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BETTY CHAN; and ASIAN  
AMERICAN REALTY &  
PROPERTY MANAGEMENT,

Appellants/Cross-Respondents,

VS.

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

### Respondents/Cross-Appellants.



SUPREME COURT CASE NO. 82208

District Court Case No A-16-744109-C

Eighth Judicial District Court

(Hon. Eric Johnson)

Appellants BETTY CHAN (“Chan”) and ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT (“Asian American”) (collectively “Appellants” or “Plaintiffs”) now file this, *Appellants’ Petition for Rehearing*. “The court may consider rehearings in the following circumstances”:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or

1 (B) When the court has overlooked, misapplied or failed to consider a  
2 statute, procedural rule, regulation or decision directly controlling a  
3 dispositive issue in the case.

4 NRAP 40(c)(2).

5 With respect, Appellants would submit that the Court has overlooked or  
6 misapprehended at least three points. The first pertains to the material fact that  
7 Respondent Wayne Wu (“Wu”), a real estate agent, undisputedly misrepresented  
8 himself on KB Home’s broker agreement in claiming that he had had accompanied  
9 Respondent Jerrin Chiu (“Chiu”), the buyer, to his first visit to the new development  
10 community—an “absolute condition” for Wu’s receiving any commission. As a  
11 matter of law, his fraudulent action necessarily voided his right to any claim for a  
12 commission. The second is relative to a material fact regarding Chiu in particular:  
13 Because he was not a party to the arbitration, this Court should remand Appellants’  
14 claims against him for a final disposition. The third concerns a question of law and  
15 policy issue of statewide importance: If the issue is undecided, this Court should  
16 rule whether Nevada law recognizes more than one procuring cause.

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21 **I. BY THE EXPRESS TERMS OF THE BROKER AGREEMENT, WHICH WU**  
22 **BREACHED WITH MISREPRESENTATIONS, WU COULD NOT RECOVER**  
23 **A COMMISSION—HE WAS NOT THE FIRST AGENT TO ACCOMPANY**  
24 **CHIU TO THE DEVELOPMENT COMMUNITY. WORSE, WU LIED THAT**  
**HE WAS. HE COMMITTED FRAUD AND SHOULD NOT BE REWARDED**  
**FOR IT.**

25 With respect, Appellants would submit that, in affirming the confirmation of  
26 the arbitration award, the Court has overlooked or misapprehended pertinent facts and  
27 points of law pertaining to Wu’s lying and fraud to get a commission. In their Opening  
28

1 Brief, Appellants specifically argued that “Wu’s broker agreement forb[ade] him from  
2 taking any commission.” (OB 41). “Specifically, the agreement provides, in pertinent  
3 part”:

4  
5 It is an **absolute condition** for the payment of any Commission  
6 that Broker accompanies and registers Buyer at the Community at the  
7 time of Buyer’s first visit as a prospective purchaser to the Community.  
8 Broker shall not be entitled to any Commission if Buyer or any relative  
9 of Buyer or any other person designated by Buyer has visited the  
10 Community without Broker prior to the date of this Agreement.

11 .... Any attempt by Broker to effectuate a broker relationship  
12 with Seller without Broker’s actual presence at Buyer’s **first** visit shall  
13 be null and void.”

14 (RB 15 (quoting the agreement); *see also* OB 14, 37-38; 1 Appx 102; 2 Appx 343).

15 As stated further in Appellants’ briefs: “Wu Respondents admit that Chan  
16 accompanied Chiu to the Tevare community for his **first visit** on December 30,  
17 2015.” (RB 16 (emphasis in original)). “It also is undisputed that Chan was the first  
18 agent to bring the Tevare property to the ‘attention’ of Respondent Chiu and the first  
19 to bring him as a ‘buyer into the picture.’” (OB 38). “Chan was the first to show  
20 the development, the lots, and the property to Respondent Chiu. Wu had no part of  
21 that.” (OB 39; *accord* AB 4; OB 9-10; RB 22, 28; *see also* 1 Appx 41-42, 194-95,  
22 202; 2 Appx 249, 268-29, 295, 316; 4 Appx 731).

23  
24 **“In the broker agreement, Wu misrepresents himself as being the agent with**  
25 **Respondent Chiu at his first visit.”** (OB 14 (emphases added); *accord* OB 38; RB  
26 15; *see also* 1 Appx 102; 2 Appx 343). “Wu has admitted as much.” (OB 38). **“Per**  
27 **the plain language of the KB Homes commission contract, this precludes Wu from**  
28

1 earning any commission whatsoever.” (RB 16 (emphasis in original); *accord* OB  
2 40-42; RB 14-20, 34-35).

3 In making its award, the GLVAR arbitration panel was bound by the *Code of*  
4 *Ethics and Arbitration Manual* (2018) (hereafter the “NAR Manual”). *The NAR*  
5 *Manual specifically required the panel to consider whether “the broker’s [Wu’s]*  
6 *actions [were] in accordance with the terms and conditions of the offer of*  
7 *cooperation and compensation [in the broker agreement].”* (2 Appx 444 (emphasis  
8 added); *see also* OB 36-37; RB 18).

