

**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 00218
Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

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

**APPELLANT'S APPENDIX
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(AA001774 – AA001982)**

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Division's Opposition to Petitioner's Motion for Stay (Case No. 17 OC 00269 1B)	12/19/19	XIV	AA002732 – AA002741
Division's Opposition to Respondent's Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/14/17	VII	AA001333 – AA001338
Division's Post-hearing Brief Pursuant to Order (Cause No. 17.0050)	10/30/17	VII	AA001299 – AA001307
Division's Pre-hearing Statement (Cause No. 17.0050)	09/06/17	I	AA000178 – AA000188
Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of the Commissioner (Cause No. 17.0050)	12/18/17	VIII	AA001379 – AA001409
Hearing Date Memo (Case No. 17 OC 00269 1B)	06/06/18	IX	AA001707
Hearing Date Memo (Case No. 17 OC 00269 1B)	08/28/19	XII	AA002292 – AA002294
Hearing Exhibit List by HWAN (Cause No. 17.0050) (<i>Exhibits D, F-H, J-K, M-N, W-X, and HH excluded from appendix as irrelevant to this appeal</i>)	09/06/17	III	AA000276 – AA000499
HWAN's Brief regarding Exhibits KK, LL, and MM (Cause No. 17.0050)	11/13/18	IX	AA001739 – AA001745
HWAN's Closing Argument (Cause No. 17.0050)	11/22/17	VIII	AA001359 – AA001378
HWAN's Notice of Filing Supplemental Hearing Exhibit SS (Cause No. 17.0050)	09/21/17	VII	AA001271 – AA001295
HWAN's Notice of Intent to File Supplemental Hearing Exhibits and Amended Hearing Exhibit List (Cause No. 17.0050)	09/11/17	IV	AA000522 – AA000582
HWAN's Post-hearing Brief on Hearing Officer's Inquiry (Cause No. 17.0050)	10/30/17	VII	AA001308 – AA001325
HWAN's Pre-hearing Statement (Cause No. 17.0050)	09/08/17	IV	AA000500 – AA000513

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
HWAN's Reply to Division's Opposition to its Brief regarding Exhibits KK, LL and MM (Cause No. 17.0050)	11/21/18	IX	AA001754 – AA001758
Joint Application to Conduct Deposition to Preserve Hearing Testimony (Cause No. 17.0050)	08/21/17	I	AA000165 – AA000168
Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/30/19	XI	AA002170 – AA002173
Joint Request for Pre-hearing Conference (Cause No. 17.0050)	08/16/17	I	AA000149 – AA000152
Joint Request to Continue Hearing (Cause No. 17.0050)	06/20/17	I	AA000042 – AA000044
Legislative History Statement Regarding NRS 690C.325(1) and NRS 690C.330 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002295 – AA002358
Limited Opposition to Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/21/17	I	AA000074 – AA000076
List of Hearing Witnesses by HWAN (Cause No. 17.0050)	09/08/17	IV	AA000514 – AA000517
Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/15/19	XIII	AA002456 – AA002494
Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	02/22/19	X	AA001802 – AA001961
Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	04/19/18	IX	AA001663 – AA001680
Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIII	AA002574 – AA002582

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/14/17	I	AA000054 – AA000064
Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/16/18	VIII	AA001471 – AA001486
Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002583 – AA002639
Motion to Strike Portions of the Division’s Post-hearing Brief (Cause No. 17.0050)	11/13/17	VII	AA001326 – AA001332
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	02/01/19	X	AA001788 – AA001801
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002139 – AA002169
Notice of Appeal (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002646 – AA002693
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 (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002522 – AA002530
Notice of Entry of Order Denying Motion for Stay (Case No. 17 OC 00269 1B)	02/16/18	VIII	AA001552 – AA001559
Notice of Entry of Order Denying Petitioner’s Motion for Leave of Court for Limited Reconsideration of Court’s Findings on HWAN’s Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/11/19	XIV	AA002717 – AA002723
Notice of Entry of Order Denying Petitioner’s Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/18/19	XIV	AA002726 – AA002731

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Entry of Order Denying Petitioner's Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	01/07/20	XIV	AA002765 – AA002775
Notice of Entry of Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002014 – AA002018
Notice of Entry of Order for Stipulation regarding (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/01/19	X	AA001977 – AA001982
Notice of Entry of Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002019 – AA002023
Notice of Entry of Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	07/10/19	XI	AA002190 – AA002194
Notice of Entry of Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/06/19	XI	AA002180 – AA002185
Notice of Filing Hearing Officer's Administrative Order (Case No. 17 OC 00269 1B)	01/28/19	X	AA001774 – AA001787
Notice of No Opposition to Request to Continue Hearing (Cause No. 17.0050)	07/24/17	I	AA000077 – AA000078

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Non-Opposition to Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal and Notice of Submission of Proposed Order (Case No. 17 OC 00269 1B)	03/12/19	X	AA001962 – AA001968
Notice of Non-Opposition to Respondent's Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/01/17	I	AA000030 – AA000031
Notice of Non-Opposition to Respondent's Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/16/17	I	AA000040 – AA000041
Notice of Submission of Competing Proposed Order (Case No. 17 OC 00269 1B)	11/22/19	XIII	AA002495 – AA002516
Notice to Set (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002289 – AA002291
Opposition to Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/04/18	IX	AA001681 – AA001687
Opposition to Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002694 – AA002698
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 (Case No. 17 OC 00269 1B)	11/25/19	XIII	AA002517 – AA002521
Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002699 – AA002702
Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/12/19	XIV	AA002724 – AA002725

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order Denying Petitioner's Motion for Stay Pending Appeal (Case No. 17 OC 00269 1B)	12/31/19	XIV	AA002759 – AA002764
Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/08/19	XI	AA002012 – AA002013
Order for Briefing Schedule (Case No. 17 OC 00269 1B)	12/26/17	VIII	AA001460 – AA001462
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/13/19	X	AA001972 – AA001973
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	06/18/19	XI	AA002186 – AA002189
Order Granting Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	09/06/18	IX	AA001732 – AA001735
Order on Joint Application to Conduct Deposition (Cause No. 17.0050)	08/17/17	I	AA000159 – AA000164
Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/05/19	XI	AA002177 – AA002179
Order on Motion Requesting Extension of Time and Order on Joint Request for Continuance (Cause No. 17.0050)	06/22/17	I	AA000045 – AA000047
Order on Motions (Cause No. 17.0050)	07/27/17	I	AA000084 – AA000091
Order on Petition to Enlarge Time to Respond to Subpoena Duces Tecum (Cause No. 17.0050)	06/05/17	I	AA000032 – AA000035
Order on Remand (Cause No. 17.0050)	01/22/19	IX	AA001759 – AA001767
Order regarding Exhibits KK, LL & MM (Cause No. 17.0050)	10/31/18	IX	AA001736 – AA001738
Order regarding Motion to Strike and Written Closing Arguments (Cause No. 17.0050)	11/14/17	VII	AA001339 – AA001340

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order regarding Post-hearing Briefs and Written Closing Arguments (Cause No. 17.0050)	10/13/17	VII	AA001296 – AA001298
Order Setting Pre-hearing Conference (Cause No. 17.0050)	08/17/17	I	AA000153 – AA000158
Order to Set for Hearing (Case No. 17 OC 00269 1B)	05/16/18	IX	AA001705 – AA001706
Order to Show Cause (Cause No. 17.0050)	05/11/17	I	AA000015 – AA000018
Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001412 – AA001458
Petition to Enlarge Time to Respond to Subpoena Duces Tecum, with cover letter (Cause No. 17.0050)	06/01/17	I	AA000023 – AA000029
Petitioner's Opening Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	02/16/18	IX	AA001560 – AA001599
Petitioner's Reply in Support of its Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002210 – AA002285
Petitioner's Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002024 – AA002138
Pre-hearing Order (Cause No. 17.0050)	06/22/17	I	AA000048 – AA000053
Proposed Hearing Exhibits and Witness List by Division (Cause No. 17.0050) (<i>Exhibits 1, 3, 6, 8-11, 13-20, 24-29, and 38-40 excluded from appendix as irrelevant to this appeal</i>)	09/06/17	II	AA000189 – AA000275
Reply Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	04/11/18	IX	AA001644 – AA001662
Reply in Support of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002542 – AA002570

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Reply in Support of Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002706 – AA002716
Reply in Support of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001538 – AA001548
Reply in Support of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002742 – AA002755
Reply in Support of Petitioner’s Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001688 – AA001701
Reply Memorandum of Points and Authorities in Support of Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/15/19	XI	AA002004 – AA002008
Request for Hearing on Petition for Judicial Review Pursuant to NRS 233B.133(4) (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002286 – AA002288
Request for Submission of Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/31/19	XI	AA002174 – AA002176
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/06/19	XI	AA002009 – AA002011
Request for Submission of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN’s Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002571 – AA002573
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	03/12/19	X	AA001969 – AA001971

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Request for Submission of Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002703 – AA002705
Request for Submission of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001549 – AA001551
Request for Submission of Motion to Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002756 – AA002758
Request for Submission of Petitioner’s Motion for Leave to Present Additional Evidence and Petitioner’s Request for Hearing on its Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001702 – AA001704
Request to Continue Hearing (Cause No. 17.0050)	07/20/17	I	AA000072 – AA000073
Respondent’s Answering Brief (Case No. 17 OC 00269 1B)	03/19/18	IX	AA001602 – AA001641
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 (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002531 – AA002541
Respondent’s Statement of Legislative History of NRS 690C.325 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002359 – AA002383
Respondents’ Response to Petitioner’s Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/08/19	XII	AA002195 – AA002209
Second Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/19/17	I	AA000065 – AA000071
Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/14/17	I	AA000036 – AA000039
Statement of Intent to Participate (Case No. 17 OC 00269 1B)	01/19/18	VIII	AA001487 – AA001489

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Stipulation and Order (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/25/19	X	AA001974 – AA001976
Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/15/18	IX	AA001600 – AA001601
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	05/11/17	I	AA000019 – AA000022
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	07/26/17	I	AA000079 – AA000083
Subpoena Duces Tecum to the Commissioner of the State of Nevada Division of Insurance (the “Division”) (Cause No. 17.0050)	08/09/17	I	AA000104 – AA000108
Subpoena for Appearance at Hearing to Dolores Bennett (Cause No. 17.0050)	08/04/17	I	AA000092 – AA000095
Subpoena for Appearance at Hearing to Sanja Samardzija (Cause No. 17.0050)	08/04/17	I	AA000096 – AA000099
Subpoena for Appearance at Hearing to Vincent Capitini (Cause No. 17.0050)	08/04/17	I	AA000100 – AA000103
Subpoena for Appearance at Hearing to Chloe Stewart (Cause No. 17.0050)	08/09/17	I	AA000109 – AA000112
Subpoena for Appearance at Hearing to Derrick Dennis (Cause No. 17.0050)	08/09/17	I	AA000113 – AA000116
Subpoena for Appearance at Hearing to Linda Stratton (Cause No. 17.0050)	08/09/17	I	AA000121 – AA000124
Subpoena for Appearance at Hearing to Vicki Folster (Cause No. 17.0050)	08/09/17	I	AA000133 – AA000136
Subpoena for Appearance at Hearing to Kim Kuhlman (Cause No. 17.0050)	08/09/17	I	AA000137 – AA000140
Subpoena for Appearance at Hearing to Mary Strong (Cause No. 17.0050)	08/09/17	I	AA000145 – AA000148

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Subpoena for Appearance at Hearing to Geoffrey Hunt (Cause No. 17.0050)	08/09/17	I	AA000117 – AA000120
Subpoena for Appearance at Hearing to Martin Reis (Cause No. 17.0050)	08/09/17	I	AA000141 – AA000144
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Creation of the Division’s Annual Renewal Application Forms (Cause No. 17.0050)	08/09/17	I	AA000125 – AA000128
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Date of the Division’s Knowledge of the Violations Set Forth in the Division’s Complaint on File in this Cause (Cause No. 17.0050)	08/09/17	I	AA000129 – AA000132
Substitution of Attorney (Case No. 17 OC 00269 1B)	01/25/19	IX	AA001771 – AA001773
Substitution of Attorney (Cause No. 17.0050)	01/24/19	IX	AA001768 – AA001770
Supplement to Division’s Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/31/18	VIII	AA001504 – AA001537
Transcript of Hearing Proceedings on September 12, 2017 (Cause No. 17.0050)	09/12/17	IV-V	AA000583 – AA000853
Transcript of Hearing Proceedings on September 13, 2017 (Cause No. 17.0050)	09/13/17	V-VI	AA000854 – AA001150
Transcript of Hearing Proceedings on September 14, 2017 (Cause No. 17.0050)	09/14/17	VII	AA001151 – AA001270
Transcript of Hearing Proceedings on August 6, 2018 (Case No. 17 OC 00269 1B)	08/06/18	IX	AA001708 – AA001731
Transcript of Hearing Proceedings on November 7, 2019 (Case No. 17 OC 00269 1B)	11/07/19	XIII	AA002384 – AA002455
Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) <i>(Exhibits 41-42 excluded from appendix as irrelevant to this appeal)</i>	09/08/17	IV	AA000518 – AA000521

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6 *Attorneys for the Division of Insurance*

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AUBREY ROWLATT
CLERK
BY V. Alegria
DEPUTY

7
8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

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

Case No. 17 OC 00269-1B

Dept. No. I

12 Petitioner,

13 vs.

14 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION OF
15 INSURANCE, a Nevada Administrative agency,

16 Respondent.

17 **NOTICE OF FILING HEARING OFFICER'S ADMINISTRATIVE ORDER**

18 Respondents hereby provide notice of the issuance and filing of the Hearing Officer's
19 Administrative Order on Remand, dated January 22, 2019, attached here as Exhibit 1. This Order was
20 issued and filed in accordance with this Court's Order Granting Petitioner's Motion for Leave to
21 Present Additional Evidence, dated September 6, 2018. Parties associated with this case were served on
22 September 6, 2018.

23 DATED this 28th day of January, 2019.

24 AARON D. FORD
Attorney General

25
26 By:


27 RICHARD PAILI YIEN
Deputy Attorney General
28 Bureau of Business and Taxation

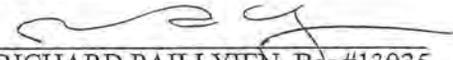
AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

DATED this 28th day of January, 2019.

AARON D. FORD
Attorney General

By:


RICHARD PAILI YIEN, Bar #13035
Deputy Attorney General

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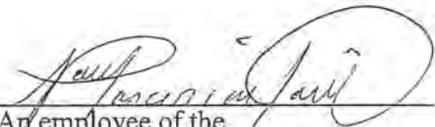
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 28th day of January, 2019, I caused to be deposited for mailing in the U.S. Mail a copy of the foregoing, **NOTICE OF FILING HEARING OFFICER'S ADMINISTRATIVE ORDER**, to the following:

Kirk B. Lenhard, Esq.
Travis F. Chance, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 N. City Pky., Ste. 1600
Las Vegas NV 89106-4614

Lori Grifa, Esq.
Archer & Greiner, P.C.
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An employee of the
Office of the Attorney General

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LIST OF EXHIBITS

Exhibit Number	Exhibit Description	Number of Pages
1	Hearing Officers Order on Remand	9

EXHIBIT 1

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Hearing Officer's Order on Remand

EXHIBIT 1

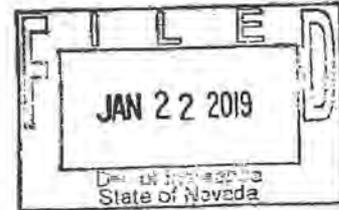
STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. 17.0050

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

Respondent.



ORDER ON REMAND

This matter was 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. A hearing was held on September 12, 13, and 14, 2017. At the close of the hearing, the Parties were ordered to file briefs on a legal issue, and written closing arguments. The Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner were issued on December 18, 2017.

On September 6, 2018, the First Judicial District Court of the State of Nevada in and for Carson City issued an Order Granting Petitioner's Motion for Leave to Present Additional Evidence, remanding the matter on judicial review for the Hearing Officer's consideration of proposed exhibits KK, LL, and MM. As the Court explained, "pursuant to NRS 233B.131(2), Petitioner [HWAN] must demonstrate that the Evidence is material to the issues before the agency and that good reasons exist for Petitioner's [HWAN's] failure to present the same in the proceeding below." (Ord. Granting Pet'r's Mot. Leave to Present Add'l Evid 2.) The Court declined to examine the evidence *in camera*, and left the issue of materiality to the Hearing Officer. "Material" means "Of such a nature that knowledge of the item would affect a person's decision-making; significant; essential." Black's Law Dictionary (3d ed. 2006). Thus, the Hearing Officer's obligation is to receive the evidence, determine if it is material and, if so, issue a new decision with new findings where applicable, but if not, issue a new decision indicating the evidence would have had no impact on the original findings. While the issue of materiality was remanded, the Remand Order does not give the Hearing Officer the authority to

1 determine good reason for failure to present evidence at the hearing. Therefore, the Hearing
2 Officer only addresses materiality in this new decision.

3 On remand, the Hearing Officer received exhibits KK, LL, and MM. After reviewing
4 the exhibits, the purpose of each exhibit was not readily apparent, and the Hearing Officer
5 issued an order on October 31, 2018, to give Home Warranty Administrator of Nevada, Inc. an
6 opportunity to address the purpose of the exhibits by November 13, 2018, and to give the
7 Division an opportunity to present its objections or opposition by November 20, 2018. The
8 Parties timely filed their briefs. Home Warranty Administrator of Nevada, Inc. also filed a
9 reply brief to the Division's opposition. Having reviewed exhibits KK, LL, and MM, and
10 considered the Parties' briefs (addressed below), the Hearing Officer finds that the exhibits are
11 not material and do not impact the final decision.

12 Review of Proposed Exhibits KK, LL, and MM

13 The proposed exhibits were presented out of chronological order; they are reviewed here
14 in chronological order. For clarification, Home Warranty Administrator of Nevada, Inc. is also
15 identified as HWAN, CHW Group, Inc. is also identified as CHW Group, and Choice Home
16 Warranty is only identified as Choice Home Warranty.

- 17 1. In July 2010, in response to another state's inquiry about a company called "Choice
18 Home Warranty," Division employees were aware that such a named company was
19 operating in Nevada without a registration. (Ex. LL at 1-3.) Employee Dolores Bennett
20 referenced "CHW Group, Inc., dba Choice Home Warranty," but all other employees
21 only referenced 'Choice Home Warranty.' (Ex. LL at 2.) Whether all employees
22 understood Choice Home Warranty to be CHW Group in this emails is not discernable.
- 23 2. In July 2011, Division employees again discussed "Choice Home Warranty," and
24 Bennett again referred to "CHW Group, Inc. dba Choice Home Warranty." (Ex. MM at
25 1-3.) Division Counsel indicated that the Division was in the process of filing a
26 complaint against Choice Home Warranty. (Ex. MM at 2.) Whether all employees
27 understood Choice Home Warranty to be CHW Group is not discernable, and no
28 evidence was presented that a complaint was filed against Choice Home Warranty.

- 1 3. Approximately two weeks later, in July 2011, Bennett sent an email about Choice Home
2 Warranty and Home Warranty Administrator of Nevada, Inc., and indicated that HWAN
3 listed Choice Home Warranty as its administrator in the proposed contract. (Ex. KK at
4 3–4.) Bennett did not make any reference to CHW Group, Inc. dba Choice Home
5 Warranty.
- 6 4. On November 1, 2011, a note was written referencing Choice Home Warranty, and
7 business written without being registered. (Ex. KK at 2.) Whether the Division
8 interpreted Choice Home Warranty to include CHW Group is not discernable, and the
9 author of the note is unknown.
- 10 5. On November 7, 2011, Bennett emailed Division employees indicating Victor
11 Mandalawi, president of CHW Group, Inc. obtained a certificate of registration as a
12 service contract provider a year earlier for a different corporation called Home Warranty
13 Administrator of Nevada, Inc. (KK at 1.) Whether the reference to CHW Group Inc.,
14 dba Choice Home Warranty was intended to mean Choice Home Warranty as used in
15 prior discussions is not discernable.

16 **Arguments**

17 **1. The Exhibits Are Not Sufficient to Meet the Requirements for Equitable Estoppel**

18 HWAN argues that exhibits KK, LL, and MM are material because they clearly establish
19 that the Division was fully aware that CHW Group used the fictitious name Choice Home
20 Warranty and that, because Choice Home Warranty was easily identifiable as CHW Group, the
21 Division should be equitably estopped from penalizing HWAN. HWAN also argues that the
22 Division should be equitably estopped from penalizing HWAN because the Division explicitly
23 authorized the structure of the relationship.

24 In Nevada, “equitable estoppel operates to prevent a party from asserting legal rights
25 that, in equity and good conscience, the party should not be allowed to assert because of his
26 conduct.” *Chanos v. Nev. Tax Comm’n*, 124 Nev. 232, 238 (2008). The Supreme Court has
27 established a four-prong test to determine whether equitable estoppel applies. As applied to this
28 case, equitable estoppel requires proof that (1) the Division was apprised of the true facts,

1 (2) the Division intended for HWAN to act upon the Division's conduct, (3) HWAN was
2 ignorant of the true state of facts, and (4) HWAN detrimentally relied on the Division's conduct.
3 *Id.* at 237.

4 Exhibits KK, LL, and MM are conversations that reflect the Division's awareness that
5 there was an entity that went by the name Choice Home Warranty that was selling unlicensed
6 service contracts and that the Division was investigating and trying to address the situation.
7 Discussions among Division staff in which one employee identified CHW Group, Inc. dba
8 Choice Home Warranty in her comments relating to questions about and investigations of
9 Choice Home Warranty do not prove that the Division knew Choice Home Warranty was, in
10 fact, CHW Group. There was no substantive discussion as to who CHW Group, Inc. dba
11 Choice Home Warranty was, nor any substantive discussion as to who Choice Home Warranty
12 was. Any interpretations about what Division staff meant in the email discussions and note of
13 exhibits KK, LL, and MM would be conjecture.

14 Further, the discussions in 2010 and 2011 did not lead to any action by the Division to
15 establish that the Division was fully aware that CHW Group was Choice Home Warranty.
16 Awareness that CHW Group operated a fictitious name Choice Home Warranty does not prove
17 that the Choice Home Warranty the Division had been investigating was the same company.
18 The Division cannot regulate based on speculation—it must act on facts. The only action the
19 Division took was to ask HWAN to register Choice Home Warranty as a fictitious name
20 because, after a discussion with Mandalawi and based on records filed by Mandalawi, the
21 Division believed that Choice Home Warranty and HWAN were one-and-the-same entity. Even
22 if the conclusion did not come until 2014, the Division took no administrative action against
23 Choice Home Warranty on the understanding that Choice Home Warranty did not operate
24 without a license because it was HWAN. A discussion with Mandalawi and the filings
25 Mandalawi submitted solidified the Division's conclusion.

26 A person wishing to sell service contracts in Nevada is required to register with the
27 Division prior to selling service contracts, and CHW Group did not register with the Division.
28 Without CHW Group's registration or administrative action taken by the Division that

1 concluded CHW Group was the same Choice Home Warranty being investigated by the
2 Division, HWAN's arguments piece together speculation—it is not clear that the Division knew
3 CHW Group dba Choice Home Warranty was the Choice Home Warranty the Division was
4 investigating. Thus, there is no proof that the Division was apprised of the true facts.

5 Nothing in this evidence reflects that the Division intended HWAN to improperly sell
6 contracts for CHW Group, nor is there evidence that the Division intended HWAN's registering
7 Choice Home Warranty as a fictitious name to mean that CHW Group could sell contracts in
8 Nevada. Since becoming registered as a service contract provider in Nevada, HWAN did not
9 change its conduct, so nothing in the evidence suggests that HWAN relied to its detriment on
10 the State.

11 On the other hand, HWAN was fully aware that CHW Group existed and operated the
12 fictitious name Choice Home Warranty because it was spelled out in the Independent Service
13 Provider Agreement that existed between HWAN and CHW Group, and because Mandalawi is
14 the president of both HWAN and CHW Group. In other words, HWAN knew who the entities
15 were and what they were doing, but there is no evidence to show that HWAN made clear to the
16 Division that Choice Home Warranty was CHW Group. While exhibits KK, LL, and MM are
17 relevant to the matter, they are not material because they are not enough to show that the
18 Division actually knew that Choice Home Warranty was CHW Group. Therefore, the equitable
19 estoppel test fails, and there is no impact on the final decision.

20 **2. The Exhibits Do Not Negate the Findings of False Representations of Material Fact**

21 HWAN argues that exhibits KK and LL are material because they show that the
22 Division was aware that HWAN used Choice Home Warranty as its administrator and,
23 therefore, HWAN should not have been fined for not correcting the “pre-populated entry of
24 ‘self,’” which was not a knowing misrepresentation.

25 Exhibit KK contains three items: (1) an email from July 27, 2011, from Bennett
26 indicating that HWAN submitted for review a contract listing Choice Home Warranty as the
27 administrator; the contract was pending due to certain objections, and the contract would be
28 approved after correction of errors; (2) a note dated November 1, 2011; and (3) an email from

1 November 7, 2011, from Bennett notifying Division employees that Mandalawi, who is
2 president of CHW Group, obtained a certificate of registration for another company, HWAN, a
3 year earlier. Only the first email in exhibit KK is relevant to HWAN's argument. As explained
4 in Section 1, above, exhibit LL does not clearly show that the Division knew as of 2010 that
5 Choice Home Warranty was CHW Group.

6 The email in exhibit KK shows that the Division was aware that HWAN's contract
7 identified Choice Home Warranty as the administrator. However, HWAN failed to identify
8 Choice Home Warranty on every renewal application HWAN submitted after the contract was
9 approved. The fact that Mandalawi signed the application and each renewal affirming that the
10 statements in the applications were true makes every answer regarding having an administrator
11 on each application a knowing misrepresentation. HWAN had entered an agreement for CHW
12 Group to act as its administrator on July 29, 2010, but HWAN did not report this on the
13 application, which was also dated and signed on July 29, 2010. (Ex. 22 & Test. Mandalawi.)
14 Mandalawi signed a separate notarized verification on August 31, 2010, affirming that the
15 information presented in the application was true. (Ex. 22 at 4.) Only one document was filed
16 with the Division identifying Choice Home Warranty as the administrator. Even if the Division
17 had been aware that Choice Home Warranty was the administrator, three months later,
18 Mandalawi submitted a renewal application indicating HWAN was the administrator, and did so
19 again in 2012 and 2013. Pre-populated or not, Mandalawi attested to the truth of the
20 information in the application, and the Division relied on the attestations such that the Division
21 asked HWAN to register Choice Home Warranty as a fictitious name.¹ The Division's
22 knowledge of whether Choice Home Warranty was CHW Group has no bearing on HWAN's
23 intentional acts because nothing in the exhibits shows that Mandalawi was unaware of who the
24 administrator was. The Division could only know what HWAN disclosed. Nothing in the
25 exhibits refutes that it was a knowing misrepresentation. Thus, exhibits KK and LL do not
26 show that the Division knew CHW Group was the administrator such that HWAN should not be

27
28 ¹ The evidence shows that HWAN presented itself as one-and-the-same with Choice Home Warranty in the
renewal applications, which also supports the conclusion in Section 1.

1 fined for making false representations of fact.

2 **3. The Exhibits Do Not Show that the Division's Testimony Was Inaccurate**

3 HWAN argues that the exhibits are material because they show that the Division's
4 testimony was inaccurate. Specifically, HWAN argues that the credibility of Rajat Jain is
5 directly contradicted by the exhibits because the exhibits show that the Division had long
6 known that CHW Group is Choice Home Warranty. As explained in Sections 1 and 2, above,
7 exhibits KK, LL, and MM do not show that the Division knew all along that Choice Home
8 Warranty was CHW Group. The exhibits also do not show that the Division knew of and
9 approved of CHW Group's sale of service contracts in Nevada. Therefore, the exhibits do not
10 affect Jain's credibility. Jain's name does not appear in any of the email correspondence of
11 exhibits KK, LL, or MM, so whether he was aware of or part of the discussions of 2010 and
12 2011 is unknown. Jain testified as to how the Division arrived at the determination in 2014 that
13 HWAN and Choice Home Warranty were one-and-the-same entity, which is not the subject of
14 any of the exhibits. Thus, the finding that HWAN engaged in unsuitable conduct is not
15 impacted by exhibits KK, LL, or MM.

16 **4. The Exhibits Do Not Establish that the Final Order Imposed Penalties Beyond the**
17 **Statute of Limitations**

18 HWAN argues that exhibits KK, LL, and MM are material since the exhibits show that
19 the Division was aware that CHW Group was selling service contracts on behalf of HWAN as
20 early as 2011. As a result, HWAN argues, the penalties for making false entries of material fact
21 in its 2011–2015 renewal applications and for allowing CHW Group to sell service contracts on
22 its behalf are improper under the statute of limitations. As explained in Sections 1, 2, and 3,
23 above, exhibits KK, LL, and MM do not show that the Division knew that Choice Home
24 Warranty was CHW Group. Moreover, HWAN did not raise the statute of limitations as an
25 affirmative defense in the hearing; as such, the Hearing Officer will not consider it on remand.

26 **5. Admissibility of Exhibits KK, LL, and MM**

27 HWAN argues that any argument by the Division that exhibits KK, LL, and MM are
28 privileged is without merit because the Remand Order requires the Hearing Officer to receive

1 and consider the exhibits. The Division argues that the Remand Order allows the Hearing
2 Officer to only consider materiality because the Court has not yet ruled on whether HWAN had
3 good reason for not presenting the exhibits during the hearing.

4 The Remand Order requires the Hearing Officer to receive the exhibits and consider
5 materiality, and issue a new decision addressing materiality and impact on the final decision.
6 The Court did not grant the Hearing Officer authority to make a determination as to whether
7 good reasons exist for HWAN's failure to present the exhibits at the hearing. Receiving the
8 exhibits and considering materiality required the Hearing Officer to look at the exhibits and
9 evaluate them in the context of the issues; the Hearing Officer is not considering the exhibits'
10 admissibility. Therefore, any argument regarding admissibility, such as privilege, is not within
11 the Hearing Officer's jurisdiction.

