

1 And even these resale prices sometimes can set new  
2 records for the property, for the neighborhood, because  
3 these are recently remodeled and in the best condition on  
4 the block, and they help pull the entire community up.

5         On top of this, there's a lot of work that goes  
6 behind these things, as shown by the profit block for  
7 Northern Nevada Capital. There's a lot of jobs created  
8 by this. You have many people in the construction  
9 industry, real estate industry that are working very hard  
10 to improve the economy overall. And there's -- there's  
11 been a lot of jobs created through this entire effort to  
12 improve these, which otherwise would just stay, waiting  
13 for someone to buy them.

14         And lastly, there's local and national economic  
15 benefits. So these properties often kind of come with  
16 liens from taxes or the sewer, in the case where they  
17 have a nature where they might have an amount due. And  
18 these investors can come in, pay all of that off with  
19 cash, cure everything and move forward.

20         And separately, even if it is not as much of an  
21 amount that everyone expected that a company like  
22 Northern Nevada Capital will make on a transaction like  
23 this, they still do pay taxes on that profit, which  
24 otherwise in these short-sale transactions, there's no  
25 taxable income to be made, it's all written off. Thank

1 you.

2 Q One thing I neglected, Mr. Jameson, can you  
3 tell us where your degree and post-graduate degrees are  
4 from?

5 A Sure. I studied mathematics and economics at  
6 Duke University.

7 Q And what -- do you have any post-graduate  
8 degrees?

9 A I do not.

10 Q You do not. Okay.

11 (Inaudible.)

12 THE WITNESS: My dad already does it enough.

13 CHAIRPERSON OPATIK: Anything further?

14 MR. WALSH: That's all -- that's all I have for  
15 this witness.

16 CHAIRPERSON OPATIK: Mr. Kizer?

17 MR. KIZER: Thank you.

18 CROSS-EXAMINATION

19 BY MR. KIZER:

20 Q Mr. Jameson, if we could go back to Slide  
21 No. 1, or at least 01, "Market Appreciation."

22 A Yes.

23 Q You're referring to comparing the median  
24 three-bedroom sales price from March 13th to September  
25 13th of 2013, I believe; correct?

1           A     Yes, this was the monthly average --

2           Q     Correct.

3           A     -- for the entire month.

4           Q     Now, the increase -- that increase, would you  
5 admit that it wouldn't -- it doesn't necessarily result  
6 strictly from the change in the market? In other words,  
7 it could be that those homes sold in September were, on  
8 average, nicer homes -- a little better term -- than the  
9 ones sold in March?

10          A     It's possible. But all else being equal,  
11 there was a significant price appreciation in those  
12 homes.

13          Q     And you are also not testifying that a house  
14 would -- a house sold in March, compared to later, then  
15 sold in September, would -- all other things being  
16 equal -- would definitely be a 9 percent increase in the  
17 two sale prices?

18          A     I believe this is indicative of that,  
19 actually, yes, sir.

20          Q     Okay.

21          A     So you see that often. Someone will have  
22 sold their -- I mean, if you look at 2005 and '06, within  
23 a few months' time the price of the same house changed  
24 dramatically, all else being equal.

25                And this is -- this is the reverse. This is the

1 recovery of the market, confidence coming back. And the  
2 realtors that I work with, I know that they look at  
3 numbers like this and say, "Hey, you know, the median  
4 price has gone up 10 percent in this time frame. We've  
5 seen a lot of growth and that talks about the market  
6 overall and its recovery."

7           So I limited this to Carson and three bedroom on  
8 purpose, because this is a three-bedroom in Carson City.  
9 And I'm not drawing (inaudible), condos (inaudible).

10           Q     That's fair. Now, the -- I think the  
11 testimony earlier was there was an initial offer or  
12 possible sale of \$379,000. If I'm not mistaken that's  
13 the --

14           A     Yes, it was listed for 379,000.

15           Q     Okay. Now, if that had sold for that amount,  
16 that would have been over the 120 percent increase. Are  
17 you aware, have you seen, whether there were any  
18 supporting documents that were prepared in case that sale  
19 went through, or if that sale went through at that price,  
20 to show to Wells Fargo?

21           A     No. I believe that in this case had it  
22 sold -- let's say it sold the exact same day for 379.  
23 There would be no need to disclose because (inaudible)  
24 terms of that structure.

25           A VOICE: Closer to the microphone, please.

1 THE WITNESS: Sorry. So -- I'm going to lean on  
2 the table.

3 The -- the 379,000, if it sold on the exact same  
4 day for that higher price, would still have complied with  
5 the deed restriction imposed by (inaudible), and, no, I  
6 don't believe they would have notified or needed to  
7 notify anyone.

8 BY MR. KIZER:

9 Q Now, do you know why, based on -- based on  
10 your presentation it appears that -- or it is that --  
11 your testimony is that the \$355,000 may have very well  
12 been well below what the market would have bore for that  
13 property?

14 A It's tough to say. I mean, in the same way  
15 that you said, we'll never know what it was worth.

16 We have two data points, and between those time  
17 periods I can identify value differences of 85,000.  
18 However, as to whether the 300 was too low or the 355  
19 was -- sorry, too high or the 355 was too low, I cannot  
20 say.

21 But it's really the walk from point A to point B,  
22 that somewhere along the way there's substantial evidence  
23 that more than \$55,000 of value and appreciation was  
24 generated at both macro and micro levels of this  
25 property.

1 Q Okay. Well, you say that's not what you're  
2 saying, but turning to the slide that's, "Value Increase  
3 Exceeds Price Appreciation" --

4 A Yes.

5 Q -- you mentioned again the two facts of price  
6 suggest the initial purchase price of \$300,000 was at or  
7 above the then-market price.

8 As I understand this, this is kind of an argument  
9 that because it sold three months later for 355, and that  
10 the market had gone up on average for three-bedroom homes  
11 in that area 9 percent, that that therefore indicates  
12 that the \$300,000 -- it should have sold for more -- for  
13 less, excuse me, than the \$300,000 back in March?

14 Is that the argument you're making?

15 A No, and I will be careful, because this type  
16 of appraisal review is challenging. I mean, if you look  
17 at a typical appraisal, it will just say that, "I support  
18 the value that has been listed." It won't go out and  
19 say, "You know what? Actually, this house is worth 3,000  
20 more." It will just say that, "Yeah, 355,000 is  
21 supported by the market and the house's condition."

22 What I was saying here was that if you add up all  
23 the value differences, both -- or the entirety, the  
24 market appreciation, the capital improvements and the  
25 value created by those, and the relief of distress --

1 which goes back to the value to communities and even, I  
2 should have said, future buyers, that -- I know that you  
3 can see someone wants -- maybe someone doesn't want to  
4 buy these properties because they require repairs and  
5 they want to only put three percent down, the whole thing  
6 falls apart.

7           This allows someone that has a very small amount of  
8 down payment to buy it. Suddenly a value is created  
9 because the sheer demand for the house goes up. There  
10 are a lot more prospective buyers. It's the same reason  
11 that when the market turns, luxury markets are the  
12 hardest to be hit by it.

13           So this property would move into another buying  
14 pool. Many more people could buy it. The property is  
15 worth more for the improvements. And at the same time,  
16 the market itself appreciates.

17           So what I would like to suggest is, assuming -- and  
18 I should say this is not my statement, but assuming the  
19 355,000 is what it was worth in September, then one could  
20 argue that a fair value for that property at the time, in  
21 March, was less than 300,000.

22           And that is why I believe the first buyer walked  
23 when they got the counteroffer of 300, and why there were  
24 no subsequent offers made for that property at 300.

25           Q       It just seems to me it's kind of a circular

1 argument that you're -- you're extrapolating back, though  
2 there might, as you mentioned, be several factors why.

3           So there's nothing that -- that indicates with a --  
4 or let me -- I'll ask you this question.

5           Is there anything with a ray of certainty, that you  
6 would accept in your field, that \$300,000 was -- was  
7 definitely at or above the market price based on factors  
8 other than extrapolating backwards?

9           A     I believe -- I can answer this (inaudible).  
10           I'm looking at it in the true points, in the same  
11 way that the assertion was made by the same two points,  
12 that the seller and/or lender were harmed because of the  
13 spread between 300 and 355.

14           So I'm taking those two points that are being  
15 raised and trying to address the fact that three -- that  
16 \$55,000 gain is supported by a number of factors and, in  
17 fact, exceeded it.

18           So that someone may have paid more or less, but I  
19 do not believe there was any harm to a seller or a lender  
20 at the time at a price of 300,000, because the market  
21 would only bear 355 four months later, despite all of  
22 these benefits that were provided to the property.

