawful until reversed or set aside in whole or in part by the court. The  
7       burden of proof is on the party attacking or resisting the decision to show  
8       that the final decision is invalid pursuant to subsection 3.

9       3. The court shall not substitute its judgment for that of the agency  
10      as to the weight of evidence on a question of fact. The court may remand or  
11      affirm the final decision or set it aside in whole or in part if substantial  
12      rights of the petitioner have been prejudiced because the final decision of  
13      the agency is:

- 14      (a) In violation of constitutional or statutory provisions;
- 15      (b) In excess of the statutory authority of the agency;
- 16      (c) Made upon unlawful procedure;
- 17      (d) Affected by other error of law;
- 18      (e) Clearly erroneous in view of the reliable, probative and substantial  
19      evidence on the whole record; or
- 20      (f) Arbitrary or capricious or characterized by abuse of discretion.

21      4. As used in this section, "substantial evidence" means evidence  
22      which a reasonable mind might accept as adequate to support a conclusion.

23      *Id.*

24      When an administrative decision is challenged, the role of the reviewing court is "to  
25      review the evidence presented to the [hearing officer] and ascertain whether [the hearing  
26      officer] acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State,*  
27      *Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, at \*5, 431 P.3d 350, 353 (2018). "[F]actual  
28      findings will only be overturned if they are not supported by substantial evidence, which, we  
have explained, is evidence that a reasonable mind could accept as adequately supporting the  
agency's conclusions. *Nassiri v Chiropractic Physicians' Bd.*, 130 Nev.245, 248, 327 P.3d 487,  
489 (2014). (citations omitted). "We review issues pertaining to statutory construction de  
novo. We nonetheless defer to an agency's interpretation of its governing statutes or  
regulations if the interpretation is within the language of the statute." *Dutchess Bus. Servs.*  
*v. State. Bd. of Pharm.*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations  
omitted).

1 The Court, having considered the pleadings, record, and other documents in the  
2 matter, the law applicable to the issues and the arguments of counsel at the hearing, and  
3 being fully advised finds as follows:

4 **B. Findings of Fact and Conclusions of Law**

5 1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050  
6 are hereby AFFIRMED in part, and MODIFIED in part as follows:

7 a. The Hearing Officer's finding of six (6) violations by the Petitioner  
8 of NRS 686A.070 for making false entries of material fact in record or  
9 statement is supported by substantial evidence and is hereby  
10 AFFIRMED.

11 The total fine of \$30,000, at \$5,000 per violation, as allowed under NRS  
12 686A.183(1)(a), is AFFIRMED.

13 b. The Hearing Officer's finding of one violation by the Petitioner of  
14 NRS 690C.320(2) for failure to make its records available to the  
15 Commissioner upon request is supported by substantial evidence and is  
16 hereby AFFIRMED.

17 The fine of \$500, as authorized pursuant to NRS 690C.325(1) is  
18 AFFIRMED,

19 c. The Hearing Officer's finding of 23,889 instances of conducting  
20 business in an unsuitable manner, in violation of NRS 690C.325(1)(b) and  
21 NRS 679B.125(2), by allowing an unregistered entity to issue, sell and  
22 offer for sale service contracts in Nevada is hereby AFFIRMED. The Court  
23 finds that NRS 690C.150 requires anyone, including a service contract  
24 administrator, who wishes to issue, sell, or offer for sale service contracts  
25 in Nevada, to possess a certificate of registration under Chapter 690C of  
26 the NRS.

27 The fine of \$50 for each of the 23,889 violations, is AFFIRMED; however,  
28 the Court finds that the aggregate cap of \$10,000 for violations of a similar

1 nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES  
2 the fine of \$1,194,450 to be capped at \$10,000 total.

3 2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust Fund pending final  
4 decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation  
5 and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018.  
6 The Clerk of the Court will distribute the total fine of \$40,500 from Petitioner's interpleaded  
7 funds to the Respondent, and refund the remaining balance to Petitioner.

8 3. The Court finds that the doctrine of estoppel does not apply in this case. The Court  
9 finds in favor of the Respondent on this issue.

10 4. The Court finds that Petitioner was not denied due process. Petitioner had received  
11 sufficient notice and opportunity to prepare, and there was no unfair surprise. The Court  
12 finds in favor of the Respondent on this issue.

13 5. The Court further orders that contingent upon Petitioner's compliance with NRS  
14 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of  
15 Registration be reinstated. In particular, Petitioner is prohibited from using an  
16 administrator to perform the duties of selling, issuing, or offering for sale service contracts in  
17 Nevada, unless said administrator has been granted a certificate of registration pursuant to  
18 NRS 690C and consistent with this Order.

