

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

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

Appellant,

vs.

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

Respondent.

**Supreme Court No. 80218**

First Judicial District Court  
Case No. 17 OC 00269 1B

Electronically Filed  
Jan 03 2020 05:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

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

**WARNING**

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

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

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

Revised December 2015

Docket 80218 Document 2020-00453

1. Judicial District First Department 1

County Carson Judge James Russell  
District Ct. Case No. 17 OC 00269 1B

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

Attorney Constance Akridge; Sydney Gambia; Brittany Walker Telephone (702) 669-4600

Firm HOLLAND & HART LLP

Address 9555 Hillwood Drive, 2nd Floor, Las Vegas, NV 89134

Client(s) Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty

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

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

Attorney Richard Yien; Joanna Grigoriev Telephone (775) 684-1129

Firm State of Nevada, Office of Attorney General

Address 100 N. Carson St., Carson City, NV 89701

Client(s) State of Nevada, Department of Business and Industry – Division of Insurance

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

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

(List additional counsel on separate sheet if necessary)

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

☐ Judgment after bench trial

☐ Judgment after jury verdict

☐ Summary judgment

☐ Default judgment

☐ Grant/Denial of NRCP 60(b) relief

☐ Grant/Denial of injunction

☐ Grant/Denial of declaratory relief

☒ Review of agency determination

☐ Dismissal:

☐ Lack of jurisdiction

☐ Failure to state a claim

☐ Failure to Prosecute

☐ Other (specify): \_\_\_\_\_

☐ Divorce Decree

☐ Original ☐ Modification

☐ Other disposition (specify): \_\_\_\_\_

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

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

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

None.

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

First Judicial District, Case No. 19 OC 00015 1B: This case is a second petition for judicial review on an agency decision subsequent to the one underlying this appeal, between the same parties. The second petition for judicial review involves some of the same legal issues as will be decided in this appeal, as the agency decision in the second petition for judicial review depends in part on legal issues decided in the agency decision underlying this appeal. Briefing is completed on the second petition for judicial review, but no hearing date has yet been set and no decision has been issued.

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

This is an appeal of a district court final order on a petition for judicial review under NRS 233B.130 of a final decision of the State of Nevada, Department of Business and Industry – Division of Insurance (“Division”). The underlying agency decision imposes fines on Home Warranty Administrator of Nevada Inc. dba Choice Home Warranty (“HWAN”) for alleged violations of NRS Chapter 690C, but the Division has misinterpreted the key statutes at issue. The Division contends that NRS 690C.150 requires anyone who “sells” service contracts, even sales agents who merely act as sales agents on behalf of registered service contract providers, to be registered with the Division as service contract providers. This is incorrect, as NRS 690C.150 plainly only requires *providers* (service contract obligors) to hold a certificate of registration.

The underlying decision also deems HWAN’s certificate of registration to have expired as a matter of law under NRS 690C.160(3), even though HWAN submitted the required renewal and completed all statutory requirements to effectuate the renewal of its certificate of registration. This, too, is incorrect. The statutory scheme does not allow the Division to simply fail to process a renewal application and deem a certificate of registration expired on its annual renewal date, without even providing notice and a hearing of the same to the certificate holder.

Finally, the underlying decision was issued without providing HWAN statutorily mandated due process of law: the issues ultimately adjudicated against HWAN were not noticed in the charging documents (the agency complaint), so HWAN was not provided adequate opportunity to develop the record and defend itself prior to the entry of the agency decision. Indeed, grounds never before raised in the underlying complaint or at the administrative hearing formed the basis for significant fines imposed on HWAN and for deeming HWAN’s certificate of registration expired as a matter of law.

The underlying administrative agency decision imposed fines against HWAN for

1. conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada (\$1,194,450 in fines for 22,889 violations at \$50 each under NRS 690C.325(1))
2. making false entries of material fact in a record or statement in violation of NRS 686A.070 (\$30,000 in fines for 6 violations at \$5,000 each under NRS 686A.183(1)(a))
3. for failing to make its records available to the Commissioner upon request (\$500 in fines for 1 violation under NRS 690C.325(1), in lieu of revocation)

The underlying administrative agency decision also deemed HWAN’s certificate of registration expired as a matter of law, but allowed HWAN to submit a renewal application within 30 days of the order.<sup>1</sup> The administrative agency decision did not include any cease and desist as requested by the Division.

The district court affirmed all of the fines, but imposed the statutory cap in NRS 690C.330 of \$10,000 for violations of a similar nature to the \$1,194,450 fines for conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada. The district court further went beyond the scope of the administrative agency decision, finding that HWAN 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.” The administrative agency decision did not issue any cease and desist against HWAN. Rather the decision imposed fines for allegedly “conducting business in an unsuitable manner.”

---

<sup>1</sup> HWAN did submit a renewal application in accordance with the agency decision, which denial of that renewal application is the subject of the second petition for judicial review noted herein in number 7 “Pending and prior proceedings in other courts”.

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

1. Whether NRS Chapter 690C, and specifically NRS 690C.150, requires anyone other than a “provider” of service contracts, as that term is defined in NRS 690C.070, to have a service contract provider certificate of registration.

2. Whether a registrant complying with NRS 690C.160(3) (submitting the required application, paying the required fees, and providing the required information) is entitled to automatically receive a renewed certificate of registration, except where the Division takes action to refuse to renew the certificate in accordance with NRS 690C.325.

3. Whether, HWAN was denied due process of law as required by NRS 690C.325, NRS 233B.127, and the Nevada Constitution when the Division imposed fines and deemed HWAN’s certificate of registration expired on grounds not noticed in the complaint and failed to provide a hearing prior to refusing to renew the certificate of registration.

4. Whether the district court erred in going beyond the scope of the administrative decision to conclude that HWAN 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,” where the underlying administrative decision only fined HWAN for allegedly “conducting business in an unsuitable manner” and did not include a cease and desist against HWAN.

5. Whether the doctrine of equitable estoppel precludes the Division’s imposition of fines here.

6. Whether the exclusion of certain evidence showing that the Division knew HWAN and its administrator CHW Group, Inc. were two separate entities was proper.

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

None.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: This appeal involves due process issues arising under the Nevada Constitution regarding “automatic expiration” of a license duly renewed, a substantial issue of first impression regarding the interpretation of registration requirements in NRS Chapter 690C relating to the Nevada service contract industry, and an issue of public policy regarding the extent of the Division of Insurance’s authority to regulate an industry beyond that expressly granted in statute, which extra-statutory exercise of authority will significantly impact Nevada consumers.

First, the Division of Insurance and the district court deemed HWAN’s certificate of registration automatically expired upon its annual renewal date, even though HWAN submitted the required renewal application and fees under NRS 690C.160 prior to the renewal date. No notice or hearing were provided prior to the Division’s refusal to renew HWAN’s certificate. Where a regulatory scheme does not provide any discretion for refusal to grant a license, such as NRS 690C.160, a constitutionally protected property right attaches. *See, e.g., Thornton v. City of St. Helens*, 425 F.3d 1158, 164-65 (9th Cir. 2005); *see also Fuentes v. Shevin*, 407 U.S. 67, 81-82 (1972) (requiring notice and a hearing *prior* to deprivation of a protected property right). Without notice and a hearing prior to the refusal to renew its certificate, HWAN’s constitutional rights to due process were violated.

Second, the Division of Insurance and the district court decided that NRS 690C.150 requires *anyone* who sells, issues, or offers for sale a service contract to hold a certificate of registration. But NRS 690C.150 expressly applies to only *providers* as that term is defined in NRS 690C.070. Currently, Nevada service contract providers, including HWAN, use sales agents to sell service contracts on their behalf, and these sales agents are not registered as service contract providers. The Division (and the district court) now requires HWAN to use only persons/entities who are registered as providers to sell its contracts, but the same is not being applied to the rest of the Nevada service contract industry. If it did, it would represent a major shift in the industry and departure from decades of established pattern and practice in using sales agents to sell contracts.

Third, for the same reasons, this appeal involves an issue of public policy. The Division cannot add registration requirements not imposed or authorized by the Legislature. Moreover, requiring service contract providers to only use other persons/entities who are registered as providers to sell service contracts will impact consumers in that service contracts will not be as widely available. The industry will have to adapt to catch up with the Division’s new, unsubstantiated interpretation, which will take significant time for such a substantial shift.

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

While ordinarily a matter such as this would be presumptively assigned to the Nevada Court of Appeals under NRAP 17(b)(9) (administrative agency cases except those involving tax, water, or public utilities commission determinations), this case involves matters raising as a principal issue a question of statewide public importance, which is retained by the Supreme Court under NRAP 17(a)(12).

This appeal concerns statutory interpretation of NRS Chapter 690C’s registration requirements, which affect the entire Nevada service contract industry. Namely, does NRS Chapter 690C require anyone other than a provider of service contracts to register with the Division of Insurance as a service contract provider in order to sell service contracts on behalf of a registered provider of service contracts. In other words, are sales agents required to be registered under NRS Chapter 690C as providers of service contracts even though they are not obligors under any service contracts? The answer to this question will have far-reaching consequences for the entire Nevada service contract industry, as many Nevada service contract providers use sales agents who are not registered as service contract providers under NRS Chapter 690C to sell their service contracts on their behalf.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

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

No.