23           I hope -- when I put it that way, someone probably  
24 got a good value for the house when they sold it -- when  
25 they bought it at 355.

1 Q And then let's talk about the person who sold  
2 the house at 355. You had mentioned, I believe, based on  
3 all these assumptions -- which are very much pro-buyer --  
4 that the return was about three -- a little less than  
5 three percent. I think that's on your last slide.

6 A Yes.

7 Q Was that an overall net-profit margin based  
8 on the time frame you're looking at, or are you talking  
9 about an annual return?

10 A No, that's just in between those two points.

11 Q Okay. So an annual return is closer to  
12 10 percent?

13 A Yes.

14 Q Okay. Would you say that's a pretty good  
15 annual return historically speaking?

16 A Well, it depends on the risk you are taking.  
17 Mortgage-backed securities you probably wouldn't take  
18 10 percent. But I -- this is a low return for the amount  
19 of risk taken and a lot of that return was actually  
20 because they took just the new market risk alone.

21 We can account for a 9 percent appreciation in  
22 market price, and they ended up making three percent. So  
23 if the market had stayed flat, I think they would have  
24 lost money on this deal.

25 MR. KIZER: Thank you.

1 CHAIRPERSON OPATIK: Any other redirect?

2 MR. WALSH: No.

3 CHAIRPERSON OPATIK: Okay. Any comments by the  
4 Commissioners? Ms. Cartinella?

5 COMMISSIONER CARTINELLA: Yes, Madam Chairman.

6 I have two questions for you. (Inaudible.) The  
7 company, Northern Nevada Capital, do they have a minimum  
8 profit margin amount that they typically go by when they  
9 are doing the research, the analysis on properties?

10 THE WITNESS: I am not familiar with that.

11 COMMISSIONER CARTINELLA: So the three percent  
12 could be normal typically or --

13 THE WITNESS: I believe that happens fairly often,  
14 yes.

15 COMMISSIONER CARTINELLA: Okay. Thank you.

16 And the other question was, is you stated that you  
17 were using Zillow as your analysis for property value.  
18 Do you ever use any other source, like the Multiple  
19 Listing Service or anything that would be -- have more  
20 accurate data?

21 THE WITNESS: Sure. I -- so Zillow is an  
22 aggregator that grabs data from the MLS. And I know it's  
23 not perfect. I wouldn't -- I'm not a Realtor, but I  
24 wouldn't advise anybody to use Zillow to buy or sell a  
25 house.

1 But since I am not a Realtor, I actually don't have  
2 the right to use the MLS. And that's, you know,  
3 something that only realtors have the exclusive use of  
4 and -- correct? So, no, I used -- I used what's  
5 available to the public.

6 And Zillow -- they weren't really in the analysis,  
7 what they provided was just -- they took every property  
8 that sold in each month and picked the median price and  
9 just posted it. But all of that comes from -- I believe  
10 it comes from the MLS statement.

11 COMMISSIONER CARTINELLA: Thank you.

12 CHAIRPERSON OPATIK: Are there any other questions  
13 by the Commissioners?

14 I just -- I would like to thank you, Commissioner  
15 Cartinella, for bringing that issue up. Zillow is not  
16 probably your best avenue for value, at all, and, no,  
17 they don't get all their information from the MLS, just  
18 to clear that up.

19 THE WITNESS: I'll probably be in trouble for using  
20 the Internet source, as well.

21 CHAIRPERSON OPATIK: Okay. If there is nothing  
22 further for this witness, we will dismiss the witness.

23 And seeing the hour, we are going to adjourn until  
24 1:30. Okay. So you've got an extra ten minutes. So  
25 1:30 we'll come back and reconvene at that time.

1 (Recess taken.)

2 CHAIRPERSON OPATIK: -- Division, Nevada Real  
3 Estate Division vs. Jason Allen Lococo.

4 MR. WALSH: We would call Kirk Hankla, please.

5 JAMES KIRK HANKLA,

6 being first duly sworn by the chairperson

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WALSH:

10 Q Would you state your name, please, sir.

11 A James Kirk Hankla.

12 Q Mr. Hankla, what is your profession or  
13 occupation, sir?

14 A I am the president --

15 CHAIRPERSON OPATIK: Excuse me. Excuse me, but  
16 you've been previously sworn.

17 THE WITNESS: That's right.

18 THE ATTORNEY: Spell your last name for me, please.

19 THE WITNESS: H-a-n-k-l-a. I'm the one who gave  
20 you the card just at the end of the last session.

21 THE ATTORNEY: Thank you.

22 THE WITNESS: You're welcome.

23 BY MR. WALSH:

24 Q And I'm sorry, sir. What is your profession  
25 or occupation?

1           A     I am the president and CEO of International  
2 City Mortgage.

3           Q     Can you give me a brief history of your  
4 educational and occupational background, sir?

5           A     All right. I graduated from the college of  
6 William and Mary in Williamsburg, Virginia, in the  
7 fall -- or, rather, the spring of 1983.

8           I got into the mortgage banking business pretty  
9 much after that. I've held a California real estate  
10 broker's license since 1986. That license is necessarily  
11 inactive in my current capacity of someone who certifies  
12 junior mini-mortgage-backed securities.

13          Q     All right. And what is your experience, if  
14 any, in ownership of agencies in the real estate  
15 industry?

16          A     I owned Coldwell Banker Alliance Realty from  
17 sometime in 1990 -- 1998 until June of 2006, when I sold.  
18 That company was number 29 in the entire Coldwell Banker  
19 system worldwide.

20          Q     And did you practice in any other  
21 jurisdictions, other than California or Nevada?

22          A     Well, the mortgage bank, we had brick and  
23 mortar in eight states and we're licensed in several  
24 more.

25          Q     Okay. In which states are you -- do you have

1 brick and mortar?

2           A     Let's see. Hawaii, California, Nevada,  
3 Arizona, Texas, Arizona, Oregon and Washington.

4           Q     And licensed in additional jurisdictions?

5           A     Oh, we're licensed in most of the states.

6 Let's get out a map.

7           Q     All right. Are you a member of any  
8 professional organizations?

9           A     Yes, I am a member of the California Mortgage  
10 Managers Association, the National Mortgage Managers  
11 Association and the newly reformed Nevada Board of  
12 Managers Association.

13          Q     And in those positions and as a result of  
14 that experience, sir -- and, I'm sorry, you said how many  
15 years in the mortgage banking industry?

16          A     Oh, 31.

17          Q     All right. Are you familiar with the current  
18 short-sale practices?

19          A     I am.

20          Q     All right. And are you familiar with HAFA,  
21 H-A-F-A, for example?

22          A     We were never directly involved in that, but  
23 I'm familiar with what it's about.

24          Q     Okay. And are you familiar, sir, with the  
25 lender's responsibility and the lender's role in those

1 short-sale situations?

2           A     Yes, I am.

3           Q     And is there any set of circumstances, sir,  
4 where the lender is a party to the underlying real estate  
5 transactions?

6           A     Only when we're the seller.

7           Q     Okay. And you are familiar, as you've sat  
8 here and listened and reviewed documents, with the  
9 transaction involving 11 Woodstock in Carson City?

10          A     Um-hum.

11          Q     Okay. And just for the court reporter, you  
12 can't say "um-hum."

13          A     Yes. Yes, I'm familiar.

14          Q     Okay. And in that transaction, sir, was --  
15 were either of the lenders parties to that?

16           MR. KIZER: I am just going to object to that  
17 question and any reference that goes to the ultimate  
18 question of fact. I have no problem with the witness  
19 talking about traditional sales or sales in general, but  
20 as far as this specific sales goes, we're asking the  
21 Commission to make a finding that the lender here was a  
22 party, as per NRS Chapter 645. So I would object to the  
23 extent it's going -- testimony on the ultimate question  
24 of fact. Thank you.

25           MR. WALSH: And that is appropriate testimony for

1 an expert witness in a contested judicatory proceeding.

2 The expert is allowed to provide opinions on the ultimate

3 question of fact to provide guidance and benefit to the

4 trier of fact, which are you all.

5 CHAIRPERSON OPATIK: All right. I just have one

6 question. Are you -- is this witness an expert witness

7 or a witness that is part of the --

8 MR. WALSH: He is an expert witness.

9 CHAIRPERSON OPATIK: Without -- without party to

10 the contract, to the --

11 MR. WALSH: That's correct.

12 CHAIRPERSON OPATIK: -- transaction at all?

13 MR. WALSH: He is not a party to, he is not

14 affiliated, he is not a member of, he is not a

15 respondent, he is not a petitioner. He's -- other than a

16 retained expert, he is a stranger to this transaction.