12 **Conclusion**

13 Having received and reviewed exhibits KK, LL, and MM, as mandated in the Court's
14 Remand Order, the Hearing Officer finds exhibits KK, LL, and MM not to be material and,
15 therefore, do not impact the final decision.

16 DATED this 22nd day of January, 2019.

17 
18 _____
19 ALEXIA M. EMMERMANN
20 Hearing Officer
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1 CERTIFICATE OF SERVICE

2 I hereby certify that I have this date served the **ORDER ON REMAND**, in **CAUSE**
3 **NO. 17.0050**, via electronic mail and by mailing a true and correct copy thereof via First Class
4 mail, properly addressed with postage prepaid, to the following:

5 Kirk B. Lenhard, Esq.
6 Brownstein Hyatt Farber Schreck, LLP
7 100 North City Parkway, Suite 1600
8 Las Vegas, NV 89106
9 E-MAIL: klenhard@bhfs.com

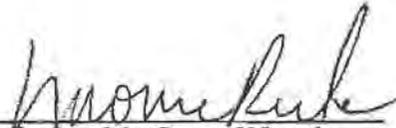
8 Travis F. Chance, Esq.
9 Brownstein Hyatt Farber Schreck, LLP
10 100 North City Parkway, Suite 1600
11 Las Vegas, NV 89106
12 E-MAIL: tchance@bhfs.com

11 Lori Grifa, Esq.
12 Archer & Greiner, P.C.
13 Court Plaza South, West Wing
14 21 Main Street, Suite 353
15 Hackensack, NJ 07601
16 E-MAIL: lgrifa@archerlaw.com

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

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

18 DATED this 22nd day of January, 2019.

19 
20 Employee of the State of Nevada
21 Department of Business and Industry
22 Division of Insurance
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1 AARON D. FORD
Attorney General
2 RICHARD PAILI YIEN, Bar No. 13035
Deputy Attorney General
3 State of Nevada
100 N. Carson St
4 Carson City, NV 89701
(775) 684-1129
5 (775) 684-1156 (fax)
Email: ryien@ag.nv.gov
6 *Attorneys for the Division of Insurance*

7
8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

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

Case No. 17 OC 00269 1B

Dept. No. I

12 Petitioner,

13 vs.

14 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION OF
15 INSURANCE, a Nevada administrative agency,

16 Respondent.

17 **NOTICE OF AMENDMENT TO RECORD ON APPEAL**

18 Respondents hereby provide notice of amendment to the Record on Appeal. The Hearing
19 Officer's Amended Administrative Order on Remand, dated January 22, 2019 will be included in the
20 Record on Appeal with this Court, attached here as Exhibit 1. The additional bates stamped pages will
21 be added to the end of the record as 004755 -004763.

22 DATED this 1st day of ^{February} ~~January~~ 2019.

23 AARON D. FORD
24 Attorney General

25 By:


26 RICHARD PAILI YIEN
Deputy Attorney General
27 Bureau of Business and Taxation
28

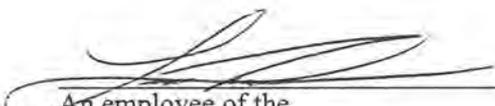
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 1st day of ~~January~~^{February}, 2019, I caused to be deposited for mailing in the U.S. Mail a copy of the foregoing, **CAPTION**, to the following:

Kirk B. Lenhard, Esq.
Travis F. Chance, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 N. City Pky., Ste. 1600
Las Vegas NV 89106-4614

Lori Grifa, Esq.
Archer & Greiner, P.C.
21 Main St., Ste. 353
Hackensack NJ 07601


An employee of the
Office of the Attorney General

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LIST OF EXHIBITS

Exhibit Number	Exhibit Description	Bates Stamp Pages
1	Hearing Officer's Order on Remand	004755 - 004763

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EXHIBIT 1

Hearing Officer's Order on Remand

EXHIBIT 1

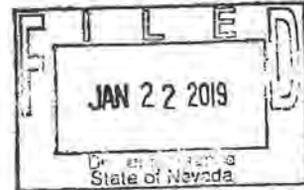
STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
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IN THE MATTER OF

CAUSE NO. 17.0050

HOME WARRANTY ADMINISTRATOR OF
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WARRANTY,

Respondent.



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13 Provider Agreement that existed between HWAN and CHW Group, and because Mandalawi is
14 the president of both HWAN and CHW Group. In other words, HWAN knew who the entities
15 were and what they were doing, but there is no evidence to show that HWAN made clear to the
16 Division that Choice Home Warranty was CHW Group. While exhibits KK, LL, and MM are
17 relevant to the matter, they are not material because they are not enough to show that the
18 Division actually knew that Choice Home Warranty was CHW Group. Therefore, the equitable
19 estoppel test fails, and there is no impact on the final decision.

20 **2. The Exhibits Do Not Negate the Findings of False Representations of Material Fact**

21 HWAN argues that exhibits KK and LL are material because they show that the
22 Division was aware that HWAN used Choice Home Warranty as its administrator and,
23 therefore, HWAN should not have been fined for not correcting the "pre-populated entry of
24 'self,'" which was not a knowing misrepresentation.

25 Exhibit KK contains three items: (1) an email from July 27, 2011, from Bennett
26 indicating that HWAN submitted for review a contract listing Choice Home Warranty as the
27 administrator; the contract was pending due to certain objections, and the contract would be
28 approved after correction of errors; (2) a note dated November 1, 2011; and (3) an email from

1 November 7, 2011, from Bennett notifying Division employees that Mandalawi, who is
2 president of CHW Group, obtained a certificate of registration for another company, HWAN, a
3 year earlier. Only the first email in exhibit KK is relevant to HWAN's argument. As explained
4 in Section 1, above, exhibit LL does not clearly show that the Division knew as of 2010 that
5 Choice Home Warranty was CHW Group.

6 The email in exhibit KK shows that the Division was aware that HWAN's contract
7 identified Choice Home Warranty as the administrator. However, HWAN failed to identify
8 Choice Home Warranty on every renewal application HWAN submitted after the contract was
9 approved. The fact that Mandalawi signed the application and each renewal affirming that the
10 statements in the applications were true makes every answer regarding having an administrator
11 on each application a knowing misrepresentation. HWAN had entered an agreement for CHW
12 Group to act as its administrator on July 29, 2010, but HWAN did not report this on the
13 application, which was also dated and signed on July 29, 2010. (Ex. 22 & Test. Mandalawi.)
14 Mandalawi signed a separate notarized verification on August 31, 2010, affirming that the
15 information presented in the application was true. (Ex. 22 at 4.) Only one document was filed
16 with the Division identifying Choice Home Warranty as the administrator. Even if the Division
17 had been aware that Choice Home Warranty was the administrator, three months later,
18 Mandalawi submitted a renewal application indicating HWAN was the administrator, and did so
19 again in 2012 and 2013. Pre-populated or not, Mandalawi attested to the truth of the
20 information in the application, and the Division relied on the attestations such that the Division
21 asked HWAN to register Choice Home Warranty as a fictitious name.¹ The Division's
22 knowledge of whether Choice Home Warranty was CHW Group has no bearing on HWAN's
23 intentional acts because nothing in the exhibits shows that Mandalawi was unaware of who the
24 administrator was. The Division could only know what HWAN disclosed. Nothing in the
25 exhibits refutes that it was a knowing misrepresentation. Thus, exhibits KK and LL do not
26 show that the Division knew CHW Group was the administrator such that HWAN should not be

27 _____
28 ¹ The evidence shows that HWAN presented itself as one-and-the-same with Choice Home Warranty in the
renewal applications, which also supports the conclusion in Section 1.

1 fined for making false representations of fact.

2 **3. The Exhibits Do Not Show that the Division's Testimony Was Inaccurate**

3 HWAN argues that the exhibits are material because they show that the Division's
4 testimony was inaccurate. Specifically, HWAN argues that the credibility of Rajat Jain is
5 directly contradicted by the exhibits because the exhibits show that the Division had long
6 known that CHW Group is Choice Home Warranty. As explained in Sections 1 and 2, above,
7 exhibits KK, LL, and MM do not show that the Division knew all along that Choice Home
8 Warranty was CHW Group. The exhibits also do not show that the Division knew of and
9 approved of CHW Group's sale of service contracts in Nevada. Therefore, the exhibits do not
10 affect Jain's credibility. Jain's name does not appear in any of the email correspondence of
11 exhibits KK, LL, or MM, so whether he was aware of or part of the discussions of 2010 and
12 2011 is unknown. Jain testified as to how the Division arrived at the determination in 2014 that
13 HWAN and Choice Home Warranty were one-and-the-same entity, which is not the subject of
14 any of the exhibits. Thus, the finding that HWAN engaged in unsuitable conduct is not
15 impacted by exhibits KK, LL, or MM.

16 **4. The Exhibits Do Not Establish that the Final Order Imposed Penalties Beyond the**
17 **Statute of Limitations**

18 HWAN argues that exhibits KK, LL, and MM are material since the exhibits show that
19 the Division was aware that CHW Group was selling service contracts on behalf of HWAN as
20 early as 2011. As a result, HWAN argues, the penalties for making false entries of material fact
21 in its 2011–2015 renewal applications and for allowing CHW Group to sell service contracts on
22 its behalf are improper under the statute of limitations. As explained in Sections 1, 2, and 3,
23 above, exhibits KK, LL, and MM do not show that the Division knew that Choice Home
24 Warranty was CHW Group. Moreover, HWAN did not raise the statute of limitations as an
25 affirmative defense in the hearing; as such, the Hearing Officer will not consider it on remand.

26 **5. Admissibility of Exhibits KK, LL, and MM**

27 HWAN argues that any argument by the Division that exhibits KK, LL, and MM are
28 privileged is without merit because the Remand Order requires the Hearing Officer to receive

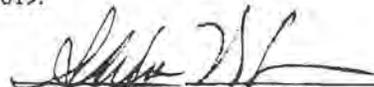
1 and consider the exhibits. The Division argues that the Remand Order allows the Hearing
2 Officer to only consider materiality because the Court has not yet ruled on whether HWAN had
3 good reason for not presenting the exhibits during the hearing.

4 The Remand Order requires the Hearing Officer to receive the exhibits and consider
5 materiality, and issue a new decision addressing materiality and impact on the final decision.
6 The Court did not grant the Hearing Officer authority to make a determination as to whether
7 good reasons exist for HWAN's failure to present the exhibits at the hearing. Receiving the
8 exhibits and considering materiality required the Hearing Officer to look at the exhibits and
9 evaluate them in the context of the issues; the Hearing Officer is not considering the exhibits'
10 admissibility. Therefore, any argument regarding admissibility, such as privilege, is not within
11 the Hearing Officer's jurisdiction.

12 **Conclusion**

13 Having received and reviewed exhibits KK, LL, and MM, as mandated in the Court's
14 Remand Order, the Hearing Officer finds exhibits KK, LL, and MM not to be material and,
15 therefore, do not impact the final decision.

16 DATED this 22nd day of January, 2019.

17 
18 ALEXIA M. EMMERMANN
19 Hearing Officer

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **ORDER ON REMAND**, in **CAUSE NO. 17.0050**, via electronic mail and by mailing a true and correct copy thereof via First Class mail, properly addressed with postage prepaid, to the following:

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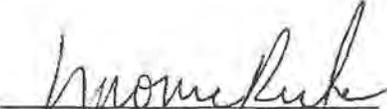
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and copies of the foregoing were sent via electronic mail to:

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

DATED this 22nd day of January, 2019.



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

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

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

14 Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION
17 OF INSURANCE, a Nevada administrative
agency,

18 Respondent.

Case No. : 17 OC 00269 1B
Dept. No.: 1

RECEIVED 22 PM 3:4
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MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES
PURSUANT TO NRS 233B.133 AND
AMEND THE RECORD ON APPEAL

20 COMES NOW Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA,
21 INC., dba CHOICE HOME WARRANTY (“HWAN”), by and through their attorneys of record,
22 the law firm of Holland & Hart LLP, and pursuant to NRS 233B.133(6) hereby moves this Court
23 to allow the parties to file supplemental briefing in light of the Order on Remand of the Hearing
24 Officer (the “Order on Remand”) which was filed on January 22, 2019, in the matter of *In re*
25 *Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*, Cause No. 17.0050.
26 HWAN also moves this Court to allow HWAN to amend the record with copies of the briefing
27 requested by the Hearing Officer resulting in the Order on Remand. A copy of the Order on
28 Remand is attached hereto as **Exhibit 1**. A copy of the proposed Supplemental Memorandum of

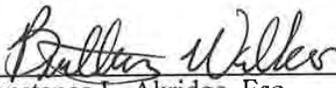
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9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

1 Points and Authorities Pursuant to NRS 233B.133 (the "Supplemental Brief") is attached hereto
2 as **Exhibit 2**. Copies of the underlying briefing and order of the Hearing Officer requesting the
3 same are attached hereto as **Exhibits 3-6**, as specified below.

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

7 DATED this 22nd day of February, 2019.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2 **FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM OF POINTS AND**
3 **AUTHORITIES PURSUANT TO NRS 233B.133 AND AMEND THE RECORD**
4 **ON APPEAL**

5 HWAN hereby requests leave to file supplemental briefing in light of the Order on
6 Remand. HWAN further requests leave to amend the record on appeal with copies of the
7 briefing requested by the Hearing Officer prior to the Hearing Officer's issuance on the Order on
8 Remand. This Court may review the final decision of an agency on the record. NRS
9 233B.135(1)(b). Here, the record was not complete until the Order on Remand was filed as a
10 result of HWAN's request to submit additional evidence pursuant to NRS 233B.131(2). In a
11 circumstance such as this, the Court may, for good cause, extend the times allowed for filing
12 memoranda in support of a petition for judicial review. See NRS 233B.133(6). Good cause
13 exists here to allow HWAN to file a supplemental brief.

14 On April 19, 2018, HWAN moved for leave to present additional evidence pursuant to
15 NRS 233B.131(2). On September 6, 2018, this Court granted HWAN's motion for leave to
16 present additional evidence and ordered the Administrative Hearing Officer to receive and
17 review the additional evidence and determine whether it was material.

18 On October 31, 2018, the Hearing Officer filed her Order Regarding Exhibits KK, LL, &
19 MM, ordering HWAN to file a brief addressing the purpose for which the exhibits were offered
20 no later than November 13, 2018. Order Regarding Exhibits KK, LL, & MM, attached hereto as
21 **Exhibit 3**. The Hearing Officer further ordered that Respondent State of Nevada Department of
22 Business and Industry – Division of Insurance (the "Division") file its objection or opposition to
23 the exhibits by November 20, 2018. *Id.* On November 13, 2018, HWAN filed its Brief
24 Regarding Exhibits KK, LL, and MM. HWAN's Brief Regarding Exhibits KK, LL, and MM,
25 attached hereto as **Exhibit 4**. On November 20, 2018, the Division filed its Opposition to
26 HWAN's Proposed Exhibits KK, LL, and MM. Division's Opposition to HWAN's Proposed
27 Exhibits KK, LL, and MM, attached hereto on **Exhibit 5**. On November 21, 2018, HWAN filed
28

1 a short Reply to Division's Opposition to Its Brief Regarding Exhibits KK, LL, and MM.¹
2 HWAN's Reply to Division's Opposition to Its Brief Regarding Exhibits KK, LL, and MM,
3 attached hereto as **Exhibit 6**. On January 22, 2019, the Hearing Officer issued an Order on
4 Remand finding the additional evidence immaterial and finding that the additional evidence does
5 not impact the final decision. Exhibit 1.

6 In the Order on Remand, the Hearing Officer found that (1) the evidence was not
7 sufficient to meet the requirements for equitable estoppel, (2) the evidence did not negate the
8 findings of false representations of material fact, (3) the evidence did not show that the Divisions
9 testimony was inaccurate, (4) the evidence did not establish that the final order imposed penalties
10 beyond the statute of limitations, and (5) the evidence's admissibility was not within the Hearing
11 Officer's jurisdiction. Exhibit 1. On January 28, 2019, Respondents filed a Notice of Filing
12 Hearing Officer's Administrative Order, and on February 1, 2019, Respondents filed a Notice of
13 Amendment to Record on Appeal, both including the Order on Remand, but not the parties'
14 briefing considered by the Hearing Officer in issuing the Order on Remand.

15 Because the Order on Remand is clearly erroneous and HWAN was unavailable to
16 dispute the findings in the Order on Remand in its original Petition for Judicial Review briefing
17 (filed before the Order on Remand), HWAN requests the opportunity to file supplemental
18 briefing on the issues raised in the Order on Remand relating to HWAN's Petition. The Order on
19 Remand concerns additional evidence directly related to the Petition. This additional evidence is
20 directly material to the underlying decision and should impact the underlying decision of the
21 Hearing Officer. Therefore, HWAN requests the opportunity to file its Supplemental Brief
22 detailing the errors in the Order on Remand and how the additional evidence should affect the
23 underlying decision. If HWAN is denied the opportunity to file its Supplemental Brief detailing
24 how the Order on Remand is clearly erroneous under NRS 233B.135(3)(e), it will effectively be
25 foreclosed from meaningful review of the Hearing Officer's underlying decision.

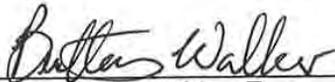
26 ¹ While the Hearing Officer did not expressly require a reply brief from HWAN, HWAN filed a 2-page reply one
27 day after the filing of the Division's opposition to correct material mischaracterizations of the record. Because the
28 Hearing Officer did not exclude HWAN's reply and indeed included the reply in the Order on Remand as part of the
"Parties' briefs" considered by the Hearing Officer, the reply must also be included in the record on appeal. See
Exhibit 1 at 2:8-10.

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In light of the foregoing, HWAN requests that leave be granted for HWAN to file (1) a Notice of Amendment to Record on Appeal enclosing Exhibits 3-6 and (2) its Supplemental Brief.

DATED this 22nd day of February, 2019.



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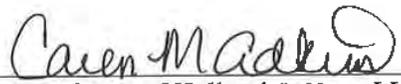
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CERTIFICATE OF SERVICE

I hereby certify that on 22nd day of February, 2019, I served a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES PURSUANT TO NRS 233B.133 AND AMEND THE RECORD ON APPEAL** via United States Mail, first class postage prepaid, at Las Vegas, Nevada, addressed to the following at the last known address of said individuals:

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*Attorneys for Respondent State of Nevada,
Department of Business and Industry – Division of
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INDEX OF EXHIBITS

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EXHIBIT 3	Hearing Officer's Order Regarding Exhibits KK, LL, and MM	Pages 127 - 130
EXHIBIT 4	HWAN's Brief Regarding Exhibits KK, LL, and MM	Pages 131 - 138
EXHIBIT 5	Division's Opposition to HWAN's Proposed Exhibits KK, LL, and MM	Pages 139 - 147
EXHIBIT 6	HWAN's Reply to Division's Opposition to Its Brief Regarding Exhibits KK, LL, and MM	Pages 148 - 153

EXHIBIT 1

Order on Remand

EXHIBIT 1

Order on Remand

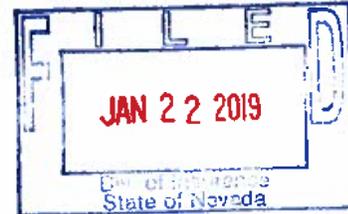
STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. 17.0050

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

Respondent.



ORDER ON REMAND

This matter was 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. A hearing was held on September 12, 13, and 14, 2017. At the close of the hearing, the Parties were ordered to file briefs on a legal issue, and written closing arguments. The Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner were issued on December 18, 2017.

On September 6, 2018, the First Judicial District Court of the State of Nevada in and for Carson City issued an Order Granting Petitioner's Motion for Leave to Present Additional Evidence, remanding the matter on judicial review for the Hearing Officer's consideration of proposed exhibits KK, LL, and MM. As the Court explained, "pursuant to NRS 233B.131(2), Petitioner [HWAN] must demonstrate that the Evidence is material to the issues before the agency and that good reasons exist for Petitioner's [HWAN's] failure to present the same in the proceeding below." (Ord. Granting Pet'r's Mot. Leave to Present Add'l Evid 2.) The Court declined to examine the evidence *in camera*, and left the issue of materiality to the Hearing Officer. "Material" means "Of such a nature that knowledge of the item would affect a person's decision-making; significant; essential." Black's Law Dictionary (3d ed. 2006). Thus, the Hearing Officer's obligation is to receive the evidence, determine if it is material and, if so, issue a new decision with new findings where applicable, but if not, issue a new decision indicating the evidence would have had no impact on the original findings. While the issue of materiality was remanded, the Remand Order does not give the Hearing Officer the authority to

1 determine good reason for failure to present evidence at the hearing. Therefore, the Hearing
2 Officer only addresses materiality in this new decision.

3 On remand, the Hearing Officer received exhibits KK, LL, and MM. After reviewing
4 the exhibits, the purpose of each exhibit was not readily apparent, and the Hearing Officer
5 issued an order on October 31, 2018, to give Home Warranty Administrator of Nevada, Inc. an
6 opportunity to address the purpose of the exhibits by November 13, 2018, and to give the
7 Division an opportunity to present its objections or opposition by November 20, 2018. The
8 Parties timely filed their briefs. Home Warranty Administrator of Nevada, Inc. also filed a
9 reply brief to the Division's opposition. Having reviewed exhibits KK, LL, and MM, and
10 considered the Parties' briefs (addressed below), the Hearing Officer finds that the exhibits are
11 not material and do not impact the final decision.

12 **Review of Proposed Exhibits KK, LL, and MM**

13 The proposed exhibits were presented out of chronological order; they are reviewed here
14 in chronological order. For clarification, Home Warranty Administrator of Nevada, Inc. is also
15 identified as HWAN, CHW Group, Inc. is also identified as CHW Group, and Choice Home
16 Warranty is only identified as Choice Home Warranty.

- 17 1. In July 2010, in response to another state's inquiry about a company called "Choice
18 Home Warranty," Division employees were aware that such a named company was
19 operating in Nevada without a registration. (Ex. LL at 1-3.) Employee Dolores Bennett
20 referenced "CHW Group, Inc., dba Choice Home Warranty," but all other employees
21 only referenced 'Choice Home Warranty.' (Ex. LL at 2.) Whether all employees
22 understood Choice Home Warranty to be CHW Group in this emails is not discernable.
- 23 2. In July 2011, Division employees again discussed "Choice Home Warranty," and
24 Bennett again referred to "CHW Group, Inc. dba Choice Home Warranty." (Ex. MM at
25 1-3.) Division Counsel indicated that the Division was in the process of filing a
26 complaint against Choice Home Warranty. (Ex. MM at 2.) Whether all employees
27 understood Choice Home Warranty to be CHW Group is not discernable, and no
28 evidence was presented that a complaint was filed against Choice Home Warranty.

1 3. Approximately two weeks later, in July 2011, Bennett sent an email about Choice Home
2 Warranty and Home Warranty Administrator of Nevada, Inc., and indicated that HWAN
3 listed Choice Home Warranty as its administrator in the proposed contract. (Ex. KK at
4 3–4.) Bennett did not make any reference to CHW Group, Inc. dba Choice Home
5 Warranty.

6 4. On November 1, 2011, a note was written referencing Choice Home Warranty, and
7 business written without being registered. (Ex. KK at 2.) Whether the Division
8 interpreted Choice Home Warranty to include CHW Group is not discernable, and the
9 author of the note is unknown.

10 5. On November 7, 2011, Bennett emailed Division employees indicating Victor
11 Mandalawi, president of CHW Group, Inc. obtained a certificate of registration as a
12 service contract provider a year earlier for a different corporation called Home Warranty
13 Administrator of Nevada, Inc. (KK at 1.) Whether the reference to CHW Group Inc.,
14 dba Choice Home Warranty was intended to mean Choice Home Warranty as used in
15 prior discussions is not discernable.

16 Arguments

17 **1. The Exhibits Are Not Sufficient to Meet the Requirements for Equitable Estoppel**

18 HWAN argues that exhibits KK, LL, and MM are material because they clearly establish
19 that the Division was fully aware that CHW Group used the fictitious name Choice Home
20 Warranty and that, because Choice Home Warranty was easily identifiable as CHW Group, the
21 Division should be equitably estopped from penalizing HWAN. HWAN also argues that the
22 Division should be equitably estopped from penalizing HWAN because the Division explicitly
23 authorized the structure of the relationship.

24 In Nevada, “equitable estoppel operates to prevent a party from asserting legal rights
25 that, in equity and good conscience, the party should not be allowed to assert because of his
26 conduct.” *Chanos v. Nev. Tax Comm’n*, 124 Nev. 232, 238 (2008). The Supreme Court has
27 established a four-prong test to determine whether equitable estoppel applies. As applied to this
28 case, equitable estoppel requires proof that (1) the Division was apprised of the true facts,

1 (2) the Division intended for HWAN to act upon the Division's conduct, (3) HWAN was
2 ignorant of the true state of facts, and (4) HWAN detrimentally relied on the Division's conduct.
3 *Id.* at 237.

4 Exhibits KK, LL, and MM are conversations that reflect the Division's awareness that
5 there was an entity that went by the name Choice Home Warranty that was selling unlicensed
6 service contracts and that the Division was investigating and trying to address the situation.
7 Discussions among Division staff in which one employee identified CHW Group, Inc. dba
8 Choice Home Warranty in her comments relating to questions about and investigations of
9 Choice Home Warranty do not prove that the Division knew Choice Home Warranty was, in
10 fact, CHW Group. There was no substantive discussion as to who CHW Group, Inc. dba
11 Choice Home Warranty was, nor any substantive discussion as to who Choice Home Warranty
12 was. Any interpretations about what Division staff meant in the email discussions and note of
13 exhibits KK, LL, and MM would be conjecture.

14 Further, the discussions in 2010 and 2011 did not lead to any action by the Division to
15 establish that the Division was fully aware that CHW Group was Choice Home Warranty.
16 Awareness that CHW Group operated a fictitious name Choice Home Warranty does not prove
17 that the Choice Home Warranty the Division had been investigating was the same company.
18 The Division cannot regulate based on speculation—it must act on facts. The only action the
19 Division took was to ask HWAN to register Choice Home Warranty as a fictitious name
20 because, after a discussion with Mandalawi and based on records filed by Mandalawi, the
21 Division believed that Choice Home Warranty and HWAN were one-and-the-same entity. Even
22 if the conclusion did not come until 2014, the Division took no administrative action against
23 Choice Home Warranty on the understanding that Choice Home Warranty did not operate
24 without a license because it was HWAN. A discussion with Mandalawi and the filings
25 Mandalawi submitted solidified the Division's conclusion.

26 A person wishing to sell service contracts in Nevada is required to register with the
27 Division prior to selling service contracts, and CHW Group did not register with the Division.
28 Without CHW Group's registration or administrative action taken by the Division that

1 concluded CHW Group was the same Choice Home Warranty being investigated by the
2 Division, HWAN's arguments piece together speculation—it is not clear that the Division knew
3 CHW Group dba Choice Home Warranty was the Choice Home Warranty the Division was
4 investigating. Thus, there is no proof that the Division was apprised of the true facts.

5 Nothing in this evidence reflects that the Division intended HWAN to improperly sell
6 contracts for CHW Group, nor is there evidence that the Division intended HWAN's registering
7 Choice Home Warranty as a fictitious name to mean that CHW Group could sell contracts in
8 Nevada. Since becoming registered as a service contract provider in Nevada, HWAN did not
9 change its conduct, so nothing in the evidence suggests that HWAN relied to its detriment on
10 the State.

11 On the other hand, HWAN was fully aware that CHW Group existed and operated the
12 fictitious name Choice Home Warranty because it was spelled out in the Independent Service
13 Provider Agreement that existed between HWAN and CHW Group, and because Mandalawi is
14 the president of both HWAN and CHW Group. In other words, HWAN knew who the entities
15 were and what they were doing, but there is no evidence to show that HWAN made clear to the
16 Division that Choice Home Warranty was CHW Group. While exhibits KK, LL, and MM are
17 relevant to the matter, they are not material because they are not enough to show that the
18 Division actually knew that Choice Home Warranty was CHW Group. Therefore, the equitable
19 estoppel test fails, and there is no impact on the final decision.

20 **2. The Exhibits Do Not Negate the Findings of False Representations of Material Fact**

21 HWAN argues that exhibits KK and LL are material because they show that the
22 Division was aware that HWAN used Choice Home Warranty as its administrator and,
23 therefore, HWAN should not have been fined for not correcting the "pre-populated entry of
24 'self'," which was not a knowing misrepresentation.

25 Exhibit KK contains three items: (1) an email from July 27, 2011, from Bennett
26 indicating that HWAN submitted for review a contract listing Choice Home Warranty as the
27 administrator; the contract was pending due to certain objections, and the contract would be
28 approved after correction of errors; (2) a note dated November 1, 2011; and (3) an email from

1 November 7, 2011, from Bennett notifying Division employees that Mandalawi, who is
2 president of CHW Group, obtained a certificate of registration for another company, HWAN, a
3 year earlier. Only the first email in exhibit KK is relevant to HWAN's argument. As explained
4 in Section 1, above, exhibit LL does not clearly show that the Division knew as of 2010 that
5 Choice Home Warranty was CHW Group.