9  
10  
11 Respectfully, the Court has overlooked the fact that Wu undisputedly lied and  
12 committed fraud in seeking to get a commission. It also overlooked the point that,  
13 under the broker agreement, per the terms of the NAR Manual, and as a matter of law,  
14 Wu was not allowed to recover any commission at all. Upon a de novo review of the  
15 District Court’s confirmation of the arbitration award, it is clear that, in this regard,  
16 the arbitration award was “arbitrary, capricious, or unsupported by the agreement.”  
17 *Clark County Educ. Ass’n v. Clark County Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d  
18 5, 8 (2006); *see also Washoe Cty. Sch. Dist. v. White*, 396 P.3d 834, 838, 133 Nev.  
19 301, 303 (2017) (holding that an appellate court “reviews a district court’s decision  
20 to vacate or confirm an arbitration award de novo.”). It does not take a judge or a  
21 lawyer to realize that under the broker agreement, Wu had no right to a commission.  
22 *The point is obvious.*  
23  
24  
25  
26  
27  
28

1 In her individual capacity and as the sole director and officer of Asian  
2 American, Chan has made a Statement, which she herself has drafted and which she  
3 would like the Court to consider. That Statement is quoted verbatim below:  
4

5 **BETTY CHAN'S STATEMENT FOR THE COURT**<sup>1</sup>

6 **1) FRAUD? Can an agent be a procuring cause of a sale**  
7 **if he acquired the sale commission by FRAUD?**

8 It was an undisputed fact, recognized by all parties including KB  
9 Home, that I was the First Real Estate Agent to show the KB Home's  
10 "Tevare" in Summerlin to Buyer Dr. Jerrin Chiu, his girlfriend, and his  
11 parents on 12/30/2015 around 12 pm at their first visit.<sup>2</sup>

12 After my showing, **Buyer Dr. Jerrin Chiu, immediately in less**  
13 **than 24 hours, put down a 10K deposit the next day on 12/31/2015**  
14 **around 10 am at KB Home Sales Office and set up an appointment**  
15 **to sign the sales contract on 1/8/2016. This was admitted in**  
16 **Respondent's brief to the arbitration panel. Respondents attorney,**  
17 **Michael Olsen, Esq. ("Olsen"), also accused me that I had**  
18 **abandoned Chiu there because he allegedly could not get a hold of**  
19 **me before he put a deposit down. Olsen tried to prove the**  
20 **abandonment happened in that less than 24 hours period while everyone**  
21 **in Las Vegas was still sleeping!**<sup>3</sup>

22 On that same afternoon of 12/31/2015 after Buyer Dr. Jerrin Chiu  
23 paid the deposit, he had his father called me and asked if I could kick  
24 back 1% of the commission to them as another agent had offered that.  
25 I did not know how to respond, as that was not our company policy to  
26 kickback, whether it was a \$100,000 sale or a \$16 million sale.  
27 However, the Chiu family had been loyal customers (until they were  
28

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24 <sup>1</sup> Chan's Statement is attached hereto as ***Exhibit 1*** and is fully incorporated herein.  
25 The Statement itself does not include citations to the record; however, Appellants'  
26 counsel has inserted footnotes into the quoted text below, which footnotes include  
27 such citations.

28 <sup>2</sup> AB 4; *see also* OB 9-10; RB 3; 1 Appx 41-42, 194-95, 202; 2 Appx 249, 268-29,  
295, 316; 4 Appx 731.

<sup>3</sup> AB 6; *see also* OB 11; RB 3; 2 Appx 296-97, 317; 3 Appx 469.

1 not) for the last 3 years. Eventually, I agreed to give ¾ % if I could do  
2 the loan for them. I am also a mortgage broker, and it is common  
3 practice in the mortgage industry to give lender credits to borrowers.<sup>4</sup>

4 On January 5, 2016, after the New Year's holiday, I sent an email  
5 to Buyer Dr. Jerrin Chiu intending to follow up on our discussion, but  
6 I received no response.<sup>5</sup>

7 On January 15, I texted Chiu, following up as to whether he had  
8 made any decision on any of the homes I had shown him. In response,  
9 he simply lied, "Ah nah, been kinda busy lately." He also said that he  
10 was not going to buy anything. Upon further inquiry, he admitted that  
11 his father had decided to go with Wu; Chiu said he felt "terrible" and  
12 that he should have told me sooner.<sup>6</sup>

13 **Maybe the highest bidder got to sign the contract?!**

14 Later, I learned from KB Home on-site sales agent, Jana, that  
15 Buyer Dr. Jerrin Chiu went with Agent Wayne Wu to sign the contract  
16 on 1/8/2016, seven days after the deposit reservation. Bear in mind,  
17 Agent Wayne Wu never showed the property and therefore he had no  
18 registration card.<sup>7</sup>

19 **Knowing it was false**, both Wu and Chiu lied and signed on KB  
20 Home's Broker commission agreement that Wu had accompanied Chiu  
21 at his first visit to KB Home.<sup>8</sup> Would KB Home still pay Agent Wu the  
22 sales commission if they told the truth?

23 **That was how they circumvented me and conspired together**  
24 **so that Agent Wayne Wu's name could be on the contract as the**  
25 **Agent of the Sale. They unlawfully and unfairly highjacked my**  
26 **legitimately earned commission.**

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27 <sup>4</sup> OB 11; RB 1-3; 1 Appx 196, 201; 6 Appx 1199; *see also* RB 29-34.

28 <sup>5</sup> OB 13; RB 3; 1 Appx 197, 201; 2 Appx 235).

