

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

2 BETTY CHAN, et al.

Case No. 82208

3 Appellants,

4 v.

5 WAYNE WU, et al.

6 Appellees.

**MOTION TO DISMISS
SECOND APPEAL**

Electronically Filed
Jul 06 2021 04:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 COMES NOW, APPELLEES by and through their attorneys at the law firm
8 Blackrock Legal, LLC., and hereby submit this *Motion to Dismiss Second Appeal*
9 (hereafter “Motion”) on the grounds set forth in the Points and Authorities herein,
10 Exhibits attached hereto and any paper or pleadings on file with this court.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **ISSUES PRESENTED**

13 One of the main issues before the Court is whether Appellants second appeal
14 of multiple orders from the district court is actually appealable. Appellants failed to
15 timely appeal several of the Orders they seek to have this Court review. This Court
16 has already denied the previous attempt to appeal some of the same issues raised
17 again in this matter. Appellants missed the deadline to appeal the sufficiency of the
18 arbitration award and may now only appeal the issues decided by the final order.
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21 **BACKGROUND**

22 This case is based upon the vexatious claims of Betty Chan (hereafter “Ms.
23 Chan”), who is unwilling to accept her own shortfalls related to the purchase of a
24 residential home. An arbitration panel awarded her \$3,448.83 (25%) of a
25 \$13,795.32 commission. Arbitration at GLVAR determined that Wayne Wu was
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1 the procuring real estate agent for the sale of real property located at located at
2 477 Cabral Peak Street, Las Vegas, Nevada 89138, (hereinafter “Subject
3 Property”) and awarded him the larger share of the commission.
4

5 Following that decision, Ms. Chan continued her litigious activities and
6 sought to overturn the decision of the Arbitration Panel. The district court found
7 the arbitration binding on August 22, 2018 and signed the Order Denying the
8 Motion to Vacate on September 18, 2018.¹ Ms. Chan again petitioned for the Court
9 to overturn the Arbitration Award and again her request was struck down on
10 October 31, 2018. The Court granted the Respondents’ request for Summary
11 Judgment. On March 22, 2019, the district court issued the Order Granting
12 Defendant’s Countermotion for Summary Judgment and Attorney Fees and Costs.²
13

14 Ms. Chan then attempted to appeal the September 18, 2018 order months
15 after her window for an appeal had passed. This Court dismissed Ms. Chan’s
16 appeal for multiple reasons. On May 14, 2020, this Court issued an *Order*
17 *Dismissing Appeal* (attached as **Exhibit “4”**). This Court listed several reasons
18 why the appeal should be dismissed: the March 22, 2019 Order cannot be appealed
19 under NRS 38.247(1)(c); the March 22, 2019 Order was not a final order, and
20 finally, there is “no statute or court rule allow[ing] an appeal from an order
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27 ¹ **Exhibit “1”** Order Denying Motion to Vacate or Modify Arbitration Award, Sep,
18, 2018.

28 ² Attached as **Exhibit “3”**.

1 declaring someone to be a procuring cause.”³ This Court also correctly ruled that
2 Ms. Chan’s attempted appeal of the September 18, 2018 Order was untimely.

3 Following this Court’s decision to dismiss the matter, Appellees filed their
4 motion seeking summary judgment on their claim of abuse of process and an
5 award of additional attorney’s fees and costs pursuant to the *Agreement to*
6 *Arbitrate* (attached as **Exhibit “5”**). Ms. Chan responded opposed. On July 21,
7
8 2020, the Honorable Eric Johnson entertained the pleadings and entered an order
9 on November 23, 2020 (hereafter “Final Order” and attached as **Exhibit “6”**). The
10 Final Order granted summary judgment against Appellees’ claim for abuse of
11 process and awarded additional attorney’s fees against Ms. Chan.
12

13
14 Only two things have changed since this Court made the correct decision in
15 dismissing Ms. Chan’s first appeal: Appellees’ claim for abuse of process was
16 dismissed; and more fees and costs were awarded against Ms. Chan. The
17 untimeliness of her appeal has not and cannot change. There is no statute allowing
18 her to appeal an order determining the procuring cause. There is no statutory
19 pathway for her to appeal the arbitration award three years later. Ms. Chan claims
20 she is fighting a battle for justice, even going to the lengths of comparing herself to
21 Thurgood Marshall in Brown v. Board of Education. Ms. Chan is seeking
22 retribution for her bruised ego and trying to fulfill her prophetic statement that she
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28 ³ See **Exhibit “4”**.

1 would “teach [Appellees] a lesson.”⁴ This Court should dismiss any claim related
2 to procuring cause or confirmation of the arbitration award.

3 LEGAL ARGUMENT

4 I. THE ISSUE OF WHO WAS THE PROCURING CAUSE HAS 5 ALREADY BEEN DECIDED AND CANNOT BE APPEALED

6 This court has already determined that there is no statutory pathway for
7
8 appealing an order determining the procuring cause in a real estate transaction. In
9 the May 14, 2020, Order dismissing Ms. Chan’s previous appeal, this Court was
10 very specific: “no statute or court rule allows an appeal from an order declaring
11 someone to be a procuring cause.”⁵ In Horvath v. Gladstone, this Court discussed
12 *res judicata* extensively: “[t]he doctrine of *res judicata* precludes parties or their
13 privies from relitigating a cause of action which has been finally determined by a
14 court of competent jurisdiction.”⁶ This Court outlined the three elements for
15
16 determining whether *res judicata* will apply: “(1) whether the issue decided in the
17 prior adjudication was identical with the issue presented in the action in question;
18
19 (2) whether there was a final judgment on the merits; and (3) whether the party
20 against whom the judgment is asserted was a party or in privity with a party to the
21 prior adjudication.”⁷ These elements are satisfied in this matter.
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26 ⁴ See **Exhibit “2”**.

27 ⁵ See **Exhibit “4”**.

28 ⁶ Horvath v. Gladstone, 97 Nev. 594, 596, 637 P.2d 531, 533 (1981).

⁷ *Id.*

1 **(1) Whether the issue decided in the prior adjudication was identical**
2 **with the issue presented in the action in question.**

3 The issues Ms. Chan is trying to re-litigate are identical to the matters
4 previously adjudicated. This Court stated that “the doctrine (issue preclusion or *res*
5 *judicata*) is intended to prevent multiple litigation causing vexation and expense to
6 the parties and wasted judicial resources by precluding parties from relitigating
7 issues they could have raised in a prior action concerning the same controversy.”⁸
8 In other words, if a party could have asserted a claim in a prior action but did not,
9 they are precluded from raising that issue later if the parties are the same and the
10 judgment is final.
11

12 **(2) Whether there was a final judgment on the merits.**
13

14 The previous order from this Court rejected the notion that Ms. Chan could
15 appeal an order regarding procuring cause. This order is attached as **Exhibit “4”**.
16 Ms. Chan was represented by counsel when this matter came before this Court in
17 the first appeal. *Ballentine’s Law Dictionary* defines a final order as in the context
18 of *res judicata* as “any judicial decision upon a question of law or fact which is not
19 provisional and subject to change in the future by the same tribunal.”⁹ This Court’s
20 previous decision was a judicial decision and is not provisional or subject to
21 change by this tribunal. As such, this Court issued a final judgment on the merits of
22 Ms. Chan’s claim that an appeal can be taken regarding the procuring cause.
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27 ⁸ *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994).

28 ⁹ *Ballentine’s Law Dictionary* 3rd Ed. “final judgment.”

1 **(3) Whether the party against whom the judgment is asserted was a**
2 **party or in privity with a party to the prior adjudication.**

3 The parties in this matter are also identical. The previous appeal contains the
4 same appellants and appellees. There is no dispute that the parties are different thus
5 this element of *res judicata* is easily satisfied in this matter.
6

7 Since this Court determined that there is no statutory method for appealing
8 the confirmation of the arbitration award and the procuring cause, any of those
9 issues included by Ms. Chan's appeal are estopped by the doctrine of *res judicata*.
10
11 As such, this Court should dismiss those claims with prejudice.

