
IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

PAUL S. PADDA and PAUL PADDA LAW, PLLC,

Cross-Appellants,

v.

RUTH L. COHEN,

Cross-Respondent.

Appeal from the Eighth Judicial District Court of the State of Nevada, in and for
County of Clark

CROSS-RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. RUTH L. COHEN is an individual,
2. MS. COHEN has been represented by attorneys from the law firms of CAMPBELL & WILLIAMS; HAYES WAKAYAMA; and MARQUIS AURBACH COFFING.

Dated this 10th day of March, 2021.

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CROSS-RESPONDENT'S ANSWERING BRIEF¹

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the district court correctly determined that Ms. Cohen's decision to reject the Padda Defendants' Offer of Judgment for \$150,000.00 was not grossly unreasonable or in bad faith in light of the fact that Ms. Cohen was seeking damages in excess of \$3 million due to the Padda Defendants' fraudulent conduct.

2. Whether the district court properly acted within its discretion when it did not explicitly address the reasonableness of the Padda Defendants' Offer of Judgment as to amount, despite implicitly acknowledging that it was reasonable only as to its timing.

3. Whether the district court properly acted within its discretion by not considering the reasonableness of the Padda Defendants' requested attorneys' fees when it concluded that all of the good faith *Beattie* factors weighed in favor of Ms. Cohen.

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¹ For ease of reference, Cross-Respondent Ruth L. Cohen will be referred to as "Ms. Cohen," and Cross-Appellant Paul S. Padda ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") will be collectively referred to as the "Padda Defendants."

II. STATEMENT OF THE CASE

Ms. Cohen is an attorney who practiced law in Nevada for over 40 years. (4 JA 629:14). She was one of the first 100 women admitted to the State Bar of Nevada, the fourth woman ever hired in the Clark County District Attorney's Office, and the first female federal prosecutor appointed in the entire state. (4 JA 629:14-17). Mr. Padda is an attorney who has practiced law in Nevada for over 15 years. (1 JA 158:5-8). In 1978, Ms. Cohen began working at the U.S. Attorney's Office ("USAO"), where she worked as a federal prosecutor for 29 years in both the criminal and civil divisions. (4 JA 629:19-21). In 2004, Mr. Padda took a position at the USAO, where he worked with Ms. Cohen for three years before Ms. Cohen retired and went into private practice. (4 JA 629:22-630:7).

On or about January 18, 2011, Mr. Padda and Ms. Cohen formed a partnership called Cohen & Padda, LLP ("C&P") to provide legal services. (8 JA 1704:11-12). Pursuant to the Partnership Agreement dated January 18, 2011, Mr. Padda and Ms. Cohen acknowledged that the duration of their partnership would be until January 14, 2014, unless dissolved by agreement of the parties (the "Partnership Agreement"). (8 JA 1704:13-15).

Sometime in 2014, Ms. Cohen began to consider semi-retirement from the practice of law. (8 JA 1704:16-17). On or about December 23, 2014, Mr. Padda and Ms. Cohen entered into an agreement, which set forth the terms by which they

effectuated the dissolution of C&P (the "Dissolution Agreement"). (8 JA 1704:18-20). C&P, in turn, ceased to exist as of December 31, 2014. (8 JA 1704:20). Section 7(b) of the Dissolution Agreement provided, in pertinent part, that "[w]ith respect to contingency cases in which there is yet to be a recovery by way of settlement or judgment," Ms. Cohen "shall be entitled to a 33.333% percent share of gross attorney's fees recovered in all contingency fee cases for which [C&P] has a signed retainer agreement dated on or before December 31, 2014" (the "Expectancy Interest"). (8 JA 1704:21-25). Nothing in the Dissolution Agreement required or anticipated that Ms. Cohen would perform work on the contingency cases that comprised her Expectancy Interest. (8 JA 1704:25-27).

On January 2, 2015, Mr. Padda formed a new law firm, which after two separate name changes, became Padda Law. (8 JA 1705:1-2). While she continued to practice law after the dissolution of C&P working primarily on new employment law matters, Ms. Cohen transitioned to part-time work and did not come to the Padda Law office often. (8 JA 1705:3-5).

On September 12, 2016, Ms. Cohen and Mr. Padda executed a Business Expectancy Interest Resolution Agreement (the "Buyout Agreement") in which Ms. Cohen agreed to exchange her Expectancy Interest for the sum certain of \$50,000. (8 JA 1705:6-8). At the time Ms. Cohen and Mr. Padda entered into the Buyout Agreement, several contingency fee cases subject to Ms. Cohen's Expectancy

Interest were pending and had not reached a complete and final resolution, including, among others, *Garland v. SPB Partners, LLC et al.*, Case No. A-15-724139-C (the “Garland Case”), *Moradi v. Nevada Property I, LLC et al.*, Case No. A-14-698824-C (the “Moradi Case”), and *Cochran v. Nevada Property I, LLC et al.*, Case No. A-13-687601-C (the “Cochran Case”). (8 JA 1705:11-17). It is undisputed that, outside of some initial involvement, Ms. Cohen did not have an ongoing active role nor was she required to perform any work on the Garland Case and the Moradi Case after entering into the fraudulent Buyout Agreement. (8 JA 1705:18-28).

