

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
2 **STATE OF NEVADA**

3 SHARATH CHANDRA, Administrator,
4 REAL ESTATE DIVISION, DEPARTMENT
5 OF BUSINESS AND INDUSTRY,
6 STATE OF NEVADA,

7 Petitioner,

8 vs.

9 THOMAS L. WITHERBY
10 (License No. A.0001528-CR),

11 Respondent.

Case No. 2020-492, AP21.045.S

FILED

DEC 29 2023

NEVADA COMMISSION OF APPRAISERS

Mgallo

12 **PETITIONER'S MOTION TO DISMISS**
13 **RESPONDENT'S PETITION FOR REHEARING**

14 The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY
15 OF THE STATE OF NEVADA ("Division"), by and through its attorneys of record, Aaron D. Ford,
16 Attorney General, and Christal P. Keegan, Deputy Attorney General, timely brings this Motion to
17 Dismiss Respondent's untimely Petition for Rehearing.

18 DATED this 28th day of December 2023.

19 AARON D. FORD
20 Attorney General

21 By: epkeegan
22 CHRISTAL P. KEEGAN, ESQ.
23 Deputy Attorney General
24 Nevada Bar No. 12725
25 5420 Kietzke Lane, #202
26 Reno, Nevada 89511
27 (775) 687-2141
28 ckeegan@ag.nv.gov

Attorney for Real Estate Division

1 **I. BACKGROUND**

2 The Division’s Complaint against Respondent Thomas L. Witherby was filed on May 19, 2023
3 for case no. 2020-492, AP21.045.S, and set to be heard by the Commission of Appraisers of Real Estate
4 (“Commission”) at its meeting commencing on July 18-20, 2023. *NRED Motion to Dismiss, Exhibit 1,*
5 *000003 – 000011.* The Division’s Complaint stated in bold lettering that it was Mr. Witherby’s
6 **“responsibility to be present when your case is called. If you are not present when your case is**
7 **called, a default may be entered against you, and the Commission may decide the case as if all**
8 **allegations in the complaint were true.”** *NRED Motion to Dismiss, Exhibit 1, 000010.*

9 On May 19, 2023, the Division also filed its Notice of Complaint and Obligation to Respond
10 which stated in bold lettering that **“This is a formal proceeding that may result in fines and/or**
11 **revocation, suspension, denial of renewal of or conditions being imposed upon you.”** *NRED Motion*
12 *to Dismiss, Exhibit 1, 000012.* Further, the Notice stated Mr. Witherby **“MUST ANSWER**
13 **THE COMPLAINT within thirty (30) days”** from the date of mailing. *NRED Motion to Dismiss,*
14 *Exhibit 1, 000012.*

15 Mr. Witherby, or his counsel, never filed an Answer.

16 On or about May 30, 2023, Mr. Witherby represented to the State that he had turned in his license
17 in May of 2021 with a letter to inactivate it, that his license expired in March of 2022, and that he was 63
18 years old entering retirement with no intention of reactivating his license. *NRED Motion to Dismiss,*
19 *Exhibit 2, 000016.*

20 That same day, May 30, 2023, the Division’s attorney presented confidential settlement terms to
21 Mr. Witherby which he rejected and decidedly contested the case against him.

22 On July 12, 2023, as a courtesy, the Division’s attorney sent Mr. Witherby the final agenda for
23 the meeting scheduled the following week which included the information to attend virtually by video or
24 telephone. *NRED Motion to Dismiss, Exhibit 3, 000021, and Exhibit 7, 000066.*

25 The next day, on July 13, 2023, Mr. Witherby’s attorney, Craig M. Capilla, made his first
26 appearance to the Division’s attorney, and represented he was the national claims counsel for OREP
27 insured, and requested a continuance. *NRED Motion to Dismiss, Exhibit 3, 000023.*

28 ...

1 The Division's attorney did not object to Mr. Witherby's attorney's request for a continuance
2 since it was his first request but noted that good cause had not been shown as required by NAC 645C.510.
3 *NRED Motion to Dismiss, Exhibit 3, 000024.*

4 On July 14, 2023, the Commission Secretary granted Mr. Witherby's request for a continuance.
5 *NRED Motion to Dismiss, Exhibit 3, 000027.*

6 On July 15, 2023, Mr. Witherby's attorney admitted to the State that he was only given a copy of
7 the Division's complaint and notices "on Thursday of this week", or July 13, 2023 two (2) working days
8 before the meeting. *NRED Motion to Dismiss, Exhibit 3, 000028.*

9 On or about August 30, 2023, the Division re-noticed Mr. Witherby for the October Commission
10 meeting. *NRED Motion to Dismiss, Exhibit 4, 000033 - 000037.*

11 On September 27, 2023, again, as a courtesy, the Division's attorney sent Mr. Witherby and his
12 attorney the final agenda for the meeting the following week which included the virtual attendance
13 information. *NRED Motion to Dismiss, Exhibit 4, 000038, and Exhibit 7, 000070.* The State also stated
14 it was prepared to present its case, and if Mr. Witherby and/or his counsel failed to appear, it would be
15 proceeding as a default. *NRED Motion to Dismiss, Exhibit 4, 000038.*

16 Mr. Witherby, or his counsel, never requested a second continuance.

17 On October 3, 2023, at the commencement of the Commission's hearings, Mr. Witherby's case
18 was called, neither he nor his counsel was present. *NRED Motion to Dismiss, Exhibit 5, 000047.*
19 Therefore, on October 10, 2023, a default Order was entered against him, and the Commission ordered:

- 20 1. Respondent's license (License No. A.0001528-CR) is revoked;
- 21 2. Respondent shall pay to the Division a fine of \$10,000 per violation for committing the
22 six (6) violations of law for a total administrative fine of \$60,000;
- 23 3. Respondent shall pay the costs of the investigation and the hearing in the amount of
24 \$3,897.22 which is actual, reasonable, and necessary;
- 25 4. The total amount the Respondent shall pay is \$63,897.22 and shall be paid in full within
26 180 days of this Order, or April 8, 2024.

27 *NRED Motion to Dismiss, Exhibit 5, 000044 - 000058.*

28 . . .

1 On December 21, 2023, the Division's attorney received Mr. Witherby's time-barred Petition for
2 Rehearing. *NRED Motion to Dismiss, Exhibit 6, 000060 - 000061.*

3 Pursuant to NAC 645C.505(5), the Division, by and through its attorneys, timely submits its
4 motion to dismiss Mr. Witherby's request for a rehearing for the reasons set forth below.

5 **II. LEGAL ARGUMENT**

6 NAC 645C.505 sets forth the procedures for a rehearing and provides that the following
7 procedures are to be used for a rehearing in a case where a ruling or decision of the Commission is against
8 the licensee. It provides as follows:

- 9 1. The licensee or holder of a certificate may, within 15 calendar days after
10 receipt of the decision, petition the Commission for a rehearing.
- 11 2. The petition does not stay any decision of the Commission unless the
12 Commission so orders.
- 13 3. The petition must state with particularity the point of law or fact which,
14 in the opinion of the licensee or holder of a certificate, the Commission has
15 overlooked or misconstrued and must contain every argument in support of
16 the application that the licensee or holder of a certificate desires to present.
- 17 4. Oral argument in support of the petition is not permitted.
- 18 5. The Division may file and serve an answer to a petition for a rehearing
19 within 10 calendar days after it has received service of the petition.
- 20 6. If a petition for rehearing is filed and the Commission is not scheduled
21 to meet before the effective date of the penalty, the Division may stay
22 enforcement of the decision being appealed. When determining whether a
23 stay is to be granted, the Division shall determine whether the petition was
24 filed in a timely manner and whether it alleges a cause or ground which may
25 entitle the licensee or holder of a certificate to a rehearing.
- 26 7. A rehearing may be granted by the Commission for any of the following
27 causes or grounds:
 - 28 (a) Irregularity in the proceedings in the original hearing.
 - (b) Accident or surprise which ordinary prudence could not have
guarded against.
 - (c) Newly discovered evidence of a material nature which the applicant
could not with reasonable diligence have discovered and produced at
the original hearing.
 - (d) Error in law occurring at the hearing and objected to by the
applicant during the earlier hearing.
8. A petition for a rehearing may not exceed 10 pages of standard printing.

24 NRS 233B.130 sets forth the requirements for a petition for rehearing, and section 4 provides the
25 relevant part:

- 26 4. A petition for rehearing or reconsideration must be filed within 15 days
27 after the date of service of the final decision. An order granting or denying
28 the petition must be served on all parties at least 5 days before the expiration
of the time for filing the petition for judicial review. If the petition is granted,
the subsequent order shall be deemed the final order for the purpose of
judicial review.

1 **A. Respondent’s Petition for Rehearing Should Be DISMISSED because it is**
2 **Time-Barred.**

3 Pursuant to NAC 645C.505(1) and NRS 233B.130(4), Mr. Witherby’s petition is untimely. The
4 October 10, 2023 default Order was the final decision, and the Order was attempted to be served upon
5 Mr. Witherby on October 17, 2023 at 8:30 a.m. at his Florida address, but was refused. *NRED Motion*
6 *to Dismiss, Exhibit 5, 000055.* The Order was delivered to his agent for final delivery on October 16,
7 2023 at 11:54 a.m., and therefore, Mr. Witherby and or his counsel should have filed his Petition 15 days
8 from that date, or October 31, 2023. *NRED Motion to Dismiss, Exhibit 3, 000057.*

9 Mr. Witherby comes now nearly two months too late with his rehearing request, when nothing in
10 Mr. Witherby’s Petition demonstrates that he did not have the ability to timely file his petition or appeal.
11 In fact, Mr. Witherby cannot reasonably explain why he waited until just two weeks ago during the
12 holidays to find another attorney to represent him when the record reflects that ever since the Division
13 filed its complaint, Mr. Witherby’s ability has not been hindered by his caregiving as demonstrated
14 through his responsive communications with the Division’s attorney and that he was able to consult with
15 several legal counsel.

16 **B. Respondent’s Petition for Rehearing Should be DENIED because he Fails to State**
17 **any Error Law or Overlooked Fact.**

18 NAC 645C.505(3) requires Mr. Witherby’s petition for a rehearing “state with particularity the
19 point of law or fact which, in the opinion of the licensee or holder of a certificate, the Commission has
20 overlooked or misconstrued and must contain every argument in support of the application that the
21 licensee or holder of a certificate desires to present.”

22 Mr. Witherby’s Petition fails to state any law or fact which the Commission overlooked or
23 misconstrued. The Commission did not deny Mr. Witherby the opportunity to present his case, therefore
24 he was not denied due process. Mr. Witherby admits he could have phoned in but he chose not to based
25 on the unsupported assumption that had he attended by phone instead of in person “the board members
26 [would] roll their eyes and act like anyone on the phone does not exist and said it will be like I was not
27 there.” *NRED Motion to Dismiss, Exhibit 6, 000060.* There is absolutely no evidence to support such
28 an erroneous assumption. In fact, the October meeting’s virtual participant list demonstrated

...

1 approximately eight (8) attendees in total with no known prejudice occurring to those
2 attending virtually.

3 Further, Mr. Witherby admits the Commission ordered the maximum discipline authorized
4 pursuant to NRS 645C.460(2) and therefore the Commission did not act in an arbitrary and capricious
5 manner as it did not exceed those ceilings. *NRED Motion to Dismiss, Exhibit 3, 000060, and Exhibit 5,*
6 *000047.* The Commission's justification for ordering such discipline is firmly planted under NAC
7 645C.500(13) because Mr. Witherby chose not to appear at his hearing, the Commission considered the
8 charges specified in the Division's complaint as true.

9 Lastly, the Commission graciously granted Mr. Witherby's first continuance request, and his
10 Petition demonstrates such request was an intentional act to abuse the process, not rendered in good faith
11 but merely for delay which flagrantly violates NAC 645C.510: "we would file for an extension and tell
12 the state that we were working on a settlement agreement but in reality it would give us more time."
13 *NRED Motion to Dismiss, Exhibit 3, 000027, and Exhibit 6, 000060.* It is important to note, Mr. Witherby
14 nor his counsel requested a second continuance, and Mr. Witherby could have phoned in and requested
15 such from the Commissioners during the meeting but he did not.

