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

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

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

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

you.

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

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

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

A I do not.

Q You do not. Okay.

(Inaudible.)

THE WITNESS: My dad already does it enough.

CHAIRPERSON OPATIK: Anything further?

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

CHAIRPERSON OPATIK: Mr. Kizer?

MR. KIZER: Thank you.

CROSS-EXAMINATION

BY MR. KIZER:

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

A Yes.

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

A Yes, this was the monthly average --
Q Correct.
A -- for the entire month.
Q Now, the increase -- that increase, would you admit that it wouldn't -- it doesn't necessarily result strictly from the change in the market? In other words, it could be that those homes sold in September were, on average, nicer homes -- a little better term -- than the ones sold in March?
A It's possible. But all else being equal, there was a significant price appreciation in those homes.
Q And you are also not testifying that a house would -- a house sold in March, compared to later, then sold in September, would -- all other things being equal -- would definitely be a 9 percent increase in the two sale prices?
A I believe this is indicative of that, actually, yes, sir.
Q Okay.
A So you see that often. Someone will have sold their -- I mean, if you look at 2005 and '06, within a few months' time the price of the same house changed dramatically, all else being equal.
And this is -- this is the reverse. This is the

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

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

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

A Yes, it was listed for 379,000.

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

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

A VOICE: Closer to the microphone, please.

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

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

BY MR. KIZER:

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

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

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

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

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

A Yes.

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

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

Is that the argument you're making?

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

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

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

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

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

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

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

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

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

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

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

A I believe -- I can answer this (inaudible).

I'm looking at it in the true points, in the same way that the assertion was made by the same two points, that the seller and/or lender were harmed because of the spread between 300 and 355.

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

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

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

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

A Yes.

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

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

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

A Yes.

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

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

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

MR. KIZER: Thank you.

CHAIRPERSON OPATIK: Any other redirect?
MR. WALSH: No.
CHAIRPERSON OPATIK: Okay. Any comments by the Commissioners? Ms. Cartinella?
COMMISSIONER CARTINELLA: Yes, Madam Chairman.
I have two questions for you. (Inaudible.) The company, Northern Nevada Capital, do they have a minimum profit margin amount that they typically go by when they are doing the research, the analysis on properties?
THE WITNESS: I am not familiar with that.
COMMISSIONER CARTINELLA: So the three percent could be normal typically or --
THE WITNESS: I believe that happens fairly often, yes.
COMMISSIONER CARTINELLA: Okay. Thank you.
And the other question was, is you stated that you were using Zillow as your analysis for property value. Do you ever use any other source, like the Multiple Listing Service or anything that would be -- have more accurate data?
THE WITNESS: Sure. I -- so Zillow is an aggregator that grabs data from the MLS. And I know it's not perfect. I wouldn't -- I'm not a Realtor, but I wouldn't advise anybody to use Zillow to buy or sell a house.

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

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

COMMISSIONER CARTINELLA: Thank you.

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

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

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

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

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

(Recess taken.)
CHAIRPERSON OPATIK: -- Division, Nevada Real Estate Division vs. Jason Allen Lococo.
MR. WALSH: We would call Kirk Hankla, please.
JAMES KIRK HANKLA,
being first duly sworn by the chairperson
was examined and testified as follows:
DIRECT EXAMINATION
BY MR. WALSH:
Q Would you state your name, please, sir.
A James Kirk Hankla.
Q Mr. Hankla, what is your profession or occupation, sir?
A I am the president --
CHAIRPERSON OPATIK: Excuse me. Excuse me, but you've been previously sworn.
THE WITNESS: That's right.
THE ATTORNEY: Spell your last name for me, please.
THE WITNESS: H-a-n-k-l-a. I'm the one who gave you the card just at the end of the last session.
THE ATTORNEY: Thank you.
THE WITNESS: You're welcome.
BY MR. WALSH:
Q And I'm sorry, sir. What is your profession or occupation?

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

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

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

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

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

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

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

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

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

brick and mortar?

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

Q And licensed in additional jurisdictions?

A Oh, we're licensed in most of the states. Let's get out a map.

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

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

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

A Oh, 31.