### **TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from** November 25, 2019

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

**17. Date written notice of entry of judgment or order was served** November 26, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing \_\_\_\_\_

☐ NRCP 52(b) Date of filing \_\_\_\_\_

☐ NRCP 59 Date of filing \_\_\_\_\_

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

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** December 13, 2019

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

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

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

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

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☒ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

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

The appealed order is a final judgment of the district court on a petition for judicial review, entitled to appeal under NRS 233B.150.

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

(a) Parties:

Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty

State of Nevada, Department of Business and Industry – Division of Insurance

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

N/A

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

Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty – judicial review of agency decision (underlying agency decision filed December 18, 2017; district court order on petition for judicial review filed November 25, 2019)

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:



(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

N/A

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

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

## VERIFICATION

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

Home Warranty Administrator of Nevada,  
Inc. dba Choice Home Warranty  
Name of appellant

Sydney Gambée  
Name of counsel of record

January 3, 2020  
Date

/s/ Sydney Gambée  
Signature of counsel of record

Nevada, Clark County  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 3rd day of January 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):  
(NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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

Joanna Grigoriev  
Senior Deputy Attorney General  
STATE OF NEVADA  
Office of Attorney General  
555 E. Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101  
[jgrigoriev@ag.nv.gov](mailto:jgrigoriev@ag.nv.gov)  
*Attorneys for State of Nevada, Department  
Of Business and Industry – Division of  
Insurance*

DATED this 3rd day of January, 2020.

/s/ Joyce Heilich  
Signature



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

IN THE MATTER OF ) CAUSE NO. 17.0050  
)  
HOME WARRANTY ADMINISTRATOR ) COMPLAINT AND APPLICATION  
OF NEVADA, INC. dba CHOICE HOME ) FOR ORDER TO SHOW CAUSE  
WARRANTY )  
)  
Respondent. )

The State of Nevada, Department of Business and Industry, Division of Insurance  
("Division"), sends greetings to:

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

YOU ARE HEREBY NOTIFIED of the conduct, conditions, or acts which are deemed  
by the Commissioner of Insurance ("Commissioner") to be in violation of the following  
provision of Nevada Revised Statutes ("NRS"): NRS 686A.070—falsifying material fact in any  
book, report, or statement; NRS 690C.325(1)(b)—conducting business in an unsuitable manner;  
and NRS 686A.310—engaging in unfair practices in settling claims.<sup>1</sup> The Commissioner may  
refuse to renew or may suspend a provider's certificate of registration pursuant to  
NRS 690C.325.

**<sup>1</sup> NRS 690C.120 Applicability of other provisions.**

1. Except as otherwise provided in this chapter, the marketing, issuance, sale, offering  
for sale, making, proposing to make and administration of service contracts are not subject to  
the provisions of title 57 of NRS, except, when applicable, the provisions of:

- (a) NRS 679B.020 to 679B.152, inclusive;
- (b) NRS 679B.159 to 679B.300, inclusive;
- (c) NRS 679B.310 to 679B.370, inclusive;
- (d) NRS 679B.600 to 679B.690, inclusive;
- (e) NRS 685B.090 to 685B.190, inclusive;
- (f) NRS 686A.010 to 686A.095, inclusive;
- (g) NRS 686A.160 to 686A.187, inclusive; and
- (h) NRS 686A.260, 686A.270, 686A.280, 686A.300 and 686A.310.

1 **I. COMPLAINT**

2 **A. Jurisdiction**

- 3 1. The Commissioner has exclusive jurisdiction to regulate the business of service  
4 contracts in the state of Nevada pursuant to chapter 690C of the NRS. The  
5 actions described in this complaint are actions that involve the regulation of the  
6 business of service contracts in the state of Nevada.

7 **B. Respondent**

- 8 1. Respondent, Home Warranty Administrator of Nevada, Inc. dba Choice Home  
9 Warranty ("CHW"), had a certificate of registration (ORG ID# 113194) as a  
10 service contract provider in Nevada since November 18, 2010. CHW submitted a  
11 renewal application of registration on November 8, 2016.

12 **C. Allegations of Fact**

- 13 1. On July 23, 2010, Insurance Commissioner of California, Steve Poizner, issued a  
14 cease and desist order to CHW for "acting in a capacity for which a license,  
15 registration, or certificate of authority from the Commissioner was required but  
16 not possessed." CHW had, through the internet, through toll-free telephone lines,  
17 and through other means and devises, solicited the purchase of home protection  
18 contracts to persons residing in California. CHW did not possess the proper  
19 licensure, registration, or certificate required to conduct such business in  
20 California. An entry of default judgment was entered in this case on October 12,  
21 2010, finding CHW "has continued to act in a capacity for which a home  
22 protection company license or a certificate of authority is required but is not  
23 possessed" thereby issuing CHW a fine of \$3,530,000.00.
- 24 2. President of CHW, Victor Mandalawi, submitted a 2011-2012 Service Contractor  
25 Provider Renewal Application to the Nevada Division on Insurance on October  
26 31, 2011. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of  
27 the application, which reads, "Since the last application, has applicant or any of  
28

1 the officers listed in Section 1 ever: (d) been fined by any state governmental  
2 agency or authority in any matter regarding service contracts?" The "no" answer  
3 provided is false because the Insurance Commissioner of California fined CHW  
4 \$3,530,000.00 on October 12, 2010, during the time between CHW's initial (last)  
5 application and CHW's October 31, 2011, renewal application.

6 3. On July 15, 2011, the Insurance Commissioner of the state of Oklahoma issued an  
7 Order in response to an Emergency Cease and Desist Order issued by the  
8 Oklahoma Insurance Department on July 29, 2010. The Cease and Desist Order  
9 was issued "pursuant to a finding that CHW was unauthorized to engage in the  
10 business of offering, providing, servicing, and entering service warranty  
11 agreements, service warranty contracts, indemnity agreements or indemnity  
12 contracts, and in violation of Oklahoma insurance code." Mr. Mandalawi  
13 stipulated on behalf of CHW that CHW "does not hold any license, certificate of  
14 authority, or other authorization from the Oklahoma Insurance Department to  
15 engage in the business of offering, providing, servicing, and entering service  
16 warranty agreements." On December 29, 2011, the Oklahoma Insurance  
17 Commissioner fined CHW \$25,000.00.

18 4. President Victor Mandalawi of CHW submitted a 2012-2013 Service Contractor  
19 Provider Renewal Application to the Nevada Division on Insurance on October  
20 19, 2012. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of  
21 the application, which reads, "Since the last application, has applicant or any of  
22 the officers listed in Section 1 ever: (d) been fined by any state governmental  
23 agency or authority in any matter regarding service contracts?" The "no" answer  
24 provided was false because the Insurance Commissioner of the state of Oklahoma  
25 fined CHW \$25,000.00 on December 29, 2011, during the time between CHW's  
26 last application and CHW's renewal application.

27 5. On February 7, 2014, the Insurance Commissioner in the State of Oklahoma  
28

1 issued an Order stating:

2 "CHW had willfully violated a Consent Order dated January 2,  
3 2012, by failing to pay all valid claims and refunds that arise  
4 pursuant to service warranty agreements in Oklahoma. IT IS  
5 FURTHER ORDERED that Respondent (CHW) has  
6 knowingly and willfully violated provisions of the Service  
7 Warranty Act; failed to update its address with the Oklahoma  
8 consumer and the Insurance Commissioner; and failed to  
9 respond to the Oklahoma Insurance Commissioner and, as a  
10 result, Respondent is fined in the amount of Ten Thousand  
11 Dollars."

12 This Order was issued in response to a consumer complaint submitted to the  
13 Insurance Commissioner in the state of Oklahoma alleging that CHW denied a  
14 claim from the consumer without ever investigating circumstances surrounding  
15 the claim and ignoring repeated attempts from the consumer to resolve the issue  
16 in good faith. The February 7, 2014, Order concluded that CHW violated  
17 Oklahoma's deceptive trade acts

18 "by failing to acknowledge and act promptly upon  
19 communication with respect to the claim; by denying  
20 Johnson's (aggrieved consumer) claim without conducting  
21 reasonable investigation based upon available information;  
22 failing to promptly provide a reasonable explanation to  
23 Johnson in relation to the facts or applicable law for the denial  
24 of the claim."

- 25 6. President Victor Mandalawi of CHW, submitted a 2014-2015 Service Contractor  
26 Provider Renewal Application to the Nevada Division on Insurance on November  
27 12, 2014. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of  
28 the application, which reads, "Since the last application, has applicant or any of  
the officers listed in Section 1 ever: (d) been fined by any state governmental  
agency or authority in any matter regarding service contracts?" The "no" answer  
provided was false because the Insurance Commissioner of the state of Oklahoma  
fined CHW \$10,000.00 on February 7, 2014, during the time between CHW's last

1 application and CHW's renewal application.

2 7. CHW and its officers, directors, employees, et al., agreed to a Final Consent  
3 Judgment on May 21, 2015, to resolve a complaint brought by the New Jersey  
4 Attorney General's Office and the New Jersey Division of Consumer Affairs  
5 alleging violation of New Jersey's Consumer Fraud Act and New Jersey  
6 regulations governing general advertising. The Final Consent Judgment was filed  
7 by the Superior Court of New Jersey and signed by the Honorable Travis L.  
8 Francis on June 9, 2015, and required various injunctive relief, revised business  
9 practices; the reporting of additional consumer complaints; the mandatory  
10 retaining of a compliance monitor; and a settlement payment of \$779,913.93.

