

**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 0026

Electronically Filed
May 12 2020 06:06 p.m.
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
VOLUME XIV OF XIV
(AA002583 – AA002775)**

Constance L. Akridge, Esq.
Nevada Bar No. 3353
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
Brittany L. Walker, Esq.
Nevada Bar No. 14641
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
clakridge@hollandhart.com
srgambee@hollandhart.com
blwalker@hollandhart.com

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

INDEX TO APPELLANT'S APPENDIX IN CHRONOLOGICAL ORDER

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Complaint and Application for Order to Show Cause (Cause No. 17.0050)	05/09/17	I	AA000001 – AA000010
Application for Subpoena Duces Tecum to Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (“HWAN”) (Cause No. 17.0050)	05/09/17	I	AA000011 – AA000014
Order to Show Cause (Cause No. 17.0050)	05/11/17	I	AA000015 – AA000018
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	05/11/17	I	AA000019 – AA000022
Petition to Enlarge Time to Respond to Subpoena Duces Tecum, with cover letter (Cause No. 17.0050)	06/01/17	I	AA000023 – AA000029
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
Order on Petition to Enlarge Time to Respond to Subpoena Duces Tecum (Cause No. 17.0050)	06/05/17	I	AA000032 – AA000035
Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/14/17	I	AA000036 – AA000039
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
Joint Request to Continue Hearing (Cause No. 17.0050)	06/20/17	I	AA000042 – AA000044
Order on Motion Requesting Extension of Time and Order on Joint Request for Continuance (Cause No. 17.0050)	06/22/17	I	AA000045 – AA000047
Pre-hearing Order (Cause No. 17.0050)	06/22/17	I	AA000048 – AA000053
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Second Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/19/17	I	AA000065 – AA000071
Request to Continue Hearing (Cause No. 17.0050)	07/20/17	I	AA000072 – AA000073
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
Notice of No Opposition to Request to Continue Hearing (Cause No. 17.0050)	07/24/17	I	AA000077 – AA000078
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	07/26/17	I	AA000079 – AA000083
Order on Motions (Cause No. 17.0050)	07/27/17	I	AA000084 – AA000091
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 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 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 Geoffrey Hunt (Cause No. 17.0050)	08/09/17	I	AA000117 – AA000120
Subpoena for Appearance at Hearing to Linda Stratton (Cause No. 17.0050)	08/09/17	I	AA000121 – AA000124
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
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
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 Martin Reis (Cause No. 17.0050)	08/09/17	I	AA000141 – AA000144
Subpoena for Appearance at Hearing to Mary Strong (Cause No. 17.0050)	08/09/17	I	AA000145 – AA000148
Joint Request for Pre-hearing Conference (Cause No. 17.0050)	08/16/17	I	AA000149 – AA000152
Order Setting Pre-hearing Conference (Cause No. 17.0050)	08/17/17	I	AA000153 – AA000158
Order on Joint Application to Conduct Deposition (Cause No. 17.0050)	08/17/17	I	AA000159 – AA000164
Joint Application to Conduct Deposition to Preserve Hearing Testimony (Cause No. 17.0050)	08/21/17	I	AA000165 – AA000168
Amended Complaint and Application for Order to Show Cause (Cause No. 17.0050)	09/05/17	I	AA000169 – AA000177
Division's Pre-hearing Statement (Cause No. 17.0050)	09/06/17	I	AA000178 – AA000188
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
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 Pre-hearing Statement (Cause No. 17.0050)	09/08/17	IV	AA000500 – AA000513
List of Hearing Witnesses by HWAN (Cause No. 17.0050)	09/08/17	IV	AA000514 – AA000517

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
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
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
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
HWAN's Notice of Filing Supplemental Hearing Exhibit SS (Cause No. 17.0050)	09/21/17	VII	AA001271 – AA001295
Order regarding Post-hearing Briefs and Written Closing Arguments (Cause No. 17.0050)	10/13/17	VII	AA001296 – AA001298
Division's Post-hearing Brief Pursuant to Order (Cause No. 17.0050)	10/30/17	VII	AA001299 – AA001307
HWAN's Post-hearing Brief on Hearing Officer's Inquiry (Cause No. 17.0050)	10/30/17	VII	AA001308 – AA001325
Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/13/17	VII	AA001326 – AA001332
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
Order regarding Motion to Strike and Written Closing Arguments (Cause No. 17.0050)	11/14/17	VII	AA001339 – AA001340
Division's Closing Statement (Cause No. 17.0050)	11/17/17	VII	AA001341 – AA001358
HWAN's Closing Argument (Cause No. 17.0050)	11/22/17	VIII	AA001359 – AA001378
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
Affirmation (Initial Appearance) (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001410 – AA001411

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001412 – AA001458
Civil Cover Sheet (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001459
Order for Briefing Schedule (Case No. 17 OC 00269 1B)	12/26/17	VIII	AA001460 – AA001462
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance – Attorney General (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001463 – AA001464
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance – Commissioner of Insurance (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001465
Administrative Record (Case No. 17 OC 00269 1B)	01/12/18	VIII	AA001466 – AA001470
Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/16/18	VIII	AA001471 – AA001486
Statement of Intent to Participate (Case No. 17 OC 00269 1B)	01/19/18	VIII	AA001487 – AA001489
Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/30/18	VIII	AA001490 – AA001503
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
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
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
Notice of Entry of Order Denying Motion for Stay (Case No. 17 OC 00269 1B)	02/16/18	VIII	AA001552 – AA001559
Petitioner's Opening Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	02/16/18	IX	AA001560 – AA001599
Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/15/18	IX	AA001600 – AA001601

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Respondent's Answering Brief (Case No. 17 OC 00269 1B)	03/19/18	IX	AA001602 – AA001641
Certificate of Service of Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/28/18	IX	AA001642 – AA001643
Reply Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	04/11/18	IX	AA001644 – AA001662
Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	04/19/18	IX	AA001663 – AA001680
Opposition to Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/04/18	IX	AA001681 – AA001687
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
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
Order to Set for Hearing (Case No. 17 OC 00269 1B)	05/16/18	IX	AA001705 – AA001706
Hearing Date Memo (Case No. 17 OC 00269 1B)	06/06/18	IX	AA001707
Transcript of Hearing Proceedings on August 6, 2018 (Case No. 17 OC 00269 1B)	08/06/18	IX	AA001708 – AA001731
Order Granting Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	09/06/18	IX	AA001732 – AA001735
Order regarding Exhibits KK, LL & MM (Cause No. 17.0050)	10/31/18	IX	AA001736 – AA001738
HWAN's Brief regarding Exhibits KK, LL, and MM (Cause No. 17.0050)	11/13/18	IX	AA001739 – AA001745
Division's Opposition to HWAN's Proposed Exhibits KK, LL, and MM (Cause No. 17.0050)	11/20/18	IX	AA001746 – AA001753
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order on Remand (Cause No. 17.0050)	01/22/19	IX	AA001759 – AA001767
Substitution of Attorney (Cause No. 17.0050)	01/24/19	IX	AA001768 – AA001770
Substitution of Attorney (Case No. 17 OC 00269 1B)	01/25/19	IX	AA001771 – AA001773
Notice of Filing Hearing Officer's Administrative Order (Case No. 17 OC 00269 1B)	01/28/19	X	AA001774 – AA001787
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	02/01/19	X	AA001788 – AA001801
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
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
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
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
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
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
Division's Opposition to Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (erroneously filed in Case No. 19 OC 00015 1B)	04/03/19	XI	AA001983 – AA002003
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 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
Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/08/19	XI	AA002012 – AA002013
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 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
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002139 – AA002169
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
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
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
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
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
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
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
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
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice to Set (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002289 – AA002291
Hearing Date Memo (Case No. 17 OC 00269 1B)	08/28/19	XII	AA002292 – AA002294
Legislative History Statement Regarding NRS 690C.325(1) and NRS 690C.330 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002295 – AA002358
Respondent's Statement of Legislative History of NRS 690C.325 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002359 – AA002383
Transcript of Hearing Proceedings on November 7, 2019 (Case No. 17 OC 00269 1B)	11/07/19	XIII	AA002384 – AA002455
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
Notice of Submission of Competing Proposed Order (Case No. 17 OC 00269 1B)	11/22/19	XIII	AA002495 – AA002516
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
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
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
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
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
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
Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002583 – AA002639
Case Appeal Statement (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002640 – AA002645
Notice of Appeal (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002646 – AA002693
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 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
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
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
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
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
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
Division's Opposition to Petitioner's Motion for Stay (Case No. 17 OC 00269 1B)	12/19/19	XIV	AA002732 – AA002741
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
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
Order Denying Petitioner's Motion for Stay Pending Appeal (Case No. 17 OC 00269 1B)	12/31/19	XIV	AA002759 – AA002764
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

INDEX TO APPELLANT'S APPENDIX IN ALPHABETICAL ORDER

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Administrative Record (Case No. 17 OC 00269 1B)	01/12/18	VIII	AA001466 – AA001470
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance – Attorney General (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001463 – AA001464
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance –Commissioner of Insurance (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001465
Affirmation (Initial Appearance) (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001410 – AA001411
Amended Complaint and Application for Order to Show Cause (Cause No. 17.0050)	09/05/17	I	AA000169 – AA000177
Application for Subpoena Duces Tecum to Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (“HWAN”) (Cause No. 17.0050)	05/09/17	I	AA000011 – AA000014
Case Appeal Statement (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002640 – AA002645
Certificate of Service of Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/28/18	IX	AA001642 – AA001643
Civil Cover Sheet (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001459
Complaint and Application for Order to Show Cause (Cause No. 17.0050)	05/09/17	I	AA000001 – AA000010
Division’s Closing Statement (Cause No. 17.0050)	11/17/17	VII	AA001341 – AA001358
Division’s Opposition to HWAN’s Proposed Exhibits KK, LL, and MM (Cause No. 17.0050)	11/20/18	IX	AA001746 – AA001753
Division’s Opposition to Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (erroneously filed in Case No. 19 OC 00015 1B)	04/03/19	XI	AA001983 – AA002003

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/30/18	VIII	AA001490 – AA001503
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
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

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
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

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

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

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

12 **IN AND FOR CARSON CITY**

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

15 **Petitioner,**

16 **v.**

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

19 **Respondent.**

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

**MOTION FOR STAY PENDING APPEAL
PURSUANT TO NRCP 62(D)**

21 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
22 ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby
23 moves this Court for a Stay pursuant NRCP 62(D) of the Order Affirming in Part, and Modifying
24 in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of
25 the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of
26 Nevada, Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.¹ This

27 ¹ The notice of entry was apparently served on November 26, 2019 and filed on November 27,
28 2019.

REC'D & FILED

2019 DEC -6 PM 4:37

AUDREY ROSE ATT

BY G. COOPER

DEPUTY

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

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Factual and Procedural Background**

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

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

8 a. The Hearing Officer's finding of six (6) violations by the
9 Petitioner of NRS 686A.070 for making false entries of
substantial evidence and is hereby AFFIRMED.

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

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

15 The fine of \$500, as authorized pursuant to NRS
16 6900.825(1) is AFFIRMED,

17 c. The Hearing Officer's finding of 23,889 instances of
18 conducting business in an unsuitable manner, in violation of
19 NRS 690C.825(1)(b) and NRS 679B.125(2), by allowing an
unregistered entity to issue, sell and offer for sale service
20 contracts in Nevada is hereby AFFIRMED. The Court finds
that NRS 6900.150 requires anyone, including a service
contract administrator, who wishes to issue, sell, or offer for
sale service contracts in Nevada, to possess a certificate of
registration under Chapter 690C of the NRS.

21 The fine of \$50 for each of the 23,889 violations, is
22 AFFIRMED; however, the Court finds that the aggregate
cap of \$10,000 for violations of a similar nature, codified in
23 NRS 690C.330, applies. The Court hereby MODIFIES the
fine of \$1,194,450 to be capped at \$10,000 total.

24
25 2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust
26 Fund pending final decision of this Court on Petitioner's Petition for
Judicial Review pursuant to the Stipulation and Order for
interpleading of Fines Pending Final Decision filed herein on March
27 15, 2018. The Clerk of the Court will distribute the total fine of
\$40,500 from Petitioner's interpleaded funds to the Respondent, and
28 refund the remaining balance to Petitioner.

...

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

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

II. Argument

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

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

(d) Stay Upon Appeal.

(1) By Supersedeas Bond. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.

(2) By Other Bond or Security. If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

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

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

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

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

21 Here, the Order directed the Clerk of the Court to “distribute the total fine of \$40,500 from
22 Petitioner’s interpleaded funds to the Respondent and refund the remaining balance to Petitioner.”
23 HWAN is informed that the Clerk of the Court complied with the Order and Respondent has the
24 \$40,500 from HWAN’s interpleaded funds. Notwithstanding, HWAN seeks a stay of the entire
25 Order, including all declaratory findings, conclusions, and orders. However, with the \$40,500 in
26 monetary fines having already been released from HWAN’s interpleaded funds to Respondent,
27 there is no need for a supersedeas bond or alternate security. The Division is in possession of the
28 full amount of the judgment; thus, the *Nelson* factors for waiver of the supersedeas bond are
satisfied.³

³ Factor 5 is not applicable.

1 (1) there are no collection complexities because judgment amount is
2 already collected, i.e., in the possession of Respondent,

3 (2) there is no need to obtain the judgment if it is affirmed on appeal
4 because it is already in the possession of Respondent,

5 (3) the district court has full confidence that there are funds to pay
6 the judgment as they are already in possession of Respondent and

7 (4) HWAN's ability to pay the judgment is so plain there is no need
8 for the bond because the amount is already in the possession of
9 Respondent.

10 Therefore, adequate security having already been provided "to protect the judgment
11 creditor's[, here, Respondent's,] ability to collect the judgment if it is affirmed by preserving the
12 status quo and preventing prejudice to the creditor arising from the stay," a supersedeas bond is
13 not necessary. *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005), as modified (Jan.
14 25, 2006). Accordingly, this Court should waive the supersedeas bond or, alternatively, require
15 a nominal bond of \$100 to be posted, or another appropriate amount as determined by this Court.

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

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

25 NRCP 62(d) plainly applies to a stay of a district court order on a petition for judicial
26 review, even where the district court order merely orders declaratory relief and does not order
27 payment of a monetary judgment. *See Pub. Serv. Comm'n v. First Judicial Dist. Court*, 94 Nev.
28 42, 574 P.2d 272 (1978), *abrogated on other grounds by Nelson*, 121 Nev. at 832, 122 P.3d at
1252 (1978). In *Public Service Commission*, the Public Service Commission of Nevada appealed
a district court's order granting petitioner Southwest Gas Corporation's petition for judicial

1 review of the Commission's administrative decision to deny a rate increase application from
2 Southwest Gas Corporation. *Id.* at 43, 574 P.2d at 273. Thus, the district court required the
3 Commission to approve the rate increase application, and no monetary judgment was imposed.
4 *Id.* After the Commission filed its notice of appeal, the district court found the Commission in
5 contempt for failure to approve the application and ordered it to grant the rate increase or be
6 punished in contempt. *Id.* The Commission took the position that the district court's order was
7 automatically stayed, arguing that its notice of appeal operated as an automatic stay under NRCP
8 62(d) because the Commission, a government agency, was exempt from the bond requirement
9 under NRCP 62(e). *Id.* at 43-44, 574 P.2d at 273. While the court ultimately held that the agency
10 was entitled to a stay without bond but was nonetheless required to file a separate and distinct
11 application for a stay, in so doing, the court implicitly recognized that a stay is available under
12 NRCP 62(d) of a district court's order on a petition for judicial review, even where the district
13 court's order concerned only declaratory relief, i.e., directing the party to approve an application,
14 rather than ordering payment of a monetary judgment. *Id.* at 42, 574 P.2d at 272. Moreover,
15 federal case law has consistently recognized that supersedeas bonds are not limited to money
16 judgments, and are available mechanisms to stay non-monetary judgments. *See J. Perez & Cia.,*
17 *Inc. v. United States*, 578 F. Supp. 1318 (D.P.R.), *aff'd*, 747 F.2d 813 (1st Cir. 1984) (noting that
18 "a supersedeas bond is not confined to money judgments from which a writ of execution can issue
19 but is also employed to stay a nonmoney judgment on appeal."); *Hebert v. Exxon Corp.*, 953 F.2d
20 936 (5th Cir. 1992) (holding that under FRCP 62(d) "[d]efendant was entitled to automatic stay
21 upon posting of supersedeas bond, even though underlying action was for declaratory judgment,
22 where such judgment bound defendant to pay specific sum of money."); *see also Nelson*, 121
23 Nev. at 834, 122 P.3d at 1253 (looking to federal decisions involving FRCP 62(d) to provide
24 persuasive authority to examine NRCP 62(d)).

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

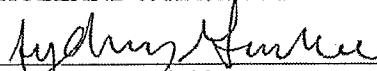
1 Nevada, to possess a certificate of registration under Chapter 690C of the NRS” and the finding
2 that HWAN “is prohibited from using an administrator to perform the duties of selling, issuing,
3 or offering for sale service contracts in Nevada, unless said administrator has been granted a
4 certificate of registration pursuant to NRS 690C.” Because Respondent already has the full
5 \$40,500 monetary judgment, and because the stay would simply retain the status quo, that is,
6 allowing HWAN to continue doing business in the state and utilize its administrator and third-
7 party sales agent to sell service contracts on its behalf, this Court should waive the full amount of
8 a supersedeas bond or require a nominal bond of \$100 to be posted (or other appropriate amount
9 as determined by the Court).⁴

10 **III. Conclusion**

11 On December 6, 2019, HWAN filed its Notice of Appeal attached hereto as **Exhibit 1**.
12 Accordingly, HWAN respectfully requests this Court grant this Motion and issue a stay of the
13 Order effective immediately or upon HWAN posting a nominal bond in the amount of \$100 (or
14 other appropriate amount as determined by the Court). The proposed order is attached as **Exhibit**
15 **2**.

16 DATED this 6th day of December, 2019.

HOLLAND & HART LLP


Constance L. Akridge
Nevada Bar No. 3353
Sydney R. Gambee
Nevada Bar No. 14201
Brittany L. Walker
Nevada Bar No. 14641
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134
Attorneys for Home Warranty
Administrator of Nevada, Inc.
dba Choice Home Warranty

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

CERTIFICATE OF SERVICE

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

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

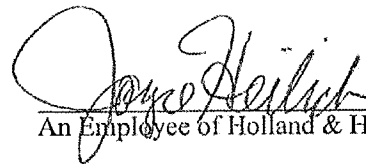
Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

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

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

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

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov


An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

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

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

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

15 Petitioner,

16 v.

