

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

2                                   **CASE NO. 82208**

3                                   \_\_\_\_\_  
4                   BETTY CHAN; and ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT

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Elizabeth A. Brown  
Clerk of Supreme Court

5                                   Appellants,

6                                   vs.

7                   WAYNE WU; JUDITH SULLIVAN; NEVADA REAL ESTATE CORP.; and JERRIN CHIU,

8                                   Respondents.  
9

10                                  \_\_\_\_\_  
11                   APPELLEES' ANSWERING BRIEF AND OPENING BRIEF ON CROSS-APPEAL  
12                                   (AMENDED)  
13                                  \_\_\_\_\_

14                   Appeal from the Eighth Judicial District Court in Clark County, Nevada

15                                   District Court Case: A-16-744109-C

16                                   District Court Judge: Honorable Eric Johnson

17                                     
18                                   **BLACKROCK LEGAL, LLC**  
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28

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

3 BETTY CHAN, et al.

4 Appellants,

5 v.

6 WAYNE WU, et al.

7 Appellees.

Case No. 82208

District Court Case: A-16-744109-C

8  
9 **NRAP 26.1 DISCLOSURE**

10 The undersigned counsel of record for Appellees certifies that the following  
11 are persons and entities as described in NRAP 26.1(a), and must be disclosed:

12  
13 (1) BETTY CHAN - Appellant

14  
15 (2) ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT - Appellant

16 (Owned solely by Betty Chan)

17  
18  
19 (3) R. DUANE FRIZELL, ESQ. - FRIZELL LAW FIRM, PLLC (Current Counsel  
20 for Appellants)

21  
22  
23 (4) AVECE M. HIGBEE, ESQ. - MARQUIS AURBACH COFFING (Former  
24 counsel for Appellants)

1 (5) TODD E. KENNEDY, ESQ. - KENNEDY & COUVILLIER, PLLC (Former  
2 counsel for Appellants)

3  
4  
5 (6) MAXIMILIANO D. COUVILLIER, ESQ. - KENNEDY & COUVILLIER,  
6 PLLC (Former counsel for Appellants)

7  
8  
9 (7) MICHAEL V. CRISTALLI, ESQ. - GENTILE CRISTALLI MILLER  
10 ARMENI SAVARESE (Former counsel for Appellants)

11  
12  
13 (8) JANIECE S. MARSHALL, ESQ. - GENTILE CRISTALLI MILLER  
14 ARMENI SAVARESE (Former counsel for Appellants)

15  
16  
17 (9) JEFFREY R. HALL, ESQ. - HUTCHISON & STEFFEN (Former counsel for  
18 Appellants)

19  
20  
21 (10) WAYNE WU – Respondent/ Cross-Appellant

22  
23  
24 (11) JUDITH SULLIVAN - Respondent/ Cross-Appellant

25  
26 (12) NEVADA REAL ESTATE CORP. Respondent/ Cross-Appellant  
27  
28

1 (13) JERRIN CHIU - Respondent/ Cross-Appellant

2  
3 (14) MICHAEL A. OLSEN, ESQ. - BLACKROCK LEGAL, LLC (Counsel for  
4 Respondents)  
5

6  
7 (15) THOMAS R. GROVER, ESQ. - BLACKROCK LEGAL, LLC (Counsel for  
8 Respondents)  
9

10  
11 (16) KEITH D. ROUTSONG, ESQ. - BLACKROCK LEGAL, LLC (Counsel for  
12 Respondents)  
13

14  
15 (17) ROMAN C. HARPER, ESQ. - GOODSSELL & OLSEN, LLP (Counsel for  
16 Respondents below)  
17

18  
19 These representations are made in order that the judges of this honorable court may  
20 evaluate disqualification or recusal.  
21

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**  
2                   **JURISDICTIONAL STATEMENT**

3                   Since the abuse of process claim was dismissed pursuant to a final order in  
4 the district court matter, jurisdiction is appropriate pursuant to NRAP 3A(b)(1).  
5 The November 28, 2020, Order is a final order disposing of Appellees’/ Cross-  
6 Appellants’ abuse of process claim.  
7

8                   **ROUTING STATEMENT**  
9

10                  The matter should be retained by the Court of Appeals according to NRAP  
11 17(b)(5), as it involves the intentional tort of abuse of process and includes a  
12 judgment, exclusive of attorney’s fees and costs, of \$250,000.00 or less. Since  
13 Chan is alleging that her arguments “rais[e] as a principle issue a question of  
14 statewide public importance” pursuant to NRAP 17(a)(12), Respondents/ Cross-  
15 Appellants do not object to jurisdiction of the Supreme Court of Nevada. However,  
16 Respondents have a motion to dismiss on file requesting dismissal of all of Chan’s  
17 appeal. Should that motion be granted, and Chan’s claims are dismissed, the Court  
18 of Appeals retains jurisdiction pursuant to NRAP 17(b)(5).  
19  
20  
21

22                   **ISSUES PRESENTED ON CROSS-APPEAL**

23                  Whether the district court erred in granting summary judgment on  
24 Appellees’/ Cross-Appellants’ claim for abuse of process. Chan has taken  
25 purposeful actions in the course of this litigation to fulfill her ulterior motive. By  
26 her own admission, Chan’s motive in this matter was to punish another agent who  
27  
28

1 stepped in after she failed to adequately serve a potential client. The lower court  
2 erred by granting summary judgment against the abuse of process claim.

3 **ISSUES PRESENTED IN ANSWER TO APPELLANT’S OPENING BRIEF**  
4

5 Whether a party can appeal an order confirming an arbitration award after  
6 failing to timely file an appeal of the District Court order confirming the decision  
7 reached by an Arbitration Panel.  
8

9 Whether a realtor can be the procuring cause of a real estate transaction after  
10 abandoning a client urgently seeking assistance with a purchase.

11 Whether the doctrine of procuring cause supports splitting a commission and  
12 whether such a split constitutes a manifest disregard of a statute preventing a  
13 commission split.  
14

15 Whether an award of attorney’s fees and costs is appropriate when based  
16 upon a contractual provision mandating such an award for a party forced to seek  
17 court assistance in enforcing or confirming an Arbitration Award.  
18

19 **STATEMENT OF FACTS**  
20

21 This dispute arose when Betty Chan failed to meet the expectations of a  
22 potential client, who was forced to hire another agent to help him find and  
23 purchase a house. The underlying commission at issue in this litigation should  
24 rightfully be paid to Wayne Wu, the agent that guided the buyer through the  
25 decision-making process and ultimately helped him obtain his home. However,  
26 Chan has spent tens of thousands of dollars, retained multiple different law firms,  
27  
28

1 and appealed twice to this Court to prevent Wu from obtaining a larger share of the  
2 commission awarded through binding arbitration at GLVAR. The facts of this case  
3 can be boiled down to the simple fact that Chan failed a potential client who was  
4 forced to seek help from another realtor after she abandoned that client when time  
5 was of the essence.  
6

7 **I. Jerrin Chiu Attempts to Use Betty Chan to Purchase a House during a**  
8 **Short Window Around the New Year**

9 On November 2, 2015, Dr. Jerrin Chiu emailed BETTY CHAN (“Chan”),  
10 officer and registered agent of ASIAN AMERICAN REALTY & PROPERTY  
11 MANAGEMENT (“AAPM”), expressing interest in searching for a home to  
12 purchase while Dr. Chiu’s parents were in town to visit in late December. In the  
13 November 2, 2015, email, Dr. Chiu provided Chan with a relative price range,  
14 desired location, and expressed that he and his parents would be available to look  
15 at homes from December 30, 2015, to January 1, 2016. He noted that this might  
16 infringe on family time over the holidays.<sup>1</sup> Chan, with no objection to the days  
17 indicated by Dr. Chiu, agreed to show him and his parents some options.<sup>2</sup>  
18

19 A few weeks later, Dr. Chiu contacted Chan again, confirming that she  
20 would accompany Dr. Chiu and his parents as they looked for a house. Chan  
21 confirmed the appointment. Dr. Chiu and Dr. Chiu’s father, Dr. Kwang Chiu  
22

23  
24  
25  
26 <sup>1</sup> 4 Appx 746 – 45.

27 <sup>2</sup> 4 Appx 746 – 45.  
28

1 (“Kwang”) sought out Chan because she spoke Mandarin Chinese, making it easier  
2 to communicate with Dr. Chiu’s parents who speak limited English. Dr. Chiu was  
3 also familiar with Chan because Dr. Chiu had used Chan as a real estate agent  
4 before in 2013 when he purchased a condo.  
5

6 On December 30, 2015, Chan met with Dr. Chiu and his parents to view  
7 some potential properties she believed met Dr. Chiu’s requirements. Neither Dr.  
8 Chiu nor his parents ever entered into any form of written agreement with Chan.  
9 Chan showed them several previously owned homes. Chan tried to persuade Dr.  
10 Chiu to purchase one of the previously owned homes, but Dr. Chiu and his parents  
11 were not interested.  
12

13  
14 As the day progressed, Chan began to rush through showings. “We then  
15 went to Toll Brothers. . . . We did not finish all the models. We were already very  
16 late for the 4th resale appointment and also late for KB . . . .”<sup>3</sup>  
17

18 Unsurprising, this rush continued as Chan took Dr. Chiu and his parents to  
19 Tevare at Summerlin, a housing development by KB Home Sales – Nevada, Inc.  
20 (“KB Home Development”). There, Chan showed Dr. Chiu and his parents three  
21 model home floor plans: Model 1 (a single-story home); Model 2 (a two-story  
22 home); and Model 3 (another two-story home). During this visit to the KB Home  
23 Development, Chan also showed Dr. Chiu a few empty lots where the model home  
24  
25

---

26  
27 <sup>3</sup> 4 Appx 728 – 36, from *Motion to Vacate*, P0011, Betty Chan Statement, “The  
28 Showing.”

1 floor plans could be erected. It is important to note that the floor plan and lot  
2 combination ultimately purchased by Chiu was never presented to him by Chan but  
3 rather by the later retained agent, Wu.