11 8. President Victor Mandalawi of CHW submitted a 2015-2016 Service Contractor  
12 Provider Renewal Application to the Nevada Division on Insurance on November  
13 17, 2015. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of  
14 the application, which reads, "Since the last application, has applicant or any of  
15 the officers listed in Section 1 ever: (d) been fined by any state governmental  
16 agency or authority in any matter regarding service contracts?" The "no" answer  
17 provided was false because the New Jersey Attorney General's Office and the  
18 New Jersey Division of Consumer Affairs settled the matter with CHW for  
19 \$779,913.93 during the time between CHW's last application and CHW's renewal  
20 application.

21 9. During the period CHW was registered as a Service Contractor Provider in  
22 Nevada, the Nevada Division of Insurance has received more than 80 consumer  
23 complaints. The consumer's descriptions detailing the complaints depict  
24 incidents where CHW does not communicate with a policyholder after the  
25 policyholder has filed a claim, incidents where policyholder claims are denied  
26 without communication or investigation, and complaints from service providers  
27 who have not been paid from CHW after performing services for them.

28

1 10. CHW submitted their 2016-2017 Service Contractor Provider renewal application  
2 on November 8, 2016. Subsequently, the Nevada Division of Insurance requested  
3 information from CHW inquiring as to how many open contracts and claims  
4 CHW had in Nevada. CHW has not responded to the Division's request at the  
5 time of this filing.

6 **D. Violations Alleged**

- 7 1. NRS 686A.070 provides that it is unlawful to knowingly make or cause to be  
8 made any false entry of a material fact in any book, report, or statement of any  
9 person or knowingly omit to make a true entry of any material fact pertaining to  
10 such person's business in any book, report, or statement of such person. Any  
11 person who violates, or with like intent, aids or abets any violation of this section  
12 is guilty of a gross misdemeanor.
- 13 2. CHW by and through its president, Victor Mandalawi, engaged in acts that  
14 constitute the unlawful making of false entry of material fact in each of CHW's  
15 renewal applications in the years 2011, 2012, 2014, and 2015.
- 16 3. CHW's complaints regarding failures to communicate with policyholders and  
17 inappropriately denying claims violates NRS 686A.310(1)(b)—“failing to  
18 acknowledge and act reasonably promptly upon communications with respect to  
19 claims arising under insurance policies.”
- 20 4. The business practices of CHW, as documented by Nevada complaints; the Better  
21 Business Bureau, news and media outlets; and the findings of fact of the various  
22 Courts' actions described above, constitute a pattern of behavior that CHW is  
23 operating in an unsuitable manner. CHW's practices cause injury to the general  
24 public with such frequency as to indicate a general business practice. As such,  
25 CHW is in violation of NRS 679B.125(2)—conducting business in an unsuitable  
26 manner.
- 27 5. Pursuant to the findings of fact of the various Courts' Orders described above,  
28



1 CHW also is in violation of NRS 686A.170—engaging in unfair and deceptive  
2 trade practices.

- 3 6. The Commissioner may refuse to renew or may suspend a provider's certificate of  
4 registration pursuant to NRS 690C.325.

5 **E. Action Required**

6 Based upon the foregoing and pursuant to NRS 690C.325:

- 7 1. Refuse to renew and revoke, subject to the rights afforded under the law, the  
8 certificate of registration for HOME WARRANTY ADMINISTRATOR OF  
9 NEVADA, INC. dba CHOICE HOME WARRANTY.
- 10 2. Pursuant to NRS 686A.183(1)(a), fine HOME WARRANTY  
11 ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY  
12 \$5,000 for each act or violation of NRS 686A.010 to 686A.310.
- 13 3. Pursuant to NRS 690C.325, discipline and/or refuse to renew and revoke HOME  
14 WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME  
15 WARRANTY for violating NRS 690C.320(2) and failing to make available to  
16 the Commissioner for inspection any accounts, books, and records concerning  
17 any service contract issued, sold, or offered for sale by the provider.
- 18 4. Issue a cease and desist order pursuant to NRS 686A.170.
- 19 5. Withhold the security deposit, as required by NRS 690C.170(2), to service  
20 existing contractual obligations of HOME WARRANTY ADMINISTRATOR  
21 OF NEVADA, INC. dba CHOICE HOME WARRANTY.
- 22 6. Order any other action deemed appropriate by the Hearing Officer.

23 **II. APPLICATION FOR ORDER TO SHOW CAUSE**

24 Under the authority of Title 57 of the NRS, and other applicable laws and regulations of  
25 the State of Nevada, and other general powers and duties of the Commissioner, the Division  
26 hereby respectfully requests that an Order to Show Cause be issued requiring Respondent  
27 HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME  
28

1 WARRANTY to appear and show cause, if any, why the non-renewal of its certificate of  
2 registration, and the imposition of fines and a cease and desist, should not be ordered.


3 At the hearing, the Division may offer written and oral evidence. Respondent also would  
4 have the opportunity to offer written and oral evidence.

5 Pursuant to Nevada Administrative Code (NAC) 679B.311, Respondent may choose to  
6 be represented by an attorney in this matter. If Respondent wishes to be represented by an  
7 attorney, Respondent shall notify the Division in writing of the name, address, and telephone  
8 number of its counsel not later than five (5) days before the hearing.

9 WHEREFORE, unless Respondent appears at the time and place of the hearing and  
10 shows good and just cause why appropriate administrative action should not be taken, the  
11 Commissioner may issue an Order against Respondent for the relief requested by the Division.

12 DATED this 9th day of May 2017.

13 ADAM PAUL LAXALT  
14 Attorney General

15  
16 By:   
17 RICHARD PAILI YIEN  
18 Deputy Attorney General  
19 100 N. Carson Street  
20 Carson City, Nevada 89701  
21 (775) 684-1129  
22 *Attorney for the Division of Insurance*  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this date served the following:

- 3 • **COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE**  
4 • **ORDER TO SHOW CAUSE**  
5 • **ORDER APPOINTING HEARING OFFICER**  
6 • **APPLICATION FOR SUBPOENA DUCES TECUM**  
7 • **SUBPOENA DUCES TECUM**

8 in **CAUSE NO. 17.0050**, by mailing true and correct copies thereof, properly addressed with  
9 postage prepaid, certified mail return receipt requested, to:

10 Home Warranty Administrator of Nevada, Inc.  
11 dba Choice Home Warranty  
12 Attn: Victor Mandalawi  
13 90 Washington Valley Road  
14 Bedminster, NJ 07921-2118  
15 CERTIFIED MAIL NO. 7016 2140 0000 7181 9786

14 Home Warranty Administrator of Nevada, Inc.  
15 dba Choice Home Warranty  
16 Attn: Victor Mandalawi  
17 1090 King Georges Post Road, Building 10  
18 Edison, NJ 08837  
19 CERTIFIED MAIL NO. 7016 2140 0000 7181 9793


17 and, the originals of the foregoing were hand-delivered to:

18 Alexia M. Emmermann, Esq.  
19 Hearing Officer  
20 Department of Business and Industry  
21 Division of Insurance  
22 1818 East College Parkway, Suite 103  
23 Carson City, NV 89706

22 and, copies of the foregoing were sent via electronic mail to:

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

25 DATED this 12<sup>th</sup> day of May, 2017.

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

7016 2140 0000 7181 9786

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**DIVE-OF-INS.A 17.0050 E**

Certified Mail Fee \$ **3813**

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage \$ **7.73**

Postmark Here  
 MAY 12 2015  
 ARSO

Home Warranty Administrator of Nevada, Inc.  
 dba Choice Home Warranty  
 Attn: Victor Mandalawi  
 90 Washington Valley Road  
 Bedminster, NJ 07921-2118

or instructions

7016 2140 0000 7181 9793

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**DIVE-OF-INS.A 17.0050 E**

Certified Mail Fee \$ **3813**

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage \$ **7.73**

Postmark Here  
 MAY 12 2015  
 ARSO

Home Warranty Administrator of Nevada, Inc.  
 dba Choice Home Warranty  
 Attn: Victor Mandalawi  
 1090 King Georges Post Road, Building 10  
 Edison, NJ 08837

or instructions

**SENDER: COMPLETE THIS SECTION**

■ Complete items 1, 2, and 3.  
 ■ Print your name and address on the reverse so that we can return the card to you.  
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Home Warranty Administrator of Nevada, Inc.  
 dba Choice Home Warranty  
 Attn: Victor Mandalawi  
 90 Washington Valley Road  
 Bedminster, NJ 07921-2118

2. Article Number (Transfer from service label)  
 9590 9402 1828 6104 1719 39  
**7016 2140 0000 7181 9786**

PS Form 3811, July 2015 PSN 7530-02-000-9053

**Domestic Return Receipt**

**0509 17.1**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent ☐ Addressee ☐ Date of Delivery

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No  
 If YES, enter delivery address below:

