

**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 00218
Electronically Filed
May 12 2020 05:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from First Judicial District Court, State of Nevada, County of Clark
The Honorable James. T. Russell, District Judge

**APPELLANT'S APPENDIX
VOLUME VII OF XIV
(AA001151 – AA001358)**

Constance L. Akridge, Esq.
Nevada Bar No. 3353
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
Brittany L. Walker, Esq.
Nevada Bar No. 14641
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
clakridge@hollandhart.com
srgambee@hollandhart.com
blwalker@hollandhart.com

*Attorneys for Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty, a Nevada corporation*

INDEX TO APPELLANT'S APPENDIX IN CHRONOLOGICAL ORDER

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Complaint and Application for Order to Show Cause (Cause No. 17.0050)	05/09/17	I	AA000001 – AA000010
Application for Subpoena Duces Tecum to Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (“HWAN”) (Cause No. 17.0050)	05/09/17	I	AA000011 – AA000014
Order to Show Cause (Cause No. 17.0050)	05/11/17	I	AA000015 – AA000018
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	05/11/17	I	AA000019 – AA000022
Petition to Enlarge Time to Respond to Subpoena Duces Tecum, with cover letter (Cause No. 17.0050)	06/01/17	I	AA000023 – AA000029
Notice of Non-Opposition to Respondent's Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/01/17	I	AA000030 – AA000031
Order on Petition to Enlarge Time to Respond to Subpoena Duces Tecum (Cause No. 17.0050)	06/05/17	I	AA000032 – AA000035
Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/14/17	I	AA000036 – AA000039
Notice of Non-Opposition to Respondent's Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/16/17	I	AA000040 – AA000041
Joint Request to Continue Hearing (Cause No. 17.0050)	06/20/17	I	AA000042 – AA000044
Order on Motion Requesting Extension of Time and Order on Joint Request for Continuance (Cause No. 17.0050)	06/22/17	I	AA000045 – AA000047
Pre-hearing Order (Cause No. 17.0050)	06/22/17	I	AA000048 – AA000053
Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/14/17	I	AA000054 – AA000064

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Second Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/19/17	I	AA000065 – AA000071
Request to Continue Hearing (Cause No. 17.0050)	07/20/17	I	AA000072 – AA000073
Limited Opposition to Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/21/17	I	AA000074 – AA000076
Notice of No Opposition to Request to Continue Hearing (Cause No. 17.0050)	07/24/17	I	AA000077 – AA000078
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	07/26/17	I	AA000079 – AA000083
Order on Motions (Cause No. 17.0050)	07/27/17	I	AA000084 – AA000091
Subpoena for Appearance at Hearing to Dolores Bennett (Cause No. 17.0050)	08/04/17	I	AA000092 – AA000095
Subpoena for Appearance at Hearing to Sanja Samardzija (Cause No. 17.0050)	08/04/17	I	AA000096 – AA000099
Subpoena for Appearance at Hearing to Vincent Capitini (Cause No. 17.0050)	08/04/17	I	AA000100 – AA000103
Subpoena Duces Tecum to the Commissioner of the State of Nevada Division of Insurance (the “Division”) (Cause No. 17.0050)	08/09/17	I	AA000104 – AA000108
Subpoena for Appearance at Hearing to Chloe Stewart (Cause No. 17.0050)	08/09/17	I	AA000109 – AA000112
Subpoena for Appearance at Hearing to Derrick Dennis (Cause No. 17.0050)	08/09/17	I	AA000113 – AA000116
Subpoena for Appearance at Hearing to Geoffrey Hunt (Cause No. 17.0050)	08/09/17	I	AA000117 – AA000120
Subpoena for Appearance at Hearing to Linda Stratton (Cause No. 17.0050)	08/09/17	I	AA000121 – AA000124
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Creation of the Division’s Annual Renewal Application Forms (Cause No. 17.0050)	08/09/17	I	AA000125 – AA000128

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Date of the Division's Knowledge of the Violations Set Forth in the Division's Complaint on File in this Cause (Cause No. 17.0050)	08/09/17	I	AA000129 – AA000132
Subpoena for Appearance at Hearing to Vicki Folster (Cause No. 17.0050)	08/09/17	I	AA000133 – AA000136
Subpoena for Appearance at Hearing to Kim Kuhlman (Cause No. 17.0050)	08/09/17	I	AA000137 – AA000140
Subpoena for Appearance at Hearing to Martin Reis (Cause No. 17.0050)	08/09/17	I	AA000141 – AA000144
Subpoena for Appearance at Hearing to Mary Strong (Cause No. 17.0050)	08/09/17	I	AA000145 – AA000148
Joint Request for Pre-hearing Conference (Cause No. 17.0050)	08/16/17	I	AA000149 – AA000152
Order Setting Pre-hearing Conference (Cause No. 17.0050)	08/17/17	I	AA000153 – AA000158
Order on Joint Application to Conduct Deposition (Cause No. 17.0050)	08/17/17	I	AA000159 – AA000164
Joint Application to Conduct Deposition to Preserve Hearing Testimony (Cause No. 17.0050)	08/21/17	I	AA000165 – AA000168
Amended Complaint and Application for Order to Show Cause (Cause No. 17.0050)	09/05/17	I	AA000169 – AA000177
Division's Pre-hearing Statement (Cause No. 17.0050)	09/06/17	I	AA000178 – AA000188
Proposed Hearing Exhibits and Witness List by Division (Cause No. 17.0050) (<i>Exhibits 1, 3, 6, 8-11, 13-20, 24-29, and 38-40 excluded from appendix as irrelevant to this appeal</i>)	09/06/17	II	AA000189 – AA000275
Hearing Exhibit List by HWAN (Cause No. 17.0050) (<i>Exhibits D, F-H, J-K, M-N, W-X, and HH excluded from appendix as irrelevant to this appeal</i>)	09/06/17	III	AA000276 – AA000499
HWAN's Pre-hearing Statement (Cause No. 17.0050)	09/08/17	IV	AA000500 – AA000513
List of Hearing Witnesses by HWAN (Cause No. 17.0050)	09/08/17	IV	AA000514 – AA000517

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) <i>(Exhibits 41-42 excluded from appendix as irrelevant to this appeal)</i>	09/08/17	IV	AA000518 – AA000521
HWAN's Notice of Intent to File Supplemental Hearing Exhibits and Amended Hearing Exhibit List (Cause No. 17.0050)	09/11/17	IV	AA000522 – AA000582
Transcript of Hearing Proceedings on September 12, 2017 (Cause No. 17.0050)	09/12/17	IV-V	AA000583 – AA000853
Transcript of Hearing Proceedings on September 13, 2017 (Cause No. 17.0050)	09/13/17	V-VI	AA000854 – AA001150
Transcript of Hearing Proceedings on September 14, 2017 (Cause No. 17.0050)	09/14/17	VII	AA001151 – AA001270
HWAN's Notice of Filing Supplemental Hearing Exhibit SS (Cause No. 17.0050)	09/21/17	VII	AA001271 – AA001295
Order regarding Post-hearing Briefs and Written Closing Arguments (Cause No. 17.0050)	10/13/17	VII	AA001296 – AA001298
Division's Post-hearing Brief Pursuant to Order (Cause No. 17.0050)	10/30/17	VII	AA001299 – AA001307
HWAN's Post-hearing Brief on Hearing Officer's Inquiry (Cause No. 17.0050)	10/30/17	VII	AA001308 – AA001325
Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/13/17	VII	AA001326 – AA001332
Division's Opposition to Respondent's Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/14/17	VII	AA001333 – AA001338
Order regarding Motion to Strike and Written Closing Arguments (Cause No. 17.0050)	11/14/17	VII	AA001339 – AA001340
Division's Closing Statement (Cause No. 17.0050)	11/17/17	VII	AA001341 – AA001358
HWAN's Closing Argument (Cause No. 17.0050)	11/22/17	VIII	AA001359 – AA001378
Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of the Commissioner (Cause No. 17.0050)	12/18/17	VIII	AA001379 – AA001409
Affirmation (Initial Appearance) (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001410 – AA001411

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001412 – AA001458
Civil Cover Sheet (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001459
Order for Briefing Schedule (Case No. 17 OC 00269 1B)	12/26/17	VIII	AA001460 – AA001462
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance – Attorney General (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001463 – AA001464
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance –Commissioner of Insurance (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001465
Administrative Record (Case No. 17 OC 00269 1B)	01/12/18	VIII	AA001466 – AA001470
Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/16/18	VIII	AA001471 – AA001486
Statement of Intent to Participate (Case No. 17 OC 00269 1B)	01/19/18	VIII	AA001487 – AA001489
Division’s Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/30/18	VIII	AA001490 – AA001503
Supplement to Division’s Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/31/18	VIII	AA001504 – AA001537
Reply in Support of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001538 – AA001548
Request for Submission of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001549 – AA001551
Notice of Entry of Order Denying Motion for Stay (Case No. 17 OC 00269 1B)	02/16/18	VIII	AA001552 – AA001559
Petitioner’s Opening Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	02/16/18	IX	AA001560 – AA001599
Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/15/18	IX	AA001600 – AA001601

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Respondent's Answering Brief (Case No. 17 OC 00269 1B)	03/19/18	IX	AA001602 – AA001641
Certificate of Service of Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/28/18	IX	AA001642 – AA001643
Reply Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	04/11/18	IX	AA001644 – AA001662
Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	04/19/18	IX	AA001663 – AA001680
Opposition to Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/04/18	IX	AA001681 – AA001687
Reply in Support of Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001688 – AA001701
Request for Submission of Petitioner's Motion for Leave to Present Additional Evidence and Petitioner's Request for Hearing on its Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001702 – AA001704
Order to Set for Hearing (Case No. 17 OC 00269 1B)	05/16/18	IX	AA001705 – AA001706
Hearing Date Memo (Case No. 17 OC 00269 1B)	06/06/18	IX	AA001707
Transcript of Hearing Proceedings on August 6, 2018 (Case No. 17 OC 00269 1B)	08/06/18	IX	AA001708 – AA001731
Order Granting Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	09/06/18	IX	AA001732 – AA001735
Order regarding Exhibits KK, LL & MM (Cause No. 17.0050)	10/31/18	IX	AA001736 – AA001738
HWAN's Brief regarding Exhibits KK, LL, and MM (Cause No. 17.0050)	11/13/18	IX	AA001739 – AA001745
Division's Opposition to HWAN's Proposed Exhibits KK, LL, and MM (Cause No. 17.0050)	11/20/18	IX	AA001746 – AA001753
HWAN's Reply to Division's Opposition to its Brief regarding Exhibits KK, LL and MM (Cause No. 17.0050)	11/21/18	IX	AA001754 – AA001758

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order on Remand (Cause No. 17.0050)	01/22/19	IX	AA001759 – AA001767
Substitution of Attorney (Cause No. 17.0050)	01/24/19	IX	AA001768 – AA001770
Substitution of Attorney (Case No. 17 OC 00269 1B)	01/25/19	IX	AA001771 – AA001773
Notice of Filing Hearing Officer's Administrative Order (Case No. 17 OC 00269 1B)	01/28/19	X	AA001774 – AA001787
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	02/01/19	X	AA001788 – AA001801
Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	02/22/19	X	AA001802 – AA001961
Notice of Non-Opposition to Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal and Notice of Submission of Proposed Order (Case No. 17 OC 00269 1B)	03/12/19	X	AA001962 – AA001968
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	03/12/19	X	AA001969 – AA001971
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/13/19	X	AA001972 – AA001973
Stipulation and Order (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/25/19	X	AA001974 – AA001976

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Entry of Order for Stipulation regarding (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/01/19	X	AA001977 – AA001982
Division’s Opposition to Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (erroneously filed in Case No. 19 OC 00015 1B)	04/03/19	XI	AA001983 – AA002003
Reply Memorandum of Points and Authorities in Support of Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/15/19	XI	AA002004 – AA002008
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/06/19	XI	AA002009 – AA002011
Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/08/19	XI	AA002012 – AA002013
Notice of Entry of Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002014 – AA002018
Notice of Entry of Order Granting Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002019 – AA002023
Petitioner’s Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002024 – AA002138

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002139 – AA002169
Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/30/19	XI	AA002170 – AA002173
Request for Submission of Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/31/19	XI	AA002174 – AA002176
Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/05/19	XI	AA002177 – AA002179
Notice of Entry of Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/06/19	XI	AA002180 – AA002185
Order Granting Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	06/18/19	XI	AA002186 – AA002189
Notice of Entry of Order Granting Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	07/10/19	XI	AA002190 – AA002194
Respondents’ Response to Petitioner’s Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/08/19	XII	AA002195 – AA002209
Petitioner’s Reply in Support of its Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002210 – AA002285
Request for Hearing on Petition for Judicial Review Pursuant to NRS 233B.133(4) (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002286 – AA002288

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice to Set (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002289 – AA002291
Hearing Date Memo (Case No. 17 OC 00269 1B)	08/28/19	XII	AA002292 – AA002294
Legislative History Statement Regarding NRS 690C.325(1) and NRS 690C.330 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002295 – AA002358
Respondent's Statement of Legislative History of NRS 690C.325 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002359 – AA002383
Transcript of Hearing Proceedings on November 7, 2019 (Case No. 17 OC 00269 1B)	11/07/19	XIII	AA002384 – AA002455
Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/15/19	XIII	AA002456 – AA002494
Notice of Submission of Competing Proposed Order (Case No. 17 OC 00269 1B)	11/22/19	XIII	AA002495 – AA002516
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 (Case No. 17 OC 00269 1B)	11/25/19	XIII	AA002517 – AA002521
Notice of Entry of 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 (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002522 – AA002530
Respondent's Opposition to Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002531 – AA002541

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Reply in Support of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002542 – AA002570
Request for Submission of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002571 – AA002573
Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIII	AA002574 – AA002582
Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002583 – AA002639
Case Appeal Statement (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002640 – AA002645
Notice of Appeal (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002646 – AA002693
Opposition to Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002694 – AA002698
Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002699 – AA002702
Request for Submission of Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002703 – AA002705
Reply in Support of Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002706 – AA002716

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Entry of Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/11/19	XIV	AA002717 – AA002723
Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/12/19	XIV	AA002724 – AA002725
Notice of Entry of Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/18/19	XIV	AA002726 – AA002731
Division's Opposition to Petitioner's Motion for Stay (Case No. 17 OC 00269 1B)	12/19/19	XIV	AA002732 – AA002741
Reply in Support of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002742 – AA002755
Request for Submission of Motion to Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002756 – AA002758
Order Denying Petitioner's Motion for Stay Pending Appeal (Case No. 17 OC 00269 1B)	12/31/19	XIV	AA002759 – AA002764
Notice of Entry of Order Denying Petitioner's Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	01/07/20	XIV	AA002765 – AA002775

INDEX TO APPELLANT’S APPENDIX IN ALPHABETICAL ORDER

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Administrative Record (Case No. 17 OC 00269 1B)	01/12/18	VIII	AA001466 – AA001470
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance – Attorney General (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001463 – AA001464
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance –Commissioner of Insurance (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001465
Affirmation (Initial Appearance) (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001410 – AA001411
Amended Complaint and Application for Order to Show Cause (Cause No. 17.0050)	09/05/17	I	AA000169 – AA000177
Application for Subpoena Duces Tecum to Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (“HWAN”) (Cause No. 17.0050)	05/09/17	I	AA000011 – AA000014
Case Appeal Statement (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002640 – AA002645
Certificate of Service of Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/28/18	IX	AA001642 – AA001643
Civil Cover Sheet (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001459
Complaint and Application for Order to Show Cause (Cause No. 17.0050)	05/09/17	I	AA000001 – AA000010
Division’s Closing Statement (Cause No. 17.0050)	11/17/17	VII	AA001341 – AA001358
Division’s Opposition to HWAN’s Proposed Exhibits KK, LL, and MM (Cause No. 17.0050)	11/20/18	IX	AA001746 – AA001753
Division’s Opposition to Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (erroneously filed in Case No. 19 OC 00015 1B)	04/03/19	XI	AA001983 – AA002003

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/30/18	VIII	AA001490 – AA001503
Division's Opposition to Petitioner's Motion for Stay (Case No. 17 OC 00269 1B)	12/19/19	XIV	AA002732 – AA002741
Division's Opposition to Respondent's Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/14/17	VII	AA001333 – AA001338
Division's Post-hearing Brief Pursuant to Order (Cause No. 17.0050)	10/30/17	VII	AA001299 – AA001307
Division's Pre-hearing Statement (Cause No. 17.0050)	09/06/17	I	AA000178 – AA000188
Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of the Commissioner (Cause No. 17.0050)	12/18/17	VIII	AA001379 – AA001409
Hearing Date Memo (Case No. 17 OC 00269 1B)	06/06/18	IX	AA001707
Hearing Date Memo (Case No. 17 OC 00269 1B)	08/28/19	XII	AA002292 – AA002294
Hearing Exhibit List by HWAN (Cause No. 17.0050) (<i>Exhibits D, F-H, J-K, M-N, W-X, and HH excluded from appendix as irrelevant to this appeal</i>)	09/06/17	III	AA000276 – AA000499
HWAN's Brief regarding Exhibits KK, LL, and MM (Cause No. 17.0050)	11/13/18	IX	AA001739 – AA001745
HWAN's Closing Argument (Cause No. 17.0050)	11/22/17	VIII	AA001359 – AA001378
HWAN's Notice of Filing Supplemental Hearing Exhibit SS (Cause No. 17.0050)	09/21/17	VII	AA001271 – AA001295
HWAN's Notice of Intent to File Supplemental Hearing Exhibits and Amended Hearing Exhibit List (Cause No. 17.0050)	09/11/17	IV	AA000522 – AA000582
HWAN's Post-hearing Brief on Hearing Officer's Inquiry (Cause No. 17.0050)	10/30/17	VII	AA001308 – AA001325
HWAN's Pre-hearing Statement (Cause No. 17.0050)	09/08/17	IV	AA000500 – AA000513

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
HWAN's Reply to Division's Opposition to its Brief regarding Exhibits KK, LL and MM (Cause No. 17.0050)	11/21/18	IX	AA001754 – AA001758
Joint Application to Conduct Deposition to Preserve Hearing Testimony (Cause No. 17.0050)	08/21/17	I	AA000165 – AA000168
Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/30/19	XI	AA002170 – AA002173
Joint Request for Pre-hearing Conference (Cause No. 17.0050)	08/16/17	I	AA000149 – AA000152
Joint Request to Continue Hearing (Cause No. 17.0050)	06/20/17	I	AA000042 – AA000044
Legislative History Statement Regarding NRS 690C.325(1) and NRS 690C.330 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002295 – AA002358
Limited Opposition to Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/21/17	I	AA000074 – AA000076
List of Hearing Witnesses by HWAN (Cause No. 17.0050)	09/08/17	IV	AA000514 – AA000517
Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/15/19	XIII	AA002456 – AA002494
Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	02/22/19	X	AA001802 – AA001961
Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	04/19/18	IX	AA001663 – AA001680
Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIII	AA002574 – AA002582

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/14/17	I	AA000054 – AA000064
Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/16/18	VIII	AA001471 – AA001486
Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002583 – AA002639
Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/13/17	VII	AA001326 – AA001332
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	02/01/19	X	AA001788 – AA001801
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002139 – AA002169
Notice of Appeal (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002646 – AA002693
Notice of Entry of 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 (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002522 – AA002530
Notice of Entry of Order Denying Motion for Stay (Case No. 17 OC 00269 1B)	02/16/18	VIII	AA001552 – AA001559
Notice of Entry of Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/11/19	XIV	AA002717 – AA002723
Notice of Entry of Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/18/19	XIV	AA002726 – AA002731

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Entry of Order Denying Petitioner's Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	01/07/20	XIV	AA002765 – AA002775
Notice of Entry of Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002014 – AA002018
Notice of Entry of Order for Stipulation regarding (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/01/19	X	AA001977 – AA001982
Notice of Entry of Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002019 – AA002023
Notice of Entry of Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	07/10/19	XI	AA002190 – AA002194
Notice of Entry of Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/06/19	XI	AA002180 – AA002185
Notice of Filing Hearing Officer's Administrative Order (Case No. 17 OC 00269 1B)	01/28/19	X	AA001774 – AA001787
Notice of No Opposition to Request to Continue Hearing (Cause No. 17.0050)	07/24/17	I	AA000077 – AA000078

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Non-Opposition to Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal and Notice of Submission of Proposed Order (Case No. 17 OC 00269 1B)	03/12/19	X	AA001962 – AA001968
Notice of Non-Opposition to Respondent's Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/01/17	I	AA000030 – AA000031
Notice of Non-Opposition to Respondent's Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/16/17	I	AA000040 – AA000041
Notice of Submission of Competing Proposed Order (Case No. 17 OC 00269 1B)	11/22/19	XIII	AA002495 – AA002516
Notice to Set (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002289 – AA002291
Opposition to Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/04/18	IX	AA001681 – AA001687
Opposition to Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002694 – AA002698
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 (Case No. 17 OC 00269 1B)	11/25/19	XIII	AA002517 – AA002521
Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002699 – AA002702
Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/12/19	XIV	AA002724 – AA002725

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order Denying Petitioner's Motion for Stay Pending Appeal (Case No. 17 OC 00269 1B)	12/31/19	XIV	AA002759 – AA002764
Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/08/19	XI	AA002012 – AA002013
Order for Briefing Schedule (Case No. 17 OC 00269 1B)	12/26/17	VIII	AA001460 – AA001462
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/13/19	X	AA001972 – AA001973
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	06/18/19	XI	AA002186 – AA002189
Order Granting Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	09/06/18	IX	AA001732 – AA001735
Order on Joint Application to Conduct Deposition (Cause No. 17.0050)	08/17/17	I	AA000159 – AA000164
Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/05/19	XI	AA002177 – AA002179
Order on Motion Requesting Extension of Time and Order on Joint Request for Continuance (Cause No. 17.0050)	06/22/17	I	AA000045 – AA000047
Order on Motions (Cause No. 17.0050)	07/27/17	I	AA000084 – AA000091
Order on Petition to Enlarge Time to Respond to Subpoena Duces Tecum (Cause No. 17.0050)	06/05/17	I	AA000032 – AA000035
Order on Remand (Cause No. 17.0050)	01/22/19	IX	AA001759 – AA001767
Order regarding Exhibits KK, LL & MM (Cause No. 17.0050)	10/31/18	IX	AA001736 – AA001738
Order regarding Motion to Strike and Written Closing Arguments (Cause No. 17.0050)	11/14/17	VII	AA001339 – AA001340

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order regarding Post-hearing Briefs and Written Closing Arguments (Cause No. 17.0050)	10/13/17	VII	AA001296 – AA001298
Order Setting Pre-hearing Conference (Cause No. 17.0050)	08/17/17	I	AA000153 – AA000158
Order to Set for Hearing (Case No. 17 OC 00269 1B)	05/16/18	IX	AA001705 – AA001706
Order to Show Cause (Cause No. 17.0050)	05/11/17	I	AA000015 – AA000018
Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001412 – AA001458
Petition to Enlarge Time to Respond to Subpoena Duces Tecum, with cover letter (Cause No. 17.0050)	06/01/17	I	AA000023 – AA000029
Petitioner's Opening Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	02/16/18	IX	AA001560 – AA001599
Petitioner's Reply in Support of its Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002210 – AA002285
Petitioner's Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002024 – AA002138
Pre-hearing Order (Cause No. 17.0050)	06/22/17	I	AA000048 – AA000053
Proposed Hearing Exhibits and Witness List by Division (Cause No. 17.0050) (<i>Exhibits 1, 3, 6, 8-11, 13-20, 24-29, and 38-40 excluded from appendix as irrelevant to this appeal</i>)	09/06/17	II	AA000189 – AA000275
Reply Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	04/11/18	IX	AA001644 – AA001662
Reply in Support of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002542 – AA002570

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Reply in Support of Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002706 – AA002716
Reply in Support of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001538 – AA001548
Reply in Support of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002742 – AA002755
Reply in Support of Petitioner’s Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001688 – AA001701
Reply Memorandum of Points and Authorities in Support of Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/15/19	XI	AA002004 – AA002008
Request for Hearing on Petition for Judicial Review Pursuant to NRS 233B.133(4) (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002286 – AA002288
Request for Submission of Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/31/19	XI	AA002174 – AA002176
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/06/19	XI	AA002009 – AA002011
Request for Submission of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN’s Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002571 – AA002573
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	03/12/19	X	AA001969 – AA001971

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Request for Submission of Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002703 – AA002705
Request for Submission of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001549 – AA001551
Request for Submission of Motion to Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002756 – AA002758
Request for Submission of Petitioner’s Motion for Leave to Present Additional Evidence and Petitioner’s Request for Hearing on its Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001702 – AA001704
Request to Continue Hearing (Cause No. 17.0050)	07/20/17	I	AA000072 – AA000073
Respondent’s Answering Brief (Case No. 17 OC 00269 1B)	03/19/18	IX	AA001602 – AA001641
Respondent’s Opposition to Petitioner’s Motion for Leave of Court for Limited Reconsideration of Court’s Findings on HWAN’s Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002531 – AA002541
Respondent’s Statement of Legislative History of NRS 690C.325 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002359 – AA002383
Respondents’ Response to Petitioner’s Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/08/19	XII	AA002195 – AA002209
Second Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/19/17	I	AA000065 – AA000071
Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/14/17	I	AA000036 – AA000039
Statement of Intent to Participate (Case No. 17 OC 00269 1B)	01/19/18	VIII	AA001487 – AA001489

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Stipulation and Order (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/25/19	X	AA001974 – AA001976
Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/15/18	IX	AA001600 – AA001601
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	05/11/17	I	AA000019 – AA000022
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	07/26/17	I	AA000079 – AA000083
Subpoena Duces Tecum to the Commissioner of the State of Nevada Division of Insurance (the “Division”) (Cause No. 17.0050)	08/09/17	I	AA000104 – AA000108
Subpoena for Appearance at Hearing to Dolores Bennett (Cause No. 17.0050)	08/04/17	I	AA000092 – AA000095
Subpoena for Appearance at Hearing to Sanja Samardzija (Cause No. 17.0050)	08/04/17	I	AA000096 – AA000099
Subpoena for Appearance at Hearing to Vincent Capitini (Cause No. 17.0050)	08/04/17	I	AA000100 – AA000103
Subpoena for Appearance at Hearing to Chloe Stewart (Cause No. 17.0050)	08/09/17	I	AA000109 – AA000112
Subpoena for Appearance at Hearing to Derrick Dennis (Cause No. 17.0050)	08/09/17	I	AA000113 – AA000116
Subpoena for Appearance at Hearing to Linda Stratton (Cause No. 17.0050)	08/09/17	I	AA000121 – AA000124
Subpoena for Appearance at Hearing to Vicki Folster (Cause No. 17.0050)	08/09/17	I	AA000133 – AA000136
Subpoena for Appearance at Hearing to Kim Kuhlman (Cause No. 17.0050)	08/09/17	I	AA000137 – AA000140
Subpoena for Appearance at Hearing to Mary Strong (Cause No. 17.0050)	08/09/17	I	AA000145 – AA000148

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Subpoena for Appearance at Hearing to Geoffrey Hunt (Cause No. 17.0050)	08/09/17	I	AA000117 – AA000120
Subpoena for Appearance at Hearing to Martin Reis (Cause No. 17.0050)	08/09/17	I	AA000141 – AA000144
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Creation of the Division's Annual Renewal Application Forms (Cause No. 17.0050)	08/09/17	I	AA000125 – AA000128
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Date of the Division's Knowledge of the Violations Set Forth in the Division's Complaint on File in this Cause (Cause No. 17.0050)	08/09/17	I	AA000129 – AA000132
Substitution of Attorney (Case No. 17 OC 00269 1B)	01/25/19	IX	AA001771 – AA001773
Substitution of Attorney (Cause No. 17.0050)	01/24/19	IX	AA001768 – AA001770
Supplement to Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/31/18	VIII	AA001504 – AA001537
Transcript of Hearing Proceedings on September 12, 2017 (Cause No. 17.0050)	09/12/17	IV-V	AA000583 – AA000853
Transcript of Hearing Proceedings on September 13, 2017 (Cause No. 17.0050)	09/13/17	V-VI	AA000854 – AA001150
Transcript of Hearing Proceedings on September 14, 2017 (Cause No. 17.0050)	09/14/17	VII	AA001151 – AA001270
Transcript of Hearing Proceedings on August 6, 2018 (Case No. 17 OC 00269 1B)	08/06/18	IX	AA001708 – AA001731
Transcript of Hearing Proceedings on November 7, 2019 (Case No. 17 OC 00269 1B)	11/07/19	XIII	AA002384 – AA002455
Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) <i>(Exhibits 41-42 excluded from appendix as irrelevant to this appeal)</i>	09/08/17	IV	AA000518 – AA000521

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

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
BEFORE HEARING OFFICER ALEXIA M. EMMERMANN

-oOo-

IN THE MATTER OF
Cause No. 17.0050
HOME WARRANTY ADMINISTRATOR
OF NEVADA, INC. dba CHOICE HOME
WARRANTY,
Respondent.

=====

HEARING
Thursday, September 14, 2017
9:00 a.m.
Carson City, Nevada
(Videoconferenced to Las Vegas)

REPORTED BY: SHANNON L. TAYLOR, CCR, CSR, RMR
Certified Court, Shorthand and Registered Merit Reporter
Nevada CCR #322, California CSR #8753, Idaho CSR #485
(775) 887-0472

A P P E A R A N C E S

The Hearing Officer:

Alexia M. Emmermann, Esq.
Insurance Counsel
Division of Insurance

For the Division of Insurance:

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

Joanna N. Grigoriev, Esq. (Las Vegas)
Senior Deputy Attorney General
Office of the Attorney General
Las Vegas, Nevada

Rajat Jain
Timothy Ghan
Derick Dennis

For the Respondent:

Kirk B. Lenhard, Esq.
Travis F. Chance, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway
Las Vegas, NV 89106-4614

Lori Grifa, Esq.
Archer & Greiner, P.C.
Court Plaza South, West Wing
21 Main Street, Suite 353
Hackensack, NJ 07601-7095

Victor Mandalawi
Victor Hakim

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

I N D E X

WITNESSES

Witness	Page
Marla Ramirez:	
Direct Examination Resumed by Ms. Grifa	6
Cross-Examination by Mr. Yien	14
Victor Mandalawi:	
(Recalled for questions by the Hearing Officer)	32
Victor Hakim:	
Direct Examination by Ms. Grifa	67
Cross-Examination by Mr. Yien	94

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

DIVISION'S EXHIBITS

(No additional exhibits were noted as being marked or admitted today.)

RESPONDENT'S EXHIBITS

Exhibit	Description	Mkd	Adm
II	July 21, 2017 Email from M. Strong		107
JJ	July 26, 2017 Letter Response from L. Grifa		107
KK - QQ	Emails (WITHDRAWN, page 108)		
RR	BBB Business Profile - Choice Home Warranty	109	109

1 CARSON CITY, NEVADA, THURSDAY, SEPTEMBER 14, 2017,

2 9:02 A.M.

3 -oOo-

4 HEARING OFFICER EMMERMANN: So we are back on
5 the record. It is 9:02 on September 14th.

6 We left off with Marla Ramirez on the stand.

7 Ms. Grifa?

8 MS. GRIFA: Yes, I'd ask to recall Marla
9 Ramirez for a brief additional direct.

10 THE WITNESS: Good morning.

11 HEARING OFFICER EMMERMANN: Good morning.

12 Ms. Ramirez, I want to remind you that you're still
13 under oath. And all the same introductory remarks that
14 I made yesterday apply, if you need a break, if you have
15 any questions, ask for clarification. Okay?

16 THE WITNESS: You got it.

17 HEARING OFFICER EMMERMANN: All right. Thank
18 you.

19

20 M A R L A R A M I R E Z,

21 having been previously duly sworn/affirmed,

22 was examined and testified as follows:

23 ///

24 ///

25 ///

1 DIRECT EXAMINATION RESUMED

2 BY MS. GRIFA:

3 Q. Good morning, Ms. Ramirez.

4 A. Good morning.

5 Q. In anticipation of your testimony here in this
6 proceeding, did you have a chance to read the documents
7 that were filed, the claims that were filed against
8 HWAN, before you testified?

9 A. Yes.

10 Q. And are you familiar with the allegation they
11 made that claims were being denied without investigation
12 or communication?

13 A. Yes.

14 Q. And have you found that to be true?

15 A. No, that is not true.

16 Q. In fact, is it possible for claims to be
17 processed without investigation or communication?

18 A. No, it's impossible.

19 Q. They also are alleging that claims are being
20 denied without regard to the contract and in an unfair
21 and deceptive way. Have you found that to be the
22 practice of CHW Group as it handles the HWAN claims?

23 A. No, that is not true.

24 Q. Yesterday, as we were concluding -- oh, let me
25 withdraw that. Is it possible to resolve claims without

1 communication?

2 A. No, it is impossible.

3 Q. Is it possible to resolve claims without
4 investigation?

5 A. No, it is impossible.

6 Q. And the company keeps records, that is to say,
7 CHW Group keeps records of every contact it has with
8 every policyholder who calls for a service appointment
9 or some other service-related issue?

10 A. That is correct.

11 Q. By date and time?

12 A. That is correct.

13 Q. Yesterday you briefly mentioned that the
14 company keeps records of a variety of different
15 communications it gets with regard to their experience,
16 including the positive ones; is that right?

17 A. That is correct.

18 Q. And we have in evidence here at this proceeding
19 Exhibit M. How many testimonials have been provided in
20 connection with this proceeding, if you know?

21 A. 6,000.

22 Q. Do those include policyholders of the other
23 HWAs as well as the Nevada consumers?

24 A. That is correct.

25 Q. So when you say 6,000, it's not 6,000 Nevada

1 people?

2 A. Right.

3 Q. But it's 6,000 generically?

4 A. That is correct.

5 MS. GRIFA: Then, Madam Hearing Officer, with
6 your permission, I would just like to, for purposes of
7 the record, direct your attention, as you review the
8 exhibits and the testimony in this case, rather than
9 having the witness read into the record, I would just
10 like to cite the page numbers for an exemplar of these
11 Nevada communications with the claims department, with
12 your permission.

13 HEARING OFFICER EMMERMANN: Yes, that would be
14 helpful. Thank you.

15 MS. GRIFA: So at page 407, Cynthia Dreeson.

16 HEARING OFFICER EMMERMANN: What exhibit?

17 MS. GRIFA: Exhibit M. These will all be
18 Exhibit M. Okay?

19 HEARING OFFICER EMMERMANN: Okay. Give me a --

20 MS. GRIFA: Oh, actually, I was just going to
21 read the names, and then I would invite you to look at
22 them at --

23 HEARING OFFICER EMMERMANN: Later?

24 MS. GRIFA: Yes.

25 HEARING OFFICER EMMERMANN: Wait, I'm going to

1 close this, then, because it's driving me nuts, this
2 broken binder.

3 MS. GRIFA: I thought perhaps, maybe in your
4 review and deliberations, you could use the page number
5 references and the names in the record, rather than have
6 her review --

7 HEARING OFFICER EMMERMANN: Okay.

8 MS. GRIFA: -- all the wonderful things that
9 these folks have said.

10 HEARING OFFICER EMMERMANN: Okay. Please, go
11 ahead.

12 MS. GRIFA: At Exhibit M, page 407, Cynthia
13 Dreeson. At page 422, Donald Mildren. At page 431,
14 Marty Sutter. At page 537, Susan Tsukamoto. At
15 page 585, Dennis Garza. At page 677, Diana Truax. At
16 page 704, Jack Cruea. At page 742, Fran Gottlieb. At
17 page 761, Owen Anderson.

18 I have no additional questions for the witness.
19 Oh, one moment. Oh, I'm sorry. I actually did have
20 another question for the witness.

21 BY MS. GRIFA:

22 Q. I just wanted to go back for a moment to
23 Anthony Trombetta. We spoke to you about him briefly
24 yesterday, and you said that -- I asked you if you had
25 any knowledge as to whether he had an elderly or an

1 infirm person in the household that was ever brought to
2 the attention of the company. Do you recall your
3 testimony?

4 A. Yes, I do.

5 Q. And by examining the records that are set forth
6 in Exhibit HH with respect to his contract, you found no
7 reference --

8 A. That is correct.

9 Q. -- to such a complaint? Are you aware --
10 withdrawn. Does the company have any particular policy
11 or procedure for dealing with people who might call and
12 make a claim regarding a particular sensitivity within
13 the household?

14 A. Yes, we do.

15 Q. With respect to either an elderly person or a
16 newborn or somebody who's sick, is there a policy in
17 place?

18 A. Yes.

19 Q. Can you tell me what the company's policy is?

20 A. So, first, all representatives take down what
21 the customer says verbatim. So that is always in the
22 record. The second is that those claims have highest
23 priority. Although, as I had mentioned yesterday, our
24 claims, on average, are dispatched, assigned to a
25 technician within four hours. So we are well within

1 emergency claim ratio for any claim that does come in.
2 But we do try to push forward any claim that has an
3 emergency-type situation.

4 Q. When you examined CHW Group's intake file for
5 Mr. Trombetta, you found no reference to any particular
6 sensitivity in the company's records?

