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

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,

Appellant,

vs.

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,

Respondent.

**Supreme Court No. 80218**

First Judicial District Court
Case No. 17 OC 00269 1B

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Dec 17 2019 05:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**EMERGENCY MOTION UNDER NRAP 27(e)**

Appeal from First Judicial District Court, State of Nevada, County of Clark
The Honorable James. T. Russell, District Judge

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**APPELLANT HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. DBA CHOICE HOME WARRANTY'S MOTION FOR STAY**

**Emergency Motion Under NRAP 27(e):**
**Action Necessary by December 26, 2019[1]**

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*Attorneys for*
*Home Warranty Administrator of Nevada, Inc.*
*dba Choice Home Warranty, a Nevada corporation*


[1] NRAP 27(e) Certificate attached hereto as **Exhibit 14**.

Appellant Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby submits this Motion for a Stay pursuant NRAP 8(a) and requests that this Court enter an order staying the Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty (the "Order"), entered by the district court on November 25, 2019, during the pendency of this appeal. The Order is attached hereto as **Exhibit 1**.

## I. STATEMENT OF FACTS

### First and Second Petitions for Judicial Review

On December 18, 2017, the hearing officer entered her Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of the Commissioner in administrative Cause No. 17.0050 (the "17.0050 Order"). 17.0050 Order, attached hereto as **Exhibit 2**. The bulk of the $1,224,950 fines imposed on HWAN were for acts not alleged by the State of Nevada, Department of Business and Industry – Division of Insurance ("Division") in the underlying complaint and that were not the focus of the administrative hearing in Cause No. 17.0050. Complaint and Amended Complaint, attached hereto as **Exhibits 3** and **4**, respectively. $1,194,450.00 of the fines were based on the erroneous conclusion that HWAN engaged in unsuitable conduct by using CHW Group, Inc. ("CHWG") as its third-party administrator and

sales agent without CHWG having a certificate of registration ("COR") under NRS Chapter 690C. Ex. 2 at 27. This is the key issue underlying this appeal.

On December 22, 2017, HWAN filed its Petition for Judicial Review challenging the 17.0050 Order ("First PJR"), and the fines were deposited with the Court pursuant to a stipulation with the Division, attached hereto as **Exhibit 5**. Meanwhile, in accordance with the 17.0050 Order, HWAN submitted its renewal application for its COR. HWAN's renewal application was then denied by the Division without statutorily mandated due process of law (a pre-denial hearing pursuant to NRS 690C.325 and 233B.127 and certified mail notice pursuant to NRS 233B.127) and without lawful basis, and the denial was later "effectuated" by the Commissioner's order in Cause No. 18.0095 (the "18.0095 Order"), attached hereto as **Exhibit 6**. The 18.0095 Order is the subject of a second PJR and it has been stayed pending the outcome of that PJR. Findings of Fact, Conclusions of Law, and Order Granting Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 ("Order Granting Stay"), attached hereto as **Exhibit 7**.

Pursuant to the Order Granting Stay in that related case, HWAN has continued to operate as a certificated service contract provider in Nevada with CHWG as its third-party administrator and sales agent.

### A. Proceedings Leading to this Appeal and Need for this Motion to Be Decided on an Emergency Basis Before December 26, 2019.

After full briefing and a hearing, on November 25, 2019, the Court entered its

Order on the First PJR, at issue here.[2] Specifically, the district court found "that NRS 690C.150 requires anyone, including a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the NRS." Ex. 1 at 3, ¶ 1(c). Further, the district court ordered that HWAN's certificate of registration as a Nevada service contract provider be reinstated, but prohibited HWAN "from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order." *Id.* at 4, ¶ 5.Pursuant to NRCP 62(a), the Order is automatically stayed for 30 days from the date of service of the notice of entry of the Order, until December 26, 2019.[3]

On December 6, 2019, HWAN filed its Notice of Appeal and Motion for Stay Pending Appeal Pursuant to NRCP 62(D) ("Motion for Stay") in the district court, along with a Motion for Order Shortening Time for Briefing and Decision of the Motion for Stay ("Motion for OST"), attached hereto as **Exhibits 9** and **10**, respectively. HWAN requested a shortened briefing schedule because the 30-day automatic stay of execution under NRCP 62(a) would expire before the Motion for

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[2] There has been no hearing or order yet on the second PJR.

[3] While an email from the Division suggests the notice of entry was actually served on November 27, 2019, the certificate of service states that the notice of entry was served on November 26, 2019. The email is attached hereto as **Exhibit 8**.

Stay could be fully briefed, and before a motion could be made to this Court, if necessary. On December 9, 2019, the Division filed its opposition to the Motion for OST, and on December 10, 2019, HWAN filed its reply and submitted the Motion for OST to the district court for decision, attached hereto as **Exhibits 11**, **12**, and **13**, respectively. The district court has not issued a ruling on the Motion for OST. Without a shortened briefing schedule, the Division's opposition to the Motion for Stay is due December 19, 2019. HWAN's reply will be due December 27, 2019, one day after the expiration of the automatic stay.

## II. LEGAL ARGUMENT

NRAP 8(a) requires that a party ordinarily move first in the district court. This Court considers the following factors in deciding whether to issue a stay:

> (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

NRAP 8(c). Here, all the factors militate in favor of issuing a stay pending appeal.

### A. HWAN Moved First in the District Court and Must Receive a Decision on this Motion for Stay Prior to December 26, 2019.

On November 27, 2019, the day before Thanksgiving, HWAN received the notice of entry of the Order, and by the following Friday, December 6, 2019, HWAN filed its Motion for Stay and Motion for OST in the district court asking for a

shortening briefing schedule on the Motion for Stay. By December 10, 2019, the Motion for OST was fully briefed and submitted to the district court. As of the date of this filing, the district court has not issued a ruling on the Motion for OST, necessitating this Motion before this Court. NRAP 27(e) Certificate, attached hereto as **Exhibit 14**. If HWAN waits for the Motion for Stay to be briefed, the Motion for Stay may not be fully briefed until December 27, 2019, which is one day after the expiration of the automatic stay of the Order under NRCP 62(a). Having attempted to make the motion first in the district court, and having attempted to have that motion heard on shortened time (including an attempt to set a mutually convenient stipulated briefing schedule with the Division), HWAN meets the requirements of NRAP 8. Ex. 12 (exhibit 1 to the Reply); Ex.14. A ruling on this Motion must be forthcoming prior to December 26, 2019, or at minimum, a temporary stay should be granted while this Motion is briefed and decided. Ex. 14.

### B. HWAN Is Likely to Prevail on the Merits of the Appeal.

The Division's Complaint and Amended Complaint do not refer to HWAN's use of CHWG as its sales agent at all. Exs. 3 and 4. Without notice of these allegations prior to the hearing, HWAN was denied the opportunity to present evidence that licensed providers routinely use unlicensed third-party sales agents to sell service contracts in Nevada with the full sanction of the Division. That evidence is abundant, and had HWAN had the required prior notice of this allegation it would

have presented this evidence at the hearing and undoubtedly prevailed. This lack of notice deprived HWAN of its constitutional right to understand the issues upon which the hearing would be decided and the opportunity to offer evidence to rebut the Division's allegations. *Dutchess Bus. Servs., Inc. v. Nev. State Bd. Of Pharmacy*, 124 Nev. 701, 711, 191 P.3d 1159, 1166 (2008). The district court did not address or entertain HWAN's due process arguments at oral argument or in deciding the First PJR. The deprivation of HWAN's due process rights and the district court's failure to even hear argument on this issue is sufficient to establish HWAN's likelihood of success on the merits and justifies reversal of the Order on appeal.

However, even if this Court overlooks the violation of HWAN's due process rights, HWAN is still likely to succeed on the merits of this appeal. There is no provision in NRS Chapter 690C that requires third-party sales agents or administrators to register with the Division. Rather NRS Chapter 690C only requires ***providers*** to be registered. NRS 690C.150 states that "[a] ***provider*** shall not issue, sell or offer for sale service contracts in this state unless the ***provider*** has been issued a certificate of registration pursuant to the provisions of this chapter." NRS 690C.150 (emphasis added). The Division asserts that this provision mandates that only registered providers may ". . . issue, sell or offer for sale service contracts . . ." as opposed to the sales agent selling service contracts on behalf of a registered provider. The Division is wrong. NRS 690C.150 simply states that

providers of service contracts must be registered, not that whoever sells a service contract must be registered. NRS 690C.070 expressly defines "provider" as simply "a person who is ***obligated*** to a holder ***pursuant to the terms of a service contract*** to repair, replace or perform maintenance on, or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods."

The statute does not preclude a provider from using a third-party sales agent to sell contracts on its behalf, and, in fact, "persons who sell" are specifically delineated as separate from providers in the regulatory framework.[4] If the statute were meant to exclude ***any*** person from issuing, selling, or offering for sale (as opposed to a "provider", the "person who is obligated to a holder pursuant to the

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[4] There is no separate definition of "persons who sell", but the chapter contemplates that such persons may exist independent of providers (as defined in NRS 690C.070) and administrators (as defined in NRS 690C.020). Indeed, 690C.120 specifically calls out "person who sells service contracts" as a person separate and apart from the categories of "provider," "administrator," and "any other person," necessarily implying that a "person who sells service contracts" could be someone other than a "provider" or even "administrator." See NRS 690C.120(2) ("A provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer service contracts.") (emphasis added). Because there is only a registration requirement for providers, and no such requirement for "administrators" or "persons who sell," it follows that the Nevada Legislature did not intend for administrators or persons who sell to be registered. Only the provider, the person obligated under the contract, must be registered. Indeed, a finding that only providers can sell service contracts would render the phrase "person who sells service contracts" in NRS 690C.120(2) superfluous and duplicative—a reading that goes against well settled principles of statutory construction.

terms of a service contract") it would state that no ***person*** shall sell service contracts without a COR. It does not.

Here, it is undisputed that the person obligated to the holder pursuant to the terms of the service contract is HWAN. The hearing officer recognized that "CHW Group sells service contracts on behalf of HWAN" in her order. Ex. 2 at 3, ln. 14. The Division approved a service contract form listing HWAN as obligor and CHWG as administrator. Approved service contract, attached hereto as **Exhibit 15**; *see also* Ex. 2 at 4, lns. 4-9. CHWG is merely the administrator and third-party sales agent (selling contracts on behalf of HWAN). Only the provider is required to be registered under Nevada law because only the provider, HWAN, is obligated under the service contracts entered into with Nevada consumers and backs those contracts with adequate financial security. The district court's holding that any person who sells service contracts must possess a COR is contrary to the plain language of the statute, is reversible error and further demonstrates HWAN's likelihood of success on the merits of the appeal. Accordingly, a stay is appropriate.

### C. The Object of the Appeal Will Be Defeated if the Stay Is Denied.

The key issue in this appeal is whether HWAN, like any other Nevada service contract provider, can use a sales agent to sell service contracts on its behalf. Nevada law requires only that service contract providers be registered, not sales agents selling on behalf of a provider and not administrators administering contracts on

behalf of a provider. HWAN has been operating with CHWG as its third-party administrator and sales agent throughout the pendency of the First PJR and the Second PJR and is entitled to continue doing so pending appeal here and under the Order Granting Stay in the Second PJR. If the stay requested herein is denied, the HWAN will not be able to continue its operations in Nevada without overhauling its operations such that it can sell its own contracts. If HWAN is forced to so overhaul its operations, then the object of this appeal will be defeated. HWAN is allowed under Nevada law to use a sales agent to sell its service contracts.

### D. HWAN Will Suffer Irreparable or Serious Injury if the Stay Is Denied, and the Division Will Not Suffer the Same if Granted.

Nevada precedent establishes that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury." *Sobol v. Capital Mgmt.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986). "The right to carry on a lawful business without obstruction is a property right, and acts committed without just cause or excuse which interfere with the carrying on of plaintiff's business or destroy its custom, its credit or its profits, do an irreparable injury." *Guion v. Terra Marketing of Nev., Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974). When a person or administrative body interferes with the "operation of a legitimate business by creating public confusion, infringing on goodwill, and damaging reputation," irreparable harm may result. *Sobol*, 102 Nev. at 446, 726 P.2d at 337.

HWAN will suffer irreparable and serious injury if the stay is denied because it will have to overhaul its operations to self-administer and sell its contracts, thereby destroying its custom and interfering with its legitimate business and profits. Further, the Order Granting Stay in the Second PJR will be rendered meaningless if the stay is denied here.

By contrast, the Division will not suffer irreparable or serious harm, as a stay merely maintains the status quo. HWAN is currently operating with CHWG as its administrator and sales agent. Further, the Division allows other service contract providers to use non-registered sales agents without incident. SCIC Bulletin, attached hereto as **Exhibit 16**. Allowing the same for HWAN will not cause any harm to the Division, and the public is already protected by the financial security requirements HWAN, the obligor, fulfills under NRS 690C.170(1)(b).[5] Indeed, this is what the district court found in the Order Granting Stay. Ex. 7 at 5-6, 10-11.

## III. CONCLUSION

For the foregoing reasons, HWAN respectfully requests that this Court grant the Motion and issue its decision thereon on or before December 26, 2019.

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[5] Indeed, there is a total of $4,038,262.07 being held as financial security to protect the public.

DATED this 17th day of December, 2019.

*/s/ Sydney R. Gambee*

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*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty, a Nevada corporation*

## CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **EMERGENCY MOTION UNDER NRAP 27(e)** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on the 17th day of December, 2019.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System or by first class United States mail, postage prepaid, at Las Vegas, Nevada as follows:

***Via the Court's Electronic Filing System:***

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*Attorneys for State of Nevada, Depart. Of Business and Industry – Division o Insurance*

*/s/ Joyce Heilich*
An Employee of Holland & Hart LLP

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# EXHIBIT 1

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AUBREY ROWLATT
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DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR CARSON CITY

| | |
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| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., DBA CHOICE HOME WARRANTY, a Nevada Corporation<br><br>Petitioner,<br><br>vs.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17-OC-00269-1B<br><br>Dept. No. I |

**NOTICE OF ENTRY OF ORDER**

Please take notice that the ORDER AFFIRMING IN PART, AND MODIFYING IN PART, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN THE MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA CHOICE HOME WARRANTY was signed by Judge James T. Russell on November 25, 2019, a conformed copy of which is attached hereto as Exhibit 1.

DATED November 26, 2019

AARON D. FORD
Attorney General

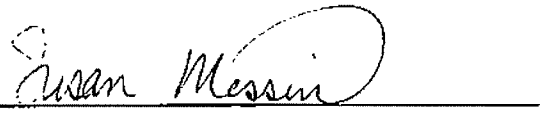
By:
RICHARD PAILI YIEN
Deputy Attorney General
*Attorney for the Division of Insurance*

## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on November 26, 2019, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada a true and correct copy of the **NOTICE OF ENTRY OF ORDER,** addressed to the following:

Constance L. Akridge, Esq.
Sydney R. Gambee, Esq.
Brittany L. Walker, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

DATED November 26, 2019



Susan Messina, An Employee of the
Office of the Attorney General

# EXHIBIT INDEX

| EXHIBIT NO. | DESCRIPTION | NO. OF PAGES (Excluding tabs) |
|---|---|---|
| 1 | Order Affirming In Part, And Modifying In Part, Findings Of Fact, Conclusions Of Law, Order Of The Hearing Officer, And Final Order Of The Commissioner In Cause No. 17.0050 In The Matter Of Home Warranty Administrator Of Nevada, Inc Dba Choice Home Warranty | 4 |

# EXHIBIT 1

EXHIBIT 1

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DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
**IN AND FOR CARSON CITY**

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| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br>Petitioner,<br><br>vs.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondents. | **Case No.: 17 OC 00269 1B**<br><br>Dept. No.: 1 |

**ORDER AFFIRMING IN PART, AND MODIFYING IN PART, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN THE MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA CHOICE HOME WARRANTY**

This matter came on for hearing on November 7, 2019 on Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial Review of the Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order 17.0050"), filed by the Petitioner on December 22, 2017.

## A. Standard of Review

The standard of review of an administrative decision is codified in NRS 233B.135. It provides in pertinent parts:

> . . .
>
> 2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.
>
> 3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
>
> (a) In violation of constitutional or statutory provisions;
>
> (b) In excess of the statutory authority of the agency;
>
> (c) Made upon unlawful procedure;
>
> (d) Affected by other error of law;
>
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) Arbitrary or capricious or characterized by abuse of discretion.
>
> 4. As used in this section, "substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion.

*Id.*

When an administrative decision is challenged, the role of the reviewing court is "to review the evidence presented to the [hearing officer] and ascertain whether [the hearing officer] acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State, Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). "[F]actual findings will only be overturned if they are not supported by substantial evidence, which, we have explained, is evidence that a reasonable mind could accept as adequately supporting the agency's conclusions. *Nassiri v Chiropractic Physicians' Bd.*, 130 Nev.245, 248, 327 P.3d 487, 489 (2014). (citations omitted). "We review issues pertaining to statutory construction de novo. We nonetheless defer to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." Dutchess Bus. Servs. v. State, Bd. of Pharm., 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations omitted).

The Court, having considered the pleadings, record, and other documents in the matter, the law applicable to the issues and the arguments of counsel at the hearing, and being fully advised finds as follows:

**B. Findings of Fact and Conclusions of Law**

1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050 are hereby AFFIRMED in part, and MODIFIED in part as follows:

a. The Hearing Officer's finding of six (6) violations by the Petitioner of NRS 686A.070 for making false entries of material fact in record or statement is supported by substantial evidence and is hereby AFFIRMED.

The total fine of $30,000, at $5,000 per violation, as allowed under NRS 686A.183(1)(a), is AFFIRMED.

b. The Hearing Officer's finding of one violation by the Petitioner of NRS 690C.320(2) for failure to make its records available to the Commissioner upon request is supported by substantial evidence and is hereby AFFIRMED.

The fine of $500, as authorized pursuant to NRS 690C.325(1) is AFFIRMED,

c. The Hearing Officer's finding of 23,889 instances of conducting business in an unsuitable manner, in violation of NRS 690C.325(1)(b) and NRS 679B.125(2), by allowing an unregistered entity to issue, sell and offer for sale service contracts in Nevada is hereby AFFIRMED. The Court finds that NRS 690C.150 requires anyone, including a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the NRS.

The fine of $50 for each of the 23,889 violations, is AFFIRMED; however, the Court finds that the aggregate cap of $10,000 for violations of a similar

nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES the fine of $1,194,450 to be capped at $10,000 total.

2. Petitioner interpleaded $1,224,950 with the County Clerk's Trust Fund pending final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018. The Clerk of the Court will distribute the total fine of $40,500 from Petitioner's interpleaded funds to the Respondent, and refund the remaining balance to Petitioner.

3. The Court finds that the doctrine of estoppel does not apply in this case. The Court finds in favor of the Respondent on this issue.

4. The Court finds that Petitioner was not denied due process. Petitioner had received sufficient notice and opportunity to prepare, and there was no unfair surprise. The Court finds in favor of the Respondent on this issue.

5. The Court further orders that contingent upon Petitioner's compliance with NRS 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of Registration be reinstated. In particular, Petitioner is prohibited from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order.

**IT IS SO ORDERED**

**DATED** this 25th day of November, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:

AARON D. FORD
Attorney General

By:
Richard P. Yien (Bar No. 13035)
Deputy Attorney General
Joanna N. Grigoriev (Bar No. 5649)
Senior Deputy Attorney General

## CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 25 day of November, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Joanna N. Grigoriev, Esq.
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Las Vegas, NV 89101

Richard P. Yien, Esq.
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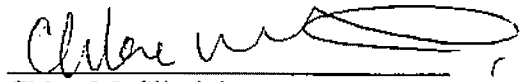

Chloe McClintick, Esq.
Law Clerk, Dept. 1

# EXHIBIT 2

FILED
DEC 18 2017
Div. of Insurance
State of Nevada

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

| IN THE MATTER OF<br><br>**HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY,**<br><br>**Respondent.** | CAUSE NO. **17.0050** |
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**FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER**[1]

This matter is before the Nevada Division of Insurance ("Division") on an Order to Show Cause issued by the Commissioner of Insurance ("Commissioner") on May 11, 2017, against Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. The Commissioner, as head of the Division, is charged with regulating the business of insurance in Nevada. NRS 232.820, -.825.2; NRS 679B.120. The Division alleges that Respondent violated various provisions of the Nevada Revised Statutes ("NRS") title 57 ("Insurance Code") and of insurance regulations found under the Nevada Administrative Code ("NAC"). A hearing was scheduled for August 1, 2017, and continued to September 12, 2017. A prehearing conference was held on September 8, 2017, at the office of the Division in Carson City. The hearing was held on September 12, 13, and 14, 2017, at the office of the Division in Carson City. At the close of the hearing, the Parties were ordered to file briefs on a legal issue due on October 30, 2017, and written closing arguments due on November 15, 2017. On November 7, 2017, Respondent filed a motion to strike portions of the Division's brief. The motion was denied, but the Parties were granted five extra pages for their written closing arguments to address any issues from the briefs, and the due date for the written closings was extended to November 17, 2017.

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[1] See NRS 679B.360.2–.3 (explaining that "the Commissioner shall make an order on hearing covering matters involved in such hearing" and enumerating what is required in the order); NRS 679B.330.1 (authorizing the Commissioner to appoint a person as a hearing officer for a hearing); and NAC 679B.411 ("The hearing officer shall file a copy of his or her order with the Division" and "[i]f

## I. FINDINGS OF FACT[2]

### A. HWAN Applications

1. CHW Group, Inc. ("CHW Group") was incorporated in the State of New Jersey in May 2009. Victor Mandalawi ("Mandalawi") and Victor Hakim ("Hakim") set up the company to provide service contracts. Both Hakim and Mandalawi are officers for CHW Group: Hakim is the chief executive officer and Mandalawi is the president. The company operates under the name "Choice Home Warranty," which is registered as a fictitious name in New Jersey. CHW Group uses the brand Choice Home Warranty, to include the website www.ChoiceHomeWarranty.com. CHW Group owns the website, through which all service contracts are sold and administered. Hakim has final say or approval on all content on the website. CHW Group's employees handle sales, marketing, claims, finance. CHW Group's sales, marketing, and finance occur at its office located at 1090 King Georges Post Road in Edison, New Jersey; CHW Group's operations, or claims handling, occurs at 2 Executive Drive in Somerset, New Jersey. CHW Group is not registered to do business in Nevada. (Ex. A; Test. Mandalawi; Test. Hakim; Test. Ramirez.)

2. Under the name Choice Home Warranty, CHW Group sold service contracts online, so sales reached consumers nationally, and consumers were purchasing the service contract in states where CHW Group was not licensed. Mandalawi and Hakim were not aware that other states required a license in order to sell this type of product. Choice Home Warranty was named in administrative actions in different states. As a result, Mandalawi created the Home Warranty Administrators name for states that require licensure. Home Warranty Administrator of Nevada, Inc. ("HWAN") was incorporated in Nevada on July 23, 2010. Mandalawi is the only employee for each of the Home Warranty Administrators companies. HWAN's address is 90 Washington Valley Road in Bedminster, New Jersey. (Test. Mandalawi.)

3. On or about July 29, 2010, Mandalawi signed a service contract provider application on

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the hearing officer is not the Commissioner, the Commissioner will indicate on the order his or her concurrence or disagreement with the order of the hearing officer").

[2] The hearing transcripts are distinguished by day, not volume number or consecutively numbered pages. Accordingly, the transcripts are distinguished in the citations as "Tr.1" for the hearing transcript

behalf of Home Warranty Administrator of Nevada, Inc., which was received by the Division on or about September 2, 2010. (Ex. 22; Ex. P.) Mandalawi is noted on the application as president of HWAN. (Ex. 22; Ex. P at 12–14; Ex. C; Test. Mandalawi.)

4. On July 29, 2010, HWAN entered into an independent service provider agreement ("Agreement") with CHW Group. Through the Agreement, CHW Group handles sales, marketing, operations (claims), and advertising for HWAN service contracts, while HWAN handles regulatory compliance. CHW Group maintains the service contracts sold to Nevada consumers. According to the Agreement, CHW Group is responsible for providing the following services:

- Communicating with potential clients (the "Clients") seeking Warranties and negotiating the signing of contracts, the form of which shall be previously approved by HWA[N], between Clients and HWA[N].
- Collecting any and all amounts paid by the Clients for the Warranties and distributing same to HW[AN] pursuant to the terms of Article 2 hereof;
- Keeping records of all Warranties
- Providing customer service to Clients; and
- Inspecting any claims made by Clients regarding goods under a Warranty and, if possible, repairing same or causing same to be replaced.

(Ex. E.) CHW Group sells service contracts on behalf of HWAN per the Agreement. When CHW Group sells a contract, CHW Group collects the payment from the consumer, and that money is eventually paid to HWAN. (Test. Mandalawi; Test. Hakim.)

5. According to the 2010 application, an administrator was not designated to be responsible for the administration of Nevada contracts. (Ex. 22; Ex. P at 1.)

6. According to the application's Section II, neither the applicant nor any of the officers listed in Section I had ever been refused a license or registration or had an existing license suspended or revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at 2; Test. Mandalawi.)

7. As part of the application, HWAN submitted its proposed contract. (Test. Mandalawi.)

8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of

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on September 12, 2017, "Tr.2" for the hearing transcript on September 13, 2017, and "Tr.3" for the hearing transcript on September 14, 2017.

each year. (Ex. U; Ex. 22; Test. Mandalawi.) In the letter, the Division noted that it had reviewed the service contract #HWAADMIN-8/2/10 that was submitted with the application, and that it was approved for use. (Ex. U at 1.)

9. In 2011, HWAN submitted another service contract for approval. The Division approved the service contract under the form number HWA-NV-0711. (Test. Mandalawi; Test. Ghan.)

10. The service contract shows the Home Warranty Administrators' logo at the top right of the first page. Under it is the name Choice Home Warranty followed by the text "America's Choice in Home Warranty Protection," and under the text in finer print it says "Obligor: Home Warranty Administrator of Nevada, Inc." This first page is a sample letter to the consumer. The first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty." The consumer is asked to read the coverage. The letter includes a toll-free number, (888)-531-5403, and a website, www.ChoiceHomeWarranty.com. Under the letter in finer print, it states that the contract explains the coverage, limitations, and exclusions. Then there are two boxes: the box on the left identifies the contract number, contract term, covered property, property type, rate, and service call fee; the box on the right identifies the coverage plan, included items, and optional coverage. Under the two boxes is the name Choice Home Warranty and the address, 510 Thornall Street, Edison, NY 08837, along with the toll-free number (888) 531-5403. The bottom right of the page contains "HWA-NV-0711" in a finer print, which indicates approval by the Division in July 2011, and is applied to each page. (Ex. 35; Ex. EE; Test. Ghan; Test. Jain; Test. Mandalawi.)

11. According to Mandalawi, there are no contracts sold to Nevada consumers other than the Nevada contract authorized in 2011. (Test. Mandalawi.)

12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2, 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)

13. The renewal applications asked the applicant to identify the pre-approved service contract form name and form numbers that applicant sells in Nevada. On each application, HWAN identified form HWA-NV-0711. (Ex. 2, 4, 5, 7, 12, 21; Ex. I.)

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14. The renewal applications for the years 2011, 2012, and 2013 asked the following questions:

- "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
- "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
- "Since the last application, has applicant or any of the officers listed in question 1 ever . . . (c) Been refused a license or registration . . . or had an existing one suspended or revoked by any state . . . [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. For the current administrator, Mandalawi wrote "Self." (Ex. 2, 4, 5; Ex. I; Test. Dennis; Test. Mandalawi.)

15. The renewal applications for years 2011, 2012, and 2013 were approved. (Ex. Y, Z, AA; Test. Mandalawi.)

16. The renewal applications also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. Mandalawi responded to these questions for the renewal applications for years 2011, 2012, and 2013. (Ex. 2, 4, 5; Ex. I.)

17. In 2013, the Division initiated an investigation into Choice Home Warranty, and began monitoring complaints. The Division also discovered that a company called Choice Home Warranty had administrative actions against it in several states. (Test. Jain.)

18. In email correspondence with Mandalawi related to a consumer complaint, Elena Ahrens, then-Chief of the Property and Casualty Section, indicated that she wanted to work with Mandalawi "regarding having an official dba of Choice Home Warranty." She said that she had stopped the issuance of a cease and desist, and wanted to remedy the situation from occurring in the future. (Ex. T at 1.) The Division asked HWAN to register the dba Choice Home Warranty because the Division "thought it was confusing for consumers having just the name Home Warranty of Nevada." (Test. Mandalawi.) Mandalawi registered the dba "Choice Home Warranty" under HWAN. (Ex. T at 7–11; Ex. B; Ex. 30–32; Test. Mandalawi.)

19. The Division issued a memo to then-Commissioner Scott J. Kipper from Derick Dennis, Management Analyst, indicating that Mandalawi notified the Division that HWAN filed the dba name,

"Choice Home Warranty," in Carson City and Washoe County. A handwritten note on the memo states, "7/8/14 This was at the request of the Division, recommend approval" with Ahrens' initials "ea." (Ex. 23 at 3; Ex. Q.) The Division issued a new Certificate of Registration dated July 14, 2014, under HWAN's same Company ID No. 113194, for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. (Ex. 23; Ex. T at 39, 51–53; Test. Mandalawi.)

20. For the registration years beginning 2014, 2015, and 2016, HWAN filed renewal applications. The applicant was listed as "Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty." (Ex. 7, 12, 21; Ex. I; Test. Mandalawi.)

21. The renewal applications for the years 2014, 2015, and 2016 asked the same following questions:

- "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
- "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
- "Since the last application, has applicant or any of the officers listed in question 1 ever . . . (c) Been refused a license or registration . . . or had an existing one suspended or revoked by any state . . . [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. (Ex. 7, 12, 21; Test. Mandalawi.) For the current administrator, Mandalawi wrote "Self." (Ex. 21)

22. The renewal application for 2014, 2015, and 2016 added a request that the applicant "List all aliases or names under which the company conducts business (Doing Business As). Provide supporting documentation." On behalf of HWAN, Mandalawi answered "NA" because he believed the question related to additional fictitious names. (Ex. 7, 12, 21; Ex. I at 12, 16, 20; Test. Mandalawi.)

23. The renewal applications for 2014, 2015, and 2016 also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. For years 2014, 2015, and 2016, Mandalawi responded to some of these questions, but left blank the number of customer complaints by Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18, 23.)

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24. The renewal applications for years 2014 and 2015 were approved. (Ex. BB, CC; Test. Mandalawi.)

25. At the time the Division received HWAN's 2016 renewal application, the Division requested additional information because the application was deemed incomplete. Specifically, the statutory security deposit was not sufficient and questions on the application were left blank. The Division's requests for information were ignored. As of the date of the hearing, the Division had not received all of the information requested. (Ex. 33; Ex. L; Ex. DD; Test. Jain.)

26. As a result of this matter, Mandalawi learned that HWAN's COR was inactive. Mary Strong, Management Analyst III, emailed HWAN on July 21, 2017, explaining that HWAN's COR had expired and that the 2016 renewal application was denied. No additional explanation was provided. A printout of HWAN's licensing status with the Division shows that HWAN dba Choice Home Warranty is inactive as of 11/18/2016. (Ex. O, DD; Test. Mandalawi.)

**B. Complaints**

27. In 2009, the Division began receiving complaints about Choice Home Warranty, which was not registered to sell service contracts in Nevada. (Ex. 28 at 2; Ex. J at 2.)

28. On January 4, 2014, the Division received a complaint from a technician who provided services to a consumer on behalf of Choice Home Warranty, but "CHW (CHOICE HOME WARRANTY, CHW GROUP)" refused to pay them the $20,000 alleged to be owed. The Division worked out a settlement between Choice Home Warranty and the technician for $7,296. (Ex. 25; Test. Kuhlman.)

29. On July 16, 2014, the Division received a consumer complaint against Choice Home Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay $1,025 for an A/C compressor that the consumer believed should have been covered by the service contract. The consumer requested the claim denial in writing, but was told by the Choice Home Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11; Test. Kuhlman.)

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30. On November 19, 2014, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim when the consumer's pipe broke the same day he had purchased the service contract (policy number 465308123). The consumer paid $826 for repair of a broken pipe. The consumer also complained because he felt Choice Home Warranty's advertisement was deceitful and misleading by claiming that the consumer could get coverage "today," when the contract requires a thirty-day waiting period. The Division worked out a settlement between Choice Home Warranty and the consumer for $500. (Ex. 11; Test. Kuhlman.)

31. On July 12, 2016, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 27, 2016, and Choice Home Warranty sent a technician, who replaced the capacitor. The A/C unit failed again within a few hours. The technician returned to look at the unit three times and provided all the information Choice had requested. The A/C unit still had not been fixed. The consumer called Choice Home Warranty numerous times and was put on hold on every call for extensive periods and, after 45 minutes, the call would fail. The consumer was told that the claim was rejected because the consumer did not maintain the unit. The consumer sent Choice Home Warranty proof that he did maintain the unit. The consumer explained that the situation was a "life or death situation" because his significant other, who is disabled, suffered from heatstroke because she and their little dog have been left in the house with temperatures exceeding 100-plus degrees. On or about July 25, 2016, the Division worked out a settlement between Choice Home Warranty and the consumer for $1,500. (Ex. 38; Test. Kuhlman.)

32. On October 4, 2016, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 8, 2016, and Choice Home Warranty sent eight technicians and four A/C companies, and all agreed that the A/C compressor and coil needed to be replaced. Choice Home Warranty denied the claim explaining that it had a photo of the unit from August 17, 2016 showing that no maintenance had been done on the unit. The consumer asked for a copy of the photo, but Choice Home Warranty did not provide the photo. The consumer faxed her maintenance records for the A/C unit, but was told that Choice Home Warranty could not read the

records. At the time of the complaint, the consumer was alleged to have endured ten weeks without A/C in Las Vegas. (Ex. 24; Test. Kuhlman.)

33. In all, the Division had received approximately 80 complaints about Choice Home Warranty. Eliminating duplicates, the total was 62. At the time the Complaint, only 2 complaints were open. All other complaints had been closed. The Division's concern was that Choice Home Warranty had a higher ratio of complaints than any other of the 170-plus service contract providers licensed in Nevada. (Ex. 28; Ex. J, W; Test. Jain.)

34. The Division conducted a general search on Choice Home Warranty online, and discovered numerous complaints by consumers on different websites. (Test. Jain.)

35. The Business Consumer Alliance rated Choice Home Warranty with an "F". It notes the company's website as www.choicehomewarranty, DBAs are CHW Group, Inc., Victor Mandalawi as president, and Victor Hakim as principal. (Ex. 9.)

36. On October 31, 2016, Mike from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty in Edison, New Jersey, was attempting to withdraw money from the consumer's bank account after the contract period ended. (Ex. 14.)

37. On July 7, 2016, Stardust from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty refused to replace a pool pump because it was not correctly installed. (Ex. 15.)

38. On April 20, 2016, Ira B. from Las Vegas, Nevada, a technician, posted a complaint on Ripoff Report advising people to stay away from Choice Home Warranty because Choice Home Warranty does not pay its vendors, and requires vendors to use repair parts according to their terms. (Ex. 16.)

39. On January 14, 2016, Iaappliance from Las Vegas, Nevada posted a complaint on Ripoff Report that Choice Home Warranty is a huge scam among contractors. The company had completed 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)

40. On October 12, 2016, David N. of Las Vegas, Nevada posted a complaint on Yelp.com that Choice Home Warranty improperly denied his claims on two occasions. The second claim denial was after a technician came and inspected the microwave and took photos. The consumer included in

his complaint the he received an email from Choice Home Warranty that said, "CHW strives to be rated #1 in the home warranty industry. Help us succeed with your positive feedback and you will receive 1 FREE month of coverage." (Ex. 18 at 2.)

41. Choice Home Warranty has been the subject of complaints in other cities—Houston, Texas, Chicago, Illinois, Overland Park, Kansas, and Titusville, Florida. According to the reports, Choice Home Warranty in New Jersey denies claims on the basis that the consumers did not maintain their units, even after consumers provide proof of maintenance. (Ex. 19, 19a, 20, 20a, 39, 40, and 40a.)

42. In reviewing complaints, Mandalawi has CHW Group employees participate in the resolution. Mandalawi distinguishes claims as problems with a system or appliance, and a complaint as a consumer who is dissatisfied with the claim or outcome. When complaints are received, they are handled by CHW Group employees. If they are escalated, Mandalawi gets involved. Mandalawi has final authority on complaints and "want[s] to be sure that CHW Group is adhering to the terms and conditions of the policy and make[s] sure they are in compliance." Complaint resolution activity is done at Executive Drive, CHW Group's Somerset location; sales and marketing is done at the King Georges Post Road in Edison. Mandalawi spends most of his time at the Somerset location. (Test. Mandalawi; Test. Ramirez.)

43. At a meeting of the Parties pending this proceeding, Mandalawi and Hakim reviewed the records of HWAN to determine how many complaints they have received from the Division since HWAN's inception. (Test. Mandalawi; Test. Hakim.)

44. CHW Group handled the claims for the consumer complaints filed with the Division. CHW Group documents its communications with the consumers. CHW Group concluded that the consumers' claims were not covered by the service contracts. (Test. Ramirez.)

45. HWAN presented what it named "Customer Testimonials NV DOI Status of HWAN," which is 867 pages of positive testimonials of Choice Home Warranty consumers from around the country, including Nevada. (Ex. M.)

**C. Regulatory Actions**

46. On July 23, 2010, California issued a cease and desist order against Choice Home Warranty and its officers, along with notices related to a monetary penalty and right to hearing for

acting as a provider of home protection contracts without a license. (Ex. 1 at 1–4 of 16.) A final order was entered on August 19, 2010. On October 12, 2010, the California Insurance Commissioner found that Choice Home Warranty acted as a home protection company without a license from October 25, 2008 through October 1, 2010, and fined Choice Home Warranty $3,530,000. In December 2010, Mandalawi, as president of Choice Home Warranty, entered into an agreement with California agreeing to take certain actions with regard to their business, and pay a $10,000 fine. The agreement was adopted by the California Commissioner on January 6, 2011. (Ex. 1; Ex. G.)

47. On July 29, 2010, Oklahoma issued a cease and desist against Choice Home Warranty for engaging in service warranty contracts without authorization. Despite the order, Choice Home Warranty continued to engage in the business. The matter was settled on January 2, 2012, with a fine of $15,000, and Choice Home Warranty was permitted to continue servicing existing contracts. (Ex. 3; Ex. H.)

48. On February 7, 2014, the Oklahoma Commissioner issued an order alleging that Choice Home Warranty continued to engage in the business "in a course of unfair and deceptive conduct while circumventing regulatory authority." (Ex. 3 at 2.) Choice Home Warranty was fined $10,000. (Ex. 3.) On October 21, 2010, the Insurance Commissioner of the State of Washington issued an Order to Cease and Desist against CHW Group, Inc. doing business as Choice Home Warranty and www.ChoiceHomeWarranty.com, Victor Mandalawi, President of CHW Group, Inc. (incorporated in both New York and New Jersey), and others. The Order demanded that all named parties, who are unlicensed in Washington, cease transacting in the unauthorized business of insurance in Washington, seeking business in Washington, and soliciting Washington residents to buy unauthorized products based on the sale of at least 92 service contracts. On January 27, 2011, the Washington Commissioner issued a Final Order Terminating Proceeding after the named parties filed a stipulation withdrawing their hearing demand. The Final Order indicated that the Order to Cease and Desist would remain in effect indefinitely. (Ex. 8 at 3 of 32.)