3. Service Type

☐ Adult Signature

☒ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

**SENDER: COMPLETE THIS SECTION**

■ Complete items 1, 2, and 3.  
 ■ Print your name and address on the reverse so that we can return the card to you.  
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Home Warranty Administrator of Nevada, Inc.  
 dba Choice Home Warranty  
 Attn: Victor Mandalawi  
 1090 King Georges Post Road, Building 10  
 Edison, NJ 08837

2. Article Number (Transfer from service label)  
 9590 9402 1828 6104 1719 22  
**7016 2140 0000 7181 9793**

PS Form 3811, July 2015 PSN 7530-02-000-9053

**Domestic Return Receipt**

**17.0050**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent ☐ Addressee ☐ Date of Delivery

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No  
 If YES, enter delivery address below:

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

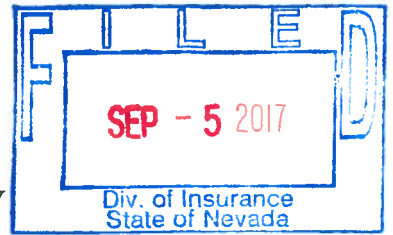
☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

IN THE MATTER OF ) CAUSE NO. 17.0050  
)  
HOME WARRANTY ADMINISTRATOR ) AMENDED  
OF NEVADA, INC. dba CHOICE HOME ) COMPLAINT AND APPLICATION  
WARRANTY ) FOR ORDER TO SHOW CAUSE  
)  
Respondent. )

The State of Nevada, Department of Business and Industry, Division of Insurance  
("Division"), sends greetings to:

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

YOU ARE HEREBY NOTIFIED of the conduct, conditions, or acts which are deemed by the  
Commissioner of Insurance ("Commissioner") to be in violation of the following provision of  
Nevada Revised Statutes ("NRS"): NRS 686A.070—falsifying material fact in any book, report,  
or statement; NRS 690C.325(1)(b)—conducting business in an unsuitable manner; and  
NRS 686A.310—engaging in unfair practices in settling claims.<sup>1</sup> The Commissioner may refuse  
to renew or may suspend a provider's certificate of registration pursuant to  
NRS 690C.325.

<sup>1</sup> **NRS 690C.120 Applicability of other provisions.**

1. Except as otherwise provided in this chapter, the marketing, issuance, sale, offering for  
sale, making, proposing to make and administration of service contracts are not subject to the  
provisions of title 57 of NRS, except, when applicable, the provisions of:

- (a) NRS 679B.020 to 679B.152, inclusive;
- (b) NRS 679B.159 to 679B.300, inclusive;
- (c) NRS 679B.310 to 679B.370, inclusive;
- (d) NRS 679B.600 to 679B.690, inclusive;
- (e) NRS 685B.090 to 685B.190, inclusive;
- (f) NRS 686A.010 to 686A.095, inclusive;
- (g) NRS 686A.160 to 686A.187, inclusive; and
- (h) NRS 686A.260, 686A.270, 686A.280, 686A.300 and 686A.310.

1 **I. COMPLAINT**

2 **A. Jurisdiction**

- 3 1. The Commissioner has exclusive jurisdiction to regulate the business of service  
4 contracts in the state of Nevada pursuant to chapter 690C of the NRS. The actions  
5 described in this complaint are actions that involve the regulation of the business  
6 of service contracts in the state of Nevada.

7 **B. Respondent**

- 8 1. Respondent, Home Warranty Administrator of Nevada, Inc. dba Choice Home  
9 Warranty ("CHW"), had a certificate of registration (ORG ID# 113194) as a  
10 service contract provider in Nevada since November 18, 2010. CHW submitted a  
11 renewal application of registration on November 8, 2016.

12 **C. Allegations of Fact**

- 13 1. On July 23, 2010, Insurance Commissioner of California, Steve Poizner, issued a  
14 cease and desist order to CHW for "acting in a capacity for which a license,  
15 registration, or certificate of authority from the Commissioner was required but  
16 not possessed." CHW had, through the internet, through toll-free telephone lines,  
17 and through other means and devises, solicited the purchase of home protection  
18 contracts to persons residing in California. CHW did not possess the proper  
19 licensure, registration, or certificate required to conduct such business in  
20 California. An entry of default judgment was entered in this case on October 12,  
21 2010, finding CHW "has continued to act in a capacity for which a home  
22 protection company license or a certificate of authority is required but is not  
23 possessed" thereby issuing CHW a fine of \$3,530,000.00.
- 24 2. President of CHW, Victor Mandalawi, signed a 2011-2012 Service Contractor  
25 Provider Renewal Application to the Nevada Division on Insurance on October  
26 31, 2011. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of the  
27 application, which reads, "Since the last application, has applicant or any of the  
28



1 officers listed in Section 1 ever: (d) been fined by any state governmental agency  
2 or authority in any matter regarding service contracts?" The "no" answer  
3 provided is false because the Insurance Commissioner of California fined CHW  
4 \$3,530,000.00 on October 12, 2010, during the time between CHW's initial (last)  
5 application and CHW's October 31, 2011, renewal application.

6 3. On July 15, 2011, the Insurance Commissioner of the state of Oklahoma issued  
7 an Order in response to an Emergency Cease and Desist Order issued by the  
8 Oklahoma Insurance Department on July 29, 2010. The Cease and Desist Order  
9 was issued "pursuant to a finding that CHW was unauthorized to engage in the  
10 business of offering, providing, servicing, and entering service warranty  
11 agreements, service warranty contracts, indemnity agreements or indemnity  
12 contracts, and in violation of Oklahoma insurance code." Mr. Mandalawi  
13 stipulated on behalf of CHW that CHW "does not hold any license, certificate of  
14 authority, or other authorization from the Oklahoma Insurance Department to  
15 engage in the business of offering, providing, servicing, and entering service  
16 warranty agreements." On December 29, 2011, the Oklahoma Insurance  
17 Commissioner fined CHW \$15,000.00.

18 4. President Victor Mandalawi of CHW signed a 2012-2013 Service Contractor  
19 Provider Renewal Application to the Nevada Division on Insurance on October  
20 19, 2012. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of  
21 the application, which reads, "Since the last application, has applicant or any of  
22 the officers listed in Section 1 ever: (d) been fined by any state governmental  
23 agency or authority in any matter regarding service contracts?" The "no" answer  
24 provided was false because the Insurance Commissioner of the state of Oklahoma  
25 fined CHW \$15,000.00 on December 29, 2011, during the time between CHW's  
26 last application and CHW's renewal application.

27 5. On February 7, 2014, the Insurance Commissioner in the State of Oklahoma  
28

1 issued an Order stating:

2 "CHW had willfully violated a Consent Order dated January 2,  
3 2012, by failing to pay all valid claims and refunds that arise  
4 pursuant to service warranty agreements in Oklahoma. IT IS  
5 FURTHER ORDERED that Respondent (CHW) has  
6 knowingly and willfully violated provisions of the Service  
7 Warranty Act; failed to update its address with the Oklahoma  
8 consumer and the Insurance Commissioner; and failed to  
9 respond to the Oklahoma Insurance Commissioner and, as a  
10 result, Respondent is fined in the amount of Ten Thousand  
11 Dollars."

12 This Order was issued in response to a consumer complaint submitted to the  
13 Insurance Commissioner in the state of Oklahoma alleging that CHW denied a  
14 claim from the consumer without ever investigating circumstances surrounding  
15 the claim and ignoring repeated attempts from the consumer to resolve the issue  
16 in good faith. The February 7, 2014, Order concluded that CHW violated  
17 Oklahoma's deceptive trade acts

18 "by failing to acknowledge and act promptly upon  
19 communication with respect to the claim; by denying  
20 Johnson's (aggrieved consumer) claim without conducting  
21 reasonable investigation based upon available information;  
22 failing to promptly provide a reasonable explanation to  
23 Johnson in relation to the facts or applicable law for the denial  
24 of the claim."

- 25 6. President Victor Mandalawi of CHW, signed a 2014-2015 Service Contractor  
26 Provider Renewal Application to the Nevada Division on Insurance on November  
27 12, 2014. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of  
28 the application, which reads, "Since the last application, has applicant or any of  
the officers listed in Section 1 ever: (d) been fined by any state governmental  
agency or authority in any matter regarding service contracts?" The "no" answer  
provided was false because the Insurance Commissioner of the state of Oklahoma  
fined CHW \$10,000.00 on February 7, 2014, during the time between CHW's last



1 application and CHW's renewal application.