Prior to entering into the Buyout Agreement, Mr. Padda had falsely represented to Ms. Cohen in September of 2016 that the Moradi case was “in the toilet” since their client had returned to work as a hedge-fund manager and told Ms. Cohen she should not wait around for any recovery. (10 JA 2175:7-9). Mr. Padda told Ms. Cohen this despite receiving a report from the retained economic expert that valued Moradi’s damages at over \$300 million and that Moradi had *not* returned to work. (10 JA 2175:11-13; 10 JA 2179:14-17). While Mr. Padda claims he did not receive this report, his paralegal at the time testified that she personally spoke to Mr. Padda about the report in July of 2016. (10 JA 2179:17-20; 11 JA 2240-2242). Mr. Padda also hid from Ms. Cohen that he had settled the Garland Case for \$215,000 on August 22, 2016, and the check for the settlement was issued the very next day after the Buyout Agreement was executed. (10 JA 2175:13-14; 10 JA

2180:17–2181:3; 11 JA 2243; 11 JA 2260-2264; 11 JA 2266-2271). Ms. Cohen’s share of the fees from the Garland Case alone would have been \$28,666.67. (10 JA 2181:2-3).

Mr. Padda’s deception did not end there. Under penalty of perjury, the Padda Defendants asserted Ms. Cohen’s expectancy interest only applied to the three cases referenced above. (10 JA 2181:4-6; 11 JA 2277:2-10). Yet after the Padda Defendants’ numerous attempts to stonewall Ms. Cohen’s discovery in this matter, the district court ordered the Padda Defendants to produce the records and Ms. Cohen ultimately discovered that there was a total of 65 cases in which she had an interest (these 65 cases, the Moradi Case, Garland Case, and Cochran case are collectively referred to herein as the “Pending Cases”). (10 JA 2181:6-10; 11 JA 2287–14 JA 3030). Through these documents Ms. Cohen not only learned that she was owed \$3,335,302.49 but also that the Padda Defendants had taken advantage of her even prior to the Buyout Agreement by paying her only 30% of her interest instead of 33.33% under instructions from Mr. Padda himself. (10 JA 2181:10-13; 11 JA 2287-2301; 13 JA 2693-2708; 14 JA 2933-2943; 14 JA 2945-2961; 14 JA 2976-2984; 14 JA 3032). It was even discovered that Mr. Padda had, on multiple occasions, specifically instructed at least one partnership employee to *not* show Ms. Cohen any disbursement sheets for contingency-fee cases that would reflect

settlement figures and the amount of attorneys' fees collected. (4 JA 0633:1-4; 4 JA 0719; 4 JA 0726-0727).

On or about April 6, 2017, seven months after being fraudulently induced into executing the Buyout Agreement, Ms. Cohen received notice that she had been suspended from the practice of law by the Nevada Board of Continuing Legal Education pursuant to Nevada Supreme Court Rule ("SCR") 212 for failure to complete the 2016 Continuing Legal Education ("CLE) requirements, as mandated by SCR 210. (8 JA 1706:5-8). Upon learning of her suspension, Ms. Cohen "immediately called the bar" and discovered that she would be required to pay \$700.00 and complete her CLE requirements in order to be reinstated. (8 JA 1706:9-11). Ms. Cohen did not pay the fee and her law license remained suspended until December 19, 2019, during which time the Moradi and Cochran Cases settled for significant sums. (8 JA 1706:12-21; 1706:26-1707:3; 1708:1-4). Specifically, contrary to Mr. Padda's representations to Ms. Cohen, the Moradi Case settled for an undisclosed amount after a jury returned a verdict of \$160.5 million and the Padda Defendants collected approximately \$9,186,677.00 in attorneys' fees. (4 JA 633:8-10; 4 JA 0735-0736). Of that, Ms. Cohen would have been entitled to \$3,061,919.44 had she not been fraudulently induced to enter into the Buyout Agreement. (10 JA 2180:13-14). Had Ms. Cohen not been deliberately deceived by Mr. Padda as to

the facts regarding the Moradi Case and the remaining Pending Cases, she would never have agreed to the \$50,000 buyout. (10 JA 2180:3-5).

On February 27, 2019, Ms. Cohen, through counsel, sent a letter to Mr. Padda demanding payment of certain attorneys' fees owed to her pursuant to her Expectancy Interest under the Dissolution Agreement. (8 JA 1706:22-25). Specifically, Ms. Cohen contended that the Padda Defendants induced her to enter the Buyout Agreement through fraudulent acts, misrepresentations and/or omissions such that the Buyout Agreement should be rescinded. (8 JA 1707:17-19). Ms. Cohen, in turn, demanded payment of 33.333% of the gross attorneys' fees earned in the Pending Cases pursuant to the Expectancy Interest set forth in the Dissolution Agreement. (8 JA 1707:19-21).