6 The email in exhibit KK shows that the Division was aware that HWAN's contract
7 identified Choice Home Warranty as the administrator. However, HWAN failed to identify
8 Choice Home Warranty on every renewal application HWAN submitted after the contract was
9 approved. The fact that Mandalawi signed the application and each renewal affirming that the
10 statements in the applications were true makes every answer regarding having an administrator
11 on each application a knowing misrepresentation. HWAN had entered an agreement for CHW
12 Group to act as its administrator on July 29, 2010, but HWAN did not report this on the
13 application, which was also dated and signed on July 29, 2010. (Ex. 22 & Test. Mandalawi.)
14 Mandalawi signed a separate notarized verification on August 31, 2010, affirming that the
15 information presented in the application was true. (Ex. 22 at 4.) Only one document was filed
16 with the Division identifying Choice Home Warranty as the administrator. Even if the Division
17 had been aware that Choice Home Warranty was the administrator, three months later,
18 Mandalawi submitted a renewal application indicating HWAN was the administrator, and did so
19 again in 2012 and 2013. Pre-populated or not, Mandalawi attested to the truth of the
20 information in the application, and the Division relied on the attestations such that the Division
21 asked HWAN to register Choice Home Warranty as a fictitious name.¹ The Division's
22 knowledge of whether Choice Home Warranty was CHW Group has no bearing on HWAN's
23 intentional acts because nothing in the exhibits shows that Mandalawi was unaware of who the
24 administrator was. The Division could only know what HWAN disclosed. Nothing in the
25 exhibits refutes that it was a knowing misrepresentation. Thus, exhibits KK and LL do not
26 show that the Division knew CHW Group was the administrator such that HWAN should not be
27

28 ¹ The evidence shows that HWAN presented itself as one-and-the-same with Choice Home Warranty in the
renewal applications, which also supports the conclusion in Section 1.

1 fined for making false representations of fact.

2 **3. The Exhibits Do Not Show that the Division's Testimony Was Inaccurate**

3 HWAN argues that the exhibits are material because they show that the Division's
4 testimony was inaccurate. Specifically, HWAN argues that the credibility of Rajat Jain is
5 directly contradicted by the exhibits because the exhibits show that the Division had long
6 known that CHW Group is Choice Home Warranty. As explained in Sections 1 and 2, above,
7 exhibits KK, LL, and MM do not show that the Division knew all along that Choice Home
8 Warranty was CHW Group. The exhibits also do not show that the Division knew of and
9 approved of CHW Group's sale of service contracts in Nevada. Therefore, the exhibits do not
10 affect Jain's credibility. Jain's name does not appear in any of the email correspondence of
11 exhibits KK, LL, or MM, so whether he was aware of or part of the discussions of 2010 and
12 2011 is unknown. Jain testified as to how the Division arrived at the determination in 2014 that
13 HWAN and Choice Home Warranty were one-and-the-same entity, which is not the subject of
14 any of the exhibits. Thus, the finding that HWAN engaged in unsuitable conduct is not
15 impacted by exhibits KK, LL, or MM.

16 **4. The Exhibits Do Not Establish that the Final Order Imposed Penalties Beyond the**
17 **Statute of Limitations**

18 HWAN argues that exhibits KK, LL, and MM are material since the exhibits show that
19 the Division was aware that CHW Group was selling service contracts on behalf of HWAN as
20 early as 2011. As a result, HWAN argues, the penalties for making false entries of material fact
21 in its 2011–2015 renewal applications and for allowing CHW Group to sell service contracts on
22 its behalf are improper under the statute of limitations. As explained in Sections 1, 2, and 3,
23 above, exhibits KK, LL, and MM do not show that the Division knew that Choice Home
24 Warranty was CHW Group. Moreover, HWAN did not raise the statute of limitations as an
25 affirmative defense in the hearing; as such, the Hearing Officer will not consider it on remand.

26 **5. Admissibility of Exhibits KK, LL, and MM**

27 HWAN argues that any argument by the Division that exhibits KK, LL, and MM are
28 privileged is without merit because the Remand Order requires the Hearing Officer to receive

1 and consider the exhibits. The Division argues that the Remand Order allows the Hearing
2 Officer to only consider materiality because the Court has not yet ruled on whether HWAN had
3 good reason for not presenting the exhibits during the hearing.

4 The Remand Order requires the Hearing Officer to receive the exhibits and consider
5 materiality, and issue a new decision addressing materiality and impact on the final decision.
6 The Court did not grant the Hearing Officer authority to make a determination as to whether
7 good reasons exist for HWAN's failure to present the exhibits at the hearing. Receiving the
8 exhibits and considering materiality required the Hearing Officer to look at the exhibits and
9 evaluate them in the context of the issues; the Hearing Officer is not considering the exhibits'
10 admissibility. Therefore, any argument regarding admissibility, such as privilege, is not within
11 the Hearing Officer's jurisdiction.

12 **Conclusion**

13 Having received and reviewed exhibits KK, LL, and MM, as mandated in the Court's
14 Remand Order, the Hearing Officer finds exhibits KK, LL, and MM not to be material and,
15 therefore, do not impact the final decision.

16 DATED this 22nd day of January, 2019.

17 
18 _____
ALEXIA M. EMMERMANN
19 Hearing Officer
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EXHIBIT 2

**Proposed Supplemental Memorandum of Points
and Authorities Pursuant to NRS 233B.133**

EXHIBIT 2

**Proposed Supplemental Memorandum of Points
and Authorities Pursuant to NRS 233B.133**

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9
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR CARSON CITY**

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

14 *Petitioner,*

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION
17 OF INSURANCE, a Nevada administrative
agency,

18 *Respondent.*

Case No. : 17 OC 00269 1B
Dept. No.: 1

**[PROPOSED] PETITIONER'S
SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES
PURSUANT TO NRS 233B.133**

Holland & Hart LLP
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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as required by NRAP 26.1(a) and must be disclosed. Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA, INC d/b/a Choice Home Warranty (“HWAN”) is a Nevada domestic corporation. It is not owned by any parent corporation and no publicly held company owns more than 10% of HWAN’s stock.

The following attorneys have appeared for the Petitioner:

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These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated this ___ of February, 2019.



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1 Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba
2 CHOICE HOME WARRANTY (“HWAN”), by and through their attorneys of record, the law
3 firm of Holland & Hart LLP, hereby submits its supplemental memorandum of points and
4 authorities in light of the Order on Remand of the Hearing Officer (the “Order on Remand”)
5 which was filed on January 22, 2019, in the matter of *In re Home Warranty Administrator of*
6 *Nevada, Inc. dba Choice Home Warranty*, Cause No. 17.0050.

7 **I. INTRODUCTION**

8 In September 2018, this Court granted HWAN’s Motion for Leave to Present Additional
9 Evidence pursuant to NRS 233B.131(2). The Court remanded the issue of whether the evidence
10 HWAN sought to introduce is material to the Administrative Hearing Officer. Now, the Hearing
11 Officer has deemed the subject evidence immaterial in the Order on Remand and found that it
12 does not impact the final decision. Because the Order on Remand is clearly erroneous, this Court
13 should not give it any weight, should admit the subject evidence as material, and should consider
14 the evidence in connection with HWAN’s Petition for Judicial Review.

15 A prime issue in this case is whether HWAN’s use of CHW Group, Inc. dba Choice
16 Home Warranty (“CHWG”) as third-party administrator and sales agent was unlawful. The law
17 plainly does not necessitate a third-party administrator to register as a provider with the Division.
18 Regardless of whether the law allows this arrangement, the Division has known for years that
19 HWAN used CHWG as its third-party administrator and sales agent, and now belatedly attempts
20 to strip HWAN of its registration because of this very arrangement, an arrangement the Division
21 implicitly approved. Likely recognizing that it implicitly approved the arrangement whereby
22 CHWG acted as HWAN’s third-party administrator and sales agent when the Division approved
23 HWAN’s form service contract listing CHWG as the same, the Division now simply contends,
24 contrary to all the evidence, that it had no idea that “Choice Home Warranty” is the same as
25 “CHW Group, Inc. dba Choice Home Warranty.” This is silly. “Choice Home Warranty” is
26 merely the fictitious name by which “CHW Group, Inc. dba Choice Home Warranty” does
27 business. The Division attempts to walk back its knowledge and approval, but there is no
28 evidence that the Division believed there to be two separate entities: CHW Group, Inc., dba

1 Choice Home Warranty and Choice Home Warranty. Rather, the evidence shows the Division
2 knew that “CHW Group, Inc. dba Choice Home Warranty” was lawfully operating as a third-
3 party administrator and sales agent for HWAN.

4 The Order on Remand is simply the latest in a line of decisions wherein the Division
5 ignores all evidence and logic in its bid to penalize HWAN for operating in Nevada through its
6 sales agent and administrator, without any legal basis whatsoever for such penalization. The
7 additional evidence presented to the Division proves that the Division knew or should have
8 known that HWAN utilized CHW Group, Inc., dba Choice Home Warranty as its third-party
9 administrator and sales agent in Nevada. The Division knew that HWAN listed “Choice Home
10 Warranty” as an administrator on its proposed service contract. The Division even quoted in
11 internal correspondence parts of HWAN’s proposed service contract that cited Choice Home
12 Warranty as HWAN’s “administrator.” The Division discussed both entities in the same
13 correspondence and knew that both entities had the same owner. The Division even requested
14 that HWAN register for itself a dba of “Choice Home Warranty,” mistakenly blurring the line
15 between the two separate entities.

16 The Hearing Officer, in considering this additional evidence, claims that this evidence is
17 not material. In so doing, the Hearing Officer purports to analyze the evidence against a standard
18 for materiality meaning “of such a nature that knowledge of the item would affect a person’s
19 decision-making; significant, essential.” However, in rendering the Remand Order, the Hearing
20 Officer simply disregards the context of the evidence, ignores every reasonable inference, and
21 concludes that the evidence does not prove that the Division knew anything because the emails
22 of the Division do not contain a specific substantive discussion affirming that the Division knew
23 “CHW Group, Inc. dba Choice Home Warranty” and “Choice Home Warranty” were one and the
24 same. By this standard, it is difficult to see how anything could be material but a blatant, in
25 print, admission of the Division’s specific knowledge that fictitious names designate the same
26 entity as their legal name. This is simply not a reasonable interpretation of the evidence.

27 The Division specifically noted in correspondence that CHW Group, Inc. had a dba
28 Choice Home Warranty. It belies all reason that the Hearing Officer, in spite of this evidence,

1 would conclude that there is no evidence that the Division knew the CHW Group, Inc. dba
2 Choice Home Warranty is the same as Choice Home Warranty Group. The record demonstrates
3 that the evidence presented by HWAN is material. It would affect a person's decision-making.
4 It tends to make more likely that the Division knew CHW Group, Inc. dba Choice Home
5 Warranty and the Choice Home Warranty used by HWAN as administrator and sales agent were
6 one and the same. It tends to show that the Division knew Choice Home Warranty administered
7 a registered provider's service contracts in Nevada. To conclude otherwise would be to conclude
8 that the Division does not understand what "dba" means. The Hearing Officer simply ignored
9 the evidence presented in determining that the evidence is immaterial. This she cannot do.

10 **II. RELEVANT FACTUAL BACKGROUND**

11 On December 18, 2017, the Hearing Officer fined HWAN \$1,224,950.00 for acts not
12 alleged by the Division in the underlying complaint.¹ The bulk of those fines, \$1,194,450.00
13 were based on the erroneous conclusion that HWAN engaged in unsuitable conduct when it used
14 CHWG as its third party administrator and sales agent without CHWG having a certificate of
15 registration.² As discussed in the Petitioner's Opening Brief and Motion for Leave to Present
16 Evidence, these grounds for assessing a penalty were not noticed in any pre-hearing complaints
17 or documents, and yet, the concept that the Division did not know CHWG was serving as a third
18 party administrator and sales agent for HWAN for six years formed the *primary* basis of the
19 Hearing Officer's decision.³

20 On April 19, 2018, HWAN moved for leave to present additional evidence pursuant to
21 NRS 233B.131(2) to show that the Division had knowledge that HWAN and CHWG were two
22 separate entities *and* that the Division had knowledge that HWAN contracted with CHWG to
23 administer its service contracts.⁴ HWAN originally sought this additional evidence, consisting of
24 internal Division correspondence and other writings, via a subpoena, but the Division argued the
25 requested evidence contained information protected by the attorney client privilege, so HWAN
26

27 ¹ See Record Entry #47 at 27.

28 ² *Id.*

³ See Pet. Op. Br. 8:22; 9:1; 11-13; Mot. for Leave to Present Add. Evid. at 4-6; 7:16-28 & 8:1-6.

⁴ Mot. for Leave to Present Add. Evid. at 3:5-9; 4:23-25 & 7:9-15.

1 agreed to withdraw them on that basis.⁵ At least three of these documents, Exhibits KK, LL, and
2 MM, (the “Evidence”), do not in fact implicate the attorney-client privilege and instead directly
3 demonstrate that the Division knew that HWAN and CHWG were separate entities and that the
4 HWAN was using CHWG as its third party administrator.⁶

5 On September 6, 2018, this Court granted HWAN’s motion for leave to present
6 additional evidence, ordered the Hearing Officer to consider the Evidence, and directed the
7 Hearing Officer “to receive the evidence and determine whether the Evidence is material, and if
8 so, whether it would have had any impact on the final decision.”⁷

9 On October 31, 2018, the Hearing Officer ordered the parties to submit additional
10 briefing addressing the purpose for which the Evidence was offered.⁸ On November 13, 2018,
11 HWAN submitted its Brief Regarding Exhibits KK, LL, and MM.⁹ On November 20, 2018, the
12 Division submitted its Opposition to HWAN’s Proposed Exhibits KK, LL, and MM.¹⁰ On
13 November 21, 2018, HWAN submitted its Reply to the Divisions Opposition.¹¹

14 On January 22, 2019, the Hearing Officer issued the Order on Remand with findings
15 indicating the Evidence contained the following:

16 1. In July 2010, in response to another state’s inquiry about a
17 company called “Choice Home Warranty,” Division employees
18 were aware that such a named company was operating in Nevada
19 without a registration. (Ex. LL at 1—3.) Employee Dolores
20 Bennett referenced “CHW Group, Inc., dba Choice Home
21 Warranty,” but all other employees only referenced ‘Choice Home
22 Warranty.’ (Ex. LL at 2.) Whether all employees understood
23 Choice Home Warranty to be CHW Group in this (sic) emails is
24 not discernable.

25 2. In July 2011, Division employees again discussed “Choice
26 Home Warranty.” and Bennett again referred to “CHW Group, Inc.
27 dba Choice Home Warranty.” (Ex. MM at 1—3.) Division Counsel
28 indicated that the Division was in the process of filing a complaint
against Choice Home Warranty. (Ex. MM at 2.) Whether all

⁵ See Record Entry #25.4; Hr’g Tr., Day 3 at 64-66 & 107-108.

⁶ See Mot. for Leave to Present Add. Evid. at 3:5-9; 4:23-25; 6:10-11 & 7:9-15.

⁷ Order Granting Pet.’s Mot. for Leave to Present Add’l Evid. at 2.

⁸ See Order Regarding Exhibits KK, LL & MM attached as Exhibit 1.

⁹ Attached as Exhibit 2.

¹⁰ Attached as Exhibit 3.

¹¹ Attached as Exhibit 4.

1 employees understood Choice Home Warranty to be CHW Group
2 is not discernable, and no evidence was presented that a complaint
was filed against Choice Home Warranty.

3 3. Approximately two weeks later, in July 2011, Bennett sent an
4 email about Choice Home Warranty and Home Warranty
5 Administrator of Nevada, Inc., and indicated that HWAN listed
6 Choice Home Warranty as its administrator in the proposed
contract. (Ex. KK at 3—4.) Bennett did not make any reference to
7 CHW Group, Inc. dba Choice Home Warranty.

8 4. On November 1, 2011, a note was written referencing Choice
9 Home Warranty, and business written without being registered.
10 (Ex. KK at 2.) Whether the Division interpreted Choice Home
11 Warranty to include CHW Group is not discernable, and the author
12 of the note is unknown.

13 5. On November 7, 2011, Bennett emailed Division employees
14 indicating Victor Mandalawi, president of CHW Group, Inc.
15 obtained a certificate of registration as a service contract provider a
16 year earlier for a different corporation called Home Warranty
17 Administrator of Nevada, Inc. (KK at 1.) Whether the reference to
18 CHW Group Inc., dba Choice Home Warranty was intended to
19 mean Choice Home Warranty as used in prior discussions is not
20 discernable.¹²

21 The Hearing Officer determined this Evidence is not material and that the Evidence does not
22 impact the final decision.

23 III. LEGAL ARGUMENT

24 The Hearing Officer found that (1) the Evidence was not sufficient to meet the
25 requirements for equitable estoppel, (2) the Evidence did not negate the findings of false
26 representations of material fact, (3) the Evidence did not show that the Division's testimony was
27 inaccurate, (4) the Evidence did not establish that the final order imposed penalties beyond the
28 statute of limitations, and (5) the Evidence's admissibility was not within the Hearing Officer's
jurisdiction.¹³ The Hearing Officer's findings and conclusions are clearly erroneous, arbitrary
and capricious in view of the substantial evidence on the whole record.

///

¹² See Order on Remand attached as Exhibit 5.

¹³ See Ex. 5.

1 **A. Standard of Review**

2 The standard of review for a petition for judicial review of an administrative agency
3 decision is set forth in NRS 233B.135(3):

4 The court shall not substitute its judgment for that of the agency as
5 to the weight of evidence on a question of fact. The court may
6 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:

- 7 (a) In violation of constitutional or statutory provisions;
8 (b) In excess of the statutory authority of the agency;
9 (c) Made upon unlawful procedure;
10 (d) Affected by other error of law;
11 (e) Clearly erroneous in view of the reliable, probative and
substantial evidence on the whole record; or
12 (f) Arbitrary or capricious or characterized by abuse of
discretion.

13 “A decision that lacks support in the form of substantial evidence is arbitrary or capricious, and
14 thus an abuse of discretion that warrants reversal.” *Tighe v. Las Vegas Metro. Police Dep't*, 110
15 Nev. 632, 634, 877 P.2d 1032, 1034 (1994). Additionally, “[a] decision of an administrative
16 agency ‘must be set aside . . . if the action failed to meet statutory, procedural, or constitutional
17 requirements.’” *Nevada Land Action Ass'n v. U.S. Forest Serv.*, 8 F.3d 713, 716 (9th Cir. 1993).
18 Substantial evidence is defined as “evidence which a reasonable mind might accept as adequate
19 to support a conclusion.” NRS 233B.135(3)(c).

20 **B. This Evidence Is Material**

21 As a threshold matter, the Hearing Officer’s conclusion that the Evidence is not material
22 is clearly erroneous given that the Hearing Officer’s own findings show that the Evidence is
23 logically connected with the facts of consequence within the matters in dispute. This is the
24 standard for materiality. See *Wyman v. State*, 125 Nev. 592, 608, 217 P.3d 572, 583 (2009)
25 (Defining material evidence as that which is “logically connected with the facts of consequence
26 or the issues in the case”); see also *United States v. De Lucia*, 256 F.2d 487 (7th Cir. 1958)
27 (“‘Materiality’ with reference to evidence means the property of substantial importance and
28 evidence is ‘material’ where it is relevant and goes to substantial matters in dispute.”).

1 In the Hearing Officer's Order on Remand, she acknowledges that the Evidence
2 encompasses "conversations that reflect the Division's awareness that there was an entity that
3 went by the name Choice Home Warranty that was selling unlicensed service contracts and that
4 the Division was investigating" [and that] "one employee identified CHW Group, Inc. dba
5 Choice Home Warranty in her comments relating to questions about and investigations of Choice
6 Home Warranty."¹⁴ Thus, the Evidence is relevant and logically connected to the issues of
7 whether the Division knew whether CHWG and HWAN were separate entities and whether
8 CHW Group, Inc. dba Choice Home Warranty was the same Choice Home Warranty used by
9 HWAN as third-party administrator and sales agent. Instead of assessing materiality, the
10 Hearing Officer skips a step and concludes the evidence does not impact her decision. This is
11 improper. The Hearing Officer must determine whether the Evidence is material and then may
12 determine whether the Evidence impacts her decision. By the very standard the Hearing Officer
13 purports to use in the Order on Remand, the Evidence is plainly material, or logically connected
14 with the facts in consequence or issues of the case; relevant and going to substantial matters in
15 dispute.

16 Therefore, the Hearing Officer's conclusion that the Evidence is not material is clearly
17 erroneous and unsupported by substantial evidence. This conclusion must be reversed. The
18 Evidence is material.

19 **C. The Evidence Demonstrates that the Division Should Be Equitably Estopped**
20 **from Arguing that HWAN Improperly Utilized CHWG as Its Third-Party**
Administrator and Sales Agent.

21 "[E]quitable estoppel operates to prevent the assertion of legal rights that in equity and
22 good conscience should be unavailable because of a party's conduct." *United Brotherhood v.*
23 *Dahnke*, 102 Nev. 20, 22, 714 P.2d 177, 178-79 (1986). To show equitable estoppel, HWAN
24 must demonstrate that the Division was "apprised of the true facts," and intended that HWAN act
25 in a manner inconsistent with those "true facts" while ignorant of those true facts, and that
26 HWAN detrimentally relied on those facts. *Las Vegas Convention & Visitors Auth. v. Miller*,
27 124 Nev. 669, 698, 191 P.3d 1138, 1157 (2008). Although estoppel cannot be applied to prevent
28

¹⁴ See Ex. 5 at 4.

1 a government entity from doing its governmental functions, estoppel will apply against a
2 government entity when the government makes “factual representations specific to the person
3 seeking information about a particular situation, who then relied on the representations in
4 commencing a course of action.” *Id. at 698-700, 191 P.3d at 1157-58.*

5 The Hearing Officer’s own findings show that the Division knew the “true fact” that
6 HWAN was using CHWG as its third-party administrator, that the Division knew HWAN
7 submitted a form service contract listing CHWG as its third-party administrator, and knew or
8 should have known that HWAN believed the Division to have approved and intended HWAN to
9 use CHWG as its third-administrator by the Division approving such form service contract. The
10 Hearing Officer found the Evidence showed that in July 2011, Division employees discussed
11 Choice Home Warranty while referring to it as CHW Group, Inc. dba Choice Home Warranty.
12 The Evidence further indicated that the Division was in the process of filing a complaint against
13 Choice Home Warranty. Two weeks later, still in July 2011, a Division employee sent an email
14 about Choice Home Warranty and HWAN, indicating that HWAN listed Choice Home Warranty
15 as its administrator in the proposed service contract. Then in November 7, 2011, Division
16 employee correspondence indicated that CHW Group, Inc.’s president obtained a certificate of
17 registration as a service contract provider a year earlier for a *different corporation* called Home
18 Warranty Administrator of Nevada, Inc. Following this correspondence, the Division did not ask
19 HWAN or CHWG to register CHWG as a provider.¹⁵ This shows that the Division approved of
20 or at the very least knew that HWAN using CHWG at its administrator no later than July 2011.
21 Yet, the Hearing Officer erroneously concludes that the Evidence does not prove that Division
22 employees were aware HWAN and CHWG were separate entities, stating that “the only action
23 the Division took was to ask HWAN to register Choice Home Warranty as a fictitious name.”¹⁶
24 However, this confusion did not occur until 2014, three years later.

25 Furthermore, the Hearing Officer’s conclusions directly contradict the Evidence. The
26 Evidence shows that Division employees investigated a company by the name of CHW Group,
27

28 ¹⁵ As the Hearing Officer also notes, nor did the Division ever file a Complaint against CHWG.

¹⁶ See Ex. 5 at 4.

1 Inc. selling contracts under the fictitious name Choice Home Warranty, and thereafter stopped
2 investigating that company once it discovered that HWAN was using CHW Group Inc., as its
3 third-party administrator.¹⁷ The Hearing Officer acknowledges this, but nonetheless concludes
4 that it “is not discernable” whether the Division and its employees knew CHW Group Inc. was
5 the same as Choice Home Warranty or, for some unknown reason, whether *all* of the employees
6 understood CHW Group Inc. to be one and the same with Choice Home Warranty.¹⁸ Why the
7 Hearing Officer would place any significance in whether *all* employees knew CHW Group Inc.
8 to be Choice Home Warranty is unclear and demonstrates that the Hearing Officer’s conclusions
9 are erroneous. It does not matter whether all employees knew that CHW Group Inc. and Choice
10 Home Warranty were one and the same. It is readily apparent that at least those employees
11 making the determination regarding whether to file a complaint against CHWG for failure to
12 register understood CHW Group Inc. and Choice Home Warranty to be one and the same, and
13 that CHWG was serving as HWAN’s third-party administrator. Indeed, the Hearing Officer
14 acknowledges no such complaint was ever filed.¹⁹

15 It appears that the Hearing Officer believes that an e-mail or writing stating expressly that
16 the Division did not file a complaint against CHWG because (1) CHW Group Inc. and Choice
17 Home Warranty are one and the same and (2) HWAN was using CHWG as its third-party
18 administrator is necessary to prove that the Division knew the same. But such a “smoking gun”
19 e-mail is not required. Such conclusions may be drawn as the result of common sense. Indeed,
20 one should be able to reasonable assume that the Division understands the acronym “dba” to
21 denote a fictitious firm name for an entity. Rather than drawing reasonable, common sense
22 conclusions from the Evidence, the Hearing Officer apparently insists that the Evidence can only
23 be material if all of the Division’s employee’s inner thoughts and common-sense conclusions are
24 laid out for all to see in black and white. This is absurd. If this heightened standard of written
25 evidence were applied to every matter, it is difficult to see how the Division could be held to
26 know anything.

27 ¹⁷ *Id.* at 2-3.

28 ¹⁸ Ex. 5 at 2-3.

¹⁹ *Id.* at 4:14-15.

1 In addition, the Division's request in 2014 that HWAN register the fictitious name
2 Choice Home Warranty further supports the conclusion that the Division did not believe HWAN
3 was acting inappropriately by using CHWG. Why would the Division ask HWAN, which it
4 acknowledged as a wholly different entity from CHWG, to register the same fictitious name it
5 knew CHWG operated under, unless they intended and authorized HWAN to utilize CHWG as
6 its third-party administrator? To accept the Division's argument that it believed HWAN and
7 CHWG to be one and the same entity and did not actually realize that HWAN was using an
8 entirely different entity CHWG as its third-party administrator would be to believe that Nevada's
9 insurance regulatory enforcement agency is completely ignorant of corporate law and utterly
10 incapable of performing simple corporate entity and fictitious firm name searches.

11 Finally, the Hearing Officer summarily concludes that HWAN did not detrimentally rely
12 on the Division's representations because "HWAN did not change its conduct, so nothing in the
13 evidence suggests that HWAN relied to its detriment on the State."²⁰ However, the very conduct
14 at issue is the utilization of CHWG as HWAN's third-party administrator, for which the Division
15 now imposes exorbitant fines. HWAN reasonably, and to its detriment, relied on the Division's
16 representations that apparently approved of HWAN's use of CHWG as its third-party
17 administrator. The Division approved HWAN's form service contract including CHWG as its
18 third-party administrator.²¹ The Division later even asked HWAN to register Choice Home
19 Warranty as its dba.²² HWAN used CHWG as its third-party administrator and is now being
20 penalized for an arrangement of which the Division had to have known and approved. HWAN
21 absolutely "relied to its detriment on the State."

22 Accordingly, the Evidence demonstrates that equitable estoppel should apply against the
23 Division because the Division made factual representations specific to HWAN, and HWAN then
24 relied on those representations in commencing a course of action. *Las Vegas Convention &*
25 *Visitors Auth.*, 124 Nev. at 698-700, 191 P.3d at 1157-58. Therefore, the Hearing Officer's
26 conclusion that the Evidence does not demonstrate that the Division should be equitably

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28 ²⁰ Ex. 5 at 5:8-10

²¹ Record Entry #47 at 4:4-5.

²² *Id.* at 5:23-25.

1 estopped from arguing that HWAN improperly utilized CHWG as its third-party administrator is
2 clearly erroneous and unsupported by the substantial evidence in the record.

3 **D. The Evidence Negates the Findings of False Representations of Material Fact**

4 The Evidence shows that HWAN did not make a knowing misrepresentation when it
5 failed to change the prepopulated entry of “self” as HWAN’s administrator on its renewal
6 applications.²³ NRS 686A.070 makes it a crime to “*knowingly* make or cause to be made any
7 false entry of a *material fact* in any book, report or statement . . .” (Emphasis added). The term
8 knowingly is a “bad-mind” element. *Ford v. State*, 127 Nev. 608, 613, 262 P.3d 1123, 1126
9 (2011) (acknowledging that the term knowingly indicates a bad-mind requirement.). NRS
10 686A.070 has not yet been interpreted by our Nevada Supreme Court, however the Ninth Circuit
11 has interpreted similar federal criminal statutes to require the government to prove that the
12 offender “(1) made a statement; (2) that was false; and (3) material; (4) with specific intent; (5)
13 in a matter within the agency’s jurisdiction.” *United States v. Selby*, 557 F.3d 968 (9th Cir.
14 2009) (interpreting 18 U.S.C.A. § 1001(3) which criminalizes persons who “make[] or use[] any
15 false writing or document knowing the same to contain any materially false, fictitious, or
16 fraudulent statement or entry.”). “Specific intent is ‘the intent to accomplish the precise act
17 which the law prohibits.’” *Bolden v. State*, 121 Nev. 908, 923, 124 P.3d 191, 201 (2005).

18 Here, the Evidence shows that HWAN’s “statement,” consisting of the failure to change
19 the prepopulated entry of “self” as HWAN’s administrator on its renewal applications, was both
20 immaterial and not made with the specific intent to make a false statement. HWAN submitted a
21 proposed service contract with its initial application indicating that CHWG was HWAN’s third-
22 party administrator and identified that approved service contract in every renewal application as
23 the contract HWAN was using in Nevada.²⁴ Thus, HWAN’s inadvertent failure to change the
24 pre-populated field on its renewal applications after 2011 do not constitute a “knowing” false
25 entry. Rather both HWAN and the Division understood CHWG was HWAN’s third-party
26 administrator.

27
28 ²³ See Ex. 3 at 2:25-28 & 3:1-9.

