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Attorneys for Respondent

FILED
MAY 27 2015
REAL ESTATE COMMISSION
BY

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

JOSEPH R. DECKER, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. DAUNSHARI WONG-CULOTTA, Respondent.	Case No.: RES 14-05-76-1056

PETITION FOR REHEARING

Respondent, DAUNSHARI WONG-CULOTTA, (hereinafter "Respondent") by and through her attorneys of record, Marquis Aurbach Coffing, hereby file their Petition for Rehearing. This Petition is made and based upon the pleadings and papers on file herein, the following Memorandum of Points & Authorities, and any oral argument entertained at the time of the hearing on this matter.

Dated this 27 day of May, 2015.

MARQUIS AURBACH COFFING

By _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I. TIMELINESS OF PETITION

On October 20, 2014, Respondent's attorneys of record, the law firm of Marquis Aurbach Coffing (MAC Law), sent notice to Mr. Joseph (JD) Decker, Administrator of the Nevada Real Estate Division (NRED),that Respondent had retained said law firm to handle any and all matters related to an investigation of Respondent in the above entitled matter.[1] The letter also specifically requested that "all future correspondence" would be sent to MAC Law's offices. Id. At the time of the letter, no complaint had been filed against Respondent. MAC Law thereafter received no correspondence or notices concerning Respondent from Mr. Decker or anyone else on behalf of NRED whatsoever.

Without notifying Respondent or Respondent's attorneys of record, a Complaint appears to have been filed and a hearing on the prosecution of the Complaint appears to have taken place on Wednesday, April 22, 2015. The Decision regarding the prosecution of said Complaint was filed on May 12, 2015. The Decision, along with an enclosed letter was mailed *to Respondent*, not Respondent's attorneys, via certified mail on May 13, 2015. Respondent received and opened the Decision and letter on May 16, 2015.

NAC 645.820(1) allows the Respondent to petition the Commission for a rehearing within 10 days of receipt of the Decision. Consequently, in light of NRED's failure to notify Respondent's attorneys of record, and in light of Respondent's Petition being submitted within the allotted time period, Respondent's Petition is therefore being timely submitted in accordance with NRC 645.820(1).

II. BRIEF STATEMENT OF FACTS

Prior to the April 22, 2015 hearing, Respondent was represented by the law firm of Marquis Aurbach Coffing (MAC Law). MAC Law's October 20, 2014 letter to Mr. Decker clearly advised Mr. Decker that MAC Law would be representing Respondent, and the letter requested that all future correspondence be sent to MAC Law's office. Id. Neither Respondent

[1] A true and accurate copy of the October 20, 2014 letter is attached hereto as **Exhibit 1.**

nor MAC Law received any notice that a Complaint had been filed or that a hearing on the prosecution of the Complaint had been scheduled. In fact, neither Respondent nor MAC Law has received a copy of said Complaint to this day.

The prosecution of the Complaint appears to have taken place on Wednesday, April 22, 2015. The Decision regarding the prosecution of said Complaint was filed on May 12, 2015. The Decision concludes that "RESPONDENT violated NRS 645.230(1)(1) on thirteen occasions by engaging in the business of, acting in the capacity of, advertising or assuming to act as, a real estate broker, real estate broker-salesperson or real estate salesperson within the State of Nevada without first obtaining the appropriate license from the Division."[2] Moreover, according to the Decision, "RESPONDENT violated NRS 645.230(1)(b) on three occasions by engaging in the business of, acting in the capacity of, advertising or assuming to act as, a property manager within the State of Nevada without first obtaining from the Division a license as a real estate broker, real estate broker-salesperson or real estate salesperson and a permit to engage in property management."[3] As such, the Decision ordered that "RESPONDENT shall pay a fine in the amount of $80,000.00 to the Division," that "RESPPONDENT shall pay hearing and investigative costs in the amount of $967.27 to the Division," and that "RESPONDENT shall pay the above-referenced monies, which total $80,967.27, to the Division within ninety (90) days of the effective date of [the] Decision."[4]

After receiving the Decision, Respondent immediately contacted MAC Law, and MAC Law contacted Keith E. Kizer, the Deputy Attorney General that appeared and prosecuted the Complaint on behalf of NRED. After discussions with Mr. Kizer, it is MAC Law's understanding that NRED and Mr. Kizer will have no objection to Respondent's Petition for Rehearing and will not oppose staying the Decision pending the rehearing.[5]

---

[2] See Decision at p. 4, ¶ 3.