- 2 7. CHW and its officers, directors, employees, et al., agreed to a Final Consent  
3 Judgment on May 21, 2015, to resolve a complaint brought by the New Jersey  
4 Attorney General's Office and the New Jersey Division of Consumer Affairs  
5 alleging violation of New Jersey's Consumer Fraud Act and New Jersey  
6 regulations governing general advertising. The Final Consent Judgment was filed  
7 by the Superior Court of New Jersey and signed by the Honorable Travis L.  
8 Francis on June 9, 2015, and required various injunctive relief, revised business  
9 practices; the reporting of additional consumer complaints; the mandatory  
10 retaining of a compliance monitor; and a settlement payment of \$779,913.93.
- 11 8. President Victor Mandalawi of CHW signed a 2015-2016 Service Contractor  
12 Provider Renewal Application to the Nevada Division on Insurance on November  
13 17, 2015. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of  
14 the application, which reads, "Since the last application, has applicant or any of  
15 the officers listed in Section 1 ever: (d) been fined by any state governmental  
16 agency or authority in any matter regarding service contracts?" The "no" answer  
17 provided was false because the New Jersey Attorney General's Office and the  
18 New Jersey Division of Consumer Affairs settled the matter with CHW for  
19 \$779,913.93 during the time between CHW's last application and CHW's  
20 renewal application.
- 21 9. During the period CHW was registered as a Service Contractor Provider in  
22 Nevada, the Nevada Division of Insurance has received more than 80 consumer  
23 complaints. The consumer's descriptions detailing the complaints depict  
24 incidents where CHW does not communicate with a policyholder after the  
25 policyholder has filed a claim, incidents where policyholder claims are denied  
26 without communication or investigation, and complaints from service providers  
27 who have not been paid from CHW after performing services for them.
- 28

1 10. CHW submitted their 2016-2017 Service Contractor Provider renewal  
2 application on November 8, 2016. Subsequently, the Nevada Division of  
3 Insurance requested information from CHW inquiring as to how many open  
4 contracts and claims CHW had in Nevada. CHW has since responded to the  
5 Division's request upon a subpoena ordered in these proceedings.

6 **D. Violations Alleged**

- 7 1. NRS 686A.070 provides that it is unlawful to knowingly make or cause to be  
8 made any false entry of a material fact in any book, report, or statement of any  
9 person or knowingly omit to make a true entry of any material fact pertaining to  
10 such person's business in any book, report, or statement of such person. Any  
11 person who violates, or with like intent, aids or abets any violation of this section  
12 is guilty of a gross misdemeanor.
- 13 2. CHW by and through its president, Victor Mandalawi, engaged in acts that  
14 constitute the unlawful making of false entry of material fact in each of CHW's  
15 renewal applications in the years 2011, 2012, 2014, and 2015.
- 16 3. CHW's complaints regarding failures to communicate with policyholders and  
17 inappropriately denying claims violates NRS 686A.310(1)(b)—“failing to  
18 acknowledge and act reasonably promptly upon communications with respect to  
19 claims arising under insurance policies.”
- 20 4. The business practices of CHW, as documented by Nevada complaints; the Better  
21 Business Bureau, news and media outlets; and the findings of fact of the various  
22 Courts' actions described above, constitute a pattern of behavior that CHW is  
23 operating in an unsuitable manner. CHW's practices cause injury to the general  
24 public with such frequency as to indicate a general business practice. As such,  
25 CHW is in violation of NRS 679B.125(2)—conducting business in an unsuitable  
26 manner.
- 27 5. Pursuant to the findings of fact of the various Courts' Orders described above,  
28

1 CHW also is in violation of NRS 686A.170—engaging in unfair and deceptive  
2 trade practices.

- 3 6. The Commissioner may refuse to renew or may suspend a provider's certificate  
4 of registration pursuant to NRS 690C.325.

5 **E. Action Required**

6 Based upon the foregoing and pursuant to NRS 690C.325:

- 7 1. Refuse to renew and revoke, subject to the rights afforded under the law, the  
8 certificate of registration for HOME WARRANTY ADMINISTRATOR OF  
9 NEVADA, INC. dba CHOICE HOME WARRANTY.
- 10 2. Pursuant to NRS 686A.183(1)(a), fine HOME WARRANTY  
11 ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY  
12 \$5,000 for each act or violation of NRS 686A.010 to 686A.310.
- 13 3. Pursuant to NRS 690C.325, discipline and/or refuse to renew and revoke HOME  
14 WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME  
15 WARRANTY for violating NRS 690C.320(2) and failing to make available to  
16 the Commissioner for inspection any accounts, books, and records concerning  
17 any service contract issued, sold, or offered for sale by the provider.
- 18 4. Issue a cease and desist order pursuant to NRS 686A.170.
- 19 5. Withhold the security deposit, as required by NRS 690C.170(2), to service  
20 existing contractual obligations of HOME WARRANTY ADMINISTRATOR  
21 OF NEVADA, INC. dba CHOICE HOME WARRANTY.
- 22 6. Order any other action deemed appropriate by the Hearing Officer.

23 **II. APPLICATION FOR ORDER TO SHOW CAUSE**

24 Under the authority of Title 57 of the NRS, and other applicable laws and regulations of  
25 the State of Nevada, and other general powers and duties of the Commissioner, the Division  
26 hereby respectfully requests that an Order to Show Cause be issued requiring Respondent  
27 HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME  
28

1 WARRANTY to appear and show cause, if any, why the non-renewal of its certificate of  
2 registration, and the imposition of fines and a cease and desist, should not be ordered.

3 At the hearing, the Division may offer written and oral evidence. Respondent also would  
4 have the opportunity to offer written and oral evidence.

5 Pursuant to Nevada Administrative Code (NAC) 679B.311, Respondent may choose to  
6 be represented by an attorney in this matter. If Respondent wishes to be represented by an attorney,  
7 Respondent shall notify the Division in writing of the name, address, and telephone number of its  
8 counsel not later than five (5) days before the hearing.

9 WHEREFORE, unless Respondent appears at the time and place of the hearing and  
10 shows good and just cause why appropriate administrative action should not be taken, the  
11 Commissioner may issue an Order against Respondent for the relief requested by the Division.

12 DATED this 5<sup>th</sup> day of September 2017.

13 ADAM PAUL LAXALT  
14 Attorney General

15 By:

16 

17 RICHARD PAILI YIEN  
18 Deputy Attorney General  
19 100 N. Carson Street  
20 Carson City, Nevada 89701  
21 (775) 684-1129  
22 *Attorney for the Division of Insurance*  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this date served the **AMENDED COMPLAINT AND**  
3 **APPLICATION FOR ORDER TO SHOW CAUSE**, in **CAUSE NO. 17.0050**, via electronic  
4 mail, to the following:

5 Kirk B. Lenhard, Esq.  
6 Brownstein Hyatt Farber Schreck, LLP  
7 100 North City Parkway, Suite 1600  
8 Las Vegas, NV 89106  
9 E-MAIL: klenhard@bhfs.com

8 Travis F. Chance, Esq.  
9 Brownstein Hyatt Farber Schreck, LLP  
10 100 North City Parkway, Suite 1600  
11 Las Vegas, NV 89106  
12 E-MAIL: tchance@bhfs.com

11 Lori Grifa, Esq.  
12 Archer & Greiner, P.C.  
13 Court Plaza South, West Wing  
14 21 Main Street, Suite 353  
15 Hackensack, NJ 07601  
16 E-MAIL: lgrifa@archerlaw.com

15 and the originals of the foregoing were hand-delivered to:

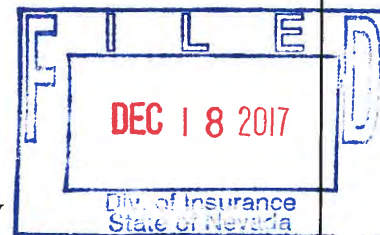
16 Alexia M. Emmermann, Esq.  
17 Hearing Officer  
18 Department of Business and Industry  
19 Division of Insurance  
20 1818 East College Parkway, Suite 103  
21 Carson City, NV 89706

20 and copies of the foregoing were sent via electronic mail to:

21 Richard Yien, Deputy Attorney General  
22 Nevada Attorney General's Office  
23 E-MAIL: ryien@ag.nv.gov

23 DATED this 6<sup>th</sup> day of September, 2017.

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



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

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

**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. 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.)

28 ///

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  
8           ever . . . (c) Been refused a license or registration . . . or had an existing one  
9           suspended or revoked by any state . . . [or] (d) Been fined by any state or  
10          governmental agency or authority in any matter regarding service contracts?”

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

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

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

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

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

          19.    The Division issued a memo to then-Commissioner Scott J. Kipper from Derick Dennis,  
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?”
- 13 • “Have you made any changes in the administrator or designated a new administrator  
14 since your last application? Current administrator is listed as:”
- 15 • “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?”

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.)

28 ///

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](http://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,  
↳ with such frequency as to indicate a general business practice.

12 NAC 679B.0385.

### 13 C. Respondent

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

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

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

26 The evidence is clear that Choice Home Warranty is CHW Group. Respondents have argued  
27 this throughout the case. (Resp’t’s Prehr’g Stmt 3–4.) During the hearing, Mandalawi, Hakim, and  
28 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.

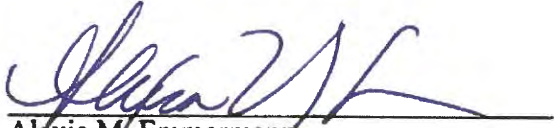
<sup>4</sup> Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is \$1,000 per act or violation.