7 A. None whatsoever.

8 Q. But if it had been communicated to the company,
9 would that claim have been treated differently?

10 A. Yes.

11 Q. How would it have been treated differently?

12 A. It would have been automatically put into the
13 dispatch department to make sure that that claim was
14 being followed closely. All claims are -- the customers
15 are contacted throughout the process. So he would have
16 been contacted throughout, and we would have been able
17 to dispatch a technician as soon as possible.

18 Q. And in the records that you examined yesterday,
19 you found no reference of that whatsoever?

20 A. No reference.

21 Q. Are you aware -- withdrawn. You're not on the
22 phone with all these people who are calling in?

23 A. No, I'm not.

24 Q. And there are thousands of calls that come in
25 every month?

1 A. Every day.

2 Q. Every day. Okay. Nationwide?

3 A. Yes.

4 Q. Or withdrawn. Not nationwide. In the areas in
5 which the company is providing claim support?

6 A. That is correct.

7 Q. Right. So are you aware, given your
8 supervisory authority over claims, as opposed to
9 complaints, whether Nevada has any special requirements
10 for dealing with people who have a sensitive physical
11 condition and with particular regard to heating or
12 cooling issues?

13 A. Yes. In fact, it's stated within the policy
14 that for any conditions in the home that the person
15 can't live in the home, we need to start the process and
16 as far as getting the technician out to the home within
17 24 hours.

18 Q. Is that a Nevada rule, or is that a CHW Group
19 policy?

20 A. That is a Nevada rule, although we try to do
21 that for CHW Group in totality.

22 Q. And with respect to the contract, the Nevada
23 contract, is there anything within the contract
24 provisions, if you know, that promises, or that type of
25 priority or sensitivity with respect to particular

1 physical ailments?

2 A. Yes. So within the contract, I do know that it
3 does state in the contract that, as I said, if there is
4 a system that's out in the home that makes the home
5 inhabitable, uninhabitable, that we have 24 hours to start
6 that claims process to get a technician out to the home,
7 and that we will be in contact with that consumer
8 throughout that process if we cannot meet that
9 guideline.

10 Q. That's the contract language for Nevada?

11 A. That is correct.

12 Q. Okay. But to your knowledge, does Nevada have
13 any particular either a legal requirement or regulatory
14 requirement in terms of how you, the company treats
15 people who have such a sensitivity?

16 A. I believe that those are the same.

17 Q. Are you aware if there's an obligation to
18 notify anybody in Nevada government with regard to this
19 particular sensitivity, and if there is an obligation,
20 do you know what the time frame is?

21 A. I am not aware of any obligation to inform
22 Nevada.

23 Q. Are you aware of whether -- so you don't think
24 it's a requirement?

25 A. Not that I'm aware of. But I'd love to see, if

1 it is, the statute. But I am not aware of that.

2 Q. Are you aware whether Nevada requests that you
3 notify them if there's somebody of a particular
4 sensitivity?

5 A. Yes.

6 Q. So you understand that Nevada requests --

7 A. Requests, right.

8 Q. -- that a service --

9 A. A service --

10 Q. Let me finish the question.

11 A. I'm sorry.

12 Q. So is it your testimony that you're aware that
13 Nevada requests that they be notified to the extent a
14 service contract provider has been contacted for
15 purposes of providing support on a heating or cooling
16 issue?

17 A. Yes, I'm aware that there's a request but not a
18 requirement.

19 MS. GRIFA: Thank you. I don't have any
20 additional questions.

21 HEARING OFFICER EMMERMANN: Mr. Yien.

22

23 CROSS-EXAMINATION

24 BY MR. YIEN:

25 Q. Good morning. Ms. Ramirez, right?

1 A. Good morning. And, yes.

2 Q. How are you doing this morning?

3 A. Good, how are you?

4 Q. Good. Thank you for asking. You're the chief
5 operating officer, COO, of CHW Group?

6 A. That is correct.

7 Q. And let's start with the chart that on
8 direct --

9 MS. GRIFA: Exhibit K.

10 BY MR. YIEN:

11 Q. Exhibit K.

12 A. Okay.

13 Q. Did you compile this data?

14 A. No, I did not.

15 Q. Who did?

16 A. Victor Hakim.

17 Q. Okay. Are you aware that the total number of
18 complaints here is roughly the same as the total number
19 of complaints that the Division of Insurance has
20 received?

21 A. The complaints?

22 Q. Right.

23 A. Yes.

24 Q. So are you saying there's no other complaints
25 out there outside of the complaints that the Nevada

1 Division of Insurance has received?

2 A. That is correct.

3 Q. Okay. And can you, roughly, can you talk about
4 how these claims numbers are calculated every --

5 A. Yes.

6 Q. Each time you receive a claim, can you just
7 brief the court on how that's -- how do you record one
8 claim?

9 A. Okay. So when a consumer calls in with a
10 request for service, it's entered into the system. That
11 begins the claims process.

12 Q. Okay.

13 A. And the technician goes out to the home. The
14 technician calls us with the diagnosis. We determine if
15 it's covered under the policy or not. That
16 determination moves the claim into a status of either
17 it's approved or it's closed denied. So what you're
18 looking at here is all the claims that have been
19 approved. So for the -- let's just say for the total of
20 69,849 claims that we processed for the state of Nevada,
21 61,345 were approved, 8,504 were denied.

22 Q. Okay. Can I put you to Mary Jo Greenlee's
23 case? It's page 661 of 1672 on the largest exhibit in
24 the binders.

25 A. It's page?

1 Q. 661 of 1672.

2 MS. GRIFA: She doesn't have HH in front of
3 her.

4 MR. YIEN: Oh, okay.

5 MS. BETSY GOULD: I have it. What number was
6 it?

7 MR. YIEN: It's page 661 of 1672, HH.

8 MS. BETSY GOULD: 661?

9 MR. YIEN: Yes.

10 THE WITNESS: Okay.

11 BY MR. YIEN:

12 Q. And on the third to the last dot, starting with
13 August 15, 2016?

14 A. Yes.

15 Q. Can you read the -- can you just read that
16 line?

17 A. Customer called to complain that the unit still
18 was not cooling. A new claim was opened. Vegas
19 Appliance Repairs was assigned to the claim.

20 Q. Okay. So some of the staff at the Division had
21 alerted me to the fact that a new claim was open. So is
22 this two claims, then, for the same, for the same AC
23 repair?

24 A. I would have to go back and check the claim
25 notes. It could have been a claim recall on the same

1 claim, or it could have been an actual new claim.

2 Q. Okay.

3 A. Sometimes when the claim is past 30 days, a new
4 claim is then opened.

5 Q. Okay.

6 A. To begin the process.

7 Q. I see.

8 A. So it does happen at times where if enough time
9 lapses. So the first claim was on June 8th. By
10 June 14th, 45 days has passed by, it becomes a new
11 event.

12 Q. I see. Okay. So it could be the case that
13 this -- the staff had alerted me, in going through
14 these, that in many cases, they saw a new claim here, a
15 new claim here, listed in the notes. And so it could be
16 the case that in one instance of, say, an air
17 conditioning repair, if it goes past a certain amount of
18 days, there's going to be multiple claims?

19 A. It is a rare event. As I said, if it's within
20 45 days, it becomes a recall on the same claim.

21 Q. Okay.

22 A. So it may have been recorded here in the notes
23 as a brand-new claim where it's just a reopening of the
24 same claim.

25 Q. Okay.

1 A. If the claim ages too long, then we reopen a
2 new claim because it becomes a new event.

3 Q. So in the instance where it becomes too long,
4 that would reflect two claims, then, on this chart?

5 A. It might.

6 Q. Okay. And in earlier testimony, one of our
7 staff, the assistant chief, I believe, had testified
8 that it's usually the case that there's a lot more
9 consumers that have complaints than actually report them
10 to their state's regulatory agency. But, again, here,
11 this number is roughly the same.

12 HEARING OFFICER EMMERMANN: Mr. Yien, what are
13 you pointing at with "this"?

14 BY MR. YIEN:

15 Q. Oh, I'm sorry. Going back to the chart,
16 Exhibit K?

17 A. Right.

18 Q. So it remains your testimony, then, that these
19 are the only complaints that CHW has?

20 A. Right. So as I pointed out yesterday, in
21 reading off these numbers, we have a 90 percent approval
22 rating, which means 90 percent of claims are closed
23 approved. That's very few that are left open that are
24 not covered under the policy.

25 Q. Okay.

1 A. So that is, that is correct. If we weren't
2 approving that many claims, you guys would probably have
3 quite a few calls. But we are reaching satisfactory
4 solutions for our consumers at a 90 percent rate.

5 Q. Okay. Did you also testify that in problem
6 cases, you'll alert Mr. Mandalawi to them, and he makes
7 the final decision; is that what I --

8 A. Yes.

9 Q. Okay. And if somebody is aggrieved by it, and
10 Mr. Mandalawi denies it, where does that get, where does
11 that fall in this chart; is that a denied claim?

12 A. Yes, if it's a denied claim, even if we have
13 provided goodwill, it would fall under denied claim if
14 it is not covered and we have tried to reach a
15 satisfactory solution for our consumer.

16 Q. Okay. So it could be the case that that
17 consumer remains aggrieved, for whatever reason, whether
18 it's covered or not, but it's in the denied column as
19 opposed to the complaints column?

20 A. Or if it wasn't covered, it is a denied claim.

21 Q. Sure. Right.

22 A. So it remains in the denied column.

23 Q. Okay.

24 A. That is correct.

25 Q. All right. As COO, Ms. Ramirez, can you

1 describe your duties at Choice Home, CHW Group doing
2 business as Choice Home Warranty?

3 A. Yes. So I'm responsible for all the
4 back-office processes within the organization. That
5 includes everything from vendor relations, which is our
6 vendor network, maintaining the vendor network. The
7 dispatch department, assigning all the technicians. We
8 have different levels of groups that deal with our
9 consumers, the first being the intake group of claims,
10 of new claims. We have a group that processes existing
11 claims. So that's the group that's in constant
12 communication with the consumers throughout the claims
13 process. We have our authorizations group that is in
14 constant communication with the contractors, intaking
15 the diagnoses. We have an additional group that is
16 speaking to the consumer after the diagnosis has been
17 taken in and we've received confirmation. And then we
18 have a resolutions team who is speaking with the
19 consumers who are, you know, unsatisfied with the
20 outcome of their claim or need further understanding of
21 why the apparent, or why the failure was not covered
22 under the policy.

23 Q. Okay. So do you deal with, do you, then, deal
24 with the premiums that come in as a result of the
25 policyholders paying their monthly dues or their --

1 A. No, I do not.

2 Q. Okay.

3 A. I deal with everything that's claims-related.

4 Q. That's Mr. Hakim's role?

5 A. Yes.

6 Q. Okay. But you did mention sales, though,
7 right?

8 A. No.

9 Q. Oh, you didn't?

10 A. No, I did not.

11 Q. Is that also Mr. Hakim's role?

12 A. Yes.

13 Q. Okay. And so, then, in dealing with claims, as
14 Mr. Mandalawi had mentioned, there's a variety of HWAs
15 in the various states?

16 A. Right.

17 Q. And so do you, then, adjudicate all the claims
18 for each of the various HWAs and the state?

19 A. I'm sorry. Can you explain the question?

20 Q. I'm sorry. Okay. Yes. So there's the
21 business entity, CHW Group doing business as Choice Home
22 Warranty. And then there's the HWA Home Warranty
23 Administrator of, in this case, Nevada. But there's
24 also, as I understand, Oklahoma and -- I can't remember
25 all the states, but there were quite a few?

1 A. Yes.

2 Q. When claims come in from those states, does CHW
3 Group, who you're the COO of, and you manage the
4 adjudication process, you guys adjudicate all those
5 claims?

6 A. Yes.

7 Q. Okay. And you do that for HWA of Nevada as
8 well?

9 A. That is correct.

10 Q. Okay. You work in the Somerset office?

11 A. Yes.

12 Q. And so there's two offices in New Jersey?

13 A. Yes, there is.

14 Q. And you said you work closely with
15 Mr. Mandalawi?

16 A. That is correct.

17 Q. And so is he physically at the Somerset
18 location?

19 A. Yes, he is.

20 Q. Often, daily?

21 A. Yes.

22 Q. Which, both?

23 A. Both.

24 Q. Daily?

25 A. Daily.

1 Q. Okay. And so when he's at your Somerset
2 office, and you have -- you're adjudicating an HWA
3 claim, HWAN claim, and you need it finalized, do you --
4 and there's a dispute, you go to Mr. Mandalawi; is that
5 correct?

6 A. If it requires his attention, yes.

7 Q. If it require the attention. How often does
8 that happen?

9 A. Very rarely.

10 Q. Very rarely. Once a day, once a week?

11 A. I have to put a number to it?

12 Q. Just guesstimate.

13 A. It would be less than once a week.

14 Q. Okay. And I would assume that those come from
15 various states; it could be Nevada, it could be
16 Oklahoma, it could be some other state?

17 A. That is correct.

18 Q. Okay. But if those disputes come in,
19 Mr. Mandalawi would resolve it?

20 A. That is correct.

21 Q. And it doesn't matter which state it would come
22 from?

23 A. That is correct.

24 Q. Okay. If I could have you -- just one second
25 here. If I could have you turn to Exhibit 27.

1 MS. GRIFA: It's on your far left, the
2 witness's far left.

3 HEARING OFFICER EMMERMANN: What exhibit number
4 did you say, Mr. Yien?

5 THE WITNESS: 27.

6 MR. YIEN: 27. It's the email solicitation
7 that was sent to Ms. Casci.

8 THE WITNESS: I'm on it.

9 BY MR. YIEN:

10 Q. Okay. Do you recognize this advertisement?

11 A. I do not.

12 Q. Okay. Does it say Choice Home Warranty on it?

13 A. Yes, it does.

14 Q. And would you assume that it's from CHW Group
15 doing business as Choice Home Warranty?

16 A. Yes, I would.

17 Q. Okay. And are you aware that this was sent to
18 a Nevada consumer?

19 MS. GRIFA: I'm sorry. Could I just have that
20 question again.

21 BY MR. YIEN:

22 Q. Are you aware that this was sent to a Nevada
23 consumer, potential Nevada consumer?

24 A. I was not.

25 Q. Okay. And Choice Home Warranty, are you aware

1 of whether or not CHW Group doing business as Choice
2 Home Warranty is licensed in the State of Nevada to sell
3 insurance, or to sell service contracts? It's early,
4 and this is our third day. Do you want me to repeat
5 that question? Are you aware of whether or not CHW
6 Group doing business as Choice Home Warranty is
7 licensed?

8 A. I am not.

9 Q. You're not aware. Do you know if you are; I
10 mean are you?

11 A. I believe, we are not. We would market into
12 Nevada through HWAN.

13 Q. Okay. So this would be illegal, then?

14 MS. GRIFA: Objection. It calls for a legal
15 conclusion.

16 MR. YIEN: Okay.

17 HEARING OFFICER EMMERMANN: Are you going to
18 withdraw your question?

19 BY MR. YIEN:

20 Q. Do you believe it's illegal?

21 HEARING OFFICER EMMERMANN: Well, I know, and
22 We're still on the objection. Are you withdrawing your
23 question, or are you offering to rephrase it, or?

24 MR. YIEN: I can just withdraw it, because
25 that's a legal conclusion that the Hearing Officer can

1 make on her own. So I'll just withdraw that question in
2 its entirety.

3 BY MR. YIEN:

4 Q. At CHW, who issues, sells or offers contracts?

5 A. So I am not a part of the sales and marketing
6 team. I am fully claims and operations. So I probably
7 would not be --

8 Q. Would that be a better question for Mr. Hakim,
9 then?

10 A. Yes. Yes. I have no -- I'm completely
11 back-office.

12 MR. YIEN: Okay. I'm almost done. Just give
13 me one second.

14 BY MR. YIEN:

15 Q. Oh, okay. One more thing. Back on page 661 of
16 1672.

17 A. I'm sorry. Which one?

18 Q. It's the Mary Jo Greenlee case. So it's HH and
19 then 661 of 1672.

20 HEARING OFFICER EMMERMANN: Which exhibit
21 number?

22 MS. GRIFA: This is HHH.

23 MR. YIEN: Oh, it's three.

24 MS. GRIFA: Triple H.

25 HEARING OFFICER EMMERMANN: Okay. Hold on one

1 second.

2 MS. GRIFA: No, double H. Double H.

3 MR. YIEN: We were on it, so it's got to be one
4 of the binders here.

5 HEARING OFFICER EMMERMANN: I got it. Okay.
6 Go ahead.

7 BY MR. YIEN:

8 Q. And this is applicable to a lot of these. And
9 do you see where it says HWAN assigned USA Air, and
10 HWAN, you know, every time HWAN is mentioned here, what
11 does that mean, does that mean an adjudicator that works
12 at CHW Group doing business as Choice Home Warranty is
13 saying that Home Warranty Administrators of Nevada is
14 doing this?

15 A. What it's saying is it's an HWAN consumer.

16 Q. Okay.

17 A. And we provide the service. CHW Group provides
18 the service to those consumers. So doing -- so CHW
19 Group, who is contractually doing business or
20 facilitating the claims process for HWAN --

21 Q. Okay.

22 A. -- is the one who is assigning the technician.

23 Q. Good. Because I was worried that, you know,
24 Mr. Mandalawi, as the sole employee --

25 A. No, he is not.

1 Q. -- was actually doing this each time it's
2 mentioned.

3 A. If he was, he would be doing it for thousands
4 of claims a day across, you know, for all the states and
5 doing business, and he would have no time for anything
6 else.

7 Q. Too much work for one person?

8 A. That is correct.

9 Q. Okay. So it's somebody at CHW Group
10 adjudicating this claim and just mentioning that, you
11 know, for the record, this is a Nevada customer, HWAN
12 customer?

13 A. That is correct.

14 MR. YIEN: I see. Thank you.

15 Okay. Thank you. Thank you, Ms. Martinez.

16 THE WITNESS: Ramirez.

17 MR. YIEN: Oh. Ms. Ramirez.

18 THE WITNESS: It's okay.

19 HEARING OFFICER EMMERMANN: Hold on. You're
20 not done.

21 MR. YIEN: I apologize.

22 THE WITNESS: That's okay.

23 MS. GRIFA: More coffee, Mr. Yien, more coffee.

24 MR. YIEN: It's not my morning.

25 HEARING OFFICER EMMERMANN: Okay. So I do have

1 two questions for you, Mrs. Ramirez. Mrs. Ramirez?

2 THE WITNESS: It's Ms. Ramirez.

3 HEARING OFFICER EMMERMANN: You were talking
4 about, I believe it was Exhibit --

5 MS. GRIFA: K?

6 HEARING OFFICER EMMERMANN: -- K, with the data
7 statistics.

8 THE WITNESS: Yes.

9 HEARING OFFICER EMMERMANN: You had talked
10 about the claims being 90 percent addressed, 10 percent,
11 approximately 10 percent being rejected or denied. Are
12 you familiar with industry standards for claims
13 resolution?

14 THE WITNESS: I am not.

15 HEARING OFFICER EMMERMANN: And then you talked
16 about CHW Group employees and a few locations, two
17 locations. What are the addresses, the physical
18 addresses for these locations?

19 THE WITNESS: So all of operations, which is
20 where I am, is in Somerset, New Jersey. The address is
21 2 Executive Drive, Somerset, New Jersey, 08873.

22 HEARING OFFICER EMMERMANN: Okay.

23 THE WITNESS: And then sales, marketing,
24 technology and finance is at 1090 King Georges Post
25 Road, Edison, New Jersey, 08837.

1 HEARING OFFICER EMMERMANN: And could you tell
2 me approximately the breakdown of how many employees? I
3 remember testimony, about 275 employees, more or less.
4 Approximately how many are in operations where you are?

5 THE WITNESS: So there's approximately 170 in
6 operations.

7 HEARING OFFICER EMMERMANN: So, then, the
8 difference would probably be sales, marketing?

9 THE WITNESS: That is correct.

10 HEARING OFFICER EMMERMANN: All right. Thank
11 you.

12 Ms. Grifa, do you have any follow-up questions?

13 MS. GRIFA: I have no redirect.

14 HEARING OFFICER EMMERMANN: Okay. Thank you
15 very much.

16 THE WITNESS: Thank you.

17 HEARING OFFICER EMMERMANN: Please remember not
18 to talk about your testimony until the final order is
19 issued. Okay?

20 THE WITNESS: Yes.

21 HEARING OFFICER EMMERMANN: Thank you very
22 much.

23 Ms. Grifa, do you have -- are you ready to call
24 Mr. --

25 MS. GRIFA: Yes, we are ready to recall

1 Mr. Mandalawi for purposes of your questioning, I
2 believe, Madam Hearing Officer.

3 HEARING OFFICER EMMERMANN: We'll start with
4 that and then see where it takes us. Ms. Grifa, do we
5 need to double-check --

6 MR. YIEN: Are these the same exhibits you're
7 going to use?

8 MS. GRIFA: Let me take a look.

9 MR. YIEN: Oh, okay.

10 MS. GRIFA: Because this is all about time
11 management today. Since you have the abbreviated
12 schedule, I just want to. Although you're doing a
13 fabulous job.

14 HEARING OFFICER EMMERMANN: Good morning.

15 MR. MANDALAWI: Good morning.

16 HEARING OFFICER EMMERMANN: Is everybody ready
17 to go?

18 MR. YIEN: Yes.

19 HEARING OFFICER EMMERMANN: Are you ready,
20 Ms. Grifa?

21 MS. GRIFA: I am.

22

23 V I C T O R M A N D A L A W I,
24 having been previously sworn/affirmed by the Reporter,
25 was recalled and examined and testified as follows:

1 HEARING OFFICER EMMERMANN: Okay. So as a
2 reminder, Mr. Mandalawi, that you are still under oath.
3 And all the preliminary stuff I discussed yesterday, if
4 you need a break, if you need clarification of the
5 question, it all still stands. Okay?

6 THE WITNESS: Sure.

7 HEARING OFFICER EMMERMANN: Are you good with
8 that?

9 THE WITNESS: Yeah.

10 HEARING OFFICER EMMERMANN: Okay. So I want to
11 let counsel know, I have a number of questions,
12 partially based on testimony, partially based on the
13 exhibits, when I first got them. And so some of these
14 questions from the exhibits may be based on because I
15 didn't hear anything from you guys, and it piqued my
16 curiosity. So I just want clarification to make sure
17 that I understand fully what we've got going here.
18 Okay?

19 All right. So my first question, it's going to
20 seem very scattered, but it's based on the questions
21 that you got yesterday.

22 I want to double-check. You said that HWAN
23 started operating in Nevada in 2010?

24 THE WITNESS: Correct.

25 HEARING OFFICER EMMERMANN: And CHW, I don't

1 know if it was CHW Group or Choice Home Warranty started
2 operating in 2008?

3 THE WITNESS: Correct.

4 HEARING OFFICER EMMERMANN: Who owns this
5 Choice Home Warranty domain?

6 THE WITNESS: CHW Group.

7 HEARING OFFICER EMMERMANN: CHW Group?

8 THE WITNESS: Yes.

9 HEARING OFFICER EMMERMANN: Who controls the
10 information that goes on that website?

11 THE WITNESS: Myself and Victor Hakim.

12 HEARING OFFICER EMMERMANN: And as the company,
13 who controls it?

14 THE WITNESS: CHW Group.

15 HEARING OFFICER EMMERMANN: CHW Group. And as
16 individuals, you and Mr. Hakim?

17 THE WITNESS: Correct.

18 HEARING OFFICER EMMERMANN: You had talked
19 yesterday in your testimony about consumers having
20 signed up for the Choice Home Warranty product in Nevada
21 because the website was up nationally. I wanted to
22 double-check what that website URL was?

23 THE WITNESS: It's www.ChoiceHomeWarranty.com.

24 HEARING OFFICER EMMERMANN: So the same one I
25 was just asking you?

1 THE WITNESS: Yes.

2 HEARING OFFICER EMMERMANN: Okay. And is that
3 still the website that's used for Choice Home Warranty,
4 the products?

5 THE WITNESS: Yes, it is.

6 HEARING OFFICER EMMERMANN: And is that the
7 same website that Home Warranty Administrators of Nevada
8 uses?

9 THE WITNESS: Well --

10 HEARING OFFICER EMMERMANN: To sell the
11 products?

12 THE WITNESS: Well, yes.

13 HEARING OFFICER EMMERMANN: And I might have --
14 let's get through the questions, and then I might have
15 you walk me through the website, because I want to
16 understand how you use that website in Nevada versus --
17 well, let me ask this. Is that website used for -- you
18 said it was nationally used. So you use it in all the
19 states where you have your Home Administrators, or Home
20 Warranty Administrators companies located?

21 THE WITNESS: Yes.

22 HEARING OFFICER EMMERMANN: Okay. So I might
23 have you walk me through the website. If we do, I'll
24 probably record it. Because I want to understand how
25 the company distinguishes where consumers are.

1 THE WITNESS: Sure.

2 HEARING OFFICER EMMERMANN: Okay?

3 MS. GRIFA: Pardon me, Madam Hearing Officer.
4 We are prepared for that. We are able to do that for
5 you today.

6 HEARING OFFICER EMMERMANN: Oh, okay.

7 MS. GRIFA: And it was, it's actually part of
8 the plan of our direct, the balance of our direct case,
9 but.

10 HEARING OFFICER EMMERMANN: With Mr. Mandalawi?

11 MS. GRIFA: With Mr. Hakim.

12 HEARING OFFICER EMMERMANN: Okay. So, then,
13 I'll hold off on that. And then, by the end of the day,
14 we'll see where we are.

15 MS. GRIFA: Yes.

16 HEARING OFFICER EMMERMANN: Okay. Great.

17 Who is the bank account for Nevada held with,
18 what bank?

19 HEARING OFFICER EMMERMANN: The Home Warranty
20 Administrator of Nevada, Inc.?

21 HEARING OFFICER EMMERMANN: Yes.

22 THE WITNESS: Chesapeake Bay.

23 HEARING OFFICER EMMERMANN: Is there a separate
24 banking entity for Choice Home Warranty?

25 THE WITNESS: For CHW Group, there is.

1 HEARING OFFICER EMMERMANN: For CHW Group,
2 there is. But not one for the dba?

3 THE WITNESS: No. There's one for Home
4 Warranty Administrator of Nevada and one for CHW Group.

5 HEARING OFFICER EMMERMANN: Then, I assume, do
6 you have bank accounts for the different states as well?

7 THE WITNESS: Different states solely for those
8 HWA companies.

9 HEARING OFFICER EMMERMANN: So are they all in
10 one bank account with subaccounts, or do you have
11 separate bank accounts for each?

12 THE WITNESS: No, they all have their own
13 account.

14 HEARING OFFICER EMMERMANN: Okay. Do you
15 recall how many, approximately, contracts were sold
16 before you obtained the license here in Nevada?

17 THE WITNESS: I don't.

18 HEARING OFFICER EMMERMANN: Okay. You've
19 mentioned in your testimony that you have an email
20 address that's dedicated solely for Nevada. And I
21 wanted to make sure I understand that that's what you
22 said.

23 THE WITNESS: Yes.

24 HEARING OFFICER EMMERMANN: And it's
25 info@HomeWarranty -- no. Could you tell me what it is

1 again.

2 THE WITNESS: Yes. I have two for Home
3 Warranty Administrators. It's
4 VMandalawi@HomeWarrantyAdministrators.com.

5 HEARING OFFICER EMMERMANN: Home Warranty
6 Administrators.com?

7 THE WITNESS: M-hm (affirmative).

8 HEARING OFFICER EMMERMANN: And what is the
9 second one?

10 THE WITNESS: It's a general inbox. It's
11 info@HomeWarrantyAdministrators.com.

12 HEARING OFFICER EMMERMANN: But you said this
13 is exclusively for Nevada consumers or Nevada clients?

14 THE WITNESS: No, it's exclusively for Home
15 Warranty Administrators. And I use that email for
16 multiple states, not just Nevada.

17 HEARING OFFICER EMMERMANN: Okay.

18 THE WITNESS: So it would be used for Home
19 Warranty Administrator of South Carolina, Home Warranty
20 Administrator of Oklahoma, et cetera.

21 HEARING OFFICER EMMERMANN: So it's to make it
22 less administratively burdensome?

23 THE WITNESS: Yes. It would be a lot of emails
24 to go through.

25 HEARING OFFICER EMMERMANN: You talked about

1 HWAN being established for purposes of regulatory
2 compliance. What does regulatory compliance mean to
3 you?

4 THE WITNESS: Regulatory compliance, what it
5 means to me is from each state to state has different
6 statutes, different, you know, regulatory requirements.
7 So the purpose that those companies were set up was to,
8 you know, make sure that we -- I could separate from
9 each of those regulatory statutes from state to state.

10 HEARING OFFICER EMMERMANN: But for all intents
11 and purposes, everything else happens under the CHW
12 Group umbrella?

13 THE WITNESS: CHW Group and Home Warranty
14 Administrators has an ISP operating agreement in place,
15 and CHW Group provides the sales, marketing and
16 operations.

17 HEARING OFFICER EMMERMANN: Okay.

18 MS. GRIGORIEV: Excuse me. Could I ask
19 Mr. Mandalawi to speak up a little bit. I'm having a
20 hard time.

21 THE WITNESS: Sure.

22 MS. GRIGORIEV: Thank you.

23 HEARING OFFICER EMMERMANN: Let me move the
24 microphone over. Did you catch that last response,
25 Ms. Grigoriev?

1 MS. GRIGORIEV: (Shook head negatively.)

2 HEARING OFFICER EMMERMANN: No. Okay.

3 Mr. Mandalawi, do you mind repeating your response?

4 THE WITNESS: If you wouldn't mind, just repeat
5 the question, so that.

6 HEARING OFFICER EMMERMANN: So I had asked if
7 CHW Group, for all intents and purposes, operates under
8 the umbrella of that company. All the other
9 transactions occur under their authority. So the
10 regulatory compliance that you said is state to state is
11 under HWAN, but everything else happens under CHW Group?

12 THE WITNESS: Yes, sales, marketing and
13 operations happens through CHW Group through an
14 operating agreement.

15 HEARING OFFICER EMMERMANN: Okay. So I have an
16 exhibit in my notes, and I need to look at it. Give me
17 a second. I have to think about what my notes mean.

18 Okay. So under Exhibit EE, in volume three.

19 THE WITNESS: Yes. Thank you.

20 HEARING OFFICER EMMERMANN: Everybody there?

21 MS. GRIFA: M-hm (affirmative). Thank you.

22 MR. YIEN: Yes.

23 HEARING OFFICER EMMERMANN: Okay. On page two
24 of nine, so I see that on the top right there's the logo
25 for Home Warranty Administrators. On the left side is

1 the logo for Choice Home Warranty. And then, under the
2 white, that white window, where it says "Choice Home
3 Warranty, America's choice," under there in a smaller
4 print is "Obligor" or "Obilgor," typo maybe, "Home
5 Warranty Administrator of Nevada, Inc." Just to
6 understand, so this is, you likely use this in the
7 different states you operate, you just change who the
8 obligor is based on whatever state you're operating,
9 right?

10 THE WITNESS: Correct, Nevada consumers would
11 get this. And a South Carolina consumer, it would be
12 similar, it would say "Obligor, Home Warranty
13 Administrator of South Carolina, Inc."

14 HEARING OFFICER EMMERMANN: Okay. At the
15 bottom, there's an address, where it says Choice Home
16 Warranty, 510 Thornall Street. Who operates out of
17 there?

18 THE WITNESS: That's just an older address.

19 HEARING OFFICER EMMERMANN: An older address.
20 So what's the updated address for this location?

21 THE WITNESS: For the Choice Home Warranty,
22 it's 1090 --

23 HEARING OFFICER EMMERMANN: 1090. Okay.

24 THE WITNESS: -- King Georges Post Road. You
25 don't need the whole thing?

1 HEARING OFFICER EMMERMANN: No.

2 THE WITNESS: Okay.

3 HEARING OFFICER EMMERMANN: I remember. I just
4 wanted to make sure I'm connecting all the dots, because
5 I'm seeing a lot of addresses, and I don't want to be
6 confused.

7 THE WITNESS: Sure.

8 HEARING OFFICER EMMERMANN: Who designed this,
9 who drafted this agreement on page two?

10 THE WITNESS: I did with some of my team.

11 HEARING OFFICER EMMERMANN: Was it part of
12 Choice, or was it part of Home Warranty Administrators
13 of Nevada?

14 THE WITNESS: It was through Choice.

15 HEARING OFFICER EMMERMANN: Through Choice.
16 Okay. Who controls the content in this contract?

17 THE WITNESS: Well, CHW Group does, but
18 ensuring that it meets the guidelines of the statutory
19 requirements of Nevada through Home Warranty
20 Administrator of Nevada.

21 HEARING OFFICER EMMERMANN: So you have to
22 collaborate to make sure whatever changes happen here
23 are consistent with whatever statutory requirements or
24 regulatory requirements exist in each state that this is
25 used?

1 THE WITNESS: Exactly, right.

2 HEARING OFFICER EMMERMANN: Okay. So I read
3 the deposition of Judge Harriet Derman. And I
4 understood the compliance monitoring that she was doing.
5 I wanted to understand. Because I understood that the
6 compliance monitoring she was doing was on behalf of CHW
7 Group dba Choice Home Warranty through New Jersey. I
8 wanted to understand that if she made a change to the
9 website advertising -- I'm not sure if she looked at the
10 contracts. But if she made a change, did that change
11 impact what went out to each of the states?

12 THE WITNESS: It could.

13 HEARING OFFICER EMMERMANN: It could. Okay.

14 THE WITNESS: I can give you an example, if you
15 like.

16 HEARING OFFICER EMMERMANN: Okay.

17 THE WITNESS: If she would ask us to bold
18 certain verbiage in the contract, you know, we would
19 have no problem doing that. And that, that wouldn't
20 change any of the requirements from state to state, so I
21 would happily oblige.

22 HEARING OFFICER EMMERMANN: Have you come
23 across the experience where two states' laws conflict,
24 so you have to do two different things in your contracts
25 or on your website?

1 THE WITNESS: I mean it would just be in, you
2 know, the terms. There are some terms that are
3 different from state to state, such as cancellation
4 terms, for instance. And she normally did not. You
5 know, I never recall her making any changes through
6 contract language.

7 HEARING OFFICER EMMERMANN: Okay. Exhibit EE,
8 at page two, pages two through eight, is this a hard
9 copy, or is this from the website?

10 THE WITNESS: This would be a hard copy that
11 would go out to consumers after purchase.

12 HEARING OFFICER EMMERMANN: And who sends out
13 the hard copy?

14 THE WITNESS: CHW Group.

15 HEARING OFFICER EMMERMANN: How do you -- okay.
16 So we're done with this exhibit. How do you divide your
17 responsibilities? I'm trying to get a sense of, because
18 you wear two hats, you've got your role as the HWAN
19 president and then your role as the CHW Group president.
20 And you have different offices, right? So HWAN has a
21 location. Where's that office?

22 THE WITNESS: Bedminster, New Jersey.

23 HEARING OFFICER EMMERMANN: Okay. So you've
24 got Bedminster?

25 THE WITNESS: Bedminster.

1 HEARING OFFICER EMMERMANN: Bedminster,
2 New Jersey. That's HWAN. You've got CHW Group in
3 Edison?

4 THE WITNESS: I go to Somerset.

5 HEARING OFFICER EMMERMANN: You go to Somerset.

6 THE WITNESS: Mostly.

7 HEARING OFFICER EMMERMANN: Okay. So there's
8 three office locations, there's three towns?

9 THE WITNESS: Yes.

10 HEARING OFFICER EMMERMANN: Do you operate
11 under your responsibility as president of HWAN only when
12 you're at your Somerset, or whatever, the Bedminster
13 office?

14 THE WITNESS: No.

15 HEARING OFFICER EMMERMANN: Or do you
16 operate -- okay.

17 THE WITNESS: No, I can fulfill the
18 obligations, you know, from Bedminster, from Somerset,
19 from Edison, from my home in New York.

20 HEARING OFFICER EMMERMANN: How do you
21 distinguish when you're acting in what role?

22 THE WITNESS: I don't know that I think about
23 it that way.

24 HEARING OFFICER EMMERMANN: Okay.

25 THE WITNESS: You know, HWAN, you know, what's

1 top of mind to me is to make sure that we're always in
2 regulatory compliance, you know, from state to state.
3 And it's easy for me to fulfill my obligations to CHW
4 Group, because so long as CHW Group is doing what they
5 should be doing under the terms of the ISP, then I also
6 know that we're in compliance with state to state for
7 the HWA companies.

8 HEARING OFFICER EMMERMANN: Okay. If you can
9 turn to Exhibit Z. It's in the same binder in front of
10 you. Do you have it before you?

11 THE WITNESS: I do.

12 HEARING OFFICER EMMERMANN: Do counsel have it?

13 MS. GRIFA: Yes, ma'am.

14 MR. YIEN: Yes.

15 HEARING OFFICER EMMERMANN: Okay. If you could
16 turn to page three. So page three is one of the renewal
17 applications that we reviewed yesterday. And I wanted
18 to understand what, one of the terms you used in here.
19 So if you go down to question two, have you made any
20 changes in administrator, do you see that?