49. On June 9, 2015, CHW Group, Inc. dba Choice Home Warranty, Victor Mandalawi, and Victor Hakim agreed to a Final Consent Judgment with the New Jersey Attorney General's Office for allegations of using deceptive means to deny claims after the New Jersey Division of Consumer Affairs

received 1,085 complaints about Choice Home Warranty. The Judgment requires Choice Home Warranty, Mandalawi, and Hakim to address issues related to improper advertisements, sales representatives' misrepresentations, terms and conditions of the contract, properly licensed technicians, fair review of claims, timely payment to technicians, payment in lieu of replacement, refunds, training of employees handling sales and claims, and future consumer complaints. Choice Home Warranty, Mandalawi, and Hakim were required to pay a $779,913.93 fine including consumer restitution, revise their business practices, pay for an independent compliance monitor to oversee compliance with the terms of the Judgment, and execute confessions of judgment in the event of a default on the Judgment. (Ex. 6; Ex. F, X.)

**D. Other Evidence Presented at Hearing**

50. In 2016, Home Warranty Administrator of Florida, Inc. and Choice Home Warranty were named defendants in a civil action in New Jersey. That same year, CHW Group, Inc. dba Choice Home Warranty and Victor Mandalawi were named defendants in a civil complaint in South Carolina. (Ex. 9, 29; Test. Mandalawi.)

51. As part of the Division's investigation, it obtained a copy of Home Warranty Administrator of South Carolina, Inc.'s application with the State of South Carolina submitted by Mandalawi. The application included a biographical affidavit, which requested information about Mandalawi's background. To the question, "Are you operating, acting, or have acted as a controlling person for any other service contract provider or service contract related company?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company in which you were, or are a controlling person, ever been disciplined by a state regulatory body?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company for which you were, or are a controlling person, ever been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory or disciplinary action?", Mandalawi responded yes.

Attached to the biographical affidavit is Mandalawi's résumé. According to it, Mandalawi is the President of Home Warranty Administrators, which "is currently licensed / registered in Arizona, Florida, Illinois, New York, Nevada, Oklahoma, and Texas." Mandalawi has held this position since

2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has held this position since 2008. (Ex. 41 at 14.)

Mandalawi presented a letter to the South Carolina Department of Insurance explaining his "Yes" responses to the questions on the biographical affidavit. In the letter, Mandalawi introduces himself as president of Home Warranty Administrator of South Carolina, Inc., and all of its affiliates, which includes HWAN, and president of Choice Home Warranty. Through the letter, Mandalawi explains that

> Choice Home Warranty (CHW) was the subject of a cease and desist letter in California, Oklahoma, and Washington. In California, CHW entered into a consent order, in Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service Warranty License, and in Washington CHW is complying with all terms of the cease and desist.
>
> CHW has been doing business for roughly two years and our home state of New Jersey does not require companies, such as ours, to be licensed. During the course of its activities, CHW discovered that all states are not created equal when it came to licensing requirements for service contracts. In fact, the very definition of the words "service contracts" changes from state to state. To address this newly discovered issue, CHW developed the Home Warranty administrators ("HWA") brand. That is, in order to address every state's particular requirements, a separate HWA was created for that state.

(Ex. 41 at 15–16; Test. Mandalawi.)

52. Choice Home Warranty has a landing page, which is a webpage that consumers land on when they click a particular email or internet link to Choice Home Warranty. The landing page is part of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code. Choice Home Warranty provides some general information and invites people to call them at (888) 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address, 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions, other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)

53. On August 21, 2017, Felecia Casci, Supervising Legal Secretary at the Division, received an email from 'CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "VIP Offer: $50 Off & 1 Month Free" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering $50 off and one month free. According to the email, Choice Home Warranty plans are subject

to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. Nothing in the solicitation identified HWAN as the party selling the service contract. (Ex. 27; Test. Casci.)

54. On August 16, 2017, Casci received another email from "CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "We Appreciate You Felecia" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering $75 off and one month free. According to the email, Choice Home Warranty plans are subject to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. (Ex. 27; Test. Casci.)

55. The Division discovered that some service contracts issued by HWAN were not approved for use. In the unapproved service contract's letter to the consumer, the first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a CHW Warranty." Again in the second paragraph, there is a reference to CHW Warranty. Under the two boxes is the name Choice Home Warranty and the address, 1090 King Georges Post Road, Edison, NJ 08837, along with the toll-free number (888) 531-5403. There is no service contract form number on the bottom of the page indicating approval by the Division. The font of the contract is reduced such that the contract is 4 pages long instead of the 5 ½ pages in the approved service contract. (Ex. 37; Test. Ghan.)

56. When Hakim acknowledged that CHW Group is not licensed to sell, solicit, or offer for sale service contracts in Nevada, he explained that "Pursuant to section 690C.120.2, administrators are not required to be licensed to sell service contracts in Nevada." (Test. Hakim.)

57. The setup for HWAN in Nevada is the same setup Mandalawi uses for all of the Home Warranty Administrators companies. All of these entities have a contract with CHW Group, and all of the entities use the website www.choicehomewarranty.com to sell their service contracts. All of the entities use substantially the same contract and terms of service. All of the businesses use CHW Group's services as provided in agreements similar to the Agreement HWAN has with CHW Group.

This creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract sent to consumers. (Test. Mandalawi.)

58. Since HWAN became licensed in Nevada, CHW Group has continually provided services to HWAN through the Agreement. CHW Group has tracked its claims statistics. According to its claims statistics, 23,889 customers have purchased a service contract through Choice Home Warranty in Nevada since 2011. (Ex. K; Test. Hakim.)

59. In some years, the Division communicated with Mandalawi by telephone or email when items were not provided with HWAN's applications. (Test. Mandalawi.)

## II. CONCLUSIONS OF LAW

In its Amended Complaint, the Division seeks administrative action against Respondent for (1) falsifying material facts in its applications; (2) engaging in unfair practices in settling claims; (3) conducting business in an unsuitable manner; and (4) failing to make records available to the Commissioner upon request. The Division also seeks a cease and desist order because the Commissioner refused to renew Respondent's 2016 COR. The Division bears the burden of showing, by a preponderance of the evidence, that Respondent violated these provisions of the Insurance Code. In hearings for the Division, "The hearing officer shall liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party." NAC 679B.245.

### A. Jurisdiction

The Commissioner is charged with regulating the business of service contracts, which includes but is not limited to promulgating regulations, reviewing provider records, investigating complaints and alleged violations of law, and conducting examinations. NRS 679B.120.3 & -.5, 690C.300, -.310 & -.320. Service contracts are regulated under the Insurance Code pursuant to chapter 690C.

### B. Statement of Law

In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a Nevada resident who may enforce the rights under a service contract. NRS 690C.060. An administrator "means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider." NRS 690C.020.

> A provider who wishes to issue, sell or offer for sale service contracts in this state must submit to the Commissioner: A registration application on a form prescribed by the Commissioner; . . . A copy of each type of service contract the provider proposes to issue, sell or offer for sale; [and] The name, address and telephone number of each administrator with whom the provider intends to contract . . . .

NRS 690C.160.1(a), (c)–(d).

> A certificate of registration is valid for 1 year after the date the Commissioner issues the certificate to the provider. A provider may renew his or her certificate of registration if, before the certificate expires, the provider submits to the Commissioner an application on a form prescribed by the Commissioner, [among other things].

NRS 690C.160.3.

Providers are required to comply with certain requirements to ensure the provider is financially viable. NRS 690C.170. A provider has limitations on the name of its business, and may not use the name of another provider. NRS 690C.200.1(b). A provider's service contract must comply with certain provisions. For example, a service contract must be "understandable and printed in a typeface that is easy to read." NRS 690C.260.1(a). A service contract must also "[i]nclude the name and address of the provider and, if applicable: The name and address of the administrator. . . ." NRS 690C.260.1(d)(1). A provider is prohibited from making "a false or misleading statement" or "intentionally omit[ting] a material statement." NRS 690C.260.2.

When a provider receives a claim, it must address the claim within a reasonable amount of time. If a claim "relates to goods that are essential to the health and safety of the holder", emergency provisions must be included in the contract. NAC 690C.110.1(c). Related to claims, certain activities are considered unfair practices:

> (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy provisions relating to any coverage at issue.
> (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
> (c) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
> . . .
> (e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.
> . . .
> (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.
> . . . .

NRS 686A.310.1.

Generally, no other provision of the Insurance Code applies except as otherwise provided in NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include trade practices, examinations, hearings, certain prohibitions, process, and advertising. NRS 690C.120.1. Also, "[a] provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer service contracts." NRS 690C.120.2.

The Commissioner is authorized to observe the conduct of a service contract provider to ensure that "business is not conducted in an unsuitable manner." NRS 679B.125.2.

> "[U]nsuitable manner" means conducting [] business in a manner which:
> 1. Results in a violation of any statute or regulation of this State relating to insurance;
> 2. Results in an intentional violation of any other statute or regulation of this State; or
> 3. Causes injury to the general public,
> ➥ with such frequency as to indicate a general business practice.

NAC 679B.0385.

**C. Respondent**

In order to address the Division's allegations, the Hearing Officer must make a determination about the parties involved in this matter because many of the issues presented in this hearing hang on who the service contract provider is. Relying on the use of the different names by Respondent's witnesses, who interact with or on behalf of Respondent through a contract, and who would most be familiar with the entities, the Hearing Officer relies on the names used in the hearing as follows:

- Home Warranty Administrator of Nevada, Inc. is HWAN
- Choice Home Warranty is CHW Group, Inc., CHW, and Choice Home Warranty Group
- Home Warranty Administrators is an affiliate of companies with the name Home Warranty Administrator of [State]

In this case, HWAN is the legal entity that has been authorized to be a service contract provider in Nevada. HWAN contracted with CHW Group, or Choice Home Warranty, as administrator of HWAN's service contracts. In 2014, the Division requested HWAN to register the fictitious name, Choice Home Warranty.

The evidence is clear that Choice Home Warranty is CHW Group. Respondents have argued this throughout the case. (Resp't's Prehr'g Stmt 3–4.) During the hearing, Mandalawi, Hakim, and Ramirez referred to CHW Group as Choice Home Warranty. Mandalawi and Hakim both testified that

HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice Home Warranty. The names are listed in his résumé as two separate companies. At the time the South Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW Group, Inc.

When an entity registers a dba, or fictitious name, the entity creates a name under which it will operate. This does not create a new company or change the entity's legal status. Registering a dba cannot make one company liable for the acts of another company, even if the two companies share the same name—it is a legal impossibility. Further, NRS 690C.200.1(b) prohibits a provider from using a name that is the name of another provider. Choice Home Warranty, under CHW Group, is another provider even if it is not a Nevada-registered provider. Why the Division requested HWAN to register the dba Choice Home Warranty is unknown, as it makes the arrangement of these businesses confusing at best. Registering Choice Home Warranty as HWAN's dba did not make HWAN and CHW Group one legal entity for purposes of regulation. Accordingly, it is the Hearing Officer's position that Choice Home Warranty as discussed in this matter should not be treated as a fictitious name of HWAN, but instead as a separate company under CHW Group. For purposes of this Order, the Hearing Officer relies on this distinction between HWAN and Choice Home Warranty: HWAN is one legal entity, and Choice Home Warranty is CHW Group, an incorporated entity that is separate from HWAN.

**D. The Division Claims Respondent Made False Entries of Material Facts in Its Applications**

**1. Administrative Actions Against Choice Home Warranty**

The Division claims that by failing to disclose other states' administrative actions against Choice Home Warranty on its Nevada renewal applications, Respondent engaged in acts that constitute the unlawful making of false entry of material fact in violation of NRS 686A.070. The Hearing Officer

disagrees.

Respondent argues that it is legally and factually impossible for HWAN to have made false misrepresentations in its renewal applications because the *renewal* applications do not ask for regulatory information about any of the officers of the applicant, and the Hearing Officer agrees. The Division's questions in each of the renewal applications do not ask whether any of the applicant's officers have had actions taken against them; rather, the questions ask whether any of the *new* officers identified in the renewal application have had actions taken against them. If the Division wanted to know whether any of applicant's officers had administrative actions taken against them in other states, the Division should have asked that question. The Division's intent regarding the questions on its own renewal application is not clear, and it would be improper to hold applicants responsible for failing to disclose information about which the Division never asked.

For the renewal applications submitted for 2011, 2012, and 2013, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. HWAN is incorporated in Nevada, creating an independent legal entity. As its own legal entity, HWAN is responsible for the acts of its business. At no time during this period was HWAN named in any administrative action in any other state. Therefore, it cannot be said that HWAN made a false entry on the renewal applications for these years by not reporting administrative actions against Choice Home Warranty.

For the renewal applications submitted for 2014 and 2015, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. dba Choice Home Warranty. As explained in Section C above, however, Choice Home Warranty is CHW Group. It is a legal impossibility for HWAN to also be CHW Group even if HWAN registered a dba called Choice Home Warranty. HWAN did not violate Nevada law by failing to disclose administrative actions taken against CHW Group in other states. CHW Group is HWAN's administrator, and none of the applications asked whether the administrator or its officers have been the subject of administrative actions in other states. To that end, HWAN was not required to report administrative actions against Choice Home Warranty in its 2014 and 2015 renewal applications.

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## 2. Applications Filed with the Division

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, the evidence shows that Respondent did make a false entry of material fact in its applications. All the applications presented at the hearing ask the applicant to disclose the name of the administrator. For all of the renewal applications Mandalawi submitted on behalf of HWAN, the administrator is noted as "self," and this was not true. "Self" means that the service contract provider—HWAN in this case—was administering all of the claims. According to the testimony of Mandalawi, Hakim, and Ramirez, Choice Home Warranty (which is CHW Group) is the administrator for HWAN. Respondent argues that this fact was disclosed in HWAN contract HWA-NV-0711, which was provided to the Division in 2011. Even if the disclosure is sufficient to say the Division was on notice in 2011 (when the HWAN contract was approved) that Choice Home Warranty was the administrator, every renewal application submitted indicated the contrary. When asked on the renewal applications whether there were any changes to the administrator or a newly designated administrator, in each renewal application, Mandalawi responded that there was no change—the administrator was "self," which is HWAN. If CHW Group was the administrator, then "self" was not an accurate response to the question on the applications. Claims administration is a material part of service contracts and, therefore, a material fact, required by NRS 690C.160.3. As such, HWAN misstated a material fact in its application. For each application year starting in 2011 that HWAN reported "self" as the administrator, is one violation of NRS 686A.070. (Five counts.)

Additionally, HWAN indicated in its applications filed starting in 2011 that it was using the service contract HWA-NV-0711 that was approved by the Division. On at least one occasion, there is evidence that HWAN used a service contract that, in fact, was not approved by the Division. Service contracts must comply with certain provisions of the Insurance Code and, therefore, must be approved before they are used. The application year 2015 did not disclose the use of an unapproved form. The service contract is a material part of the service contract provider application and, therefore, a material fact of the application. As such, HWAN misstated another material fact in its 2015 renewal application, in violation of NRS 686A.070. (One count.)

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**E. The Division Claims Respondent Has Engaged in Unfair Practices in Settling Claims**

The Division alleges that the number of complaints against Respondent show that Respondent has engaged in unfair practices in settling claims in violation of NRS 686A.310 and had, thereby, acted in an unsuitable manner. NRS 679B.125.2. Respondent argues that the number of complaints does not amount to unfair practices in settling claims, and that it believes it provides Nevada customers sterling service.

In this case, the evidence shows that the Division received at least 63 individual consumer complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the complaints, five were presented at the hearing: three complaints from 2014 and two complaints from 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers believed were covered, or that Choice Home Warranty did not pay the technician who provided services on the appliance. When the Division got involved, HWAN agreed to cover or settle the complaints. The Division's evidence says the claims were covered; Respondent's evidence says the claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's involvement does not mean that Respondent admitted that the claims were covered. As presented, the Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling claims.

**F. The Division Claims Respondent Has Failed to Make Its Records Available**

The Division claims that Respondent failed to make available information requested by the Commissioner in violation of NRS 690C.320.2. The Division sought information about HWAN's claims and open contracts in Nevada. Respondent argues that the Division presented no evidence to support this claim.

The evidence shows that the Division made several requests of Respondent through Mandalawi, including to Mandalawi's email address of record. Respondent acknowledges having communicated with the Division via email or telephone on other occasions, as evident through the testimony and exhibits. The parties both state that the requested information was produced, but only after a subpoena was issued, which was at least six months after the renewal application was received. Moreover, this information relating to how many open contracts and claims Respondent had in Nevada was requested

in the renewal application, but Respondent did not respond to those questions. The law is clear that, upon the Commissioner's request, "[a] provider shall . . . make available" records concerning any service contract issued, sold, or offered for sale available. NRS 690C.320.2. Thus, Respondent violated NRS 690C.320.2 when it did not produce such information when requested. (One count.)

**G. Respondent Has Conducted Business in an Unsuitable Manner**

**1. Complaints Against Respondent**

The Division claims that, given the number of consumer complaints in Nevada, media reports, and findings by other states, constitutes a pattern of behavior that Respondent is operating in an unsuitable manner, and that Respondent's practices cause injury to the general public with such frequency as to indicate a general business practice, in violation of NRS 690C.325.1(b) and NRS 679B.125.2.

The evidence shows a number of consumer complaints posted online. These reports include complaints by Nevadans, but the Division made no effort to verify the substance of the complaints. This evidence, while consistent with the consumer complaints received by the Division, does not substantiate that Respondent is operating in an unsuitable manner because the substance of the reports was not vetted. This evidence tends to corroborate that there may be a problem with claims handling. These violations are troubling, and may warrant further review to determine whether Respondent's claims handling is appropriate. However, this evidence regarding claims handling does not show that Respondent is violating Nevada laws or causing injury to the general public "with such frequency as to indicate a general business practice."

**2. HWAN's Association with CHW Group**

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, as argued by Respondent, the Hearing Officer concludes that Respondent conducted business in an unsuitable manner by allowing an unregistered entity to engage in the business of service contracts in Nevada.

Respondent argues that the Division violated its due process rights in claiming that HWAN allowed CHW Group to operate without a license because Respondent "never received proper notice of the Division's argument that CHW Group, Inc. is one and the same with HWAN." (HWAN's Closing

Arg. 4.) Respondent further argues that this Order should find "that HWAN and CHW are separate entities and that CHW has not used HWAN to avoid its own licensing.' (Id. at 7.) The Hearing Officer finds Respondent's arguments to be contradictory and unsupported.

Based on the Amended Complaint, it is clear that the Division considered HWAN and Choice Home Warranty to be one-and-the-same entity. When the Division claimed that Respondent should have disclosed that Choice Home Warranty had been disciplined in other states, Respondent argued in its prehearing statement that no such duty existed because HWAN and Choice Home Warranty are two separate entities because Choice Home Warranty is CHW Group. Facts about how Respondent operates were presented during the hearing, and it was Respondent's witnesses who explained who the different entities, and their respective roles, are. Respondent brought as witnesses the CEO of CHW Group and the COO of CHW Group, in addition to Mandalawi, President of both HWAN and CHW Group, who all spoke proficiently about the entities and clearly distinguished them. It was Respondent's position that Choice Home Warranty was CHW Group, and Respondent presented considerable evidence to support its position. Respondent cannot claim that HWAN and Choice Home Warranty are two separate entities and, in the same breath, conclude that Respondent had no notice of the Division's position that HWAN and Choice Home Warranty were considered one and the same entity to avoid responsibility for violations of law that resulted from the very conclusion they advocated. Therefore, it cannot be said that Respondent had no notice of the Division's argument that CHW Group is one and the same with HWAN.

Respondent also argues that the Division is equitably estopped from taking action against it because the Division knew that CHW Group and HWAN were selling contracts in Nevada. There is no evidence that the Division knew that CHW Group and Choice Home Warranty were the same. The record likewise shows no evidence that the Division was aware that CHW Group was selling contracts in Nevada, only that Choice Home Warranty was selling contracts in Nevada. The Division asked HWAN to register Choice Home Warranty as a dba because, after a discussion with Mandalawi, "[i]t was identified that Choice and HWAN were one and the same entity, that Choice was not selling illegally because HWAN was a licensed entity in Nevada." (Test. Jain.) Respondent argues that it detrimentally relied upon the Division's representation that in exchange for HWAN's use of the

fictitious name, the Division released the legal right to initiate an adversarial action that HWAN and CHW Group are the same entity. How a fictitious name registration amounts to detrimental reliance is unclear. The Commissioner's obligation under the Insurance Code is to protect Nevadans in the business of service contracts. The Commissioner cannot ignore her charge under the law—when an entity is violating a law that harms Nevadans, the Commissioner must act.

Respondent claims that the Division is estopped from taking action against Respondent because the Division made express representations to HWAN relative to HWAN's relationship with CHW Group, and that HWAN relied on these in conducting its operations. There is no evidence in the record that HWAN had to or did change its operations as a result of the dba registered in Nevada. More importantly, there is no evidence that the Division knew that Choice Home Warranty was CHW Group or of the contract between HWAN and CHW Group. Even if in 2011 the Division approved a contract in 2011 that indicated that Choice Home Warranty was administering the contract, contract administration is not approval to issue, sell, or offer for sale service contracts. Moreover, after that contract was approved in 2011, Respondent indicated that it was itself administering its service contracts, which was not true.

Based on the presentation of Mandalawi and Hakim, CHW Group, Inc. is the legal entity that controls and operates all the content, data, contracts, information, processing, management, claims, marketing, advertising, and sales of all products sold through HWAN, while HWAN manages regulatory compliance. Respondent claims this creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract issued to consumers. According to Hakim, an administrator is permitted to issue, sell, and offer for sale or administer service contracts without a certificate of registration pursuant to NRS 690C.120.2. Hakim is incorrect.

Nevada law clearly prohibits the issuance, sale, or offering for sale service contracts unless the provider has been issued a certificate of registration. NRS 690C.150. The provision Hakim incorrectly relies on, NRS chapter 690C section 120 subsection 2, involves a certificate of authority issued pursuant to NRS chapter 680A, which is a certificate issued to *insurance companies* to operate in Nevada. A certificate of registration and a certificate of authority are two different things. What NRS

690C.120.2 says is that a certificate of authority is not required in the business of service contracts and, so, anyone involved in service contracts is not required to obtain a certificate of authority. It most certainly does not say that an administrator may issue, sell, or offer to sell service contracts without proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter 690C a nullity.

By definition, an administrator should not be engaged in issuing, selling, or offering to sell service contracts. Hakim, Mandalawi, and Ramirez all testified that Choice Home Warranty handles all sales, advertising, and marketing for HWAN. As Hakim stated, his interest in HWAN is that HWAN continue to operate, "because if [HWAN is] not operating in the State of Nevada, then Choice Home Warranty is not operating in the State of Nevada." (Tr3. 98:9-16.) This is a reflection of CHW Group's intent to operate in Nevada using HWAN for "regulatory compliance." This intent is further reflected in the service contract that was sold in Nevada that identified CHW Warranty as the company—a service contract that was not approved for use in Nevada.

Based on the evidence, it is clear that "regulatory compliance" as stated by Mandalawi means that HWAN holds the certificate of registration in Nevada, and nothing more. Since receiving its COR, HWAN has been merely a figurehead, enabling an unlicensed entity to engage in the business of service contracts in Nevada under HWAN's license. CHW Group has engaged in the business of service contracts without a license, which is a violation of NRS 690C.150, and skirted regulation by the Division, which is a danger to the public. This activity has been occurring since at least 2010, when HWAN was first licensed. With the sale of over 69,000 service contracts, it is undeniable that it is Respondent's practice to allow CHW Group to issue, sell, and offer for sale service contracts in Nevada, thereby avoiding regulation for each contract sold in Nevada. HWAN's practice has occurred with such frequency as to indicate a general business practice, which amounts to conducting business in an unsuitable manner, in violation of NRS 690C.325 and 679B.125.

**H. The Division Requests a Cease and Desist Order to Prevent Respondent from Engaging in the Business of Service Contracts Without a Certificate of Registration**

In the Amended Complaint, the Division indicates that Respondent filed a renewal application for 2016, and that the Commissioner is authorized to refuse to renew a provider's certificate of

registration ("COR"). The Division requested a cease and desist be issued. In arguing that Respondent's 2016 COR was properly denied the Division appears to be claiming that Respondent is improperly engaging in the business of service contracts. Respondent argues that it had no notice of the facts underlying the Division's position that it did not appropriately renew its COR in 2016. Mandalawi believed that the issue of the 2016 renewal application would be considered in this hearing and that, until then, HWAN could continue operating in Nevada. (Test. Mandalawi.) The Hearing Officer finds that the Division did not properly notify Respondent that the 2016 renewal application was denied.

In Nevada, certificates of registration for service contract providers expire one year after the COR is issued. NRS 690C.160.3. Nothing in Nevada law grants the Division authority to allow a provider to continue operating after the expiration of a COR, but a provider may submit a renewal application to receive a new COR to continue operating. It is unclear how the automatic expiration of a COR after one year would require notice to the provider for due process purposes when the law clearly makes the COR available for one year and no longer. However, when a provider timely submits a renewal application that is denied, then the Division must issue a notice to the provider about the denial, providing an explanation for the denial and an opportunity for the provider to request a hearing on the propriety of the denial. A hearing on such denials are heard within 30 days.

In this case, Respondent timely filed a renewal application on or about November 7, 2016, to obtain a new COR. When the Division found the renewal application to be incomplete, the Division should have promptly notified Respondent that the renewal application was not complete and, therefore, denied so that Respondent would know that it was not approved to continue operating in Nevada. Notice of the denial was finally provided on or about July 21, 2017, almost eight months after HWAN submitted the application. The denial also provided no information as to why the renewal application was denied, nor did it notify Respondent that it could appeal the decision through a hearing request. Thus, the Hearing Officer finds that for the service contracts sold up until the date of this Order, Respondent cannot be found to have sold without a valid COR in violation of Nevada law since the Division did not properly notify Respondent of the denial with an explanation of the denial or of the opportunity for a hearing on the denial, which would have been adjudicated within 30 days of a hearing

request and prevented 13 months of Respondent selling service contracts without a COR.

Nonetheless, the registration expired as a matter of law on November 18, 2016. Therefore, as of the date of this Order, Respondent is on notice that it must apply for a renewal of its certificate of registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the date of this Order. The Division must issue its determination on the application no later than 15 business days after receipt of the complete application. As a result, the Division cannot take action against Respondent for issuing, selling, or offering for sale service contracts without a certificate of registration from the date of this Order plus 45 days.[3]

## ORDER OF THE HEARING OFFICER

Based on the foregoing Findings of Fact and Conclusions of Law, the preponderance of the evidence presented at hearing shows that Respondent has violated the provisions of the Insurance Code complained of by the Division. Accordingly, the Hearing Officer HEREBY ORDERS that:

1. Respondent be fined $30,000, the maximum fine of $5,000 allowed under NRS 686A.183.1(a), for each of six violations of making a false entry of material fact in a record or statement in violation of NRS 686A.070;
2. Respondent be fined $500, an administrative fine authorized pursuant to NRS 690C.325.1 in lieu of a revocation, for failing to make its records available to the Commissioner upon request;
3. Respondent be fined $50 for each act or violation,[4] for conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada, and to sell 23,889 service contracts in Nevada through Respondent's certificate of registration, for a total of $1,194,450; and

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[3] This ruling does not prevent the Division from taking action for other violations in connection with the service contracts issued, sold, or offered for sale, during this period if any are later discovered.

[4] Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is $1,000 per act or violation.

4. If Respondent wishes to continue engaging in the business of service contracts in Nevada, Respondent may apply for a certificate of registration as provided in this Order.
5. All administrative fines imposed in this Order are due no later than 30 days from the date of this Order.

So ORDERED this 18th day of December 2017.

Alexia M. Emmermann
Hearing Officer

**FINAL ORDER OF THE COMMISSIONER**

Based on the record in this administrative hearing and having reviewed the Hearing Officer's Findings of Fact and Conclusion of Law in this matter, Cause No. 16.0126, I concur with the Hearing Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of Law, and Order of the Hearing Officer as the Final Order in this matter.

IT IS SO ORDERED.

DATED this 18th day of December, 2017.

BARBARA D. RICHARDSON
Commissioner of Insurance

## CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER,** in **CAUSE NO. 17.0050,** via electronic mail and by mailing a true and correct copy thereof, properly addressed with postage prepaid, certified mail return receipt requested, to the following:

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and copies of the foregoing were sent via electronic mail to:

Richard Yien, Deputy Attorney General
Nevada Attorney General's Office
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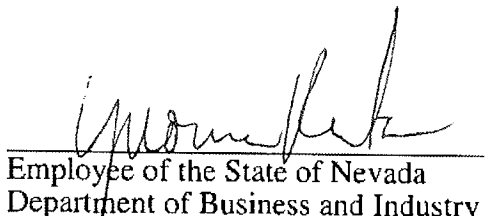
DATED this 18th day of December, 2017.



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DIV. OF P.S. 17.0050 12-18

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KIRK B. LENHARD, ESQ.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 NORTH CITY PARKWAY, SUITE 1600
LAS VEGAS, NV 89106

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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1. Article Addressed to:

KIRK B. LENHARD, ESQ.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 NORTH CITY PARKWAY, SUITE 1600
LAS VEGAS, NV 89106

9590 9402 2940 7094 9269 03

2. Article Number (*Transfer from service label*)

7017 1070 0000 8962 9357

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A. Signature
X [signature]
- [ ] Agent
- [ ] Addressee

B. Received by (*Printed Name*) Gideon Toxla

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:
- [ ] Yes
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3. Service Type
- [ ] Adult Signature
- [ ] Adult Signature Restricted Delivery
- [x] Certified Mail®
- [ ] Certified Mail Restricted Delivery
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- [ ] Collect on Delivery Restricted Delivery
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PS Form 3811, July 2015 PSN 7530-02-000-9053 CGL 17.0050 12-18 Domestic Return Receipt

# EXHIBIT 3

FILED
MAY 9
DIV. OF INSURANCE

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

| | |
|---|---|
| IN THE MATTER OF<br><br>**HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY**<br><br>Respondent. | CAUSE NO. 17.0050<br><br>**COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE** |

The State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), sends greetings to:

**HOME WARRANTY ADMINISTRATOR OF NEVADA, INC.**
**dba CHOICE HOME WARRANTY**

YOU ARE HEREBY NOTIFIED of the conduct, conditions, or acts which are deemed by the Commissioner of Insurance ("Commissioner") to be in violation of the following provision of Nevada Revised Statutes ("NRS"): NRS 686A.070—falsifying material fact in any book, report, or statement; NRS 690C.325(1)(b)—conducting business in an unsuitable manner; and NRS 686A.310—engaging in unfair practices in settling claims.[1] The Commissioner may refuse to renew or may suspend a provider's certificate of registration pursuant to NRS 690C.325.

---

[1] **NRS 690C.120 Applicability of other provisions.**

1. Except as otherwise provided in this chapter, the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts are not subject to the provisions of title 57 of NRS, except, when applicable, the provisions of:
   (a) NRS 679B.020 to 679B.152, inclusive;
   (b) NRS 679B.159 to 679B.300, inclusive;
   (c) NRS 679B.310 to 679B.370, inclusive;
   (d) NRS 679B.600 to 679B.690, inclusive;
   (e) NRS 685B.090 to 685B.190, inclusive;
   (f) NRS 686A.010 to 686A.095, inclusive;
   (g) NRS 686A.160 to 686A.187, inclusive; and
   (h) NRS 686A.260, 686A.270, 686A.280, 686A.300 and 686A.310.

## I. COMPLAINT

### A. Jurisdiction

1. The Commissioner has exclusive jurisdiction to regulate the business of service contracts in the state of Nevada pursuant to chapter 690C of the NRS. The actions described in this complaint are actions that involve the regulation of the business of service contracts in the state of Nevada.

### B. Respondent

1. Respondent, Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("CHW"), had a certificate of registration (ORG ID# 113194) as a service contract provider in Nevada since November 18, 2010. CHW submitted a renewal application of registration on November 8, 2016.

### C. Allegations of Fact

1. On July 23, 2010, Insurance Commissioner of California, Steve Poizner, issued a cease and desist order to CHW for "acting in a capacity for which a license, registration, or certificate of authority from the Commissioner was required but not possessed." CHW had, through the internet, through toll-free telephone lines, and through other means and devises, solicited the purchase of home protection contracts to persons residing in California. CHW did not possess the proper licensure, registration, or certificate required to conduct such business in California. An entry of default judgment was entered in this case on October 12, 2010, finding CHW "has continued to act in a capacity for which a home protection company license or a certificate of authority is required but is not possessed" thereby issuing CHW a fine of $3,530,000.00.
2. President of CHW, Victor Mandalawi, submitted a 2011-2012 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on October 31, 2011. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of

the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided is false because the Insurance Commissioner of California fined CHW $3,530,000.00 on October 12, 2010, during the time between CHW's initial (last) application and CHW's October 31, 2011, renewal application.

3. On July 15, 2011, the Insurance Commissioner of the state of Oklahoma issued an Order in response to an Emergency Cease and Desist Order issued by the Oklahoma Insurance Department on July 29, 2010. The Cease and Desist Order was issued "pursuant to a finding that CHW was unauthorized to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts, and in violation of Oklahoma insurance code." Mr. Mandalawi stipulated on behalf of CHW that CHW "does not hold any license, certificate of authority, or other authorization from the Oklahoma Insurance Department to engage in the business of offering, providing, servicing, and entering service warranty agreements." On December 29, 2011, the Oklahoma Insurance Commissioner fined CHW $25,000.00.

4. President Victor Mandalawi of CHW submitted a 2012-2013 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on October 19, 2012. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided was false because the Insurance Commissioner of the state of Oklahoma fined CHW $25,000.00 on December 29, 2011, during the time between CHW's last application and CHW's renewal application.

5. On February 7, 2014, the Insurance Commissioner in the State of Oklahoma

issued an Order stating:

> "CHW had willfully violated a Consent Order dated January 2, 2012, by failing to pay all valid claims and refunds that arise pursuant to service warranty agreements in Oklahoma. IT IS FURTHER ORDERED that Respondent (CHW) has knowingly and willfully violated provisions of the Service Warranty Act; failed to update its address with the Oklahoma consumer and the Insurance Commissioner; and failed to respond to the Oklahoma Insurance Commissioner and, as a result, Respondent is fined in the amount of Ten Thousand Dollars."

This Order was issued in response to a consumer complaint submitted to the Insurance Commissioner in the state of Oklahoma alleging that CHW denied a claim from the consumer without ever investigating circumstances surrounding the claim and ignoring repeated attempts from the consumer to resolve the issue in good faith. The February 7, 2014, Order concluded that CHW violated Oklahoma's deceptive trade acts

> "by failing to acknowledge and act promptly upon communication with respect to the claim; by denying Johnson's (aggrieved consumer) claim without conducting reasonable investigation based upon available information; failing to promptly provide a reasonable explanation to Johnson in relation to the facts or applicable law for the denial of the claim."

6. President Victor Mandalawi of CHW, submitted a 2014-2015 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on November 12, 2014. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided was false because the Insurance Commissioner of the state of Oklahoma fined CHW $10,000.00 on February 7, 2014, during the time between CHW's last

application and CHW's renewal application.

7. CHW and its officers, directors, employees, et al., agreed to a Final Consent Judgment on May 21, 2015, to resolve a complaint brought by the New Jersey Attorney General's Office and the New Jersey Division of Consumer Affairs alleging violation of New Jersey's Consumer Fraud Act and New Jersey regulations governing general advertising. The Final Consent Judgment was filed by the Superior Court of New Jersey and signed by the Honorable Travis L. Francis on June 9, 2015, and required various injunctive relief, revised business practices; the reporting of additional consumer complaints; the mandatory retaining of a compliance monitor; and a settlement payment of $779,913.93.

8. President Victor Mandalawi of CHW submitted a 2015-2016 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on November 17, 2015. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided was false because the New Jersey Attorney General's Office and the New Jersey Division of Consumer Affairs settled the matter with CHW for $779,913.93 during the time between CHW's last application and CHW's renewal application.

9. During the period CHW was registered as a Service Contractor Provider in Nevada, the Nevada Division of Insurance has received more than 80 consumer complaints. The consumer's descriptions detailing the complaints depict incidents where CHW does not communicate with a policyholder after the policyholder has filed a claim, incidents where policyholder claims are denied without communication or investigation, and complaints from service providers who have not been paid from CHW after performing services for them.

10. CHW submitted their 2016-2017 Service Contractor Provider renewal application on November 8, 2016. Subsequently, the Nevada Division of Insurance requested information from CHW inquiring as to how many open contracts and claims CHW had in Nevada. CHW has not responded to the Division's request at the time of this filing.

**D. Violations Alleged**

1. NRS 686A.070 provides that it is unlawful to knowingly make or cause to be made any false entry of a material fact in any book, report, or statement of any person or knowingly omit to make a true entry of any material fact pertaining to such person's business in any book, report, or statement of such person. Any person who violates, or with like intent, aids or abets any violation of this section is guilty of a gross misdemeanor.
2. CHW by and through its president, Victor Mandalawi, engaged in acts that constitute the unlawful making of false entry of material fact in each of CHW's renewal applications in the years 2011, 2012, 2014, and 2015.
3. CHW's complaints regarding failures to communicate with policyholders and inappropriately denying claims violates NRS 686A.310(1)(b)—"failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies."
4. The business practices of CHW, as documented by Nevada complaints; the Better Business Bureau, news and media outlets; and the findings of fact of the various Courts' actions described above, constitute a pattern of behavior that CHW is operating in an unsuitable manner. CHW's practices cause injury to the general public with such frequency as to indicate a general business practice. As such, CHW is in violation of NRS 679B.125(2)—conducting business in an unsuitable manner.
5. Pursuant to the findings of fact of the various Courts' Orders described above,

CHW also is in violation of NRS 686A.170—engaging in unfair and deceptive trade practices.

6. The Commissioner may refuse to renew or may suspend a provider's certificate of registration pursuant to NRS 690C.325.

**E. Action Required**

Based upon the foregoing and pursuant to NRS 690C.325:

1. Refuse to renew and revoke, subject to the rights afforded under the law, the certificate of registration for HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY.
2. Pursuant to NRS 686A.183(1)(a), fine HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY $5,000 for each act or violation of NRS 686A.010 to 686A.310.
3. Pursuant to NRS 690C.325, discipline and/or refuse to renew and revoke HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY for violating NRS 690C.320(2) and failing to make available to the Commissioner for inspection any accounts, books, and records concerning any service contract issued, sold, or offered for sale by the provider.
4. Issue a cease and desist order pursuant to NRS 686A.170.
5. Withhold the security deposit, as required by NRS 690C.170(2), to service existing contractual obligations of HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY.
6. Order any other action deemed appropriate by the Hearing Officer.

## II. APPLICATION FOR ORDER TO SHOW CAUSE

Under the authority of Title 57 of the NRS, and other applicable laws and regulations of the State of Nevada, and other general powers and duties of the Commissioner, the Division hereby respectfully requests that an Order to Show Cause be issued requiring Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME

WARRANTY to appear and show cause, if any, why the non-renewal of its certificate of registration, and the imposition of fines and a cease and desist, should not be ordered.

At the hearing, the Division may offer written and oral evidence. Respondent also would have the opportunity to offer written and oral evidence.

Pursuant to Nevada Administrative Code (NAC) 679B.311, Respondent may choose to be represented by an attorney in this matter. If Respondent wishes to be represented by an attorney, Respondent shall notify the Division in writing of the name, address, and telephone number of its counsel not later than five (5) days before the hearing.

WHEREFORE, unless Respondent appears at the time and place of the hearing and shows good and just cause why appropriate administrative action should not be taken, the Commissioner may issue an Order against Respondent for the relief requested by the Division.

DATED this 9th day of May 2017.