19 IT IS SO ORDERED

20 DATED this 25<sup>th</sup> day of November, 2019.

21  
22   
DISTRICT COURT JUDGE

23 Respectfully submitted by:

24 AARON D. FORD  
25 Attorney General

26 By:   
27 Richard P. Yien (Bar No. 13035)  
28 Deputy Attorney General  
Joanna N. Grigoriev (Bar No. 5649)  
Senior Deputy Attorney General


**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 25 day of November, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Joanna N. Grigoriev, Esq.  
Senior Deputy Attorney General  
555 E. Washington Ave.  
Las Vegas, NV 89101

Richard P. Yien, Esq.  
Deputy Attorney General  
100 N. Carson Street  
Carson City, NV 89701

Constance L. Akridge, Esq.  
Sydney R. Gambee, Esq.  
Brittany L. Walker, Esq.  
Holland & Hart, LLP  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, NV 89134

  
Chloe McClintick, Esq.  
Law Clerk, Dept. 1

# EXHIBIT 3

# EXHIBIT 3

REC'D & FILED

2019 DEC -6 PM 4:37

AUDREY ROSE, ATT

BY C. COOPER, CLERK

DEPUTY

1 Constance L. Akridge  
Nevada Bar No. 3353  
2 Sydney R. Gambee  
Nevada Bar No. 14201  
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8 *Attorneys for Home Warranty*  
9 *Administrator of Nevada, Inc.*  
10 *dba Choice Home Warranty*

11 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
12 **IN AND FOR CARSON CITY**

13 HOME WARRANTY ADMINISTRATOR OF  
14 NEVADA, INC. dba CHOICE HOME  
WARRANTY, a Nevada corporation,

15 Petitioner,

16 v.

17 STATE OF NEVADA, DEPARTMENT OF  
18 BUSINESS AND INDUSTRY-DIVISION OF  
INSURANCE, a Nevada administrative  
19 agency,

20 Respondent.

Case No. 17 OC 00269 1B  
Dept. No. I

**MOTION FOR STAY PENDING APPEAL  
PURSUANT TO NRCP 62(D)**

21 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty  
22 ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby  
23 moves this Court for a Stay pursuant NRCP 62(D) of the Order Affirming in Part, and Modifying  
24 in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of  
25 the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of  
26 Nevada, Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.<sup>1</sup> This

27 <sup>1</sup> The notice of entry was apparently served on November 26, 2019 and filed on November 27,  
28 2019.



1 Motion is made and based upon the following memorandum of points and authorities, the  
2 pleadings and papers on file herein, and any oral argument this Court may consider.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Factual and Procedural Background**

5 On November 25, 2019, the Court entered the Order, which ordered as follows:

6 1. The Findings of Fact and Conclusions of Law in the  
7 Administrative Order 17.0050 are hereby AFFIRMED in part, and  
8 MODIFIED in part as follows:

9 a. The Hearing Officer's finding of six (6) violations by the  
10 Petitioner of NRS 686A.070 for making false entries of  
11 material fact in record or statement is supported by  
12 substantial evidence and is hereby AFFIRMED.

13 The total fine of \$30,000, at \$5,000 per violation, as allowed  
14 under NRS 686A.183(1)(a), is AFFIRMED.

15 b. The Hearing Officer's finding of one violation by the  
16 Petitioner of NRS 690C.320(2) for failure to make its  
17 records available to the Commissioner upon request is  
18 supported by substantial evidence and is hereby  
19 AFFIRMED.

20 The fine of \$500, as authorized pursuant to NRS  
21 6900.825(1) is AFFIRMED,

22 c. The Hearing Officer's finding of 23,889 instances of  
23 conducting business in an unsuitable manner, in violation of  
24 NRS 690C.825(1)(b) and NRS 679B.125(2), by allowing an  
25 unregistered entity to issue, sell and offer for sale service  
26 contracts in Nevada is hereby AFFIRMED. The Court finds  
27 that NRS 6900.150 requires anyone, including a service  
28 contract administrator, who wishes to issue, sell, or offer for  
sale service contracts in Nevada, to possess a certificate of  
registration under Chapter 690C of the NRS.

The fine of \$50 for each of the 23,889 violations, is  
AFFIRMED; however, the Court finds that the aggregate  
cap of \$10,000 for violations of a similar nature, codified in  
NRS 690C.330, applies. The Court hereby MODIFIES the  
fine of \$1,194,450 to be capped at \$10,000 total.

2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust  
Fund pending final decision of this Court on Petitioner's Petition for  
Judicial Review pursuant to the Stipulation and Order for  
interpleading of Fines Pending Final Decision filed herein on March  
15, 2018. The Clerk of the Court will distribute the total fine of  
\$40,500 from Petitioner's interpleaded funds to the Respondent, and  
refund the remaining balance to Petitioner.

...

5. The Court further orders that contingent upon Petitioner's compliance with NRS 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of Registration be reinstated. In particular, Petitioner is prohibited from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order.