12 **II. MS. CHAN'S APPEAL OF THE ARBITRATION AWARD IS STILL**
13 **UNTIMELY**

14 The deadline to appeal the District Court's decision on the appropriateness
15 of the GLVAR arbitration award and the various questions of law related thereto,
16 including procuring cause, has passed. NRAP 4(a)(1) provides that a party may
17 appeal a judgment "no later than 30 days after the date that written notice of entry
18 of the judgment or order appealed from is served." The *Order Denying Motion to*
19 *Vacate or Modify Arbitration Award* was filed and served on or about September
20 18, 2018. Appellant did not file her first *Notice of Appeal* until April 22, 2019. The
21 second *Notice of Appeal* was filed on December 14, 2020. Thus, all issues related
22 to the sufficiency of the GLVAR arbitration award and the determination of the
23 procuring cause cannot stand on appeal. The *Order Denying Motion to Vacate or*
24 *Modify Arbitration Award* was automatically affirmed. Therefore, the majority of
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1 the claims addressing the GLVAR arbitration should be dismissed entirely,
2 including:

- 3 1. Whether Nevada law allowed for more than one buyer's agent to be the
4 procuring cause of a property sale and thereby required a commission
5 split with a subsequent buyer's agent.¹⁰
- 6 2. Whether the arbitration award was arbitrary and capricious,
7 unsupported by applicable agreements, and/or based on a manifest
8 disregard for the law.¹¹
- 9 3. Whether the District Court erred by affirming the arbitration award on
10 the basis of insufficient and/or flawed findings of fact and conclusions of
11 law.¹²
- 12 4. Whether the arbitration panel exceeded its authority in making its
13 award.¹³

14 These findings were determined by the September 18, 2018 Order. This Court
15 lacks jurisdiction to entertain an untimely appeal.

16 Ms. Chan may argue that the March 22, 2019 Order restarted the appeal
17 period and thus, Ms. Chan preserved her right to appeal by timely appealing in
18 April 2019. However, this Court already determined that the March 22, 2019 Order
19 could not be appealed. When this Court dismissed Ms. Chan's previous appeal this
20 Court stated as follows: "First it appears that the March 22, 2019, order may not be
21 appealable under NRS 38.247(1)(c) as an order confirming an arbitration award
22 because that order does not actually confirm an arbitration award. The Order
23 merely states that it affirms the previous confirmation order, entered September 18,
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26 ¹⁰ See Appellant's *Docketing Statement* at Page 4.

27 ¹¹ See Appellant's *Docketing Statement* at Page 4.

28 ¹² Id.

¹³ Id.

1 2018. To the extent the March 22, 2019, order can be construed as an order
2 confirming the arbitration award, it appears superfluous and unappealable.”¹⁴ In
3 other words, the March 22, 2019 Order purporting to affirm the previous decision
4 could not have restarted the appeal period. The language in the March 22, 2019
5 Order regarding the arbitration award was “superfluous and unappealable.”
6 Though Ms. Chan timely appealed the March 22, 2019 Order, that order was not
7
8 appealable. Arguments that the March 22, 2019 Order revived the appeal period
9 are meritless. Ms. Chan waited too long to appeal. The March 22, 2019 Order
10 explicitly states that the “September 18, 2018 Order is affirmed wherein Wu was
11 determined to procuring cause and the arbitration award was confirmed.”¹⁵
12
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14 **III. THERE IS NO STATUTORY SCHEME ALLOWING FOR MS.**
15 **CHAN’S PRESENT APPEAL TO PROCEED**

16 This Court was clear that there was no statutory method for Ms. Chan to
17 appeal the order confirming the arbitration award. This court stated that “no statute
18 or court rule allows an appeal from an order declaring someone to be a procuring
19 cause.”¹⁶ NRS 38.247(1)(c) & (1)(f), part of the Uniform Arbitration Act of 2000
20 are the statutory avenues for appealing arbitration awards. NRS 38.247(1)(c)
21 allows for the appeal of “[a]n order confirming or denying confirmation of an
22 arbitration award.” NRS 38.247(1)(f) allows for the appeal of a “final judgment
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27 ¹⁴ See **Exhibit “4”**.

28 ¹⁵ See **Exhibit “3”**.

¹⁶ See **Exhibit “4”**.

1 entered pursuant to NRS 38.206 to 38.248, inclusive.” In other words, appeals may
2 be filed on orders confirming an arbitration award, or from orders arising from the
3 Uniform Arbitration Act of 2000. Ms. Chan had a pathway for appeal pursuant to
4 NRS 38.247(1)(c) had she elected to timely appeal the September 18, 2018 Order.
5 That was the order which confirmed the arbitration award. It was not a final
6 judgment, but it was the order confirming the award and the appropriate order to
7 appeal. Instead, Ms. Chan waited years to file the present appeal. The final order
8 did not address anything related to the procuring cause.
9

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11 Appellees argue that the Final Order is not an order pursuant to NRS 38.206
12 to 38.248, as required by NRS 38.247(1)(f). It was an order resolving the
13 counterclaims and attorney’s fees. There were two different actions in this matter.
14 The first was Ms. Chan’s attempt to overturn the arbitration. This failed. The
15 second action involved the litigation that arose out of Ms. Chan’s litigious actions.
16 The final order entered in the second action adjudicated the abuse of process claim
17 and assessed more attorney’s fees. Ms. Chan is trying to take a second bite of the
18 apple. Courts must “construe statutes to give effect to every provision and ensure
19 that no provision is rendered meaningless or superfluous.”¹⁷ This Court has been
20 clear that it will always ““avoid statutory interpretation that renders
21 language meaningless or superfluous,' and '[i]f the statute's language is clear and
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28 ¹⁷ Leordeanu v. Am. Prot. Ins. Co., 330 S.W.3d 239, 248 n.35 (Tex. 2010).

unambiguous, [this court will] enforce the statute as written.' Additionally, [the Court will] construe 'statutes to preserve harmony among them.'"¹⁸

Allowing Ms. Chan to continue this appeal, pursuant to an order which may be final, but is not a final order pursuant to NRS 38.206 to 38.248, renders NRS 38.247(1)(c) a nullity. This would allow a first shot at appealing an order confirming an arbitration award and **another** chance to appeal once a final order in litigation is entered. The legislature did not contemplate two chances to appeal. Nevada adopted the Uniform Arbitration Act of 2000 which “favor[s] efficient and expeditious enforcement of agreements to arbitrate.”¹⁹ Allowing for appeals to prolong the process is not efficient. This Court should dismiss Ms. Chan’s claims involving the determination of procuring cause and confirmation of the arbitration award. Ms. Chan can **only** appeal issues in the Final Order. Ms. Chan **cannot** have another chance to appeal when there is no applicable statutory scheme.

CONCLUSION

Any claims that Ms. Chan has brought related to the confirmation of the arbitration award or in relation to the procuring cause must be dismissed.

DATED this 6th day of JULY 2021.

By: /s/Michael A. Olsen, Esq.
MICHAEL A. OLSEN, ESQ. (NBN 6067)
THOMAS R. GROVER, ESQ. (NBN 12387)

¹⁸ State v. Steven P., 129 Nev. 692, 696, 309 P.3d 1041, 1043-44 (2013), see also Hobbs v. State, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011) and Canarelli v. Eighth Judicial Dist. Court, 127 Nev. 808, 814, 265 P.3d 673, 677 (2011).

¹⁹ *Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 718, 359 P.3d 113, 117 (Nev. 2015).