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

19 Respondent.

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

NOTICE OF APPEAL

20 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
21 ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby files its Notice of
22 Appeal of the First Judicial District Court Order Affirming in Part, and Modifying in Part,
23 Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the
24 Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada,
25 Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.¹ The Order
26 affirmed in part and modified in part the State of Nevada Department of Business and Industry –
27

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

REC'D & FILED

2019 DEC -6 PM 4:38

AUSREY ROYLATT
CLERK

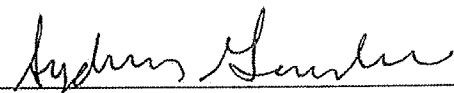
BY _____
DEPUTY
C. COOPER

AA002591

1 Division of Insurance Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final
2 Order of Commissioner (the "Final Decision") filed on December 18, 2017.² NRS 233B.150
3 states that "[a]n aggrieved party may obtain a review of any final judgment of the district court
4 by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the
5 Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be
6 taken as in other civil cases." Notice is hereby given that HWAN, Petitioner above named,
7 appeals to the Supreme Court of Nevada from the Order.

8 DATED this 6th day of December, 2019.

9 HOLLAND & HART LLP

10 

11
12 Constance L. Akridge
13 Nevada Bar No. 3353
14 Sydney R. Gambee
15 Nevada Bar No. 14201
16 Brittany L. Walker
17 Nevada Bar No. 14641
18 9555 Hillwood Drive, 2nd Floor
19 Las Vegas, NV 89134

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

23
24
25
26
27
28 ² Exhibit 2.

CERTIFICATE OF SERVICE

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

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

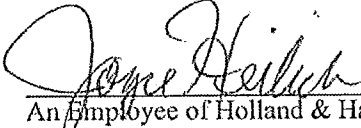
Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

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

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

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

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov


An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

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

EXHIBIT 1

Order and Notice of Entry

EXHIBIT 1

Order and Notice of Entry

1 AARON D. FORD
Attorney General
2 RICHARD PAILI YIEN, Bar No. 13035
Deputy Attorney General
3 State of Nevada
Business and Taxation Division
4 100 N. Carson Street
Carson City, NV 89701
5 P: (775) 684-1129
F: (775) 684-1156
6 Email: ryien@ag.nv.gov

7 *Attorney for the Division of Insurance*

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

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

10 HOME WARRANTY ADMINISTRATOR OF
11 NEVADA, INC., DBA CHOICE HOME
WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

12 Petitioner,

13 vs.

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

16 Respondent.

17 NOTICE OF ENTRY OF ORDER

18 Please take notice that the ORDER AFFIRMING IN PART, AND MODIFYING IN
19 PART, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING
20 OFFICER, AND FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN
21 THE MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA
22 CHOICE HOME WARRANTY was signed by Judge James T. Russell on November 25,
23 2019, a conformed copy of which is attached hereto as Exhibit 1.

24 DATED November 26, 2019

25 AARON D. FORD
Attorney General

26 By: 

27 RICHARD PAILI YIEN
Deputy Attorney General
28 *Attorney for the Division of Insurance*


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

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

DATED November 26, 2019


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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT INDEX

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIGORIEV
Senior Deputy Attorney General
3 Nevada Bar No.5649
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAULI YIEN
Deputy Attorney General
6 Nevada Bar No. 13035
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 E-mail: ryien@ag.nv.gov
Attorneys for Respondent
9 Nevada Division of Insurance

REC'D & FILED

2019 NOV 25 AM 7:47

AUSREY ROWLATT
CLERK
BY  DEPUTY

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,

Case No.: 17 OC 00269 1B

Dept. No.: 1

15 vs.

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

19 Respondents.

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

24 This matter came on for hearing on November 7, 2019 on Home Warranty
25 Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial
26 Review of the Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final
27 Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order
28 17.0050"), filed by the Petitioner on December 22, 2017.

1 A. Standard of Review

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

4 ...
5 2. The final decision of the agency shall be deemed reasonable and
6 lawful until reversed or set aside in whole or in part by the court. The
7 burden of proof is on the party attacking or resisting the decision to show
8 that the final decision is invalid pursuant to subsection 3.

9 3. The court shall not substitute its judgment for that of the agency
10 as to the weight of evidence on a question of fact. The court may remand or
11 affirm the final decision or set it aside in whole or in part if substantial
12 rights of the petitioner have been prejudiced because the final decision of
13 the agency is:

- 14 (a) In violation of constitutional or statutory provisions;
- 15 (b) In excess of the statutory authority of the agency;
- 16 (c) Made upon unlawful procedure;
- 17 (d) Affected by other error of law;
- 18 (e) Clearly erroneous in view of the reliable, probative and substantial
19 evidence on the whole record; or
- 20 (f) Arbitrary or capricious or characterized by abuse of discretion.

21 4. As used in this section, "substantial evidence" means evidence
22 which a reasonable mind might accept as adequate to support a conclusion.

23 *Id.*

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

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

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

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

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

11 The total fine of \$30,000, at \$5,000 per violation, as allowed under NRS
12 686A.183(1)(a), is AFFIRMED.

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

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

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

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

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

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


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

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

13 5. The Court further orders that contingent upon Petitioner's compliance with NRS
14 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of
15 Registration be reinstated. In particular, Petitioner is prohibited from using an
16 administrator to perform the duties of selling, issuing, or offering for sale service contracts in
17 Nevada, unless said administrator has been granted a certificate of registration pursuant to
18 NRS 690C and consistent with this Order.

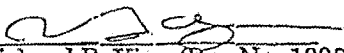
19 IT IS SO ORDERED

20 DATED this 25th day of November, 2019.

21
22 
DISTRICT COURT JUDGE

23 Respectfully submitted by:

24 AARON D. FORD
25 Attorney General

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

CERTIFICATE OF MAILING

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

Joanna N. Grigoriev, Esq.
Senior Deputy Attorney General
555 E. Washington Ave.
Las Vegas, NV 89101

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

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


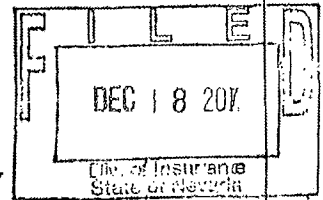

Chloe McClintick, Esq.
Law Clerk, Dept. 1

EXHIBIT 2

**Findings of Fact, Conclusions of Law, Order of
Hearing Officer and Final Order of Commissioner**

EXHIBIT 2

**Findings of Fact, Conclusions of Law, Order of
Hearing Officer and Final Order of Commissioner**



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.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER OF HEARING OFFICER,
AND FINAL ORDER OF THE COMMISSIONER¹

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. FINDINGS OF FACT²

A. HWAN Applications

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

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

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

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

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

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

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

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

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

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

19 6. According to the application's Section II, neither the applicant nor any of the officers
20 listed in Section I had ever been refused a license or registration or had an existing license suspended or
21 revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any
22 state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at
23 2; Test. Mandalawi.)

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

25 8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of
26 registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of
27

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

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

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

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

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

23 12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2,
24 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)

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

28 ///

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

- 3 • "Have there been any changes in the executive officers or in the officers responsible
4 • "Have you made any changes in the administrator or designated a new administrator
5 • "Since the last application, has applicant or any of the officers listed in question 1
6 ever... (c) Been refused a license or registration... or had an existing one
7 suspended or revoked by any state... [or] (d) Been fined by any state or
 governmental agency or authority in any matter regarding service contracts?"

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

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

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

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

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

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

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

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

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

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

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

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

22 23. The renewal applications for 2014, 2015, and 2016 also ask how many service contracts
23 were sold to Nevada residents, other information related to revenue, claims paid, and customer
24 complaints, and information about how complaints are handled. For years 2014, 2015, and 2016,
25 Mandalawi responded to some of these questions, but left blank the number of customer complaints by
26 Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18,
27 23.)

28 ///

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

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

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

13 **B. Complaints**

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

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

21 29. On July 16, 2014, the Division received a consumer complaint against Choice Home
22 Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning
23 ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay
24 \$1,025 for an A/C compressor that the consumer believed should have been covered by the service
25 contract. The consumer requested the claim denial in writing, but was told by the Choice Home
26 Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11;
27 Test. Kuhlman.)

28 ///

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

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

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

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

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

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

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

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

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

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

23 39. On January 14, 2016, laappliance from Las Vegas, Nevada posted a complaint on Ripoff
24 Report that Choice Home Warranty is a huge scam among contractors. The company had completed
25 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)

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

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

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

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

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

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

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

26 **C. Regulatory Actions**

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

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

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

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

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

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

10 **D. Other Evidence Presented at Hearing**

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

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

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

1 2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has
2 held this position since 2008. (Ex. 41 at 14.)

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

8 Choice Home Warranty (CHW) was the subject of a cease and desist letter in California,
9 Oklahoma, and Washington. In California, CHW entered into a consent order, in
10 Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service
Warranty License, and in Washington CHW is complying with all terms of the cease and
desist.

11 CHW has been doing business for roughly two years and our home state of New Jersey
12 does not require companies, such as ours, to be licensed. During the course of its
13 activities, CHW discovered that all states are not created equal when it came to licensing
14 requirements for service contracts. In fact, the very definition of the words "service
contracts" changes from state to state. To address this newly discovered issue, CHW
developed the Home Warranty administrators ("HWA") brand. That is, in order to
address every state's particular requirements, a separate HWA was created for that state.

15 (Ex. 41 at 15-16; Test. Mandalawi.)

16 52. Choice Home Warranty has a landing page, which is a webpage that consumers land on
17 when they click a particular email or internet link to Choice Home Warranty. The landing page is part
18 of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code.
19 Choice Home Warranty provides some general information and invites people to call them at (888)
20 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address,
21 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the
22 bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions,
23 other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)

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

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

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

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

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

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

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

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

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

9 II. CONCLUSIONS OF LAW

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

18 A. Jurisdiction

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

23 B. Statement of Law

24 In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless
25 the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter
26 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the
27 terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for
28 the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a
Nevada resident who may enforce the rights under a service contract. NRS 690C.060. An
administrator "means a person who is responsible for administering a service contract that is issued,
sold or offered for sale by a provider." NRS 690C.020.

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

4 NRS 690C.160.1(a), (c)-(d).

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

8 NRS 690C.160.3.

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

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

- 21 (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy
provisions relating to any coverage at issue.
- 22 (b) Failing to acknowledge and act reasonably promptly upon communications with
respect to claims arising under insurance policies.
- 23 (c) Failing to adopt and implement reasonable standards for the prompt investigation and
processing of claims arising under insurance policies.
- 24 . . .
- 25 (e) Failing to effectuate prompt, fair and equitable settlements of claims in which
liability of the insurer has become reasonably clear.
- 26 . . .
- 27 (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the
insurance policy, with respect to the facts of the insured's claim and the applicable
law, for the denial of the claim or for an offer to settle or compromise the claim.

28 NRS 686A.310.1.

1 Generally, no other provision of the Insurance Code applies except as otherwise provided in
2 NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include
3 trade practices, examinations, hearings, certain prohibitions, process, and advertising.
4 NRS 690C.120.1. Also, "[a] provider, person who sells service contracts, administrator or any other
5 person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter
6 680A of NRS to issue, sell, offer for sale or administer service contracts." NRS 690C.120.2.

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

9 "[U]nsuitable manner" means conducting [] business in a manner which:

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

14 NAC 679B.0385.

15 C. Respondent

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

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

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

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

1 HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for
2 such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns
3 the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and
4 administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group
5 employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in
6 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice
7 Home Warranty. The names are listed in his résumé as two separate companies. At the time the South
8 Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not
9 registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW
10 Group, Inc.

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

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

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

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

1 disagrees.

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

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

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

28 ///

1 **2. Applications Filed with the Division**

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

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

28 ///

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

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

7 In this case, the evidence shows that the Division received at least 63 individual consumer
8 complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the
9 complaints, five were presented at the hearing: three complaints from 2014 and two complaints from
10 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers
11 believed were covered, or that Choice Home Warranty did not pay the technician who provided
12 services on the appliance. When the Division got involved, HWAN agreed to cover or settle the
13 complaints. The Division's evidence says the claims were covered; Respondent's evidence says the
14 claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's
15 involvement does not mean that Respondent admitted that the claims were covered. As presented, the
16 Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling
17 claims.

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

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

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

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

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

6 **1. Complaints Against Respondent**

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

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

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

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

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

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

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

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

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

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

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

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

1 690C.120.2 says is that a certificate of authority is not required in the business of service contracts and,
2 so, anyone involved in service contracts is not required to obtain a certificate of authority. It most
3 certainly does not say that an administrator may issue, sell, or offer to sell service contracts without
4 proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter
5 690C a nullity.

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

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

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

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

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

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

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

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

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

9 **ORDER OF THE HEARING OFFICER**

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

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

22 ///

23 ///

24 ///

25 ///

26


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

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

1 4. If Respondent wishes to continue engaging in the business of service contracts in Nevada,
2 Respondent may apply for a certificate of registration as provided in this Order.

3 5. All administrative fines imposed in this Order are due no later than 30 days from the date of this
4 Order.

5 So ORDERED this 18th day of December 2017.

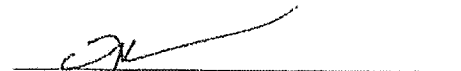
6
7 
8 Alexia M. Emmerman
9 Hearing Officer

10 **FINAL ORDER OF THE COMMISSIONER**

11 Based on the record in this administrative hearing and having reviewed the Hearing Officer's
12 Findings of Fact and Conclusion of Law in this matter, Cause No. ~~16-0126~~ ^{17.0050}, I concur with the Hearing
13 Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of
14 Law, and Order of the Hearing Officer as the Final Order in this matter.

15 IT IS SO ORDERED.

16 DATED this 18th day of December, 2017.

17
18 
19 BARBARA D. RICHARDSON
20 Commissioner of Insurance
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

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

7 Kirk B. Lenhard, Esq.
8 Brownstein Hyatt Farber Schreck, LLP
9 100 North City Parkway, Suite 1600
10 Las Vegas, NV 89106
11 E-MAIL: klenhard@bhfs.com
12 CERTIFIED MAIL NO. 7017 1070 0000 8962 9357

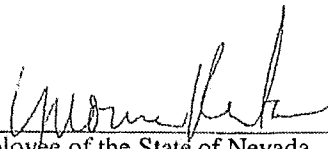
13 Travis F. Chance, Esq.
14 Brownstein Hyatt Farber Schreck, LLP
15 100 North City Parkway, Suite 1600
16 Las Vegas, NV 89106
17 E-MAIL: tchance@bhfs.com
18 CERTIFIED MAIL NO. 7017 1070 0000 8962 9364

19 Lori Grifa, Esq.
20 Archer & Greiner, P.C.
21 Court Plaza South, West Wing
22 21 Main Street, Suite 353
23 Hackensack, NJ 07601
24 E-MAIL: lgrifa@archerlaw.com
25 CERTIFIED MAIL NO. 7017 1070 0000 8962 9371

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

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

DATED this 18th day of December, 2017.

23 
24 Employee of the State of Nevada
25 Department of Business and Industry
26 Division of Insurance

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

EXHIBIT 1	Notice of Appeal	Pages 1 - 45
EXHIBIT 2	Proposed Order Granting Motion for Stay	Pages 46 - 49

EXHIBIT 2

**Proposed Order Granting Motion
for Stay Pending Appeal**

EXHIBIT 2

**Proposed Order Granting Motion
for Stay Pending Appeal**

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

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

10
11
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 OF
19 INSURANCE, a Nevada administrative
agency,

20 Respondent.
21

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

**[PROPOSED] ORDER GRANTING
MOTION FOR STAY PENDING APPEAL
PURSUANT TO NRCP 62(D)**

22 This matter comes before the Court on Petitioner HOME WARRANTY
23 ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY ("HWAN")'s
24 Motion for Stay Pending Appeal Pursuant to NRCP 62(d) ("Motion") of the Order Affirming in
25 Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer,
26 and Final Order of the Commissioner in Cause No. 17.0050 In The Matter of Home Warranty
27
28

1 Administrator of Nevada, Inc., dba Choice Home Warranty entered on November 25, 2019¹
2 (“Order”).

3 This Court having considered HWAN’s Motion and the papers and pleadings on file and
4 good cause appearing,

5 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. The Court hereby finds as
6 follows:

7 Petitioner interpleaded \$1,224,950 with the County Clerk’s Trust Fund pending final
8 decision of this Court on Petitioner’s Petition for Judicial Review pursuant to the Stipulation and
9 Order for Interpleading of Fines Pending Final Decision filed herein on March 15, 2018
10 (“Stipulation”). Pursuant to the Stipulation the parties agreed “to have the fines imposed by the
11 Decision interpleaded into this Court Clerk’s Trust Fund until a final decision is issued by this
12 Court on Petitioner’s Petition for Judicial Review.” The Order directed the Clerk of the Court to
13 “distribute the total fine of \$40,500 from Petitioner’s interpleaded funds to the Respondent, and
14 refund the remaining balance to Petitioner.” Respondent has already received the \$40,500 from
15 HWAN’s interpleaded funds from the Clerk of Court. As such, because the amount of the fines
16 affirmed by the Order have already been paid to Respondent in full, a full supersedeas bond is
17 unnecessary.

18 The five factors set forth in *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 for
19 waiving supersedeas bond and imposing alternate security are satisfied. There are no concerns
20 regarding the complexity of the collection process, the amount of time required to obtain a
21 judgment after it is affirmed on appeal, the availability of funds to pay the judgment, or HWAN’s
22 ability to pay the judgment because the full amount of \$40,500 has already been paid to
23 Respondent.² Additionally, the public and Respondent are adequately protected by HWAN’s
24 compliance with the financial security requirements in NRS 690C.170.

25
26
27 ¹ Notice of Entry was served on November 26, 2019 and filed on November 27, 2019.

28 ² Likewise, the fifth factor enumerated by the *Nelson* court is entirely inapplicable given the
payment of the \$40,500 to Respondent from HWAN’s interpleaded funds.

**HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134**

THEREFORE, IT IS HEREBY FURTHER ORDERED that the requirement for supersedeas bond is waived, and HWAN is required to post alternate security instead.