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

A I am.

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

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

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

short-sale situations?

A Yes, I am.

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

A Only when we're the seller.

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

A Um-hum.

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

A Yes. Yes, I'm familiar.

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

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

MR. WALSH: And that is appropriate testimony for

an expert witness in a contested judicatory proceeding. The expert is allowed to provide opinions on the ultimate question of fact to provide guidance and benefit to the trier of fact, which are you all.

CHAIRPERSON OPATIK: All right. I just have one question. Are you -- is this witness an expert witness or a witness that is part of the --

MR. WALSH: He is an expert witness.

CHAIRPERSON OPATIK: Without -- without party to the contract, to the --

MR. WALSH: That's correct.

CHAIRPERSON OPATIK: -- transaction at all?

MR. WALSH: He is not a party to, he is not affiliated, he is not a member of, he is not a respondent, he is not a petitioner. He's -- other than a retained expert, he is a stranger to this transaction.

CHAIRPERSON OPATIK: Even having stated so, I think I am going to sustain the objection. I'll sustain the objection.

MR. WALSH: And on what basis?

CHAIRPERSON OPATIK: The basis that the -- the facts that are being presented or the facts -- the allocations that are being brought forward are really irrelevant to the question that you asked.

MR. WALSH: The allegation is that he violates a

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

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

MR. WALSH: No.

CHAIRPERSON OPATIK: Was that not your last question?

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

CHAIRPERSON OPATIK: Restate the question.

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

CHAIRPERSON OPATIK: Um-hum.

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

CHAIRPERSON OPATIK: In his opinion?

MR. WALSH: In his opinion, yes.

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

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

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

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

MR. KIZER: Yes.

CHAIRPERSON OPATIK: You had a witness list?

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

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

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

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

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

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

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

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

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

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

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

MR. KIZER: Very good.

CHAIRPERSON OPATIK: The objection is overruled.

BY MR. WALSH:

Q Mr. Hankla, do you remember the question?

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

Q I think I would ask you two questions. Basically, has -- from an industry standpoint is the lender considered a party to a short-sale transaction?

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

involved.

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

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

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

You mentioned the Article 3 judges. What are those?

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

Q To sit where?

A On federal benches.

Q Okay. Bankruptcy and federal district courts?

A That's right.

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

obligation or duty of care to a lender.

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

A No.

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

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

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

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

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

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

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

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

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

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

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

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

A Absolutely.

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

A No.

Q And why not?

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

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

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

Q And why is it adversarial?

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

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

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

Q And would that be particularly true where the

lender is attempting to foreclose on the property?

A Oh, sure, absolutely.

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON OPATIK: Mr. Kizer?

MR. KIZER: I have no questions of the witness. Thank you.

COMMISSIONER CARTINELLA: Question, just to clarify, again.

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

Who does your broker price opinions?

THE WITNESS: Well, that would depend on where the

property is. We're in lots of states.

COMMISSIONER CARTINELLA: Well, but would it be --

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

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

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

COMMISSIONER CARTINELLA: Okay. Thank you.

THE WITNESS: Thank you.

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

MR. KIZER: I do not.

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

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

THE WITNESS: Unless the principal is the bank.

CHAIRPERSON OPATIK: Right. On a short sale.

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

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

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

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

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

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

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

CHAIRPERSON OPATIK: -- the broker?

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

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

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

it isn't."

CHAIRPERSON OPATIK: Okay.

THE WITNESS: Or maybe we're agreeing.

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

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

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

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

CHAIRPERSON OPATIK: Okay. No further questions from me.

MALE VOICE: Not me.

CHAIRPERSON OPATIK: Okay. The witness is excused.