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SECOND APPEAL**

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10 **BLACKROCK LEGAL, LLC**
11 MICHAEL A. OLSEN, ESQ. (SBN 6076)
12 THOMAS R. GROVER, ESQ. (SBN 12387)
13 KEITH D. ROUTSONG, ESQ. (SBN 14944)
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15 Las Vegas, NV 89147
16 Telephone: (702) 855-5658
17 *Attorneys for Appellants*

18 Appellee, WAYNE WU, by and through his undersigned attorneys, the law
19 firm BLACKROCK LEGAL, LLC, hereby submits his *Appellee’s Appendix of*
20 *Exhibits in Support of Motion to Dismiss Second Appeal*, pursuant to EDCR
21 2.27(B).

<u>DATE</u>	<u>DOCUMENT</u>	<u>EXHIBIT NO.</u>
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1 11/9/2016 Agreement to Arbitrate “5”

2
3 11/23/2020 Order Granting in Part Defendants’ Motion for “6”
4 Summary Judgment, or in the Alternative, for
5 Contractual Award of Attorney’s Fees, for Writ of
6 Execution on Plaintiff’s Commissions Awarded
7 By Glvar Arbitration Panel, and Release of Bond
8 Deposited on Appeal and Order Granting
9 Plaintiffs’ Countermotion for Summary Judgment

10 DATED this 6th day of July 2021.

11 **BLACKROCK LEGAL, LLC**

12 /s/ Michael A. Olsen, Esq.
13 MICHAEL A. OLSEN, ESQ.
14 Nevada Bar No. 6076
15 THOMAS R. GROVER, ESQ.
16 Nevada Bar No. 12387
17 KEITH D. ROUTSONG, ESQ.
18 Nevada Bar No. 14944
19 *Attorneys for Appellants*
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11 **BLACKROCK LEGAL, LLC**

12 /s/ Michael A. Olsen, Esq.
13 MICHAEL A. OLSEN, ESQ.
14 Nevada Bar No. 6076
15 THOMAS R. GROVER, ESQ.
16 Nevada Bar No. 12387
17 KEITH D. ROUTSONG, ESQ.
18 Nevada Bar No. 14944
19 *Attorneys for Appellants*
20
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EXHIBIT “1”



1 **ORD**

2 MICHAEL A. OLSEN, ESQ.

3 Nevada Bar No. 6076

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5 Nevada Bar No. 14374

6 **Goodsell & Olsen, LLP**

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13 *Attorneys for Defendants/Counterclaimants*

14 *Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.*

15 *and Jerrin Chiu*

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

11 BETTY CHAN and ASIAN AMERICAN
12 REALTY & PROPERTY MANAGEMENT,

13 Plaintiffs/Counterdefendants,

14 v.

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

18 Defendants/Counterclaimants.

) Case No: A-16-744109-C

) Dept. No: XX

) **ORDER DENYING MOTION TO**
) **VACATE OR MODIFY**
) **ARBITRATION AWARD**

19 **APPEARANCES**

20 Michael A. Olsen, Esq. of Goodsell & Olsen, LLP, on behalf of Wayne Wu, Judith
21 Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants.

22 Todd E. Kennedy, Esq. of Kennedy & Couvillier, PLLC on behalf of Betty Chan and
23 Asian American Realty & Property Management, Plaintiffs/Counterdefendants.

24 This matter came on for hearing on August 22, 2018 before the Honorable Eric Johnson
25 regarding Plaintiffs/Counterdefendants' *Motion to Vacate or Modify Arbitration Award*
(hereafter "Motion to Vacate"), and Defendants/Counterclaimants' *Opposition to Motion to*
Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring
Cause, for Summary Judgment, and for Attorney Fees (hereafter "Countermotion"). The Court

1 having read and considered the papers and pleadings on file, having heard oral arguments made
2 at the time of hearing, and good cause appearing, therefore the Court makes the following
3 findings of fact and conclusions of law:

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. Because Betty Chan, Wayne Wu, and Judith Sullivan are all Realtors, the parties
6 recognize that the underlying dispute in this matter involving commission funds totaling
7 \$13,795.32 was required to be submitted to the Greater Las Vegas Association of Realtors
8 (hereafter "GLVAR") for binding arbitration. Plaintiff/Counterdefendant Betty Chan submitted
9 her *Request and Agreement to Arbitrate (Member)* (hereafter "Agreement to Arbitrate") to the
10 GLVAR seeking arbitration of the dispute.

11 2. The Agreement to Arbitrate contained express consent to arbitrate the dispute
12 between the parties through the GLVAR in accordance with the *Code of Ethics and Arbitration*
13 *Manual* subscribed to by Realtors.

14 3. This matter proceeded to an arbitration before a GLVAR arbitration panel on
15 April 17, 2018.

16 4. Plaintiffs/Counterdefendants have brought their Motion to Vacate seeking to
17 overturn or modify the arbitration award (hereafter "Award") that was duly entered by the
18 GLVAR arbitration panel on April 27, 2018. The Award determined, that of the \$13,795.32 in
19 total commission, \$3,228.83 was to be paid to Betty Chan and that the remaining \$10,346.49 was
20 to be paid to Defendant/Counterclaimant Wayne Wu.

21 5. Specifically, Plaintiffs/Counterdefendants have attempted to assert the Award
22 should be modified based on statutory and common law grounds, including that the GLVAR
23 purportedly exceeded its authority to arbitrate, acted in an arbitrary and capricious manner,
24 demonstrated manifest disregard for the law, or that the Award was procured by fraud.
25

1 6. Notwithstanding, the Court finds that Nevada law does not prohibit splitting a
2 commission between two individuals both claiming to be the procuring cause and therefore
3 Plaintiffs/Counterdefendants have failed to meet their burden of demonstrating clear and
4 convincing evidence of a violation under any of the standards asserted in the Motion to Vacate
5 that would justify modifying or vacating the Award.

6 ///

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

- 15 a. That the *Motion to Vacate or Modify Arbitration Award* is DENIED.
- 16 b. That pursuant to NRS 38.241(4) and NRS 38.242(2) the Arbitration Award of the
17 GLVAR arbitration panel is CONFIRMED.
- 18 c. That the Counter-Motion seeking summary judgment and an award of attorney
19 fees is taken under advisement, with supplemental briefing to be filed by the
20 Defendants/Counterclaimants by September 5, 2018;
- 21 d. That Plaintiffs/Counterclaimants shall have until September 19, 2018 to submit
22 any responsive briefing regarding the Counter-Motion as supplemented.
- 23 e. AND THAT a hearing on the Countermotion for Summary Judgment and for
24 Attorney's fees shall be held on October 10, 2018 at 8:30 a.m.
- 25

f. It is further ordered that the stay ordered by the Court pending resolution of the arbitration is lifted.

IT IS SO ORDERED this 14 ^{SEPT} of ~~AUGUST~~ 2018.



DISTRICT COURT JUDGE
ERIC JOHNSON *KM*

Prepared and submitted by:



MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

ROMAN C. HARPER, ESQ.

Nevada Bar No. 14374

GOODSELL & OLSEN, LLP

*Attorneys for Wayne Wu, Judith Sullivan,
Nevada Real Estate Corp. and Jerrin Chiu*

Approved by:



TODD E. KENNEDY, ESQ.

Nevada Bar No. 6014

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Nevada Bar No. 7661

KENNEDY & COUVILLIER, PLLC

*Attorneys for Betty Chan and Asian
American Realty & Property Management*

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17 *Attorneys for Appellants*

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18 Nevada Bar No. 14944
19 *Attorneys for Appellants*
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EXHIBIT “2”

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

(no subject)

7025951268@mms.att.net <7025951268@mms.att.net>

Fri, Feb 5, 2016 at 6:01 PM

To: aaroffer@gmail.com

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

9-2
1-9



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

2
3 BETTY CHAN, et al.

Supreme Court Case No. 82208

4 Appellants,

5 v.

6
7 WAYNE WU, et al.