After Mr. Padda refused to compensate Ms. Cohen for her Expectancy Interest in the Pending Cases, Ms. Cohen commenced the instant action against the Padda Defendants on April 9, 2019, advancing causes of action for, *inter alia*, fraud, breach of fiduciary duty and breach of contract. (8 JA 1707:4-16). Ms. Cohen sought to recover \$3,314,227.49 in damages, which represented the amount of her Expectancy Interest in the Pending Cases. (8 JA 1707:22-23).

On December 18, 2019, the Padda Defendants served Ms. Cohen with an offer of judgment pursuant to NRCP 68 in the amount of \$150,000.00, inclusive of attorney's fees, expenses, prejudgment interest, and costs (the "Offer"). (10 JA

2027-2029). Ms. Cohen, confident in her case and the evidence obtained through discovered showing she was entitled to recover \$3,314,227.49 in damages, did not accept the Offer.

On January 27, 2021, two weeks before trial was set to begin, the district court heard arguments on the Padda Defendants' motion for summary judgment. (8 JA 1703). On February 18, 2020, the district court granted the Padda Defendants' motion for summary judgment on the narrow basis that Ms. Cohen's suspension from the practice of law rendered her a "non-lawyer" subject to the prohibition on fee sharing under NRPC 5.4(a). (8 JA 1709:8-22; 1710:9-11; 1711:10-14). The district court noted that "[i]f Ms. Cohen is successful on her claim of fraudulent inducement, she would be able to address all of the claims she has pled in her complaint at trial," but ultimately rejected her claims solely on the "narrow basis" of the licensing issue and feeling that the case could not proceed to trial. (8 JA 1711:15-22). If not for Ms. Cohen's suspension from the practice of law, she would have been able to proceed to trial on all of her claims. The district court, in turn, dismissed all of Ms. Cohen's claims (including her breach of contract, breach of fiduciary duty and unjust enrichment claims) on grounds she is prohibited from pursuing her Expectancy Interest in the Pending Cases that settled while Ms. Cohen was suspended from the practice of law. (8 JA 1710:12-28). The district court's

order granting summary judgment is currently on appeal before this Court in Supreme Court Case No. 81018.

On March 11, 2020, the Padda Defendants filed a Motion for Attorneys' Fees, seeking a total of \$279,167.50 in attorneys' fees from Ms. Cohen due to Ms. Cohen's rejection of the Offer. (10 JA 1976-2164). On March 25, 2020, Ms. Cohen filed her Opposition to the Padda Defendants' Motion, arguing that given the strength of Ms. Cohen's case and the amount of damages she was seeking, it was wholly reasonable for her to reject the Offer, rendering an award of attorneys' fees improper under the *Beattie* factors. (10 JA 2174-2187; 11 JA 2188-2416; 12 JA 2417-2650; 13 JA 2651-2880; 14 JA 2881-3039). On April 9, 2020, the Padda Defendants filed their Reply in Support of their Motion for Attorneys' Fees. (15 JA 3083-3226).

The district court considered the Padda Defendants' Motion in Chambers on April 17, 2020, and an Order denying the Padda Defendants' Motion was issued on April 29, 2020. (15 JA 3227-3230). The district court found that, while the Offer was reasonable only in its timing, Ms. Cohen's decision to reject the offer was not grossly unreasonable or in bad faith. (15 JA 3228:21-24). The Padda Defendants subsequently filed their Notice of Cross-Appeal on May 11, 2020. (15 JA 3238-3248).

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III. STATEMENT OF FACTS

1. On April 9, 2019, Ms. Cohen filed her complaint against the Padda Defendants asserting the following causes of action: (1) First Claim for Relief for breach of contract—Partnership Dissolution Agreement (against Mr. Padda); (2) Second Claim for Relief for breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (3) Third Claim for Relief for tortious breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (4) Fourth Claim for Relief for breach of fiduciary duty (against Mr. Padda); (5) Fifth Claim for Relief for fraud in the inducement (against Mr. Padda and Padda Law); (6) Sixth Claim for Relief for fraudulent concealment (against Mr. Padda and Padda Law); (7) Seventh Claim for Relief for fraudulent or intentional misrepresentation (against Mr. Padda and Padda Law); (8) Eighth Claim for Relief for unjust enrichment (against Padda Law or, in the alternative, against Mr. Padda); (9) Ninth Claim for Relief for elder abuse under NRS 41.1395 (against Mr. Padda); and (10) Tenth Claim for Relief for declaratory relief (against Mr. Padda and Padda Law). (8 JA 1707:4-16).

2. On December 18, 2019, the Padda Defendants filed their motion for summary judgment arguing, *inter alia*, that NRPC 5.4(a) barred Ms. Cohen from recovering her share of legal fees from cases that settled or concluded while her law license was suspended. (1 JA 154; 173:3-174:11).