As noted in the Order, pursuant to the Stipulation and Order for Interpleading of Fines Pending Final Decision filed herein on March 15, 2018 ("Stipulation"), the parties agreed "to have the fines imposed by the Decision interpleaded into this Court Clerk's Trust Fund until a final decision is issued by this Court on Petitioner's Petition for Judicial Review." The Order directed the Clerk of the Court to "distribute the total fine of \$40,500 from Petitioner's interpleaded funds to the Respondent and refund the remaining balance to Petitioner." HWAN is informed that the Clerk of the Court complied with the Order and the Respondent has the \$40,500 from HWAN's interpleaded funds, which represents the amount HWAN was required to pay in fines to Respondent under the Order.

## II. Argument

### A. A Stay is Warranted Under NRCP 62(d)<sup>2</sup>

NRCP 62(d) governs stays pending appeal and provides:

#### (d) Stay Upon Appeal.

(1) By Supersedeas Bond. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.

(2) By Other Bond or Security. If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

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<sup>2</sup>See also NRAP 8(a)(1)(b) (requiring a party to move first in the district court for approval of a stay.)

NRCP 62(d) “allows an appellant to obtain a stay pending appeal *as of right* upon the posting of a supersedeas bond for the full judgment amount.” *Clark Cty. Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 134 Nev. 174, 175, 415 P.3d 16, 17 (2018) (citing *Pub. Serv. Comm’n* and acknowledging that a district court order granting a petition for judicial review is entitled to a stay as of right; however, a separate motion for stay must be filed); *see also Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 n.4 (2005), as modified (Jan. 25, 2006) (emphasis added) (overruling *Pub. Serv. Comm’n v. First Judicial Dist. Court*, 94 Nev. 42, 574 P.2d 272 (1978) to the extent it held that the stay is permissive). “However, a supersedeas bond should not be the judgment debtor’s sole remedy, particularly where other appropriate, reliable alternatives exist.” Under *Nelson*, a district court must consider five factors to determine whether a supersedeas bond may be waived and alternate security provided instead:

(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

*Id.* at 836, 122 P.3d at 1254.

Here, the Order directed the Clerk of the Court to “distribute the total fine of \$40,500 from Petitioner’s interpleaded funds to the Respondent and refund the remaining balance to Petitioner.” HWAN is informed that the Clerk of the Court complied with the Order and Respondent has the \$40,500 from HWAN’s interpleaded funds. Notwithstanding, HWAN seeks a stay of the entire Order, including all declaratory findings, conclusions, and orders. However, with the \$40,500 in monetary fines having already been released from HWAN’s interpleaded funds to Respondent, there is no need for a supersedeas bond or alternate security. The Division is in possession of the full amount of the judgment; thus, the *Nelson* factors for waiver of the supersedeas bond are satisfied:<sup>3</sup>

---

<sup>3</sup> Factor 5 is not applicable.

1 (1) there are no collection complexities because judgment amount is  
2 already collected, i.e., in the possession of Respondent,

3 (2) there is no need to obtain the judgment if it is affirmed on appeal  
4 because it is already in the possession of Respondent,

5 (3) the district court has full confidence that there are funds to pay  
6 the judgment as they are already in possession of Respondent and

7 (4) HWAN's ability to pay the judgment is so plain there is no need  
8 for the bond because the amount is already in the possession of  
9 Respondent.

10 Therefore, adequate security having already been provided "to protect the judgment  
11 creditor's[, here, Respondent's,] ability to collect the judgment if it is affirmed by preserving the  
12 status quo and preventing prejudice to the creditor arising from the stay," a supersedeas bond is  
13 not necessary. *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005), as modified (Jan.  
14 25, 2006). Accordingly, this Court should waive the supersedeas bond or, alternatively, require  
15 a nominal bond of \$100 to be posted, or another appropriate amount as determined by this Court.

16 Notably, HWAN is in no way waiving its entitlement "to obtain a stay pending appeal as  
17 of right" with the posting of a full supersedeas bond. *Nelson*, 121 Nev. at 834, 122 P.3d at 1253.  
18 However, HWAN's inability to post the full supersedeas bond was created by this Court's Order  
19 directing immediate release of the very funds that should have been used to post the bond  
20 (HWAN's interpleaded funds). Because Respondent already has the \$40,500 that would have  
21 been posted as supersedeas bond, any additional bond is entirely superfluous. Hence HWAN's  
22 request to post a nominal bond as security for the stay.