<sup>6</sup> OB 14; RB 4; *see also* 1 Appx 14, 44, 197-98, 201; 2 Appx 269-71, 299; cf. AB 9;  
4 Appx 728-36.

<sup>7</sup> AB 9; *see also* RB 3; 1 Appx 128-31, 197, 199; 2 Appx 298, 322.

<sup>8</sup> 1 Appx 102; 2 Appx 343.

1 Both Buyer Dr. Jerrin Chiu and Agent Wayne Wu were no better  
2 than any other thieves in cheating me out of my money, and also  
3 cheating KB to pay Wu's Commission at the same time. I am definitely  
4 the victim of their fraud.

5 Given the facts, this case actually has nothing to do with whether  
6 or not a commission can be split between agents. **It should be a case**  
7 **to determine whether an agent can be a procuring cause if he**  
8 **acquired the sales commission by fraud! And did he have any**  
9 **legitimate reason to split the commission?**

10 **2) Did the arbitration panel and the District Court err**  
11 **when they ignored the fraudulent Broker Commission**  
12 **Agreement manufactured by both Buyer Dr. Jerrin**  
13 **Chiu and Agent Wayne Wu?**

14 The transcript of the August 22, 2018 hearing reflects how the  
15 District Court brushed off the fraud committed by Wu and Chiu. Mr.  
16 Todd Kennedy was my former attorney. Excerpts of the transcript  
17 follow:

18 [MR. KENNEDY:] Mr. Chiu -- Mr. Wu himself agreed  
19 by contract with the party paying, I do not get -- I recognize that  
20 you will not -- and I'm not entitled to a commission if I didn't --  
21 was not the first -- if I was not with Mr. Chiu when he first saw  
22 the community. It was undisputed he was not, Ms. Chan was.

23 ....

24 MR. KENNEDY: Importantly, Your Honor -- you know,  
25 again, the contract -- you know, saying that Ms. Chan wasn't a  
26 party to the contract, it's because they conspired to exclude here.  
27 Mr. Chiu signed that agreement. Their star witness, in fact,  
28 represented by Counsel knew who the first person was to take  
him to that property and it was Ms. Chan.

He signed that contract and actively **committed fraud**  
against KB Homes because if he had said no, I had another  
person there, we know what KB Homes would say well, that  
broker's entitled to the commission. But Ms. Chan was never  
given the opportunity because they lied to her about what they  
were doing. That's also part of the record.

So -- and it's not whether she was a party to the contract.

1 That contract, as the Nevada Supreme Court has said, applies to  
2 the determination of procuring cause. Mr. Wu contractually said,  
3 I am not the procuring cause, unless I was the first person to bring  
4 it there. That's part of the agreement. That's a contract KB  
Homes has said you don't get any commission.

5 That's where we end up with and that's why you have an  
6 arbitration decision splitting the baby, giving it to somebody who  
7 contractually cannot have it. And that's why you do get to this  
8 arbitrary standard and that's why you do get to the manifest  
disregard.

9 ....

10 [THE COURT:] You know, whether or not, you know,  
11 there was a fraud scheme to deprive Ms. Chan of her commission  
12 because of Mr. Wu's relationship to the buyer? I -- those are all  
13 issues that are fact intensive and get -- went before the arbitration  
board.

14 And I think that there's nothing in the law that precludes  
15 them in Nevada from dis -- to discerning that Mr. Wu, which is  
16 clearly what they decided was Mr. Wu was the primary force  
behind this.<sup>9</sup>

17 What the District Court had said was if the Arbitration Panel  
18 went through with it, then the District Court would agree to it even  
19 though it involved fraud! The Court stated further:

20 THE COURT: .... So, ... like I said, I haven't found  
21 anything that said, you know, someone who doesn't step -- who  
22 steps in later and makes a material contribution to the  
23 completion of the sale is not entitled to anything if they're not  
the first one to put the buyer and seller together.<sup>10</sup>

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27 <sup>9</sup> 3 Appx 622, 634-35, 637 (emphases added).

28 <sup>10</sup> 3 Appx 624 (emphasis added).



1           The key word was “material contribution.” In this case, what was  
2           Agent Wayne Wu’s material contribution? Fraud was what he had  
3           contributed!

4           I would think all bets should be off if the foundation of their  
5           “material contribution” was a fraudulent Broker Commission  
6           Agreement.

7           Extracts from the transcript of the hearing on October 31, 2018  
8           show that the District Court had raised doubt as to whether there was  
9           interference of contract (Ms. Janiece Marshall was my former  
10          attorney):

11           MS. MARSHALL: .... Now, the second thing is that the  
12           arbitration panel, it’s a manifest abuse of their discretion  
13           because, one, the KB agreement, purchase agreement with  
14           respect to what Wu entered into and Mr. Chiu specifically say  
15           that the -- it’s an absolute condition for the payment of any  
16           commission that broker accompanies and registers buyer at the  
17           community at the time of buyer’s first visit as a prospective  
18           purchaser to the community. Broker is not entitled to commission  
19           if the buyer or any of his relatives have visited the community  
20           without broker prior to the date of this agreement.

21           ....