8 Appellees.

**APPELLEE’S APPENDIX OF
EXHIBITS IN SUPPORT OF
MOTION TO DISMISS
SECOND APPEAL**

9
10 **BLACKROCK LEGAL, LLC**
11 MICHAEL A. OLSEN, ESQ. (SBN 6076)
12 THOMAS R. GROVER, ESQ. (SBN 12387)
13 KEITH D. ROUTSONG, ESQ. (SBN 14944)
14 10155 W. Twain Ave., Suite 100
15 Las Vegas, NV 89147
16 Telephone: (702) 855-5658
17 *Attorneys for Appellants*

18 Appellee, WAYNE WU, by and through his undersigned attorneys, the law
19 firm BLACKROCK LEGAL, LLC, hereby submits his *Appellee’s Appendix of*
20 *Exhibits in Support of Motion to Dismiss Second Appeal*, pursuant to EDCR
21 2.27(B).

<u>DATE</u>	<u>DOCUMENT</u>	<u>EXHIBIT NO.</u>
9/18/2018	Order Denying Motion to Vacate or Modify Arbitration Award	“1”
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1 11/9/2016 Agreement to Arbitrate “5”

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3 11/23/2020 Order Granting in Part Defendants’ Motion for “6”
4 Summary Judgment, or in the Alternative, for
5 Contractual Award of Attorney’s Fees, for Writ of
6 Execution on Plaintiff’s Commissions Awarded
7 By Glvar Arbitration Panel, and Release of Bond
8 Deposited on Appeal and Order Granting
9 Plaintiffs’ Countermotion for Summary Judgment

10 DATED this 6th day of July 2021.

11 **BLACKROCK LEGAL, LLC**

12 /s/ Michael A. Olsen, Esq.
13 MICHAEL A. OLSEN, ESQ.
14 Nevada Bar No. 6076
15 THOMAS R. GROVER, ESQ.
16 Nevada Bar No. 12387
17 KEITH D. ROUTSONG, ESQ.
18 Nevada Bar No. 14944
19 *Attorneys for Appellants*
20
21
22
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EXHIBIT “3”



ORDR

MICHAEL A. OLSEN, ESQ.

Nevada Bar No: 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

BLACKROCK LEGAL, LLC

10155 W. Twain Ave., Suite 100

Las Vegas, NV 89147

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Facsimile (702) 869-8243

mike@blackrocklawyers.com

tom@blackrocklawyers.com

Attorneys for Defendants/Counterclaimants

Wayne Wu, Judith Sullivan, Nevada

Real Estate Corp. and Jerrin Chiu

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,

v.

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

Defendants/Counterclaimants.

) Case No: A-16-744109-C

)

) Dept. No: XX

)

) **ORDER GRANTING**

)

) **DEFENDANTS**

)

) **COUNTERMOTION FOR**

)

) **SUMMARY JUDGMENT AND**

)

) **ATTORNEY FEES AND COSTS**

)

APPEARANCES

- Michael A. Olsen, Esq. of Goodsell & Olsen, LLP, on behalf of Wayne Wu,
Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu,
Defendants/Counterclaimants (hereinafter “Defendants”).
- Janiece S. Marshall, Esq. of Gentile Cristalli Miller Armeni Savarese on behalf of
Betty Chan and Asian American Realty & Property Management,
Plaintiffs/Counterdefendants (hereinafter “Plaintiffs”).

1 This matter came on for hearing on October 31, 2018 before the Honorable Eric Johnson
2 presiding on the Defendants *Countermotion for Summary Judgment, and for Attorney Fees [and*
3 *costs]* (hereafter “Countermotion”) and Plaintiffs *Opposition to recognize Wu as the Procuring*
4 *Cause, for Summary Judgment, and for Attorney Fees*. The Court having read and considered the
5 papers and pleadings on file, having heard oral arguments made at the time of hearing, and good
6 cause appearing, therefore the Court makes the following findings of fact and conclusions of
7 law:
8

9
10 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

11 1. The underlying dispute in this matter involves realtor commission funds totaling
12 \$13,795.32 for the real estate transaction on January 8, 2016 for the purchase of the home
13 located at 477 Cabral Peak Street, Las Vegas, Nevada 89138, APN # 137-34-119-012 by Dr.
14 Jerrin Chiu. This matter came before a GLVAR arbitration panel on April 17, 2018. The
15 arbitration panel heard all evidence and arguments of the parties and found that Wu (respondent)
16 was to be paid the \$10,346.49 of the commission funds due from the sale and Betty Chan
17 (complainant) was to be paid \$3448.83.
18

19 **A. COUNTERMOTION FOR SUMMARY JUDGMENT GRANTED**

20 2. This matter initially came on for hearing on August 22, 2018 before the
21 Honorable Eric Johnson regarding Plaintiffs *Motion to Vacate or Modify Arbitration Award*
22 (hereafter “Motion to Vacate”), and Defendants *Opposition to Motion to Vacate or Modify*
23 *Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary*
24 *Judgment, and for Attorney Fees* (hereafter “Countermotion”).
25

26 3. During the August 22, 2018 hearing, this Court denied Plaintiffs Motion to Vacate
27 or Modify Arbitration award finding: “that Nevada law does not prohibit splitting a commission
28 between two individuals both claiming to be the procuring cause and therefore

1 Plaintiffs/Counterdefendants have failed to meet their burden of demonstrating clear and
2 convincing evidence of a violation under any of the standards asserted in the Motion to Vacate
3 that would justify modifying or vacating the Award.” *See September 18, 2108 Order Denying*
4 *Motion to Vacate or Modify Arbitration Award.*

5
6 4. During that same August 22, 2018 hearing the Court further found that Wayne
7 Wu was the procuring cause and: “That pursuant to NRS 38.241(4) and NRS 38.242(2) the
8 Arbitration Award of the GLVAR arbitration panel is CONFIRMED; and That the Counter-
9 Motion seeking summary judgment and an award of attorney fees is taken under advisement,
10 with supplemental briefing to be filed by the Defendants/Counterclaimants by September 5,
11 2018.” *Id.* The Court hereby affirms its Order dated on or about September 18, 2018 Denying
12 Plaintiffs Motion to Vacate or Modify Arbitration Award and finding Wu to be the procuring
13 cause. The Court further notes the allowable time frame for Plaintiffs to file a Motion to
14 Reconsider the September 18, 2018 Order has passed.

15
16
17 5. The Court set the remaining Countermotion for Summary Judgment and For
18 Attorney’s fees and Costs to be heard on October 31, 2018, at which time all supplemental
19 briefing regarding the Defendants Countermotion for Summary Judgment and for Attorney’s
20 fees and costs, along with the Opposition to the same, was considered.

21
22 6. NRCP 56(c) provides that summary judgment shall be rendered if “the pleadings,
23 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
24 any, show that there is no genuine issue as to any material fact and that the moving party is
25 entitled to judgment as a matter of law.” The Nevada Supreme Court stated that a factual dispute
26 is “genuine” when the evidence is such that a rational trier of fact could return a verdict for the
27 nonmoving party. *Wood v. Safeway, Inc.*, 121 P.3d 1026 (2005). Once the moving party has
28 shown that there is no genuine dispute as to material facts, the burden shifts to the nonmoving

1 party to set forth specific facts demonstrating the existence of a genuine issue for trial or have
2 summary judgment entered against that party. In meeting this burden, the nonmoving party, "is
3 not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." *Id.*
4

5 7. The Arbitration Panel's award resolved all disputes the plaintiffs had against these
6 defendants, Wu, Sullivan, Nevada Real Estate Corp and Chiu. For the reasons stated above the
7 award is confirmed and Wu is confirmed as the procuring cause. This resolves the Plaintiff's
8 request for declaratory relief and claim of unjust enrichment. Because there are no genuine issues
9 as to any material fact left to be decided against these defendants in this case, summary judgment
10 in favor of the defendants is proper.
11

12 **B. COUNTERMOTION FOR ATTORNEY FEES AND COSTS GRANTED**

13 8. Defendants requested the Court award them their attorney fees and costs. After
14 considering the pleadings and arguments of counsel, attorney fees and cost are awarded in the
15 amounts of \$920.83 for costs and \$21,435.00 for legal fees.
16