16 In summary, Mr. Witherby's Petition for Rehearing is insufficient and fails to articulate any such
17 law or demonstrate any fact to support his request. The Commission has not overlooked or misconstrued
18 any law or fact, and therefore it should deny his request for a rehearing.

19 **C. Respondent's Petition Should be DENIED because he Fails to Articulate any Reason**
20 **as Set Forth in NAC 645C.505(7).**

21 As the Petitioner for his rehearing request, the burden of proof is upon Mr. Witherby to present
22 causes or grounds for the Commission's consideration, and he has not articulated and/or substantiated
23 any reasons for which the Commission should grant him a rehearing as set forth in NAC 645.505(7).

24 **a) No Irregularity in the Original Proceedings Occurred.**

25 Pursuant to NAC 645C.500(13) and NAC 645C.502, the Commission precisely followed the
26 statutory framework for when a party is on notice of the hearing, fails to file an answer, and fails to
27 appear. Accordingly, the Commission rightfully exercised its lawful authority to revoke Mr. Witherby's
28 licenses and the imposition of administrative fines. Mr. Witherby even admits the Commission did

1 not exceed its statutory authority and ordered “the maximum punishment”. *NRED Motion to Dismiss,*
2 *Exhibit 6, 000060.* Therefore, the October 3, 2023 Commission meetings were properly conducted
3 without irregularity.

4 **b) No Accident or Surprise Existed.**

5 The fact that Mr. Witherby failed to appreciate the significance of his failure to appear does not
6 constitute accident or surprise, particularly given his pattern of disregard for implications to his appraisal
7 license. Mr. Witherby admits in his Petition that upon notice from the Division that it had obtained
8 sufficient evidence to commence with disciplinary action against him, he requested that his case go to
9 the Appraisal Advisory Review Committee (“AARC”) instead of before the Commission. *NRED Motion*
10 *to Dismiss, Exhibit 6, 000060.* Mr. Witherby’s Petition states “the review committee was over the internet
11 due to COVID-19” but what he does not state is whether he actually attended the meeting over the
12 internet. *NRED Motion to Dismiss, Exhibit 6, 000060.* That’s because when the AARC meeting was
13 held on May 24, 2022, Mr. Witherby did not appear. *NRED Motion to Dismiss, Exhibit 7, 000063.*

14 Mr. Witherby perpetuates misrepresentations upon the Commission through his baseless claims
15 that he received a letter from the State saying AARC dismissed the Complaint. *NRED Motion to Dismiss,*
16 *Exhibit 6, 000060.* The evidence demonstrates the Division informed Mr. Witherby that due to his failure
17 to appear before AARC, despite such being at his request, the case was now going to the Commission.
18 *NRED Motion to Dismiss, Exhibit 7, 000063.* The Division’s letter dated May 24, 2022, says nothing
19 about this case being dismissed. *NRED Motion to Dismiss, Exhibit 7, 000063.*

20 Up until now, Mr. Witherby has demonstrated lack of concern about his license to the State as
21 evidenced in his representations that he inactivated his license and didn’t care to practice appraisal
22 anymore. *NRED Motion to Dismiss, Exhibit 2, 000016.* Again, Mr. Witherby’s failure to appreciate the
23 significance of his license status does not constitute accident or surprise.

24 Simply, Mr. Witherby knew that it was his responsibility to be present when his case was called
25 and of the discipline action that may be taken as plainly noticed in the Division’s May 19, 2023 filed
26 Complaint and the corresponding notices. *NRED Motion to Dismiss, Exhibit 1, 000003 – 000011.* Mr.
27 Witherby’s choosing to rely on his legal counsel’s advice instead of appearing by “phone call in I could
28 ...

1 do” was decidedly his choice and is inconsistent with the policy interest in favor of deciding cases on the
2 merits rather than default. *NRED Motion to Dismiss, Exhibit 6, 000060.*

3 **c) No Newly Discovered Material Evidence Has Been Presented.**

4 Mr. Witherby’s Petition alleges he has since had informal second opinions conducted on his
5 appraisal report which, with reasonable diligence, could have been discovered and produced at the
6 original hearing. *NRED Motion to Dismiss, Exhibit 6, 000061.* Mr. Witherby could have had these
7 reviews timely conducted and as part of the preparation for his case, particularly since the Commission
8 granted his first continuance request. *NRED Motion to Dismiss, Exhibit 3, 000027.* In short, Mr.
9 Witherby has been afforded more than enough time to prepare his case.

10 Furthermore, Mr. Witherby’s propounds third-party hearsay claims that his report’s errors are
11 “minor admin mistakes” miss the point - the results of the hearing were based on his failure to appear.
12 *NRED Motion to Dismiss, Exhibit 6, 000061.* By Mr. Witherby’s failing to prepare, he prepared to fail,
13 and he has not offered any support of unavailable or unknown new material evidence to justify his
14 rehearing request.

15 **d) No Error in Law Occurred at the Meeting.**

16 Mr. Witherby does not allege any error in law occurred at the meeting. As discussed herein, under
17 **Section B.** pursuant to NAC 645C.505(3), Mr. Witherby fails to state any point of law or fact which the
18 Commission has overlooked or misconstrued because there is none.

19 Further, it would have been inappropriate for the Commissioners to unilaterally continue Mr.
20 Witherby’s case a second time without his presenting a request for such. Proceeding accordingly, the
21 Division through its counsel presented testimony that proper notice was effectuated, and the Commission,
22 as permitted by statute, accepted the charges specified in the complaint as true. The hearing was
23 conducted adequately to support the Commission’s conclusion. In summary, the Commission followed
24 precisely the statutory framework in exercising its lawful authority to revoke Mr. Witherby’s license and
25 the imposition of administrative fines. Therefore, the Commission should not grant a rehearing because
26 no error in law occurred during the original proceedings.

27 ...

28 ...

1 **III. CONCLUSION**

2 Based on the foregoing, the Division respectfully respects the Commission follow the law and
3 DISMISS Mr. Witherby's Petition for Rehearing because it is time-barred. The Commission did not
4 deny Mr. Witherby the ability to file for rehearing 15 days from receipt of the October 10, 2023 default
5 Order. The administrative record clearly reflects Mr. Witherby could have attended by phone but chose
6 not to, therefore the Commission should AFFIRM its October 10, 2023 default Order because the
7 proceedings, as conducted, are supported by NAC 645C.500(13) and NAC 645C.502.

8 Lastly, the inclusion of Mr. Witherby's request on the January 2024 Meeting agenda deviates
9 from the law's exclusion of untimely requests. In anticipation of the January 2024 meeting, the State
10 requests the Commission to consider:

11 1) Following the law pursuant to NAC 645C.505(4), which prohibits oral argument
12 in support of the petition and rely on the briefing filed by the parties as well as the administrative
13 record;

14 2) Follow the law pursuant to NAC 645C.505(1) and dismiss Mr. Witherby's time-barred
15 request for a rehearing since doing so sets a precedent that allows future respondents, and specifically
16 Mr. Witherby, to pile on meritless claims on the Commission's docket; and,

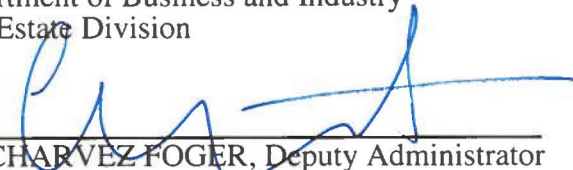
17 3) Pursuant to NAC 645C.505(7), which provides the Commission the discretion to grant a
18 rehearing under four (4) specific causes or grounds listed, and since none such exists, accordingly DENY
19 Mr. Witherby's rehearing request.

20
21 DATED this 29th day of December 2023.

DATED this 28th day of December 2023.

22 STATE OF NEVADA
23 Department of Business and Industry
24 Real Estate Division

AARON D. FORD
Attorney General

25 By: 
26 CHARVEZ FOGGER, Deputy Administrator
27 Deputy Attorney General
28 3300 West Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

By: 
CHRISTAL P. KEEGAN, ESQ.
Nevada Bar No. 12725
5420 Kietzke Lane, #202
Reno, Nevada 89511
(775) 687-2141
ckeegan@ag.nv.gov

Attorney for Real Estate Division

EXHIBIT 1

EXHIBIT 1

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2023 I deposited a true and correct copy of the foregoing:

**Complaint and Notice of Hearing
Notice and Complaint and Obligation to Respond
Notice of Documents
For
Thomas L. Witherby Case# 2020-492 & AP21.045.S**

In the United States Mail, postage pre-paid, in Las Vegas, Nevada, through the State of Nevada mailroom, by certified mail addressed to the following respondents at his last known address as follows:

Thomas L. Witherby
5921 N. Lamp Dr.
Beverly Hills, Florida 34465

Certified No. 7020 1290 0001 3945 4300

By: *M Gallo*

Maria Gallo
Commission Coordinator
State of Nevada Real Estate Division
3300 W. Sahara Avenue, Suite 350
Las Vegas, NV 89102

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
2 **STATE OF NEVADA**

3 SHARATH CHANDRA, Administrator,
4 REAL ESTATE DIVISION,
5 DEPARTMENT OF BUSINESS AND
6 INDUSTRY, STATE OF NEVADA,

6 Petitioner,

7 vs.

8 THOMAS L. WITHERBY
9 (License No. A.0001528-CR),

10 Respondent.

Case No. 2020-492, AP21.045.S

FILED

MAY 19 2023

NEVADA COMMISSION OF APPRAISERS

mgallo

11
12 **COMPLAINT AND NOTICE OF HEARING**

13 State of Nevada, Department of Business and Industry, Real Estate Division (“the
14 Division”), by and through counsel, Attorney General AARON D. FORD and Deputy
15 Attorney General Christal Park Keegan, hereby notifies THOMAS L. WITHERBY
16 (“Respondent”) of an administrative complaint and hearing which is to be held pursuant
17 to Chapter 233B and Chapter 645C of the Nevada Revised Statutes (“NRS”) and Chapter
18 645C of the Nevada Administrative Code (“NAC”). The purpose of the hearing is to
19 consider the allegations stated below and to determine if the Respondent should be
20 subject to a disciplinary penalty as set forth in NRS 645C and or NAC 645C, if the stated
21 allegations are proven at the hearing by the evidence presented.

22 **JURISDICTION**

23 At all times relevant to this Complaint, the Respondent was a Certified Residential
24 Appraiser licensed by the Division, and therefore, is subject to the Jurisdiction of the
25 Division and the provisions of NRS and NAC Chapter 645C. By availing himself of the
26 benefits and protections of the laws of the State of Nevada, the Respondent has submitted
27 to the jurisdiction of the Division.

28 ///

1 **PROCEDURAL HISTORY**

2 1. The Division received a complaint alleging that the Respondent’s Appraisal
3 Report contained inaccuracies and omissions that negatively impacted the value of the
4 Property. *0002 - 0056.*

5 2. The Division commissioned a Standard 3 Review of the underlying appraisal
6 performed by the Respondent. *0335 - 0354.*

7 3. The Respondent requested his case to be heard by the Appraisal Advisory
8 Review Committee (“AARC”). *0363.*

9 4. The Respondent did not appear at the May 24, 2022, AARC meeting,
10 therefore, the Division determined that this matter should be heard by the Nevada
11 Commission of Appraisers of Real Estate (“Commission”), now comes herewith. *0363.*

12 **FACTUAL ALLEGATIONS**

13 1. The Respondent’s Nevada Certified Residential Appraiser, License No.
14 A.0001528-CR, has been in closed, expired status for over a year as of March 31, 2022.

15 2. The Respondent prepared an Appraisal Report for 3183 Mura Del Prato,
16 Henderson, Nevada 89044 (“Property”). *0057 – 0103.*

17 3. The Respondent’s Appraisal Report represented use of linear regression
18 modules to support the adjustments made in the sales grid but admitted lack of
19 understanding of how to properly complete a linear regression. *0067.*

20 4. Further, the Respondent’s Appraisal Report and workfile do not contain
21 statistical analysis to support the adjustments made in the sales grid. *0057 – 0329.*

22 5. The Complainant alleged the Respondent failed to support adjustments
23 made for upgraded features. *0002.*

24 6. The Respondent’s Appraisal Report and workfile failed to support the
25 \$25,000 adjustment made to Comparable Sale #2’s upgraded features. *0059.*

26 7. The Complainant alleged homes built by Toll Brothers are premium but the
27 Respondent failed to note such benefit for Comparables #s 1-3 built by Toll Brothers.
28 *0002.*

1 reasonable time after the issuance of the oral report. The workfile must include all other
2 data, information, and documentation necessary to support the appraiser's opinions and
3 conclusions and to show compliance with USPAP, or references to the location(s) of such
4 other data, information, and documentation.

