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Electronically Filed  
Aug 30 2021 03:17 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

BETTY CHAN, et al.

Case No. 82208

Appellants,

v.

**REPLY IN SUPPORT OF  
MOTION TO DISMISS  
SECOND APPEAL**

WAYNE WU, et al.

Appellees.

COMES NOW, Appellees WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP. and JERRIN CHIU, (collectively “Appellees”) by and  
through their attorney, Michael A. Olsen, Esq. of the law firm Blackrock Legal,  
LLC., and hereby submits this *Reply in support of Motion to Dismiss Second  
Appeal*, on the grounds set forth in the Points and Authorities herein, Exhibits  
attached hereto and any paper or pleadings on file with this court.

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**BACKGROUND**

This matter can easily be boiled down to a handful of simple facts. Betty  
Chan (hereafter “Ms. Chan”) failed to serve clients in need of a realtor during a  
tight timeline to purchase a house. Those clients were abandoned by Ms. Chan and  
forced to seek assistance of another realtor, Wayne Wu (hereafter “Mr. Wu”). Mr.  
Wu assisted the clients purchase a home. After the purchase, Ms. Chan sought to

1 take all the commission from the sale, despite her failure as an agent. Instead of  
2 abiding by her ethical duty to seek a resolution through arbitration, Ms. Chan filed  
3 suit against the clients, Mr. Wu and the real estate brokerage. Appellees were  
4 forced to combat this litigation prior to even entering binding arbitration.  
5  
6 Eventually, the matter was sent to the GLVAR Arbitration committee who  
7 awarded Mr. Wu the lion's share of the commission and allowed Ms. Chan to take  
8 a smaller portion.  
9

10 This was not enough for Ms. Chan, who fought against the validity of the  
11 arbitration award. The district court found the arbitration binding on August 22,  
12 2018 and issued an order on September 18, 2018.<sup>1</sup> On March 22, 2019, the district  
13 court issued an Order Granting Defendant's *Countermotion for Summary Judgment*  
14 *and Attorney Fees and Costs*.<sup>2</sup> It was then that Ms. Chan filed her first appeal,  
15 which this Court dismissed.<sup>3</sup>  
16  
17

18 Now, Ms. Chan is trying to appeal on the same issues again. The District  
19 Court granted summary judgment against Appellees' counterclaim for abuse of  
20 process but awarded more fees against Ms. Chan in the November 23, 2020, Order.  
21 The arbitration award and its validity had been decided long before Ms. Chan  
22 initiated this second appeal.  
23  
24

25 Appellees filed their *Motion to Dismiss Second Appeal* on July 7, 2021. Ms.

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26  
27 <sup>1</sup> **Exhibit "1"** September 18, 2018, Order.

28 <sup>2</sup> Attached as **Exhibit "2"**.

<sup>3</sup> A copy of the *Order Dismissing Appeal* is attached as **Exhibit "3"**.

1 Chan filed her response on August 3, 2021, which focuses solely on the fact that  
2 the district court issued a final order in the matter and therefore the present appeal  
3 is timely. Ms. Chan completely ignores this Court’s statement that “no statute or  
4 court rule allows an appeal from an order declaring someone to be a procuring  
5 cause.”<sup>4</sup> Essentially, Ms. Chan hangs her hat on the argument that the most recent  
6 order granting summary judgment on the abuse of process claim and awarding  
7 attorney’s fees and costs is the final order that allows appeal of all previous orders.  
8  
9 This is simply not the case and Ms. Chan’s second appeal should be dismissed as  
10 to the claims involving the confirmation and validity of the arbitration award.  
11  
12

### 13 **LEGAL ARGUMENT**

#### 14 **I. THE SEPTEMBER 18, 2018, ORDER WAS SUFFICIENTLY FINAL**

15 Ms. Chan claims that the September 18, 2018, Order was “not sufficiently  
16 final” to allow appellate review of the portions of the order which confirmed the  
17 arbitration award. In support of this claim, Ms. Chan cites to this Court’s decision  
18 in Karcher Firestopping v. Meadow Valley Cont., Inc. In Karcher, this Court  
19 dismissed an appeal from an order vacating an arbitration award because the  
20 “supplemental proceedings extended, rather than concluded, the arbitration  
21 process.”<sup>5</sup> This is what caused the order being appealing in Karcher to not be  
22 “sufficiently final to be suitable for appellate review.”<sup>6</sup> Indeed, in Karcher, the  
23  
24  
25

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26  
27 <sup>4</sup> See **Exhibit “3”**.