23 **B. A Stay of Declaratory Relief Is Warranted Even Without Need for a Stay of**  
24 **a Monetary Judgment**

25 NRCP 62(d) plainly applies to a stay of a district court order on a petition for judicial  
26 review, even where the district court order merely orders declaratory relief and does not order  
27 payment of a monetary judgment. *See Pub. Serv. Comm'n v. First Judicial Dist. Court*, 94 Nev.  
28 42, 574 P.2d 272 (1978), *abrogated on other grounds by Nelson*, 121 Nev. at 832, 122 P.3d at  
1252 (1978). In *Public Service Commission*, the Public Service Commission of Nevada appealed  
a district court's order granting petitioner Southwest Gas Corporation's petition for judicial

1 review of the Commission's administrative decision to deny a rate increase application from  
2 Southwest Gas Corporation. *Id.* at 43, 574 P.2d at 273. Thus, the district court required the  
3 Commission to approve the rate increase application, and no monetary judgment was imposed.  
4 *Id.* After the Commission filed its notice of appeal, the district court found the Commission in  
5 contempt for failure to approve the application and ordered it to grant the rate increase or be  
6 punished in contempt. *Id.* The Commission took the position that the district court's order was  
7 automatically stayed, arguing that its notice of appeal operated as an automatic stay under NRCP  
8 62(d) because the Commission, a government agency, was exempt from the bond requirement  
9 under NRCP 62(e). *Id.* at 43-44, 574 P.2d at 273. While the court ultimately held that the agency  
10 was entitled to a stay without bond but was nonetheless required to file a separate and distinct  
11 application for a stay, in so doing, the court implicitly recognized that a stay is available under  
12 NRCP 62(d) of a district court's order on a petition for judicial review, even where the district  
13 court's order concerned only declaratory relief, i.e., directing the party to approve an application,  
14 rather than ordering payment of a monetary judgment. *Id.* at 42, 574 P.2d at 272. Moreover,  
15 federal case law has consistently recognized that supersedeas bonds are not limited to money  
16 judgments, and are available mechanisms to stay non-monetary judgments. *See J. Perez & Cia.,*  
17 *Inc. v. United States*, 578 F. Supp. 1318 (D.P.R.), *aff'd*, 747 F.2d 813 (1st Cir. 1984) (noting that  
18 "a supersedeas bond is not confined to money judgments from which a writ of execution can issue  
19 but is also employed to stay a nonmoney judgment on appeal."); *Hebert v. Exxon Corp.*, 953 F.2d  
20 936 (5th Cir. 1992) (holding that under FRCP 62(d) "[d]efendant was entitled to automatic stay  
21 upon posting of supersedeas bond, even though underlying action was for declaratory judgment,  
22 where such judgment bound defendant to pay specific sum of money."); *see also Nelson*, 121  
23 Nev. at 834, 122 P.3d at 1253 (looking to federal decisions involving FRCP 62(d) to provide  
24 persuasive authority to examine NRCP 62(d)).

25 Here, now that Respondent is already in possession of its monetary judgment affirmed by  
26 the district court's order (\$40,500), HWAN desires a stay on the remaining declaratory relief in  
27 the district court's order, including the finding that "NRS 690C.150 requires anyone, including a  
28 service contract administrator, who wishes to issue, sell, or offer for sale service contracts in

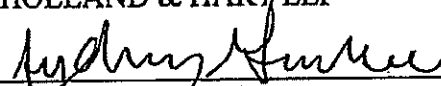
1 Nevada, to possess a certificate of registration under Chapter 690C of the NRS” and the finding  
2 that HWAN “is prohibited from using an administrator to perform the duties of selling, issuing,  
3 or offering for sale service contracts in Nevada, unless said administrator has been granted a  
4 certificate of registration pursuant to NRS 690C.” Because Respondent already has the full  
5 \$40,500 monetary judgment, and because the stay would simply retain the status quo, that is,  
6 allowing HWAN to continue doing business in the state and utilize its administrator and third-  
7 party sales agent to sell service contracts on its behalf, this Court should waive the full amount of  
8 a supersedeas bond or require a nominal bond of \$100 to be posted (or other appropriate amount  
9 as determined by the Court).<sup>4</sup>

10 **III. Conclusion**

11 On December 6, 2019, HWAN filed its Notice of Appeal attached hereto as **Exhibit 1**.  
12 Accordingly, HWAN respectfully requests this Court grant this Motion and issue a stay of the  
13 Order effective immediately or upon HWAN posting a nominal bond in the amount of \$100 (or  
14 other appropriate amount as determined by the Court). The proposed order is attached as **Exhibit**  
15 **2**.

16 DATED this 6th day of December, 2019.

HOLLAND & HART LLP



Constance L. Akridge

Nevada Bar No. 3353

Sydney R. Gambee

Nevada Bar No. 14201

Brittany L. Walker

Nevada Bar No. 14641

9555 HILLWOOD DRIVE, 2ND FLOOR

LAS VEGAS, NV 89134

*Attorneys for Home Warranty*

*Administrator of Nevada, Inc.*

*dba Choice Home Warranty*

25 <sup>4</sup> Further, the public and Respondent are adequately protected by HWAN’s compliance with the  
26 financial security requirements in NRS 690C.170. HWAN provides financial security each year  
27 for the full amount under NRS 690C.170 based on the service contracts sold by its third-party  
28 sales agent on behalf of HWAN, under which HWAN is the sole obligor. Indeed, \$780,131.00  
has been submitted to the Division (or to the Court) as security, and \$3,258,131.07 is being held  
in HWAN’s segregated reserve account. Thus, there is \$4,038,262.07 being held as financial  
security.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of December, 2019, a true and correct copy of the foregoing **MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** was served by the following method(s):