22           MS. MARSHALL: So, Your Honor, that specifically  
23           provides under section two, the last sentence, that a broker who  
24           wasn’t with the buyer on the first visit is not entitled to the  
25           commission. And these issues were brought up –

26           THE COURT: Well, no, it’s that if registered. And again,  
27           we don’t have –

28           MS. MARSHALL: But then look at the last sentence,  
29           Your Honor. No, the last sentence in that paragraph that’s  
30           highlighted, number two.

31           THE COURT: Okay.

32           MS. MARSHALL: It specifically applies to the broker.  
33           And what that does is it precludes Wu.

1 THE COURT: Well, then, I mean, then that issue is KB  
2 Homes should be suing Wu to get their money back.

3 MS. MARSHALL: Mr. Wu is held to that. And this is why  
4 my argument is a manifest abuse of the arbitration because that  
5 was before them. They had that agreement.... Mr. Wu didn't do  
6 anything except be present at the time the purchase agreement  
7 was entered into.

8 ....

9 MS. MARSHALL: So, Your Honor, their motion for  
10 summary judgment asks for Wu to be determined to be the  
11 procuring agent, but he can't be the procuring agent under the  
12 KB Homes sales agreement....

13 ....

14 THE COURT: .... And to find him the procuring cause,  
15 they would have to find that there was no -- that there was an  
16 abandonment on the part of the plaintiff. I understand your  
17 argument. I'm not -- and as I said, if this was to start over again  
18 and we started doing -- you know, we had a trial here and it was  
19 a bench trial, I might determine differently from the arbitration  
20 panel or a jury might. But what we had here was a binding  
21 arbitration and both sides presented evidence and they came back  
22 with this decision and I can't say it's arbitrary and capricious. So  
23 I'm asking now, what is left of your lawsuit?

24 ....

25 MR. OLSEN: I'm talking about who is the prevailing  
26 party in this case.

27 THE COURT: Let me stop you. I don't have a copy of the  
28 complaint in front of me, but the only thing that sort of caught  
my ear from the plaintiff's side in reference to your client is the  
concept of interference with contracts. Is that part of the  
complaint? And then secondly, is that something you would say  
was resolved by the arbitration award?

1 MR. OLSEN: So, Your Honor, I do have the complaint  
2 here, I believe, and I've taken several close looks at it and it did  
3 not have an intentional interference claim, to my recollection.

4 MS. MARSHALL: I didn't say intentional interference,  
5 counsel, I said unjust enrichment. I do have a copy of the  
6 complaint, Your Honor.

7 THE COURT: Well, I thought you did say interference  
8 with contract.

9 MS. MARSHALL: No, I said that they -- I said that the  
10 cause of action was unjust enrichment --

11 THE COURT: Okay.

12 MS. MARSHALL: -- because Mr. Wu and Mr. Chiu  
13 conspired against Mrs. Chan to deprive her of the commission.  
14 And that has always been an allegation that Ms. Chan has  
15 alleged, that they went behind her back and Mr. Chiu --

16 THE COURT: That would have been dealt with by the  
17 arbitration panel.

18 MR. OLSEN: Exactly.

19 MS. MARSHALL: That was not dealt with by the  
20 arbitration panel, Your Honor, and one of the reasons why is the  
21 arbitrator twice prevented Mrs. Chan from continuing her  
22 testimony. He cut her off and she didn't get to provide all the  
23 information that she was entitled to at the arbitration panel.<sup>11</sup>

24 Finally, finally! My former attorney, an ex-judge, Ms. Janiece  
25 Marshall's ferocious argument had drawn the Court's attention, but  
26 sadly, as the Court said,

27 THE COURT: .... And I'm not ignoring Nevada law  
28 because Nevada law provides that if the initial broker or initial  
realtor abandons, then someone else can step into the shoes as

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<sup>11</sup> 4 Appx 789-94, 804-05 (emphases added).

1 the procuring cause. That's what it **appears** the panel found in  
2 this instance.... So I'm not inclined to reverse the panel decision.  
I'm not inclined to reconsider that.<sup>12</sup>

3 It was Attorney Olsen's lucky day so that he could carry on  
4 saying, "there is no law prohibiting the split of commission between  
5 agents" except he would never mention that his clients lied and cheated  
6 to get paid.

7 The arbitration panel and the District Court erred when they  
8 ignored the fraudulent Broker Commission Agreement manufactured  
by both Buyer Dr. Jerrin Chiu and Agent Wayne Wu.

9 **3) Did the Arbitration Panel and the District Court have**  
10 **the authority to go against the Broker Agreement by**  
11 **redefining its absolute condition for an Agent to be**  
12 **paid a sales commission?**

13 The Broker Agreement in the KB Sales Contract provided by  
14 Attorney Olsen on 7/25/2017 to the Arbitration panel stated plainly: "**It**  
15 **is an absolute condition for the payment of any Commission that**  
16 **Broker accompanies and registers Buyer at the Community at the**  
**time of Buyer's first visit as a prospective purchaser to the**  
**Community."**<sup>13</sup>

17 It is apparent that both the arbitration panel and the District Court  
18 disregarded this "absolute condition." Here is the simple analysis for  
19 the commission:

- 20 1. Who was the first agent to show Chiu the community? -  
21 Betty Chan. No one disputes that.<sup>14</sup>
- 22 2. Which agent was Chiu with at his first visit? - Betty Chan.  
23 None dispute that either.<sup>15</sup>

24  
25 <sup>12</sup> 4 Appx 795 (emphases added).