21 THE WITNESS: Yes.

22 HEARING OFFICER EMMERMANN: So you listed the
23 current administrator as self. Who's self?

24 THE WITNESS: The administrator would be CHW
25 Group.

1 HEARING OFFICER EMMERMANN: Okay. I wanted to
2 understand that, because self, to me, means an
3 individual or person.

4 THE WITNESS: Right.

5 HEARING OFFICER EMMERMANN: You. And so I
6 wanted to understand how that all...

7 In Exhibit of T, same binder -- is everybody on
8 Exhibit T?

9 MS. GRIFA: Yes, ma'am.

10 MR. YIEN: Let me get there. Is that another
11 contractor provider application?

12 HEARING OFFICER EMMERMANN: No, this is an
13 email from Elena Ahrens.

14 THE WITNESS: I'm getting there. I apologize.

15 HEARING OFFICER EMMERMANN: It's the same
16 binder.

17 MR. YIEN: Okay. I'm there now.

18 HEARING OFFICER EMMERMANN: Okay. So this is
19 page one. In the email from you to Ms. Ahrens, you
20 wrote "Copies of our policy and T&C's." I just want to
21 know what T&C's means.

22 THE WITNESS: Terms and conditions.

23 HEARING OFFICER EMMERMANN: Okay. In this, as
24 part of this exhibit, there's discussion about the
25 issuance of a C&D, which I understand to be a cease and

1 desist. Do you understand that the same?

2 THE WITNESS: Yes.

3 HEARING OFFICER EMMERMANN: Okay. Do you
4 recall what happened about that time, what was going on
5 regarding a C&D?

6 THE WITNESS: To my recollection, it was
7 something in the line of the Nevada Division wanting to
8 issue a cease and desist order for, I believe it was
9 Choice Home Warranty, because of possible confusion
10 about what the -- who the licensed entity was. And this
11 was a long time ago, so.

12 HEARING OFFICER EMMERMANN: I understand that.

13 THE WITNESS: I believe, it was, you know, kind
14 of like a simple phone call saying, hey, Choice Home
15 Warranty is us, it's on our approved form, we are Home
16 Warranty Administrators of Nevada, Inc., that's a
17 licensed entity. And then that was quickly, you know --
18 as you could see from the email, just it was -- that
19 stopped there, basically.

20 HEARING OFFICER EMMERMANN: So you worked with
21 the Division to resolve the issue of Choice operating
22 without a license, or whatever, and that sort of made
23 the C&D issue go away?

24 THE WITNESS: Yeah, we were licensed for quite
25 a while before this email.

1 HEARING OFFICER EMMERMANN: With HWAN?

2 THE WITNESS: Correct.

3 HEARING OFFICER EMMERMANN: Okay.

4 THE WITNESS: So it was just, I guess, it was
5 just confusion on their part. But after simply just
6 clarifying it, saying we're Home Warranty Administrator
7 of Nevada, that was it.

8 HEARING OFFICER EMMERMANN: You worked it out?

9 THE WITNESS: Yeah.

10 HEARING OFFICER EMMERMANN: Okay. Can you turn
11 to Exhibit 10? It's in the Division's exhibit binder.

12 Somebody's phone is vibrating.

13 MS. GRIFA: It was mine. Guilty.

14 HEARING OFFICER EMMERMANN: Are you there?

15 THE WITNESS: I am.

16 HEARING OFFICER EMMERMANN: Okay. I'm looking
17 at an opinion issued by the Superior Court of New Jersey
18 in Middlesex County. And I just want to know, if you
19 know, the header that says Amanda Kernahan, Plaintiff,
20 v. Home Warranty Administrator of Florida, do you see
21 that?

22 THE WITNESS: Yeah.

23 HEARING OFFICER EMMERMANN: Do you know who
24 et al. is, who else is named? Because I understand that
25 sometimes in further pleadings, people, attorneys will

1 condense the names of the parties. So I was just
2 wondering who else was identified as a defendant in this
3 matter, if you recall?

4 THE WITNESS: I don't know.

5 HEARING OFFICER EMMERMANN: You don't know.

6 I think, this might have to come from Mr. Hakim
7 when we go over the website. But how do you prevent
8 business from occurring in California and Washington,
9 for example, if you have a national website?

10 THE WITNESS: If a consumer tries to sign up,
11 it would read them a message that we don't offer
12 coverage in their state. They wouldn't be able to
13 purchase a policy.

14 HEARING OFFICER EMMERMANN: And how do you
15 distinguish where a person is signing up from?

16 THE WITNESS: They input their address, their
17 zip code.

18 HEARING OFFICER EMMERMANN: Okay.

19 THE WITNESS: So our system would recognize it
20 as not a covered area, somewhere we don't sell policies,
21 and it would not allow them to set up a policy.

22 HEARING OFFICER EMMERMANN: Okay. If you'll
23 turn to Exhibit CC. Are you there?

24 THE WITNESS: I am.

25 HEARING OFFICER EMMERMANN: Okay. This is one

1 of the renewal applications. The mailing address shows
2 90 Washington Valley Road in Bedminster. That's the
3 location, that's where you work out of?

4 THE WITNESS: Yes.

5 HEARING OFFICER EMMERMANN: Okay. And then
6 this is the home office for HWAN?

7 THE WITNESS: It is.

8 HEARING OFFICER EMMERMANN: And then if you'd
9 turn to page six of Exhibit CC. Do you see the check,
10 check number 1802?

11 THE WITNESS: Yes.

12 HEARING OFFICER EMMERMANN: Okay. Does HWAN
13 issue its own checks, or do you get them preprinted by
14 the bank?

15 THE WITNESS: I issue, we issue our own checks.

16 HEARING OFFICER EMMERMANN: So you have the
17 blank template?

18 THE WITNESS: Exactly.

19 HEARING OFFICER EMMERMANN: And then, if you
20 want to close that binder again and go to -- well,
21 before I make you go there, let me look at it, make sure
22 I still have a question about it. I don't. Exhibit 34.

23 THE WITNESS: Got it.

24 HEARING OFFICER EMMERMANN: Are you there?

25 THE WITNESS: Yeah.

1 HEARING OFFICER EMMERMANN: Counsel, are you
2 there?

3 MS. GRIFA: Yes.

4 HEARING OFFICER EMMERMANN: I wanted to ask,
5 under Summary of Accounts, in the middle of the page on
6 page one, for example, it shows -- it's all redacted.
7 But it shows two lines where there are, I assume, are
8 two different account numbers. And then the two
9 different account titles. The first line says "Demand
10 Money Plus" and the second "Business Checking." I just
11 wanted to understand how those work for HWAN.

12 THE WITNESS: Sure. So these are solely for
13 Home Warranty Administrator of Nevada. I set up two
14 accounts under that same name. One is an operating
15 account. The other is for the reserves.

16 HEARING OFFICER EMMERMANN: And which one is
17 the operating account?

18 THE WITNESS: At Business Checking.

19 HEARING OFFICER EMMERMANN: And then that would
20 mean Demand Money Plus is the reserves?

21 THE WITNESS: Right.

22 HEARING OFFICER EMMERMANN: And you are the
23 only person with access to this account?

24 THE WITNESS: Correct.

25 HEARING OFFICER EMMERMANN: So, hypothetically

1 speaking, you become incapacitated, what happens to the
2 accounts?

3 THE WITNESS: I never thought of that.

4 HEARING OFFICER EMMERMANN: Okay. Just
5 curious.

6 THE WITNESS: Yeah.

7 HEARING OFFICER EMMERMANN: Are you, as far as
8 bank accounts, are you responsible for Choice, or CHW
9 Group's bank account?

10 THE WITNESS: I am a signer.

11 HEARING OFFICER EMMERMANN: You're a signer.
12 But you and who else is on the account?

13 THE WITNESS: Victor Hakim.

14 HEARING OFFICER EMMERMANN: Is there anybody
15 else on the account?

16 THE WITNESS: No.

17 HEARING OFFICER EMMERMANN: And CHW Group only
18 has -- I assume you set it up similar to this one where
19 you have the one account and then subaccounts?

20 THE WITNESS: Correct.

21 HEARING OFFICER EMMERMANN: Okay. Is there any
22 opportunity for those funds to -- other than to transfer
23 in and transfer out -- let me try and formulate my
24 question here. So I noticed in the bank statements that
25 you had transfer from -- let me go back to it. So page

1 five of 14, for example. That 11-4 date entry. Are you
2 there?

3 THE WITNESS: Yes.

4 HEARING OFFICER EMMERMANN: So the transfer to
5 Nevada Operating would mean what; where did it come
6 from, and where did it go?

7 THE WITNESS: I'm not totally sure by looking
8 at this.

9 HEARING OFFICER EMMERMANN: No. Okay. And
10 then transfer from CHW Operating, who, who has the
11 authority to transfer in and out of CHW Operating into
12 this HWAN account?

13 THE WITNESS: I do.

14 HEARING OFFICER EMMERMANN: So Mr. Hakim
15 couldn't do a transfer from CHW to that bank account, or
16 could he?

17 THE WITNESS: He could do a transfer in, yes.

18 HEARING OFFICER EMMERMANN: Okay. And then, do
19 you know if the description, for example, on page nine
20 of 14, the description -- so the dates are 2-13 and
21 2-21, for example. Are those descriptions that you
22 enter into the transaction, or is that something that's
23 automated by the bank?

24 THE WITNESS: The description itself?

25 HEARING OFFICER EMMERMANN: Yes.

1 THE WITNESS: I guess, the bank. You know, I
2 would, you know, sometimes initiate it. We also have a
3 controller that has -- under my guidance can initiate
4 the transfer. But the description would be from the
5 bank. I wouldn't input that description.

6 HEARING OFFICER EMMERMANN: So, what, you have
7 a controller?

8 THE WITNESS: Yeah.

9 HEARING OFFICER EMMERMANN: Comptroller or
10 controller?

11 THE WITNESS: A controller.

12 HEARING OFFICER EMMERMANN: Controller. So
13 they have access to the account as well?

14 THE WITNESS: Yes.

15 HEARING OFFICER EMMERMANN: Oh. So it's more
16 than just you with access to the account?

17 THE WITNESS: For CHW Group, not for Home
18 Warranty Administrator of Nevada.

19 HEARING OFFICER EMMERMANN: Oh, okay. I see.
20 Okay. So is there anywhere for you guys to input why
21 you're transferring money or anything like that?

22 THE WITNESS: I'm thinking about their portal.
23 I'm not -- I don't remember if there's a field to input
24 that, a reason code.

25 HEARING OFFICER EMMERMANN: And then there was

1 some testimony about some goodwill payments made to
2 consumers. Where would that money have come from?

3 THE WITNESS: That happens through CHW Group.

4 HEARING OFFICER EMMERMANN: So CHW Group paid
5 out to the consumers. It didn't come from the HWAN
6 account, is what I want to verify?

7 THE WITNESS: No.

8 HEARING OFFICER EMMERMANN: Okay. How much
9 time do you think you spend as the HWAN president in
10 comparison to the time you spend as CHW Group president?

11 THE WITNESS: It's hard to quantify, because,
12 you know, I would say the -- like I said, so long as
13 through the operating agreement CHW does everything
14 they're supposed to do, it means that HWAN is in
15 compliance with the regulatory statutes from state to
16 state. So I consider myself as working all the time for
17 both entities really.

18 HEARING OFFICER EMMERMANN: But there's no way
19 to -- I'm just trying to understand if you think you
20 spend more time dealing with CHW issues or the
21 regulatory stuff.

22 THE WITNESS: I would say that, you know, the
23 regulatory stuff is not, it's not so time, you know,
24 intensive.

25 HEARING OFFICER EMMERMANN: Okay.

1 THE WITNESS: CHW Group is a flourishing
2 operating business handling thousands and thousands of
3 claims, you know, a day. So that's really where, you
4 know, for lack of a better word, all the action is.

5 HEARING OFFICER EMMERMANN: Okay.

6 THE WITNESS: Whereas the Home Warranty
7 Administrators responsibilities are not that -- you
8 know, it's not like an all day everyday thing. I hope I
9 explained that okay.

10 HEARING OFFICER EMMERMANN: Yeah, I think, I
11 think, that makes sense. And because you're not only
12 president of HWAN, you've got the other states, that
13 regulatory component of the job is sort of always there,
14 but?

15 THE WITNESS: Exactly.

16 HEARING OFFICER EMMERMANN: Okay. I see what
17 you're saying.

18 Okay. So those were my questions based on the
19 testimony yesterday. Now I need to look at my questions
20 from when I was reviewing the evidence.

21 THE WITNESS: Sure.

22 HEARING OFFICER EMMERMANN: Are you doing okay?

23 THE WITNESS: Yeah, fine.

24 HEARING OFFICER EMMERMANN: I wanted to
25 double-check that the companies in different states all

1 use the same website as Choice Home Warranty as the sort
2 of starting point into the product?

3 THE WITNESS: Through the operating agreement,
4 it's a similar setup where CHW Group handles the
5 marketing, sales and operations, yes.

6 HEARING OFFICER EMMERMANN: I think, I know the
7 answer to this, but I want to clarify. So CHW -- well,
8 Choice Home Warranty has the number identified on the
9 website as 888-531-5403. Home Warranty Administrators,
10 I believe, in the exhibits I saw, in the application,
11 the number is listed as 866-681-3656?

12 THE WITNESS: Right.

13 HEARING OFFICER EMMERMANN: Is that first
14 number, the 531 number, for consumers?

15 THE WITNESS: For CHW Group, yeah, that's the
16 customer service, that's the starting point for
17 consumers. There's various different options that they
18 can select based on the department they're trying to
19 reach.

20 HEARING OFFICER EMMERMANN: Okay. And then, so
21 if a consumer were to call the 681 number, what would
22 they get?

23 THE WITNESS: They would get Home Warranty
24 Administrators.

25 HEARING OFFICER EMMERMANN: And you would

1 transfer them over to --

2 THE WITNESS: Well, they wouldn't go through
3 CHW. It would be directly on my phone.

4 HEARING OFFICER EMMERMANN: Okay.

5 THE WITNESS: It's only programmed to ring on
6 my phone.

7 HEARING OFFICER EMMERMANN: And what would you
8 do; so if a consumer were to call that number, what
9 would you do with it?

10 THE WITNESS: I'd answer it.

11 HEARING OFFICER EMMERMANN: So you'd take the
12 claim and all that other fun stuff, or would you
13 transfer them over to the other phone number?

14 THE WITNESS: No, I'd probably transfer them
15 over.

16 HEARING OFFICER EMMERMANN: Okay.

17 THE WITNESS: Although I do like to speak to
18 consumers from time to time, too.

19 HEARING OFFICER EMMERMANN: Do you? Okay.

20 THE WITNESS: Stay in touch.

21 HEARING OFFICER EMMERMANN: I noticed in one of
22 the exhibits that your attorney -- I don't need to pull
23 it up, but, I think, it was Exhibit M. Well, maybe, you
24 know what, just look at page one of Exhibit M.

25 Are you all there?

1 MS. GRIFA: Yes.

2 MR. YIEN: Which one of the exhibits?

3 HEARING OFFICER EMMERMANN: M.

4 MR. YIEN: M. Okay.

5 MS. GRIFA: Just to clarify, on the bottom
6 right-hand corner, it's at 70675?

7 HEARING OFFICER EMMERMANN: Yes.

8 MS. GRIFA: Okay. Yes.

9 HEARING OFFICER EMMERMANN: Are you ready?

10 THE WITNESS: I am.

11 HEARING OFFICER EMMERMANN: Have you seen this
12 exhibit before?

13 THE WITNESS: This is the first time I'm
14 looking at it, but I know what it is.

15 HEARING OFFICER EMMERMANN: What is it?

16 THE WITNESS: Testimonials from consumers.

17 HEARING OFFICER EMMERMANN: Okay. So this is
18 what Ms. Grifa talked about earlier this morning with
19 Ms. Ramirez?

20 THE WITNESS: I believe so.

21 HEARING OFFICER EMMERMANN: Okay. I was
22 wondering, and this is more just plain curiosity, how do
23 you guys get this many positive feedback from consumers?
24 Because getting positive feedback is usually impossible.
25 People always want to do the negative feedback.

1 THE WITNESS: Of course.

2 HEARING OFFICER EMMERMANN: So how is it that
3 you guys were able to capture so much positive feedback?

4 THE WITNESS: Yeah, at the end of every claim
5 event, once the claim is closed, we ask for the
6 feedback. And we'll send an email kind of like a --
7 almost like a customer survey, with just tell us how
8 your experience was. And we'd either, in turn, get
9 positive feedback or negative feedback. So that's how
10 we compile this.

11 HEARING OFFICER EMMERMANN: And you got that
12 many people to respond?

13 THE WITNESS: Yes.

14 HEARING OFFICER EMMERMANN: With just an email
15 survey?

16 THE WITNESS: Yes.

17 HEARING OFFICER EMMERMANN: I don't see -- I've
18 heard a lot of people complain. People don't respond.
19 Nobody wants to look. But, so that's impressive that
20 you've gotten that many people to respond.

21 I want to clarify, because at the beginning, I
22 had asked your attorney, and then there was testimony,
23 and I got two different answers. So I want to make sure
24 I understand. Right now, is CHW, or is Choice Home
25 Warranty, HWAN permitted to transact in service

1 contracts in Nevada?

2 THE WITNESS: Is Home Warranty Administrator of
3 Nevada?

4 HEARING OFFICER EMMERMANN: Yes, is it, is the
5 license active, or is it inactive, as you understand?

6 THE WITNESS: As I understand, it's -- I
7 understand that they've listed it on their website as
8 inactive. But our, my contention is that we are active,
9 I guess, until the consummation of this proceeding.

10 HEARING OFFICER EMMERMANN: Okay. To your
11 knowledge, has the Division ever examined or audited
12 your company?

13 THE WITNESS: No, they have not.

14 HEARING OFFICER EMMERMANN: Either company?

15 THE WITNESS: No.

16 HEARING OFFICER EMMERMANN: Okay. I think,
17 that's all my questions.

18 So based on that, counsel, I will open it up
19 for redirect and recross.

20 MS. GRIFA: Would you consider giving me a
21 comfort break before we do that?

22 HEARING OFFICER EMMERMANN: Sure. Oh, yes,
23 absolutely. So in the interest of time, let's make our
24 breaks quick today. So five minutes. Okay?

25 MS. GRIFA: Perhaps we can, we're going to use

1 media with Mr. Hakim, so maybe we could use that time to
2 set that up in advance.

3 HEARING OFFICER EMMERMANN: Sure. Okay.

4 We are off the record.

5 * * * * *

6 (A break was taken, 10:17 to 10:30 a.m.)

7 * * * * *

8 HEARING OFFICER EMMERMANN: Okay. We are back
9 on the record.

10 Okay. So, Ms. Grifa?

11 MS. GRIFA: I have no additional questions for
12 the witness.

13 HEARING OFFICER EMMERMANN: Oh. That ends
14 that. You know what? Okay. So usually it's redirect,
15 right?

16 MS. GRIFA: Right. I have no redirect.

17 HEARING OFFICER EMMERMANN: So I answered a
18 whole of -- or I asked a bunch of questions that were
19 not hard. So I want to give you each an opportunity.
20 Usually, recross, for me, is just based on direct.

21 So, Mr. Yien, do you have any follow-up
22 questions based on what I asked of Mr. Mandalawi?

23 MR. YIEN: I have no follow-up questions.

24 HEARING OFFICER EMMERMANN: Well, that was
25 easy.

1 Okay. Mr. Mandalawi, thank you very much for
2 your testimony. Please remember that your testimony
3 shouldn't be discussed until after the final order is
4 issued. Okay?

5 THE WITNESS: Thank you very much.

6 HEARING OFFICER EMMERMANN: Thank you.

7 MR. YIEN: Madam Hearing Officer, I have just a
8 bit of housekeeping, to get it out of the way, because I
9 know you guys are rushed. I had initially objected to
10 some of the exhibits being entered due to
11 attorney-client privilege.

12 HEARING OFFICER EMMERMANN: Yes.

13 MR. YIEN: I'll withdraw that.

14 HEARING OFFICER EMMERMANN: You're withdrawing
15 your objection?

16 MR. YIEN: Yes. They can admit all of that.

17 HEARING OFFICER EMMERMANN: Okay.

18 MS. GRIFA: So, I believe, those, do we need to
19 put those letters in?

20 MR. YIEN: It's all of what was previously --

21 MS. GRIFA: Okay.

22 MR. LENHARD: Just the supplemental.

23 MS. GRIFA: Yeah. So just because I have
24 somewhat lost track, so with respect to respondent's
25 case, we would respectfully ask that exhibits that are

1 II through QQ be received on consent.

2 MR. YIEN: Yes.

3 MS. GRIFA: Entered as evidence.

4 HEARING OFFICER EMMERMANN: I just want to make
5 sure that my recollection of the exhibits is the same.

6 MS. GRIFA: Not every one of those exhibits has
7 been discussed in testimony.

8 MR. YIEN: Right.

9 MS. GRIFA: But that would be our proffer, II
10 through QQ.

11 HEARING OFFICER EMMERMANN: Okay. And so just
12 so everyone's clear, so even though it wasn't discussed,
13 none of those, or some of those exhibits have not been
14 discussed, if they're still stipulated to or admitted,
15 they're still part of the public record.

16 MS. GRIFA: Understood.

17 HEARING OFFICER EMMERMANN: And so I just want
18 to make sure that that's clear. So to the extent you
19 still have an objection about there being confidential
20 information or privileged --

21 MR. YIEN: Right. That can't be redacted
22 after?

23 HEARING OFFICER EMMERMANN: Generally, well,
24 unless there's something in statute that says it's
25 personally identifying information, the privilege is

1 maintained. So the question would be whether or not the
2 privilege is maintained even though it's being
3 presented.

4 MS. GRIFA: Should we --

5 MR. YIEN: Yeah.

6 MS. GRIFA: Do you want to reserve?

7 MR. YIEN: I apologize. And I should talk to
8 counsel at the Division to just make sure I'm not doing
9 anything against her wishes.

10 MS. GRIFA: I'll proffer. But we'll -- he'll
11 reserve maybe, and then we can come back to it before we
12 close proceedings.

13 HEARING OFFICER EMMERMANN: Okay.

14 MR. YIEN: And you can strike it, if necessary.
15 But we can talk.

16 MS. GRIFA: All right. Well, maybe we'll all
17 reconsider.

18 MR. YIEN: Okay.

19 MR. LENHARD: We may not have any use for it.

20 MS. GRIFA: Oh, okay.

21 HEARING OFFICER EMMERMANN: So you're saying I
22 might have fewer exhibits to look at?

23 MR. LENHARD: Yeah.

24 MS. GRIFA: One less notebook.

25 HEARING OFFICER EMMERMANN: All right. Thank

1 you.

2 All right. Ms. Grifa, your next witness.

3 MS. GRIFA: Gladly. Victor Hakim.

4 HEARING OFFICER EMMERMANN: Good morning,
5 Mr. Hakim. I said it several times already through the
6 hearing, but I still have to look at my notes. So the
7 court reporter will swear you in when we're ready to
8 begin. Please wait until the question has been asked of
9 you completely. If you don't understand the question,
10 ask for a clarification. Speak up, and always use a
11 verbal response. Like I said, and I'm guilty of it,
12 too, "M-hm," "Huh-uh," shrugging the shoulders is not
13 captured in the transcript. And if you need a break,
14 please ask. Okay?

15 THE WITNESS: Thank you.

16 HEARING OFFICER EMMERMANN: All right. So will
17 you please swear the witness in.

18

19 V I C T O R H A K I M,
20 having been first duly sworn/affirmed by the Reporter,
21 was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MS. GRIFA:

25 Q. Good morning. Would you spell your first and

1 last name for the record, please.

2 A. Victor Hakim, V-I-C-T-O-R, H-A-K-I-M.

3 Q. Where are you presently employed?

4 A. CHW Group.

5 Q. What is your title there?

6 A. CEO.

7 Q. Are you the founder of that company?

8 A. Yes.

9 Q. When did you found the company?

10 A. Around 2008.

11 Q. Do you have a contractual relationship, in your
12 capacity as CEO of CHW Group, Inc., with the respondent
13 in this matter?

14 A. Yes. We have an independent service provider
15 agreement, and we resell contracts in Nevada on behalf
16 of Home Warranty Administrator of Nevada. We also
17 provide the back-end consumer services through that
18 contract, starting with the claims process, through CHW
19 Group.

20 Q. And that ISP agreement has been received as an
21 exhibit in this matter, I believe, as Exhibit E; is that
22 right?

23 A. If you say so.

24 Q. Okay. Does that ISP govern all of the dealings
25 between the two companies?

1 A. Yes.

2 Q. We heard from Marla Ramirez in these
3 proceedings with respect to her responsibility with CHW
4 Group as the COO in claims support; is that right?

5 A. Yes.

6 Q. She's your employee?

7 A. Yes.

8 Q. Then the advertising, marketing and sales is
9 handled, in part, by other people at CHW Group?

10 A. Not Marla Ramirez, but.

11 Q. Other than Marla Ramirez?

12 A. Yes.

13 Q. And all of those people work in Edison,
14 New Jersey?

15 A. Correct.

16 Q. Is the type of relationship that you have
17 described between HWAN and your company similar to other
18 arrangements in the industry, if you know?

19 A. I'm aware of -- I believe, it's a licensed
20 entity in Nevada, Home Shield of America, Inc., which
21 operates as HMS Home Warranty, as well as Total Protect
22 Home Warranty.

23 Q. So this is not necessarily a unique
24 arrangement?

25 A. No, it's not.

1 Q. Is CHW Group, Incorporated licensed in
2 New Jersey?

3 A. There's no -- license to sell service
4 contracts?

5 Q. Yeah, or license to do any, to -- license to
6 sell service contracts?

7 A. There is no requirement to be licensed to sell
8 service contracts in New Jersey.

9 Q. Is it licensed, registered or hold any
10 certificate that would authorize it to do business in
11 Nevada?

12 A. I don't believe so.

13 Q. Is it your understanding that it is required to
14 be licensed in some way?

15 A. No, through the ISP, CHW Group, Inc. doing
16 business as Choice Home Warranty is the administrator of
17 the contracts. And under, I believe it's 690C.120.2,
18 administrators do not require to be, are not required to
19 be registered with the Department of Insurance or
20 licensed to sell, issue or service contracts on behalf
21 of another provider.

22 Q. So you are issuing, selling, and what was the
23 other verb you just used?

24 A. Administrating or handling claims. But CHW
25 Group actually is not issuing. It's only selling on

1 behalf of Home Warranty Administrator of Nevada, and
2 then it's servicing the claims on their behalf as well.

3 HEARING OFFICER EMMERMANN: Mr. Hakim, can I
4 ask you to slow down just a little bit?

5 THE WITNESS: Yes. I'm sorry.

6 HEARING OFFICER EMMERMANN: Because I'm having
7 a hard time capturing all my notes.

8 THE WITNESS: I'm sorry.

9 HEARING OFFICER EMMERMANN: You speak fast, so.

10 THE WITNESS: I'm sorry.

11 HEARING OFFICER EMMERMANN: Thank you.

12 BY MS. GRIFA:

13 Q. Is CHW Group's role as an administrator with
14 respect to HWAN disclosed to the State of Nevada, to the
15 extent you know?

16 A. It was referred to throughout the past couple
17 of days, a July 2011 submitted contract that was
18 approved by the State of Nevada, with the logo of Choice
19 Home Warranty and Home Warranty Administrators.

20 Q. So it's your understanding that it has been
21 disclosed?

22 A. Yes.

23 Q. And in the contract language, it describes the
24 respective roles of HWAN and CHW Group?

25 A. In the first couple of sentences, it

1 specifically says that Home Warranty Administrator of
2 Nevada, Inc. is the obligor and Choice Home Warranty is
3 the administrator.

4 Q. How many states does CHW Group operate in?

5 A. North of 40, somewhere between 42 and 45, off
6 the top of my head.

7 Q. Are there any states in which it operates
8 independent of the HWA companies that we have discussed
9 in the last two days?

10 A. There are some states that don't require any
11 service contract business to be registered. In those
12 states, CHW Group, Inc. would be the obligor and works
13 on its own through those states. In some other states,
14 CHW Group has a similar independent service provider
15 contract that we have with Home Warranty Administrator,
16 with a company by the name was TMI Solutions, which is a
17 subsidiary of AmTrust, in other states where to be
18 compliant in those states.

19 Q. So we know that HWA operates in nine states.
20 And it is your testimony that CHW Group provides the
21 support that's been described pursuant to the ISP in
22 those nine states?

23 A. Yes.

24 Q. And you've now introduced us to a new entity,
25 TMI. And do you fulfill a similar function to TMI in

1 other states?

2 A. Pretty much exactly the same. We sell service
3 contracts that they're the obligor of. And they also in
4 that ISP hired us to administrate the claims on their
5 behalf as well. So we market, sell and administrate.

6 Q. Just like you do with HWAN?

7 A. Exactly the same.

8 Q. And how many states do you do that for TMI?

9 A. Between 12 and 15.

10 Q. And TMI is owned by another entity?

11 A. Yes.

12 Q. What entity, and that is AmTrust?

13 A. AmTrust is about a \$10 billion insurance
14 company.

15 Q. Victor Mandalawi doesn't own AmTrust, does he?

16 A. If he comes to work with us every day.

17 Q. Probably not? So in total, it's 24 states
18 where you're the reseller. And then how many states
19 does CHW operate independent --

20 A. About 20.

21 Q. So that's 44 states?

22 A. Something, you're in the ballpark, yeah.

23 Q. Okay. We've heard throughout the testimony
24 that with respect to the role of CHW Group that there is
25 a distinction between a claim and a complaint. Would

1 you mind just giving us that one more time?

2 A. Sure. So a claim is a request. We call it a
3 request for service. That means something's broken in
4 someone's home and they're calling in to tell us, hey, I
5 need somebody out to help me, something's broken in my
6 house. A complaint we consider to be a written
7 complaint, whether it be to the BBB, a state agency,
8 online, something of that nature.

9 Q. With respect to all of the work that CHW Group
10 does, can you tell us how many claims, claims CHW has
11 processed since 2009 nationwide?

12 A. CHW has processed more than 1.3 million claims
13 since 2009.

14 Q. And how much money has CHW Group either
15 actually disbursed or recommended be disbursed
16 nationwide during that same period, 2009 to the present?

17 A. It's in excess of a hundred million dollars.

18 Q. I'm going to ask you to look at Exhibit K.
19 And, I think, you'll find that in the book labeled A to
20 M. Before we go on to this document, I just wanted to
21 ask you one additional question on the complaint
22 analysis. Is it necessary for a state agency or the BBB
23 or some outside entity to contact CHW Group before a
24 recommendation or a payment be made to a contract
25 holder, whether it be from HWA or this TMI group?

1 A. No, I mean I heard Mr. Yien ask questions to
2 people in the way of, so before this payment was made,
3 the state had to get involved to force this company for
4 the payment to be made. But as in this document that
5 you just brought to my -- that we just opened describes,
6 I don't think the state got involved in 61,345 approved
7 claims.

8 Q. So you're referencing Exhibit K, right now?

9 A. Correct.

10 Q. Okay. So Exhibit K is a statistical analysis
11 of the Nevada claims that were received by HWAN; isn't
12 that right?

13 A. Correct.

14 Q. And it demonstrates the ratio between the
15 claims to complaints, right?

16 A. Correct.

17 Q. So are you able to testify, as a consequence of
18 the ISP, how many active customers are in Nevada
19 presently?

20 A. So this document actually does not describe
21 that. The customers listed down column one of this
22 document are the number of customers who signed up in
23 each year, not the active contracts for that period.
24 But I do, I am aware that HWAN has more than 13,000
25 active customers as of today.

1 Q. And over the course of the last, I guess, seven
2 years that it's 13,000-plus, some people have dropped
3 out?

4 A. Sure, we signed up 23,000, and some people
5 had -- and every one of them has not continuously
6 renewed.

7 Q. I'm not going to ask you to go line by line or
8 column by column. But suffice it to say, for the period
9 during which CHW Group, Incorporated has been servicing
10 Nevada consumers pursuant to the ISP, how many claims
11 have been processed?

12 A. 69,849.

13 Q. How many have been approved?

14 A. 61,345.

15 Q. How many have been denied?

16 A. 8,504.

17 Q. And what is the average approval rate over the
18 course of those years?

19 A. It's more than 87 percent.

20 Q. And how many complaints, in the manner in which
21 you have defined complaints, approximately how many
22 complaints have been received in the State of Nevada by
23 the company?

24 A. So this document, as Mr. Yien alluded to in his
25 questions earlier, only reflects the complaints that

1 have been received by the Division of Insurance. So
2 it's 71. As for totality of, I don't have the answer,
3 but it's not much higher.

4 Q. And what is the complaint-to-claim ratio?

5 A. Over here, it's about one-tenth of one percent.

6 Q. With respect to the -- you've been working in
7 this home warranty business for quite some time. And
8 you've been selling service contracts in a variety of
9 different states. How does this compare, if you know,
10 to some of your competitors?

11 A. Yeah, so I've had occasion to hire former
12 employees of America Home Shield or Home Warranty of
13 America. And they've described to me approval rates
14 somewhere, industry standard is between 85 and 92
15 percent.

16 Q. So the manner in which the HWAN claims are
17 being handled is consistent with the industry standard,
18 as best you know?

19 A. We believe so.

20 Q. Ms. Kuhlman, a Department of Insurance staffer,
21 gave testimony here, I believe, on Tuesday. You were
22 present for that, right?

23 A. Correct.

24 Q. And she indicated that the department
25 received -- I believe, this summarizes her testimony --

1 more complaints in a week than she could count. She did
2 not imply that there were more complaints against either
3 HWAN or CHW. But suffice it to say, claims are just
4 these, at least by the way the Department of Insurance
5 is defining it, are people who are calling to express
6 their dissatisfaction?

7 A. I'm sorry. Repeat the question.

8 Q. Ms. Kuhlman said in her testimony that on a
9 weekly basis, she received more claims that she could
10 count. But that is not the same kind of claim that you
11 were discussing here?

12 A. I think, she was talking about what we are
13 describing as complaints.

14 Q. Right.

15 A. Clearly, I don't think they're all from us,
16 because 71 over seven years is not more than somebody
17 could count.

18 Q. Mr. Ghan testified, I think, yesterday. And he
19 talked about -- I'm not going to try to summarize his
20 testimony. But he did make some comparison between
21 claims and phone calls. Were you present for that
22 testimony?

23 A. Yes.

24 Q. So is there a relationship between the number
25 of phone calls that come in and the number of claims

1 that come in?

2 A. That's actually a statistic we track in the
3 call center to make sure that we're doing a good job.
4 We get about three calls per claim on a regular basis.
5 And the -- I think, it was the pretrial statement he was
6 referring to. Is that what that document's called?

7 Q. I believe, that's right, yes.

8 A. Okay. So he said that one section said claims
9 and one section said service requests. For us, it's
10 really the same thing. It's a service request under the
11 contract. A phone call is something completely
12 different than that. If we were describing phone calls
13 at three per claim, we would have wrote, 210,000 would
14 be the number here. These are all claims. The home
15 warranty industry and our competitors have a similar
16 300 percent claims rate. It's just different than
17 typical insurance.

18 Q. Mr. Hakim, you accompanied Mr. Mandalawi to a
19 meeting with the Division of Insurance in June 2017;
20 isn't that right?

21 A. Yes.

22 Q. And that was after you received a filing, well,
23 it was after the respondent received a filing from the
24 State of Nevada indicating that there was excessive
25 claims being received by HWAN. And you came out with

1 him for purposes of that meeting. Isn't that right?

2 A. Excessive complaints?

3 Q. Well, you came out after the pleadings were
4 filed?

5 A. Yeah, we came to the meeting.

6 Q. You came to the meeting. And after that
7 meeting, as your counsel, I asked the Division to
8 provide us with a list of those claims; isn't that
9 right?

10 A. Yeah.

11 Q. The complaints to the --

12 A. Okay.

13 Q. The complaints to the Division of Insurance?

14 A. Correct.

15 Q. And what did your review of those documents
16 produced by the Division of Insurance in June of 2017
17 seem to indicate?

18 A. That we consistently made decisions in
19 accordance with the service contract. And some claims
20 inevitably ended up getting denied. By the page, it
21 says thousands of them. But Marla testified either this
22 morning or yesterday to a complaint that was -- that
23 Mr. Yien had submitted about a customer who purchased a
24 policy and then made a claim before it even started.
25 And then the Division got involved, and we made a

1 payment. But the customer's policy didn't -- was not
2 even in effect yet, so it wasn't a valid claim. The
3 fact that we placated the customer and the Division of
4 Insurance by making a payment is just our -- we think
5 it's our showing of our ability to work with people.

6 Q. The document that he had provided actually
7 indicated there were less than 80 complaints, right?

8 A. Correct.

9 Q. And then, in the course of discovery, we
10 received additional documentation that was prepared by
11 Mary Strong that indicated it was even less than in
12 Mr. Yien's reported document; isn't that right?

13 A. Correct.

14 Q. So if you could tell us, inasmuch as CHW is the
15 sort of receiver of the complaints versus claims, can
16 you give us an idea what that ratio is nationwide?