17 CHAIRPERSON OPATIK: Even having stated so, I think

18 I am going to sustain the objection. I'll sustain the

19 objection.

20 MR. WALSH: And on what basis?

21 CHAIRPERSON OPATIK: The basis that the -- the

22 facts that are being presented or the facts -- the

23 allocations that are being brought forward are really

24 irrelevant to the question that you asked.

25 MR. WALSH: The allegation is that he violates a

1 duty to the lender and that duty is based on an  
2 interpretation he believes strained and structured,  
3 stretch, that the lender is a party to the transaction.  
4 And this witness can testify based on his experience as  
5 an expert that not only by law, under the holdings of the  
6 Nevada Supreme Court the lender is an adversary in this  
7 situation and is not a party to the transaction. The  
8 lender is a third-party lienholder, not a party.

9 CHAIRPERSON OPATIK: Understood, but then you were  
10 going into who were the parties -- who were the  
11 principals of the corporation.

12 MR. WALSH: No.

13 CHAIRPERSON OPATIK: Was that not your last  
14 question?

15 MR. WALSH: No, it was not. I'm sorry if I --

16 CHAIRPERSON OPATIK: Restate the question.

17 MR. WALSH: My question was -- is that under this  
18 particular transaction --

19 CHAIRPERSON OPATIK: Um-hum.

20 MR. WALSH: -- has he seen anything that would make  
21 the lenders, the two lenders -- the first and the  
22 second -- in this transaction parties to the real estate  
23 transaction?

24 CHAIRPERSON OPATIK: In his opinion?

25 MR. WALSH: In his opinion, yes.

1 MR. KIZER: And, Madam Chair, we have in the record  
2 from both sides -- we have all the documents regarding  
3 the sale of this property, we have the documents from the  
4 lender, Wells Fargo, in evidence. So I'm not -- I don't  
5 understand what the need for an expert is on reading  
6 those documents. The Commission is more than capable of  
7 reading those documents, and counsel is more than capable  
8 of referring to those documents.

9 So, again, this is not a matter of providing  
10 guidance to the Commission, this is a matter of  
11 stating -- acting as a commissioner, stating what he  
12 believes is a -- who is a party and who is not a party.

13 So, again, the documentation speaks for itself and  
14 I'm not sure why there's a need to go beyond that with  
15 respect to that ultimate question.

16 CHAIRPERSON OPATIK: Let me ask you this,  
17 Mr. Kizer. Did you have -- did you know what witnesses  
18 were going to be called?

19 MR. KIZER: Yes.

20 CHAIRPERSON OPATIK: You had a witness list?

21 MR. WALSH: And I have no problem with this witness  
22 testifying as to, again, general practices in the field  
23 and his experience in the field. But, again, if they're  
24 looking right at 11 Woodstock Avenue and this specific  
25 transaction, that's a specific finding for the

1 Commission. That's not a general testimony by an expert  
2 as to practicing -- that's our objection.

3 CHAIRPERSON OPATIK: As to speaking to this  
4 transaction, this witness really doesn't have any  
5 personal knowledge. He was not there during the  
6 transaction. He was not there during the negotiations.  
7 As an expert witness he can speak generally and that's  
8 true.

9 MR. WALSH: Well, that -- that is true, but an  
10 expert witness also, in any kind of a trial, if he is  
11 given knowledge and facts of the particular  
12 transaction -- it's no different than a causation expert  
13 in an accident case.

14 You hire a mechanical engineer or you hire an  
15 engineer to say: Okay. I've looked at the evidence.  
16 Here's -- here's what I've been told. Here's what I  
17 know. The car was going, in my opinion, 55 miles an hour  
18 when he ran the stop sign, based on the skid marks, based  
19 on this, based on that.

20 They take their expertise and knowledge and apply  
21 them to the facts of a particular case and render an  
22 opinion. And this gentleman is qualified to do that.

23 MR. KIZER: I'm not sure what he's bringing to the  
24 table outside the documents that have already been  
25 accepted by this Commission, pursuant to counsel.

1 MR. WALSH: And he's entitled to render an opinion  
2 based upon those documents and to take -- based on the  
3 testimony that's been presented here.

4 It is the Division that is raising the issue that,  
5 number one, that the lender is a party to this  
6 transaction to whom we owe a fiduciary duty or some duty  
7 of care.

8 And this witness can say: Based upon what I know  
9 of the industry practices, based upon what I know of this  
10 transaction, that is absolutely not true.

11 CHAIRPERSON OPATIK: Okay. Then let's -- let's do  
12 this. The State does not know where they're going with  
13 it. Let's allow it for a few moments and let's see if it  
14 goes someplace awry. Okay?

15 MR. KIZER: Very good.

16 CHAIRPERSON OPATIK: The objection is overruled.

17 BY MR. WALSH:

18 Q Mr. Hankla, do you remember the question?

19 A I don't. I'm shocked, but I don't.

20 Q I think I would ask you two questions.

21 Basically, has -- from an industry standpoint is the  
22 lender considered a party to a short-sale transaction?

23 A Well, a lender is a party to the transaction  
24 as a lienholder, you know, but we don't feel that we are  
25 owed any fiduciary duty from the real estate brokers

1 involved.

2           And I would further say that the Nevada Supreme  
3 Court has become very clear on it, as well as several  
4 other real-live Article 3 judges. So, in fact, the  
5 relationship between lender and borrower is not  
6 fiduciary, it is, in fact, adversarial.

7           And so the suggestion that a real estate broker who  
8 is representing a principal could also be working in the  
9 best interests of the bank, of the lender, I'm sorry, you  
10 just can't get there from here. That does not work.

11           Q     I want you to clarify one thing. You -- just  
12 for the benefit of the Commission that, as I understand  
13 it, are not lawyers -- thank you.

14           You mentioned the Article 3 judges. What are  
15 those?

16           A     Oh, those are the guys who are appointed by  
17 the President, confirmed by the Congress.

18           Q     To sit where?

19           A     On federal benches.

20           Q     Okay. Bankruptcy and federal district  
21 courts?

22           A     That's right.

23           Q     And then, Mr. Hankla, you -- with regard to  
24 this particular transaction, you've rendered your opinion  
25 that in general there is no fiduciary duty, there is no

1 obligation or duty of care to a lender.

2           In this particular transaction did you see or hear  
3 anything that would change or modify your opinion?

4           A     No.

5           Q     And you've heard, also, the testimony here  
6 that there's -- based on some duty of care owed to the  
7 bank, that the bank may have been shorted on this  
8 transaction or may have been able to get more money.

9           Based upon your experience as a mortgage lender how  
10 did the bank fair in this transaction?

11          A     Well, from everything I heard today I would  
12 say that the guy at the bank deserves a gold star. And  
13 if I was Mr. Jameson's boss, I might be asking him to  
14 bring his playbook.

15          Q     So the bank did great, the investor did not  
16 so good?

17          A     That's my opinion, yeah. I mean, it looked  
18 to me like, when you look at that number of 269, and  
19 exactly where they wound up, and ultimately where the  
20 investor went at the end of the day, the guy making the  
21 call for the bank did a pretty darn good job.

22          Q     Can you tell us, sir, the analysis that a  
23 bank would do in a short-sale situation in deciding how  
24 much money they would demand from a short-sale  
25 transaction?

1           A       Well, the first thing we're going to do is  
2 we're going to try to figure out what the property is  
3 worth. The ways we're going to do that -- there are  
4 specifically three ways.

5           We're going to -- we're going to look at the AVMOs,  
6 so that's the Automated Valuation Models. We are going  
7 to use somebody like CoreLogic or Inner Fence or maybe  
8 even Clerk Capital. We're going to look at their  
9 computer model runs to see what they come up with.

10          And then we may contact a couple of brokers in the  
11 community, what we call broker price opinions.

12          And then once we have an idea of what it is worth,  
13 we're going to factor in, you know: Gee, what do we  
14 think the holding time is? What does the property look  
15 like? What do we have to do? Are we going to have to  
16 hire somebody? Are we going to have to have a contractor  
17 to go in there to rehabilitate this place before we sell  
18 it?

19          We're primarily in the interests in going and  
20 getting it off our balance sheet just as quickly as  
21 possible because it's a nonperforming asset and those are  
22 bad. They more or less come right off your balance  
23 sheet.