26 <sup>13</sup> 1 Appx 102 (emphasis added); 2 Appx 343 (emphases added).

27 <sup>14</sup> AB 4; *see also* OB 9-10; RB 3; 1 Appx 41-42, 194-95, 202; 2 Appx 249, 268-29,  
28 295, 316; 4 Appx 731.

<sup>15</sup> *See id.*

1 This simple analysis evidenced that I had met KB's "absolute  
2 condition" for the Commission. So, did the Arbitration Panel and  
3 District Court have any authority to override that and award any part of  
4 the commission to Wu instead? Worse, did they award an agent who  
5 had committed fraud to get the commission?

6 *Thank you for giving me this chance to speak out with my own*  
7 *voice, to tell a true picture that I am not the liar. I have devoted my best*  
8 *efforts to take care of my clients and my best efforts to fight*  
9 *Respondents' fraud. I hope that this Court will appreciate my*  
10 *persistence to fight this fraud and know that the issue is not solely the*  
11 *Commission. My unwavering determination to rip out black sheep in*  
12 *the industry has pushed me forward with this matter. Wu's unethical*  
13 *and fraudulent act that violated "fair competition" must be stopped.*  
14 *No one is above the law to do whatever he thinks he can.*

15 *It is also important to clarify that this case should not be*  
16 *precedent for splitting commission due to "fraud".*

17 **II. RELATIVE TO RESPONDENT CHIU, BECAUSE HE WAS NOT A PARTY TO**  
18 **THE ARBITRATION, THIS COURT SHOULD REMAND APPELLANTS'**  
19 **CLAIMS AGAINST HIM TO THE DISTRICT COURT FOR A FINAL**  
20 **DISPOSITION.**

21 This Court has noted that "Jerrin Chiu ... was not a party to the arbitration."  
22 (Affirm. Ord. at p.6, n.7). With respect, Appellants would submit that in this case,  
23 the Court has overlooked the point that the arbitration award and its confirmation do  
24 not dispose of Appellants' claims against him.

25 In their Opening Brief, Appellants explained that "the District Court stayed the  
26 lawsuit pending the arbitration among Appellants and all of the Respondents, with  
27 the notable exception of Respondent Chiu." (OB 20-21 (emphasis added); see also  
28 OB 47 n.9; 1 Appx 153; 2 Appx 291; 4 Appx 716). Appellants argued: "Irrespective  
of the arbitration award among and between Chan Appellants and [the other]  
Respondents ..., and regardless of this Court's ultimate decision on the District

1 Court's confirmation of that award, Chiu ... [is] still liable to Chan Appellants." (RB  
2 at 10).

3           Given that Chiu was not a party to the arbitration agreement, the  
4 arbitration panel could not have rendered an award in his favor in the  
5 first instance.... It is undisputed that the arbitration panel did consider  
6 Chan Appellants' claims against Chiu. By stretching its "confirmation"  
7 of the panel's award to include those claims, the District Court  
8 necessarily erred. Therefore, ... this Court should reverse the District  
9 Court's rulings as to the claims against Chiu and remand them for  
10 further proceedings. (1 Appx 15-17). *See* NRCP 54(b).

11 (RB at 13-14). Appellants are asking the Court to do just that.

12           **III. IF THE ISSUE IS UNDECIDED, THIS COURT SHOULD RULE WHETHER**  
13 **NEVADA LAW RECOGNIZES MORE THAN ONE PROCURING CAUSE.**

14           With respect, Appellants would submit that in this case, the Court may have  
15 overlooked an important question of law and issue of public policy: whether Nevada  
16 recognizes more than one procuring cause. In their Opening Brief, Appellants  
17 specifically argued that the District Court erred in concluding that "that Nevada law  
18 does not prohibit splitting a commission between two individuals both claiming to  
19 be the procuring cause.'" (OB 22-23 (quoting 3 Appx 693)). Appellants contended  
20 "[t]hat conclusion constitutes an error of law, upon which this appeal is based....  
21 [I]n Nevada, there can only be one procuring cause ...." (OB 23). As noted in the  
22 Opening Brief, "[t]his matter is highly contested." (OB 22). Indeed, the parties  
23 briefed the issue at length. (*See, e.g.*, OB 24-37; AB 37-40; RB 8-10).

24           This Court has made note of the issue, but it ultimately declined to rule on it.  
25 Specifically, the Court stated:  
26  
27  
28

1           .... This court has resolved numerous issues implicating the  
2           procuring cause doctrine and, as Chan observes, all those decisions  
3           appear to have presupposed that there can be only one procuring cause.  
4           *See, e.g., Carrigan v. Ryan*, 109 Nev. 797, 801-02, 858 P.2d 29, 32  
5           (1993) ...; *Atwell v. Sw. Secs.*, 107 Nev. 820, 825, 820 P.2d 766, 769  
6           (1991) ...; *Bartsas Realty, Inc. v. Leuerton*, 82 Nev. 6, 9, 409 P.2d 627,  
7           629 (1966) .... However, Chan has not identified a case in which this  
8           court has addressed the specific issue of whether there can be more than  
9           one procuring cause, much less a case in which this court has held that  
10           there cannot be more than one procuring cause.

11           (*Order of Affirmance* at pp.3-4 (filed Sep. 15, 2022) [“Affirm. Ord.”]).