4  
5 During the December 30th visit to KB Home Development, Chan was  
6 unwilling to let Dr. Chiu's interests govern the schedule. "I told Buyer Jerrin that  
7 we had [an] appointment with another property at 1:30 pm and [were] already late  
8 so we needed to hurry."<sup>4</sup> Thus, Chan whisked Dr. Chiu and his parents away from  
9 the KB Home Development. Chan concluded the day with an email, the subject  
10 line of which read "3 properties we saw today." Chan's summary of the day  
11 identified only "3 properties that [Dr. Chiu] [was purportedly] interested" in  
12 purchasing: listings 1594880, 1594035, and 1592526.<sup>5</sup> None of these met Dr.  
13 Chiu's needs nor were any of these properties purchased by him.  
14  
15  
16

17 **II. Chan Becomes Non-Responsive After the Rushed and Incomplete**  
18 **Showings of December 30, 2015**

19 Despite Dr. Chiu's expressed desire to finalize his home selection within a  
20 tight timeframe (while his parents were in town over the holiday), Chan became  
21 unresponsive after the initial rushed day of showings. This occurred despite Dr.  
22 Chiu's attempts to reach Chan. According to Chan, her non-responsive attitude  
23 during the exact time frame Dr. Chiu needed to make his decision was due to her  
24  
25

---

26 <sup>4</sup> 4 Appx 728 – 36, from *Motion to Vacate*, P0012, Betty Chan Statement, "KB  
27 Home."

28 <sup>5</sup> 3 Appx 571 – 72, P0051.

1 pursuit of personal affairs, including going to see “fireworks” with her family.

2 During arbitration, Chan admitted that she failed and refused to respond to Dr.

3 Chiu’s calls over the New Year’s holiday, preferring instead to spend time with her  
4 visiting daughter.<sup>6</sup>

6 On December 31, 2015, Dr. Chiu and his parents—unaccompanied by Chan  
7 who had abandoned them and was not returning calls—returned to the KB Home  
8 Development. They called Chan at approximately 10:50 a.m., to express their  
9 desire to look at more options before Dr. Chiu’s parents left town. Chan did not  
10 answer.  
11

13 While waiting for Chan to return their call, Dr. Chiu and his parents, without  
14 the assistance of any broker, met with a KB Home representative and were  
15 informed that if they did not make a deposit towards a lot before the end of the  
16 day, they would be subject to the development-wide price increase of \$3,000.00.  
17

18 Even though he had not yet decided to purchase a KB Home, Dr. Chiu—  
19 unable to contact Chan—decided to make a fully refundable earnest deposit of  
20 \$10,000.00 with KB Home to avoid the price increase on the KB Home lots. The  
21 deposit was made because it was fully refundable for fourteen (14) days. Dr. Chui  
22 made the deposit with KB Homes based on the representation that the refund could  
23  
24

---

26  
27 <sup>6</sup> 4 Appx 728 – 36, from *Motion to Vacate*, P0013–14, Betty Chan Statement,  
28 “Follow up.”

1 be returned for fourteen days should he opt not to purchase from KB Homes.<sup>7</sup>

2 On January 2, 2016, Kwang called Chan several times without answer and  
3 left a message. Chan had previously been made aware that time was of the essence  
4 for Dr. Chiu, and she knew that Kwang and his wife had to return to California in  
5 two days and needed an agent to help them explore housing options and find a  
6 home to purchase.  
7

8  
9 On January 3, 2016, Kwang called Chan again and left another message. Dr.  
10 Chiu's parents had to leave, yet he still had not identified a house to purchase.  
11 Chan did not respond. Despite the urgency Dr. Chiu had expressed in identifying a  
12 house to purchase, Chan admits that she had no contact with Dr. Chiu from  
13 December 30, 2015, to January 5, 2016, the very days Dr. Chiu had indicated they  
14 needed help locating a home.<sup>8</sup>  
15  
16

17 **III. Dr. Chiu Searches for Someone to Answer His Questions So he can**  
18 **Purchase a house**

19 Frustrated that Chan failed and refused to respond to their calls and  
20 messages and running out of time to consider options together, Dr. Chiu and his  
21 parents began searching for other real estate agents that could guide them through a  
22 purchase. Kwang started the search by calling a few different agents, but none  
23 answered. Kwang remembered a former acquaintance who worked in the Vegas  
24  
25

26 <sup>7</sup> Affidavit of Jerrin Chiu, 1 Appx 128 – 31.

27 <sup>8</sup> See 4 Appx 728 – 36, from *Motion to Vacate*, P0013–14, Betty Chan Statement,  
28 “Follow up.”

1 area as a broker, Wayne Wu (“Wu”). Kwang located Wu’s number in a local  
2 newspaper and called Wu at approximately 1:40 p.m. on January 3, 2016.

3 Kwang recommended Wu to Chiu because of his expertise in architecture,  
4 ability to speak Mandarin, and his knowledge of the Chinese tradition of feng shui.  
5 Moreover, Wu was responsive to concerns and willing to accommodate his  
6 schedule to Dr. Chiu’s short timeline even though he had no prior notice.  
7

8  
9 On January 7, 2016, Dr. Chiu met with Wu at the KB Home Development.  
10 Dr. Chiu expressed his frustrations in dealing with Chan, her forceful nature in  
11 trying to convince him to buy one of the Three Resale Properties, her pushing him  
12 (in the alternative) to purchase a KB Homes Model 3 floorplan, a plan Dr. Chiu  
13 was not impressed with, and her failure to respond to phone calls and voice  
14 messages.  
15

16  
17 Wu listened to Dr. Chiu’s criteria and began to identify properties that could  
18 potentially satisfy Dr. Chiu’s objectives. Thus, he suggested Lot 43 and the Model  
19 2 floorplan, a combination that had never even been suggested by Chan. Wu  
20 explained the implications of building the Model 2 floorplan on Lot 43, including  
21 how the combination would be effective at bringing in natural light with an  
22 impressive view of the mountains in conformity with principles of feng shui.  
23

24  
25 Dr. Chiu found Wu’s analysis convincing; Wu was also able to satisfy his  
26 concerns about KB Homes quality and access to the development, even though he  
27 initially deemed it to be outside his desired area. Based on Wu’s recommendation,  
28



1 Chiu purchased Lot 43 with the Model 2 floorplan on January 8, 2016.<sup>9</sup> Wu is the  
2 broker that procured the sale and the ONLY listed Broker on the purchase  
3 agreement<sup>10</sup> and the addendum.<sup>11</sup> There is no mention of Chan in any of the  
4 closing documents.  
5

#### 6 **IV. Chan Uses Threats to Attempt to Obtain Wu's Commission**

7 Chan has acknowledged that she knew at least by January 15, 2015 that Dr.  
8 Chiu had been forced to find another real estate agent to meet his needs.<sup>12</sup> After  
9 waiting another week, Chan decided to go to KB Homes and attempt to unilaterally  
10 obtain the Commission for herself by claiming that Dr. Chiu had signed a  
11 registration card appointing her as agent.<sup>13</sup> Chan could not produce the card and  
12 KB Homes was unable to locate such a document, which did not deter Chan from  
13 trying to obtain Wu's Commission by threatening Dr. Chiu.  
14  
15  
16

17 Chan next hired Jeffrey R. Hall, Esq. of Hutchison & Steffen to send a  
18 demand letter to First American Title on March 24, 2016. Chan demanded she be  
19 paid Wu's Commission and claimed that "Mr. Chiu signed a broker registration  
20  
21  
22

---

23 <sup>9</sup> 1 Appx 128 – 31.

24 <sup>10</sup> A true and correct copy of the purchase agreement is located at 3 Appx 503 – 30.

25 <sup>11</sup> A true and correct copy of the addendum to the purchase agreement is located at  
26 3 Appx 503 – 30

27 <sup>12</sup> 4 Appx 728 – 36, from *Motion to Vacate*, P0014–15, Betty Chan Statement, at  
28 "The Other Agent's Intrusion."

<sup>13</sup> See 4 Appx 728 – 36, from *Motion to Vacate*, P0015, Betty Chan Statement,  
"Registration Card."

1 identifying Chan as his agent on [December 31, 2015].”<sup>14</sup> But Chan never had  
2 possession of the registration card; her real motive was to punish Wu for “daring”  
3 to provide services to the client she abandoned:  
4

5       Honestly from day one i met you my focus is not the commission, i  
6 felt insulted and humiliated, **another agent dared challenge me** and  
7 he really do not know who I am. I have been really sad more than i am  
8 angry. Last night i read many court cases. Even though **my card has**  
9 **disappeared**, it wont hurt me winning. I liked to teach them a lesson.  
10 Life is not about money. So happen **i do have few hundred thousand**  
11 **in hand that i can use**. If they are willing to go along with me to  
12 spend equal amount of money, **then I will be very happy to play**  
13 **their game**. I got my direction last nite, so i felt peaceful now. All i  
14 need KB to understand I don’t hate kb for this, and i need them to  
15 **work with me on my plan**. Jana, i dont blame you either and take  
16 care of yourself.<sup>15</sup>

17       Unaware of Chan’s ulterior motives, Wu, through counsel, requested a copy  
18 of the purported registration card from Chan’s attorney on June 17, 2016. This  
19 request was renewed on June 21, 2016. Chan never had the registration card, which  
20 she knew and admitted as early as February 2016, four months earlier. Apparently,  
21 her counsel figured out the same. Chan purportedly sought to find the card but after  
22 a week Wu suddenly received notice that Chan’s counsel “no longer represent[ed]  
23 Betty Chan in this matter.”<sup>16</sup>

24       Pursuant to Mr. Hall’s confirmation that Chan was unrepresented, Chan was

---

25 <sup>14</sup> 3 Appx 536 – 38; compare 3 Appx 671 – 72 (showing Chan knew she did not  
26 have a registration card on February 5, 2016).

27 <sup>15</sup> 3 Appx 671 – 72.

28 <sup>16</sup> Email Chain between Laura Meyers, Michael A. Olsen, Esq., and Jeffrey Hall,  
Esq, located at 3 Appx 541 – 45.

1 contacted directly requesting the purported registration card on June 29, 2016.