24          Q       Okay. And are you interested in doing that  
25 as quickly as possible?

1 A Absolutely.

2 Q Okay. And in developing that information  
3 would you rely upon the seller's agents?

4 A No.

5 Q And why not?

6 A Because they're not working for us and we  
7 couldn't ask them to.

8 Q And why could you not ask them to work for  
9 you?

10 A Because -- well, like I stated earlier, the  
11 Nevada Supreme Court in One Sutters has already very  
12 clearly laid out that the relationship between borrower  
13 and lender is adversarial.

14 Q And why is it adversarial?

15 A Well, because our interests are opposed. Us  
16 as the lender are looking to get as much as money as we  
17 can. The client is looking to get as much money as they  
18 can. And that's an adversarial relationship.

19 It would be a whole lot like being -- you wouldn't  
20 want to be accused of crime and have the State -- the  
21 State's attorney also representing you. That's not how  
22 the system is supposed to work.

23 And there's a similar situation between a borrower  
24 and a lender.

25 Q And would that be particularly true where the

1 lender is attempting to foreclose on the property?

2 A Oh, sure, absolutely.

3 Q And are you familiar, sir, with the  
4 rehabilitative period, first of a seller who is facing a  
5 foreclosure versus a short sale?

6 A Yeah, it depends on whether it's an FHA  
7 transaction or a conventional transaction, but I can tell  
8 you in the case of a conventional transaction, we  
9 would -- Fanie Mae -- the Fannie Mae regs would say that  
10 the borrower can be rehabilitated in two years if there  
11 were extenuating circumstances.

12 Extenuating circumstances would be things like  
13 illness, death, that type of thing.

14 Apart from that it would be three years. And in  
15 the case of a foreclosure, without extenuating  
16 circumstances, seven.

17 Q And so that, the little shorter period of  
18 time, would be to the benefit of, say, Ms. Brummer in  
19 this -- in this case?

20 A Absolutely. The date that it hits the credit  
21 report starts the clock ticking.

22 Q The -- in short-sale transactions in general,  
23 from the standpoint of a lender, do you have any  
24 objection that the property may be purchased by an  
25 investor for purposes of resale in the near future?

1           A       It's not our concern, really. I mean, it's  
2 the next lender's concern.

3           What we don't want to do is -- we want to avoid  
4 fraud. That is a -- that's really what a lot of these  
5 time periods have to do with. It would have something to  
6 do with, for example, like a favored buyer coming in or a  
7 family member or something like that and attempt to crime  
8 down the number on a bank.

9           Q       All right. And you're certainly not aware of  
10 any of those allegations or facts that would support that  
11 in this case?

12          A       There's nothing here that looks like that at  
13 all.

14          MR. WALSH: That's all I have of this witness.

15          CHAIRPERSON OPATIK: Mr. Kizer?

16          MR. KIZER: I have no questions of the witness.

17          Thank you.

18          COMMISSIONER CARTINELLA: Question, just to  
19 clarify, again.

20                You said that you didn't feel like the agents had  
21 any -- you know, they would be in an adversarial-type  
22 situation, it wouldn't be that they would be working as a  
23 bank.

24                Who does your broker price opinions?

25          THE WITNESS: Well, that would depend on where the

1 property is. We're in lots of states.

2 COMMISSIONER CARTINELLA: Well, but would it be --

3 THE WITNESS: We would call -- we would call two or  
4 three local brokers. I mean, I don't do that, I have  
5 folks that do that.

6 COMMISSIONER CARTINELLA: But you do have a broker  
7 or a realtor or a licensee do the broker price opinion?

8 THE WITNESS: When there's a broker price opinion,  
9 it's always done by a licensee.

10 COMMISSIONER CARTINELLA: Okay. Thank you.

11 THE WITNESS: Thank you.

12 CHAIRPERSON OPATIK: Wait. Mr. Kizer, you had no  
13 questions?

14 MR. KIZER: I do not.

15 CHAIRPERSON OPATIK: I am so sorry, then. I do  
16 have a question.

17 So the relationship between the listing broker and  
18 the lender is by definition adversarial, so to speak,  
19 through the seller?

20 THE WITNESS: Unless the principal is the bank.

21 CHAIRPERSON OPATIK: Right. On a short sale.

22 THE WITNESS: That's right, it is an adversarial  
23 relationship.

24 CHAIRPERSON OPATIK: Okay. But -- so if that  
25 listing broker were to have blatantly lied somehow to the

1 negotiator or the lender, would they be free of recourse?

2 THE WITNESS: I cannot imagine us going after a  
3 broker. I mean, I would imagine it's a little bit like a  
4 situation with an attorney.

5 We're not going to take the listing broker's word  
6 for it. We are going to do our own due diligence. And  
7 we may bring our own brokers and we're going to run our  
8 own AVMs and if necessary we'll do an appraisal or maybe  
9 even two.

10 CHAIRPERSON OPATIK: So if it were determined that  
11 the -- that the lender did not get the best price in  
12 their opinion because they were being misinformed by the  
13 broker, then you would not -- you would not --

14 THE WITNESS: Well, there's no form --

15 CHAIRPERSON OPATIK: -- the broker?

16 THE WITNESS: -- for the broker to even inform the  
17 lender. We are flat out not going to listen to them.  
18 It's irrelevant.

19 You've got somebody who is representing somebody  
20 who is trying to get out of the house. We get it. We're  
21 not listening to them. What they say bears absolutely no  
22 bearing on what we do. They can say anything they want.  
23 And that's what they do. They're talking to us, they're  
24 saying, "Hey, we think it's worth this."

25 We're checking our numbers and we're saying, "No,

1 it isn't."

2 CHAIRPERSON OPATIK: Okay.

3 THE WITNESS: Or maybe we're agreeing.

4 CHAIRPERSON OPATIK: Okay. So -- but the real  
5 estate agent does negotiate with the negotiator. They do  
6 converse. They do talk. They do -- they do try to come  
7 to an agreement.

8 THE WITNESS: Well, sure. But, you know, we -- our  
9 negotiator, whoever is working for us in this capacity,  
10 we've got the number in mind. Now, maybe they can sway  
11 us a little bit one way or the other. Maybe we're  
12 looking -- you know, we're looking at a whole lot of  
13 factors.

14 CHAIRPERSON OPATIK: True. Understood. But if you  
15 determine that that -- that the information that swayed  
16 you came from the real estate agent, would that then --  
17 would that -- would you ever -- would they be in a  
18 position to be pursued by the --

19 THE WITNESS: No. No, they don't work for us. We  
20 have -- they have no fiduciary obligation to us,  
21 whatsoever. They can't. The law is set up that way.

22 CHAIRPERSON OPATIK: Okay. No further questions  
23 from me.

24 MALE VOICE: Not me.

25 CHAIRPERSON OPATIK: Okay. The witness is excused.

1 THE WITNESS: Thank you.

2 CHAIRPERSON OPATIK: Call your next witness.

3 MR. WALSH: That's our case.

4 CHAIRPERSON OPATIK: You rest at this point?

5 MR. WALSH: We do.

6 CHAIRPERSON OPATIK: Mr. Kizer?

7 MR. KIZER: We have nothing in rebuttal and are  
8 ready for closing when you are ready.

9 CHAIRPERSON OPATIK: Okay. So do you want to do  
10 your closing arguments at this point?

11 MR. WALSH: Yes.

12 MR. KIZER: Yes, Madam Chair.

13 In the opening statement by the respondent's  
14 counsel he had mentioned whether we were in reality  
15 asking for an advisory opinion. We are not. The  
16 Division is not. Granted, again, as I mentioned in my  
17 opening, this is akin to a case of first impression.  
18 It's a unique set of circumstances, but we're looking at  
19 a specific statutory regulation cited in the Complaint,  
20 whether this rose to the level of a violation.

21 And I will point out that, from a previous  
22 witness's testimony, we're not charging the absolute  
23 fidelity violation with respect to the seller's mortgage  
24 money. If you look at paragraph 15, that's only against  
25 the seller, and then 16 talks only about the not dealing

1 fairly with the mortgage lender.

2           So we understand that they have a greater  
3 responsibility -- much greater, perhaps -- with respect  
4 to the seller themselves than with the seller's lender.  
5 That's why there's two charges in respect to the seller,  
6 but only one charge with respect to the seller's lender.

7           As mentioned earlier, as well, through the  
8 testimony of Mr. O'Brien, that the initial investigation  
9 did not result in a Complaint, but it was quite clear  
10 that it was being closed without prejudice. And now we  
11 have before you the Complaint.

12           And that's, again, a decision for the four of you  
13 to make on whether or not that Complaint has been proven  
14 and whether -- if so, whether there's a violation or  
15 violations here.

16           The bank, the lender, told Mr. Lococo to put this  
17 on the MLS. The bank with respect to a prior offer said  
18 that there needs to be more money put on the table, and  
19 that the prospective buyer decided not to do so.