17 9. The Court finds that the Defendants fees are reasonable and were actually
18 incurred in the confirmation and enforcement of the award of the Arbitration Panel. The Court
19 finds that the contractual provision contained in the Arbitration Agreement signed by both
20 Plaintiff and Defendant provided that "In the event [a party does] not comply with the award and
21 it is necessary for any party to obtain judicial confirmation and enforcement of the award against
22 me, [the party] agree[s] to pay that party costs and reasonable attorney's fees incurred in
23 obtaining such confirmation and enforcement."
24

25 10. The Court further finds that provision was reasonable and enforceable. As costs
26 were never challenged, the Court hereby ORDERS costs in the amount of \$920.83 pursuant to
27 Defendants' Memorandum of Costs and Disbursements, which was unopposed.
28

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

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

23
24 13. **Brunzell Factor #1:** "the qualities of the advocate: his ability, his training,
25 education, experience, professional standing and skill". Counsel for Defendants, Michael A.
26 Olsen, Esq. is a founding partner of his firm and has been a member of the State Bar of Nevada
27 for over twenty years. He is a graduate of Utah State University and BYU's J. Reuben Clark Law
28 School. His abilities as an advocate have been recognized through numerous awards and honors,

1 and Mr. Olsen's abilities have been honed through, among other experience, regular appearances
2 in the Eighth Judicial District Court on contested matters.

3 14. **Brunzell Factor #2:** "the character of the work to be done: its difficulty, its
4 intricacy, its importance, time and skill required, the responsibility imposed and the prominence
5 and character of the parties where they affect the importance of the litigation" This matter
6 involved complex legal issues including a determination of procuring cause and whether the
7 Arbitration Panel exceeded its authority pursuant to Nevada statute. Because the Plaintiff elected
8 to contest the validity of the Arbitration award it became incumbent on Defendant to defend the
9 award and have it confirmed by the Court. Defendant was successful in confirming and
10 enforcing the Arbitration Award.
11

12 15. **Brunzell Factor #3:** "the work actually performed by the lawyer: the skill, time
13 and attention given to the work". The Plaintiffs attempt to set aside the Arbitration Award and to
14 further litigate against the Defendants has required investment of a substantial amount of time
15 and effort to prepare and provide a proper defense, including against motion practice initiated by
16 the Plaintiffs. The fees and costs awarded were reasonably incurred in defending the actions
17 taken by Plaintiffs in this matter as set forth in detail above.
18

19 20 16. **Brunzell Factor #4:** "the result: whether the attorney was successful and what
21 benefits were derived". Defendants were ultimately successful in upholding and enforcing the
22 Arbitration Award, recognizing Wu as the procuring cause and thereby securing summary
23 judgment in favor of the Defendants.
24

25 17. While "good judgment would dictate that each of these factors be given
26 consideration by the trier of fact and that no one element should predominate or be given undue
27 weight," each factor strongly supports an award of attorneys' fees and costs in the favor of
28 Defendants.


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

- 2 a. That the September 18, 2018 Order is affirmed wherein Wu was determined the
3 procuring cause and the Arbitration Award was confirmed.
4
5 b. That the *Countermotion for Summary Judgment* is GRANTED
6
7 c. That the *Motion for Attorney's Fees and Costs* is GRANTED and that Attorney's
8 fees in the amount of \$21,435.00 and Costs in the amount of \$920.83 are hereby awarded
9 to Defendants.

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

11
12
13 
14 DISTRICT COURT JUDGE SS
15 ERIC JOHNSON
16

17 Prepared and submitted by:

18 
19 MICHAEL A. OLSEN, ESQ.
20 Nevada Bar No. 6076
21 THOMAS R. GROVER, ESQ.
22 Nevada Bar No. 12387
23 **GOODSELL & OLSEN, LLP**
24 *Attorneys for Wayne Wu, Judith Sullivan,*
25 *Nevada Real Estate Corp. and Jerrin Chiu*
26
27
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3 BETTY CHAN, et al.

Supreme Court Case No. 82208

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17 *Attorneys for Appellants*

18 Appellee, WAYNE WU, by and through his undersigned attorneys, the law
19 firm BLACKROCK LEGAL, LLC, hereby submits his *Appellee’s Appendix of*
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9 Plaintiffs’ Countermotion for Summary Judgment

10 DATED this 6th day of July 2021.

11 **BLACKROCK LEGAL, LLC**

12 /s/ Michael A. Olsen, Esq.
13 MICHAEL A. OLSEN, ESQ.
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19 *Attorneys for Appellants*
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EXHIBIT “4”

IN THE SUPREME COURT OF THE STATE OF NEVADA

BETTY CHAN; AND ASIAN
AMERICAN REALTY & PROPERTY
MANAGEMENT,

Appellants,

vs.

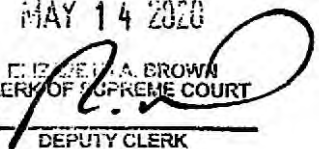
WAYNE WU; JUDITH SULLIVAN;
NEVADA REAL ESTATE CORP.;
JERRIN CHIU; AND KB HOME SALES-
NEVADA INC.,

Respondents.

No. 78666

FILED

MAY 14 2020

C. J. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This court previously ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellants have filed a response and respondents have filed a reply.¹

First, it appeared that the March 22, 2019, order may not be appealable under NRS 38.247(1)(c) as an order confirming an arbitration award because that order does not actually confirm an arbitration award. The order merely states that it affirms the previous confirmation order, entered September 18, 2018. To the extent the March 22, 2019, order can be construed as an order confirming the arbitration award, it appeared superfluous and unappealable. *See Campos-Garcia v. Johnson*, 130 Nev. 610, 331 P.3d 890 (2014).

Appellants seem to assert that the March 22, 2019, order substantively amended the September 18, 2018, order and is thus appealable as an amended judgment. *See* NRAP 4(a)(5). But the March 22,

¹Appellants' motion to strike the reply or for leave to file a sur-reply is denied.

2019, order does not amend the confirmation of the arbitration award. To the extent appellants challenge only the portion of the March 22, 2019, order declaring Wu to be the procuring cause, no statute or court rule allows an appeal from an order declaring someone to be a procuring cause.² See *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (this court “may only consider appeals authorized by statute or court rule”). And the order is not appealable under NRS 38.247(1)(c) because it does not actually confirm an arbitration award.

Second, it appeared that the March 22, 2019, order may not be appealable pursuant to NRS 38.247(1)(f) as a final judgment entered under NRS 38.206-.248 because appellants’ claims against KB Home Sales-Nevada Inc. and respondents’ counterclaims remained pending in the district court. Appellants respond that the finality requirements of NRS 38.247(1)(f) are inapplicable because the appeal challenges the confirmation of an arbitration award and pending claims do not defeat jurisdiction. Accordingly, appellants appear to concede that the March 22, 2019, order is not appealable under NRS 38.247(1)(f).³

²It appears appellants may also contend that the March 22, 2019, order is appealable as a special order after final judgment. See NRAP 3A(b)(8). However, appellants do not dispute that no final judgment has been entered in this action. In the absence of a final judgment, there can be no special order after final judgment.

³This court also identified two other potential jurisdictional defects—it appeared the notice of appeal was improperly filed by appellant Betty Chan, a non-attorney, on behalf of appellant Asian American Realty & Property Management, and the notice of appeal may have been prematurely filed prior to the resolution of a pending tolling motion. Given the conclusion that the March 22, 2019, order is not appealable, these issues are not discussed further.