2 Chan's response was to inform that she had retained counsel that was currently out  
3 of town but would follow up after having a chance to review the file.<sup>17</sup> This was  
4 the first of many times in which Chan's relationship with her attorneys was  
5 mysteriously terminated.  
6

7 **V. Chan Uses the District Court, GLVAR, and Two Additional Law Firms**  
8 **to Challenge Payment of Wu's Commission**

9 On September 27, 2016, Chan—now represented by Marquis Aurbach  
10 Coffing—committed an ethical violation of the GLVAR rules by filing a  
11 *Complaint* in the Eighth Judicial District Court, prior to submitting the matter to  
12 GLVAR for mediation and possible arbitration as required by rule.<sup>18</sup> Chan caused  
13 Dr. Chiu and Wu to incur thousands of dollars in attorney's fees and costs by  
14 initiating the litigation in the district court, in direct violation of her obligation to  
15 submit to arbitration.  
16  
17

18 Chan did not simply sue Wu. She also filed a frivolous action against  
19 Nevada Real Estate Corp. (the real estate company where Wu works), Judith  
20  
21

22 <sup>17</sup> Email Chain between Laura Meyers, paralegal and Betty Chan, see 3 Appx 546 –  
23 48.

24 <sup>18</sup> 2 Appx 398 – 459, Arbitration Manual, Article 17, page 13 (“Realtors shall  
25 submit the dispute to arbitration in accordance with the policies of the Board rather  
26 than litigate the matter.”); Part Ten – Arbitration of Disputes, Section 53(a) The  
27 Award, page 150 (“The award shall be in writing and signed by the arbitrators or a  
28 majority of them, shall state only the amount of the award, and, when so signed  
and transmitted to each of the parties, shall be valid and binding and shall not be  
subject to review or appeal.”).

1 Sullivan (designated Realtor® and officer of Nevada Real Estate Corp.), Dr. Chiu,  
2 and KB Homes (the property developer/seller). As suggested in her email to KB  
3 homes quoted above Chan never pursued her claims against KB Homes who, to  
4 this day, has yet to file an answer to Chan’s 2016 Complaint. Chan wanted KB to  
5 “work with me on my plan” to punish Wu by filing and pursuing frivolous  
6 litigation, despite a contractual and ethical obligation to arbitrate the matter with  
7 GLVAR. It was only after Appellees sought to dismiss the action that Chan filed a  
8 Motion to Stay, pending the outcome of the binding arbitration.  
9

10  
11 On December 6, 2016, Wu and Sullivan submitted their *Answer and*  
12 *Counterclaim* and asserted that Dr. Chiu and Chan never entered a written  
13 agreement and that there was never a meeting of the minds regarding the core  
14 terms of her representation. Dr. Chiu also asserted that there was never any written  
15 or verbal agreement setting forth the terms of any agreement between the parties.  
16 Wu and Sullivan further asserted that Chan fraudulently represented to Dr. Chiu  
17 and to First American Title Company that she possessed a broker registration card  
18 identifying her as Dr. Chiu’s agent without being able to produce any such  
19 document upon challenge.<sup>19</sup> Wu and Sullivan also noted that Chan had failed to  
20 bring this matter before the GLVAR as is required of Realtors®.  
21

22 On January 13, 2017, Chan, through counsel, filed her *Motion for Stay*  
23  
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28 <sup>19</sup> See 3 Appx 559 – 67; 3 Appx 536 – 38.

1 *Pending Arbitration* stating that Chan “submitted a claim for arbitration with the  
2 Greater Las Vegas Association of Realtors® pursuant to the Code of Ethics and  
3 Arbitration Manual for the National Association of Realtors®. In the event of  
4 disputes between Realtors®, Realtors® must submit the dispute to arbitration in  
5 accordance with the policies of GLVAR.”<sup>20</sup> However, Chan only remembered the  
6 arbitration policy over a year after Dr. Chiu entered a contract to purchase his  
7 home and months after having improperly filed the instant lawsuit.  
8  
9

10 Ten days after the Motion for Stay, Chan’s second counsel filed their *Motion*  
11 *to Withdraw as Counsel of Record for Plaintiffs Betty Chan and Asian American*  
12 *Realty & Property Management*. The motion requested withdrawal because of  
13 “differences with Plaintiffs concerning action to be taken” going forward.  
14

15 On May 1, 2017, the District Court held a status check due to Chan’s failure  
16 to provide any evidence that she had filed for arbitration. Because the named  
17 plaintiffs in the A-Case included a corporation, representation by counsel was  
18 required.<sup>21</sup> Chan retained Black & Lobello, the third firm she retained in this  
19 matter.  
20  
21

## 22 **VI. CHAN REPUDIATES RESULT OF BINDING ARBITRATION**

23 On July 10, 2017, Respondents were finally made aware of a filing with the  
24 Arbitration Board. To initiate arbitration, Chan submitted her *Request and*  
25

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27 <sup>20</sup> See *Motion for Stay Pending Arbitration*, at 3:10–12, 1 Appx 61 – 65.

28 <sup>21</sup> EDCR 7.42(b) (“A corporation may not appear in proper person.”).

1 *Agreement to Arbitrate (Member)* (hereafter “Agreement to Arbitrate”). In the  
2 Agreement to Arbitrate, Chan recognized that “by becoming and remaining a  
3 member of the Greater Las Vegas Association of Realtors®” she had “previously  
4 consented to arbitration through the Association under its Rules and regulations.”<sup>22</sup>  
5

6 Further, Chan acknowledged that she sought arbitration of a “dispute arising  
7 out of the real estate business as defined by Article 17 of the Code of Ethics”  
8 between her and Wu.<sup>23</sup> She claimed that there was “due, unpaid and owing to [her]  
9 . . . the sum of \$13,795.32.”<sup>24</sup> And the scope of the arbitration was clearly laid out  
10 by Chan in the Agreement to Arbitrate.  
11  
12

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

23 In the event I do not comply with the award and it is necessary for any  
24 party to obtain judicial confirmation and enforcement of the award  
25 against me, **I agree to pay that party costs and reasonable**

26 <sup>22</sup> 1 Appx 183 – 2 Appx 288, P0001.

27 <sup>23</sup> 1 Appx 183 – 2 Appx 288, P0001, ¶ 3.

28 <sup>24</sup> 1 Appx 183 – 2 Appx 288, P0001, ¶ 4.

1        **attorney’s fees incurred obtaining such confirmation and**  
2        **enforcement.**<sup>25</sup>

3 Pursuant to the Agreement to Arbitrate, an arbitration was held before the GLVAR  
4 on or about April 17, 2018. The Arbitration Panel, consisting of three arbitrators,  
5 awarded Chan with twenty-five percent, or \$3,448.83 of the \$13,795.32  
6 commission. The remainder was awarded to Wu.  
7

8        Notwithstanding her consent to the arbitration and the rules governing the  
9 same, Chan has since repudiated the Award. On May 17, 2018, the last day for  
10 Chan to seek procedural review of the arbitration, she defiantly declared “I will not  
11 engage [in] a procedur[al] review with GLVAR . . . .”<sup>26</sup> After a diatribe of  
12 purported procedural deficiencies—which Chan refused to actually raise before the  
13 GLVAR—Chan openly criticized the GLVAR.  
14  
15

16        I am totally disappointed GLVAR has not changed a bit since my first  
17 arbitration 25 years ago. For whatever happened in the arbitration hearing, I  
18 could not trust GLVAR would be capable of providing a professional  
19 hearing any more. As such, I resort to legal action to fight for my  
20 obligations. I want that to be a known public record.<sup>27</sup>

21        Following that binding decision, Chan continued her litigious activities and  
22 sought to overturn the decision of the Arbitration Panel. The district court found  
23 the arbitration binding on August 22, 2018, and signed the Order Denying the  
24  
25

26 <sup>25</sup> 1 Appx 183 – 2 Appx 288, P0001, ¶ 5 (emphasis added).

27 <sup>26</sup> 3 Appx 460 – 64.

28 <sup>27</sup> 3 Appx 460 – 64.

1 Motion to Vacate on September 18, 2018.<sup>28</sup> Chan again petitioned for the Court to  
2 overturn the Arbitration Award and again her request was struck down on October  
3 31, 2018, when the Court granted the Respondents' request for Summary Judgment  
4 and took their request for an Award of Attorneys' Fees and Costs under  
5 advisement. On March 22, 2019, the district court also issued the Order Granting  
6 Defendant's Countermotion for Summary Judgment and Attorney Fees and  
7 Costs.<sup>29</sup>

10 Chan then attempted to appeal the September 18, 2018, order months after  
11 her window for an appeal had passed. This Court elected to dismiss Chan's appeal  
12 for multiple reasons. On May 14, 2020, this Court issued an *Order Dismissing*  
13 *Appeal* (5 Appx 1085 - 89). This Court listed several reasons why the appeal  
14 should be dismissed: 1) the March 22, 2019 Order cannot be appealed under NRS  
15 38.247(1)(c); 2) the March 22, 2019 Order was not a final order, and 3) there is  
16 "no statute or court rule allow[ing] an appeal from an order declaring someone to  
17 be a procuring cause."<sup>30</sup> This Court also correctly ruled that Chan's attempted  
18 appeal of the September 18, 2018 Order was untimely.

22 Following this Court's decision to dismiss the matter, Appellees filed their  
23 *Motion for Summary Judgment, or in the Alternative, for Contractual Award of*  
24

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26 <sup>28</sup> 4 Appx 691 – 94, Order Denying Motion to Vacate or Modify Arbitration Award,  
27 Sep, 18, 2018.

27 <sup>29</sup> 4 Appx 816 – 22.

28 <sup>30</sup> 5 Appx 1085 – 89.