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~~ <sup>17.0050</sup>, 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

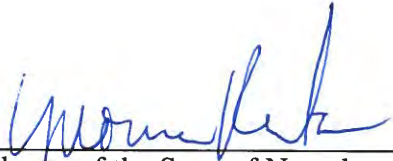
11 Travis F. Chance, Esq.  
12 Brownstein Hyatt Farber Schreck, LLP  
13 100 North City Parkway, Suite 1600  
14 Las Vegas, NV 89106  
15 E-MAIL: [tchance@bhfs.com](mailto:tchance@bhfs.com)  
16 CERTIFIED MAIL NO. 7017 1070 0000 8962 9364

14 Lori Grifa, Esq.  
15 Archer & Greiner, P.C.  
16 Court Plaza South, West Wing  
17 21 Main Street, Suite 353  
18 Hackensack, NJ 07601  
19 E-MAIL: [lgrifa@archerlaw.com](mailto:lgrifa@archerlaw.com)  
20 CERTIFIED MAIL NO. 7017 1070 0000 8962 9371

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

1 AARON D. FORD  
Attorney General  
2 RICHARD PAILI YIEN, Bar No. 13035  
Deputy Attorney General  
3 State of Nevada  
100 N. Carson St  
4 Carson City, NV 89701  
(775) 684-1129  
5 (775) 684-1156 (fax)  
Email: [ryien@ag.nv.gov](mailto:ryien@ag.nv.gov)  
6 *Attorneys for the Division of Insurance*

REC'D & FILED  
2019 JAN 28 PM 2:14  
AUBREY ROWLATT  
CLERK  
BY V. Alegria  
DEPUTY

7  
8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
9 **IN AND FOR CARSON CITY**

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

Case No. 17 OC 00269-1B

Dept. No. I

12 Petitioner,

13 vs.

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

16 Respondent.


17 **NOTICE OF FILING HEARING OFFICER'S ADMINISTRATIVE ORDER**

18 Respondents hereby provide notice of the issuance and filing of the Hearing Officer's  
19 Administrative Order on Remand, dated January 22, 2019, attached here as Exhibit 1. This Order was  
20 issued and filed in accordance with this Court's Order Granting Petitioner's Motion for Leave to  
21 Present Additional Evidence, dated September 6, 2018. Parties associated with this case were served on  
22 September 6, 2018.

23 DATED this 28<sup>th</sup> day of January, 2019.

24 AARON D. FORD  
Attorney General

25  
26 By:

  
27 RICHARD PAILI YIEN  
Deputy Attorney General  
Bureau of Business and Taxation  
28

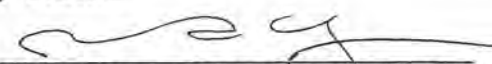
**AFFIRMATION**  
**(Pursuant to NRS 239B.030)**

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

DATED this 28<sup>th</sup> day of January, 2019.

AARON D. FORD  
Attorney General

By:

  
RICHARD PAILI YIEN, Bar #13035  
Deputy Attorney General

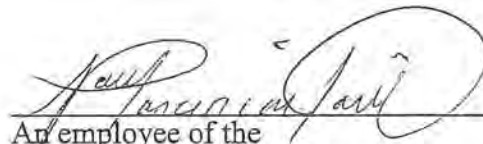
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 28<sup>th</sup> day of January, 2019, I caused to be deposited for mailing in the U.S. Mail a copy of the foregoing, **NOTICE OF FILING HEARING OFFICER'S ADMINISTRATIVE ORDER**, to the following:

Kirk B. Lenhard, Esq.  
Travis F. Chance, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
100 N. City Pky., Ste. 1600  
Las Vegas NV 89106-4614

Lori Grifa, Esq.  
Archer & Greiner, P.C.  
21 Main St., Ste. 353  
Hackensack NJ 07601

  
An employee of the  
Office of the Attorney General

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

**LIST OF EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Number of Pages</b>
1	Hearing Officers Order on Remand	9

**EXHIBIT 1**

**Hearing Officer's Order on Remand**

**EXHIBIT 1**

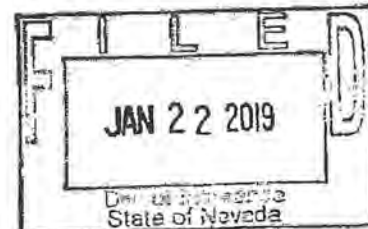
STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. 17.0050

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

Respondent.



**ORDER ON REMAND**

This matter was 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. A hearing was held on September 12, 13, and 14, 2017. At the close of the hearing, the Parties were ordered to file briefs on a legal issue, and written closing arguments. The Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner were issued on December 18, 2017.

On September 6, 2018, the First Judicial District Court of the State of Nevada in and for Carson City issued an Order Granting Petitioner's Motion for Leave to Present Additional Evidence, remanding the matter on judicial review for the Hearing Officer's consideration of proposed exhibits KK, LL, and MM. As the Court explained, "pursuant to NRS 233B.131(2), Petitioner [HWAN] must demonstrate that the Evidence is material to the issues before the agency and that good reasons exist for Petitioner's [HWAN's] failure to present the same in the proceeding below." (Ord. Granting Pet'r's Mot. Leave to Present Add'l Evid 2.) The Court declined to examine the evidence *in camera*, and left the issue of materiality to the Hearing Officer. "Material" means "Of such a nature that knowledge of the item would affect a person's decision-making; significant; essential." Black's Law Dictionary (3d ed. 2006). Thus, the Hearing Officer's obligation is to receive the evidence, determine if it is material and, if so, issue a new decision with new findings where applicable, but if not, issue a new decision indicating the evidence would have had no impact on the original findings. While the issue of materiality was remanded, the Remand Order does not give the Hearing Officer the authority to



1 determine good reason for failure to present evidence at the hearing. Therefore, the Hearing  
2 Officer only addresses materiality in this new decision.

3 On remand, the Hearing Officer received exhibits KK, LL, and MM. After reviewing  
4 the exhibits, the purpose of each exhibit was not readily apparent, and the Hearing Officer  
5 issued an order on October 31, 2018, to give Home Warranty Administrator of Nevada, Inc. an  
6 opportunity to address the purpose of the exhibits by November 13, 2018, and to give the  
7 Division an opportunity to present its objections or opposition by November 20, 2018. The  
8 Parties timely filed their briefs. Home Warranty Administrator of Nevada, Inc. also filed a  
9 reply brief to the Division's opposition. Having reviewed exhibits KK, LL, and MM, and  
10 considered the Parties' briefs (addressed below), the Hearing Officer finds that the exhibits are  
11 not material and do not impact the final decision.

12 **Review of Proposed Exhibits KK, LL, and MM**

13 The proposed exhibits were presented out of chronological order; they are reviewed here  
14 in chronological order. For clarification, Home Warranty Administrator of Nevada, Inc. is also  
15 identified as HWAN, CHW Group, Inc. is also identified as CHW Group, and Choice Home  
16 Warranty is only identified as Choice Home Warranty.

- 17 1. In July 2010, in response to another state's inquiry about a company called "Choice  
18 Home Warranty," Division employees were aware that such a named company was  
19 operating in Nevada without a registration. (Ex. LL at 1-3.) Employee Dolores Bennett  
20 referenced "CHW Group, Inc., dba Choice Home Warranty," but all other employees  
21 only referenced 'Choice Home Warranty.' (Ex. LL at 2.) Whether all employees  
22 understood Choice Home Warranty to be CHW Group in this emails is not discernable.
- 23 2. In July 2011, Division employees again discussed "Choice Home Warranty," and  
24 Bennett again referred to "CHW Group, Inc. dba Choice Home Warranty." (Ex. MM at  
25 1-3.) Division Counsel indicated that the Division was in the process of filing a  
26 complaint against Choice Home Warranty. (Ex. MM at 2.) Whether all employees  
27 understood Choice Home Warranty to be CHW Group is not discernable, and no  
28 evidence was presented that a complaint was filed against Choice Home Warranty.

- 1 3. Approximately two weeks later, in July 2011, Bennett sent an email about Choice Home  
2 Warranty and Home Warranty Administrator of Nevada, Inc., and indicated that HWAN  
3 listed Choice Home Warranty as its administrator in the proposed contract. (Ex. KK at  
4 3-4.) Bennett did not make any reference to CHW Group, Inc. dba Choice Home  
5 Warranty.
- 6 4. On November 1, 2011, a note was written referencing Choice Home Warranty, and  
7 business written without being registered. (Ex. KK at 2.) Whether the Division  
8 interpreted Choice Home Warranty to include CHW Group is not discernable, and the  
9 author of the note is unknown.
- 10 5. On November 7, 2011, Bennett emailed Division employees indicating Victor  
11 Mandalawi, president of CHW Group, Inc. obtained a certificate of registration as a  
12 service contract provider a year earlier for a different corporation called Home Warranty  
13 Administrator of Nevada, Inc. (KK at 1.) Whether the reference to CHW Group Inc.,  
14 dba Choice Home Warranty was intended to mean Choice Home Warranty as used in  
15 prior discussions is not discernable.

#### 16 Arguments

##### 17 **1. The Exhibits Are Not Sufficient to Meet the Requirements for Equitable Estoppel**

18 HWAN argues that exhibits KK, LL, and MM are material because they clearly establish  
19 that the Division was fully aware that CHW Group used the fictitious name Choice Home  
20 Warranty and that, because Choice Home Warranty was easily identifiable as CHW Group, the  
21 Division should be equitably estopped from penalizing HWAN. HWAN also argues that the  
22 Division should be equitably estopped from penalizing HWAN because the Division explicitly  
23 authorized the structure of the relationship.