- ☒ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien  
Deputy Attorney General  
STATE OF NEVADA  
Office of Attorney General  
100 N. Carson St.  
Carson City, Nevada 89701  
[ryien@ag.nv.gov](mailto:ryien@ag.nv.gov)

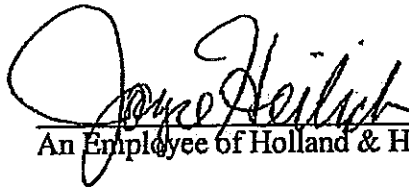
Joanna Grigoriev  
Senior Deputy Attorney General  
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Office of Attorney General  
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*Attorneys for State of Nevada, Department  
Of Business and Industry – Division of  
Insurance*

*Attorneys for State of Nevada, Department  
Of Business and Industry – Division of  
Insurance*

- ☒ **Email:** by electronically delivering a copy via email to the following e-mail address:

[jgrigoriev@ag.nv.gov](mailto:jgrigoriev@ag.nv.gov)  
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An Employee of Holland & Hart LLP

**EXHIBIT 4**

**EXHIBIT 4**



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2 JOANNA N. GRIGORIEV  
Senior Deputy Attorney General  
3 Nevada Bar No. 5649  
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*Nevada Division of Insurance*  
8

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AUDREY ROWLATT  
CLERK

BY C. COOPER  
DEPUTY

9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR CARSON CITY**

11 HOME WARRANTY ADMINISTRATOR  
12 OF NEVADA, INC. dba CHOICE HOME  
WARRANTY, a Nevada corporation,

13  
14 Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF  
17 BUSINESS AND INDUSTRY, DIVISION  
OF INSURANCE, a Nevada  
18 administrative agency,

19 Respondents.  
20

CASE No.: 17 OC 00269 1B

DEPT No.: 1

21 **DIVISION'S OPPOSITION TO PETITIONER'S MOTION FOR STAY**

22 Respondent, State of Nevada, Department of Business and Industry, Division of  
23 Insurance ("Division"), through its counsel, Nevada Attorney General, AARON D. FORD,  
24 and his Deputy Attorney General, RICHARD P. YIEN and Senior Deputy Attorney  
25 General, JOANNA N. GRIGORIEV, hereby files this opposition ("Opposition") to Petitioner  
26 Home Warranty Administrator of Nevada Inc.'s ("HWAN") Motion for Stay Pending Appeal  
27 Pursuant to NRCP 62(d) ("Motion for Stay"), filed with this Court on December 6, 2019.  
28

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. FACTS/ PROCEDURAL HISTORY

HWAN's Motion for Stay seeks to stay this Court's order ("PJR Order") issued on November 25, 2019<sup>1</sup>, affirming in part, and modifying in part the Findings of Fact, Conclusions of Law, and Final Order of the Commissioner ("Administrative Order") in Cause No. 17.0050, issued on December 18, 2017, which found HWAN in violation of numerous provisions of the Insurance Code. On December 13, 2019, Petitioner filed Notice of Appeal of the PJR Order with the Nevada Supreme Court<sup>2</sup>.

On December 6, 2019, HWAN filed its Motion for Stay, demanding that it would be addressed on Order Shortening Time ("OST"). HWAN insisted in its Motion for OST, that "stay is one of right, so the legal issues are not complex . . . ." (HWAN's Reply in Supp. Mot. for OST, 2:23-24).<sup>3</sup> This case illustrates why such a demand for a shortened time for the Division to file its opposition and for the Court to consider HWAN's motion, was fundamentally unfair. Upon a closer look, it turns out, that the law does not support HWAN's arguments, and the cases relied upon by HWAN hold the opposite of what it asserts that they stand for. HWAN fails to present any valid legal basis for granting a stay.

## II. ARGUMENT

### A. PETITIONER'S MOTION FAILS TO IDENTIFY ANY VALID BASIS FOR GRANTING A STAY

#### a. No Stay is Warranted Under NRCP 62(d)

HWAN's Motion for Stay, relying solely on NRCP 62(d), seeks to stay "the remaining declaratory relief in district court's order . . ." <sup>4</sup> (HWAN's Mot. 6:26-27) HWAN claims that

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<sup>1</sup> Notice of Entry of Order was served on HWAN on November 27, 2019.

<sup>2</sup> The notice was filed on December 6, 2019 with the First Judicial District Court.

<sup>3</sup> The Court denied HWAN's Motion for OST December 12, 2019.

<sup>4</sup> The \$40,500 (total fine) has been released from the interpleaded funds.