1 *Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by*  
2 *GLVAR Arbitration Panel, and Release of Bond Deposited on Appeal* seeking  
3 summary judgment on their claim of abuse of process and an award of additional  
4 attorney's fees and costs pursuant to the *Agreement to Arbitrate* (see 1 Appx 183 –  
5 2 Appx 288). Chan responded with her *Plaintiffs' Opposition to Defendants'*  
6 *Motion for Summary Judgment, or in the alternative, for Contractual Award of*  
7 *Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by*  
8 *GLVAR Arbitration Panel and Release of Bond Deposited on Appeal, and*  
9 *Countermotion for Summary Judgment on Defendants' Abuse-of-Process*  
10 *Counterclaim*. On July 21, 2020, the Honorable Eric Johnson entertained the  
11 pleadings and entered an order on November 23, 2020 (hereafter "Final Order,"  
12 see 7 Appx 1456 - 64). The Final Order granted summary judgment against  
13 Appellees' claim for abuse of process and awarded additional attorney's fees  
14 against Chan for her continuing pursuit of her meritless claims.  
15

16  
17 These results have not phased Chan, who has now incurred tens of thousands  
18 of dollars more in attorney's fees and costs than the initial commission was worth.  
19  
20 Chan claims she is fighting a battle for justice, even going to the lengths of  
21 comparing herself to Thurgood Marshall in Brown v. Board of Education. In  
22 reality, Chan is seeking retribution for her bruised ego and trying to fulfill her  
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1 prophetic statement that she would “teach [Appellees] a lesson.”<sup>31</sup> Teaching a  
2 lesson is NOT proper grounds for initiating and pursuing baseless litigation after  
3 having lost a mandatory arbitration hearing.  
4

5 It is Appellee’s position that the district court erred in granting summary  
6 judgment against Appellees on the abuse of process claim. Chan openly admitted  
7 that it wasn’t about the commission but that she wanted to financially punish Wu  
8 with this litigation. She even called it a game and indicated that while she would  
9 name KB in order to “justify” filing in district court, she never had any intention of  
10 pursuing a claim against KB. Chan knew that she had to name KB in order to give  
11 her an excuse to file in district court when she was contractually and ethically  
12 bound to litigate the commission issue through mandatory arbitration before a  
13 panel established by the GLVAR. The lawsuit itself is nothing but a rouse  
14 intended to drive up costs of litigation and to teach the Appellees a lesson.<sup>32</sup> Her  
15 wounded pride has propelled this litigation for nearly five years. She has used the  
16 legal system to financially abuse the Appellees, who have now incurred several  
17 times more in attorney’s fees and costs than the initial commission which was split  
18 by the arbitration panel. Despite these facts, Chan asserts that she is fighting  
19 against an injustice, like the great civil rights activists of the 1960s. The District  
20 Court outright stated that comparing Chan to Thurgood Marshall was offensive and  
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27 <sup>31</sup> See 1 Appx 183 – 2 Appx 288.

28 <sup>32</sup> Id.

1 that Ms. Chan represented the worst of litigants. Specifically, the District Court  
2 found, in the November 23, 2020 Order (See 7 Appx 1456 - 64), that “Ms. Chan  
3 represents the worst of litigation[.]”<sup>33</sup> It is offensive. Chan is not fighting an  
4 injustice. She is desperately trying to lick her wounded ego by abusing the legal  
5 system. Her claims should be denied and the dismissal of the abuse of process  
6 should be reversed. Finally, the awards of attorney’s fees and costs should be  
7 affirmed, as the *Agreement to Arbitrate*, which Chan signed, clearly provides for  
8 an award of attorney’s fees and costs incurred seeking to enforce the arbitration  
9 award.  
10  
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12

13       Lastly, it is important to note that Appellees have filed a *Motion to Dismiss*  
14 *Second Appeal* (hereafter “MTD”) in this matter. The MTD lays out the clear and  
15 obvious reasons why this Court should not entertain Chan’s appeal. First and  
16 foremost, Chan failed to timely appeal the order confirming the arbitration award.  
17 The *Order Denying Motion to Vacate or Modify Arbitration Award* was filed and  
18 served on or about September 18, 2018. Appellant did not file her first *Notice of*  
19 *Appeal* until April 22, 2019, well beyond the 30-day time limit granted by NRAP  
20 4(a)(1). The second *Notice of Appeal* was filed on December 14, 2020. Again, this  
21 is well beyond the deadline imposed by NRAP 4(a)(1). Additionally, as this Court  
22 wisely pointed out, “no statute or court rule allows an appeal from an order  
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28 <sup>33</sup> 7 Appx 1456 - 64 at 2:20.

1 declaring someone to be a procuring cause.”<sup>34</sup> Absent a statutory pathway, Chan  
2 should not be permitted to maintain an appeal. Finally, *res judicata* blocks Ms.  
3 Chan’s **second** attempt to appeal the sufficiency of the arbitration award as well as  
4 the procuring cause issue. Appellees believe that this appeal should be dismissed  
5 for lack of jurisdiction, however, Appellees hereby present their answering brief  
6 and opening brief for the cross-appeal.  
7

## 8 **ARGUMENT FOR CROSS-APPEAL**

### 9 **I. STANDARD OF REVIEW – A DISTRICT COURT’S GRANTING OF** 10 **SUMMARY JUDGMENT IS REVIEWED *DE NOVO*** 11

12 The Supreme Court of Nevada “reviews a district court’s grant of summary  
13 judgment *de novo*, without deference to the findings of the lower court.”<sup>35</sup>  
14 Furthermore, the Supreme Court of Nevada, “when reviewing a motion for  
15 summary judgment, the evidence, and any reasonable inferences drawn from it,  
16 must be viewed in a light most favorable to the nonmoving party.”<sup>36</sup> Therefore, this  
17 Court must review the decision to grant summary judgment on Cross-Appellants’  
18 abuse of process claim *de novo* and must view all evidence in the light most  
19 favorable to Cross-Appellants.  
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24 <sup>34</sup> See 3 Appx 503 – 30.

25 <sup>35</sup> *Wood v. Safeway, Inc.*, 121 P. 3d 1026, 1029 (2005), citing to *GES, Inc. v.*  
26 *Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (citing *Caughlin Homeowners*  
*Ass’n v. Caughlin Club*, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993)).

27 <sup>36</sup> *Id.*, citing to *Lipps v. Southern Nevada Paving*, 116 Nev. 497, 498, 998 P.2d  
28 1183, 1184 (2000) (citing *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d  
662, 663 (1985)).

## 1 II. CHAN'S ACTIONS CONSTITUTE AN ABUSE OF PROCESS

2 Chan's conduct and her own admissions have demonstrated that she did not  
3 initiate the lawsuit in good faith, but rather to harass defendants and punish them.  
4 To establish a valid claim for abuse of process, one must establish "(1) an ulterior  
5 purpose [...] other than resolving a legal dispute, and (2) a willful act in the use of  
6 the legal process not proper in the regular conduct of the proceeding."<sup>37</sup> To  
7 successfully obtain motion for summary judgment on an abuse of process claim,  
8 the moving party must "present specific facts that [the nonmoving party] had an  
9 ulterior purpose in the underlying lawsuit, other than resolving [their] legal dispute  
10 [...] and improperly used the legal process to accomplish that purpose."<sup>38</sup>

14 Chan has already admitted that she has an ulterior motive for filing her  
15 lawsuit. In her email located at 3 Appx 671 – 72, she states that she "felt insulted  
16 and humiliated, another agent dared challenge me and he really do not know  
17 who I am."<sup>39</sup> She continues: "I liked to teach them a lesson. Life is not about  
18 money. So happen i do have few hundred thousand in hand that i can use. If  
19 they are willing to go along with me to spend equal amount of money, then I will  
20 be very happy to play their game."<sup>40</sup> In her own words, she has admitted that she  
21 filed the lawsuit, not because of a valid legal dispute, but because she wanted to  
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26 <sup>37</sup> LaMantia v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002).

27 <sup>38</sup> Id at 31, 880.

28 <sup>39</sup> 3 Appx 671 – 72.

<sup>40</sup> 3 Appx 671 – 72.

1   avenger her pride and teach the Defendants a lesson. She even talks about how she  
2   has enough money to carry a lawsuit and make them pay attorney's fees to keep up  
3   with her. This is a clear ulterior motive, and Chan cannot point to any specific fact  
4   on the record to indicate otherwise. Indeed, her conduct during the lawsuit has also  
5   been vexatious and improper. This weighs against the District Court's decision to  
6   dismiss the abuse of process claim by way of summary judgment. In reality this is  
7   a textbook example of abuse of process!

10       Chan improperly used the legal system to accomplish her ulterior motive.  
11   First, she fraudulently represented that she possessed a broker registration card  
12   identifying her as Dr. Chiu's agent. This was not true, yet Chan alleges in her  
13   initial complaint that "Plaintiff Chan located a buyer registration card and  
14   Defendant Chiu filled in the buyer portion and Plaintiff Chan filled in the realtor  
15   portion."<sup>41</sup> Chan never had such a card, yet she continued to claim that she did, to  
16   the point of including it in her original complaint and trying to take the  
17   commission by claiming she possessed the card. Not only did Chan misrepresent  
18   the existence of the buyer registration card, but she also filed this lawsuit in  
19   contravention of her responsibility to seek arbitration through GLVAR. She filed  
20   this civil suit prior to seeking resolution through arbitration, and only agreed to  
21   stay the case when Defendants threatened her with sanctions. She also breached the

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28   <sup>41</sup> See Chan's *Complaint* at 3:24-25, 1 Appx 1-10.

1 *Agreement to Arbitrate*, in which she specifically agreed to abide by the arbitration  
2 award. Her conduct during the litigation has been inappropriate and has only  
3 served as evidence of her desire to run-up costs and punish the Defendants. She has  
4 propagated this litigation, at the expense of tens of thousands of dollars, yet she  
5 can only recover, at most, the \$13,000.00 commission held by GLVAR. This court  
6 has even entered an award of attorney's fees against Chan.  
7

8  
9 Chan's intentions have been clear from the beginning: vengeance on those  
10 who dared cross her. She has used the assistance of five different law firms to  
11 accomplish this task. The matter has been before the GLVAR Arbitration panel,  
12 the district court and now the Supreme Court of Nevada for a second time. Chan is  
13 the posterchild of one who abuses the legal system to accomplish her own ulterior  
14 motive. The district court erred by granting summary judgment on the abuse of  
15 process claim. Clearly, there was at least "a factual dispute [that would allow] a  
16 rational trier of fact could return a verdict" finding abuse of process.<sup>42</sup> In fact,  
17 Chan's statements of wanting to punish Appellees constitutes direct evidence of  
18 abuse of process. No evidentiary hearing should be necessary given Chan's own  
19 statement that she intended to use the legal system to cause Appellees to incur  
20 hundreds of thousands in legal fees.<sup>43</sup> However, the Court granted summary  
21 judgment against Appellees, dismissing their abuse of process claim.  
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27 <sup>42</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

28 <sup>43</sup> See 3 Appx 671 – 72.