12           A Lexis search on October 15, 2022 only yielded 30 published opinions from  
13           Nevada appellate courts that even mentioned the term “procuring cause.” Of those,  
14           only one was handed down since 2020. *See Easton Bus. Opportunities, Inc. v. Town*  
15           *Exec. Suites*, 126 Nev. 119, 230 P.3d 827 (2010). Unfortunately, in that one opinion,  
16           the Court noted that the doctrine had nothing to do with the case before it. *See id.* at  
17           131, 320 P.3d at 835. Thus, it made no ruling on the doctrine. *See id.* Appellants  
18           have shown, however, that other courts have construed Nevada law to mean that  
19           there can only be one procuring cause:

20                     Applying Nevada law, the United States District Court for the  
21                     District of Nevada has rejected the notion that there can be more than  
22                     one procuring cause. *See Twitchell v. Paris*, 2008 U.S. Dist. LEXIS  
23                     136552 (D. Nev.) (“[T]o earn a commission, a broker must be the  
24                     proximate cause of the sale, not just an actual cause.”) (unpublished  
25                     disposition) (citing *Carrigan*, 109 Nev. at 803, 858 P.2d at 33). Relying  
26                     upon Nevada precedent, other courts have also held that multiple  
27                     procuring causes cannot exist. *See, e.g., Lundburg v. Stinson*, 695 P.2d  
28                     328, 335 (Haw. 1985) (“Where there are many brokers involved in a  
                      transaction, there can be only one ‘procuring cause.’” (citing *Barstas*,  
                      82 Nev. at 9, 409 P.2d at 629)).

(OB 32-33).

1 If this Court concludes that it has not ruled on the matter definitively, then  
2 Appellants would respectfully submit that the time for it to do so is now. The  
3 overwhelming majority of real estate agents in Clark County (and in all of Nevada,  
4 actually) are members of Las Vegas REALTORS®<sup>16</sup>—formerly known as Greater  
5 Las Vegas Association of REALTORS® (“GLVAR”).<sup>17</sup> Members are required to  
6 agree to arbitrate commission disputes between themselves. (RB 11; *see also* 1  
7 Appx 180-81; 2 Appx 411, 429). In such mandatory arbitrations, procuring cause is  
8 the “primary determining factor.” (2 Appx 443).

11 Without a definitive ruling from the Court, arbitration panels will continue to  
12 apply the doctrine as they see fit. With respect, the judiciary may just be  
13 perpetuating any uncertainty about the doctrine by ignoring its legal contours and  
14 holding, instead, that “we are not persuaded that the arbitration panel’s decision ...  
15 was a manifest disregard of the law.” (Affirm. Ord. p.4). Such a self-perpetuating  
16 cycle would defeat the rule of law in Nevada and replace it with the rule of man—  
17 or worse, the law of the jungle. Real estate agents deserve better.

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23 <sup>16</sup> *Clever* estimates that there are more than 18,000 real estate agents in all of Nevada.  
24 *See* Shirshikov, Dennis, *Top Real Estate Agents in Nevada*, CLEVER (Oct. 4, 2022)  
25 <<https://listwithclever.com/top-real-estate-agents/nevada/#>>. Las Vegas Realtors  
26 has over 15,000 members. *See* <<https://www.lasvegasrealtor.com/directory#search>>.

27 <sup>17</sup> *See* *GLVAR Rebrands to Las Vegas REALTORS®*, NEVADA BUSINESS MAGAZINE  
28 (Feb. 13, 2020) <<https://www.nevadabusiness.com/2020/02/glvar-rebrands-to-las-vegas-realtors/>>.





**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to NRAP 25(c), on October 17, 2022, I served a true and correct copy of ***APPELLANTS' PETITION FOR REHEARING***, together with any and all exhibits and attachments, via the Supreme Court's Electronic Filing System to the following:

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

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

**[X]** Proportionately spaced, has a typeface of 14 points or more, and contains **4529** words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains words or lines of text; or

[ ] Does not exceed \_\_\_\_\_ pages.

DATED: October 17, 2022.

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# **EXHIBIT 1**

# **EXHIBIT 1**

## **BETTY CHAN'S STATEMENT FOR THE COURT**

### **1) FRAUD? Can an agent be a procuring cause of a sale if he acquired the sale commission by FRAUD?**

It was an undisputed fact, recognized by all parties including KB Home, that I was the First Real Estate Agent to show the KB Home's "Tevare" in Summerlin to Buyer Dr. Jerrin Chiu, his girlfriend, and his parents on 12/30/2015 around 12 pm at their first visit.

After my showing, **Buyer Dr. Jerrin Chiu, immediately in less than 24 hours, put down a 10K deposit the next day on 12/31/2015 around 10 am at KB Home Sales Office and set up an appointment to sign the sales contract on 1/8/2016. This was admitted in Respondent's brief to the arbitration panel. Respondents attorney, Michael Olsen, Esq. ("Olsen"), also accused me that I had abandoned Chiu there because he allegedly could not get a hold of me before he put a deposit down.** Olsen tried to prove the abandonment happened in that less than 24 hours period while everyone in Las Vegas was still sleeping!