²⁴ *Id.*

1 Such inadvertent error is immaterial where the Division was fully aware that HWAN was
2 using CHWG as its third-party administrator, which is demonstrated by the Evidence. In fact,
3 the Hearing Officer concedes that the Evidence “shows that the Division was aware that
4 HWAN’s contract identified Choice Home Warranty as the administrator.”²⁵

5 Interestingly, while the Hearing Officer resists drawing reasonable conclusions from the
6 Evidence where those conclusions would support HWAN, the Hearing Officer has no problem
7 reaching conclusions when they would support the Division’s position, even conclusions that
8 contradict her underlying decision. For instance, the Hearing Officer concludes that “[p]re-
9 populated or not, Mandalawi attested to the truth of the information in the application, and the
10 Division relied on the attestations such that the Division asked HWAN to register Choice Home
11 Warranty as a fictitious name.”²⁶ Interestingly, nothing in the Evidence shows that the Division
12 asked HWAN to register Choice Home Warranty as a fictitious name because it believed HWAN
13 and Choice Home Warranty to be one and the same. Indeed, in the Hearing Officer’s original
14 decision, she concluded that “[w]hy the Division requested HWAN to register the dba Choice
15 Home Warranty is unknown.”²⁷ Now the Hearing Officer has been presented with evidence that
16 the Division knew and acknowledged CHW Group, Inc. and HWAN as two “different
17 corporations” (in Exhibit KK).²⁸ Faced with this Evidence and Evidence showing that the
18 Division knew “Choice Home Warranty” is the same as “CHW, Group, Inc. dba Choice Home
19 Warranty,” the Hearing Officer abruptly reverses course. The Hearing Officer inexplicably now
20 concludes without any evidentiary basis that “HWAN presented itself as one-and-the-same with
21 Choice Home Warranty in the renewal applications,” presumably by using the dba Choice Home
22 Warranty by HWAN. But the use of this dba was at the Division’s request. The Hearing Officer
23 initially found no evidence showing why the Division made this request of HWAN, and no such
24 evidence is within the Evidence at issue in the Order on Remand. The Hearing Officer’s flip-
25 flop interpretation of the record shows that her Order on Remand is clearly erroneous and

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27 ²⁵ See Ex. 5 at 6:6-7.

28 ²⁶ *Id.* at 6:19-21.

²⁷ Record Entry #47 at 18:16-17).

²⁸ Ex. 5 at 3:10-15.

1 unsupported by substantial evidence on the whole record.

2 **E. The Evidence Shows that the Division's Testimony Was Inaccurate**

3 The Evidence shows that the Division either (1) knew that CHW Group, Inc. dba Choice
4 Home Warranty was the same as Choice Home Warranty or (2) had absolutely no understanding
5 of corporate law or the purpose and function of fictitious firm names. The Evidence shows that
6 as early as July 2010, Division employees were aware that Choice Home Warranty was
7 operating in Nevada without a registration and at least one Division employee referenced CHW
8 Group, Inc., dba Choice Home Warranty.²⁹ By July 2011, that same Division employee again
9 discussed CHW Group, Inc. dba Choice Home Warranty in the context of beginning an
10 investigation for apparent unregistered conduct.³⁰ Two weeks later, that same Division
11 employee sent an email indicating indicated that HWAN listed Choice Home Warranty as its
12 administrator in the proposed contract.³¹ On November 7, 2011, that same Division employee
13 emailed Division employees stating Victor Mandalawi, president of CHW Group, Inc., obtained
14 a certificate of registration as a service contract provider a year earlier for a *different corporation*
15 called Home Warranty Administrator of Nevada, Inc.³² Not surprisingly, the Hearing Officer
16 found that no complaint was ever filed against CHWG for operating in Nevada.³³

17 These facts when taken together show that the Division's witness, Rajat Jain, was not
18 credible when he testified that "[i]t was identified that Choice and HWAN were one and the
19 same entity, that Choice was not selling illegally because HWAN was a licensed entity in
20 Nevada."³⁴ Rather, it is plain from the Evidence that the Division knew CHWG was a "different
21 corporation" from HWAN.³⁵ The only reasonable conclusion is that the Division determined
22 Choice was not selling illegally because it knew that HWAN used CHWG as its third-party
23 administrator, and it approved this arrangement, just as it had for countless other providers.

24 The Division summarily dismissed this argument, stating that the Evidence does not

25 ²⁹ *Id.* at 2:17-22.

26 ³⁰ *Id.* at 2:23-28.

27 ³¹ *Id.* at 3:1-5.

28 ³² *Id.* at 3:6-9.

³³ *Id.* 5 at 2:27-28.

³⁴ *See* Hr'g Tr., Day 1 at 117: 12-15.

³⁵ Ex. 5 at 2-3.

1 show that the Division knew all along that Choice Home Warranty was CHWG and that Mr.
2 Jain's name does not appear on the email correspondence.³⁶ The Hearing Officer erroneously
3 agreed with the Division. However, the Evidence indeed shows the Division knew Choice Home
4 Warranty was CHWG. *See* Sections C & D, *supra*. Further, the fact that Mr. Jain's name is not
5 on the emails is of no consequence because Mr. Jain was testifying as the most knowledgeable
6 person for the Division.³⁷ As the most knowledgeable person for the Division (and the Chief
7 Insurance Examiner), Mr. Jain should have had knowledge regarding the information in the
8 Evidence. Indeed it is disingenuous to assume that the Chief Insurance Examiner would not be
9 made aware of the Evidence, emails which reveal the Division's understanding of who exactly
10 CHWG was.

11 The Hearing Officer accepted that Mr. Jain, as the most knowledgeable person for the
12 Division, could testify "as to how the Division arrived at the determination in 2014 that HWAN
13 and Choice Home Warranty were one-and-the-same entity,"³⁸ but summarily concluded that
14 "whether he was aware of or part of the discussions of 2010 and 2011 is unknown."³⁹ This is
15 entirely improper. Indeed, had the evidence correctly been deemed material and admitted at the
16 hearing, HWAN could have questioned Mr. Jain about his knowledge concerning the Evidence,
17 or lack thereof. Because the Evidence was wrongfully excluded, the record is incomplete. At
18 the very least, the Hearing Officer should have deemed the Evidence material, *see* Section B,
19 *supra*, and taken additional evidence as to Mr. Jain's knowledge and understanding regarding the
20 Evidence, during which HWAN should have had the opportunity to cross-examine Mr. Jain.

21 Therefore, the Hearing Officer's conclusion that the Evidence does not show the
22 Division's testimony was inaccurate is belied by the record, not supported by substantial
23 evidence, and must be reversed, or at the very least remanded for additional testimony of Mr.
24 Jain to be taken.

25 ///

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27 ³⁶ *Id.* at 7:7-11.

³⁷ *See* Hr'g Tr., Day 1 at 26:14-21.

³⁸ Ex. 5 at 7:12-14.

³⁹ *Id.* at 7:11-12.

1 **F. The Evidence Establishes that the Final Order Imposes Penalties Beyond the**
2 **Statute of Limitations.**

3 NRS 11.190(4)(b) provides that the statute of limitations is 2 years for “[a]n action upon
4 a statute or a penalty or forfeiture, where the action is given to a person or the State, or both,
5 except when the statute imposing it prescribes a different limitation.”⁴⁰ The Hearing Officer
6 reiterated her erroneous conclusion that the Evidence does not show that the Division knew
7 CHW Group Inc., was Choice Home Warranty and also dismissed this argument because it was
8 not raised as an affirmative defense.⁴¹ However, as explained more fully in Petitioner’s Opening
9 Brief,⁴² the bases for these fines were not set forth in the Division’s original complaints against
10 HWAN. Thus, HWAN was not on notice of the grounds for the fines in order to present the
11 proper affirmative defenses. Accordingly, the Hearing Officer erred as a matter of law for
12 failing to consider these arguments on remand.⁴³

13 The Hearing Officer fined HWAN \$50 for every contract sold by CHWG since the
14 inception of its business of Nevada. Because the Division’s action was not commenced until the
15 filing of the original Complaint and Order to Show Cause on May 9, 2017, any fines on conduct
16 occurring earlier than 2 years ago are prohibited by NRS 11.190(4)(b). Thus, any fines imposed
17 on conduct that occurred before May 9, 2015 are invalid on their face as barred by the statute of
18 limitations.

19 The evidence introduced at hearing supporting the number of contracts (23,889) forming
20 the basis of the fines imposed by the Division (\$1,194,450) reveals that 8,139 contracts were
21 actually sold in 2011, 2012, 2013, and 2014, well outside the applicable statute of limitations.⁴⁴
22 In 2015 alone, another 5,683 contracts were sold, with another 10,067 contracts sold in 2016 and

23 _____
24 ⁴⁰ While HWAN argued in its Opening Brief filed herein February 15, 2018 that NRS 679B.185(4) applies, HWAN
25 agrees with the Division that NRS 679.185(4) applies only to those “who engage in ‘unauthorized transaction of
26 insurance.’” Division’s Answering Brief, filed March 19, 2018 herein, at 27:11-12. HWAN is a registrant under
27 NRS Chapter 690C, not an insurer. *See id.*; *see also* NRS 690C.200 (prohibiting a provider from even using the
28 word “insurance” or “any other word or term that implies that the provider is engaged in the business of transacting
insurance” in its name).

⁴¹ Ex. 5 at 7:22-25.

⁴² *See* Pet. Op. Br. at 23:19-27; 24: 1-15.

⁴³ This issue was briefed before the Hearing Officer in its Brief Regarding Exhibits KK, LL, and MM filed
November 13, 2018. Exhibit 2.

⁴⁴ Record Entry # 35, Exhibit K (CHW073096).

1 2017.⁴⁵ Assuming that approximately one-third (1/3) of the 5,683 contracts sold in 2015 (1894)
2 were sold in the first third of that year (months January – April 2015), only 13,856 contracts
3 (3,789 for the last 2/3 of 2015 + 10,067 for 2016 & 2017) actually fall within the statute of
4 limitations period. Assuming that the Division is even entitled to *any* fines for the conduct at
5 issue, which HWAN strongly disputes, the maximum fine that could have been imposed on the
6 conduct falling within the statute of limitations is \$692,800 (\$50 x 13,856), not \$1,194,450.

7 Nonetheless, because the Evidence shows that the Division knew HWAN was selling
8 contracts through CHWG as its administrator, the Division implicitly approved the arrangement,
9 and the Division did not take any action against this arrangement, the Division is equitably
10 estopped from penalizing HWAN for the same. *See* Section C, *supra*.

11 **G. The Evidence Is Admissible Because It Is Material, and the Evidence Is Not**
12 **Privileged.**

13 This court need not determine whether the Evidence is admissible because it is material.
14 When a party moves to submit additional evidence before an administrative agency, the lower
15 court's role "is limited to determining whether (1) the evidence is material, and (2) there existed
16 good reasons for not presenting such evidence before the administrative agency originally." In
17 other words, the role of the court is not to determine whether the evidence is admissible as "such
18 analysis becomes subsumed within the court's finding that the additional evidence is material,
19 given the more relaxed standard for admissibility contained in the UAPA [uniform
20 administrative procedure act]." *Salmon v. Dep't of Pub. Health & Addiction Servs.*, 259 Conn.
21 288, 318, 788 A.2d 1199, 1217 (2002); *see also* NRS 233B.131(2); *Garcia v. Scolari's Food &*
22 *Drug*, 125 Nev. 48, 53, 200 P.3d 514, 518 (2009) (relying on *Salmon*, 788 A.2d at 1220-21 in
23 interpreting NRS 233B.131(2)).

24 The Hearing Officer found that the Evidence was not material and did not impact the
25 final decision but refused to consider whether the Evidence was admissible stating it was not
26 within the Hearing Officer's jurisdiction. As discussed *supra*, the Hearing Officer's own
27 findings show that the Evidence is material in that it was relevant and logically connected to

28

⁴⁵ *Id.*

1 substantial matters in dispute, and should have impacted the final decision. *Wyman v. State*, 125
2 Nev. at 608, 217 P.3d at 583 (Material evidence is that which is “logically connected with the
3 facts of consequence or the issues in the case”). Thus, this Court need not determine whether the
4 evidence is admissible, because such analysis was subsumed by the Court’s order that the
5 Hearing Officer receive and consider the Evidence given the relaxed standard for admissibility in
6 administrative actions. *Salmon*, 788 A.2d at 1217; *see also* NRS 233B.123 (relaxing the
7 standard for admissibility in administrative actions).

8 Nevertheless, should this Court wish to consider the admissibility of the Evidence,
9 HWAN has demonstrated that the attorney-client privilege does not apply, and even if it did
10 apply, it was waived. NRS 233B.123(1) governs the admissibility of evidence in administrative
11 proceedings and states: “Evidence may be admitted, except where precluded by statute, if it is of
12 a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.
13 Agencies shall give effect to the rules of privilege recognized by law.” (emphasis added). Under
14 NRS 49.095, a privileged communication is one made between a client and lawyer for the
15 purposes of facilitating legal services. “Acts or services performed by an attorney for his client
16 in the course of employment and which are accessible to others or to the public do not fall within
17 the privilege because no private communication is involved.” *Cheyenne Const., Inc. v. Hozz*,
18 102 Nev. 308, 312, 720 P.2d 1224, 1226 (1986)

19 During the administrative proceedings, the Division objected to the admission of the
20 Evidence based upon attorney-client privilege. However, Exhibit LL is not directed to an
21 attorney. Although Exhibits KK and MM were sent to a Division attorney, they do not on their
22 face appear to be requesting legal services or advice; instead they are governing acts within the
23 scope of the attorney’s employment at a regulatory enforcement agency. *See Cheyenne Const.,*
24 *Inc.*, 102 Nev. at 312, 720 P.2d at 1226.

25 Moreover, even if the communications were privileged, any claim to privilege was
26 waived. “If there is disclosure of privileged communications, this waives the remainder of the
27 privileged consultation on the same subject.” *Id.* at 311–12, 720 P.2d at 1226. Here, the
28 Division voluntarily produced the documents in response to a properly served subpoena *duces*

1 *tecum*, thereby waiving any privilege that could have attached to them. Further, the
2 Commissioner annexed the documents to her decision and order in a separate hearing, which is
3 now the subject of a second petition for judicial review, so the documents are a public record.
4 Exhibit 1 to Petition for Judicial Review in Case No. 19-OC-00015-1B, attached hereto as
5 **Exhibit 6.**

6 In addition, the Division cannot seek to use its privilege to hide evidence central to the
7 basis it placed at issue for its decision to penalize HWAN. See *Wynn Resorts, Ltd. v. Eighth*
8 *Judicial Dist. Court in & for Cty. of Clark*, 399 P.3d 334, 345 (Nev. 2017), *reh'g denied* (Sept.
9 28, 2017) (“The at-issue waiver doctrine applies where the client has placed at issue the
10 substance or content of a privileged communication.”); see also *Mendoza v. McDonald's Corp.*,
11 213 P.3d 288, 304 (Ct. App. 2009) (internal quotations omitted) (“[a] party is not allowed to
12 assert the privilege when doing so places the claimant in such a position, with reference to the
13 evidence, that it would be unfair and inconsistent to permit the retention of the privilege because
14 the attorney-client privilege is not to be both a sword and a shield.”). The Division placed the
15 so-called privileged emails at issue when it denied knowing HWAN and CHWG were separate
16 entities and denied knowing that HWAN used CHWG as its third-party administrator. The
17 Division attempts to shield the truth, hiding material evidence that reveals its position to be false
18 behind the guise of attorney-client privilege. The Division should not be permitted to invoke the
19 privilege so that it can take a position that is directly contradictory to the facts.

20 Finally, this Court need not again consider whether good cause exists to admit the
21 Evidence because the Court has already determined good cause exists by remanding the matter to
22 the Hearing Officer. However, should the Court wish to reconsider whether HWAN had “good
23 reasons” for failure to present the Evidence in the proceeding before the agency pursuant to NRS
24 233B.131, HWAN reiterates its arguments make in its motion for leave to present additional
25 evidence.⁴⁶ HWAN relied on the Division’s assertion that the documents were privileged, and at
26 the time did not believe the Evidence was necessary to the case based on the allegations in the
27

28 ⁴⁶ Mot. for leave to Present Add'l Evid. at 3:17-18; 4:11-25; 5:1-17; 7:16-28 & 8:1-6.

1 original complaint.⁴⁷ In fact, the Division had never given notice of any fact, claim, or argument
2 in any complaint or filing that made the Evidence relevant to the proofs adduced at the hearing.⁴⁸
3 It was only after the hearing that the Evidence became an issue. When the Division filed its
4 closing papers it proffered conclusions directly contrary to the facts revealed in the Evidence,
5 necessitating the post-hearing and judicial review proceedings leading to the Order on Remand.⁴⁹
6 Therefore, supplementation of the administrative record with the Evidence is warranted here.

7 **IV. CONCLUSION**

8 In sum, the Hearing Officer's Order on Remand is clearly erroneous in that it is not
9 supported by substantial evidence on the entire record. The Hearing Officer's finding that the
10 Evidence is not material is clearly erroneous because the Evidence goes directly to facts of
11 consequence and substantial matters in dispute. The Hearing Officer's conclusion that this
12 Evidence does not impact the final decision is contrary to the Evidence. In fact, the additional
13 Evidence establishes that the Division knew that HWAN used CHWG as its third-party
14 administrator and sales agent, and that the Division was aware that HWAN and CHWG are
15 different corporations. HWAN has established that its substantial rights have been prejudiced,
16 and this Court must set aside the Order on Remand in whole or in part. Because the Evidence is
17 material, admissible, and should affect the underlying decision, the Court should consider the
18 Evidence when evaluating HWAN's Petition for Judicial Review.

19 DATED this ___ day of February, 2019.

20
21 

22 _____
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28 Las Vegas, Nevada 89134

Attorneys for Petitioner

27 _____
28 ⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

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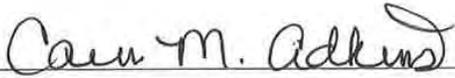
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CERTIFICATE OF SERVICE

I hereby certify that on 2nd, day of February, 2019, I served a true and correct copy of the foregoing **[PROPOSED] PETITIONER'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES PURSUANT TO NRS 233B.133** via United States Mail, first class postage prepaid, at Las Vegas, Nevada, addressed to the following at the last known address of said individuals:

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EXHIBIT 1

Order Regarding Exhibits KK, LL, and MM

EXHIBIT 1

Order Regarding Exhibits KK, LL, and MM

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE



IN THE MATTER OF

CAUSE NO. 17.0050

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

Respondent.

ORDER REGARDING EXHIBITS KK, LL & MM

On or about September 6, 2018, the Hearing Officer received a copy of the First Judicial District Court's Order Granting Petitioner's Motion for Leave to Present Additional Evidence ("Remand Order") in the matter of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty v. State of Nevada, Department of Business and Industry, Division of Insurance, Case No. 17 OC 00269 1B, Dept. No. I. The Remand Order instructs the Hearing Officer to "consider Petitioner's Proposed Exhibits KK, LL, and MM . . . and determine whether the Evidence is material," and to issue a new decision reflecting the Evidence's impact on the original findings. (Remand Ord. at 2:10-12.)

Having reviewed Exhibits KK, LL, and MM, the purpose of these Exhibits is not readily apparent. Therefore, to fully consider the materiality of these exhibits, consistent with the Court's Remand Order, the Hearing Officer HEREBY ORDERS the Parties to file the following:

1. Home Warranty Administrator of Nevada, Inc. ("HWAN") shall address the purpose for which Exhibits KK, LL, and MM are offered. The brief must be filed no later than 5:00 p.m. on November 13, 2018.
2. If the Division of Insurance ("Division") has any objection or opposition to the Exhibits, the Division may file the objections or opposition no later than 5:00 p.m. on November 20, 2018.

Each Party's brief may not exceed 5 pages. The Parties may file their briefs electronically through the Hearing Officer's Legal Secretary, Yvonne Renta at yrenta@doi.nv.gov. In order to expedite this matter and reduce the cost of service to the Parties, the Hearing Officer finds that good cause exists to

1 allow the Parties to use electronic service. Thus, if the Parties so stipulate, service may be met through
2 electronic service.

3 So ORDERED this 31st day of October, 2018.

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6 
7 Alexia M. Emmermann
8 Hearing Officer
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **ORDER REGARDING EXHIBITS KK, LL & MM**, in **CAUSE NO. 17.0050**, via electronic mail and by mailing a true and correct copy thereof via First Class mail, 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

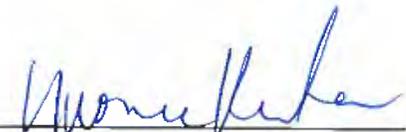
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and copies of the foregoing were sent via electronic mail to:

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

DATED this 31st day of October, 2018.



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

EXHIBIT 2

HWAN's Brief Regarding Exhibits KK, LL, and MM

EXHIBIT 2

HWAN's Brief Regarding Exhibits KK, LL, and MM

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17 *Attorneys for Respondent*

18 **STATE OF NEVADA - DEPARTMENT OF BUSINESS AND INDUSTRY**
19 **DIVISION OF INSURANCE**

20 IN THE MATTER OF:

21 CAUSE NO.: 17.0050

22 HOME WARRANTY ADMINISTRATOR
23 OF NEVADA, INC. dba CHOICE HOME
24 WARRANTY,

25 **HOME WARRANTY ADMINISTRATOR**
26 **OF NEVADA, INC. d/b/a CHOICE HOME**
27 **WARRANTY'S BRIEF REGARDING**
28 **EXHIBITS KK, LL, AND MM**

Respondent.

Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a Choice Home Warranty ("HWAN") hereby submits the instant Brief Regarding Exhibits KK, LL, and MM, pursuant to the Order entered October 31, 2018 (the "Brief"). This Brief is made and based upon the pleadings and papers on file herein, the following arguments, and any oral arguments of counsel that are agreed to be considered.

DATED this 13th day of November, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: 

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
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Attorneys for Respondent

1 **I. INTRODUCTION**

2 On December 18, 2017, a Findings of Fact, Conclusions of Law, Order of Hearing
3 Officer, and Final Order of the Commissioner (the “Decision”) was issued in this Cause. The
4 Decision found that HWAN had violated NRS 686A.070 five times by representing it was self-
5 administered in its 2011-2015 renewal applications when CHW Group, Inc. (“CHWG”) was its
6 administrator. It also found that HWAN had conducted business in an unsuitable manner under
7 NRS 679B.125 and NRS 690C.325 by allowing CHWG to sell and offer for sale service contracts
8 on HWAN’s behalf because CHWG does not hold a certificate of registration.

9 On December 22, 2018, HWAN timely filed a Petition for Judicial Review of the Order
10 with the First Judicial District Court and on April 19, 2018, HWAN filed a Motion for Leave to
11 Present Additional Evidence (the “Motion”) – namely, Exhibits KK, LL, and MM – for the
12 hearing officer’s consideration. The district court entered an order on September 6, 2018 granting
13 the Motion and requiring the hearing office in the instant cause to “receive the [Exhibits] and
14 determine if [they] are material, and, if so, whether it would have had any impact on the final
15 decision.”¹ Pursuant to the hearing officer’s order entered herein on October 31, 2018, HWAN
16 submits the instant Brief outlining the relevance of the Exhibits.

17 **II. ARGUMENT**

18 **A. Exhibits KK, LL, and MM are relevant to whether the Division should be**
19 **equitably estopped from penalizing HWAN for its relationship with CHWG.**

20 The Exhibits are directly material to numerous issues and findings in the Decision itself
21 related to the Division’s knowledge of certain facts. Specifically, HWAN’s argument that the
22 Division should be equitably estopped from penalizing HWAN for its relationship with CHWG
23 was rejected because “[t]here is no evidence that the Division knew that CHW Group and Choice
24 Home Warranty were the same.”² Exhibit KK clearly establishes that no later than November 7,
25 2011, the Division was fully aware of the fact that CHWG used the fictitious name Choice Home
26 Warranty. Moreover, there can be no merit to any contention that the Division thought Choice
27 Home Warranty was HWAN since the Division did not require that HWAN file the fictitious
28 name Choice Home Warranty until 2014.

¹ See Order Granting Pet.’s Mot. for Leave to Present Add’l Evidence, attached hereto as **Exhibit 1**.

² See Decision 23:21-22.

1 Furthermore, Exhibit LL shows that the Division's Legal Department had been
2 investigating CHW Group, Inc. dba Choice Home Warranty in response to questions about
3 "Choice Home Warranty." In other words, a simple inquiry into any information on "Choice
4 Home Warranty" was easily identifiable by the Division as relating to CHWG, as early as July
5 15, 2010. Exhibit MM, also an e-mail exchange, corroborates that the Division was fully aware
6 that "CHW Group, Inc." was in fact the same as Choice Home Warranty.

7 It is equally indisputable that the Division knew that CHWG was selling service contracts
8 on behalf of HWAN and explicitly authorized the structure of that relationship. In the Decision,
9 the Hearing Officer rejected HWAN's arguments regarding equitable estoppel based upon the
10 conclusion that "[t]he record likewise shows no evidence that the Division was aware that CHW
11 Group was selling contracts in Nevada, only that Choice Home Warranty was selling contracts in
12 Nevada."³ Exhibit KK shows that in 2011 the Division knew CHWG was selling service
13 contracts on behalf of HWAN and that the Division ultimately decided that CHWG could sell
14 service contracts backed by HWAN, as the provider, by approving HWAN's service contract with
15 full knowledge of the relationship between HWAN and CHWG.

16 NRS 690C.070 defines provider as a "person who is obligated to a holder pursuant to the
17 terms of a service contract to repair, replace, or perform maintenance on, or to indemnify the
18 holder for the costs of repairing, replacing, or performing maintenance on, goods." The record
19 for this hearing demonstrates that CHWG has never been a provider in the State of Nevada, and
20 the Exhibits demonstrate that the provider has always been HWAN and the Division has known
21 this since at least 2011. Accordingly, Exhibits KK, LL and MM clearly show that the Division
22 must be equitably estopped from seeking to penalize HWAN for utilizing CHWG to sell service
23 contracts because it explicitly approved the relationship and HWAN relied upon that approval.

24 **B. Exhibits KK and LL are relevant to the issue of whether HWAN made false**
25 **representations of material fact.**

26 The Decision imposed a fine on HWAN for not correcting the pre-populated entry of
27 "self" as HWAN's administrator in HWAN's renewal applications. Leaving aside that the failure
28 to correct this information was not a knowing misrepresentation, Exhibit KK notes the corporate
identity of HWAN as "Home Warranty Administrator of Nevada, Inc." It also notes that "Choice

³ See Decision 23:22-24.

1 Home Warranty” is HWAN’s administrator and has an office address in New Jersey. Further, as
2 detailed above, Exhibit LL clearly shows the Division knew that “Choice Home Warranty” was
3 CHWG in 2010. Taken together, the only logical conclusion from Exhibits KK and LL is that the
4 Division was obviously aware that HWAN was a separate entity from CHWG/“Choice Home
5 Warranty.” Moreover, these documents demonstrate that any error in the renewal application was
6 not a knowingly false entry since the entry was contrary to all of the information provided to the
7 Division through other documents. HWAN’s inadvertent mistake cannot rise to the level of a
8 knowing misrepresentation. Thus, even if HWAN made a mistake by failing to correct the “self”
9 entry on its prior renewal applications, the Division knew that CHWG was administrator.

10 **C. The Exhibits indicate that the testimony at the hearing was inaccurate and**
11 **that the Division has known all along that CHWG sells on behalf of HWAN.**

12 As set forth above, the Exhibits indicate several important facts related to the Division’s
13 knowledge: (1) that “Choice Home Warranty” is and was CHWG; (2) that HWAN and CHWG
14 were separate legal entities; (3) that CHWG/“Choice Home Warranty” was not certificated and
15 was selling service contracts in Nevada with the Division’s knowledge and explicit approval; and
16 (4) that HWAN used CHWG as its contract administrator. These facts, taken together, are
17 relevant to the credibility of certain testimony made at the hearing. As the Decision noted, Rajat
18 Jain testified that “[i]t was identified that Choice and HWAN were one and the same entity, that
19 Choice was not selling illegally because HWAN was a licensed entity in Nevada.”⁴

20 But this testimony is directly contradicted by the Exhibits, which show that the Division
21 has long known that CHWG is Choice Home Warranty. The Exhibits further show that the
22 Division clearly knew CHWG had been selling service contracts in Nevada and approved of the
23 relationship. Contrary to Mr. Jain’s testimony, then, the Division had specific knowledge that
24 “Choice and HWAN were” **not** the same entity. In other words, the Division plainly knew that
25 CHWG was selling contracts in Nevada without a certificate and, more importantly, was selling
26 on behalf of HWAN as early as 2011 and never took any affirmative action due to this
27 arrangement – likely because it knows that contract administrators and sales agents are not
28 required to be certificated under Nevada law.⁵ Indeed, not only was the Division aware of these

⁴ See Hr’g Tr., Day 1 at 117:12-15.

⁵ Indeed, the Division’s own website contains numerous approved service contracts where the seller is not

1 facts, it explicitly approved the relationship between CHWG and HWAN. Consistent with the
2 foregoing, the Decision erred in finding that HWAN engaged in unsuitable conduct by allowing
3 an uncertificated entity to sell contracts on its behalf.

4 **D. The Exhibits establish that the Decision erred by imposing penalties beyond**
5 **the time permitted by the applicable statute of limitations.**

6 The Decision ultimately imposed penalties pursuant to Nevada statutes for making false
7 entries of material fact in its 2011-2015 renewal applications and for allowing CHWG to sell
8 service contracts on its behalf since 2010.⁶ As is set forth above, the Exhibits are relevant to the
9 correctness of each of these findings and indicate that the Division was aware that CHWG was
10 selling service contracts on behalf of HWAN as early as 2011. On this basis, the Exhibits are
11 relevant to show that the current penalties violate the applicable statute of limitations. NRS
12 11.190(4)(b) is clear that “[a]n action upon a statute for a penalty or forfeiture, where the action is
13 given to a person or the State” is two years. Enforcement actions and penalties against contract
14 providers are clearly given to the Division and the Exhibits’ timeline indicate that no penalties
15 may be imposed for conduct prior to May 8, 2015.⁷ The Decision should be revised accordingly.