1           **i.       Ulterior Motive**

2           Chan has tried desperately to explain her words about exacting revenge on  
3 Appellees. All of her attempts and excuses cannot change the fact that Chan  
4 admitted that her motive in this litigation was to wreak havoc on Appellees' bank  
5 accounts. Regardless of Chan's excuses, her actions show that she really has  
6 desired to cause Defendants to incur thousands in legal fees and costs trying to  
7 enforce the arbitration award. Her words do not show that she is fighting for social  
8 justice or a wrong. Her text clearly demonstrates that Chan was is purely motivated  
9 by pride. She even states that she needs to get KB homes to "work with [her] on  
10 [her] plan."<sup>44</sup> This was not a plan to achieve justice, it was a plan to cause  
11 Defendants financial ruin for daring to challenge Chan. Chan has asserted that the  
12 District Court case was necessary because she could not seek relief against KB  
13 Homes before the GLVAR. Of course, this was all part of the "plan," because the  
14 naming of KB Homes as a defendant is a complete farce! Chan granted KB Homes  
15 an open extension to answer the Complaint from the outset and to this day KB has  
16 never even answered the Complaint! Quite a plan indeed. Chan never intended to  
17 harm her business by actually going after KB Homes with a bogus claim, she  
18 knows doing so would greatly hinder her ability to ever do business with KB  
19 Homes again. The "plan" was simply to file this case in order to unnecessarily and  
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28 <sup>44</sup> 4 Appx 691 – 94.



1 vexatiously drive up the cost of litigation, as set forth in her email. Had she  
2 actually desired justice, she would have also gone against the company who  
3 allowed Wu to step in and allegedly take her sale.  
4

5         If this is not a clear, ulterior motive, there is no such thing. Out of the  
6 plaintiff's own mouth is an admission that she planned to drive up legal fees to  
7 soothe her wounded ego and drive out a competitor in the Asian speaking  
8 marketplace who "dares challenge her." Her justification on this point is pathetic as  
9 it does not matter who the communication was directed to or whether she was just  
10 venting. Her actions clearly demonstrate that this was a plan from the beginning.  
11  
12 So far, she has succeeded in at least part of her plan: to drive up legal fees. Chan  
13 must not be permitted to continue to increase costs for Defendants. Those costs  
14 must fall on the party who planned, from the beginning, to bully Defendants into  
15 submission by piling legal fees on them; the same party who violated her ethical  
16 duty to seek arbitration before initiating court proceedings. Absent an award of all  
17 attorney's fees and costs incurred by Defendants in defending against this ill-  
18 conceived and vexatious litigation will put the Defendants in the position of having  
19 won the war but lost the financial battle and Chan's grand plan to abuse the legal  
20 system will have worked to perfection. The District Court only awarded Appellee's  
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1 a portion of the massive amount of attorney's fees and costs they incurred in this  
2 litigation.<sup>45</sup> All this over a relatively small commission.

3 Chan claims that her actions only constitute bad intentions and not an  
4 ulterior motive to coerce settlement of a claim.<sup>46</sup> That is exactly what Chan has  
5 done. Indeed, she does have bad intentions, as she has admitted, but she also had  
6 an ulterior purpose of trying to use the court system to coerce the Defendants into  
7 settling this case for nothing. Why else would she say to a fellow agent that she  
8 had a few hundred thousand dollars set aside to effectuate her plan? She intended,  
9 from the very beginning, to drag this matter into the District Court and, if  
10 necessary, before this honorable court. This was to cause Defendants to  
11 continuously incur legal fees to the point of giving up entirely on the commission  
12 and conceding it to Chan. There is no way to dispute this. She admits to this plan.  
13 Chan wishes to paint herself in a new light. She wants people to think that she is  
14 fighting for justice for all realtors. This motivation is an attempt to walk-back on  
15 her original scheme. If she was truly intending to fight for social justice, why did  
16 she file a civil complaint immediately, before arbitration, in direct contravention to  
17 her ethical responsibility? The answer is that civil actions are much more  
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25 <sup>45</sup> Copies of invoices for the fees and costs incurred up until the *Memorandum of Production of Invoices for Attorney's Fees and Costs* are located at 7 Appx 1369 – 1401.

26 <sup>46</sup> See Chan's August 15, 2018, *Opposition/ Motion to Strike* at 14: 13-14, and 15:13-15, citing to *Raphaelson v. Ashtonwood Stud Assocs., L.P.*, 2009 U.S. Dist. LEXIS 66517, \*8 (D. Nev. 2009) and *Georgiou Studio, Inc. v. Blvd. Invest, LLC*, 663 F. Supp. 2d 973, 982 D. Nev. 2009), 3 Appx 592-608.

1 expensive than arbitration actions. There is nothing to indicate that Chan is truly  
2 fighting for justice. She was upset that somebody dared to play in her sandbox, and  
3 she wanted to punish them for it. It also must be noted that Chan believed she  
4 could simply outspend Appellees in this litigation thereby accomplishing her plan.  
5 If the District Court's orders stand, awarding only a portion of Appellees fees  
6 against Appellant then Ms. Chan's grand scheme will prevail, Appellees will have  
7 won the battle but lost the financial war since they will be out tens of thousands of  
8 dollars in fighting over a relatively small commission. All of Appellee's fees and  
9 costs should be awarded against Appellant in order to make them whole and to  
10 prevent such future abuses of the litigation process.

11  
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13  
14 **ii. Improper, Willful Act**

15 Chan has engaged in improper and willful acts in furtherance of her plan to  
16 punish Defendants. The National Association of Realtors' ("NAR") Code of Ethics  
17 and Standards of Practice, Article 17 mandates that disputes between realtors, "if  
18 mediation is not required, Realtors shall submit the dispute to arbitration in  
19 accordance with the policies of the Board rather than litigate the matter."<sup>47</sup> The  
20 NAR's Code of Ethics further "includes the obligation of Realtors (principals) to  
21 cause their firms to . . . arbitrate and be bound by any resulting . . . award."<sup>48</sup>  
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27 <sup>47</sup> National Association of Realtors, *Code of Ethics and Standards of Practice*,  
Article 17 (January 1, 2017), see 2 Appx 398 – 459 [emphasis added].

28 <sup>48</sup> *Id* [emphasis added].

1 The Greater Las Vegas Association of Realtors’ (“GLVAR”) is one of  
2 Nevada’s local governing Boards within the NAR. The GLVAR’s code of ethics  
3 requires that any and all legitimate disputes regarding commissions between  
4 realtors are subject to arbitration before the GLVAR.<sup>49</sup>

6 Chan is a member of the GLVAR, subjected to the requirement that her  
7 dispute with Wu be submitted to mandatory, binding arbitration. Because GLVAR  
8 requires arbitration for the dispute in this matter, Chan was required to “submit the  
9 dispute to arbitration in accordance with the policies of the [GLVAR] **rather than**  
10 **litigate the matter**” [Emphasis Added]. Not only was Chan required to submit to  
11 arbitration rather than litigate this matter before the District Court, such arbitration  
12 is binding. Thus, Chan’s ethical codes of conduct proscribe the possibility of  
13 litigating this matter before this Court without first seeking to settle the matter by  
14 mediation and if that fails by arbitration.

18 By filing her Complaint with this Court, Chan has deliberately violated  
19 Local, State, and National codes of ethics. Chan ignored the mandate to arbitrate  
20 the matter before the GLVAR, wasting both this Court’s time and resources. Not  
21 only has Chan wasted this Court’s resources and time, but Chan also filed the  
22 District Court case prior to arbitration to harass and unnecessarily drive-up  
23 Defendants’ cost of defense. This was part of her plan from the onset. Lawsuits are  
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27 <sup>49</sup> GLVAR, *The Code of Ethics – Our Promise of Professionalism*, p. 31, referring  
28 to the Standard of Practice, Article 17, at 2 Appx 398 – 459.

1 much more expensive than arbitration hearing, so by filing her suit first, she  
2 managed to cause Defendants to incur even more in legal fees. Her only excuse for  
3 filing the district court case first is that “GLVAR would not open an arbitration  
4 case because no commission had been distributed.”<sup>50</sup> So, instead of waiting for the  
5 proper procedure to initiate an arbitration proceeding, Chan deliberately chose to  
6 violate her ethical duties to submit to arbitration first.  
7

8  
9 Furthermore, Chan filed an appeal which was obviously frivolous and  
10 unnecessary. She even deliberately tried to bootstrap an unappealable order to her  
11 appeal. These were deliberate steps to drive up costs. This Court listed three  
12 reasons why Chan’s appeal was inappropriate, yet she still appealed and managed  
13 to cause Defendants to incur even more legal fees, and now she has doubled down,  
14 doing it again! In sum, Chan has acted with an ulterior motive from the onset. She  
15 accomplished this ulterior motive by failing to comply with her ethical duty to  
16 submit to arbitration prior to filing a civil suit and by pursuing an obviously  
17 frivolous appeal which attempted to incorporate previous orders which cannot be  
18 substantively appealed. Summary judgment dismissing the abuse of process claim  
19 was in error. Chan has exhibited a textbook case of abuse of process and this Court  
20 should reverse the District Court’s finding and remand the matter to the District  
21 Court with instructions to enter summary judgment finding abuse of process.  
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27 <sup>50</sup> See Chan’s August 15, 2018, *Opposition/ Motion to Strike* at 8:3-5; 3 Appx 592-  
28 608.

1 Given the fact that this Court reviews decisions to grant summary judgment  
2 utilizing a *de novo* standard of review, Cross-Appellants pray that this Court  
3 reverse the District Court’s finding that Chan did not commit an abuse of process.  
4  
5 Furthermore, this Court should enter an order finding Chan abused process and  
6 admitted to doing so. Her admission is *prima facie* evidence that she abused the  
7 legal system to cause Cross-Appellants to incur tens of thousands in legal fees.  
8

9 **ARGUMENT ANSWERING APPELLANTS’ OPENING BRIEF**

10 **I. The GLVAR Arbitration Panel correctly split the commission between**  
11 **Chan and Wu.**

12 In order to effectively challenge an arbitration award a party must  
13 demonstrate (1) applicable statutory grounds provided in NRS 38.241; (2) that the  
14 award was arbitrary, capricious, or unsupported by the agreement; or (3) that the  
15 arbitrator manifestly disregarded the law.<sup>51</sup>  
16

17 Statutory grounds to vacate an arbitration award may apply if a contesting  
18 party demonstrates by clear and convincing evidence that an “arbitrator exceeded  
19 his or her powers.”<sup>52</sup> This burden proves to be quite high as “Courts presume that  
20 arbitrators are acting within the scope of their authority.”<sup>53</sup>  
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23 However, allegations that an arbitrator misinterpreted the agreement  
24 or made factual or legal errors do not support vacating an award as  
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26 <sup>51</sup> Clark County Education Association v. Clark County School District, 122 Nev.  
337, 341–42; 131 P.3d 5, 8 (2006).