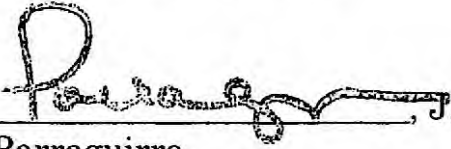
Appellants also seem to assert that the notice of appeal was timely filed from the September 18, 2018, order confirming arbitration award. That order was not identified in the notice of appeal and it does not appear reasonable to interpret the notice of appeal and the documents filed therewith as challenging that order. *See Abdullah v. State*, 129 Nev. 86, 90–91, 294 P.3d 419, 421 (2013) (stating the general rule that an order not included in the notice of appeal is not considered on appeal but recognizing that an appeal will not be dismissed if an intent to appeal from a judgment “can be reasonably inferred and the respondent is not misled”). However, even if the notice of appeal is construed as a challenge to the September 18, 2018, order, the notice of appeal was untimely filed on April 22, 2019, more than 30 days after service of notice of entry of that order on September 21, 2018. *See* NRAP 4(a)(1) (providing that a notice of appeal must be filed within 30 days after service of notice of entry of the order challenged on appeal); NRS 38.247(2) (providing that appeals from orders confirming an arbitration award are to be taken “as from an order or a judgment in a civil action”).

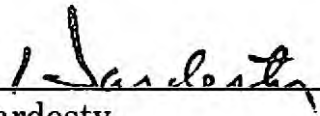
Appellants filed an amended notice of appeal on April 6, 2020, that purports to appeal from the March 22, 2019, order, a March 10, 2020, order, and “[a]ll prior court judgments, orders, rulings, and decisions” previously entered by the district court and that appellants are aggrieved by. To the extent this amended notice of appeal can be construed as an appeal from the September 18, 2018, order, the notice of appeal was untimely filed. The March 22, 2019, order is not independently appealable as discussed above. And the March 10, 2020, order, which grants in part a motion to resolve a pending motion, denies a motion for reconsideration,

denies a motion for summary judgment, and denies a motion to certify a judgment as final under NRCP 54(b), is also not substantively appealable.

Accordingly, it appears that this court lacks jurisdiction and this court

ORDERS this appeal DIMISSED.⁴


Parraguirre


Hardesty


Cadish

cc: Hon. Eric Johnson, District Judge
James A. Kohl, Settlement Judge
Frizell Law Firm, PLLC
Wood, Smith, Henning & Berman, LLP/Las Vegas
Blackrock Legal, LLC
Eighth District Court Clerk

⁴Respondents' request for attorney fees incurred on appeal is denied.



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10 DATED this 6th day of July 2021.

11 **BLACKROCK LEGAL, LLC**

12 /s/ Michael A. Olsen, Esq.
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19 *Attorneys for Appellants*
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EXHIBIT “5”

Greater Las Vegas Association of REALTORS®
1750 E. Sahara AV., Las Vegas, NV 89104
(702) 784-5052

REQUEST AND AGREEMENT TO ARBITRATE (MEMBER)
**PAGES 2, 3, 4 AND 5 MUST BE COMPLETED, SIGNED AND SUBMITTED
WITH A SUMMARY AND SUPPORTING DOCUMENTS
OR YOUR COMPLAINT WILL BE RETURNED TO YOU.**

DATE: 11/9/2016

CASE NUMBER: 162014 (assigned by GLVAR® staff)

1. The undersigned, by becoming and remaining a member of the Greater Las Vegas Association of REALTORS®, (or participate in its MLS), has previously consented to arbitration through the Association under its Rules and regulations.
2. Each person named below is a member in good standing of the Association or was a member at the time the dispute arose.
3. A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (list all persons and/or firms you wish to name as respondents to this arbitration):*

PLEASE NAME RESPONDENTS:

Judith Sullivan, Principal Broker of Nevada Real Estate Corp. Company
Wayne Wu, Agent of Nevada Real Estate Corp. Company

(Note: Arbitration is generally conducted between REALTORS® (principals) or between firms comprised of REALTOR® principals.)

4. There is due, unpaid, and owing to me (or I retain) from the above named person(s) the sum of \$ 13,795.32. My claim is predicated upon the statement attached, marked Exhibit "1", and supporting documents which are incorporated by reference into this application. **DO NOT STAPLE** your packet - turn in original complaint form and copies of supporting documents.
disputed funds are held by First American Title: Escrow No. 112-24908656.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

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

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

11/9/16
JK
1-1

6. I have enclosed my check in the sum of \$500.00 for the arbitration filing deposit of commissions of \$501.00 and above. I have enclosed my check in the sum of \$100.00 for the arbitration filing deposit of commissions \$500.00 and below which I understand is refundable to the prevailing party or if arbitration does not take place.
7. I understand that I may be represented by counsel and that I must provide written notice no less than (15) fifteen days before the hearing of the name, address and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party (ies) require representation.

All parties appearing at a hearing may be called as a witness without advance notice.

Notice of witnesses and legal and/or REALTOR® Counsel must be submitted at least 15 days prior to the hearing date. Each party shall arrange for his witnesses to be present at the time and place designates for the hearing. The following REALTOR® non-principal (or REALTOR-ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing:

8. I declare this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been in the exercise of reasonable diligence, whichever is later.
9. If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.
10. Are the circumstances giving rise to this arbitration request the subject of civil litigation? ☒ Yes ☐ No
11. Important note related to arbitration conducted pursuant to Standards of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standards of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.
12. Address of the property in the transaction given rise to this arbitration request
477 Cabral Peak Street, Las Vegas, NV89138
13. The sale/lease closed on: May 27 2016

Agreements to arbitrate are irrevocable except as otherwise provided under state law.

By submission of this complaint and / or response, I consent to receive communications sent from the Greater Las Vegas Association of REALTORS® via U.S. Mail, e-mail telephone or facsimile at the numbers and locations noted by you on this form. This permission includes all future U.S. mailing address, e-mail, telephone, which I might supply to the Greater Las Vegas Association of REALTORS®. Permission continues until / unless specifically revoked, in writing, to the Greater Las Vegas Association of REALTORS®.

Signature (Broker): Betty Chan
Broker's Name (print): Betty Chan
Company: Asian American Realty & Property Management
Address: 4651 Spring Mountain Road, Las Vegas, NV 89102

Signature (Agent): Betty Chan
Agent's Name (print): Betty Chan
Company: Asian American Realty & Property Management
Address: 4651 Spring Mountain Road, Las Vegas, NV 89102

Telephone: (702) 222-0078

Telephone: (702) 222-0078

NOTE: This Association offers voluntary mediation, binding only if parties reach a written, signed settlement.

Rev 2/5/16 JK



April 27, 2018

Nevada Real Estate Corp.
Mr. Wayne Wu (Agent) and
Judith Sullivan (Broker)
3512 Wynn Road
Las Vegas, NV 89103

VIA EMAIL and CERTIFIED MAIL

RE: Arbitration Case #16201A

Dear Mr. Wayne Wu,

Enclosed is a amended letter referencing the actual Award of Arbitrators decision for the above-referenced case. Please reference the "Award of Arbitrators" that actually states that \$3,448.83 to be paid by Respondent to Complainant, and the remaining \$10,346.49 be paid to Respondent from the title company.

The award must be paid no later than 5:00 p.m. on May 7, 2018, either directly to the Respondent or to the Greater Las Vegas Association of REALTORS®. The funds will be deposited in a GLVAR escrow account and are held by GLVAR pending the outcome of a procedural review and/or legal challenge. A request for procedural review must be filed within twenty (20) days of the award. Alternatively, a notice of legal challenge must be received within that same twenty (20) day period.

The appeal period runs until 5:00 p.m. on May 17, 2018. If no appeal is received by that date at the offices of the Greater Las Vegas Association of REALTORS®, 6360 S Rainbow Blvd., Las Vegas, NV 89118, a letter will be sent to all named parties and the file will be closed.

Please note our new location at 6360 S. Rainbow Boulevard, Las Vegas, NV 89118. If you should have any questions, please feel free to contact me.