[3] Id.at p. 5, ¶ 4.

[4] Id. at p. 5, lines 7-13.

[5] See **Exhibit 2.**

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III. LEGAL ARGUMENT

A. APPLICABLE LAW

NAC 645.820 (NRS 645.190) provides for the procedures for rehearing a case where a ruling or decision of the Commission is against the licensee:

> 6. If a petition for rehearing is filed and the Commission is not scheduled to meet before the effective date of the penalty, the Division may stay enforcement of the decision appealed from. When determining whether a stay is to be granted, the Division shall determine whether the petition was timely filed and whether it alleges a cause or ground which may entitle the licensee to a rehearing.
>
> 7. A rehearing may be granted by the Commission for any of the following causes or grounds:
>
> (a) Irregularity in the proceedings in the original hearing;
>
> (b) Accident or surprise which ordinary prudence could not have guarded against; . . .

NRS 645.680 concerns, among other things Complaint and notice of hearing requirements and provides:

> 1. The procedure set forth in this section and NRS 645.690 must be followed before the Commission revokes, suspends or denies the renewal of any license, permit or registration of an owner-developer issued pursuant to this chapter.
>
> 2. Upon the initiation of a complaint by the Administrator, the matter must be set for a hearing by the Administrator, who shall schedule a hearing before the Commission, and ***the licensee, permittee or owner-developer is entitled to be heard thereon in person or by counsel.***
>
> . . .
>
> 4. ***The licensee, permittee or owner-developer must be given at least 30 days' notice in writing by the Division of the date, time and place of the hearing together with a copy of the complaint and copies of all communications, reports, affidavits or depositions in possession of the Division relevant to the complaint. The Division may present evidence obtained after the notice only if the Division shows that the evidence was not available after diligent investigation before the time notice was given to the licensee, permittee or owner-developer and that the evidence was given or communicated to the licensee, permittee or owner-developer immediately after it was obtained.***
>
> 5. Notice is complete upon delivery personally to the licensee, permittee or owner-developer or by mailing by certified mail to the last known address of the licensee, permittee or owner-developer. If the licensee is a broker-salesperson or salesperson, the Division shall also notify the broker with whom he or she is associated, or the owner-developer by whom he or she is employed, by mailing an exact statement of the charges and the date, time and place of the hearing by certified mail to the owner-developer or broker's last known address.

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(Emphasis added).

NRS 233B.121 provides for the requisite notice of hearings in contested cases:

> 1. ***In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.***
>
> 2. The notice must include:
>
> (a) A statement of the time, place and nature of the hearing.
>
> (b) A statement of the legal authority and jurisdiction under which the hearing is to be held.
>
> (c) A reference to the particular sections of the statutes and regulations involved.
>
> (d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.
>
> 3. ***Any party is entitled to be represented by counsel.***
>
> 4. Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved. An agency may by regulation authorize the payment of fees and reimbursement for mileage to witnesses in the same amounts and under the same conditions as for witnesses in the courts of this state.
>
> . . .

(Emphasis added).

B. RESPONDENT IS ENTITLED TO A REHEARING

Respondent was entitled to notice and an opportunity to be heard at the hearing in this matter on April 22, 215 in person and/or by counsel. NRS 645.680(2); NRS 233B.121(3). Respondent's attorneys of record properly notified Mr. Decker and NRED in writing that MAC Law would be representing Respondent in all further proceedings, and MAC Law requested that all future correspondence concerning Respondent by remitted to MAC Law's offices.[6]

NRED must give a licensee, permittee or owner-developer at least 30 days' notice in writing of the date, time and place of the hearing together with a copy of the complaint and copies of all communications reports, affidavits or depositions in possession of the Division relevant to the complaint. NRS 645.680(4). Moreover, no proceeding to suspend, revoke or deny

[6] See **Exhibit 1**.

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the renewal of any license or registration of an owner-developer may be maintained unless it is commenced by the giving of notice to the licensee. NRS 645.685(3).

In the case at hand, Respondent did not receive notice of the hearing or an opportunity to be heard at the hearing. As such, Respondent is entitled to a rehearing pursuant to NAC 645.820(7), which provides:

> A rehearing may be granted by the Commission for any of the following causes or grounds:
>
> (a) Irregularity in the proceedings in the original hearing;
>
> (b) Accident or surprise which ordinary prudence could not have guarded against.