20           In fact, the last witness even testified that the  
21 lender is a party, albeit as a lienholder. And again, as  
22 stated before, we're not saying this is a traditional  
23 party. It's not a traditional sale. We made the  
24 arguments we make.

25           The bottom line here is we have a situation where,

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1 again, there is a desperate -- perhaps a desperate seller  
2 or perhaps a desperate lienholder here to get this sold.

3           And, again, we're not challenging the validity of  
4 short sales or investment buyers or cash buyers or  
5 anything along those lines. Our focus here on this  
6 complaint is with -- as the facts allege, with the MLS  
7 situation that led to an outcome, perhaps a predetermined  
8 outcome, where the property is then sold by somebody who  
9 is also actually using the Grover of Mr. Lococo, and  
10 resulting in multiple representations, thus multiple  
11 commissions to the brokerage. And it was set up that way  
12 to have that result be the -- not only the only result  
13 that occurred, the only possible result that could have  
14 occurred.

15           And with that, we ask the Commission to rule as you  
16 all see fit. Thank you.

17           CHAIRPERSON OPATIK: Thank you.

18           Mr. Walsh?

19           MR. WALSH: Madam Chairman and Commissioners, I  
20 thank you for your time here and your attention. I know  
21 this at times has probably been a little -- people's eyes  
22 tend to glaze over, and especially as we approached the  
23 noon hour.

24           The question I think that has to be asked is, why  
25 are we here? The Commission says, you know, that the

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1 lender is merely a lienholder now and they're a party in  
2 that stead.

3           That form, the -- it's clear that the seller --  
4 they allege gross negligence to the seller due to breach  
5 of duty of fidelity to the seller, breach of care to the  
6 seller. And it's clear in the record before you  
7 absolutely none of that happened.

8           The -- and I go back to where we started in my  
9 opening statement and say, why are we here? The initial  
10 findings by the Division in January of '14 is, "No  
11 violation. Have a nice day."

12           The only thing that happens -- there's no  
13 additional investigation. There's no additional facts.  
14 Nothing else happens other than Jason Hidalgo writes an  
15 article in the Reno Gazette-Journal attacking the scheme  
16 of short sales and investor clips; a poorly researched  
17 piece of -- you know, if you ask my opinion -- yellow  
18 journalism.

19           And if any of you had read that article, I was  
20 quoted in that article. I asked them to -- they  
21 obviously did not understand what was going on. I gave  
22 them a list of people to talk to. They didn't talk to  
23 any of them. I could go on and on, but that's not  
24 beneficial here.

25           The -- there has been talk of the MLS problems

1 here. And, again, the facts before this Commission --  
2 you are the arbiter. You are the judicial tribunal here  
3 that decides, based on the facts that are before you, was  
4 there gross negligence? Was there a breach in the duty  
5 of care? Was there a breach of the duty of fidelity?

6 And that cannot be. The Division has presented no  
7 new facts beyond when they sat down in the opening of the  
8 case.

9 The only facts that have come forth since that time  
10 have come forth from the respondent's witnesses to tell  
11 you that the property was placed in the MLS. To tell you  
12 that there were no offers generated by the MLS. To tell  
13 you that the seller instructed her agent not to put it in  
14 the MLS. To tell you that when the banks had them put it  
15 in the MLS, it went into the MLS and no new offers came  
16 in. To tell you that the \$55,000 profit that was alleged  
17 in the Complaint does not exist, that any increase in the  
18 value came from the fact that the market increased during  
19 the holding period of time, that the investor or the  
20 purchaser put money into the property which created  
21 value, that the taint of the short sale or foreclosure  
22 was removed, which created value in the property.

23 And the implication is that Mr. O'Brien somehow  
24 improperly steered this to his investor for his own  
25 benefit to get the resale when the investor sold.

1 Well -- and Mr. O'Brien sat here and said, "I want  
2 referrals. I want repeat business." I mean, everybody  
3 in this room, I think it would be safe to say, wants to  
4 do a good job and wants to get that repeat business.

5 That's what he's in the business for. That's what we're  
6 all in the business for. And that's exactly what he did.

7 And he told you that not only is he not their  
8 exclusive agent, Northern Nevada Capital uses Re/Max,  
9 they use Chase, they use Dixon. They use other agents  
10 and other brokers. He is not the only guy in town that  
11 they use.

12 So how they can extrapolate from the facts before  
13 you that there was something inappropriate about this  
14 transaction because the investor made a profit at the end  
15 of the day, a very slim profit -- and as Mr. Hankla just  
16 told you, that, you know, if it had been one of his deals  
17 he would be talking to the manager of the investor  
18 saying, you know, "Come into my office and bring your  
19 playbook. You're done at three percent. Why are you  
20 wasting my time?" And the fact that the investor here  
21 made a profit. There's nothing in the statute that says  
22 they can't.

23 You have to find by substantial evidence -- and  
24 that's your mandate, your statutory mandate -- that  
25 there's been a violation here, that substantial evidence

1 says that there's gross negligence.

2 Well, gross negligence is a specifically defined --  
3 defined claim. And I don't know if the Commissioners had  
4 the opportunity to -- to read the motion we had submitted  
5 earlier, but it sets out the standard for gross  
6 negligence, and that is a very high standard. It is  
7 almost a willful, intentional disregard for the rights  
8 and status of Ms. Brummer.

9 And that just didn't happen. She said these  
10 guys -- "These guys saved me." This deal had to close,  
11 it had to close this way, and it did.

12 And it's the same with the duty of fidelity, the  
13 fiduciary duty. There's nothing that you can remotely  
14 find that remotely approaches even a -- if you look at  
15 the traditional statue of justice for the scale, what has  
16 to happen here is the six scales have to go thunk for  
17 gross negligence. And they're not even moving.

18 And even if you say a breach of fiduciary duty or a  
19 breach of fidelity to Ms. Brummer -- this is the scale  
20 still -- there is no evidence of movement. And the same  
21 thing with the duty of care.

22 I have some problems with the argument of duty of  
23 care under the statutory scheme that you have. Your  
24 jurisdiction is specifically defined by Statute. And  
25 that statute and that duty of care has to give the --

1 your licensees notice of the conduct that you hold them  
2 to.

3           And to extrapolate, to change the rules, to broaden  
4 that duty to say that now they owe some duty to a lender  
5 who they are adverse to, there's nothing in the Statute  
6 that makes that a requirement. There's nothing in the  
7 statute that gives them notice that that's what is  
8 expected of them. And that has to happen and that has to  
9 be in the statute for them to know that that's the  
10 conduct they're expected to adhere to.

11           If the Division or this Commission wants to change  
12 the rules, as we stated when I opened, we would be happy  
13 to participate in that process. We'll -- we'll come  
14 testify. We'll put in our two cents. We'll submit for  
15 public regulations. But this is not the forum to do  
16 that.

17           There has to have been substantial evidence that a  
18 reviewing court can look at to say: You four people were  
19 right. These people really screwed up. And it just is  
20 not in this record. And based on that, I would urge this  
21 Commission to dismiss the Complaint or enter a finding in  
22 favor of Mr. Lococo and Mr. O'Brien. Thank you.

23           CHAIRPERSON OPATIK: Thank you.

24           Commissioners, this is the time that we deliberate.  
25 So are there any comments that need to be made or you

1 would like to make at this point?

2 MR. WALSH: I would volunteer if you have any  
3 questions of me, I would be happy to try to answer them.

4 CHAIRPERSON OPATIK: Yes, Ms. Cartinella.

5 COMMISSIONER CARTINELLA: Yes. Sherrie Cartinella  
6 for the record.

7 Regardless of the lender situation, I do believe  
8 that there is negligence in this case. I believe that  
9 there were people harmed or potentially harmed, and I  
10 would not be in favor of dismissing this case.

11 CHAIRPERSON OPATIK: Anybody else?

12 COMMISSIONER SCHWARTZ: Neil Schwartz. I will take  
13 an opposing position to that. I believe after listening  
14 to all the evidence and reading all the material that  
15 there wasn't -- there was not any gross negligence  
16 involved in this transaction.

17 CHAIRPERSON OPATIK: Mr. Reiss?

18 COMMISSIONER REISS: I, too, feel that I just don't  
19 see that there was proof enough in my eyes to say that  
20 there was gross negligence. I understand the situation  
21 completely, very well. I've seen it a lot. And I think  
22 that the proof to prove that was negligence is -- I just  
23 don't feel confident that that was -- to render a  
24 decision based -- that that existed.