IT IS HEREBY FURTHER ORDERED that HWAN shall post a nominal bond in the amount of _____.


IT IS HEREBY FURTHER ORDERED that pursuant to NRCP 62(D), the Order, including any and all declaratory judgments therein, is **STAYED** pending appeal with the stay being effective upon HWAN's posting of the bond pursuant to NRCP 62(d)(2).

IT IS SO ORDERED.

DATED this _____ day of _____, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:


 Constance L. Akridge
 Sydney R. Gambiee
 Brittany L. Walker
 Holland & Hart LLP
 9555 HILLWOOD DRIVE, 2ND FLOOR
 LAS VEGAS, NV 89134

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

13900922 vs 104645,0001

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

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

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

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

15 Petitioner,

16 v.

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

19 Respondent.

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

CASE APPEAL STATEMENT

21 **1. Name of appellant filing this case appeal statement:**

22 Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty, a Nevada
23 corporation.

24 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

25 The Honorable James T Russell, First Judicial District Court of the State of Nevada in and
26 for Carson City.

27 **3. Identify each appellant and the name and address of counsel for each**
28 **appellant:**

REC'D & FILED
2019 DEC -6 PM 4:37
AUDREY KOWLATT
CLERK
BY _____ DEPUTY

1 Appellant: Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty, a
2 Nevada corporation.

3 Counsel for Appellant:

4
5 Constance L. Akridge
6 Sydney R. Gambiae
7 Brittany L. Walker
8 Holland & Hart LLP
9 9555 Hillwood Drive, 2nd Floor
10 Las Vegas, NV 89134

11 **4. Identify each respondent and the name and address of appellate counsel, if
12 known, for each respondent (if the name of a respondent's appellate counsel is unknown,
13 indicate as much and provide the name and address of that respondent's trial counsel).**

14 Respondent: State of Nevada, Department of Business and Industry Division of Insurance,
15 a Nevada administrative agency.

16 Counsel for Respondents:

17 Richard Yien
18 Deputy Attorney General
19 State of Nevada
20 Office of Attorney General
21 100 N. Carson St.
22 Carson City, Nevada 89701

23 Joanna Grigoriev
24 Senior Deputy Attorney General
25 State of Nevada
26 Office of Attorney General
27 555 E. Washington Avenue, Suite 3900
28 Las Vegas, Nevada 89101

29 **5. Indicate whether any attorney identified above in response to question 3 or 4
30 is not licensed to practice law in Nevada and, if so, whether the district court granted that
31 attorney permission to appear under SCR 42 (attach a copy of any district court order
32 granting such permission):**

33 All attorneys identified in questions 3 and 4 are licensed to practice law in Nevada.

34 ///

1 **6. Indicate whether appellant was represented by appointed or retained counsel**
2 **in the district court:**

3 Appellant was represented by retained counsel in the district court.

4 **7. Indicate whether appellant is represented by appointed or retained counsel on**
5 **appeal:**

6 Appellant is represented by retained counsel on appeal.

7 **8. Indicate whether appellant was granted leave to proceed in forma pauperis,**
8 **and the date of entry of the district court order granting such leave:**

9 Appellant was not granted leave to proceed in forma pauperis.

10 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
11 **complaint, indictment, information, or petition was filed):**

12 The petition for judicial review was filed on December 22, 2017.

13 **10. Provide a brief description of the nature of the action and result in the district**
14 **court, including the type of judgment or order being appealed and the relief granted by the**
15 **district court:**

16 Petitioner filed this petition seeking judicial review of the State of Nevada Department of
17 Business and Industry – Division of Insurance’s (the “Division”) Findings of Fact, Conclusions of
18 Law, Order of the Hearing Officer, and Final Order of the Commissioner filed on December 18,
19 2017, in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., DBA
20 Choice Home Warranty Order (the “Final Decision”). The Final Decision ordered:

- 21
22 1. Respondent be fined \$30,000, the maximum fine of \$5,000
23 allowed under NRS 686A.183.1(a), for each of six violations of
24 making a false entry of material fact in a record or statement in
25 violation of NRS 686A.070;
26 2. Respondent be fined \$500, an administrative fine authorized
27 pursuant to NRS 690C.325.1 in lieu of a revocation, for failing to
28 make its records available to the Commissioner upon request;
 3. Respondent be fined \$50 for each act or violation, for conducting
 business in an unsuitable manner by allowing an unregistered entity
 to issue and offer service contracts in Nevada, and to sell 23,889

1 service contracts in Nevada through Respondent's certificate of
2 registration, for a total of \$1,194,450.¹

3 Final Decision at 27.

4 The district court entered an order Affirming in Part, and Modifying in Part, Findings of
5 Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in
6 Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice
7 Home Warranty (the "Order") on November 25, 2019.²

8 The district court granted relief by granting the petition for judicial review and affirming
9 in part and modifying the Final Decision as follows:

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

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

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

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

22 c. The Hearing Officer's finding of 23,889 instances of
23 conducting business in an unsuitable manner, in violation of NRS
24 690C.325(1)(b) and NRS 679B.125(2), by allowing an unregistered
25 entity to issue, sell and offer for sale service contracts in Nevada is
26 hereby AFFIRMED. The Court finds that NRS 690C.150 requires
27 anyone, including a service contract administrator, who wishes to
28 issue, sell, or offer for sale service contracts in Nevada, to possess
a certificate of registration under Chapter 690C of the NRS.

The fine of \$50 for each of the 23,889 violations, is AFFIRMED;
however the Court finds that the aggregate cap of \$10,000 for
violations of a similar nature, codified in NRS 690C.330, applies.
The Court hereby MODIFIES the fine of \$1,194,450 to be capped
at \$10,000 total.

Order at 3-4.

¹ The Hearing Officer specified in a footnote that the \$50 fines for each act or violation, totaling \$1,194,450, was pursuant to NRS 690C.325.1, which allows a maximum administrative fine of \$1,000 per act or violation.

² Notice of Entry was served on November 26, 2019 and filed on November 27, 2019.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

This case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation:

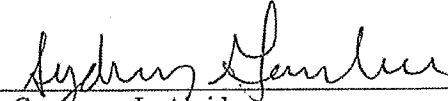
No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Settlement of this case is not possible.

DATED this 6th day of December, 2019.

HOLLAND & HART LLP



Constance L. Akridge
Nevada Bar No. 3353
Sydney R. Gambee
Nevada Bar No. 14201
Brittany L. Walker
Nevada Bar No. 14641
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

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

CERTIFICATE OF SERVICE

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

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov


Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

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

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

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

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov


An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com
8

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

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

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

15 Petitioner,

16 v.

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

19 Respondent.

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

NOTICE OF APPEAL

20 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
21 ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby files its Notice of
22 Appeal of the First Judicial District Court Order Affirming in Part, and Modifying in Part,
23 Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the
24 Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada,
25 Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.¹ The Order
26 affirmed in part and modified in part the State of Nevada Department of Business and Industry –
27

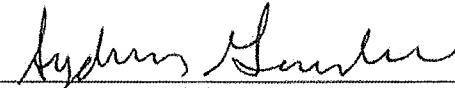
28 ¹ Exhibit 1. The Notice of Entry was served on November 26, 2019 and filed on November 27, 2019.

REC'D & FILED
2019 DEC -6 PM 4:37
AUDREY ROBERTS
CLERK
BY ~~CH. C. HART~~
DEPUTY

1 Division of Insurance Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final
2 Order of Commissioner (the "Final Decision") filed on December 18, 2017.² NRS 233B.150
3 states that "[a]n aggrieved party may obtain a review of any final judgment of the district court
4 by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the
5 Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be
6 taken as in other civil cases." Notice is hereby given that HWAN, Petitioner above named,
7 appeals to the Supreme Court of Nevada from the Order.

8 DATED this 6th day of December, 2019.

9 HOLLAND & HART LLP

10
11 

12 Constance L. Akridge
13 Nevada Bar No. 3353
14 Sydney R. Gambee
15 Nevada Bar No. 14201
16 Brittany L. Walker
17 Nevada Bar No. 14641
18 9555 Hillwood Drive, 2nd Floor
19 Las Vegas, NV 89134

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

23
24
25
26
27
28 ² Exhibit 2.

CERTIFICATE OF SERVICE

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

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

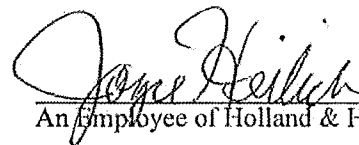
Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

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

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

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

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov


An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

INDEX OF EXHIBITS

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

EXHIBIT 1

Order and Notice of Entry

EXHIBIT 1

Order and Notice of Entry

AARON D. FORD
Attorney General
RICHARD PAILI YIEN, Bar No. 13035
Deputy Attorney General
State of Nevada
Business and Taxation Division
100 N. Carson Street
Carson City, NV 89701
P: (775) 684-1129
F: (775) 684-1156
Email: ryien@ag.nv.gov

Attorney for the Division of Insurance

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

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

HOME WARRANTY ADMINISTRATOR OF
NEVADA, INC., DBA CHOICE HOME
WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

Petitioner,

vs.

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

Respondent.

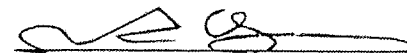
NOTICE OF ENTRY OF ORDER

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

DATED November 26, 2019

AARON D. FORD
Attorney General

By:


RICHARD PAILI YIEN
Deputy Attorney General
Attorney for the Division of Insurance


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

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

DATED November 26, 2019


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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT INDEX

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIGORIEV
Senior Deputy Attorney General
3 Nevada Bar No. 5649
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAULI YIEN
Deputy Attorney General
6 Nevada Bar No. 13035
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 E-mail: ryien@ag.nv.gov
Attorneys for Respondent
9 *Nevada Division of Insurance*

REC'D & FILED

2019 NOV 25 AM 7:47

AUDREY ROWLATT
CLERK
BY 
DEPUTY

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,
Petitioner,

Case No.: 17 OC 00269 1B

Dept. No.: 1

14
15 vs.

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

18
19 Respondents.

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

24 This matter came on for hearing on November 7, 2019 on Home Warranty
25 Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial
26 Review of the Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final
27 Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order
28 17.0050"), filed by the Petitioner on December 22, 2017.

1 A. Standard of Review

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

4 ...
5 2. The final decision of the agency shall be deemed reasonable and
6 lawful until reversed or set aside in whole or in part by the court. The
7 burden of proof is on the party attacking or resisting the decision to show
8 that the final decision is invalid pursuant to subsection 3.

9 3. The court shall not substitute its judgment for that of the agency
10 as to the weight of evidence on a question of fact. The court may remand or
11 affirm the final decision or set it aside in whole or in part if substantial
12 rights of the petitioner have been prejudiced because the final decision of
13 the agency is:

- 14 (a) In violation of constitutional or statutory provisions;
15 (b) In excess of the statutory authority of the agency;
16 (c) Made upon unlawful procedure;
17 (d) Affected by other error of law;
18 (e) Clearly erroneous in view of the reliable, probative and substantial
19 evidence on the whole record; or
20 (f) Arbitrary or capricious or characterized by abuse of discretion.

21 4. As used in this section, "substantial evidence" means evidence
22 which a reasonable mind might accept as adequate to support a conclusion.

23 *Id.*

24 When an administrative decision is challenged, the role of the reviewing court is "to
25 review the evidence presented to the [hearing officer] and ascertain whether [the hearing
26 officer] acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State,*
27 *Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). "[F]actual
28 findings will only be overturned if they are not supported by substantial evidence, which, we
29 have explained, is evidence that a reasonable mind could accept as adequately supporting the
30 agency's conclusions. *Nassiri v Chiropractic Physicians' Bd.*, 130 Nev.245, 248, 327 P.3d 487,
31 489 (2014). (citations omitted). "We review issues pertaining to statutory construction de
32 novo. We nonetheless defer to an agency's interpretation of its governing statutes or
33 regulations if the interpretation is within the language of the statute." *Dutchess Bus. Servs.*
34 *v. State, Bd. of Pharm.*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations
35 omitted).

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

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

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

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

11 The total fine of \$30,000, at \$5,000 per violation, as allowed under NRS
12 686A.183(1)(a), is AFFIRMED.

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

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

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

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

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

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

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

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

13 5. The Court further orders that contingent upon Petitioner's compliance with NRS
14 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of
15 Registration be reinstated. In particular, Petitioner is prohibited from using an
16 administrator to perform the duties of selling, issuing, or offering for sale service contracts in
17 Nevada, unless said administrator has been granted a certificate of registration pursuant to
18 NRS 690C and consistent with this Order.

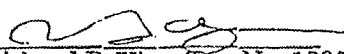
19 IT IS SO ORDERED

20 DATED this 25th day of November, 2019.

21
22 
DISTRICT COURT JUDGE

23 Respectfully submitted by:

24 AARON D. FORD
25 Attorney General

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

CERTIFICATE OF MAILING

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

Joanna N. Grigoriev, Esq.
Senior Deputy Attorney General
555 E. Washington Ave.
Las Vegas, NV 89101

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

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


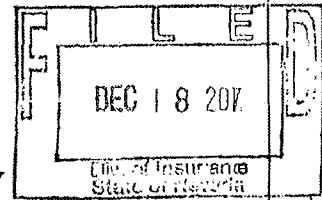

Chloe McClintick, Esq.
Law Clerk, Dept. 1

EXHIBIT 2

**Findings of Fact, Conclusions of Law, Order of
Hearing Officer and Final Order of Commissioner**

EXHIBIT 2

**Findings of Fact, Conclusions of Law, Order of
Hearing Officer and Final Order of Commissioner**



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.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER OF HEARING OFFICER,
AND FINAL ORDER OF THE COMMISSIONER¹**

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. FINDINGS OF FACT²

A. HWAN Applications

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

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

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

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

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

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

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

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

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

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

19 6. According to the application's Section II, neither the applicant nor any of the officers
20 listed in Section I had ever been refused a license or registration or had an existing license suspended or
21 revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any
22 state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at
23 2; Test. Mandalawi.)

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

25 8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of
26 registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of
27

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

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

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

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

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

23 12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2,
24 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 23. The renewal applications for 2014, 2015, and 2016 also ask how many service contracts
23 were sold to Nevada residents, other information related to revenue, claims paid, and customer
24 complaints, and information about how complaints are handled. For years 2014, 2015, and 2016,
25 Mandalawi responded to some of these questions, but left blank the number of customer complaints by
26 Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18,
27 23.)

28 ///

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

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

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

13 **B. Complaints**

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

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

21 29. On July 16, 2014, the Division received a consumer complaint against Choice Home
22 Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning
23 ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay
24 \$1,025 for an A/C compressor that the consumer believed should have been covered by the service
25 contract. The consumer requested the claim denial in writing, but was told by the Choice Home
26 Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11;
27 Test. Kuhlman.)

28 ///

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

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

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

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

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

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

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

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

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

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

23 39. On January 14, 2016, Iaappliance from Las Vegas, Nevada posted a complaint on Ripoff
24 Report that Choice Home Warranty is a huge scam among contractors. The company had completed
25 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)

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

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

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

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

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

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

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

26 **C. Regulatory Actions**

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

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

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

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

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

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

10 **D. Other Evidence Presented at Hearing**

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

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

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

1 2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has
2 held this position since 2008. (Ex. 41 at 14.)

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

8 Choice Home Warranty (CHW) was the subject of a cease and desist letter in California,
9 Oklahoma, and Washington. In California, CHW entered into a consent order, in
10 Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service
Warranty License, and in Washington CHW is complying with all terms of the cease and
desist.

11 CHW has been doing business for roughly two years and our home state of New Jersey
12 does not require companies, such as ours, to be licensed. During the course of its
13 activities, CHW discovered that all states are not created equal when it came to licensing
14 requirements for service contracts. In fact, the very definition of the words "service
contracts" changes from state to state. To address this newly discovered issue, CHW
developed the Home Warranty administrators ("HWA") brand. That is, in order to
address every state's particular requirements, a separate HWA was created for that state.

15 (Ex. 41 at 15-16; Test. Mandalawi.)

16 52. Choice Home Warranty has a landing page, which is a webpage that consumers land on
17 when they click a particular email or internet link to Choice Home Warranty. The landing page is part
18 of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code.
19 Choice Home Warranty provides some general information and invites people to call them at (888)
20 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address,
21 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the
22 bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions,
23 other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)

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

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

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

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

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

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

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

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

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

9 II. CONCLUSIONS OF LAW

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

18 A. Jurisdiction

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

23 B. Statement of Law

24 In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless
25 the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter
26 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the
27 terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for
28 the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a
Nevada resident who may enforce the rights under a service contract. NRS 690C.060. An
administrator "means a person who is responsible for administering a service contract that is issued,
sold or offered for sale by a provider." NRS 690C.020.

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

4 NRS 690C.160.1(a), (c)-(d).

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

8 NRS 690C.160.3.

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

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

- 21 (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy
provisions relating to any coverage at issue.
- 22 (b) Failing to acknowledge and act reasonably promptly upon communications with
respect to claims arising under insurance policies.
- 23 (c) Failing to adopt and implement reasonable standards for the prompt investigation and
processing of claims arising under insurance policies.
- 24
- 25 (e) Failing to effectuate prompt, fair and equitable settlements of claims in which
liability of the insurer has become reasonably clear.
- 26
- 27 (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the
insurance policy, with respect to the facts of the insured's claim and the applicable
law, for the denial of the claim or for an offer to settle or compromise the claim.

28 NRS 686A.310.1.

1 Generally, no other provision of the Insurance Code applies except as otherwise provided in
2 NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include
3 trade practices, examinations, hearings, certain prohibitions, process, and advertising.
4 NRS 690C.120.1. Also, "[a] provider, person who sells service contracts, administrator or any other
5 person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter
6 680A of NRS to issue, sell, offer for sale or administer service contracts." NRS 690C.120.2.

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

9 "[U]nsuitable manner" means conducting [] business in a manner which:

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

14 NAC 679B.0385.

15 C. Respondent

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

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

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

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

1 HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for
2 such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns
3 the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and
4 administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group
5 employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in
6 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice
7 Home Warranty. The names are listed in his résumé as two separate companies. At the time the South
8 Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not
9 registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW
10 Group, Inc.

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

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

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

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

1 disagrees.