24 In Nevada, "equitable estoppel operates to prevent a party from asserting legal rights  
25 that, in equity and good conscience, the party should not be allowed to assert because of his  
26 conduct." *Chanos v. Nev. Tax Comm'n*, 124. Nev. 232, 238 (2008). The Supreme Court has  
27 established a four-prong test to determine whether equitable estoppel applies. As applied to this  
28 case, equitable estoppel requires proof that (1) the Division was apprised of the true facts,

1 (2) the Division intended for HWAN to act upon the Division's conduct, (3) HWAN was  
2 ignorant of the true state of facts, and (4) HWAN detrimentally relied on the Division's conduct.  
3 *Id.* at 237.

4 Exhibits KK, LL, and MM are conversations that reflect the Division's awareness that  
5 there was an entity that went by the name Choice Home Warranty that was selling unlicensed  
6 service contracts and that the Division was investigating and trying to address the situation.  
7 Discussions among Division staff in which one employee identified CHW Group, Inc. dba  
8 Choice Home Warranty in her comments relating to questions about and investigations of  
9 Choice Home Warranty do not prove that the Division knew Choice Home Warranty was, in  
10 fact, CHW Group. There was no substantive discussion as to who CHW Group, Inc. dba  
11 Choice Home Warranty was, nor any substantive discussion as to who Choice Home Warranty  
12 was. Any interpretations about what Division staff meant in the email discussions and note of  
13 exhibits KK, LL, and MM would be conjecture.

14 Further, the discussions in 2010 and 2011 did not lead to any action by the Division to  
15 establish that the Division was fully aware that CHW Group was Choice Home Warranty.  
16 Awareness that CHW Group operated a fictitious name Choice Home Warranty does not prove  
17 that the Choice Home Warranty the Division had been investigating was the same company.  
18 The Division cannot regulate based on speculation—it must act on facts. The only action the  
19 Division took was to ask HWAN to register Choice Home Warranty as a fictitious name  
20 because, after a discussion with Mandalawi and based on records filed by Mandalawi, the  
21 Division believed that Choice Home Warranty and HWAN were one-and-the-same entity. Even  
22 if the conclusion did not come until 2014, the Division took no administrative action against  
23 Choice Home Warranty on the understanding that Choice Home Warranty did not operate  
24 without a license because it was HWAN. A discussion with Mandalawi and the filings  
25 Mandalawi submitted solidified the Division's conclusion.

26 A person wishing to sell service contracts in Nevada is required to register with the  
27 Division prior to selling service contracts, and CHW Group did not register with the Division.  
28 Without CHW Group's registration or administrative action taken by the Division that

1 concluded CHW Group was the same Choice Home Warranty being investigated by the  
2 Division, HWAN's arguments piece together speculation—it is not clear that the Division knew  
3 CHW Group dba Choice Home Warranty was the Choice Home Warranty the Division was  
4 investigating. Thus, there is no proof that the Division was apprised of the true facts.

5 Nothing in this evidence reflects that the Division intended HWAN to improperly sell  
6 contracts for CHW Group, nor is there evidence that the Division intended HWAN's registering  
7 Choice Home Warranty as a fictitious name to mean that CHW Group could sell contracts in  
8 Nevada. Since becoming registered as a service contract provider in Nevada, HWAN did not  
9 change its conduct, so nothing in the evidence suggests that HWAN relied to its detriment on  
10 the State.

11 On the other hand, HWAN was fully aware that CHW Group existed and operated the  
12 fictitious name Choice Home Warranty because it was spelled out in the Independent Service  
13 Provider Agreement that existed between HWAN and CHW Group, and because Mandalawi is  
14 the president of both HWAN and CHW Group. In other words, HWAN knew who the entities  
15 were and what they were doing, but there is no evidence to show that HWAN made clear to the  
16 Division that Choice Home Warranty was CHW Group. While exhibits KK, LL, and MM are  
17 relevant to the matter, they are not material because they are not enough to show that the  
18 Division actually knew that Choice Home Warranty was CHW Group. Therefore, the equitable  
19 estoppel test fails, and there is no impact on the final decision.

## 20 **2. The Exhibits Do Not Negate the Findings of False Representations of Material Fact**

21 HWAN argues that exhibits KK and LL are material because they show that the  
22 Division was aware that HWAN used Choice Home Warranty as its administrator and,  
23 therefore, HWAN should not have been fined for not correcting the "pre-populated entry of  
24 'self'," which was not a knowing misrepresentation.

25 Exhibit KK contains three items: (1) an email from July 27, 2011, from Bennett  
26 indicating that HWAN submitted for review a contract listing Choice Home Warranty as the  
27 administrator; the contract was pending due to certain objections, and the contract would be  
28 approved after correction of errors; (2) a note dated November 1, 2011; and (3) an email from



1 November 7, 2011, from Bennett notifying Division employees that Mandalawi, who is  
2 president of CHW Group, obtained a certificate of registration for another company, HWAN, a  
3 year earlier. Only the first email in exhibit KK is relevant to HWAN's argument. As explained  
4 in Section 1, above, exhibit LL does not clearly show that the Division knew as of 2010 that  
5 Choice Home Warranty was CHW Group.

6 The email in exhibit KK shows that the Division was aware that HWAN's contract  
7 identified Choice Home Warranty as the administrator. However, HWAN failed to identify  
8 Choice Home Warranty on every renewal application HWAN submitted after the contract was  
9 approved. The fact that Mandalawi signed the application and each renewal affirming that the  
10 statements in the applications were true makes every answer regarding having an administrator  
11 on each application a knowing misrepresentation. HWAN had entered an agreement for CHW  
12 Group to act as its administrator on July 29, 2010, but HWAN did not report this on the  
13 application, which was also dated and signed on July 29, 2010. (Ex. 22 & Test. Mandalawi.)  
14 Mandalawi signed a separate notarized verification on August 31, 2010, affirming that the  
15 information presented in the application was true. (Ex. 22 at 4.) Only one document was filed  
16 with the Division identifying Choice Home Warranty as the administrator. Even if the Division  
17 had been aware that Choice Home Warranty was the administrator, three months later,  
18 Mandalawi submitted a renewal application indicating HWAN was the administrator, and did so  
19 again in 2012 and 2013. Pre-populated or not, Mandalawi attested to the truth of the  
20 information in the application, and the Division relied on the attestations such that the Division  
21 asked HWAN to register Choice Home Warranty as a fictitious name.<sup>1</sup> The Division's  
22 knowledge of whether Choice Home Warranty was CHW Group has no bearing on HWAN's  
23 intentional acts because nothing in the exhibits shows that Mandalawi was unaware of who the  
24 administrator was. The Division could only know what HWAN disclosed. Nothing in the  
25 exhibits refutes that it was a knowing misrepresentation. Thus, exhibits KK and LL do not  
26 show that the Division knew CHW Group was the administrator such that HWAN should not be

---

28 <sup>1</sup> The evidence shows that HWAN presented itself as one-and-the-same with Choice Home Warranty in the  
renewal applications, which also supports the conclusion in Section 1.

1 fined for making false representations of fact.

2 **3. The Exhibits Do Not Show that the Division's Testimony Was Inaccurate**

3 HWAN argues that the exhibits are material because they show that the Division's  
4 testimony was inaccurate. Specifically, HWAN argues that the credibility of Rajat Jain is  
5 directly contradicted by the exhibits because the exhibits show that the Division had long  
6 known that CHW Group is Choice Home Warranty. As explained in Sections 1 and 2, above,  
7 exhibits KK, LL, and MM do not show that the Division knew all along that Choice Home  
8 Warranty was CHW Group. The exhibits also do not show that the Division knew of and  
9 approved of CHW Group's sale of service contracts in Nevada. Therefore, the exhibits do not  
10 affect Jain's credibility. Jain's name does not appear in any of the email correspondence of  
11 exhibits KK, LL, or MM, so whether he was aware of or part of the discussions of 2010 and  
12 2011 is unknown. Jain testified as to how the Division arrived at the determination in 2014 that  
13 HWAN and Choice Home Warranty were one-and-the-same entity, which is not the subject of  
14 any of the exhibits. Thus, the finding that HWAN engaged in unsuitable conduct is not  
15 impacted by exhibits KK, LL, or MM.

16 **4. The Exhibits Do Not Establish that the Final Order Imposed Penalties Beyond the**  
17 **Statute of Limitations**

18 HWAN argues that exhibits KK, LL, and MM are material since the exhibits show that  
19 the Division was aware that CHW Group was selling service contracts on behalf of HWAN as  
20 early as 2011. As a result, HWAN argues, the penalties for making false entries of material fact  
21 in its 2011–2015 renewal applications and for allowing CHW Group to sell service contracts on  
22 its behalf are improper under the statute of limitations. As explained in Sections 1, 2, and 3,  
23 above, exhibits KK, LL, and MM do not show that the Division knew that Choice Home  
24 Warranty was CHW Group. Moreover, HWAN did not raise the statute of limitations as an  
25 affirmative defense in the hearing; as such, the Hearing Officer will not consider it on remand.

26 **5. Admissibility of Exhibits KK, LL, and MM**

27 HWAN argues that any argument by the Division that exhibits KK, LL, and MM are  
28 privileged is without merit because the Remand Order requires the Hearing Officer to receive

1 and consider the exhibits. The Division argues that the Remand Order allows the Hearing  
2 Officer to only consider materiality because the Court has not yet ruled on whether HWAN had  
3 good reason for not presenting the exhibits during the hearing.