1 NRCP 62(d) provides legal basis for a stay “as a matter of right” and of the entire Order.  
2 (See HWAN’s Mot. 4:21-22). HWAN’s arguments have no merit.

3 NRCP 62(d) provides:

4  
5       ...  
6       (1) If an appeal is taken, the appellant may obtain a stay by supersedeas  
7       bond, except in an action described in Rule 62(a)(2). The bond may be given  
8       upon or after filing the notice of appeal or after obtaining the order allowing  
9       the appeal. The stay is effective when the supersedeas bond is filed.

10       (2) If an appeal is taken, a party is entitled to a stay by providing a bond  
11       or other security. Unless the court orders otherwise, the stay takes effect  
12       when the court approves the bond or other security and remains in effect  
13       for the time specified in the bond or other security.

14       The Nevada Supreme Court and the Ninth Circuit, among others, have applied Rule  
15       62(d) to orders and judgments that are monetary in nature. When an appeal is taken from  
16       an order or judgment that is not monetary in nature, the stay relief of Rule 62(d) is  
17       unavailable. In *N.L.R.B v. Westphal*, 859 F.2d 818, 819 (9<sup>th</sup> Cir. 1988), the Ninth Circuit  
18       Court of Appeals held that an employer appealing an order directing compliance with  
19       NLRB subpoenas was not entitled to a stay of the order upon filing a supersedeas bond, as  
20       “[t]he posting of a bond protects the prevailing plaintiff from the risk of a later uncollectible  
21       judgment and compensates him for delay in the entry of the final judgment. When applied  
22       to a subpoena compliance order, this protection is largely meaningless.” *Id.*<sup>5</sup> See also  
23       *Donovan v. Fall River Foundry Co.*, 696 F.2d 524, 526 (7<sup>th</sup> Cir. 1982) (stating that Rule  
24       62(d) procedure “*makes little sense as applied to an order to do, rather than order*  
25       *to pay*” (emphasis added)). The Ninth Circuit court in *Westphal* found the Seventh Circuit’s  
26       reasoning in *Donovan* to be most persuasive. *Westphal*, 859 F.2d at 819. The Fifth Circuit  
27       court in *Hebert v. Exxon, Corp.*, 953 F.2d 936, 938 (5<sup>th</sup> Cir.1992), in turn, relied on  
28       *Westphal*, explaining that “[c]ourts have restricted the application of Rule 62(d)’s stay to  
      *judgments for money* because a bond may not adequately compensate a non-appealing

---

27       <sup>5</sup> “[F]ederal decisions involving the Federal Rules of Civil Procedure provide  
28       persuasive authority when this court examines its rules.” *Nelson v. Heer*, 121 Nev. 832,  
      834, 122 P.3d 1252, 1253 (2005) (citations omitted).

1 party for loss incurred as a result of the stay of a non money judgment.” *Id.* (emphasis  
2 added). It concluded that in determining whether Rule 62(d) applies, the court should  
3 examine the nature of the relief ordered, not simply the form of judgment. “The  
4 applicability of Rule 62(d) turns not on that distinction [between declaratory and money  
5 judgment], but on whether the judgment involved is *monetary or nonmonetary*.” *Hebert*,  
6 953 F.2d at 938 (emphasis added).<sup>6</sup>

7 Nevada has applied NRCP 62(d) to stays of money judgments.<sup>7</sup> See *Clark County*  
8 *Office of Coroner/ Medical Examiner v. Las Vegas Review Journal*, 134 Nev. Adv. Op. 24,  
9 415 P.3d 16 (2018) (“[u]pon motion, as a secured party, the state or local government is  
10 generally entitled to a stay of a *money judgment* under NRCP 62(d) without posting a  
11 supersedeas bond or other security.” *Id.* (emphasis added). See also *Nelson v. Heer*, 121  
12 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) which held that the court has discretion to stay  
13 execution of a *money judgment* even in the absence of a bond. (“The purpose of security  
14 for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment  
15 if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising  
16 from the stay”). No stay of the PJR Order is warranted under NRCP 62(d) to the remaining  
17 declaratory relief in the PJR Order in the present case. HWAN has utterly failed to provide  
18 any other arguments as to why it may be entitled to a stay and its Motion for Stay should  
19 be denied.

20  
21  
22  
23 <sup>6</sup> HWAN's reference to *Hebert* as an example of a federal case holding that supersede  
24 as bonds are “also employed to stay non-monetary judgments” is at best misleading. (See  
HWAN's Mot. 6:14-16; 19-22).

25 <sup>7</sup> HWAN's reliance on *State ex rel. Public Serv. Comm'n v. First Judicial Dist. Court,*  
26 *in and for Carson City*, 94 Nev. 42, 574 P.2d 272 (1978), *abrogated by Nelson*, to suggest  
27 that NRCP 62(d) may be applied “where the district court's order concerned only  
28 declaratory relief . . . ” (HWAN's Mot. 6:9-14) is misguided, as the appeal by the Public  
Service Commission of Nevada was from the district court's order directing it to grant the  
application *for surcharge in the amount of \$109,188.00*, thus a monetary relief.