GREATER LAS VEGAS ASSOCIATION OF REALTORS®

The Voice for Real Estate in Southern Nevada

1750 E. Sahara Avenue • Las Vegas, Nevada • 89104 • (702)784-5000 • FAX: (702)784-5060



www.LasVegasRealtor.com

Form #A-12

Greater Las Vegas Association of REALTORS®
1750 E Sahara Ave
Las Vegas, NV 89109
702-784-5000

Case #16201A

Award of Arbitrators

The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable dispute between

Betty Chan, Asian American Realty and Wayne Wu and Judith Sullivan, Nevada Real Estate Corp

Complainant

Respondent

certify that on April 17th, 2018, we heard the evidence of the parties and having heard all the evidence and arguments

of the parties, a majority of the panel finds there is due and owing \$ 3,448.83 to be paid by Respondent to


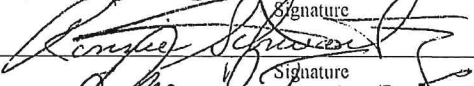
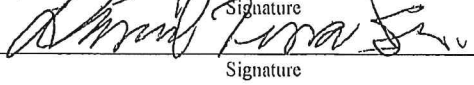
Complainant and the remaining \$10,346.49 be paid to Respondent from the company.
The non-prevailing party must, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors.

The deposits of the parties shall be used to cover the costs of arbitration or shall go into the general operating funds of the Association of REALTORS®. In the event the award of the arbitrators is in an amount other than that requested by any of the parties, the disposition of the deposits shall be directed by the arbitrators.

Requests for procedural review of the arbitration hearing procedures must be filed in writing with the President within twenty (20) days after the award has been transmitted to the parties* and must be accompanied by a deposit of \$ 250.00. **The request for procedural review must cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process. If no procedural review is filed within twenty (20) days following transmittal of the award and the non-prevailing party does not notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated during that time, the award will be paid from the escrow or trust account. If a procedural review request is timely filed and the award is confirmed by the directors following the procedural review, the award will be paid from the escrow or trust unless the non-prevailing party advises the association in writing within fifteen (15) days from the transmittal of the directors' confirmation that a suit challenging the validity of the award has been filed. If the directors invalidate the award, the funds shall be returned to the individual who made the deposit.

Dated: April 17th, 2018

Arbitrators:

<u>Keith Lynam (Chair)</u>		Chairperson
Type/Print	Signature	
<u>Ronnie Schwartz</u>		Panel Member
Type/Print	Signature	
<u>David Tina Sr.</u>		Panel Member
Type/Print	Signature	
_____	_____	Panel Member
Type/Print	Signature	
_____	_____	Panel Member
Type/Print	Signature	

Many arbitration hearings are convened to determine questions of procuring cause. For purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause is considered to be the initiation of the unbroken chain of causal events that results in a successful transaction, defined as a sale that closes or a lease that is executed.

(Revised 05/15)

*Award becomes final twenty (20) days from the date the award is transmitted absent a procedural review request being filed.

**Appeal deposits Can Not exceed \$500.



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

2
3 BETTY CHAN, et al.

Supreme Court Case No. 82208

4 Appellants,

5 v.

6
7 WAYNE WU, et al.

8 Appellees.

**APPELLEE’S APPENDIX OF
EXHIBITS IN SUPPORT OF
MOTION TO DISMISS
SECOND APPEAL**

9
10 **BLACKROCK LEGAL, LLC**
11 MICHAEL A. OLSEN, ESQ. (SBN 6076)
12 THOMAS R. GROVER, ESQ. (SBN 12387)
13 KEITH D. ROUTSONG, ESQ. (SBN 14944)
14 10155 W. Twain Ave., Suite 100
15 Las Vegas, NV 89147
16 Telephone: (702) 855-5658
17 *Attorneys for Appellants*

18 Appellee, WAYNE WU, by and through his undersigned attorneys, the law
19 firm BLACKROCK LEGAL, LLC, hereby submits his *Appellee’s Appendix of*
20 *Exhibits in Support of Motion to Dismiss Second Appeal*, pursuant to EDCR
21 2.27(B).

<u>DATE</u>	<u>DOCUMENT</u>	<u>EXHIBIT NO.</u>
9/18/2018	Order Denying Motion to Vacate or Modify Arbitration Award	“1”
2/5/2016	Gmail from Betty Chan dated February 5, 2016	“2”
3/22/2019	Order Granting Defendant’s Countermotion for Summary Judgment and Attorney Fees and Costs	“3”
5/14/2020	Order Dismissing Appeal	“4”

1 11/9/2016 Agreement to Arbitrate “5”

2
3 11/23/2020 Order Granting in Part Defendants’ Motion for “6”
4 Summary Judgment, or in the Alternative, for
5 Contractual Award of Attorney’s Fees, for Writ of
6 Execution on Plaintiff’s Commissions Awarded
7 By Glvar Arbitration Panel, and Release of Bond
8 Deposited on Appeal and Order Granting
9 Plaintiffs’ Countermotion for Summary Judgment

10 DATED this 6th day of July 2021.

11 **BLACKROCK LEGAL, LLC**

12 /s/ Michael A. Olsen, Esq.
13 MICHAEL A. OLSEN, ESQ.
14 Nevada Bar No. 6076
15 THOMAS R. GROVER, ESQ.
16 Nevada Bar No. 12387
17 KEITH D. ROUTSONG, ESQ.
18 Nevada Bar No. 14944
19 *Attorneys for Appellants*
20
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28



EXHIBIT “6”

Heather S. Sullivan
CLERK OF THE COURT

ORDR

MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

KEITH D. ROUTSONG, ESQ.

Nevada Bar No. 14944

BLACKROCK LEGAL, LLC

10155 W. Twain Ave., Suite 100

Las Vegas, NV 89147

Telephone: (702) 855-5658

Facsimile: (702) 869-8243

mike@blackrocklawyers.com

tom@blackrocklawyers.com

keith@blackrocklawyers.com

*Attorneys for Wayne Wu, Judith Sullivan,
Nevada Real Estate Corp. and Jerrin Chiu*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

) Case No: A-16-744109-C

) Dept. No: XX

)

Plaintiffs/Counterdefendants,

)

v.

)

)

)

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

)

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Defendants/Counterclaimants.

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**ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, OR IN
THE ALTERNATIVE, FOR
CONTRACTUAL AWARD OF
ATTORNEY'S FEES, FOR WRIT
OF EXECUTION ON PLAINTIFF'S
COMMISSIONS AWARDED BY
GLVAR ARBITRATION PANEL,
AND RELEASE OF BOND
DEPOSITED ON APPEAL
AND ORDER GRANTING
PLAINTIFFS' COUNTERMOTION
FOR SUMMARY JUDGMENT**

APPEARANCES

- Michael A. Olsen, Esq. of Blackrock Legal, LLC, on behalf of Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants (hereinafter "Defendants").



- R. Duane Frizell, Esq., of Frizell Law Firm, on behalf of Betty Chan and Asian American Realty & Property Management, (hereinafter “Plaintiffs”).

This matter came on for hearing on July 21, 2020 and again on September 30, 2020 before the Honorable Eric Johnson presiding on the Defendants’ *Motion for Summary Judgment, or in the Alternative, for Contractual Award of Attorney’s Fees, for Writ of Execution on Plaintiff’s Commissions Awarded by GLVAR Arbitration Panel, and Release of Bond Deposited on Appeal* (hereafter “Motion”) and *Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney’s Fees, for Writ of Execution on Plaintiff’s Commissions Awarded by GLVAR Arbitration Panel and Release of Bond Deposited on Appeal, and Countermotion for Summary Judgment on Defendants’ Abuse-of-Process Counterclaim* (hereafter “Opposition and Countermotion”). The Court having read and considered the papers and pleadings on file, having heard oral arguments made at the time of hearings, and good cause appearing, therefore the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACTS

1. Defendants have a good argument that Plaintiff ran this lawsuit far beyond what it should have been run, and the Court thinks Ms. Chan represents the worst of litigations, but she had a right to file a complaint, and her filing of the civil complaint does not rise to the level of abuse of judicial process.