5 The Respondent violated USPAP RECORD KEEPING RULE by failing to include
6 statistical analysis to support the adjustments made in the sales grid within the
7 Appraisal Report or workfile.

8 The Respondent's actions constitute unprofessional conduct pursuant to NRS
9 645C.470(2), as determined by NAC 645C.405(1) and grounds for disciplinary action
10 pursuant to NRS 645C.460(1)(a) and/or (b).

11 **Second Violation**

12 USPAP Standards Rule 1-1(c) requires that an appraiser in developing a real
13 property appraisal must (c) not render appraisal services in a careless or negligent
14 manner, such as by making a series of errors that, although individually might not
15 significantly affect the results of an appraisal, in the aggregate affects the credibility of
16 those results.

17 Respondent violated Standards Rule 1-1(c) by failing to contain documentation to
18 support the \$25,000 adjustment for Comparable #2's upgraded features.

19 Respondent further violated Standards Rule 1-1(c) by failing to adjust for differing
20 builders in the Appraisal Report when Comparables #s 1, 2, and 3 are Toll Brother built
21 units, and Comparables #s 4, 5, and 6 are KB Homes built units.

22 Respondent also violated Standards Rule 1-1(c) by failing to use more than just one
23 end-unit comparable, Comparable #2, and failing to make adjustments to the other non-
24 end-unit comparables, Comparables #s 1, 3, 4, 5, and 6.

25 The Respondent's actions constitute unprofessional conduct pursuant to NRS
26 645C.470(2), as determined by NAC 645C.405(1) and (2) and grounds for disciplinary
27 action pursuant to NRS 645C.460(1)(a) and/or (b).

28 ///

1 **Third Violation**

2 USPAP Standards Rule 1-2(c) required an appraiser, in developing a real property
3 appraisal, must (c) not render appraisal services in a careless or negligent manner, such
4 as by making a series of errors that, although individually might not significantly affect
5 the results of an appraisal, in the aggregate affects the credibility of those results.

6 The Respondent violated Standards Rule 1-2(c) by failing to provide support for the
7 opinion that seller concessions of 3% or less do not affect pricing and failing to update the
8 boiler plate Definition of Value language stating “the seller pays these costs in virtually
9 all sales transactions” which contradicted his opinion that there were seller concessions.

10 The Respondent’s actions constitute unprofessional conduct pursuant to NRS
11 645C.470(2), as determined by NAC 645C.405(1) and (2) and grounds for disciplinary
12 action pursuant to NRS 645C.460(1)(a) and/or (b).

13 **Fourth Violation**

14 USPAP Standards Rule 1-5(b) provides that when the value opinion to be
15 developed is market value, an appraiser must, if such information is available to the
16 appraiser in the normal course of business: (b) analyze all sales of the subject property
17 that occurred within the three (3) years prior to the effective date of the appraisal.

18 Respondent violated Standards Rule 1-5(b) by failing to report or analyze the
19 publicly recorded prior sale of the Property which occurred June 21, 2018, for \$310,000,
20 less than two (2) years prior to the effective date of the Appraisal Report.

21 The Respondent’s actions constitute unprofessional conduct pursuant to NRS
22 645C.470(2), as determined by NAC 645C.405(1) and grounds for disciplinary action
23 pursuant to NRS 645C.460(1)(a) and/or (b).

24 **Fifth Violation**

25 USPAP Standards Rule 2-1(a) requires each written or oral real property appraisal
26 report must: (a) clearly and accurately set forth the appraisal in a manner that will not be
27 misleading.

28 ///

1 In violation of Standards Rule 2-1(a), Respondent failed to change his Definition of
2 Value to match his opinion that there were seller concessions, even if under 3% of the sale
3 price.

4 Respondent also violated Standards Rule 2-1(a) when he made a series of errors
5 which in their aggregate can mislead the intended user, specifically, when Respondent
6 failed to support the \$25,000 adjustment for Comparable #2's upgraded features; failed to
7 adjust for differing builders; used only one end-unit comparable, Comparable #2, and
8 failed to make adjustments to the other non-end-unit comparables.

9 The Respondent's actions constitute unprofessional conduct pursuant to NRS
10 645C.470(2), as determined by NAC 645C.405(1) and (2) and grounds for disciplinary
11 action pursuant to NRS 645C.460(1)(a) and/or (b).

12 Sixth Violation

13 USPAP Standards Rule 2-2(a)(x) requires each written real property appraisal
14 report must be prepared under one of the following options and prominently state which
15 option is used: Appraisal Report or Restricted Appraisal Report. (a) The content of an
16 Appraisal Report must be appropriate for the intended use of the appraisal and, at a
17 minimum (x) provide sufficient information to indicate that the appraiser complied with
18 the requirements of STANDARD 1 by: (1) summarizing the appraisal methods and
19 techniques employed; (2) stating the reasons for excluding the sales comparison, cost, or
20 income approach(es) if any have not been developed; (3) summarizing the results of
21 analyzing the subject sales, agreements of sale, options, and listings in accordance with
22 Standards Rule 1-5; [Comment: If such information is unobtainable, a statement on the
23 efforts undertaken by the appraiser to obtain the information is required. If such
24 information is irrelevant, a statement acknowledging the existence of the information and
25 citing its lack of relevance is required.]; (4) stating the value opinion(s) and conclusion(s);
26 and (5) summarizing the information analyzed and the reasoning that supports the
27 analyses, opinions, and conclusions, including reconciliation of the data and approaches.

28 ///

1 Respondent violated Standards Rule 2-2(a)(x) by failing to analyze the previous
2 sale in the Appraisal Report.

3 The Respondent's actions constitute unprofessional conduct pursuant to NRS
4 645C.470(2), as determined by NAC 645C.405(1) and grounds for disciplinary action
5 pursuant to NRS 645C.460(1)(a) and/or (b).

6 **DISCIPLINE AUTHORIZED**

7 1. Pursuant to NRS 645C.460(2), if grounds for disciplinary action against an
8 appraiser are found to exist for unprofessional conduct, the Commission may revoke or
9 suspend the certificate, place conditions upon the certificate, deny the renewal of his or
10 her certificate, and/or impose a fine up to \$10,000.00 per violation.

11 2. Additionally, under NRS 622.400, the Commission is authorized to impose
12 the costs of the proceeding upon the Respondent, including investigative costs and
13 attorney's fees, if the Commission otherwise imposes discipline on the Respondent.

14 3. Therefore, the Division requests the Commission to impose such discipline as
15 it determines is appropriate under the circumstances and to award the Division its costs
16 and attorney's fees for this proceeding.

17 **PLEASE TAKE NOTICE** that a disciplinary hearing has been set to consider this
18 Administrative Complaint against the above-named Respondent in accordance with
19 Chapter 233B and Chapter 645C of the Nevada Revised Statutes and Chapter 645C of the
20 Nevada Administrative Code.

21 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled
22 for July 18- 20, 2023, beginning at approximately 9:00 a.m. each day, or until
23 such time as the Commission concludes its business. The Commission meeting
24 will be held at the Nevada State Business Center, 3300 W. Sahara Avenue,
25 Nevada Room 4th Floor, Las Vegas, Nevada 89102, with video conference to:
26 Department of Business & Industry 1818 E. College Parkway Suite 103, Carson
27 City, Nevada 89076.

28 ///

1 **STACKED CALENDAR:** Your hearing is one of several hearings that may
2 be scheduled at the same time as part of a regular meeting of the Commission
3 that is expected to take place on July 18-20, 2023. Thus, your hearing may be
4 continued until later in the day or from day to day. It is your responsibility to
5 be present when your case is called. If you are not present when your case is
6 called, a default may be entered against you, and the Commission may decide
7 the case as if all allegations in the complaint were true. If you need to negotiate
8 a more specific time for your hearing in advance, because of coordination with
9 out-of-state witnesses or the like, please call Maria Gallo, Commission
10 Coordinator, at (702) 486-4074.

11 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is an
12 open meeting under Nevada's open meeting Law (OML) and may be attended by the
13 public. After the evidence and arguments, the Commission may conduct a closed meeting
14 to discuss your alleged misconduct or professional competence. You are entitled to a copy
15 of the transcript of the open and closed portions of the meeting, although you must pay for
16 the transcription.

17 As the Respondent, you are specifically informed that you have the right to appear
18 and be heard in your defense, either personally or through your counsel of choice. At the
19 hearing, the Division has the burden of proving the allegations in the complaint and will
20 call witnesses and present evidence against you. You have the right to respond and to
21 present relevant evidence and argument on all issues involved. You have the right to call
22 and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any
23 matter relevant to the issues involved.

24 You have the right to request that the Commission issue subpoenas to compel
25 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
26 you may be required to demonstrate the relevance of the witnesses' testimony and/or

27 ///

28 ///

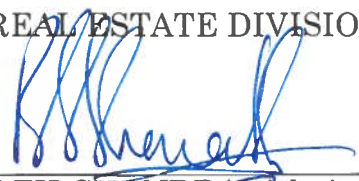
1 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS
2 Chapter 233B, and NAC Chapter 645C.

3
4 DATED the 18 day of May, 2023.

DATED the 18th day of May, 2023.

5
6 NEVADA REAL ESTATE DIVISION

AARON D. FORD
Attorney General

7
8 By: 
9 SHARATH CHANDRA, Administrator
10 3300 W. Sahara Avenue, Suite 350
11 Las Vegas, Nevada 89102
12 Telephone: (702) 486-4033

By: 
13 CHRISTAL PARK KEEGAN, ESQ.
14 Deputy Attorney General
15 Bar No. 12725
16 5420 Kietzke Lane #202
17 Reno, Nevada 89511
18 Telephone: (775) 687-2141
19 Email: ckeegan@ag.nv.gov
20 *Attorney for Real Estate Division*

21
22
23
24
25
26
27
28

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
2 **STATE OF NEVADA**

3 SHARATH CHANDRA, Administrator,
4 REAL ESTATE DIVISION,
5 DEPARTMENT OF BUSINESS AND
6 INDUSTRY, STATE OF NEVADA,

Case No. 2020-492, AP21.045.S

FILED

MAY 19 2023

NEVADA COMMISSION OF APPRAISERS

mgallo

Petitioner,

vs.

7 THOMAS L. WITHERBY
8 (License No. A.0001528-CR),

9 Respondent.
10
11

12
13 **NOTICE OF COMPLAINT AND OBLIGATION TO RESPOND**

14 **TO:** THOMAS L. WITHERBY
15 5921 N. LAMP POST DR.
16 BEVERLY HILLS, FL 34465

VIA CERTIFIED MAIL.

17 **PLEASE TAKE NOTICE THAT A COMPLAINT HAS BEEN FILED**
18 **AGAINST YOU** before the Real Estate Commission ("Commission") by the Real Estate
19 Division of the Department of Business and Industry, State of Nevada ("the Division").
20 **This is a formal proceeding that may result in fines and/or revocation,**
21 **suspension, denial of renewal of or conditions being imposed upon you.** Served
22 with this Notice is a copy of the Complaint and Notice of Hearing and a Notice of
23 Documents providing copies of all non-privileged communications, reports, affidavits or
24 depositions in the possession of the Division which may be relevant to the complaint and
25 which may be used as evidence against you.

26 **YOU MUST ANSWER THE COMPLAINT** within thirty (30) days after it was
27 served on you (if sent to you by mail, the time period starts from the date of
28 **mailing**). Your Answer must contain an admission or denial of each allegation in the

1 Complaint and any defenses upon which you will rely, **and must be filed with the Real**
2 **Estate Division as follows:**

3 MARIA GALLO
4 Commission Coordinator
5 Nevada Real Estate Division
6 3300 W. Sahara Avenue, Suite 350
7 Las Vegas, Nevada 89102

A copy also must be sent to:
CHRISTAL PARK KEEGAN, ESQ.
Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
Email: ckeegan@ag.nv.gov

8 **If you do not answer on time, the Division may ask the Commission to**
9 **enter its decision against you and decide the case based solely on the**
10 **Complaint.**

11 Other important rights you have are listed in Nevada Revised Statutes Chapters
12 645 and 233B and the Nevada Administrative Code Chapter 645.