Respondent was entitled to receive notice of the hearing by having NRED provide Respondent's attorneys with proper notice and accompanying materials. Despite having been advised by MAC Law to forward all future correspondence concerning Respondent to MAC Law's offices, NRED failed to fulfill its mandates prior to conducting the hearing. As such, the original hearing can only be described as suffering from (1) "irregularity in the proceedings" and (2) the "accident" of having failed to properly notify Respondent and MAC Law of the hearing. MAC Law exercised ordinary prudence by sending Mr. Decker the October 20, 2014 letter. Respondent's due process rights to notice and an opportunity to be heard at the hearing have been violated. The original hearing in this matter suffers from irregularities and the accidental non-appearance of Respondent or her attorneys. As such, Respondent is clearly and justifiably entitled to a rehearing pursuant to NAC 645.820(7)(a)-(b).

C. RESPONDENT IS ENTITLED TO A STAY OF ENFORCEMENT OF THE DECISION'S ORDER

NAC 645.820(6) allows the Division to stay enforcement of the May 12, 2015 Order if the Commission not scheduled to meet before the effective date of the penalty, the Division may stay enforcement of the decision appealed from. Respondent has timely filed this Petition, as more fully provided above. Respondent has presented good cause which entitles her to a rehearing. Additionally, upon information and belief, neither NRED nor Mr. Kizer will oppose the stay of the enforcement of the Order or in the Petition for Rehearing. Thus, Respondent

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additionally seeks a stay of the enforcement of the May 12, 2015 Order if the Commission is not scheduled to meet prior to August 6, 2015.

IV. CONCLUSION

Respondent respectfully requests that the Commission grant her a rehearing based on the grounds, causes and issues raised herein above.

Dated this 27 day of May, 2015.

MARQUIS AURBACH COFFING

By _____

Scott A. Marquis, Esq.
Nevada Bar No. 6407
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Respondent

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Exhibit 1

MARQUIS AURBACH
COFFING

DIRECT LINE: (702) 207-6095
DIRECT FAX: (702) 856-8995
EMAIL: AANDERSON@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIOBEE
DALE A. HAYES
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
FRANK M. FLANSBURG III
CRAIG R. ANDERSON
DAVID A. COLVIN
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
JASON M. GERBER
MICAH S. ECHOLS
ERIK W. FOX
BRIAN R. HARDY
TYE S. HANSEEN
LIANE K. WAKAYAMA
CANDICE E. RENKA

JAMIE A. FROST
JACK F. DEGREE
CODY S. MOUNTEER
CHAD F. CLEMENT
BENJAMIN T. AUTEN
KRISTIN L. GIFFORD
CHRISTIAN T. BALDUCCI
VINCENT J. VITATOE
ADAM C. ANDERSON
JIMMY T. LEE
BRIANNA SMITH
JAMES J. RUGGEROLI
NIKITA R. PIERCE
JARED M. MOSER

JOHN M. SACCO
DAVID G. ALLEMAN
OF COUNSEL

October 20, 2014

Mr. Joseph (JD) Decker
2501 E. Sahara Avenue, Suite 102
Las Vegas, NV 89104

Re: RES14-05-76-1056 NRED v. WONG-CULOTTA
Our File No. 13850-010

Dear Mr. Joseph (JD) Decker:

This office is in receipt of your October 3, 2014 correspondence and September 30, 2014, Cease and Desist Order regarding the above mentioned matter. Please be advised that this law firm has been retained by Ms. Daunshari Wong-Culotta in light of the same. Therefore, please remit all future correspondence to this office.

Upon review of the Cease and Desist and October 3rd correspondence, we are exceedingly perplexed by NRED's intentions. While you allege our client is in violation of NRS 645.230 and NRS 645.235, you failed to provide any real explanation or substantiating evidence supporting these allegations.

Instead, you requested that our client provide "[a]ny documentation or other evidence … to support [her] compliance with the above provisions." As you are well aware, such request is wholly improper and a violation of my client's Due Process rights. Accordingly, my client has no intentions to provide your office with any documentation without receipt of a formal complaint, which specifically outlines whatever charges NRED is making against her.

Furthermore, upon discussing the instant matter with Ms. Carolyn Washington, she stated that no Complaint had been filed and that this case has been handed over to the Attorney General's office to determine whether or not my client's actions were unlawful (although we are still unclear exactly what actions NRED claims are violations). Thus, Ms. Washington indicated that she could not even provide us with the evidence that NRED has accumulated regarding these alleged violations.