17 A. Sure. So as I described, over the past seven,
18 eight, nine years, we've received more than 1.3 million
19 claims from our customers. And as far as we can gather,
20 whether it be through the BBB or random websites or any
21 state or governmental agencies, we count about 5,000
22 total written complaints. And so it's 5,000. And we
23 think the number to compare it against is the
24 1.3 million service requests.

25 Q. That's over from 2009 to the present?

1 A. Correct.

2 Q. It's actually a longer period than HWAN has
3 been doing business in Nevada?

4 A. Yeah, and one of the statistics that we track,
5 similar to the one that's on this page, is the
6 complaints-versus-claims ratio. If it's going up, we
7 know we might have a problem. If it's going down, we
8 feel like we're doing a better job.

9 Q. Was there a time, and going back to Exhibit 10,
10 that there was an increase -- I'm sorry, Exhibit K, that
11 there was a slight increase demonstrated in the
12 statistics that you track?

13 A. Sure.

14 Q. And do you have an explanation for that?

15 A. Yes, in 2015, after we settled with the
16 New Jersey Attorney General, the New Jersey Attorney
17 General posted a press release. The BBB also listed the
18 action on their site. And we feel like that has caused,
19 that caused an increase in complaints, written
20 complaints coming that year. I mean the general thought
21 behind that theory is that a consumer may have seen
22 that, that case, and thought that they may have been
23 inadvertent or --

24 Q. Aggrieved in some way?

25 A. Exactly.

1 Q. Mr. Jain testified to an exhibit that was
2 provided by the Division that had a tagline bca.org. Do
3 you know anything about that entity?

4 A. I have never heard of the BCA.

5 Q. So you don't know anything about the F grade?

6 A. Never heard of the BCA.

7 Q. But we did see some pretty negative media clips
8 yesterday on the video in this proceeding; isn't that
9 right?

10 A. Yes.

11 Q. And, in fact, in one of the screens that we
12 were able to pause on, during the portion of the
13 testimony, that BBB rated CHW Group as an F?

14 A. Correct.

15 Q. And that was arising from a 2013 claim to the
16 BBB?

17 A. I think, they were just imposing 2013.
18 Currently, Choice Home Warranty has a B minus grade with
19 the BBB.

20 Q. Are you satisfied with that grade?

21 A. I'm never satisfied with a B minus. But
22 America Home Shield, which is the largest provider of
23 home warranties in the country, does a billion dollars
24 in business, is graded a B by the BBB. First American
25 Home Warranty, which is owned by First American Title,

1 has a B with the BBB. But that doesn't make me
2 satisfied with my B minus, but we're within industry
3 range.

4 Q. And a long way from, to the F in 2013?

5 A. Correct.

6 Q. So, in other words, the assessment of the BBB
7 is comparable to your largest competitors, correct?

8 A. Yes.

9 Q. If you were to evaluate the top 10 largest
10 players in this particular field, where does Choice Home
11 Warranty Group, Inc. fit?

12 A. In the totality of contracts that we either
13 administrate or own on our own, we're probably the fifth
14 or sixth largest home warranty company in the country.

15 Q. I'd like to talk a little bit about advertising
16 and perhaps -- and contracts. So in connection with
17 your consent order, there was a requirement that
18 Judge Derman review both the contracts and the
19 advertising; isn't that right?

20 A. Correct.

21 Q. And she did, as part of her compliance monitor
22 duties, recommend certain changes to make sure that your
23 CHW Group's advertising was compliant with the consent
24 order, correct?

25 A. Some changes.

1 Q. And she reported what she thought was
2 appropriate to you and then reported that back to the
3 State of New Jersey; isn't that right?

4 A. Correct.

5 Q. And to the extent that she made any, made a
6 request for any changes, those changes were made?

7 A. Yes.

8 Q. So HWAN does none of its own advertising; is
9 that right?

10 A. Pursuant to the ISP, I mean it has the right to
11 sell its own customers, but it works with Choice Home
12 Warranty.

13 Q. Okay. So we have in this case two exhibits
14 that have been offered by DOI, and they are 27 and 28.
15 So those would be in the book that have all the numbered
16 tabs, which is right in front of you, sir.

17 A. I got it.

18 Q. Can you just take a look at both of the --

19 Is everybody all set? Mr. Yien?

20 MR. YIEN: Yes.

21 BY MS. GRIFA:

22 Q. Actually, it's -- I believe, it's 26 and 27.
23 27 and 28. I'm sorry.

24 A. In this book it's 26 and 27.

25 Q. Is it? I'm --

1 A. So --

2 MS. GRIFA: Wait, wait, wait. Wait for
3 Mr. Yien.

4 MR. YIEN: I'm just trying to return. It's 26
5 and 27.

6 MS. GRIFA: 26 and 27. It's funny, because in
7 my book it's 27, 26 and 27. And that book, it's
8 somewhat different.

9 THE WITNESS: It's 26 and 27.

10 BY MS. GRIFA:

11 Q. I'm just directing your attention to two pieces
12 of advertising that were received, offered by the
13 Division and have been received into evidence in this
14 proceeding. Do you recognize these documents?

15 A. Yes.

16 Q. What do you recognize them to be?

17 A. So 26 is a website, is a webpage. And 27 is an
18 email advertisement.

19 Q. Okay. Mr. Hall, an attorney for the Division
20 of Insurance, testified yesterday about the California
21 orders back from 2010. And he reviewed these two
22 documents with respect to whether there was compliance
23 with those old consent orders. Can you respond to
24 anything that he might have said with regard to this?

25 A. Yes, so he specifically testified to a

1 provision that stated that email advertisements should
 2 state, email advertisements sent to solicit California
 3 contracts should specifically have a disclaimer that
 4 Choice Home Warranty's are not available in California,
 5 or something of the sort. So this would actually be 27.
 6 Because that's an email advertisement.

7 The reason this email does not have a
 8 disclaimer at the bottom is because we don't sell in
 9 California, we don't solicit California contracts. So
 10 we think we're in full compliance with that order,
 11 because we're not selling any California contracts, so
 12 hence no need for the disclaimer.

13 Q. So 2010, there was a cease and desist order
 14 issued against Choice Home Warranty, I'm sorry, CHW
 15 Group, Inc. And is it your testimony that CHW Group,
 16 Inc. has not sold in that market since that time?

17 A. Correct.

18 Q. And there's been no additional cease and desist
 19 issued since that time against Choice Home Warranty
 20 Group?

21 A. Right.

22 Q. I want to keep your attention on 27 and 28.
 23 And I'd also like to see if we could perhaps pull up the
 24 media. It might be illustrative at this point.

25 Do you recognize -- so right now, for purposes

1 of describing it to the record, we have pulled up from
2 Choice -- is this from Choice Home Warranty's website,
3 if you know?

4 A. Yes.

5 Q. Okay. And this is an advertisement that looks
6 quite a lot like --

7 A. It's an exact printout.

8 Q. 26, right?

9 A. Yes.

10 Q. Including the box for zip code, et cetera. So
11 this is an Internet, is this an Internet advertising on
12 your website, this is not a solicitation?

13 A. Right.

14 Q. Okay. And so to the extent the consumer wanted
15 to make an inquiry of what Choice Home Warranty was
16 offering, they would do that by entering their own zip
17 code?

18 A. Correct.

19 Q. So Ms. Casci, who is a DOI employee, indicated
20 that she obtained these two exhibits, presumably in
21 furtherance of her support of Mr. Yien in the Division's
22 case, and you were here for that testimony?

23 A. Correct.

24 Q. So on Exhibit 27, we don't see the logo. Okay.
25 We don't see the precise, the visual on the screen does

1 not match what's Exhibit 27. So if you could just walk
2 us through Exhibit 26 with respect to what we see on the
3 screen, if you could describe what we're looking at.

4 A. Right. So Ms. Casci testified that this, that
5 she received this advertisement through her email. I
6 guess, she clicked on a link and it took her to this, to
7 this website. And that it didn't describe Home Warranty
8 Administrators of Nevada. And how can Choice Home
9 Warranty kind of sell in Nevada was the theme.

10 But if we scroll all the way to the bottom, we
11 offer our consumers a way to view the contract in every
12 state. Also, on all of our perspective, this is a
13 landing page, it's not our main website. But on every
14 one of our landing pages or through our main website,
15 you can view the copy of the contract. And over here it
16 says click here to view the complete limits of liability
17 and any exclusions and a bunch of other disclaimer.

18 Q. What will come up after we click that?

19 A. So then you'll see a copy of the contract that
20 you would receive as a consumer.

21 Q. Okay. Let's, why don't we wait till it loads.
22 So what we have as Exhibit 26 is what you called a
23 landing page?

24 A. Correct.

25 Q. Okay. And that's, basically, would it be fair

1 to call that an ad, or no?

2 A. Okay.

3 Q. Is that an accurate way to describe it, or am I
4 wrong?

5 A. It's a --

6 Q. It's a landing page?

7 A. It's a landing page.

8 Q. And then, when you click that link, you come up
9 with the terms and conditions of the Choice Home
10 Warranty. Is there any reference in that --

11 A. Yes, so this is on our website --

12 Q. Do you know what it's called?

13 A. -- for all customers to view. This is a copy
14 of the contract that a customer can view before they
15 purchase. And it says, without me -- I'll just describe
16 it. But it says the state, it lists the states in which
17 you're contracting with Choice Home Warranty, it lists
18 the states in which you're contracting with TMI
19 Solutions, or it lists the states in which you're
20 contracting with the Home Warranty Administrator of X
21 state. So on this specifically, in Nevada, it says "In
22 Nevada, the company obligated under this agreement
23 is" --

24 HEARING OFFICER EMMERMANN: Wait. Read much
25 slower.

1 THE WITNESS: I'm sorry. In Nevada
2 specifically, it says "In Nevada, the company obligated
3 under this agreement is Home Warranty Administrator of
4 Nevada."

5 HEARING OFFICER EMMERMANN: Much better. Thank
6 you.

7 THE WITNESS: Sorry.

8 BY MS. GRIFA:

9 Q. Now, how would the consumer actually get to a
10 contract from this particular page with HWAN?

11 A. So this is, this is a disclaimer at the bottom
12 of that landing page.

13 Q. Okay.

14 A. If the consumer was to purchase online, and I
15 know everybody's been on a website these days, but, you
16 know, we have one of those, you check a box with "I
17 agree with the terms and conditions," which is a link,
18 and it shows you all of the terms and conditions. So
19 prior to purchase, you're clicking the checkbox and you
20 are also able to see all of this.

21 Q. So why don't we go to the website. I think,
22 this was an issue that was raised a few moments ago,
23 this morning. And we can do that with your testimony.

24 A. Sure. Just scroll up, I guess. Click that
25 Submit button under the Get a Quote. And put in some

1 fake information.

2 MS. GRIFA: Would you mind volunteering your
3 own name, Mr. Chance.

4 MR. CHANCE: Sure.

5 THE WITNESS: You're going to get a phone call,
6 then, and an email if you do that.

7 By MS. GRIFA:

8 Q. Does he have to put in his phone number?

9 A. 555-1212. 155 Main Street.

10 Q. Main Street.

11 A. Any city. So I mean just before we do a Nevada
12 one, just put a California one. As the Hearing Officer
13 had mentioned, how do we control this? If you just
14 put -- I believe, it's a state-based, not an actual zip
15 code-based, so I don't think the zip code matters. Or
16 you could just put 91102. Pretty short.

17 Q. This would be the response if you were trying
18 to buy --

19 A. Yeah, so Choice Home Warranty is not currently
20 servicing your area. For your coverage and area, we
21 would recommend. And they actually sell some leads to
22 our competitors.

23 Q. You recommend your competitors.

24 Hey, if we could go back, Mr. Chance, and
25 perhaps put in Las Vegas, Nevada and some relevant zip

1 code.

2 A. So this is the step two of the recording
3 process. They would select the plan. So scroll down.
4 And then hit Continue.

5 This shows you the price. And if you scroll
6 down -- keep going. So the customer would enter their
7 credit card number and then click the "I agree to the
8 terms of service." Again, it's a link where the
9 customer can view the copy of the contract, and they
10 will know the contracted party that they purchased
11 through. So sometimes the obligor, like I said, is a
12 Home Warranty Administrator branded company or even a
13 TMI Solutions company or Choice Home Warranty, CHW
14 Group.

15 Q. And that is all pursuant to the ISP that you
16 have with HWAN? Yes?

17 A. Yes.

18 Q. And it's pursuant to a similar ISP you might
19 have with TMI?

20 A. Correct.

21 Q. So there's no circumstances in the manner in
22 which you are marketing that you are selling in places
23 where you are not permitted to sell; is that fair to
24 say?

25 A. Correct.

1 Q. And there is no -- and there is ample
2 opportunity for any Nevada consumer to understand who
3 you are doing business with in the Nevada area?

4 A. Correct.

5 Q. Ms. Casci said that she found your CHW
6 information in her spam box. Do you have any evidence
7 that Ms. Casci's actually been contacting Choice Home
8 Warranty?

9 A. She's got about, she's gotten about 10 quotes
10 on her website starting on July 3rd, 2017, through as
11 recently as, I believe, September.

12 Q. Presumably, test quotes for purposes of this
13 case?

14 A. Potentially.

15 Q. You haven't sold, CHW has not sold her a
16 service contract, have they?

17 A. I haven't verified that they have or have not.

18 MS. GRIFA: I don't have any additional
19 questions for the witness.

20 HEARING OFFICER EMMERMANN: Mr. Yien.

21

22 CROSS-EXAMINATION

23 BY MR. YIEN:

24 Q. Mr. Hakim, my line of questioning is going to
25 be really short.

1 A. Okay.

2 Q. Is CHW Group, Inc. doing business as Choice
3 Home Warranty licensed to sell, solicit or offer for
4 sale a service contract in Nevada?

5 A. No.

6 Q. Okay. Is it certified, does it have a
7 certification by the Nevada Division of Insurance to
8 sell, solicit or offer for sale?

9 A. Pursuant to section 690C.120.2, administrators
10 are not required to be licensed to sell service
11 contracts in Nevada.

12 Q. Okay. So my question is, is CHW --

13 A. So we're not, because we're complying with that
14 law.

15 MR. YIEN: Okay.

16 HEARING OFFICER EMMERMANN: Remember to wait
17 until one person stops talking.

18 THE WITNESS: Sorry. I'm sorry.

19 BY MR. YIEN:

20 Q. I believe, my client would disagree with that.
21 But just for the record, is CHW Group, Inc. doing
22 business as Choice Home Warranty certified by the Nevada
23 Division of Insurance to sell, solicit or offer for sale
24 a service contract in Nevada?

25 A. No.

1 MR. YIEN: That's all the questions I have.

2 THE WITNESS: Okay.

3 HEARING OFFICER EMMERMANN: I have a few
4 questions.

5 THE WITNESS: Okay.

6 HEARING OFFICER EMMERMANN: Is Mr. Hakim the
7 last witness?

8 MS. GRIFA: Pardon me?

9 HEARING OFFICER EMMERMANN: Is Mr. Hakim the
10 last witness?

11 MS. GRIFA: He is the last witness for
12 respondent, Madam Hearing Officer.

13 HEARING OFFICER EMMERMANN: All right. So,
14 then, you have the pleasure of getting all the final
15 questions that I may have.

16 MS. GRIFA: Congratulations.

17 HEARING OFFICER EMMERMANN: It's going to take
18 me a couple minutes to get everything together.

19 THE WITNESS: Sure.

20 HEARING OFFICER EMMERMANN: You are the CEO of
21 CHW Group, Inc., you said?

22 THE WITNESS: Yes.

23 HEARING OFFICER EMMERMANN: So tell me how you
24 and Mr. Mandalawi divvy up your responsibilities as far
25 as CEO versus president. Who gets the final say, for

1 example? Who decides what, who's doing what?

2 THE WITNESS: I handle the sales, advertising
3 and marketing, and finance functions report to me.
4 Marla Ramirez also reports to me, and Victor Mandalawi
5 in terms of operations. So we're both involved in that.
6 But he's mostly handling operations and regulation.

7 HEARING OFFICER EMMERMANN: By operations, you
8 mean the --

9 THE WITNESS: Claims-handling and things like
10 that.

11 HEARING OFFICER EMMERMANN: Who handles --
12 never mind. Exhibit K, if you could turn to that. Are
13 we all there?

14 MS. GRIFA: Yes.

15 HEARING OFFICER EMMERMANN: Okay. So,
16 Mr. Hakim, as I understand it from Ms. Ramirez's
17 testimony this morning, and then based on the answers to
18 the questions from your testimony, you created the
19 document in Exhibit K?

20 THE WITNESS: Correct.

21 HEARING OFFICER EMMERMANN: Okay. So I'm
22 wondering, because the top of this says Home Warranty
23 Administrators. So I'm trying to understand why you, as
24 a CHW Group, Inc. guy, are doing anything that has to do
25 with Home Warranty Administrators.

1 THE WITNESS: In fact, actually, I created it
2 on our Choice Home Warranty letterhead and sent it to
3 Victor Mandalawi, who, I guess, put it on this
4 letterhead for the purpose of this case. But we're the
5 recordkeeper for all of the claims, the claims
6 statistics, approvals and everything, but it was
7 originally, on my computer it's saved as a Choice Home
8 Warranty letter.

9 HEARING OFFICER EMMERMANN: Okay. And what's
10 your interest in Home Warranty, the Home Warranty
11 Administrator companies for --

12 THE WITNESS: I'm not an owner. I have a
13 general interest that they continue to operate, because
14 if we're not, if they're not operating in the State of
15 Nevada, then Choice Home Warranty is not operating in
16 the State of Nevada. So it's pursuant to agreement. So
17 it's just a general business interest.

18 HEARING OFFICER EMMERMANN: Okay. Is there an
19 association for service contract providers?

20 THE WITNESS: There is the National Home
21 Service Contract Association.

22 HEARING OFFICER EMMERMANN: I was curious just
23 to see if they do statistics and standards.

24 THE WITNESS: They don't put them out publicly.

25 HEARING OFFICER EMMERMANN: Okay. The website

1 that we went over today, can you tell me what the URL
2 was for the landing page?

3 THE WITNESS: Sure. It's
4 www.ChoiceHomeWarranty.com, slash, D, slash, D7.

5 HEARING OFFICER EMMERMANN: And then what's the
6 URL for the main website?

7 THE WITNESS: Just the
8 www.ChoiceHomeWarranty.com.

9 MS. GRIFA: Slower.

10 THE WITNESS: Sorry.

11 HEARING OFFICER EMMERMANN: So w --
12 www.ChoiceHomeWarranty.com, no forward slash, nothing
13 else after that?

14 THE WITNESS: Right. That's it on the screen.

15 HEARING OFFICER EMMERMANN: And, I think, I
16 asked this question of Mr. Mandalawi. But who controls
17 the content on these pages?

18 THE WITNESS: I have final say or approval on
19 all the contents on the pages.

20 HEARING OFFICER EMMERMANN: And tell me how you
21 work. Because as I understand it, the compliance
22 monitor, Judge Derman, is still involved in consulting
23 and providing services about certain things on this, on
24 the Choice Home Warranty website for CHW Group. So CHW
25 Group, Inc. is the one who contracted her?

1 THE WITNESS: Correct.

2 HEARING OFFICER EMMERMANN: Okay. So if she
3 says something needs to change on the Choice Home
4 Warranty website, does that impact all of the companies
5 listed, for example, on the -- well, we're looking at
6 the page right now that shows Terms of Service
7 Agreement, Choice Home Warranty.

8 THE WITNESS: So as far as I can remember, I
9 don't believe she's ever made any changes to the
10 service, the actual service contract. So that's this
11 page.

12 HEARING OFFICER EMMERMANN: Okay.

13 THE WITNESS: And I'm not sure if I remember if
14 she made any other changes. But can I point you to a
15 different page for an example? No, the computer.

16 HEARING OFFICER EMMERMANN: Yes. Do you want
17 the mouse?

18 THE WITNESS: Yeah, sure.

19 HEARING OFFICER EMMERMANN: Do you want the
20 keyboard?

21 THE WITNESS: No, I don't, I won't need it.

22 HEARING OFFICER EMMERMANN: There you go.

23 THE WITNESS: Thank you.

24 So if we were -- if she had recommended a
25 change on this page, which is just general --

1 HEARING OFFICER EMMERMANN: Can you tell us
2 what the page is, so that we have it in the record?

3 THE WITNESS: Sorry. This is -- I cannot read
4 that.

5 HEARING OFFICER EMMERMANN: The URL.

6 THE WITNESS: The URL. So I clicked on
7 Homeowners on the main menu bar, right underneath logo
8 Choice Home Warranty.

9 HEARING OFFICER EMMERMANN: Okay.

10 THE WITNESS: And this page just has general
11 information about home warranties. And if we made a
12 change here, it would not affect the page that describes
13 who you're contracting with at all.

14 HEARING OFFICER EMMERMANN: Right.

15 THE WITNESS: So it would only be a change in
16 the language on the advertising. And from time to time,
17 some of this gets changed for advertising and search
18 engine optimization and other types of things.

19 HEARING OFFICER EMMERMANN: So any change that
20 would be made to this Homeowners page where you describe
21 what a home warranty is, et cetera, any change made here
22 would be seen in every state that uses Choice Home
23 Warranty as the --

24 THE WITNESS: Correct.

25 HEARING OFFICER EMMERMANN: -- sales website?

1 Okay.

2 THE WITNESS: Right. So if Judge Derman had
3 requested a change because she thought potentially that
4 something was misleading, and I can't remember if she
5 ever did or did not to the website, every consumer in
6 every state would see that change. And, I guess, it
7 would no longer be misleading, if that situation ever
8 even existed.

9 HEARING OFFICER EMMERMANN: Okay.

10 THE WITNESS: But then the contracted party
11 user agreement page also doesn't get affected by that.
12 So customers still know if they're contracting with CHW
13 Group or TMI or a Home Warranty Administrator branded
14 company.

15 HEARING OFFICER EMMERMANN: Do you have a
16 mechanism to distinguish pages for different states?
17 So, for example, if Nevada allows one thing, but
18 Oklahoma does not, do you have a backend mechanism to
19 make different pages for each state?

20 THE WITNESS: No, we stay compliant with the
21 entire site. And the site guidelines, as far as I know,
22 the state guidelines, whether it be through TMI or a
23 Home Warranty Administrator brand, mostly guide or only
24 guide the use agreement and actual contract. And the
25 site, we utilize FTC guidelines for advertising before

1 we push anything to the site. So it's always national.
2 But it's never misleading. Or we strive to do.

3 MS. GRIFA: I'm sorry. Was that FTC, Federal
4 Trade --

5 THE WITNESS: The Federal Trade Commission.

6 HEARING OFFICER EMMERMANN: Then, so then, to
7 me, it would be that you would strive to adhere to the
8 most stringent laws of any given state, and that would
9 apply to all the other states?

10 THE WITNESS: Correct.

11 HEARING OFFICER EMMERMANN: I couldn't help but
12 notice on the credit card page.

13 THE WITNESS: Sure. Let's get back there. We
14 might have to start this process again. I'll try to hit
15 the Back button.

16 HEARING OFFICER EMMERMANN: I think, you
17 started on the first path.

18 THE WITNESS: Oh, sorry about that.

19 HEARING OFFICER EMMERMANN: Okay. Scroll up
20 just a little bit.

21 THE WITNESS: M-hm (affirmative).

22 HEARING OFFICER EMMERMANN: I see something
23 about a promotional discount. So it made me wonder,
24 what's the promotional discount for?

25 THE WITNESS: Just advertising, marketing

1 stuff.

2 HEARING OFFICER EMMERMANN: All right. What
3 was the law that you cited, 690C --

4 THE WITNESS: -- .120.2, I believe.

5 HEARING OFFICER EMMERMANN: For
6 administrators.

7 THE WITNESS: Right.

8 HEARING OFFICER EMMERMANN: You said it fast,
9 so I wanted to --

10 THE WITNESS: I'm sorry.

11 HEARING OFFICER EMMERMANN: Okay. So those are
12 my questions based on the direct and cross. And let me
13 double-check my notes that I got everything else.

14 Are you involved at all -- I thought you said
15 no, but just to double-check, because it's going to
16 follow into my next questions. Are you involved at all
17 in anything with HWAN, as far as operations,
18 decision-making?

19 THE WITNESS: No.

20 HEARING OFFICER EMMERMANN: No. Okay. And I
21 ask because I noticed, when Mr. Mandalawi was
22 testifying, that you had made a note to your counsel
23 about something about reserve accounts. And it caught
24 my eye. So I was just wondering how you would -- do you
25 know anything about the reserve accounts for HWAN?

1 THE WITNESS: I just was looking at the bank
2 statement that you had been pointing out to. So.

3 HEARING OFFICER EMMERMANN: Okay. What is the
4 home office address for Choice Home Warranty, or I'm
5 sorry, CHW Group, Inc.?

6 THE WITNESS: We consider the headquarters the
7 1090 King Georges Post Road, Edison, New Jersey, 08837.

8 HEARING OFFICER EMMERMANN: Okay. Thank you.

9 Has CHW Group, to your knowledge, ever been
10 examined or audited by the Division of Insurance?

11 THE WITNESS: No.

12 HEARING OFFICER EMMERMANN: Okay. Those are
13 all my questions for you.

14 Counsel, do you have any redirect or questions
15 based on mine?

16 MS. GRIFA: I have no redirect.

17 HEARING OFFICER EMMERMANN: Okay. Mr. Yien,
18 any questions based on my questions to Mr. Hakim?

19 MR. YIEN: I have no further questions.

20 HEARING OFFICER EMMERMANN: Wow. Okay.
21 Mr. Hakim, you are excused.

22 THE WITNESS: Thank you.

23 HEARING OFFICER EMMERMANN: And as a reminder,
24 please don't discuss your testimony with anybody until
25 after the final order is issued by the Commissioner.

1 THE WITNESS: Thank you.

2 HEARING OFFICER EMMERMANN: Thank you.

3 All right. Counsel, Ms. Grifa, where are we
4 with your --

5 MS. GRIFA: Subject to perhaps a very short
6 discussion with Mr. Yien with regard to II through QQ, I
7 believe, we would rest our presentation.

8 HEARING OFFICER EMMERMANN: Okay.

9 MS. GRIFA: And if perhaps we take 10 minutes,
10 maybe he and I can work this out.

11 HEARING OFFICER EMMERMANN: Okay. That would
12 be great.

13 MS. GRIFA: Is that available, or?

14 MR. YIEN: Well, I got to talk to my client.
15 It's really in my client's interest whether or not they
16 want it to be a public record.

17 MR. LENHARD: Is II through QQ --

18 HEARING OFFICER EMMERMANN: Okay. Wait here.
19 Hold on. But do we need all the discussion on the
20 record, is what I wanted to know?

21 MR. LENHARD: No.

22 MS. GRIFA: I'm not sure that we do.

23 MR. LENHARD: Will you take it off? Yeah. Are
24 we off?

25 HEARING OFFICER EMMERMANN: Yes, let's get off

1 the record.

2 * * * * *

3 (There was a discussion off the record, 11:23
4 to 11:25 a.m.)

5 * * * * *

6 HEARING OFFICER EMMERMANN: Okay. So we're
7 back on the record. It's 11:25. We have 35 minutes.

8 MS. GRIFA: Madam Hearing Officer, earlier in
9 the proceeding today, I had offered or sought to offer a
10 number of marked exhibits, II through QQ, inclusive. As
11 it turns out, a number of them were never referenced in
12 any testimony by any witness. A number of them do
13 reference a counsel to the Division of Insurance.

14 So I will withdraw the proffer of KK through
15 QQ, inclusive. And I would only offer II and JJ as
16 respondent's exhibits and ask Mr. Yien to consider
17 consenting to their admission into the hearing record.

18 MR. YIEN: I consent to II and JJ.

19 HEARING OFFICER EMMERMANN: So II and JJ, we're
20 going to call that stipulated?

21 MR. YIEN: Yep.

22 HEARING OFFICER EMMERMANN: Stipulated.

23 (Exhibits II and JJ were admitted.)

24 HEARING OFFICER EMMERMANN: And KK through QQ
25 will be considered withdrawn?

1 MS. GRIFA: Yes. Yes, ma'am.

2 MR. YIEN: (Nodded head affirmatively.)

3 (Exhibits KK through QQ were withdrawn.)

4 MS. GRIFA: I have not -- I'm sorry.

5 HEARING OFFICER EMMERMANN: Let me have just
6 one second. Okay.

7 MS. GRIFA: Mr. Hakim had testified to the
8 present grade of the company on the BBB report today.
9 And I do have a copy from the BBB website. I have not
10 shared it with Mr. Yien. But if he would consider
11 reviewing it here, we would like to offer it as an
12 exhibit.

13 HEARING OFFICER EMMERMANN: Okay. Mr. Yien?

14 MS. GRIFA: And if you would like to
15 double-check it for truth and accuracy as against the
16 website, we could do that as well.

17 MR. YIEN: You just printed it out?

18 MS. GRIFA: I think, it probably has the date
19 of the printout.

20 MR. YIEN: Okay. Nine --

21 MS. GRIFA: Yesterday.

22 MR. YIEN: -- twelve. Yeah. I don't have any
23 issues with admitting this into the record.

24 MS. GRIFA: I'm not quite sure how it would be
25 received. Would you receive it as a UU, or would it be

1 received as a -- indirectly as a hearing exhibit?

2 HEARING OFFICER EMMERMANN: I'll put it down as
3 Exhibit RR.

4 MS. GRIFA: Would you like my copy, ma'am?

5 HEARING OFFICER EMMERMANN: Yes, please. And
6 then, do you want that as stipulated, or do you want
7 that as admitted; do you care?

8 MR. YIEN: I stipulate, and I consent.

9 MS. GRIFA: Thank you. Appreciate that.

10 HEARING OFFICER EMMERMANN: Okay.

11 (Exhibit RR was marked and admitted.)

12 HEARING OFFICER EMMERMANN: Are there any other
13 matters from counsel that I need to consider?

14 MS. GRIFA: The respondent rests.

15 MR. YIEN: (Shook head negatively.)

16 HEARING OFFICER EMMERMANN: I have a couple
17 things that I want to bring up.

18 First, I wanted to get a copy of the bank
19 statements without the redactions. In Nevada, the last
20 four digits of a bank account can be left in a document
21 without it being considered shared information. So I
22 would like them to show the last four digits and
23 whatever information, the name of the bank, whatever
24 other information is there. To the extent there's
25 personal identifying information, I can redact it, or

1 you can present it to be redacted. But it is easier for
2 me to get the information, and then we redact it before
3 it goes out in the public file.

4 I would like to ask the counsel to provide me
5 with a brief. And this is the question I have. Are you
6 ready? If a fictitious name does not create a separate
7 legal entity, what is the effect of many separate legal
8 entities that share the same dba?

9 MR. LENHARD: Is the court reporter taking this
10 down?

11 THE REPORTER: Yes.

12 MS. GRIFA: What was the last word? I'm sorry.

13 HEARING OFFICER EMMERMANN: Dba.

14 MS. GRIFA: Share the same dba?

15 HEARING OFFICER EMMERMANN: Right.

16 So I would like to ask your preference. Do you
17 want to wait until the transcript is complete before
18 submitting this brief, or do you want to do the brief
19 over the next few weeks?

20 MR. LENHARD: I guess, the question begins with
21 do you want the closing argument that you referenced in
22 writing with this brief or separately?

23 HEARING OFFICER EMMERMANN: Thinking on when I
24 have to do this, I'd like them separate, because then we
25 have two separate deadlines and not scrambling to

1 complete both. But I am open to --

2 MR. LENHARD: From our end, I'm sure we're fine
3 with that. The next question would be is your
4 preference to get our answer to the question, with
5 whatever citation and authority, do we do it -- I assume
6 it's a 10-page limit on the answer to the question?

7 HEARING OFFICER EMMERMANN: So the answer to
8 the question, I don't want to limit it to -- I don't
9 want it more than 20 pages.

10 MR. LENHARD: Fair enough.

11 HEARING OFFICER EMMERMANN: I think, you can
12 respond to it in 20.

13 MR. LENHARD: Okay.

14 HEARING OFFICER EMMERMANN: But I want to give
15 the parties the opportunity to really delve into that
16 question and look at case law, because I don't -- I
17 doubt there's much in Nevada case law that addresses
18 this issue.

19 MR. LENHARD: That's probably a fair statement.

20 HEARING OFFICER EMMERMANN: So I'd like to see
21 how it's been handled or if it's even been answered.

22 Mr. Yien, how do you feel about a written
23 closing being due at the same time as a briefs? Would
24 you prefer them separate, or are you okay with having
25 them both due on the same day?

1 MR. YIEN: It depends on when, I suppose, when
2 you want them. When was your idea of a deadline?

3 MR. LENHARD: Well, I'll let him go first. I'm
4 sorry.

5 HEARING OFFICER EMMERMANN: I'm thinking, for a
6 written closing, I don't think the written closing will
7 be dependent upon the brief.

8 MR. LENHARD: Okay.

9 HEARING OFFICER EMMERMANN: But if you find,
10 when you're doing your written closing, that you need
11 something from there, then let me know, and we can
12 discuss extending the due date for the written closing.

13 My preference for the written closing is, let's
14 see, 10 days from Monday, that way, everybody can get
15 home to their respective places and breathe a little bit
16 before they get back into these issues. So it would
17 be --

18 MS. GRIGORIEV: Can I ask a question, Madam
19 Hearing Officer?

20 HEARING OFFICER EMMERMANN: Sure.

21 MS. GRIGORIEV: Will we have access to the
22 transcripts before the written closing? Because, I
23 think, that's more important than for the brief.

24 HEARING OFFICER EMMERMANN: So you would prefer
25 to have the transcript before the closing?

1 MR. LENHARD: Yes.

2 HEARING OFFICER EMMERMANN: Okay.

3 MR. LENHARD: We were going to ask for the same
4 thing.

5 MS. GRIGORIEV: Yes.

6 HEARING OFFICER EMMERMANN: Okay. So, then,
7 what we'll do is when I get the transcript, I'll issue a
8 brief order with the deadlines for everything.

9 MR. LENHARD: Okay.

10 HEARING OFFICER EMMERMANN: Because you might
11 want the transcript for the brief as well.

12 MR. LENHARD: It might help.

13 HEARING OFFICER EMMERMANN: It might help. So
14 we're probably looking at a couple weeks, because we're
15 talking three days, two and a half days. So I'll just
16 go ahead and issue an order when the transcript comes
17 out. Okay?

18 MS. GRIFA: Did you want to have a different
19 date for the briefs, since --

20 MR. LENHARD: Yeah, she's changing it.

21 MS. GRIFA: Oh, everything. Okay.

22 HEARING OFFICER EMMERMANN: The bank statements
23 that I asked for, if I could have those by Wednesday of
24 next week. Is that sufficient time?

25 MS. GRIFA: Wednesday. So that would be the

1 20th of September, I believe. Monday is the 18th?

2 HEARING OFFICER EMMERMANN: That sounds right.
3 Let me double-check my calendar. Wednesday the 20th.

4 MS. GRIFA: We would submit them directly to
5 your clerk, with a copy to counsel?

6 HEARING OFFICER EMMERMANN: Yes.

7 I wanted to ask Ms. -- well, respondents,
8 either counsel, do you want me to review Judge Derman's
9 video testimony?

10 MR. LENHARD: I don't think it's necessary.

11 MS. GRIFA: At your discretion. We don't think
12 it's necessary.

13 MR. LENHARD: You read it.

14 MS. GRIFA: You read it. We would not insist
15 that you watch it. Although it's certainly your option.

16 MR. LENHARD: She's a nice lady, I mean.

17 HEARING OFFICER EMMERMANN: And I wanted to ask
18 if the parties have objection to my digging into the
19 Choice Home Warranty website a little bit more, because
20 I can't read as much from here.

21 MS. GRIFA: No.

22 MR. LENHARD: No, no problem.

23 HEARING OFFICER EMMERMANN: Mr. Yien?

24 MR. YIEN: No, not at all. I do have one
25 concern about the video deposition. There were a number

1 of objections. What is your -- how do you want to
2 resolve those?

3 MS. GRIFA: I'll withdraw the objection. I'll
4 withdraw the objection. I believe, the Hearing Officer
5 is fully capable of --

6 MR. LENHARD: He had a number of objections,
7 though.

8 MS. GRIFA: No, I think, it's mine. No, they
9 were mine. I think, the Hearing Officer is fully
10 capable of deciding how to treat those questions and
11 answers.

12 MR. YIEN: Well, the reason is, if I rely on
13 any of those answers from the objected questions, I need
14 to know in advance whether I can use it or not in
15 closing, or.

16 MS. GRIFA: I think, most of those questions
17 were formed -- I'm not concerned. I'll withdraw the
18 objections.

19 MR. LENHARD: I was going to say, how many
20 deposition objections are really granted at trial, like
21 what? Zero. So.

22 MR. YIEN: I just wanted to --

23 MR. LENHARD: We'll withdraw.

24 MS. GRIFA: We'll withdraw the objections.

25 HEARING OFFICER EMMERMANN: Okay. Next, this

1 just reminded me of a question I have that I didn't ask.
2 So I'll ask for Mr. Mandalawi to come up for a real
3 quick question.