25 CHAIRPERSON OPATIK: Okay. And I have a comment.

1 And after listening to everything that I've heard, I have  
2 an issue with the fact that Mr. Lococo was contacted, by  
3 his own admission, in January of 22nd, while it was  
4 listed with another agent, and at that point did not  
5 bring up a potential buyer, did not go look for a  
6 potential buyer.

7 MS. BRUMMER: That's not true.

8 CHAIRPERSON OPATIK: That's what he said.

9 MS. BRUMMER: No, I gave him the e-mail on the 1st.  
10 It was my e-mail.

11 THE ATTORNEY: Excuse me.

12 CHAIRPERSON OPATIK: Yes.

13 THE ATTORNEY: We're -- the Commission is  
14 deliberating. It's not a back-and-forth situation where  
15 you're able to interject.

16 MS. BRUMMER: Sorry.

17 CHAIRPERSON OPATIK: Regardless, what was thought  
18 was said, what I heard -- and we'll probably get it back  
19 from the court reporter -- that he was notified of the  
20 sale -- of the -- of the price of the house that was  
21 going to -- that the bank was going to accept, the lender  
22 was going to accept, and it was -- that was dated on the  
23 22nd.

24 According to what he said was, he was -- when asked  
25 by Mr. Kizer, "When did you find that out?" He said,

1 "January 22nd."

2           If that was the case and he didn't bring up a buyer  
3 at that point, yet brought a buyer three days after their  
4 company listed the property, therein I find an issue.

5           I also find an issue with the fact that a buyer  
6 materialized that quickly after it was listed, when it  
7 had been listed by another agent on the MLS. So the  
8 property was out there. It was known by most of the  
9 agents if they're MLS companies, and the buyer never  
10 materialized until after it was listed with this company.  
11 Therein I find an issue.

12           However, having said that -- I think the appearance  
13 of what went on is not in the best light; however, I  
14 can't find gross negligence.

15           So at this point we've all had our say.

16           THE ATTORNEY: What you need to do is, with the  
17 Complaint in front of you, look at the factual  
18 allegations and --

19           CHAIRMAN OPATIK: One at a time?

20           THE ATTORNEY: One at a time or you can group them  
21 together, however you wish.

22           You need to decide whether these have been proven  
23 or not proven. If there's been additional testimony and  
24 evidence that's been given today for you to find  
25 additional findings of fact that's not in the Complaint,

1 you are able to do that, as well. And you will do those  
2 by motion.

3 COMMISSIONER SCHWARTZ: Each individual one?

4 THE ATTORNEY: You can do each individual one or if  
5 you wanted to take some as a group. Okay? So you --

6 CHAIRPERSON OPATIK: So each one of the  
7 allegations, each one of the --

8 THE ATTORNEY: Right. You go through and you  
9 establish your facts, and then after you've established  
10 what facts you are finding then you move to the  
11 allegations of law. You guys have sort of had a  
12 discussion as far as, I think, where you are ultimately  
13 going to go, but you need to have that kind of a  
14 deliberation so that an order may be drafted.

15 CHAIRPERSON OPATIK: So with regard to Allegation  
16 No. 1 --

17 COMMISSIONER SCHWARTZ: Excuse me. We have -- I  
18 have a ton of responses and documents and allegations. I  
19 would like to know specifically which document you are  
20 reading from so I can follow.

21 CHAIRPERSON OPATIK: The Complaint.

22 THE ATTORNEY: The Complaint.

23 COMMISSIONER SCHWARTZ: The Complaint, okay.

24 COMMISSIONER REISS: Line 14?

25 CHAIRPERSON OPATIK: All right. Which --

1 THE ATTORNEY: The Complaint --

2 CHAIRPERSON OPATIK: The Complaint is Case No. 2 --

3 MR. SCHWARTZ: Hold on.

4 THE ATTORNEY: 204-3324.

5 COMMISSIONER SCHWARTZ: Okay.

6 THE ATTORNEY: Page 2.

7 COMMISSIONER REISS: Page 2.

8 THE ATTORNEY: At the top, where it starts, "Actual  
9 Allegations" --

10 COMMISSIONER REISS: Got you.

11 THE ATTORNEY: -- paragraph one: "I responded at  
12 the relevant times mentioned to this Complaint."

13 Do you need me to --

14 COMMISSIONER REISS: No, we're good.

15 CHAIRPERSON OPATIK: So if we look at Allegation 1,  
16 2, 3 and 4 -- and 4, we can take those as a group?  
17 Whether they -- whether we agree with the allegation or  
18 not?

19 It's on page 2 of the Complaint. I'm talking about  
20 Allegations 1, 2, 3 and 4. Maybe 1, 2, 3. Let's do 1,  
21 2, 3.

22 COMMISSIONER SCHWARTZ: Thank you.

23 CHAIRPERSON OPATIK: So we're talking about  
24 Allegations 1, 2, 3 and 4.

25 COMMISSIONER SCHWARTZ: All right.

1           CHAIRPERSON OPATIK: And we can take those as,  
2 "They've been established and we agree with those," "they  
3 have not been established, therefore we don't agree."

4           COMMISSIONER SCHWARTZ: Okay.

5           CHAIRPERSON OPATIK: And I need a motion for all  
6 three.

7           THE ATTORNEY: And remember if you see something  
8 within that actual allegation that's been contradicted  
9 today, you are able to amend the factual allegation to  
10 say that, "This has been proven."

11           You are saying whether or not these factual  
12 allegations have been proven or not proven.

13           CHAIRPERSON OPATIK: And we need that by motion, 1,  
14 2 and 3.

15           COMMISSIONER REISS: Well, then, I'll make a  
16 motion, 1, 2 and 3, that the allegations were not proven.

17           CHAIRPERSON OPATIK: "Were not"?

18           THE ATTORNEY: "Were not"?

19           COMMISSIONER REISS: "Not."

20           CHAIRPERSON OPATIK: No, 1, 2, 3.

21           COMMISSIONER REISS: Oh.

22           THE ATTORNEY: We're reading the factual  
23 allegations.

24           COMMISSIONER REISS: Oh, got you. They "were,"  
25 yes.

1 CHAIRPERSON OPATIK: "Were proven"?

2 COMMISSIONER REISS: Yes.

3 CHAIRPERSON OPATIK: Okay. Now I need a second.

4 COMMISSIONER SCHWARTZ: I second that.

5 CHAIRPERSON OPATIK: All in favor?

6 THE ATTORNEY: Discussion.

7 CHAIRPERSON OPATIK: Oh. Discussion? Okay.

8 Now, all in favor?

9 (Aye votes.)

10 All right. All oppose? Chair votes aye.

11 Okay. As to Allegation 4.

12 COMMISSIONER SCHWARTZ: Four, okay.

13 CHAIRPERSON OPATIK: Four -- yeah, 4. Let's do 4  
14 alone.

15 COMMISSIONER CARTINELLA: I move that Allegation  
16 No. 4 has been proven.

17 COMMISSIONER SCHWARTZ: I'll second that.

18 CHAIRPERSON OPATIK: Discussion? All in favor.

19 (Ayes voted.) Chair votes aye. All oppose?

20 Okay. Moving right along to number, let's see, 5.

21 Let's take 5 on its own.

22 COMMISSIONER REISS: In regards to No. 5 I would  
23 say the allegations were not proven.

24 COMMISSIONER CARTINELLA: Second.

25 CHAIRPERSON OPATIK: All in favor?

1 (Ayes voted.) The chair votes aye. All opposed?

2 MR. WALSH: May I inquire? I just want to make  
3 sure we're on --

4 CHAIRPERSON OPATIK: The same page?

5 MR. WALSH: Yeah.

6 CHAIRPERSON OPATIK: We're on the Complaint, page  
7 2, No. 5 --

8 MR. WALSH: And is that the Lococo Complaint?

9 CHAIRPERSON OPATIK: -- line 14. Yes.

10 COMMISSIONER REISS: Yes, sir.

11 MR. WALSH: Okay. So that's -- No. 5 is the one  
12 that reads, "Respondent's actions resulted in"?

13 CHAIRPERSON OPATIK: "Triple agencies, multiple  
14 records and" --

15 COMMISSIONER SCHWARTZ: I think you're just as  
16 confused as I am.

17 CHAIRPERSON OPATIK: Okay. On to No. 6. Maybe we  
18 can take 6, 7 -- 6 and 7 together?

19 COMMISSIONER SCHWARTZ: Right.

20 CHAIRPERSON OPATIK: Unless there's opposition to  
21 that.

22 COMMISSIONER REISS: Yeah, I move that 6 and 7 were  
23 proven.

24 CHAIRPERSON OPATIK: Were proven.

25 COMMISSIONER SCHWARTZ: I second that.

1 CHAIRPERSON OPATIK: Discussion? All in favor?

2 (Ayes voted.) The chair votes aye. All  
3 oppose?