ADAM PAUL LAXALT
Attorney General

By: _____
RICHARD PAILI YIEN
Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1129
*Attorney for the Division of Insurance*

## CERTIFICATE OF SERVICE

I hereby certify that I have this date served the following:

- **COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE**
- **ORDER TO SHOW CAUSE**
- **ORDER APPOINTING HEARING OFFICER**
- **APPLICATION FOR SUBPOENA DUCES TECUM**
- **SUBPOENA DUCES TECUM**

in **CAUSE NO. 17.0050,** by mailing true and correct copies thereof, properly addressed with postage prepaid, certified mail return receipt requested, to:

Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty
Attn: Victor Mandalawi
90 Washington Valley Road
Bedminster, NJ 07921-2118
CERTIFIED MAIL NO. 7016 2140 0000 7181 9786

Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty
Attn: Victor Mandalawi
1090 King Georges Post Road, Building 10
Edison, NJ 08837
CERTIFIED MAIL NO. 7016 2140 0000 7181 9793

and, the originals of the foregoing were hand-delivered to:

Alexia M. Emmermann, Esq.
Hearing Officer
Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706

and, copies of the foregoing were sent via electronic mail to:

Richard Yien, Deputy Attorney General
Nevada Attorney General's Office
E-MAIL: ryien@ag.nv.gov

DATED this 12th day of May, 2017.

Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

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1. Article Addressed to:

Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty
Attn: Victor Mandalawi
90 Washington Valley Road
Bedminster, NJ 07921-2118

9590 9402 1828 6104 1719 39

2. Article Number (Transfer from service label)
7016 2140 0000 7181 9786

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
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DIV. OF INS. 17.0050

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☐ Return Receipt (hardcopy) $
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☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $
Postage $ 7.73
Total Postage and Fees $
Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty
Attn: Victor Mandalawi
90 Washington Valley Road
Bedminster, NJ 07921-2118
See Reverse for Instructions

Postmark Here

7016 2140 0000 7181 9786

**SENDER: COMPLETE THIS SECTION**

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty
Attn: Victor Mandalawi
1090 King Georges Post Road, Building 10
Edison, NJ 08837

9590 9402 1828 6104 1719 22

2. Article Number (Transfer from service label)
7016 2140 0000 7181 9793

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

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DIV. OF INS. 17.0050

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Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $
Postage $ 7.73
Total Postage and Fees $
Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty
Attn: Victor Mandalawi
1090 King Georges Post Road, Building 10
Edison, NJ 08837
See Reverse for Instructions

Postmark Here

7016 2140 0000 7181 9793

000010

# EXHIBIT 4

FILED
SEP - 5 2017
Div. of Insurance
State of Nevada

**STATE OF NEVADA**
**DEPARTMENT OF BUSINESS AND INDUSTRY**
**DIVISION OF INSURANCE**

| | |
|---|---|
| IN THE MATTER OF<br><br>**HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY**<br><br>Respondent. | CAUSE NO. 17.0050<br><br>**AMENDED COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE** |

The State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), sends greetings to:

**HOME WARRANTY ADMINISTRATOR OF NEVADA, INC.**
**dba CHOICE HOME WARRANTY**

YOU ARE HEREBY NOTIFIED of the conduct, conditions, or acts which are deemed by the Commissioner of Insurance ("Commissioner") to be in violation of the following provision of Nevada Revised Statutes ("NRS"): NRS 686A.070—falsifying material fact in any book, report, or statement; NRS 690C.325(1)(b)—conducting business in an unsuitable manner; and NRS 686A.310—engaging in unfair practices in settling claims.[1] The Commissioner may refuse to renew or may suspend a provider's certificate of registration pursuant to NRS 690C.325.

[1] **NRS 690C.120 Applicability of other provisions.**
1. Except as otherwise provided in this chapter, the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts are not subject to the provisions of title 57 of NRS, except, when applicable, the provisions of:
(a) NRS 679B.020 to 679B.152, inclusive;
(b) NRS 679B.159 to 679B.300, inclusive;
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(e) NRS 685B.090 to 685B.190, inclusive;
(f) NRS 686A.010 to 686A.095, inclusive;
(g) NRS 686A.160 to 686A.187, inclusive; and
(h) NRS 686A.260, 686A.270, 686A.280, 686A.300 and 686A.310.

## I. COMPLAINT

### A. Jurisdiction

1. The Commissioner has exclusive jurisdiction to regulate the business of service contracts in the state of Nevada pursuant to chapter 690C of the NRS. The actions described in this complaint are actions that involve the regulation of the business of service contracts in the state of Nevada.

### B. Respondent

1. Respondent, Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("CHW"), had a certificate of registration (ORG ID# 113194) as a service contract provider in Nevada since November 18, 2010. CHW submitted a renewal application of registration on November 8, 2016.

### C. Allegations of Fact

1. On July 23, 2010, Insurance Commissioner of California, Steve Poizner, issued a cease and desist order to CHW for "acting in a capacity for which a license, registration, or certificate of authority from the Commissioner was required but not possessed." CHW had, through the internet, through toll-free telephone lines, and through other means and devises, solicited the purchase of home protection contracts to persons residing in California. CHW did not possess the proper licensure, registration, or certificate required to conduct such business in California. An entry of default judgment was entered in this case on October 12, 2010, finding CHW "has continued to act in a capacity for which a home protection company license or a certificate of authority is required but is not possessed" thereby issuing CHW a fine of $3,530,000.00.
2. President of CHW, Victor Mandalawi, signed a 2011-2012 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on October 31, 2011. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the

officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided is false because the Insurance Commissioner of California fined CHW $3,530,000.00 on October 12, 2010, during the time between CHW's initial (last) application and CHW's October 31, 2011, renewal application.

3. On July 15, 2011, the Insurance Commissioner of the state of Oklahoma issued an Order in response to an Emergency Cease and Desist Order issued by the Oklahoma Insurance Department on July 29, 2010. The Cease and Desist Order was issued "pursuant to a finding that CHW was unauthorized to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts, and in violation of Oklahoma insurance code." Mr. Mandalawi stipulated on behalf of CHW that CHW "does not hold any license, certificate of authority, or other authorization from the Oklahoma Insurance Department to engage in the business of offering, providing, servicing, and entering service warranty agreements." On December 29, 2011, the Oklahoma Insurance Commissioner fined CHW $15,000.00.

4. President Victor Mandalawi of CHW signed a 2012-2013 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on October 19, 2012. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided was false because the Insurance Commissioner of the state of Oklahoma fined CHW $15,000.00 on December 29, 2011, during the time between CHW's last application and CHW's renewal application.

5. On February 7, 2014, the Insurance Commissioner in the State of Oklahoma

issued an Order stating:

> "CHW had willfully violated a Consent Order dated January 2, 2012, by failing to pay all valid claims and refunds that arise pursuant to service warranty agreements in Oklahoma. IT IS FURTHER ORDERED that Respondent (CHW) has knowingly and willfully violated provisions of the Service Warranty Act; failed to update its address with the Oklahoma consumer and the Insurance Commissioner; and failed to respond to the Oklahoma Insurance Commissioner and, as a result, Respondent is fined in the amount of Ten Thousand Dollars."

This Order was issued in response to a consumer complaint submitted to the Insurance Commissioner in the state of Oklahoma alleging that CHW denied a claim from the consumer without ever investigating circumstances surrounding the claim and ignoring repeated attempts from the consumer to resolve the issue in good faith. The February 7, 2014, Order concluded that CHW violated Oklahoma's deceptive trade acts

> "by failing to acknowledge and act promptly upon communication with respect to the claim; by denying Johnson's (aggrieved consumer) claim without conducting reasonable investigation based upon available information; failing to promptly provide a reasonable explanation to Johnson in relation to the facts or applicable law for the denial of the claim."

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9. During the period CHW was registered as a Service Contractor Provider in Nevada, the Nevada Division of Insurance has received more than 80 consumer complaints. The consumer's descriptions detailing the complaints depict incidents where CHW does not communicate with a policyholder after the policyholder has filed a claim, incidents where policyholder claims are denied without communication or investigation, and complaints from service providers who have not been paid from CHW after performing services for them.

10. CHW submitted their 2016-2017 Service Contractor Provider renewal application on November 8, 2016. Subsequently, the Nevada Division of Insurance requested information from CHW inquiring as to how many open contracts and claims CHW had in Nevada. CHW has since responded to the Division's request upon a subpoena ordered in these proceedings.

**D. Violations Alleged**

1. NRS 686A.070 provides that it is unlawful to knowingly make or cause to be made any false entry of a material fact in any book, report, or statement of any person or knowingly omit to make a true entry of any material fact pertaining to such person's business in any book, report, or statement of such person. Any person who violates, or with like intent, aids or abets any violation of this section is guilty of a gross misdemeanor.
2. CHW by and through its president, Victor Mandalawi, engaged in acts that constitute the unlawful making of false entry of material fact in each of CHW's renewal applications in the years 2011, 2012, 2014, and 2015.
3. CHW's complaints regarding failures to communicate with policyholders and inappropriately denying claims violates NRS 686A.310(1)(b)—"failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies."
4. The business practices of CHW, as documented by Nevada complaints; the Better Business Bureau, news and media outlets; and the findings of fact of the various Courts' actions described above, constitute a pattern of behavior that CHW is operating in an unsuitable manner. CHW's practices cause injury to the general public with such frequency as to indicate a general business practice. As such, CHW is in violation of NRS 679B.125(2)—conducting business in an unsuitable manner.
5. Pursuant to the findings of fact of the various Courts' Orders described above,

CHW also is in violation of NRS 686A.170—engaging in unfair and deceptive trade practices.

6. The Commissioner may refuse to renew or may suspend a provider's certificate of registration pursuant to NRS 690C.325.

**E. Action Required**

Based upon the foregoing and pursuant to NRS 690C.325:

1. Refuse to renew and revoke, subject to the rights afforded under the law, the certificate of registration for HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY.
2. Pursuant to NRS 686A.183(1)(a), fine HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY $5,000 for each act or violation of NRS 686A.010 to 686A.310.
3. Pursuant to NRS 690C.325, discipline and/or refuse to renew and revoke HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY for violating NRS 690C.320(2) and failing to make available to the Commissioner for inspection any accounts, books, and records concerning any service contract issued, sold, or offered for sale by the provider.
4. Issue a cease and desist order pursuant to NRS 686A.170.
5. Withhold the security deposit, as required by NRS 690C.170(2), to service existing contractual obligations of HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY.
6. Order any other action deemed appropriate by the Hearing Officer.

## II. APPLICATION FOR ORDER TO SHOW CAUSE

Under the authority of Title 57 of the NRS, and other applicable laws and regulations of the State of Nevada, and other general powers and duties of the Commissioner, the Division hereby respectfully requests that an Order to Show Cause be issued requiring Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME

WARRANTY to appear and show cause, if any, why the non-renewal of its certificate of registration, and the imposition of fines and a cease and desist, should not be ordered.

At the hearing, the Division may offer written and oral evidence. Respondent also would have the opportunity to offer written and oral evidence.

Pursuant to Nevada Administrative Code (NAC) 679B.311, Respondent may choose to be represented by an attorney in this matter. If Respondent wishes to be represented by an attorney, Respondent shall notify the Division in writing of the name, address, and telephone number of its counsel not later than five (5) days before the hearing.

WHEREFORE, unless Respondent appears at the time and place of the hearing and shows good and just cause why appropriate administrative action should not be taken, the Commissioner may issue an Order against Respondent for the relief requested by the Division.

DATED this 5th day of September 2017.

ADAM PAUL LAXALT
Attorney General

By:

RICHARD PAILI YIEN
Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1129
*Attorney for the Division of Insurance*

## CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **AMENDED COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE,** in **CAUSE NO. 17.0050,** via electronic mail, to the following:

Kirk B. Lenhard, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
E-MAIL: klenhard@bhfs.com

Travis F. Chance, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
E-MAIL: tchance@bhfs.com

Lori Grifa, Esq.
Archer & Greiner, P.C.
Court Plaza South, West Wing
21 Main Street, Suite 353
Hackensack, NJ 07601
E-MAIL: lgrifa@archerlaw.com

and the originals of the foregoing were hand-delivered to:

Alexia M. Emmermann, Esq.
Hearing Officer
Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706

and copies of the foregoing were sent via electronic mail to:

Richard Yien, Deputy Attorney General
Nevada Attorney General's Office
E-MAIL: ryien@ag.nv.gov

DATED this 6th day of September, 2017.

Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

# EXHIBIT 5

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
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LORI GRIFA, ESQ., (admitted *pro hac vice*)
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Telephone: 201.342.6000

*Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty*

REC'D & FILED
2018 MAR 15 PM 4:50
SUSAN MERRIWETHER
CLERK
BY_____
DEPUTY

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>*Petitioner,*<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY - DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>*Respondent.* | CASE NO.: 17 OC 00269 1B<br>DEPT NO.: I<br><br>**STIPULATION AND ORDER FOR INTERPLEADING OF FINES PENDING FINAL DECISION** |

Petitioner Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("Petitioner"), by and through its counsel of record Kirk B. Lenhard, Esq., Travis F. Chance, Esq., and Mackenzie Warren, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Lori Grifa, Esq., of the law firm of Archer & Greiner, P.C., and Respondent the State of Nevada Department of Business and Industry – Division of Insurance ("Respondent"), by and through its counsel of record Richard P. Yien, Esq., Deputy Attorney General, hereby stipulate and agree as follows:

WHEREAS, Respondent, via Findings of Fact, Conclusions of Law, Order of Hearing Officer, and a Final Order of the Commissioner (the "Decision"), issued fines against Petitioner after a contested administrative hearing in the total amount of $1,224,950.00;

WHEREAS, Petitioner filed a Petition for Judicial Review of the Decision with this Court on December 22, 2017 and a Motion to Stay the Decision on January 16, 2018;

WHEREAS, this Court denied Petitioner's Motion to Stay the Decision and its associated fines by Order dated February 14, 2018;

NOW, THEREFORE, the parties hereby stipulate and agree to have the fines imposed by the Decision interpleaded into this Court Clerk's Trust Fund until a final decision is issued by this Court on Petitioner's Petition for Judicial Review.

**IT IS SO STIPULATED.**

DATED this 12th day of March, 2018

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

KIRK B. LENHARD, Bar No. 1437
TRAVIS F. CHANCE, Bar No. 13800
MACKENZIE WARREN, Bar No. 14642

**ARCHER & GREINER P.C.**

LORI GRIFA (admitted *pro hac vice*)

*Attorneys for Petitioner*

DATED this 12th day of March, 2018

**ADAM PAUL LAXALT**
**ATTORNEY GENERAL**

RICHARD P. YIEN, Bar No. 13035

*Attorney for Respondent*

**IT IS SO ORDERED.**

Dated March 15, 2018

James T. Russell
District Court Judge

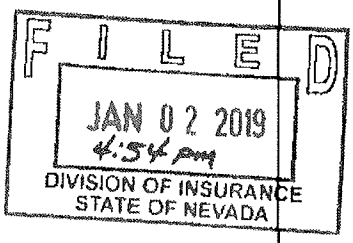
Respectfully Submitted by:
BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:
KIRK B. LENHARD, ESQ., Bar No. 1437
TRAVIS F. CHANCE, ESQ., Bar No. 13800
MACKENZIE WARREN, ESQ., Bar No. 14642

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

# EXHIBIT 6

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE




| IN THE MATTER OF<br><br>**HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY**<br><br>Respondent. | CAUSE NO. **18.0095**<br><br>**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF THE COMMISSIONER** |
|---|---|

This matter is before the State of Nevada, Department of Business and Industry, Division of Insurance (Division") on an Order Granting Division's Request for a Hearing issued by the Deputy Commissioner of Insurance ("Deputy") on March 12, 2018. The Division's Request was made pursuant to Nevada Revised Statutes ("NRS") 690C.325(1) to effectuate the denial of the service contract provider renewal application of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("HWAN" or "Respondent"). NRS 690C.325(1) requires a hearing, or a waiver of a hearing, to non-renew, suspend, limit or revoke a provider's certificate of registration as a service contract provider in Nevada. Thus, a due process hearing must commence, unless waived, to implement certain actions against the certificate of a registered service contract provider. The Division alleges that the Respondent violated various provisions of the NRS title 57 ("Insurance Code") to such an extent that the Division requested a due process hearing under NRS 690C.325(1) to allow HWAN to provide evidence supporting HWAN's position that its January 11, 2018 renewal application as a Service Contract Provider should be renewed rather than effectuating a denial.

The Commissioner, as head of the Division, is charged with regulating the business of insurance and service contracts in Nevada. NRS 232.820-825.2; NRS 690C.120(1)(a); NRS 679B.120; Chapter 690C of NRS.

The hearing in this matter was properly noticed and was originally set for May 2, 2018, (continued to May 3, 2018, if necessary) at 9:00 a.m. at the offices of the State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), located at 1818 E.

College Parkway, Suite 103, Carson City, Nevada 89706. Pursuant to Nevada Administrative Code ("NAC") 679B.211(3)(a), and in response to two separate Joint Motions to Continue the hearing, the Joint Requests to Continue were each granted. The first Continuance was granted on April 20, 2018, and the second was granted on June 6, 2018. On August 17, 2018, the Respondent, HWAN, submitted a third Motion to Continue the Hearing which was opposed by the Division. On August 22, 2018, the Hearing Officer set a new Hearing date and Pre-hearing schedule. In response, on August 28, 2018, HWAN submitted a Motion to Reset the Hearing Date to accommodate Religious Observation. On September 10, 2018, the Hearing Officer set a new Hearing date for October 23, 2018, (continued to October 24, 2018, if necessary) which was properly noticed to the parties.

The hearing was held over the two day period of October 23 and 24, 2018, and was held pursuant to chapter 233B of the NRS, Title 57 of NRS, including 679B *et seq.*, chapter 679B of NAC, and all other applicable laws and regulations.

Present for the Division were Deputy Attorney General, Richard Yien, and Senior Deputy Attorney General, Joanna Grigoriev. HWAN was represented by counsel, Kirk B. Lenhard, Esq., Daven P. Cameron, Esq., of the Nevada law firm Brownstein Hyatt Farber Schreck, LLP; Lori Grifa, Esq., of the law firm of Archer & Greiner P.C. of Hackensack, New Jersey; and Brian Tretter, Special Counsel of Bedminster, New Jersey. Barbara D. Richardson, Commissioner of Insurance ("Commissioner"), presided as the Hearing Officer.

## SUMMARY OF PROCEEDINGS

On February 1, 2018, renewal applicant HWAN was provided a Notice of Denial to renew its Service Contract Provider Certificate of Registration. HWAN was provided four reasons for the denial of its January 11, 2018 Renewal Application ("Renewal Application").

On February 2, 2018, the Division received a Request for a Hearing from HWAN to reconsider an October 26, 2017 renewal application from HWAN to retain its certificate as a Service Contract Provider in Nevada. (See Cause No. 18.0069). The Division did not process the October 26, 2017 renewal application for a Service Contract Provider for HWAN, as both HWAN and the Division were awaiting the results of a previous administrative action between

the two parties, Cause No. 17.0050. This previous action began on May 9, 2017, when the Division, through the Nevada Attorney General, filed a Complaint and Application to Show Cause, resulting in Cause No. 17.0050. HWAN's request for a Hearing was granted based on the February 2, 2018 Request for a Hearing, and a Notice of Hearing was sent via certified mail on February 9, 2018, opening Cause No. 18.0069. Cause No 18.0069 was eventually closed due to a March 9, 2018 formal Notice of Withdrawal of Request for Hearing by HWAN. On March 12, 2018, the Hearing Officer Provided an Order Granting [HWAN's] Notice to Withdraw Request for Hearing and Cause No. 18.0069 was closed.

The results of the previous administrative action, Cause No. 17.0050, ended with a December 18, 2017 Final Order from the Division by Hearing Officer Alexia Emmermann ("Emmermann Order"). The Emmermann Order determined that, among other items, HWAN's certificate of registration expired as a matter of law. In the Emmermann Order, the Hearing Officer provided a time line for HWAN to submit a renewal application and for the Division to review this renewal application. The January 11, 2018 HWAN Renewal Application and its February 1, 2018 denial are now the subject of this current administrative action. Cause No. 18.0095.

HWAN was provided a notice of the denial of the Renewal Application on February 1, 2018, explaining the four reasons for the denial of the January 11, 2018 Renewal Application. The Division requested a hearing to effectuate this denial on March 12, 2018. On March 13, 2018, the Division's request for a hearing was granted and notice was sent via certified mail to the Respondent. In the March 13, 2018 Notice of Hearing, Barbara Richardson, the Commissioner of Insurance ("Commissioner"), was named as Hearing Officer.

On March 14, 2018, the Commissioner, as Hearing Officer sent out a Pre-Hearing Order to the parties and set the hearing date for May 2, 2018 at 9:00 a.m. (continued to May 3, 2018, if necessary).

On March 28, 2018, HWAN submitted a Request for a Hearing and noted that "HWAN will consent to consolidate and hold this hearing on the date previously set by Commissioner Richardson for Cause No. 18.0095; to wit, May 2, 2018."

On April 3, 2018, the Hearing Officer issued an Order Regarding Stipulated Hearing Date; Order Confirming Terms of [March 14, 2018] Pre-Hearing Order which included the granting of the request for the parties to consolidate the hearing requests into the May 2, 2018 Hearing.

On two following occasions, April 18, 2018 and June 5, 2018, the parties submitted joint requests to Continue Hearing Dates. The Joint Requests were each granted: the first on April 20, 2018, and the second on June 6, 2018, based on the representations of the parties that each party felt they could use more time to negotiate a settlement.

On May 24, 2018, HWAN submitted a Motion for Subpoenas Ad Testificandum and Application for Subpoena Duces Tecum.

On August 17, 2018, HWAN submitted a third Motion to Continue the Hearing. On August 21, 2018, the Division submitted an Opposition to the Request for a Continuance. On August 22, 2018, the Hearing Officer set a new Hearing date and Pre-hearing schedule.

On August 28, 2018, HWAN submitted a Motion to Reset the Hearing Date to Accommodate Religious Observance.

On August 31, 2018, the Division filed an Opposition to Respondent's Motion for Subpoenas.

On September 10, 2018, the Hearing Officer set a new Hearing date for October 23, 2018, (continued to October 24, 2018, if necessary). On October 16, 2018, each party submitted Pre-Hearing statements.

On September 13, 2018, HWAN filed a Motion for a More Definite Statement.

On September 14, 2018, the Division filed a Non-Opposition to Respondent's Motion for a More Definite Statement.

On September 19, 2018, the Hearing Officer filed an Order Granting Motion for More Definite Statement.

On September 25, 2018, Subpoenas for Appearance at Hearing were sent to Rajat Jain, Timothy Ghan, Mary Strong and the State of Nevada Division of Insurance.

On September 26, 2018, HWAN filed a Motion for a Subpoena Duces Tecum.

On September 27, 2018, the Division filed a Limited Opposition to Respondent's Second Motion for Subpoenas.

On September 28, 2018, the Division filed a More Definite Statement.

On September 28, 2018, the Hearing Officer filed an Order on the Motion for Second Subpoena Duces Tecum. On October 3, 2018, the Subpoena Duces Tecum for the second request was filed.

On October 8, 2018, HWAN submitted a Third Motion for Third Subpoena Duces Tecum. In response, on October 10, 2018, the Division submitted an Opposition to Respondent's Third Motion for Subpoenas.

On October 11, 2018, the Hearing Officer filed an Order on the Motion for Third Subpoena Duces Tecum.

On October 16, 2018, both parties met the Pre-Hearing notice deadlines and submitted their Prehearing Statements, their Proposed Hearing Exhibit List, and their List of Hearing Witnesses.

On October 17, 2018, HWAN submitted an additional Prehearing Statement.

On October 19, 2018, the Parties submitted a Joint Request for Prehearing Conference. The Prehearing Conference was held on the morning of the first date of the Hearing, October 23, 2018.

On November 19, 2018, HWAN submitted a Brief Regarding Recusal of Commissioner as Hearing Officer, and the Division submitted its Brief Regarding Recusal of Commissioner as Hearing Officer. These contemporaneous briefs were stipulated to as part of the October 23, 2018 Hearing.

On December 3, 2018, HWAN and the Division submitted timely contemporaneous Closing Briefs.

On December 11, 2018, the Hearing Officer issued her Order Denying Petitioner's Motion for the Recusal of the Commissioner as Hearing Officer.

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## WITNESSES

**RAJAT JAIN**. Rajat Jain, Chief Insurance Examiner of the property casualty unit for the Division ("Jain"), provided testimony under subpoena from HWAN about the Division policies and procedures for reviewing Service Contract Provider initial and renewal applications. Jain also provided testimony regarding the actual review process for the HWAN January 11, 2018 Renewal Application. Additionally, Jain provided testimony regarding Choice Home Warranty's ("CHW") continued sales practices in the service contract market in Nevada, as well as testimony regarding the Division's past enforcement actions against Service Contract Providers.

**TIMOTHY GHAN**. Timothy Ghan, Assistant Chief Insurance Examiner of the property casualty unit for the Division ("Ghan"), provided testimony under subpoena from HWAN about the Division policies and procedures in reviewing Service Contract Provider initial and renewal applications. Ghan also provided testimony regarding the actual review process for the HWAN January 11, 2018 Renewal Application. Ghan also provided testimony regarding a solicitation he received from CHW to purchase a service contract product at a discount.

**FELECIA CASCI.** Felecia Casci, Chief Legal Secretary for the Division ("Casci"), provided testimony on behalf of the Division, regarding the use of certified mail for the transmittal of the Notice of Hearing and the Division's Request for a Hearing.

**MARY STRONG**. Mary Strong, Management Analyst III for the Division ("Strong"), provided testimony under subpoena from HWAN regarding the policies and procedures in reviewing Service Contract Provider initial and renewal applications.

## EXHIBITS

The Respondent proposed 70 exhibits (Exhibits A-RRR), and each was marked for identification. Exhibits B, D, J, Q, S, V, W, Y, Z, AA, CC, DD, GG, HH, II, JJ, KK and NN were admitted to and entered into evidence. The Division proposed 17 exhibits (Exhibits 1-17). Exhibits 11, 12 and 13 were withdrawn by the Division at the Hearing. All other Division Exhibits were admitted and entered into evidence.

## FINDINGS OF FACT

1. NRS 690C.325(1) states that, [t]he Commissioner may refuse to renew or may suspend, limit or revoke a provider's certificate of registration if the Commissioner finds after a hearing thereon, or upon waiver of hearing by the provider, that the provider has:

> a. Violated or failed to comply with any lawful order of the Commissioner;
> b. Conducted business in an unsuitable manner;
> c. Willfully violated or willfully failed to comply with any lawful regulation of the Commissioner; or
> d. Violated any provision of this chapter.

2. The Emmermann Order, in its Order of the Hearing Officer, noted specifically that if HWAN wishes to continue engaging in the business of service contracts in Nevada, HWAN may apply for a certificate of registration as provided in the Emmermann Order. Division Exhibit 2, pg. 27.

3. The Emmermann Order provided the following instruction to HWAN:

> Therefore , as of the date of this Order [December 18, 2017], [HWAN] is on notice that it must apply for a renewal of its certificate of registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the date of this [the Emmermann] Order. Division Exhibit 2, pg. 27.

4. The Emmermann Order provided the following instruction to the Division in relation to the instructions provided to HWAN:

> The Division must issue its determination on the application no later than 15 business days after the receipt of the complete application. As a result, the Division cannot take action against [HWAN] for issuing, selling, or offering for sale service contracts without a certificate of registration from the date of this Order plus 45 days. Division Exhibit 2, pg. 27.

5. HWAN submitted a Renewal Application for a Service Contract Provider Certificate of Registration ("Renewal Application") which was received by the Division on January 11, 2018.

6. According to the Emmermann Order, HWAN was required to provide a complete renewal application by January 17, 2018.

7. HWAN's Renewal Application was received by the Division within the 30 days after the Emmermann Order, however, it was deemed incomplete by the Division. Division

Exhibit 4, pg.2.

8. Despite the deadline under the Emmermann Order for a complete application to be received within the 30 days, the Division provided some additional time, until January 26, 2018, for HWAN to complete its application. Division Exhibit 4, pg. 2.

9. The Emmermann Order required that the Division make a determination on the renewal application no later than 15 business days after the receipt of the complete application. Division Exhibit 2, pg. 27.

10. Fifteen business days from the date of receipt of the Renewal Application would have been February 2, 2018, if the Renewal Application was received by the Division on January 11, 2018.

11. There was an argument made at the Hearing that the Renewal Application actually arrived at the Division on January 10, 2018. This was supported by Division staff testimony. Hr'g Tr., Day 1 at 182:16- 21 (10/23).

12. In a March 27, 2018 letter from Victor Mandalawi, President of HWAN to Division representative, Mary Strong, HWAN states that, "Unless vacated or modified by the pending appeal before Judge Russell in Nevada's First District Court, the Emmermann Order dated December 18, 2017 remains the law of the case." HWAN Exhibit DD, pg. 2.

13. The March 27, 2018 letter also formally requested that the Division reconsider the February 1, 2018 denial notice. HWAN Exhibit DD, pg 3.

## CONCLUSIONS OF LAW

Based upon all pleadings and papers on file in this matter, the testimony of the witnesses, which were all found to be credible, a review of the exhibits admitted at the hearing, and the foregoing Findings of Fact, the Hearing Officer makes the following Conclusions of Law:

### A. Jurisdiction

The Commissioner has jurisdiction over this matter pursuant to NRS 690C.120, 679B.120, NRS 679.125, and NRS 690C.300,-.310 and .320. Service Contracts are regulated by the Commissioner under the Insurance Code pursuant to chapter 690C of NRS.

**B. Burden of Proof**

The Division bears the burden of showing, by a preponderance of the evidence, that HWAN violated provisions of the Insurance Code to support an action under NRS 690C.325(1) which provides that "[t]he Commissioner may refuse to renew ... a provider's certificate of registration if the Commissioner finds after a hearing thereon, ... that the provider has:" violated any one of the elements required under NRS 690C.325(1)(a-d). In hearings before the Division, "the hearing officer shall liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party." NAC 679B.245.

**C. Division Arguments**

On February 1, 2018, a notice of denial, hereafter known as a Letter of Determination ("Determination Letter") from the Division was sent to HWAN, as required under the Emmermann Order, listing four reasons to deny HWAN's January 11, 2018 Renewal Application. HWAN Exhibit Z, Division Exhibit 6:

1. Violation of an Order – specifically, the Emmermann Order which called for the payment of fines for various insurance Code violations by HWAN in Nevada.
2. Incomplete Application based on missing financial security statutory requirement.
3. Concerns Regarding Administrator, Choice Home Warranty, ("CHW").
4. Unsuitability of Applicant, HWAN.

The Determination Letter which listed the four reasons for denial was also included in the Division's Request for a Hearing sent to HWAN via Certified Mail on March 12, 2018. These reasons correspond to the statutorily required reasons for an action under NRS 690C.325

> **NRS 690C.325 Administrative fines; suspension, limitation, revocation or refusal to renew certificate of registration.**
> 1. The Commissioner may refuse to renew or may suspend, limit or revoke a provider's certificate of registration if the Commissioner finds after a hearing thereon, or upon waiver of hearing by the provider, that the provider has:
> (a) Violated or failed to comply with any lawful order of the Commissioner;
> (b) Conducted business in an unsuitable manner;
> (c) Willfully violated or willfully failed to comply with any lawful regulation of the Commissioner; or
> (d) Violated any provision of this chapter.
> . . . .

The statutory reasons from NRS 690C.325 for refusal to renew were the basis of the Division's arguments at the Hearing and correspond to the points below.

**a. Violation of a lawful Order of the Commissioner, specifically a violation of the Emmermann Order**

The first reason in the Division's argument that HWAN's renewal of its certificate of registration as a Service Contract Provider be denied was listed in the Determination Letter as HWAN was in violation of the Emmermann Order, namely that HWAN failed to pay the fines called for in that Order. Division Exhibit 6, HWAN Exhibit Z. The Emmermann Order imposed administrative fines on HWAN totaling $1,224,950 for various violations of the Insurance Code. The fines were due no later than 30 days from the date of the Emmermann Order which would make them due January 17, 2018. Division Exhibit 6, pg. 2. No such payment was received by the Division. Hr'g Tr., Day 1 at 119:4-23 (10/23).

HWAN argues that since HWAN submitted a Motion to Stay of Final Administrative Decision ("Motion") filed with the District Court on January 16, 2018 that this Motion halted any enforcement of the fines due under the Emmermann Order. HWAN Exhibit AA. However, the District Court denied that Motion for a Stay on February 14, 2018. HWAN Exhibit AA.

HWAN and the Division filed a Stipulation and Order for Interpleading of Fines Pending Final Decision ("Interpleading"), which was granted by the District Court on March 15, 2018. HWAN Exhibit CC. HWAN argues that this joint Interpleading should act as a stay to allow them not to pay the required fines under the Emmermann Order; however, the District Court already ruled on the Motion for a Stay when it denied it on February 14, 2018. HWAN Exhibit AA.

The Division argues that NRS 233B.135(2) controls the current action. NRS 233B.135(2) states that "[t]he final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3."

HWAN argues that since the District Court **remanded** the Emmermann Order back to the Division on September 6, 2018, ("Remand Order") that the Emmermann Order was **set aside** by the District Court. (emphasis added). Attachment 1. HWAN also argues that the term

**remand** has the same definition as the term **set aside** such that the District Court's act to remand the Emmermann Order would affect whether the Emmermann Order should be considered as a lawful final decision of the agency under NRS 233B.135(2). However, according to the definition from Black's Law, to **remand** is "to send a case or claim back to the court or tribunal from which it came for some further action." Black's Law Dictionary (10th ed. 2014). Black's defines **set aside** as "to annul or vacate (a judgment, order, etc.)." *Id.*

Under NRS 233B.135(2), to reverse or set aside a final order of an agency is a final action by the court which would certainly affect the status of a final order of an agency decision that had been appealed to that court. A remand does not alter the terms or the final status of the agency's final decision. In this situation, the District Court did provide that the Hearing Officer in the Emmermann case must draft a new Order. The District Court noted that the new Order would be on a limited basis and focused on a determination of whether the three additional proposed Exhibits proffered by HWAN to the District Court for review would affect the agency's final decision. Attachment 1.

In its September 6, 2018 Order Granting Petitioner's Motion for Leave to Present Additional Evidence, the court did not annul, vacate, reverse or set aside the agency's final decision. Given that the District Court had an opportunity to, but chose not to, make any determination to annul, vacate, reverse or set aside the agency's final decision as required under NRS 233B.135(2) to override the Division's lawful order, the Emmermann Order is considered as a lawful final decision of the agency.

**b. Division's Argument that by providing an Incomplete Application, HWAN willfully violated or willfully failed to comply with any lawful regulation of the Commissioner**

The Division's second reason for a denial of HWAN's renewal of its certificate of registration noted in the Determination Letter was that HWAN did not provide a complete application within a timely manner as required by the Emmermann Order. The annual statutory requirement to provide an update for a financial security deposit for Service Contract Providers was not met by HWAN within the 30-day due date provided in the Emmermann Order. Division Exhibit 6, HWAN Exhibit Z.

The annual financial security deposit for Service Contract Providers is calculated using unearned gross considerations as required under NRS 690C.170(1)(b) which states a Service Contract Provider must "[m]aintain a reserve account in this State and deposit with the Commissioner security as provided in this subsection. The reserve account must contain at all times an amount of money equal to at least 40 percent of the unearned gross consideration received by the provider for any unexpired service contracts. ... The provider shall also deposit with the Commissioner security in an amount that is equal to $25,000 or 10 percent of the unearned gross consideration received by the provider for any unexpired service contracts, whichever is greater."

There was also significant debate by HWAN at the Hearing regarding whether the January 11, 2018 Renewal Application was complete or not as of the January 11, 2018 date. HWAN argued that the Renewal Application should have been considered complete at the January 11, 2018 date, and it further supports this in its March 27, 2018 letter from Victor Mandalawi, President of HWAN, to Division representative, Mary Strong. HWAN Exhibit DD, pg. 1.

HWAN argues that the Division failed to show that HWAN's Renewal Application was incomplete. The Division argued that HWAN was on notice pursuant to NRS 690C.170(1)(b) that its reserve account and deposit with the Division must comply with required security deposit requirements. HWAN did submit a security deposit for the January 11, 2018 Renewal Application on January 16, 2018, in the amount of $345,811, but this amount was based on data from the quarter ending June 30, 2017.

The Division argues that, since HWAN did not submit data documenting its unearned gross considerations for the most recent quarter which would have been December 31, 2017 for a Renewal Application dated January 11, 2018, the Division was unable to determine if HWAN was in compliance with NRS 690C.170(1)(b). The Division argues that HWAN submitted unearned gross considerations for the quarter ending June 30, 2017, and given that this Renewal Application was dated January 11, 2018, HWAN should have known that it needed to submit the required application data from December 31, 2017.

While the Division may be technically correct about the appropriate time period for the data, HWAN was not provided notice that the unearned gross considerations data it provided in its Renewal Application was for an improper quarterly time period until it received the February 1, 2018 Determination Letter. Under NRS 690C.160(3), the Division is not required to allow Service Contract Provider applicants extra time to correct any defects in their initial or renewal Service Contract Provider certificate of registration applications. NRS 690C.160(3) states that "[a] certificate of registration is valid for 1 year after the date the Commissioner issues the certificate to the provider. A provider may renew his or her certificate of registration if, before the certificate expires, the provider submits to the Commissioner ..." As such, if a Service Contract Provider does not submit a complete application under the requirements of NRSC.160(3), then the certificate expires as a matter of law.

However, the Division did provide a January 19, 2018 letter of instruction drafted by Mary Strong to HWAN ("Strong letter"). The Strong letter asked for three additional items from HWAN which could easily have been interpreted to be the only three items that HWAN would have to submit to the Division to fulfill the requirement to have a complete renewal application on file at the Division. Division Exhibit 4, pg. 2. However, the Strong letter did not ask HWAN to provide any information on its unearned gross considerations for the most recent quarter. Division Exhibit 4, pg. 2.

Given that the Division attempted to help correct the incompleteness of HWAN's Renewal Application, it hardly appears reasonable that the Division could hold missing data from that Renewal Application against HWAN when the Division did not ask for it in their attempt to help.

On March 27, 2018, the Division did receive the required data from HWAN for determining the unearned gross considerations as of December 31, 2017, which would be the most recent quarter before its January 11, 2018 renewal application. The data accompanied a payment for a new security deposit based on this new data, in the amount of $393,465. This brought the total amount of the statutory security deposit to $629,230 as would have been required under the January 11, 2018 Renewal Application. HWAN Exhibit DD, pg. 2.

Thus, as of March 27, 2018, HWAN had corrected the defect for the incompleteness of its January 11, 2018 Renewal Application. Despite the January 19, 2018 Strong letter to HWAN noting that the Renewal Application was incomplete, the testimony at the Hearing as well as the Division's own policies and procedures for processing Renewal Applications did not sufficiently support the Division's argument that HWAN was provided adequate notice to provide a completed Renewal Application as required under the Emmermann Order. Division Exhibit 4, HWAN Exhibit Y, HWAN Exhibit Z, pg. 3.

**c. Division Argument that HWAN conducted business in an Unsuitable Manner, specifically regarding HWAN's use of CHW**

The Division's third reason for the denial of HWAN's renewal of its certificate of registration noted in the Determination Letter states that HWAN did not properly obtain a certificate of registration for its administrator Choice Home Warranty ("CHW"). NRS 690C.150 states that "[a] provider shall not issue, sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of this chapter."