27 <sup>52</sup> NRS 38.241(1)(d).

28 <sup>53</sup> Health Plan of Nevada, Inc., 120 Nev. at 697, 100 P.3d at 178.

1 being in excess of the arbitrator's powers. Arbitrators do not exceed  
2 their powers if their interpretation of an agreement, even if erroneous,  
3 **is rationally grounded in the agreement**. The question is whether  
4 the arbitrator had the authority under the agreement to decide an issue,  
5 not whether the issue was correctly decided. Review under excess-of-  
6 authority grounds is limited and only granted in very unusual  
7 circumstances. An award should be enforced so long as the arbitrator  
8 is arguably construing or applying the contract. **If there is a colorable**  
9 **justification for the outcome, the award should be confirmed.**<sup>54</sup>

10 NRS 38.241 may also allow review of an arbitration award when the  
11 contesting party demonstrates by clear and convincing evidence that the “award  
12 was procured by corruption, fraud or other undue means.”<sup>55</sup> However, the  
13 contesting party must meet this burden by demonstrating that the arbitration award  
14 was obtained by intentional misrepresentations related to the arbitration  
15 proceedings.<sup>56</sup>

16 As to common law grounds, to establish that an award was arbitrary,  
17 capricious, or unsupported by the agreement, the contesting party must establish,  
18 by clear and convincing evidence, that the award “was unsupported by substantial  
19 evidence.”<sup>57</sup> “The arbitrary-and-capricious standard does not permit a reviewing  
20 court to vacate an arbitrator’s award based on misinterpretation of the law.”<sup>58</sup>

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23 <sup>54</sup> Health Plan of Nevada, Inc., 120 Nev. at 697–98, 100 P.3d at 178 (emphasis  
24 added) (citations omitted).

25 <sup>55</sup> NRS 38.241(1)(a).

26 <sup>56</sup> See, e.g., Sylver v. Regents Bank, NA, 129 Nev. Adv. Op. 30, 300 P.3d 718  
(2013).

27 <sup>57</sup> Clark County Education Association, 122 Nev. at 341–42; 131 P.3d at 8.

28 <sup>58</sup> Clark County Education Association, 122 Nev. at 343–44; 131 P.3d at 9.

1 Similarly, manifest disregard of the law “limits the reviewing court’s  
2 concern to whether the arbitrator consciously ignored or missed the law.”<sup>59</sup> Thus,  
3 when reviewing an arbitration award under the common law, “neither standard  
4 permits a reviewing court to consider the arbitrator’s interpretation of the law.”<sup>60</sup>  
5 “When searching for a manifest disregard for the law, a court should attempt to  
6 locate arbitrators who appreciate the significance of clearly governing legal  
7 principles but decide to ignore or pay no attention to those principles.”<sup>61</sup>  
8  
9

10 Thus, “Nevada recognizes both common-law grounds and statutory grounds  
11 for examining an arbitration award. **However, the scope of judicial review of an**  
12 **arbitration award is limited and is nothing like the scope of an appellate**  
13 **court’s review of a trial court’s decision.**”<sup>62</sup>  
14

15 Because Chan, who now complains that the Award was not a proper  
16 interpretation of the law, has failed to demonstrate clear and convincing evidence  
17 that any of these standards have been met, the Award must be confirmed.  
18

## 19 II. CHAN CANNOT BE THE PROCURING CAUSE

20

21 The Arbitration Manual lists a number of issues that may be subject to  
22 arbitration, including disputes where multiple brokers claim to be owed money  
23

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25 <sup>59</sup> Clark County Education Association, 122 Nev. at 342; 131 P.3d at 9.

26 <sup>60</sup> Clark County Education Association, 122 Nev. at 342; 131 P.3d at 9.

27 <sup>61</sup> Clark County Education Association, 122 Nev. at 344; 131 P.3d at 10 (citation  
omitted).

28 <sup>62</sup> Health Plan of Nevada, Inc., 120 Nev. at 695, 100 P.3d at 176.



1 from a commission.<sup>63</sup> The Arbitration Manual recognizes that brokers may claim  
2 that the right to commission proceeds due to the procuring cause standard.<sup>64</sup>

3 This Court has determined how “a court . . . decide[s] which [broker] was  
4 the ‘procuring’ or ‘inducing’ cause of the sale.”<sup>65</sup> To be the procuring cause of a  
5 sale, the broker’s conduct must be more than merely trifling.<sup>66</sup> “Merely introducing  
6 the eventual purchaser is not . . . enough.”<sup>67</sup> A broker cannot be the procuring  
7 cause when it is shown that they have “abandoned efforts or been helplessly  
8 ineffective.”<sup>68</sup> Courts have also held that merely introducing or alerting a  
9 prospective buyer that a property is available is usually insufficient to constitute a  
10 procuring cause.<sup>69</sup> Several jurisdictions have held that the broker’s efforts must be  
11 the **predominating cause** of the sale.<sup>70</sup> Clearly, given the division of the  
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17 <sup>63</sup> *Code of Ethics and Arbitration Manual*, Standard of Practice 17-4(1); 2 Appx  
18 398 – 459

19 <sup>64</sup> *Code of Ethics and Arbitration Manual*, Standard of Practice 17-4(1); 2 Appx  
20 398 – 459

21 <sup>65</sup> Bartsas Realty, Inc. v. Leverton, 82 Nev. 6, 9, 409 P.2d 627, 629 (1966)  
22 (citations omitted).

23 <sup>66</sup> Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 629.

24 <sup>67</sup> Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 629.

25 <sup>68</sup> Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 630; see also Levy Wolf Real  
26 Estate Brokerage, Inc. v. Lizza Industries, Inc., 500 N.Y.S. 2d 37, 118 A.D.2d 688  
27 (N.Y. App. Div. 1986).

28 <sup>69</sup> See United Farm Agency of Alabama, Inc. v. Green, 466 So. 2d 118 (Ala. 1988);  
Greene v. Hellman, 51 N.Y.2d 197, 412 N.E.2d 1301 (1980).

<sup>70</sup> See Carmichael v. Agur Realty Co., 574 So. 2d 603 (Miss. 1990); Ham v.  
Morris, 711 S.W.2d 187 (Mo. 1986); A N Associates, Inc. v. Quotron Systems,  
Inc., 605 N.Y.S. 2d 178, 159 Misc. 2d 515, (Civ. Ct. N.Y. Cnty. 1993); Vincent v.  
Weber, 13 Ohio Misc. 280, 232 N.E. 2d 671 (Mun. Ct. 1965).

1 commission in this case the Arbitrators found Wayne Wu to be both the procuring  
2 cause and the predominating cause of the sale. If there was any error by the  
3 arbitration panel it is that they should have awarded the entirety of the commission  
4 to Wu and nothing to Chan.  
5

6 Notwithstanding the authority to determine that one broker has acted as the  
7 procuring cause, the Arbitration Manual explicitly confers authority to split an  
8 award:  
9

10 While awards are generally for the full amount in question (which  
11 may be required by state law), in exceptional cases, awards may be  
12 split between the parties (again, except where prohibited by state law).  
13 Split awards are the exception rather than the rule and should be  
14 utilized only when Hearing Panels determine that the transaction  
15 would have resulted only through the combined efforts of both parties.  
16 It should also be considered that questions of representation and  
17 entitlement to compensation are separate issues.<sup>71</sup>

18 Having conducted extensive research on the issue, Appellees are aware of no  
19 law in the state of Nevada prohibiting the splitting of commission. It should also  
20 be noted that Appellant never even provided a transcript of the arbitration hearing  
21 to the District Court judge to review.  
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26 <sup>71</sup> *Code of Ethics and Arbitration Manual*, Appendix II to Part Ten: Arbitration  
27 Guidelines (Suggested Factors for Consideration by a Hearing Panel in  
28 Arbitration), at 158; 2 Appx 398 – 459

1 “It is for the arbitrators to determine which issues were actually ‘necessary’  
2 to the ultimate decision.”<sup>72</sup>

3 Thus, an arbitration decision is final and conclusive *because the*  
4 *parties have agreed that it be so.* By ensuring that an arbitrator’s  
5 decision is final and binding, courts simply assure that the parties  
6 receive the benefit of their bargain.

7 Moreover, “[a]rbitrators, unless specifically required to act in  
8 conformity with rules of law, may base their decision upon broad  
9 principles of justice and equity, and in doing so may expressly or  
10 impliedly reject a claim that a party might successfully have asserted  
11 in a judicial action.”

12 . . .  
13 Parties who stipulate in an agreement that controversies that may arise  
14 out of it shall be settled by arbitration, may expect not only to reap the  
15 advantages that flow from the use of that nontechnical, summary  
16 procedure, but also to find themselves bound by an award reached by  
17 paths neither marked nor traceable and not subject to judicial  
18 review.<sup>73</sup>

19 Arbitrators wield significant power to craft an award considering all legal,  
20 factual, and equitable nuances in a matter. The GLVAR relies on this authority in  
21 providing arbitration decisions.

22 The National Association’s Professional Standards Committee has  
23 consistently taken the position that arbitration awards should not  
24 include findings of fact or rationale for the arbitrators’ award among  
25 the reasons for this are the fact that arbitration awards are not  
26 appealable on the merits but generally only on the limited procedural  
27 bases established in the governing state arbitration statute; that the  
28 issues considered by Hearing Panels are often myriad and complex,  
and the reasoning for an award may be equally complex and difficult

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26 <sup>72</sup> Hall v. Superior Court, 18 Cal. App. 4th 427, 436, 22 Cal. Rptr. 2d 376, 381  
27 (1993).