4 We might as well have you come up now.

5 Sorry about that, Mr. Mandalawi.

6 MR. MANDALAWI: Thank you.

7 HEARING OFFICER EMMERMANN: You're still under
8 oath; do you understand that?

9 MR. MANDALAWI: Yes.

10 HEARING OFFICER EMMERMANN: Okay. Does Home
11 Warranty Administrators have its own website?

12 MR. MANDALAWI: Yes, it does.

13 HEARING OFFICER EMMERMANN: What is that
14 website?

15 MR. MANDALAWI: HomeWarrantyAdministrators.com.

16 HEARING OFFICER EMMERMANN: And you use this
17 website for all of your HWA companies?

18 MR. MANDALAWI: Correct.

19 HEARING OFFICER EMMERMANN: All right. That's
20 what I needed to know. Thank you.

21 MR. MANDALAWI: Sure.

22 HEARING OFFICER EMMERMANN: Any questions from
23 counsel?

24 MS. GRIFA: Nothing.

25 MR. YIEN: (Shook head negatively.)

1 HEARING OFFICER EMMERMANN: Okay. Thank you.

2 The last thing I would like to do is review the
3 exhibits to make sure we're all on the same page. So I
4 have two little sheets. Let me know when you're ready.

5 So for the Division's exhibits, I want to
6 double-check. I have exhibits 1 through 42, to include
7 19-A, 20-A and 40-A. Does that sound right to
8 everybody?

9 MR. YIEN: Yes.

10 HEARING OFFICER EMMERMANN: And all of them, so
11 all of them were either admitted or stipulated to today,
12 or in the hearing. Okay.

13 For HWAN's exhibits, I have exhibits A through
14 Z, double A through double J, and double R.

15 MR. YIEN: And double R was just that BBB
16 report.

17 MR. LENHARD: Yes.

18 MR. YIEN: Yes.

19 HEARING OFFICER EMMERMANN: And I have, just
20 for my records, KK through QQ, or double K through
21 double Q were withdrawn.

22 MS. GRIFA: That's right.

23 HEARING OFFICER EMMERMANN: Okay. We're not
24 missing anything else? And these were, these were all
25 stipulated to.

1 MR. YIEN: Yes, they were all stipulated to,
2 yes.

3 MS. GRIFA: I believe, that's right.

4 HEARING OFFICER EMMERMANN: All right. I
5 think, that's all I've got. Do you have anything else
6 for me?

7 No? Okay. So we're waiting for the
8 transcript. I will issue a short order identifying due
9 dates, and we will go from there.

10 Thank you, everybody, very much for your time
11 and attention and consideration.

12 And if you don't know, the order, my order is
13 due to the Commissioner of Insurance within 30 days of
14 the close of the hearing. The hearing will close on the
15 last due date of either the brief or the written
16 closing. I issue a findings of facts, conclusions of
17 law, and an order to the Commissioner. The Commissioner
18 issues a final order deciding whether she disagrees or
19 disagrees or modifies my order.

20 Do you have any questions for me?

21 MS. GRIFA: No.

22 MR. LENHARD: No.

23 HEARING OFFICER EMMERMANN: No. All right.
24 Well, thank you very much. Have a great day.

25 MS. GRIFA: Thank you very much.

1 HEARING OFFICER EMMERMANN: Safe travels.

2 MR. LENHARD: Thank you.

3 MR. YIEN: Thank you.

4 * * * * *

5 (The Hearing adjourned at 11:40 a.m.)

6 -oOo-

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

I, SHANNON L. TAYLOR, a Certified Court Reporter, Nevada CCR #322, do hereby certify:

That I was present at the Department of Business and Industry, Division of Insurance, 1818 East College Parkway, 1st Floor Hearing Room, Carson City, Nevada, at 9:00 a.m. on Thursday, September 14, 2017, and commencing at 9:02 a.m. took verbatim stenotype notes of the third and final day of a Hearing had upon the matter captioned within, Cause Number 17.0050;

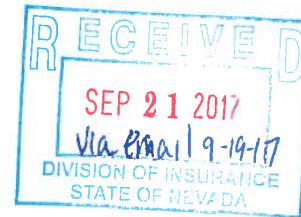
That the witnesses were duly sworn/affirmed by me to tell the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed the aforementioned stenotype notes into typewriting as herein appears, and that the within transcript, consisting of pages 1 through 120, is a full, true and correct transcription of said stenotype notes of said third day of said Hearing.

DATED: At Carson City, Nevada, this 28th day of September, 2017.

SHANNON L. TAYLOR
Nevada CCR #322, RMR

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
klenhard@bhfs.com
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
tchance@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135



LORI GRIFA, ESQ., NJ Bar No. 011551989
lgrifa@archerlaw.com
ARCHER & GREINER, P.C.
Court Plaza South, West Wing
21 Main Street, Suite 353
Hackensack, NJ 07601
Telephone: 201.342.6000
Facsimile: 201.342.6611

Attorneys for Respondent
Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty

**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.

**HOME WARRANTY ADMINISTRATOR
OF NEVADA, INC.'S NOTICE OF
FILING SUPPLEMENTAL HEARING
EXHIBIT SS**

TO: Alexis M. Emmermann, Esq., Hearing Officer
c/o Yvonne Renta, Clerk
Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89106

PLEASE TAKE NOTICE that Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a CHOICE HOME WARRANTY, at the specific direction of the Hearing Officer in the instant Cause, serves and files herewith Supplemental Hearing **Exhibit SS** on this 19th day of September, 2017.

At the specific direction of the Hearing Officer, given on September 14, 2017, Exhibit SS (Bates stamped numbers CHW073482-CHW073502) is served and filed in the exact manner in which these documents were received from Chesapeake Bank by Respondent's counsel, save for the redaction by counsel of portions of the account numbers contained within same for purpose of account security. Inasmuch as the provided documents do not feature a bank logo or explicit reference to the bank, other than the email address www.chesbank.com found on documents Bates stamped: CHW073482-CHW073484; CHW073486-CHW073487, CHW073489-CHW073490, and CHW073492; Respondent also serves and files a letter (CHW073502) from Chesapeake Bank, dated July 7, 2017¹, previously served on opposing counsel during pre-hearing discovery.

DATED this 19th day of September, 2017.

BY: 

LORI GRIFA, ESQ., NJ Bar No. 011551989
lgrifa@archerlaw.com
ARCHER & GREINER, P.C.

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
klenhard@bhfs.com
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
tchance@bhfs.com

Attorneys for Respondent Home Warranty
Administrator of Nevada, Inc. dba Choice Home
Warranty

¹ This document, originally Bates stamped CHW070674, was obtained by Respondent in response to a pre-hearing query from DAG Richard Yien and provided to him by electronic mail on July 14, 2017.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Archer & Greiner, P.C., and that on the 19th day of September, 2017, I caused a true and correct copy of the foregoing **HOME WARRANTY ADMINISTRATOR OF NEVADA, INC.'S SUPPLEMENTAL HEARING EXHIBITS** to be served, by Federal Express, postage prepaid, and via electronic mail, to the following:

ALEXIA M. EMMERMANN, ESQ.
c/o Ms. Yvonne Renta, Clerk to the Hearing Officer
Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706
Email: yrenta@doi.nv.gov

ADAM PAUL LAXALT, ESQ.
ATTORNEY GENERAL
RICHARD YIEN, Deputy Attorney General
Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701-4717
Email: ryien@ag.nv.gov


an employee of Archer & Greiner, PC

EXHIBIT SS

Date 7/06/16
Account Number
Enclosures

Page 1
9957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

Check your balance anytime with Online Banking
visit www.chesbank.com to learn more.

***** SUMMARY OF ACCOUNTS *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 945,201.78
5612 BUSINESS CHECKING 944.51

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	6/06/16 thru 7/06/16
Previous Balance	944,920.89	Days in the statement period	31
Deposits/Credits	.00	Average Ledger	944,920.89
Checks/Debits	.00	Average Collected	944,920.89
Service Charge	.00	Interest Earned	280.89
Interest Paid	280.89	Annual Percentage Yield Earned	0.35%
Current Balance	945,201.78	2016 Interest Paid	1,928.29

Activity in Date Order		Amount
Date	Description	
7/06	Interest Deposit	280.89

Daily Balance Information			
Date	Balance	Date	Balance
6/06	944,920.89	7/06	945,201.78

* * * END OF STATEMENT * * *

CHW073482

003932

AA001275

Date 8/04/16
Account Number
Enclosures

Page 1
9957
1

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

Check your balance anytime with Online Banking
visit www.chesbank.com to learn more.

***** S U M M A R Y O F A C C O U N T S *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 970,251.41 1
5612 BUSINESS CHECKING 944.51

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	1
Account Number	9957	Statement Dates	7/07/16 thru 8/04/16
Previous Balance	945,201.78	Days in the statement period	29
1 Deposits/Credits	24,781.32	Average Ledger	964,855.93
Checks/Debits	.00	Average Collected	964,855.93
Service Charge	.00	Interest Earned	268.31
Interest Paid	268.31	Annual Percentage Yield Earned	0.35%
Current Balance	970,251.41	2016 Interest Paid	2,196.60

Activity in Date Order		Amount
Date	Description	
7/13	Credit Memo	24,781.32
8/04	Interest Deposit	268.31

Daily Balance Information			
Date	Balance	Date	Balance
7/07	945,201.78	7/13	969,983.10
		8/04	970,251.41

* * * END OF STATEMENT * * *

CHW073483

003933

AA001276

Date 9/06/16
Account Number
Enclosures

Page 1
9957
1

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

Check your balance anytime with Online Banking
Visit www.chesbank.com to learn more.

***** S U M M A R Y O F A C C O U N T S *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 987,137.65 1
5612 BUSINESS CHECKING 944.51

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	1
Account Number	9957	Statement Dates	8/05/16 thru 9/06/16
Previous Balance	970,251.41	Days in the statement period	33
1 Deposits/Credits	16,575.56	Average Ledger	981,804.07
Checks/Debits	.00	Average Collected	981,804.07
Service Charge	.00	Interest Earned	310.68
Interest Paid	310.68	Annual Percentage Yield Earned	0.35%
Current Balance	987,137.65	2016 Interest Paid	2,507.28

Activity in Date Order		Amount
Date	Description	
8/15	Credit Memo	16,575.56
9/06	Interest Deposit	310.68

Daily Balance Information					
Date	Balance	Date	Balance	Date	Balance
8/05	970,251.41	8/15	986,826.97	9/06	987,137.65

* * * END OF STATEMENT * * *

CHW073484

003934

AA001277

CHESAPEAKE BANK		DDA CREDIT		Pay to the order of <u>CHW</u>	
USA LEGION 01 - Savings Bank 02 - Army Service 03 - Army Service 04 - Army Service 05 - Army Service 06 - Army Service 07 - Army Service 08 - Army Service 09 - Army Service 10 - Army Service 11 - Army Service 12 - Army Service 13 - Army Service 14 - Army Service 15 - Army Service 16 - Army Service 17 - Army Service 18 - Army Service 19 - Army Service 20 - Army Service 21 - Army Service 22 - Army Service 23 - Army Service 24 - Army Service 25 - Army Service 26 - Army Service 27 - Army Service 28 - Army Service 29 - Army Service 30 - Army Service 31 - Army Service 32 - Army Service 33 - Army Service 34 - Army Service 35 - Army Service 36 - Army Service 37 - Army Service 38 - Army Service 39 - Army Service 40 - Army Service 41 - Army Service 42 - Army Service 43 - Army Service 44 - Army Service 45 - Army Service 46 - Army Service 47 - Army Service 48 - Army Service 49 - Army Service 50 - Army Service 51 - Army Service 52 - Army Service 53 - Army Service 54 - Army Service 55 - Army Service 56 - Army Service 57 - Army Service 58 - Army Service 59 - Army Service 60 - Army Service 61 - Army Service 62 - Army Service 63 - Army Service 64 - Army Service 65 - Army Service 66 - Army Service 67 - Army Service 68 - Army Service 69 - Army Service 70 - Army Service 71 - Army Service 72 - Army Service 73 - Army Service 74 - Army Service 75 - Army Service 76 - Army Service 77 - Army Service 78 - Army Service 79 - Army Service 80 - Army Service 81 - Army Service 82 - Army Service 83 - Army Service 84 - Army Service 85 - Army Service 86 - Army Service 87 - Army Service 88 - Army Service 89 - Army Service 90 - Army Service 91 - Army Service 92 - Army Service 93 - Army Service 94 - Army Service 95 - Army Service 96 - Army Service 97 - Army Service 98 - Army Service 99 - Army Service 00 - Army Service		NAME OF <u>MEMBER</u> PAYMENT DATE: <u>08/15/16</u>		AMOUNT <u>16,575.56</u>	
9 9 5 7 0 3 6 8 1 6 5 7 5 6		12200-000411			

Amount \$16,575.56 Date 8/15/2016

CHW073485

003935

AA001278

Page 1
9957

Date 11/04/16
Account Number
Enclosures

Page 1
9957
1

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

Check your balance anytime with Online Banking
Visit www.chesbank.com to learn more.

***** SUMMARY OF ACCOUNTS *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 992,089.15 1
5612 BUSINESS CHECKING 1,944.51

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	1
Account Number	9957	Statement Dates	10/05/16 thru 11/06/16
Previous Balance	987,402.69	Days in the statement period	33
1 Deposits/Credits	5,372.70	Average Ledger	991,544.81
1 Checks/Debits	1,000.00	Average Collected	991,544.81
Service Charge	.00	Interest Earned	313.76
Interest Paid	313.76	Annual Percentage Yield Earned	0.35%
Current Balance	992,089.15	2016 Interest Paid	3,086.08

Activity in Date Order		Amount
Date	Description	
10/12	Credit Memo	5,372.70
11/04	Transf to NV Operating	1,000.00-
	Confirmation number 1104160208	
11/06	Interest Deposit	313.76

Daily Balance Information			
Date	Balance	Date	Balance
10/05	987,402.69	11/04	991,775.39
10/12	992,775.39	11/06	992,089.15

* * * END OF STATEMENT * * *

CHW073487

003937

AA001280

CHESAPEAKE BANK		DDA CREDIT		Date <u>10/12/16</u>	
ACCOUNT 01 - Checking Entry 02 - ACH Debit Entry 03 - Credit Entry 04 - ACH Credit Entry 05 - Manual Deposit 06 - Manual Withdrawal 07 - Credit Transfer		NAME Name Recently Added/Updated of <u>00000</u>		DATE Payment Date <u>10/12/16</u>	
AMOUNT 0000000000		AMOUNT 5372.70		DATE 10/12/16	

Amount \$5,372.70 Date 10/12/2016

CHW073488

003938

AA001281

Date 12/02/16
Account Number
Enclosures

Page 1
9957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

Check your balance anytime with Online Banking
Visit www.chesbank.com to learn more.

***** SUMMARY OF ACCOUNTS *****

Account Number	Account Title	Current Balance	Enclosures
9957	DEMAND MONEY PLUS	992,355.52	
5612	BUSINESS CHECKING	944.51	

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	11/07/16 thru 12/04/16
Previous Balance	992,089.15	Days in the statement period	28
Deposits/Credits	.00	Average Ledger	992,089.15
Checks/Debits	.00	Average Collected	992,089.15
Service Charge	.00	Interest Earned	266.37
Interest Paid	266.37	Annual Percentage Yield Earned	0.35%
Current Balance	992,355.52	2016 Interest Paid	3,352.45

Activity in Date Order		Amount
Date	Description	
12/04	Interest Deposit	266.37

Daily Balance Information			
Date	Balance	Date	Balance
11/07	992,089.15	12/04	992,355.52

* * * END OF STATEMENT * * *

CHW073489

003939

AA001282

Date 1/04/17
Account Number
Enclosures

Page 1
9957
1

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

Check your balance anytime with Online Banking
visit www.chesbank.com to learn more.

***** SUMMARY OF ACCOUNTS *****

Account Number	Account Title	Current Balance	Enclosures
9957	DEMAND MONEY PLUS	1,004,771.86	1
5612	BUSINESS CHECKING	944.51	

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	1
Account Number	9957	Statement Dates	12/05/16 thru 1/04/17
Previous Balance	992,355.52	Days in the statement period	31
1 Deposits/Credits	12,118.80	Average Ledger	1,000,955.95
Checks/Debits	.00	Average Collected	1,000,955.95
Service Charge	.00	Interest Earned	297.54
Interest Paid	297.54	Annual Percentage Yield Earned	0.35%
Current Balance	1,004,771.86	2017 Interest Paid	297.54

Activity in Date Order		Amount
Date	Description	
12/14	Credit Memo	12,118.80
1/04	Interest Deposit	297.54

Daily Balance Information					
Date	Balance	Date	Balance	Date	Balance
12/05	992,355.52	12/14	1,004,474.32	1/04	1,004,771.86

* * * END OF STATEMENT * * *

CHW073480

003940

AA001283

CHESAPEAKE BANK		DDA CREDIT		12/14/16	
ISSUANCE 001 - Depository Entry 002 - ACH Debit Entry 003 - Cash Debit Entry 004 - Cash Credit Entry 005 - Manual Debit Entry 006 - Manual Credit Entry 007 - Direct Bill Payment		NAME <u>WARRANTY ADMINISTRATOR</u> ACCOUNT <u>1211880</u> PAYMENT DATE <u>12/14/16</u> DEBIT ACCT NO <u>1211880</u>		FROM TO DATE AMOUNT	
ISSUANCE 001 - Depository Entry 002 - ACH Debit Entry 003 - Cash Debit Entry 004 - Cash Credit Entry 005 - Manual Debit Entry 006 - Manual Credit Entry 007 - Direct Bill Payment		NAME <u>WARRANTY ADMINISTRATOR</u> ACCOUNT <u>1211880</u> PAYMENT DATE <u>12/14/16</u> DEBIT ACCT NO <u>1211880</u>		FROM TO DATE AMOUNT	
ISSUANCE 001 - Depository Entry 002 - ACH Debit Entry 003 - Cash Debit Entry 004 - Cash Credit Entry 005 - Manual Debit Entry 006 - Manual Credit Entry 007 - Direct Bill Payment		NAME <u>WARRANTY ADMINISTRATOR</u> ACCOUNT <u>1211880</u> PAYMENT DATE <u>12/14/16</u> DEBIT ACCT NO <u>1211880</u>		FROM TO DATE AMOUNT	

Amount \$12,118.80 Date 12/14/2016

CHW073491

003941

AA001284

Date 2/03/17
Account Number
Enclosures

Page 1
9957
1

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

Check your balance anytime with Online Banking
Visit www.chesbank.com to learn more.

***** S U M M A R Y O F A C C O U N T S *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 1,008,645.07 1
6612 BUSINESS CHECKING 944.51

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	1
Account Number	9957	Statement Dates	1/05/17 thru 2/05/17
Previous Balance	1,004,771.86	Days in the statement period	32
1 Deposits/Credits	3,564.21	Average Ledger	1,006,999.49
Checks/Debits	.00	Average Collected	1,006,999.49
Service Charge	.00	Interest Earned	309.00
Interest Paid	309.00	Annual Percentage Yield Earned	0.35%
Current Balance	1,008,645.07	2017 Interest Paid	606.54

Activity in Date Order		Amount
Date	Description	
1/17	Credit Memo	3,564.21
2/05	Interest Deposit	309.00

Daily Balance Information					
Date	Balance	Date	Balance	Date	Balance
1/05	1,004,771.86	1/17	1,008,336.07	2/05	1,008,645.07

* * * END OF STATEMENT * * *

CHW073492

003942

AA001285

Amount \$3,564.21 Date 1/17/2017

AA001286

Date 3/03/17
Account Number
Enclosures

Page 1
9957
1

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

***Effective April 1, 2017 bank statements returned by the Postal Service
as Return Address/Undeliverable Address will be subject to a \$10.00
fee charged to the customer's account.***

***** S U M M A R Y O F A C C O U N T S *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 1,014,273.94 1
5612 BUSINESS CHECKING 944.52

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	1
Account Number	9957	Statement Dates	2/06/17 thru 3/05/17
Previous Balance	1,008,645.07	Days in the statement period	28
2 Deposits/Credits	6,656.88	Average Ledger	1,013,034.15
1 Checks/Debits	1,300.00	Average Collected	1,013,034.15
Service Charge	.00	Interest Earned	271.99
Interest Paid	271.99	Annual Percentage Yield Earned	0.35%
Current Balance	1,014,273.94	2017 Interest Paid	878.53

Activity in Date Order		Amount
Date Description		
2/13 Trsf from CHW Operating		6,656.87
Confirmation number 213170525		
2/21 Transf to NV Operating		1,300.00-
Confirmation number 221170501		
2/23 Credit Memo		.01
3/05 Interest Deposit		271.99

Daily Balance Information					
Date	Balance	Date	Balance	Date	Balance
2/06	1,008,645.07	2/21	1,014,001.94	3/05	1,014,273.94
2/13	1,015,301.94	2/23	1,014,001.95		

*** END OF STATEMENT ***

CHW073494

003944

AA001287

Amount \$0.01 Date 2/23/2017

AA001288

Date 4/04/17
Account Number
Enclosures

Page 1
957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

***Effective April 1, 2017 bank statements returned by the Postal Service
as Return Address/Undeliverable Address will be subject to a \$10.00
fee charged to the customer's account.***

***** S U M M A R Y O F A C C O U N T S *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 1,056,778.62
5612 BUSINESS CHECKING 944.52

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	3/06/17 thru 4/04/17
Previous Balance	1,014,273.94	Days in the statement period	30
1 Deposits/Credits	42,202.38	Average Ledger	1,050,849.33
Checks/Debits	.00	Average Collected	1,050,849.33
Service Charge	.00	Interest Earned	302.30
Interest Paid	302.30	Annual Percentage Yield Earned	0.35%
Current Balance	1,056,778.62	2017 Interest Paid	1,180.83

Activity in Date Order		Amount
Date	Description	
3/10	Trsf from CHW Operating	42,202.38
	Confirmation number 310170142	
4/04	Interest Deposit	302.30

Daily Balance Information					
Date	Balance	Date	Balance	Date	Balance
3/06	1,014,273.94	3/10	1,056,476.32	4/04	1,056,778.62

* * * END OF STATEMENT * * *

CHW073498

003946

AA001289

Date 5/04/17
Account Number
Enclosures

Page 1
9957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

***Effective April 1, 2017 bank statements returned by the Postal Service
as Return Address/Undeliverable Address will be subject to a \$10.00
fee charged to the customer's account.***

***** S U M M A R Y O F A C C O U N T S *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 1,070,926.52
5612 BUSINESS CHECKING 944.52

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	4/05/17 thru 5/04/17
Previous Balance	1,056,778.62	Days in the statement period	30
1 Deposits/Credits	13,840.57	Average Ledger	1,068,312.42
Checks/Debits	.00	Average Collected	1,068,312.42
Service Charge	.00	Interest Earned	307.33
Interest Paid	307.33	Annual Percentage Yield Earned	0.35%
Current Balance	1,070,926.52	2017 Interest Paid	1,488.16

Activity in Date Order		Amount
Date	Description	
4/10	Trsf from CHW Operating	13,840.57
	Confirmation number 410170542	
5/04	Interest Deposit	307.33

Daily Balance Information			
Date	Balance	Date	Balance
4/05	1,056,778.62	4/10	1,070,619.19
		5/04	1,070,926.52

*** END OF STATEMENT ***

CHW073497

003947

AA001290

Date 6/02/17
Account Number
Enclosures

Page 1
9957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

*****Ask us about cash rewards for our new myCard.*****

***** S U M M A R Y O F A C C O U N T S *****
Account Number Account Title Current Balance Enclosures
9957 DEMAND MONEY PLUS 1,107,351.85
5612 BUSINESS CHECKING 944.52

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	5/05/17 thru 6/04/17
Previous Balance	1,070,926.52	Days in the statement period	31
1 Deposits/Credits	36,097.30	Average Ledger	1,103,530.53
Checks/Debits	.00	Average Collected	1,103,530.53
Service Charge	.00	Interest Earned	328.03
Interest Paid	328.03	Annual Percentage Yield Earned	0.35%
Current Balance	1,107,351.85	2017 Interest Paid	1,816.19

Activity in Date Order		Amount
Date	Description	
5/08	Trsf from CHW Operating	36,097.30
	Confirmation number 508170480	
6/04	Interest Deposit	328.03

Daily Balance Information					
Date	Balance	Date	Balance	Date	Balance
5/05	1,070,926.52	5/08	1,107,023.82	6/04	1,107,351.85

* * * END OF STATEMENT * * *

CHW073498

003948

AA001291

Date 7/03/17
Account Number
Enclosures

Page 1
9957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

*****Ask us about cash rewards for our new myCard.*****

***** S U M M A R Y O F A C C O U N T S *****

Account Number	Account Title	Current Balance	Enclosures
9957	DEMAND MONEY PLUS	2,250,864.12	
5612	BUSINESS CHECKING	944.52	

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	6/05/17 thru 7/04/17
Previous Balance	1,107,351.85	Days in the statement period	30
2 Deposits/Credits	1,143,050.76	Average Ledger	1,604,295.33
Checks/Debits	.00	Average Collected	1,604,295.33
Service Charge	.00	Interest Earned	461.51
Interest Paid	461.51	Annual Percentage Yield Earned	0.35%
Current Balance	2,250,864.12	2017 Interest Paid	2,277.70

Activity in Date Order

Date	Description	Amount
6/06	Trsf from CHW Operating	350,000.00
	Confirmation number 606170273	
6/29	Trsf from Line of Credit	793,050.76
	Confirmation number 629170146	
7/04	Interest Deposit	461.51

Daily Balance Information

Date	Balance	Date	Balance
6/05	1,107,351.85	6/29	2,250,402.61
6/06	1,457,351.85	7/04	2,250,864.12

*** END OF STATEMENT ***

CHW073499

003949

AA001292

Date 8/04/17
Account Number
Enclosures

Page 1
9957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

*****Ask us about cash rewards for our new myCard.*****

***** S U M M A R Y O F A C C O U N T S *****

Account Number	Account Title	Current Balance	Enclosures
9957	DEMAND MONEY PLUS	2,327,038.09	
5612	BUSINESS CHECKING	944.52	

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	7/05/17 thru 8/06/17
Previous Balance	2,250,864.12	Days in the statement period	33
1 Deposits/Credits	75,442.90	Average Ledger	2,310,303.98
checks/Debits	.00	Average Collected	2,310,303.98
Service Charge	.00	Interest Earned	731.07
Interest Paid	731.07	Annual Percentage Yield Earned	0.35%
Current Balance	2,327,038.09	2017 Interest Paid	3,008.77

Activity in Date Order		Amount
Date	Description	
7/12	Trsf from CHW Operating	75,442.90
	Confirmation number 712170292	
8/06	Interest Deposit	731.07

Daily Balance Information			
Date	Balance	Date	Balance
7/05	2,250,864.12	7/12	2,326,307.02
		8/06	2,327,038.09

* * * END OF STATEMENT * * *

CHW073500

003950

AA001293

Date 9/01/17
Account Number
Enclosures

Page 1
9957

Home Warranty Administrator of NV Inc
1090 King Georges Post Rd
Edison NJ 08837

*****Ask us about cash rewards for our new myCard.*****

***** S U M M A R Y O F A C C O U N T S *****

Account Number	Account Title	Current Balance	Enclosures
9957	DEMAND MONEY PLUS	2,423,993.26	
5612	BUSINESS CHECKING	944.52	

***** CHECKING ACCOUNT *****

Account Title: Home Warranty Administrator of NV Inc

DEMAND MONEY PLUS		Number of Enclosures	0
Account Number	9957	Statement Dates	8/07/17 thru 9/04/17
Previous Balance	2,327,038.09	Days in the statement period	29
1 Deposits/Credits	96,281.29	Average Ledger	2,423,319.38
Checks/Debits	.00	Average Collected	2,423,319.38
Service Charge	.00	Interest Earned	673.88
Interest Paid	673.88	Annual Percentage Yield Earned	0.35%
Current Balance	2,423,993.26	2017 Interest Paid	3,682.65

Activity in Date Order		Amount
Date	Description	
8/07	Trsf from CHW Operating	96,281.29
	Confirmation number 807170487	
9/04	Interest Deposit	673.88

Daily Balance Information			
Date	Balance	Date	Balance
8/07	2,423,319.38	9/04	2,423,993.26

*** END OF STATEMENT ***

CHW073501

003951

AA001294



7 July 2017

To Whom It May Concern:

This letter is to confirm that Home Warranty Administrator of NV, Inc. has a reserve account with Chesapeake Bank. The current account balance is \$2,250,864.12. Chesapeake Bank also holds the reserve and operating accounts for other Home Warranty Administrator corporations owned by Victor Mandalawi, and the current total balance in those accounts are \$24,762,890.57.

Sincerely,

Erin Johnston

Chesapeake Bank

Business Development Officer

Assistant Vice President

CHW073502

CHW070674

003952

AA001295

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

This matter was heard before the Hearing Officer on September 12, 13, and 14, 2017. During the prehearing conference held on September 8, 2017, and at the beginning of the hearing on September 12, 2017, the Hearing Officer indicated that she would ask the Parties to file post-evidentiary briefs and written closing arguments in order to maximize the time for presentation of evidence. (Prehr'g Conf. Tr. 8:24–10:10, Sep. 8, 2017; Hr'g Tr. 13:1–5, Sep. 12, 2017.) At the conclusion of witness testimony, the Hearing Officer informed the Parties that she would issue an order to set filing dates for the post-hearing filings. (Hr'g Tr. 110:4–114:6, 118:7–9, Sep. 14, 2017.)

A. Brief

At the conclusion of the hearing, the Hearing Officer asked each Party to file a brief on the following question: If a fictitious name does not create a separate legal entity, what is the effect of many separate legal entities that share the same DBA (fictitious name or doing-business-as designation)? In considering this question, the Parties should explore the legal relationship between Home Warranty Administrator of Nevada, Inc. ("HWAN") and CHW Group, Inc. ("CHW"). For example, are the companies in a franchise relationship? Or is CHW a subcontractor for HWAN? What are the implications of the relationship as they relate to the Division's allegations?

This brief is each Party's opportunity to enlighten the Hearing Officer on the legal effects of the relationship between the companies under the laws of Nevada. The briefs should be sufficiently long to address the issues, but no more than 20 pages. Exhibits may be provided with

1 the brief, and do not count toward the page limit. **The briefs must be filed by close of business**
2 **on October 30, 2017.**

3 B. Written Closing Argument

4 The Parties may file written closing arguments not to exceed 15 pages. **The written**
5 **closing argument must be filed by close of business on November 15, 2017.**

6 So ORDERED.

7 DATED this 13th day of October, 2017.

8
9 
10 ALEXIA M. EMMERMANN
11 Hearing Officer
12
13
14
15
16
17
18
19
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**, in **CAUSE NO. 17.0050**, via
3 electronic mail and by mailing a true and correct copy thereof, properly addressed with postage
4 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


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

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

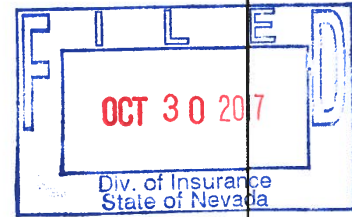
21 and copies of the foregoing were sent via electronic mail to:

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

25 DATED this 13th day of October, 2017.

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

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE



IN THE MATTER OF) CAUSE NO. 17.0050
)
HOME WARRANTY) **DIVISION'S POST HEARING BRIEF**
ADMINISTRATOR) **PURSUANT TO ORDER**
OF NEVADA, INC. dba CHOICE)
HOME WARRANTY)
)
Respondent.)

This brief comes before the Hearing Officer pursuant to a Post-hearing Order issued on October 13, 2017. Hearing Officer Emmermann inquires: "If a fictitious name does not create a separate legal entity, what is the effect of many separate legal entities that share the same DBA (fictitious name of doing-business-as designation)?" In considering this question, the Parties should explore the legal relationship between Home Warranty Administrator of Nevada, Inc. ("HWAN") and CHW Group, Inc. For example, are the companies in a franchise relationship? Or is CHW a subcontractor for HWAN? What are the implications of the relationship as they relate to the Division's "allegations"? The Nevada Division of Insurance ("Division"), by and through its counsel Deputy Attorney General RICHARD PAILI YIEN and Senior Deputy Attorney General JOANNA GRIGORIEV hereby submit this brief.

THE LEGAL RELATIONSHIP BETWEEN HWAN AND CHW

Summary of Pertinent Facts

In the present case, respondent HWAN, a Nevada corporation, uses as its dba the name "Choice Home Warranty."¹ The same dba is also used by a New Jersey Corporation, Choice Home Warranty Group Inc., dba Choice Home Warranty ("CHW"). Victor Mandalawi and Victor Hakim are owners, principals and control persons of CHW. Victor Mandalawi is also the sole officer and employee of HWAN. CHW is listed as the "Administrator" for HWAN's service contracts.

CHW has been involved in the sale, internet, email, and other advertisement and solicitation of service contracts in various states. In the states requiring licensure, like Nevada, CHW created "HWA" entities to apply for licensure. Such an arrangement is used by CHW to

¹ A dba is a fictitious or assumed trade name used by an entity to conduct business.

1 avoid having to disclose its various disciplinary actions and violations to the state regulators in the
2 application process. This is the case in Nevada.

3 In Nevada, a service provider must obtain a certificate of registration. NRS 690C.150.
4 According to Mandalawi, CHW, began soliciting, advertising, and selling service contracts in
5 Nevada in its own name sometime in 2008. HWAN registered shortly thereafter without
6 disclosing CHW as the name of the prior entity under which it operated. Subsequently, it also
7 became apparent that HWAN has failed to disclose prior regulatory actions brought against CHW
8 in other states.

9 HWAN, dba CHW, consists of one employee, Victor Mandalawi, who controls the
10 information that goes onto CHW's web sites where HWAN consumers go to sign up for services.²
11 Mandalawi testified that it is his role as president of HWAN to oversee the day-to day activities of
12 CHW.³ Mandalawi communicates as President of CHW from a CHW email account when
13 addressing complaints against HWAN.⁴ Mandalawi agrees, "there is a common interest between
14 both companies."⁵ Mandalawi does not distinguish when and where he acts as President of
15 HWAN as opposed to President of CHW.⁶ Mandalawi considers himself, "working all the time
16 for both entities, really."⁷ Mandalawi is the sole person with access to both HWAN and CHW
17 bank accounts and the bank records provided to the Division show comingling of the funds of the
18 two entities.⁸ Mandalawi authorizes "goodwill payments" for HWAN to come from the bank
19 accounts of CHW.⁹ Mandalawi voluntarily steps in to resolve the complaints against CHW¹⁰ on
20 behalf of HWAN.

21 After HWAN was created, CHW continued to act in a provider capacity by performing the
22 very functions for which Nevada law requires a certificate of registration, including sale,
23 solicitation, and advertising. Mandalawi's testimony reflects that all of this work is done from the

24 ²Hearing Record for Thursday, September 14, page 34 line 9 to page 35 line 12,

25 ³Hearing Record for Wednesday, September 13, 2017, page 266, lines 11-13,

26 ⁴ Hearing Record for Wednesday, September 13, 2017, page 241, line 9 to page 242, line 5

27 ⁵ Hearing Record for Wednesday, September 13, 2017, page 240, lines 11-14

28 ⁶ Hearing Record for Wednesday, September 13, 2017, page 240, lines 7-14

⁷Hearing Record for Thursday, September 14, 2017, page 56, lines 16-17

⁸Hearing Record for Thursday, September 14, 2017, page 52, line 4 to page 55 line 15

⁹Hearing Record for Thursday, September 14, 2017, page 55 line 25 to page 56 line 3. Mandalawi

¹⁰Hearing Record for Thursday, September 14, 2017, page 239, line 18 to page 240, line 14

1 CHW offices and HWAN's only role is simply to attain and maintain the license.¹¹ Per
2 Mandalawi, the CHW offices perform "all the actions," including the advertisement, solicitation
3 and sale of service contracts.¹² Hakim corroborates this in his testimony.¹³

4 Law

5 The Commissioner of Insurance ("Commissioner") is charged with regulation and oversight
6 of all entities subject to the provisions of Title 57 of the NRS ("Insurance Code"). Protection of
7 the general public from harm by dishonest persons, who are subject to the Commissioner's
8 jurisdiction, is one of the primary policy concerns behind enforcement powers conferred on the
9 Commissioner by the Legislature under provisions of title 57 *See* NRS 679B.120, 679B.125. The
10 Division's complaint against HWAN in this case includes allegations of providing false
11 information, engaging in unfair and deceptive trade practices, and conducting business in an
12 unsuitable manner. (Division's Cmplt. 6 :7-27; 7: 1-4). Ample evidence in support of the
13 Division's allegations of violations of the Insurance Code by HWAN dba CHW has been
14 presented regardless of what the nature of its relationship with CHW would legally be deemed to
15 be.