HWAN has been on notice of the requirement to have CHW obtain a certificate of registration as of December 18, 2017, under the Emmermann Order. Division Exhibit 2, pg. 24, lines 21-28 and pg. 25, lines 1-19. The Emmermann Order stated that, "Nevada law clearly prohibits the issuance, sale, or offering for sale service contracts unless the provider has been issued a certificate of registration. NRS 690C.150." Division Exhibit 2, pg. 24, lines 24-25.

On January 19, 2018, the Division sent the Strong letter to HWAN giving HWAN a status of its Renewal Application as a Service Contract Provider in Nevada. HWAN Exhibit W, Division Exhibit 4.

On January 26, 2018, HWAN responded to the January 19, 2018, Strong letter and noted as part of its response that the duties of CHW to HWAN were all set forth in the Independent Service Provider Agreement ("ISP") attached to the January 26, 2018 letter. HWAN Exhibit Y, pg. 3, Division Exhibit 5, pg. 3. HWAN also supplied an excel spreadsheet as an attachment to the January 26, 2018 letter which provided a list of contracts sold by CHW in Nevada from

December 18, 2017, through January 19, 2018. HWAN Exhibit Y, pgs. 11-26. The attachment to the January 26, 2018 letter was a document titled *Independent Service Provider Agreement* ("ISP") which laid out the relationship of HWAN to CHW. HWAN Exhibit Y, pg. 3-10.

It is unclear why the ISP is titled as an "Independent Service Provider Agreement" when HWAN argued that CHW is not a Service Contract Provider. HWAN Exhibit Y, pg. 3, Division Exhibit 5, pg. 3. It is also unclear why HWAN would use this document to argue CHW is only administering service contracts when Section B of the ISP, under the Duties of the Parties, states that CHW is responsible for selling and negotiating service contracts to clients. HWAN Exhibit Y, pg. 3, Division Exhibit 5, pg. 3.

HWAN argues that under the internal Division checklist for reviewing Service Contract applications and renewals, the checklist indicates that "[t]hird party administrators are not required to be registered for service contracts." HWAN Exhibit B. HWAN further argues that since CHW is an administrator, it does not have to have a certificate of registration as a Service Contract Provider.

NRS 690C.020 under the Service Contract chapter of the Insurance Code defines an administrator as a person who is responsible for administering a service contract that is issued, sold, or offered for sale by a provider. This definition does not allow for the sale or negotiations of service contracts by an administrator.

Even if HWAN's argument that the notation on the Division's internal checklist stating that third-party administrators do not have to get a Service Contract Provider certificate of registration, it should be noted that third-party administrators are required to hold a certificate of registration under a different section of the Insurance Code, NRS 683A.085. NRS 683A.085 requires that "[n]o person may act as, offer to act as or hold himself or herself out to the public as an administrator, unless the person has obtained a certificate of registration as an administrator from the Commissioner pursuant to NRS 683A.08524." The Division's internal checklist specifically indicated that third-party administrators do not have to get a Service Contract Provider certificate of registration.

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HWAN sent a letter to the Division which was received on March 28, 2018. In that letter from HWAN's President Victor Mandalawi ("Mandalawi letter"), he stated that "CHW Group Inc. will no longer function as HWAN's Nevada Administrator effective April 30, 2018. HWAN Exhibit V, pg. 2, Division Exhibit 7, pg. 2. However, testimony was provided by two members of the Division staff, Jain and Ghan, that supported the fact that CHW continues to solicit and sell service contracts in Nevada through at least October 2, 2018. Hr'g Tr., Day 1 at 241:21-242: 5 (10/23) and Hr'g Tr., Day 2 at 34:14-36:2 and 38:7-11 (10/24). The Division was also able to provide a copy of an email advertisement that had been sent to Ghan from CHW offering a discount on the purchase of a service contract from them. Division Exhibit 9.

HWAN argues that CHW is allowed to sell service contracts as an *agent* of HWAN without being registered as a Service Contract Provider in Nevada. However, this is contrary to the statutes, specifically NRS 690C.150 which prohibits the issuance, sale, or offering for sale service contracts unless the provider has been issued a certificate of registration.

In its closing argument HWAN attempted to argue that, since the Division contends that only "providers" are allowed to sell service contracts, somehow this means that the Division believes that a provider's employees could not sell service contracts. This makes no sense as that the term "person" in the Insurance Code is given the same definition as "person" within the general application of the law.

A line of Supreme Court rulings dating back over 200 years has blurred the distinction between flesh and blood human beings and the businesses they own. The most recent Supreme Court cases embracing this blurred definition are *Citizen's United v. Federal Elections Committee*, 558 U.S. 310 (2010) and *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2785 (2014). Unless the plain language of the statute says "natural person" then "person" must be given the meaning determined by years of legal precedent. In *Citizens*, the Court recognized that First Amendment protection of free speech extends to corporations when they determined that bans on corporations and unions are disallowed when those organization make independent expenditures and financing electioneering communications. In *Burwell*, as part of their opinion, the Court opined that closely held corporations could hold religious beliefs that could be

protected under the Relgious Freedom Resoration Act of 1999. ("RFRA") The Court determined that the RFRA permits for-profit corporations are closely held to refuse, on religious grounds, to pay for legally mandated overage of certain contraceptive drugs and devices in their employees' health insurance plans. In so ruling, the Court embraced the view that closely held for-profit corporations are legal "persons" under the RFRA and are therefore capable of exercising religious choices. These cases reinforce the general supposition in law that corporations are considered "persons".

HWAN also argues that since the Division has not, as of yet, non-renewed another registered Service Contract Provider for using a non-registered agents, then the Division is estopped from doing so in this case. This argument falls short as HWAN was unable to provide sufficient evidence that other Service Contract Providers were using non-registered agents in the same manner as HWAN. As each case heard by the Division must be determined on a case by case basis using the facts in front of the agency, HWAN's argument falls short as it provided no substantial evidence. HWAN only provided inferences and unsupported insinuations, but no evidence was provided in this hearing to support HWAN's argument of disparate treatment. HWAN's argument also falls short as it ignores that HWAN has been on notice from the Division since December 18, 2017, through the Emmermann Order that CHW had to be registered.

Based on the evidence presented, HWAN is still in violation of NRS 690C.150 by continuing to allow CHW as its administrator to sell service contracts without a certificate of registration.

**d. Division Argument that HWAN is an Unsuitable Renewal Applicant because HWAN has willfully violated or willfully failed to comply with any lawful regulation of the Commissioner**

The fourth reason for the Division's argument to deny HWAN's renewal of its certificate of registration as stated in the Determination Letter is that HWAN violated numerous provisions of the Insurance Code, including making false entries of material fact on its renewal applications from 2011 to 2015 in violation of NRS 686A.070; using a service contract form that was not approved by the Division in violation of NRS 686A.070; not producing

information requested by the Division regarding the number of claims incurred and opened contracts held in Nevada in violation of NRS 690C.320(2); and allowing an unregistered entity to issue, sell, or offer for sale service contracts in Nevada in violation of NRS 690C.150. Each of these last four set of statutory violations were originally violations addressed in the Emmermann Order. Division Exhibit 2.

HWAN argues that, since the Emmermann Order addressed each of these violations and determined that fines should be administered rather than revocation or non-renewal of HWAN's certificate of registration, these violations cannot now be used to impose additional punishment for the same acts.

The Division did not provide any additional evidence or testimony that supported that HWAN *continued* to make false entries of material fact on its renewal applications from 2011 to 2015 in violation of NRS 686A.070, or that HWAN *continued* using a service contract form that was not approved by the Division in violation of NRS 686A.070, or that HWAN *continued* to not produce information requested by the Division regarding the number of claims incurred and opened contracts held in Nevada in violation of NRS 690C.320(2) subsequent to the Emmermann Order. Given that there was no evidence provided to support that HWAN had continued to violate these statutes after the Emmermann Order, and that these violations had been addressed in that previous administrative action covered by the Emmermann Order, the Division cannot argue that these violations can be used to support a finding in the current administrative hearing. Unless HWAN had continued to violate the same statutes, the Division cannot use these same violations against HWAN unless the Division provided evidence to support that these statutory violations had continued beyond the administrative action in which they were addressed.

However, the Division was able to provide substantial evidence that HWAN was still violating NRS 690C.150. Hr'g Tr., Day 1 at 241:21-242: 5 (10/23) and Hr'g Tr., Day 2 at 34:14-36:2 and 38:7-11 (10/24). HWAN provided insufficient evidence to refute the Division's contention. Hr'g Tr., Day 1 at 241:21-242: 5 (10/23) and Hr'g Tr., Day 2 at 34:14-36:2 and 38:7-11 (10/24).

The Commissioner is obligated under the Insurance Code to protect Nevadans from entities within her jurisdiction when those entities are causing harm to the Nevada consumers. Nevada consumers are harmed when an entity conducts business in an unsuitable manner. The NAC defines unsuitable manner in NAC 679B.385 as conducting business in a manner which:

> 1. Results in a violation of any statute or regulation of this State relating to insurance;
> 2. Results in an intentional violation of any other statute or regulation of this State; or
> 3. Causes injury to the general public, with such frequency as to indicate a general business practice.

NAC 679B.0385 applies to Service Contract Providers, as well as the general insurance business, as NRS 690C.120 under the Service Contract Provider chapter lays out the applicability of other Insurance Code provisions regarding the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts. These applicable Insurance Code provisions are:

> (a) NRS 679B.020 to 679B.152, inclusive;
> (b) NRS 679B.159 to 679B.300, inclusive;
> (c) NRS 679B.310 to 679B.370, inclusive;
> (d) NRS 679B.600 to 679B.690, inclusive;
> (e) NRS 685B.090 to 685B.190, inclusive; ...

Given that NAC 679B.0385 is applicable under NRS 679B.125, which is made applicable to Service Contract Providers by NRS 690C.120, conducting business in an unsuitable manner as a Service Contract Provider is a violation of NRS 679B.125 and NRS 690C.150.

HWAN's continued violations of NRS 690C.150 post the Emmermann Order by using an unregistered entity to issue, sell, or offer for sale service contracts in Nevada is conducting business in an unsuitable manner as it is misleading to the Nevada consumers; and HWAN has been on notice of this violation since December 18, 2017.

There was insufficient evidence provided that HWAN had continued to violate NRS 686A.070 and NRS 690C.320(2) as stated in the Determination Letter, but there was substantial evidence provided that HWAN continued to violate NRS 690C.150, and thus, the weight of the Division's argument for this fourth reason to deny HWAN's application to renew its certificate

of registration as a Service Contract Provider is held to establish only that HWAN continued to violate NRS 690C.150.

**D. HWAN Arguments**

HWAN laid out four arguments to support its request to have its Service Contract Renewal Application for a certificate of registration approved. In its first argument, HWAN claims that the Division's Request for a Hearing should be considered a request for an illegal proceeding. HWAN's second argument is that since the Determination Letter was not sent via certified mail, it must be treated as an unlawful denial under the statutes. HWAN's third argument is that it cannot be held in violation of the Emmermann Order because of its Motion to the District Court to stay the fines determined by the Emmermann Order creates a presumption that HWAN has complied with the Emmermann Order on the specific requirement to pay fines to the Division as per that Order. The final argument HWAN presents in support of its request to have its Service Contract Renewal Application for a certificate of registration approved is a procedural dispute in that HWAN argues that the Division did not comply within its time requirements to make a determination on HWAN's renewal application as required in the Emmermann Order. Each of HWAN's arguments is discussed below.

**a. Illegal proceeding**

HWAN maintains that the Division's Request for a Hearing, filed on March 12, 2018, states that a hearing is being sought pursuant to NRS 679B.310 and NRS 690C.325(1). HWAN argues that the hearing itself as an illegal, extra-statutory proceeding as it contends that there is no such proceeding to "effectuate a denial" of a renewal application for a Service Contract Provider certificate under NRS 679B.310(2)(b) which provides that, "the Commissioner shall hold a hearing ...[u]pon written application for a hearing by a person aggrieved by any act, threatened act, or failure of the Commissioner to act...."

HWAN argues that since the Division cannot be aggrieved by the actions, or failure to act of the Commissioner or its employees, the Division cannot request a hearing if the purpose of the hearing is to deny a renewal application of a Service Contract Provider certificate of registration. However, this argument fails, as HWAN is relying on the incorrect statutory

reference. The Division relies on NRS 690C.325, which specifically lays out a hearing requirement under the Service Contract Provider Chapter of the Insurance Code. HWAN's statutory reference is a general requirement under the Insurance Code, which, if not specifically contradicted in the Service Contract Provider Chapter within the Insurance Code, would prevail. In this situation, the Service Contract Provider Chapter within the Insurance Code specifically calls for a hearing under NRS 690C.325 if the Division is seeking to non-renew a Service Contract Provider certificate of registration.

The Division cannot refuse to renew a certificate of registration unless it holds a hearing as required under NRS 690C.325 which provides the statutory right and requirement for this hearing to be held in this case:

> **NRS 690C.325 Administrative fines; suspension, limitation, revocation or refusal to renew certificate of registration.**
>
> 1. The Commissioner may refuse to renew or may suspend, limit or revoke a provider's certificate of registration if the Commissioner finds after a hearing thereon, or upon waiver of hearing by the provider, that the provider has:
>
> (a) Violated or failed to comply with any lawful order of the Commissioner;
>
> (b) Conducted business in an unsuitable manner;
>
> (c) Willfully violated or willfully failed to comply with any lawful regulation of the Commissioner; or
>
> (d) Violated any provision of this chapter.
>
> ➥ In lieu of such a suspension or revocation, the Commissioner may levy upon the provider, and the provider shall pay forthwith, an administrative fine of not more than $1,000 for each act or violation.
>
> 2. The Commissioner shall suspend or revoke a provider's certificate of registration on any of the following grounds if the Commissioner finds after a hearing thereon that the provider:
>
> (a) Is in unsound condition, is being fraudulently conducted, or is in such a condition or is using such methods and practices in the conduct of its business as to render its further transaction of service contracts in this State currently or prospectively injurious to service contract holders or to the public.
>
> (b) Refuses to be examined, or its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its books, papers, records, contracts, correspondence or other documents for examination by the Commissioner when required, or refuse to perform any legal obligation relative to the examination.
>
> (c) Has failed to pay any final judgment rendered against it in this State upon any policy, bond, recognizance or undertaking as issued or guaranteed by it, within 30 days after the judgment became final or within 30 days after dismissal of an appeal before final determination, whichever date is the later.
>
> 3. The Commissioner may, without advance notice or a hearing thereon, immediately suspend the certificate of registration of any provider that has filed for bankruptcy or otherwise been deemed insolvent.

It makes no sense that the Division could not hold a hearing to refuse to renew, suspend,

limit or revoke a provider's certificate of registration because it is not an aggrieved party under NRS 679B.310(2)(b), when NRS 690C.325 statutorily requires the Division to hold a due process hearing.

HWAN argues that the February 1, 2018 Determination Letter must be considered a final act of the Division and that the Determination Letter constitutes a denial under the statutes which would not be allowed unless there was a hearing first as required by NRS 690C.325. However, it was apparent from the evidence provided that HWAN did not consider the Determination Letter a final determination of its ability to continue selling service contracts in Nevada. According to a October 21, 2018 letter from HWAN President Victor Mandalawi to the Division, HWAN stated that it did not stop using CHW Group, Inc. d/b/a/ Choice Home Warranty as administrator. Division Exhibit 5 and Division Exhibit 16.

Given that HWAN has continued and continues to sell service contracts in Nevada, it cannot argue that it has been harmed by the Determination Letter; nor has HWAN been denied its right to due process under the statutes, as there was no evidence that the Division has taken any action to stop the sales of service contracts by HWAN based on the February 1, 2018 Determination Letter except to initiate a hearing under the requirements of NRS 690C.325.

In its argument, HWAN does not consider that both HWAN and the Division were under restrictive timelines for submitting the January 11, 2018 Renewal Application and for the Division to act upon it. According to the terms of the Emmermann Order, the Division had to commit to a determination on the Renewal Application by the 15th day after the receipt of the completed renewal application from HWAN. HWAN is very aware of these restrictive timelines from the Emmermann Order as, in its arguments, it questioned the Division's compliance to meet them.

Under the requirements in NRS 690C.325, the February 1, 2018 determination could not be effectuated until a hearing upon the determination was held and the renewal applicant was provided its due process right to argue its position. As such, HWAN's reliance on NRS 679B.310(2)(b) does not prevail over the Division's required use of the statutory requirement to provide a due process hearing to effectuate a determination of the Division under NRS

690C.325.

**b. Unlawful Denial, specifically HWAN argues that the Determination was an unlawful denial of its certificate of registration**

HWAN argues that the Division failed to send the Determination Letter via certified mail as required under NRS 233B.127 (3) and, therefore, it was an unlawful denial. NRS 233B.127 requires that an agency must give notice by certified mail of a pending agency proceeding to a [certificate holder] of facts or conduct which warrant the intended action and the [certificate holder] is given an opportunity to show compliance with all lawful requirements for the retention of its [certificate].

> **NRS 233B.127 Licenses: Applicability of provisions governing contested cases to grant, deny or renew; expiration notice and opportunity to show compliance required before adverse action by agency; summary suspension.**
>
> 1. The provisions of NRS 233B.121 to 233B.150, inclusive, do not apply to the grant, denial or renewal of a license unless notice and opportunity for hearing are required by law to be provided to the applicant before the grant, denial or renewal of the license.
>
> 2. When a licensee has made timely and sufficient application for the renewal of a license or for a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.
>
> 3. No revocation, suspension, annulment or withdrawal of any license is lawful unless, before the institution of agency proceedings, the agency gave notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. An agency's order of summary suspension may be issued by the agency or by the Chair of the governing body of the agency. If the order of summary suspension is issued by the Chair of the governing body of the agency, the Chair shall not participate in any further proceedings of the agency relating to that order. Proceedings relating to the order of summary suspension must be instituted and determined within 45 days after the date of the order unless the agency and the licensee mutually agree in writing to a longer period.

The requirements of NRS 233B.127 were met when the Division provided the Division's Request for a Hearing to HWAN via certified mail on March 12, 2018, and attached the February 1, 2018 Determination Letter so that HWAN would have notice of the facts or conduct which warranted the intended action of the Division which is to have the renewal

application denied pursuant to this hearing. Division Exhibit 17.

**c. HWAN's Motion to the District Court to Stay the Payment of Fines under the Emmermann Order should stay the Division's ability to take action against HWAN for not paying the ordered fines**

The March 12, 2018 Division's Request for a Hearing, which included the February 1, 2018 Determination Letter as an attachment, set out the Division's four reasons used to seek a denial of HWAN's Renewal Application. The first reason was that HWAN failed to pay the fines required under the Emmermann Order in a timely manner, therefore HWAN was in violation of NRS 690C.325(1)(a). Division Exhibit 6, pg. 2.

HWAN provided evidence at the Hearing that it had made a timely application for a stay of the fine in a Motion for Stay of Final Administrative Decision filed with the District Court on January 16, 2018. HWAN Exhibit V.pg. 5.

HWAN argues that since the Motion for the Stay was filed, this prevents the Division from relying on the NRS 233B.135(2) which states:

> **NRS 233B.135 Judicial review: Manner of conducting; burden of proof; standard for review.**
> 1. Judicial review of a final decision of an agency must be:
> (a) Conducted by the court without a jury; and
> (b) Confined to the record.
> ➥ In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.
> 2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.

HWAN also maintains that its position relies on case law which states that "where an order of an administrative agency is appealed to a court, that agency may not act further on that matter until all questions raised by the appeal are finally resolved." *Westside Charter Serv., Inc. v. Gray Line Tours of S. Nev.*, 99 Nev. 456.459, 664 P.2d 351, 353 (1983).

The situation in the *Westside* case is unlike the situation in this case. The *Westside* decision was based on an agency taking action contravening to the decision of an earlier district court decision, which was on appeal. This created a conflict between the decision of the appellate court and the agency. *Id.* at 458-460. The court in *Westside* also noted that it would be

clear that a district court's stay of judgement while the case was under appeal would not allow the agency to deal with the subject matter encompassed in that stay of judgment. *Id.* at 460. However, this is not the situation in the current matter. HWAN did file a Motion for Stay of Final Administrative Decision filed with the District Court on January 16, 2018, but the court denied that Motion for Stay on February 14, 2018.

The *Westside* court based its understanding of a generally accepted principle of the interaction of agency final decisions and the treatment of them by parties during and appeals process on the Alaska Supreme Court decision in *Fischback & Moore of Alaska, Inc. v. Lynn,* 407 P.2d 174 (Alaska 1965). The *Fischback* court stated that:

> If a court has appellate jurisdiction over a decision of an administrative body, it would not be consistent with the full exercise of that jurisdiction to permit the administrative body also to exercise jurisdiction which would conflict with that exercised by the court. The court's jurisdiction over the subject matter of an appeal must be complete and not subject to being interfered with or frustrated by concurrent action by the administrative body.
>
> Operation of the rule is limited to situations where the exercise of administrative jurisdiction would conflict with the proper exercise of the court's jurisdiction. If there would be no conflict, then there would be no obstacle to the administrative agency exercising a continuing jurisdiction that may be conferred upon it by law.

*Id.* at 176. See also, *Westside* at 459.

HWAN also argues that *Baker v. Labor Comm'n* 351 P. 3d 111, 113 (Utah Ct. App,. 2015), as it cited *Westside,* supports its premise noting that, upon petition for judicial review, an agency lacks jurisdiction to alter or modify final agency decisions during such review. The actual language from the *Baker* case is that, "the Commission did not have the jurisdiction to alter its *final orders* once Sunrise instituted proceedings to review the Commission's orders in the district court." (Emphasis added). *Id.* at 113.

Enforcement of a violation of the Emmermann Order does not alter or modify the agency's final Order, and it does not conflict or create an obstacle or interfere with the jurisdiction of the District Court proceeding addressing the December 22, 2017 Petition for Judicial Review of the Emmermann Order by HWAN. As such, the Division's reliance on NRS 233B.135(2) is appropriate and under NRS 233B.135(2) "[t]he final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court."

**d. HWAN's Argument that the Division did not meet the time requirements under the Emmermann Order to make a determination on HWAN's Renewal Application thus the Division is estopped from bringing a hearing to deny that renewal.**

HWAN argues that the Renewal Application was received by the Division on January 10, 2018, and therefore, the Division did not make its 15 business day after receipt deadline requirement under the Emmermann Order. HWAN maintains that the 15th business day trigger would have been January 31, 2018. HWAN contends that since the Division missed the required deadline, the Division should approve HWAN's Renewal Application.

Assuming the January 10, 2018 date of receipt by the Division of the Renewal Application is true, HWAN failed to account for Martin Luther King Day on January 15, 2018 which does not count as a business day. HWAN also failed to account for the actual wording of the Emmermann Order, which states that the Division must issue a decision within 15 business days *after* receipt of the Renewal Application. (Emphasis Added). The 15th business day after the January 10, 2018 receipt of the Renewal Application was February 1, 2018. As such, this procedural argument has no merit.

**CONCLUSION**

1. The February 1, 2018 Determination Letter from the Division to HWAN is based on four specific concerns that the Division has regarding the renewal applicant HWAN:

a. Violation of an Order – specifically the Emmermann Order which called for the payment of fines for various insurance Code violations by HWAN in Nevada.
b. Incomplete Application based on missing financial security statutory requirement.
c. Concerns Regarding Administrator, Choice Home Warranty, ("CHW")
d. Unsuitability of Applicant, HWAN.

Each of these concerns was addressed through evidence and testimony by the Division in the Hearing. These specific concerns all tie back to specific violations of the statutes under the Insurance Code.

2. The preponderance of evidence shows HWAN continues to be in violation of a lawful Order of the Commissioner for not paying the required fines in the Emmermann Order under 1(a), above. The Emmermann Order is considered as a lawful final decision of the agency

under NRS 233B.135(2), and a violation of an Order is one of the reasons provided in NRS 690C.325 to non-renew a Service Contract Provider certificate of registration, specifically NRS 690C.325(1)(a).

3. The Division did not meet its burden to show that HWAN should be denied its renewal certificate of registration based on an incomplete application, therefore not supporting denial reason 1(b), above.

4. Based on the preponderance of the evidence presented, HWAN is still in violation of NRS 690C.150, therefore supporting denial reason 1(c) above, which is a criteria necessary to take an action not to renew a certificate of registration under NRS 690C.325(1)(a)and (b). HWAN is still in violation of NRS 690C.150 by continuing to allow CHW as HWAN's administrator to sell service contracts without a certificate of registration even after December 18, 2017, when HWAN was provided notice via the Emmermann Order that CHW must apply for its own certificate of registration as a Service Contract Provider if it sells service contracts to Nevada citizens.

5. The preponderance of the evidence shows that HWAN continues to violate NRS 690C.150 by using an unregistered entity to issue, sell, or offer for sale service contracts in Nevada, which is considered to be conducting business in an unsuitable manner as it is misleading to the Nevada consumers, and HWAN has been on notice of the violation since December 18, 2017, therefore supporting denial reason 1(d) above, specifically a criteria necessary to take an action not to renew a certificate of registration under NRS 690C.325(1)(b).

6. Under the arguments presented to support a non-renewal of HWAN's certificate of registration under 1(d) above, the Division did not provide any additional or substantial evidence or testimony that supported its contention that HWAN *continued* to make false entries of material fact on its renewal applications from 2011 to 2015 in violation of NRS 686A.070; or that HWAN *continued* using a service contract form that was not approved by the Division in violation of NRS 686A.070; or that HWAN *continued* to not produce information requested by the Division regarding the number of claims incurred and opened contracts held in Nevada in violation of NRS 690C.320(2). As a result, these three additional reasons proposed by the

Division to support the unsuitability of the applicant HWAN as a criteria to take an action not to renew a certificate of registration under NRS 690C.325(1)(b) do not carry sufficient weight to do so.

7. While the Division's argument did not carry sufficient weight as to violations of NRS 686A.070 and NRS 690C.320(2) as provided in arguments to support 1(d), the Division's argument presented to support a non-renewal of HWAN's certificate of registration under 1(d) above showed by a preponderance of the evidence that HWAN is still continuing to violate NRS 690C.150 by using an unregistered entity to issue, sell, or offer for sale service contracts in Nevada. This violation does support the unsuitability of the applicant HWAN under NRS 690C.325, but it is being considered by this Hearing Officer as a duplication of the concerns regarding the Administrator, CHW, under the arguments presented for non-renewal of a certificate of registration under 1(c) above. As such, it does not receive any additional weight due to the violation falling into two categories under the Determination Letter.

## ORDER OF THE HEARING OFFICER

Based on the testimony and exhibits contained in the record, all pleadings and documents filed in this matter, and pursuant to the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer makes the following order:

NOW, THEREFORE, IT IS HEREBY ORDERED that the February 1, 2018 Determination Letter from the Division to HWAN is EFFECTUATED in part and DENIED in part as follows:.

1. The February 1, 2018 Determination Letter from the Division to HWAN is DENIED in part as to the Division's use of HWAN's incomplete application as a reason for denial of the Renewal Application.

2. The February 1, 2018 Determination Letter from the Division to HWAN is DENIED in part as to the Division's use of HWAN's violations of NRS 686A.070 and NRS 690C.320(2) as stated in the Determination Letter under the category of Unsuitability of Applicant as a reason for denial of the Renewal Application as these violations were not shown to be on-going.

3. The February 1, 2018 Determination Letter from the Division to HWAN is UPHELD to effectuate denial of the January 11, 2018 renewal application, since HWAN continues to be in violation of a lawful Order of the Commissioner for not paying the required fines in the Emmermann Order.

4. The February 1, 2018 Determination Letter from the Division to HWAN is UPHELD to effectuate denial of the January 11, 2018 renewal application, since HWAN continues to be in violation of NRS 690C.150 even after receiving notice of this violation on December 18, 2017.

5. Given that each violation of NRS 690C.150 can stand on its own as a criteria to non-renew a Service Contract Provider certificate of registration under NRS 690C.325, HWAN's Renewal application, Certificate No. NV 113194 is DENIED.

IT IS SO ORDERED.

DATED this 2nd day of January, 2019.

BARBARA D. RICHARDSON
Hearing Officer/Commissioner of Insurance

# ATTACHMENT 1

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
klenhard@bhfs.com
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
tchance@bhfs.com
MACKENZIE WARREN, ESQ., Nevada Bar No. 14642
mwarren@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

LORI GRIFA, ESQ. (admitted *pro hac vice*)
lgrifa@archerlaw.com
ARCHER & GREINER P.C.
21 Main Street, Suite 353
Hackensack, NJ 97601
Telephone: 201.342.6000

*Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

REC'D & FILED
2018 SEP -6 PM 2:14
SUSAN MERRIWETHER
CLERK
BY

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DIVISION OF INSURANCE
STATE OF NEVADA

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>*Petitioner,*<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY -DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>*Respondent.* | CASE NO.: 17 OC 00269 1B<br>DEPT NO.: I<br><br>**ORDER GRANTING PETITIONER'S MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE** |

This matter having come on for hearing on August 6, 2018 on Petitioner Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Motion for Leave to Present Additional Evidence pursuant to NRS 233B.131(2) (the "Motion"), which was filed herein on April 19, 2018,

The Respondent State of Nevada, Department of Business and Industry – Division of Insurance (the "Division") having filed an Opposition thereto on May 4, 2018 and Petitioner having filed a Reply in Support of the Motion on May 14, 2018,

The Court, having considered the papers on file herein and the arguments of counsel at the

hearing, and being fully advised in the premises, finds as follows:

Petitioner seeks to introduce new evidence to be considered by the Division, namely its Proposed Exhibits KK, LL, and MM (the "Evidence") in the proceeding below. The Court acknowledges that, pursuant to NRS 233B.131(2), Petitioner must demonstrate that the Evidence is material to the issues before the agency and that good reasons exist for Petitioner's failure to present the same in the proceeding below. The Court declines both Parties' offer to examine the disputed evidence *in camera*. Instead, the issue of materiality is best left to the Administrative Hearing officer to decide.

IT IS HEREBY ORDERED that Petitioner's Motion is GRANTED on the limited basis that -this matter be REMANDED to the Division of Insurance. The hearing officer is to consider Petitioner's Proposed Exhibits KK, LL, and MM. The hearing officer will receive the Evidence and determine whether the Evidence is material, and if so, whether it would have had any impact on the final decision. If so, the hearing officer will issue a new decision with new findings where applicable. If not, the hearing officer will issue a new decision indicating the Evidence would have had no impact on the original findings.

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BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

Upon issuance of the new decision, the Division shall file an amendment to the Administrative Record on file herein to include a copy of the new decision.

DATED this 6th day of September, 2018.

DISTRICT COURT JUDGE

Submitted by:

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

By:_____
KIRK B. LENHARD, ESQ., Bar No. 1437
TRAVIS F. CHANCE, ESQ., Bar No. 13800
MACKENZIE WARREN, ESQ., Bar No. 14642

LORI GRIFA, ESQ., (admitted *pro hac vice*)
ARCHER & GREINER P.C.

*Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

Approved as to form and content by:

**ADAM PAUL LAXALT, NEVADA ATTORNEY GENERAL**

JOANNA GRIGORIEV, ESQ., Bar No. 5649
RICHARD P. YIEN, ESQ., Bar No. 13035

*Attorneys for Respondent*

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

## CERTIFICATE OF MAILING

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 6th day of September, 2018, I served the foregoing Order by placing a copy in the United States Mail, postage prepaid, addressed as follows:

Kirk B. Lenhard, Esq.
Travis F. Chance, Esq.
Mackenzie Warren, Esq.
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Lori Grifia, Esq.
21 Main Street, Suite 353
Hackensack, NJ 97601

Richard Paili Yien
Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701

Angela Jeffries
Judicial Assistant, Dept. 1

# Exhibit KK

Exhibit KK

 print FYI

**Dolores Bennett**

**From:** Dolores Bennett
**Sent:** Monday, November 07, 2011 9:21 AM
**To:** David Hall
**Cc:** Ted Bader; Marie Hall
**Subject:** Update: CHW Group, Inc. dba Choice Home Warranty

**Importance:** High

David:
It was just recapping my notes from our meeting last week about CHW Group, Inc. dba Choice Home Warranty and realized that Victor Mandalawi, who was listed as President of CHW Group, Inc., obtained a Certificate of Registration as a service contract provider a year ago with our office on 11/18/10 under a different corporation: Home Warranty Administrator of Nevada, Inc. (Org. ID # 113194).

Note: Home Warranty Administrator of Nevada, Inc. was formed in Nevada on 7/23/10, but the Nevada Secretary of State revoked their corporation on 8/1/11, since they only filed their Articles of Incorporation, and then missed two filings (8/31/10 List of Officers and 7/31/11 Annual List). I just received their service contract provider renewal application for their 11/18/11 renewal with us, so I will have to contact Mr. Mandalawi about their corporate status, since I cannot renew a license for a corporation that does not exist. FYI: They indicated on our renewal that they have had no sales since we licensed them.

Dolores Bennett, ARC, ARM, AIS, AINS
**Insurance Examiner**
**Property & Casualty Section**
**Nevada Division of Insurance**
**1818 E. College Parkway, Suite 103**
**Carson City, NV 89706**
**direct: (775) 687-0763**
**main: (775) 687-0700**
**fax: (775) 687-0787**
**dbennett@doi.state.nv.us**

**Visit us online at the Service Contracts Section for service contract provider requirements, filing information, and more.**

11-1-11 Choice Home Warranty
Never got UCD
Had already done business in NJ
[illegible] David to more [illegible]
[illegible] [illegible] business [illegible]
without being registered
Dave confirmed DOI rec'd complaints
Would now need a CUP
Get list of all written contracts
to business [illegible]
Proceed w/ action

alint
pcl

**Dolores Bennett**

| | |
|---|---|
| **From:** | Dolores Bennett |
| **Sent:** | Wednesday, July 27, 2011 2:39 PM |
| **To:** | Harland Amborn; David Hall |
| **Cc:** | Ted Bader; Gennady Stolyarov |
| **Subject:** | RE: Choice Home Warranty |

Mr. Hall:

**Choice Home Warranty** is not registered as a service contract provider in Nevada.

**Home Warranty Administrator Of Nevada, Inc.** (Org. ID # 113194) is registered as a service contract provider in Nevada, and only has one service contract approved for sale in Nevada at this time: Home Service Agreement # HWAADMIN-6/2/10 (Approved: 11/22/10). That contract is under the "Home Warranty Administrators" name and makes no mention of Choice Home Warranty. However, Home Warranty Administrator of Nevada, Inc. has a pending form filing (Filing # 25290) in SERFF for a new contract called "Choice Home Warranty" (Home Service Agreement # HWA-NV-0711) listing Home Warranty Administrator Of Nevada, Inc. as the Obligor, and listing Choice Home Warranty as the Administrator.

The cover letter contains both Choice Home Warranty and Home Warranty Administrators logos and reads,

- Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty. We appreciate your
  business and look forward to providing you with quality service for all your home protection needs.
  To obtain the most value from your new home warranty, please take a moment to read and understand your coverage. Your coverage is dependant on the plan you have selected.
  Should you have a problem with any of your covered systems or appliances, please call us toll-free at (888)-531-5403. We are available 24 hours a day, 7 days a week, 365 days a year, or simply log on to our website located at www.ChoiceHomeWarranty.com and file your claim online.

However, the agreement reads,

- Throughout this Agreement the words "We", "Us" and "Our" refer to Home Warranty Administrator of Nevada, Inc. (HWA), 90 Washington
  Valley Road, Bedminster, NJ 07921, the Obligor of this Agreement and it is backed by the full faith and credit of HWA. This Agreement is
  administered by Choice Home Warranty (Administrator), 510 Thornall Street, Edison, NJ 08837.

That pending filing is still under review pending the company response to our objections to certain statements, wording and typographical errors in the contract. We will approve the contract after they correct those errors.

Dolores Bennett, **ARC, ARM, AIS, AINS**

**Insurance Examiner**
**Property & Casualty Section**
**Nevada Division of Insurance**
**1818 E. College Parkway, Suite 103**
**Carson City, NV 89706**
**direct: (775) 687-0763**
**main: (775) 687-0700**
**fax: (775) 687-0787**
**dbennett@doi.state.nv.us**

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---

**From:** Harland Amborn
**Sent:** Wednesday, July 27, 2011 1:39 PM
**To:** David Hall
**Cc:** Dolores Bennett
**Subject:** Choice Home Warranty

Enforcement Case ID: 11424

<< File: DOC.PDF >>

Here are two responses that we received from Choice Home Warranty on Consumer Complaints that were filed. I'm not sure that Home Warranty Administrator of Nevada, Inc Company ID << OLE Object: Picture (Metafile) >> << OLE Object: Picture (Metafile) >> 113194 can "back" a warranty from Choice Home Warranty.

*Harland F. Amborn*
*Deputy Commissioner*
**Nevada Division of Insurance**
**2501 E. Sahara Ave., Ste. 302**
**Las Vegas, NV 89104**
**(702) 486-4379**
**(702) 486-4007 (fax)**

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# Exhibit LL

Exhibit LL

admit all of it

Dolores Bennett

**From:** Lara Pellegrini
**Sent:** Thursday, July 22, 2010 3:58 PM
**To:** Dolores Bennett
**Subject:** RE: Choice Home Warranty

No doubt about that. I talked to the Insurance Division in Washington and it sounds like Choice is a big scam.

---

**From:** Dolores Bennett
**Sent:** Thursday, July 22, 2010 3:51 PM
**To:** Lara Pellegrini
**Subject:** RE: Choice Home Warranty

Thanks very much. I've been watching all the emails. So far the company's a lot of talk and no action!

Dolores Bennett, ARC, ARM, AIS
State of Nevada
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, Nevada 89701
(775) 687-4270 x 250
dbennett@doi.state.nv.us

---

**From:** Lara Pellegrini
**Sent:** Thursday, July 22, 2010 3:50 PM
**To:** Dolores Bennett
**Subject:** RE: Choice Home Warranty

I am sure David is working on it. I just wanted you to be aware that they have been in violation of Nevada law, if they do apply to be registered.

---

**From:** Dolores Bennett
**Sent:** Thursday, July 22, 2010 3:16 PM
**To:** Lara Pellegrini
**Subject:** RE: Choice Home Warranty

Have you talked to David Hall? He seems to be handling it on your end. Who should be taking administrative action? Maybe Ben Gillard has been dealing with David Hall.

Dolores Bennett, ARC, ARM, AIS
State of Nevada
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, Nevada 89701
(775) 687-4270 x 250
dbennett@doi.state.nv.us

---

**From:** Lara Pellegrini
**Sent:** Thursday, July 22, 2010 2:36 PM
**To:** Dolores Bennett
**Subject:** RE: Choice Home Warranty

I do not understand why we are even waiting for them to get registered before taking any administrative action. They have already violated Nevada law by selling service contracts to Nevada residents without being registered, and then when the residents have a claim, Choice Home Warranty tries to find any reason they can to deny the claim. Check out this link:

http://www.complaintsboard.com/bycompany/choice-home-warranty-a96136.html

---

**From:** Dolores Bennett
**Sent:** Thursday, July 15, 2010 7:42 AM
**To:** Ben Gillard; Dave Erickson; Lara Pellegrini; Kristy Scott; Felecia Tuin
**Cc:** David Hall
**Subject:** RE: Choice Home Warranty

RE: CHW GROUP, INC., DBA CHOICE HOME WARRANTY
Ben:
David Hall in our Legal department has been working on that case, so please consult with him. David sent me emails in February mentioning this company and asking how companies get registered. Then on February 17, 2010 David Hall and I received the following message from Art Chartrand [artchartrand@me.com]:

***The attached is being Fed X'd today to your attention in original: The completed signed registration, the list of officers and copy of certificate of incorporation.***
***Choice is working earnestly on obtaining a bond and completing the affidavit on the reserves for Nevada business and hopes to have completed soon.***
***As I advised, the obtaining of a bond for smaller companies can be problematic. We will keep you advised.***
***We appreciate your willingness to work with Choice as it continues to serve the best interests of its Nevada customers.***

I never received the Fed Ex or the application fees or proof of financial responsibility, so they are still not a registered service contract provider in Nevada. I believe it might have been directed to Mr. Hall. Please ask him. Let me know if you would like a copy of the application that he emailed along with the above message. It has their FEIN # 27-0255041 and states that they are incorporated in New Jersey. I don't believe we have received any registration fees for this company.