13 DATED this 18th day of May, 2023.

14 AARON D. FORD
15 Attorney General

16 By: *epkeegan*
17 CHRISTAL PARK KEEGAN, ESQ.
18 Deputy Attorney General
19 Bar No. 12725
20 5420 Kietzke Lane, Suite 202
21 Reno, Nevada 89511
22 Telephone: (775) 687-2141
23 Email: ckeegan@ag.nv.gov
24 *Attorney for Real Estate Division*

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**

2 **STATE OF NEVADA**

3 SHARATH CHANDRA, Administrator,
4 REAL ESTATE DIVISION,
5 DEPARTMENT OF BUSINESS AND
6 INDUSTRY, STATE OF NEVADA,

Case No. 2020-492, AP21.045.S

7 Petitioner,

FILED

MAY 19 2023

8 vs.

NEVADA COMMISSION OF APPRAISERS

9 THOMAS L. WITHERBY
(License No. A.0001528-CR),

mgallo

10 Respondent.

11

12 **NOTICE OF DOCUMENTS**

13 **TO:** THOMAS L. WITHERBY
14 5921 N. LAMP POST DR.
15 BEVERLY HILLS, FL 34465

VIA CERTIFIED MAIL

16 In accordance with Nevada Revised Statutes (“NRS”) 645C.500(4), attached hereto
17 are copies of all non-privileged communications, reports, affidavits, or depositions in
18 possession of the Department of Business and Industry, Real Estate Division, that may be
19 relevant to the Complaint. The attached documents are identified as **BATES STAMPS**
20 **0001 – 0364.**

21 DATED this 18th day of May, 2023.

22 AARON D. FORD
23 Attorney General

24 By: epkeegan
25 CHRISTAL PARK KEEGAN, ESQ.
26 Deputy Attorney General
27 Bar No. 12725
28 5420 Kietzke Lane, Suite 202
 Reno, Nevada 89511
 Telephone: (775) 687-2141
 Email: ckeegan@ag.nv.gov
 Attorney for Real Estate Division

EXHIBIT 2

EXHIBIT 2

From: Thomas Witherby <twitherby@witherbyappraisal.com>
Sent: Tuesday, May 30, 2023 3:34 AM
To: Christal P. Keegan <ckeegan@ag.nv.gov>
Subject: RE: Appraisal Complaint / Thomas Witherby CASE NO. 2020-492

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

My license expired in March of 2022 but I turned it in May of 2021 with a letter to inactivate it as I was no longer completing appraisals in Nevada. As far as my intent, I am 63 years old about to retire, so no I have no intention of ever returning to Nevada and no intention of trying to reactivate my license.

Thank you,

Thomas L. Witherby

From: [Christal P. Keegan](mailto:ckeegan@ag.nv.gov)
Sent: Thursday, May 25, 2023 2:00 PM
To: [Thomas Witherby](mailto:twitherby@witherbyappraisal.com)
Subject: RE: Appraisal Complaint / Thomas Witherby CASE NO. 2020-492

Hi, Mr. Witherby:

Thank you for your email. I just called and left you a voice message. I will be here in the office until about 3 PM PT. As stated in my message, settlement terms are dictated by your intent to practice appraisal in Nevada. Your Nevada license has been inactive for over 1 year (expired 3/31/22). Please give me a call back so we can have a discussion and determine if a path towards resolution is possible.

Sincerely,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Thomas Witherby <twitherby@witherbyappraisal.com>
Sent: Thursday, May 25, 2023 5:24 AM
To: Christal P. Keegan <ckeegan@ag.nv.gov>
Subject: RE: Appraisal Complaint / Thomas Witherby CASE NO. 2020-492

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

What did you have in mind for settling?

Thank you,

Thomas L. Witherby
Witherby Appraisal, Inc.
Certified Residential Appraiser
Lic #RD8455
904-778-6049

From: [Christal P. Keegan](#)
Sent: Wednesday, May 24, 2023 3:04 PM
To: [Thomas Witherby](#)
Subject: Appraisal Complaint / Thomas Witherby CASE NO. 2020-492

Hi, Mr. Witherby:

I am the deputy attorney general that will prosecuting this case against you. Please advise if you have retained legal representation so that I can redirect my correspondences accordingly. Otherwise, it is my understanding that you are self-represented, and this serves as an introduction for communications.

On May 19, 2023, the Nevada Real Estate Division filed a Complaint against you regarding the appraisal report you prepared for 3183 Mura Del Prato, Henderson, NV 89044 ("Property"). You

had requested your case to be heard by the Appraisal Advisory Review Committee, but you did not appear, therefore, this Complaint was filed, and your case is scheduled for hearing on July 18-20, 2023.

USPS Tracking shows the Complaint is in transit to your Florida address. For your convenience, I am attaching an electronic copy of the Documents being delivered to you by mail, which include the Certificate of Service, Complaint, Notice of Complaint, Notice of Documents.

Please be advised that your attendance is required, and your answers to the complaint are due 30 days after filing May 19, 2023.

In summary, the Complaint demonstrates that your appraisal report contained inaccuracies and omissions that negatively impact the value of the Property. Therefore, the Complaint alleges six (6) violations:

Under USPAP: Record Keeping Rule, 1-1(c) series of error that in their aggregate affect the report, 1-2 (c) unsupported and contradictory opinions, 1-5(b) failing to report/analyze publicly recorded prior sale, 2-1(a) series of error and failing to change boiler plate definitions to match your opinion, and 2-2(a)(x) for failing to analyze the previous sale.

Pursuant to NRS 645C.460(2) the Commission may affect your reactivation of your appraisal certificate, and/or impose an administrative fine of up to \$10,000 per violation.

The Division may be open to settling the matter. I understand you need time to review the Complaint. Should you be interested in resolving this matter in lieu of the public hearing, I'm available and my direct line is provided below.

Thank you,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

EXHIBIT 3

EXHIBIT 3

From: [Christal P. Keegan](#)
To: TWITHERBY@WITHERBYAPPRAISAL.COM
Subject: Agenda for Appraisal Hearings July 18-20, 2022 re: Thomas Witherby Case No. 2020-492
Date: Wednesday, July 12, 2023 9:19:00 AM
Attachments: [Agenda CARE July 2023 FINAL.pdf](#)

Good morning, Mr. Witherby:

As a courtesy, attached is the final meeting agenda for the Appraisal Hearings next week for the case against you. Please let me know if you have any questions; you can also reach out to the Commission Coordinator for logistical questions.

Maria Gallo

**Nevada Real Estate Division
Commission Coordinator
3300 W. Sahara Ave, Suite 350
Las Vegas, NV 89102
Office (702) 486-4074
Fax (702) 486-4275**

Thank you,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that

any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: [Craig Capilla](#)
To: [Christal P. Keegan](#)
Cc: ["twitherby@witherbyappraisal.com"](mailto:twitherby@witherbyappraisal.com)
Subject: Thomas Witherby, CASE NO. 2020-492
Date: Thursday, July 13, 2023 1:17:48 PM

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good afternoon Ms. Keegan,

I am reaching out to you regarding the appraisal complaint pending against Mr. Witherby. I am national claims counsel for OREP insureds and we are in receipt of the complaint, notice of hearing and corresponding notices. It is my understanding that there is also a pending offer of settlement for the matter. I would respectfully request a continuance of the hearing scheduled to begin on July 18, 2023. We are in the process of vetting the claims against Mr. Witherby and assigning him local counsel to hopefully effectuate a settlement or represent him at a hearing if necessary. Would you be agreeable to continuing the hearing so that we can complete assigning the file to local counsel in hopes that we can resolve the matter without needing a hearing?

We would like to limit the costs of both the Commission and Mr. Witherby who now resides in Florida in the event that a hearing can be avoided. Please let me know if you would be agreeable to a continuance. Thank you.



FRANKLIN
GREENSWAG
CHANNON
& CAPILLA, LLC

Craig M. Capilla
Franklin, Greenswag, Channon & Capilla, LLC
181 Waukegan Road, Suite 205
Northfield, IL 60093
847-701-2250 (P)
847-501-5390 (F)
ccapilla@fgccclaw.com

NOTE: This e-mail is from a law firm, Franklin, Greenswag, Channon & Capilla, LLC ("FGCC"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. If you are not an existing client of FGCC, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to FGCC in reply that you expect FGCC to hold in confidence. If you properly received this e-mail as a client, co-counsel, or retained expert of FGCC, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

From: [Christal P. Keegan](#)
To: [Craig Capilla](#); [Maria Gallo](#)
Cc: ["twitherby@witherbyappraisal.com"](mailto:twitherby@witherbyappraisal.com); [Daren A. Gonzalez](#)
Subject: FW: Respondent's Request for Continuance RE: Thomas Witherby, CASE NO. 2020-492
Date: Thursday, July 13, 2023 3:06:00 PM

Hi, Attorney Capilla:

I am in receipt of your request for a continuance on behalf of Respondent Mr. Witherby. These requests should be submitted to the Commission Coordinator, Maria Gallo, who's information I've pasted below for your information. But as a courtesy, I'm forwarding this request to her along with my response.

Since this is the first request, we will not object - but I want to note that good cause has not been shown. The Division's Complaint was filed May 19, 2023. I emailed the Respondent the Division's filed documents on May 24, 2023. Between May 25 – May 30, 2023, we exchanged email communications, including settlement efforts which the Respondent rejected. There is no explanation for why he did not contact his insurance requesting legal representation sooner than 2 business days before his scheduled hearing. By all accounts, this appears to be made purely for delay. We will object to any additional requests for a continuance.

NAC 645C.510 Hearings: Continuances. ([NRS 645C.210](#))

1. The time of a hearing before the Commission may be continued by the Commission upon the written petition of the licensee or holder of a certificate or upon the written petition of the Division, for good cause shown, or by stipulation of the parties to the hearing.

2. A continuance will not be granted on the grounds that the attorney for the licensee or holder of a certificate has not had an opportunity to review the case unless the attorney was given the case by the licensee or holder of a certificate less than 15 calendar days before the hearing.

3. A continuance will not be granted unless it is made in good faith and not merely for delay.

(Added to NAC by Comm'n of Appraisers of Real Estate, eff. 1-26-90; A 11-19-91)

Maria Gallo

**Nevada Real Estate Division
Commission Coordinator
3300 W. Sahara Ave, Suite 350
Las Vegas, NV 89102
Office (702) 486-4074
Fax (702) 486-4275**

Thank you,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Craig Capilla <CCapilla@fgcclaw.com>

Sent: Thursday, July 13, 2023 1:18 PM

To: Christal P. Keegan <ckeegan@ag.nv.gov>

Cc: 'twitherby@witherbyappraisal.com' <twitherby@witherbyappraisal.com>

Subject: Thomas Witherby, CASE NO. 2020-492

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good afternoon Ms. Keegan,

I am reaching out to you regarding the appraisal complaint pending against Mr. Witherby. I am national claims counsel for OREP insureds and we are in receipt of the complaint, notice of hearing and corresponding notices. It is my understanding that there is also a pending offer of settlement for the matter. I would respectfully request a continuance of the hearing scheduled to begin on July 18,

2023. We are in the process of vetting the claims against Mr. Witherby and assigning him local counsel to hopefully effectuate a settlement or represent him at a hearing if necessary. Would you be agreeable to continuing the hearing so that we can complete assigning the file to local counsel in hopes that we can resolve the matter without needing a hearing?

We would like to limit the costs of both the Commission and Mr. Witherby who now resides in Florida in the event that a hearing can be avoided. Please let me know if you would be agreeable to a continuance. Thank you.