16 The facts, briefly summarized above reveal that CHW created an artificial entity, (HWAN
17 dba CHW), a fictional service provider, after having already been performing all of the functions
18 requiring a certificate of registration under Nevada law for some time. After creating HWAN,
19 CHW has continued to advertise, solicit, and sell service contracts; all of which are functions of a
20 licensed service contract provider.¹⁴ CHW used HWAN to apply and renew the certificate of
21 registration without ever revealing all of its disciplinary baggage from other states.

22
23
24 ¹¹ "So the purpose that those companies were set up was to, you know, make sure that we – I
could separate from each of those regulatory statutes from state to state" Hearing Record for
Thursday, page 39, lines 4-9.

25 ¹² Hearing Record Wednesday, page 135, line 23 to page 136 line 5 and Hearing Record
26 Thursday, page 40, lines 9-14.

¹³ Hearing Record Thursday, page 70, line 1 to page 72 line 13.

27 ¹⁴ NRS 690C.150 provides: "A provider shall not **issue, sell or offer for sale service contracts**
28 in this state unless the provider has been issued a certificate of registration pursuant to the
provisions of this chapter."

1 The response to the Hearing Officer's question about the legal implications of various legal
2 entities using the same dba is that such use, by itself, may not be legally determinative; however,
3 it is an element of the overwhelming evidence supporting the Division's allegations, including
4 those of unsuitability and unfair trade practices. It is also an element of evidence as to the nature
5 of the "relationship" between CHW and HWAN. It is the Division's position that CHW created
6 the corporate fiction of HWAN to deceive the Division of Insurance and consumers by concealing
7 CHW's (the entity performing all of the provider functions for which a certificate of registration is
8 required in Nevada) disciplinary history. This position is further supported by Mandalawi's
9 attempt to do the same in Washington, only to withdraw the HWA application shortly after
10 Washington regulators connected HWA to CHW.¹⁵¹⁶

11 In civil litigation, courts have developed various formulas to prevent fraud or injustice
12 resulting from abuses of corporate fiction, including in cases of separate corporate entities or
13 parent and subsidiary companies that through their conduct have lost their distinct corporate
14 identities. 1 Treatise on the Law of Corporation § 7: 16 (3d) provides the following overview:

15 The formulae most commonly invoked to determine the extent of a parent
16 corporation's liability for the torts and contracts of its subsidiaries, and in various
17 other classes of cases, are (1) agency, (2) instrumentality, (3) identity or alter ego,
18 (4) fraud, and (5) abuse of control or inequitable use of the separate entity
19 privilege. Courts of a particular jurisdiction seldom consistently follow any one
20 of these theories. Normally, whether the court labels a subsidiary an "agent,"
21 "instrumentality," "alter ego," or "identity" of the parent seems to make no
22 difference in the court's decision. Courts do not purport to apply different
23 considerations or approaches in cases arising in the parent-subsidiary context from
24 those where the object of piercing the veil was an individual stockholder.

25 *Id.* Nevada adopted the "alter ego" doctrine in 1957 in *Frank McCleary Cattle Co. v. Sewell*, 73
26 Nev. 279, 282, 317 P.2d 957, 959 (1957), reversed on other grounds in *Callie v. Bowling*, 123
27 Nev. 181, 160 P.3d 878 (2007). The court in *McCleary* held that a judgment rendered against one
28 corporation could be enforced by execution against a second corporation, owned by the same two
people, with the same president, to which all the assets of the first corporation had been

¹⁵ Hearing Record for Wednesday, page 243 line 18 to page 245, line 17.

¹⁶ Division's Exhibit 8, page 14, lines 8-13

1 transferred for tax reasons. *McCleary*, 73 Nev. at 282, 317 P. 2d 967.¹⁷ In 2001, the Nevada
2 Legislature codified the requirements articulated by the *McCleary* court in NRS 78.747. Common
3 law still applies to situations and persons not addressed in the statute. In *Bonanza Hotel Gift Shop,*
4 *Inc. v. Bonanza No. 2*, 95 Nev. 463, 466, 596 (1979), the Nevada Supreme Court held that it must
5 be shown that the subsidiary corporation “is so organized and controlled, and its affairs are so
6 conducted that it is in fact a mere instrumentality or adjunct of another corporation. 95 Nev. at
7 466, 596 P.2d at 229.

8 Prevention of fraud and/or manifest injustice have been characterized as the most
9 important factors considered by the Nevada courts when deciding whether to pierce the corporate
10 veil. *In re James Giampietro*, 317 B.R. 841, 853 (Bankr. D. Nev. 2004). “Indeed, the ‘essence’
11 of the alter ego doctrine is to ‘do justice’ whenever it appears that the protections provided by the
12 corporate form are being abused.” *Polaris Industrial Corp. v. Kaplan*, 103 Nev. 598, 603, 747
13 P.2d 884, 888 (1987).

14 This summary and the guiding principles of how courts, in the context of civil litigation,
15 address the abuses of corporate fiction perpetrated to escape liability or in order to commit fraud,
16 are presented here in response to the Hearing Officer’s inquiry as to the nature of the relationship
17 between CHW and HWAN; it is not for the purpose of requesting the application of the alter ego
18 doctrine. The Division’s case is much simpler and this tribunal can decide whether violations of
19 the Insurance Code have been perpetrated by HWAN dba CHW without applying any of the
20 formulas used by the courts or making any formal determinations as to the legal relationship
21 between the HWAN and CHW. Although as a practical matter, CHW and HWAN are one and
22 the same, with CHW performing the functions of a provider as well as of the administrator, for
23 the purpose of this administrative action, the evidence substantiates the alleged violations as

24
25 ¹⁷ The requirements for the application of the alter ego doctrine were identified by the Nevada
26 Supreme Court in *McCleary* as follows: 1. The corporation must be influenced and governed by
27 the person asserted to be its alter ego, 2. there must be such unity of interest and ownership that
28 one is inseparable from the other; and 3) the facts must be such that adherence to the fiction of
separate entity would, under the circumstances, sanction a fraud or promote injustice. It is not
necessary that the plaintiff prove actual fraud. It is enough if the recognition of the two entities as
separate would result in an injustice.

1 against HWAN dba CHW.

2
3 To go along with the charade of the two entities and to further analyze the HWAN and
4 CHW relationship beyond the use of the dba, the law of agency is instructive. An agency
5 relationship is formed when one person has the right to control the performance of another.
6 *Grand Hotel Gift Shop v. Granite St. Ins.*, 108 Nev. 811, 815, 839 P.2d 599, 602 (1992). To bind
7 a principal, an agent must have actual authority, express or implied, or apparent authority. *Dixon*
8 *v. Thatcher*, 103 Nev. 414, 417 (1987), citing *Myers v. Jones*, 99 Nev. 91, 93 (1983). *See also*
9 *Hunter Min. Laboratories, Inc. v. Management Assistance, Inc.*, 104 Nev. 568, 570, 763 P.2d
10 350, 352: “in an agency relationship, the principal possesses the right to control the agent’s
11 conduct.” *Id.* In the present case, the elements of an agency relationship between HWAN and
12 CHW are unequivocally present.

14 The contract between CHW and HWAN provides as follows: “CHW shall provide the
15 following services... (i) communicating with potential clients (the “Clients”) seeking Warranties
16 and *negotiating the signing of contracts*,...”¹⁸ Negotiating and signing contracts is a function of a
17 service provider under the Nevada law. NRS 690C.150. This is an express delegation by HWAN
18 of its duties as a licensed service provider to CHW. This express authority, as Mandalawi
19 testified, is the result of a collaborative effort between HWAN and CHW.¹⁹

21 The agency relationship here is also implied in fact. As stated above, all of the functions
22 statutorily afforded by the legislature to the service contract provider-- here HWAN--are
23 performed by CHW²⁰. All of the sales are conducted by CHW, as evidenced in Hakim’s
24 testimony and corroborated in the marketing materials received by Nevadans, including
25

26
27 ¹⁸ Respondent’s Exhibit E

28 ¹⁹ Hearing Record for Thursday, September 14, 2017, page 42 line 15 to page 43 line 1, Mandalawi

²⁰ Hearing Record for Thursday page 40, lines 9-14

1 employees of the Division. The name and logo of CHW appear in these email advertisements for
2 HWAN products. Again, as per the testimony of Mandalawi, "all of the action," occurs at CHW.
3 Apparent authority in turn is "that authority which a principal holds his agent out as possessing or
4 permits him to exercise or to represent himself as possessing, under such circumstances as to
5 estop the principal from denying its existence." *Dixon* at 1031 (citations omitted). Apparent
6 authority is based on the principles of equitable estoppel whereby the principal is estopped from
7 denying agency relationship "when by his conduct he has clothed the agent with apparent
8 authority to act." *Ellis v. Nelson*, 68 Nev. 410, 418 (1951). In the present case, all of the marketing
9 materials received by Nevadans are from CHW. It is not until they complete the online
10 application that they receive any notice that HWAN is the party they are actually contracting with.
11 In addition to the express and implied authority, there is also apparent authority of CHW, as
12 evidenced by the third parties' reliance. All of the complaints received against HWAN by the
13 Division list CHW as the party they are aggrieved by.
14

15 Respondents will argue that in this case CHW is an independent contractor of HWAN.
16 The facts show otherwise. There is no independence. There is a total control of one entity over
17 the other, as HWAN on paper and in practice has delegated all of its functions to CHW. All of
18 the functions are performed by CHW.²¹ It is also important to note that HWAN has delegated to
19 an unlicensed entity all of its functions for which the law requires a certificate of registration,
20 further supporting the finding of unsuitability and deceptive and unfair trade practices.
21

22 Again, and as mentioned above, all of the email content HWAN customers go through is
23 really a CHW web site, the sales of the HWAN product are done through the online application
24 process controlled by CHW, the CHW logo appears on HWAN's marketing materials, and CHW
25 employees respond to HWAN consumer claims and complaints. Victor Mandalawi is President
26

27
28 ²¹ Hearing Record for Thursday, September 14, page 45, line 10 to page 46, line 7 Mandalawi

1 of both companies, and has testified that he does not distinguish when and where he acts as
2 President of HWAN as opposed to President of CHW. Per Mandalawi's testimony, "I consider
3 myself as working all the time for both entities, really."²² Mandalawi is also the sole person with
4 access to both HWAN and CHW bank accounts.²³ There is no independence of the alleged
5 contractor. Unequivocally, the law and facts support an agency relationship and therefore, the
6 resulting liability.

7 Nevada partnership laws, codified as the uniform partnership act in Chapter 87 of the NRS
8 also provide some guidance in response to the Hearing Officer's questions. A general partnership
9 is liable for each partner's torts in the scope of the partnership business and for each partner's
10 authorized contracts.²⁴ Agency principles apply in the law of partnership. In Nevada, partners are
11 considered the agents of the partnership for carrying on usual partnership business. Each general
12 partner is personally liable for all debts of the partnership for each co-partner's torts.²⁵ There are
13 no general formalities, such as filing with the Secretary of State's office or attaining a business
14 license to become a general partnership.²⁶ A general partnership is an association of two or more
15 persons who are carrying on as co-owners a business for profit.²⁷ The contributions of money or
16 services in return for a share of profits creates a presumption that a general partnership exists.²⁸ A
17 corporation is a separate legal person who can be a partner in a partnership. In cases such as the
18 present one, where HWAN and CHW contribute services pursuant to the agreement in return for
19 profit, a general partnership exists, and each would be held responsible for the other's torts,
20 regardless of their separate business registrations.
21
22
23

24
25 ²² Hearing Record for Thursday, September 14, page 45, line 10 to page 46, line 7 Mandalawi

26 ²³ Hearing Record for Thursday, September 14, page 52 line 4 to page 55 line 18

27 ²⁴ NRS 87.130

28 ²⁵ NRS 87.130

²⁶ NRS 87.070(4)

²⁷ Id.

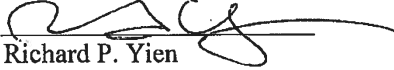
²⁸ Id.

1 Conclusion

2 The Division provides this brief as a response to the Hearing Officer's request and as a
3 means to illustrate how Nevada courts address issues of fairness and justice when analyzing the
4 nature of relationships between business entities, notwithstanding their characterization or
5 agreement. It is the Division's position that for regulatory purposes HWAN dba CHW's actions
6 substantiate the findings of unsuitability, unfair and deceptive practices, and of the other
7 violations alleged. Pursuant to NRS 233B.123, all relevant information should be considered,
8 including the actions of CHW in Nevada where, before and after the creation of HWAN, CHW
9 has been performing the functions of a provider. Its disciplinary history in other states and the fact
10 that it has been omitted in HWAN application is also relevant and aids the Commissioner in the
11 performance of her duties of protection and oversight.

12 Dated this 30th day of October 2017.

13
14 ADAM PAUL LAXALT
15 Attorney General

16 By: 
17 Richard P. Yien
18 Deputy Attorney General
19 (775) 684-1129
20 RYien@ag.nv.gov
21 Attorneys for the Division of Insurance
22
23
24
25
26
27
28

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
klenhard@bhfs.com
2 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
tchance@bhfs.com
3 BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
4 Las Vegas, NV 89106-4614
Telephone: 702.382.2101
5 Facsimile: 702.382.8135

6 LORI GRIFA, ESQ., NJ Bar No. 011551989
lgrifa@archerlaw.com
7 ARCHER & GREINER, P.C.
21 Main Street, Suite 353
8 Hackensack, NJ 07601
Telephone: 201.342.6000
9 Facsimile: 201.342.6611

10 *Attorneys for Respondent Home Warranty*
11 *Administrator of Nevada, Inc. dba Choice Home*
Warranty

12 **STATE OF NEVADA**
13 **DEPARTMENT OF BUSINESS AND INDUSTRY**
14 **DIVISION OF INSURANCE**

14 IN THE MATTER OF:

CAUSE NO.: 17.0050

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

**HOME WARRANTY ADMINISTRATOR
OF NEVADA, INC.'S POST-HEARING
BRIEF ON HEARING OFFICER'S
INQUIRY**

17 *Respondent.*

18
19 Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a Choice
20 Home Warranty ("HWAN"), by and through its attorneys of record Kirk B. Lenhard, Esq. and
21 Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Lori Grifa,
22 Esq., of the law firm of Archer & Greiner, P.C, hereby submits the instant Post-Hearing Brief on
23 Hearing Officer's Inquiry (the "Brief"), pursuant to the Order entered October 13, 2017. This
24 Brief is made and based upon the pleadings and papers on file herein, the following arguments,
25 and any oral arguments of counsel that this tribunal shall choose to consider.
26
27
28

16092588



1 **I. INTRODUCTION**

2 This matter was heard over the course of two and a half days, from September 12 to
3 September 14, 2017 (the "Hearing"). At the close of the Hearing, Hearing Officer Emmermann
4 notified the parties that she would like them to brief an issue that arose during the Hearing. On
5 October 13, 2017, Hearing Officer Emmermann issued an Order, directing the parties to brief the
6 following question:

7 If a fictitious name does not create a separate legal entity, what is
8 the effect of many separate legal entities that share the same DBA
9 (fictitious name or doing business-as designation)? In considering
10 this question, the Parties should explore the legal relationship
11 between Home Warranty Administrator of Nevada, Inc.
12 ("HWAN") and CHW Group, Inc. ("CHW").

13 Overall, the issue to be briefed is what "the implications [are] of the relationship as they
14 relate to the Division's allegations?"

15 In sum, there appears to be no precedent that stands for the proposition that the use of a
16 fictitious name by one entity makes it one and the same with other entities using that same
17 fictitious name. The term itself answers the question: a fictitious name is fictitious and not a
18 distinct legal entity. Additionally, the scope of HWAN's purely contractual relationship with
19 CHW is limited to conduct within the borders of the State of Nevada, so CHW's conduct, and any
20 discipline and resulting fines issued in other states may not be imputed to HWAN.

21 **II. ARGUMENT**

22 **A. As recognized in at least 34 American jurisdictions, the utilization of a**
23 **fictitious name does not create a separate legal entity, so HWAN and**
24 **CHW cannot be one and the same by using the same fictitious name.**

25 1. *The general rule is that a fictitious name is not a separate legal*
26 *entity from the one using it.*

27 An extensive amount of research was conducted on the more narrow issue posed by
28 Hearing Officer Emmermann, to wit: does the use of a fictitious name by multiple corporate

1 entities make those corporate entities the same? No cases were discovered that directly address
2 this question. However, analysis of a more general business law principle related to fictitious
3 names provides the answer. The overwhelming weight of authority is clear that the use of a
4 fictitious business name does not create a separate legal entity, nor does it exist separate and apart
5 from the entity which uses it. The leading case on this principle is *Duval v. Midwest Auto City,*
6 *Inc.*, 425 F. Supp. 1381 (D. Neb. 1977), *aff'd*, 578 F.2d 721 (8th Cir. 1978).

7 In *Duval*, the defendants were sued under federal laws designed to prohibit tampering
8 with odometers on motor vehicles and to provide compensation for those victimized. 425 F. Supp.
9 at 1382. Numerous individuals and companies were involved in the scheme. *Id.* at 1383-1384.
10 After a five-day bench trial, the Court, in its judgment, noted that the complaint itself named
11 “Midwest Auto City, Inc., A Corporation; . . . Dave Studna, Individually, Dave Studna d/b/a E &
12 J Motor Sales and E. Studna Auto Sales; Ervin Delp, Individually; Midwest Auto City, Inc., and
13 Ervin Delp d/b/a Tecumseh Motors; and Bernard Flaherty.” *Id.* at 1387. However, the Court
14 outlined that, in fact, “[u]nder the evidence, there are four entities only[:] Midwest Auto City,
15 Inc., David Studna, Ervin Delp, and Bernard Flaherty.” *Id.* In rendering its judgment against those
16 four entities, the Court stated:

17 The designation “d/b/a” means “doing business as” but is merely
18 descriptive of the person or corporation who does business under
19 some other name. **Doing business under another name does not**
20 **create an entity distinct from the person operating the**
21 **business.** The individual who does business as a sole proprietor
22 under one or several names remains one person, personally liable
23 for all his obligations. **So also with a corporation which uses**
24 **more than one name.**

25 *Id.* at 1387 (emphasis added).

26 Over the last forty years and across at least 32 other jurisdictions, courts have found
27 similarly. See *Miller v. Hehlen*, 104 P.3d 193, 199 (Ariz. 2005) (holding that “a sole
28

1 proprietorship has no existence apart from the individual” in the context of a sole proprietor’s
2 attempt to enforce a noncompetition clause against a former employee); *Wood Mfg. Co., Inc. v.*
3 *Schultz*, 613 F. Supp. 878, 884, n. 7 (W.D. Ark. 1985) (citing *Duval* and noting there is no legal
4 distinction between a corporation and its assumed name in the context of naming parties to a
5 lawsuit); *Pinkerton’s, Inc. v. Sup. Ct.*, 49 Cal. App. 4th 1342, 1348-1349 (1996) (holding that the
6 “[u]se of a fictitious business name does not create a separate legal entity” and that “while a
7 corporation may be sued by its fictitious business name, once its true name is discovered, all
8 further proceedings should be in the corporate name”); *Bauer v. Pounds*, 762 A.2d 499, 503
9 (Conn. App. Ct. 2000) (noting that “[i]t appears well settled that the use of a fictitious or assumed
10 business name does not create a separate legal entity”); *Jaffe v. Nocera*, 493 A.2d 1003, 1007-
11 1008 (D.C. 1985) (holding that “[t]he corporate name following the designation d/b/a (“doing
12 business as”) is merely descriptive of [defendant]; an individual actually doing business this way
13 remains one person, personally liable for all his obligations”) (internal quotations and citations
14 omitted); *Higgins v. Capitol Credit Servs., Inc.*, 762 F. Supp. 1128, 1130 n. 1 (D. Del. 1991)
15 (noting that a fictitious name is not an entity capable of being sued); *Equal Employment*
16 *Opportunity Comm’n v. Doherty Enterprises, Inc.*, No. 14-81184-CIV, 2016 WL 824487, at *4
17 (S.D. Fla. Mar. 2, 2016) (noting that a fictitious firm is not a legal entity capable of being sued);
18 *American Express Travel Related Servs. Co. v. Berlye*, 414 S.E.2d 499, 501 (Ga. App. 1991)
19 (“[t]he use of d/b/a or ‘doing business as’ to associate a tradename with the corporation using it
20 does not create a legal entity separate from the corporation but is merely descriptive of the
21 corporation”); *Credit Assocs. of Maui, Ltd. v. Carlbom*, 50 P.3d 431, 436-437 (Haw. Ct. App.
22 2002) (holding that a sole proprietor conducting business under a trade name remains personally
23 liable for all debts); *W.L. Scott, Inc. v. Madras Aerotech, Inc.*, 103 Idaho 736, 739 (1982) (holding
24 that although a corporation may assume a fictitious name, it must bring suit on a contract entered
25 into under that name in its legal, corporate name); *John Morrell & Co. v. Halbur*, 476 F. Supp. 2d
26 1061, 1077 (N.D. Iowa 2007) (citing *Duval* and finding that fictitious firms have no independent
27 legal status from the entities using them); *Vernon v. Schuster*, 688 N.E.2d 1172, 1177 (Ill. 1997)

1 (“[h]owever, doing business under another name does not create an entity distinct from the person
2 operating the business”); *Krawfish Kitchen Restaurant, Inc. v. Ardoin*, 396 So. 2d 990, 993 (La.
3 Ct. App. 1981) (finding that an individual doing business as a corporation does not enjoy the
4 limited liability of the corporation because a fictitious name is not separate and apart from the one
5 using it); *Bushey v. Northern Assur. Co. of Am.*, 766 A.2d 598, 604-607 (Md. 2001) (holding that,
6 in the insurance context, the insured cannot be the fictitious firm, as assumed names are not
7 separate entities from the one using them); *Iron Workers’ Local No. 25 Pension & Ben. Funds v.*
8 *Steel Enterprises, Inc.*, No. 07-CV-10882-DT, 2009 WL 3645633, at *2, n. 4 (E.D. Mich. Oct. 30,
9 2009) (noting that fictitious firm names are not actual legal entities capable of being sued);
10 *Gabrelcik v. National Indem. Co.*, 131 N.W.2d 534, 536 (Minn. 1964) (“Whether the vehicle is
11 registered in the husband’s name or in the name of the business which he owns and operates as a
12 sole proprietorship, the result is the same; namely, that this vehicle was owned by the insured’s
13 spouse who resided in the same household”); *Local 36 Sheet Metal Workers’ Int’l Ass’n, AFL-*
14 *CIO v. Whitney Mech. Contractors, Inc.*, No. 09-3201-CV-S-RED, 2011 WL 13177640, at *4
15 (W.D. Mo. Mar. 7, 2011) (citing *Duval* and finding that an arbitration award entered against a
16 fictitious firm name may be enforced against the entity using that name); *Hall v. Auto-Owners*
17 *Ins. Co.*, 265 Neb. 716, 720 (2003) (holding that “doing business under another name or several
18 names does not create an entity separate and distinct from the person operating the business”);
19 *Beijing Gongmei Imp. & Exp. Co., Ltd. v. Ijbara*, No. 2:10-CV-02821-SDW, 2012 WL 3228711,
20 at *9 (D.N.J. Aug. 6, 2012) (noting that “doing business under some other name does not create a
21 separate discreet entity”); *Tr. of the Mason Tenders, Dist. Council Welfare Fund, Pension Fund,*
22 *Annuity Fund & Training Program Fund v. Faulkner*, 484 F. Supp. 2d 254, 258 (S.D.N.Y. 2007)
23 (stating “[t]he designation ‘d/b/a’ means ‘doing business as’ but is merely descriptive of the
24 person or corporation who does business under some other name. Doing business under another
25 name does not create an entity distinct from the person operating the business.”) (internal
26 quotation marks and alterations omitted); *Carlson v. Doekson Gross, Inc.*, 372 N.W.2d 902, 905
27 (N.D. 1985) (holding that “[a] sole proprietorship which is conducted under a trade name is not a
28

1 separate legal entity”); *Patterson v. A&M Auto Body*, 589 N.E.2d 1306, 1308 (Ohio 1992)
2 (affirming the Court of Appeals’ holding that a motion to dismiss made at the close of plaintiff’s
3 case should have been granted, since the action had been commenced against the trade name and
4 not an actual legal entity); *Bishop v. Wilson Quality Homes*, 986 P.2d 512, 515 (Okla. 1999)
5 (“Doing business under another name does not create an entity distinct from the person operating
6 the business. The individual who does business as a sole proprietor under one or several names
7 remains one person, personally liable for all his obligations. Doing business under another name
8 does not create an entity distinct from the person operating the business.”); *Burlington Coat*
9 *Factory of Pennsylvania, LLC v. Grace Constr. Mgmt. Co., LLC*, 126 A.3d 1010, 1024 (2015)
10 (“The use of a fictitious name does not create a separate legal entity, but is merely descriptive of a
11 person or corporation who does business under another name.”); *PPV Entm’t, LLC v. Almodovar*,
12 No. CIV. 14-1675 PG, 2015 WL 3604167, at *2 (D.P.R. June 8, 2015) (“Doing business under
13 another name does not create an entity [separate] from the person operating the business.”)
14 (quoting *Duval*); *Nelson v. Ace Steel & Recycling, Inc.*, 842 F. Supp. 2d 1182, 1185 (D.S.D.
15 2012) (“[D]oing business under a fictitious name does not create an entity distinct from the
16 person or entity operating the business.”); *Bill Walker & Assocs., Inc. v. Parrish*, 770 S.W.2d
17 764, 770 (Tenn. Ct. App. 1989) (holding that signing an agreement utilizing a fictitious name
18 nonetheless obligates the one using the fictitious name, rather than the fictitious firm itself);
19 *Bailey v. Vanscot Concrete Co.*, 894 S.W.2d 757, 760 (Tex. 1995), *disapproved of on other*
20 *grounds by Chilkewitz v. Hyson*, 22 S.W.3d 825 (Tex. 1999) (holding that even though a plaintiff
21 may file suit against an assumed name, the correct legal entity using that name must be
22 substituted prior to judgment); *Recalde v. ITT Hartford*, 492 S.E.2d 435, 438-439 (Va. 1997)
23 (holding that “[d]oing business under another name does not create an entity distinct from the
24 person operating the business”); *Paul Davis Restoration of S.E. Wisc., Inc. v. Paul Davis*
25 *Restoration of N.E. Wisc.*, 831 N.W.2d 413, 420 (Wis. 2013) (holding that “the name under which
26 a person or corporation does business is indistinct from the underlying legal entity” in deciding
27 that a judgment entered against name under which garnishment defendant did business was
28

1 enforceable against the defendant itself); *O'Hanlon v. Hartford Accident & Indem. Co.*, 639 F.2d
2 1019, 1025 (3d Cir. 1981) ("We [hold] ... that where an insured purchases a policy in a trade
3 name, the policy will be viewed as if issued in his given name"); *Snowden v. Checkpoint Check*
4 *Cashing*, 290 F.3d 631, 634 n.2 (4th Cir. 2002) (noting that a trade name is not a separate legal
5 entity capable of being sued).

6 2. *Nevada law implicitly follows the well-established principle that the*
7 *utilization of a fictitious name does not create a separate legal entity.*

8 In addition to the foregoing numerous jurisdictions, Nevada law implicitly follows the
9 general principle set forth in *Duval*. In *Trump v. Eighth Jud. Dist. Ct.*, Nick Ribis entered into an
10 employment agreement on January 10, 1991, in which Mr. Ribis was hired as the chief executive
11 officer and the senior officer of all gaming, hotel and other operations coordinated by "The
12 Trump Organization." 109 Nev. 687, 694, 857 P.2d 740, 746 (1993). The agreement was signed
13 by Donald Trump individually, as well as on behalf of various Trump corporations. *Id.* At the
14 time, Dennis Gomes was the president and chief executive officer of the Golden Nugget Las
15 Vegas, owned by GNLV Corp. *Id.* at 690, 857 P.2d at 742. In his capacity as chief executive
16 officer of the Trump Organization, Mr. Ribis recruited Mr. Gomes to become the chief executive
17 officer of the Trump Taj Mahal, an arrangement that was finalized by contract entered into on
18 March 18, 1991. *Id.* at 690-691, 857 P.2d at 742.

19 On March 21, 1991, GNLV filed a complaint against Mr. Gomes, numerous Trump
20 corporations, and Donald Trump, individually, alleging, *inter alia*, intentional interference with
21 contractual relations. *Id.* at 691, 857 P.2d at 743. After serving the complaint, GNLV dismissed
22 all but Gomes and Trump, individually, from the suit. *Id.* Trump then moved to quash, arguing
23 the court lacked personal jurisdiction over him. *Id.* After an evidentiary hearing, the trial court
24 disagreed and Trump filed a petition for a writ of prohibition. *Id.* The Supreme Court affirmed the
25 court below, finding that Trump was subject to personal jurisdiction in Nevada, not because of his
26 own acts, but because of the acts of his individual agent, Mr. Ribis. *Id.* at 698, 857 P.2d at 747.

27 Specifically, the Court noted that, "[s]ince the action on appeal before us lies only against
28

1 Trump as an individual, and not against any Trump corporation, GNLV must show that Ribis
2 acted as Trump's personal agent in order to attribute Ribis' contacts with Nevada to Trump for
3 purposes of establishing personal jurisdiction." *Id.* at 695, 857 P.2d at 745. In finding that such a
4 showing had been made, the Court focused on Ribis' employment agreement. *Id.* at 687, 694, 857
5 P.2d at 746. Although the agreement specified that Ribis' employment was with "The Trump
6 Organization," the Court explicitly noted that "GNLV introduced prima facie evidence that the
7 Trump Organization is a fictitious name under which Trump conducted business as an
8 individual." *Id.* at 705, 857 P.2d at 751, n. 4. In other words, the Nevada Supreme Court looked to
9 the actual entity doing business in Nevada, albeit an individual, not the fictitious name of the
10 entity. This allowed Trump to be individually responsible for the acts of "The Trump
11 Organization's" agents, including subjecting him to personal jurisdiction in Nevada, a result
12 consistent with the vast majority of jurisdictions, as set forth *supra*.¹

13 3. *Imputing CHW's actions outside of the State of Nevada to HWAN would*
14 *cut against well-founded public policy and cannot be reconciled with*
15 *Nevada law, and the abundance of other authority, that hold the use of a*
fictitious name does not create a separate legal entity.

16 The litany of cases above clearly shows that the use of a fictitious firm name does not
17 create a separate legal entity. As applied here, HWAN's utilization of the trade name "Choice

18 ¹ In fact, it appears that only one published decision has held to the contrary. In *Hertz Corp. v.*
19 *Ashbaugh*, 607 P.2d 1173 (N.M. App. 1980), the New Mexico Court of Appeals affirmed a lower
20 court holding that it was the intent of the parties when contracting for insurance to insure only
21 Mr. Ashbaugh "doing business as Corky's Wrecker Service," and not Mr. Ashbaugh as an
22 individual. However, *Ashbaugh* is likely an anomaly on the question at issue and stands only on
23 its specific facts for several reasons. First, it appears that the *Ashbaugh* Court was focused on the
24 unique standard of review, as it noted "at the outset that the rules of appellate review require us to
25 sustain the court's findings and conclusions if supported by the evidence." *Id.* at 1174. Second, as
26 subsequent decisions have pointed out, *Ashbaugh* entirely failed to consider the general rule
27 above and relied upon partnership cases that set forth the rule that individual partners are distinct
28 from an insured partnership for insurance purposes. *See, e.g., Providence Wash. Ins. Co. v. Valley*
Forge Ins. Co., 42 Cal. App. 4th 1194, 1202 (1996) (finding that "*Ashbaugh* is inattentive to the
force of the principle that a trade name does not create a separate entity and wrongly relies on
cases finding individual partners distinct from the insured partnership"). Third, *Ashbaugh* is in the
specific context of insurance law and addresses the narrow issue of who the named insured is for
coverage purposes. Even so, *Ashbaugh* still missed the mark because "[n]umerous decisions
recognize in the insurance context the identity [i.e., the sameness] of the sole proprietor with the
trade name adopted by the sole proprietor." *Bushey, supra*, 362 Md. at 637 (listing cases). Thus, it
appears that even cases that hold contrary to the general rule that a trade name does not create an
entity legally distinct from the one using it lack any real legal support.

1 Home Warranty” does not mean that “Choice Home Warranty” is a legal entity in and of itself.
2 Similarly, CHW Group, Inc.’s utilization of the same trade name does not create a separate legal
3 entity. Thus, it defies all logic rooted in an abundance of legal precedent to assert that HWAN and
4 CHW using the same trade name of “Choice Home Warranty” would make them the same entity,
5 since the trade name “Choice Home Warranty” is itself not a separate, distinct legal entity.

6 A holding contrary to the general rule set forth above would be against the public policy
7 of this State. Finding that a fictitious name is a separate legal entity would allow any corporation
8 or other business entity to simply utilize an assumed name when entering into contractual
9 obligations to avoid those debts. *Cf. Trustees of the Mason Tenders, Dist. Council Welfare Fund,*
10 *Pension Fund, Annuity Fund & Training Program Fund v. Faulkner*, 484 F. Supp. 2d 254, 257
11 (S.D.N.Y. 2007) (citing *Golden Distrib., Ltd. v. Garced*, 134 B.R. 766, 769 (Bankr. S.D.N.Y.
12 1991)) (holding that the fictitious name and the sole proprietor using it “constitute one person
13 under the law, and any liability assumed by [the fictitious firm is] also assumed by [the sole
14 proprietor] in his individual capacity”). It would also create problems with enforcing judgments
15 against a corporation where the judgment itself was entered against only the fictitious name. *See*
16 *Local 36 Sheet Metal Workers’ Int’l Ass’n, AFL-CIO v. Whitney Mech. Contractors, Inc.*, No. 09-
17 3201-CV-S-RED, 2011 WL 13177640, at *4 (W.D. Mo. Mar. 7, 2011). In the same vein, in the
18 insurance regulatory context, a holding contrary to the general rule would allow a licensee to
19 utilize a fictitious name as a shield to avoid any fines or adverse actions taken against that
20 fictitious name. Hence, a finding from this tribunal that CHW’s actions outside of Nevada are
21 somehow imputable to HWAN because both entities use the same fictitious name would not only
22 be against the public policy of this State but would also be against the tide of authority from 33
23 other jurisdictions.

24 **B. As a matter of corporate law, CHW and HWAN are separate legal entities;**
25 **thus, CHW’s conduct may not be imputed to HWAN.**

26 An additional layer to Hearing Officer Emmermann’s inquiry is the overall nature of the
27 HWAN-CHW relationship and the implications of that relationship on the Division’s allegations.
28

1 This inquiry relates to the Division's desire to equate HWAN with CHW and to treat them
2 as one and the same. This argument is strikingly similar to a Nevada case in which our Supreme
3 Court found error on the part of a state agency as a matter of law. In *Nev. Tax Comm'n v. Hicks*,
4 the Nevada Tax Commission² revoked the gaming licenses of Marion Hicks and Clifford Jones.
5 73 Nev. 115, 118, 310 P.2d 852, 853 (1957), *superseded by statute on other grounds by Nev.*
6 *Rev. Stat. 463.315(11)(d), as recognized in M & R Inv. Co. v. Nev. Gaming Comm'n*, 93 Nev. 35,
7 35, 559 P.2d 829, 830 (1977). Hicks and Jones were in a partnership with several other
8 individuals whose gaming licenses were suspended until Hicks and Jones relinquished their
9 partnership shares. *Id.* All individuals, as well as the partnership, filed a separate lawsuit against
10 the Commission to enjoin its decision. *Id.*

11 On the Commission's appeal from the trial court's grant of a permanent injunction, the
12 Court first noted the rule that the trial court's review is limited to whether the Commission's
13 decision is supported by substantial evidence in the record. *Id.* at 125, 310 P.2d at 857. The Court
14 then identified the two separate corporate entities involved in the matter: the Bonanza Hotel, Inc.
15 and the Thunderbird Hotel Company, the partnership that ran the gaming enterprise within the
16 hotel. *Id.* The partnership leased space from and within the hotel corporation for gaming
17 operations. *Id.*

18 In 1947, Hicks borrowed \$160,000.00 from George Sadlo, a known associate of Jack
19 Lansky, who himself was known to be involved in organized crime and was unsuitable for a
20 gaming license. *Id.* The money was used to construct the hotel. *Id.* at 126, 310 P.2d at 858. In the
21 revocation proceeding, the Commission found that Lansky was involved in making the loan and
22 that the loan constituted a direct or indirect interest in the hotel corporation. *Id.* at 128, 310 P.2d
23 at 859. This interest, according to the Commission, was required to be and was not in fact
24 disclosed by Hicks and Jones. *Id.*

25 The Court agreed with the Commission's findings that the loan was actually an investment
26 in the hotel and subject to disclosure. *Id.* at 129, 310 P.2d at 859. However, the Commission also

27 ² The Nevada Tax Commission issued gaming licenses in Nevada prior to the establishment of the
28 Nevada Gaming Control Board.

1 made the conclusion of law that “the separate and individual entities of Thunderbird Hotel
2 Company, a copartnership, and Bonanza Hotel, Inc., a corporation, should be disregarded and
3 should be considered as merged into the one entity owned by citees and controlled and operated
4 by citee Marion B. Hicks.” *Id.* With this finding the Court could not agree, holding that “[t]he
5 theory of corporate entity is simply that a corporation possesses a legal entity apart from the
6 people who compose it.” *Id.* at 129–30, 310 P.2d at 859 (emphasis added).