28 <sup>73</sup> Moncharsh v. Heily & Blase, 3 Cal. 4th 1, 10–11, 832 P.2d 899, 903–04 (1992).

1 to reduce to writing; and that the inclusion of written findings of fact  
2 or rationale (or both) would conceivably result in attempts to use such  
3 detail as “precedent” in subsequent hearings which might or might not  
involve similar facts.<sup>74</sup>

4 Despite the authoritative finality that this gives to their decision, in the  
5 specific case of the GLVAR a process for procedural review is nonetheless  
6 provided to the parties.  
7

8 After the award has been transmitted to each of the parties, they have  
9 twenty (20) days to request procedural review of the arbitration  
10 hearing procedure by the Board of Directors. The non-prevailing party  
11 shall also have the same twenty (20) days following transmittal of the  
12 award to notify the Professional Standards Administrator that a legal  
challenge to the validity of the award has been initiated.

13 If no such procedural review is requested, the award becomes **final**  
14 **and binding following the twenty (20) day period.** However, if  
15 procedural review is requested, the award is not considered final and  
16 binding until after the Board of Directors has concluded that the  
hearing was conducted in a manner consistent with the Board’s  
procedures and the parties had been afforded due process.<sup>75</sup>

17 In addition to the provisions of the Arbitration Manual, the April 27, 2018,  
18 letter communicating the Award put the parties on notice that “A request for  
19 procedural review must be filed within twenty (20) days of the award.  
20

21 \_\_\_\_\_  
22 <sup>74</sup> Arbitration Manual, at Appendix II to Part Ten: Arbitration Guidelines  
23 (Suggested Factors for Consideration by a Hearing Panel in Arbitration), Sample  
24 Fact Situation Analysis, page 162; see also Arbitration Manual, Appendix V to  
25 Part Ten: Arbitration Hearing Checklist, (33), page 174 (“The award shall be in  
26 writing and signed by the arbitrators or a majority of them, and shall state only the  
amount of the award, and when transmitted to each of the parties shall not be  
subject to review or appeal.”); 2 Appx 398 – 459.

27 <sup>75</sup> Arbitration Manual, at Part Ten – Arbitration of Disputes, Section 53(c), page  
28 150; 2 Appx 398 – 459.

1 Alternatively, a notice of legal challenge must be received within that same twenty  
2 (20) day period.”

3 In this matter, Chan explicitly refused to seek any procedural review of the  
4 Award before the GLVAR. This even though Chan was advised that she had the  
5 right to raise any challenges that she felt affected her due process or the fairness of  
6 the award.  
7

8  
9 In conformity with GLVAR policy as established by the Arbitration Manual,  
10 the Award followed the binding principles and clearly pronounced the award of the  
11 Hearing Panel. Yet Chan now argues that the only issue before the GLVAR was  
12 regarding procuring cause and attempts to demonstrate that the final decision was a  
13 legal misinterpretation. Even if Chan could demonstrate by clear and convincing  
14 evidence that the only issue before the GLVAR was to determine procuring cause,  
15 which she cannot, a misinterpretation of the law is not a valid basis to challenge an  
16 arbitration award under NRS 38.241. The GLVAR’s Award was rationally based  
17 in the Agreement to Arbitrate and considered issues in the Arbitration Manual.  
18  
19  
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### 21 **III. The GLVAR Did Not Manifestly Disregard the Law**

22 Chan claims that “the Award manifestly disregards the law . . . because it . . .  
23 makes an implicit finding that cannot exist: more than one procuring cause.”<sup>76</sup>  
24 Chan fails to demonstrate that the Award actually relies on the implication that she  
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27 <sup>76</sup> See Chan’s *Motion to Vacate*, at 12:3–4; 4 Appx 908 – 912.  
28

1 urges be deduced based on her post hoc simplification of the arbitration  
2 proceedings. As the procuring cause, the GLVAR awarded the majority (75%) of  
3 the \$13,795.32 to Wu, but also exercised its authority under the Arbitration Manual  
4 to split the Award and provide Chan with the nominal remainder.  
5

6 And the GLVAR's decision to do so is not subject to review where, as is this  
7 case here, nothing has been done to meet the burden of proving by clear and  
8 convincing evidence that the GLVAR was attempting to flaunt and openly  
9 disregard legal authority. Although Chan insists that the GLVAR can be implied to  
10 have misinterpreted the law, mere misinterpretations of the law do not constitute  
11 manifest disregard for the law for purposes of overturning the Award.  
12  
13

14 Chan fails to cite to any actual law or precedent which requires there to be  
15 only one procuring cause. Instead, she essentially argues that the requirement that  
16 there be only one procuring cause is somehow hinted at or implied in Nevada case  
17 law. Appellants suggest that because a Lexis search for "procuring cause" yields  
18 no results is somehow proof that Nevada law prohibits the splitting of a  
19 commission. However, Appellants fail to cite to any Nevada statute or binding  
20 precedent from Nevada which explicitly states that there can be only one procuring  
21 cause. How, the, did the Arbitration Panel manifestly disregard Nevada law by  
22 splitting the commission when no state law or precedent can be produced  
23 preventing a commission split? On appeal, Chan must show that "the arbitrator  
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1 consciously ignored or missed the law.”<sup>77</sup> Chan has produced nothing, aside from  
2 some case law from nearby states, which prevents the splitting of a commission.  
3 The arbitration panel is specifically authorized split a commission unless prevented  
4 by state law.<sup>78</sup>

6 Caldwell v. Consolidated Realty & Management Co., is a case cited by  
7 Appellants as the only case containing “procuring causes.” Appellants state that the  
8 term was used by the lower court and that the “case was reversed on appeal.”<sup>79</sup>  
9 However, this Court did not reverse the District Court’s decision because of a  
10 finding that there were two procuring causes. Rather this Court reversed the district  
11 court’s finding because “neither appellants nor respondents secured a purchase of  
12 appellants' property within the term of the listing agreement, or the subsequent 45-  
13 day period specified in the extension clause.”<sup>80</sup>

17 The only other Nevada case which Appellants cite is Bartsas Realty v.  
18 Leverton. Appellants claim that because Bartsas uses singular pronouns it is  
19 somehow Nevada law that there can be only one procuring cause. Additionally,  
20 the Court in Bartsas actually remanded the case to the District Court to make a  
21 determination regarding procuring cause. The Bartsas court even cites to precedent  
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24 <sup>77</sup> Clark County Education Association, 122 Nev. at 342; 131 P.3d at 9.

25 <sup>78</sup> *Code of Ethics and Arbitration Manual*, Appendix II to Part Ten: Arbitration  
26 Guidelines (Suggested Factors for Consideration by a Hearing Panel in  
Arbitration), at 158; 2 Appx 398 – 459.

27 <sup>79</sup> See Chan’s *Opening Brief* at 31: 1-2.

28 <sup>80</sup> Caldwell v. Consolidated Realty & Management Co., 99 Nev. 635, 635, 668 P.2d  
284, 285 (1983).

1 that held that “The first broker still may be shown to have abandoned efforts or  
2 been helplessly ineffective.”<sup>81</sup> This is the exact situation in this matter, and Chan  
3 has done nothing to rebut the fact that she abandoned Appellees when they needed  
4 her most. Is the Arbitration Panel supposed to infer, from a 1966 case that uses  
5 singular pronouns or articles, that Nevada law prohibits splitting a commission?  
6 Not only that, but it is clear that the Arbitration Panel rightly believed that Chan  
7 had abandoned her client during a tight window in which they needed to purchase  
8 a home. This Court should uphold the District Court’s order, as well as the  
9 arbitration award. It is clearly not Nevada state law that a commission cannot be  
10 split. Furthermore, Chan abandoned her client. She was lucky to get a percentage  
11 of the commission at all.

12  
13 Finally, Chan has not presented a copy of the transcript from the actual  
14 arbitration panel. How can this court review the decision of the panel without a  
15 copy of the transcript? Chan argues that since there are no findings in the actual  
16 award, the award should be reversed. However, the panel clearly entertained  
17 argument and reached conclusions at the arbitration hearing. A review of the  
18 transcript of the actual hearing is essential to determine whether GLVAR was  
19 attempting to flaunt or openly disregard the law. No information is presented to  
20 support this; therefore, the award must be affirmed.

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27 <sup>81</sup> Bartsas Realty v. Leverton, 409 P.2d 627, 630 (1983), citing to Frink v. Gilbert,  
28 53 Wash. 392, 101 P. 1088; Flinders v. Gilbert, *supra*.



1 **IV. THE AWARDS OF ATTORNEY’S FEES WERE APPROPRIATE**  
2 **i. Chan failed to comply with the Arbitration Award**

3 Chan attempts to undermine the validity of the attorney’s fees awarded  
4 against her in the lower court by claiming that she never failed to comply with the  
5 Arbitration Award. Specifically, Chan states that she “did not fail to ‘comply’ with  
6 the arbitration award; she only appealed.”<sup>82</sup> Regardless of how Chan attempts to  
7 spin her behavior in this case, saying that she has complied with the Arbitration  
8 Award and was only appealing is laughable. Chan filed an inappropriate appeal in  
9 2019, which wasted this Court’s previous time and caused Appellees to incur  
10 thousands more in legal fees. She ignored her duty to submit to and abide by the  
11 Arbitration Award and the contract establishing its enforceability. She put forth  
12 several inappropriate and frivolous filings at the District Court level, including her  
13 April 1, 2019, *Motion to vacate entry of order or Motion for extension of time to*  
14 *file reconsideration to the entry of order granting Defendant countermotion* in  
15 which she requested that the district court vacate notice of entry of the judgment  
16 awarding attorney’s fees and costs against her or, alternatively, to reconsider the  
17 order.  
18

19 The simple facts of the case illustrate how unreasonable and wholly  
20 uncooperative Chan has been. She is litigating over \$13,000 and has likely  
21 incurred hundreds of thousands in legal fees, including tens of thousands in legal  
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28 <sup>82</sup> See Chan’s *Opening Brief* at 47:5.