FRANKLIN
GREENSWAG
CHANNON
& CAPILLA, LLC

Craig M. Capilla
Franklin, Greenswag, Channon & Capilla, LLC
181 Waukegan Road, Suite 205
Northfield, IL 60093
847-701-2250 (P)
847-501-5390 (F)
ccapilla@fgcclaw.com

NOTE: This e-mail is from a law firm, Franklin, Greenswag, Channon & Capilla, LLC ("FGCC"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. If you are not an existing client of FGCC, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to FGCC in reply that you expect FGCC to hold in confidence. If you properly received this e-mail as a client, co-counsel, or retained expert of FGCC, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

From: [Maria Gallo](#)
To: CCapilla@fgcclaw.com; twitherby@witherbyappraisal.com
Cc: [Christal P. Keegan](#)
Subject: Respondents Request for Continuance RE: Thomas Witherby, Case No. 2020-492
Date: Friday, July 14, 2023 8:23:36 AM

Greetings,

The Commissioner Secretary has granted Mr. Witherby's request for a continuance. A formal letter will be mailed to Respondent and Counsel via certified mail on Monday July 17th.

Re: NRED v. Thomas L. Witherby
Case No. 2020-492 AP21.045.S

This is a formal notice to inform you that the Secretary of the Commission of Appraisers of Real Estate has determined that your request for a continuance be granted.

A Notice of Hearing with the exact date, time and location of the next scheduled Commission meeting will be mailed to you no later than 30 days prior to the hearing date.

Should you have any questions regarding this matter, please contact me at 702-486-4606, or via e-mail at mgallo@red.nv.gov.

Kind Regards,

Maria Gallo

Nevada Real Estate Division
Commission Coordinator
3300 W. Sahara Ave, Suite 350
Las Vegas, NV 89102
Office (702) 486-4074
Fax (702) 486-4275



Nevada Real Estate Division

Nevada Department of Business and Industry
"Growing business in Nevada"

From: [Craig Capilla](#)
To: [Christal P. Keegan](#)
Cc: "twitherby@witherbyappraisal.com"; [Daren A. Gonzalez](#)
Subject: RE: Respondent's Request for Continuance RE: Thomas Witherby, CASE NO. 2020-492
Date: Saturday, July 15, 2023 5:20:14 AM

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you Ms. Keegan,

I appreciate your courtesy in agreeing to the continuance of this matter. I apologize for any delay in this matter as I believe Mr. Witherby notified the insurer almost immediately at the end of May but I was only presented with a copy of the complaint and notices on Thursday of this week. I will ensure that those delays are addressed. I will also get this assigned to local counsel right away so there is no further disruption here. Thank you.



FRANKLIN
GREENSWAG
CHANNON
& CAPILLA, LLC

Craig M. Capilla
Franklin, Greenswag, Channon & Capilla, LLC
181 Waukegan Road, Suite 205
Northfield, IL 60093
847-701-2250 (P)
847-501-5390 (F)
ccapilla@fgcclaw.com

NOTE: This e-mail is from a law firm, Franklin, Greenswag, Channon & Capilla, LLC ("FGCC"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. If you are not an existing client of FGCC, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to FGCC in reply that you expect FGCC to hold in confidence. If you properly received this e-mail as a client, co-counsel, or retained expert of FGCC, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

From: Christal P. Keegan <ckeegan@ag.nv.gov>
Sent: Thursday, July 13, 2023 5:06 PM
To: Craig Capilla <CCapilla@fgcclaw.com>; Maria Gallo <mgallo@red.nv.gov>
Cc: 'twitherby@witherbyappraisal.com' <twitherby@witherbyappraisal.com>; Daren A. Gonzalez <interndg@ag.nv.gov>
Subject: FW: Respondent's Request for Continuance RE: Thomas Witherby, CASE NO. 2020-492

Hi, Attorney Capilla:

I am in receipt of your request for a continuance on behalf of Respondent Mr. Witherby. These requests should be submitted to the Commission Coordinator, Maria Gallo, who's information I've pasted below for your information. But as a courtesy, I'm forwarding this request to her along with my response.

Since this is the first request, we will not object - but I want to note that good cause has not been shown. The Division's Complaint was filed May 19, 2023. I emailed the Respondent the Division's filed documents on May 24, 2023. Between May 25 – May 30, 2023, we exchanged email communications, including settlement efforts which the Respondent rejected. There is no explanation for why he did not contact his insurance requesting legal representation sooner than 2 business days before his scheduled hearing. By all accounts, this appears to be made purely for delay. We will object to any additional requests for a continuance.

NAC 645C.510 Hearings: Continuances. ([NRS 645C.210](#))

1. The time of a hearing before the Commission may be continued by the Commission upon the written petition of the licensee or holder of a certificate or upon the written petition of the Division, for good cause shown, or by stipulation of the parties to the hearing.

2. A continuance will not be granted on the grounds that the attorney for the licensee or holder of a certificate has not had an opportunity to review the case unless the attorney was given the case by the licensee or holder of a certificate less than 15 calendar days before the hearing.

3. A continuance will not be granted unless it is made in good faith and not merely for delay.

(Added to NAC by Comm'n of Appraisers of Real Estate, eff. 1-26-90; A 11-19-91)

Maria Gallo

**Nevada Real Estate Division
Commission Coordinator
3300 W. Sahara Ave, Suite 350
Las Vegas, NV 89102
Office (702) 486-4074
Fax (702) 486-4275**

Thank you,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Craig Capilla <CCapilla@fgcclaw.com>

Sent: Thursday, July 13, 2023 1:18 PM

To: Christal P. Keegan <ckeegan@ag.nv.gov>

Cc: 'twitherby@witherbyappraisal.com' <twitherby@witherbyappraisal.com>

Subject: Thomas Witherby, CASE NO. 2020-492

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good afternoon Ms. Keegan,

I am reaching out to you regarding the appraisal complaint pending against Mr. Witherby. I am national claims counsel for OREP insureds and we are in receipt of the complaint, notice of hearing and corresponding notices. It is my understanding that there is also a pending offer of settlement for the matter. I would respectfully request a continuance of the hearing scheduled to begin on July 18, 2023. We are in the process of vetting the claims against Mr. Witherby and assigning him local counsel to hopefully effectuate a settlement or represent him at a hearing if necessary. Would you be agreeable to continuing the hearing so that we can complete assigning the file to local counsel in hopes that we can resolve the matter without needing a hearing?

We would like to limit the costs of both the Commission and Mr. Witherby who now resides in Florida in the event that a hearing can be avoided. Please let me know if you would be agreeable to a continuance. Thank you.

Craig M. Capilla
Franklin, Greenswag, Channon & Capilla, LLC
181 Waukegan Road, Suite 205
Northfield, IL 60093
847-701-2250 (P)

000030

NRED Motion to Dismiss



847-501-5390 (F)
ccapilla@fgcclaw.com

NOTE: This e-mail is from a law firm, Franklin, Greenswag, Channon & Capilla, LLC (“FGCC”), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. If you are not an existing client of FGCC, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to FGCC in reply that you expect FGCC to hold in confidence. If you properly received this e-mail as a client, co-counsel, or retained expert of FGCC, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

EXHIBIT 4

EXHIBIT 4

STEVE SISOLAK
Governor

STATE OF NEVADA



TERRY REYNOLDS
Director

SHARATH CHANDRA
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

www.red.nv.gov

August 30, 2023

Thomas L. Witherby
5921 N. Lamp Dr.
Beverly Hills, FL 34465

Certified No: 7020 1290 0001 3945 4751

Craig M. Capilla, Esq.
Franklin, Greenswag, Channon & Capilla, LLC.
181 Waukegan Road, Suite 205
Northfield, IL 60093

Certified No: 7020 1290 0001 3945 4768

Re: NRED v. Thomas L. Witherby
Case No. 2020-492, AP21.045.S

The hearing in the above-entitled matters has been scheduled for the next Nevada Commission of Appraisers of Real Estate (Commission) meeting at the time and dates listed below.

October 3-5, 2023 @ 9:00 A.M.

**NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
4TH FLOOR, NEVADA ROOM
LAS VEGAS, NEVADA 89102**

**With VIDEO CONFERENCE TO:
NEVADA DIVISION OF INSURANCE
1818 E. COLLEGE PARKWAY, SUITE 103
CARSON CITY, NEVADA 89706**

STACKED CALENDAR: This matter is one of several matters scheduled at the same time as part of a regular meeting of the Commission that is expected to last from **Tuesday, October 03, 2023, at 9:00 a.m.** and **each day thereafter at 9:00 a.m. through Thursday, October 05, 2023, or earlier if the business of the Commission is concluded.** Thus, this matter may be continued until later in the day or from day to day. It is your responsibility to be present when this case is called. If you are not present when the case is called, a default may be entered against the respondent.

Not less than 5 days prior to the hearing before the Commission, the respondent must provide the Division with copies of all documents which the respondent reasonably anticipates will be used in support of his or her position. These documents must be coordinated and submitted by email to the Commission Coordinator at mgallo@red.nv.gov to have exhibits marked.

3300 W. Sahara Avenue, Suite 350, Las Vegas, Nevada 89102
1818 E. College Parkway, Suite 110, Carson City, Nevada 89706

Telephone: (702) 486-4033 Fax: (702) 486-4275
Telephone: (775) 684-1900 Fax: (775) 687-4868

000033

NRED Motion to Dismiss

Please be advised that if the Commission finds you have committed a violation, you may be responsible for paying the Division's costs and attorney fees associated with the hearing.

Please contact me if you have questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "M Gallo".

Maria Gallo
Commission Coordinator
Telephone: (702) 486-4074
Email: mgallo@red.nv.gov

Cc: Sharath Chandra, Administrator
Commissioners
Compliance
Christal Keegan, Deputy Attorney General

USPS Tracking®

Tracking Number:

70201290000139454768

Copy Add to Informed Delivery (<https://infor>)

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE 601 3823

Certified Mail Fee \$
Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$
 Return Receipt (electronic) \$
 Certified Mail Restricted Delivery \$
 Adult Signature Required \$
 Adult Signature Restricted Delivery \$

Postage \$

Craig M. Capilla, Esq.
Franklin, Greenswag, Channon & Capilla, LLC.
181 Waukegan Road, Suite 205
Northfield, IL 60093

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7020 1290 0001 3945 4768

LAS VEGAS NV 89199-9114
Postmark
AUG 30 2023
USPS

Latest Update

Your item has been delivered to an agent for final delivery in WINNETKA, IL 60093 on September 5, 2023 at 11:33 am.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered to Agent
Delivered to Agent for Final Delivery

WINNETKA, IL 60093
September 5, 2023, 11:33 am

[See All Tracking History](#)

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates



USPS Tracking Plus®



Product Information



See Less ^

Track Another Package

Enter tracking or barcode numbers

000035

NRED Motion to Dismiss

Feedback

Tracking Number:

Remove X

70201290000139454751

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

Get More Out of USPS Tracking:

USPS Tracking Plus[®]

Moving Through Network

● In Transit to Next Facility

October 8, 2023

● Arrived at USPS Regional Facility

LAS VEGAS NV DISTRIBUTION CENTER
October 2, 2023, 3:01 pm

● Unclaimed/Being Returned to Sender

BEVERLY HILLS, FL 34465
September 20, 2023, 8:36 am

● Reminder to Schedule Redelivery of your item

September 10, 2023

● Available for Pickup

BEVERLY HILLS
3971 N LECANTO HWY
BEVERLY HILLS FL 34465-9998
M-F 0830-1630; SAT 0900-1200
September 6, 2023, 10:48 am

Feedback

000036

NRED Motion to Dismiss

● **Notice Left (No Authorized Recipient Available)**

BEVERLY HILLS, FL 34465
September 5, 2023, 3:12 pm

● **Arrived at USPS Regional Facility**

JACKSONVILLE FL DISTRIBUTION CENTER
September 4, 2023, 7:18 am

● **Departed USPS Regional Facility**

LAS VEGAS NV DISTRIBUTION CENTER
September 1, 2023, 8:00 am

● **Arrived at USPS Regional Facility**

LAS VEGAS NV DISTRIBUTION CENTER
August 31, 2023, 11:15 pm

● **Hide Tracking History**

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates



USPS Tracking Plus®



Product Information



See Less ^

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

000037

NRED Motion to Dismiss

From: [Christal P. Keegan](#)
To: [Craig Capilla](#)
Cc: "twitherby@witherbyappraisal.com"; [Maria Gallo](#)
Subject: Hearing Agenda RE: Respondent's Request for Continuance RE: Thomas Witherby, CASE NO. 2020-492
Date: Wednesday, September 27, 2023 10:31:00 AM
Attachments: [Agenda CARE Oct 2023.pdf](#)

Hi, Attorney Capilla:

Attached is the final agenda for the Appraisal Hearing's next week with attendance information. The State is prepared to present its case against Mr. Witherby, or if he or his counsel fail to appear, we will proceed as a default.