3. At the same time, the Padda Defendants served Ms. Cohen with the Offer pursuant to NRCP 68 in the amount of \$150,000.00, inclusive of attorney's fees, expenses, prejudgment interest, and costs. (10 JA 2027-2029).

4. Ms. Cohen did not respond to the Offer and by operation of law the offer was deemed rejected by Ms. Cohen.

5. Ms. Cohen opposed the Padda Defendants' motion for summary judgment on January 10, 2020. (4 JA 628-659). With respect to the Padda Defendants' argument concerning the effect of her suspension from the practice of law, Ms. Cohen contended that a prior, temporary suspension did not absolve the Padda Defendants of their contractual or fiduciary obligations. (4 JA 647:18-25; 648:6-649:9).

6. The Padda Defendants filed their reply in support of motion for summary judgment on January 24, 2020. (8 JA 1654-1684).

7. Following a hearing on January 27, 2020, the district court granted the Padda Defendants' motion for summary judgment and dismissed all of Ms. Cohen's claims. (8 JA 1703-1712). Specifically, the district court found that a lawyer who is suspended from the practice of law pursuant to SCR 212 for failing to comply with the CLE requirements of SCR 210 is a "non-lawyer" for purposes of NRPC 5.4(a). (8 JA 1709:8-16). The district court further found NRPC 5.4(a) prohibited Ms. Cohen from recovering or sharing in attorneys' fees earned on cases that were open

and unresolved during the time in which she was suspended. (8 1710:9-28). Thus, while the district court noted that all of Ms. Cohen's claims would have otherwise survived summary judgment, the district court held that it could not, "in good conscience, permit Ms. Cohen to use her remaining fraud and fiduciary duty claims, among others, to circumvent NRPC 5.4(a) by essentially enforcing a contract obligation NRPC 5.4(a) renders illegal and unenforceable." (8 JA 1711:10-22).

8. On February 21, 2020, Ms. Cohen filed her motion for reconsideration and submitted additional legal authority establishing that fee-splitting contracts involving suspended or disbarred lawyers are enforceable where, as here, the lawyer transferred responsibility for the cases at issue prior to suspension or disbarment in exchange for a percentage of the ultimate recovery and that lawyer no longer had any further responsibility on those cases. (8 JA 1727-1737).

9. The Padda Defendants filed their opposition to the motion for reconsideration on March 6, 2020, (9 JA 1738-1794), and Ms. Cohen filed her reply on March 16, 2020. (10 JA 2165-2173).

10. The district court summarily denied Ms. Cohens' motion for reconsideration on March 31, 2020. (15 JA 3040-30455). The district court determined that Ms. Cohen's submission of additional persuasive legal authority did not render the Order clearly erroneous under EDCR 2.24. (15 JA 3042:20-27). The district court found that Ms. Cohen's cited legal authority concerned a different

approach for addressing a suspended attorney's ability to recovery fees after his or her suspension. (15 JA 3042:28-3043:20). Moreover, the district court found that Ms. Cohen's legal authority was inapposite as her claims in this action were not predicated upon a referral fee or origination fee agreement. (15 JA 3043:21-3044:8).

11. On April 8, 2020, Ms. Cohen filed her Notice of Appeal concerning the district court's decision to grant summary judgment in the district court, and subsequently filed the same in this Court on April 16, 2020. (15 JA 3055-3082).

12. Prior to the district court's ruling on Ms. Cohen's motion for reconsideration, on March 11, 2020, the Padda Defendants filed a Motion for Attorneys' Fees, seeking a total of \$279,167.50 in attorneys' fees from Ms. Cohen due to Ms. Cohen's rejection of the Offer. (10 JA 1976-2164).

13. On March 25, 2020, Ms. Cohen filed her Opposition to the Padda Defendants' Motion, arguing that given the strength of Ms. Cohen's case and the amount of damages she was seeking, it was wholly reasonable for her to reject the Offer, rendering an award of attorneys' fees improper under the *Beattie* factors. (10 JA 2174-2187; 11 JA 2188-2416; 12 JA 2417-2650; 13 JA 2651-2880; 14 JA 2881-3039).

14. On April 9, 2020, the Padda Defendants filed their Reply in Support of their Motion for Attorneys' Fees. (15 JA 3083-3226).

15. On April 29, 2020, the district court denied the Padda Defendants' Motion for Attorneys' Fees because the court found that the Offer was reasonable only as to its timing and that Ms. Cohen's rejection of the Offer was not grossly unreasonable or in bad faith given the circumstances. (15 JA 3227-3230; 3228:21-24).