Dolores Bennett, ARC, ARM, AIS
State of Nevada
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, Nevada 89701
(775) 687-4270 x 250
dbennett@doi.state.nv.us

---

**From:** Ben Gillard
**Sent:** Wednesday, July 14, 2010 4:34 PM
**To:** Dave Erickson; Lara Pellegrini; Kristy Scott; Dolores Bennett; Felecia Tuin
**Subject:** FW: Choice Home Warranty

Does anyone have anything on "Choice Home Warranty"?

---

**From:** Singer, Alan (OIC) [mailto:AlanS@OIC.WA.GOV]
**Sent:** Wednesday, July 14, 2010 3:46 PM
**To:** Ben Gillard
**Subject:** Choice Home Warranty

Hi Ben,

I learned that Elizabeth Saenz left the agency – sorry to hear that, I enjoyed working with her!

I am writing to ask your help. We received a Choice Home Warranty complaint and I wanted to ask if you would please check and see if your state has taken any action or issued any order or had any complaint about Choice Home Warranty. If there was only a complaint and no regulatory order or other action taken, I want to learn the disposition.

I appreciate your help.

Thanks,

Alan

Alan Michael Singer
Staff Attorney
Legal Affairs
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255
360-725-7046
360-586-0152 Fax

# Exhibit MM

# Exhibit MM

NO – all

Dolores Bennett

From: Dolores Bennett
Sent: Monday, July 11, 2011 8:06 AM
To: Dolores Bennett
Subject: FW: Sensible Home Warranty, LLC (Org. ID # 113841)

For file.

Dolores Bennett, ARC, ARM, AIS, AINS
Insurance Examiner
Property & Casualty Section
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706
direct: (775) 687-0763
main: (775) 687-0700
fax: (775) 687-0787
dbennett@doi.state.nv.us

Visit us online at the Service Contracts Section for service contract provider requirements, filing information, and more.

From: Ted Bader
Sent: Monday, July 11, 2011 8:06 AM
To: Dolores Bennett
Cc: David Hall; Ted Bader
Subject: RE: Sensible Home Warranty, LLC (Org. ID # 113841)

Thank you. David and I discussed this before he responded to you and I concur with his appraisal. Should you discover any further nexus between the two entities, please advise us.

Ted L. Bader, CFE, Senior Investigator
Enforcement Unit, Nevada Division of Insurance
1818 East College Parkway
Carson City, NV 89706
tbader@doi.state.nv.us
(775) 687-0711; FAX: (775) 687-0787

If you hold a cat by the tail you learn things you cannot learn any other way.
Mark Twain

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From: Dolores Bennett
Sent: Monday, July 11, 2011 7:35 AM
To: Ted Bader
Cc: Dolores Bennett
Subject: FW: Sensible Home Warranty, LLC (Org. ID # 113841)

FYI

Please note our new address and phone number:

Dolores Bennett, ARC, ARM, AIS, AINS
Insurance Examiner
Property & Casualty Section
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706
direct: (775) 687-0763
main: (775) 687-0700
fax: (775) 687-0787
dbennett@doi.state.nv.us

Visit us online at the Service Contracts Section for service contract provider requirements, filing information, and more.

**From:** David Hall
**Sent:** Friday, July 08, 2011 9:16 AM
**To:** Dolores Bennett
**Subject:** RE: Sensible Home Warranty, LLC (Org. ID # 113841)

We are in the process of filing a complaint against Choice Home Warranty. The connection with Sensible is difficult to prove, so we are going to hold off on following that up unless it becomes an issue.

*David R. Hall*
Insurance Counsel
Department of Business and Industry
Division of Insurance
1818 College Pkwy., Suite 103
Carson City, NV 89706
Phone: (775) 687-0708
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**From:** Dolores Bennett
**Sent:** Friday, July 01, 2011 10:51 AM
**To:** Ted Bader
**Cc:** David Hall; Ben Gillard
**Subject:** Sensible Home Warranty, LLC (Org. ID # 113841)

Re: Sensible Home Warranty, LLC (Org. ID # 113841)
Ted:
Amy Parks wanted me to follow up with you or David Hall to make sure there's no problem with Sensible Home Warranty, LLC in relation to CHW Group Inc., dba Choice Home Warranty. You had a copy of records from New Jersey that established a relation between the two. Have you spoken to David Hall about this situation? Choice Home Warranty is not registered with us.

Please note our new address and phone number:

Dolores Bennett, ARC, AK. , AIS, AINS
Insurance Examiner
Property & Casualty Section
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706
direct: (775) 687-0763
main: (775) 687-0700
fax: (775) 687-0787
dbennett@doi.state.nv.us

Visit us online at the Service Contracts Section for service contract provider requirements, filing information, and more.

## CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF THE COMMISSIONER,** in **CAUSE NO. 18.0095,** via electronic mail, and by mailing a true and correct copy thereof via Certified Mail, return receipt requested, properly addressed with postage prepaid, to the following:

Kirk B. Lenhard, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
E-MAIL: klenhard@bhfs.com
CERTIFIED MAIL NO. 7017 3380 0000 0598 4544

Travis F. Chance, Esq.
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*Attorneys for Respondent Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

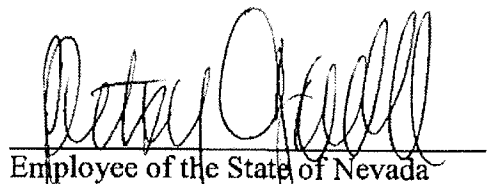
and a copy of the foregoing was sent via electronic mail and by Inter-departmental mail to the following:

Richard Yien, Deputy Attorney General
Nevada Attorney General's Office
E-MAIL: ryien@ag.nv.gov

Joanna Grigoriev, Senior Deputy Attorney General
Nevada Attorney General's Office
E-MAIL: jgrigoriev@ag.nv.gov

*Attorneys for the Division of Insurance*

DATED this 2nd day of January, 2019.



Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

# EXHIBIT 7

Constance L. Akridge, Esq.
Nevada Bar No. 3353
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
Brittany L. Walker, Esq.
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blwalker@hollandhart.com

*Attorneys for Petitioners*

REC'D & FILED
2019 APR 24 AM 9:58
AUBREY ROWLATT
CLERK
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DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

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| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>vs.<br><br>NEVADA COMMISSIONER OF INSURANCE BARBARA D. RICHARDSON and THE STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY – DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondents. | Case No. : 19 OC 00015 1B<br>Dept. No.: I<br><br>**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING MOTION FOR STAY OF FINAL ADMINISTRATIVE DECISION PURSUANT TO NRS 233B.140** |

This matter came before this Court on March 28, 2019 at 9:00 a.m. on Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY's ("HWAN") Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (the "Motion"), filed January 23, 2019.[1] Constance L. Akridge, Esq. and Sydney R. Gambee, Esq. of Holland & Hart LLP appeared on behalf of HWAN. Richard Yien, Esq., Deputy Attorney General, appeared on behalf of Respondents the NEVADA COMMISSIONER OF INSURANCE BARBARA D. RICHARDSON (the "Commissioner") and STATE OF NEVADA

[1] HWAN filed an Errata to the Motion on January 24, 2019.



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DEPARTMENT OF BUSINESS AND INDUSTRY – DIVISION OF INSURANCE (the "Division," collectively, "Respondents"). This Court entered its Order Granting a Temporary Stay and Re: Time to File Opposition to Motion for Stay on January 24, 2019. Respondents filed an Opposition to the Motion on February 8, 2019. HWAN filed its Reply on February 15, 2019.

The Court having considered the pleadings and documentary evidence submitted by the parties and the arguments of counsel, and finding that HWAN has demonstrated a likelihood of success on the merits and a reasonable probability that the enforcement of the Division's Order filed on January 2, 2019, in the matter of *In re Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty,* Cause No. 18.0095 (the "Decision"), will cause irreparable harm and hardship to HWAN for which compensatory damages are an inadequate remedy, this Court hereby makes the following findings of fact, conclusions of law, and orders as follows:

## FINDINGS OF FACT

### I. Likelihood of Success on the Merits.

#### A. The Decision.

1. The Decision in this matter depends upon another prior administrative order.

2. On December 18, 2017, Division Hearing Officer Alexia M. Emmermann, Esq. ("Emmermann") issued Findings of Fact, Conclusions of Law, and Order in Cause Number 17.0050 ("Emmermann Decision").[2]

3. The Emmermann Decision provides that HWAN could submit a renewal application for its certificate of registration ("COR") as a service contract provider within 30 days of the Emmermann Decision.

4. The Emmermann Decision required the Division to issue its determination on the application no later than 15 business days after receipt of the complete application.

5. HWAN submitted a renewal application for its COR within 30 days of the Emmermann Decision.

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[2] HWAN is currently also challenging the Emmermann Decision in First Judicial District Court Case No. 17 OC 00269 1B via Petition for Judicial Review (the "Emmermann PJR Case").



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6. On February 1, 2018, the Division issued a letter to HWAN denying the renewal application (the "Denial Letter").

7. On March 12, 2018, the Division requested a hearing to "effectuate the Denial of the Application for a Renewal of Service Contract Provider Application Submitted on January 11, 2018" pursuant to NRS 679B.310.

8. On March 13, 2018, the Insurance Commissioner issued the notice of hearing and appointed herself as the presiding Hearing Officer.

9. On October 23 and 24, 2018, a hearing to "effectuate the denial" of HWAN's renewal application was held.

10. On January 2, 2019, the Division entered the Decision, which purports to effectuate the denial of HWAN's renewal application for a COR as a service contract provider in Nevada.

11. The Decision upholds the denial of HWAN's renewal application for its COR on the following grounds: [3]

a. HWAN violated the Emmermann Decision by failing to pay the required fines;

b. CHW was required to hold a certificate of registration and HWAN was in continual violation of NRS 690C.150 by using CHW as its administrator to sell service contracts without a certificate of registration.

12. HWAN has demonstrated a likelihood of success on the merits because the Decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record and arbitrary or capricious or characterized by abuse of discretion.

**B. First Ground for Nonrenewal: Nonpayment of Fines.**

13. The Hearing Officer concluded that HWAN violated the Emmermann Decision by failing to pay fines imposed by the Emmermann Decision.

[3] The Division also stated as a basis for the denial that HWAN filed an incomplete renewal application and was unsuitable based upon the Emmermann Decision's cited violations; however the Hearing Officer found that there was insufficient evidence to support these grounds for denial and did not uphold the denial of HWAN's renewal application on those grounds.



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14. The Emmermann Decision imposed fines against HWAN in the total amount of $1,224,950.00 (the "Fines").

15. The Fines were due no later than 30 days from the date of the Emmermann Decision, which was January 17, 2018.

16. On January 16, 2018, HWAN filed a motion for stay of the Emmermann Decision in the Emmermann PJR Case.

17. On February 14, 2018, the Court entered its Order Denying Motion for Stay in the Emmermann PJR Case, which denied the requested stay because the motion for stay was not filed at the time of the petition for judicial review in that matter in accordance with NRS 233B.140.

18. Upon entry of the Order Denying Motion for Stay in the Emmermann PJR Case, HWAN and the Division, through counsel, immediately began negotiating payment of the Fines.

19. HWAN and the Division agreed that the total amount of the Fines would be interpleaded into the Court Clerk's Trust Fund until a final decision is issued by the Court in the Emmermann PJR Case.

20. On March 9, 2018, the Division approved and signed a Stipulation and Order for Interpleading of Fines Pending Final Decision in the Emmermann PJR Case. HWAN approved and signed the same on March 12, 2018. The Court approved and entered the same on March 15, 2018.

21. HWAN, justifiably relying upon the Division's representation that it agreed to the interpleader, interpleaded $1,224,950.00 into the Court Clerk's Trust Fund and that amount remains with the Court at present.

**C. Second Ground for Nonrenewal: Failure to Register Third-Party Administrator**

22. The Hearing Officer concluded that HWAN conducted business in an unsuitable manner and that HWAN violated NRS 690C.150 because HWAN used and continued to use CHW as its service contract administrator and sales agent when CHW did not have certificate of registration.



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23. The Division's internal checklist for reviewing Service Contract applications and renewals states that "[t]hird party administrators are not required to be registered for service contracts."

24. The Decision applies the requirement that CHW Group, Inc. ("CHW") must be registered pursuant to NRS 683A.08524 to administer *service contracts* issued by HWAN-- a service contract provider under NRS Chapter 690.

25. On this basis, the Decision concludes that despite the Division's internal checklist, HWAN was "in violation of NRS 690C.150 by continuing to allow CHW as its administrator to sell service contracts without a certificate of registration."

26. CHW issues, offers for sale, and sells only service contracts under which HWAN, as the registered service contract provider, is the obligor.

27. CHW does not issue, offer for sale, or sell service contracts under which CHW is obligor.

## II. Irreparable Harm, the Balance of the Hardships and the Public Interest.

28. Denial of the stay would result in hardship to HWAN.

29. The Division's purported denial of HWAN's certificate of registration in the Decision will certainly result in confusion among HWAN's customer base, damage to HWAN's goodwill and reputation, and may even prevent HWAN from continuing to acquire new service contracts or to service its existing contracts.

30. For instance, if HWAN's potential customers mistakenly believe that the Division's action in denying HWAN's renewal application was based upon a valid, well-reasoned application of Nevada law (which it is not as set for herein), HWAN may be effectively denied the ability to operate its business and sell new service contracts.

31. In addition, if vendors of HWAN believe that HWAN is uncertificated, HWAN may be unable to retain vendors to provide repair and other services under its existing contracts.

32. This would leave HWAN unable to service its existing customers' contracts.

33. Thus, not only is HWAN irreparably injured by the denial of a stay, but HWAN's customers may be injured by the denial of a stay.



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34. Further, HWAN is currently operating, so there is no hardship to the Division.

35. The public is also protected by the financial security from HWAN currently held by the Division pursuant to NRS 690C.170(1)(b).

36. Any of the foregoing Findings of Fact that constitute Conclusions of Law shall be deemed Conclusions of Law.

## CONCLUSIONS OF LAW

1. Upon filing a petition for judicial review, a party aggrieved by a final administrative decision may also file a motion to stay the decision. NRS 233B.140(1).

2. In determining whether to grant or deny a stay, this Court is to consider the same factors as those for a preliminary injunction under NRCP 65. NRS 233B.140(2).

3. The relevant factors for consideration are: (1) the likelihood of the moving party's success on the merits of its petition; (2) the threat of irreparable harm; (3) the relative interests of the parties; and (4) any public interest considerations. *See Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); *IT Corp. v. Cnty. of Imperial*, 672 P.2d 121, 127-28 (Cal. 1983).

4. The Court shall give deference to the administrative agency when determining whether to grant or deny a stay and consider the risk to the public, if any, of staying the administrative decision. NRS 233B.140(3)(a).

### I. HWAN Has Demonstrated a Likelihood of Success on the Merits

5. To demonstrate a likelihood of success on the merits, HWAN must demonstrate that it is likely to succeed on its underlying Petition for Judicial Review.

6. The standard of review for a petition for judicial review of an administrative agency decision is as follows:

> The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
>
> (a) In violation of constitutional or statutory provisions;
> (b) In excess of the statutory authority of the agency;





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> (c) Made upon unlawful procedure;
> (d) Affected by other error of law;
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) Arbitrary or capricious or characterized by abuse of discretion.

NRS 233B.135(3).

7. "A decision that lacks support in the form of substantial evidence is arbitrary or capricious, and thus an abuse of discretion that warrants reversal." *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994).

8. Additionally, "[a] decision of an administrative agency 'must be set aside . . . if the action failed to meet statutory, procedural, or constitutional requirements.'" *Nevada Land Action Ass'n v. U.S. Forest Serv.*, 8 F.3d 713, 716 (9th Cir. 1993).

9. Substantial evidence is defined as "evidence which a reasonable mind might accept as adequate to support a conclusion." NRS 233B.135(3)(c).

10. In general, judicial review of an agency's factual determinations is limited to "whether substantial evidence supports" them. *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 251, 327 P.3d 487, 491 (2014) (citing and interpreting NRS 233B.135).

11. However, where the issue on review is one of law and, specifically, one of statutory interpretation, "independent appellate review of an administrative ruling, rather than a more deferential standard of review, is appropriate." *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 329, 849 P.2d 267, 269 (1993).

12. A reviewing court should only defer to an administrative agency's interpretation of its governing statutes where that interpretation is within the clear and unambiguous language of the statutes at issue. *See Dutchess,* 124 Nev. at 709, 191 P.3d at 1165.

13. When interpreting a statute, a court must first determine whether the statute is ambiguous. *See Maxwell*, 109 Nev. at 330, 849 P.2d at 269-270.

14. Where a statute's language is plain and unambiguous, a court may not "add to or alter [the language] to accomplish a purpose not on the face of the statute." *Id.* (internal citations omitted alteration in original).

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**A. The First Ground for Nonrenewal Fails Because HWAN Paid the Fines.**

15. The Commissioner may refuse to renew a provider's certificate of registration if the Commissioner finds after a hearing thereon that the provider has violated or failed to comply with any lawful order of the Commissioner. NRS 690C.325(1)(a).

16. "[E]quitable estoppel operates to prevent the assertion of legal rights that in equity and good conscience should be unavailable because of a party's conduct." *United Brotherhood v. Dahnke*, 102 Nev. 20, 22, 714 P.2d 177, 178-79 (1986).

17. It requires an element of justifiable reliance by the party invoking the doctrine. *Merrill v. DeMott*, 113 Nev. 1390, 1396, 951 P.2d 1040, 1043 (1997).

18. Moreover, Nevada courts have applied estoppel against state agencies where specific representations were made and were detrimentally relied upon. *See, e.g., Southern Nev. Mem. Hospital v. State*, 101 Nev. 387, 705 P.2d 139 (1985).

19. HWAN did not pay the Fines to the Division within the 30-day period of the Decision.

20. However, HWAN filed its Motion for Stay in the Emmermann PJR Case prior to the deadline for paying the Fines to the Division. When that stay was denied, the parties immediately began negotiating payment of the Fines.

21. The Division and HWAN agreed to allow HWAN to interplead the Fines into the Court Clerk's Trust Fund in the Emmermann PJR Case.

22. HWAN justifiably relied upon the Division's representation that it stipulated and agreed to the interpleader of the Fines.

23. In March 2018, HWAN interpleaded the Fines into the Court Clerk's Trust Fund consistent with the parties' agreement and stipulation.

24. Because the Fines were paid by HWAN, albeit to the Court, HWAN's failure to pay the Fines to the Division cannot be a valid ground for denial of HWAN's renewal application.

25. Therefore, HWAN has demonstrated a likelihood of success on the merits of its underlying Petition for Judicial Review on this ground.

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**B. The Second Ground for Nonrenewal Fails Because CHW Is Not Required to Be Registered.**

26. The Commissioner may refuse to renew a provider's certificate of registration if the Commissioner finds after a hearing thereon that the provider has conducted business in an unsuitable manner or violated any provision of NRS Chapter 690C. NRS 690C.325(1)(b) & (d).

27. "A provider shall not issue, sell, or offer for sale service contracts in this state unless the provider has been issued a certificate of registration." NRS 690C.150.

28. The term "provider" for purposes of NRS 690C.150 means "a person who is obligated to a holder pursuant to the terms of a service contract." NRS 690C.070.

29. The term "administrator" for purposes of NRS Chapter 690C means "a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider." NRS 690C.010.

30. NRS 690C.150, NRS 690C.070 and NRS 690C.010 are clear and unambiguous.

31. CHW has not issued, sold, or offered for sale service contracts under which it is obligated as provider, so it is not required to be registered as a service contract provider.

32. CHW has only issued, sold, or offered for sale service contracts under which HWAN is obligated as provider, as HWAN's service contract administrator.

33. No applicable law requires a service contract administrator to be registered.

34. The Hearing Officer erroneously states that service contract administrators are required to be licensed by NRS 683A.085.

35. NRS 683A.085 is not applicable to service contract administrators pursuant to NRS 690C.120.

36. NRS 683A.085 is applicable to administrators as defined in NRS 683A.025 and requires administrators as defined in NRS 683A.025 to obtain a certificate of registration pursuant to NRS 683A.08524.

37. The term "administrator" as defined in NRS 683A.025 does not include service contract administrators or the conduct of CHW at issue here.

38. NRS 683A.085 and NRS 683A.025 are clear and unambiguous.



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39. Because CHW is not required by applicable law to be registered as a service contract administrator, HWAN's use of an "unregistered" administrator cannot be a valid ground for denial of HWAN's renewal application.

40. Therefore, HWAN has demonstrated a likelihood of success on the merits of its underlying Petition for Judicial Review on this ground.

## II. Denial of the Stay Would Result in Irreparable Harm to HWAN, and the Balance of the Hardships and Public Interest Weigh in Favor of a Stay.

41. Nevada precedent establishes that acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits may cause an irreparable injury. *Sobol v. Capital Mgmt.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986).

42. "Equity will . . . restrain tortious acts where it is essential to preserve a business or property interests . . . . The right to carry on a lawful business without obstruction is a property right, and acts . . . which interfere with the carrying on of plaintiff's business or destroy its custom, its credit or its profits, do an irreparable injury and thus authorize the issuance of an injunction." *Guion v. Terra Marketing of Nev., Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974).

43. "A licensee whose license has been revoked or suspended immediately suffers the irreparable penalty of loss of [license] for which there is no practical compensation." *State, Dept. of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Services, Inc.*, 128 Nev. 362, 370, 294 P.3d 1223, 1228 (2012) (quoting *Com. v. Yameen*, 401 Mass. 331, 516 N.E.2d 1149, 1151 (1987)).

44. Irreparable harm exists when an entity is unable to continue conducting its business and is "threatened with the prospect of losing its license to conduct business." *Id.*

45. When a person or administrative body interferes with the operation of a "legitimate business by creating confusion, infringing on goodwill, and damaging reputation," irreparable harm may result. *Sobol*, 102 Nev. at 446, 726 P.2d at 337.

46. The Hearing Officer's purported denial of HWAN's certificate of registration in



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the Decision will result in confusion among HWAN's customer base, damage to HWAN's goodwill and reputation, and may even prevent HWAN from continuing to acquire new service contracts or to service its existing contracts, thereby unreasonably interfering with its business and profits.

47. Further, HWAN is currently operating, so there is no hardship to the Division.

48. The public is also protected by the financial security from HWAN currently held by the Division pursuant to NRS 690C.170(1)(b).

49. The Division has offered no evidence that the public will be harmed by the grant of a stay.

50. Any of the foregoing Conclusions of Law that constitute Findings of Fact shall be deemed Findings of Fact.

**ACCORDINGLY, IT IS HEREBY ORDERED** that HWAN's Motion is hereby GRANTED. The decision rendered by the Administrative Hearing Officer on January 2, 2019 is STAYED pending final decision on HWAN's Petition for Judicial Review.

**IT IS SO ORDERED.**

DATED this 29th day of April, 2019.

JAMES T. RUSSELL
DISTRICT JUDGE

Respectfully submitted by:

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Sydney R. Gambee, Esq.
Brittany L. Walker, Esq.
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*Attorneys for Petitioner*

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## CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 24th day of April, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Constance L. Akridge, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

Richard Yien
Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701

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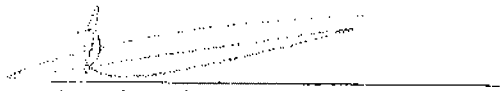

Angela Jeffries
Judicial Assistant, Dept. 1

# EXHIBIT 8

## Sydney R. Gambee

**From:** Susan L. Messina <SMessina@ag.nv.gov>
**Sent:** Wednesday, November 27, 2019 11:59 AM
**To:** Connie Akridge; Sydney R. Gambee
**Cc:** Richard P. Yien; Joanna N. Grigoriev
**Subject:** HWAN v. State of Nevada, Case No. 17-OC-00269-1B
**Attachments:** Respondent's Opposition to Petitioners Motion for Leave of Court for Limited Resonsideration of Courts Findings on HWAN's PJR.pdf; 20191127_NOTICE OF ENTRY OF ORDER Affirming In Part and Modifying In Part, FOF, COL, Order of the Hearing Officer and Final Order.pdf

Good Morning,

Attached please find the following:

1. Respondent's Opposition to Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN'S Petition for Judicial Review;
2. Notice of Entry of Order Affirming In Part and Modifying in Part, Findings of Fact, conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner
   In Cause No. 17.0050 In the Matter of Home Warranty Administrator of Nevada, Inc. DBA Choice Home Warranty.

A hard copy has been placed in today's mail to each of you.

Thank you,

Susan Messina
Legal Secretary II
Business and Taxation
Office of the Attorney General
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Carson City, NV 89701
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# EXHIBIT 9

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*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

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BY C. COOPER
DEPUTY

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**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

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| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17 OC 00269 1B<br>Dept. No. I<br><br>**MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** |

Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby moves this Court for a Stay pursuant NRCP 62(D) of the Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.[1] This

[1] The notice of entry was apparently served on November 26, 2019 and filed on November 27, 2019.

Motion is made and based upon the following memorandum of points and authorities, the pleadings and papers on file herein, and any oral argument this Court may consider.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. Factual and Procedural Background

On November 25, 2019, the Court entered the Order, which ordered as follows:

> 1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050 are hereby AFFIRMED in part, and MODIFIED in part as follows:
>
> > a. The Hearing Officer's finding of six (6) violations by the Petitioner of NRS 686A.070 for making false entries of material fact in record or statement is supported by substantial evidence and is hereby AFFIRMED.
> >
> > The total fine of $30,000, at $5,000 per violation, as allowed under NRS 686A.183(1)(a), is AFFIRMED.
> >
> > b. The Hearing Officer's finding of one violation by the Petitioner of NRS 690C.320(2) for failure to make its records available to the Commissioner upon request is supported by substantial evidence and is hereby AFFIRMED.
> >
> > The fine of $500, as authorized pursuant to NRS 6900.825(1) is AFFIRMED,
> >
> > c. The Hearing Officer's finding of 23,889 instances of conducting business in an unsuitable manner, in violation of NRS 690C.825(1)(b) and NRS 679B.125(2), by allowing an unregistered entity to issue, sell and offer for sale service contracts in Nevada is hereby AFFIRMED. The Court finds that NRS 6900.150 requires anyone, including a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the NRS.
> >
> > The fine of $50 for each of the 23,889 violations, is AFFIRMED; however, the Court finds that the aggregate cap of $10,000 for violations of a similar nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES the fine of $1,194,450 to be capped at $10,000 total.
>
> 2. Petitioner interpleaded $1,224,950 with the County Clerk's Trust Fund pending final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018. The Clerk of the Court will distribute the total fine of $40,500 from Petitioner's interpleaded funds to the Respondent, and refund the remaining balance to Petitioner.

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...

> 5. The Court further orders that contingent upon Petitioner's compliance with NRS 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of Registration be reinstated. In particular, Petitioner is prohibited from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order.

As noted in the Order, pursuant to the Stipulation and Order for Interpleading of Fines Pending Final Decision filed herein on March 15, 2018 ("Stipulation"), the parties agreed "to have the fines imposed by the Decision interpleaded into this Court Clerk's Trust Fund until a final decision is issued by this Court on Petitioner's Petition for Judicial Review." The Order directed the Clerk of the Court to "distribute the total fine of $40,500 from Petitioner's interpleaded funds to the Respondent and refund the remaining balance to Petitioner." HWAN is informed that the Clerk of the Court complied with the Order and the Respondent has the $40,500 from HWAN's interpleaded funds, which represents the amount HWAN was required to pay in fines to Respondent under the Order.

## II. Argument

### A. A Stay is Warranted Under NRCP 62(d)[2]

NRCP 62(d) governs stays pending appeal and provides:

> (d) Stay Upon Appeal.
> (1) By Supersedeas Bond. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.
> (2) By Other Bond or Security. If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

[2] *See also* NRAP 8(a)(1)(b) (requiring a party to move first in the district court for approval of a stay.)



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NRCP 62(d) "allows an appellant to obtain a stay pending appeal ***as of right*** upon the posting of a supersedeas bond for the full judgment amount." *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 134 Nev. 174, 175, 415 P.3d 16, 17 (2018) (citing *Pub. Serv. Comm'n* and acknowledging that a district court order granting a petition for judicial review is entitled to a stay as of right; however, a separate motion for stay must be filed); *see also Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 n.4 (2005), as modified (Jan. 25, 2006) (emphasis added) (overruling *Pub. Serv. Comm'n v. First Judicial Dist. Court*, 94 Nev. 42, 574 P.2d 272 (1978) to the extent it held that the stay is permissive). "However, a supersedeas bond should not be the judgment debtor's sole remedy, particularly where other appropriate, reliable alternatives exist." Under *Nelson*, a district court must consider five factors to determine whether a supersedeas bond may be waived and alternate security provided instead:

> (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

*Id.* at 836, 122 P.3d at 1254.

Here, the Order directed the Clerk of the Court to "distribute the total fine of $40,500 from Petitioner's interpleaded funds to the Respondent and refund the remaining balance to Petitioner." HWAN is informed that the Clerk of the Court complied with the Order and Respondent has the $40,500 from HWAN's interpleaded funds. Notwithstanding, HWAN seeks a stay of the entire Order, including all declaratory findings, conclusions, and orders. However, with the $40,500 in monetary fines having already been released from HWAN's interpleaded funds to Respondent, there is no need for a supersedeas bond or alternate security. The Division is in possession of the full amount of the judgment; thus, the *Nelson* factors for waiver of the supersedeas bond are satisfied:[3]

[3] Factor 5 is not applicable.



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> (1) there are no collection complexities because judgment amount is already collected, i.e., in the possession of Respondent,
>
> (2) there is no need to obtain the judgment if it is affirmed on appeal because it is already in the possession of Respondent,
>
> (3) the district court has full confidence that there are funds to pay the judgment as they are already in possession of Respondent and
>
> (4) HWAN's ability to pay the judgment is so plain there is no need for the bond because the amount is already in the possession of Respondent.

Therefore, adequate security having already been provided "to protect the judgment creditor's[, here, Respondent's,] ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay," a supersedeas bond is not necessary. *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005), as modified (Jan. 25, 2006). Accordingly, this Court should waive the supersedeas bond or, alternatively, require a nominal bond of $100 to be posted, or another appropriate amount as determined by this Court.

Notably, HWAN is in no way waiving its entitlement "to obtain a stay pending appeal as of right" with the posting of a full supersedeas bond. *Nelson*, 121 Nev. at 834, 122 P.3d at 1253. However, HWAN's inability to post the full supersedeas bond was created by this Court's Order directing immediate release of the very funds that should have been used to post the bond (HWAN's interpleaded funds). Because Respondent already has the $40,500 that would have been posted as supersedeas bond, any additional bond is entirely superfluous. Hence HWAN's request to post a nominal bond as security for the stay.

### B. A Stay of Declaratory Relief Is Warranted Even Without Need for a Stay of a Monetary Judgment

NRCP 62(d) plainly applies to a stay of a district court order on a petition for judicial review, even where the district court order merely orders declaratory relief and does not order payment of a monetary judgment. *See Pub. Serv. Comm'n v. First Judicial Dist. Court*, 94 Nev. 42, 574 P.2d 272 (1978), *abrogated on other grounds by Nelson*, 121 Nev. at 832, 122 P.3d at 1252 (1978). In *Public Service Commission*, the Public Service Commission of Nevada appealed a district court's order granting petitioner Southwest Gas Corporation's petition for judicial



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review of the Commission's administrative decision to deny a rate increase application from Southwest Gas Corporation. *Id.* at 43, 574 P.2d at 273. Thus, the district court required the Commission to approve the rate increase application, and no monetary judgment was imposed. *Id.* After the Commission filed its notice of appeal, the district court found the Commission in contempt for failure to approve the application and ordered it to grant the rate increase or be punished in contempt. *Id.* The Commission took the position that the district court's order was automatically stayed, arguing that its notice of appeal operated as an automatic stay under NRCP 62(d) because the Commission, a government agency, was exempt from the bond requirement under NRCP 62(e). *Id.* at 43-44, 574 P.2d at 273. While the court ultimately held that the agency was entitled to a stay without bond but was nonetheless required to file a separate and distinct application for a stay, in so doing, the court implicitly recognized that a stay is available under NRCP 62(d) of a district court's order on a petition for judicial review, even where the district court's order concerned only declaratory relief, i.e., directing the party to approve an application, rather than ordering payment of a monetary judgment. *Id.* at 42, 574 P.2d at 272. Moreover, federal case law has consistently recognized that supersedeas bonds are not limited to money judgments, and are available mechanisms to stay non-monetary judgments. *See J. Perez & Cia., Inc. v. United States*, 578 F. Supp. 1318 (D.P.R.), aff'd, 747 F.2d 813 (1st Cir. 1984) (noting that "a supersedeas bond is not confined to money judgments from which a writ of execution can issue but is also employed to stay a nonmoney judgment on appeal."); *Hebert v. Exxon Corp.*, 953 F.2d 936 (5th Cir. 1992) (holding that under FRCP 62(d) "[d]efendant was entitled to automatic stay upon posting of supersedeas bond, even though underlying action was for declaratory judgment, where such judgment bound defendant to pay specific sum of money."); *see also Nelson*, 121 Nev. at 834, 122 P.3d at 1253 (looking to federal decisions involving FRCP 62(d) to provide persuasive authority to examine NRCP 62(d)).

Here, now that Respondent is already in possession of its monetary judgment affirmed by the district court's order ($40,500), HWAN desires a stay on the remaining declaratory relief in the district court's order, including the finding that "NRS 690C.150 requires anyone, including a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in

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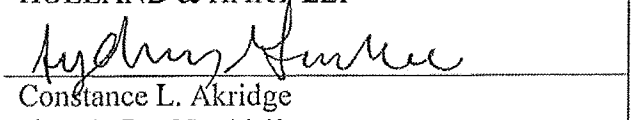
Nevada, to possess a certificate of registration under Chapter 690C of the NRS" and the finding that HWAN "is prohibited from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C." Because Respondent already has the full $40,500 monetary judgment, and because the stay would simply retain the status quo, that is, allowing HWAN to continue doing business in the state and utilize its administrator and third-party sales agent to sell service contracts on its behalf, this Court should waive the full amount of a supersedeas bond or require a nominal bond of $100 to be posted (or other appropriate amount as determined by the Court).[4]

## III. Conclusion

On December 6, 2019, HWAN filed its Notice of Appeal attached hereto as **Exhibit 1**. Accordingly, HWAN respectfully requests this Court grant this Motion and issue a stay of the Order effective immediately or upon HWAN posting a nominal bond in the amount of $100 (or other appropriate amount as determined by the Court). The proposed order is attached as **Exhibit 2**.

DATED this 6th day of December, 2019.

HOLLAND & HART LLP



Constance L. Akridge
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Sydney R. Gambee
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*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

[4] Further, the public and Respondent are adequately protected by HWAN's compliance with the financial security requirements in NRS 690C.170. HWAN provides financial security each year for the full amount under NRS 690C.170 based on the service contracts sold by its third-party sales agent on behalf of HWAN, under which HWAN is the sole obligor. Indeed, $780,131.00 has been submitted to the Division (or to the Court) as security, and $3,258,131.07 is being held in HWAN's segregated reserve account. Thus, there is $4,038,262.07 being held as financial security.



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## CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2019, a true and correct copy of the foregoing **MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** was served by the following method(s):

☑ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
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100 N. Carson St.
Carson City, Nevada 89701
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*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

Joanna Grigoriev
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*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

☑ Email: by electronically delivering a copy via email to the following e-mail address:

jgrigoriev@ag.nv.gov
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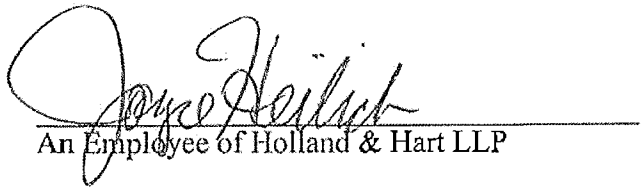

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clakridge@hollandhart.com
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*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

REC'D & FILED
2019 DEC -6 PM 4:38
AUDREY ROMLATT
CLERK
BY _____ DEPUTY
C. COCHER

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17 OC 00269 1B<br>Dept. No. I<br><br>**NOTICE OF APPEAL** |

Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby files its Notice of Appeal of the First Judicial District Court Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.[1] The Order affirmed in part and modified in part the State of Nevada Department of Business and Industry –

[1] **Exhibit 1.** The Notice of Entry was served on November 26, 2019 and filed on November 27, 2019.



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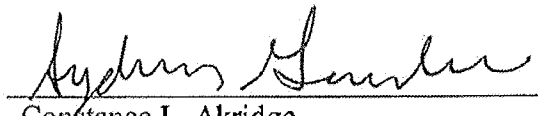
Division of Insurance Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of Commissioner (the "Final Decision") filed on December 18, 2017.[2] NRS 233B.150 states that "[a]n aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be taken as in other civil cases." Notice is hereby given that HWAN, Petitioner above named, appeals to the Supreme Court of Nevada from the Order.

DATED this 6th day of December, 2019.

HOLLAND & HART LLP



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*Attorneys for Home Warranty Administrator of Nevada, Inc.*
*dba Choice Home Warranty*

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LAS VEGAS, NV 89134

[2] **Exhibit 2.**

## CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2019, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served by the following method(s):

☑ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
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Office of Attorney General
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*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

Joanna Grigoriev
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*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

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## INDEX OF EXHIBITS


| | | |
|---|---|---|
| EXHIBIT 1 | Order and Notice of Entry | Pages 1 - 10 |
| EXHIBIT 2 | Findings of Fact, Conclusions of Law, Order of Hearing Officer and Final Order of Commissioner | Pages 11 - 40 |



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# EXHIBIT 1

**Order and Notice of Entry**

EXHIBIT 1

Order and Notice of Entry

AARON D. FORD
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RICHARD PAILI YIEN, Bar No. 13035
Deputy Attorney General
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Business and Taxation Division
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*Attorney for the Division of Insurance*

REC'D & FILED
2019 NOV 27 AM 10: 43
AUBREY ROWLATT
CLERK
BY P. O'KEEFE
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR CARSON CITY

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., DBA CHOICE HOME WARRANTY, a Nevada Corporation<br><br>Petitioner,<br><br>vs.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17-OC-00269-1B<br><br>Dept. No. I |

## NOTICE OF ENTRY OF ORDER

Please take notice that the ORDER AFFIRMING IN PART, AND MODIFYING IN PART, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN THE MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA CHOICE HOME WARRANTY was signed by Judge James T. Russell on November 25, 2019, a conformed copy of which is attached hereto as Exhibit 1.