Even if NRED would have been more clear regarding its evidence and allegations, it concerns us that NRED sent this "evidence" to the Attorney General's Office without waiting for our client to produce the evidence that was demanded. It doesn't appear that NRED actually planned to give our client a chance to defend herself since it failed to provide her with an adequate description of the charges and sent its "evidence" to the Attorney General before NRED's deadline for our client to provide evidence in her defense had even passed.

For all of the reasons set forth herein, our client will not be providing any evidence until some type of formal charge is made against her and she has the opportunity to evaluate the "evidence" compiled by NRED. According to Ms. Washington, a complaint is unlikely to be filed until 2015, if at all. As such, we will plan to deal with NRED's allegations when, and if, such a complaint is actually filed. Should you wish to discuss the matter further, please do not hesitate to contact us.

Sincerely,

MARQUIS AURBACH COFFING

Scott A. Marquis, Esq.
Adam C. Anderson, Esq.

ACA:aca

MAC:13850-010 2350408_1 10/20/2014 10:40 AM

Exhibit 2

James Ruggeroli

From: Keith E. Kizer [KKizer@ag.nv.gov]
Sent: Tuesday, May 26, 2015 1:59 PM
To: Scott Marquis
Cc: James Ruggeroli
Subject: RE: Petition for Rehearing [IWOV-iManage.FID929499]

Thank you. I have a copy of the documents to mail to you two, but am awaiting a filed-stamped copy of the complaint from the Division.

I will email you once I have the filed-stamped copy (and will include a scanned copy of the compliant in that email) to let you know the documents and complaint have been mailed to you.

Also, as we discussed, the Division and I have no objection to a rehearing.

Keith E. Kizer
Deputy Attorney General
State of Nevada
702-486-3326
KKizer@ag.nv.gov

From: Scott Marquis [mailto:smarquis@maclaw.com]
Sent: Tuesday, May 26, 2015 10:00 AM
To: Keith E. Kizer
Cc: James Ruggeroli
Subject: Petition for Rehearing [IWOV-iManage.FID929499]

Hello Keith,

Thanks again for taking the time to discuss the Shari-Wong-Culotta matter with me last week. As I told you over the phone, we sent a letter last October in this matter, in which we requested to be notified of any further correspondence in this matter, and a copy is attached hereto for your convenience.

Please provide copies of the complaint and any evidence you have in this matter to James Ruggeroli, Esq. (he is copied on this email) and myself at your earliest opportunity. We should have the petition for rehearing filed this week.

Thanks so much,

MARQUIS AURBACH
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James Ruggeroli

From: Keith E. Kizer [KKizer@ag.nv.gov]
Sent: Tuesday, May 26, 2015 2:12 PM
To: Scott Marquis
Cc: James Ruggeroli
Subject: RE: Petition for Rehearing [IWOV-iManage.FID929499]

I should also add that the Division and I have no objection to a stay of the decision.

From: Scott Marquis [mailto:smarquis@maclaw.com]
Sent: Tuesday, May 26, 2015 2:11 PM
To: Keith E. Kizer
Cc: James Ruggeroli
Subject: RE: Petition for Rehearing [IWOV-iManage.FID929499]

I thought that was likely the case. Thank you for the clarification.

From: Keith E. Kizer [mailto:KKizer@ag.nv.gov]
Sent: Tuesday, May 26, 2015 2:08 PM
To: Scott Marquis
Cc: James Ruggeroli
Subject: RE: Petition for Rehearing [IWOV-iManage.FID929499]

It is business days, so you have the additional time if needed.

From: Scott Marquis [mailto:smarquis@maclaw.com]
Sent: Tuesday, May 26, 2015 2:05 PM
To: Keith E. Kizer
Cc: James Ruggeroli
Subject: RE: Petition for Rehearing [IWOV-iManage.FID929499]

Thanks Keith.

I had forgotten about the requirement under NAC 645.820 that allows for a 10 day window to file a petition for rehearing. Do you know if there has ever been a ruling regarding whether that is 10 calendar or business days? Today is the 6th business day since she was served, but the 10th calendar day, and while we plan to get it filed today, it would give us a bit of breathing room if it could be filed tomorrow.

Thanks,

MARQUIS AURBACH
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Also, as we discussed, the Division and I have no objection to a rehearing.

Keith E. Kizer
Deputy Attorney General
State of Nevada
702-486-3326
KKizer@ag.nv.gov

From: Scott Marquis [mailto:smarquis@maclaw.com]
Sent: Tuesday, May 26, 2015 10:00 AM
To: Keith E. Kizer
Cc: James Ruggeroli
Subject: Petition for Rehearing [IWOV-iManage.FID929499]

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