16 **E. Even if the Exhibits are privileged, that privilege has been waived.**⁸

17 To the extent that the Division will argue in opposition that the Exhibits are privileged and
18 must therefore not be considered, such a contention is without merit. As a threshold matter, the
19 District Court’s order requires the Hearing Officer to receive and consider the Exhibits so any
20 argument regarding privilege is moot. In any event, it is questionable as to whether these exhibits
21 are privileged at all. A privileged communication under Nevada law is one made between a client
22 and lawyer for the purposes of facilitating legal services. *See* NRS 49.095. Exhibit LL is not
23 directed to a Division attorney.⁹ And, although Exhibits KK and MM are made to David Hall, a
24 Division attorney, they do not on their face appear to be requesting legal advice or services.¹⁰

25
26 certified. *See, e.g.,* <http://di.nv.gov/ins/f?p=600:35:0:>

27 ⁶ *See* Decision at 25:19-20; 27:13-21. These penalties were imposed pursuant to NRS 686A.070, NRS
28 686A.181(1)(a), NRS 679B.125, and NRS 690C.325(1).

⁷ This is because the Division did not initiate the instant cause until May 9, 2017.

⁸ Due to the outstanding and unresolved claim of privilege of the e-mails, HWAN has made best efforts not to
directly quote or attach the Exhibits.

⁹ *See generally* Ex. 3.

¹⁰ *See generally* Exs. 2, 4. *See also* *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 399 P.3d 334, 341 (Nev. 2017).

1 Even if the Exhibits are privileged, however, that privilege has been waived. Nevada law
2 has long held that “[i]f there is disclosure of privileged communications, this waives the
3 remainder of the privileged consultation on the same subject.” *Cheyenne Const., Inc. v. Hozz*, 102
4 Nev. 308, 311–12, 720 P.2d 1224, 1226 (1986). Here, the Division voluntarily produced the
5 Exhibits in response to a properly served subpoena *duces tecum*. This voluntary disclosure
6 waived any privilege that could have attached to them.

7 In addition, “where the client has placed at issue the substance or content of a privileged
8 communication,” waiver attaches. *Wynn Resorts*, 399 P.3d at 345. This is because “[a] party is
9 not allowed to assert the privilege when doing so places the claimant in such a position, with
10 reference to the evidence, that it would be unfair and inconsistent to permit the retention of the
11 privilege because the attorney-client privilege is not to be both a sword and a shield.” *Mendoza v.*
12 *McDonald’s Corp.*, 213 P.3d 288, 304 (Ct. App. 2009) (internal quotations omitted). Here, the
13 Division has argued directly contrary to the facts these very Exhibits make evident, as described
14 hereinabove, at length on review.¹¹ The Division attempts to use the privilege as a sword, when it
15 is meant to be a shield, and this it cannot do. The Division should not be permitted to invoke the
16 privilege so that it can take a position that is directly contradictory to the facts.

17 **III. CONCLUSION**

18 Based upon the foregoing, the Exhibits should be considered and admitted into the record
19 here and appropriate reconsidered findings made by the hearing officer as set forth above. In
20 addition, HWAN requests that the hearing officer attach the Exhibits to any supplemental order
21 entered to allow for proper review by the district court.

22 DATED this 13th day of November, 2018.

23 BROWNSTEIN HYATT FARBER SCHRECK, LLP

24 BY: 

25 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
26 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

27 *Attorneys for Respondent*

28 ¹¹ See Division’s Answering Br., attached hereto as **Exhibit 2**, at 11:11-12; 12:14-17; 12:14-13:9; 17:12; 22:16-17;
23:4-5; 34:12-13; 34:17-18.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1000
Las Vegas, NV 89106-4614
702.382.2101

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on the 13th day of November, 2018, I caused a true and correct copy of the foregoing **HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a BRIEF REGARDING EXHIBITS KK, LL, AND MM** to be served, U.S. Mail, postage prepaid, and via electronic mail, to the following:

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Office of the Attorney General
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ryien@ag.nv.gov

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*Attorneys for Petitioner State of Nevada, Department Of
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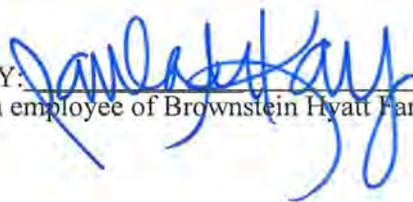
BY: 
an employee of Brownstein Hyatt Farber Schreck, LLP

EXHIBIT 3

The Division's Opposition to Exhibits KK, LL, and MM

EXHIBIT 3

The Division's Opposition to Exhibits KK, LL, and MM

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION/ PERTINENT FACTS

Pursuant to the instructions of the Court Order, the Hearing Officer, in turn, issued an order requiring HWAN to submit a brief to “address the purpose for which Exhibits KK, LL, and MM are offered.” The Division was presented with the option to file an opposition to the proposed Exhibits¹. The Division objects and opposes the introduction of these Exhibits, as set forth.

II. ARGUMENT

EXHIBITS KK, LL, AND MM ARE IMMATERIAL TO THIS MATTER AND NOTHING IN THE EXHIBITS NEGATES THE VIOLATIONS BY HWAN OR ABSOLVES IT FROM THE RESPONSIBILITY IMPOSED BY LAW

After an administrative hearing in Cause No. 17.0050, the Hearing Officer found that HWAN violated NRS 686A.070, by making false entries of material fact (six counts); conducted business in an unsuitable manner in violation of NRS 690.325 and 679B.125 by using Choice Home Warranty Group (“CHWG”), an unlicensed entity, for all activities for which Nevada law requires a certificate of registration (23,889 contracts)²; and violated NRS 690C.320.2 (one count) by failing to make records available to the Commissioner upon request,³ and ordered fines.⁴ The Exhibits HWAN is seeking to introduce are not material to any of these rulings and none would be affected by them.

HWAN makes five arguments in its brief. HWAN does not argue that the Exhibits show that it did not violate the law. The essence of HWAN’s claim of relevancy can be characterized as follows—because the Exhibits may be suggesting that the Division staff knew or should have known of HWAN’s misrepresentations, HWAN should not have been penalized for them. For the reasons set forth below, HWAN’s arguments must fail.

A. Equitable Estoppel Does Not Apply

HWAN claims that Exhibits KK, LL, and MM show that “the Division must be equitably estopped from seeking to penalize HWAN for utilizing CHWG to sell service contracts because it

¹ “[i]f the Division of Insurance has any objection or opposition to the Exhibits, the Division may file the objections or opposition no later than 5:00 pm.m on November 20, 2018 (October 31, 2018, Order, 1: 23-25).

² Final Order, 25:17-24, 27:18-21.

³ Final Order; 22:1-5; 27:16-17.

⁴ Final Order 27:13-21.

1 explicitly approved the relationship . . .” (HWAN Br., 2:23). Setting aside the fact that these Exhibits do
2 not show what HWAN claims they show⁵, it is well-settled that “estoppel cannot prevent the state from
3 performing its governmental functions.” *Chanos v. Nevada Tax Com’n*, 124 Nev. 232, 238, 181 P.3d
4 675, 679 (2008). The Commissioner cannot be prevented from exercising her duties imposed by the
5 Legislature under the Insurance Code, title 57 of the NRS, including protection of the public by
6 disciplining licensees for their violations. HWAN’s argument that the Division should be estopped from
7 enforcing the law must be rejected. Even if Exhibits KK, LL, and MM did show that someone from the
8 Division staff could have had the knowledge of the existence of two separate entities, it is immaterial to
9 whether or not the Commissioner may enforce the provisions of Title 57. Notably, HWAN does not
10 argue that these Exhibits in any way could show that it did not use CHWG to sell its contracts.

11 **B. The Exhibits Are Not Relevant to HWAN’s Statutory Responsibility Under NRS 686A.070**
12 **or to the Finding of Violations Thereof**

13 HWAN claims the Exhibits are relevant to HWAN’s violations found under NRS 686A.070. In
14 its Complaint, the Division alleged that HWAN violated NRS 686A.070 by failing to disclose material
15 facts about its business in its renewal applications of the Nevada certificate of registration. The Hearing
16 Officer found six (6) violations of NRS 686A.070⁶. NRS 686A.070 provides:

17
18 A person subject to regulation under this Code *shall not knowingly make*
19 *or cause to be made any false entry* of a material fact in any book, report
20 *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.

21 (Emphasis added). The language of the statute places no burden on the Division to hold the hand of an
22 applicant and correct any misstatements applicant enters as answers to the questions posed in the
23 application. There is nothing in Exhibits KK, LL, and MM that would absolve HWAN from its
24 responsibility to be truthful in applications to the Division under NRS 686A.070.

25 It is undisputed that Victor Mandalawi (“Mandalawi”), the president of HWAN and of CHWG,
26 d/b/a Choice Home Warranty, did not disclose CHWG as HWAN’s Administrator in its annual renewal
27

28 ⁵ See analysis in section C of this brief.
⁶ Final Order, 20:17-19, 26-27; 27:13-15.

1 applications. On its initial application filed with the Division on September 2, 2010, in response to the
2 question, “[h]ave you designated an administrator to be responsible for administration of Nevada
3 service contracts?” HWAN answered “No,”⁷ even though, according to HWAN’s own representations
4 to this tribunal, the purported agreement between HWAN and CHW Group was signed on July 29,
5 2010. (See HWAN’s Ex. E, ISP Agreement). Thereafter, the false entries and omissions continued in
6 renewal applications. In response to the question pertaining to the “administrator” of the applicant
7 (question 2 of Division’s Exs. 2, 4, 5, and 21—renewal applications for years 2011, 2012, 2013 and
8 2016), HWAN’s reply was “self.” The answer to the same question in renewal applications for years
9 2014 and 2015 was left blank. (Exs. 7 and 12). When asked by the Hearing Officer who Mandalawi was
10 referring to by entering “self” in response to these questions, he responded, “CHW,” in direct conflict
11 with HWAN’s own defense that HWAN and CHWG are two separate entities.⁸

12 HWAN does not deny this. Instead, it argues that “[t]he Decision imposed a fine on HWAN for
13 not correcting the pre-populated entry of ‘self’ as HWAN’s administrator in HWAN’s renewal
14 applications.”⁹ This is a new argument, and it must be rejected on many grounds, mainly, because it is
15 *irrelevant* to the issue on the limited remand and because it attempts to re-litigate issues already ruled
16 upon.¹⁰ HWAN’s attempt to introduce a new argument that its false entries are merely “inadvertent
17 mistakes” to correct a “prepopulated application form” not only improper, but it is also contradicted by
18 tangible evidence.¹¹

19 Nothing in the proposed Exhibits even remotely affects the findings of HWAN’s violations of
20 NRS 686A.070—HWAN made false entries and knowingly omitted material information in violation of
21 NRS 686A.070. The allegation by HWAN that the Exhibits indicate knowledge by the Division of the
22 relationship between HWAN and CHWG, even assuming it is true, does not negate or absolve HWAN
23

24 ⁷ Division’s Ex. 22 and HWAN’s Ex. P.

25 ⁸ Tr., Day 3, 46:15-25.

26 ⁹ HWAN Br., 2:25-26.

27 ¹⁰ It is also an attempt to introduce an alleged fact not in the record. There is nothing in this record that suggests
28 that the Division pre-populated HWAN’s applications, including their initial application.

¹¹ The fact that HWAN attempted to conceal CHWG as its Administrator on the *initial application*, coupled with its
answers in each subsequent renewal application--consistently making the same false representations—means the concealment
was, at the least, with the knowledge thereof. Moreover, even if the renewal applications were “pre-populated,” they would
be pre-populated *based* on the information *submitted by HWAN* on its original application.

1 from the mandate or the responsibility placed on the applicant by NRS 686A.070.

2 HWAN does not claim that any other findings of violations by the Hearing Officer would be
3 impacted by these Exhibits. They would not.

4 **C. HWAN's Argument That Witness Testimony Was Inaccurate Has No Merit**

5 This argument, designed to justify the introduction of these Exhibits by claiming that they
6 discredit Division witnesses, is also without merit. Substantively, no argument is set forth on how these
7 proposed Exhibits may be relevant, or affect the findings. As far as any effect on the credibility of the
8 witnesses—HWAN's counsel was in possession of these Exhibits during the hearing, yet no attempt
9 was made at that time to impeach the witnesses. In fact, counsel for HWAN voluntarily decided not to
10 seek admittance of these Exhibits.¹² This attempt by HWAN to re-litigate the case under the guise of the
11 limited Court Order is disingenuous, inapposite, and untimely.

12 Lastly, Exhibits KK, LL, and MM, are consistent with the testimony of the Division witnesses.
13 These Exhibits, including privileged attorney-client communications in 2011, at best, show the
14 confusion among Division employees, resulting from the deceit perpetrated on the State of Nevada by
15 the set of overlapping characters operating CHWG and HWAN.¹³ After being told by Mandalawi that
16 the two entities were one and the same^{14 15}, the Division allowed HWAN to register Choice Home
17

18 ¹² See Tr., 9/14/17, 107:8-15.

19 ¹³ CHWG was selling service contracts as Choice Home Warranty in various states, including Nevada, as early as
2008, and it had run into problems in some jurisdictions for selling without a license. Mandalawi testified:

20 Q: In 2010, in Nevada, right before you started the HWAN, there were a few problems, correct?

21 A. Yes.

22 Q. Well, the nature of the problems in Oklahoma, California and Washington were basically of the same
23 nature, right?

24 A. Yes.

25 Q. And that involved selling without --

26 A. Selling without a license.

27 Q. And in Nevada?

28 A. Yes.

Q. Nevada, a similar problem?

A. Yeah (Tr. 9/13/17, 139:14-25, 140:1-5)

Q. what was the company against whom the allegations [consumer complaints] were made?

A. *CHW Group*. (Tr., 9/13/17, 138:24-25).

¹⁴ Chief Jain testified: “[a]t some point, there was a discussion with Mr. Mandalawi. It was identified that Choice
and HWAN were one in the same entity, that Choice was not selling illegally because HWAN was a licensed entity in
Nevada. And Mr. Mandalawi then chose to register Choice in the state and surrendered the certificate of registration and
agreed to the new certificate showing HWAN dba Choice.” Tr., 09/12/17, 117:11-18.

¹⁵ This is also supported by testimony of comingling of funds between HWAN and CHWG Tr., 09/12/17, 69:21-
72:18.

1 Warranty as its d/b/a to avoid confusion among consumers. This is also consistent with HWAN's own
2 annual renewal applications, which never disclosed an administrator. It was precisely because the
3 Division thought that HWAN and "Choice Home Warranty" were one entity, that it requested that
4 HWAN register a dba, as the public already knew it as "Choice Home Warranty."¹⁶

5 Believing the two entities to be one and the same, the Chief of Property and Casualty at the
6 Nevada Division of Insurance testified, "[f]rom every documentation that I have seen, from the
7 consumer complaints that we have seen, from the dba's, from the service contract form that is out in the
8 market, from the email advertisements that we have heard consumers receive, in fact, I have received
9 them, there is no doubt in my mind that Choice Home Warranty is the same entity as Home Warranty
10 Administrators of Nevada."¹⁷ HWAN's attempt to now use its own deception, resulting in confusion
11 among Division staff, to in order to discredit Division witness by arguing the witness should have been
12 aware of the lies and deceit perpetrated by HWAN, is troubling, absurd, and untimely.

13 **D & E. HWAN's Attempt to Re-litigate the Case by Introducing New Arguments for the First**
14 **Time is Improper as is HWAN's Attempt to Introduce the Issue of Waiver of Privilege in**
15 **this Limited Remand Order.**

16 HWAN, again, audaciously oversteps the scope of this briefing by attempting to introduce new
17 legal arguments and theories. The Division's position is that improper and, again, beyond the scope of
18 the limited charge in the Court Order. HWAN introduces a new argument citing NRS 11.190(4)(b) for
19 the first time. Additionally, in an attempt to bypass the District Court's ruling and use these exhibits in
20 the pending PJR, HWAN argues that the Division waived its privilege. The Division has not waived
21 any such privilege. Moreover, the District Court still needs to find "good reasons" pursuant to NRS
22 233B.135 (1)(a) in order to admit these exhibits into the record. Because the District Court decided to
23 first address the issue of materiality, by remanding it to the Hearing Officer prior to addressing whether
24 "good reasons" exist, no such admittance of privileged information has occurred. These issues are
25 beyond the scope of the limited remand order and need not be addressed to answer the question posed
26 by the District Court. The charge of the Hearing Officer is limited to determining whether the proposed
27 exhibits would have been material and had any affect as to her Final Order; no more.

28 ¹⁶ Tr., 09/12/17, 114:21-115:18.

¹⁷ Tr., 09/12/17, 117:21-118:2.

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III. CONCLUSION

For the reasons set forth above, the Exhibits are not material to the issue of HWAN's statutory responsibilities or to the finding of violations thereof.

DATED this 20th day of November 2018.

ADAM PAUL LAXALT
Attorney General

By: 
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Senior Deputy Attorney General
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1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of the State of Nevada Attorney General's Office and that on the
3 20th day of November 2018, I served the foregoing Nevada Division of Insurance's **DIVISION'S**
4 **OPPOSITION TO HWAN'S PROPOSED EXHIBITS KK, LL, AND MM** via email and by U.S.
5 Mail, postage prepaid, as follows:

6 Alexia Emmerman, Esq., Hearing Officer
7 Attn: Yvonne Renta
8 yrenta@doi.nv.gov
9 Department of Business and Industry
10 Division of Insurance
11 1818 E. College Pky., Ste. 103
12 Carson City NV 89706

11 Kirk B. Lenhard, Esq.
12 klenhard@bhfs.com
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14 tchance@bhfs.com
15 Brownstein Hyatt Farber Schreck, LLP
16 100 N. City Pky., Ste. 1600
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16 Lori Grifa, Esq.
17 lgrifa@archerlaw.com
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19 21 Main St., Ste. 353
20 Hackensack NJ 07601

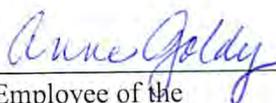
21 
22 An Employee of the
23 Office of the Attorney General
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EXHIBIT 4

**HWAN's Reply to the Division's Opposition
to Exhibits KK, LL, and MM**

EXHIBIT 4

**HWAN's Reply to the Division's Opposition
to Exhibits KK, LL, and MM**

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

12 STATE OF NEVADA
13 DEPARTMENT OF BUSINESS AND INDUSTRY
14 DIVISION OF INSURANCE

15 IN THE MATTER OF

CAUSE NO.: 17.0050

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

19 *Respondent.*

**HOME WARRANTY
ADMINISTRATOR OF NEVADA, INC.
d/b/a CHOICE HOME WARRANTY'S
REPLY TO DIVISION'S OPPOSITION
TO ITS BRIEF REGARDING
EXHIBITS KK, LL and MM**

20 Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a Choice
21 Home Warranty ("HWAN"), a Nevada corporation, hereby replies the Division of Insurance's
22 November 20, 2018 Opposition (the "Opposition") to HWAN's November 13, 2018 Brief
23 Regarding Exhibits KK, LL and MM (the "Exhibits") in light of material mischaracterizations of
24 the terms of the underlying Order and prior sworn testimony adduced in the instant Cause.
25 HWAN requests this Reply at it is necessary to correct the record.

26 //
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DATED this 21st day of November, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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ARCHER & GREINER P.C.

BY: _____

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Telephone: 201.342.6000

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

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 HWAN incorporates by reference the procedural and factual background set forth in its
3 April 19, 2018 Motion before the First Judicial District Court, that Court’s September 6, 2018
4 Order (the “Order”) granting HWAN’s Motion, as well as HWAN’s November 13, 2018 Brief.
5 For the sake of brevity, HWAN will not restate that which is contained therein.

6 The Division, by Sr. Deputy Attorney General Joanna Grigoriev, filed an Opposition to
7 Respondent’s Brief on November 20, 2018. Said Opposition, at Page 2, misstates the terms of the
8 Order of the First Judicial Court in a material way. The Division “objects to and opposes” the
9 introduction of these Exhibits”. Neither an objection, nor an opposition is available to the
10 Division pursuant to the terms of the Court’s September 6, 2018 Order. That Order very plainly
11 required the hearing officer “receive the [Exhibits] and determine if they are material and would
12 have had any impact on the final decision.”¹ Indeed, the Division quotes this very directive on
13 Page 1 of its Opposition brief. It should be clear that the hearing officer has been ordered to
14 receive the Exhibits and will do so.

15 The Division further argues that the Exhibits cannot be received because they were
16 available during to HWAN during the instant Cause and HWAN “voluntarily decided” not to use
17 them. The Division goes further to suggest the April 19, 2018 Motion is a tactic which is
18 “disingenuous, inapposite, and untimely.” This jibe ignores the procedural posture of the motion
19 and the Order. To be clear, these Exhibits were not addressed by either party or their witnesses in
20 the underlying hearing because the Division had never given notice of any fact, claim or argument
21 in any complaint or filing that made them material or relevant to the proofs adduced at the
22 hearing. Indeed, it was only after the hearing that these Exhibits became an issue. Well after the
23 hearing, when the Division filed its closing papers, the Division proffered conclusions directly
24 contrary to facts set forth in these Exhibits – contrary to facts in its possession and known at the
25 time of the briefing, necessitating the post-hearing motion and this review. HWAN argues that

26
27 ¹ See Order Granting Pet’s Mot. For Leave to Present Add’l Evidence, attached to HWAN’s Brief as Ex. 1
28

1 the Division cannot proffer conclusions based on facts it knows to be contrary to the argument
2 and that these proffered conclusions formed the basis of errors in the hearing officer's decision
3 that require reversal.

4 Finally, in its Opposition, the Division has taken liberties with sworn testimony, which
5 cannot stand. Neither HWAN nor Mr. Mandalawi ever wavered on the separate identities of the
6 two corporations before the Division in the instant Cause. There was no conflict or contradiction
7 in Respondent's proofs. When asked, "So you listed the current administrator as self. Who's
8 self?" He responded: "The administrator would be CHW Group.", referencing CHW Group, Inc.
9 d/b/a Choice Home Warranty, an entity duly incorporated and operating in New Jersey.²

10
11 **I. CONCLUSION:**

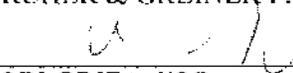
12 Based upon the foregoing, HWAN respectfully requests record be corrected accordingly.

13 DATED this 21st day of November, 2018.

14 BROWNSTEIN HYATT FARBER SCHRECK, LLP

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of Nevada, Inc., dba Choice Home Warranty*

27 ² See Hr'g Tr. Day 3 at 46:22-25.
28

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CERTIFICATE OF SERVICE

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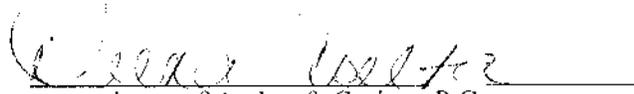
I hereby certify that I am an employee of Archer & Greiner, P.C. and that on 21st day of November, 2018, I served a true and correct copy of the foregoing **HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a CHOICE HOME WARRANTY'S REPLY TO DIVISION'S OPPOSITION TO ITS BRIEF REGARDING EXHIBITS KK, LL, and MM** via electronic mail and Federal Express, at Las Vegas and Carson City, Nevada, addressed to the following at the last known address of said individuals:

Richard P. Yien, Esq., Deputy Attorney General
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Alexia Emmermann, Hearing Officer
c/o Yvonne Renta, Clerk
Nevada Commissioner of Insurance
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*Attorneys for Defendant State of Nevada, Department Of
Business And Industry-Division Of Insurance*


an employee of Archer & Greiner, P.C.

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EXHIBIT 5

Order on Remand

EXHIBIT 5

Order on Remand

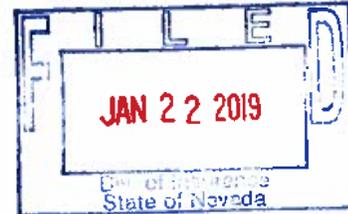
STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. 17.0050

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

Respondent.



ORDER ON REMAND

This matter was 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. A hearing was held on September 12, 13, and 14, 2017. At the close of the hearing, the Parties were ordered to file briefs on a legal issue, and written closing arguments. The Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner were issued on December 18, 2017.

On September 6, 2018, the First Judicial District Court of the State of Nevada in and for Carson City issued an Order Granting Petitioner's Motion for Leave to Present Additional Evidence, remanding the matter on judicial review for the Hearing Officer's consideration of proposed exhibits KK, LL, and MM. As the Court explained, "pursuant to NRS 233B.131(2), Petitioner [HWAN] must demonstrate that the Evidence is material to the issues before the agency and that good reasons exist for Petitioner's [HWAN's] failure to present the same in the proceeding below." (Ord. Granting Pet'r's Mot. Leave to Present Add'l Evid 2.) The Court declined to examine the evidence *in camera*, and left the issue of materiality to the Hearing Officer. "Material" means "Of such a nature that knowledge of the item would affect a person's decision-making; significant; essential." Black's Law Dictionary (3d ed. 2006). Thus, the Hearing Officer's obligation is to receive the evidence, determine if it is material and, if so, issue a new decision with new findings where applicable, but if not, issue a new decision indicating the evidence would have had no impact on the original findings. While the issue of materiality was remanded, the Remand Order does not give the Hearing Officer the authority to

1 determine good reason for failure to present evidence at the hearing. Therefore, the Hearing
2 Officer only addresses materiality in this new decision.

3 On remand, the Hearing Officer received exhibits KK, LL, and MM. After reviewing
4 the exhibits, the purpose of each exhibit was not readily apparent, and the Hearing Officer
5 issued an order on October 31, 2018, to give Home Warranty Administrator of Nevada, Inc. an
6 opportunity to address the purpose of the exhibits by November 13, 2018, and to give the
7 Division an opportunity to present its objections or opposition by November 20, 2018. The
8 Parties timely filed their briefs. Home Warranty Administrator of Nevada, Inc. also filed a
9 reply brief to the Division's opposition. Having reviewed exhibits KK, LL, and MM, and
10 considered the Parties' briefs (addressed below), the Hearing Officer finds that the exhibits are
11 not material and do not impact the final decision.

12 **Review of Proposed Exhibits KK, LL, and MM**

13 The proposed exhibits were presented out of chronological order; they are reviewed here
14 in chronological order. For clarification, Home Warranty Administrator of Nevada, Inc. is also
15 identified as HWAN, CHW Group, Inc. is also identified as CHW Group, and Choice Home
16 Warranty is only identified as Choice Home Warranty.

- 17 1. In July 2010, in response to another state's inquiry about a company called "Choice
18 Home Warranty," Division employees were aware that such a named company was
19 operating in Nevada without a registration. (Ex. LL at 1-3.) Employee Dolores Bennett
20 referenced "CHW Group, Inc., dba Choice Home Warranty," but all other employees
21 only referenced 'Choice Home Warranty.' (Ex. LL at 2.) Whether all employees
22 understood Choice Home Warranty to be CHW Group in this emails is not discernable.
- 23 2. In July 2011, Division employees again discussed "Choice Home Warranty," and
24 Bennett again referred to "CHW Group, Inc. dba Choice Home Warranty." (Ex. MM at
25 1-3.) Division Counsel indicated that the Division was in the process of filing a
26 complaint against Choice Home Warranty. (Ex. MM at 2.) Whether all employees
27 understood Choice Home Warranty to be CHW Group is not discernable, and no
28 evidence was presented that a complaint was filed against Choice Home Warranty.

1 3. Approximately two weeks later, in July 2011, Bennett sent an email about Choice Home
2 Warranty and Home Warranty Administrator of Nevada, Inc., and indicated that HWAN
3 listed Choice Home Warranty as its administrator in the proposed contract. (Ex. KK at
4 3–4.) Bennett did not make any reference to CHW Group, Inc. dba Choice Home
5 Warranty.

6 4. On November 1, 2011, a note was written referencing Choice Home Warranty, and
7 business written without being registered. (Ex. KK at 2.) Whether the Division
8 interpreted Choice Home Warranty to include CHW Group is not discernable, and the
9 author of the note is unknown.

10 5. On November 7, 2011, Bennett emailed Division employees indicating Victor
11 Mandalawi, president of CHW Group, Inc. obtained a certificate of registration as a
12 service contract provider a year earlier for a different corporation called Home Warranty
13 Administrator of Nevada, Inc. (KK at 1.) Whether the reference to CHW Group Inc.,
14 dba Choice Home Warranty was intended to mean Choice Home Warranty as used in
15 prior discussions is not discernable.

16 Arguments

17 **1. The Exhibits Are Not Sufficient to Meet the Requirements for Equitable Estoppel**

18 HWAN argues that exhibits KK, LL, and MM are material because they clearly establish
19 that the Division was fully aware that CHW Group used the fictitious name Choice Home
20 Warranty and that, because Choice Home Warranty was easily identifiable as CHW Group, the
21 Division should be equitably estopped from penalizing HWAN. HWAN also argues that the
22 Division should be equitably estopped from penalizing HWAN because the Division explicitly
23 authorized the structure of the relationship.

24 In Nevada, “equitable estoppel operates to prevent a party from asserting legal rights
25 that, in equity and good conscience, the party should not be allowed to assert because of his
26 conduct.” *Chanos v. Nev. Tax Comm'n*, 124 Nev. 232, 238 (2008). The Supreme Court has
27 established a four-prong test to determine whether equitable estoppel applies. As applied to this
28 case, equitable estoppel requires proof that (1) the Division was apprised of the true facts,

1 (2) the Division intended for HWAN to act upon the Division's conduct, (3) HWAN was
2 ignorant of the true state of facts, and (4) HWAN detrimentally relied on the Division's conduct.
3 *Id.* at 237.