Thank you,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Christal P. Keegan <ckeegan@ag.nv.gov>
Sent: Friday, August 18, 2023 10:04 AM
To: Craig Capilla <CCapilla@fgcclaw.com>
Cc: 'twitherby@witherbyappraisal.com' <twitherby@witherbyappraisal.com>; Maria Gallo <mgallo@red.nv.gov>

Subject: Re: Respondent's Request for Continuance RE: Thomas Witherby, CASE NO. 2020-492

Hi Attorney Capilla,

We have not heard from a local attorney concerning this case. The Commission Coordinator is about to send out the meeting notice. We need to know where we are sending it to.

Thank you,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Craig Capilla <CCapilla@fgcclaw.com>

Sent: Saturday, July 15, 2023 5:20 AM

To: Christal P. Keegan <ckeegan@ag.nv.gov>

Cc: 'twitherby@witherbyappraisal.com' <twitherby@witherbyappraisal.com>; Daren A. Gonzalez <interndg@ag.nv.gov>

Subject: RE: Respondent's Request for Continuance RE: Thomas Witherby, CASE NO. 2020-492

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you Ms. Keegan,

I appreciate your courtesy in agreeing to the continuance of this matter. I apologize for any delay in this matter as I believe Mr. Witherby notified the insurer almost immediately at the end of May but I was only presented with a copy of the complaint and notices on Thursday of this week. I will ensure that those delays are addressed. I will also get this assigned to local counsel right away so there is no further disruption here. Thank you.



FRANKLIN
GREENSWAG
CHANNON
& CAPILLA, LLC

Craig M. Capilla
Franklin, Greenswag, Channon & Capilla, LLC
181 Waukegan Road, Suite 205
Northfield, IL 60093
847-701-2250 (P)
847-501-5390 (F)
ccapilla@fgcclaw.com

NOTE: This e-mail is from a law firm, Franklin, Greenswag, Channon & Capilla, LLC (“FGCC”), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. If you are not an existing client of FGCC, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to FGCC in reply that you expect FGCC to hold in confidence. If you properly received this e-mail as a client, co-counsel, or retained expert of FGCC, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

From: Christal P. Keegan <ckeegan@ag.nv.gov>

Sent: Thursday, July 13, 2023 5:06 PM

To: Craig Capilla <CCapilla@fgcclaw.com>; Maria Gallo <mgallo@red.nv.gov>

Cc: 'twitherby@witherbyappraisal.com' <twitherby@witherbyappraisal.com>; Daren A. Gonzalez <interndg@ag.nv.gov>

Subject: FW: Respondent's Request for Continuance RE: Thomas Witherby, CASE NO. 2020-492

Hi, Attorney Capilla:

I am in receipt of your request for a continuance on behalf of Respondent Mr. Witherby. These requests should be submitted to the Commission Coordinator, Maria Gallo, who's information I've pasted below for your information. But as a courtesy, I'm forwarding this request to her along with my response.

Since this is the first request, we will not object - but I want to note that good cause has not been shown. The Division's Complaint was filed May 19, 2023. I emailed the Respondent the Division's filed documents on May 24, 2023. Between May 25 – May 30, 2023, we exchanged

email communications, including settlement efforts which the Respondent rejected. There is no explanation for why he did not contact his insurance requesting legal representation sooner than 2 business days before his scheduled hearing. By all accounts, this appears to be made purely for delay. We will object to any additional requests for a continuance.

NAC 645C.510 Hearings: Continuances. ([NRS 645C.210](#))

1. The time of a hearing before the Commission may be continued by the Commission upon the written petition of the licensee or holder of a certificate or upon the written petition of the Division, for good cause shown, or by stipulation of the parties to the hearing.

2. A continuance will not be granted on the grounds that the attorney for the licensee or holder of a certificate has not had an opportunity to review the case unless the attorney was given the case by the licensee or holder of a certificate less than 15 calendar days before the hearing.

3. A continuance will not be granted unless it is made in good faith and not merely for delay.

(Added to NAC by Comm'n of Appraisers of Real Estate, eff. 1-26-90; A 11-19-91)

Maria Gallo

**Nevada Real Estate Division
Commission Coordinator
3300 W. Sahara Ave, Suite 350
Las Vegas, NV 89102
Office (702) 486-4074
Fax (702) 486-4275**

Thank you,
Christal

Christal Park Keegan, Esq.
Deputy Attorney General

State of Nevada
Office of the Attorney General
Department of Business & Industry
Real Estate Division
5420 Kietzke Lane #202
Reno, Nevada 89511

E: ckeegan@ag.nv.gov | T: 775.687.2141



Notice of Confidentiality:

This preceding e-mail message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521, and contain information intended for the specific individual(s) only or constitute non-public information. This information may be confidential. If you are not the intended recipient you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify me immediately by E-mail, and delete the original message. Use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Craig Capilla <CCapilla@fgcclaw.com>

Sent: Thursday, July 13, 2023 1:18 PM

To: Christal P. Keegan <ckeegan@ag.nv.gov>

Cc: 'twitherby@witherbyappraisal.com' <twitherby@witherbyappraisal.com>

Subject: Thomas Witherby, CASE NO. 2020-492

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good afternoon Ms. Keegan,

I am reaching out to you regarding the appraisal complaint pending against Mr. Witherby. I am national claims counsel for OREP insureds and we are in receipt of the complaint, notice of hearing and corresponding notices. It is my understanding that there is also a pending offer of settlement for the matter. I would respectfully request a continuance of the hearing scheduled to begin on July 18, 2023. We are in the process of vetting the claims against Mr. Witherby and assigning him local counsel to hopefully effectuate a settlement or represent him at a hearing if necessary. Would you be agreeable to continuing the hearing so that we can complete assigning the file to local counsel in hopes that we can resolve the matter without needing a hearing?

We would like to limit the costs of both the Commission and Mr. Witherby who now resides in Florida in the event that a hearing can be avoided. Please let me know if you would be agreeable to a continuance. Thank you.



FRANKLIN
GREENSWAG
CHANNON
& CAPILLA, LLC

Craig M. Capilla
Franklin, Greenswag, Channon & Capilla, LLC
181 Waukegan Road, Suite 205
Northfield, IL 60093
847-701-2250 (P)
847-501-5390 (F)
ccapilla@fgcclaw.com

NOTE: This e-mail is from a law firm, Franklin, Greenswag, Channon & Capilla, LLC (“FGCC”), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer, and do not copy or disclose it to anyone else. If you are not an existing client of FGCC, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to FGCC in reply that you expect FGCC to hold in confidence. If you properly received this e-mail as a client, co-counsel, or retained expert of FGCC, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

EXHIBIT 5

EXHIBIT 5

JOE LOMBARDO
Governor

STATE OF NEVADA



TERRY REYNOLDS
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Deputy Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

www.red.nv.gov

October 10, 2023

Thomas L. Witherby.
5921 N. Lamp Post Dr.
Beverly Hills, FL 34465

Certified No. 7020 1290 0001 3945 3716

Craig M. Capilla, Esq.
Franklin, Greenswag, Channon & Capilla, LLC
181 Waukegan Road, Suite 205
Northfield, IL 60093

Certified No. 7020 1290 0001 3945 3709

Re: NRED v. Thomas L. Witherby
Case No.: 2020-492 AP20.045.S

Enclosed herewith you will find the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER entered by the Nevada Commission for Appraisers of Real Estate at the meeting held October 03, 2023, in Las Vegas, Nevada.

The Commission has ordered the following:

1. Respondent's license (License No. A.0001528-CR) is revoked;
2. Respondent shall pay to the Division a fine of \$10,000 per violation for committing the above-stated six (6) violations of law for a total administrative fine of \$60,000;
3. Respondent shall pay the costs of the investigation and the hearing in the amount of \$3,897.22 which is actual, reasonable, and necessary;
4. The total amount the Respondent shall pay is \$63,897.22 and shall be paid in full within 180 days of this Order;

TOTAL AMOUNT DUE: \$63,897.22
PAYMENT DUE DATE: APRIL 08, 2024

Submit your payment to the address below. Checks or money orders are to be made payable to the "Nevada Real Estate Division".

Nevada Real Estate Division
Attention: Administration Section Manager
3300 West Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

3300 W. Sahara Avenue, Suite 350, Las Vegas, Nevada 89102
1818 E. College Parkway, Suite 110, Carson City, Nevada 89706

Telephone: (702) 486-4033 Fax: (702) 486-4275
Telephone: (775) 684-1900 Fax: (775) 687-4868

000045

NRED Motion to Dismiss

There are two copies of this letter enclosed, one copy is marked "Remittance Copy" and should be returned with your check or money order to the Nevada Real Estate Division. The purpose of the remittance copy is to assure proper posting of fines to your disciplinary file.

Please note that Division staff does not have the authority to extend the due date for your fine or education requirements that have been ordered by the Commission. If you find that you are unable to meet the required due date, you will need to request in writing that you be placed on the agenda for a Commission hearing in which the respondent will be allowed to request an extension from the Commission. This request should be made several months prior to the due date.

Please contact me if you have questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "M Gallo".

Maria Gallo

Commission Coordinator

Telephone: (702) 486-4074

Email: mgallo@red.nv.gov

cc: Sharath Chandra, Administrator
Christal Keegan, Deputy Attorney General

1 Therefore, the Commission, having considered the evidence introduced by the Division and being
2 fully advised, enters the following Findings of Fact, Conclusions of Law, and Order:

3 **I. JURISDICTION**

4 At all times relevant to this Complaint, the Respondent was a Certified Residential Appraiser
5 licensed by the Division, and therefore, is subject to the Jurisdiction of the Division and the provisions
6 of NRS and NAC Chapter 645C. By availing himself of the benefits and protections of the laws of the
7 State of Nevada, the Respondent has submitted to the jurisdiction of the Division.

8 **II. FINDINGS OF FACT**

9 The matter having been submitted for decision based upon the allegations of the Complaint, the
10 Commission now, based upon the evidence presented during the hearing, finds that there is substantial
11 evidence in the record to establish each of the following:

12 1. The Respondent’s Nevada Certified Residential Appraiser, License No. A.0001528-CR,
13 has been in closed, expired status for over a year as of March 31, 2022.

14 2. The Respondent prepared an Appraisal Report for 3183 Mura Del Prato, Henderson,
15 Nevada 89044 (“Property”). 0057 – 0103.

16 3. The Respondent’s Appraisal Report represented use of linear regression modules to
17 support the adjustments made in the sales grid but admitted lack of understanding of how to properly
18 complete a linear regression. 0067.

19 4. Further, the Respondent’s Appraisal Report and workfile do not contain statistical analysis
20 to support the adjustments made in the sales grid. 0057 – 0329.

21 5. The Complainant alleged the Respondent failed to support adjustments made for upgraded
22 features. 0002.

23 6. The Respondent’s Appraisal Report and workfile failed to support the \$25,000 adjustment
24 made to Comparable Sale #2’s upgraded features. 0059.

25 7. The Complainant alleged homes built by Toll Brothers are premium but the Respondent
26 failed to note such benefit for Comparables #s 1-3 built by Toll Brothers. 0002.

27 ...

28 ...