4 Okay. Then we go on to number -- I forgot  
5 where we were.

6 COMMISSIONER REISS: Eight.

7 COMMISSIONER CARTINELLA: Eight.

8 CHAIRPERSON OPATIK: Thank you. No. 8. Nine --  
9 maybe 8, 9 and 10? Eight, nine and ten maybe together?

10 COMMISSIONER CARTINELLA: Will you do 8 and 9?

11 CHAIRPERSON OPATIK: Eight and nine.

12 COMMISSIONER CARTINELLA: I move Allegations 8 and  
13 9 have been proven.

14 COMMISSIONER SCHWARTZ: I second that.

15 CHAIRPERSON OPATIK: Any discussion? All in favor?

16 (Ayes voted.) The chair votes aye. All opposed?

17 Okay. No. 10. Ten and 11? Can we put 10 and 11  
18 together?

19 COMMISSIONER CARTINELLA: I want to take 10  
20 separate.

21 CHAIRPERSON OPATIK: Separate, okay.

22 COMMISSIONER CARTINELLA: I move that the  
23 Allegation No. 10 was not proven.

24 COMMISSIONER REISS: Second.

25 CHAIRPERSON OPATIK: Any discussion? All in favor?

1                   (Ayes voted.) The chair votes aye. All  
2 opposed?

3                   Okay, then No. 10.

4                   COMMISSIONER CARTINELLA: No, that was No. 10.

5                   COMMISSIONER SCHWARTZ: No. 11.

6                   CHAIRPERSON OPATIK: Oh, that was No. 10? Number  
7 11. Sorry.

8                   COMMISSIONER CARTINELLA: I move that No. 11 of the  
9 factual allegations has not been proven.

10                  For sake of discussion, perhaps?

11                  CHAIRPERSON OPATIK: Okay. For sake of discussion,  
12 can I get a second, or it will die?

13                  COMMISSIONER SCHWARTZ: I will give you a second  
14 for sake of discussion.

15                  COMMISSIONER CARTINELLA: Yes, and I will speak to  
16 my motion. I'm just confused on the -- on receiving both  
17 sides of the commission, where the referral fee would  
18 come in on that, if that's the appropriate place for that  
19 or is that just two separate things?

20                  CHAIRPERSON OPATIK: I believe it's two separate  
21 things. A referral fee is different than a commission.  
22 In fact, these -- both these mentioned here did represent  
23 the parties.

24                  COMMISSIONER CARTINELLA: Okay. Then keep it down.

25                  CHAIRPERSON OPATIK: All right. And Mr. O'Brien is

1 a broker.

2 COMMISSIONER CARTINELLA: (Inaudible). Okay.

3 CHAIRPERSON OPATIK: So then we have to vote on the  
4 motion because we have it; right?

5 COMMISSIONER CARTINELLA: Yeah. We just have to  
6 vote it down.

7 CHAIRPERSON OPATIK: Okay. So all in favor of the  
8 motion that it has not been proven, No. 11?

9 All opposed?

10 (Ayes voted.) The chair votes aye.

11 So back to No. 11.

12 COMMISSIONER SCHWARTZ: I would move that it was  
13 proven.

14 CHAIRPERSON OPATIK: Now we need a second.

15 COMMISSIONER CARTINELLA: Second.

16 COMMISSIONER SCHWARTZ: Second.

17 CHAIRPERSON OPATIK: Thank you. Any discussion?

18 All in favor?

19 (Aye votes.) Chair votes aye. All opposed?

20 Number, let's see, 12. Twelve and 13 together?

21 A VOICE: Yeah.

22 COMMISSIONER CARTINELLA: I move Allegations No. 12  
23 and 13 have been proven.

24 COMMISSIONER SCHWARTZ: I second that.

25 CHAIRPERSON OPATIK: Any discussion?

1 All in favor of the motion?

2 (Aye votes.) The chair votes aye. Opposed?

3 Thank you.

4 THE ATTORNEY: So now we debate the violations.

5 CHAIRPERSON OPATIK: Debate the violations. Okay.

6 Based on what we've just done, do we have -- do we have

7 to take them -- do we take them one at a time?

8 THE ATTORNEY: Yes.

9 CHAIRPERSON OPATIK: Okay. Violation No. 1, which

10 is No. 14, Item 14 on page 2: "The Respondent violated

11 NRS 645.633(1)(h), pursuant to NAC 645.606(6) and/or

12 NRS 645.252(2), by not dealing fairly with the Brummers."

13 Was that -- we need a motion to either say yes or

14 no to that violation.

15 COMMISSIONER REISS: I'll make a motion that, no,

16 that item, not dealing fairly with the Brummers, was not

17 proven.

18 CHAIRPERSON OPATIK: Not proven.

19 COMMISSIONER SCHWARTZ: I'll second that.

20 CHAIRPERSON OPATIK: Discussion?

21 All in favor of the motion?

22 (Aye votes.) The Chair votes aye. All opposed?

23 COMMISSIONER CARTINELLA: Aye.

24 CHAIRPERSON OPATIK: Okay. And Violation No. 2,

25 which is Item 15. "Respondent violated

1 NRS 645.633(1)(i), pursuant to NAC 645.605(6) and/or  
2 NRS 645.252(2), by not responding" -- "by not  
3 representing the Brummers with absolute fidelity."

4 Are we lost again?

5 COMMISSIONER SCHWARTZ: I make a motion that that  
6 violation was not proven.

7 COMMISSIONER CARTINELLA: Second.

8 CHAIRPERSON OPATIK: Discussion? All in favor?

9 (Aye votes.) The chair votes aye. All opposed?

10 Violation No. 4, paragraph 16: "Respondent  
11 violated NRS 645.633(1)(h), pursuant to NAC 645.605(6)  
12 and/or NRS 645.252(2), by not dealing fairly with the  
13 Brummers' mortgage lender."

14 COMMISSIONER SCHWARTZ: I make a motion that that  
15 wasn't proven.

16 COMMISSIONER REISS: Second.

17 CHAIRPERSON OPATIK: Discussion? All in favor of  
18 the motion?

19 (Aye votes.) The chair votes aye. All opposed?

20 All right. Having made the decision that the  
21 violations were not proven we do not have to go on to the  
22 disciplinary.

23 THE ATTORNEY: Correct.

24 CHAIRPERSON OPATIK: Correct.

25 THE ATTORNEY: That's the end.

1 CHAIRPERSON OPATIK: That's the end. So stated.

2 MR. WALSH: Thank you for your time.

3 CHAIRPERSON OPATIK: Thank you.

4 THE ATTORNEY: Now, I do have one question for  
5 counsel. Is Mr. O'Brien on this agenda?

6 MR. KIZER: Yes. And we had discussed this --

7 A VOICE: Your mike is going (inaudible) --

8 CHAIRPERSON OPATIK: You said were you done; right?

9 COMMISSIONER SCHWARTZ: Yeah, they heard you.

10 A VOICE: Did you turn them off?

11 MR. KIZER: I'll speak loud.

12 So we have spoken and we would ask that you  
13 continue the O'Brien matter so Mr. Walsh and I can work  
14 on a stipulation in accordance with this decision here  
15 today and we'll (inaudible) from that.

16 CHAIRPERSON OPATIK: Okay. So we need a motion for  
17 that?

18 MR. KIZER: Or just to help the administrator,  
19 maybe the easiest thing would be for us to dismiss the  
20 matter, if that's within -- in line with Mr. O'Brien and  
21 Mr. Walsh, and I assume it is.

22 MR. WALSH: We will not object.

23 MR. KIZER: Okay. That's easier. We're happy to  
24 do that.

25 THE ATTORNEY: Yeah, because they've withdrawn the

1 Complaint, so there is nothing for this Commission to  
2 consider.

3           CHAIRPERSON OPATIK: Okay. You got the -- thank  
4 you for that.

5           I would like to make a statement and it has nothing  
6 to do here, but the practice of -- of having clients sign  
7 an MLS Waiver is not always in the best interests of the  
8 seller. In this case it may have been a different.  
9 However, in most cases that is not perceived, in my  
10 opinion, as using your best skill and care of your  
11 client. By not exposing the listing to as many people as  
12 possible, you are not promoting your seller's best  
13 interests. And that is just the opinion of one  
14 commissioner. Thank you.

15           (End of proceedings.)