On that same afternoon of 12/31/2015 after Buyer Dr. Jerrin Chiu paid the deposit, he had his father called me and asked if I could kick back 1% of the commission to them as another agent had offered that. I did not know how to respond, as that was not our company policy to kickback, whether it was a \$100,000 sale or a \$16 million sale. However, the Chiu family had been loyal customers (until they were not) for the last 3 years. Eventually, I agreed to give  $\frac{3}{4}$  % if I could do the loan for them. I am also a mortgage broker, and it is common practice in the mortgage industry to give lender credits to borrowers.

On January 5, 2016, after the New Year's holiday, I sent an email to Buyer Dr. Jerrin Chiu intending to follow up on our discussion, but I received no response.

On January 15, I texted Chiu, following up as to whether he had made any decision on any of the homes I had shown him. In response, he simply lied, "Ah nah, been kinda busy lately." He also said that he was not going to buy anything. Upon further inquiry, he admitted that his father had decided to go with Wu; Chiu said he felt "terrible" and that he should have told me sooner.

### **Maybe the highest bidder got to sign the contract?!**

Later, I learned from KB Home on-site sales agent, Jana, that Buyer Dr. Jerrin Chiu went with Agent Wayne Wu to sign the contract on 1/8/2016, seven days after

the deposit reservation. Bear in mind, Agent Wayne Wu never showed the property and therefore he had no registration card.

**Knowing it was false**, both Wu and Chiu lied and signed on KB Home's Broker commission agreement that Wu had accompanied Chiu at his first visit to KB Home. Would KB Home still pay Agent Wu the sales commission if they told the truth?

**That was how they circumvented me and conspired together so that Agent Wayne Wu's name could be on the contract as the Agent of the Sale. They unlawfully and unfairly highjacked my legitimately earned commission.**

Both Buyer Dr. Jerrin Chiu and Agent Wayne Wu were no better than any other thieves in cheating me out of my money, and also cheating KB to pay Wu's Commission at the same time. I am definitely the victim of their fraud.

Given the facts, this case actually has nothing to do with whether or not a commission can be split between agents. **It should be a case to determine whether an agent can be a procuring cause if he acquired the sales commission by fraud! And did he have any legitimate commission to split?**

- 2) **Did the arbitration panel and the District Court err when they ignored the fraudulent Broker Commission Agreement manufactured by both Buyer Dr. Jerrin Chiu and Agent Wayne Wu?**

The transcript of the August 22, 2018 hearing reflects how the District Court brushed off the fraud committed by Wu and Chiu. Mr. Todd Kennedy was my former attorney. Excerpts of the transcript follow:

[MR. KENNEDY:] Mr. Chiu -- Mr. Wu himself agreed by contract with the party paying, I do not get -- I recognize that you will not -- and I'm not entitled to a commission if I didn't -- was not the first -- if I was not with Mr. Chiu when he first saw the community. It was undisputed he was not, Ms. Chan was.

....

MR. KENNEDY: Importantly, Your Honor -- you know, again, the contract -- you know, saying that Ms. Chan wasn't a party to the contract, it's because they conspired to exclude here. Mr. Chiu signed that agreement. Their star witness, in fact, represented by Counsel knew

who the first person was to take him to that property and it was Ms. Chan.

He signed that contract and actively **committed fraud** against KB Homes because if he had said no, I had another person there, we know what KB Homes would say well, that broker's entitled to the commission. But Ms. Chan was never given the opportunity because they lied to her about what they were doing. That's also part of the record.

So -- and it's not whether she was a party to the contract. That contract, as the Nevada Supreme Court has said, applies to the determination of procuring cause. Mr. Wu contractually said, I am not the procuring cause, unless I was the first person to bring it there. That's part of the agreement. That's a contract KB Homes has said you don't get any commission.

That's where we end up with and that's why you have an arbitration decision splitting the baby, giving it to somebody who contractually cannot have it. And that's why you do get to this arbitrary standard and that's why you do get to the manifest disregard.

....

[THE COURT:] You know, whether or not, you know, there was a fraud scheme to deprive Ms. Chan of her commission because of Mr. Wu's relationship to the buyer? I -- those are all issues that are fact intensive and get -- went before the arbitration board.

And I think that there's nothing in the law that precludes them in Nevada from dis -- to discerning that Mr. Wu, which is clearly what they decided was Mr. Wu was the primary force behind this.

What the District Court had said was if the Arbitration Panel went through with it, then the District Court would agree to it even though it involved fraud! The Court stated further:

THE COURT: .... So, ... like I said, I haven't found anything that said, you know, someone who doesn't step -- who steps in later and makes a **material contribution** to the completion of the sale is not

entitled to anything if they're not the first one to put the buyer and seller together.

The key word was "material contribution." In this case, what was Agent Wayne Wu's material contribution? Fraud was what he had contributed!

I would think all bets should be off if the foundation of their "material contribution" was a fraudulent Broker Commission Agreement.

Extracts from the transcript of the hearing on October 31, 2018 show that the District Court had raised doubt as to whether there was interference of contract (Ms. Janiece Marshall was my former attorney):

MS. MARSHALL: .... Now, the second thing is that the arbitration panel, it's a manifest abuse of their discretion because, one, the KB agreement, purchase agreement with respect to what Wu entered into and Mr. Chiu specifically say that the -- it's an absolute condition for the payment of any commission that broker accompanies and registers buyer at the community at the time of buyer's first visit as a prospective purchaser to the community. Broker is not entitled to commission if the buyer or any of his relatives have visited the community without broker prior to the date of this agreement.