THE WITNESS: Thank you.
CHAIRPERSON OPATIK: Call your next witness.
MR. WALSH: That's our case.
CHAIRPERSON OPATIK: You rest at this point?
MR. WALSH: We do.
CHAIRPERSON OPATIK: Mr. Kizer?
MR. KIZER: We have nothing in rebuttal and are ready for closing when you are ready.
CHAIRPERSON OPATIK: Okay. So do you want to do your closing arguments at this point?
MR. WALSH: Yes.
MR. KIZER: Yes, Madam Chair.
In the opening statement by the respondent's counsel he had mentioned whether we were in reality asking for an advisory opinion. We are not. The Division is not. Granted, again, as I mentioned in my opening, this is akin to a case of first impression. It's a unique set of circumstances, but we're looking at a specific statutory regulation cited in the Complaint, whether this rose to the level of a violation.
And I will point out that, from a previous witness's testimony, we're not charging the absolute fidelity violation with respect to the seller's mortgage money. If you look at paragraph 15, that's only against the seller, and then 16 talks only about the not dealing

fairly with the mortgage lender.

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

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

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

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

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

The bottom line here is we have a situation where,

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

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

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

CHAIRPERSON OPATIK: Thank you.

Mr. Walsh?

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

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

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

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

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

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

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

The -- there has been talk of the MLS problems

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

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

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

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

Well -- and Mr. O'Brien sat here and said, "I want referrals. I want repeat business." I mean, everybody in this room, I think it would be safe to say, wants to do a good job and wants to get that repeat business. That's what he's in the business for. That's what we're all in the business for. And that's exactly what he did.

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

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

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

says that there's gross negligence.

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

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

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

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

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

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

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

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

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

CHAIRPERSON OPATIK: Thank you.

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

would like to make at this point?

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

CHAIRPERSON OPATIK: Yes, Ms. Cartinella.

COMMISSIONER CARTINELLA: Yes. Sherrie Cartinella for the record.

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

CHAIRPERSON OPATIK: Anybody else?

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

CHAIRPERSON OPATIK: Mr. Reiss?

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

CHAIRPERSON OPATIK: Okay. And I have a comment.

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

MS. BRUMMER: That's not true.

CHAIRPERSON OPATIK: That's what he said.

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

THE ATTORNEY: Excuse me.

CHAIRPERSON OPATIK: Yes.

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

MS. BRUMMER: Sorry.

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

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

"January 22nd."

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

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

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

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

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

CHAIRMAN OPATIK: One at a time?

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

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

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

COMMISSIONER SCHWARTZ: Each individual one?

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

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

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

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

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

CHAIRPERSON OPATIK: The Complaint.

THE ATTORNEY: The Complaint.

COMMISSIONER SCHWARTZ: The Complaint, okay.

COMMISSIONER REISS: Line 14?

CHAIRPERSON OPATIK: All right. Which --

THE ATTORNEY: The Complaint --
CHAIRPERSON OPATIK: The Complaint is Case No. 2 --
MR. SCHWARTZ: Hold on.
THE ATTORNEY: 204-3324.
COMMISSIONER SCHWARTZ: Okay.
THE ATTORNEY: Page 2.
COMMISSIONER REISS: Page 2.
THE ATTORNEY: At the top, where it starts, "Actual Allegations" --
COMMISSIONER REISS: Got you.
THE ATTORNEY: -- paragraph one: "I responded at the relevant times mentioned to this Complaint."
Do you need me to --
COMMISSIONER REISS: No, we're good.
CHAIRPERSON OPATIK: So if we look at Allegation 1, 2, 3 and 4 -- and 4, we can take those as a group? Whether they -- whether we agree with the allegation or not?
It's on page 2 of the Complaint. I'm talking about Allegations 1, 2, 3 and 4. Maybe 1, 2, 3. Let's do 1, 2, 3.
COMMISSIONER SCHWARTZ: Thank you.
CHAIRPERSON OPATIK: So we're talking about Allegations 1, 2, 3 and 4.
COMMISSIONER SCHWARTZ: All right.

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

COMMISSIONER SCHWARTZ: Okay.

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

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

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

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

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

CHAIRPERSON OPATIK: "Were not"?

THE ATTORNEY: "Were not"?

COMMISSIONER REISS: "Not."

CHAIRPERSON OPATIK: No, 1, 2, 3.

COMMISSIONER REISS: Oh.

THE ATTORNEY: We're reading the factual allegations.