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# **EXHIBIT 3**

# **EXHIBIT 3**

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**BEFORE THE REAL ESTATE COMMISSION  
STATE OF NEVADA**

JOSEPH R. DECKER, Administrator, REAL  
ESTATE DIVISION, DEPARTMENT OF  
BUSINESS & INDUSTRY, STATE OF NEVADA,

Case No.: 2014-3324

Petitioner,

vs.

JASON LOCOCO,

Respondent.

JOSEPH R. DECKER, Administrator, REAL  
ESTATE DIVISION, DEPARTMENT OF  
BUSINESS & INDUSTRY, STATE OF NEVADA,

Case No.: REN 14-05-02-42

Petitioner,

vs.

STEVEN P. O'BRIEN,

Respondent.

**AFFIDAVIT IN SUPPORT OF JOINT MOTION TO DISMISS**

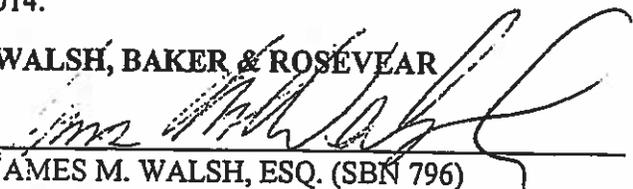
COMES NOW, Respondents JASON LOCOCO and STEVEN P. O'BRIEN, by and through their attorney, James M. Walsh, Esq., Walsh, Baker & Rosevear, and hereby submits the Affidavit and CV of James Kirk Hankla, attached hereto as **Exhibit 1**, in support of their Joint Motion to Dismiss.

**Affirmation Pursuant to NRS 239B.030**

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

DATED this 30<sup>th</sup> day of December, 2014.

**WALSH, BAKER & ROSEVEAR**

  
JAMES M. WALSH, ESQ. (SBN 796)  
9468 Double R Boulevard, Suite A  
Reno, Nevada 89521  
(775) 853-0883  
Attorneys for Respondents

1 CERTIFICATE OF SERVICE

2 I, the undersigned, declare under penalty of perjury, that I am an employee of WALSH, BAKER,  
3 ROSEVEAR & LOOMIS, PC that I am over the age of eighteen (18) years, and that I am not a party to,  
4 nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing  
document on all parties to this action by:

5  Placing an original or true copy thereof in a sealed envelope placed for collection and  
6 mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary  
7 course of business practices;

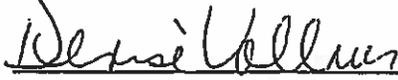
8 addressed as follows:

9 Keith E. Kizer  
10 Deputy Attorney General  
11 555 East Washington Avenue, Suite 3900  
12 Las Vegas, Nevada 89101  
13 Attorneys for Real Estate Division

14 Joseph R. Decker, Administrator  
15 Department of Business and Industry  
16 Real Estate Division  
17 2501 East Sahara Avenue  
18 Las Vegas, Nevada 89104-4137

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed this 30<sup>th</sup> day of December, 2014.

21   
22 \_\_\_\_\_  
23 Denise Vollmer, an employee of  
24 Walsh, Baker, Rosevear & Loomis, PC  
25  
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BEFORE THE REAL ESTATE COMMISSION  
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Case No.: REN 14-05-02-42

Petitioner,

vs.

STEVEN P. O'BRIEN,

Respondent.

AFFIDAVIT OF JAMES KIRK HANKLA

STATE OF NEVADA )

)

COUNTY OF WASHOE )

I, James Kirk Hankla, do hereby swear under penalty of perjury that the assertions of this affidavit are true.

1. I am President and Chief Executive Officer of International City Mortgage.
2. International City Mortgage is a mortgage lender operating in the western United States with branches in the states of Arizona, California, Hawaii, Oregon, Texas and Nevada.
3. That International City Mortgage is a Ginnie Mae mortgage backed securities issuer and servicer as well as a Fannie Mae mortgage backed securities seller and servicer.

1           4.     That I founded and have owned International City Mortgage for the last 28 years and  
2 have 31 years' experience in the mortgage banking business.

3           5.     In addition, I am also the former President of an International Coldwell Banker Real  
4 Estate Agency.

5           6.     I owned Coldwell Banker franchises in Whittier, Long Beach, Los Alamitos and  
6 Hacienda Heights, in Southern California, between 1998 and 2006. This was the 29<sup>th</sup> ranked Coldwell  
7 Banker Franchise in the world.

8           7.     As a mortgage banker and former President of a real estate agency, I have intimate  
9 knowledge of the duties, obligations and relationships of lenders and real estate brokers and agents, as  
10 well as the conduct of short sale transactions and negotiations.

11          8.     In a short sale situation, the lender is not a party to the real estate sale transaction, in that  
12 it has no contractual relationship with the buyer's or the seller's agent.

13          9.     The relationship between the seller and lender in a short sale transaction is an arm's  
14 length often adversarial relationship, often times with the loan in default and the lender seeking to  
15 foreclose and take the seller's property.

16          10.    When a short sale offer is made to the lender, the lender conducts its own value analysis  
17 of the property and makes its own economic decisions based upon such factors as the amount owed on  
18 the underlying debt, the current value of the property, potential carrying time if the property is  
19 foreclosed, expenses associated with the foreclosure, expenses associated with maintenance of the  
20 property after foreclosure versus the potential of receiving cash payment for less than the full amount of  
21 the loan. The lender then makes its own determination to either accept the seller's short sale offer or to  
22 counter requesting a higher payoff amount that it will accept in satisfaction of its debt.

23          11.    The lender does not accept or rely upon the information provided by the seller's or  
24 buyer's agent, but makes its own independent determination based upon the factors above as to whether  
25 it will accept the short sale offer or counter.

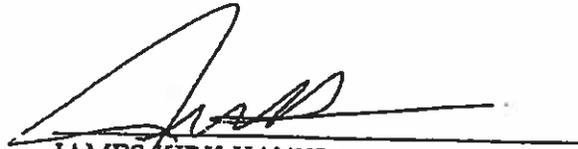
26          12.    In short sales, there is no contractual or agency relationship by and between the lender  
27 and the seller/buyer's agent and those agents owe no fiduciary duty to the lender.

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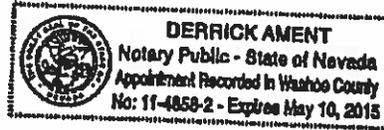
4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5 Dated this 29 day of December, 2014.

6  
7  
8   
9 JAMES KIRK HANKLA

8 Subscribed and sworn to before me  
9 this 29 day of December, 2014.

10   
11 NOTARY PUBLIC



# James Kirk Hankla

+1-775-544-9625

912 Lakeshore Blvd. POB 6084, Incline Village, NV,  
USA 89450

kirk.hankla@icitymortgage.com

www.icitymortgage.com

## Objectives

Leading companies engaged in the real estate industry in sustainable strategies for growth in both favorable and challenging environments.

## Education

1983 College of William & Mary | Business Administration

## Experience

1987- present | President / CEO

International City Mortgage Inc. | 333 South Anita Dr. Orange, CA, USA 92868

International City Mortgage (ICM) is mortgage bank that was founded in 1987 by James Kirk Hankla. ICM is approved to do business in 16 states and has offices in 6 states including California, Nevada, Arizona, Oregon, Hawaii, and Texas. ICM originated and funds an average loan volume at this time of approximately 50MM per month. ICM is one of 300 or so lenders of any size in the United States that is approved to issue GNMA (Ginnie Mac) mortgage backed securities. ICM is also approve to sell directly through Fannie Mac's cash window. ICM's loan servicing portfolio is currently in excess of 700MM.

2004- 2014 | President

Coldwell Banker Nicaragua

2005- 2012 | President

Coldwell Banker Belize

1998- 2006 | President /CEO

Rockpointe Realty Group Inc. DBA: Coldwell Banker Alliance Realty

## Skills

- Extensive experience in developing residential real estate.
- Management of real estate loan portfolios.
- Developing marketing strategies in both the real estate brokerage and mortgage banking industries.
- Working with GSE's and implementing compliance programs.
- Managing growth.
- Underwriting mortgage loans.
- Underwriting real estate appraisals.
- Supervising a large and diverse staff. (ICM has over 300 employees)

CERTIFICATE OF SERVICE

I do hereby certify that I am an employee of the Office of the Attorney General and that on the 31<sup>st</sup> day of March, 2015, I served a true and accurate copy of the RESPONSE TO JOINT MOTION TO DISMISS by mailing via United States mail, first class, postage prepaid, to:

Roderic A. Carucci, Esq.  
702 Plumas Street  
Reno, NV 89509

  
An Employee of the Office of the Attorney General