7 The Commission argued that the “corporation was so closely related to the partnership
8 that an interest in one was for all practical purposes an interest in the other.” *Id.* However, the
9 Court found this notion to be unsupported in the evidence. Although there was a lessor-lessee
10 relationship between the corporation and partnership, and in spite of the fact that Hicks and Jones
11 held positions of control over both enterprises, neither Sadlo nor Lansky had any controlling
12 interest in either. *Id.* at 125-126, 130, 310 P.2d at 857, 860. The Court found the loan was merely
13 a financial investment *in the corporation*, giving no degree of control to either Lansky or Sadlo.
14 *Id.* at 130, 310 P.2d at 860 (emphasis added). Additionally, the loan was a corporate debt and the
15 “theory of corporate entity prevent[ed] that obligation from being transformed into a partnership
16 obligation.” *Id.* On that basis, the corporate debt could not have constituted a reportable
17 participating interest in the *partnership* that ran the gaming operations. *Id.* (emphasis added).

18 Here, the Division is attempting to do just what the Tax Commission improperly did in
19 *Hicks*: disregard the clear legal boundaries of HWAN and CHW to impute all of CHW’s conduct
20 to HWAN. However, this flawed logic ignores not only longstanding principles of corporate law
21 but also the evidence adduced at the Hearing. CHW and HWAN are separate and distinct legal
22 entities. This is borne out by the fact that CHW and HWAN clearly have entirely independent
23 corporate formation documents. CHW is a separate, legal entity incorporated under the laws of
24 the State of New Jersey. *See* Resp’t Ex. A. On the other hand, HWAN is a separate, legal entity
25 incorporated under the laws of the State of Nevada. *See* Resp’t Ex. C. And, although CHW has
26 one common officer with HWAN, Victor Mandalawi is HWAN’s only officer, shareholder,
27 owner, and source of control. Hr’g Tr., Day 2 at 131; 134-135.

1 The Division contends, with no basis, that HWAN and CHW are one and the same, alter
2 egos of one another. *See* Hr'g Tr., Day 1 at 117-118. Yet, this ignores the longstanding principle
3 that "the corporate cloak is not lightly thrown aside." *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219,
4 220, 452, P.2d 916, 916 (1969). Not only does the Complaint lack any allegations to that effect,
5 the Division presented no evidence whatsoever that would support an alter ego theory of
6 liability. Indeed, its own witnesses testified that they either had never heard of the concept of
7 piercing the corporate veil or had never engaged in the exercise of doing so. *See, e.g.*, Hr'g Tr.,
8 Day 2 at 6-14.

9 Furthermore, Victor Mandalawi testified that a business relationship between HWAN and
10 CHW exists – a purely contractual one. Hr'g Tr., Day 2 at 131:19-23. Similar to the lessor-lessee
11 relationship involved in *Hicks*, CHW is an *independent* service provider for HWAN's service
12 contracts. *Id.* at 132:4-8. In this role, CHW handles the sales and operations for HWAN. *Id.* at
13 136:1. HWAN handles all regulatory compliance work for itself. *Id.* at 136:3. This arrangement is
14 contemplated by Nevada law. *See* NRS 690C.020, 690C.120(2). In fact, it was approved by the
15 Division, since the Division reviewed and approved CHW's independent service provider
16 contract ("ISPC") with HWAN. *Id.* at 152:3-8; Resp't Ex. E. Such an arrangement, in and of
17 itself, is certainly not enough to overcome the general rule, *supra*, that the use of the same
18 fictitious name by multiple legal entities does not make those entities one and the same.

19 Additionally, the ISPC itself makes clear that CHW and HWAN are entering into a
20 contract only for services, rather than any sort of joint venture, franchise,³ or partnership. The
21 ISPC includes a disclaimer that "[n]otwithstanding anything contained in or to be inferred from
22 this Agreement to the contrary, the Parties are, and shall remain separate entities, and this
23

24 ³ There is clearly no franchise relationship here. As stated in *Kerl v. Dennis Rasmussen, Inc.*, 273
25 Wis. 2d 106, 125 (2004), "a franchise is a commercial arrangement between two businesses
26 which authorizes the franchisee to use the franchisor's intellectual property and brand identity,
27 marketing experience, and operational methods." There is no agreement in existence in which
28 HWAN has authorized CHW to use HWAN's intellectual property ("IP"), brand identity,
marketing experience, or operational methods. To the contrary, CHW continues to use its own
IP, marketing, and operational methods in administering HWAN's service contracts. The
Division failed to offer any proofs to the contrary; and should the Division raise any inference
without supplying evidentiary proofs, that effort must fail.

1 Agreement shall not cause the Parties to become partners or joint venturers.” Resp’t Ex. E at 2, §
2 3(C). Similarly to the lack of any evidence of identity between the corporation and partnership in
3 *Hicks*, there is no evidence to support the notion that an interest in HWAN is for all practical
4 purposes an interest in CHW. Thus, CHW’s conduct cannot be imputed to HWAN because they
5 are not the same legal entity.

6 **C. As a matter of agency law, CHW is HWAN’s agent, whose scope of authority**
7 **is limited to conduct within the State of Nevada.**

8 From the foregoing, it is clear that CHW is HWAN’s agent, as set forth in the ISPC. The
9 inquiry of whether the implications of the relationship between those entities, and whether
10 CHW’s conduct is imputable to HWAN, is therefore dependent upon CHW’s scope of authority.
11 The Nevada Supreme Court has defined “actual authority” of an agent to mean “when, at the time
12 of taking action that has legal consequences for the principal, the agent reasonably believes, in
13 accordance with the principal’s manifestations to the agent, that the principal wishes the agent
14 so to act.” *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. Adv. Op. 57, 331 P.3d 850, 856
15 (2014) (citing Rest. (Third) of Agency § 2.01 (2006)) (emphasis added). The scope of an agent’s
16 actual authority to act for the principal is determined by what a reasonable agent would believe its
17 authority to be, based upon the principal’s manifestations. *Id.*

18 CHW need never resort to “reasonable belief.” *Simmons Self-Storage, supra*. The scope
19 of CHW’s authority to act on behalf of HWAN is clearly and actually governed by and set forth
20 in the ISPC. *Id.* at 133:5-9. Specifically, Section 1 of the ISPC sets forth the duties and
21 obligations of CHW, as follows:

- 22 ii. Communicating with potential clients (the “Clients”) seeking
23 Warranties and negotiating the signing of contracts, the form of
24 which shall be previously approved by HWSTATE, between
25 Clients and HWSTATE.
26 iii. Collecting any and all amounts paid by the Clients for the
27 Warranties and distributing same to HWSTATE pursuant to the
28

terms of Article 2 hereof;

iv. Keeping records of all Warranties;

v. Providing customer service to Clients; and

vi. Inspecting any claims made by Clients regarding goods under a Warranty and, if possible, repairing same or causing same to be replaced.

Resp't Ex. E at 1. Section 3(A) of the ISPC explicitly states that "CHW shall act as an independent contractor at all times." *Id.* at 2. The ISPC authorizes CHW to procure only those contracts which it has approved from potential consumers, giving CHW only the discretion "to determine the means and manner by which it performs its obligations pursuant to this Agreement". *Id.* at 1-2. For HWAN's potential consumers, CHW is empowered to sell only the contract that is approved by the Division. *See Hr'g Tr., Day 2, at 151:19-152:8. See also Rep't Ex. EE.*

In other words, a reasonable interpretation of HWAN's manifestations of the scope of CHW's authority, set forth in the ISPC, are limited to procuring and servicing the contracts sold and backed by HWAN, in the State of Nevada. *See Resp't Ex. E at 2, § 3(c)* (limiting CHW's authority to those matters specifically set forth in the ISPC). HWAN did not allow, nor would it have any reason to authorize, CHW to engage in any transactions outside this state because HWAN's pecuniary interest is limited to contracts with Nevada consumers. Based on the foregoing, it is obvious that CHW's actual authority is limited to conduct within the State of Nevada and relating only to Nevada consumers. Hence, any of CHW's extra-territorial conduct as alleged by the Division cannot be imputed to HWAN as a matter of law. This conduct includes:

1. The 2010 California fine against CHW, Division Ex. 1;
2. the 2011 and 2014 Oklahoma fines against CHW, Division Ex. 3;
3. the 2015 New Jersey consent judgment against CHW, Division Ex. 6;
4. a Houston, Texas news report, Division Ex. 19, regarding CHW;
5. a Chicago, Illinois news report, Division Ex. 20, regarding CHW;

6. a South Carolina private civil action against CHW, Division Ex. 29;
7. an Overland Park, Kansas news report, Division Ex. 39;
8. a Titusville, Florida news report, Division Ex. 40.

In that same vein, the Division's allegations of conducting business in an unsuitable manner and engaging in deceptive trade practices are based only upon the extra-territorial conduct of an entirely separate and distinct legal entity. As a result, these allegations may not be asserted against HWAN as a matter of law.

III. CONCLUSION

From the foregoing, it is clear that the general rule governing the relationship between trade names and the entities using them applies here: "Choice Home Warranty" is nothing more than a fiction. Because Choice Home Warranty does not independently exist, it cannot be said to any reasonable degree that HWAN and CHW are therefore the same entity solely because they use the same trade name. HWAN and CHW are clearly independent, separate corporate entities and the conduct of each may not be attributed to the other. In reality, HWAN and CHW have, and have always had, a purely contractual relationship, under which CHW administers HWAN's service contracts with Nevada consumers. The Division has failed to produce any evidence to demonstrate that HWAN and CHW are anything other than separate legal entities, connected by the ISPC, to overcome the general rule set forth above.

While the corporate entities, HWAN and CHW, contemplated a continuing relationship by virtue of the execution of the ISPC contemporaneous to the incorporation and licensure of HWAN, it should not be overlooked that their relationship was made public and formalized at the express request of and with the approval of the Division. *See Hr'g Tr., Day 2, at 190:1-191:21. See also Rep't Ex. T.* The "d/b/a" arrangement was and is a creature of that request. The request having been made and the applicable papers memorializing it having been filed did not change the underlying relationship between the two separate entities. HWAN gave certain, limited authority to CHW in Nevada but left specific control to CHW over its day-to-day operations and precise methods of placing contracts with Nevada consumers to its sound discretion. Thus, all of

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.822.2101

1 CHW's conduct outside of the State of Nevada is attributable only to CHW, and not HWAN, and
2 such conduct cannot be used as a basis to revoke HWAN's Certificate of Authority.

3 DATED this 30th day of October, 2017.

4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

5
6 BY: 

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437

klenhard@bhfs.com

7 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

tchance@bhfs.com

8 LORI GRIFA, ESQ., NJ Bar No. 011551989

lgrifa@archerlaw.com

9
10 *Attorneys for Respondent Home Warranty*
11 *Administrator of Nevada, Inc. dba Choice Home*
12 *Warranty*

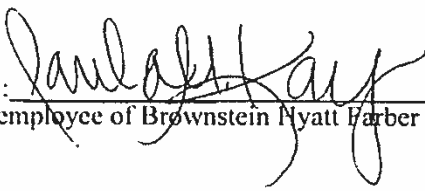
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-3614
702.782.2101

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on the 30th day of October, 2017, I caused a true and correct copy of the foregoing **HOME WARRANTY ADMINISTRATOR OF NEVADA, INC'S POST-HEARING BRIEF ON HEARING OFFICER'S INQUIRY** to be served, U.S. Mail, postage prepaid, and via electronic mail, to the following:

ALEXIA M. EMMERMANN, ESQ.
Hearing Officer
Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706
Email: yrenta@doi.nv.gov

ADAM PAUL LAXALT, ESQ.
ATTORNEY GENERAL
RICHARD YIEN, Deputy Attorney General
Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701-4717
Email: rvien@ag.nv.gov

BY: 
an employee of Brownstein Hyatt Farber Schreck, LLP

Felecia Casci

From: Richard P. Yien <RYien@ag.nv.gov>
Sent: Thursday, November 02, 2017 11:33 AM
To: Yvonne Renta; Felecia Casci
Subject: FW: In The Matter of HWAN dba Choice Home Warranty
Attachments: 2017.10.30 HWAN Post-Hearing Brief.pdf

From: Kay, Paula [<mailto:PKay@BHFS.com>]
Sent: Monday, October 30, 2017 4:57 PM
To: yrenta@doi.nv.gov
Cc: Richard P. Yien <RYien@ag.nv.gov>; Lenhard, Kirk B. <KLenhard@BHFS.com>; lgrifa@archerlaw.com; Chance, Travis F. <tchance@bhfs.com>
Subject: In The Matter of HWAN dba Choice Home Warranty

Cause No.: 17.0050

Please find attached Home Warranty Administrator of Nevada, Inc.'s Post-Hearing Brief on Hearing Officer's Inquiry. Hard copies to follow via U.S. Mail.

Thank you,

Paula M. Kay
Legal Secretary
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
702.464.7036 tel
PKay@BHFS.com

To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
klenhard@bhfs.com
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
tchance@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135



LORI GRIFA, ESQ., NJ Bar No. 011551989
lgrifa@archerlaw.com
ARCHER & GREINER, P.C.
Court Plaza South, West Wing
21 Main Street, Suite 353
Hackensack, NJ 07601
Telephone: 201.342.6000
Facsimile: 201.342.6611

*Attorneys for Respondent Home Warranty
Administrator of Nevada, Inc. dba Choice Home
Warranty*

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

**MOTION TO STRIKE PORTIONS OF THE
DIVISION OF INSURANCE'S POST-
HEARING BRIEF**

Respondent.

Pursuant to NAC 679B.415 and NAC 679B.243(1)(e), Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a Choice Home Warranty ("HWAN"), by and through its attorneys of record Kirk B. Lenhard, Esq. and Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Lori Grifa, Esq., of the law firm of Archer & Greiner, P.C., hereby moves this tribunal to strike certain portions of the Division of Insurance's (the "Division") Post Hearing Brief and to preclude reference to those same allegations in the Division's Closing Argument that were uncharged in the pleadings of the above entitled matter. Alternatively, HWAN moves this tribunal to enlarge the closing statements of the parties by five

1 (5) pages in order to provide the opportunity to rebut the same, for the reasons set forth more fully
2 herein.

3 NAC 679B.415(1) allows any party to move this tribunal for an order by the hearing
4 officer granting relief. Although NAC 679B.415(3)(b) generally requires motions to be filed no
5 later than 10 days before the date set for hearing, it also allows the hearing officer to waive this
6 requirement. HWAN respectfully requests relaxation of the foregoing deadline, since the
7 arguments contained herein did not arise until receipt of the Division's Post Hearing Brief
8 Pursuant to Order on October 30, 2017.

9 This Motion is made and based upon the papers on file herein, the attached Memorandum
10 of Points and Authorities, and any oral arguments of counsel that this tribunal shall choose to
11 consider.

12 DATED this 7th day of November, 2017.

13 BROWNSTEIN HYATT FARBER SCHRECK, LLP

14 BY: 

15 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437

16 klenhard@bhfs.com

17 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

18 tchance@bhfs.com

19 LORI GRIFA, ESQ., NJ Bar No. 011551989

20 lgrifa@archerlaw.com

21 *Attorneys for Respondent Home Warranty*
22 *Administrator of Nevada, Inc. dba Choice Home*
23 *Warranty*
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

HWAN has been a registered service contract provider in good standing in the State of Nevada since 2010. HWAN is a duly organized legal entity, solely owned and operated by Victor Mandalawi. HWAN is not the same legal entity as CHW Group Inc. or Choice Home Warranty (“CHW”), and it never has been.

On May 9, 2017, the Division, through the Nevada Attorney General, filed an eight (8) page Complaint and Application for Order to Show Cause against HWAN. On September 5, 2017, the Division filed an Amended Complaint. The Amended Complaint set forth four allegations against Respondent, alleging:

- It made knowingly false entries in its annual Registration renewals in violation of NRS 686A.070;
- It improperly denied claims by “failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” in violation of NRS 686.310(1)(b);
- It did business with CHW, as documented by Nevada complaints; the Better Business Bureau, news and media outlets and findings of fact of the various Courts’ actions” and conducted business in an “unsuitable manner” in violation of NRS 679.125(2); and
- It failed to make available to the Commissioner for inspection any accounts, books and records pertaining to any service contract issued, sold or offered for sale by the provider” in violation of NRS 686A.170.

Am. Compl. at 6-7.¹ In nearly every paragraph of the Division’s Amended Complaint, the Division referenced CHW, rather than the registered Nevada entity, HWAN.

The hearing on the aforesaid allegations was adjourned a number of times with the consent of the parties and ultimately was conducted on September 12, 13 and 14, 2017. In the period between the filing of the original complaint and the contested hearing, the Division

¹ Substantively, these allegations and violations mirror those in the original Complaint.

1 changed its theory and its proofs, without ever appropriately amending its pleadings. On the eve
2 of the closing statements, the Division seems poised to do so again.

3 Specifically, in its Post Hearing Brief, the Division asserts, without support in the record,
4 that HWAN and CHW are one and the same entity and that CHW created the “HWA” entities to
5 avoid licensure² and with the specific intent to avoid disclosing disciplinary actions brought in
6 other states.³ The Division goes further, again without support in the record, to allege: that “CHW
7 created an artificial entity, (HWAN dba CHW), a fictional service provider”; and “CHW created
8 a corporate fiction of HWAN to deceive the Division of Insurance and consumers by concealing
9 CHW’s identity.” *See* Division Post Hearing Br. at 3-4. It is obvious what will come next.

10 With the proofs closed for nearly 60 days, and no ability to now amend the Amended
11 Complaint, allowing the Division to argue these points in its Closing Argument cannot be
12 permitted. Contested hearings before the Division are obliged to be conducted pursuant to NRS
13 Chapter 233B, NRS Title 57, including NRS 679B.310, *et seq*, and NAC Chapter 679B. Any
14 party called on to respond to the Division is entitled to fundamental due process protections,
15 including the right to notice and the opportunity to be heard. The statutory protections, codified
16 by the Nevada legislature guarantee to a regulated business such as HWAN the right to a hearing
17 on a level playing field, not trial by ambush. *See Dutchess Bus. Servs., Inc. v. Nev. State Bd. of*
18 *Pharmacy*, 124 Nev. 701, 714, 191 P.3d 1159, 1168 (noting that “due process guarantees of
19 fundamental fairness still apply” to administrative proceedings). The Division is required to have
20 given notice to HWAN of “the issues on which decision will turn and...the factual material on
21 which the agency relies for decision so that [it] may rebut it.” *Id.* (citing *Bowman Transp. v. Ark.-*
22 *Best Freight System*, 419 U.S. 281, 288–89 n. 4 (1974)). Nowhere in the Complaint or Amended
23 Complaint is it alleged either that HWAN and CHW are one and the same entity, or that HWAN
24 is a fictional corporation created by CHW to avoid licensure. In order to afford HWAN due
25

26 ² The uncontradicted testimony of Victor Mandalawi indicates that he was the sole impetus of the HWA entities. He
remains the sole investor, officer and owner in them since inception. *See* H’rg Tr., Day 2 at 132:25-135:10.

27 ³ The intentional creation of an entity for purposes of avoiding disclosures mandated by statute or regulation is
tantamount to conspiracy. *Eg., Boorman v. Nev. Memorial Cremation Society, Inc.*, 772 F.2d. 1309 (D. Nev. 2011).
28 This bold allegation appears for the first time in the Division’s Post Hearing Brief.

1 process, then, these arguments must be stricken from the Division's Post Hearing Brief and the
2 Division must be precluded from advancing these newly born conspiracy theories for purposes of
3 "substantiating the findings of unsuitability, unfair and deceptive practices, and of all other
4 violations alleged" inasmuch as HWAN was denied the opportunity of notice and the right to be
5 heard during the proceedings as to the same.

6 While administrative hearings are not plagued by the rigidity of formal court proceedings,
7 basic due process principles do apply. The Division had ample opportunities to amend its
8 pleadings pursuant to NAC 679B.245 as its proof evolved during pre-hearing discovery. It likely
9 could have amended its pleadings to conform to its proofs during the September hearing.
10 However, because the proofs having been closed for nearly sixty (60) days, the Respondent will
11 be irretrievably prejudiced if the Division is now permitted engage in a *de facto* amendment of its
12 pleadings, by leveling new accusations outside the four corners of the charging instrument, filed
13 six (6) months ago.

14 Alternatively, if these allegations will not be stricken and the Division will not be
15 precluded from its continuing evolution of allegations, theories and proofs, HWAN seeks an
16 enlargement of the page limitations on the Closing Arguments in order to anticipate such
17 arguments and theories and rebut the same. A five page enlargement of the page limitation set
18 forth in the October 13, 2017 Order would be a reasonable accommodation. The presiding
19 Hearing Officer has the discretion and authority to grant this request and the limited scope of the
20 change would not be an unreasonable burden to any party.

21 DATED this 7th day of November, 2017.

22 BROWNSTEIN HYATT FARBER SCHRECK, LLP

23
24 BY: 

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437

klenhard@bhfs.com

25 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

tchance@bhfs.com

26 LORI GRIFA, ESQ., NJ Bar No. 011551989

lgrifa@archerlaw.com

27 *Attorneys for Respondent*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on the 7th day of November, 2017, I caused a true and correct copy of the foregoing **MOTION TO STRIKE PORTIONS OF THE DIVISION OF INSURANCE'S POST-HEARING BRIEF** to be served, U.S. Mail, postage prepaid, and via electronic mail, to the following:

ALEXIA M. EMMERMANN, ESQ.
Hearing Office
Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706
Email: yrenta@doi.nv.gov

ADAM PAUL LAXALT, ESQ.
ATTORNEY GENERAL
RICHARD YIEN, Deputy Attorney General
Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701-4717
Email: ryien@ag.nv.gov


an employee of Brownstein Hyatt Farber Schreck, LLP

213471825v2

Yvonne Renta

From: Kay, Paula <PKay@BHFS.com>
Sent: Tuesday, November 07, 2017 3:49 PM
To: Yvonne Renta; 'Richard P. Yien'
Cc: Lenhard, Kirk B.; lgrifa@archerlaw.com; Chance, Travis F.
Subject: In The Matter of HWAN dba Choice Home Warranty
Attachments: Motion to Strike.pdf

Cause No.: 17.0050

Please find attached **Motion to Strike Portions of the Division of Insurance's Post-Hearing Brief**. Hard copies to follow via U.S. Mail.

Thank you,

Paula M. Kay
Legal Secretary
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
702.464.7036 tel
PKay@BHFS.com

To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE



IN THE MATTER OF
HOME WARRANTY
ADMINISTRATOR OF NEVADA
dba CHOICE HOME WARRANTY

Respondent

Cause No. 17.0050

**DIVISION OF INSURANCE'S
OPPOSITION TO RESPONDENT'S
MOTION TO STRIKE PORTIONS OF THE
DIVISION'S POST- HEARING BRIEF**

COMES NOW, Department of Business and Industry, Division of Insurance ("Division") through their counsel, Deputy Attorney General, RICHARD PAULI YIEN, and Senior Deputy Attorney General JOANNA N. GRIGORIEV, hereby file their Opposition ("Opposition") to Respondent Home Warranty Administrator of Nevada dba Choice Home Warranty ("Respondent") Motion to Strike Portions of the Division's Post-Hearing Brief ("Motion") on the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On May 9, 2017 Nevada Division of Insurance ("Division") filed a Complaint¹ and Application for Order to Show Cause against Respondent Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("Respondent"). The Division alleged that Respondent violated the following provisions of Nevada Revised Statutes ("NRS"): NRS 686A.070—making a false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to such person's business 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 and NRS 690C.320(2)—failing to make available to Commissioner for inspection any accounts, books, and records concerning any service contract issued, sold, or offered

¹ Division amended its Complaint on September 5, 2017.

1 for sale by the provider.² On July 17, 2017, Respondent filed a Motion for Pre-Hearing Deposition
2 Subpoenas or, in the Alternative, Application for Hearing Subpoenas and Application for Subpoena
3 Duces Tecum ("Motion for Subpoenas"). Division submitted its proposed exhibits and witness list on
4 September 6, 2017.³ Respondent's counsel stipulated to the admission of all of the exhibits used
5 henceforth. The parties filed their pre-hearing statements on September 11, 2017.

6 II. ARGUMENT

7 RESPONDENT'S MOTION HAS NO BASIS IN FACT OR LAW

8 In its Motion, Respondent argues that the Division's Post-Hearing Brief changes the Division's
9 "theory and its proofs, without ever appropriately amending its pleadings." (Mot.4:1) In support of this
10 assertion, Respondent states: "in its Post Hearing Brief⁴, the Division asserts, without support in the
11 record, that HWAN and CHW are one and the same entity and that CHW created the 'HWA' entities to
12 avoid licensure and with the specific intent to avoid disclosing disciplinary actions brought in other
13 states." This statement, purporting to paraphrase the Division's language is taken out of context and as
14 such the argument is misleading. The Division, in direct compliance with the Hearing Officer's order
15 on October 13, 2017, analyzed the facts pertinent to the question of the relationship between the two
16 entities and concluded as follows: "[a]lthough as a practical matter, CHW and HWAN are one and
17 the same, with CHW performing the functions of a provider as well as of the administrator, for the

18 ² NRS 690C.120 Applicability of other provisions.

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

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

³ On September 8, 2017, additional 2 exhibits were submitted.

⁴ The above-referenced Brief was filed pursuant to a Post-hearing Order issued of October 13, 2017 by the Hearing
Officer requesting a response from the parties to the following inquiry: "If a fictitious name does not create a separate legal
entity, what is the effect of many separate legal entities that share the same DBA (fictitious name of doing-business-as
designation). In considering this question, the Parties should explore the legal relationship between Home Warranty
Administrator of Nevada, Inc ("HWAN") and CHW Group, Inc. For example, are the companies in a franchise relationship?
Or is CHW a subcontractor for HWAN? What are the implications of the relationship as they relate to the Division's
allegations."

1 **purpose of this administrative action, the evidence substantiates the alleged violations as against**
2 **HWAN dba CHW.”** (Division Br. 5:20-23). (emphasis added). The Division here clearly states that
3 it will prove its allegations in this administrative case against HWAN dba CHW. No more, no less.

4 Furthermore, the reference by the Division to a fictional entity, which Respondent finds so
5 disturbing, was again made in the context of complying with the Hearing Officer's order. The Division
6 analyzed, among other legal theories, the theory of alter ego.⁵ In fact, the same theory is addressed by
7 the Respondent in its Post-Hearing Brief. Respondent again fails to provide the context or the full
8 statement made by the Division in its Post-Hearing Brief, namely:

9 This summary and the guiding principles of how courts, in the context of civil litigation,
10 address the abuses of corporate fiction perpetrated to escape liability or in order to
11 commit fraud, is presented here in response to the Hearing Officer's inquiry as to the
12 nature of the relationship between CHW and HWAN; it is not for the purpose of
13 requesting the application of the alter ego doctrine. The Division's case is much simpler
14 and this tribunal can decide whether violations of the Insurance Code have been
15 perpetrated by HWAN dba CHW without applying any of the formulas used by the
16 courts or making any formal determinations as to the legal relationship between the
17 HWAN and CHW.

14 Div. Br. 5: 14-23

15 It is not clear if Respondent had not read the Division's Brief in its entirety, but the Division has
16 no intention of bringing any new charges and its Brief clearly states so. Having said that, it is puzzling
17 and, in fact disingenuous for the Respondent to claim, that any of the statements quoted by the
18 Respondent are a surprise or that the issue of one entity vs. two is a “newly born conspiracy theor[y].”
19 (Mot. 5:2). After all, as early as July 17, 2017, Respondent identified this as an issue in its Motion for
20 Subpoenas: “HWAN is not Choice Home Warranty. Nevertheless, the Division's Complaint
21 consistently and repeatedly comingles the identity of the two companies in an inappropriate way.”
22 (Motion for Subpoenas 3 n.1). Also, in its Pre-Hearing Statement, Respondent expressly identifies the
23 following as the first legal issue in this administrative matter: “[t]he Division's entire case related to
24

25 ⁵ In its Brief, the Division analyzed the Nevada law and Nevada's adoption of the alter ego doctrine. The
26 requirements for the application of the alter ego doctrine were identified by the Nevada Supreme Court in *McCleary* as
27 follows: 1. The corporation must be influenced and governed by the person asserted to be its alter ego, 2. there must be such
28 unity of interest and ownership that one is inseparable from the other; and 3) the facts must be such that adherence to the
fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice. It is not necessary that the
plaintiff prove actual fraud. It is enough if the recognition of the two entities as separate would result in an injustice. *Frank
McCleary Cattle Co. v. Sewell*, 73 Nev 279, 279, 282, 317 P.2d 957, 959 (1957), reversed on other grounds in *Callie v.
Bowling*, 123 Nev. 181, 160 P.3d 878 (2007)

1 fines in other states rests upon the false premise that HWAN was the legal entity that was subject to
2 those fines.” (Respondent’s Pre-hearing Statement 3: 3-4). Respondent goes on to summarize its legal
3 argument of why HWAN and CHW are separate legal entities and therefore the disclosure of regulatory
4 actions of CHW cannot be required of HWAN. “HWAN and CHW were legally distinct entities . . .”
5 (Respondent’s Pre-Hearing Statement 4:4).

6 **LAW**

7 In Nevada, parties of contested cases “must be afforded an opportunity for hearing after
8 **reasonable** notice.” NRS 233B.121.1 (emphasis added). The notice must include:

- 9 (a) A statement of the time, place and nature of the hearing.
10 (b) A statement of the legal authority and jurisdiction under which the hearing is to be
11 held.
12 (c) A reference to the particular sections of the statutes and regulations involved.
13 (d) A short and plain statement of the matters asserted. . . .

14 NRS 233B.121.1–2.

15 The Nevada Supreme Court has analyzed the scope of this notice requirement and concluded
16 that “due process requirements of notice are satisfied where the parties are sufficiently apprised of the
17 nature of the proceedings so that there is no unfair surprise. The crucial element is adequate
18 opportunity to prepare.” *Nev. State Apprenticeship Council v. Joint Apprenticeship & Training*
19 *Committee for the Electrical Industry*, 94 Nev. 763, 765, 587 P.2d 1315, 1316-17 (1978) (citations
20 omitted). The Court reversed the district court’s ruling that the Council violated due process guarantees
21 by failing to require a party in a contested case to file a detailed complaint stating in particularity the
22 party’s charges. *Id.* at 765-66, 1317. The Court found that a letter used to provide notice satisfied the
23 requirements of NRS 233B.121. *Id.* The Court also concluded that Joint Apprenticeship and Training
24 Committee suffered no prejudice because it knew and had access to the factual data upon which its
25 action was based. *Id.* Respondent was aware of Division’s stance as early as July 17, 2017 (Motion for
26 Subpoenas 3 n.1), which was corroborated by Respondent’s witnesses’ testimonies. As such they had
27 both sufficient notice and access to the factual data well in advance of the September 12, 2017 hearing.

28 As stated earlier, the Division has no intention of bringing any new charges against the
Respondent and it intends to prove its allegations through the evidence introduced before and at the
hearing. Respondent’s Motion is inapposite and its allegations of denial of notice and due process are

1 completely unsupported in fact or law.

2 **III. CONCLUSION**

3 For the reasons set forth above, Respondent's Motion should be denied.

4 Dated this 14th day of November, 2017.

5 ADAM PAUL LAXALT
6 Attorney General

7 By:

8 
9 RICHARD PAILITYEN
10 Deputy Attorney General

CERTIFICATE OF SERVICE

I, certify that I am an employee of the State of Nevada Attorney General's Office and that on the 14th day of November 2017, I served the foregoing Nevada Division of Insurance's **DIVISION OF INSURANCE'S OPPOSITION TO RESPONDENT'S MOTION TO STRIKE PORTIONS OF THE DIVISION'S POST- HEARING BRIEF** by U.S. Mail, postage prepaid to:

MS. YVONNE RENTA; HEARING OFFICER
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE
1818 E. COLLEGE PKY., STE. 103
CARSON CITY NV 89706

KIRK B. LENHARD, ESQ.
TRAVIS F. CHANCE, ESQ.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 N. CITY PKY., STE. 1600
LAS VEGAS NV 89106-4614

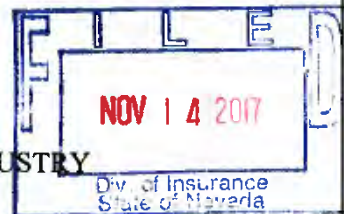
LORI GRIFA, ESQ.
ARCHER & GREINER, P.C.
21 MAIN ST., STE. 353
HACKENSACK NJ 07601

By:



An Employee of the
Office of the Attorney General

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 October 13, 2017, the Hearing Officer ordered the Parties in this matter to file written closing arguments in this matter. The Parties were permitted to file written closing arguments, not to exceed 15 pages, by close of business on November 15, 2017. On or about November 7, 2017, Respondent filed a Motion to Strike Portions of the Division of Insurance's Post-Hearing Brief ("Motion"). Respondent asked that, in the alternative, the Hearing Officer enlarge closing arguments of the Parties by 5 pages to allow Respondent the opportunity to rebut provisions in the Division's brief. The Division filed an opposition to the Motion.

The Hearing Officer denies Respondent's motion to strike certain portions of the Division's brief, as the briefs were "each Party's opportunity to enlighten the Hearing Officer on the legal effects of the relationship between the companies under the laws of Nevada." (Ord. Oct. 13, 2017.) However, the Hearing Officer grants Respondent's request to enlarge the written closing argument by 5 pages. This ruling applies to written closing arguments filed by either Party. In addition, the Hearing Officer extends the due date for written closing arguments. Accordingly, written closing arguments, not to exceed 20 pages, are due to the Hearing Officer **by close of business on Friday, November 17, 2017.**

So ORDERED.

DATED this 14th day of November, 2017.


ALEXIA M. EMMERMANN
Hearing Officer

1 **CERTIFICATE OF SERVICE**

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


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

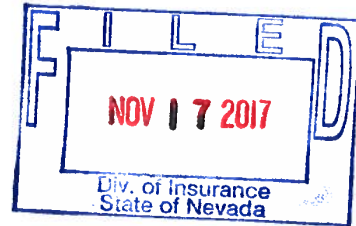
15 Lori Grifa, Esq.
16 Archer & Greiner, P.C.
17 Court Plaza South, West Wing
18 21 Main Street, Suite 353
19 Hackensack, NJ 07601
20 E-MAIL: lgrifa@archerlaw.com

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

25 DATED this 14th day of November, 2017.

26 
27 Employee of the State of Nevada
28 Department of Business and Industry
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) DIVISION'S CLOSING STATEMENT
OF NEVADA, INC. dba CHOICE HOME)
WARRANTY)
)
Respondent.)

COMES NOW, the State of Nevada Department of Business and Industry, Division of Insurance ("Division") through its counsel Richard Paili Yien, DAG and Joanna Grigoriev, SDAG. This Closing Statement is filed pursuant to a Post-hearing Order issued on October 13, 2017.

On May 9, 2017 Nevada Division of Insurance (" Division") filed a Complaint¹ and Application for Order to Show Cause against Respondent Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("Respondent). The Division alleged that Respondent violated the following provisions of Nevada Revised Statutes ("NRS"): NRS 686A.070-- making a false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to such person s business in any book, report or statement; NRS 686A.310—engaging in unfair practices in settling claims; NRS 690C.320(2)—failing to make available to Commissioner for inspection any accounts, books, and records concerning any service contract issued, sold, or offered for sale by the provider; and NRS 690C.325(1)(b)—conducting business in an unsuitable manner.² Based on the allegations presented, the Division sought relief under

¹ Division amended its Complaint on September 5, 2017.

² 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 NRS 690C.325 (revocation or nonrenewal³); 686A.183(1)(a) (fines); NRS 686A.170 (cease and desist
2 order) and NRS 690C.170(2) (withholding of the security deposit and any other remedy deemed
3 appropriate by the Hearing Officer). The Division submitted its proposed exhibits and witness list on
4 September 6, 2017.⁴ Respondent's counsel stipulated to the admission of all of the exhibits used
5 henceforth. The parties filed their pre-hearing statements on September 6, 2017. At the hearing,
6 Division presented ample evidence in the form of witness testimony and documentary evidence to
7 prove its allegations by a preponderance of the evidence.⁵ The Division now files this Closing
8 Statement.

9
10 **1. The Division Has Proven by a Preponderance of the Evidence that Respondent**
11 **Violated NRS 686A.070**

12 NRS 686A.070 provides: A person subject to regulation under this Code **shall not**
13 **knowingly make or cause to be made any false entry** of a material fact in any book,
14 report or statement of any person **or knowingly omit to make a true entry of any**
15 **material fact pertaining to such person s business** in any book, report or statement of
16 such person. (Emphasis added)

17 In its Complaint, the Division has alleged that Respondent has violated NRS 686A.070 by
18 failing to disclose material facts about its business in its renewal applications for the Nevada certificate
19 of registration for years 2011, 2012, 2014 and 2015. The material facts alleged to have been omitted
20 included the regulatory actions held against CHW Group in the states of California, Oklahoma, New
21 Jersey. (Division Cmplt. 2-6)

22 Victor Mandalawi ("Mandalawi"), President of Respondent and of Choice Home Warranty
23 Group testified that Choice Home Warranty Group ("CHW") was selling service contracts in various
24 states, including Nevada, as early as 2008, and that it had run into problems in some jurisdictions for
25 selling without a license.⁶ The following is an excerpt from Mandalawi's testimony about selling
26 without a license in Nevada and other states under the name of CHW :

27 ³ Respondent is currently operating without a valid certificate of registration. The Division is seeking a full
28 revocation of the non-renewed certificate of registration.