....

MS. MARSHALL: So, Your Honor, that specifically provides under section two, the last sentence, that a broker who wasn't with the buyer on the first visit is not entitled to the commission. And these issues were brought up –

THE COURT: Well, no, it's that if registered. And again, we don't have –

MS. MARSHALL: But then look at the last sentence, Your Honor. No, the last sentence in that paragraph that's highlighted, number two.

THE COURT: Okay.



MS. MARSHALL: It specifically applies to the broker. And what that does is it precludes Wu.

THE COURT: Well, then, I mean, then that issue is KB Homes should be suing Wu to get their money back.

MS. MARSHALL: Mr. Wu is held to that. And this is why my argument is a manifest abuse of the arbitration because that was before them. They had that agreement.... Mr. Wu didn't do anything except be present at the time the purchase agreement was entered into.

....

MS. MARSHALL: So, Your Honor, their motion for summary judgment asks for Wu to be determined to be the procuring agent, but he can't be the procuring agent under the KB Homes sales agreement....

....

THE COURT: .... And to find him the procuring cause, they would have to find that there was no -- that there was an abandonment on the part of the plaintiff. I understand your argument. I'm not -- and as I said, if this was to start over again and we started doing -- you know, we had a trial here and it was a bench trial, I might determine differently from the arbitration panel or a jury might. But what we had here was a binding arbitration and both sides presented evidence and they came back with this decision and I can't say it's arbitrary and capricious. So I'm asking now, what is left of your lawsuit?

....

MR. OLSEN: I'm talking about who is the prevailing party in this case.

THE COURT: Let me stop you. I don't have a copy of the complaint in front of me, but the only thing that sort of caught my ear from the plaintiff's side in reference to your client is the concept of interference with contracts. Is that part of the complaint? And then

secondly, is that something you would say was resolved by the arbitration award?

MR. OLSEN: So, Your Honor, I do have the complaint here, I believe, and I've taken several close looks at it and it did not have an intentional interference claim, to my recollection.

MS. MARSHALL: I didn't say intentional interference, counsel, I said unjust enrichment. I do have a copy of the complaint, Your Honor.

THE COURT: Well, I thought you did say interference with contract.

MS. MARSHALL: No, I said that they -- I said that the cause of action was unjust enrichment --

THE COURT: Okay.

MS. MARSHALL: -- because Mr. Wu and Mr. Chiu conspired against Mrs. Chan to deprive her of the commission. And that has always been an allegation that Ms. Chan has alleged, that they went behind her back and Mr. Chiu --

THE COURT: That would have been dealt with by the arbitration panel.

MR. OLSEN: Exactly.

MS. MARSHALL: That was not dealt with by the arbitration panel, Your Honor, and one of the reasons why is the arbitrator twice prevented Mrs. Chan from continuing her testimony. He cut her off and she didn't get to provide all the information that she was entitled to at the arbitration panel.

Finally, finally! My former attorney, an ex-judge, Ms. Janiece Marshall's ferocious argument had drawn the Court's attention, but sadly, as the Court said,

THE COURT: .... And I'm not ignoring Nevada law because Nevada law provides that if the initial broker or initial realtor abandons,

then someone else can step into the shoes as the procuring cause. That's what it **appears** the panel found in this instance.... So I'm not inclined to reverse the panel decision. I'm not inclined to reconsider that.

It was Attorney Olsen's lucky day so that he could carry on saying, "there is no law prohibiting the split of commission between agents" except he would never mention that his clients lied and cheated to get paid.

The arbitration panel and the District Court erred when they ignored the fraudulent Broker Commission Agreement manufactured by both Buyer Dr. Jerrin Chiu and Agent Wayne Wu.

**3) Did the Arbitration Panel and the District Court have the authority to go against the Broker Agreement by redefining its absolute condition for an Agent to be paid a sales commission?**

The Broker Agreement in the KB Sales Contract provided by Attorney Olsen on 7/25/2017 to the Arbitration panel stated plainly: **"It is an absolute condition for the payment of any Commission that Broker accompanies and registers Buyer at the Community at the time of Buyer's first visit as a prospective purchaser to the Community."**

It is apparent that both the arbitration panel and the District Court disregarded this "absolute condition." Here is the simple analysis for the commission:

1. Who was the first agent to show Chiu the community? - Betty Chan. No one disputes that.
2. Which agent was Chiu with at his first visit? - Betty Chan. None dispute that either.

This simple analysis evidenced that I had met KB's "absolute condition" for the Commission. So, did the Arbitration Panel and District Court have any authority to override that and award any part of the commission to Wu instead? Worse, did they award an agent who had committed fraud to get the commission?

*Thank you for giving me this chance to speak out with my own voice, to tell a true picture that I am not the liar. I have devoted my best efforts to take care of my clients and my best efforts to fight Respondents' fraud. I hope that this Court will appreciate my persistence to fight this fraud and know that the issue is not solely the Commission. My unwavering determination to rip out black sheep in the industry*

*has pushed me forward with this matter. Wu's unethical and fraudulent act that violated "fair competition" must be stopped. No one is above the law to do whatever he thinks he can.*

*It is also important to clarify that this case should not be precedent for splitting commission due to "fraud".*

With respect,

BETTY CHAN

October 16, 2022