1 8. The Respondent's Appraisal Report did not make adjustments for differing builders
2 when data indicates a resale townhome built by Toll Brothers commands a higher premium.
3 *0059, 0064, and 0343.*

4 9. The Complainant alleged the RESPONDENT misrepresented Comparables #s 1, 3, 4, 5,
5 and 6 as end-units and made no adjustments or comments about the impact of this feature. *0002.*

6 10. The Property is an end-unit townhome but the Respondent's Appraisal Report contained
7 only one end-unit comparable, Comparable #2, with no adjustments made to the other non-end-unit
8 comparables. *0059 and 0064.*

9 11. The Respondent's Appraisal Report and workfile provided no evidence to
10 support the opinion that seller concessions do not affect pricing, even if under 3% of the sales price.
11 *0067, and 0057 – 0329.*

12 12. The Respondent's Appraisal Report failed to report and analyze a prior sale of the Property
13 that occurred within the prior three years despite such information publicly recorded. *0350.*

14 13. The Respondent's Appraisal Report appraised for \$300,000 which was less than what the
15 Property sold for two years prior at \$310,000. *0350, and 0063.*

16 **III. CONCLUSIONS OF LAW**

17 The Commission, based upon the preponderance of the evidence, makes the following
18 legal conclusions:

19 The Respondent failed to prepare the appraisal report for the Property in Compliance with the
20 Standards of the Appraisal Foundation and the law. The Standards are published in the Uniform
21 Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of
22 the Appraisal Foundation, as authorized by Congress, and adopted in Nevada by NAC 645C.400(1)¹.

23 **First Violation**

24 The USPAP RECORD KEEPING RULE requires an appraiser must prepare a workfile for each
25 appraisal or appraisal review assignment. A workfile must be in existence prior to the issuance of any
26 report or other communication of assignment results. A written summary of an oral report must be added
27

28 ¹ The 2020-2021 edition of USPAP, effective January 1, 2020 through December 31, 2021, is applicable to and utilized for this Complaint.

1 to the workfile within a reasonable time after the issuance of the oral report. The workfile must include
2 all other data, information, and documentation necessary to support the appraiser's opinions and
3 conclusions and to show compliance with USPAP, or references to the location(s) of such other data,
4 information, and documentation.

5 The Respondent violated USPAP RECORD KEEPING RULE by failing to include statistical
6 analysis to support the adjustments made in the sales grid within the Appraisal Report or workfile.

7 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2), as
8 determined by NAC 645C.405(1) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
9 and/or (b).

10 **Second Violation**

11 USPAP Standards Rule 1-1(c) requires that an appraiser in developing a real property appraisal
12 must (c) not render appraisal services in a careless or negligent manner, such as by making a series of
13 errors that, although individually might not significantly affect the results of an appraisal, in the aggregate
14 affects the credibility of those results.

15 Respondent violated Standards Rule 1-1(c) by failing to contain documentation to support the
16 \$25,000 adjustment for Comparable #2's upgraded features.

17 Respondent further violated Standards Rule 1-1(c) by failing to adjust for differing builders in the
18 Appraisal Report when Comparables #s 1, 2, and 3 are Toll Brother built units, and Comparables #s 4, 5,
19 and 6 are KB Homes built units.

20 Respondent also violated Standards Rule 1-1(c) by failing to use more than just one end-unit
21 comparable, Comparable #2, and failing to make adjustments to the other non-end-unit comparables,
22 Comparables #s 1, 3, 4, 5, and 6.

23 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2),
24 as determined by NAC 645C.405(1) and (2) and grounds for disciplinary action pursuant to
25 NRS 645C.460(1)(a) and/or (b).

26 **Third Violation**

27 USPAP Standards Rule 1-2(c) required an appraiser, in developing a real property appraisal, must
28 (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors

1 that, although individually might not significantly affect the results of an appraisal, in the aggregate
2 affects the credibility of those results.

3 The Respondent violated Standards Rule 1-2(c) by failing to provide support for the opinion that
4 seller concessions of 3% or less do not affect pricing and failing to update the boiler plate Definition of
5 Value language stating "the seller pays these costs in virtually all sales transactions" which contradicted
6 his opinion that there were seller concessions.

7 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2),
8 as determined by NAC 645C.405(1) and (2) and grounds for disciplinary action pursuant to
9 NRS 645C.460(1)(a) and/or (b).

10 **Fourth Violation**

11 USPAP Standards Rule 1-5(b) provides that when the value opinion to be developed is market
12 value, an appraiser must, if such information is available to the appraiser in the normal course of business:
13 (b) analyze all sales of the subject property that occurred within the three (3) years prior to the effective
14 date of the appraisal.

15 Respondent violated Standards Rule 1-5(b) by failing to report or analyze the publicly recorded
16 prior sale of the Property which occurred June 21, 2018, for \$310,000, less than two (2) years prior to the
17 effective date of the Appraisal Report.

18 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2), as
19 determined by NAC 645C.405(1) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
20 and/or (b).

21 **Fifth Violation**

22 USPAP Standards Rule 2-1(a) requires each written or oral real property appraisal report must:
23 (a) clearly and accurately set forth the appraisal in a manner that will not be misleading.

24 In violation of Standards Rule 2-1(a), Respondent failed to change his Definition of Value to
25 match his opinion that there were seller concessions, even if under 3% of the sale price.

26 Respondent also violated Standards Rule 2-1(a) when he made a series of errors which in
27 their aggregate can mislead the intended user, specifically, when Respondent failed to support
28 the \$25,000 adjustment for Comparable #2's upgraded features; failed to adjust for differing

1 builders; used only one end-unit comparable, Comparable #2, and failed to make adjustments to the other
2 non-end-unit comparables.

3 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2),
4 as determined by NAC 645C.405(1) and (2) and grounds for disciplinary action pursuant to
5 NRS 645C.460(1)(a) and/or (b).

6 **Sixth Violation**

7 USPAP Standards Rule 2-2(a)(x) requires each written real property appraisal report must be
8 prepared under one of the following options and prominently state which option is used: Appraisal
9 Report or Restricted Appraisal Report. (a) The content of an Appraisal Report must be appropriate for
10 the intended use of the appraisal and, at a minimum (x) provide sufficient information to indicate that the
11 appraiser complied with the requirements of STANDARD 1 by: (1) summarizing the appraisal methods
12 and techniques employed; (2) stating the reasons for excluding the sales comparison, cost, or income
13 approach(es) if any have not been developed; (3) summarizing the results of analyzing the subject sales,
14 agreements of sale, options, and listings in accordance with Standards Rule 1-5; [Comment: If such
15 information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the
16 information is required. If such information is irrelevant, a statement acknowledging the existence of the
17 information and citing its lack of relevance is required.]; (4) stating the value opinion(s) and
18 conclusion(s); and (5) summarizing the information analyzed and the reasoning that supports the
19 analyses, opinions, and conclusions, including reconciliation of the data and approaches.

20 Respondent violated Standards Rule 2-2(a)(x) by failing to analyze the previous sale in the
21 Appraisal Report.

22 The Respondent's actions constitute unprofessional conduct pursuant to NRS 645C.470(2), as
23 determined by NAC 645C.405(1) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
24 and/or (b).

25 **ORDER**

26 The Commission, being fully apprised in the premises and good cause appearing,
27 hereby ORDERS:

- 28 1. Respondent's license (License No. A.0001528-CR) is revoked;

JOE LOMBARDO
Governor

STATE OF NEVADA
COMMISSION OF APPRAISERS OF REAL ESTATE

JOHN WRIGHT
President
LARRY MICHAEL GANDY JR.
Vice President
JOHN IVEY
Secretary

TERRY REYNOLDS
Director



DATE: 10/9/2023

RESPONDENT: Thomas Witherby

CASE#: 2020-492

HEARING DATE: 3-Oct-23

STATEMENT OF HEARING FEES AND COSTS PURSUANT TO NRS 622.400(2)

Administrative Costs: \$ 200.00

Investigative Costs: \$ 150.00

Commission Costs: \$ 53.08

Attorney Fees: \$ 3,494.14

Witness Costs: \$ -

Court Reporter Costs: \$ -

Other Services (Describe service below): \$ -

TOTAL AMOUNT DUE: \$ 3,897.22 *This does not include any fines or restitution ordered by the Commission

Tracking Number:

[Remove X](#)

70201290000139453716

[Copy](#)

[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your item was refused by the addressee at 8:30 am on October 17, 2023 in BEVERLY HILLS, FL 34465 and is being returned to the sender.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Alert

Refused

BEVERLY HILLS, FL 34465
October 17, 2023, 8:30 am

Arrived at Post Office

BEVERLY HILLS, FL 34465
October 17, 2023, 8:29 am

[See All Tracking History](#)

Feedback

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

[Text & Email Updates](#)



[USPS Tracking Plus®](#)



[Product Information](#)



000055

NRED Motion to Dismiss

See Less 

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

Tracking Number:

[Remove X](#)

70201290000139453709

[Copy](#)

[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your item has been delivered to an agent for final delivery in WINNETKA, IL 60093 on October 16, 2023 at 11:54 am.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered to Agent

Delivered to Agent for Final Delivery

WINNETKA, IL 60093

October 16, 2023, 11:54 am

[See All Tracking History](#)

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

[Text & Email Updates](#)



Feedback

[USPS Tracking Plus®](#)



[Product Information](#)



[See Less ^](#)

Track Another Package

000057

NRED Motion to Dismiss

Need More Help?

Contact USPS Tracking support for further assistance.

[FAQs](#)

EXHIBIT 6

EXHIBIT 6

Maria Gallo

From: Thomas Witherby <twitherby@witherbyappraisal.com>
Sent: Thursday, December 21, 2023 11:26 AM
To: Maria Gallo
Subject: Appraisal Board Disciplinary Action

FILED

DEC 21 2023

NEVADA COMMISSION OF APPRAISERS

Mgallo

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

I was told by Sonny Vinuya that you were the person I needed to contact about requesting a new hearing. If that information is not correct I do apologize. I had a hearing in October and I now live in Florida and did not go to the hearing so they applied the maximum punishment on me. I have been trying for the past two weeks or more to find an attorney to represent me and file an appeal but it seems it is too close to the holidays for any of them to commit to my case. This is why I am asking you for consideration on a new hearing or negotiations whichever you would be open to. I have no idea what is allowed or not because I have never been in this position before and I do not know the law like you do. Before making up your mind I would like to explain to you my situation and why I was not present at the hearing.

The appraisal in question was completed in March of 2020 and a complaint was filed in June of 2020 of which I responded to. I was contacted and asked if I would rather attend the Appraisal Review Committee meeting instead of a full Board Hearing. I said yes and the review committee was over the internet due to Covid-19. I later received a letter from the State relaying to me the committee dismissed the complaint. That was later toward the end of the year in 2020. I moved to Florida in early 2021 to help take care of my aging parents and in order to obtain my Florida appraisal license the State of Nevada had to send a letter of good standing that stated there were no current investigations or disciplinary actions for me. The State of Nevada sent the letter and I obtained my Florida License. I was then notified in May of 2023 that the case had been refiled and there was a hearing set for July of 2023. I notified my E&O company and the head lawyer for them told me he would get with me to discuss a strategy for the hearing. I think it was 2 days before the hearing I still had not heard from him so I called him and he told me he was so busy he forgot. He said that we would file for an extension and tell the state that we were working on a settlement agreement but in reality it would give us more time. This is why I did not attend the first hearing.

Second Hearing in October:

After he filed for the extension he told me he would have an attorney from Las Vegas assigned to me. I waited for someone to call me and a week before the hearing I had not heard from anyone so I called him again. He told me the same thing, that he was busy and forgot, then he had someone call me the next day. The attorney I spoke with said she would not have the time to prepare a proper case in less than a week and told me the only thing I could do was to go to Las Vegas for the hearing and beg for my license. I told her that I did not have the money to be able to do that due to expenses I was obligated to. I will explain that next. I told her that I was informed there was a phone call in I could do and she advised me strongly not to do that. She told me that it would not do any good to call in because the board members roll their eyes and act like anyone on the phone does not exist and said it will be like I was not there. This is why I did not call in.

I received the notice from the hearing and have not responded until now due to the attention my father has needed. My life since I moved to Florida has not been good as my father had dementia and several strokes over this period. I have been financially supporting my parents during this period and providing all the help that I could. My father passed on December 15, 2023. This is why I have not filed for an appeal yet. Financially supporting them was draining my accounts and now that this action has been filed against me I have not been very little work and I have been told that the State of Florida will probably take my license here due to this action.

I am asking if I could please have another hearing to possibly change the results since the appraisal in question is not an appraisal report that is worthy of revocation of my license. If I would have known how bad my attorneys were going to be I would have settled in the beginning (even though I felt I had done nothing wrong). I have since had a USPAP instructor review my report and he stated that while he did find a few minor errors it was his experience that most appraisal boards would have made me take some classes at the most. I also had a very well respected Appraiser in Las Vegas (Scott Dugan) review my report and he said the same thing that there were minor adim mistakes but that was it.