4 Exhibits KK, LL, and MM are conversations that reflect the Division's awareness that
5 there was an entity that went by the name Choice Home Warranty that was selling unlicensed
6 service contracts and that the Division was investigating and trying to address the situation.
7 Discussions among Division staff in which one employee identified CHW Group, Inc. dba
8 Choice Home Warranty in her comments relating to questions about and investigations of
9 Choice Home Warranty do not prove that the Division knew Choice Home Warranty was, in
10 fact, CHW Group. There was no substantive discussion as to who CHW Group, Inc. dba
11 Choice Home Warranty was, nor any substantive discussion as to who Choice Home Warranty
12 was. Any interpretations about what Division staff meant in the email discussions and note of
13 exhibits KK, LL, and MM would be conjecture.

14 Further, the discussions in 2010 and 2011 did not lead to any action by the Division to
15 establish that the Division was fully aware that CHW Group was Choice Home Warranty.
16 Awareness that CHW Group operated a fictitious name Choice Home Warranty does not prove
17 that the Choice Home Warranty the Division had been investigating was the same company.
18 The Division cannot regulate based on speculation—it must act on facts. The only action the
19 Division took was to ask HWAN to register Choice Home Warranty as a fictitious name
20 because, after a discussion with Mandalawi and based on records filed by Mandalawi, the
21 Division believed that Choice Home Warranty and HWAN were one-and-the-same entity. Even
22 if the conclusion did not come until 2014, the Division took no administrative action against
23 Choice Home Warranty on the understanding that Choice Home Warranty did not operate
24 without a license because it was HWAN. A discussion with Mandalawi and the filings
25 Mandalawi submitted solidified the Division's conclusion.

26 A person wishing to sell service contracts in Nevada is required to register with the
27 Division prior to selling service contracts, and CHW Group did not register with the Division.
28 Without CHW Group's registration or administrative action taken by the Division that

1 concluded CHW Group was the same Choice Home Warranty being investigated by the
2 Division, HWAN's arguments piece together speculation—it is not clear that the Division knew
3 CHW Group dba Choice Home Warranty was the Choice Home Warranty the Division was
4 investigating. Thus, there is no proof that the Division was apprised of the true facts.

5 Nothing in this evidence reflects that the Division intended HWAN to improperly sell
6 contracts for CHW Group, nor is there evidence that the Division intended HWAN's registering
7 Choice Home Warranty as a fictitious name to mean that CHW Group could sell contracts in
8 Nevada. Since becoming registered as a service contract provider in Nevada, HWAN did not
9 change its conduct, so nothing in the evidence suggests that HWAN relied to its detriment on
10 the State.

11 On the other hand, HWAN was fully aware that CHW Group existed and operated the
12 fictitious name Choice Home Warranty because it was spelled out in the Independent Service
13 Provider Agreement that existed between HWAN and CHW Group, and because Mandalawi is
14 the president of both HWAN and CHW Group. In other words, HWAN knew who the entities
15 were and what they were doing, but there is no evidence to show that HWAN made clear to the
16 Division that Choice Home Warranty was CHW Group. While exhibits KK, LL, and MM are
17 relevant to the matter, they are not material because they are not enough to show that the
18 Division actually knew that Choice Home Warranty was CHW Group. Therefore, the equitable
19 estoppel test fails, and there is no impact on the final decision.

20 **2. The Exhibits Do Not Negate the Findings of False Representations of Material Fact**

21 HWAN argues that exhibits KK and LL are material because they show that the
22 Division was aware that HWAN used Choice Home Warranty as its administrator and,
23 therefore, HWAN should not have been fined for not correcting the "pre-populated entry of
24 'self'," which was not a knowing misrepresentation.

25 Exhibit KK contains three items: (1) an email from July 27, 2011, from Bennett
26 indicating that HWAN submitted for review a contract listing Choice Home Warranty as the
27 administrator; the contract was pending due to certain objections, and the contract would be
28 approved after correction of errors; (2) a note dated November 1, 2011; and (3) an email from

1 November 7, 2011, from Bennett notifying Division employees that Mandalawi, who is
2 president of CHW Group, obtained a certificate of registration for another company, HWAN, a
3 year earlier. Only the first email in exhibit KK is relevant to HWAN's argument. As explained
4 in Section 1, above, exhibit LL does not clearly show that the Division knew as of 2010 that
5 Choice Home Warranty was CHW Group.

6 The email in exhibit KK shows that the Division was aware that HWAN's contract
7 identified Choice Home Warranty as the administrator. However, HWAN failed to identify
8 Choice Home Warranty on every renewal application HWAN submitted after the contract was
9 approved. The fact that Mandalawi signed the application and each renewal affirming that the
10 statements in the applications were true makes every answer regarding having an administrator
11 on each application a knowing misrepresentation. HWAN had entered an agreement for CHW
12 Group to act as its administrator on July 29, 2010, but HWAN did not report this on the
13 application, which was also dated and signed on July 29, 2010. (Ex. 22 & Test. Mandalawi.)
14 Mandalawi signed a separate notarized verification on August 31, 2010, affirming that the
15 information presented in the application was true. (Ex. 22 at 4.) Only one document was filed
16 with the Division identifying Choice Home Warranty as the administrator. Even if the Division
17 had been aware that Choice Home Warranty was the administrator, three months later,
18 Mandalawi submitted a renewal application indicating HWAN was the administrator, and did so
19 again in 2012 and 2013. Pre-populated or not, Mandalawi attested to the truth of the
20 information in the application, and the Division relied on the attestations such that the Division
21 asked HWAN to register Choice Home Warranty as a fictitious name.¹ The Division's
22 knowledge of whether Choice Home Warranty was CHW Group has no bearing on HWAN's
23 intentional acts because nothing in the exhibits shows that Mandalawi was unaware of who the
24 administrator was. The Division could only know what HWAN disclosed. Nothing in the
25 exhibits refutes that it was a knowing misrepresentation. Thus, exhibits KK and LL do not
26 show that the Division knew CHW Group was the administrator such that HWAN should not be
27

28 ¹ The evidence shows that HWAN presented itself as one-and-the-same with Choice Home Warranty in the
renewal applications, which also supports the conclusion in Section 1.

1 fined for making false representations of fact.

2 **3. The Exhibits Do Not Show that the Division's Testimony Was Inaccurate**

3 HWAN argues that the exhibits are material because they show that the Division's
4 testimony was inaccurate. Specifically, HWAN argues that the credibility of Rajat Jain is
5 directly contradicted by the exhibits because the exhibits show that the Division had long
6 known that CHW Group is Choice Home Warranty. As explained in Sections 1 and 2, above,
7 exhibits KK, LL, and MM do not show that the Division knew all along that Choice Home
8 Warranty was CHW Group. The exhibits also do not show that the Division knew of and
9 approved of CHW Group's sale of service contracts in Nevada. Therefore, the exhibits do not
10 affect Jain's credibility. Jain's name does not appear in any of the email correspondence of
11 exhibits KK, LL, or MM, so whether he was aware of or part of the discussions of 2010 and
12 2011 is unknown. Jain testified as to how the Division arrived at the determination in 2014 that
13 HWAN and Choice Home Warranty were one-and-the-same entity, which is not the subject of
14 any of the exhibits. Thus, the finding that HWAN engaged in unsuitable conduct is not
15 impacted by exhibits KK, LL, or MM.

16 **4. The Exhibits Do Not Establish that the Final Order Imposed Penalties Beyond the**
17 **Statute of Limitations**

18 HWAN argues that exhibits KK, LL, and MM are material since the exhibits show that
19 the Division was aware that CHW Group was selling service contracts on behalf of HWAN as
20 early as 2011. As a result, HWAN argues, the penalties for making false entries of material fact
21 in its 2011–2015 renewal applications and for allowing CHW Group to sell service contracts on
22 its behalf are improper under the statute of limitations. As explained in Sections 1, 2, and 3,
23 above, exhibits KK, LL, and MM do not show that the Division knew that Choice Home
24 Warranty was CHW Group. Moreover, HWAN did not raise the statute of limitations as an
25 affirmative defense in the hearing; as such, the Hearing Officer will not consider it on remand.

26 **5. Admissibility of Exhibits KK, LL, and MM**

27 HWAN argues that any argument by the Division that exhibits KK, LL, and MM are
28 privileged is without merit because the Remand Order requires the Hearing Officer to receive

1 and consider the exhibits. The Division argues that the Remand Order allows the Hearing
2 Officer to only consider materiality because the Court has not yet ruled on whether HWAN had
3 good reason for not presenting the exhibits during the hearing.

4 The Remand Order requires the Hearing Officer to receive the exhibits and consider
5 materiality, and issue a new decision addressing materiality and impact on the final decision.
6 The Court did not grant the Hearing Officer authority to make a determination as to whether
7 good reasons exist for HWAN's failure to present the exhibits at the hearing. Receiving the
8 exhibits and considering materiality required the Hearing Officer to look at the exhibits and
9 evaluate them in the context of the issues; the Hearing Officer is not considering the exhibits'
10 admissibility. Therefore, any argument regarding admissibility, such as privilege, is not within
11 the Hearing Officer's jurisdiction.

12 **Conclusion**

13 Having received and reviewed exhibits KK, LL, and MM, as mandated in the Court's
14 Remand Order, the Hearing Officer finds exhibits KK, LL, and MM not to be material and,
15 therefore, do not impact the final decision.

16 DATED this 22nd day of January, 2019.

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ALEXIA M. EMMERMANN
19 Hearing Officer
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **ORDER ON REMAND**, in **CAUSE NO. 17.0050**, via electronic mail and by mailing a true and correct copy thereof via First Class mail, properly addressed with postage prepaid, to the following:

Kirk B. Lenhard, Esq.
Brownstein Hyatt Farber Schreck, LLP
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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 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 22nd day of January, 2019.



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

EXHIBIT 6

**Petition for Judicial Review
in Case No. 19-OC-00015-1B**

EXHIBIT 6

**Petition for Judicial Review
in Case No. 19-OC-00015-1B**

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7 *Attorneys for Petitioners*

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

RECORDED & FILED
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ASSISTANT CLERK
S. COOPER

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

Case No. : 19000015 19
Dept. No.: I

13 Petitioner,

PETITION FOR JUDICIAL REVIEW

14 vs.

15 NEVADA COMMISSIONER OF
INSURANCE BARBARA D. RICHARDSON
16 and THE STATE OF NEVADA,
DEPARTMENT OF BUSINESS AND
17 INDUSTRY – DIVISION OF INSURANCE, a
Nevada administrative agency,

18 Respondents.

19 Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba
20 CHOICE HOME WARRANTY (“HWAN”), by and through their attorneys of record, the law
21 firm of Holland & Hart LLP, and pursuant to NRS 233B.130, hereby request judicial review of
22 the Findings of Fact, Conclusion of Law, and Order of the Commissioner (the “Decision”) by the
23 NEVADA COMMISSIONER OF INSURANCE BARBARA D. RICHARDSON
24 (“Commissioner”) AND THE STATE OF NEVADA DEPARTMENT OF BUSINESS AND
25 INDUSTRY – DIVISION OF INSURANCE (the “Division”) which was filed on January 2,
26 2019, in the matter of *In re Home Warranty Administrator of Nevada, Inc. dba Choice Home*
27 *Warranty*, Cause No. 18.0095. A copy of the Decision is attached hereto as **Exhibit “1.”**

28 ///

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

1 Jurisdiction with this Court is proper pursuant to NRS 233B.130, as the Decision is not
2 reviewable by any other administrative body. Venue is proper under NRS 233B.130(2)(b)
3 (“Petitions for judicial review must . . . [b]e instituted by filing a petition in the district court . . .
4 in the district court in and for Carson City.”).

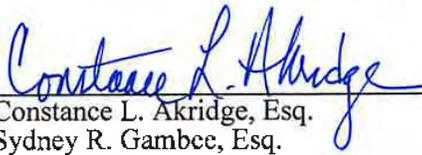
5 Petitioner, a party to the administrative proceeding, is aggrieved by and appeals the
6 Findings of Fact, Conclusions of Law, and Order in the Decision, and any and all interlocutory
7 orders giving rise to the Decision. While the Division is required to transmit the record of
8 proceedings to this Court and there is no requirement for Petitioners to designate portions of the
9 record, Petitioners request that a complete copy of the transcript of the proceedings, together
10 with copies of all documents provided by Petitioners to the Division in this matter, as well as
11 copies of legal briefings and correspondence with the Division, be included in the record for
12 review by this Court.

13 Finally, Petitioners will be filing a memorandum of points and authorities pursuant to
14 NRS 233B.133 within the time required by that statute following notice to the undersigned of
15 transmission of the record of the proceedings to this Court. This “Petition” is the appellate
16 notification required to commence the appeal and judicial review, and should not be construed as
17 Petitioners’ memorandum of points and authorities under NRS 233B.133.

18 The undersigned affirms that the foregoing does not contain the social security number of
19 any person.

20 DATED this 23rd day of January, 2019.

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Constance L. Akridge, Esq.
Sydney R. Gambce, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Petitioner

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INDEX OF EXHIBITS

EXHIBIT 1	Findings of Fact, Conclusions of Law and Order	Pages 1 - 49
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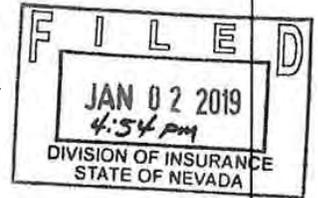
EXHIBIT 1

Findings of Fact, Conclusions of Law and Order

EXHIBIT 1

Findings of Fact, Conclusions of Law and Order

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE



IN THE MATTER OF
**HOME WARRANTY ADMINISTRATOR
OF NEVADA, INC. dba CHOICE HOME
WARRANTY**

CAUSE NO. 18.0095
**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF THE COMMISSIONER**

Respondent.

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.

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

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

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

20 SUMMARY OF PROCEEDINGS

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

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

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

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

17 HWAN was provided a notice of the denial of the Renewal Application on February 1,
18 2018, explaining the four reasons for the denial of the January 11, 2018 Renewal Application.
19 The Division requested a hearing to effectuate this denial on March 12, 2018. On March 13,
20 2018, the Division's request for a hearing was granted and notice was sent via certified mail to
21 the Respondent. In the March 13, 2018 Notice of Hearing, Barbara Richardson, the
22 Commissioner of Insurance ("Commissioner"), was named as Hearing Officer.

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

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

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

5 On two following occasions, April 18, 2018 and June 5, 2018, the parties submitted joint
6 requests to Continue Hearing Dates. The Joint Requests were each granted: the first on April
7 20, 2018, and the second on June 6, 2018, based on the representations of the parties that each
8 party felt they could use more time to negotiate a settlement.

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

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

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

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

18 On September 10, 2018, the Hearing Officer set a new Hearing date for October 23,
19 2018, (continued to October 24, 2018, if necessary). On October 16, 2018, each party
20 submitted Pre-Hearing statements.

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

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

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

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

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

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

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

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

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

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

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

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

16 On October 19, 2018, the Parties submitted a Joint Request for Prehearing Conference.
17 The Prehearing Conference was held on the morning of the first date of the Hearing, October
18 23, 2018.

19 On November 19, 2018, HWAN submitted a Brief Regarding Recusal of Commissioner
20 as Hearing Officer, and the Division submitted its Brief Regarding Recusal of Commissioner as
21 Hearing Officer. These contemporaneous briefs were stipulated to as part of the October 23,
22 2018 Hearing.

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

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

27 ///

28 ///

1 **WITNESSES**

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

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

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

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

23 **EXHIBITS**

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

1 **FINDINGS OF FACT**

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

- 5 a. Violated or failed to comply with any lawful order of the
6 Commissioner;
7 b. Conducted business in an unsuitable manner;
8 c. Willfully violated or willfully failed to comply with any lawful
9 regulation of the Commissioner; or
10 d. Violated any provision of this chapter.

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

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

16 Therefore , as of the date of this Order [December 18, 2017], [HWAN] is
17 on notice that it must apply for a renewal of its certificate of registration if
18 it wishes to continue in the business of service contracts in Nevada within
19 30 days of the date of this [the Emmermann] Order. Division Exhibit 2,
20 pg. 27.

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

23 The Division must issue its determination on the application no later than
24 15 business days after the receipt of the complete application. As a result,
25 the Division cannot take action against [HWAN] for issuing, selling, or
26 offering for sale service contracts without a certificate of registration from
27 the date of this Order plus 45 days. Division Exhibit 2, pg. 27.

28 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

1 Exhibit 4, pg.2.

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

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

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

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

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

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

20 **CONCLUSIONS OF LAW**

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

25 **A. Jurisdiction**

26 The Commissioner has jurisdiction over this matter pursuant to NRS 690C.120,
27 679B.120, NRS 679.125, and NRS 690C.300,-.310 and .320. Service Contracts are regulated
28 by the Commissioner under the Insurance Code pursuant to chapter 690C of NRS.

1 **B. Burden of Proof**

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

9 **C. Division Arguments**

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

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

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

24 **NRS 690C.325 Administrative fines; suspension, limitation, revocation or
25 refusal to renew certificate of registration.**

- 26 1. The Commissioner may refuse to renew or may suspend, limit or revoke a
27 provider’s certificate of registration if the Commissioner finds after a hearing
28 thereon, or upon waiver of hearing by the provider, that the provider has:
29 (a) Violated or failed to comply with any lawful order of the Commissioner;
30 (b) Conducted business in an unsuitable manner;
31 (c) Willfully violated or willfully failed to comply with any lawful regulation
32 of the Commissioner; or
33 (d) Violated any provision of this chapter.

34

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

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

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

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

15 HWAN and the Division filed a Stipulation and Order for Interpleading of Fines
16 Pending Final Decision ("Interpleading"), which was granted by the District Court on March
17 15, 2018. HWAN Exhibit CC. HWAN argues that this joint Interpleading should act as a stay
18 to allow them not to pay the required fines under the Emmermann Order; however, the District
19 Court already ruled on the Motion for a Stay when it denied it on February 14, 2018. HWAN
20 Exhibit AA.

21 The Division argues that NRS 233B.135(2) controls the current action. NRS
22 233B.135(2) states that "[t]he final decision of the agency shall be deemed reasonable and
23 lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the
24 party attacking or resisting the decision to show that the final decision is invalid pursuant to
25 subsection 3."

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

1 remand has the same definition as the term set aside such that the District Court's act to
2 remand the Emmermann Order would affect whether the Emmermann Order should be
3 considered as a lawful final decision of the agency under NRS 233B.135(2). However,
4 according to the definition from Black's Law, to remand is "to send a case or claim back to the
5 court or tribunal from which it came for some further action." Black's Law Dictionary (10th ed.
6 2014). Black's defines set aside as "to annul or vacate (a judgment, order, etc.)." *Id.*

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

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

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

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

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

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

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

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

1 While the Division may be technically correct about the appropriate time period for the
2 data, HWAN was not provided notice that the unearned gross considerations data it provided in
3 its Renewal Application was for an improper quarterly time period until it received the February
4 1, 2018 Determination Letter. Under NRS 690C.160(3), the Division is not required to allow
5 Service Contract Provider applicants extra time to correct any defects in their initial or renewal
6 Service Contract Provider certificate of registration applications. NRS 690C.160(3) states that
7 “[a] certificate of registration is valid for 1 year after the date the Commissioner issues the
8 certificate to the provider. A provider may renew his or her certificate of registration if, before
9 the certificate expires, the provider submits to the Commissioner ...” As such, if a Service
10 Contract Provider does not submit a complete application under the requirements of
11 NRSC.160(3), then the certificate expires as a matter of law.

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

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

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

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

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

10 The Division's third reason for the denial of HWAN's renewal of its certificate of
11 registration noted in the Determination Letter states that HWAN did not properly obtain a
12 certificate of registration for its administrator Choice Home Warranty ("CHW"). NRS
13 690C.150 states that "[a] provider shall not issue, sell or offer for sale service contracts in this
14 state unless the provider has been issued a certificate of registration pursuant to the provisions
15 of this chapter."

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

25 The fourth reason for the Division's argument to deny HWAN's renewal of its
26 certificate of registration as stated in the Determination Letter is that HWAN violated numerous
27 provisions of the Insurance Code, including making false entries of material fact on its renewal
28 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

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

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

10 The Division did not provide any additional evidence or testimony that supported that
11 HWAN *continued* to make false entries of material fact on its renewal applications from 2011 to
12 2015 in violation of NRS 686A.070, or that HWAN *continued* using a service contract form that
13 was not approved by the Division in violation of NRS 686A.070, or that HWAN *continued* to
14 not produce information requested by the Division regarding the number of claims incurred and
15 opened contracts held in Nevada in violation of NRS 690C.320(2) subsequent to the
16 Emmermann Order. Given that there was no evidence provided to support that HWAN had
17 continued to violate these statutes after the Emmermann Order, and that these violations had
18 been addressed in that previous administrative action covered by the Emmermann Order, the
19 Division cannot argue that these violations can be used to support a finding in the current
20 administrative hearing. Unless HWAN had continued to violate the same statutes, the Division
21 cannot use these same violations against HWAN unless the Division provided evidence to
22 support that these statutory violations had continued beyond the administrative action in which
23 they were addressed.

24 However, the Division was able to provide substantial evidence that HWAN was still
25 violating NRS 690C.150. Hr'g Tr., Day 1 at 241:21-242: 5 (10/23) and Hr'g Tr., Day 2 at
26 34:14-36:2 and 38:7-11 (10/24). HWAN provided insufficient evidence to refute the Division's
27 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
28 38:7-11 (10/24).

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

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

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

- 16 (a) NRS 679B.020 to 679B.152, inclusive;
- 17 (b) NRS 679B.159 to 679B.300, inclusive;
- 18 (c) NRS 679B.310 to 679B.370, inclusive;
- 19 (d) NRS 679B.600 to 679B.690, inclusive;
- 20 (e) NRS 685B.090 to 685B.190, inclusive; ...

21 Given that NAC 679B.0385 is applicable under NRS 679B.125, which is made
22 applicable to Service Contract Providers by NRS 690C.120, conducting business in an
23 unsuitable manner as a Service Contract Provider is a violation of NRS 679B.125 and NRS
24 690C.150.

25 HWAN's continued violations of NRS 690C.150 post the Emmermann Order by using
26 an unregistered entity to issue, sell, or offer for sale service contracts in Nevada is conducting
27 business in an unsuitable manner as it is misleading to the Nevada consumers; and HWAN has
28 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

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

3 **D. HWAN Arguments**

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

17 **a. Illegal proceeding**

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

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

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

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

11 **NRS 690C.325 Administrative fines; suspension, limitation, revocation or
12 refusal to renew certificate of registration.**

13 1. The Commissioner may refuse to renew or may suspend, limit or revoke a
14 provider's certificate of registration if the Commissioner finds after a hearing
15 thereon, or upon waiver of hearing by the provider, that the provider has:

- 16 (a) Violated or failed to comply with any lawful order of the Commissioner;
- 17 (b) Conducted business in an unsuitable manner;
- 18 (c) Willfully violated or willfully failed to comply with any lawful regulation
19 of the Commissioner; or
- 20 (d) Violated any provision of this chapter.

21 ➤ In lieu of such a suspension or revocation, the Commissioner may levy upon
22 the provider, and the provider shall pay forthwith, an administrative fine of not
23 more than \$1,000 for each act or violation.

24 2. The Commissioner shall suspend or revoke a provider's certificate of
25 registration on any of the following grounds if the Commissioner finds after a
26 hearing thereon that the provider:

27 (a) Is in unsound condition, is being fraudulently conducted, or is in such a
28 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,

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

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

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

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

24 Under the requirements in NRS 690C.325, the February 1, 2018 determination could not
25 be effectuated until a hearing upon the determination was held and the renewal applicant was
26 provided its due process right to argue its position. As such, HWAN's reliance on NRS
27 679B.310(2)(b) does not prevail over the Division's required use of the statutory requirement to
28 provide a due process hearing to effectuate a determination of the Division under NRS

1 690C.325.

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

4 HWAN argues that the Division failed to send the Determination Letter via certified
5 mail as required under NRS 233B.127 (3) and, therefore, it was an unlawful denial. NRS
6 233B.127 requires that an agency must give notice by certified mail of a pending agency
7 proceeding to a [certificate holder] of facts or conduct which warrant the intended action and the
8 [certificate holder] is given an opportunity to show compliance with all lawful requirements for
9 the retention of its [certificate].

10 **NRS 233B.127 Licenses: Applicability of provisions governing contested**
11 **cases to grant, deny or renew; expiration notice and opportunity to show**
12 **compliance required before adverse action by agency; summary suspension.**

13 1. The provisions of NRS 233B.121 to 233B.150, inclusive, do not apply to
14 the grant, denial or renewal of a license unless notice and opportunity for hearing
15 are required by law to be provided to the applicant before the grant, denial or
16 renewal of the license.

17 2. When a licensee has made timely and sufficient application for the
18 renewal of a license or for a new license with reference to any activity of a
19 continuing nature, the existing license does not expire until the application has
20 been finally determined by the agency and, in case the application is denied or the
21 terms of the new license limited, until the last day for seeking review of the
22 agency order or a later date fixed by order of the reviewing court.

23 3. No revocation, suspension, annulment or withdrawal of any license is
24 lawful unless, before the institution of agency proceedings, the agency gave
25 notice by certified mail to the licensee of facts or conduct which warrant the
26 intended action, and the licensee was given an opportunity to show compliance
27 with all lawful requirements for the retention of the license. If the agency finds
28 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.

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

1 application denied pursuant to this hearing. Division Exhibit 17.

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

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

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

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

15 **NRS 233B.135 Judicial review: Manner of conducting; burden of proof;**
16 **standard for review.**

17 1. Judicial review of a final decision of an agency must be:

- 18 (a) Conducted by the court without a jury; and
19 (b) Confined to the record.

20 ↪ In cases concerning alleged irregularities in procedure before an agency that
21 are not shown in the record, the court may receive evidence concerning the
22 irregularities.

23 2. The final decision of the agency shall be deemed reasonable and lawful
24 until reversed or set aside in whole or in part by the court. The burden of proof is
25 on the party attacking or resisting the decision to show that the final decision is
26 invalid pursuant to subsection 3.

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

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

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

6 The *Westside* court based its understanding of a generally accepted principle of the
7 interaction of agency final decisions and the treatment of them by parties during and appeals
8 process on the Alaska Supreme Court decision in *Fischback & Moore of Alaska, Inc. v. Lynn*,
9 407 P.2d 174 (Alaska 1965). The *Fischback* court stated that:

10 If a court has appellate jurisdiction over a decision of an administrative body, it
11 would not be consistent with the full exercise of that jurisdiction to permit the
12 administrative body also to exercise jurisdiction which would conflict with that
13 exercised by the court. The court's jurisdiction over the subject matter of an
14 appeal must be complete and not subject to being interfered with or frustrated by
15 concurrent action by the administrative body.

16 Operation of the rule is limited to situations where the exercise of administrative
17 jurisdiction would conflict with the proper exercise of the court's jurisdiction. If
18 there would be no conflict, then there would be no obstacle to the administrative
19 agency exercising a continuing jurisdiction that may be conferred upon it by law.

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

21 HWAN also argues that *Baker v. Labor Comm'n* 351 P. 3d 111, 113 (Utah Ct. App.,
22 2015), as it cited *Westside*, supports its premise noting that, upon petition for judicial review, an
23 agency lacks jurisdiction to alter or modify final agency decisions during such review. The
24 actual language from the *Baker* case is that, "the Commission did not have the jurisdiction to
25 alter its *final orders* once Sunrise instituted proceedings to review the Commission's orders in
26 the district court." (Emphasis added). *Id.* at 113.

27 Enforcement of a violation of the Emmermann Order does not alter or modify the
28 agency's final Order, and it does not conflict or create an obstacle or interfere with the
29 jurisdiction of the District Court proceeding addressing the December 22, 2017 Petition for
30 Judicial Review of the Emmermann Order by HWAN. As such, the Division's reliance on NRS
31 233B.135(2) is appropriate and under NRS 233B.135(2) "[t]he final decision of the agency shall
32 be deemed reasonable and lawful until reversed or set aside in whole or in part by the court."

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

4 HWAN argues that the Renewal Application was received by the Division on January
5 10, 2018, and therefore, the Division did not make its 15 business day after receipt deadline
6 requirement under the Emmermann Order. HWAN maintains that the 15th business day trigger
7 would have been January 31, 2018. HWAN contends that since the Division missed the
8 required deadline, the Division should approve HWAN's Renewal Application.

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

16 **CONCLUSION**

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

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

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

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

1 under NRS 233B.135(2), and a violation of an Order is one of the reasons provided in NRS
2 690C.325 to non-renew a Service Contract Provider certificate of registration, specifically NRS
3 690C.325(1)(a).

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

7 4. Based on the preponderance of the evidence presented, HWAN is still in
8 violation of NRS 690C.150, therefore supporting denial reason 1(c) above, which is a criteria
9 necessary to take an action not to renew a certificate of registration under NRS
10 690C.325(1)(a) and (b). HWAN is still in violation of NRS 690C.150 by continuing to allow
11 CHW as HWAN's administrator to sell service contracts without a certificate of registration
12 even after December 18, 2017, when HWAN was provided notice via the Emmermann Order
13 that CHW must apply for its own certificate of registration as a Service Contract Provider if it
14 sells service contracts to Nevada citizens.

15 5. The preponderance of the evidence shows that HWAN continues to violate NRS
16 690C.150 by using an unregistered entity to issue, sell, or offer for sale service contracts in
17 Nevada, which is considered to be conducting business in an unsuitable manner as it is
18 misleading to the Nevada consumers, and HWAN has been on notice of the violation since
19 December 18, 2017, therefore supporting denial reason 1(d) above, specifically a criteria
20 necessary to take an action not to renew a certificate of registration under NRS 690C.325(1)(b).