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

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

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

28 ///

1 **2. Applications Filed with the Division**

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

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

28 ///

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

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

7 In this case, the evidence shows that the Division received at least 63 individual consumer
8 complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the
9 complaints, five were presented at the hearing: three complaints from 2014 and two complaints from
10 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers
11 believed were covered, or that Choice Home Warranty did not pay the technician who provided
12 services on the appliance. When the Division got involved, HWAN agreed to cover or settle the
13 complaints. The Division's evidence says the claims were covered; Respondent's evidence says the
14 claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's
15 involvement does not mean that Respondent admitted that the claims were covered. As presented, the
16 Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling
17 claims.

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

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

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

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

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

6 **1. Complaints Against Respondent**

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

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

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

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

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

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

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

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

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

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

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

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

1 690C.120.2 says is that a certificate of authority is not required in the business of service contracts and,
2 so, anyone involved in service contracts is not required to obtain a certificate of authority. It most
3 certainly does not say that an administrator may issue, sell, or offer to sell service contracts without
4 proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter
5 690C a nullity.

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

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

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

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

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

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

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

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

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

9 **ORDER OF THE HEARING OFFICER**

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

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

22 ///

23 ///

24 ///

25 ///

26

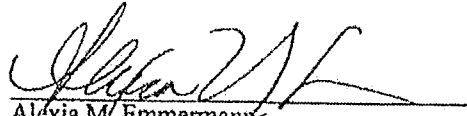
27 ³ This ruling does not prevent the Division from taking action for other violations in connection with
28 the service contracts issued, sold, or offered for sale, during this period if any are later discovered.

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

1 4. If Respondent wishes to continue engaging in the business of service contracts in Nevada,
2 Respondent may apply for a certificate of registration as provided in this Order.

3 5. All administrative fines imposed in this Order are due no later than 30 days from the date of this
4 Order.

5 So ORDERED this 18th day of December 2017.

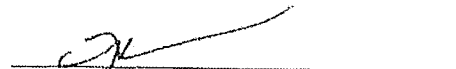
6
7 
8 Alexia M. Emmermann
9 Hearing Officer

10 **FINAL ORDER OF THE COMMISSIONER**

11 Based on the record in this administrative hearing and having reviewed the Hearing Officer's
12 Findings of Fact and Conclusion of Law in this matter, Cause No. ~~16-0126~~ ^{17.0050}, I concur with the Hearing
13 Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of
14 Law, and Order of the Hearing Officer as the Final Order in this matter.

15 IT IS SO ORDERED.

16 DATED this 18th day of December, 2017.

17
18 
19 BARBARA D. RICHARDSON
20 Commissioner of Insurance
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

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

7 Kirk B. Lenhard, Esq.
8 Brownstein Hyatt Farber Schreck, LLP
9 100 North City Parkway, Suite 1600
10 Las Vegas, NV 89106
11 E-MAIL: klenhard@bhfs.com
12 CERTIFIED MAIL NO. 7017 1070 0000 8962 9357

11 Travis F. Chance, Esq.
12 Brownstein Hyatt Farber Schreck, LLP
13 100 North City Parkway, Suite 1600
14 Las Vegas, NV 89106
15 E-MAIL: tchance@bhfs.com
16 CERTIFIED MAIL NO. 7017 1070 0000 8962 9364

14 Lori Grifa, Esq.
15 Archer & Greiner, P.C.
16 Court Plaza South, West Wing
17 21 Main Street, Suite 353
18 Hackensack, NJ 07601
19 E-MAIL: lgrifa@archerlaw.com
20 CERTIFIED MAIL NO. 7017 1070 0000 8962 9371

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

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

22 DATED this 18th day of December, 2017.

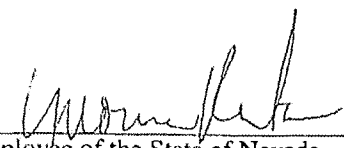
23 
24 Employee of the State of Nevada
25 Department of Business and Industry
26 Division of Insurance
27
28

EXHIBIT 2

**Proposed Order Granting Motion
for Stay Pending Appeal**

EXHIBIT 2

**Proposed Order Granting Motion
for Stay Pending Appeal**

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

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

10
11
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 OF
19 INSURANCE, a Nevada administrative
agency,

20 Respondent.
21

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

**[PROPOSED] ORDER GRANTING
MOTION FOR STAY PENDING APPEAL
PURSUANT TO NRCP 62(D)**

22 This matter comes before the Court on Petitioner HOME WARRANTY
23 ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY ("HWAN")'s
24 Motion for Stay Pending Appeal Pursuant to NRCP 62(d) ("Motion") of the Order Affirming in
25 Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer,
26 and Final Order of the Commissioner in Cause No. 17.0050 In The Matter of Home Warranty
27
28

1 Administrator of Nevada, Inc., dba Choice Home Warranty entered on November 25, 2019¹
2 (“Order”).

3 This Court having considered HWAN’s Motion and the papers and pleadings on file and
4 good cause appearing,

5 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. The Court hereby finds as
6 follows:

7 Petitioner interpleaded \$1,224,950 with the County Clerk’s Trust Fund pending final
8 decision of this Court on Petitioner’s Petition for Judicial Review pursuant to the Stipulation and
9 Order for Interpleading of Fines Pending Final Decision filed herein on March 15, 2018
10 (“Stipulation”). Pursuant to the Stipulation the parties agreed “to have the fines imposed by the
11 Decision interpleaded into this Court Clerk’s Trust Fund until a final decision is issued by this
12 Court on Petitioner’s Petition for Judicial Review.” The Order directed the Clerk of the Court to
13 “distribute the total fine of \$40,500 from Petitioner’s interpleaded funds to the Respondent, and
14 refund the remaining balance to Petitioner.” Respondent has already received the \$40,500 from
15 HWAN’s interpleaded funds from the Clerk of Court. As such, because the amount of the fines
16 affirmed by the Order have already been paid to Respondent in full, a full supersedeas bond is
17 unnecessary.

18 The five factors set forth in *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 for
19 waiving supersedeas bond and imposing alternate security are satisfied. There are no concerns
20 regarding the complexity of the collection process, the amount of time required to obtain a
21 judgment after it is affirmed on appeal, the availability of funds to pay the judgment, or HWAN’s
22 ability to pay the judgment because the full amount of \$40,500 has already been paid to
23 Respondent.² Additionally, the public and Respondent are adequately protected by HWAN’s
24 compliance with the financial security requirements in NRS 690C.170.

25
26
27 ¹ Notice of Entry was served on November 26, 2019 and filed on November 27, 2019.

28 ² Likewise, the fifth factor enumerated by the *Nelson* court is entirely inapplicable given the
payment of the \$40,500 to Respondent from HWAN’s interpleaded funds.

1 **THEREFORE, IT IS HEREBY FURTHER ORDERED** that the requirement for
2 supersedeas bond is waived, and HWAN is required to post alternate security instead.

THEREFORE, IT IS HEREBY FURTHER ORDERED that the requirement for supersedeas bond is waived, and HWAN is required to post alternate security instead.

IT IS HEREBY FURTHER ORDERED that HWAN shall post a nominal bond in the amount of _____.

IT IS HEREBY FURTHER ORDERED that pursuant to NRCP 62(D), the Order, including any and all declaratory judgments therein, is **STAYED** pending appeal with the stay being effective upon HWAN's posting of the bond pursuant to NRCP 62(d)(2).

IT IS SO ORDERED.

DATED this _____ day of _____, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:

Stephen Hayler

Constance L. Akridge
Sydney R. Gambee
Brittany L. Walker
Holland & Hart LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

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

13900922 v5 104645,0001

1 AARON FORD
Attorney General
2 JOANNA N. GRIGORIEV (Bar No. 5649)
Senior Deputy Attorney General
3 RICHARD P. YIEN (Bar No. 13035)
Deputy Attorney General
4 State of Nevada
100 N. Carson Street
5 Carson City, NV 89701
6 Tel. (775) 684-1129
7 Email: jgrigoriev@ag.nv.gov
Email: ryien@ag.nv.gov

8
9 *Attorneys for the Division of Insurance*

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

19
20 **Respondents.**

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

21 **OPPOSITION TO PETITIONER'S MOTION FOR ORDER SHORTENING**
22 **TIME FOR BRIEFING AND DECISION ON MOTION FOR STAY PENDING**
23 **APPEAL PURSUANT TO NRCP 62(d)**

24 Respondent, State of Nevada, Department of Business and Industry, Division of
Insurance ("Division"), through its counsel, Nevada Attorney General, AARON D. FORD,
25 and his Deputy Attorney General, RICHARD P. YIEN and Senior Deputy Attorney
26 General, JOANNA N. GRIGORIEV, hereby files this opposition ("Opposition") to Petitioner
27 Home Warranty Administrator of Nevada Inc.'s ("HWAN") Motion for Order Shortening
28

REC'D & FILED
2019 DEC -9 PM 3: 56
AUBREY ROWLATT
V. Alegria
BY _____ DEPUTY

1 Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(d),
2 filed with this Court on December 6, 2019.

3 Facts and Procedural History

4 On December 18, 2017, the Hearing Officer issued Findings of Fact and Conclusions
5 of Law in cause No. 17.0050, which the Commissioner of Insurance signed, finding that
6 HWAN has engaged in numerous violations under title 57 ("17.0050 Administrative
7 Order"). On December 22, 2017, HWAN filed a petition for judicial review ("PJR"). On
8 November 7, 2019, the hearing was held before this Court on said PJR. On November 25,
9 2019, this Court issued an Order Affirming in Part, and Modifying in Part, Findings of
10 Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the
11 Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of
12 Nevada, Inc. dba Choice Home Warranty ("District Court Order"). On November 27, 2019,
13 Division filed a Notice of Entry of Order. ¹ On December 6, 2019, Petitioner filed a Motion
14 for Stay, alongside its Motion for Order Shortening Time, to which the Division files this
15 opposition.

16 Argument

17 HWAN's motion for OST is yet another improper attempt by HWAN to limit the
18 Division's legally allotted timeframe to properly brief the Court on the pending pleading,
19 with no good cause stated. HWAN does not provide good cause to shorten the time afforded
20 to the Division to file its opposition and for the Court to consider HWAN's Motion for Stay.
21 The legal issues associated with HWAN's Motion for Stay require time to research and
22 respond, especially given the complexity of a HWAN's status, as it continues to allow an
23 unregistered entity to sell service contracts in Nevada.

24 Every appellant must adhere to the same rules and deadlines. NRCP 62(a)(1), which
25 automatically affords thirty (30) days "before an execution on a judgment may issue or
26

27 ¹ On November 15, 2019, HWAN filed a Motion for Leave of Court for Limited
28 Reconsideration of Court's findings on HWAN's Petition for Judicial Review. The Court
has not issued an yet.

1 proceedings may be taken to enforce it," applies uniformly to all parties subject to a
2 judgment. Similarly, NRAP 8(a)(1) requirements are not directed solely at HWAN. There
3 is nothing different about HWAN's circumstances from those of other parties wishing to
4 file an appeal, which would justify depriving the Division of its statutorily afforded time to
5 file an opposition.

6 HWAN's approaching expiration of the automatic stay on December 26, 2019, is
7 solely HWAN's responsibility. HWAN waited almost two weeks to file its Motion for Stay,
8 providing the Division with an email courtesy copy at 4:45pm on Friday, December 6, 2019,
9 and demanding that the Division file its opposition by Tuesday, December 11, 2019,
10 effectively giving the Division two business days to oppose HWAN's motion if the OST is
11 granted. This is fundamentally unfair. HWAN is again, self-creating an emergency, and
12 the Division should not be made a casualty thereof. The Division requests a full and fair
13 opportunity to brief the Court on this issue, without a shortened time restraint.

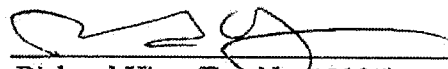
14 Conclusion

15 For the reasons set forth above, the Division respectfully request that the Court deny
16 HWAN's Motion for Order Shortening Time.

17 DATED: December 9, 2019.

18 AARON D FORD
19 Attorney General

20 By:



21 Richard Yien (Bar No. 13035)
22 Deputy Attorney General
23 Joanna Grigoriev (Bar No. 5649)
24 Senior Deputy Attorney General
25
26
27
28

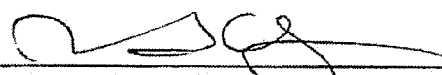
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: December 9, 2019.

AARON D FORD
Attorney General

By: 
Richard Paili Yien (Bar No. 13035)
Deputy Attorney General

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 9th day of December, 2019, I served a copy of the foregoing **OPPOSITION TO PETITIONER'S MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION ON MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(d)**, by mailing a true and correct copy to the following:

Constance Akridge, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532

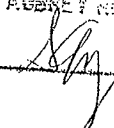

An employee of the *Susan Messina*
Office of the Nevada Attorney General

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIGORIEV
Senior Deputy Attorney General
3 Nevada Bar No. 5649
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAULI YIEN
Deputy Attorney General
6 Nevada Bar No. 13035
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 E-mail: ryien@ag.nv.gov
Attorneys for Respondent
9 *Nevada Division of Insurance*

REC'D & FILED

2019 DEC -9 AM 8:09

AUBREY ROWLATT
CLERK

BY  CLERK

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,

Case No.: 17 OC 00269 1B

Dept. No.: 1

15 vs.

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

19 Respondents.

20 ORDER DENYING PETITIONER'S MOTION FOR LEAVE OF COURT FOR
21 LIMITED RECONSIDERATION OF COURT'S FINDINGS ON HWAN'S
PETITION FOR JUDICIAL REVIEW

22 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
23 Choice Home Warranty's ("Petitioner") Motion for Leave of Court Pursuant to PJDCR 15(10)
24 and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN'S Petition for
25 Judicial Review ("Motion for Leave"), filed by the Petitioner on November 15, 2019.
26 Respondent filed an Opposition on November 27, 2019, and Petitioner filed its Reply in
27 Support and Request to Submit documents on December 4, 2019.

Upon review and consideration of the papers and pleadings on file, and for good cause appearing, Petitioner's Motion is hereby DENIED.

The Court hereby finds:

NRS 233B.135 (1) (b), provides that: “1. Judicial review of a final decision of an agency must be . . . (b) Confined to the record.” *Id.* Petitioner’s Motion for Leave relies on exhibits not found in the record, references documents, websites, and alleged facts not in the record.

The issue of who can lawfully sell service contracts in Nevada, pursuant to chapter 690C of the NRS, has been briefed and argued by Petitioner a multitude of times. After receiving extensive briefings on the issue, at the oral argument, the Court devoted considerable attention to this issue and afforded Petitioner an extensive opportunity to address it. The Court sees no further reason to reconsider issues already exhaustively litigated. NRS 233B.150 provides an adequate remedy for any party aggrieved by the decision of the district court.

Based upon the papers, pleading, and orders on file herein, the Court now finds and ORDERS:

Petitioner's Motion for Leave of Court Pursuant to PJD CR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN'S Petition for Judicial Review is hereby DENIED.


IT IS SO ORDERED

DATED this 9th day of December, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:

AARON D. FORD
Attorney General

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


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 9 day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Joanna N. Grigoriev, Esq.
Richard P. Yien, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

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


Chloe McClintick, Esq.
Law Clerk, Dept. 1

JAMES T. RUSSELL
DISTRICT JUDGE
FIRST JUDICIAL DISTRICT COURT
885 East Musser Street • Room 3061
Carson City, Nevada 89701

RETURN
SERVICES
REQUESTED

NEOPOST
12/09/2019
FIRST-CLASS MAIL
PRST
\$000.45
USPS
ZIP 89701
04111264981

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

RECEIVED
DEC 11 2019

Holland & Hard LLP

021 JGFSHP 55134

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

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

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 v.

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

18 Respondent.
19

REC'D & FILED

2019 DEC 10 PM 3:29

AUBREY ROWLAND
P. O'KEEFE

BY _____ DEPUTY

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

REQUEST FOR SUBMISSION

20 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
21 ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby requests that the
22 Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal
23 Pursuant to NRCP 62(d), filed in the above-entitled matter on December 6, 2019, be submitted to
24 the court for consideration. While 5 days' notice is required under FJDCR 9 for motions for

25 ///

26 ///

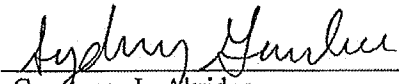
27 ///

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 orders shortening time, Respondent has already filed its Opposition on December 9, 2019, HWAN
2 files its Reply concurrently herewith, and briefing on this Motion is now complete.

3 DATED this 10th day of December, 2019.

4 HOLLAND & HART LLP

5
6 

7 Constance L. Akridge

8 Nevada Bar No. 3353

9 Sydney R. Gambee

10 Nevada Bar No. 14201

11 Brittany L. Walker

12 Nevada Bar No. 14641

13 9555 HILLWOOD DRIVE, 2ND FLOOR

14 LAS VEGAS, NV 89134

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

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2019, a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** was served by the following method(s):

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

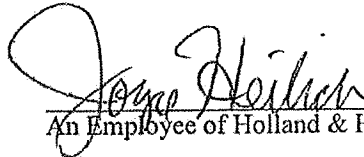
Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

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

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

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

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov


An Employee of Holland & Hart LLP

13938066_v1 104645.0001

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com

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

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

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

15 Petitioner,

16 v.

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

20 Respondent.

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

**REPLY IN SUPPORT OF MOTION FOR
ORDER SHORTENING TIME FOR
BRIEFING AND DECISION OF
MOTION FOR STAY PENDING APPEAL
PURSUANT TO NRCP 62(D)**

21 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
22 ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby
23 submits this Reply in support of its Motion for an Order Shortening Time for Briefing and
24 Decision ("Motion for OST") of HWAN's Motion for Stay pursuant NRCP 62(D) ("Motion for
25 Stay") of the Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of
26 Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050
27 in the Matter of Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty (the
28 "Order") entered on November 25, 2019.

REC'D & FILED
2019 DEC 10 PM 3:29
AUBREY ROWLATT
CLERK
BY P. O'KEEFE
DEPUTY

MEMORANDUM OF POINTS AND AUTHORITIES

Respondent casts the Motion for OST as “improper,” but cannot point to a single reason why a simple motion for order shortening time pursuant to Rule 9 of the First Judicial District Court Rules (FJDCR), is improper. Both Respondent’s “legally allotted timeframe” and the procedures for hearing motions for orders shortening time are governed by the FJDCR. An order shortening time is appropriate where good cause supports the request for shortened time. Here, good cause supports an order shortening the time for briefing on and decision of HWAN’s Motion for Stay because of the short timeframe within which any party may move for a stay while the automatic stay under NRCP 62(a)(1) is in place, which has been further shortened by the timing of the service of the Notice of Entry of the Order, circumstances which are not of HWAN’s making.