DATED November 26, 2019

AARON D. FORD
Attorney General

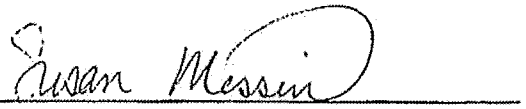
By:
RICHARD PAILI YIEN
Deputy Attorney General
*Attorney for the Division of Insurance*

## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on November 26, 2019, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada a true and correct copy of the **NOTICE OF ENTRY OF ORDER,** addressed to the following:

Constance L. Akridge, Esq.
Sydney R. Gambee, Esq.
Brittany L. Walker, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

DATED November 26, 2019



Susan Messina, An Employee of the
Office of the Attorney General

# EXHIBIT INDEX

| EXHIBIT NO. | DESCRIPTION | NO. OF PAGES (Excluding tabs) |
|---|---|---|
| 1 | Order Affirming In Part, And Modifying In Part, Findings Of Fact, Conclusions Of Law, Order Of The Hearing Officer, And Final Order Of The Commissioner In Cause No. 17.0050 In The Matter Of Home Warranty Administrator Of Nevada, Inc Dba Choice Home Warranty | 4 |

# EXHIBIT 1

EXHIBIT 1

AARON D. FORD
Attorney General
JOANNA N. GRIGORIEV
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555 E. Washington Ave. #3900
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*Attorneys for Respondent*
*Nevada Division of Insurance*

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2019 NOV 25 AM 7:47
AUDREY ROWLATT
CLERK
BY
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br>Petitioner,<br><br>vs.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondents. | Case No.: 17 OC 00269 1B<br><br>Dept. No.: 1 |

**ORDER AFFIRMING IN PART, AND MODIFYING IN PART, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN THE MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA CHOICE HOME WARRANTY**

This matter came on for hearing on November 7, 2019 on Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial Review of the Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order 17.0050"), filed by the Petitioner on December 22, 2017.

A. Standard of Review

The standard of review of an administrative decision is codified in NRS 233B.135. It provides in pertinent parts:

> . . .
>
> 2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.
>
> 3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
>
> (a) In violation of constitutional or statutory provisions;
>
> (b) In excess of the statutory authority of the agency;
>
> (c) Made upon unlawful procedure;
>
> (d) Affected by other error of law;
>
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) Arbitrary or capricious or characterized by abuse of discretion.
>
> 4. As used in this section, "substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion.

*Id.*

When an administrative decision is challenged, the role of the reviewing court is "to review the evidence presented to the [hearing officer] and ascertain whether [the hearing officer] acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State, Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). "[F]actual findings will only be overturned if they are not supported by substantial evidence, which, we have explained, is evidence that a reasonable mind could accept as adequately supporting the agency's conclusions. *Nassiri v Chiropractic Physicians' Bd.*, 130 Nev.245, 248, 327 P.3d 487, 489 (2014). (citations omitted). "We review issues pertaining to statutory construction de novo. We nonetheless defer to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." Dutchess Bus. Servs. v. State, Bd. of Pharm., 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations omitted).

The Court, having considered the pleadings, record, and other documents in the matter, the law applicable to the issues and the arguments of counsel at the hearing, and being fully advised finds as follows:

B. Findings of Fact and Conclusions of Law

1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050 are hereby AFFIRMED in part, and MODIFIED in part as follows:

a. The Hearing Officer's finding of six (6) violations by the Petitioner of NRS 686A.070 for making false entries of material fact in record or statement is supported by substantial evidence and is hereby AFFIRMED.

The total fine of $30,000, at $5,000 per violation, as allowed under NRS 686A.183(1)(a), is AFFIRMED.

b. The Hearing Officer's finding of one violation by the Petitioner of NRS 690C.320(2) for failure to make its records available to the Commissioner upon request is supported by substantial evidence and is hereby AFFIRMED.

The fine of $500, as authorized pursuant to NRS 690C.325(1) is AFFIRMED,

c. The Hearing Officer's finding of 23,889 instances of conducting business in an unsuitable manner, in violation of NRS 690C.325(1)(b) and NRS 679B.125(2), by allowing an unregistered entity to issue, sell and offer for sale service contracts in Nevada is hereby AFFIRMED. The Court finds that NRS 690C.150 requires anyone, including a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the NRS.

The fine of $50 for each of the 23,889 violations, is AFFIRMED; however, the Court finds that the aggregate cap of $10,000 for violations of a similar

nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES the fine of $1,194,450 to be capped at $10,000 total.

2. Petitioner interpleaded $1,224,950 with the County Clerk's Trust Fund pending final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018. The Clerk of the Court will distribute the total fine of $40,500 from Petitioner's interpleaded funds to the Respondent, and refund the remaining balance to Petitioner.

3. The Court finds that the doctrine of estoppel does not apply in this case. The Court finds in favor of the Respondent on this issue.

4. The Court finds that Petitioner was not denied due process. Petitioner had received sufficient notice and opportunity to prepare, and there was no unfair surprise. The Court finds in favor of the Respondent on this issue.

5. The Court further orders that contingent upon Petitioner's compliance with NRS 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of Registration be reinstated. In particular, Petitioner is prohibited from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order.

**IT IS SO ORDERED**

DATED this 25th day of November, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:

AARON D. FORD
Attorney General

By: _____
Richard P. Yien (Bar No. 13035)
Deputy Attorney General
Joanna N. Grigoriev (Bar No. 5649)
Senior Deputy Attorney General

## CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 25 day of November, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Joanna N. Grigoriev, Esq.
Senior Deputy Attorney General
555 E. Washington Ave.
Las Vegas, NV 89101

Richard P. Yien, Esq.
Deputy Attorney General
100 N. Carson Street
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Constance L. Akridge, Esq.
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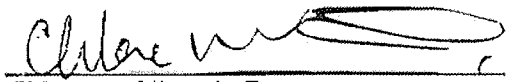

Chloe McClintick, Esq.
Law Clerk, Dept. 1

# EXHIBIT 2

**Findings of Fact, Conclusions of Law, Order of Hearing Officer and Final Order of Commissioner**


# EXHIBIT 2

**Findings of Fact, Conclusions of Law, Order of Hearing Officer and Final Order of Commissioner**

FILED
DEC 18 2017
Div. of Insurance
State of Nevada

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

| IN THE MATTER OF<br><br>**HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY,**<br><br>**Respondent.** | CAUSE NO. **17.0050** |
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## FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER[1]

This matter is before the Nevada Division of Insurance ("Division") on an Order to Show Cause issued by the Commissioner of Insurance ("Commissioner") on May 11, 2017, against Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. The Commissioner, as head of the Division, is charged with regulating the business of insurance in Nevada. NRS 232.820, -.825.2; NRS 679B.120. The Division alleges that Respondent violated various provisions of the Nevada Revised Statutes ("NRS") title 57 ("Insurance Code") and of insurance regulations found under the Nevada Administrative Code ("NAC"). A hearing was scheduled for August 1, 2017, and continued to September 12, 2017. A prehearing conference was held on September 8, 2017, at the office of the Division in Carson City. The hearing was held on September 12, 13, and 14, 2017, at the office of the Division in Carson City. At the close of the hearing, the Parties were ordered to file briefs on a legal issue due on October 30, 2017, and written closing arguments due on November 15, 2017. On November 7, 2017, Respondent filed a motion to strike portions of the Division's brief. The motion was denied, but the Parties were granted five extra pages for their written closing arguments to address any issues from the briefs, and the due date for the written closings was extended to November 17, 2017.

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[1] See NRS 679B.360.2–.3 (explaining that "the Commissioner shall make an order on hearing covering matters involved in such hearing" and enumerating what is required in the order); NRS 679B.330.1 (authorizing the Commissioner to appoint a person as a hearing officer for a hearing); and NAC 679B.411 ("The hearing officer shall file a copy of his or her order with the Division" and "[i]f

## I. FINDINGS OF FACT[2]

### A. HWAN Applications

1. CHW Group, Inc. ("CHW Group") was incorporated in the State of New Jersey in May 2009. Victor Mandalawi ("Mandalawi") and Victor Hakim ("Hakim") set up the company to provide service contracts. Both Hakim and Mandalawi are officers for CHW Group: Hakim is the chief executive officer and Mandalawi is the president. The company operates under the name "Choice Home Warranty," which is registered as a fictitious name in New Jersey. CHW Group uses the brand Choice Home Warranty, to include the website www.ChoiceHomeWarranty.com. CHW Group owns the website, through which all service contracts are sold and administered. Hakim has final say or approval on all content on the website. CHW Group's employees handle sales, marketing, claims, finance. CHW Group's sales, marketing, and finance occur at its office located at 1090 King Georges Post Road in Edison, New Jersey; CHW Group's operations, or claims handling, occurs at 2 Executive Drive in Somerset, New Jersey. CHW Group is not registered to do business in Nevada. (Ex. A; Test. Mandalawi; Test. Hakim; Test. Ramirez.)

2. Under the name Choice Home Warranty, CHW Group sold service contracts online, so sales reached consumers nationally, and consumers were purchasing the service contract in states where CHW Group was not licensed. Mandalawi and Hakim were not aware that other states required a license in order to sell this type of product. Choice Home Warranty was named in administrative actions in different states. As a result, Mandalawi created the Home Warranty Administrators name for states that require licensure. Home Warranty Administrator of Nevada, Inc. ("HWAN") was incorporated in Nevada on July 23, 2010. Mandalawi is the only employee for each of the Home Warranty Administrators companies. HWAN's address is 90 Washington Valley Road in Bedminster, New Jersey. (Test. Mandalawi.)

3. On or about July 29, 2010, Mandalawi signed a service contract provider application on

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the hearing officer is not the Commissioner, the Commissioner will indicate on the order his or her concurrence or disagreement with the order of the hearing officer").

[2] The hearing transcripts are distinguished by day, not volume number or consecutively numbered pages. Accordingly, the transcripts are distinguished in the citations as "Tr.1" for the hearing transcript

behalf of Home Warranty Administrator of Nevada, Inc., which was received by the Division on or about September 2, 2010. (Ex. 22; Ex. P.) Mandalawi is noted on the application as president of HWAN. (Ex. 22; Ex. P at 12–14; Ex. C; Test. Mandalawi.)

4. On July 29, 2010, HWAN entered into an independent service provider agreement ("Agreement") with CHW Group. Through the Agreement, CHW Group handles sales, marketing, operations (claims), and advertising for HWAN service contracts, while HWAN handles regulatory compliance. CHW Group maintains the service contracts sold to Nevada consumers. According to the Agreement, CHW Group is responsible for providing the following services:

- Communicating with potential clients (the "Clients") seeking Warranties and negotiating the signing of contracts, the form of which shall be previously approved by HWA[N], between Clients and HWA[N].
- Collecting any and all amounts paid by the Clients for the Warranties and distributing same to HW[AN] pursuant to the terms of Article 2 hereof;
- Keeping records of all Warranties
- Providing customer service to Clients; and
- Inspecting any claims made by Clients regarding goods under a Warranty and, if possible, repairing same or causing same to be replaced.

(Ex. E.) CHW Group sells service contracts on behalf of HWAN per the Agreement. When CHW Group sells a contract, CHW Group collects the payment from the consumer, and that money is eventually paid to HWAN. (Test. Mandalawi; Test. Hakim.)

5. According to the 2010 application, an administrator was not designated to be responsible for the administration of Nevada contracts. (Ex. 22; Ex. P at 1.)

6. According to the application's Section II, neither the applicant nor any of the officers listed in Section I had ever been refused a license or registration or had an existing license suspended or revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at 2; Test. Mandalawi.)

7. As part of the application, HWAN submitted its proposed contract. (Test. Mandalawi.)

8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of

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on September 12, 2017, "Tr.2" for the hearing transcript on September 13, 2017, and "Tr.3" for the hearing transcript on September 14, 2017.

each year. (Ex. U; Ex. 22; Test. Mandalawi.) In the letter, the Division noted that it had reviewed the service contract #HWAADMIN-8/2/10 that was submitted with the application, and that it was approved for use. (Ex. U at 1.)

9. In 2011, HWAN submitted another service contract for approval. The Division approved the service contract under the form number HWA-NV-0711. (Test. Mandalawi; Test. Ghan.)

10. The service contract shows the Home Warranty Administrators' logo at the top right of the first page. Under it is the name Choice Home Warranty followed by the text "America's Choice in Home Warranty Protection," and under the text in finer print it says "Obligor: Home Warranty Administrator of Nevada, Inc." This first page is a sample letter to the consumer. The first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty." The consumer is asked to read the coverage. The letter includes a toll-free number, (888)-531-5403, and a website, www.ChoiceHomeWarranty.com. Under the letter in finer print, it states that the contract explains the coverage, limitations, and exclusions. Then there are two boxes: the box on the left identifies the contract number, contract term, covered property, property type, rate, and service call fee; the box on the right identifies the coverage plan, included items, and optional coverage. Under the two boxes is the name Choice Home Warranty and the address, 510 Thornall Street, Edison, NY 08837, along with the toll-free number (888) 531-5403. The bottom right of the page contains "HWA-NV-0711" in a finer print, which indicates approval by the Division in July 2011, and is applied to each page. (Ex. 35; Ex. EE; Test. Ghan; Test. Jain; Test. Mandalawi.)

11. According to Mandalawi, there are no contracts sold to Nevada consumers other than the Nevada contract authorized in 2011. (Test. Mandalawi.)

12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2, 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)

13. The renewal applications asked the applicant to identify the pre-approved service contract form name and form numbers that applicant sells in Nevada. On each application, HWAN identified form HWA-NV-0711. (Ex. 2, 4, 5, 7, 12, 21; Ex. I.)

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14. The renewal applications for the years 2011, 2012, and 2013 asked the following questions:

- "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
- "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
- "Since the last application, has applicant or any of the officers listed in question 1 ever . . . (c) Been refused a license or registration . . . or had an existing one suspended or revoked by any state . . . [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. For the current administrator, Mandalawi wrote "Self." (Ex. 2, 4, 5; Ex. I; Test. Dennis; Test. Mandalawi.)

15. The renewal applications for years 2011, 2012, and 2013 were approved. (Ex. Y, Z, AA; Test. Mandalawi.)

16. The renewal applications also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. Mandalawi responded to these questions for the renewal applications for years 2011, 2012, and 2013. (Ex. 2, 4, 5; Ex. I.)

17. In 2013, the Division initiated an investigation into Choice Home Warranty, and began monitoring complaints. The Division also discovered that a company called Choice Home Warranty had administrative actions against it in several states. (Test. Jain.)

18. In email correspondence with Mandalawi related to a consumer complaint, Elena Ahrens, then-Chief of the Property and Casualty Section, indicated that she wanted to work with Mandalawi "regarding having an official dba of Choice Home Warranty." She said that she had stopped the issuance of a cease and desist, and wanted to remedy the situation from occurring in the future. (Ex. T at 1.) The Division asked HWAN to register the dba Choice Home Warranty because the Division "thought it was confusing for consumers having just the name Home Warranty of Nevada." (Test. Mandalawi.) Mandalawi registered the dba "Choice Home Warranty" under HWAN. (Ex. T at 7–11; Ex. B; Ex. 30–32; Test. Mandalawi.)

19. The Division issued a memo to then-Commissioner Scott J. Kipper from Derick Dennis, Management Analyst, indicating that Mandalawi notified the Division that HWAN filed the dba name,

"Choice Home Warranty," in Carson City and Washoe County. A handwritten note on the memo states, "7/8/14 This was at the request of the Division, recommend approval" with Ahrens' initials "ea." (Ex. 23 at 3; Ex. Q.) The Division issued a new Certificate of Registration dated July 14, 2014, under HWAN's same Company ID No. 113194, for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. (Ex. 23; Ex. T at 39, 51–53; Test. Mandalawi.)

20. For the registration years beginning 2014, 2015, and 2016, HWAN filed renewal applications. The applicant was listed as "Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty." (Ex. 7, 12, 21; Ex. I; Test. Mandalawi.)

21. The renewal applications for the years 2014, 2015, and 2016 asked the same following questions:

- "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
- "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
- "Since the last application, has applicant or any of the officers listed in question 1 ever . . . (c) Been refused a license or registration . . . or had an existing one suspended or revoked by any state . . . [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. (Ex. 7, 12, 21; Test. Mandalawi.) For the current administrator, Mandalawi wrote "Self." (Ex. 21)

22. The renewal application for 2014, 2015, and 2016 added a request that the applicant "List all aliases or names under which the company conducts business (Doing Business As). Provide supporting documentation." On behalf of HWAN, Mandalawi answered "NA" because he believed the question related to additional fictitious names. (Ex. 7, 12, 21; Ex. I at 12, 16, 20; Test. Mandalawi.)

23. The renewal applications for 2014, 2015, and 2016 also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. For years 2014, 2015, and 2016, Mandalawi responded to some of these questions, but left blank the number of customer complaints by Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18, 23.)

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24. The renewal applications for years 2014 and 2015 were approved. (Ex. BB, CC; Test. Mandalawi.)

25. At the time the Division received HWAN's 2016 renewal application, the Division requested additional information because the application was deemed incomplete. Specifically, the statutory security deposit was not sufficient and questions on the application were left blank. The Division's requests for information were ignored. As of the date of the hearing, the Division had not received all of the information requested. (Ex. 33; Ex. L; Ex. DD; Test. Jain.)

26. As a result of this matter, Mandalawi learned that HWAN's COR was inactive. Mary Strong, Management Analyst III, emailed HWAN on July 21, 2017, explaining that HWAN's COR had expired and that the 2016 renewal application was denied. No additional explanation was provided. A printout of HWAN's licensing status with the Division shows that HWAN dba Choice Home Warranty is inactive as of 11/18/2016. (Ex. O, DD; Test. Mandalawi.)

**B. Complaints**

27. In 2009, the Division began receiving complaints about Choice Home Warranty, which was not registered to sell service contracts in Nevada. (Ex. 28 at 2; Ex. J at 2.)

28. On January 4, 2014, the Division received a complaint from a technician who provided services to a consumer on behalf of Choice Home Warranty, but "CHW (CHOICE HOME WARRANTY, CHW GROUP)" refused to pay them the $20,000 alleged to be owed. The Division worked out a settlement between Choice Home Warranty and the technician for $7,296. (Ex. 25; Test. Kuhlman.)

29. On July 16, 2014, the Division received a consumer complaint against Choice Home Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay $1,025 for an A/C compressor that the consumer believed should have been covered by the service contract. The consumer requested the claim denial in writing, but was told by the Choice Home Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11; Test. Kuhlman.)

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30. On November 19, 2014, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim when the consumer's pipe broke the same day he had purchased the service contract (policy number 465308123). The consumer paid $826 for repair of a broken pipe. The consumer also complained because he felt Choice Home Warranty's advertisement was deceitful and misleading by claiming that the consumer could get coverage "today," when the contract requires a thirty-day waiting period. The Division worked out a settlement between Choice Home Warranty and the consumer for $500. (Ex. 11; Test. Kuhlman.)

31. On July 12, 2016, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 27, 2016, and Choice Home Warranty sent a technician, who replaced the capacitor. The A/C unit failed again within a few hours. The technician returned to look at the unit three times and provided all the information Choice had requested. The A/C unit still had not been fixed. The consumer called Choice Home Warranty numerous times and was put on hold on every call for extensive periods and, after 45 minutes, the call would fail. The consumer was told that the claim was rejected because the consumer did not maintain the unit. The consumer sent Choice Home Warranty proof that he did maintain the unit. The consumer explained that the situation was a "life or death situation" because his significant other, who is disabled, suffered from heatstroke because she and their little dog have been left in the house with temperatures exceeding 100-plus degrees. On or about July 25, 2016, the Division worked out a settlement between Choice Home Warranty and the consumer for $1,500. (Ex. 38; Test. Kuhlman.)

32. On October 4, 2016, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 8, 2016, and Choice Home Warranty sent eight technicians and four A/C companies, and all agreed that the A/C compressor and coil needed to be replaced. Choice Home Warranty denied the claim explaining that it had a photo of the unit from August 17, 2016 showing that no maintenance had been done on the unit. The consumer asked for a copy of the photo, but Choice Home Warranty did not provide the photo. The consumer faxed her maintenance records for the A/C unit, but was told that Choice Home Warranty could not read the

records. At the time of the complaint, the consumer was alleged to have endured ten weeks without A/C in Las Vegas. (Ex. 24; Test. Kuhlman.)

33. In all, the Division had received approximately 80 complaints about Choice Home Warranty. Eliminating duplicates, the total was 62. At the time the Complaint, only 2 complaints were open. All other complaints had been closed. The Division's concern was that Choice Home Warranty had a higher ratio of complaints than any other of the 170-plus service contract providers licensed in Nevada. (Ex. 28; Ex. J, W; Test. Jain.)

34. The Division conducted a general search on Choice Home Warranty online, and discovered numerous complaints by consumers on different websites. (Test. Jain.)

35. The Business Consumer Alliance rated Choice Home Warranty with an "F". It notes the company's website as www.choicehomewarranty, DBAs are CHW Group, Inc., Victor Mandalawi as president, and Victor Hakim as principal. (Ex. 9.)

36. On October 31, 2016, Mike from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty in Edison, New Jersey, was attempting to withdraw money from the consumer's bank account after the contract period ended. (Ex. 14.)

37. On July 7, 2016, Stardust from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty refused to replace a pool pump because it was not correctly installed. (Ex. 15.)

38. On April 20, 2016, Ira B. from Las Vegas, Nevada, a technician, posted a complaint on Ripoff Report advising people to stay away from Choice Home Warranty because Choice Home Warranty does not pay its vendors, and requires vendors to use repair parts according to their terms. (Ex. 16.)

39. On January 14, 2016, Iaappliance from Las Vegas, Nevada posted a complaint on Ripoff Report that Choice Home Warranty is a huge scam among contractors. The company had completed 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)

40. On October 12, 2016, David N. of Las Vegas, Nevada posted a complaint on Yelp.com that Choice Home Warranty improperly denied his claims on two occasions. The second claim denial was after a technician came and inspected the microwave and took photos. The consumer included in

his complaint the he received an email from Choice Home Warranty that said, "CHW strives to be rated #1 in the home warranty industry. Help us succeed with your positive feedback and you will receive 1 FREE month of coverage." (Ex. 18 at 2.)

41. Choice Home Warranty has been the subject of complaints in other cities—Houston, Texas, Chicago, Illinois, Overland Park, Kansas, and Titusville, Florida. According to the reports, Choice Home Warranty in New Jersey denies claims on the basis that the consumers did not maintain their units, even after consumers provide proof of maintenance. (Ex. 19, 19a, 20, 20a, 39, 40, and 40a.)

42. In reviewing complaints, Mandalawi has CHW Group employees participate in the resolution. Mandalawi distinguishes claims as problems with a system or appliance, and a complaint as a consumer who is dissatisfied with the claim or outcome. When complaints are received, they are handled by CHW Group employees. If they are escalated, Mandalawi gets involved. Mandalawi has final authority on complaints and "want[s] to be sure that CHW Group is adhering to the terms and conditions of the policy and make[s] sure they are in compliance." Complaint resolution activity is done at Executive Drive, CHW Group's Somerset location; sales and marketing is done at the King Georges Post Road in Edison. Mandalawi spends most of his time at the Somerset location. (Test. Mandalawi; Test. Ramirez.)

43. At a meeting of the Parties pending this proceeding, Mandalawi and Hakim reviewed the records of HWAN to determine how many complaints they have received from the Division since HWAN's inception. (Test. Mandalawi; Test. Hakim.)

44. CHW Group handled the claims for the consumer complaints filed with the Division. CHW Group documents its communications with the consumers. CHW Group concluded that the consumers' claims were not covered by the service contracts. (Test. Ramirez.)

45. HWAN presented what it named "Customer Testimonials NV DOI Status of HWAN," which is 867 pages of positive testimonials of Choice Home Warranty consumers from around the country, including Nevada. (Ex. M.)

**C. Regulatory Actions**

46. On July 23, 2010, California issued a cease and desist order against Choice Home Warranty and its officers, along with notices related to a monetary penalty and right to hearing for

acting as a provider of home protection contracts without a license. (Ex. 1 at 1–4 of 16.) A final order was entered on August 19, 2010. On October 12, 2010, the California Insurance Commissioner found that Choice Home Warranty acted as a home protection company without a license from October 25, 2008 through October 1, 2010, and fined Choice Home Warranty $3,530,000. In December 2010, Mandalawi, as president of Choice Home Warranty, entered into an agreement with California agreeing to take certain actions with regard to their business, and pay a $10,000 fine. The agreement was adopted by the California Commissioner on January 6, 2011. (Ex. 1; Ex. G.)

47. On July 29, 2010, Oklahoma issued a cease and desist against Choice Home Warranty for engaging in service warranty contracts without authorization. Despite the order, Choice Home Warranty continued to engage in the business. The matter was settled on January 2, 2012, with a fine of $15,000, and Choice Home Warranty was permitted to continue servicing existing contracts. (Ex. 3; Ex. H.)

48. On February 7, 2014, the Oklahoma Commissioner issued an order alleging that Choice Home Warranty continued to engage in the business "in a course of unfair and deceptive conduct while circumventing regulatory authority." (Ex. 3 at 2.) Choice Home Warranty was fined $10,000. (Ex. 3.) On October 21, 2010, the Insurance Commissioner of the State of Washington issued an Order to Cease and Desist against CHW Group, Inc. doing business as Choice Home Warranty and www.ChoiceHomeWarranty.com, Victor Mandalawi, President of CHW Group, Inc. (incorporated in both New York and New Jersey), and others. The Order demanded that all named parties, who are unlicensed in Washington, cease transacting in the unauthorized business of insurance in Washington, seeking business in Washington, and soliciting Washington residents to buy unauthorized products based on the sale of at least 92 service contracts. On January 27, 2011, the Washington Commissioner issued a Final Order Terminating Proceeding after the named parties filed a stipulation withdrawing their hearing demand. The Final Order indicated that the Order to Cease and Desist would remain in effect indefinitely. (Ex. 8 at 3 of 32.)

49. On June 9, 2015, CHW Group, Inc. dba Choice Home Warranty, Victor Mandalawi, and Victor Hakim agreed to a Final Consent Judgment with the New Jersey Attorney General's Office for allegations of using deceptive means to deny claims after the New Jersey Division of Consumer Affairs

received 1,085 complaints about Choice Home Warranty. The Judgment requires Choice Home Warranty, Mandalawi, and Hakim to address issues related to improper advertisements, sales representatives' misrepresentations, terms and conditions of the contract, properly licensed technicians, fair review of claims, timely payment to technicians, payment in lieu of replacement, refunds, training of employees handling sales and claims, and future consumer complaints. Choice Home Warranty, Mandalawi, and Hakim were required to pay a $779,913.93 fine including consumer restitution, revise their business practices, pay for an independent compliance monitor to oversee compliance with the terms of the Judgment, and execute confessions of judgment in the event of a default on the Judgment. (Ex. 6; Ex. F, X.)

**D. Other Evidence Presented at Hearing**

50. In 2016, Home Warranty Administrator of Florida, Inc. and Choice Home Warranty were named defendants in a civil action in New Jersey. That same year, CHW Group, Inc. dba Choice Home Warranty and Victor Mandalawi were named defendants in a civil complaint in South Carolina. (Ex. 9, 29; Test. Mandalawi.)

51. As part of the Division's investigation, it obtained a copy of Home Warranty Administrator of South Carolina, Inc.'s application with the State of South Carolina submitted by Mandalawi. The application included a biographical affidavit, which requested information about Mandalawi's background. To the question, "Are you operating, acting, or have acted as a controlling person for any other service contract provider or service contract related company?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company in which you were, or are a controlling person, ever been disciplined by a state regulatory body?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company for which you were, or are a controlling person, ever been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory or disciplinary action?", Mandalawi responded yes.

Attached to the biographical affidavit is Mandalawi's résumé. According to it, Mandalawi is the President of Home Warranty Administrators, which "is currently licensed / registered in Arizona, Florida, Illinois, New York, Nevada, Oklahoma, and Texas." Mandalawi has held this position since

2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has held this position since 2008. (Ex. 41 at 14.)

Mandalawi presented a letter to the South Carolina Department of Insurance explaining his "Yes" responses to the questions on the biographical affidavit. In the letter, Mandalawi introduces himself as president of Home Warranty Administrator of South Carolina, Inc., and all of its affiliates, which includes HWAN, and president of Choice Home Warranty. Through the letter, Mandalawi explains that

> Choice Home Warranty (CHW) was the subject of a cease and desist letter in California, Oklahoma, and Washington. In California, CHW entered into a consent order, in Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service Warranty License, and in Washington CHW is complying with all terms of the cease and desist.
>
> CHW has been doing business for roughly two years and our home state of New Jersey does not require companies, such as ours, to be licensed. During the course of its activities, CHW discovered that all states are not created equal when it came to licensing requirements for service contracts. In fact, the very definition of the words "service contracts" changes from state to state. To address this newly discovered issue, CHW developed the Home Warranty administrators ("HWA") brand. That is, in order to address every state's particular requirements, a separate HWA was created for that state.

(Ex. 41 at 15–16; Test. Mandalawi.)

52. Choice Home Warranty has a landing page, which is a webpage that consumers land on when they click a particular email or internet link to Choice Home Warranty. The landing page is part of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code. Choice Home Warranty provides some general information and invites people to call them at (888) 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address, 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions, other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)

53. On August 21, 2017, Felecia Casci, Supervising Legal Secretary at the Division, received an email from 'CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "VIP Offer: $50 Off & 1 Month Free" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering $50 off and one month free. According to the email, Choice Home Warranty plans are subject

to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. Nothing in the solicitation identified HWAN as the party selling the service contract. (Ex. 27; Test. Casci.)

54. On August 16, 2017, Casci received another email from "CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "We Appreciate You Felecia" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering $75 off and one month free. According to the email, Choice Home Warranty plans are subject to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. (Ex. 27; Test. Casci.)

55. The Division discovered that some service contracts issued by HWAN were not approved for use. In the unapproved service contract's letter to the consumer, the first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a CHW Warranty." Again in the second paragraph, there is a reference to CHW Warranty. Under the two boxes is the name Choice Home Warranty and the address, 1090 King Georges Post Road, Edison, NJ 08837, along with the toll-free number (888) 531-5403. There is no service contract form number on the bottom of the page indicating approval by the Division. The font of the contract is reduced such that the contract is 4 pages long instead of the 5 ½ pages in the approved service contract. (Ex. 37; Test. Ghan.)

56. When Hakim acknowledged that CHW Group is not licensed to sell, solicit, or offer for sale service contracts in Nevada, he explained that "Pursuant to section 690C.120.2, administrators are not required to be licensed to sell service contracts in Nevada." (Test. Hakim.)

57. The setup for HWAN in Nevada is the same setup Mandalawi uses for all of the Home Warranty Administrators companies. All of these entities have a contract with CHW Group, and all of the entities use the website www.choicehomewarranty.com to sell their service contracts. All of the entities use substantially the same contract and terms of service. All of the businesses use CHW Group's services as provided in agreements similar to the Agreement HWAN has with CHW Group.

This creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract sent to consumers. (Test. Mandalawi.)

58. Since HWAN became licensed in Nevada, CHW Group has continually provided services to HWAN through the Agreement. CHW Group has tracked its claims statistics. According to its claims statistics, 23,889 customers have purchased a service contract through Choice Home Warranty in Nevada since 2011. (Ex. K; Test. Hakim.)

59. In some years, the Division communicated with Mandalawi by telephone or email when items were not provided with HWAN's applications. (Test. Mandalawi.)

## II. CONCLUSIONS OF LAW

In its Amended Complaint, the Division seeks administrative action against Respondent for (1) falsifying material facts in its applications; (2) engaging in unfair practices in settling claims; (3) conducting business in an unsuitable manner; and (4) failing to make records available to the Commissioner upon request. The Division also seeks a cease and desist order because the Commissioner refused to renew Respondent's 2016 COR. The Division bears the burden of showing, by a preponderance of the evidence, that Respondent violated these provisions of the Insurance Code. In hearings for the Division, "The hearing officer shall liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party." NAC 679B.245.

### A. Jurisdiction

The Commissioner is charged with regulating the business of service contracts, which includes but is not limited to promulgating regulations, reviewing provider records, investigating complaints and alleged violations of law, and conducting examinations. NRS 679B.120.3 & -.5, 690C.300, -.310 & -.320. Service contracts are regulated under the Insurance Code pursuant to chapter 690C.

### B. Statement of Law

In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a Nevada resident who may enforce the rights under a service contract. NRS 690C.060. An administrator "means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider." NRS 690C.020.

> A provider who wishes to issue, sell or offer for sale service contracts in this state must submit to the Commissioner: A registration application on a form prescribed by the Commissioner; . . . A copy of each type of service contract the provider proposes to issue, sell or offer for sale; [and] The name, address and telephone number of each administrator with whom the provider intends to contract . . . .

NRS 690C.160.1(a), (c)–(d).

> A certificate of registration is valid for 1 year after the date the Commissioner issues the certificate to the provider. A provider may renew his or her certificate of registration if, before the certificate expires, the provider submits to the Commissioner an application on a form prescribed by the Commissioner, [among other things].

NRS 690C.160.3.

Providers are required to comply with certain requirements to ensure the provider is financially viable. NRS 690C.170. A provider has limitations on the name of its business, and may not use the name of another provider. NRS 690C.200.1(b). A provider's service contract must comply with certain provisions. For example, a service contract must be "understandable and printed in a typeface that is easy to read." NRS 690C.260.1(a). A service contract must also "[i]nclude the name and address of the provider and, if applicable: The name and address of the administrator. . . ." NRS 690C.260.1(d)(1). A provider is prohibited from making "a false or misleading statement" or "intentionally omit[ting] a material statement." NRS 690C.260.2.

When a provider receives a claim, it must address the claim within a reasonable amount of time. If a claim "relates to goods that are essential to the health and safety of the holder", emergency provisions must be included in the contract. NAC 690C.110.1(c). Related to claims, certain activities are considered unfair practices:

> (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy provisions relating to any coverage at issue.
> (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
> (c) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
> . . .
> (e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.
> . . .
> (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.
> . . . .

NRS 686A.310.1.

Generally, no other provision of the Insurance Code applies except as otherwise provided in NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include trade practices, examinations, hearings, certain prohibitions, process, and advertising. NRS 690C.120.1. Also, "[a] provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer service contracts." NRS 690C.120.2.

The Commissioner is authorized to observe the conduct of a service contract provider to ensure that "business is not conducted in an unsuitable manner." NRS 679B.125.2.

> "[U]nsuitable manner" means conducting [] business in a manner which:
> 1. Results in a violation of any statute or regulation of this State relating to insurance;
> 2. Results in an intentional violation of any other statute or regulation of this State; or
> 3. Causes injury to the general public,
> - with such frequency as to indicate a general business practice.

NAC 679B.0385.

**C. Respondent**

In order to address the Division's allegations, the Hearing Officer must make a determination about the parties involved in this matter because many of the issues presented in this hearing hang on who the service contract provider is. Relying on the use of the different names by Respondent's witnesses, who interact with or on behalf of Respondent through a contract, and who would most be familiar with the entities, the Hearing Officer relies on the names used in the hearing as follows:

- Home Warranty Administrator of Nevada, Inc. is HWAN
- Choice Home Warranty is CHW Group, Inc., CHW, and Choice Home Warranty Group
- Home Warranty Administrators is an affiliate of companies with the name Home Warranty Administrator of [State]

In this case, HWAN is the legal entity that has been authorized to be a service contract provider in Nevada. HWAN contracted with CHW Group, or Choice Home Warranty, as administrator of HWAN's service contracts. In 2014, the Division requested HWAN to register the fictitious name, Choice Home Warranty.

The evidence is clear that Choice Home Warranty is CHW Group. Respondents have argued this throughout the case. (Resp't's Prehr'g Stmt 3–4.) During the hearing, Mandalawi, Hakim, and Ramirez referred to CHW Group as Choice Home Warranty. Mandalawi and Hakim both testified that

HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice Home Warranty. The names are listed in his résumé as two separate companies. At the time the South Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW Group, Inc.

When an entity registers a dba, or fictitious name, the entity creates a name under which it will operate. This does not create a new company or change the entity's legal status. Registering a dba cannot make one company liable for the acts of another company, even if the two companies share the same name—it is a legal impossibility. Further, NRS 690C.200.1(b) prohibits a provider from using a name that is the name of another provider. Choice Home Warranty, under CHW Group, is another provider even if it is not a Nevada-registered provider. Why the Division requested HWAN to register the dba Choice Home Warranty is unknown, as it makes the arrangement of these businesses confusing at best. Registering Choice Home Warranty as HWAN's dba did not make HWAN and CHW Group one legal entity for purposes of regulation. Accordingly, it is the Hearing Officer's position that Choice Home Warranty as discussed in this matter should not be treated as a fictitious name of HWAN, but instead as a separate company under CHW Group. For purposes of this Order, the Hearing Officer relies on this distinction between HWAN and Choice Home Warranty: HWAN is one legal entity, and Choice Home Warranty is CHW Group, an incorporated entity that is separate from HWAN.

**D. The Division Claims Respondent Made False Entries of Material Facts in Its Applications**

**1. Administrative Actions Against Choice Home Warranty**

The Division claims that by failing to disclose other states' administrative actions against Choice Home Warranty on its Nevada renewal applications, Respondent engaged in acts that constitute the unlawful making of false entry of material fact in violation of NRS 686A.070. The Hearing Officer

disagrees.

Respondent argues that it is legally and factually impossible for HWAN to have made false misrepresentations in its renewal applications because the *renewal* applications do not ask for regulatory information about any of the officers of the applicant, and the Hearing Officer agrees. The Division's questions in each of the renewal applications do not ask whether any of the applicant's officers have had actions taken against them; rather, the questions ask whether any of the *new* officers identified in the renewal application have had actions taken against them. If the Division wanted to know whether any of applicant's officers had administrative actions taken against them in other states, the Division should have asked that question. The Division's intent regarding the questions on its own renewal application is not clear, and it would be improper to hold applicants responsible for failing to disclose information about which the Division never asked.

For the renewal applications submitted for 2011, 2012, and 2013, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. HWAN is incorporated in Nevada, creating an independent legal entity. As its own legal entity, HWAN is responsible for the acts of its business. At no time during this period was HWAN named in any administrative action in any other state. Therefore, it cannot be said that HWAN made a false entry on the renewal applications for these years by not reporting administrative actions against Choice Home Warranty.

For the renewal applications submitted for 2014 and 2015, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. dba Choice Home Warranty. As explained in Section C above, however, Choice Home Warranty is CHW Group. It is a legal impossibility for HWAN to also be CHW Group even if HWAN registered a dba called Choice Home Warranty. HWAN did not violate Nevada law by failing to disclose administrative actions taken against CHW Group in other states. CHW Group is HWAN's administrator, and none of the applications asked whether the administrator or its officers have been the subject of administrative actions in other states. To that end, HWAN was not required to report administrative actions against Choice Home Warranty in its 2014 and 2015 renewal applications.

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## 2. Applications Filed with the Division

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, the evidence shows that Respondent did make a false entry of material fact in its applications. All the applications presented at the hearing ask the applicant to disclose the name of the administrator. For all of the renewal applications Mandalawi submitted on behalf of HWAN, the administrator is noted as "self," and this was not true. "Self" means that the service contract provider—HWAN in this case—was administering all of the claims. According to the testimony of Mandalawi, Hakim, and Ramirez, Choice Home Warranty (which is CHW Group) is the administrator for HWAN. Respondent argues that this fact was disclosed in HWAN contract HWA-NV-0711, which was provided to the Division in 2011. Even if the disclosure is sufficient to say the Division was on notice in 2011 (when the HWAN contract was approved) that Choice Home Warranty was the administrator, every renewal application submitted indicated the contrary. When asked on the renewal applications whether there were any changes to the administrator or a newly designated administrator, in each renewal application, Mandalawi responded that there was no change—the administrator was "self," which is HWAN. If CHW Group was the administrator, then "self" was not an accurate response to the question on the applications. Claims administration is a material part of service contracts and, therefore, a material fact, required by NRS 690C.160.3. As such, HWAN misstated a material fact in its application. For each application year starting in 2011 that HWAN reported "self" as the administrator, is one violation of NRS 686A.070. (Five counts.)