16. On May 11, 2020, the Padda Defendants filed their Notice of Cross-Appeal. (15 JA 3238-3248).

IV. SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion when it denied the Padda Defendants' Motion for Attorneys' Fees. While the Padda Defendants argue in their Opening Brief that Ms. Cohen's actions were unreasonable due to the district court concluding that she was ultimately barred from recovering in this matter, Ms. Cohen had legitimate good faith bases upon which to believe that she would be entitled to her claimed damages. It would be improper for the Court to find that the district court abused its discretion and that Ms. Cohen acted unreasonably simply because ultimately the district court ruled in favor of the Padda Defendants on summary judgment on a narrow and distinct issue. There is no established precedent in Nevada that would permit Mr. Padda to breach his continuing fiduciary obligations owed to Ms. Cohen and allow the Padda Defendants to defraud her out of millions of dollars with complete immunity simply because Ms. Cohen fell behind on her

CLEs. It was entirely reasonable for Ms. Cohen to reject the Offer for \$150,000.00 when she had every reason to believe she would be recovering over \$3 million at trial.

Further, the district court did not abuse its discretion by not explicitly stating its findings as to the reasonableness of the amount of the Offer, as it was implicitly clear that the district court found it to be unreasonable. Nevada law is clear that explicit findings are not required for a decision awarding or denying attorneys' fees under *Beattie* to be upheld. Lastly, the district court did not abuse its discretion by failing to address the reasonableness of the fees requested by the Padda Defendants. Nevada law is clear that when all three good faith factors weigh in favor of the offeree, as was the case here, fees may not be awarded no matter how reasonable they may be. Thus, the district court did not abuse its discretion when denying the Padda Defendants' motion for attorneys' fees, and this Court should affirm the district court's ruling.

V. ARGUMENT

A. STANDARD OF REVIEW.

In determining whether to award attorney fees based on the rejection of an offer of judgment, the district court is to evaluate:

(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject

the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). When a district court properly evaluates the *Beattie* factors, its decision to grant or deny attorney fees will not be disturbed absent a clear abuse of discretion. *LaForge v. State, Univ. & Cmty. Coll. Sys. Of Nev.*, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000). However, when “the district court determines that the three good-faith *Beattie* factors weigh in favor of the party that rejected the offer of judgment, the reasonableness of the fees requested by the offeror becomes irrelevant, and cannot, by itself, support a decision to award attorney fees to the offeror.” *Frazier v. Drake*, 131 Nev. 632, 644, 357 P.3d 365, 373 (Nev. App. 2015).

An abuse of discretion occurs when the court’s evaluation of the *Beattie* factors is arbitrary or capricious. *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 251, 955 P.2d 661, 672 (1998). A district court, however, is not required to make explicit findings on every *Beattie* factor to adequately exercise its discretion. *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 383, 283 P.3d 250, 258 (2016) (citations omitted); *see also Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001) (“Although explicit findings with respect to these factors are preferred, the district court’s failure to make explicit findings is not a per se abuse of discretion.”) (citing *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642

(1994)). Further, “[c]laims for attorney fees under NRS 17.115 and NRCP 68 are fact intensive. Thus, we will not disturb such awards in the absence of an abuse of discretion.” *Wynn*, 117 Nev. at 13, 16 P.3d at 428 (citing *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995)).

B. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION BY CONSIDERING ALL OF THE CIRCUMSTANCES SURROUNDING MS. COHEN’S REJECTION OF THE OFFER OF JUDGMENT IN DENYING A FEE AWARD.

The Padda Defendants’ primary argument is simply that since the district court ultimately concluded that Ms. Cohen was unable to recover any damages resulting from Mr. Padda’s fraud due to her failure to complete her CLE requirements, Ms. Cohen’s rejection of the Offer is *per se* unreasonable. The Padda Defendants completely ignore the concern highlighted by this Court in *Beattie*: “while the purpose of NRCP 68 is to encourage settlement, it is not to force plaintiffs unfairly to forego legitimate claims.” *Beattie*, 99 Nev. at 588, 668 P.2d at 274. Indeed, the Padda Defendants appear to suggest that because the district court ruled against Ms. Cohen on a discrete issue related to her standing to pursue the claims in this action, Ms. Cohen must have been acting in bad faith throughout the entire litigation. The Padda Defendants ignore that the district court itself noted that “[i]f Ms. Cohen is successful on her claim of fraudulent inducement, she would be able to address all of the claims she has pled in her complaint at trial,” and ultimately

rejected her claims only on the “narrow basis” of the licensing issue and feeling that the case could not proceed to trial. (8 JA 1711:15-22). The district court effectively held that but for Ms. Cohen’s suspension from the practice of law (a highly contested issue with no precedent under Nevada law) she would have been able to proceed to trial on all of her claims.²

The Padda Defendants further argue that affirming the district court’s order on this matter would undermine the purpose of NRCP 68. In reality, if the Padda Defendants’ arguments were to be accepted, every party that fails to prevail on a claim due to a legal issue would be deemed to have proceeded unreasonably and in bad faith. Such a finding would completely circumvent the purpose of NRCP 68 and unfairly force litigants to forego legitimate claims, which is a result that would be in complete contrast to this Court’s holding in *Beattie*.