Most importantly, Respondent complains that the relief sought in the Motion for OST is “fundamentally unfair,” but says nothing about how Respondent refused entirely to even entertain entering into a stipulation with HWAN regarding a mutually agreeable briefing schedule. HWAN attempted to enter into a stipulation with Respondent for a shortened briefing schedule, which Respondent flatly denied. *See* Email dated December 9, 2019 (wherein Respondent refuses to agree to a briefing schedule, failing to even propose alternative briefing dates), attached hereto as **Exhibit 1**. If Respondent were actually concerned with the briefing schedule proposed in the Motion for OST, which is simply the shortest time possible accounting for the 5 days’ judicial notice required by FJDCR 9 and given the exigent circumstances, it had the opportunity to propose and agree to a mutually convenient briefing schedule.

Even so, Respondent greatly exaggerates its position in responding to the Motion for Stay on shortened time. First, the stay is one of right, so the legal issues are not complex, as Respondent represents in its Opposition. Second, while Respondent certainly is required to service its Notice of Entry of Order within 14 days after entry of the judgment, NRCP 58(e), Respondent created ambiguity regarding when the automatic stay expires with its own inaccurate certificate of service on its Notice of Entry of Order and then served that Notice of Entry of Order the day before Thanksgiving, cutting the time for HWAN to make its Motion for Stay even

1 shorter.¹ The Notice of Entry of the Order was apparently served on November 26, 2019
2 according to the certificate of service, which means the automatic stay is in effect until December
3 26, 2019. However, Respondent concedes that the Notice of Entry was filed on November 27,
4 2019, and an email from Respondent confirms the Notice of Entry was not actually served until
5 November 27, 2019. Email dated November 27, 2019, attached hereto as **Exhibit 2** (noting the
6 Notice of Entry of Order was “placed in today’s mail,” on November 27, 2019). However,
7 HWAN cannot take chances and in an abundance of caution, presumes the automatic stay would
8 expire 30 days from the certificate of service date of November 26, 2019.

9 Respondent complains that HWAN “waited almost two weeks to file its Motion for Stay,”
10 but this is absolutely false. First, as detailed above, HWAN did not receive the Notice of Entry
11 until November 27, 2019, the day before Thanksgiving. HWAN filed its Motion for Stay on
12 December 6, 2019, which is nine (9) calendar days after HWAN received the Notice of Entry, but
13 only five (5) business days accounting for the Thanksgiving holiday and weekend. HWAN filed
14 its Motion for Stay as soon as practicable after service of the Notice of Entry.

15 Second, as Respondent notes, the rules regarding stays apply “uniformly to all parties.”
16 HWAN did not create the exigency here. HWAN took steps to file its Motion for Stay as soon as
17 practicable, took all reasonable steps to come to an agreement with Respondent on a shortened
18 briefing schedule, and simply requests a briefing schedule that will allow the Motion for Stay to
19 be decided here and with enough time to make a motion in the Nevada Supreme Court before
20 expiration of the automatic stay on December 26, 2019, if necessary. HWAN cannot change the
21 fact that the timing of the Notice of Entry of Order results in the 30-day automatic stay timeframe
22 including two holidays.

23 ///

24 ///

25 ///

26 ///

27

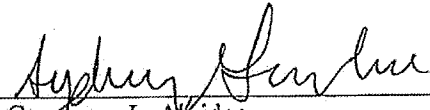
28 ¹ A briefing schedule in the ordinary course will also encompass the Christmas holiday.

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 As such, HWAN respectfully requests that the Court grant the Motion for OST.

2 DATED this 10th day of December, 2019.

3 HOLLAND & HART LLP

4 

5 Constance L. Akridge

6 Nevada Bar No. 3353

7 Sydney R. Gambee

8 Nevada Bar No. 14201

9 Brittany L. Walker

10 Nevada Bar No. 14641

11 9555 HILLWOOD DRIVE, 2ND FLOOR

12 LAS VEGAS, NV 89134

13 *Attorneys for Home Warranty*

14 *Administrator of Nevada, Inc.*

15 *dba Choice Home Warranty*

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2019, a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** was served by the following method(s):

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

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

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

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

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov


An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

INDEX OF EXHIBITS

EXHIBIT 1	Email dated December 9, 2019	Pages 1 - 3
EXHIBIT 2	Email dated November 27, 2019	Pages 4 - 5

13937202_v2 104645.0001

EXHIBIT 1

Email Dated December 9, 2019

EXHIBIT 1

Email Dated December 9, 2019

From: Richard P. Yien <RYien@ag.nv.gov>
Sent: Monday, December 9, 2019 3:32 PM
To: Connie Akridge; Joanna N. Grigoriev
Cc: Sydney R. Gambee
Subject: RE: HWAN Motion to Stay on an OST

Hi Connie,

Our client respectfully declines your offer. The Division will file an opposition to OST and provide courtesy copies to you shortly.

Thank you,
Richard

Richard Yien, Deputy Attorney General
State of Nevada
Office of the Attorney General
100 N. Carson St.
Carson City, Nevada 89701
RYien@ag.nv.gov
Phone: (775) 684-1129
Fax: (775) 684-1156



This e-mail contains the thoughts and opinions of Richard Yien and does not represent official Office of the Attorney General policy. This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at RYien@ag.nv.gov and delete the message and attachments from your computer and network. Thank you.

From: Connie Akridge <CLAkridge@hollandhart.com>
Sent: Monday, December 9, 2019 12:05 PM
To: Richard P. Yien <RYien@ag.nv.gov>; Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>
Cc: Sydney R. Gambee <SRGambee@hollandhart.com>
Subject: HWAN Motion to Stay on an OST

Hi Richard and Joanna,

As you likely saw, on Friday HWAN filed its notice of appeal and motion for stay pending appeal. As you know, per NRCP 62(a)(1), the district court's order is stayed for 30 days. We filed a motion for order shortening time to expedite the briefing schedule and decision on the motion for stay to fit within the 30 days and give some room for motion practice at the Nevada Supreme Court level, if necessary. To obviate the need for additional briefing and allow you more time to focus on the motion for stay, will you agree to the briefing schedule in the motion for OST so the motion for stay may be heard within the required timeframe? If so, we will prepare a stipulation setting the briefing schedule and withdrawing the motion for OST, and we will send along for your signature.

Thank you,

Connie

Constance L. Akridge

Partner

9555 Hillwood Drive Las Vegas, NV 89134

T 702.222.2543 M 702.785.3402

HOLLAND & HART 



CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail.

EXHIBIT 2

Email Dated November 27, 2019

EXHIBIT 2

Email Dated November 27, 2019

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

Good Morning,

Attached please find the following:

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

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

Thank you,

Susan Messina
Legal Secretary II
Business and Taxation
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
SMessina@ag.nv.gov
T: 775.684.1210



1 AARON D. FORD
Attorney General
2 JOANNA N. GRIFORIEV,
Nevada Bar No. 5649
3 Senior Deputy Attorney General
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAILI YIEN,
Nevada Bar No. 13035
6 Deputy Attorney General
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 Email: ryien@ag.nv.gov
Attorneys for Respondent
9 *Nevada Division of Insurance*

REC'D & FILED
2019 DEC 11 PM 12:59
AUBREY ROWLATT
CLERK
BY J. HARKLER

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

12 HOME WARRANTY ADMINISTRATOR OF
NEVADA, INC., DBA CHOICE HOME
13 WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

14 Petitioner,

15 vs.

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

18 Respondent.

19 NOTICE OF ENTRY OF ORDER

20 Please take notice that the ORDER DENYING PETITIONER'S MOTION FOR
21 LEAVE OF COURT FOR LIMITED RECONSIDERATION OF COURT'S FINDINGS ON
22 HWAN'S PETITION FOR JUDICIAL REVIEW was signed by Judge James T. Russell on
23 December 9, 2019, a conformed copy of which is attached hereto as Exhibit 1.

24 DATED December 11, 2019

25 AARON D. FORD
Attorney General

26 By: 

27 RICHARD PAILI YIEN
Deputy Attorney General
28 *Attorney for the Division of Insurance*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on December 11, 2019, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada a true and correct copy of the NOTICE OF ENTRY OF ORDER, addressed to the following:

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

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

DATED December 11, 2019


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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES (Excluding tabs)
1	Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN'S Petition for Judicial Review	3

EXHIBIT 1

ORDER DENYING PETITIONER'S
MOTION FOR LEAVE OF COURT FOR
LIMITED RECONSIDERATION OF
COURT'S FINDINGS ON HWAN'S
PETITION FOR JUDICIAL REVIEW

EXHIBIT 1

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIGORIEV
Senior Deputy Attorney General
3 Nevada Bar No.5649
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAILI YIEN
Deputy Attorney General
6 Nevada Bar No. 13035
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 E-mail: ryien@ag.nv.gov
Attorneys for Respondent
9 *Nevada Division of Insurance*

REC'D & FILED

2019 DEC -9 AM 8:09

AUDREY ROWLATT
CLERK

BY  CLERK

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,
Petitioner,

Case No.: 17 OC 00269 1B

Dept. No.: 1

14 vs.

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

18 Respondents.

20 ORDER DENYING PETITIONER'S MOTION FOR LEAVE OF COURT FOR
21 LIMITED RECONSIDERATION OF COURT'S FINDINGS ON HWAN'S
PETITION FOR JUDICIAL REVIEW

22 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
23 Choice Home Warranty's ("Petitioner") Motion for Leave of Court Pursuant to PJD CR 15(10)
24 and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN'S Petition for
25 Judicial Review ("Motion for Leave"), filed by the Petitioner on November 15, 2019.
26 Respondent filed an Opposition on November 27, 2019, and Petitioner filed its Reply in
27 Support and Request to Submit documents on December 4, 2019.

1 Upon review and consideration of the papers and pleadings on file, and for good
2 cause appearing, Petitioner's Motion is hereby DENIED.

3 The Court hereby finds:

4 NRS 233B.135 (1) (b), provides that: "1. Judicial review of a final decision of an agency
5 must be . . . (b) Confined to the record." *Id.* Petitioner's Motion for Leave relies on
6 exhibits not found in the record, references documents, websites, and alleged facts not in
7 the record.

8 The issue of who can lawfully sell service contracts in Nevada, pursuant to chapter 690C
9 of the NRS, has been briefed and argued by Petitioner a multitude of times. After
10 receiving extensive briefings on the issue, at the oral argument, the Court devoted
11 considerable attention to this issue and afforded Petitioner an extensive opportunity to
12 address it. The Court sees no further reason to reconsider issues already exhaustively
13 litigated. NRS 233B.150 provides an adequate remedy for any party aggrieved by the
14 decision of the district court.

15 Based upon the papers, pleading, and orders on file herein, the Court now finds and
16 ORDERS:

17 Petitioner's Motion for Leave of Court Pursuant to PJDCR 15(10) and DCR 13(7) for
18 Limited Reconsideration of Findings Pertaining to HWAN'S Petition for Judicial Review
19 is hereby DENIED.

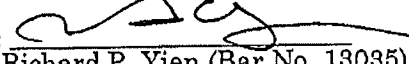
20 IT IS SO ORDERED

21 DATED this 9th day of December 2019.

22
23 
DISTRICT COURT JUDGE

24 Respectfully submitted by:

25 AARON D. FORD
26 Attorney General

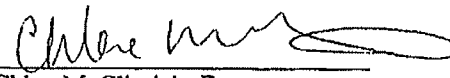
27 By: 
28 Richard P. Yien (Bar No. 13035)
Deputy Attorney General
Joanna N. Grigoriev (Bar No. 5649)
Senior Deputy Attorney General

CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 9 day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Joanna N. Grigoriev, Esq.
Richard P. Yien, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

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


Chloe McClintick, Esq.
Law Clerk, Dept. 1

1 AARON FORD
Attorney General
2 JOANNA N. GRIGORIEV (Bar No. 5649)
Senior Deputy Attorney General
3 RICHARD P. YIEN (Bar No. 13035)
Deputy Attorney General
4 State of Nevada
100 N. Carson Street
5 Carson City, NV 89701
Tel. (775) 684-1129
6 Email: jgrigoriev@ag.nv.gov
7 Email: ryien@ag.nv.gov
8

9 *Attorneys for the Division of Insurance*

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

19 **Respondents.**
20

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

21 **ORDER DENYING PETITIONER'S MOTION FOR ORDER SHORTENING**
22 **TIME FOR BRIEFING AND DECISION ON MOTION FOR STAY PENDING**
23 **APPEAL PURSUANT TO NRCP 62(d)**

24 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
Choice Home Warranty's ("HWAN") Motion for Order Shortening Time for Briefing and
25 Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(d) ("Motion for OST"), filed
26 with this Court on December 6, 2019. Respondent, State of Nevada Division of Insurance
27 (hereinafter jointly "Division") filed an Opposition on December 9, 2019. Upon review and
28 consideration of the papers and pleadings on file, and for good cause appearing, Petitioner's

REC'D & FILED

2019 DEC 12 AM 10:45

AUBREY ROWLATT
P. O'KEEFE
CLERK

BY _____ DEPUTY

1 Motion for OST is HEREBY DENIED.

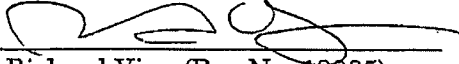
2 IT IS SO ORDERED

3 DATED this 11th day of December, 2019.

4 
5 DISTRICT COURT JUDGE

6
7 Respectfully submitted by:

8 AARON D FORD
9 Attorney General

10 By: 
11 Richard Yien (Bar No. 13035)
12 Deputy Attorney General
13 Joanna Grigoriev (Bar No. 5649)
14 Senior Deputy Attorney General
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIFORIEV,
Nevada Bar No. 5649
3 Senior Deputy Attorney General
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAILI YIEN,
Nevada Bar No. 13035
6 Deputy Attorney General
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 Email: ryien@ag.nv.gov
Attorneys for Respondent
9 Nevada Division of Insurance

REC'D & FILED
2019 DEC 18 AM 11:03
AUSREY ROWLATT
CLERK
BY C. COOPER
DEPUTY

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

12 HOME WARRANTY ADMINISTRATOR OF
NEVADA, INC., DBA CHOICE HOME
13 WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

14 Petitioner,

15 vs.

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

18 Respondent.

19 NOTICE OF ENTRY OF ORDER

20 Please take notice that the ORDER DENYING PETITIONER'S MOTION FOR
21 ORDER SHORTENING TIME FOR BRIEFING AND DECISION ON MOTION FOR
22 STAY PENDING APPEAL PURSUANT TO NRCP 62 (d) was signed by Judge James T.
23 Russell on December 11, 2019, a conformed copy of which is attached hereto as Exhibit 1.

24 DATED December 18, 2019

25 AARON D. FORD
Attorney General

26 By: R. Paili Yien Bar No. 12237
27 RICHARD PAILI YIEN
28 Deputy Attorney General
Attorney for the Division of Insurance

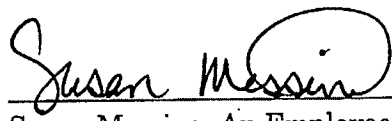
CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on December 18, 2019, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada a true and correct copy of the NOTICE OF ENTRY OF ORDER, addressed to the following:

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

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

DATED December 18, 2019


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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES (Excluding tabs)
1	Order Denying Petitioner's Motion For Order Shortening Time For Briefing And Decision On Motion For Stay Pending Appeal Pursuant To NRCP 62 (D)	3

EXHIBIT 1

ORDER DENYING PETITIONER'S
MOTION FOR ORDER SHORTENING
TIME FOR BRIEFING AND
DECISION ON MOTION FOR STAY
PENDING APPEAL PURSUANT TO
NRCP 62 (d)

EXHIBIT 1

1 AARON FORD
Attorney General
2 JOANNA N. GRIGORIEV (Bar No. 5649)
Senior Deputy Attorney General
3 RICHARD P. YIEN (Bar No. 13035)
Deputy Attorney General
4 State of Nevada
5 100 N. Carson Street
6 Carson City, NV 89701
7 Tel. (775) 684-1129
Email: jgrigoriev@ag.nv.gov
8 Email: ryien@ag.nv.gov

9 *Attorneys for the Division of Insurance*

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

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

14
15 Petitioner,

16 vs.

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

19
20 Respondents.

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

21 **ORDER DENYING PETITIONER'S MOTION FOR ORDER SHORTENING**
22 **TIME FOR BRIEFING AND DECISION ON MOTION FOR STAY PENDING**
23 **APPEAL PURSUANT TO NRCP 62(d)**

24 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
Choice Home Warranty's ("HWAN") Motion for Order Shortening Time for Briefing and
25 Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(d) ("Motion for OST"), filed
26 with this Court on December 6, 2019. Respondent, State of Nevada Division of Insurance
27 (hereinafter jointly "Division") filed an Opposition on December 9, 2019. Upon review and
28 consideration of the papers and pleadings on file, and for good cause appearing, Petitioner's

REC'D & FILED
2019 DEC 12 AM 10:45
AUBREY ROWLATT
P. O'KEEFE
BY _____ DEPUTY

1 Motion for OST is HEREBY DENIED.

2 IT IS SO ORDERED

3 DATED this 11th day of December, 2019.

4

5

6

James T. Russell
DISTRICT COURT JUDGE

7

Respectfully submitted by:

8

AARON D FORD

9

Attorney General

10

By: 

11

Richard Yien (Bar No. 13035)

12

Deputy Attorney General

13

Joanna Grigoriev (Bar No. 5649)

14

Senior Deputy Attorney General

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIGORIEV
Senior Deputy Attorney General
3 Nevada Bar No. 5649
RICHARD PAULI YIEN
4 Deputy Attorney General
Nevada Bar No. 13035
5 Office of the Attorney General
100 N. Carson Street
6 Carson City, NV 89701
E-mail: ryien@ag.nv.gov
7 *Attorneys for Respondent*
Nevada Division of Insurance

REC'D & FILED

2019 DEC 19 PM 4:26

AUBREY ROWLAND
CLERK

BY C. COOPER
DEPUTY

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

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

13
14 Petitioner,

15 vs.