2. Ms. Chan apparently had an ethical obligation with the realtor board to attend either arbitration or mediation, which Ms. Chan may have violated (but the Court is not making a ruling on this matter because it is not before the Court); however, the Court finds she had a right to file the civil Complaint.



4. Ms. Chan executed a contract for arbitration which includes a valid and enforceable attorney's fees provision. Since Ms. Chan has chosen to continue fighting the collection of the arbitration award she is contractually liable for the related and reasonable attorney's fees and costs incurred by the Defendants until such time as they are able to satisfy the arbitration award and the fees and costs awarded by this court. Given the foregoing, Defendants are entitled to an award of reasonable attorney's fees and costs incurred in seeking to enforce the arbitration award since the date of the submission of the last request for fees and costs by Defendants on October 31, 2018.

5. This Court already ruled upon the scope of the arbitration agreement in the March 22, 2019 Order, which encompassed any efforts to collect on the arbitration award.

6. Since the March 22, 2019 Order, Defendants have incurred additional fees seeking to collect the arbitration award and such fees fall within the scope of the arbitration agreement.

7. Counsel for Defendants shall file their invoices with the Court Clerk, which invoices were submitted to the Court for in camera inspection, and which invoices the Court actually reviewed.

CONCLUSIONS OF LAW

8. The Clerk of the Court has already issued a writ of execution, which is valid and enforceable, however, Defendants may submit a new writ for full amount of the commission currently held by GLVAR, which amount shall be applied to the amount of the fees and costs awarded against Plaintiffs in this action.

1 9. Ms. Chan is under an ongoing contractual obligation to pay reasonable attorney's
2 fees and costs Defendants incur in seeking to enforce the arbitration agreement and the fees and
3 costs awarded by this Court. Nothing in the Agreement to Arbitrate prevents collection of such
4 reasonable attorney's fees and costs incurred so long as Ms. Chan fights against collection of the
5 original award.
6

7 10. Ms. Chan may have violated an ethical obligation as a member of the GLVAR;
8 however such a violation should be resolved before that body and not before this Court.
9

10 11. The Supreme Court of Nevada has determined that it lacked jurisdiction over Ms.
11 Chan's most recent appeal and has dismissed that appeal. Therefore, jurisdiction over this case
12 remains in this court and the supersedeas bond is to be immediately released to Defendants.

13 12. Ms. Chan had a right to file her complaint and did not file her complaint with an
14 ulterior motive. Accordingly, she committed no abuse of process.

15 13. The Nevada Supreme Court's decision to dismiss the appeal did not preclude
16 collection of additional fees as the Nevada Supreme Court never took jurisdiction of the matter
17 or examined the scope of the arbitration agreement.
18

19 14. The Agreement to Arbitrate is between Ms. Chan and GLVAR for participation in
20 arbitration.
21

22 15. With regard to the agreement to arbitrate and the attorney fee provision contained
23 therein, there was a clear meeting of the minds between Ms. Chan and GLVAR, as well as the
24 others who participated in the arbitration process.

25 16. The fees incurred by Defendants related to their abuse of process claim are
26 denied.
27

28 17. The Court awards \$35,630.00 in fees and costs to Defendants and finds that such
an amount of fees satisfies the requirements of Brunzell.

18. Defendants shall be permitted to collect the entire amount of the funds held in escrow by the GLVAR, provided that they do so pursuant to a new writ of execution.

19. Counsel for Defendants shall file a new writ of execution for the full amount of the funds held in escrow by GLVAR.

IT IS HEREBY ORDERED, AJUDICATED, AND DECREED:

a) Defendants may execute upon the entirety of the \$13,795.32 commission held in the GLVAR escrow account pursuant to a new writ of execution.

b) Defendants shall file a new Writ of Execution to obtain the entirety of the funds currently held in the GLVAR escrow account.

c) Defendants' request for summary judgment that Ms. Chan committed an abuse of process is DENIED;

d) Plaintiffs' request for summary judgment that Ms. Chan did not commit an abuse of process is GRANTED;

e) The supersedeas bond posted by Plaintiffs in the amount of \$33,533.75 shall immediately be released to DEFENDANTS and the clerk of court is hereby instructed to issue a check payable to the Blackrock Legal, LLC Trust account in that amount of said bond plus interest, if any;

f) Defendants are hereby awarded fees and costs in the amount of \$35,630.00 incurred in seeking to enforce the arbitration award since the Court's last award of attorney's fees.

g) Ms. Chan is hereby given leave to file a motion for stay of execution.

~~h) The status check currently scheduled for November 18, 2020 at 8:30 a.m. is hereby VACATED.~~

1 i) Pursuant to NRCP 54(b), the Court finds no just reason for delay, and this order is
2 hereby entered as a final order as to any and all claims and counterclaims between and among
3 Plaintiffs and the identified Defendants.

4 IT IS SO ORDERED this _____ of November 2020.

5 Dated this 23rd day of November, 2020

6
7 
8 DISTRICT COURT JUDGE

9 Prepared and submitted by:

7AB 1B9 E166 A32D
Eric Johnson
District Court Judge

10 /s/ Keith D. Routsong, Esq.

11 MICHAEL A. OLSEN, ESQ.

12 Nevada Bar No. 6076

13 THOMAS R. GROVER, ESQ.

14 Nevada Bar No. 12387

15 KEITH D. ROUTSONG, ESQ.

16 Nevada Bar No. 14944

17 **BLACKROCK LEGAL, LLC**

18 *Attorneys for Wayne Wu, Judith Sullivan,*

19 *Nevada Real Estate Corp. and Jerrin Chiu*

20 Approved as to form and content by:

21 /s/ R. Duane Frizell, Esq.

22 R. DUANE FRIZELL, ESQ.

23 Nevada Bar No. 97

24 **FRIZELL LAW FIRM**

25 *Attorney for Betty Chan and Asian American*

26 *Realty and Property Management*

Keith Routsong

From: Keith Routsong
Sent: Wednesday, November 18, 2020 7:59 AM
To: Duane Frizell; Mike Olsen
Subject: RE: Chan v. Wu: Proposed Order

Duane,

Those changes are fine with us. I added your electronic signature and will submit to the Court this morning. Thanks.

Keith

From: Duane Frizell <dfrizell@frizelllaw.com>
Sent: Tuesday, November 17, 2020 11:20 AM
To: Mike Olsen <mike@blackrocklawyers.com>; Keith Routsong <keith@blackrocklawyers.com>
Subject: Chan v. Wu: Proposed Order
Importance: High

Hi Mike and Keith:

I have gone through the proposed order and made some revisions. My redlined version and my clean version are attached in Word.

All of my revisions are relatively minor and are based on the court's rulings as expressly stated in the transcripts of the hearings. I have attached the transcripts for the two hearings for your reference as well.

On the attached clean version of the proposed order, I authorize you to affix my electronic signature and submit to the court.

Thanks!

--Duane



R. Duane Frizell

Attorney at Law

Licensed in Nevada, New Mexico, and Texas

FRIZELL LAW FIRM

400 N. Stephanie St., Suite 265 | Henderson, Nevada 89014

Tel. No. (702) 657-6000 | Fax No. (702) 657-0065 | 中文專線 (702) 846-2888

DFrizell@FrizellLaw.com

www.FrizellLaw.com

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Betty Chan, Plaintiff(s)

CASE NO: A-16-744109-C

7 vs.

DEPT. NO. Department 20

8 Wayne Wu, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/23/2020

15 Thomas Grover	tom@blackrocklawyers.com
16 Daniel Ormsby .	DOrmsby@goodsellolsen.com
17 Janice M. Michaels .	jmichaels@wshblaw.com
18 Laura Myers .	laura@goodsellolsen.com
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