While the Padda Defendants insist on only focusing as to whether Ms. Cohen was successful on her claims, the *Beattie* factors require only that claims be brought in good faith. At the time the Padda Defendants served Ms. Cohen with the Offer, Ms. Cohen had every reason to believe that she would be successful on her claims against the Padda Defendants. Ms. Cohen had concrete evidence establishing that

² Ms. Cohen has filed an appeal of the district court’s Order Granting Summary Judgment based on this narrow issue that is currently pending before this Court.

Mr. Padda defrauded her and abused his trusted relationship with Ms. Cohen when he deliberately misled Ms. Cohen that the Moradi Case was “in the toilet,” and led her to believe that there was little hope of recovery in the Garland and Cochran cases. The Padda Defendants, on the same day as they served the Offer, filed their motion for summary judgment that contained zero case law from Nevada that would have established that Ms. Cohen was not entitled to the damages she was seeking based on a failure to reinstate her license. (5 JA 173:15-24; 174:1-11). Indeed, the Padda Defendants admitted, in their motion, that the position they argued to the court was “not expressly stated in the model rules.” (5 JA 173:16).

The first time Nevada case law was cited with regard to whether Ms. Cohen was barred from recovering her one-third interest in any fees obtained in partnership cases due to falling behind on CLE was in Ms. Cohen’s opposition, long after the Offer had expired as a matter of law. In her opposition, Ms. Cohen cited to *Shimrak v. Garcia-Mendoza*, 112 Nev. 246, 912 P.2d 822 (1996), a case which permitted fee-splitting with a non-lawyer. (4 JA 648:6-16). Even in the Padda Defendants’ reply they presented no Nevada law to support their position, only addressing the case cited by Ms. Cohen. Incredulously, in the Padda Defendants’ attempts to distinguish *Shimrak* from Ms. Cohen’s case, they argued that Ms. Cohen was “guilty of the greatest moral fault” between the two parties because she fell behind on her CLEs,

as opposed to Mr. Padda who had intentionally defrauded his mentor, who was over seventy years old, out of over \$3 million. (8 JA 1666:3-4).

The Padda Defendants then seek to fault Ms. Cohen for not introducing certain case law in her opposition to the motion for summary judgment, but later introducing those cases in her motion for reconsideration. (Cross-Appellants' Opening Brief ("CAOB"), at 24). The Padda Defendants do not mention to the Court that the licensing issue was one of many arguments raised in the motion for summary judgment, all of which Ms. Cohen addressed. (4 JA 628-659). When the district court ultimately focused on only the licensing issue when making its decision, it obviously meant that when Ms. Cohen moved for reconsideration she could focus the entirety of her argument as to that one narrow issue. While the Padda Defendants point to this as underhanded or deceptive in their Opening Brief, Ms. Cohen was completely transparent with the district court about these cases and that they were being raised to the district court for the first time on reconsideration. (8 JA 1728:9-10; 10 JA 2168:15-16). Once again, the Padda Defendants want the Court to view the events underlying this appeal with the benefit of hindsight despite the fact that neither party knew the district court would focus entirely on this single issue and consider nothing else.

The fact that Ms. Cohen's motion for reconsideration more thoroughly addressed the sole issue the district court ultimately based its decision on, as well as

presenting additional case law, is not in any way indicative of bad faith. Doing so is completely proper and has served as a basis upon which district courts have granted reconsideration in the past. *See Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217, 606 P.2d 1095, 1097 (1980) (holding that the district court did not abuse its discretion when it granted reconsideration because of newly cited case law). Moreover, the Padda Defendants' argument that Ms. Cohen could not possibly have relied on these authorities when rejecting the Offer because this law was not cited in her opposition to summary judgment is without any evidentiary support or merit. Ms. Cohen believed that relying on binding Nevada case law from *Shimrak* was sufficient to advance her position that the mere lapse of her CLEs and decision to retire from the practice of law altogether does not grant a license to the Padda Defendants to breach their contractual and fiduciary obligations owed to her.

As stated above, the Padda Defendants' argument boils down to this: Ms. Cohen lost, therefore her pursuit of her claims was unreasonable. The Padda Defendants cite to no law that supports this position, as no such law exists. Such a position runs completely afoul to the purpose of the offer of judgment rule and Nevada public policy. *See Beattie*, 99 Nev. at 588, 668 P.2d at 274 (purpose of the offer of judgment rule is not to penalize parties who pursue legitimate claims); *Frazier*, 131 Nev. at 644, 357 P.3d at 373 (stating that unfairly penalizing parties who reject unreasonably low offers of judgment and proceed on their claims in good

faith, despite losing at trial, “is the exact result that the Nevada Supreme Court sought to avoid” by enacting the *Beattie* factors). If simply losing at trial rendered a party’s position inherently unreasonable or meant they proceeded in bad faith, the first and third *Beattie* factor would be rendered entirely superfluous. This is why *Beattie* vests the district courts with full discretion as to whether a resulting fee award is warranted in a particular case. *LaForge*, 116 Nev. at 423, 997 P.2d at 136 (holding that a district court’s decision as to an award of fees under NRCP is entirely discretionary and will not be disturbed absent a clear abuse of discretion).