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

19 Respondents.
20

CASE No.: 17 OC 00269 1B

DEPT No.: 1

21 **DIVISION'S OPPOSITION TO PETITIONER'S MOTION FOR STAY**

22 Respondent, State of Nevada, Department of Business and Industry, Division of
23 Insurance ("Division"), through its counsel, Nevada Attorney General, AARON D. FORD,
24 and his Deputy Attorney General, RICHARD P. YIEN and Senior Deputy Attorney
25 General, JOANNA N. GRIGORIEV, hereby files this opposition ("Opposition") to Petitioner
26 Home Warranty Administrator of Nevada Inc.'s ("HWAN") Motion for Stay Pending Appeal
27 Pursuant to NRCP 62(d) ("Motion for Stay"), filed with this Court on December 6, 2019.
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- .1
- .2
- .3
- .4
- .5
- .6
- .7
- .8
- .9
- 0
- .1
- .2
- .3
- .4
- .5
- .6
- .7
- .8
- .9
- 0
- .1
- .2
- .3
- .4
- .5
- .6
- .7
- .8
- .9

HWAN's Motion for Stay seeks to stay this Court's order ("PJR Order") issued on November 25, 2019¹, affirming in part, and modifying in part the Findings of Fact, Conclusions of Law, and Final Order of the Commissioner ("Administrative Order") in Cause No. 17.0050, issued on December 18, 2017, which found HWAN in violation of numerous provisions of the Insurance Code. On December 13, 2019, Petitioner filed Notice of Appeal of the PJR Order with the Nevada Supreme Court².

On December 6, 2019, HWAN filed its Motion for Stay, demanding that it would be addressed on Order Shortening Time (“OST”). HWAN insisted in its Motion for OST, that “stay is one of right, so the legal issues are not complex” (HWAN’s Reply in Supp. Mot. for OST, 2:23-24).³ This case illustrates why such a demand for a shortened time for the Division to file its opposition and for the Court to consider HWAN’s motion, was fundamentally unfair. Upon a closer look, it turns out, that the law does not support HWAN’s arguments, and the cases relied upon by HWAN hold the opposite of what it asserts that they stand for. HWAN fails to present any valid legal basis for granting a stay.

A. PETITIONER'S MOTION FAILS TO IDENTIFY ANY VALID BASIS FOR GRANTING A STAY

a. No Stay is Warranted Under NRCP 62(d)

HWAN's Motion for Stay, relying solely on NRCP 62(d), seeks to stay "the remaining declaratory relief in district court's order . . ." ⁴ (HWAN's Mot. 6:26-27) HWAN claims that

¹ Notice of Entry of Order was served on HWAN on November 27, 2019.

² The notice was filed on December 6, 2019 with the First Judicial District Court.

³ The Court denied HWAN's Motion for OST December 12, 2019.

⁴ The \$40,500 (total fine) has been released from the interpleaded funds.

1 NRCP 62(d) provides legal basis for a stay “as a matter of right” and of the entire Order.
2 (See HWAN’s Mot. 4:21-22). HWAN’s arguments have no merit.

3 NRCP 62(d) provides:

- 4 . . .
- 5 (1) If an appeal is taken, the appellant may obtain a stay by supersedeas
6 bond, except in an action described in Rule 62(a)(2). The bond may be given
7 upon or after filing the notice of appeal or after obtaining the order allowing
8 the appeal. The stay is effective when the supersedeas bond is filed.
9 (2) If an appeal is taken, a party is entitled to a stay by providing a bond
or other security. Unless the court orders otherwise, the stay takes effect
when the court approves the bond or other security and remains in effect
for the time specified in the bond or other security.

10 The Nevada Supreme Court and the Ninth Circuit, among others, have applied Rule
11 62(d) to orders and judgments that are monetary in nature. When an appeal is taken from
12 an order or judgment that is not monetary in nature, the stay relief of Rule 62(d) is
13 unavailable. In *N.L.R.B. v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988), the Ninth Circuit
14 Court of Appeals held that an employer appealing an order directing compliance with
15 NLRB subpoenas was not entitled to a stay of the order upon filing a supersedeas bond, as
16 “[t]he posting of a bond protects the prevailing plaintiff from the risk of a later uncollectible
17 judgment and compensates him for delay in the entry of the final judgment. When applied
18 to a subpoena compliance order, this protection is largely meaningless.” *Id.*⁵ See also
19 *Donovan v. Fall River Foundry Co.*, 696 F.2d 524, 526 (7th Cir. 1982) (stating that Rule
20 62(d) procedure “*makes little sense as applied to an order to do, rather than order*
21 *to pay*” (emphasis added)). The Ninth Circuit court in *Westphal* found the Seventh Circuit’s
22 reasoning in *Donovan* to be most persuasive. *Westphal*, 859 F.2d at 819. The Fifth Circuit
23 court in *Hebert v. Exxon, Corp.*, 953 F.2d 936, 938 (5th Cir.1992), in turn, relied on
24 *Westphal*, explaining that “[c]ourts have restricted the application of Rule 62(d)’s stay to
25 *judgments for money* because a bond may not adequately compensate a non-appealing
26

27 ⁵ “[F]ederal decisions involving the Federal Rules of Civil Procedure provide
28 persuasive authority when this court examines its rules.” *Nelson v. Heer*, 121 Nev. 832,
834, 122 P.3d 1252, 1253 (2005) (citations omitted).

1 party for loss incurred as a result of the stay of a non money judgment.” *Id.* (emphasis
2 added). It concluded that in determining whether Rule 62(d) applies, the court should
3 examine the nature of the relief ordered, not simply the form of judgment. “The
4 applicability of Rule 62(d) turns not on that distinction [between declaratory and money
5 judgment], but on whether the judgment involved is *monetary or nonmonetary*.” *Hebert*,
6 953 F.2d at 938 (emphasis added).⁶

7 Nevada has applied NRCP 62(d) to stays of money judgments.⁷ See *Clark County*
8 *Office of Coroner/ Medical Examiner v. Las Vegas Review Journal*, 134 Nev. Adv. Op. 24,
9 415 P.3d 16 (2018) (“[u]pon motion, as a secured party, the state or local government is
10 generally entitled to a stay of a *money judgment* under NRCP 62(d) without posting a
11 supersedeas bond or other security.” *Id.* (emphasis added). See also *Nelson v. Heer*, 121
12 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) which held that the court has discretion to stay
13 execution of a *money judgment* even in the absence of a bond. (“The purpose of security
14 for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment
15 if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising
16 from the stay”). No stay of the PJR Order is warranted under NRCP 62(d) to the remaining
17 declaratory relief in the PJR Order in the present case. HWAN has utterly failed to provide
18 any other arguments as to why it may be entitled to a stay and its Motion for Stay should
19 be denied.

20
21
22
23 ⁶ HWAN's reference to *Hebert* as an example of a federal case holding that supersede
24 as bonds are “also employed to stay non-monetary judgments” is at best misleading. (See
HWAN's Mot. 6:14-16; 19-22).

25 ⁷ HWAN's reliance on *State ex rel. Public Serv. Comm'n v. First Judicial Dist. Court,*
26 *in and for Carson City*, 94 Nev. 42, 574 P.2d 272 (1978), *abrogated by Nelson*, to suggest
27 that NRCP 62(d) may be applied “where the district court's order concerned only
28 declaratory relief . . . ” (HWAN's Mot. 6:9-14) is misguided, as the appeal by the Public
Service Commission of Nevada was from the district court's order directing it to grant the
application *for surcharge in the amount of \$109,188.00*, thus a monetary relief.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8

9
10
11
12
13
14

15

16
17
18
19
20
21
22
23
24

26
27
28

1 an adequate and speedy remedy. *See Renown Reg'l. Med. V. Second Jud. Dist. Ct.*, 130 Nev.
2 824, 828, 335 P.3d 199, 202 (2014).

3 **2. HWAN Will Not Suffer Irreparable or Serious Injury if the Stay is**
4 **Denied.**

5 The PJR Order did not preclude HWAN from operating as a provider in Nevada. To
6 the contrary, it held that HWAN's COR "be reinstated," upon HWAN's compliance with
7 chapter 690C requirements. "Irreparable harm" is harm for which compensatory damages
8 would be inadequate. *See Hansen*, 116 Nev. 650, 658, 6 P.3d 982, 987. In *Wisconsin Gas*
9 *Co. v. F.E.R.C.*, 758 F.2d 669, 674, (D.C.Cir.1985), one of the cases *Hansen* relies on, the
10 court explained that,

11 The key word in this consideration is *irreparable*. Mere injuries, however
12 substantial, in terms of money, time and energy necessarily expended in
13 the absence of a stay are not enough. The possibility that *adequate*
14 *compensatory or other corrective relief will be available at a later*
date, in the ordinary course of litigation weighs heavily against a claim of
irreparable harm.

15 *Id.* (emphasis added), quoting *Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 104
16 U.S. App. D.C. 106, 259 F.2d 921, 925 (D.C.Cir.1958). In the present case, HWAN's
17 potential inconvenience of having to forego the use of the unlicensed entity pending appeal
18 certainly does not constitute irreparable harm that would satisfy this requirement under
19 NRAP 8(c).

20 **3. The Division Will Suffer Irreparable or Serious Injury if the Stay or**
21 **Injunction is Granted**

22 As the Court is aware through the PJR record, HWAN's administrator, CHW, has
23 been the subject of regulatory actions against in California, Washington, Oklahoma, and
24 New Jersey. On October 1, 2019 the Office of the Attorney General in Arizona filed a
25 consumer fraud lawsuit against CHW. Additionally, since the administrative hearing⁹ in
26 Nevada in 2017, fifty six (56) additional consumer complaints have been filed with the
27 Nevada Division of Insurance against HWAN.

28 ⁹ March 8, 2017--December 12, 2019 timeframe.

1 In view of the finding in the Administrative Order that "since receiving its COR,
2 HWAN has been merely a figurehead . . ." (Administrative Order 25:15-17), with CHW, the
3 unlicensed and unregulated entity performing all functions for which the Nevada
4 legislature requires regulatory oversight and a valid COR, the one-person show that makes
5 up HWAN, presents an inherent danger of harm to the public. Notably, in Nevada,
6 irreparable injury is presumed in statutory enforcement actions. *See State of Nevada ex.*
7 *Rel. Office of the Attorney General, Bureau of Consumer Protection v. NOS*
8 *Communications, Inc.*, 120 Nev. 65, 68, 84 P.3d 1052, 1054 (2004).

9 **4. HWAN is Highly Unlikely to Prevail on the Merits in the Appeal**

10 NRS 690C.150 mandates that a COR is required to "issue, sell, or offer for sale service
11 contract." NRS 690C.020 and 690C.150, read in harmony, establish that the function of an
12 administrator, is to administer contracts that are sold by a licensed provider. HWAN's
13 interpretation would lead to absurd results of allowing entities to perform the functions for
14 which registration and thus regulatory oversight is required by law, and avoiding
15 registration and regulation by simply affixing a label of an "administrator," "sales agent,"
16 or anything other than "provider." It would render NRS 690C.150 nugatory, and the tenets of
17 statutory construction do not permit that. *Charlie Brown Constr. Co. v. Boulder City*, 106
18 Nev. 497, 502, 797 P.2d 946, 949 (1990) (overruled on other grounds).

19 The Nevada Supreme Court has recognized the authority and specialized skill and
20 knowledge of regulatory agencies and, the agencies' authority to interpret the language of a
21 statute that they are charged with administering. *See Int 1 Technology Inc. v. Second*
22 *Judicial District Court*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006) ("as long as th[e]
23 interpretation is reasonably consistent with the language of the statute, it is entitled to
24 deference in the courts."). *See also Pyramid Lake Lake Paiute Tribe of Indians v. Washoe*
25 *County*, 112 Nev. 743, 747, 918 P2d 697, 700 (1996), 112 Nev. 743 747, 918 P2d 697, 700
26 (citations omitted), *Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy*, 124 Nev.
27 701, 709, 191 P3d 1159, 1165 (2008) (citations omitted). HWAN is highly unlikely to convince
28

1 the Nevada Supreme Court that its tortured and self-serving interpretation of chapter 690C of
2 the NRS is correct.

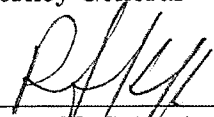
3 HWAN's Motion for Stay is completely devoid of any valid substantive basis that would
4 support granting a stay. When considering the factors under NRAP 8(c), which HWAN failed
5 to do, all weigh clearly against a stay and in favor of the Division.

6 CONCLUSION

7 For the reasons set forth above, the Division respectfully requests that HWAN's
8 Motion for Stay be denied.

9 DATED: December 19, 2019.

10 AARON D. FORD
11 Attorney General

12 By:  Bar No. 12237
13 for Joanna N. Grigoriev (Bar. No. 5649)
14 Senior Deputy Attorney General
15 Richard P. Yien (Bar No. 13035)
16 Deputy Attorney General
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED: December 19, 2019.

AARON D. FORD
Attorney General

By: RF/YK Bar No. 12237
for Joanna N. Grigoriev (Bar. No. 5649)
Senior Deputy Attorney General
Richard P. Yien (Bar No. 13035)
Deputy Attorney General

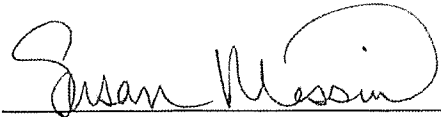
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 19th day of December, 2019 I served the foregoing **DIVISION'S OPPOSITION TO PETITIONER'S MOTION FOR STAY** by depositing for mail in the United States Mail, first-class postage prepaid, at Carson City, Nevada, addressed to the Following:

Constance Akridge, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532

Sydney R. Gambee
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532


An employee of the
Office of the Nevada Attorney General

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com
8

9 *Attorneys for Home Warranty*
10 *Administrator of Nevada, Inc.*
11 *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 OF
19 INSURANCE, a Nevada administrative
agency,

20 Respondent.

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

**REPLY IN SUPPORT OF MOTION FOR
STAY PENDING APPEAL PURSUANT
TO NRCP 62(D)**

21 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
22 ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby
23 submits this Reply in support of its Motion for Stay Pending Appeal Pursuant to NRCP 62(d).
24 Attached hereto as **Exhibit 1** is the Order Granting Temporary Stay entered by the Nevada
25 Supreme Court on December 23, 2019.

26 ///

REC'D & FILED

2019 DEC 26 PM 4:04

AUDREY ROWLATT
CLERK

BY P. O'KEEFE
DEPUTY

MEMORANDUM OF POINTS AND AUTHORITIES

I. NRCP 62(d) Allows Stays of Non-Monetary Orders

The Division claims that the “Nevada Supreme Court and the Ninth Circuit, among others, have applied Rule 62(d) to orders and judgments that are monetary in nature” and that where the order “is not monetary in nature, the stay relief of Rule 62(d) is unavailable.” Opp’n at 3. This is simply incorrect, and the Division ignores applicable Nevada authority in reaching this conclusion.

In *Clark County Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, the Court acknowledged that *State ex rel. Pub. Serv. Comm’n v. First Judicial Dist. Court, in & for Carson City*, 94 Nev. 42, 574 P.2d 272 (1978), involved an appeal from a non-monetary judgment. 134 Nev. 174, 176, 415 P.3d 16, 18 (2018) (“Notably, *Nelson v. Heer* involved an appeal from a money judgement, to which the automatic stay provisions of NRCP 62 apply, while *Public Service Commission* did not. Thus, neither case directly addresses the question here, whether the Coroner’s Office is entitled to a stay from a money judgment for attorney fees and costs without bond under both NRCP 62(d) and NRCP 62(e) together.”) Indeed, while the Court did not ultimately grant a stay under NRCP 62(d) in *Public Service Commission*, because the agency did not file a separate motion for stay, the implication is that non-monetary judgments and monetary judgments alike may be entitled to a stay under NRCP 62(d).

To bolster its argument that only monetary judgments are entitled to stays, the Division mischaracterizes *Public Service Commission* as a case involving monetary relief, stating that “the appeal by the Public Service Commission of Nevada was from the district court’s order directing it to grant the application *for surcharge in the amount of \$109,188.00*, thus a monetary relief.” Opp’n at 4:25-28 n. 7. But the fact that the *application* that the Commission was directed to approve indirectly involved money does not make the order of the Court a monetary one. The Court did not order any of the parties to pay to the other money. Rather, the Court ordered the Commission to grant Southwest’s Gas Corporation’s application. The application just happened to concern a surcharge increase (on Southwest Gas Corporation’s

own customers). The underlying order was one for declaratory relief, as the Nevada Supreme Court acknowledged in *Clark County Office of Coroner*; the Commission was not directed to pay money, but to approve an application.

Nor does the federal caselaw cited by the Division help its argument, given one crucial difference between NRCP 62(d) and FRCP 62(b). While FRCP 62(b) has only one provision applicable to stays, that requiring “bond or other security,” NRCP 62(d) allows a party to obtain a stay by either (1) a supersedeas bond or (2) providing bond or other security. These provisions must not be read to the exclusion of the other: the rules provide for a stay in the event of a full supersedeas bond or by providing bond or other security. Further, the term “judgment” as used in NRCP 62 includes not only monetary judgments, but “any order from which an appeal lies.” NRCP 54(a). Read in conjunction with *Clark County Coroner* (noting the non-monetary nature of the judgment in *Public Service Commission*), it is clear that Nevada allows stays of both monetary and non-monetary judgments.

Moreover, federal law is not clear on this issue, as the First Circuit acknowledges that “a supersedeas bond is not confined to money judgments from which a writ of execution can issue but is also employed to stay a nonmoney judgment on appeal.” *See J. Perez & Cia., Inc. v. United States*, 578 F. Supp. 1318 (D.P.R.), *aff’d*, 747 F.2d 813 (1st Cir. 1984).¹ The Ninth and Seventh Circuit cases upon which the Division relies do not deal with final judgments as would be included within the meaning of “judgment” under NRCP 54(a) (orders from which an appeal lies). Rather, *N.L.R.B. v. Westphal* dealt with a motion for stay of an order enforcing subpoenas, while *Donovan v. Fall River Foundry Co., Inc.* dealt with a motion for stay of an order requiring a company to permit an inspection under an OSHA warrant. *N.L.R.B. v. Westphal*, 859 F.2d 818 (9th Cir. 1988); *Donovan v. Fall River Foundry Co., Inc.*, 696 F.2d 524,525 (7th Cir. 1982). Neither of these cases are persuasive here because neither of the orders from which stays were sought would even qualify as a “judgment” under NRCP 62(d), in that neither of those orders would be appealable

¹ Nor did HWAN mislead the Court in referencing *Herbert*; HWAN provided full disclosure that the Court in *Herbert* held under FRCP 62(d) “[d]efendant was entitled to automatic stay upon posting of supersedeas bond, even though underlying action was for declaratory judgment, *where such judgment bound defendant to pay specific sum of money.*” *See* Motion at 6 (emphasis added) (citing *Hebert v. Exxon Corp.*, 953 F.2d 936 (5th Cir. 1992) with full parenthetical).