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

CHAIRPERSON OPATIK: "Were proven"?
COMMISSIONER REISS: Yes.
CHAIRPERSON OPATIK: Okay. Now I need a second.
COMMISSIONER SCHWARTZ: I second that.
CHAIRPERSON OPATIK: All in favor?
THE ATTORNEY: Discussion.
CHAIRPERSON OPATIK: Oh. Discussion? Okay. Now, all in favor?
(Aye votes.)
All right. All oppose? Chair votes aye.
Okay. As to Allegation 4.
COMMISSIONER SCHWARTZ: Four, okay.
CHAIRPERSON OPATIK: Four -- yeah, 4. Let's do 4 alone.
COMMISSIONER CARTINELLA: I move that Allegation No. 4 has been proven.
COMMISSIONER SCHWARTZ: I'll second that.
CHAIRPERSON OPATIK: Discussion? All in favor.
(Ayes voted.) Chair votes aye. All oppose?
Okay. Moving right along to number, let's see, 5. Let's take 5 on its own.
COMMISSIONER REISS: In regards to No. 5 I would say the allegations were not proven.
COMMISSIONER CARTINELLA: Second.
CHAIRPERSON OPATIK: All in favor?

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

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

CHAIRPERSON OPATIK: The same page?

MR. WALSH: Yeah.

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

MR. WALSH: And is that the Lococo Complaint?

CHAIRPERSON OPATIK: -- line 14. Yes.

COMMISSIONER REISS: Yes, sir.

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

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

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

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

COMMISSIONER SCHWARTZ: Right.

CHAIRPERSON OPATIK: Unless there's opposition to that.

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

CHAIRPERSON OPATIK: Were proven.

COMMISSIONER SCHWARTZ: I second that.

CHAIRPERSON OPATIK: Discussion? All in favor?
(Ayes voted.) The chair votes aye. All oppose?
Okay. Then we go on to number -- I forgot where we were.
COMMISSIONER REISS: Eight.
COMMISSIONER CARTINELLA: Eight.
CHAIRPERSON OPATIK: Thank you. No. 8. Nine -- maybe 8, 9 and 10? Eight, nine and ten maybe together?
COMMISSIONER CARTINELLA: Will you do 8 and 9?
CHAIRPERSON OPATIK: Eight and nine.
COMMISSIONER CARTINELLA: I move Allegations 8 and 9 have been proven.
COMMISSIONER SCHWARTZ: I second that.
CHAIRPERSON OPATIK: Any discussion? All in favor?
(Ayes voted.) The chair votes aye. All opposed?
Okay. No. 10. Ten and 11? Can we put 10 and 11 together?
COMMISSIONER CARTINELLA: I want to take 10 separate.
CHAIRPERSON OPATIK: Separate, okay.
COMMISSIONER CARTINELLA: I move that the Allegation No. 10 was not proven.
COMMISSIONER REISS: Second.
CHAIRPERSON OPATIK: Any discussion? All in favor?

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

Okay, then No. 10.

COMMISSIONER CARTINELLA: No, that was No. 10.

COMMISSIONER SCHWARTZ: No. 11.

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

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

For sake of discussion, perhaps?

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

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

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

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

COMMISSIONER CARTINELLA: Okay. Then keep it down.

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

a broker.

COMMISSIONER CARTINELLA: (Inaudible). Okay.

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

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

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

All opposed?

(Ayes voted.) The chair votes aye.

So back to No. 11.

COMMISSIONER SCHWARTZ: I would move that it was proven.

CHAIRPERSON OPATIK: Now we need a second.

COMMISSIONER CARTINELLA: Second.

COMMISSIONER SCHWARTZ: Second.

CHAIRPERSON OPATIK: Thank you. Any discussion? All in favor?

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

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

A VOICE: Yeah.

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

COMMISSIONER SCHWARTZ: I second that.

CHAIRPERSON OPATIK: Any discussion?

All in favor of the motion?

(Aye votes.) The chair votes aye. Opposed? Thank you.

THE ATTORNEY: So now we debate the violations.

CHAIRPERSON OPATIK: Debate the violations. Okay. Based on what we've just done, do we have -- do we have to take them -- do we take them one at a time?

THE ATTORNEY: Yes.