Here, the district court considered the entire realm of facts surrounding the case and Ms. Cohen’s reasons for bringing her claims, the damages she was seeking, and the reasons for rejecting the Offer, which were briefed in detail. (10 JA 2174-2187). Without citing to any supporting legal authority, the Padda Defendants argue that the fact Ms. Cohen was seeking over \$3 million in damages is not relevant when considering whether the Offer was reasonable and whether Ms. Cohen acted reasonably in rejecting it. But, as already established in Nevada, the amount of damages sought by the plaintiff is incredibly relevant to the district court’s analysis of whether an offer of judgment is reasonable. *See O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 556, 429 P.3d 664, 669 (Nev. App. 2018) (holding that district court abused its discretion relating to the reasonableness of the amount of an offer when it failed to properly consider the damages being sought at the time the offer

was made). Thus, the district court specifically found that Ms. Cohen's rejection of the Offer was reasonable considering she was seeking over \$3 million from the Padda Defendants (the Offer was for approximately 4.5% of the damages sought). (15 JA 3235:23-24). Such a finding is squarely within the district court's discretion, and there is no basis upon which to find the district court acted arbitrarily or capriciously.

The Padda Defendants further argue that the district court's decision that Ms. Cohen was barred from recovery cannot be reconciled with the district court finding Ms. Cohen proceeded in good faith. Such an assertion is baffling. Once more, the Padda Defendants are asking this Court to find that only victorious parties can be deemed to have proceeded in good faith. This completely ignores the reality that parties who proceed in good faith can lose. There is absolutely nothing inconsistent with the district court finding that while it disagreed with Ms. Cohen's legal position and ability to recover damages in this case, it nonetheless believed she brought those claims in good faith.

Ms. Cohen should not be penalized for failing to predict that her claims would be dismissed based on a narrow and highly contested issue in which there is no controlling precedent in Nevada. This is not the purpose of NRCP 68, and this case serves as the very template where the penalty provisions of an offer of judgment would be truly unjust. To prosecute the Padda Defendants' fraud, Ms. Cohen had

the evidence on her side. Ms. Cohen had the law on her side. Ms. Cohen's claims only failed because she fell behind on her CLEs and, due to her poor health, her age, and her decisions to retire, decided not to renew her license. That should not result in Mr. Padda being given complete immunity to defraud her out of \$3.3 million. As stated above, the district court itself noted that "[i]f Ms. Cohen is successful on her claim of fraudulent inducement, she would be able to address all of the claims she has pled in her complaint at trial," but ultimately rejected her claims solely on the "narrow basis" of the licensing issue and feeling that the case could not proceed to trial. (8 JA 1711:15-22). Thus, the district court properly exercised its discretion when it found Ms. Cohen proceeded reasonably with her claims and denied the Padda Defendants' request for attorneys' fees was proper.

C. THE DISTRICT COURT PROPERLY ACTED WITHIN ITS DISCRETION WHEN IT DID NOT MAKE AN EXPLICIT FINDING ON WHETHER THE OFFER WAS REASONABLE AS TO ITS AMOUNT BECAUSE DISTRICT COURTS ARE NOT REQUIRED TO MAKE EXPLICIT FINDINGS ON EVERY *BEATTIE* FACTOR.

Under Nevada law, a district court is not required to explicitly address every *Beattie* factor when ruling on whether to grant or deny attorneys' fees pursuant to NRCP 68. *See Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 383, 283 P.3d 250, 258 (2016) (citations omitted); *see also Wynn*, 117 Nev. at 13, 16 P.3d at 428 ("Although explicit findings with respect to these factors are preferred, the

district court's failure to make explicit findings is not a per se abuse of discretion.”). “If the record clearly reflects that the district court properly considered the Beattie factors, we will defer to its discretion.” *Wynn*, 117 Nev. at 13, 16 P.3d at 428–29 (citing *Schwartz*, 110 Nev. at 1049, 881 P.2d at 642). Further, “[d]istrict court need not . . . make explicit findings as to all of the factors where support for an implicit ruling regarding one or more of the factors is clear on the record.” *Schwartz*, 110 Nev. at 1049, 881 P.2d at 642 (citing *National Union Fire Ins. v. Pratt and Whitney*, 107 Nev. 535, 543–44, 815 P.2d 601, 606 (1991)). Thus, despite this Court having held on numerous occasions that such a failure does not constitute an abuse of discretion, the Padda Defendants base one of their arguments entirely upon this issue.