⁴ On September 8, 2017, an additional 2 exhibits were submitted by the Division and received into evidence.

⁵ Division must prove its allegations by a preponderance of the evidence (where "the existence of the contested fact
is found to be more probable than not.") *Nassiri v. Chiropractic Physician's Board of Nevada*, 130 Adv. Op. 27, 327 P.3d.
487, 491 (2014), citations omitted.

⁶ Tr. Day 2, 138:9-25; 139:1-25; 140:1-23.

1 Q. Right. If you could summarize in one sentence for us, what was the nature of
2 the allegation against—what was the company against whom the allegations were
made?

3 A. CHW Group.

4 Tr. Day 2 138:24-25.

5 Q. In fact, back in 2010, there were a few problems in Nevada as well; isn't that
right?

6 A. In Nevada?

7 Q. Yes.

8 A. Yes, there were.

9 Tr. Day 2, 139:14-18

10 Q. Well, the nature of the problems in Oklahoma, California and Washington
were basically of the same nature, right?

11 A. Yes.

12 Q. And that involved selling without –

13 A. Selling without a license.

14 Q. And in Nevada?

15 A. Yes.

16 Q. Nevada, a similar problem?

17 A. Yeah.

18 Tr. Day 2, 139:22-25; 140:1- 6.

19 Q. How is it that you were unlicensed in Nevada, contracts were being sold here?

20 A. Yes, so the nature of our sales is it reaches consumer nationally, and they were
singing up in states that we were not licensed.

21 Tr. Day 2 140:10-14.

22 In turn, Mandalawi set up Home Warranty Administrator companies in the states that required a
23 license.^{7 8} In states where no license was required, Mandalawi did not incorporate Home Warranty
24 Administrator entities and CHW continues to do business solely as CHW.⁹

25 Respondent knowingly failed to disclose these material facts, namely regulatory actions against
26 CHW. There is no mention of any of CHW's regulatory actions from other states, even in response to
the direct inquiries on the Nevada renewal applications. Assistant Chief Timothy Ghan and Actuarial
Analyst Derick Dennis testified that Respondent was expected to have disclosed these regulatory
actions in their renewal applications.¹⁰ Failure to present this information constituted a repeated pattern

27 ⁷ Tr. Day 2, 137:3 – 139:25

28 ⁸ Tr. Day 1, 125:16-24

⁹ Tr. Day 3, 72:4-13

¹⁰ See testimony of Assistant Chief Timothy Ghan, Tr. Day 2, 8:13 to 15:21 and testimony of Derick Dennis, Tr.

1 of violations of NRS 686A.070, in that said information constituted “a material fact pertaining to such
2 person’s business.” This is especially true in view of the fact that CHW began soliciting, advertising
3 and selling service contracts in Nevada in its own name, and after HWAN’s incorporation continued to
4 act in a provider capacity by performing the very functions for which Nevada law requires a certificate
5 of registration as a provider,¹¹

6 Respondent does not deny omitting such information. Instead, Respondent’s defense to this
7 allegation is that HWAN did not need to disclose the disciplinary actions of CHW because they were
8 two separate entities,¹² and that the relationship between HWAN and CHW Group is contractual,
9 whereby CHW Group is HWAN’s “Administrator.” To consider this defense, however, it is imperative
10 to also consider the evidence of concealment of CHW as Respondent’s “Administrator” on
11 Respondent’s initial application and subsequently on the renewal applications.

12 On the initial application filed with the Division on September 2, 2010, in response to the
13 question, “Have you designated an administrator to be responsible for administration of Nevada service
14 contracts?” Respondent answered “No,”¹³ even though as it has represented to this tribunal, the
15 purported agreement between HWAN and CHW was signed on July 29, 2010. (See Respondent’s
16 Exhibit E, ISP Agreement). Why did Respondent fail to disclose CHW as its contractual Administrator
17 in its initial application? The purpose is quite clear. Respondent intentionally omitted disclosing any
18 connection to CHW to prevent any of the regulatory actions against it or other wrongdoings in various
19 states from surfacing. This fact is not only another powerful piece of evidence substantiating Division’s
20 allegation of violations of NRS 686A.070, but it emphasizes further the audacity of the charade and of
21 Respondent’s disingenuous defense.

22 The violations began with Respondent making a false entry on the initial application in 2010 and
23 failing to disclose CHW Group as its “Administrator,” then followed by false entries or omissions of
24 material fact in each subsequent renewal application. These false entries and omissions in renewal
25

26 Day 1, 199-204

27 ¹¹ NRS 690C.150 Certificate required to issue, sell or offer for sale service contracts. A provider shall not issue,
28 sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to
the provisions of this chapter.

¹² Respondent’s Prehearing Statement, page 3, lines 12-15

¹³ Division’s Exhibit 22 and Respondent’s Exhibit P (page 1, bottom)

1 applications are two-fold. First, in response to the question pertaining to the "Administrator" of the
2 applicant (question 2 of Division's Exhibits 2,4,5, and 21--renewal applications for years 2011, 2012,
3 2013 and 2016), Respondent's reply was "self." The answer to the same question in renewal
4 applications for years 2014 and 2015 was left blank. (Exhibits 7 and 12) When asked by the Hearing
5 Officer who Mandalawi was referring to by entering "self" in response to these questions, he responded,
6 "CHW," in direct conflict with Respondent's defense that HWAN and CHW and Respondent are two
7 separate entities. ¹⁴ Furthermore, if Respondent's defense is that CHW and Respondent are two separate
8 entities and CHW is a mere contractual administrator, then CHW has been violating NRS 690C.150
9 repeatedly by soliciting and selling service contracts. HWAN, in turn, has been knowingly delegating
10 functions of a Provider for which a certificate of registration is required to an unlicensed entity, in
11 violation of NRS 690C.150 and NRS 686A.170. Lastly, if CHW is "self," then Respondent should
12 have disclosed prior regulatory actions against CHW in the applications.

13 These deliberate violations become even clearer when examining Mandalawi's virtually
14 identical attempt at deception when applying for a license in Washington state. This evidence is
15 directly relevant and should be considered. See Division's Exhibit 8, page 14/32, lines 4-13. Insurance
16 Commissioner for Washington, Alan Singer explains:

17 On September 1, 2010, the OIC received Victor Mandalawi's August 31, 2010 Application for
18 Registration as a Service Contract Provider in the State of Washington for the corporation entity,
19 "Home Warranty Administrators." Mr. Mandalawi's biography submitted with this application
20 failed to indicate he had any connection to Choice Home Warranty, though. And even though
21 the State of California had by then issued at least two separate cease and desist orders against
22 Choice Home Warranty and "its officers, directors, employees, trustees, agents, affiliates, and
23 service representatives," **Mr. Mandalawi's application failed to mention such orders existed.**
24 **In fact, the application failed to mention "Choice Home Warranty" or "CHW Group Inc."**
25 **at all in his application.** On September 15, 2010, Mr. Mandalawi withdrew the application.
26 (Emphasis added)

23 *Id.*

24 This exhibit unambiguously describes an identical attempt to hide past regulatory actions from another
25 state regulator and illustrates, not just a mere omission in one instance, but an intentional pattern of
26 concealment of Respondent's prior regulatory actions.

27
28

¹⁴ Tr. Day 3, 46:15-25

1 In addition to the direct evidence of false entries and omissions of material fact referenced
2 above, Assistant Chief Ghan testified that Respondent left blank the answers to the question pertaining
3 to the "number of customer complaints by Nevada residents" inquiry in Respondent's 2014, 2015, and
4 2016 renewal applications,¹⁵ ¹⁶ further evidencing Respondent's continued and intentional concealment
5 of regulatory violations. Chief Jain testified as follows: "It turned out that Choice, by far, had the
6 highest number of complaints from among the 170-plus service contract providers licensed to do
7 business in Nevada. That is a big red flag. That shows that on the surface, the company is not doing
8 what they are contractually obligated to do. And that eventually harms the consumers."¹⁷ This is
9 corroborated by the more than 1,800 complaints collected by the Better Business Bureau¹⁸ and 116
10 complaints received by the New Jersey Division of Consumer Affairs.¹⁹

11 The evidence presented by the Division overwhelmingly and unequivocally proves repeated
12 violations of NRS 686A.070.

13 **2. The Division Has Proven by a Preponderance of the Evidence that Respondent Violated**
14 **NRS 686A.310 by Engaging in Unfair Practices in Settling Claims.**

15 NRS686A.310 provides in pertinent part:

16 Engaging in any of the following activities is considered to be an unfair practice: 1.

- 17
- 18 (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy
 - 19 (b) Failing to acknowledge and act reasonably promptly upon communications with
 - 20 respect to claims arising under insurance policies. Failing to adopt and
 - 21 implement reasonable standards for the prompt investigation and processing of
 - 22 claims arising under insurance policies.
 - 23 (c) Failing to affirm or deny coverage of claims within a reasonable time after proof
 - 24 of loss requirements have been completed and submitted by the insured.
 - 25 (d) Failing to effectuate prompt, fair and equitable settlements of claims in which
 - 26 liability of the insurer has become reasonably clear.

27 ...

28 During the period Respondent was registered as a Service Contractor Provider and additionally while
Respondent operated solely under the name Choice Home Warranty in Nevada, the Division had

¹⁵ Exhibits 7 (page 3 bottom), 12 (page 3 bottom to page 4 top), and 21 (page 4 middle),

¹⁶ Tr. Day 2, 17:16-20

¹⁷ Testimony of Rajat Jain, Tr. Day 1, 78:1-7

¹⁸ Division's Exhibit 19, page 1/3, last paragraph

¹⁹ Division's Exhibit 13, page 2/51, 2nd to last paragraph

1 received more than 80 consumer complaints.²⁰ The consumers' descriptions detailing the complaints
2 depict incidents where Respondent did not communicate with a policyholder after the policyholder had
3 filed a claim with CHW and incidents where policyholders' claims were unreasonably denied without
4 communication or investigation.²¹ Compliance Investigator Kim Kulhman testified that in instances
5 where claims were covered by contracts, Respondent failed to remedy the complaints and honor the
6 claims until after the Division had stepped in.²² In two of the instances, Respondent took over 4 weeks
7 to resolve broken heating in the summer months of Las Vegas. These are clear violations of NRS
8 686A.310.

9 There are at least ten (10) other complaints of similar or identical practices in settling claims
10 against the Respondent. *See* Division's Exhibits, 3, 6, 10, 13, 14, 15, 16, 17, 18, 19, 20, 29, 38, 39, 40,
11 42. Exhibit 24, one of the Division's consumer complaints illustrates the business practice:

12 I filed a service request on 06/08/2016 with Choice Home warranty. They sent USAIR their
13 technician, Gus Marin, to repair my A/C. He said it was too old and needed to be replaced.
14 They sent 7 more technicians from 4 more Nevada A/C companies. All agreed that the A/C
15 compressor and coil needed to be replaced. CHW said they had a picture on 8/17/2016 that
16 showed no maintenance on my unit thus they denied my claim after 10 weeks in Vegas
17 sweltering heat and \$900.00 power bills. I asked them to see the picture they said they
18 couldn't send it to me and I should call Vegas Appliance repairs. I did. They had no
19 picture. I faxed my maintenance records to CHW. They said they couldn't read them.
20 My contract says if it cannot be repaired we'll replace it. (Division's Ex. 24, Page 1)

21 In giving this Nevada consumer the runaround and making them wait out the summer heat in Las Vegas
22 for 10 weeks, Respondent failed to acknowledge and act reasonably promptly thereby violating NRS
23 686A.310(1)(b). Even though the claimant provided Respondent with the necessary maintenance
24 records, Respondent denied the covered claim for more than 10 weeks and did not resolve the issue
25 until the Division had intervened. Ms. Kuhlman testified that this was a contractually covered claim.²³

26 Another complaint against Respondent illustrated same runaround tactic.

27 **On June 27, 2016**, my air conditioner stopped working. I called my warranty company, Choice
28 Home Warranty in Edison, NJ. They dispatched the call to one of their contract technicians. A
29 technician arrived and determined that the capacitor needed to be replaced, which he replaced.
30 He left, and the capacitor failed within a few hours. I called Choice again, Choice asked the
31 technician for more information regarding the unit. From my understanding, he supplied

²⁰ Division's Exhibit 28

²¹ Division's Exhibits 11, 24, and 38

²² Tr. Day 1, 141-150

²³ *Id.*

1 sufficient information. He returned three times. The technician (Adon Chavez) told me that he
2 sent Choice everything they had requested. **Today is July 11th**, as of today the compressor has
3 not been repaired. **I have called a number of times to contact Choice and I was put on hold**
4 **EVERY single time for extensive periods. At times exceeding 45 minutes, at which point**
5 **the call failed.** AT one point I managed to get a supervisor on the phone, his name was David
6 L. I was told that the claim was rejected verbally by Choice because they said I didn't
7 maintain the unit. I have maintained the unit. TO which I have sent them proof that I
8 did... I have sent those copies of the maintenance for these past several years, spring (2016)
9 and the ones for 2014 and 2013. The one from 2015 (performed by GreenStar Heating and A/C)
10 was not available. The Company no longer existed. I do not believe that Choice Home
11 warranty is looking for their clients. Even after I provided sufficient proof of maintenance, they
12 still denied my claim and fired the technician. This has now become a life or death situation.
13 My significant other, who is disabled, along with our little dog, have been left in the house with
14 temperatures exceeding 100 plus degrees. We live in Las Vegas, where the summer months are
15 exceedingly hot. She became ill with severe heat stroke. (Division's Exhibit 38, page 1)

16 The business practice includes forcing a claimant to call numerous times just to make a claim, with wait
17 time often exceeding 45 minutes, at which point the call would abruptly fail. This is not reasonably
18 prompt and as such is a violation of NRS 686A.310. Unreasonably rejecting a claim "due to
19 maintenance," when the claimant provided maintenance records is also a violation of NRS 686A.310.
20 Requiring the Division to intervene before honoring a claim is similarly, not "reasonably prompt," and
21 thereby a violation of NRS 686A.310. The complainants' reported recollections of Respondent's
22 actions are not disputed in Respondent's witnesses' testimonies. Respondent's unfair practices are
23 violations of NRS 686A.310(1)(b).

24 Furthermore, NAC 690C.110(1)(c) requires

25 if the service contract relates to goods that are essential to the health and safety of the holder and
26 the repair of such goods is covered under the terms and conditions of the service contract,
27 procedures for obtaining emergency service on such goods outside of normal business hours,
28 including, without limitation, a statement which provides that if the emergency involves the loss
of heating or cooling, loss of plumbing or substantial loss of electrical service and the
emergency renders a dwelling unfit for a person to live in because of defects that immediately
endanger the health and safety of the occupants of the dwelling: (1) Repairs will commence
within 24 hours after the report of the claim and will be completed as soon as reasonably
practicable thereafter; and (2) If the provider determines that repairs cannot practicably be
completed within 3 calendar days after the report of the claim, the provider will provide a status
report" within 3 days after the report of the claim.

The Division's testimony from Mary Strong and Kim Kulhman illustrate that Respondent never filed
such reports with regard to the above two-mentioned consumer complaints despite the fact that these
claims were subject to NAC 690C.110(1)(c). More than 3 days (4 and 10 weeks) passed before their
claim was honored. Respondent did not act in a reasonably prompt manner in honoring these covered
claims and thereby violated both NRS 686A.310(1)(b) and NAC 690C.110(1)(c).

1 In the letter in Exhibit 3, page 35-39, another consumer communicated the horror he had to deal
2 with in getting Respondent to honor covered claims stating, "I find it an erroneous assumption that you
3 may be able to determine over the phone, having never laid eyes on the unit, that it was in a state of
4 disrepair. The company did not even offer to have a technician make an independent determination."²⁴
5 Although this was an Oklahoma consumer, the company the consumer dealt with was one and the same
6 as Respondent's, "Choice Home Warranty, an unlicensed service warranty association"²⁵. The evidence
7 presented at the hearing contained also administrative and court findings from other states where CHW
8 was engaging in similar unfair practices, On February 7, 2014, the Insurance Commissioner in the State
9 of Oklahoma issued an Order stating:

10 CHW had willfully violated a Consent Order dated January 2, 2012, by failing to
11 pay all valid claims and refunds that arise pursuant to service warranty agreements
12 in Oklahoma. IT IS FURTHER ORDERED that Respondent (CHW) has
13 knowingly and willfully violated provisions of the Service Warranty Act; failed to
14 update its address with the Oklahoma consumer and the Insurance Commissioner;
and failed to respond to the Oklahoma Insurance Commissioner and, as a result,
Respondent is fined in the amount of Ten Thousand Dollars. (Division's Exhibit 3,
page 4/39 at "ORDER")

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

20 by failing to acknowledge and act promptly upon communication with respect to
21 the claim; by denying Johnson's (aggrieved consumer) claim without conducting
22 reasonable investigation based upon available information; failing to promptly
provide a reasonable explanation to Johnson in relation to the facts or applicable
law for the denial of the claim. (Division's Exhibit 3, page 4/39 at para 2)

23 These findings are directly relevant to the analysis of Respondent's business practices pertaining to
24 claims adjudications in Nevada. Notably, when comparing the contract used in this particular
25 Oklahoma case with the contract used in Nevada, Assistant Chief Ghan testified that the logos were

26 ²⁴ Division's Exhibit 3, page 35/39, 3rd paragraph, last 2 sentences

27 ²⁵ On the contracts the logos, phone number and web site are identical, See Tr. Day 2, 25:4 – 26:13; the phone
28 number to initiate a claim is identical 1-888-531-5403, compare contract in Oklahoma regulatory action as Division's Exhibit
3, page 23/39 section III and the contract as approved by Nevada Division of Insurance as Division's Exhibit 35, page 2/7,
section C; administrating personnel are the same, see Tr. Day 3, 72:4 to 73:22 testimony of Victor Hakim.

1 identical, the phone number and web site were the same, and both displayed "Choice Home Warranty"
2 next to the logo.²⁶ The phone number used to initiate a service call, 1-888-531-5403²⁷, is the same in
3 Oklahoma and Nevada. The testimony from Victor Hakim also brought to surface the fact that it is the
4 same personnel that adjudicate claims in both states.²⁸ This is consistent throughout all regulatory
5 evidence as well as the evidence presented in the various news and media outlets.

6 Other excerpts where Respondent's claims adjudication processes violate NRS 686A.310
7 include:

- 8 1. Reported on July 17, 2016 from Henderson, Nevada, "Pool company sends Tech who does
9 nothing to really diagnose the problem. Took nothing apart or left note for me or never even
10 called me.... The next day, the Supervisor at Choice Home warranty told me he would not
11 refund the check and that my pool pump was not covered because it was not correctly
12 installed." Division's Exhibit 15 Ripoff Report

13 Denying a claim without diagnosing the problem is a violation of NRS 686A.310.

- 14 2. Reported on October 12, 2016 from Las Vegas, Nevada, "I am not sure how this is not
15 considered a scam?.... The "appliance tech" tells me that a transformer went out and that I
16 most likely need a new built-in microwave. He even writes down on my receipt the parts I
17 will need with a email note about the replacement. He take pics of my microwave. First let
18 me tell you that I grew up in the Army. To this day I mop my floors almost every day, make
19 my bed with hospital corners and can eat off nearly every surface. ... this is all part of the
20 OCD experience I have with my environment. Know that my microwave was/is spotless and
21 cleaned after every use. ... Today I got a call from CHW that denied my claim because my
22 Microwave as they put it "was covered in grease and oil" and was not properly maintained."
23 Division's Exhibit 18, yelp.com review, page 1 bottom to page 2 top.

24 Accusing a claimant of improperly maintaining a microwave to deny a claim when the claimant with
25 obsessive compulsive disorder asserts that his microwave is clean and the technician reported a faulty
26 transformer as the culprit is certainly unreasonable and in violation of NRS 686A.310.

27 In New Jersey's AG press release, Exhibit 6, the Attorney General reported,

28 "The Division alleged that CHW used deceptive tactics to deny consumers' claims, such as
denying claims if the consumers were unable to submit multiple years' worth of maintenance
records. As a result, consumer who paid hundreds of dollars for CHW's "warranties" were
required to pay out-of pocket for air conditioning, refrigerator, or other repairs that were
purportedly covered. Choice Home Warranty allegedly deceived consumers by refusing to
provide the services it promised – specifically, the ability to have major appliances or systems
repaired or replaced," Division of Consumer Affairs Acting Director Steve Lee said. "CHW

²⁶ Tr. Day 2, 25-26

²⁷ Contract in Oklahoma regulatory action as Division's Exhibit 3, page 23/39 section III of contract and Contract as
approved by Nevada Division of Insurance as Division's Exhibit 35, page 2/7, section C

²⁸ Tr. Day 3, 72:4 to 73:21

1 did this after luring consumers with ads promising they would “never Pay for Covered Home
2 Repairs Again.” The Division received, directly or indirectly 1,085 complaints about CHW and
its practices, from consumers in New Jersey and throughout the country.”

3 Notably, the phone number, 1-888-531-5403, logo, and web site address used as evidence in the New
4 Jersey Complaint²⁹, are the same as those contracts³⁰ sold to Nevada consumers.

5 No fewer than 10 other sources of complaints present analogous, if not identical, pattern of
6 unfair practices in settling claims, to those of the Nevada consumer complaints presented by the
7 Division’s witnesses against the Respondent. Behind each complaint is a person who has been
8 scammed by the Respondent for profit. The Hearing Officer should consider that the targeted victim
9 were as those with limited means to replace home appliances and without the knowledge or money to
10 seek legal remedies. Whereas Respondents challenge the reliability of these other reports,³¹ the Hearing
11 Officer should consider the fact that some consumers lack the sophistication and knowledge of the
12 regulatory process and available remedies.³² It does not make their individual complaints any less
13 authentic and their grievances any less genuine.

14 Respondents attempted to mislead the Hearing Officer by claiming that “...the ratio of
15 complaints to consumers is only approximately 0.1%”³³, they do so by calculating only the complaints
16 received by the Division, thereby misleading this tribunal as to the true number and percentage of
17 aggrieved consumers and complaints.³⁴ There are obviously more, as evidenced by those who report
18 their grievances to other sources, such as yelp.com and the Ripoff Report.³⁵ ³⁶ Where Respondent offer
19 hundreds of pages of testimonials, they do so by offering nationwide testimonies when Respondent
20 allegedly only operates in Nevada.³⁷ Respondent’s Exhibit M, titled, “Customer Testimonials NV DOI
21 Status of HWAN” contains 867 pages of testimonials.³⁸ Pages 1-10 are from Nevada, but the next 857
22

23 ²⁹ Division’s Exhibit 13, page 12/51 and 15/51

24 ³⁰ Compare with Division’s Exhibits 35 and 37

25 ³¹ Tr. Day1, 103:17 – 104:22

26 ³² Tr. Day 2, 28:7 to 29:14

27 ³³ Prehearing statement page 4.

28 ³⁴ Tr. Day 2, 28:7 to 29:14

³⁵ Division’s Exhibits 14-18

³⁶ Also see footnote 34, “Most individuals don’t file with the Division or have knowledge that they should file with the Division”

³⁷ Respondent’s Exhibit M, pages 1-10 are Nevada testimonials, but the next 857 pages are nationwide

³⁸ When asked by the Hearing Officer how these testimonials are retrieved, Respondent misleads by replying to her inquiry that it is a simple email. Respondent, in fact, offers a free month of service in exchange for the testimonial (See Exhibit 18, yelp.com review, page 2/2:bottom last 5 paragraphs starting with, “If you are wondering how so many sites offer

1 pages are nationwide, thereby attempting to mislead this tribunal that all nationwide accolades belong to
2 them in spite of the fact that Respondent claims to be only responsible for actions in Nevada.³⁹ If
3 Respondent is using CHW's nationwide testimonials as a defense, and whereas Mandalawi, in
4 Respondent's applications considers "self" to be CHW, the burden of CHW's regulatory violations
5 should be attributed to the Respondent as well.

6 **3. Respondent Has Violated NRS 690C.320.**

7
8 NRS 690C.320 states: "A provider shall, upon the request of the Commissioner, make
9 available to the Commissioner for inspection any accounts, books and records concerning any service
10 contract issued, sold or offered for sale by the provider which are reasonably necessary to enable the
11 Commissioner to determine whether the provider is in compliance with the provisions of this chapter."
12 The Commissioner's regulation and oversight of licensees and protection of the public depends on her
13 ability to examine and review documents upon request.

14 Management Analyst Mary Strong testified that she requested information about Respondent's
15 open accounts and reserve account by email to vmandalawi@homewarrantyadministrators.com, the
16 email address reported to the Division in Respondent's initial and renewal applications.⁴⁰ On behalf of
17 the Commissioner, Ms. Strong requested:

18 "the number of open service contracts for Home warranty Administrators of Nevada, Inc dba
19 Choice Home Warranty."

20 and;

21 "all bank records, including but not limited to records of all deposits, withdrawals, and end-of
22 cycle balances – for each month for the past twelve months beginning July 1, 2016 through July
23 1, 2017, for the reserve account for Home warranty Administrator of Nevada, Inc. dba Choice
24 Home Warranty from Chesapeake Bank. The Commissioner further requests that HWAN d.b.a.
25 Choice Home Warranty provides the Account number of the Reserve Account at Chesapeake
26 Bank. Please document whether the reserve account is solely dedicated to Nevada residents or if
the funds are comingled with other funds or fund of/from other states. Please respond no later
than Friday, July 21, 2017 with the requested information."⁴¹

27 Ms. Strong testified that the Division did not receive these records upon request as the law mandates,
28

positive reviews..." thereby neglecting to fully respond to the Hearing Officer's inquiry.

³⁹ "CHW is HWAN's agent, whose scope of authority is limited to conduct within the State of Nevada." Home
Warranty Administrator of Nevada, Inc's Post-Hearing Brief on Hearing Officer's Inquiry, 13:6-7

⁴⁰ Tr. Day 1, 230:20 to 232:6.

⁴¹ Division's Exhibit 33 and Respondent's Exhibit L

1 and was subsequently forced to seek them through a subpoena. Even then, the Respondent did not
2 provide the information requested.⁴² Chief Jain elaborated in testimony:

3 We requested the reserve account at the time we received the renewal application. And to date,
4 we have not received that information directly from CHW... It was an email sent from my staff
5 more than once . . . ”⁴³ “We have not been permitted to review the account as requested . . . And
as I mentioned, “it was not provided willingly. It was provided only through subpoena.”⁴⁴

6 This failure to make business records available to the Division affects the Commissioner’s ability to
7 protect the public and monitor the security of contracts sold to Nevada residents. It is also a direct
8 violation of NRS 690C.320. As a result of Respondent’s noncompliance, the Commissioner did not
9 have the ability to inspect Respondent’s reserve account or to learn until the hearing that Respondent
10 had failed to maintain a proper reserve account in Nevada.⁴⁵ The purpose of maintaining the reserve
11 account, per Chief Jain’s testimony,

12 The Nevada Legislature, for consumer protection purposes, enacted law that requires every
13 service contract provider to maintain a 40 percent reserve account at all times, 40 percent on
14 gross premiums. The purposes of the reserve account is if the service contract provider was to
15 go into insolvency or had some other financial issues where they were unable to pay the claims
16 for Nevada consumers who are participating in the contracts, if that inability existed, this
17 account that we found, that can be used to make sure the Nevada claims, Nevada’s claims are
18 honored.... **If there is not sufficient money, that is verifiable by the Division, to ensure that
19 Nevada claims are paid, then that is harmful to Nevada consumers who have paid
20 premium in lieu for a promise of a contract which the entity may no longer be able to
21 uphold. It is, in my opinion, it is a danger to Nevada public.”**⁴⁶ (Emphasis added).

22 As Chief Jain testified, as a result of the Respondent’s non-compliance, the Division was unable to
23 examine Respondent’s account which apparently was not maintained, as required, at a financial
24 institution in Nevada.⁴⁷ Respondent was also using contracts which had not been approved by the
25 Division in violation of NAC 690C.100, further endangering the public and making oversight
26 impossible; a fact which due to Respondent’s non-compliance only came to light as a result of the
27 hearing.⁴⁸

28 **4. Respondent Is Conducting Business in an Unsuitable Manner Pursuant to NRS
690C.325**

⁴² Tr. Day 1, 231:15 to 232:3

⁴³ Tr. Day 1, 64 :11 to 66:6. Also see Exhibit 33.

⁴⁴ Tr. Day 1, 67:22 – 68:3

⁴⁵ Tr. Day 1, 132:19 to 133:9

⁴⁶ Tr. Day 1, 67:2-12

⁴⁷ Tr. Day 1, 130:14-21

⁴⁸ Tr. Day 2, 20:22 to 22:24, testimony of Assistant Chief Timothy Ghan

1 NRS 690C.325 provides in pertinent part:

2 1. The Commissioner may refuse to renew or may suspend, limit or revoke a provider's
3 certificate of registration if the Commissioner finds after a hearing thereon, or upon waiver
of hearing by the provider, that the provider has:

- 4 (a) Violated or failed to comply with any lawful order of the Commissioner;
5 (b) Conducted business in an unsuitable manner;
6 (c) Willfully violated or willfully failed to comply with any lawful regulation of the
Commissioner; or
7 (d) Violated any provision of this chapter

8 ...

9 The Division has proven that Respondent has repeatedly violated Nevada law. Pursuant to NRS
10 690C.325(1)(d), a finding of just one violation of the Insurance Code is sufficient to revoke
11 Respondent's certificate of registration.⁴⁹ The Division has not only proven a single violation sufficient
12 to revoke its certificate of registration under NRS 690C.325(1)(d), but it has proven repeated violations
13 which amount to very dangerous business practices, thus also falling under NRS 690C.325(1)(b).⁵⁰

14 In addition to the repeated violations of NRS 686A.070 (falsifying application), the Division has proven
15 that Respondent violated NRS 690C.320(2) (failing to make available records, in the process revealing
16 other violations), as well as unfair trade practices in settling claims. Respondent's regular business
17 practices are indeed very much a danger to the general public. Resulting from these proceedings, the
Division also learned that Respondent failed to comply with both, the repair and report requirements,

18 ⁴⁹ NRS 690C.120 provides makes other provisions in the insurance Code applicable as follows:

19 Except as otherwise provided in this chapter, the marketing, issuance, sale, offering for sale,
20 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: 1.

- 21 (a) NRS 679B.020 to 679B.152, inclusive;
22 (b) NRS 679B.159 to 679B.300, inclusive;
23 (c) NRS 679B.310 to 679B.370, inclusive;
24 (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.

25 ...

26 ⁵⁰ 679B.0385 interprets "unsuitable manner" as follows:

"unsuitable manner means conducting insurance business in a manner which:

- 27 1. Results in a violation of any statute or regulation of this State relating to insurance;
28 2. Results in an intentional violation of any other statute or regulation of this State; or
3. Causes injury to the general public,

with such frequency as to indicate a general business practice.

1 under NAC 690C.110(1)(c) when an emergency repair exists and the service contract provider is unable
2 to remedy the situation according to statutorily required times. The Division is unaware that these
3 dangerous situations exist if the Respondent fails to report, as required under NAC 690C.110(1)(c). In
4 southern Nevada where summertime temperatures often exceed 100 degrees, this can become a life or
5 death situation. As stated in one of the Nevada consumer complaints: "My significant other, who is
6 disabled, along with our little dog, have been left in the house with temperatures exceeding 100 plus
7 degrees. We live in Las Vegas, where the summer months are exceedingly hot. She became ill with
8 severe heat stroke."⁵¹

9 The Division has proven repeated violations of NRS 686A.070, NRS 686A.310, and NRS
10 690C.320 as analyzed in depth in Sections 1-3 of this Closing Statement. These numerous and repeated
11 violations of the above-mentioned statutes constitute regular business practices that are harmful to the
12 general public. Finally, despite the fact that the Division did not renew Respondent's Certificate of
13 Registration⁵², Respondent has continued to sell and offer for sale service contracts since November 18,
14 2016, after the Certificate failed to renew, thus repeatedly violating of NRS 690C.150.^{53 54}

15 Respondent heavily profits⁵⁵ from its violations and unfair trade practices at the expense of
16 Nevada consumers. As chief Jain summarizes, "All of that in totality raises severe concerns about the
17 suitability to do business in Nevada. And I do not believe that they should be allowed to do business in
18 Nevada, to protect the Nevada public."⁵⁶ In the plethora of violations proven by the Division, should the
19 Hearing Officer find one violation alleged, it constitutes grounds for revocation pursuant to
20 NRS690C.325.

21 CONCLUSION

22 Based on the overwhelming evidence presented by the Division, Respondent's non-renewed
23 certificate of registration should be revoked pursuant to NRS 690C.325. Pursuant to NRS
24

25 ⁵¹ Division's Exhibit 38, page 1

26 ⁵² Tr. Day 1, 74:14 to 76:25

27 ⁵³ See example, Respondent's Exhibit HH, page 23/1672, contract term 07/08/2017 to 07/08/2018

28 ⁵⁴ See Division's Exhibit 27 and testimony from Felecia Casci Tr. Day 1, 225:11 to 226:9

⁵⁵ "Despite these alleged failures to honor the terms of consumers' residential service contracts, CHW paid Mandalawi at least \$2.6 million from January 2011 to September 2013, paid Hakim at least \$3.7 million between December 2010 and September 2013, and paid Seruya at least \$2.1 million between January 2011 and April 2013" Division's Exhibit 13, page 2/51, third to last paragraph.


⁵⁶ Tr. Day 1, 79:7-16

1 686A.183(1)(a), Respondent should be fined \$5000 for each violation of NRS 686A to 686A.310. The
2 Division is also respectfully requesting that a Cease and Desist Order is issued pursuant to NRS
3 686A.170 and that the security deposit is withheld to service existing contractual obligations of the
4 Respondent as provided in NRS 690C.170(2).

5 DATED this 17th day of November 2017.

6 ADAM PAUL LAXALT
7 Attorney General

8 By:

9 
10 RICHARD PAILI YEN
11 Deputy Attorney General
12 100 N. Carson Street
13 Carson City, Nevada 89701
14 (775) 684-1129
15 Attorney for the Division of Insurance

1 **CERTIFICATE OF SERVICE**

2 I, certify that I am an employee of the State of Nevada Attorney General's Office and that on the
3 17th day of November 2017, I served the foregoing Nevada Division of Insurance's **DIVISION'S**
4 **CLOSING STATEMENT** by U.S. Mail, postage prepaid to:

5
6 MS. YVONNE RENTA; HEARING OFFICER
7 DEPARTMENT OF BUSINESS AND INDUSTRY
8 DIVISION OF INSURANCE
9 1818 E. COLLEGE PKY., STE. 103
10 CARSON CITY NV 89706

11 KIRK B. LENHARD, ESQ.
12 TRAVIS F. CHANCE, ESQ.
13 BROWNSTEIN HYATT FARBER SCHRECK, LLP
14 100 N. CITY PKY., STE. 1600
15 LAS VEGAS NV 89106-4614

16 LORI GRIFA, ESQ.
17 ARCHER & GREINER, P.C.
18 21 MAIN ST., STE. 353
19 HACKENSACK NJ 07601

20
21
22
23
24
25
26
27
28
By: _____

An Employee of the
Office of the Attorney General

Betsy Gould

Subject: FW: 17.0050 Closing Statement for In the matter of: Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty
Attachments: Closing Statement 11172017 FINAL.doc.pdf

From: Richard P. Yien [<mailto:RYien@ag.nv.gov>]
Sent: Friday, November 17, 2017 4:53 PM
To: Yvonne Renta
Cc: Chance, Travis F.; 'Grifa, Lori'; 'Lenhard, Kirk B.'; Joanna N. Grigoriev
Subject: 17.0050 Closing Statement for In the matter of: Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty

Ms. Renta,

Please find attached, the Division's Closing Statement in cause # 17.0050.

Thank you,

Richard Yien, Deputy Attorney General
State of Nevada
Office of the Attorney General
100 N. Carson St.
Carson City, Nevada 89701
RYien@ag.nv.gov
Phone: (775) 684-1129
Fax: (775) 684-1156

This e-mail contains the thoughts and opinions of Richard Yien and does not represent official Office of the Attorney General policy. This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at RYien@ag.nv.gov and delete the message and attachments from your computer and network. Thank you.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **APPELLANT'S APPENDIX (VOLUME VII OF XIV)** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on May 12, 2020.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System as indicated below:

Via Electronic Filing System:

Richard P. Yien
Joanna N. Grigoriev

/s/ Joyce Heilich
An Employee of Holland & Hart LLP