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

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

4 7. While the Division's argument did not carry sufficient weight as to violations of
5 NRS 686A.070 and NRS 690C.320(2) as provided in arguments to support 1(d), the Division's
6 argument presented to support a non-renewal of HWAN's certificate of registration under 1(d)
7 above showed by a preponderance of the evidence that HWAN is still continuing to violate
8 NRS 690C.150 by using an unregistered entity to issue, sell, or offer for sale service contracts in
9 Nevada. This violation does support the unsuitability of the applicant HWAN under NRS
10 690C.325, but it is being considered by this Hearing Officer as a duplication of the concerns
11 regarding the Administrator, CHW, under the arguments presented for non-renewal of a
12 certificate of registration under 1(c) above. As such, it does not receive any additional weight
13 due to the violation falling into two categories under the Determination Letter.

14 **ORDER OF THE HEARING OFFICER**

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

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

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

24 2. The February 1, 2018 Determination Letter from the Division to HWAN is
25 DENIED in part as to the Division's use of HWAN's violations of NRS 686A.070 and NRS
26 690C.320(2) as stated in the Determination Letter under the category of Unsuitability of
27 Applicant as a reason for denial of the Renewal Application as these violations were not shown
28 to be on-going.

ATTACHMENT 1

Exhibit Page No. 31

EXHIBIT PAGE 108

AA001916

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TEL: 702.382.2101

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lgrifa@archerlaw.com
8 ARCHER & GREINER P.C.
21 Main Street, Suite 353
9 Hackensack, NJ 97601
Telephone: 201.342.6000

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

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

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

16 *Petitioner,*

17 v.

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

20 *Respondent.*

CASE NO.: 17 OC 00269 1B
DEPT NO.: I

**ORDER GRANTING PETITIONER'S
MOTION FOR LEAVE TO PRESENT
ADDITIONAL EVIDENCE**

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

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

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

17264496

REC'D & FILED

2018 SEP -6 PM 2: 14

SUSAN HERRIWETHER

CLERK

BY  09/01/18



BROWNSTEIN HYATT FARBER SCHECK, LLP
100 Ninth City Parkway, Suite 1000
Las Vegas, NV 89166-4114
TEL 702.332.3191

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

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

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

16 ...

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17264496

CERTIFICATE OF MAILING

1
2 The undersigned, an employee of the First Judicial District Court, hereby certifies that on
3 the ^{6th} 6 day of September, 2018, I served the foregoing Order by placing a copy in the United
4 States Mail, postage prepaid, addressed as follows:

5 Kirk B. Lenhard, Esq.
6 Travis F. Chance, Esq.
7 Mackenzie Warren, Esq.
8 100 North City Parkway, Suite 1600
9 Las Vegas, NV 89106-4614

9 Lori Grifia, Esq.
10 21 Main Street, Suite 353
11 Hackensack, NJ 07601

11 Richard Paili Yien
12 Deputy Attorney General
13 100 N. Carson Street
14 Carson City, NV 89701


15 Angela Jeffries
16 Judicial Assistant, Dept. 1
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit KK

Exhibit KK

edit
FYI

Dolores Bennett

From: Dolores Bennett
Sent: Monday, November 07, 2011 9:21 AM
To: David Hall
Col: Ted Bader; Made 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
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Visit us online at the [Service Contracts Section](#) for service contract provider requirements, filing information, and more.

DIVISION-SDT000399

11-1-11 Check Home Warrant
 INFO GOT LCO
 HAD ALREADY DONE BUSINESS W/ NJ
 FILE AGAIN DROD TO HOME FOR ME
 W/ AGOOR - 2 BUSINESS DEPT
 W/ AGOOR BEING REGISTERED
 DATE CONFIRMED DOI RECD COMPLAINTS
 SUBNO NOW NEED A CLIP
 GET LIST OF AEC WEATHERS CONFIRM
 ID BUREAU DEPT
 PROCEED w/ ACTION

DIVISION-SDT000400

*ahk
pc1*

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)-631-6403. 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 Thomas 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
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dbennett@dof.state.nv.us

Visit us online at the [Service Contracts Section](#) for service contract provider requirements, filing information, and more.

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

DIVISION-SDT000402

Amborn

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) 486-4378
(702) 486-4007 (fax)

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DIVISION-SDT000403

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

DIVISION-SDT000404

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 # 27-0256041 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

2

DIVISION-SDT000405

Exhibit Page No. 43

EXHIBIT PAGE 120

AA001928

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
360-586-0153 Fax

DIVISION-SDT000406

Exhibit Page No. 44

EXHIBIT PAGE 121

AA001929

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
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dbennett@dol.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@dol.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)

DIVISION-SDT000407

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 89708
direct: (775) 887-0783
main: (775) 887-0700
fax: (775) 887-0787
dbennett@dol.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 89708
Phone: (775) 887-0708
Fax: (775) 887-0787
Email: dhall@dol.state.nv.us

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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:

DIVISION-SDT000408

Dolores Bennett, ARC, AIA, AIS, AINS

**Insurance Examiner
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fax: (775) 687-0787
dbennett@dol.state.nv.us**

Visit us online at the [Service Contracts Section](#) for service contract provider requirements, filing information, and more.

DIVISION-SDT000409

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this date served the **FINDINGS OF FACT,**
3 **CONCLUSIONS OF LAW, AND ORDER OF THE COMMISSIONER,** in **CAUSE NO.**
4 **18.0095,** via electronic mail, and by mailing a true and correct copy thereof via Certified Mail,
5 return receipt requested, properly addressed with postage prepaid, to the following:

6 Kirk B. Lenhard, Esq.
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8 100 North City Parkway, Suite 1600
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10 E-MAIL: klenhard@bhfs.com
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18 Lori Grifa, Esq.
19 Archer & Greiner, P.C.
20 Court Plaza South, West Wing
21 21 Main Street, Suite 353
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23 E-MAIL: lgrifa@archerlaw.com
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25 *Attorneys for Respondent Home Warranty Administrator
26 of Nevada, Inc. dba Choice Home Warranty*

27 and a copy of the foregoing was sent via electronic mail and by Inter-departmental mail to the
28 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

-1- Division of Insurance

Exhibit Page No. 49

EXHIBIT 3

**Hearing Officer's Order Regarding
Exhibits KK, LL, and MM**

EXHIBIT 3

**Hearing Officer's Order Regarding
Exhibits KK, LL, and MM**

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE



IN THE MATTER OF

CAUSE NO. 17.0050

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

Respondent.

ORDER REGARDING EXHIBITS KK, LL & MM

On or about September 6, 2018, the Hearing Officer received a copy of the First Judicial District Court's Order Granting Petitioner's Motion for Leave to Present Additional Evidence ("Remand Order") in the matter of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty v. State of Nevada, Department of Business and Industry, Division of Insurance, Case No. 17 OC 00269 1B, Dept. No. I. The Remand Order instructs the Hearing Officer to "consider Petitioner's Proposed Exhibits KK, LL, and MM . . . and determine whether the Evidence is material," and to issue a new decision reflecting the Evidence's impact on the original findings. (Remand Ord. at 2:10-12.)

Having reviewed Exhibits KK, LL, and MM, the purpose of these Exhibits is not readily apparent. Therefore, to fully consider the materiality of these exhibits, consistent with the Court's Remand Order, the Hearing Officer HEREBY ORDERS the Parties to file the following:

1. Home Warranty Administrator of Nevada, Inc. ("HWAN") shall address the purpose for which Exhibits KK, LL, and MM are offered. The brief must be filed no later than 5:00 p.m. on November 13, 2018.
2. If the Division of Insurance ("Division") has any objection or opposition to the Exhibits, the Division may file the objections or opposition no later than 5:00 p.m. on November 20, 2018.

Each Party's brief may not exceed 5 pages. The Parties may file their briefs electronically through the Hearing Officer's Legal Secretary, Yvonne Renta at yrenta@doi.nv.gov. In order to expedite this matter and reduce the cost of service to the Parties, the Hearing Officer finds that good cause exists to

1 allow the Parties to use electronic service. Thus, if the Parties so stipulate, service may be met through
2 electronic service.

3 So ORDERED this 31st day of October, 2018.
4

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7 Alexia M. Emmermann
8 Hearing Officer
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the **ORDER REGARDING EXHIBITS KK, LL & MM**, in **CAUSE NO. 17.0050**, via electronic mail and by mailing a true and correct copy thereof via First Class mail, properly addressed with postage prepaid, to the following:

Kirk B. Lenhard, Esq.
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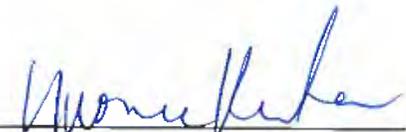
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and copies of the foregoing were sent via electronic mail to:

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

DATED this 31st day of October, 2018.



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

EXHIBIT 4

**HWAN's Brief Regarding
Exhibits KK, LL, and MM**

EXHIBIT 4

**HWAN's Brief Regarding
Exhibits KK, LL, and MM**

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17 *Attorneys for Respondent*

18 **STATE OF NEVADA - DEPARTMENT OF BUSINESS AND INDUSTRY**
19 **DIVISION OF INSURANCE**

20 IN THE MATTER OF:

21 CAUSE NO.: 17.0050

22 HOME WARRANTY ADMINISTRATOR
23 OF NEVADA, INC. dba CHOICE HOME
24 WARRANTY,

25 **HOME WARRANTY ADMINISTRATOR**
26 **OF NEVADA, INC. d/b/a CHOICE HOME**
27 **WARRANTY'S BRIEF REGARDING**
28 **EXHIBITS KK, LL, AND MM**

Respondent.

Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a Choice Home Warranty ("HWAN") hereby submits the instant Brief Regarding Exhibits KK, LL, and MM, pursuant to the Order entered October 31, 2018 (the "Brief"). This Brief is made and based upon the pleadings and papers on file herein, the following arguments, and any oral arguments of counsel that are agreed to be considered.

DATED this 13th day of November, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: 

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
LORI GRIFA, ESQ., NJ Bar No. 011551989

Attorneys for Respondent

1 **I. INTRODUCTION**

2 On December 18, 2017, a Findings of Fact, Conclusions of Law, Order of Hearing
3 Officer, and Final Order of the Commissioner (the “Decision”) was issued in this Cause. The
4 Decision found that HWAN had violated NRS 686A.070 five times by representing it was self-
5 administered in its 2011-2015 renewal applications when CHW Group, Inc. (“CHWG”) was its
6 administrator. It also found that HWAN had conducted business in an unsuitable manner under
7 NRS 679B.125 and NRS 690C.325 by allowing CHWG to sell and offer for sale service contracts
8 on HWAN’s behalf because CHWG does not hold a certificate of registration.

9 On December 22, 2018, HWAN timely filed a Petition for Judicial Review of the Order
10 with the First Judicial District Court and on April 19, 2018, HWAN filed a Motion for Leave to
11 Present Additional Evidence (the “Motion”) – namely, Exhibits KK, LL, and MM – for the
12 hearing officer’s consideration. The district court entered an order on September 6, 2018 granting
13 the Motion and requiring the hearing office in the instant cause to “receive the [Exhibits] and
14 determine if [they] are material, and, if so, whether it would have had any impact on the final
15 decision.”¹ Pursuant to the hearing officer’s order entered herein on October 31, 2018, HWAN
16 submits the instant Brief outlining the relevance of the Exhibits.

17 **II. ARGUMENT**

18 **A. Exhibits KK, LL, and MM are relevant to whether the Division should be**
19 **equitably estopped from penalizing HWAN for its relationship with CHWG.**

20 The Exhibits are directly material to numerous issues and findings in the Decision itself
21 related to the Division’s knowledge of certain facts. Specifically, HWAN’s argument that the
22 Division should be equitably estopped from penalizing HWAN for its relationship with CHWG
23 was rejected because “[t]here is no evidence that the Division knew that CHW Group and Choice
24 Home Warranty were the same.”² Exhibit KK clearly establishes that no later than November 7,
25 2011, the Division was fully aware of the fact that CHWG used the fictitious name Choice Home
26 Warranty. Moreover, there can be no merit to any contention that the Division thought Choice
27 Home Warranty was HWAN since the Division did not require that HWAN file the fictitious
28 name Choice Home Warranty until 2014.

¹ See Order Granting Pet.’s Mot. for Leave to Present Add’l Evidence, attached hereto as **Exhibit I**.

² See Decision 23:21-22.

1 Furthermore, Exhibit LL shows that the Division's Legal Department had been
2 investigating CHW Group, Inc. dba Choice Home Warranty in response to questions about
3 "Choice Home Warranty." In other words, a simple inquiry into any information on "Choice
4 Home Warranty" was easily identifiable by the Division as relating to CHWG, as early as July
5 15, 2010. Exhibit MM, also an e-mail exchange, corroborates that the Division was fully aware
6 that "CHW Group, Inc." was in fact the same as Choice Home Warranty.

7 It is equally indisputable that the Division knew that CHWG was selling service contracts
8 on behalf of HWAN and explicitly authorized the structure of that relationship. In the Decision,
9 the Hearing Officer rejected HWAN's arguments regarding equitable estoppel based upon the
10 conclusion that "[t]he record likewise shows no evidence that the Division was aware that CHW
11 Group was selling contracts in Nevada, only that Choice Home Warranty was selling contracts in
12 Nevada."³ Exhibit KK shows that in 2011 the Division knew CHWG was selling service
13 contracts on behalf of HWAN and that the Division ultimately decided that CHWG could sell
14 service contracts backed by HWAN, as the provider, by approving HWAN's service contract with
15 full knowledge of the relationship between HWAN and CHWG.

16 NRS 690C.070 defines provider as a "person who is obligated to a holder pursuant to the
17 terms of a service contract to repair, replace, or perform maintenance on, or to indemnify the
18 holder for the costs of repairing, replacing, or performing maintenance on, goods." The record
19 for this hearing demonstrates that CHWG has never been a provider in the State of Nevada, and
20 the Exhibits demonstrate that the provider has always been HWAN and the Division has known
21 this since at least 2011. Accordingly, Exhibits KK, LL and MM clearly show that the Division
22 must be equitably estopped from seeking to penalize HWAN for utilizing CHWG to sell service
23 contracts because it explicitly approved the relationship and HWAN relied upon that approval.

24 **B. Exhibits KK and LL are relevant to the issue of whether HWAN made false**
25 **representations of material fact.**

26 The Decision imposed a fine on HWAN for not correcting the pre-populated entry of
27 "self" as HWAN's administrator in HWAN's renewal applications. Leaving aside that the failure
28 to correct this information was not a knowing misrepresentation, Exhibit KK notes the corporate
identity of HWAN as "Home Warranty Administrator of Nevada, Inc." It also notes that "Choice

³ See Decision 23:22-24.

1 Home Warranty” is HWAN’s administrator and has an office address in New Jersey. Further, as
2 detailed above, Exhibit LL clearly shows the Division knew that “Choice Home Warranty” was
3 CHWG in 2010. Taken together, the only logical conclusion from Exhibits KK and LL is that the
4 Division was obviously aware that HWAN was a separate entity from CHWG/“Choice Home
5 Warranty.” Moreover, these documents demonstrate that any error in the renewal application was
6 not a knowingly false entry since the entry was contrary to all of the information provided to the
7 Division through other documents. HWAN’s inadvertent mistake cannot rise to the level of a
8 knowing misrepresentation. Thus, even if HWAN made a mistake by failing to correct the “self”
9 entry on its prior renewal applications, the Division knew that CHWG was administrator.

10 **C. The Exhibits indicate that the testimony at the hearing was inaccurate and**
11 **that the Division has known all along that CHWG sells on behalf of HWAN.**

12 As set forth above, the Exhibits indicate several important facts related to the Division’s
13 knowledge: (1) that “Choice Home Warranty” is and was CHWG; (2) that HWAN and CHWG
14 were separate legal entities; (3) that CHWG/“Choice Home Warranty” was not certificated and
15 was selling service contracts in Nevada with the Division’s knowledge and explicit approval; and
16 (4) that HWAN used CHWG as its contract administrator. These facts, taken together, are
17 relevant to the credibility of certain testimony made at the hearing. As the Decision noted, Rajat
18 Jain testified that “[i]t was identified that Choice and HWAN were one and the same entity, that
19 Choice was not selling illegally because HWAN was a licensed entity in Nevada.”⁴

20 But this testimony is directly contradicted by the Exhibits, which show that the Division
21 has long known that CHWG is Choice Home Warranty. The Exhibits further show that the
22 Division clearly knew CHWG had been selling service contracts in Nevada and approved of the
23 relationship. Contrary to Mr. Jain’s testimony, then, the Division had specific knowledge that
24 “Choice and HWAN were” **not** the same entity. In other words, the Division plainly knew that
25 CHWG was selling contracts in Nevada without a certificate and, more importantly, was selling
26 on behalf of HWAN as early as 2011 and never took any affirmative action due to this
27 arrangement – likely because it knows that contract administrators and sales agents are not
28 required to be certificated under Nevada law.⁵ Indeed, not only was the Division aware of these

⁴ See Hr’g Tr., Day 1 at 117:12-15.

⁵ Indeed, the Division’s own website contains numerous approved service contracts where the seller is not

1 facts, it explicitly approved the relationship between CHWG and HWAN. Consistent with the
2 foregoing, the Decision erred in finding that HWAN engaged in unsuitable conduct by allowing
3 an uncertificated entity to sell contracts on its behalf.

4 **D. The Exhibits establish that the Decision erred by imposing penalties beyond**
5 **the time permitted by the applicable statute of limitations.**

6 The Decision ultimately imposed penalties pursuant to Nevada statutes for making false
7 entries of material fact in its 2011-2015 renewal applications and for allowing CHWG to sell
8 service contracts on its behalf since 2010.⁶ As is set forth above, the Exhibits are relevant to the
9 correctness of each of these findings and indicate that the Division was aware that CHWG was
10 selling service contracts on behalf of HWAN as early as 2011. On this basis, the Exhibits are
11 relevant to show that the current penalties violate the applicable statute of limitations. NRS
12 11.190(4)(b) is clear that “[a]n action upon a statute for a penalty or forfeiture, where the action is
13 given to a person or the State” is two years. Enforcement actions and penalties against contract
14 providers are clearly given to the Division and the Exhibits’ timeline indicate that no penalties
15 may be imposed for conduct prior to May 8, 2015.⁷ The Decision should be revised accordingly.

16 **E. Even if the Exhibits are privileged, that privilege has been waived.**⁸

17 To the extent that the Division will argue in opposition that the Exhibits are privileged and
18 must therefore not be considered, such a contention is without merit. As a threshold matter, the
19 District Court’s order requires the Hearing Officer to receive and consider the Exhibits so any
20 argument regarding privilege is moot. In any event, it is questionable as to whether these exhibits
21 are privileged at all. A privileged communication under Nevada law is one made between a client
22 and lawyer for the purposes of facilitating legal services. *See* NRS 49.095. Exhibit LL is not
23 directed to a Division attorney.⁹ And, although Exhibits KK and MM are made to David Hall, a
24 Division attorney, they do not on their face appear to be requesting legal advice or services.¹⁰

25
26 certified. *See, e.g.*, <http://di.nv.gov/ins/f?p=600:35:0:>

27 ⁶ *See* Decision at 25:19-20; 27:13-21. These penalties were imposed pursuant to NRS 686A.070, NRS
28 686A.181(1)(a), NRS 679B.125, and NRS 690C.325(1).

⁷ This is because the Division did not initiate the instant cause until May 9, 2017.

⁸ Due to the outstanding and unresolved claim of privilege of the e-mails, HWAN has made best efforts not to
directly quote or attach the Exhibits.

⁹ *See generally* Ex. 3.

¹⁰ *See generally* Exs. 2, 4. *See also Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 399 P.3d 334, 341 (Nev. 2017).

1 Even if the Exhibits are privileged, however, that privilege has been waived. Nevada law
2 has long held that “[i]f there is disclosure of privileged communications, this waives the
3 remainder of the privileged consultation on the same subject.” *Cheyenne Const., Inc. v. Hozz*, 102
4 Nev. 308, 311–12, 720 P.2d 1224, 1226 (1986). Here, the Division voluntarily produced the
5 Exhibits in response to a properly served subpoena *duces tecum*. This voluntary disclosure
6 waived any privilege that could have attached to them.

7 In addition, “where the client has placed at issue the substance or content of a privileged
8 communication,” waiver attaches. *Wynn Resorts*, 399 P.3d at 345. This is because “[a] party is
9 not allowed to assert the privilege when doing so places the claimant in such a position, with
10 reference to the evidence, that it would be unfair and inconsistent to permit the retention of the
11 privilege because the attorney-client privilege is not to be both a sword and a shield.” *Mendoza v.*
12 *McDonald’s Corp.*, 213 P.3d 288, 304 (Ct. App. 2009) (internal quotations omitted). Here, the
13 Division has argued directly contrary to the facts these very Exhibits make evident, as described
14 hereinabove, at length on review.¹¹ The Division attempts to use the privilege as a sword, when it
15 is meant to be a shield, and this it cannot do. The Division should not be permitted to invoke the
16 privilege so that it can take a position that is directly contradictory to the facts.

17 **III. CONCLUSION**

18 Based upon the foregoing, the Exhibits should be considered and admitted into the record
19 here and appropriate reconsidered findings made by the hearing officer as set forth above. In
20 addition, HWAN requests that the hearing officer attach the Exhibits to any supplemental order
21 entered to allow for proper review by the district court.

22 DATED this 13th day of November, 2018.

23 BROWNSTEIN HYATT FARBER SCHRECK, LLP

24 BY: 

25 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437
26 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

27 *Attorneys for Respondent*

28 ¹¹ See Division’s Answering Br., attached hereto as **Exhibit 2**, at 11:11-12; 12:14-17; 12:14-13:9; 17:12; 22:16-17;
23:4-5; 34:12-13; 34:17-18.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1000
Las Vegas, NV 89106-4614
702.382.2101

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on the 13th day of November, 2018, I caused a true and correct copy of the foregoing **HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a BRIEF REGARDING EXHIBITS KK, LL, AND MM** to be served, U.S. Mail, postage prepaid, and via electronic mail, to the following:

Richard P. Yien, Esq., Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701
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ryien@ag.nv.gov

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*Attorneys for Petitioner State of Nevada, Department Of
Business And Industry - Division Of Insurance*

ALEXIA M. EMMERMANN, ESQ.
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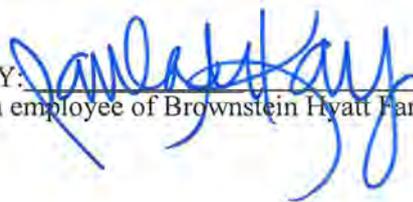
BY: 
an employee of Brownstein Hyatt Farber Schreck, LLP

EXHIBIT 5

**Division's Opposition to HWAN's Proposed
Exhibits KK, LL, and MM**

EXHIBIT 5

**Division's Opposition to HWAN's Proposed
Exhibits KK, LL, and MM**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION/ PERTINENT FACTS

Pursuant to the instructions of the Court Order, the Hearing Officer, in turn, issued an order requiring HWAN to submit a brief to “address the purpose for which Exhibits KK, LL, and MM are offered.” The Division was presented with the option to file an opposition to the proposed Exhibits¹. The Division objects and opposes the introduction of these Exhibits, as set forth.

II. ARGUMENT

EXHIBITS KK, LL, AND MM ARE IMMATERIAL TO THIS MATTER AND NOTHING IN THE EXHIBITS NEGATES THE VIOLATIONS BY HWAN OR ABSOLVES IT FROM THE RESPONSIBILITY IMPOSED BY LAW

After an administrative hearing in Cause No. 17.0050, the Hearing Officer found that HWAN violated NRS 686A.070, by making false entries of material fact (six counts); conducted business in an unsuitable manner in violation of NRS 690.325 and 679B.125 by using Choice Home Warranty Group (“CHWG”), an unlicensed entity, for all activities for which Nevada law requires a certificate of registration (23,889 contracts)²; and violated NRS 690C.320.2 (one count) by failing to make records available to the Commissioner upon request,³ and ordered fines.⁴ The Exhibits HWAN is seeking to introduce are not material to any of these rulings and none would be affected by them.

HWAN makes five arguments in its brief. HWAN does not argue that the Exhibits show that it did not violate the law. The essence of HWAN’s claim of relevancy can be characterized as follows—because the Exhibits may be suggesting that the Division staff knew or should have known of HWAN’s misrepresentations, HWAN should not have been penalized for them. For the reasons set forth below, HWAN’s arguments must fail.

A. Equitable Estoppel Does Not Apply

HWAN claims that Exhibits KK, LL, and MM show that “the Division must be equitably estopped from seeking to penalize HWAN for utilizing CHWG to sell service contracts because it

¹ “[i]f the Division of Insurance has any objection or opposition to the Exhibits, the Division may file the objections or opposition no later than 5:00 pm.m on November 20, 2018 (October 31, 2018, Order, 1: 23-25).

² Final Order, 25:17-24, 27:18-21.

³ Final Order; 22:1-5; 27:16-17.

⁴ Final Order 27:13-21.

1 explicitly approved the relationship . . .” (HWAN Br., 2:23). Setting aside the fact that these Exhibits do
2 not show what HWAN claims they show⁵, it is well-settled that “estoppel cannot prevent the state from
3 performing its governmental functions.” *Chanos v. Nevada Tax Com’n*, 124 Nev. 232, 238, 181 P.3d
4 675, 679 (2008). The Commissioner cannot be prevented from exercising her duties imposed by the
5 Legislature under the Insurance Code, title 57 of the NRS, including protection of the public by
6 disciplining licensees for their violations. HWAN’s argument that the Division should be estopped from
7 enforcing the law must be rejected. Even if Exhibits KK, LL, and MM did show that someone from the
8 Division staff could have had the knowledge of the existence of two separate entities, it is immaterial to
9 whether or not the Commissioner may enforce the provisions of Title 57. Notably, HWAN does not
10 argue that these Exhibits in any way could show that it did not use CHWG to sell its contracts.

11 **B. The Exhibits Are Not Relevant to HWAN’s Statutory Responsibility Under NRS 686A.070**
12 **or to the Finding of Violations Thereof**

13 HWAN claims the Exhibits are relevant to HWAN’s violations found under NRS 686A.070. In
14 its Complaint, the Division alleged that HWAN violated NRS 686A.070 by failing to disclose material
15 facts about its business in its renewal applications of the Nevada certificate of registration. The Hearing
16 Officer found six (6) violations of NRS 686A.070⁶. NRS 686A.070 provides:

17
18 A person subject to regulation under this Code *shall not knowingly make*
19 *or cause to be made any false entry* of a material fact in any book, report
20 *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.

21 (Emphasis added). The language of the statute places no burden on the Division to hold the hand of an
22 applicant and correct any misstatements applicant enters as answers to the questions posed in the
23 application. There is nothing in Exhibits KK, LL, and MM that would absolve HWAN from its
24 responsibility to be truthful in applications to the Division under NRS 686A.070.

25 It is undisputed that Victor Mandalawi (“Mandalawi”), the president of HWAN and of CHWG,
26 d/b/a Choice Home Warranty, did not disclose CHWG as HWAN’s Administrator in its annual renewal

27
28 ⁵ See analysis in section C of this brief.

⁶ Final Order, 20:17-19, 26-27; 27:13-15.

1 applications. On its initial application filed with the Division on September 2, 2010, in response to the
2 question, “[h]ave you designated an administrator to be responsible for administration of Nevada
3 service contracts?” HWAN answered “No,”⁷ even though, according to HWAN’s own representations
4 to this tribunal, the purported agreement between HWAN and CHW Group was signed on July 29,
5 2010. (See HWAN’s Ex. E, ISP Agreement). Thereafter, the false entries and omissions continued in
6 renewal applications. In response to the question pertaining to the “administrator” of the applicant
7 (question 2 of Division’s Exs. 2, 4, 5, and 21—renewal applications for years 2011, 2012, 2013 and
8 2016), HWAN’s reply was “self.” The answer to the same question in renewal applications for years
9 2014 and 2015 was left blank. (Exs. 7 and 12). When asked by the Hearing Officer who Mandalawi was
10 referring to by entering “self” in response to these questions, he responded, “CHW,” in direct conflict
11 with HWAN’s own defense that HWAN and CHWG are two separate entities.⁸

12 HWAN does not deny this. Instead, it argues that “[t]he Decision imposed a fine on HWAN for
13 not correcting the pre-populated entry of ‘self’ as HWAN’s administrator in HWAN’s renewal
14 applications.”⁹ This is a new argument, and it must be rejected on many grounds, mainly, because it is
15 *irrelevant* to the issue on the limited remand and because it attempts to re-litigate issues already ruled
16 upon.¹⁰ HWAN’s attempt to introduce a new argument that its false entries are merely “inadvertent
17 mistakes” to correct a “prepopulated application form” not only improper, but it is also contradicted by
18 tangible evidence.¹¹

19 Nothing in the proposed Exhibits even remotely affects the findings of HWAN’s violations of
20 NRS 686A.070—HWAN made false entries and knowingly omitted material information in violation of
21 NRS 686A.070. The allegation by HWAN that the Exhibits indicate knowledge by the Division of the
22 relationship between HWAN and CHWG, even assuming it is true, does not negate or absolve HWAN
23

24 ⁷ Division’s Ex. 22 and HWAN’s Ex. P.

25 ⁸ Tr., Day 3, 46:15-25.

26 ⁹ HWAN Br., 2:25-26.

27 ¹⁰ It is also an attempt to introduce an alleged fact not in the record. There is nothing in this record that suggests
28 that the Division pre-populated HWAN’s applications, including their initial application.

¹¹ The fact that HWAN attempted to conceal CHWG as its Administrator on the *initial application*, coupled with its
answers in each subsequent renewal application--consistently making the same false representations—means the concealment
was, at the least, with the knowledge thereof. Moreover, even if the renewal applications were “pre-populated,” they would
be pre-populated *based* on the information *submitted by HWAN* on its original application.

1 from the mandate or the responsibility placed on the applicant by NRS 686A.070.

2 HWAN does not claim that any other findings of violations by the Hearing Officer would be
3 impacted by these Exhibits. They would not.