The district court's order in this matter clearly illustrates that the district court considered the *Beattie* factors and fully reviewed the briefs and arguments on the matter. (15 JA 3235:2-5; 3235:11-22). The Padda Defendants raise no argument to support their contention that the district court abused its discretion, aside from the fact the district court disagreed with them. Indeed, the Padda Defendants affirmatively argue that the district court was fully aware of the arguments they are making now when it made its decision: “The Padda Parties made virtually this same argument to the district court.” (CAOB, 29). The district court fully considered these arguments, disagreed with the Padda Defendants, and explicitly stated that it

found that the Offer was only reasonable as to its timing. (15 JA 3235:22-23). While the district court does not explicitly state that the Offer was unreasonable as to its amount, such can be clearly inferred by the district court's precise language and ruling, rendering the decision proper. *See Schwartz*, 110 Nev. at 1049, 881 P.2d at 642 (stating that where implicit support for a ruling on one or more of the *Beattie* factors is clear on the record, explicit findings as to all factors are not necessary).

The only argument the Padda Defendants offer is, once again, that because Ms. Cohen's claims were rejected, the Offer should be seen as reasonable, no matter what damages Ms. Cohen sought at the time. This is not a case involving a district court that wholly failed to consider one of the *Beattie* factors. The Padda Defendants bear the burden of establishing that the district court abused its discretion, and they cannot meet that burden by simply stating that the district court disagreed with their position after careful consideration. The district court was intimately familiar with the facts of this case and crafted its decision based on those facts, and this Court should not second guess the district court's findings based on purely factual arguments the district court already considered. *See Wynn*, 117 Nev. at 13, 16 P.3d at 428 (citing *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995)) (“[c]laims for attorney fees under NRS 17.115 and NRCP 68 are fact intensive. Thus, we will not disturb such awards in the absence of an abuse of discretion.”).

D. THE DISTRICT COURT PROPERLY ACTED WITHIN ITS DISCRETION WHEN IT DECLINED TO ADDRESS THE REASONABLENESS OF THE PADDA DEFENDANTS' REQUESTED FEES BECAUSE WHEN THE GOOD FAITH FACTORS ALL WEIGH IN FAVOR OF THE OFFEREE, NO FEES MAY BE AWARDED NO MATTER HOW REASONABLE THEY MAY BE.

The district court was under no obligation to consider the reasonableness of the fees requested by the Padda Defendants due to the simple fact that all three good faith *Beattie* factors weighed in favor of Ms. Cohen. The district court believed that Ms. Cohen proceeded in good faith, as it acknowledged even when dismissing her claims that, absent this “narrow” issue, she would have been able to address all of her claims at trial. (8 JA 1711:15-22). Nor did the Padda Defendants allege that the district court erred as to the first *Beattie* factor except to the extent that the district court considered the amount of Ms. Cohen’s damages, which, in reality, the district court only considered with regard to the second and third *Beattie* factor.

The second *Beattie* factor weighed in favor of Ms. Cohen. The district court carefully stated that only the timing of the Offer was reasonable. (15 JA 3235:22-23). The timing of an offer is of relatively little importance if the amount of the offer is unreasonable. In order for the second *Beattie* factor to have weighed in favor of the Padda Defendants, the Offer needed to be “reasonable and in good faith in *both* its timing and amount.” *Beattie*, 99 Nev. 588-89, 668 P.2d at 274 (emphasis added).

Because the Offer was not reasonable as to both the timing and amount, this factor weighed in favor of Ms. Cohen.

Lastly, the district court explicitly held that Ms. Cohen's rejection of the Offer "was not grossly unreasonable or in bad faith" as was discussed in detail above. (15 JA 3235:23-24). As a result, all three of the good faith *Beattie* factors weighed in favor of Ms. Cohen. Thus, the reasonableness of the requested attorneys' fees is irrelevant, as any award of fees in such a situation has been deemed improper in Nevada. *See Frazier*, 131 Nev. at 644, 357 P.3d at 373 (holding that when "the district court determines that the three good-faith *Beattie* factors weigh in favor of the party that rejected the offer of judgment, the reasonableness of the fees requested by the offeror becomes irrelevant, and cannot, by itself, support a decision to award attorney fees to the offeror."). Accordingly, the district court properly acted within its discretion when it deliberately declined to address the reasonableness of the Padda Defendants' requested fees since such an analysis was rendered moot.

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VI. CONCLUSION

Based on the foregoing, Ms. Cohen respectfully requests that the Court affirm the district court's Order denying the Padda Defendants' motion for attorneys' fees and costs.

Dated this 10th day of March, 2021.

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VERIFICATION

I, Liane K. Wakayama, Esq., declare as follows:

1. I am one of the attorneys for Ruth L. Cohen.
2. I verify that I have read and compared the foregoing CROSS-RESPONDENT'S ANSWERING BRIEF and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.
3. I, as legal counsel, am verifying the Answering Brief because the questions presented are legal issues, which are matters for legal counsel.
4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 10th day of March, 2021.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 6,813 words; or

☐ does not exceed _____ pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 10th day of March, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CROSS-RESPONDENT'S ANSWERING BRIEF** was filed electronically with the Nevada Supreme Court on the 10th day of March, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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