1                   b.     **No Stay is Warranted Under NRAP 8(c)**

2           As NRAP 8 requires a party to seek a stay in the district court before seeking a stay  
3 in the Supreme Court, the standard in NRAP 8(c) has been used by the district courts  
4 generally to determine whether to issue a stay pending appeal. *See Fritz Hansen A/S v.*  
5 *Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Under the general standard  
6 in NRAP 8(c), which HWAN failed to mention or address, HWAN is also not entitled to a  
7 stay. Had HWAN attempted an analysis, it would have become clear that all of the factors  
8 weigh heavily in favor of the Division.

9           The factors listed in NRAP 8(c) are: (1) whether the object of the appeal will be  
10 defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer  
11 irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real  
12 party in interest will suffer irreparable or serious injury if the stay or injunction is granted;  
13 and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ  
14 petition.<sup>8</sup>

15           1.     **The Object of HWAN's Appeal Will Not be Defeated.**

16           The true object of HWAN's appeal is to convince the Nevada Supreme Court that  
17 Nevada law permits it to continue to operate in Nevada by using Choice Home Warranty  
18 ("CHW"), an unlicensed entity performing the functions of a provider, for which Nevada  
19 law requires a certificate of registration ("COR"). HWAN is appealing the interpretation of  
20 the provisions of chapter 690C of the NRS by the administrative Hearing Officer upheld by  
21 this Court. Nothing can happen throughout the process of appeal that would render the  
22 issue of interpretation of the provisions of chapter 690C of the NRS moot. As such, the  
23 object of appeal will not be defeated, i.e. rendered moot, if a stay is not granted. *See Mikohn,*  
24 *120 Nev. at 253, 89 P.3d at 39.* The availability of appeal after final judgment is considered

25  
26  
27           <sup>8</sup> In applying these four factors, the Nevada Supreme Court stated that "[w]e have  
28 not indicated that any one factor carries more weight than the others, although . . . if one  
or two factors are especially strong they may counterbalance other weak factors" *Mikohn*  
*Gaming Corp. v. McCrear*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

an adequate and speedy remedy. *See Renown Reg'l. Med. V. Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014).

**2. HWAN Will Not Suffer Irreparable or Serious Injury if the Stay is Denied.**

The PJR Order did not preclude HWAN from operating as a provider in Nevada. To the contrary, it held that HWAN's COR "be reinstated," upon HWAN's compliance with chapter 690C requirements. "Irreparable harm" is harm for which compensatory damages would be inadequate. *See Hansen*, 116 Nev. 650, 658, 6 P.3d 982, 987. In *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674, (D.C.Cir.1985), one of the cases *Hansen* relies on, the court explained that,

The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that *adequate compensatory or other corrective relief will be available at a later date*, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.

*Id.* (emphasis added), quoting *Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 104 U.S. App. D.C. 106, 259 F.2d 921, 925 (D.C.Cir.1958). In the present case, HWAN's potential inconvenience of having to forego the use of the unlicensed entity pending appeal certainly does not constitute irreparable harm that would satisfy this requirement under NRAP 8(c).

**3. The Division Will Suffer Irreparable or Serious Injury if the Stay or Injunction is Granted**

As the Court is aware through the PJR record, HWAN's administrator, CHW, has been the subject of regulatory actions against in California, Washington, Oklahoma, and New Jersey. On October 1, 2019 the Office of the Attorney General in Arizona filed a consumer fraud lawsuit against CHW. Additionally, since the administrative hearing<sup>9</sup> in Nevada in 2017, fifty six (56) additional consumer complaints have been filed with the Nevada Division of Insurance against HWAN.

---

<sup>9</sup> March 8, 2017--December 12, 2019 timeframe.

1 In view of the finding in the Administrative Order that "since receiving its COR,  
2 HWAN has been merely a figurehead . . ." (Administrative Order 25:15-17), with CHW, the  
3 unlicensed and unregulated entity performing all functions for which the Nevada  
4 legislature requires regulatory oversight and a valid COR, the one-person show that makes  
5 up HWAN, presents an inherent danger of harm to the public. Notably, in Nevada,  
6 irreparable injury is presumed in statutory enforcement actions. *See State of Nevada ex.*  
7 *Rel. Office of the Attorney General, Bureau of Consumer Protection v. NOS*  
8 *Communications, Inc.*, 120 Nev. 65, 68, 84 P.3d 1052, 1054 (2004).