1 fees awarded to Appellees in this matter. She has been obstinate in settlement  
2 offers, has fired or removed counsel when they refused to take her case further  
3 down the rabbit hole and she has initiated two appeals, one of which was clearly  
4 inappropriate. Her actions have been the complete opposite of compliance. She  
5 then accuses Appellees of trying to assassinate her character. The District Court  
6 stated bluntly in the very order which Appellees are appealing, that “the Court  
7 thinks Ms. Chan represents the worst of litigation[.]”<sup>83</sup> Appellees do not need to  
8 assassinate Chan’s character in this matter, they have simply alerted the Court of  
9 her alarming and stubborn behavior. It is absurd to think that a person who, by a  
10 very decree of the court is the worst of litigation, could be compared to Thurgood  
11 Marshall. Chan has not complied with her ethical duties, she has not complied with  
12 binding arbitration to which she agreed, she has asserted frivolous filings,  
13 including appeals, and all of this because: “[I] felt insulted and humiliated,  
14 **another agent dared challenge me** and he really do not know who I am [...] I  
15 liked to teach them a lesson. Life is not about money. So happen **i do have few**  
16 **hundred thousand in hand that i can use**. If they are willing to go along with me  
17 to spend equal amount of money, **then I will be very happy to play their**  
18 **game**.”<sup>84</sup> This is a game to Chan. This Court should end that game by confirming

27 <sup>83</sup> See November 24, 2020 Order at 2:20 at 7 Appx 1456 - 64 at 2:20.

28 <sup>84</sup> 3 Appx 671 – 72.

1 the arbitration award and attorney's fees awarded against Chan. This must be put  
2 to a stop.

3 **ii. Appellees sought confirmation of the arbitration award contrary**  
4 **to Chan's assertions in her opening brief**

5 The second prong of Chan's attack on the attorney's fees and costs awarded  
6 against her pursuant to the *Agreement to Arbitrate* is her claim that Appellees did  
7 not seek confirmation of the Arbitration Award. This argument is not accurate.  
8 Appellees have sought both enforcement of the award as well as its confirmation.  
9 Chan filed her *Motion to Vacate or Modify Arbitration Award* on July 18, 2018. In  
10 response, to this motion, Appellees filed their *Opposition to Motion to Vacate or*  
11 *Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring*  
12 *Cause, for Summary Judgment, and for Attorney Fees* on August 6, 2018. In this  
13 opposition, Appellees requested confirmation of the arbitration award **multiple**  
14 **times**. Specifically, in their prayer to the Court, Appellees requested that the Court  
15 "deny Chan's Motion to Vacate, **confirm the Award**, and enter summary  
16 judgment in this matter."<sup>85</sup> In response to this request, the district court, in the  
17 September 18, 2018 *Order Denying Motion to Vacate or Modify Arbitration*  
18 *Award*, specifically stated the following: Pursuant to NRS 38.241(4) and NRS  
19 38.242(2) the Arbitration Award of the GLVAR arbitration panel is  
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27 <sup>85</sup> See Appellees' *Opposition to Motion to Vacate or Modify Arbitration Award and*  
28 *Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment,*  
*and for Attorney Fees* at 27:18-19; 3 Appx 465 – 591.

1 CONFIRMED.”<sup>86</sup> Since the beginning of this matter, Appellees sought to confirm  
2 the arbitration award. It was only after Chan’s stubbornness to refute the  
3 confirmation of the Award did Appellees begin asking for assignment of Chan’s  
4 share of the Award to pay their rapidly multiplying attorney’s fees and costs.  
5

6 Appellants split hairs; arguing that the Appellees never sought enforcement  
7 of the award, but rather enforcement of the award of attorney’s fees and costs. In  
8 reality, Chan’s litigious behavior has caused Appellees to incur thousands upon  
9 thousands of dollars in excess of any amount they could hope to recover from the  
10 arbitration. As such, all the proceeds recovered, whether through the GLVAR  
11 arbitration or through the two partial awards of attorney’s fees and costs, will be  
12 used to pay these fees and costs. Up until this point in the litigation, Appellees  
13 have only been awarded a small portion of the fees and costs they have incurred  
14 battling Chan’s stubbornness.<sup>87</sup> An attempt to enforce the award of attorney’s fees  
15 and costs is tantamount to an attempt to enforce the arbitration award. Counsel for  
16 Appellees has been paid very little in comparison to what fees have been incurred.  
17 Additionally, Appellees did not only request that Chan’s share of the commission  
18 be subject to a writ of attachment. In their March 26, 2019, *Motion for Writ of*  
19 *Execution on Plaintiff’s Commissions Awarded by GLVAR Arbitration Panel,*  
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26 <sup>86</sup> See September 18, 2018 *Order Denying Motion to Vacate or Modify Arbitration*  
27 *Award* at 3:16-17; 3 Appx 691 – 701.

28 <sup>87</sup> Invoices up until the *Memorandum of Production of Invoices for Attorney’s Fees*  
*and Costs* are located at 7 Appx 1369 – 1401.

Appellees specifically requested “that the entirety of the \$13,795.32 commissions held in the GLVAR escrow account be immediately made payable and distributed to Blackrock Legal Trust account.” This clearly constitutes an attempt to enforce the entirety of the arbitration award. It is irrelevant that the commissions held by GLVAR would be paid to counsel for Appellees. Appellees certainly sought to enforce the arbitration award through this request and, therefore, Chan’s argument is incorrect.

**iii. Chan is contractually bound to pay the fees and costs associated with enforcement of the award**

The language in the Agreement to Arbitrate is broad. Chan affixed her signature to this broad language, which states: “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 obtaining such confirmation and enforcement.**”<sup>88</sup> Appellants were awarded a portion of their fees and costs in March 2019 and again in 2020, however they are **still** seeking confirmation and enforcement of the arbitration award. Chan is contractually bound to cover the fees of a party seeking such relief. She has not yet given up on her attempts to overturn the arbitration award; indeed, overturning that award is at the heart of her newly minted crusade for social justice. This Court, in In re Amerco Derivative Litigation

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<sup>88</sup> 1 Appx 183 – 2 Appx 288, P0001, ¶ 5 (emphasis added).

1 stated that in interpreting contracts the “ultimate goal is to effectuate the  
2 contracting parties' intent.”<sup>89</sup> The intent, in this matter was clear: to resolve the  
3 dispute between the parties by whatever outcome was reached by the arbitrators.

4  
5 Indeed, the Agreement to Arbitrate, signed by Chan, states the following:

6 I request and consent to arbitration through the Association in  
7 accordance with the *Code of Ethics and Arbitration Manual* [...]. I  
8 agree to abide by the arbitration award and, if I am the non-prevailing  
9 party, to, within ten (10) days following transmittal of the award,  
either (1) pay the award to the party(ies) named in the award [...]

10 There is no ambiguity or possible misinterpretation of this contract. Chan agreed,  
11 in writing and signed by her, to submit to binding arbitration. That same contract  
12 contains a provision requiring her to pay all attorney’s fees and costs incurred in  
13 seeking confirmation and enforcement of the award, not just a portion. Therefore,  
14 the previous orders awarding only a portion of the fees should be reversed with  
15 instructions to award all fees and costs incurred by Appellees in enforcing the  
16 arbitration award.  
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19  
20 **REQUEST FOR RELIEF**

21 WHEREFORE, Appellees/ Cross-Appellants hereby request the following from  
22 the Honorable Court:

- 23 1. Confirmation of the District Court’s Order confirming the GLVAR  
24 Arbitration award;  
25  
26

27 <sup>89</sup> In re Amerco Derivative Litigation, 127 Nev. 196, 211, 252 P.3d 681, 693  
28 (2011).

2. Reversal of the District Court's dismissal of Appellees'/ Cross-Appellants' counterclaim for abuse of process by way of summary judgment and remand with instructions to find in favor of Appellees;
3. Reversal of the District Court Orders from March 22, 2019 awarding \$21,453.00 in fees and \$920.83 in costs, as well as the November 23, 2020 awarding \$35,630.00 in fees, insofar as they award only a portion of the attorney's fees and costs incurred by Appellees and remand with instructions to enter an award of all fees and costs incurred fighting the vexatious litigation asserted by Betty Chan and seeking a claim for abuse of process;
4. Instructions from the Court regarding a proper damage award for the abuse of process claim or remand to the District Court for a determination of damages; and
5. Any further relief as the honorable court determines is just and proper.

DATED February 3, 2022.

/s/Michael A. Olsen, Esq.  
MICHAEL A. OLSEN, ESQ.  
Nevada Bar No. 6076  
THOMAS R. GROVER, ESQ.  
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1 **CERTIFICATE OF COMPLIANCE**

2 Pursuant to NRAP 28(a)(12), 28.2(a) and NRAP 32(a)(9), I hereby certify as  
3 follows:

4 6. I hereby certify that this brief complies with the formatting  
5 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and  
6 the type-style requirements of NRAP 32(a)(6) because:

7 ☒ This brief has been prepared in a proportionally spaced typeface  
8 using the most recent version of Word, which is routinely updated, in  
9 Times New Roman 14-point font; or

10 ☐ This brief has been prepared in a monospaced typeface using [state  
11 name and version of word-processing program] with [state number of  
characters per inch and name of type style].

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

15 ☒ Proportionately spaced, has a typeface of 14 points or more, and  
16 contains 11,904 words; or

17 ☐ Monospaced, has 10.5 or fewer characters per inch, and contains  
18 \_\_\_\_\_ words or \_\_\_\_\_ lines of text; or

19 ☐ Does not exceed \_\_\_\_\_ pages.

20 ///

21 ///

22  
23 8. Finally, I hereby certify that I have read this appellate brief, and to the  
24 best of my knowledge, information, and belief, it is not frivolous or interposed for  
25 any improper purpose. I further certify that this brief complies with all applicable  
26 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires  
27 every assertion in the brief regarding matters in the record to be supported by a  
28 reference to the page and volume number, if any, of the transcript or appendix  
where the matter relied on is to be found. I understand that I may be subject to



1 sanctions in the event that the accompanying brief is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.

3 Dated February 3, 2022

4 /s/Michael A. Olsen, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify pursuant to NRAP 25(c), that on February 3, 2022, I served a true and correct copy of the forgoing **OPENING BRIEF** together with any and all exhibits and other attachments, via the Supreme Court's Electronic Filing System to the following:

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