28 <sup>5</sup> Karcher Firestopping v. Meadow Valley Cont., Inc., 204 P.3d 1262, 1266 (2009).

<sup>6</sup> Id.

1 district court vacated the arbitration award and “referred the matter back to  
2 arbitration.”<sup>7</sup> Thus, the entire arbitration process was revived. It stands to reason  
3 that this Court denied an appeal in Karcher when arbitration was reconvened. Such  
4 an order is certainly not sufficiently final, as this Court instructed in Karcher.  
5

6 The September 18, 2018, Order in this case is nothing like the order in  
7 Karcher. The arbitration award was confirmed and no further arbitration hearing  
8 was directed or needed. The issues resolved in the November 23, 2020, Order were  
9 the abuse of process claim and additional attorney’s fees and costs. The abuse of  
10 process claim, as this Court is aware, is a claim arising out of Ms. Chan’s own  
11 words that she would initiate litigation to teach Appellees a lesson.<sup>8</sup> It is entirely  
12 separate from the arbitration proceedings. The award of attorney’s fees and costs,  
13 which arose from the *Agreement to Arbitrate* is also only related to enforcement of  
14 the arbitration award (a collection issue), not its validity or confirmation.  
15  
16  
17

18 When the November 23, 2020, Order was issued, the arbitration process had  
19 been completed for years. In Karcher, this Court instructed that the statutory  
20 scheme created by NRS 38 “is designed to permit appeals **only** from orders that  
21 bring an element of finality to the arbitration process.”<sup>9</sup> The September 18, 2018,  
22 Order was the order which brought an element of finality to the arbitration process.  
23  
24  
25

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26 <sup>7</sup> Karcher Firestopping v. Meadow Valley Cont., Inc., 204 P.3d 1262, 1263 (2009).

27 <sup>8</sup> See **Exhibit “4”**

28 <sup>9</sup> Karcher Firestopping v. Meadow Valley Cont., Inc., 204 P.3d 1262, 1266 (2009),  
emphasis added.

1 It confirmed the arbitration and left only attorney's fees and costs to be resolved, as  
2 well as the abuse of process claim which is wholly unrelated to the arbitration  
3 process or its result. As such, Appellees argue that it was the September 18, 2018,  
4 Order, not the November 23, 2020, Order that brought sufficient finality to the  
5 matter to allow an appeal. The November 23, 2020, Order, which is being appealed  
6 now, has nothing to do with arbitration. Ms. Chan should have appealed the  
7 September 18, 2018, Order, but she did not.

10 **II. THERE IS NO STATUTORY SCHEME ALLOWING FOR MS.**  
11 **CHAN'S PRESENT APPEAL TO PROCEED**

12 Ms. Chan does not address the argument that this Court clearly indicated that  
13 there was no statutory scheme for an "appeal from an order declaring someone to  
14 be a procuring cause."<sup>10</sup> This is exactly what she is attempting to do in this appeal.  
15 She failed to appeal in 2018 and is now trying to revive the issue of the procuring  
16 cause and the validity of the arbitration award despite this Court's clear instruction  
17 that no statutes allow such an appeal.

20 **CONCLUSION**

21 This Court should grant the Appellees' *Motion to Dismiss Second Appeal* as  
22 to all claims related to the validity and confirmation of the arbitration award.

24 DATED this 30th day of AUGUST 2021.

25 By: /s/Michael A. Olsen, Esq.  
26 MICHAEL A. OLSEN, ESQ.  
Nevada Bar No. 6067

27  
28 <sup>10</sup> See **Exhibit "3"**.

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

BETTY CHAN, et al.

Appellants,

v.

WAYNE WU, et al.

Appellees.

Case No. 82208

District Court Case No. A-16-744109-C

**EXHIBITS TO REPLY IN SUPPORT OF MOTION TO DISMISS  
SECOND APPEAL**

Appellees file these **EXHIBITS TO REPLY IN SUPPORT OF MOTION  
TO DISMISS SECOND APPEAL**: The following exhibits are attached:

**EXHIBITS**

Exhibit "1"	<i>Order Denying Motion to Vacate or Modify Arbitration Award</i> Entered September 18, 2018
Exhibit "2"	<i>Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs</i> Entered March 22, 2019
Exhibit "3"	<i>Order Dismissing Appeal</i> Supreme Court Case No. 78666 Entered May 14, 2020

Exhibit "4"

*Email from Betty Chan*  
Dated February 5, 2016

DATED this 30th day of AUGUST 2021.