9 **4. HWAN is Highly Unlikely to Prevail on the Merits in the Appeal**

10 NRS 690C.150 mandates that a COR is required to "issue, sell, or offer for sale service  
11 contract." NRS 690C.020 and 690C.150, read in harmony, establish that the function of an  
12 administrator, is to administer contracts that are sold by a licensed provider. HWAN's  
13 interpretation would lead to absurd results of allowing entities to perform the functions for  
14 which registration and thus regulatory oversight is required by law, and avoiding  
15 registration and regulation by simply affixing a label of an "administrator," "sales agent,"  
16 or anything other than "provider." It would render NRS 690C.150 nugatory, and the tenets of  
17 statutory construction do not permit that. *Charlie Brown Constr. Co. v. Boulder City*, 106  
18 Nev. 497, 502, 797 P.2d 946, 949 (1990) (overruled on other grounds).

19 The Nevada Supreme Court has recognized the authority and specialized skill and  
20 knowledge of regulatory agencies and, the agencies' authority to interpret the language of a  
21 statute that they are charged with administering. *See Int 1 Technology Inc. v. Second*  
22 *Judicial District Court*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006) ("as long as th[e]  
23 interpretation is reasonably consistent with the language of the statute, it is entitled to  
24 deference in the courts."). *See also Pyramid Lake Lake Paiute Tribe of Indians v. Washoe*  
25 *County*, 112 Nev. 743, 747, 918 P2d 697, 700 (1996), 112 Nev. 743 747, 918 P2d 697, 700  
26 (citations omitted), *Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy*, 124 Nev.  
27 701, 709, 191 P3d 1159, 1165 (2008) (citations omitted). HWAN is highly unlikely to convince  
28

1 the Nevada Supreme Court that its tortured and self-serving interpretation of chapter 690C of  
2 the NRS is correct.

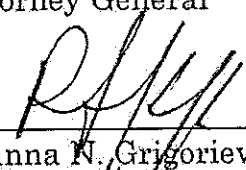
3 HWAN's Motion for Stay is completely devoid of any valid substantive basis that would  
4 support granting a stay. When considering the factors under NRAP 8(c), which HWAN failed  
5 to do, all weigh clearly against a stay and in favor of the Division.

6 CONCLUSION

7 For the reasons set forth above, the Division respectfully requests that HWAN's  
8 Motion for Stay be denied.

9 DATED: December 19, 2019.

10 AARON D. FORD  
11 Attorney General

12 By:  Bar No. 12237  
13 for Joanna N. Grigoriev (Bar. No. 5649)  
14 Senior Deputy Attorney General  
15 Richard P. Yien (Bar No. 13035)  
16 Deputy Attorney General  
17  
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19  
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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

DATED: December 19, 2019.

AARON D. FORD  
Attorney General

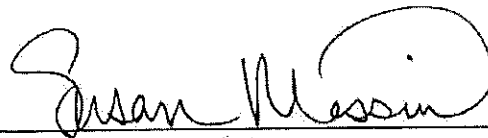
By: R. P. Yien Bar No. 12237  
for Joanna N. Grigoriev (Bar. No. 5649)  
Senior Deputy Attorney General  
Richard P. Yien (Bar No. 13035)  
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 19th day of December, 2019 I served the foregoing **DIVISION'S OPPOSITION TO PETITIONER'S MOTION FOR STAY** by depositing for mail in the United States Mail, first-class postage prepaid, at Carson City, Nevada, addressed to the Following:

Constance Akridge, Esq.  
Holland & Hart, LLP  
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Sydney R. Gambee  
Holland & Hart, LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas NV 89134-0532



An employee of the  
Office of the Nevada Attorney General

# EXHIBIT 5

# EXHIBIT 5

## Joanna N. Grigoriev

---

**From:** Connie Akridge <CLAkridge@hollandhart.com>  
**Sent:** Friday, December 20, 2019 3:57 PM  
**To:** Joanna N. Grigoriev  
**Cc:** Sydney R. Gambee; Richard P. Yien  
**Subject:** RE: HWAN

Hi Joanna,

We cannot accept your offer because it does not fully remedy the irreparable harm issue.

Thanks!

Connie

---

Constance L. Akridge  
Partner  
9555 Hillwood Drive Las Vegas, NV 89134  
T 702.222.2543 M 702.785.3402



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---

**From:** Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>  
**Sent:** Wednesday, December 18, 2019 1:05 PM  
**To:** Connie Akridge <CLAkridge@hollandhart.com>  
**Cc:** Sydney R. Gambee <SRGambee@hollandhart.com>; Richard P. Yien <RYien@ag.nv.gov>  
**Subject:** HWAN

Hello Connie and Sydney,

We have reviewed your Emergency Motion Under NRAP 27(e). You appear to be concerned that without the OST from the district court, the automatic 30-day stay will expire on December 26, 2019, before the district court had been fully briefed and before it had a chance to rule on your Motion for Stay. The Division is willing to stipulate that it will not seek to enforce the order prior to the district court's ruling on your Motion for Stay, even if the December 26, 2019 expiration date had passed. If you agree, then we would suggest that you withdraw your Emergency Motion.

Let us know.

Thanks.

Joanna N. Grigoriev  
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