CHAIRPERSON OPATIK: Okay. Violation No. 1, which is No. 14, Item 14 on page 2: "The Respondent violated NRS 645.633(1)(h), pursuant to NAC 645.606(6) and/or NRS 645.252(2), by not dealing fairly with the Brummers."

Was that -- we need a motion to either say yes or no to that violation.

COMMISSIONER REISS: I'll make a motion that, no, that item, not dealing fairly with the Brummers, was not proven.

CHAIRPERSON OPATIK: Not proven.

COMMISSIONER SCHWARTZ: I'll second that.

CHAIRPERSON OPATIK: Discussion?

All in favor of the motion?

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

COMMISSIONER CARTINELLA: Aye.

CHAIRPERSON OPATIK: Okay. And Violation No. 2, which is Item 15. "Respondent violated

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

Are we lost again?

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

COMMISSIONER CARTINELLA: Second.

CHAIRPERSON OPATIK: Discussion? All in favor?

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

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

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

COMMISSIONER REISS: Second.

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

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

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

THE ATTORNEY: Correct.

CHAIRPERSON OPATIK: Correct.

THE ATTORNEY: That's the end.

CHAIRPERSON OPATIK: That's the end. So stated.
MR. WALSH: Thank you for your time.
CHAIRPERSON OPATIK: Thank you.
THE ATTORNEY: Now, I do have one question for counsel. Is Mr. O'Brien on this agenda?
MR. KIZER: Yes. And we had discussed this --
A VOICE: Your mike is going (inaudible) --
CHAIRPERSON OPATIK: You said were you done; right?
COMMISSIONER SCHWARTZ: Yeah, they heard you.
A VOICE: Did you turn them off?
MR. KIZER: I'll speak loud.
So we have spoken and we would ask that you continue the O'Brien matter so Mr. Walsh and I can work on a stipulation in accordance with this decision here today and we'll (inaudible) from that.
CHAIRPERSON OPATIK: Okay. So we need a motion for that?
MR. KIZER: Or just to help the administrator, maybe the easiest thing would be for us to dismiss the matter, if that's within -- in line with Mr. O'Brien and Mr. Walsh, and I assume it is.
MR. WALSH: We will not object.
MR. KIZER: Okay. That's easier. We're happy to do that.
THE ATTORNEY: Yeah, because they've withdrawn the

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

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

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

(End of proceedings.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, MARIAN S. BROWN PAVA, a Certified Court Reporter in and for the State of Nevada and State of California do hereby certify that I transcribed from an audiotape the proceedings in the matter entitled herein; that the foregoing transcript, consisting of pages 1 through 138, is a true and correct transcript taken from the audiotape to the best of my knowledge, skill and ability.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

Dated at Reno, Nevada, this 3rd day of March, 2015.

Marian S. Brown Pava

MARIAN S. BROWN PAVA, CCR #169, RPR, CSR #4525

EXHIBIT 3

EXHIBIT 3

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

JOSEPH R. DECKER, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. JASON LOCOCO, Respondent.	Case No.: 2014-3324
JOSEPH R. DECKER, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. STEVEN P. O'BRIEN, Respondent.	Case No.: REN 14-05-02-42

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 30th 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

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am an employee of WALSH, BAKER, ROSEVEAR & LOOMIS, PC that I am over the age of eighteen (18) years, and that I am not a party to, 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:

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

addressed as follows:

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

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

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

Executed this 30th day of December, 2014.

Denise Vollmer, an employee of
Walsh, Baker, Rosevear & Loomis, PC

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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, Petitioner, vs. JASON LOCOCO, Respondent.	Case No.: 2014-3324
JOSEPH R. DECKER, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. STEVEN P. O'BRIEN, Respondent.	Case No.: REN 14-05-02-42

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.

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

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

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

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

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

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

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

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

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

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FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 29 day of December, 2014.

JAMES KIRK HANKLA

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

NOTARY PUBLIC

DERRICK AMENT
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 11-4858-2 - Expires May 10, 2015

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 Mae) mortgage backed securities. ICM is also approve to sell directly through Fannie Mae'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 31st 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

Danielle Wright
An Employee of the Office of the Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101