Additionally, HWAN indicated in its applications filed starting in 2011 that it was using the service contract HWA-NV-0711 that was approved by the Division. On at least one occasion, there is evidence that HWAN used a service contract that, in fact, was not approved by the Division. Service contracts must comply with certain provisions of the Insurance Code and, therefore, must be approved before they are used. The application year 2015 did not disclose the use of an unapproved form. The service contract is a material part of the service contract provider application and, therefore, a material fact of the application. As such, HWAN misstated another material fact in its 2015 renewal application, in violation of NRS 686A.070. (One count.)

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**E. The Division Claims Respondent Has Engaged in Unfair Practices in Settling Claims**

The Division alleges that the number of complaints against Respondent show that Respondent has engaged in unfair practices in settling claims in violation of NRS 686A.310 and had, thereby, acted in an unsuitable manner. NRS 679B.125.2. Respondent argues that the number of complaints does not amount to unfair practices in settling claims, and that it believes it provides Nevada customers sterling service.

In this case, the evidence shows that the Division received at least 63 individual consumer complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the complaints, five were presented at the hearing: three complaints from 2014 and two complaints from 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers believed were covered, or that Choice Home Warranty did not pay the technician who provided services on the appliance. When the Division got involved, HWAN agreed to cover or settle the complaints. The Division's evidence says the claims were covered; Respondent's evidence says the claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's involvement does not mean that Respondent admitted that the claims were covered. As presented, the Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling claims.

**F. The Division Claims Respondent Has Failed to Make Its Records Available**

The Division claims that Respondent failed to make available information requested by the Commissioner in violation of NRS 690C.320.2. The Division sought information about HWAN's claims and open contracts in Nevada. Respondent argues that the Division presented no evidence to support this claim.

The evidence shows that the Division made several requests of Respondent through Mandalawi, including to Mandalawi's email address of record. Respondent acknowledges having communicated with the Division via email or telephone on other occasions, as evident through the testimony and exhibits. The parties both state that the requested information was produced, but only after a subpoena was issued, which was at least six months after the renewal application was received. Moreover, this information relating to how many open contracts and claims Respondent had in Nevada was requested

in the renewal application, but Respondent did not respond to those questions. The law is clear that, upon the Commissioner's request, "[a] provider shall . . . make available" records concerning any service contract issued, sold, or offered for sale available. NRS 690C.320.2. Thus, Respondent violated NRS 690C.320.2 when it did not produce such information when requested. (One count.)

**G. Respondent Has Conducted Business in an Unsuitable Manner**

**1. Complaints Against Respondent**

The Division claims that, given the number of consumer complaints in Nevada, media reports, and findings by other states, constitutes a pattern of behavior that Respondent is operating in an unsuitable manner, and that Respondent's practices cause injury to the general public with such frequency as to indicate a general business practice, in violation of NRS 690C.325.1(b) and NRS 679B.125.2.

The evidence shows a number of consumer complaints posted online. These reports include complaints by Nevadans, but the Division made no effort to verify the substance of the complaints. This evidence, while consistent with the consumer complaints received by the Division, does not substantiate that Respondent is operating in an unsuitable manner because the substance of the reports was not vetted. This evidence tends to corroborate that there may be a problem with claims handling. These violations are troubling, and may warrant further review to determine whether Respondent's claims handling is appropriate. However, this evidence regarding claims handling does not show that Respondent is violating Nevada laws or causing injury to the general public "with such frequency as to indicate a general business practice."

**2. HWAN's Association with CHW Group**

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, as argued by Respondent, the Hearing Officer concludes that Respondent conducted business in an unsuitable manner by allowing an unregistered entity to engage in the business of service contracts in Nevada.

Respondent argues that the Division violated its due process rights in claiming that HWAN allowed CHW Group to operate without a license because Respondent "never received proper notice of the Division's argument that CHW Group, Inc. is one and the same with HWAN." (HWAN's Closing

Arg. 4.) Respondent further argues that this Order should find "that HWAN and CHW are separate entities and that CHW has not used HWAN to avoid its own licensing.' (Id. at 7.) The Hearing Officer finds Respondent's arguments to be contradictory and unsupported.

Based on the Amended Complaint, it is clear that the Division considered HWAN and Choice Home Warranty to be one-and-the-same entity. When the Division claimed that Respondent should have disclosed that Choice Home Warranty had been disciplined in other states, Respondent argued in its prehearing statement that no such duty existed because HWAN and Choice Home Warranty are two separate entities because Choice Home Warranty is CHW Group. Facts about how Respondent operates were presented during the hearing, and it was Respondent's witnesses who explained who the different entities, and their respective roles, are. Respondent brought as witnesses the CEO of CHW Group and the COO of CHW Group, in addition to Mandalawi, President of both HWAN and CHW Group, who all spoke proficiently about the entities and clearly distinguished them. It was Respondent's position that Choice Home Warranty was CHW Group, and Respondent presented considerable evidence to support its position. Respondent cannot claim that HWAN and Choice Home Warranty are two separate entities and, in the same breath, conclude that Respondent had no notice of the Division's position that HWAN and Choice Home Warranty were considered one and the same entity to avoid responsibility for violations of law that resulted from the very conclusion they advocated. Therefore, it cannot be said that Respondent had no notice of the Division's argument that CHW Group is one and the same with HWAN.

Respondent also argues that the Division is equitably estopped from taking action against it because the Division knew that CHW Group and HWAN were selling contracts in Nevada. There is no evidence that the Division knew that CHW Group and Choice Home Warranty were the same. The record likewise shows no evidence that the Division was aware that CHW Group was selling contracts in Nevada, only that Choice Home Warranty was selling contracts in Nevada. The Division asked HWAN to register Choice Home Warranty as a dba because, after a discussion with Mandalawi, "[i]t was identified that Choice and HWAN were one and the same entity, that Choice was not selling illegally because HWAN was a licensed entity in Nevada." (Test. Jain.) Respondent argues that it detrimentally relied upon the Division's representation that in exchange for HWAN's use of the

fictitious name, the Division released the legal right to initiate an adversarial action that HWAN and CHW Group are the same entity. How a fictitious name registration amounts to detrimental reliance is unclear. The Commissioner's obligation under the Insurance Code is to protect Nevadans in the business of service contracts. The Commissioner cannot ignore her charge under the law—when an entity is violating a law that harms Nevadans, the Commissioner must act.

Respondent claims that the Division is estopped from taking action against Respondent because the Division made express representations to HWAN relative to HWAN's relationship with CHW Group, and that HWAN relied on these in conducting its operations. There is no evidence in the record that HWAN had to or did change its operations as a result of the dba registered in Nevada. More importantly, there is no evidence that the Division knew that Choice Home Warranty was CHW Group or of the contract between HWAN and CHW Group. Even if in 2011 the Division approved a contract in 2011 that indicated that Choice Home Warranty was administering the contract, contract administration is not approval to issue, sell, or offer for sale service contracts. Moreover, after that contract was approved in 2011, Respondent indicated that it was itself administering its service contracts, which was not true.

Based on the presentation of Mandalawi and Hakim, CHW Group, Inc. is the legal entity that controls and operates all the content, data, contracts, information, processing, management, claims, marketing, advertising, and sales of all products sold through HWAN, while HWAN manages regulatory compliance. Respondent claims this creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract issued to consumers. According to Hakim, an administrator is permitted to issue, sell, and offer for sale or administer service contracts without a certificate of registration pursuant to NRS 690C.120.2. Hakim is incorrect.

Nevada law clearly prohibits the issuance, sale, or offering for sale service contracts unless the provider has been issued a certificate of registration. NRS 690C.150. The provision Hakim incorrectly relies on, NRS chapter 690C section 120 subsection 2, involves a certificate of authority issued pursuant to NRS chapter 680A, which is a certificate issued to *insurance companies* to operate in Nevada. A certificate of registration and a certificate of authority are two different things. What NRS

690C.120.2 says is that a certificate of authority is not required in the business of service contracts and, so, anyone involved in service contracts is not required to obtain a certificate of authority. It most certainly does not say that an administrator may issue, sell, or offer to sell service contracts without proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter 690C a nullity.

By definition, an administrator should not be engaged in issuing, selling, or offering to sell service contracts. Hakim, Mandalawi, and Ramirez all testified that Choice Home Warranty handles all sales, advertising, and marketing for HWAN. As Hakim stated, his interest in HWAN is that HWAN continue to operate, "because if [HWAN is] not operating in the State of Nevada, then Choice Home Warranty is not operating in the State of Nevada." (Tr3. 98:9-16.) This is a reflection of CHW Group's intent to operate in Nevada using HWAN for "regulatory compliance." This intent is further reflected in the service contract that was sold in Nevada that identified CHW Warranty as the company—a service contract that was not approved for use in Nevada.

Based on the evidence, it is clear that "regulatory compliance" as stated by Mandalawi means that HWAN holds the certificate of registration in Nevada, and nothing more. Since receiving its COR, HWAN has been merely a figurehead, enabling an unlicensed entity to engage in the business of service contracts in Nevada under HWAN's license. CHW Group has engaged in the business of service contracts without a license, which is a violation of NRS 690C.150, and skirted regulation by the Division, which is a danger to the public. This activity has been occurring since at least 2010, when HWAN was first licensed. With the sale of over 69,000 service contracts, it is undeniable that it is Respondent's practice to allow CHW Group to issue, sell, and offer for sale service contracts in Nevada, thereby avoiding regulation for each contract sold in Nevada. HWAN's practice has occurred with such frequency as to indicate a general business practice, which amounts to conducting business in an unsuitable manner, in violation of NRS 690C.325 and 679B.125.

**H. The Division Requests a Cease and Desist Order to Prevent Respondent from Engaging in the Business of Service Contracts Without a Certificate of Registration**

In the Amended Complaint, the Division indicates that Respondent filed a renewal application for 2016, and that the Commissioner is authorized to refuse to renew a provider's certificate of

registration ("COR"). The Division requested a cease and desist be issued. In arguing that Respondent's 2016 COR was properly denied the Division appears to be claiming that Respondent is improperly engaging in the business of service contracts. Respondent argues that it had no notice of the facts underlying the Division's position that it did not appropriately renew its COR in 2016. Mandalawi believed that the issue of the 2016 renewal application would be considered in this hearing and that, until then, HWAN could continue operating in Nevada. (Test. Mandalawi.) The Hearing Officer finds that the Division did not properly notify Respondent that the 2016 renewal application was denied.

In Nevada, certificates of registration for service contract providers expire one year after the COR is issued. NRS 690C.160.3. Nothing in Nevada law grants the Division authority to allow a provider to continue operating after the expiration of a COR, but a provider may submit a renewal application to receive a new COR to continue operating. It is unclear how the automatic expiration of a COR after one year would require notice to the provider for due process purposes when the law clearly makes the COR available for one year and no longer. However, when a provider timely submits a renewal application that is denied, then the Division must issue a notice to the provider about the denial, providing an explanation for the denial and an opportunity for the provider to request a hearing on the propriety of the denial. A hearing on such denials are heard within 30 days.

In this case, Respondent timely filed a renewal application on or about November 7, 2016, to obtain a new COR. When the Division found the renewal application to be incomplete, the Division should have promptly notified Respondent that the renewal application was not complete and, therefore, denied so that Respondent would know that it was not approved to continue operating in Nevada. Notice of the denial was finally provided on or about July 21, 2017, almost eight months after HWAN submitted the application. The denial also provided no information as to why the renewal application was denied, nor did it notify Respondent that it could appeal the decision through a hearing request. Thus, the Hearing Officer finds that for the service contracts sold up until the date of this Order, Respondent cannot be found to have sold without a valid COR in violation of Nevada law since the Division did not properly notify Respondent of the denial with an explanation of the denial or of the opportunity for a hearing on the denial, which would have been adjudicated within 30 days of a hearing

request and prevented 13 months of Respondent selling service contracts without a COR.

Nonetheless, the registration expired as a matter of law on November 18, 2016. Therefore, as of the date of this Order, Respondent is on notice that it must apply for a renewal of its certificate of registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the date of this Order. The Division must issue its determination on the application no later than 15 business days after receipt of the complete application. As a result, the Division cannot take action against Respondent for issuing, selling, or offering for sale service contracts without a certificate of registration from the date of this Order plus 45 days.[3]

## ORDER OF THE HEARING OFFICER

Based on the foregoing Findings of Fact and Conclusions of Law, the preponderance of the evidence presented at hearing shows that Respondent has violated the provisions of the Insurance Code complained of by the Division. Accordingly, the Hearing Officer HEREBY ORDERS that:

1. Respondent be fined $30,000, the maximum fine of $5,000 allowed under NRS 686A.183.1(a), for each of six violations of making a false entry of material fact in a record or statement in violation of NRS 686A.070;
2. Respondent be fined $500, an administrative fine authorized pursuant to NRS 690C.325.1 in lieu of a revocation, for failing to make its records available to the Commissioner upon request;
3. Respondent be fined $50 for each act or violation,[4] for conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada, and to sell 23,889 service contracts in Nevada through Respondent's certificate of registration, for a total of $1,194,450; and

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[3] This ruling does not prevent the Division from taking action for other violations in connection with the service contracts issued, sold, or offered for sale, during this period if any are later discovered.

[4] Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is $1,000 per act or violation.

4. If Respondent wishes to continue engaging in the business of service contracts in Nevada, Respondent may apply for a certificate of registration as provided in this Order.
5. All administrative fines imposed in this Order are due no later than 30 days from the date of this Order.

So ORDERED this 18th day of December 2017.

Alexia M. Emmermann
**Hearing Officer**

**FINAL ORDER OF THE COMMISSIONER**

Based on the record in this administrative hearing and having reviewed the Hearing Officer's Findings of Fact and Conclusion of Law in this matter, Cause No. ~~16.0126~~ 17.0050, I concur with the Hearing Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of Law, and Order of the Hearing Officer as the Final Order in this matter.

IT IS SO ORDERED.

DATED this 18th day of December, 2017.

BARBARA D. RICHARDSON
Commissioner of Insurance

## CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER,** in **CAUSE NO. 17.0050,** via electronic mail and by mailing a true and correct copy thereof, properly addressed with postage prepaid, certified mail return receipt requested, to the following:

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and copies of the foregoing were sent via electronic mail to:

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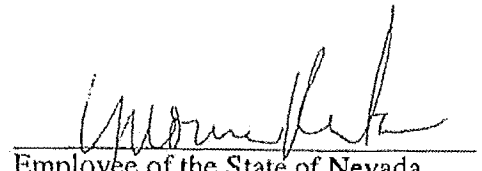
DATED this 18th day of December, 2017.



Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

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# EXHIBIT 2

**Proposed Order Granting Motion for Stay Pending Appeal**


# EXHIBIT 2

**Proposed Order Granting Motion for Stay Pending Appeal**

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**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17 OC 00269 1B<br>Dept. No. I<br><br>**[PROPOSED] ORDER GRANTING MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** |

This matter comes before the Court on Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY ("HWAN")'s Motion for Stay Pending Appeal Pursuant to NRCP 62(d) ("Motion") of the Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 In The Matter of Home Warranty

Administrator of Nevada, Inc., dba Choice Home Warranty entered on November 25, 2019[1] ("Order").

This Court having considered HWAN's Motion and the papers and pleadings on file and good cause appearing,

**IT IS HEREBY ORDERED** that the Motion is **GRANTED**. The Court hereby finds as follows:

Petitioner interpleaded $1,224,950 with the County Clerk's Trust Fund pending final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation and Order for Interpleading of Fines Pending Final Decision filed herein on March 15, 2018 ("Stipulation"). Pursuant to the Stipulation the parties agreed "to have the fines imposed by the Decision interpleaded into this Court Clerk's Trust Fund until a final decision is issued by this Court on Petitioner's Petition for Judicial Review." The Order directed the Clerk of the Court to "distribute the total fine of $40,500 from Petitioner's interpleaded funds to the Respondent, and refund the remaining balance to Petitioner." Respondent has already received the $40,500 from HWAN's interpleaded funds from the Clerk of Court. As such, because the amount of the fines affirmed by the Order have already been paid to Respondent in full, a full supersedeas bond is unnecessary.

The five factors set forth in *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 for waiving supersedeas bond and imposing alternate security are satisfied. There are no concerns regarding the complexity of the collection process, the amount of time required to obtain a judgment after it is affirmed on appeal, the availability of funds to pay the judgment, or HWAN's ability to pay the judgment because the full amount of $40,500 has already been paid to Respondent.[2] Additionally, the public and Respondent are adequately protected by HWAN's compliance with the financial security requirements in NRS 690C.170.

---

[1] Notice of Entry was served on November 26, 2019 and filed on November 27, 2019.

[2] Likewise, the fifth factor enumerated by the *Nelson* court is entirely inapplicable given the payment of the $40,500 to Respondent from HWAN's interpleaded funds.



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**THEREFORE, IT IS HEREBY FURTHER ORDERED** that the requirement for supersedeas bond is waived, and HWAN is required to post alternate security instead.

**IT IS HEREBY FURTHER ORDERED** that HWAN shall post a nominal bond in the amount of _____.

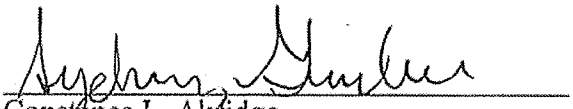
**IT IS HEREBY FURTHER ORDERED** that pursuant to NRCP 62(D), the Order, including any and all declaratory judgments therein, is **STAYED** pending appeal with the stay being effective upon HWAN's posting of the bond pursuant to NRCP 62(d)(2).

**IT IS SO ORDERED.**

DATED this _____ day of _____, 2019.

_____
DISTRICT COURT JUDGE

Respectfully submitted by:



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*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

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# EXHIBIT 10

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2018 DEC -6 PM 4:37
AUDREY ROWLATT
CLERK
BY
DEPUTY

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**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17 OC 00269 1B<br>Dept. No. I<br><br>**MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** |

Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby moves this Court for an Order Shortening Time for Briefing and Decision of HWAN's Motion for Stay pursuant NRCP 62(D) ("Motion for Stay") of the Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of

Nevada, Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019,[1] filed concurrently herewith. A proposed Order is attached hereto as **Exhibit 1**. This Motion is made and based upon the following memorandum of points and authorities, the pleadings and papers on file herein, and any oral argument this Court may consider.

## MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Rule 9 of the First Judicial District Court Rules, the Court may consider motions for shortening or extending time on 5 days' notice to all parties. Here, good cause supports an order shortening the time for briefing on and decision of HWAN's Motion for Stay.

On November 25, 2019, the Court entered the Order, which ordered as follows:

> 1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050 are hereby AFFIRMED in part, and MODIFIED in part as follows:
>
> > a. The Hearing Officer's finding of six (6) violations by the Petitioner of NRS 686A.070 for making false entries of material fact in record or statement is supported by substantial evidence and is hereby AFFIRMED.
> >
> > The total fine of $30,000, at $5,000 per violation, as allowed under NRS 686A.183(1)(a), is AFFIRMED.
> >
> > b. The Hearing Officer's finding of one violation by the Petitioner of NRS 690C.320(2) for failure to make its records available to the Commissioner upon request is supported by substantial evidence and is hereby AFFIRMED.
> >
> > The fine of $500, as authorized pursuant to NRS 6900.825(1) is AFFIRMED,
> >
> > c. The Hearing Officer's finding of 23,889 instances of conducting business in an unsuitable manner, in violation of NRS 690C.825(1)(b) and NRS 679B.125(2), by allowing an unregistered entity to issue, sell and offer for sale service contracts in Nevada is hereby AFFIRMED. The Court finds that NRS 6900.150 requires anyone, including a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the NRS.
> >
> > The fine of $50 for each of the 23,889 violations, is AFFIRMED; however, the Court finds that the aggregate

[1] The notice of entry was apparently served on November 26, 2019 and filed on November 27, 2019.



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> cap of $10,000 for violations of a similar nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES the fine of $1,194,450 to be capped at $10,000 total.
>
> 2. Petitioner interpleaded $1,224,950 with the County Clerk's Trust Fund pending final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018. The Clerk of the Court will distribute the total fine of $40,500 from Petitioner's interpleaded funds to the Respondent, and refund the remaining balance to Petitioner.
>
> ...
>
> 5. The Court further orders that contingent upon Petitioner's compliance with NRS 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of Registration be reinstated. In particular, Petitioner is prohibited from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order.

Pursuant to NRCP 62(a)(1), "no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after service of written notice of its entry, unless the court orders otherwise." The Notice of Entry of the Order was served on November 26, 2019, which means the automatic stay is in effect until December 26, 2019. HWAN files its Motion for Stay concurrently herewith, requesting a stay of the Order, including all declaratory findings, such as those in subsection (1)(c) and (5) of the Order.

HWAN is required by NRAP 8(a)(1) to move first in this court for the requested stay before moving for the same in the Nevada Supreme Court. If the Motion for Stay is briefed and decided in the ordinary course, there will not be a decision before the December 26, 2019 expiration of the automatic stay under NRCP 62(a)(1), and there will likewise be no time for HWAN to move in the Nevada Supreme Court for a stay pursuant to NRAP 8, if necessary. Therefore, this Court should impose a slightly shortened briefing schedule such that the Motion for Stay may be briefed and decided with enough time for HWAN to bring a motion for the same in the Nevada Supreme Court under NRAP 8, if necessary. HWAN hereby moves for Order

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Shortening Time of its Motion for Stay as soon as is practicable after service by mail of the Notice of Entry of Order on November 26, 2019.[2]

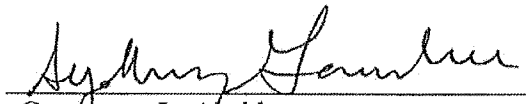
As such, HWAN requests that the Court shorten the time for briefing on the Motion for Stay as follows so a decision may be issued on or before December 18, 2019, which will give HWAN one week (excluding the Court holiday Christmas Day) to make a motion under NRAP 8 to the Nevada Supreme Court before December 26, 2019, if necessary:

Respondents' Opposition to Motion for Stay: December 11, 2019

HWAN's Reply in support of Motion for Stay: December 16, 2019

DATED this 6th day of December, 2019.

HOLLAND & HART LLP



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[2] The Thanksgiving holiday was on November 28, 2019.

## CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2019, a true and correct copy of the foregoing **MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** was served by the following method(s):

☑ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
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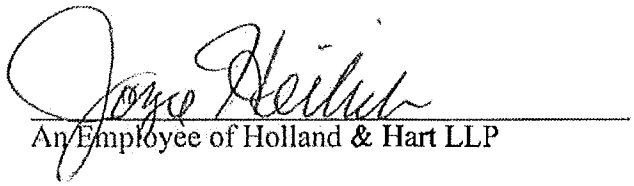
*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

☑ Email: by electronically delivering a copy via email to the following e-mail address:

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov



An Employee of Holland & Hart LLP

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## INDEX OF EXHIBITS

| | | |
|---|---|---|
| EXHIBIT 1 | Proposed Order Granting Motion for OST | Pages 1 - 3 |

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# EXHIBIT 1

**Proposed Order Granting Motion for OST**


# EXHIBIT 1

**Proposed Order Granting Motion for OST**

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*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17 OC 00269 1B<br>Dept. No. I<br><br>**ORDER GRANTING MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** |

This matter comes before the Court on Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty's ("HWAN" or "Petitioner"), Motion for Order Shortening Time for Briefing and Decision of ("Motion for OST") HWAN's Motion for Stay pursuant NRCP 62(D) ("Motion for Stay") of the Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the



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Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.[1]

The Court having considered HWAN's Motion for OST and the papers and pleadings on file, five (5) days' notice having been given to Respondents pursuant to FDJCR 9, and good cause appearing,

**IT IS HEREBY ORDERED** that the Motion for OST is **GRANTED**. Respondents shall file and serve their opposition to HWAN's Motion for Stay no later than _____. HWAN shall file and serve its reply in support of HWAN's Motion for Stay no later than _____.

**IT IS SO ORDERED.**

DATED this ____ day of December, 2019.

_____
DISTRICT COURT JUDGE

Respectfully submitted by:

HOLLAND & HART LLP

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*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

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[1] The notice of entry was apparently served on November 26, 2019 and filed on November 27, 2019.



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# EXHIBIT 11

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JOANNA N. GRIGORIEV (Bar No. 5649)
Senior Deputy Attorney General
RICHARD P. YIEN (Bar No. 13035)
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*Attorneys for the Division of Insurance*

REC'D & FILED
2019 DEC -9 PM 3:56
AUBREY ROWLATT
CLERK
BY V. Alegria DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>vs.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondents. | Case No.: 17 OC 00269 1B<br>Dept. No.: 1 |

**OPPOSITION TO PETITIONER'S MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION ON MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(d)**

Respondent, State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), through its counsel, Nevada Attorney General, AARON D. FORD, and his Deputy Attorney General, RICHARD P. YIEN and Senior Deputy Attorney General, JOANNA N. GRIGORIEV, hereby files this opposition ("Opposition") to Petitioner Home Warranty Administrator of Nevada Inc.'s ("HWAN") Motion for Order Shortening

Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(d), filed with this Court on December 6, 2019.

## Facts and Procedural History

On December 18, 2017, the Hearing Officer issued Findings of Fact and Conclusions of Law in cause No. 17.0050, which the Commissioner of Insurance signed, finding that HWAN has engaged in numerous violations under title 57 ("17.0050 Administrative Order"). On December 22, 2017, HWAN filed a petition for judicial review ("PJR"). On November 7, 2019, the hearing was held before this Court on said PJR. On November 25, 2019, this Court issued an Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("District Court Order"). On November 27, 2019, Division filed a Notice of Entry of Order. [1] On December 6, 2019, Petitioner filed a Motion for Stay, alongside its Motion for Order Shortening Time, to which the Division files this opposition.

## Argument

HWAN's motion for OST is yet another improper attempt by HWAN to limit the Division's legally allotted timeframe to properly brief the Court on the pending pleading, with no good cause stated. HWAN does not provide good cause to shorten the time afforded to the Division to file its opposition and for the Court to consider HWAN's Motion for Stay. The legal issues associated with HWAN's Motion for Stay require time to research and respond, especially given the complexity of a HWAN's status, as it continues to allow an unregistered entity to sell service contracts in Nevada.

Every appellant must adhere to the same rules and deadlines. NRCP 62(a)(1), which automatically affords thirty (30) days "before an execution on a judgment may issue or

[1] On November 15, 2019, HWAN filed a Motion for Leave of Court for Limited Reconsideration of Court's findings on HWAN's Petition for Judicial Review. The Court has not issued an yet.

proceedings may be taken to enforce it," applies uniformly to all parties subject to a judgment. Similarly, NRAP 8(a)(1) requirements are not directed solely at HWAN. There is nothing different about HWAN's circumstances from those of other parties wishing to file an appeal, which would justify depriving the Division of its statutorily afforded time to file an opposition.

HWAN's approaching expiration of the automatic stay on December 26, 2019, is solely HWAN's responsibility. HWAN waited almost two weeks to file its Motion for Stay, providing the Division with an email courtesy copy at 4:45pm on Friday, December 6, 2019, and demanding that the Division file its opposition by Tuesday, December 11, 2019, effectively giving the Division two business days to oppose HWAN's motion if the OST is granted. This is fundamentally unfair. HWAN is again, self-creating an emergency, and the Division should not be made a casualty thereof. The Division requests a full and fair opportunity to brief the Court on this issue, without a shortened time restraint.

## Conclusion

For the reasons set forth above, the Division respectfully request that the Court deny HWAN's Motion for Order Shortening Time.

DATED: December 9, 2019.

AARON D FORD
Attorney General

By: _____
Richard Yien (Bar No. 13035)
Deputy Attorney General
Joanna Grigoriev (Bar No. 5649)
Senior Deputy Attorney General

## AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

DATED: December 9, 2019.

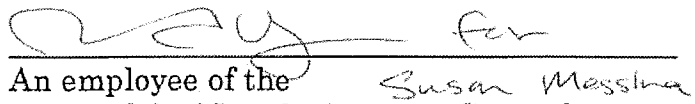
AARON D FORD
Attorney General

By: _____
Richard Paili Yien (Bar No. 13035)
Deputy Attorney General

## CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 9th day of December, 2019, I served a copy of the foregoing **OPPOSITION TO PETITIONER'S MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION ON MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(d)**, by mailing a true and correct copy to the following:

Constance Akridge, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532



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Office of the Nevada Attorney General

# EXHIBIT 12

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2019 DEC 10 PM 3:29
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BY P. O'KEEFE
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17 OC 00269 1B<br>Dept. No. I<br><br>**REPLY IN SUPPORT OF MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** |

Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby submits this Reply in support of its Motion for an Order Shortening Time for Briefing and Decision ("Motion for OST") of HWAN's Motion for Stay pursuant NRCP 62(D) ("Motion for Stay") of the Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.



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## MEMORANDUM OF POINTS AND AUTHORITIES

Respondent casts the Motion for OST as "improper," but cannot point to a single reason why a simple motion for order shortening time pursuant to Rule 9 of the First Judicial District Court Rules (FJDCR), is improper. Both Respondent's "legally allotted timeframe" and the procedures for hearing motions for orders shortening time are governed by the FJDCR. An order shortening time is appropriate where good cause supports the request for shortened time. Here, good cause supports an order shortening the time for briefing on and decision of HWAN's Motion for Stay because of the short timeframe within which any party may move for a stay while the automatic stay under NRCP 62(a)(1) is in place, which has been further shortened by the timing of the service of the Notice of Entry of the Order, circumstances which are not of HWAN's making.

Most importantly, Respondent complains that the relief sought in the Motion for OST is "fundamentally unfair," but says nothing about how Respondent refused entirely to even entertain entering into a stipulation with HWAN regarding a mutually agreeable briefing schedule. HWAN attempted to enter into a stipulation with Respondent for a shortened briefing schedule, which Respondent flatly denied. *See* Email dated December 9, 2019 (wherein Respondent refuses to agree to a briefing schedule, failing to even propose alternative briefing dates), attached hereto as **Exhibit 1**. If Respondent were actually concerned with the briefing schedule proposed in the Motion for OST, which is simply the shortest time possible accounting for the 5 days' judicial notice required by FJDCR 9 and given the exigent circumstances, it had the opportunity to propose and agree to a mutually convenient briefing schedule.

Even so, Respondent greatly exaggerates its position in responding to the Motion for Stay on shortened time. First, the stay is one of right, so the legal issues are not complex, as Respondent represents in its Opposition. Second, while Respondent certainly is required to service its Notice of Entry of Order within 14 days after entry of the judgment, NRCP 58(e), Respondent created ambiguity regarding when the automatic stay expires with its own inaccurate certificate of service on its Notice of Entry of Order and then served that Notice of Entry of Order the day before Thanksgiving, cutting the time for HWAN to make its Motion for Stay even

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shorter.[1] The Notice of Entry of the Order was apparently served on November 26, 2019 according to the certificate of service, which means the automatic stay is in effect until December 26, 2019. However, Respondent concedes that the Notice of Entry was filed on November 27, 2019, and an email from Respondent confirms the Notice of Entry was not actually served until November 27, 2019. Email dated November 27, 2019, attached hereto as **Exhibit 2** (noting the Notice of Entry of Order was "placed in today's mail," on November 27, 2019). However, HWAN cannot take chances and in an abundance of caution, presumes the automatic stay would expire 30 days from the certificate of service date of November 26, 2019.

Respondent complains that HWAN "waited almost two weeks to file its Motion for Stay," but this is absolutely false. First, as detailed above, HWAN did not receive the Notice of Entry until November 27, 2019, the day before Thanksgiving. HWAN filed its Motion for Stay on December 6, 2019, which is nine (9) calendar days after HWAN received the Notice of Entry, but only five (5) business days accounting for the Thanksgiving holiday and weekend. HWAN filed its Motion for Stay as soon as practicable after service of the Notice of Entry.

Second, as Respondent notes, the rules regarding stays apply "uniformly to all parties." HWAN did not create the exigency here. HWAN took steps to file its Motion for Stay as soon as practicable, took all reasonable steps to come to an agreement with Respondent on a shortened briefing schedule, and simply requests a briefing schedule that will allow the Motion for Stay to be decided here and with enough time to make a motion in the Nevada Supreme Court before expiration of the automatic stay on December 26, 2019, if necessary. HWAN cannot change the fact that the timing of the Notice of Entry of Order results in the 30-day automatic stay timeframe including two holidays.

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[1] A briefing schedule in the ordinary course will also encompass the Christmas holiday.



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LAS VEGAS, NV 89134

As such, HWAN respectfully requests that the Court grant the Motion for OST.

DATED this 10th day of December, 2019.

HOLLAND & HART LLP

Constance L. Akridge
Nevada Bar No. 3353
Sydney R. Gambee
Nevada Bar No. 14201
Brittany L. Walker
Nevada Bar No. 14641
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

## CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2019, a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** was served by the following method(s):

☑ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

☑ Email: by electronically delivering a copy via email to the following e-mail address:

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov

An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

## INDEX OF EXHIBITS

| | | |
|---|---|---|
| EXHIBIT 1 | Email dated December 9, 2019 | Pages 1 - 3 |
| EXHIBIT 2 | Email dated November 27, 2019 | Pages 4 - 5 |

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

13937202_v2 104645.0001

# EXHIBIT 1

**Email Dated December 9, 2019**


# EXHIBIT 1

**Email Dated December 9, 2019**

**From:** Richard P. Yien <RYien@ag.nv.gov>
**Sent:** Monday, December 9, 2019 3:32 PM
**To:** Connie Akridge; Joanna N. Grigoriev
**Cc:** Sydney R. Gambee
**Subject:** RE: HWAN Motion to Stay on an OST

Hi Connie,

Our client respectfully declines your offer. The Division will file an opposition to OST and provide courtesy copies to you shortly.

Thank you,
Richard

**Richard Yien, Deputy Attorney General**
**State of Nevada**
**Office of the Attorney General**
**100 N. Carson St.**
**Carson City, Nevada 89701**
**RYien@ag.nv.gov**
**Phone: (775) 684-1129**
**Fax: (775) 684-1156**

This e-mail contains the thoughts and opinions of Richard Yien and does not represent official Office of the Attorney General policy. This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at RYien@ag.nv.gov and delete the message and attachments from your computer and network. Thank you.

**From:** Connie Akridge <CLAkridge@hollandhart.com>
**Sent:** Monday, December 9, 2019 12:05 PM
**To:** Richard P. Yien <RYien@ag.nv.gov>; Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>
**Cc:** Sydney R. Gambee <SRGambee@hollandhart.com>
**Subject:** HWAN Motion to Stay on an OST

Hi Richard and Joanna,

As you likely saw, on Friday HWAN filed its notice of appeal and motion for stay pending appeal. As you know, per NRCP 62(a)(1), the district court's order is stayed for 30 days. We filed a motion for order shortening time to expedite the briefing schedule and decision on the motion for stay to fit within the 30 days and give some room for motion practice at the Nevada Supreme Court level, if necessary. To obviate the need for additional briefing and allow you more time to focus on the motion for stay, will you agree to the briefing schedule in the motion for OST so the motion for stay may be heard within the required timeframe? If so, we will prepare a stipulation setting the briefing schedule and withdrawing the motion for OST, and we will send along for your signature.

Thank you,

Connie

---

Constance L. Akridge
Partner
9555 Hillwood Drive Las Vegas, NV 89134
T 702.222.2543 M 702.785.3402
HOLLAND&HART

CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail.

# EXHIBIT 2

**Email Dated November 27, 2019**


# EXHIBIT 2

**Email Dated November 27, 2019**

**From:** Susan L. Messina <SMessina@ag.nv.gov>
**Sent:** Wednesday, November 27, 2019 11:59 AM
**To:** Connie Akridge; Sydney R. Gambee
**Cc:** Richard P. Yien; Joanna N. Grigoriev
**Subject:** HWAN v. State of Nevada, Case No. 17-OC-00269-1B
**Attachments:** Respondent's Opposition to Petitioners Motion for Leave of Court for Limited Resonsideration of Courts Findings on HWAN's PJR.pdf; 20191127_NOTICE OF ENTRY OF ORDER Affirming In Part and Modifying In Part, FOF, COL, Order of the Hearing Officer and Final Order.pdf

Good Morning,

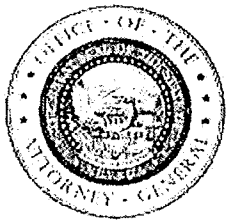
Attached please find the following:

1. Respondent's Opposition to Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN'S Petition for Judicial Review;
2. Notice of Entry of Order Affirming In Part and Modifying in Part, Findings of Fact, conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner
   In Cause No. 17.0050 In the Matter of Home Warranty Administrator of Nevada, Inc. DBA Choice Home Warranty.

A hard copy has been placed in today's mail to each of you.

Thank you,

Susan Messina
Legal Secretary II
Business and Taxation
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
SMessina@ag.nv.gov
T: 775.684.1210



# EXHIBIT 13

Constance L. Akridge
Nevada Bar No. 3353
Sydney R. Gambee
Nevada Bar No. 14201
Brittany L. Walker
Nevada Bar No. 14641
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: 702.669.4600
Fax: 702.669.4650
clakridge@hollandhart.com
srgambee@hollandhart.com
blwalker@hollandhart.com

*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

REC'D & FILED
2019 DEC 10 PM 3:29
AUBREY ROWLATT
P. OKEEFFE
BY_____
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | Case No. 17 OC 00269 1B<br>Dept. No. I<br><br>**REQUEST FOR SUBMISSION** |

Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby requests that the Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(d), filed in the above-entitled matter on December 6, 2019, be submitted to the court for consideration. While 5 days' notice is required under FJDCR 9 for motions for

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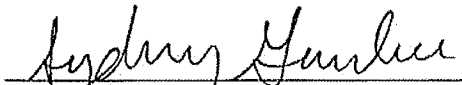
HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

orders shortening time, Respondent has already filed its Opposition on December 9, 2019, HWAN files its Reply concurrently herewith, and briefing on this Motion is now complete.

DATED this 10th day of December, 2019.

HOLLAND & HART LLP



Constance L. Akridge
Nevada Bar No. 3353
Sydney R. Gambee
Nevada Bar No. 14201
Brittany L. Walker
Nevada Bar No. 14641
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

*Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

## CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2019, a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** was served by the following method(s):

☑ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

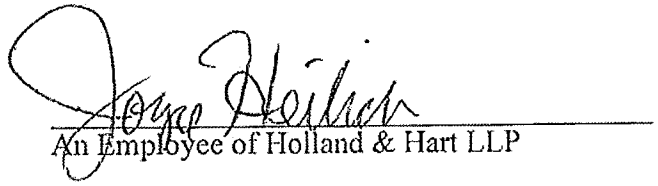
*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

*Attorneys for State of Nevada, Department Of Business and Industry – Division of Insurance*

☑ Email: by electronically delivering a copy via email to the following e-mail address:

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov



An Employee of Holland & Hart LLP

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LAS VEGAS, NV 89134

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# EXHIBIT 14

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

| | |
|---|---|
| HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,<br><br>Appellant,<br><br>vs.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,<br><br>Respondent. | **Supreme Court No. 80218**<br><br>First Judicial District Court<br>Case No. 17 OC 00269 1B |

Appeal from First Judicial District Court, State of Nevada, County of Clark
The Honorable James. T. Russell, District Judge

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**NRAP 27(e) Certificate**

---

Constance L. Akridge, Esq.
Nevada Bar No. 3353
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
Brittany L. Walker, Esq.
Nevada Bar No. 14641
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
clakridge@hollandhart.com
srgambee@hollandhart.com
blwalker@hollandhart.com

*Attorneys for*
*Home Warranty Administrator of Nevada, Inc.*
*dba Choice Home Warranty, a Nevada corporation*

I, Sydney R. Gambee, hereby make this NRAP 27(e) certification as follows:

1. I am counsel for Appellant Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN") and submit this Certificate in support of HWAN's Emergency Motion for a Stay pursuant NRAP 8(a) and NRAP 27(e).