By: /s/Michael A. Olsen, Esq.  
MICHAEL A. OLSEN, ESQ.  
Nevada Bar No. 6067

**EXHIBIT “1”**





**ORD**  
MICHAEL A. OLSEN, ESQ.  
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ROMAN C. HARPER, ESQ.  
Nevada Bar No. 14374  
**Goodsell & Olsen, LLP**  
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*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	)	Case No: A-16-744109-C
REALTY & PROPERTY MANAGEMENT,	)	
	)	Dept. No: XX
Plaintiffs/Counterdefendants,	)	
v.	)	<b>ORDER DENYING MOTION TO</b>
	)	<b>VACATE OR MODIFY</b>
WAYNE WU, JUDITH SULLIVAN,	)	<b>ARBITRATION AWARD</b>
NEVADA REAL ESTATE CORP., JERRIN	)	
CHIU, KB HOME SALES – NEVADA INC.,	)	
	)	
Defendants/Counterclaimants.	)	

**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.

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

This matter came on for hearing on August 22, 2018 before the Honorable Eric Johnson 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

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

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

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

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 <sup>Sept</sup> 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

MAXIMILIANO COUVILLIER, ESQ.

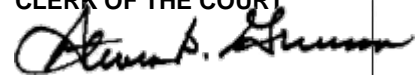
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**KENNEDY & COUVILLIER, PLLC**

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

**EXHIBIT “2”**





**ORDR**

MICHAEL A. OLSEN, ESQ.

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*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

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

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

13. **Brunzell Factor #1:** "the qualities of the advocate: his ability, his training, education, experience, professional standing and skill". Counsel for Defendants, Michael A. Olsen, Esq. is a founding partner of his firm and has been a member of the State Bar of Nevada for over twenty years. He is a graduate of Utah State University and BYU's J. Reuben Clark Law 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.

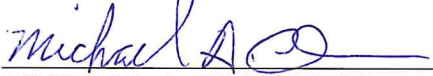
4                   b.       That the *Countermotion for Summary Judgment* is GRANTED

5                   c.       That the *Motion for Attorney's Fees and Costs* is GRANTED and that Attorney's  
6                   fees in the amount of \$21,435.00 and Costs in the amount of \$920.83 are hereby awarded  
7                   to Defendants.  
8

9  
10                   IT IS SO ORDERED this 19 <sup>MARCH</sup> of ~~FEBRUARY~~ 2019.  
11

12  
13                     
14                   \_\_\_\_\_  
15                   DISTRICT COURT JUDGE SS  
16                   ERIC JOHNSON

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  
28

**EXHIBIT “3”**

IN THE SUPREME COURT OF THE STATE OF NEVADA

BETTY CHAN; AND ASIAN  
AMERICAN REALTY & PROPERTY  
MANAGEMENT,

Appellants,

vs.

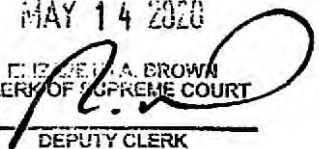
WAYNE WU; JUDITH SULLIVAN;  
NEVADA REAL ESTATE CORP.;  
JERRIN CHIU; AND KB HOME SALES-  
NEVADA INC.,

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.<sup>1</sup>

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,

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<sup>1</sup>Appellants' 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.<sup>2</sup> 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).<sup>3</sup>

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<sup>2</sup>It 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.

<sup>3</sup>This 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”).

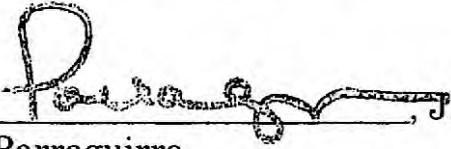
Appellants filed an amended notice of appeal on April 6, 2020, that purports to appeal from the March 22, 2019, order, a March 10, 2020, order, and “[a]ll prior court judgments, orders, rulings, and decisions” previously entered by the district court and that appellants are aggrieved by. To the extent 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,

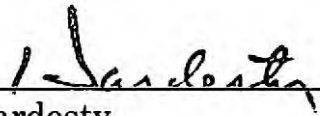


denies a motion for summary judgment, and denies a motion to certify a judgment as final under NRCP 54(b), is also not substantively appealable.

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

ORDERS this appeal DIMISSED.<sup>4</sup>

  
Parraguirre

  
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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

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<sup>4</sup>Respondents' request for attorney fees incurred on appeal is denied.

**EXHIBIT “4”**

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

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(no subject)

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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.

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