4 The Remand Order requires the Hearing Officer to receive the exhibits and consider  
5 materiality, and issue a new decision addressing materiality and impact on the final decision.  
6 The Court did not grant the Hearing Officer authority to make a determination as to whether  
7 good reasons exist for HWAN's failure to present the exhibits at the hearing. Receiving the  
8 exhibits and considering materiality required the Hearing Officer to look at the exhibits and  
9 evaluate them in the context of the issues; the Hearing Officer is not considering the exhibits'  
10 admissibility. Therefore, any argument regarding admissibility, such as privilege, is not within  
11 the Hearing Officer's jurisdiction.

12 Conclusion

13 Having received and reviewed exhibits KK, LL, and MM, as mandated in the Court's  
14 Remand Order, the Hearing Officer finds exhibits KK, LL, and MM not to be material and,  
15 therefore, do not impact the final decision.

16 DATED this 22nd day of January, 2019.

17   
18 ALEXIA M. EMMERMANN  
19 Hearing Officer  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that I have this date served the **ORDER ON REMAND**, in **CAUSE**  
3 **NO. 17.0050**, via electronic mail and by mailing a true and correct copy thereof via First Class  
4 mail, properly addressed with postage prepaid, to the following:

5 Kirk B. Lenhard, Esq.  
6 Brownstein Hyatt Farber Schreck, LLP  
7 100 North City Parkway, Suite 1600  
8 Las Vegas, NV 89106  
9 E-MAIL: [klenhard@bhfs.com](mailto:klenhard@bhfs.com)


10 Travis F. Chance, Esq.  
11 Brownstein Hyatt Farber Schreck, LLP  
12 100 North City Parkway, Suite 1600  
13 Las Vegas, NV 89106  
14 E-MAIL: [tchance@bhfs.com](mailto:tchance@bhfs.com)

15 Lori Grifa, Esq.  
16 Archer & Greiner, P.C.  
17 Court Plaza South, West Wing  
18 21 Main Street, Suite 353  
19 Hackensack, NJ 07601  
20 E-MAIL: [lgrifa@archerlaw.com](mailto:lgrifa@archerlaw.com)

21 and copies of the foregoing were sent via electronic mail to:

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

25 DATED this 22<sup>nd</sup> day of January, 2019.

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



1 AARON D. FORD  
Attorney General  
2 RICHARD PAILI YIEN, Bar No. 13035  
Deputy Attorney General  
3 State of Nevada  
Business and Taxation Division  
4 100 N. Carson Street  
Carson City, NV 89701  
5 P: (775) 684-1129  
F: (775) 684-1156  
6 Email: [ryien@ag.nv.gov](mailto:ryien@ag.nv.gov)

7 *Attorney for the Division of Insurance*

REC'D & FILED  
2019 NOV 27 AM 10:43  
AUBREY ROWLATT  
CLERK  
BY P. O'KEEFE  
DEPUTY

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

Case No. 17-OC-00269-1B

Dept. No. I

12 Petitioner,

13 vs.

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

16 Respondent.

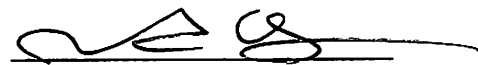
17 NOTICE OF ENTRY OF ORDER

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*

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

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

  
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  
Attorney General  
2 JOANNA N. GRIGORIEV  
Senior Deputy Attorney General  
3 Nevada Bar No. 5649  
555 E. Washington Ave. #3900  
4 Las Vegas, NV 89101  
E-mail: jgrigoriev@ag.nv.gov  
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

AUDREY 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



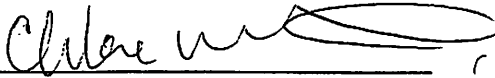
**CERTIFICATE OF MAILING**

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

1 AARON D. FORD  
Attorney General  
2 JOANNA N. GRIFORIEV,  
Nevada Bar No. 5649  
3 Senior Deputy Attorney General  
555 E. Washington Ave. #3900  
4 Las Vegas, NV 89101  
E-mail: jgrigoriev@ag.nv.gov  
5 RICHARD PAILI YIEN,  
Nevada Bar No. 13035  
6 Deputy Attorney General  
Office of the Attorney General  
7 100 N. Carson Street  
Carson City, NV 89701  
8 Email: ryien@ag.nv.gov  
Attorneys for Respondent  
9 Nevada Division of Insurance

REC'D & FILED  
2019 DEC 11 PM 12:59  
AUBREY ROWLATT  
CLERK  
BY J. HARKLER

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

12 HOME WARRANTY ADMINISTRATOR OF  
NEVADA, INC., DBA CHOICE HOME  
13 WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

14 Petitioner,

15 vs.

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

18 Respondent.


19 NOTICE OF ENTRY OF ORDER

20 Please take notice that the ORDER DENYING PETITIONER'S MOTION FOR  
21 LEAVE OF COURT FOR LIMITED RECONSIDERATION OF COURT'S FINDINGS ON  
22 HWAN'S PETITION FOR JUDICIAL REVIEW was signed by Judge James T. Russell on  
23 December 9, 2019, a conformed copy of which is attached hereto as Exhibit 1.

24 DATED December 11, 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 December 11, 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.  
Holland & Hart, LLP  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, NV 89134

Sydney R. Gambia, Esq.  
Holland & Hart, LLP  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, NV 89134

DATED December 11, 2019



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

# EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES (Excluding tabs)
1	Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN'S Petition for Judicial Review	3

**EXHIBIT 1**

**ORDER DENYING PETITIONER'S**  
**MOTION FOR LEAVE OF COURT FOR**  
**LIMITED RECONSIDERATION OF**  
**COURT'S FINDINGS ON HWAN'S**  
**PETITION FOR JUDICIAL REVIEW**

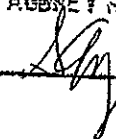
**EXHIBIT 1**

1 AARON D. FORD  
Attorney General  
2 JOANNA N. GRIGORIEV  
Senior Deputy Attorney General  
3 Nevada Bar No. 5649  
555 E. Washington Ave. #3900  
4 Las Vegas, NV 89101  
E-mail: jgrigoriev@ag.nv.gov  
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 DEC -9 AM 8:09

AUDREY ROWLATT  
CLERK

BY  CLERK

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

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

Case No.: 17 OC 00269 1B

Dept. No.: 1

15 vs.

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

19 Respondents.

20 ORDER DENYING PETITIONER'S MOTION FOR LEAVE OF COURT FOR  
21 LIMITED RECONSIDERATION OF COURT'S FINDINGS ON HWAN'S  
PETITION FOR JUDICIAL REVIEW

22 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba  
23 Choice Home Warranty's ("Petitioner") Motion for Leave of Court Pursuant to PJD CR 15(10)  
24 and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN'S Petition for  
25 Judicial Review ("Motion for Leave"), filed by the Petitioner on November 15, 2019.  
26 Respondent filed an Opposition on November 27, 2019, and Petitioner filed its Reply in  
27 Support and Request to Submit documents on December 4, 2019.

1 Upon review and consideration of the papers and pleadings on file, and for good  
2 cause appearing, Petitioner's Motion is hereby DENIED.

3 The Court hereby finds:

4 NRS 233B.135 (1) (b), provides that: "1. Judicial review of a final decision of an agency  
5 must be . . . (b) Confined to the record." *Id.* Petitioner's Motion for Leave relies on  
6 exhibits not found in the record, references documents, websites, and alleged facts not in  
7 the record.

8 The issue of who can lawfully sell service contracts in Nevada, pursuant to chapter 690C  
9 of the NRS, has been briefed and argued by Petitioner a multitude of times. After  
10 receiving extensive briefings on the issue, at the oral argument, the Court devoted  
11 considerable attention to this issue and afforded Petitioner an extensive opportunity to  
12 address it. The Court sees no further reason to reconsider issues already exhaustively  
13 litigated. NRS 233B.150 provides an adequate remedy for any party aggrieved by the  
14 decision of the district court.

15 Based upon the papers, pleading, and orders on file herein, the Court now finds and  
16 ORDERS:

17 Petitioner's Motion for Leave of Court Pursuant to PJDCR 15(10) and DCR 13(7) for  
18 Limited Reconsideration of Findings Pertaining to HWAN'S Petition for Judicial Review  
19 is hereby DENIED.

20 **IT IS SO ORDERED**

21 **DATED** this 9<sup>th</sup> day of December 2019.

22  
23   
DISTRICT COURT JUDGE

24 Respectfully submitted by:

25 AARON D. FORD  
26 Attorney General

27 By: 

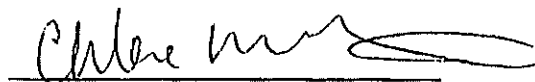
28 Richard P. Yien (Bar No. 13035)  
Deputy Attorney General  
Joanna N. Grigoriev (Bar No. 5649)  
Senior Deputy Attorney General

**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 9 day of December, 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.  
Richard P. Yien, Esq.  
Office of the Attorney General  
100 N. Carson Street  
Carson City, NV 89701

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



Chloe McClintick, Esq.  
Law Clerk, Dept. 1