2. The district court entered its Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty (the "Order"), on November 25, 2019.

3. While an email (Ex. 8 to the Motion) from the Division suggests the notice of entry of the Order was actually served on November 27, 2019, the certificate of service of the notice of entry states that the notice of entry was served on November 26, 2019.

4. Pursuant to NRCP 62(a), the Order is automatically stayed for 30 days from the date of service of the notice of entry of the Order, until December 26, 2019.

5. This Motion must be decided prior to the expiration of the automatic stay, prior to December 26, 2019, or HWAN will suffer irreparable harm.

6. Specifically, the district court found in the Order "that NRS 690C.150 requires anyone, including a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in Nevada, to possess a certificate of registration

under Chapter 690C of the NRS." Ex. 1 to the Motion at 3, ¶ 1(c). Further, the district court ordered that HWAN's certificate of registration as a Nevada service contract provider be reinstated, but prohibited HWAN "from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order." *Id.* at 4, ¶ 5.

7. HWAN is currently utilizing CHWG as its sales agent and third-party administrator. If the automatic stay expires prior to the decision on this Motion, HWAN will be forced to overhaul its operations such that it can sell its own contracts, thereby destroying its custom and interfering with its legitimate business and profits, even though HWAN is not prohibited by Nevada law from having CHWG sell service contracts on its behalf (as detailed in the Motion).

8. This Motion is being filed as soon as practicable. On December 6, 2019, HWAN filed its Notice of Appeal and Motion for Stay Pending Appeal Pursuant to NRCP 62(D) ("Motion for Stay") in the district court, along with a Motion for Order Shortening Time for Briefing and Decision of the Motion for Stay ("Motion for OST"). HWAN requested a shortened briefing schedule because the 30-day automatic stay of execution under NRCP 62(a) would expire before the Motion for Stay could be fully briefed, and before a motion could be made to this Court, if necessary. On December 9, 2019, the Division filed its opposition to the Motion for

OST, and on December 10, 2019, HWAN filed its reply and submitted the Motion for OST to the district court for decision.

9. On December 9, 2019, counsel also attempted to come to an agreement with Respondent via email (Exhibit 1 to the Reply attached as Exhibit 12 to the Motion) as to a shortened briefing schedule on the Motion for Stay before the district court to obviate the need for this Motion, but Respondent refused to agree to a shortened briefing schedule.

10. The district court has not issued a ruling on the Motion for OST. Without a shortened briefing schedule, the Respondent's opposition to the Motion for Stay is due December 19, 2019. HWAN's reply will be due December 27, 2019, one day after the expiration of the automatic stay.

11. Therefore, this Motion must be heard as an emergency motion and relief granted in less than 14 days. Otherwise, there will be a lapse in the stay of the Order.

12. The telephone number and office addresses for the attorneys for Respondent are:

Richard Yien
(775) 684-1129
100 N. Carson St.
Carson City, Nevada 89701

Joanna Grigoriev
(702) 486-3101
555 E. Washington Ave., #3900
Las Vegas, Nevada 89101

13. Counsel for Respondent is receiving a copy of this Motion via mail and e-mail concurrently with the filing of the Motion.

14. While the relief sought in the Motion was available in the district court, and while HWAN filed the Motion for Stay in the district court, the district court has declined to issue a shortened briefing schedule. Therefore, the district court will not have full briefing on the Motion for Stay prior to the expiration of the automatic stay under NRCP 62(a).

15. At minimum, a temporary stay should be granted while this Motion is briefed and decided.

DATED this 17th day of December, 2019.

*/s/ Sydney R. Gambee*
Sydney R. Gambee, Esq.

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# EXHIBIT 15

SERFF
25290
Gunnady

You are here: Filing Search (filingSearch.xhtml)
> Filing Search Results (filingSearchResults.xhtml) > Filing Summary

New Search | Refine Search | Return to Search Results

Health Plan Binder Search

# Filing Summary

## Filing Information

**Product Name:**

home service agreement

**Type Of Insurance:**

33.0 Other Lines of Business

**Sub Type Of Insurance:**

33.0004 Service Contracts

**Filing Type:**

Form

**SERFF Tracking Number:**

BLNK-127328348

**Submission Date:**

7/19/11

**Filing Status:**

Closed - Approved

12,000
390
12,390

## Filing Outcome

**SERFF Status:**

Closed

**Disposition Date:**

08/26/2011

# YOUR HOME SERVICE AGREEMENT

HOME WARRANTY ADMINISTRATOR

CHOICE Home Warranty

CHOICE HOME WARRANTY

America's Choice in Home Warranty Protection

Obligor: Home Warranty Administrator of Nevada, Inc.

Approved

Dear Test Account,

Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty. We appreciate your business and look forward to providing you with quality service for all your home protection needs.

To obtain the most value from your new home warranty, please take a moment to read and understand your coverage. Your coverage is dependant on the plan you have selected.

Should you have a problem with any of your covered systems or appliances, please call us toll-free at (888)-531-5403. We are available 24 hours a day, 7 days a week, 365 days a year, or simply log on to our website located at www.ChoiceHomeWarranty.com and file your claim online.

THIS CONTRACT EXPLAINS THE COVERAGE, LIMITATIONS, & EXCLUSIONS. PLEASE REVIEW YOUR CONTRACT.

**Contract Number:** 123456789
**Contract Term:** 01/01/2011 – 01/01/2012
**Covered Property:**
123 Main Street
City, State 12345
**Property Type:** Single Family
**Rate:** $430.00
**Service Call Fee:** $60.00

**Coverage Plan:** Gold Plan
**Includes:** Air Conditioning System, Heating System, Electrical System, Plumbing System, Plumbing Stoppage, Water Heater, Whirlpool Bathtub, Refrigerator, Oven/Range/Stove, Cooktop, Dishwasher, Garbage Disposal, Built-In-Microwave, Clothes Washer, Clothes Dryer, Ductwork, Garage Door Opener, Ceiling & Exhaust Fans
**Optional Coverage:** None

CHOICE HOME WARRANTY
510 Thornall Street · Edison, NJ 08837 · Toll Free: (888) 531-5403
HWA-NV-0711

# YOUR HOME SERVICE AGREEMENT

Throughout this Agreement the words "We", "Us" and "Our" refer to Home Warranty Administrator of Nevada, Inc. (HWA), 90 Washington Valley Road, Bedminster, NJ 07921, the Obligor of this Agreement and it is backed by the full faith and credit of HWA. This Agreement is administered by Choice Home Warranty (Administrator), 510 Thornall Street, Edison, NJ 08837.

A. COVERAGE

During the coverage period, Our sole responsibility will be to arrange for a qualified service contractor ("Service Provider") to repair or replace, at Our expense (up to the limits set forth below), the systems and components mentioned as "Included" in accordance with the terms and conditions of this contract so long as such systems and components:

1. Are located inside the confines of the main foundation of the home or attached or detached garage (with the exception of the exterior pool/spa, well pump, septic tank pumping and air conditioner); and
2. Become inoperative due to normal wear and tear; and
3. Are in place and in proper working order on the effective date of this home warranty contract. This contract does not cover any known or unknown pre-existing conditions. It is understood that WE ARE NOT A SERVICE PROVIDER and are not ourselves undertaking to repair or replace any such systems or components. This contract covers single-family homes (including manufactured homes), new construction homes, condominiums, townhomes, and mobile homes under 5,000 square feet, unless an alternative dwelling type (i.e. above 5,000 square feet or multi-unit home) is applied, and appropriate fee is paid. Coverage is for occupied, owned or rented residential property, not commercial property or residences used as businesses, including, but not limited to, day care centers, fraternity/sorority houses, and nursing/care homes. This contract describes the basic coverage and options available. Coverage is subject to limitations and conditions specified in this contract. Please read your contract carefully. NOTE: This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty.

B. COVERAGE PERIOD

**Coverage starts 30 days after acceptance of application by Us and receipt of applicable contract fees and continues for 365 days from that date.** Your coverage may begin before 30 days if We receive proof of prior coverage, showing no lapse of coverage, through another carrier within 15 days of the order date.

C. SERVICE CALLS – TO REQUEST SERVICE: 1-866-531-5403

1. You or your agent (including tenant) must notify The Administrator for work to be performed under this contract as soon as the problem is discovered. The Administrator will accept service calls 24 hours a day, 7 days a week, 365 days a year at 1-866-681-3656. Notice of any malfunction must be given to the Administrator prior to expiration of this contract.
2. Upon request for service, the Administrator will contact an authorized Service Provider within two (2) days during normal business hours and four (4) days on weekends and holidays. The authorized Service Provider will contact You to schedule a mutually convenient appointment during normal business hours.
3. We define an emergency as a breakdown of a covered system which renders the dwelling unfit to live in because of defects that endanger the health and safety of the occupants. Upon request for services that fall within the emergency guidelines the Administrator will commence repairs within 24 hours. If repairs cannot be completed within three calendar days, the Administrator will provide you with a status report. If you should request the Administrator to perform non-emergency service outside of normal business hours, you will be responsible for payment of additional fees and/or overtime charges.
4. The Administrator has the sole and absolute right to select the Service Provider to perform the service; and We will not reimburse for services performed without prior approval.
5. You will pay a trade service call fee ("Service Fee") per claim (amount shown on page one) or the actual cost, whichever is less. The Service Fee is for each visit by Our approved Service Provider, except as noted Section C(6), and is payable to the Us approved Service Provider at the time of each visit. The service fee applies to each call dispatched and scheduled, including but not limited to those calls wherein coverage is included, excluded, or denied. The service fee also applies in the event You fail to be present at a scheduled time, or in the event You cancel a service call at the time a service contractor is in route to your home or at your home.
6. If service work performed under this contract should fail, then We will make the necessary repairs without an additional trade service call fee for a period of 90 days on parts and 30 days on labor.

D. COVERAGE (COVERAGE DEPENDANT ON PLAN)

The Coverage is for no more than one unit, system, or appliance, unless additional fees are paid. If no additional fees are paid, covered unit, system, or appliance is at Our sole discretion; certain limitations of liability apply to Covered systems and appliances.

1. CLOTHES DRYER

*INCLUDED*: All components and parts, except:

*EXCLUDED*: Noise - Venting - Lint screens - Knobs and dials – Doors - Door seals – Hinges - Glass – Leveling and balancing - Damage to clothing.

2. CLOTHES WASHER

*INCLUDED*: All components and parts, except:

*EXCLUDED*: Noise - Plastic mini-tubs - Soap dispensers - Filter screens - Knobs and dials - Door seals – Hinges - Glass – Leveling and balancing -Damage to clothing.

3. KITCHEN REFRIGERATOR

NOTE: Must be located in the kitchen.

*INCLUDED*: All components and parts, including integral freezer unit, except:

*EXCLUDED*: Racks - Shelves - Lighting and handles - Freon - Ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions – Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator - Wine coolers or mini refrigerators – Food spoilage – Doors - Door seals and gaskets – Hinges – Glass - Audio/Visual equipment and internet connection components.

# YOUR HOME SERVICE AGREEMENT

4. AIR CONDITIONING/COOLER
NOTE: Not exceeding 5 (five) ton capacity and designed for residential use.
*INCLUDED*: Ducted electric central air conditioning ducted electric wall air conditioning. All components and parts, for units below 13 SEER and when We are unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:
*EXCLUDED*: Gas air conditioning systems - Condenser casings - Registers and Grills - Filters - Electronic air cleaners - Window units - Non-ducted wall units - Water towers - Humidifiers - Improperly sized units - Chillers - All exterior condensing, cooling and pump pads – Roof mounts, jacks, stands or supports - Condensate pumps – Commercial grade equipment - Cost for crane rentals - Air conditioning with mismatched condensing unit and evaporative coil per manufacturer specifications – Improper use of metering devices - Thermal expansion valves - Refrigerant conversion - Leak detections – Water leaks - Drain line stoppages – Maintenance - Noise. No more than two systems covered unless purchased separately at time of enrollment. We are not responsible for the costs associated with matching dimensions, brand or color made. We will not pay for any modifications necessitated by the repair of existing equipment or the installation of new equipment.
5. HEATING SYSTEM OR BUILT-IN WALL UNIT
NOTE: Main source of heat to home not to exceed 5 (five) ton capacity and designed for residential use.
*INCLUDED*: All components and parts necessary for the operation of the heating system. For units below 13 SEER and when We are unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:
*EXCLUDED*: All components and parts relating to geothermal, water source heat pumps including: outside or underground piping, components for geothermal and/or water source heat pumps, redrilling of wells for geothermal and/or water source heat pumps, and well pump and well pump components for geothermal and/or water source heat pumps. Access - Radiators or valves - Baseboard casings - Radiant heating – Dampers – Valves - Fuel storage tanks - Portable units - Solar heating systems - Fireplaces and key valves – Filters – Line dryers and filters - Oil filters, nozzles, or strainers - Registers – Backflow preventers – Evaporator coil pan – Primary or secondary drain pans - Grills - Clocks - Timers – Add-ons for zoned systems - Heat lamps - Humidifiers - Flues and vents – Improperly sized heating systems – Mismatched systems - Chimneys – Pellet stoves - Cable heat (in ceiling) - Wood stoves (even if only source of heating) - Calcium build-up - Maintenance. **NOTE: We will pay no more than $1,500 per covered item per contract term for access, diagnosis and repair or replacement of any glycol, hot water, or steam circulating heating systems.**
6. WATER HEATER (Gas and/or Electric)
*INCLUDED*: All components and parts, including circulating pumps, except:
*EXCLUDED*: Access – Insulation blankets – Pressure reducing valve – Sediment build-up – Rust and corrosion - Main, Holding or storage tanks - Vents and flues - Thermal expansion tanks - Low boy and/or Squat water heaters - Solar water heaters - Solar components - Fuel, holding or storage tanks - Noise - Energy management systems - Commercial grade equipment and units exceeding 75 gallons - Drain pans and drain lines - Tankless water heaters.
7. ELECTRICAL SYSTEM
*INCLUDED*: All components and parts, including built-in bathroom exhaust fans, except:
*EXCLUDED*: Fixtures - Carbon monoxide alarms, smoke detectors, detectors or related systems - Intercoms and door bell systems associated with intercoms - Inadequate wiring capacity - Solar power systems and panels - Solar Components - Energy Management Systems - Direct current (D.C.) wiring or components - Attic exhaust fans - Commercial grade equipment - Auxiliary or sub-panels – Broken and/or severed wires - Rerunning of new wiring for broken wires – Wire tracing - Garage door openers – Central vacuum systems - Damages due to power failure or surge – Circuit Overload. **We will pay no more than $500 per contract term for access, diagnosis and repair and/or replacement.**
8. PLUMBING SYSTEM/STOPPAGE
*INCLUDED*: Leaks and breaks of water, drain, gas, waste or vent lines, except if caused by freezing or roots - Toilet tanks, bowls and mechanisms (replaced with builder's grade as necessary), toilet wax ring seals - Valves for shower, tub, and diverter angle stops, rinses and gate valves - Permanently installed interior sump pumps - Built-in bathtub whirlpool motor and pump assemblies - Stoppages/Clogs in drain and sewer lines up to 100 feet from access point. Mainline stoppages are only covered if there is an accessible ground level clean out, except:
*EXCLUDED*: Stoppages and clogs in drain and sewer lines that cannot be cleared by cable or due to roots, collapsed, broken, or damaged lines outside the confines of the main foundation (even if within 100 feet of access point) – Access to drain or sewer lines from vent or removal of water closets - Cost to locate, access or install ground level clean out – Slab leaks - Polybutylene or Quest piping – Galvanized drain lines - Hose Bibs - Drum traps - Flange- Collapse of or damage to water, drain, gas, waste or vent lines caused by freezing, settlement and/or roots – Faucets, fixtures, cartridges, shower heads & shower arms - Baskets and strainers - Popup assemblies - Bathtubs and showers – Cracked porcelain - Glass - Shower enclosures and base pans – Roman tubs - Bath tub drain mechanisms - Sinks - Toilet lids and seats - Cabling or grouting - Whirlpool jets - Whirlpool control panel - Septic tanks - Sewage ejector pumps - Water softeners - Pressure regulators - Inadequate or excessive water pressure - Flow restrictions in fresh water lines caused by rust, corrosion or chemical deposits - Holding or storage tanks - Saunas and/or steam rooms. NOTE: We will provide access to plumbing systems through unobstructed walls, ceilings or floors, only, and will return the access opening to rough finish condition. **We will pay no more than $500 per contract term for access, diagnosis and repair and/or replacement.** Our authorized Service Provider will close the access opening and return it to rough finish condition, subject to the $500 limit indicated. We shall not be responsible for payment of the cost to remove and replace any built-in appliances, cabinets, floor coverings or other obstructions impeding access to walls, ceilings, and/or floors.
9. BUILT-IN MICROWAVE
*INCLUDED*: All components and parts, except:
*EXCLUDED*: Doors – Hinges – Handles – Doors - Door glass – Lights - Interior linings – Trays - Clocks - Shelves - Portable or counter top units – Arcing - Meat probe assemblies - Rotisseries.
10. OVEN/RANGE/STOVE/COOKTOP (Gas or Electric; Built-in, Portable or Free Standing).
*INCLUDED*: All components and parts, except:

*EXCLUDED*: Clocks (unless they affect the cooking function of the unit) - Meat probe assemblies - Rotisseries - Racks - Handles - Knobs - Door seals – Doors – Hinges - Lighting and handles – Glass - Sensi-heat burners will only be replaced with standard burners.
11. DISHWASHER
*INCLUDED*: All components and parts, except:
*EXCLUDED*: Racks - Baskets – Rollers – Hinges – Handles – Doors – Door gaskets – Glass - Damage caused by broken glass - Cleaning.
12. GARBAGE DISPOSAL
*INCLUDED*: All components and parts, including entire unit, except:
*EXCLUDED*: Problems and/or jams caused by bones, glass, or foreign objects other than food.
13. CEILING AND EXHAUST FANS
*INCLUDED*: Motors - Switches - Controls - Bearings – Blades, except:
*EXCLUDED*: Fans - Blades - Belts - Shutters - Filters - Lighting. Note: Builder's standard is used when replacement is necessary.
14. DUCTWORK
*INCLUDED*: Duct from heating unit to point of attachment at registers or grills, except:
*EXCLUDED*: Registers and grills - Insulation - Asbestos-insulated ductwork – Vents, flues and breaching – Ductwork exposed to outside elements - Improperly sized ductwork - Separation due to settlement and/or lack of support - Damper motors - Diagnostic testing of, or locating leaks to ductwork, including but not limited to, as required by any federal, state or local law, ordinance or regulation, or when required due to the installation or replacement of system equipment. We will provide access to ductwork through unobstructed walls, ceilings or floors, only, and will return the access opening to rough finish condition. **With respect to concrete covered, embedded, encased, or otherwise inaccessible ductwork, We will pay no more than $500 per contract term for access, diagnosis and repair or replacement.** Our authorized Service Provider will close the access opening and return to a rough finish condition, subject to the $500 limit indicated. We shall not be responsible for payment of the cost to remove and replace any built-in appliances, cabinets, floor coverings or other obstructions impeding access to walls, ceilings, and/or floors.
15. GARAGE DOOR OPENER
*INCLUDED*: All components and parts, except:
*EXCLUDED*: Garage doors - Hinges - Springs - Sensors - Chains – Travelers - Tracks - Rollers - Remote receiving and/or transmitting devices.
16. GREEN
*INCLUDED*: If a covered system or appliance (limited to Clothes Washer, Clothes Dryer, Refrigerator, Dishwasher, Heating System, and Water Heater) breaks down per Section A above and subject to all other contract inclusions, exclusions and limitations, and it can not be repaired, We will replace the appliance with an ENERGY STAR qualified product (subject to availability, exclusions and limitations), one with similar and like features as existing appliance, except:
*EXCLUDED*: All other contract limitations of liability and exclusions apply.

E. OPTIONAL COVERAGE (Requires Additional Payment)
NOTE: You may purchase any Optional Coverage for up to 30 days after commencement of Coverage. However, Coverage shall not commence until receipt of payment by Us and such Coverage shall expire upon expiration of Coverage period in Section B.
1. POOL AND/OR SPA EQUIPMENT
*INCUDED*: Both pool and built-in spa equipment (exterior hot tub and whirlpool) are covered if they utilize common equipment. If they do not utilize common equipment, then only one or the other is covered unless an additional fee is paid. Coverage applies to above ground, accessible working components and parts of the heating, pumping and filtration system as follows: Heater – Pump - Motor - Filter - Filter timer - Gaskets - Blower - Timer - Valves, limited to back flush, actuator, check, and 2 and 3-way valves - Relays and switches - Pool sweep motor and pump - Above ground plumbing pipes and wiring, except:
*EXCLUDED*: Portable or above ground pools/spas - Control panels and electronic boards - Lights - Liners – Maintenance - Structural defects - Solar equipment - Jets - Ornamental fountains, waterfalls and their pumping systems - Pool cover and related equipment - Fill line and fill valve - Built-in or detachable cleaning equipment such as, but not limited to, pool sweeps, pop up heads – Turbo valves, skimmers, chlorinators, and ionizers - Fuel storage tanks – Disposable filtration mediums – Cracked or corroded filter casings – Grids - Cartridges - Heat pump – Salt water systems. **We will pay no more than $500 per contract term for access, diagnosis and repair and/or replacement.**
2. SEPTIC TANK PUMPING
*INCLUDED*: Main line stoppages/clogs (one time only, and must have existing access or clean out). If a stoppage is due to a septic tank back up, then we will pump the septic tank one time during the term of the plan.
Coverage can only become effective if a septic certification was completed within 90 days prior to close of sale. We reserve the right to request a copy of the certification prior to service dispatch.
*EXCLUDED*: The cost of gaining or finding access to the septic tank and the cost of sewer hook ups - Disposal of waste - Chemical treatments – Tanks - Leach lines – Cess pools - Mechanical pumps/systems. **Limited to a total of $200 maximum.**
3. WELL PUMP
*INCLUDED*: All components and parts of well pump utilized for main dwelling only, except:
*EXCLUDED*: Holding or storage tanks - Digging – Locating pump – Pump retrieval - Redrilling of wells - Well casings - Pressure tanks – Pressure switches and gauges – Check valve – Relief valve – Drop pipe - Piping or electrical lines leading to or connecting pressure tank and main dwelling including wiring from control box to the pump - Booster pumps - Well pump and well pump components for geothermal and/or water source heat pumps. **We will pay no more than $500 per contract term for access, diagnosis and repair and/or replacement.**
4. SUMP PUMP
*INCLUDED*: Permanently installed sump pump for ground water, within the foundation of the home or attached garage, except:
*EXCLUDED*: Sewerage ejector pumps - Portable pumps – Backflow preventors – Check valves - Piping modifications for new installs.
5. CENTRAL VACUUM

# YOUR HOME SERVICE AGREEMENT

*INCLUDED*: All mechanical system components and parts, except:
*EXCLUDED*: Ductwork – Hoses - Blockages – Accessories.
6. LIMITED ROOF LEAK (Single Family Homes Only)
*INCLUDED*: Repair of shake, shingle, and composition roof leaks over the occupied living area.
*EXCLUDED*: Porches - Patios – Cracked and/or missing material - Foam roofs - Tar and gravel or metal roof - Cemwood shakes - Masonite shingles - Flat or built-up roof - Structural leaks adjacent to or caused by appendages of any kind – Downspouts Flashing – Gutters – Skylights – Decks - Patio covers - Solar equipment - Roof jacks – Antennae - Satellite components – Chimneys – Partial roof replacement - Preventative maintenance.
NOTE: If roof must be partially or completely replaced to effect repair, this coverage does not apply.
7. STAND ALONE FREEZER
*INCLUDED*: All parts and components that affect the operation of the unit, except:
*EXCLUDED*: Ice-makers, crushers, dispensers and related equipment - Internal shell – Racks – Shelves - Glass displays – Lights - Knobs and caps – Dials – Doors - Door seals and gaskets - Door hinges - Door handles – Glass - Condensation pans – Clogged drains and clogged lines – Grates - Food spoilage - Freon - Disposal and recapture of Freon.
8. SECOND REFRIGERATOR
*INCLUDED*: All components and parts, including integral freezer unit, except:
*EXCLUDED*: Racks - Shelves - Lighting and handles - Freon - Ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions – Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator – Food spoilage – Doors - Door seals and gaskets – Hinges - Glass – Audio/Visual equipment and internet connection components.
9. SEPTIC SYSTEM
*INCLUDED:* Sewage ejector pump - Jet pump - Aerobic pump - Septic tank and line from house.
*EXCLUDED:* Leach lines - Field lines - Lateral lines - Tile fields and leach beds - Insufficient capacity - Clean out - Pumping. **We will pay no more than $500 per contract term for access, diagnosis and repair and/or replacement.**

E. LIMITATIONS OF LIABILITY
1. The following are not included during the contract term; (i) malfunction or improper operation due to rust or corrosion of all systems and appliances, (ii) collapsed ductwork, (iii) known or unknown pre-existing conditions.
2. We are not responsible for providing access to or closing access from any covered item which is concrete-encased or otherwise obstructed or inaccessible.
3. At times it is necessary to open walls or ceilings to make repairs. The Service Provider obtained by We will close the opening, and return to a rough finish condition. We are not responsible for restoration of any wall coverings, floor coverings, plaster, cabinets, counter tops, tiling, paint, or the like.
4. We are not responsible for the repair of any cosmetic defects or performance of routine maintenance.
5. Electronic or computerized energy management or lighting and appliance management systems, solar systems and equipment are not included.
6. You may be charged an additional fee by the Service Provider to dispose of an old appliance, system or component, including, but not limited to the following items: condensing units, evaporator coils, compressors, capacitors, refrigerators, freezers, water heaters, and any system or appliance which contains dangerous or hazardous materials.
7. We are not liable for service involving hazardous or toxic materials including but not limited to mold, lead paint, or asbestos, nor costs or expenses associated with refrigerant recovery, recycling, reclaiming or disposal. We are not liable for any failure to obtain timely service due to conditions beyond Our control, including, but not limited to, labor difficulties or delays in obtaining parts or equipment.
8. We are not liable for repair of conditions caused by chemical or sedimentary build up, rust or corrosion, mildew, mold, misuse or abuse, failure to clean or maintain as specified by the equipment manufacturer, missing parts, structural changes, fire, freezing, electrical failure or surge, water damage, lightening, mud, earthquake, soil movement, soil settlement, settling of home, storms, accidents, pest damage, acts of God, or failure due to excessive or inadequate water pressure.
9. We have the sole right to determine whether a covered system or appliance will be repaired or replaced. We are responsible for installing replacement equipment of similar features, capacity, and efficiency, but not for matching dimensions, brand or color. We are not responsible for upgrades, components, parts, or equipment required due to the incompatibility of the existing equipment with the replacement system or appliance or component or part thereof or with new type of chemical or material utilized to run the replacement equipment including, but not limited to, differences in technology, refrigerant requirements, or efficiency as mandated by federal, state, or local governments. If parts are no longer available, We will offer a cash payment in the amount of the average cost between parts and labor of the covered repair. We reserve the right to locate parts at any time. We are not liable for replacement of entire systems or appliances due to obsolete, discontinued or unavailability of one or more integral parts. However, We will provide reimbursement for the costs of those parts determined by reasonable allowance for the fair value of like parts. We reserve the right to rebuild a part or component, or replace with a rebuilt part or component.
10. We are not liable for repairs related to costs of construction, carpentry or other incidental costs associated with alterations or modifications of appliances, components or installation of different equipment and/or systems. Except as required to maintain compatibility with equipment manufactured to be 13 SEER and/or 7.7 HSPF or higher compliant, We are not responsible for providing upgrades, components, parts or equipment required due to the incompatibility of the existing equipment with the replacement system, appliance or component/part, including but not limited to efficiency as mandated by federal, state or local governments.
11. We are not responsible for repairs related to inadequacy, lack of capacity, improper installation, mismatched systems, oversized systems, undersized systems, previous repair or design, manufacturer's defect, and any modification to the system or appliance.
12. We are not liable for normal or routine maintenance. We will not pay for repairs or failures that result from the Contract holder's failure to perform normal or routine maintenance. For example, you are responsible for providing maintenance and cleaning pursuant to

# YOUR HOME SERVICE AGREEMENT

manufacturers' specifications, such as periodic cleaning of heating and air conditioning systems, evaporator coils and condenser coils, as well as periodic filter replacement.
13. We are not liable for the repair or replacement of commercial grade equipment, systems or appliances. **We shall pay no more than $1,000 in aggregate for professional series or like appliances such as, but not limited to, brand names such as Sub Zero, Viking, Wolf, Bosch, Jenn-Air, GE Monogram, Thermador, and etc.**
14. We reserve the right to obtain a second opinion at Our expense.
15. We are not responsible for any repair, replacement, installation, or modification of any covered system or appliance arising from a manufacturer's recall or defect of said covered items, nor any covered item while still under an existing manufacturer's, distributor's, or in-home warranty.
16. We reserve the right to offer cash back in lieu of repair or replacement in the amount of Our actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance.
17. We are not responsible for the repair or replacement of any system or appliance or component or part thereof that has been previously, or is subsequently, determined to be defective by the Consumer Product Safety Commission or the manufacturer and for which either has issued, or issues, a warning or recall, or which is otherwise necessitated due to failure caused by the manufacturer's improper design, use of improper materials, formula, manufacturing process or other manufacturing defect.
18. We will not pay for the repairs or replacement of any covered systems or appliances if they are inoperable as a result of known or unknown pre-existing conditions, deficiencies and/or defects.
19. You agree that We are not liable for the negligence or other conduct of the Service Provider, nor are We an insurer of Service Provider's performance. You also agree that We are not liable for consequential, incidental, indirect, secondary, or punitive damages. You expressly waive the right to all such damages. Your sole remedy under this agreement is recovery of the cost of the required repair or replacement, whichever is less. **You agree that, in no event, will Our liability exceed $1500 per contract item for access, diagnosis and repair or replacement.**

G. Mediation
**In the event of a dispute over claims or coverage you agree to file a written claim with Us and allow Us thirty (30) calendar days to respond to the claim. The parties agree to mediate in good faith before resorting to mandatory arbitration in the State of Nevada.**
Except where prohibited, if a dispute arises from or relates to this Agreement or its breach, and if the dispute cannot be settled through direct discussions you agree that:
1. Any and all disputes, claims and causes of action arising out of or connected with this Agreement shall be resolved individually, without resort to any form of class action, and exclusively by the American Arbitration Association in the state of Nevada under its Commercial Mediation Rules. Controversies or claims shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or regulatory duties or liability.
2. Any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred to a maximum of $1500 per claim, but in no event attorneys' fees.
3. Under no circumstances will you be permitted to obtain awards for, and you hereby waive all rights to claim, indirect, punitive, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased. All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement, shall be governed by, and construed in accordance with, the laws of the State of Nevada, U.S.A. without giving effect to any choice of law or conflict of law rules (whether of the State of Nevada or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of Nevada.

H. Severability
If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect.

I. BUILDING AND ZONING CODE REQUIREMENTS OR VIOLATIONS
1. We will not contract for services to meet current building or zoning code requirements or to correct for code violations, nor will it contract for services when permits cannot be obtained. We will not pay for the cost to obtain permits.
2. Except as required to maintain compatibility with equipment manufactured to be 13 SEER and/or 7.7 HSPF or higher compliant, We are not responsible for upgrade or additional costs or expenses that may be required to meet current building or zoning code requirements or correct for code violations. This includes city, county, state, federal and utility regulations and upgrades required by law.

J. MULTIPLE UNITS AND INVESTMENT PROPERTIES
1. If the contract is for duplex, triplex, or fourplex dwelling, then every unit with in such dwelling must be covered by Our contract with applicable optional coverage for coverage to apply to common systems and appliances.
2. If this contract is for a unit within a multiple unit of 5 or more, then only items contained within the confines of each individual unit are covered. Common systems and appliances are excluded.
3. Except as otherwise provided in this section, common systems and appliances are excluded.

K. TRANSFER OF CONTRACT & RENEWALS
1. If your covered property is sold during the term of this contract You must notify Us of the change in ownership and submit the name of the new owner by phoning 1-866-681-3656 in order to transfer coverage to the new owner.
2. You may transfer this contract at any time. There is no fee to transfer contract.
3. This contract may be renewed at Our option and where permitted by state law. In that event You will be notified of the prevailing rate and terms for renewal.

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4. If You select the monthly payment option and We elect to renew your contract, We will notify You of applicable rate and terms of renewal during the tenth month of your contract. You will automatically be renewed for a monthly coverage period unless You notify Us in writing 30 days prior to the expiration of the contract. Your first payment for the next contract term will be construed as authorization for month-to-month charges.

L. CANCELLATION

This is a service contract for repair, replacement, or partial replacement of the products listed that are deemed manufactured or sold by the manufacturer. This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty. You may cancel within the first 30 days of the order date for a refund of the paid contract fees. You may cancel after the first 30 days and You shall be entitled to a pro rata refund of the paid contract fee for the unexpired term, less a $50 administrative fee. If We do not provide a refund within 45 days of cancellation a ten percent penalty for each 30 day period or portion thereof shall be added to the refund.

This contract shall be non-cancelable by Us except for:

1. Failure by You to pay an amount when due.
2. You are convicted of a crime which results in an increase in the service required under the service contract.
3. Fraud or misrepresentation of facts material by You to the issuance of this contract; or in presenting a claim.
4. An act or omission by You or a violation of any condition of the service contract by You, provided that the act, omission, or violation occurred after the effective date of the service contract and substantially and materially increases the service required under the service contract.
5. A material change in the nature or extent of the required service or repair which occurs after the effective date of the service contract and which causes the required service or repair to be substantially and materially increased beyond that contemplated at the time that the service contract was issued or sold.

If We cancel this agreement for one of the reasons listed above You shall be entitled to a pro rata refund of the paid contract fee for the unexpired term, and will not be charged an administrative fee. We will provide 15 days notice prior to cancellation of this contract.

All cancellation requests must be submitted in writing.

**Dolores Bennett**

**From:** Dolores Bennett
**Sent:** Wednesday, July 27, 2011 2:39 PM
**To:** Harland Amborn; David Hall
**Cc:** Ted Bader; Gennady Stolyarov
**Subject:** RE: Choice Home Warranty

Mr. Hall:

**Choice Home Warranty** is not registered as a service contract provider in Nevada.

**Home Warranty Administrator Of Nevada, Inc.** (Org. ID # 113194) is registered as a service contract provider in Nevada, and only has one service contract **approved** for sale in Nevada at this time: Home Service Agreement # HWAADMIN-8/2/10 (Approved: 11/22/10). That contract is under the "Home Warranty Administrators" name and makes no mention of Choice Home Warranty. However, Home Warranty Administrator of Nevada, Inc. has a **pending** form filing (Filing # 25290) in SERFF for a new contract called "Choice Home Warranty" (Home Service Agreement # HWA-NV-0711) listing Home Warranty Administrator Of Nevada, Inc. as the Obligor, and listing Choice Home Warranty as the Administrator.

The cover letter contains both Choice Home Warranty and Home Warranty Administrators logos and reads,

- Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty. We appreciate your
  business and look forward to providing you with quality service for all your home protection needs.
  To obtain the most value from your new home warranty, please take a moment to read and understand your coverage. Your coverage is dependant on the plan you have selected.
  Should you have a problem with any of your covered systems or appliances, please call us toll-free at (888)-531-5403. We are available 24 hours a day, 7 days a week, 365 days a year, or simply log on to our website located at www.ChoiceHomeWarranty.com and file your claim online.

However, the agreement reads,

- Throughout this Agreement the words "We", "Us" and "Our" refer to Home Warranty Administrator of Nevada, Inc. (HWA), 90 Washington
  Valley Road, Bedminster, NJ 07921, the Obligor of this Agreement and it is backed by the full faith and credit of HWA. This Agreement is
  administered by Choice Home Warranty (Administrator), 510 Thornall Street, Edison, NJ 08837.

That pending filing is still under review pending the company response to our objections to certain statements, wording and typographical errors in the contract. We will approve the contract after they correct those errors.

Dolores Bennett, **ARC, ARM, AIS, AINS**

**Insurance Examiner**
**Property & Casualty Section**
**Nevada Division of Insurance**
**1818 E. College Parkway, Suite 103**
**Carson City, NV 89706**
**direct: (775) 687-0763**
**main: (775) 687-0700**
**fax: (775) 687-0787**
**dbennett@doi.state.nv.us**

**Visit us online at the** Service Contracts Section for service contract provider requirements, filing information, and more.

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**From:** Harland Amborn
**Sent:** Wednesday, July 27, 2011 1:39 PM
**To:** David Hall
**Cc:** Dolores Bennett
**Subject:** Choice Home Warranty

# EXHIBIT 16

**From:** Stephen McDaniel
**Subject:** UPDATE SCIC: Nevada DOI Data Call
**Date:** Wednesday, November 27, 2019 8:45:37 AM
**Attachments:** image002.png
image003.png
Data Call Letter of Instruction.pdf
SCP Data Call Spreadsheet.xlsx

# Nevada Division of Insurance Data Call

Members,

Yesterday we met with the Nevada Division of Insurance ("Division") regarding several recent concerns in the regulation of service contract industry—specifically, the industry data call issued last week as well as the regulation of service contract sellers. This meeting was held with Jim Burleson of Meenan PA, Timothy Ghan, Assistant Chief Examiner for the Property and Casualty Division, and Gennady Stolyarov, Lead Actuary for the Property and Casualty Division.

As to the industry data call, the Division would not accept the argument that the statutory provision that is the justification for the data call does not apply to service contract providers as non-insurers, despite the plain language of the statute. Instead the Division asserts that it has the authority to request this information based on a combination of the purpose behind the "data call statute" and the fact that service contract providers are subject to certain provisions of the insurance code per Nev. Rev. Stat. 690C.120(1). As such, the Division has no plan to rescind the data call and expects all service contract providers licensed in the state of Nevada to respond.

With that said, Mr. Ghan did commit to allowing companies an extension of time to submit the data, but indicated that each company would individually need to request such an extension. Additionally, Mr. Ghan commented that the data request is intended to gain a better understanding of the industry, and that it is not intended to be adversarial in anyway. We expressed the industries concerns that this appears to be a first step towards full insurance regulation by the Division; however, Mr. Ghan responded that the Division has no intention to employ rate regulation within the service contract industry or subject it to regulation akin to that of the insurance industry. Mr. Ghan also emphasized that individual company data collected will not be published and that nothing from the data call will be published except for the possibility of the aggregated data being made available to the general public with no identifying information for any individual company.

We have the option to challenge the Division with an argument based on the plain language of the statute and the Division appearing to exceed its statutory authority against their statutory purpose and consumer protection focused arguments; however, given the level of deference that the Clark County Courts traditionally give the Division, it is doubtful that this would be a successful endeavor.

Given all of this, we recommend that you continue to compile the requested information as quickly as possible and request an extension immediately if it is possible you may need one. Additionally, we recommend that you familiarize yourself with the trade secret statutes applicable to the Division and utilize those protections with your submission notwithstanding Mr. Ghan's comments regarding there being no publication of individual company information.

As to the regulation of service contract sellers, there was some concern in the industry based on recent Division action as to an individual company that the Division may be taking the position that all sellers of service contracts, even those that are not providers of service contracts, are required to be licensed as service contract providers. I have confirmed with Mr. Ghan that this is not and will not be the Division's position and that sellers of service contracts that are not providers do not need to be licensed as providers or otherwise register with the Division. Mr. Ghan did, however, state that it is the Division's position that service contract administrators are not permitted to *sell* service contracts unless licensed as a service contract provider.

We will continue to monitor these issues and work with the Division should attempted regulation, legislation, or administrative action develop.

Thank you.

MEENAN
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You received this email because you are a member of the SCIC.