1 under NRAP 3A. *See* NRAP 3A(b). Nor are the reasons cited in denying those stays particularly
2 helpful here where the order to be stayed is a final appealable order.

3 Here, the stay is requested for an appealable final order, which may be a monetary or non-
4 monetary judgment. *See* NRCP 62(d); NRCP 54(a). While a supersedeas bond for the full
5 amount of the money judgment imposed by the Order is no longer available (due to the Division
6 already receiving the full amount of that monetary judgment), a bond or other security may be
7 posted to secure a stay regardless of whether the underlying order is monetary or non-monetary.
8 *See* NRCP 62(d)(2); *see also Clark County Office of Coroner/Med. Exam'r*, 134 Nev. at 176,
9 415 P.3d at 18.

10 In addition, it must be noted that the Division agrees that money judgments are
11 automatically stayed upon the posting of a supersedeas bond. Opp'n at 2-3. It cannot be disputed
12 that the Order is a money judgment assessing fines against HWAN. Had the Court not distributed
13 to the Division the portion of the interpleaded funds representing the fines the Court upheld
14 against HWAN, HWAN would have obtained a stay of the entire Order as a matter of right upon
15 posting a supersedeas bond in the amount of those fines (\$40,500). "The purpose of security for
16 a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is
17 affirmed by preserving the status quo and preventing prejudice to the creditor arising from the
18 stay." *Nelson*, 121 Nev. at 832. It is undeniable that the purpose of security for a stay as described
19 in *Nelson* is fulfilled here. Indeed, the Division is in possession of the fines. HWAN's right to
20 obtain a stay should not be prejudiced because the Court disbursed part of the interpleaded funds
21 to the Division to fulfill the monetary portion of the Order.

22 **II. NRAP 8 Does Not Apply to This Motion, and Even If It Did, HWAN Is Entitled to a**
23 **Stay**

24 The Division cites *Fritz Hansen A/S v. Eighth Jud. Dist. Ct.* for the proposition that
25 "the standard in NRAP 8(c) has been used by the district courts generally to determine
26 whether to issue a stay pending appeal." Opp'n at 5. But *Fritz Hansen* does not support the
27 Division's claim. The Nevada Supreme Court in *Fritz Hansen* applied the NRAP 8(c) factors,
28 not the district court. 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (noting "this court," meaning

1 the Nevada Supreme Court, considers the NRAP 8(c) factors). This is because NRAP 8(c) is
2 not the standard applicable to the district court when considering a motion for stay. NRAP
3 8(c) applies to a motion pending before the Nevada Supreme Court, and NRCP 62 governs
4 the motion before this Court. NRAP 1(a) (NRAP “govern[s] procedure in the Supreme court
5 of Nevada and the Nevada Court of Appeals,” not the procedure in district courts of this state);
6 NRCP 1 (“[t]hese rules govern the procedure in all civil actions and proceedings in the district
7 courts”); *see also Clark County Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*,
8 134 Nev. 174, 178, 415 P.3d 16, 20 (2018) (wherein Justice Cherry distinguishes between the
9 district court’s discretion under NRCP 62 and “the authority now applicable, NRAP 8,”²
10 before the Nevada Supreme Court).

11 Because the NRAP 8(c) factors do not apply here and only apply before the Nevada
12 Supreme Court, they are not properly analyzed in connection with this Motion.

13 However, even if the Court were to analyze the NRAP 8(c) factors, HWAN would still be
14 entitled to a stay. NRAP 8(c) lists the following factors to be considered in determining whether
15 to issue a stay:

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

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

23 **A. HWAN Is Likely to Succeed on Appeal.**

24 First, HWAN is likely to succeed on appeal. The Division completely ignores the blatant
25 deprivation of HWAN’s due process rights that conclusively establishes HWAN’s likelihood of
26 success on this appeal. The Division’s Complaint and Amended Complaint did not refer to
27 HWAN’s use of CHWG as its sales agent at all. *See generally* Complaint and Application for
28

² Indeed, the NRAP 8 factors can only logically be applied by the Nevada Supreme Court. If
factors including likelihood of prevailing on the merits of the appeal were considered by the
district court, the district court would be analyzing whether its own order is improper and thus
likely to be overturned on appeal. This is nonsensical. If the district court believed its own order
to be improper, it would not have issued it in the first place.

1 Order to Show Cause, Record, Tab 1; Amended Complaint and Application for Order to Show
2 Cause, Record, Tab 30. Without notice of these allegations prior to the hearing, HWAN was
3 denied the opportunity to present evidence that licensed providers routinely use unlicensed third-
4 party sales agents to sell service contracts in Nevada with the full sanction of the Division. That
5 evidence is abundant, and had HWAN had the required prior notice of this allegation it would
6 have presented this evidence at the hearing and undoubtedly prevailed. This lack of notice
7 deprived HWAN of its constitutional right to understand the issues upon which the hearing would
8 be decided and the opportunity to offer evidence to rebut the Division's allegations. *Dutchess*
9 *Bus. Servs., Inc. v. Nev. State Bd. Of Pharmacy*, 124 Nev. 701, 711, 191 P.3d 1159, 1166 (2008).

10 In addition, NRS Chapter 690C does not mandate that only providers may sell service
11 contracts on their own behalf; the Chapter even contemplates that there may be "persons who
12 sell" whole and apart from registered providers. *See* NRS 690C.120(2).³ And NRS Chapter 690C
13 only requires providers to be registered. NRS 690C.150 states that "[a] *provider* shall not issue,
14 sell or offer for sale service contracts in this state unless the *provider* has been issued a certificate
15 of registration pursuant to the provisions of this chapter." NRS 690C.150 (emphasis added). NRS
16 690C.070 expressly defines "provider" as simply "a person who is *obligated* to a holder *pursuant*
17 *to the terms of a service contract* to repair, replace or perform maintenance on, or to indemnify
18 the holder for the costs of repairing, replacing or performing maintenance on, goods." The statute
19 does not preclude a provider from using a third-party sales agent to sell contracts on its behalf. If
20 the statute were meant to exclude *any* person from issuing, selling, or offering for sale (as opposed
21 to a "provider", the "person who is obligated to a holder pursuant to the terms of a service
22 contract") it would state that no *person* shall sell service contracts without a COR. It does not.

23 ³ Moreover, there is no separate definition of "persons who sell", but because 690C.120
24 specifically calls out "person who sells service contracts" as a person separate and apart from the
25 categories of "provider," "administrator," and "any other person," this necessarily implies that a
26 "person who sells service contracts" could be someone other than a "provider" or even
27 "administrator." Because there is only a registration requirement for providers, and no such
28 requirement for "administrators" or "persons who sell," it follows that the Nevada Legislature did
not intend for administrators or persons who sell to be registered. Only the provider, the person
obligated under the contract, must be registered. Indeed, a finding that only providers can sell
service contracts would render the phrase "person who sells service contracts" in NRS
690C.120(2) superfluous and duplicative—a reading that goes against well settled principles of
statutory construction.

1 Here, it is undisputed that the person obligated to the holder pursuant to the terms of the
2 service contract is HWAN. The hearing officer recognized that "CHW Group sells service
3 contracts on behalf of HWAN" in her order. Findings of Fact, Conclusions of Law, Order of the
4 Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 ("17.0050 Order"),
5 Record, Tab 47 at 4038, ln. 14. The Division approved a service contract form listing HWAN as
6 obligor and CHWG as administrator. Record, Tab 35 at Exhibit EE (CHW073376-CHW073383);
7 *see also* 17.0050 Order, Record, Tab 47 at 4039, lns. 4-9. CHWG is merely the administrator and
8 third-party sales agent (selling contracts on behalf of HWAN). Only the provider is required to
9 be registered under Nevada law because only the provider, HWAN, is obligated under the service
10 contracts entered into with Nevada consumers and backs those contracts with adequate financial
11 security.

12 **B. Without the Stay, the Object of the Appeal Will Be Defeated.**

13 Second, without a stay the object of the appeal will be defeated. The key issue in this
14 appeal is whether HWAN, like any other Nevada service contract provider, can use a sales agent
15 to sell service contracts on its behalf. Nevada law requires only that service contract providers
16 be registered, not sales agents selling on behalf of a provider and not administrators administering
17 contracts on behalf of a provider. HWAN has been operating with CHWG as its third-party
18 administrator and sales agent throughout the pendency of the First PJR and the Second PJR and
19 is entitled to continue doing so pending appeal here and under the Findings of Fact, Conclusions
20 of Law, and Order Granting Motion for Stay of Final Administrative Decision Pursuant to NRS
21 233B.140, entered April 24, 2019 in the Second PJR.

22 If the stay is denied, HWAN will be required to overhaul its operations such that it alone
23 sells its service contracts, even though other Nevada providers are allowed to use third-party sales
24 agents to sell their service contracts. If HWAN is so forced to reorganize, then the object of
25 HWAN's appeal will be rendered meaningless. Indeed, the Division's contention that "[n]othing
26 can happen during the process of appeal that would render the interpretation of [NRS 690C] moot"
27 misses the point. Opp'n at 5. The erroneous interpretation and application of the statute is the
28 central issue on appeal, and without a stay the object of the appeal will be defeated.

1 **C. HWAN Will Suffer Irreparable Injury If the Stay Is Denied.**

2 Third, HWAN will suffer irreparable injury if the stay is denied. “The right to carry on a
3 lawful business without obstruction is a property right, and acts committed without just cause or
4 excuse which interfere with the carrying on of plaintiff’s business or destroy its custom, its credit
5 or its profits, do an irreparable injury.” *Guion v. Terra Marketing of Nev., Inc.*, 90 Nev. 237, 240,
6 523 P.2d 847, 848 (1974). When a person or administrative body interferes with the “operation
7 of a legitimate business by creating public confusion, infringing on goodwill, and damaging
8 reputation,” irreparable harm may result. *Sobol*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986).
9 HWAN will suffer irreparable and serious injury if the stay is denied because it will have to
10 overhaul its operations to sell its own contracts, thereby destroying its custom and interfering with
11 its legitimate business and profits.

12 **D. The Division Will Not Suffer Irreparable Injury If the Stay Is Granted.**

13 Fourth, and finally, the Division will not suffer irreparable injury if the stay is granted.
14 The Division points to nothing other than foreign regulatory actions against CHWG, regulatory
15 actions which the hearing officer determined were *not a basis for a finding of unsuitable conduct*
16 on behalf of HWAN. 17.0050 Order, Record, Tab 47 at 4053-4054. And the Division cannot
17 now reference consumer complaints it alleges it has received against HWAN since the first
18 hearing, as these complaints are not in the record, were not the basis of the 17.0050 Order against
19 HWAN, have never formed the basis of any administrative action against HWAN, and lack any
20 specificity whatsoever. Even the complaints introduced to the hearing officer were deemed
21 “insufficient to show that [HWAN] engaged in unfair practices in settling claims.” *Id.* at 4056.
22 Neither the regulatory actions against CHWG (which were already disregarded by the hearing
23 officer) nor the new alleged complaints against HWAN can be used as a basis for denying the
24 stay here, especially when HWAN has, and continues to, maintain the statutory financial security
25 required by statute to protect Nevada consumers.⁴

26 ///

27
28 ⁴ Indeed, there is a total of \$4,038,262.07 being held as financial security to protect the public.

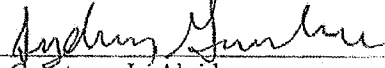
HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 **III. Conclusion**

2 For the foregoing reasons, HWAN respectfully requests this Court grant its Motion and
3 issue a stay of the Order effective immediately or upon HWAN posting a nominal bond in the
4 amount of \$100 (or other appropriate amount as determined by the Court).

5 DATED this 26th day of December, 2019.

6 HOLLAND & HART LLP

7 

8 Constance L. Akridge

9 Nevada Bar No. 3353

10 Sydney R. Gambee

11 Nevada Bar No. 14201

12 Brittany L. Walker

13 Nevada Bar No. 14641

14 9555 HILLWOOD DRIVE, 2ND FLOOR

15 LAS VEGAS, NV 89134

16 *Attorneys for Home Warranty*

17 *Administrator of Nevada, Inc.*

18 *dba Choice Home Warranty*

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of December, 2019, a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** was served by the following method(s):

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov

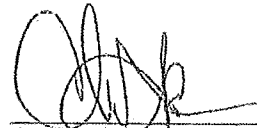
Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
igrigoriev@ag.nv.gov

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

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

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

igrigoriev@ag.nv.gov
ryien@ag.nv.gov



An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

INDEX OF EXHIBIT(S)

EXHIBIT	DESCRIPTION	PAGE(S)
1	Order Granting Temporary Stay entered by the Nevada Supreme Court on December 23, 2019	2

13998214_v3

EXHIBIT 1

AA002753

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOME WARRANTY ADMINISTRATOR
OF NEVADA, INC., D/B/A CHOICE
HOME WARRANTY, A NEVADA
CORPORATION,
Appellants,
vs.
STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY,
DIVISION OF INSURANCE, A
NEVADA ADMINISTRATIVE AGENCY,
Respondent.

No. 80218

FILED

DEC 23 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING TEMPORARY STAY

This is an appeal from a district court order affirming, as modified, an administrative decision under NRS Chapter 690C concerning appellant's service contract business.

Appellant has filed an emergency motion for stay, seeking an order staying the district court's decision so that it can continue, pending appeal, to operate its business through its administrator in the same manner as before the court's decision. Respondent has filed an opposition. In the opposition, respondent points out that it offered to refrain from seeking to enforce the order before the district court rules on appellant's pending stay motion below, but appellant declined the offer.

Given respondent's offer and the upcoming holiday calendar, we conclude that a temporary stay is warranted so that the district court has an opportunity to read and rule on appellant's stay motion. The district court is in a better position to evaluate the merits of a request for stay, the relevant factors, and the need for a bond or alternate security, and thus, NRAP 8(a)(1) normally requires parties to seek a stay from the district court

SUPREME COURT
OF
NEVADA

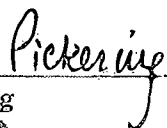


(O) 1947A 

19-51886

AA002754

before seeking one from this court. *Nelson v. Heer*, 121 Nev. 882, 836, 122 P.3d 1252, 1254 (2005), *as modified* (Jan. 25, 2006) ("This requirement [to first seek a stay in the district court] is grounded in the district court's vastly greater familiarity with the facts and circumstances of the particular case."); *see also* NRAP 8(a)(2)(A)(ii) (a motion for relief in this court should demonstrate that the district court has denied a stay and the reasons therefor). Accordingly, while expressing no opinion on the propriety of a stay pending appeal, we temporarily stay enforcement of the district court's order pending a decision on the district court stay motion and further order of this court. Appellant shall have 5 days from the date that the district court rules on its stay motion to provide a status report to this court.

It is so ORDERED.

 J.
Pickering
 J.
Parraguirre
 J.
Cadish

cc: Hon. James Todd Russell, District Judge
Holland & Hart LLP/Las Vegas
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Constance L. Akridge
Nevada Bar No. 3353
2 Sydney R. Gambee
Nevada Bar No. 14201
3 Brittany L. Walker
Nevada Bar No. 14641
4 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
5 Las Vegas, NV 89134
Phone: 702.669.4600
6 Fax: 702.669.4650
clakridge@hollandhart.com
7 srgambee@hollandhart.com
blwalker@hollandhart.com
8

9 *Attorneys for Home Warranty*
10 *Administrator of Nevada, Inc.*
11 *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
WARRANTY, a Nevada corporation,

15 Petitioner,

16 v.

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

19 Respondent.
20

21 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
22 ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby requests that the
23 Motion Stay Pending Appeal Pursuant to NRCP 62(d), filed in the above-entitled matter on

24 ///

REC'D & FILED

2019 DEC 26 PM 4:04

AUSNEY ADWYATT
CLERK

BY P. O'KEEFE DEPUTY

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

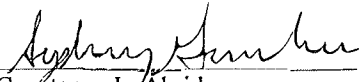
REQUEST FOR SUBMISSION

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 December 6, 2019, be submitted to the court for consideration.

2 DATED this 26th day of December, 2019.

3 HOLLAND & HART LLP

4
5 

6 Constance L. Akridge
7 Nevada Bar No. 3353
8 Sydney R. Gambee
9 Nevada Bar No. 14201
10 Brittany L. Walker
11 Nevada Bar No. 14641
12 9555 HILLWOOD DRIVE, 2ND FLOOR
13 LAS VEGAS, NV 89134

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

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of December, 2019, a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** was served by the following method(s):

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

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
Carson City, Nevada 89701
ryien@ag.nv.gov


Joanna Grigoriev
Senior Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
jgrigoriev@ag.nv.gov

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

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

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

jgrigoriev@ag.nv.gov
ryien@ag.nv.gov


An Employee of Holland & Hart LLP

13992464_v1 104645.0001

1 AARON FORD
Attorney General
2 JOANNA N. GRIGORIEV (Bar No. 5649)
Senior Deputy Attorney General
3 RICHARD P. YIEN (Bar No. 18035)
Deputy Attorney General
4 State of Nevada
100 N. Carson Street
5 Carson City, NV 89701
Tel. (775) 684-1129
6 Email: jgrigoriev@ag.nv.gov
7 Email: ryien@ag.nv.gov
8

9 *Attorneys for the Division of Insurance*

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

19 *Respondents.*
20

21 **ORDER DENYING PETITIONER'S MOTION FOR STAY PENDING APPEAL**

22 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
23 Choice Home Warranty's ("HWAN") Motion for Stay Pending Appeal Pursuant to NRCP 62(d)
24 ("Motion for Stay"), filed with this Court on December 6, 2019, seeking a stay pending appeal
25 to the Nevada Supreme Court, of this Court's order ("PJR Order"), affirming in part and
26 modifying in part the Administrative Order ("Administrative Order") in the Division of
27 Insurance Cause 17.0050. Respondent, State of Nevada Division of Insurance ("Division")
28

REC'D & FILED

2019 DEC 31 AM 11:17

AUGREY ROWLATT

BY

[Signature]
CLERK
REPUTY

1 filed an Opposition on December 19, 2019. HWAN filed its Reply and Request for Submission
2 on December 26, 2019.