4 **C. HWAN's Argument That Witness Testimony Was Inaccurate Has No Merit**

5 This argument, designed to justify the introduction of these Exhibits by claiming that they
6 discredit Division witnesses, is also without merit. Substantively, no argument is set forth on how these
7 proposed Exhibits may be relevant, or affect the findings. As far as any effect on the credibility of the
8 witnesses—HWAN's counsel was in possession of these Exhibits during the hearing, yet no attempt
9 was made at that time to impeach the witnesses. In fact, counsel for HWAN voluntarily decided not to
10 seek admittance of these Exhibits.¹² This attempt by HWAN to re-litigate the case under the guise of the
11 limited Court Order is disingenuous, inapposite, and untimely.

12 Lastly, Exhibits KK, LL, and MM, are consistent with the testimony of the Division witnesses.
13 These Exhibits, including privileged attorney-client communications in 2011, at best, show the
14 confusion among Division employees, resulting from the deceit perpetrated on the State of Nevada by
15 the set of overlapping characters operating CHWG and HWAN.¹³ After being told by Mandalawi that
16 the two entities were one and the same^{14 15}, the Division allowed HWAN to register Choice Home
17

18 ¹² See Tr., 9/14/17, 107:8-15.

19 ¹³ CHWG was selling service contracts as Choice Home Warranty in various states, including Nevada, as early as
2008, and it had run into problems in some jurisdictions for selling without a license. Mandalawi testified:

20 Q: In 2010, in Nevada, right before you started the HWAN, there were a few problems, correct?

21 A. Yes.

22 Q. Well, the nature of the problems in Oklahoma, California and Washington were basically of the same
23 nature, right?

24 A. Yes.

25 Q. And that involved selling without --

26 A. Selling without a license.

27 Q. And in Nevada?

28 A. Yes.

Q. Nevada, a similar problem?

A. Yeah (Tr. 9/13/17, 139:14-25, 140:1-5

Q. what was the company against whom the allegations [consumer complaints] were made?

A. *CHW Group*. (Tr., 9/13/17, 138:24-25).

¹⁴ Chief Jain testified: "[a]t some point, there was a discussion with Mr. Mandalawi. It was identified that Choice
and HWAN were one in the same entity, that Choice was not selling illegally because HWAN was a licensed entity in
Nevada. And Mr. Mandalawi then chose to register Choice in the state and surrendered the certificate of registration and
agreed to the new certificate showing HWAN dba Choice." Tr., 09/12/17, 117:11-18.

¹⁵ This is also supported by testimony of comingling of funds between HWAN and CHWG Tr., 09/12/17, 69:21-
72:18.

1 Warranty as its d/b/a to avoid confusion among consumers. This is also consistent with HWAN's own
2 annual renewal applications, which never disclosed an administrator. It was precisely because the
3 Division thought that HWAN and "Choice Home Warranty" were one entity, that it requested that
4 HWAN register a dba, as the public already knew it as "Choice Home Warranty."¹⁶

5 Believing the two entities to be one and the same, the Chief of Property and Casualty at the
6 Nevada Division of Insurance testified, "[f]rom every documentation that I have seen, from the
7 consumer complaints that we have seen, from the dba's, from the service contract form that is out in the
8 market, from the email advertisements that we have heard consumers receive, in fact, I have received
9 them, there is no doubt in my mind that Choice Home Warranty is the same entity as Home Warranty
10 Administrators of Nevada."¹⁷ HWAN's attempt to now use its own deception, resulting in confusion
11 among Division staff, to in order to discredit Division witness by arguing the witness should have been
12 aware of the lies and deceit perpetrated by HWAN, is troubling, absurd, and untimely.

13 **D & E. HWAN's Attempt to Re-litigate the Case by Introducing New Arguments for the First**
14 **Time is Improper as is HWAN's Attempt to Introduce the Issue of Waiver of Privilege in**
15 **this Limited Remand Order.**

16 HWAN, again, audaciously oversteps the scope of this briefing by attempting to introduce new
17 legal arguments and theories. The Division's position is that improper and, again, beyond the scope of
18 the limited charge in the Court Order. HWAN introduces a new argument citing NRS 11.190(4)(b) for
19 the first time. Additionally, in an attempt to bypass the District Court's ruling and use these exhibits in
20 the pending PJR, HWAN argues that the Division waived its privilege. The Division has not waived
21 any such privilege. Moreover, the District Court still needs to find "good reasons" pursuant to NRS
22 233B.135 (1)(a) in order to admit these exhibits into the record. Because the District Court decided to
23 first address the issue of materiality, by remanding it to the Hearing Officer prior to addressing whether
24 "good reasons" exist, no such admittance of privileged information has occurred. These issues are
25 beyond the scope of the limited remand order and need not be addressed to answer the question posed
26 by the District Court. The charge of the Hearing Officer is limited to determining whether the proposed
27 exhibits would have been material and had any affect as to her Final Order; no more.

28 ¹⁶ Tr., 09/12/17, 114:21-115:18.

¹⁷ Tr., 09/12/17, 117:21-118:2.

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III. CONCLUSION

For the reasons set forth above, the Exhibits are not material to the issue of HWAN's statutory responsibilities or to the finding of violations thereof.

DATED this 20th day of November 2018.

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Attorney General

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada Attorney General's Office and that on the 20th day of November 2018, I served the foregoing Nevada Division of Insurance's **DIVISION'S OPPOSITION TO HWAN'S PROPOSED EXHIBITS KK, LL, AND MM** via email and by U.S. Mail, postage prepaid, as follows:

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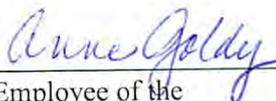

An Employee of the
Office of the Attorney General

EXHIBIT 6

**HWAN's Reply to Division's Opposition to Its
Brief Regarding Exhibits KK, LL, and MM**

EXHIBIT 6

**HWAN's Reply to Division's Opposition to Its
Brief Regarding Exhibits KK, LL, and MM**

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

12 STATE OF NEVADA
13 DEPARTMENT OF BUSINESS AND INDUSTRY
14 DIVISION OF INSURANCE

15 IN THE MATTER OF

CAUSE NO.: 17.0050

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

19 *Respondent.*

**HOME WARRANTY
ADMINISTRATOR OF NEVADA, INC.
d/b/a CHOICE HOME WARRANTY'S
REPLY TO DIVISION'S OPPOSITION
TO ITS BRIEF REGARDING
EXHIBITS KK, LL and MM**

20 Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a Choice
21 Home Warranty ("HWAN"), a Nevada corporation, hereby replies the Division of Insurance's
22 November 20, 2018 Opposition (the "Opposition") to HWAN's November 13, 2018 Brief
23 Regarding Exhibits KK, LL and MM (the "Exhibits") in light of material mischaracterizations of
24 the terms of the underlying Order and prior sworn testimony adduced in the instant Cause.
25 HWAN requests this Reply at it is necessary to correct the record.

26 //
27
28

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DATED this 21st day of November, 2018.

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

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 HWAN incorporates by reference the procedural and factual background set forth in its
3 April 19, 2018 Motion before the First Judicial District Court, that Court’s September 6, 2018
4 Order (the “Order”) granting HWAN’s Motion, as well as HWAN’s November 13, 2018 Brief.
5 For the sake of brevity, HWAN will not restate that which is contained therein.

6 The Division, by Sr. Deputy Attorney General Joanna Grigoriev, filed an Opposition to
7 Respondent’s Brief on November 20, 2018. Said Opposition, at Page 2, misstates the terms of the
8 Order of the First Judicial Court in a material way. The Division “objects to and opposes” the
9 introduction of these Exhibits”. Neither an objection, nor an opposition is available to the
10 Division pursuant to the terms of the Court’s September 6, 2018 Order. That Order very plainly
11 required the hearing officer “receive the [Exhibits] and determine if they are material and would
12 have had any impact on the final decision.”¹ Indeed, the Division quotes this very directive on
13 Page 1 of its Opposition brief. It should be clear that the hearing officer has been ordered to
14 receive the Exhibits and will do so.

15 The Division further argues that the Exhibits cannot be received because they were
16 available during to HWAN during the instant Cause and HWAN “voluntarily decided” not to use
17 them. The Division goes further to suggest the April 19, 2018 Motion is a tactic which is
18 “disingenuous, inapposite, and untimely.” This jibe ignores the procedural posture of the motion
19 and the Order. To be clear, these Exhibits were not addressed by either party or their witnesses in
20 the underlying hearing because the Division had never given notice of any fact, claim or argument
21 in any complaint or filing that made them material or relevant to the proofs adduced at the
22 hearing. Indeed, it was only after the hearing that these Exhibits became an issue. Well after the
23 hearing, when the Division filed its closing papers, the Division proffered conclusions directly
24 contrary to facts set forth in these Exhibits – contrary to facts in its possession and known at the
25 time of the briefing, necessitating the post-hearing motion and this review. HWAN argues that

26
27 ¹ See Order Granting Pet’s Mot. For Leave to Present Add’l Evidence, attached to HWAN’s Brief as Ex. 1
28

1 the Division cannot proffer conclusions based on facts it knows to be contrary to the argument
2 and that these proffered conclusions formed the basis of errors in the hearing officer's decision
3 that require reversal.

4 Finally, in its Opposition, the Division has taken liberties with sworn testimony, which
5 cannot stand. Neither HWAN nor Mr. Mandalawi ever wavered on the separate identities of the
6 two corporations before the Division in the instant Cause. There was no conflict or contradiction
7 in Respondent's proofs. When asked, "So you listed the current administrator as self. Who's
8 self?" He responded: "The administrator would be CHW Group.", referencing CHW Group, Inc.
9 d/b/a Choice Home Warranty, an entity duly incorporated and operating in New Jersey.²

10
11 **I. CONCLUSION:**

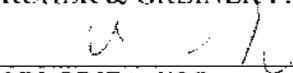
12 Based upon the foregoing, HWAN respectfully requests record be corrected accordingly.

13 DATED this 21st day of November, 2018.

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27 ² See Hr'g Tr. Day 3 at 46:22-25.

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CERTIFICATE OF SERVICE

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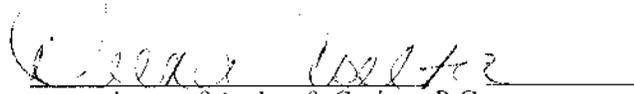
I hereby certify that I am an employee of Archer & Greiner, P.C. and that on 21st day of November, 2018, I served a true and correct copy of the foregoing **HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a CHOICE HOME WARRANTY'S REPLY TO DIVISION'S OPPOSITION TO ITS BRIEF REGARDING EXHIBITS KK, LL, and MM** via electronic mail and Federal Express, at Las Vegas and Carson City, Nevada, addressed to the following at the last known address of said individuals:

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Alexia Emmermann, Hearing Officer
c/o Yvonne Renta, Clerk
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yrenta@doi.nv.gov

*Attorneys for Defendant State of Nevada, Department Of
Business And Industry-Division Of Insurance*


an employee of Archer & Greiner, P.C.

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8 *Attorneys for Petitioners*

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

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

14 Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION
17 OF INSURANCE, a Nevada administrative
agency,

18 Respondent.
19

Case No. : 17 OC 00269 1B
Dept. No.: 1

**NOTICE OF NON-OPPOSITION TO
PETITIONER'S MOTION FOR LEAVE
TO FILE SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES PURSUANT TO NRS
233B.133 AND AMEND THE RECORD
ON APPEAL AND**

**NOTICE OF SUBMISSION OF
PROPOSED ORDER**

20 PLEASE TAKE NOTICE that Petitioner, HOME WARRANTY ADMINISTRATOR OF
21 NEVADA, INC., dba CHOICE HOME WARRANTY'S, Motion for Leave to File Supplemental
22 Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on
23 Appeal (the "Motion") is unopposed. The Motion was filed on February 22, 2019, and was served
24 via United States Mail, first class postage prepaid on February 22, 2019. In accordance with the
25 local rules, the Respondent, State of Nevada, Department of Business and Industry – Division of
26 Insurance (the "Division"), was required to file and serve a written memorandum of points and
27 authorities in opposition to the Motion no later than March 11, 2019. However, no such
28

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CLERK OF DISTRICT COURT
BY _____

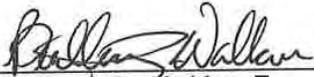
Holland & Hart LLP
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Las Vegas, Nevada 89134

1 memorandum was filed. “[F]ailure of an opposing party to file a memorandum of points and
2 authorities in opposition to any motion within the time permitted shall constitute a consent to the
3 granting of the motion.” FDCR 15(5).

4 Accordingly, Petitioner respectfully requests that this Court grant its Motion. Petitioner
5 thanks the Court for its time and attention to this matter.

6 PLEASE ALSO TAKE NOTICE that Petitioner hereby submits its proposed Order
7 Granting Petitioner’s Motion as **Exhibit 1**.

8 DATED this 12 day of March, 2019.

9
10 
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18 *Attorneys for Petitioner*

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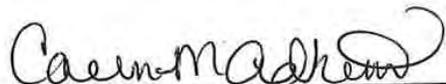
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CERTIFICATE OF SERVICE

I hereby certify that on 12th day of March, 2019, I served a true and correct copy of the foregoing **NOTICE OF NON-OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES PURSUANT TO NRS 233B.133 AND AMEND THE RECORD ON APPEAL AND NOTICE OF SUBMISSION OF PROPOSED ORDER** via United States Mail, first class postage prepaid, at Las Vegas, Nevada, addressed to the following at the last known address of said individuals:

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Richard Yien, Deputy Attorney General
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Carson City, NV 89701
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*Attorneys for Respondent State of Nevada,
Department of Business and Industry – Division of
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an employee of Holland & Hart, LLP

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INDEX OF EXHIBITS

EXHIBIT 1	Proposed Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233b.133 and Amend the Record on Appeal	Pages 1 - 3
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EXHIBIT 1

**Proposed Order Granting Petitioner's Motion for Leave
to File Supplemental Memorandum of Points and
Authorities Pursuant to NRS 233B.133 and
Amend the Record on Appeal**

EXHIBIT 1

**Proposed Order Granting Petitioner's Motion for Leave
to File Supplemental Memorandum of Points and
Authorities Pursuant to NRS 233B.133 and
Amend the Record on Appeal**

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

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

14 Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION
17 OF INSURANCE, a Nevada administrative
agency,

18 Respondent.

Case No. : 17 OC 00269 1B
Dept. No.: 1

**[PROPOSED] ORDER GRANTING
PETITIONER'S MOTION FOR LEAVE
TO FILE SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES PURSUANT TO NRS
233B.133 AND AMEND THE RECORD
ON APPEAL**

20 This matter was submitted to the Court on Petitioner's Motion for Leave to File
21 Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the
22 Record on Appeal (the "Motion"), which was filed herein on February 22, 2019.

23 The Respondent State of Nevada, Department of Business and Industry – Division of
24 Insurance (the "Division") was required to file and serve a written memorandum of points and
25 authorities in opposition no later than March 11, 2019. The Division did not file any memorandum
26 of points and authorities in opposition to the Motion. Failure to timely file and serve a written
27 opposition "shall constitute a consent to the granting of the motion." FDCR 15(5).

28 After considering the papers and pleadings on file, and good cause appearing, the Court

Holland & Hart LLP
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1 hereby orders as follows:

2 IT IS HEREBY ORDERED that Petitioner's Motion is GRANTED.

3 IT IS FURTHER ORDERED that Petitioner may file and serve its supplemental
4 memorandum of points and authorities pursuant to NRS 233B.133(6) within seven (7) days of
5 notice of entry of this Order.

6 IT IS FURTHER ORDERED that Petitioner may file and serve a notice of amendment to
7 record on appeal containing Exhibits 3-6 to the Motion within seven (7) days of notice of entry of
8 this Order.

9 IT IS SO ORDERED.

10 DATED this ___ day of March, 2019.

11

12

DISTRICT COURT JUDGE

13

Submitted by:

14

HOLLAND & HART, LLP

15

16

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10 **IN AND FOR CARSON CITY**

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17 OF INSURANCE, a Nevada administrative
agency,
18

19 Respondent.

Case No. : 17 OC 00269 1B
Dept. No.: 1

REQUEST FOR SUBMISSION

20 COMES NOW, Petitioner, HOME WARRANTY ADMINISTRATOR OF NEVADA,
21 INC., dba CHOICE HOME WARRANTY, by and through its counsel of record Holland & Hart,
22 LLP, hereby requests that the Motion for Leave to File Supplemental Memorandum of Points and
23 Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (the "Motion"),
24
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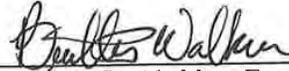
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2019 MAR 12 PM 3:31
SUBJECT: HOME WARRANTY
BY: C. COOPER
C. COOPER

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

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previously filed in the above-entitled matter on the 22nd day of February, 2019, be submitted to the Court for consideration.

DATED this 12 day of March, 2019.



Constance L. Akridge, Esq.
Sydney R. Gambée, Esq.
Brittany L. Walker, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Petitioner

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

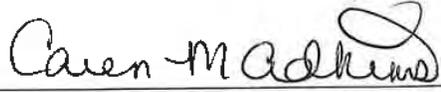
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CERTIFICATE OF SERVICE

I hereby certify that on 12th day of March, 2019, I served a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** via United States Mail, first class postage prepaid, at Las Vegas, Nevada, addressed to the following at the last known address of said individuals:

Joanna Grigoriev, Senior Deputy Attorney General
Richard Yien, Deputy Attorney General
State of Nevada
100 N. Carson Street
Carson City, NV 89701
jgrigoriev@ag.nv.gov
ryien@ag.nv.gov

*Attorneys for Respondent State of Nevada,
Department of Business and Industry – Division of
Insurance*


an employee of Holland & Hart, LLP

Holland & Hart LLP
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Las Vegas, Nevada 89134

1 Constance L. Akridge, Esq.
Nevada Bar No. 3353
2 Sydney R. Gambee, Esq.
Nevada Bar No. 14201
3 Brittany L. Walker, Esq.
Nevada Bar No. 14641
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Email: clakridge@hollandhart.com
7 sgambee@hollandhart.com
8 blwalker@hollandhart.com

Attorneys for Petitioners

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

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

Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
17 BUSINESS AND INDUSTRY – DIVISION
OF INSURANCE, a Nevada administrative
18 agency,

Respondent.

Case No. : 17 OC 00269 1B
Dept. No.: 1

**ORDER GRANTING PETITIONER'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES
PURSUANT TO NRS 233B.133 AND
AMEND THE RECORD ON APPEAL**

20 This matter was submitted to the Court on Petitioner's Motion for Leave to File
21 Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the
22 Record on Appeal (the "Motion"), which was filed herein on February 22, 2019.

23 The Respondent State of Nevada, Department of Business and Industry – Division of
24 Insurance (the "Division") was required to file and serve a written memorandum of points and
25 authorities in opposition no later than March 11, 2019. The Division did not file any memorandum
26 of points and authorities in opposition to the Motion. Failure to timely file and serve a written
27 opposition "shall constitute a consent to the granting of the motion." FDCR 15(5).

28 After considering the papers and pleadings on file, and good cause appearing, the Court

REC'D & FILED
2019 MAR 13 PM 3:09
CLERK OF COURT
BY: [Signature]

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

1 hereby orders as follows:

2 IT IS HEREBY ORDERED that Petitioner's Motion is GRANTED.

3 IT IS FURTHER ORDERED that Petitioner may file and serve its supplemental
4 memorandum of points and authorities pursuant to NRS 233B.133(6) within seven (7) days of
5 notice of entry of this Order.

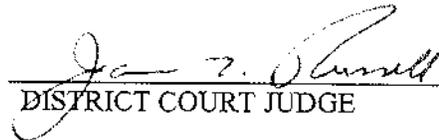
6 IT IS FURTHER ORDERED that Petitioner may file and serve a notice of amendment to
7 record on appeal containing Exhibits 3-6 to the Motion within seven (7) days of notice of entry of
8 this Order.

9 IT IS SO ORDERED.

10 DATED this 13 day of March, 2019.

11

12


DISTRICT COURT JUDGE

13 Submitted by:

14 **HOLLAND & HART, LLP**

15

16 
Constance L. Akridge, Esq.
Sydney R. Gambee, Esq.
17 Brittany L. Walker, Esq.
HOLLAND & HART LLP
18 9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

19

20 *Attorneys for Petitioner*

21

22

23

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1 Constance L. Akridge, Esq.
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2 Sydney R. Gambee, Esq.
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Email: clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

8 *Attorneys for Petitioners*

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

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

14 Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION
17 OF INSURANCE, a Nevada administrative
agency,

18 Respondent.

Case No. : 17 OC 00269 1B
Dept. No.: 1

STIPULATION AND ORDER

**(1) WITHDRAWING NOTICE OF NON
OPPOSITION AND REQUEST FOR
SUBMISSION OF MOTION FOR LEAVE
TO FILE SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES PURSUANT TO NRS
233B.133 AND AMEND THE RECORD
ON APPEAL AND**

**(2) EXTENDING THE TIME FOR
OPPOSITION TO AND REPLY IN
SUPPORT OF MOTION FOR LEAVE TO
FILE SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES PURSUANT TO NRS
233B.133 AND AMEND THE RECORD
ON APPEAL**

25 Petitioner, Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty
26 (“Petitioner”), and Respondent, the State of Nevada Department of Business and Industry –
27 Division of Insurance (“Respondent”), by and through their counsel of record, hereby stipulate
28 and agree as follows:

REC'D & FILED
2019 MAR 25 AM 10:59
C. J. ...
BY _____

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

1 1. Petitioner filed and served its Motion for Leave to File Supplemental
2 Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on
3 Appeal (the "Motion") on February 22, 2019;

4 2. Petitioner filed and served a Notice of Non-Opposition to the Motion and a
5 Request for Submission on March 12, 2019;

6 3. Respondent filed no memorandum of points and authorities in opposition to the
7 Motion because it contends it did not receive the mailed service copy of the Motion;

8 4. Petitioner agrees to withdraw its Notice of Non-Opposition to the Motion and
9 Request for Submission;

10 5. Respondent shall file and serve its memorandum of points and authorities in
11 opposition to the Motion no later than Wednesday, April 3, 2019;

12 6. Petitioner shall file and serve its reply memorandum of points and authorities no
13 later than April 15, 2019.

14 **IT IS SO STIPULATED.**

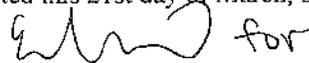
15 DATED this 21 day of March, 2019.

16
17 Dated this 21st day of March, 2019.

18 
19 Aaron D. Ford, Esq., Attorney General
20 Richard P. Yien, Esq., Deputy Attorney General
21 Joanna Grigoriev, Esq., Deputy Attorney General
22 100 N. Carson Street
23 Carson City, NV 89701

24
25
26
27
28 *Attorneys for Respondent*

Dated this 21st day of March, 2019

18  for
19 Constance L. Akridge, Esq.
20 Sydney R. Gambee, Esq.
21 Brittany L. Walker, Esq.
22 HOLLAND & HART LLP
23 9555 Hillwood Drive, Second Floor
24 Las Vegas, Nevada 89134

Attorneys for Petitioner

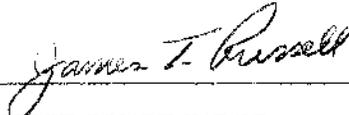
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

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ORDER

IT IS SO ORDERED.

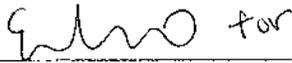
DATED this 25th day of March, 2019.



DISTRICT COURT JUDGE

Submitted by:

HOLLAND & HART, LLP

 for

Constance L. Akridge, Esq.
Sydney R. Gamber, Esq.
Brittany L. Walker, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Petitioner

Holland & Hart LLP
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Las Vegas, Nevada 89134

1 Constance L. Akridge, Esq.
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2 Sydney R. Gambee, Esq.
Nevada Bar No. 14201
3 Brittany L. Walker, Esq.
Nevada Bar No. 14641
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5 Las Vegas, Nevada 89134
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6 Fax: (702) 669-4650
Email: clakridge@hollandhart.com
7 sergambee@hollandhart.com
blwalker@hollandhart.com

8 *Attorneys for Petitioners*

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

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

14 Petitioner,

15 vs.

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

18 Respondents.
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Case No. : 17 OC 00269 1B
Dept. No.: 1

NOTICE OF ENTRY OF ORDER FOR

**(1) WITHDRAWING NOTICE OF NON
OPPOSITION AND REQUEST FOR
SUBMISSION OF MOTION FOR LEAVE
TO FILE SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES PURSUANT TO NRS
233B.133 AND AMEND THE RECORD
ON APPEAL AND**

**(2) EXTENDING THE TIME FOR
OPPOSITION TO AND REPLY IN
SUPPORT OF MOTION FOR LEAVE TO
FILE SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES PURSUANT TO NRS
233B.133 AND AMEND THE RECORD
ON APPEAL**

26 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that an Order for (1)
27 **WITHDRAWING NOTICE OF NON OPPOSITION AND REQUEST FOR SUBMISSION OF**
28 **MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM OF POINTS AND**

REC'D & FILED

2019 APR -1 PM 1:59

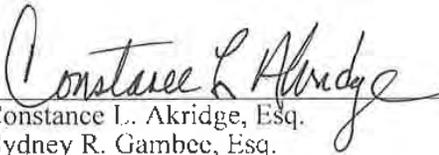
AUBREY ROWLATT
CLERK

BY C. TORRES
DEPUTY

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

1 AUTHORITIES PURSUANT TO NRS 233B.133 AND AMEND THE RECORD ON APPEAL.
2 AND (2) EXTENDING THE TIME FOR OPPOSITION TO AND REPLY IN SUPPORT OF
3 MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM OF POINTS AND
4 AUTHORITIES PURSUANT TO NRS 233B.133 AND AMEND THE RECORD ON APPEAL.
5 was entered in the above-captioned matter on the 25th day of March, 2019.

6 A copy of said Order is attached hereto.

7
8 
9 Constance L. Akridge, Esq.
Sydney R. Gambec, Esq.
10 Brittany L. Walker, Esq.
11 HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
12 Las Vegas, Nevada 89134

13 *Attorneys for Petitioner*

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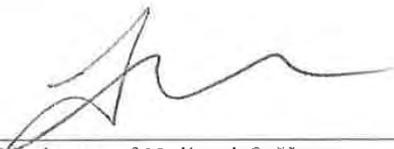
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April, 2019 a true and correct copy of the foregoing
**NOTICE OF ENTRY OF ORDER FOR (1) WITHDRAWING NOTICE OF NON
OPPOSITION AND REQUEST FOR SUBMISSION OF MOTION FOR LEAVE TO
FILE SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES
PURSUANT TO NRS 233B.133 AND AMEND THE RECORD ON APPEAL AND (2)
EXTENDING THE TIME FOR OPPOSITION TO AND REPLY IN SUPPORT OF
MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM OF POINTS
AND AUTHORITIES PURSUANT TO NRS 233B.133 AND AMEND THE RECORD ON
APPEAL** was served via email and by depositing same in the United States mail, first class
postage fully prepaid to the persons and addresses listed below:

Joanna Grigoriev, Senior Deputy Attorney General
Richard Yien, Deputy Attorney General
State of Nevada
100 N. Carson Street
Carson City, NV 89701
jgrigoriev@ag.nv.gov
ryien@ag.nv.gov

*Attorneys for Respondent State of Nevada,
Department of Business and Industry Division of
Insurance*


An Employee of Holland & Hart LLP

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Email: clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

8 *Attorneys for Petitioners*

9
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR CARSON CITY**

12 HOME WARRANTY ADMINISTRATOR
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13 WARRANTY, a Nevada corporation,

14 Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY – DIVISION
17 OF INSURANCE, a Nevada administrative
agency,

18 Respondent.

Case No. : 17 OC 00269 1B
Dept. No.: 1

STIPULATION AND ORDER

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ON APPEAL

24
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26 (“Petitioner”), and Respondent, the State of Nevada Department of Business and Industry
27 Division of Insurance (“Respondent”), by and through their counsel of record, hereby stipulate
28 and agree as follows:

REC'D & FILED
2019 MAR 25 AM 10:59
AUSNEY BOWLATT
C. COOPER
BY _____
DEPUTY

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

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7 Motion because it contends it did not receive the mailed service copy of the Motion;

8 4. Petitioner agrees to withdraw its Notice of Non-Opposition to the Motion and
9 Request for Submission;

10 5. Respondent shall file and serve its memorandum of points and authorities in
11 opposition to the Motion no later than Wednesday, April 3, 2019;

12 6. Petitioner shall file and serve its reply memorandum of points and authorities no
13 later than April 15, 2019.

14 **IT IS SO STIPULATED.**

15 DATED this 21 day of March, 2019.

16
17 Dated this 21st day of March, 2019.

18 
19 Aaron D. Ford, Esq., Attorney General
20 Richard P. Yien, Esq., Deputy Attorney General
21 Joanna Grigoriev, Esq., Deputy Attorney General
22 100 N. Carson Street
23 Carson City, NV 89701

24 *Attorneys for Respondent*

17 Dated this 21st day of March, 2019

18  for
19 Constance L. Akridge, Esq.
20 Sydney R. Gambee, Esq.
21 Brittany L. Walker, Esq.
22 HOLLAND & HART LLP
23 9555 Hillwood Drive, Second Floor
24 Las Vegas, Nevada 89134

25 *Attorneys for Petitioner*

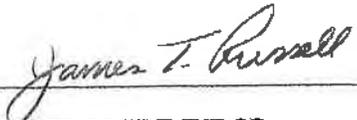
Holland & Hart LLP
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ORDER

IT IS SO ORDERED.

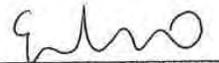
DATED this 25th day of March, 2019.



DISTRICT COURT JUDGE

Submitted by:

HOLLAND & HART, LLP

 for

Constance L. Akridge, Esq.
Sydney R. Gambia, Esq.
Brittany L. Walker, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Petitioner