3 The Court finds that the remaining declaratory relief in the PJR Order, which is the
4 subject of HWAN's Motion for Stay¹, is non-monetary in nature and a supersedeas bond or
5 other security under NRCP 62(d)² would not adequately compensate the Division for the loss
6 incurred as a result of a stay. The Nevada Supreme Court and the Ninth Circuit, have applied
7 Rule 62(d) to orders and judgments that are monetary in nature. "The purpose of security for
8 a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it
9 is affirmed by preserving the status quo and preventing prejudice to the creditor arising from
10 the stay." *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) (as modified 2006).
11 See also *N.L.R.B. v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988)³ ("[t]he posting of a bond
12 protects the prevailing plaintiff from the risk of a later uncollectible judgment and
13 compensates him for delay in the entry of the final judgment. When applied to a subpoena
14 compliance order, this protection is largely meaningless." *Id.*); *Donovan v. Fall River Foundry*

15
16 ¹ The monetary relief portion of the PJR Order, namely a \$40,500 fine, was released with
17 the rest of the interpleaded funds, on or about December 2, 2019, by the Clerk of the
FJDC.

18 ² NRCP 62(d) provides:

19 ...
20 (1) If an appeal is taken, the appellant may obtain a stay by
21 supersedeas bond, except in an action described in Rule 62(a)(2). The
22 bond may be given upon or after filing the notice of appeal or after
obtaining the order allowing the appeal. The stay is effective when the
supersedeas bond is filed.

23 (2) If an appeal is taken, a party is entitled to a stay by providing a
24 bond or other security. Unless the court orders otherwise, the stay
takes effect when the court approves the bond or other security and
remains in effect for the time specified in the bond or other security.

25 ³ "[F]ederal decisions involving the Federal Rules of Civil Procedure provide
26 persuasive authority when this court examines its rules." *Nelson v. Heer*, 121 Nev. 832,
834, 122 P.3d 1252, 1253 (2005) (citations omitted).

27 ⁴ The parties address this standard in their respective Opposition to Motion for Stay and
28 Reply pleadings.

1 Co., 696 F.2d 524, 526 (7th Cir. 1982) (Rule 62(d) procedure "makes little sense as applied to
2 an order to do, rather than order to pay").

3 The Court finds that no stay of the PJR Order is warranted under NRCF 62(d) and a
4 bond or other security would not adequately compensate the Division for loss incurred as
5 a result of the stay of the non-monetary judgment.

6 The Court further finds that as NRAP 8 requires a party to seek a stay in the
7 district court before seeking a stay in the Supreme Court, NRAP 8(c)⁴ is the appropriate
8 standard used by the District Courts to determine whether to issue a stay pending
9 appeal.⁵ See *Fritz Hansen A/S v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982,
10 986 (2000). The Court finds that consideration of the factors under NRAP 8(c) weigh in
11 favor of the Division.

12 (1) The object of HWAN's appeal is to obtain a reversal of the administrative
13 Hearing Officer's statutory interpretation of chapter 690C requirements upheld by this
14 Court, so as to allow HWAN to operate in Nevada using Choice Home Warranty ("CHW"),
15 an unlicensed entity, to perform the functions of a provider for which Nevada law requires
16 a certificate of registration ("COR"). This object of HWAN's appeal will not be defeated, i.e.
17 rendered meaningless, if a stay is not granted. See *Mikohn*, 120 Nev. 248, 253, 89 P.3d 36,
18 39 (2004). The availability of appeal after final judgment is considered an adequate and
19 speedy remedy. See *Renown Reg'l. Med. V. Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335
20 P.3d 199, 202 (2014).

21 (2) HWAN is also unlikely to prevail on the merits of the appeal. NRS 690C.150
22 mandates that a COR is required to "issue, sell, or offer for sale service contract." NRS
23

24 ⁴The factors in NRAP 8(c) are: (1) whether the object of the appeal will be defeated if the
25 stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or
26 serious injury if the stay or injunction is denied; (3) whether respondent/real party in
27 interest will suffer irreparable or serious injury if the stay or injunction is granted; and
28 (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ
petition

⁵The parties address stay under NRAP 8(c) standard in their respective Opposition to
Motion for Stay and Reply pleadings.

1 690C.020 in turn provides that "Administrator" means a person who is responsible for
2 administering a service contract that is issued, sold or offered for sale by a provider." Read
3 in harmony, it is clear, that the function of an administrator is to administer contracts that
4 are issued, sold or offered for sale by a licensed provider. To issue, sell or offer for sale
5 service contracts, an entity must be a registered provider. HWAN's interpretation would
6 lead to absurd results of allowing entities to perform the functions for which registration
7 and thus regulatory oversight is required by law, and avoiding registration and regulation
8 by simply affixing a label of an "administrator," "sales agent," or anything other than
9 "provider." It would render NRS 690C.150 nugatory, and the tenets of statutory
10 construction do not permit that. *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497,
11 502, 797 P.2d 946, 949 (1990) (overruled on other grounds).

12 (3) The analysis of irreparable injury also favors the Division. The PJR Order did
13 not preclude HWAN from operating as a provider in Nevada. It also did not prohibit
14 HWAN's use of CHW as its administrator; however, the functions performed may not be
15 the functions of a provider for which the law requires regulatory oversight, i.e. a COR,
16 unless CHW obtains such. See NRS 690C.150, 690C.020. "Irreparable harm" is harm for
17 which compensatory damages would be inadequate. See *Hansen*, 116 Nev. 650, 658, 6 P.3d
18 982, 987. In the present case, HWAN's potential inconvenience of having to forego, pending
19 appeal, the use of the unlicensed entity for certain functions, does not constitute irreparable
20 harm that would satisfy this requirement under NRAP 8(c). HWAN can also contract with
21 an entity possessing a COR, or issue, sell, or offer for sale service contracts on its own
22 without outsourcing to an unlicensed third party.

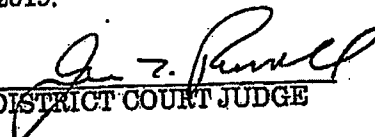
23 (4) On the other hand, a stay, allowing an unlicensed and unregulated entity (CHW),
24 subject to numerous regulatory actions in other states, to perform the functions for which
25 the Nevada law requires regulatory oversight through a valid COR, would create an
26 inherent danger of harm to the public and nullify the statutory scheme. Notably, In
27 Nevada, irreparable injury is presumed in statutory enforcement actions. See *State of*
28 *Nevada ex. Rel. Office of the Attorney General, Bureau of Consumer Protection v. NOS*

1 *Communications, Inc.*, 120 Nev. 65, 68, 84 P.3d 1052, 1054 (2004).

2 Based upon the papers and pleadings, on file herein, it is THEREFORE ORDERED
3 that HWAN's Motion for Stay is DENIED under NRCp 62(d) and NRAP 8(c).


4 IT IS SO ORDERED

5
6 DATED this 31st day of December, 2019.

7 
8 DISTRICT COURT JUDGE

9
10 Respectfully submitted by:

11 AARON D FORD
12 Attorney General

13 By: 
14 Richard Yien (Bar No. 12035)
15 Deputy Attorney General
16 Joanna Grigoriev (Bar No. 5649)
17 Senior Deputy Attorney General
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 30th day of December, 2019 I served the foregoing [PROPOSED] ORDER DENYING PETITIONER'S MOTION FOR STAY PENDING APPEAL by depositing for mail in the United States Mail, first-class postage prepaid, at Carson City, Nevada, addressed to the Following:

Constance Akridge, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532

Sydney R. Gambee
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532



Susan Messina, An employee of the
Office of the Nevada Attorney General

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIGORIEV,
Nevada Bar No. 5649
3 Senior Deputy Attorney General
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAILI YIEN,
Nevada Bar No. 13035
6 Deputy Attorney General
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 Email: ryien@ag.nv.gov
Attorneys for Respondent
9 Nevada Division of Insurance

REC'D & FILED

2020 JAN -7 PM 2:39

AUBREY ROWLATT
CLERK

BY P. O'KEEFF
DEPUTY

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

12 HOME WARRANTY ADMINISTRATOR OF
NEVADA, INC., DBA CHOICE HOME
13 WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

14 Petitioner,

15 vs.

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

18 Respondent.

19 NOTICE OF ENTRY OF ORDER

20 Please take notice that the ORDER DENYING PETITIONER'S MOTION FOR
21 STAY PENDING APPEAL PURSUANT TO NRCP 62 (d) was signed by Judge James T.
22 Russell on December 31, 2019, a conformed copy of which is attached hereto as Exhibit 1.

23 DATED January 7, 2020

24 AARON D. FORD
Attorney General

25 By:


RICHARD PAILI YIEN

26 Deputy Attorney General

27 Attorney for the Division of Insurance
28

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: January 7, 2020.

AARON FORD
Attorney General

By: 

RICHARD P. YIEN (Bar No. 13035)
Deputy Attorney General

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on January 7, 2020, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada a true and correct copy of the NOTICE OF ENTRY OF ORDER, addressed to the following:

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

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

DATED January 7, 2020


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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES (Excluding tabs)
1	Order Denying Petitioner's Motion For Stay Pending Appeal Pursuant to NRCP 62 (d)	5

EXHIBIT 1

Order Denying Petitioner's Motion
For Stay Pending Appeal Pursuant to
NRCP 62(d)

EXHIBIT 1

1 AARON FORD
Attorney General
2 JOANNA N. GRIGORIEV (Bar No. 5649)
Senior Deputy Attorney General
3 RICHARD P. YIEN (Bar No. 18035)
Deputy Attorney General
4 State of Nevada
100 N. Carson Street
5 Carson City, NV 89701
Tel. (775) 684-1129
6 Email: jgrigoriev@ag.nv.gov
7 Email: ryien@ag.nv.gov
8

9 *Attorneys for the Division of Insurance*

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

19 *Respondents.*
20

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

REC'D & FILED

2019 DEC 31 AM 11:17

AUDREY ROWLATT
CLERK
BY *[Signature]* DEPUTY

21 **ORDER DENYING PETITIONER'S MOTION FOR STAY PENDING APPEAL**

22 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
23 Choice Home Warranty's ("HWAN") Motion for Stay Pending Appeal Pursuant to NRCP 62(d)
24 ("Motion for Stay"), filed with this Court on December 6, 2019, seeking a stay pending appeal
25 to the Nevada Supreme Court, of this Court's order ("PJR Order"), affirming in part and
26 modifying in part the Administrative Order ("Administrative Order") in the Division of
27 Insurance Cause 17.0050. Respondent, State of Nevada Division of Insurance ("Division")
28

1 filed an Opposition on December 19, 2019. HWAN filed its Reply and Request for Submission
2 on December 26, 2019.

3 The Court finds that the remaining declaratory relief in the PJR Order, which is the
4 subject of HWAN's Motion for Stay¹, is non-monetary in nature and a supersedeas bond or
5 other security under NRCP 62(d)² would not adequately compensate the Division for the loss
6 incurred as a result of a stay. The Nevada Supreme Court and the Ninth Circuit, have applied
7 Rule 62(d) to orders and judgments that are monetary in nature. "The purpose of security for
8 a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it
9 is affirmed by preserving the status quo and preventing prejudice to the creditor arising from
10 the stay." *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) (as modified 2006).
11 See also *N.L.R.B v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988)³ ("[t]he posting of a bond
12 protects the prevailing plaintiff from the risk of a later uncollectible judgment and
13 compensates him for delay in the entry of the final judgment. When applied to a subpoena
14 compliance order, this protection is largely meaningless." *Id.*); *Donovan v. Fall River Foundry*

15
16 ¹ The monetary relief portion of the PJR Order, namely a \$40,500 fine, was released with
17 the rest of the interpleaded funds, on or about December 2, 2019, by the Clerk of the
18 FJDC.

19 ² NRCP 62(d) provides:

20 (1) If an appeal is taken, the appellant may obtain a stay by
21 supersedeas bond, except in an action described in Rule 62(a)(2). The
22 bond may be given upon or after filing the notice of appeal or after
23 obtaining the order allowing the appeal. The stay is effective when the
24 supersedeas bond is filed.

25 (2) If an appeal is taken, a party is entitled to a stay by providing a
26 bond or other security. Unless the court orders otherwise, the stay
27 takes effect when the court approves the bond or other security and
28 remains in effect for the time specified in the bond or other security.

29 ³ "[F]ederal decisions involving the Federal Rules of Civil Procedure provide
30 persuasive authority when this court examines its rules." *Nelson v. Heer*, 121 Nev. 832,
31 834, 122 P.3d 1252, 1253 (2005) (citations omitted).

32 ⁴ The parties address this standard in their respective Opposition to Motion for Stay and
33 Reply pleadings.

1 Co., 696 F.2d 524, 526 (7th Cir. 1982) (Rule 62(d) procedure "makes little sense as applied to
2 an order to do, rather than order to pay").

3 The Court finds that no stay of the PJR Order is warranted under NRCP 62(d) and a
4 bond or other security would not adequately compensate the Division for loss incurred as
5 a result of the stay of the non-monetary judgment.

6 The Court further finds that as NRAP 8 requires a party to seek a stay in the
7 district court before seeking a stay in the Supreme Court, NRAP 8(c) ⁴ is the appropriate
8 standard used by the District Courts to determine whether to issue a stay pending
9 appeal. ⁵ See *Fritz Hansen A/S v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982,
10 986 (2000). The Court finds that consideration of the factors under NRAP 8(c) weigh in
11 favor of the Division.

12 (1) The object of HWAN's appeal is to obtain a reversal of the administrative
13 Hearing Officer's statutory interpretation of chapter 690C requirements upheld by this
14 Court, so as to allow HWAN to operate in Nevada using Choice Home Warranty ("CHW"),
15 an unlicensed entity, to perform the functions of a provider for which Nevada law requires
16 a certificate of registration ("COR"). This object of HWAN's appeal will not be defeated, i.e.
17 rendered meaningless, if a stay is not granted. See *Mikohn*, 120 Nev. 248, 253, 89 P.3d 36,
18 39 (2004). The availability of appeal after final judgment is considered an adequate and
19 speedy remedy. See *Renown Reg'l. Med. V. Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335
20 P.3d 199, 202 (2014).

21 (2) HWAN is also unlikely to prevail on the merits of the appeal. NRS 690C.150
22 mandates that a COR is required to "issue, sell, or offer for sale service contract." NRS
23

24 ⁴The factors in NRAP 8(c) are: (1) whether the object of the appeal will be defeated if the
25 stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or
26 serious injury if the stay or injunction is denied; (3) whether respondent/real party in
27 interest will suffer irreparable or serious injury if the stay or injunction is granted; and
28 (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ
petition

⁵The parties address stay under NRAP 8(c) standard in their respective Opposition to
Motion for Stay and Reply pleadings.

1 690C.020 in turn provides that "Administrator" means a person who is responsible for
2 administering a service contract that is issued, sold or offered for sale by a provider." Read
3 in harmony, it is clear, that the function of an administrator is to administer contracts that
4 are issued, sold or offered for sale by a licensed provider. To issue, sell or offer for sale
5 service contracts, an entity must be a registered provider. HWAN's interpretation would
6 lead to absurd results of allowing entities to perform the functions for which registration
7 and thus regulatory oversight is required by law, and avoiding registration and regulation
8 by simply affixing a label of an "administrator," "sales agent," or anything other than
9 "provider." It would render NRS 690C.150 nugatory, and the tenets of statutory
10 construction do not permit that. *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497,
11 502, 797 P.2d 946, 949 (1990) (overruled on other grounds).

12 (3) The analysis of irreparable injury also favors the Division. The PJR Order did
13 not preclude HWAN from operating as a provider in Nevada. It also did not prohibit
14 HWAN's use of CHW as its administrator; however, the functions performed may not be
15 the functions of a provider for which the law requires regulatory oversight, i.e. a COR,
16 unless CHW obtains such. See NRS 690C.150, 690C.020. "Irreparable harm" is harm for
17 which compensatory damages would be inadequate. See *Hansen*, 116 Nev. 650, 658, 6 P.3d
18 982, 987. In the present case, HWAN's potential inconvenience of having to forego, pending
19 appeal, the use of the unlicensed entity for certain functions, does not constitute irreparable
20 harm that would satisfy this requirement under NRAP 8(c). HWAN can also contract with
21 an entity possessing a COR, or issue, sell, or offer for sale service contracts on its own
22 without outsourcing to an unlicensed third party.

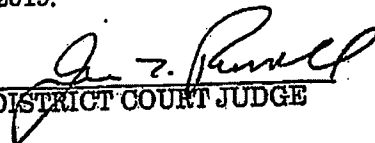
23 (4) On the other hand, a stay, allowing an unlicensed and unregulated entity (CHW),
24 subject to numerous regulatory actions in other states, to perform the functions for which
25 the Nevada law requires regulatory oversight through a valid COR, would create an
26 inherent danger of harm to the public and nullify the statutory scheme. Notably, In
27 Nevada, irreparable injury is presumed in statutory enforcement actions. See *State of*
28 *Nevada ex. Rel. Office of the Attorney General, Bureau of Consumer Protection v. NOS*

1 *Communications, Inc.*, 120 Nev. 65, 68, 84 P.3d 1052, 1054 (2004).

2 Based upon the papers and pleadings, on file herein, it is THEREFORE ORDERED
3 that HWAN's Motion for Stay is DENIED under NRCP 62(d) and NRAP 8(c).


4 IT IS SO ORDERED

5
6 DATED this 31st day of December, 2019.

7 
8 DISTRICT COURT JUDGE
9

10 Respectfully submitted by:

11 AARON D FORD
12 Attorney General

13 By: 
14 Richard Yien (Bar No. 12035)
15 Deputy Attorney General
16 Joanna Grigoriev (Bar No. 5649)
17 Senior Deputy Attorney General
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 30th day of December, 2019 I served the foregoing [PROPOSED] ORDER DENYING PETITIONER'S MOTION FOR STAY PENDING APPEAL by depositing for mail in the United States Mail, first-class postage prepaid, at Carson City, Nevada, addressed to the Following:

Constance Akridge, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532

Sydney R. Gambee
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532



Susan Messina, An employee of the
Office of the Nevada Attorney General

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing APPELLANT'S APPENDIX (VOLUME XIV OF XIV) with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on May 12, 2020.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System as indicated below:

Via Electronic Filing System:

Richard P. Yien
Joanna N. Grigoriev

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