I am not asking you to overturn the action just grant me another hearing that I will attend and represent myself. I do not expect the board to go easy on me because I did miss the other hearings but if I can get the revocation lifted then I could continue to work so that I may pay the fines assessed. Without my license here in Florida I will not be able to pay the fine and I will lose everything I have. So please have a little compassion and grant me a Christmas wish so I might start the new year better than the last three have been. Thank you so much for your time and consideration.

Thank you,

Thomas L. Witherby
Witherby Appraisal, Inc.
Certified Residential Appraiser
License #RD8455
904-778-6049

EXHIBIT 7

EXHIBIT 7

Steve Sisolak
Governor

STATE OF NEVADA



Terry Reynolds
Director

Sharath Chandra
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

<http://red.nv.gov/>

May 24, 2022

Thomas L. Witherby
Witherby Appraisal Inc.
1762 Pandora Dr.
Las Vegas, NV 89123

CERTIFIED: 7018 1130 0001 6026 3777

RE: NRED vs. WITHERBY
CASE NO.: 2020-492, AP20.045.S
SUBJECT PROPERTY: 204 Satin Mist Court, Las Vegas NV 89144

Dear Thomas L. Witherby:

This letter is in follow up to an investigation by the Division concerning the above referenced case. The Division has obtained sufficient evidence to commence with disciplinary action against you and intends to do so by filing a complaint before the Appraisal Commission (Commission).

Appraisal Advisory Review Committee was held on May 24, 2022. You stated in an email to Investigator Silva you wished your case to be heard by AARC. You did not appear at the AARC meeting; therefore, your case will be heard by CARE.

Pursuant to NRS 645C.460, if the Commission finds that violation(s) have occurred, they may impose an administrative fine of up to \$10,000.00 per violation and/or suspend, revoke or place conditions upon your license if warranted. Additionally, the costs of the investigation and hearing, including attorney's fees, may be recovered. Failure to pay these sums in a timely manner may result in the institution of collection proceedings.

Any documentation or evidence you wish to have considered regarding the alleged violations should immediately be brought to the attention of the undersigned. You may contact me at nlazzarino@red.nv.gov or by mail within ten days of the date of this letter.

Thank you for your attention in this matter.

Sincerely,

Nick Lazzarino

Nick Lazzarino
State of Nevada
Real Estate Division
Appraisal Compliance/Audit Investigator II

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

7016 1130 0001 6026 3777

Domestic Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hard copy) \$ 2.10
- Return Receipt (electronic) \$ 0.00
- Certified Mail Restricted Delivery \$ 0.00
- Adult Signature Required \$ 0.00
- Adult Signature Restricted Delivery \$ 0.00

Postage \$ 7.33

Total Postage \$ 7.33

Sent To

Street and

City, State



Thomas L. Witherby
Witherby Appraisal Inc.
1762 Pandora Dr.
Las Vegas, NV 89123

EXHIBIT 7

EXHIBIT 7

JOE LOMBARDO
Governor

STATE OF NEVADA

TERRY REYNOLDS
Director



SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Deputy Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.nv.gov

NOTICE & AGENDA OF PUBLIC MEETING
OF THE
NEVADA COMMISSION OF APPRAISERS OF REAL ESTATE
July 18-20, 2023

The Nevada Commission of Appraisers of Real Estate will conduct a meeting **TUESDAY, JULY 18, 2023, beginning at 9:00 a.m. and each day thereafter at 9:00 a.m. through THURSDAY, JULY 20, 2023, or until the Commission concludes its business at the following locations:**

**NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
4TH FLOOR, NEVADA ROOM
LAS VEGAS, NEVADA 89102**

**With VIDEO CONFERENCE TO:
NEVADA DIVISION OF INSURANCE
1818 E. COLLEGE PARKWAY, SUITE 103
CARSON CITY, NEVADA 89706**

Members of the public can attend the meeting virtually and participate during the agenda items designated for public comment by video or telephone using the information below:

DIAL-IN NUMBER: (844) 621-3956 OR WEBEX.COM

TUESDAY, JULY 18, 2023

**1-844-621-3956 ACCESS CODE/MEETING NUMBER: 2487 460 2363##
WEBEX.COM MEETING NUMBER: 2487 460 2363 MEETING PASSWORD: PySxpanp334**

WEDNESDAY, JULY 19, 2023

**1-844-621-3956 ACCESS CODE/MEETING NUMBER: 2481 041 0720##
WEBEX.COM MEETING NUMBER: 2481 041 0720 MEETING PASSWORD: gpCfp4KtP39**

THURSDAY, JULY 20, 2023

**1-844-621-3956 ACCESS CODE/MEETING NUMBER: 2496 805 8105##
WEBEX.COM MEETING NUMBER: 2496 805 8105 MEETING PASSWORD: TJwaeC33JS3**

STACKED AGENDA: Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda by the discretion of the President. Items may also be combined for consideration or pulled or removed from the agenda at any time. Persons who have business before the Commission are solely responsible to see that they are present when their business is conducted. Pursuant to NRS 241.030 the Commission may conduct a closed meeting to consider the character, allegations of misconduct, professional competence, or physical and mental health of a person.

PUBLIC COMMENT: Public Comment may be limited to three minutes per person at the discretion of the President. The Commission may only take action on those items denoted as potential action items.

Members of the public may submit written public comment by email to Maria Gallo at mgallo@red.nv.gov. Emails received prior to 4:00 p.m. on the day before the meeting will be provided to the Commission for review and entered into the record.

NOTICE: Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the Commission may refuse to consider public comment (NRS 233B.126).

1) **COMMISSION/DIVISION BUSINESS:**

- A. Call to order, introduction of Commissioners in attendance; and establish quorum.
- B. Introduction of Division staff in attendance.

2) **PUBLIC COMMENT:**

Members of the public are encouraged to address the Commission regarding any matter. However, no action may be taken on a matter. No comments may be made regarding a matter that is or may be the subject of a formal complaint before the Commission. Comment may not be limited based on viewpoint. Persons who desire to submit written testimony should submit it to the Commission Coordinator.

Anyone participating over the phone that wishes to provide public comment should press *3 on your phone to raise your hand and hosting staff will recognize that you would like to give public comment, or you can press *6 to unmute yourself and state your name.

If you are attending by video, click on the raise hand emoji to indicate that you would like to give public comment and hosting staff will recognize you or you can unmute yourself and state your name. ***PUBLIC COMMENT MAY BE LIMITED TO THREE MINUTES PER PERSON AT THE DISCRETION OF THE PRESIDENT.***

3) **DISCUSSION AND POSSIBLE ACTION REGARDING ADVISORY REVIEW COMMITTEE INFORMAL CONFERENCE RECOMMENDATION:**

- A. NRED V. KRISTINA ALLAN (AKA BIENEK), for possible action
Case No. 2020-915, AP21.016.S
License No. A.0005276-CR (Active)

4) **DISCUSSION AND POSSIBLE ACTION REGARDING RESPONDENT'S PETITION FOR RECONSIDERATION OF DISCIPLINARY TERMS:**

- A. NRED v. ALFONSO A. CAMINO, for possible action
Case No. 2017-989 AP17.032.S
License No. A.0001257-CR (Active)

5) **DISCIPLINARY ACTION: DISCUSSION AND POSSIBLE ACTION BY THE COMMISSION:**

- A. NRED v. DON E. BEEBE JR., for possible action
Case No. 2020-638 AP21A.0007.S
License No. A0004097-CR (Active)
- B. NRED v. THOMAS L. WITHERBY, for possible action
Case No. 2020-492 AP20.45.S
License No. A0001528-CR (Closed)

6) COMMISSION/DIVISION BUSINESS:

- A. Discussion regarding the Administrator's report.
- B. Discussion regarding the Disciplinary Report.
- C. Discussion regarding Appraisal Program Manager's report on compliance caseload.
- D. For possible action: Discussion, nomination, and election of officers for FY24 pursuant to NAC 645C.200.
- E. For possible action: Discussion and possible action to approve the minutes of the April 04, 2023, meeting.
- F. Discussion regarding Appraisal Subcommittee 2023 federal compliance reviews including a presentation by Policy Manager Jenny Tidwell.

7) FOR POSSIBLE ACTION: DISCUSSION AND DECISION ON DATE, TIME, PLACE, AND AGENDA ITEMS FOR UPCOMING MEETING(S).

8) PUBLIC COMMENT:

Members of the public are encouraged to address the Commission regarding any matter. However, no action may be taken on a matter. No comments may be made regarding a matter that is or may be the subject of a formal complaint before the Commission. Comment may not be limited based on viewpoint. Persons who desire to submit written testimony should submit it to the Commission Coordinator.

Anyone participating over the phone that wishes to provide public comment should press *3 on your phone to raise your hand and hosting staff will recognize that you would like to give public comment, or you can press *6 to unmute yourself and state your name.

If you are attending by video, click on the raise hand emoji to indicate that you would like to give public comment and hosting staff will recognize you or you can unmute yourself and state your name. ***PUBLIC COMMENT MAY BE LIMITED TO THREE MINUTES PER PERSON AT THE DISCRETION OF THE PRESIDENT.***

9) FOR POSSIBLE ACTION: ADJOURNMENT

THIS NOTICE AND AGENDA HAS BEEN POSTED ON OR BEFORE 9:00 A.M. ON THE THIRD WORKING DAY BEFORE THE MEETING AT THE FOLLOWING LOCATIONS

Carson City Assessor
201 N. Carson Street, Suite 6
Carson City, NV 89701

Churchill County Assessor
155 N. Taylor Street, Suite 200
Fallon, NV 89406

Clark County Assessor
500 S. Grand Central Pkwy
Second Floor
Las Vegas, NV 89106

Douglas County Assessor
1616 8th Street
P.O. Box 218
Minden, NV 89423

Elko County Treasurer
571 Idaho St. Ste 101
Elko, NV 89801

Humboldt County Assessor
50 W. Fifth Street
Winnemucca, NV 89445

Lander County Assessor
315 S. Humboldt
Battle Mountain, NV 89820

Lyon County Assessor
Lyon County Courthouse
P.O. Box 460
Yerington, NV 89447

Mineral County Assessor
1st & A Street
P.O. Box 400
Hawthorne, NV 89515

Nevada Association of Realtors
760 Margrave Drive, Suite 200
Reno, NV 89510

Nevada Real Estate Division
3300 W. Sahara Avenue,
Las Vegas, NV 89102

Nevada Public Notice Website
<https://notice.nv.gov/>

NDOT-Right of Way Division
123 E. Washington Avenue
Las Vegas, NV 89301

NDOT - Chief ROW Agent
Capitol Complex
Carson City, NV 89710

Nevada Chapter Appraisal Institute
2251 N. Rampart Blvd., Suite 1495
Las Vegas, Nevada 89128

Nye County Assessor
Nye County Courthouse
P.O. Box 271
Tonopah, NV 89049

Pershing County Assessor
400 Main Street
P.O. Box 89
Lovelock, NV 89419

Washoe County Assessor
1001 E. 9th Street, P.O. Box 11130
Reno, NV 89520

White Pine County Assessor
297 Nevada Northern Rail Way, Suite 3
Ely, NV 89301

State of Nevada
Dept. of Business & Industry
State Real Estate Division
INTERNET

PAGE: http://red.nv.gov/Content/Meetings/Real_Estate_Calendar

Contact for Supporting Materials:
MARIA GALLO
Commission Coordinator
Nevada Real Estate Division
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
Phone: 702-486-4074
Email: mgallo@red.nv.gov

JOE LOMBARDO
Governor

STATE OF NEVADA



DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.nv.gov

TERRY REYNOLDS
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Deputy Administrator

NOTICE & AGENDA OF PUBLIC MEETING
OF THE
NEVADA COMMISSION OF APPRAISERS OF REAL ESTATE

October 3-5, 2023

The Nevada Commission of Appraisers of Real Estate will conduct a meeting **TUESDAY, OCTOBER 3, 2023, beginning at 9:00 a.m. and each day thereafter at 9:00 a.m. through THURSDAY, OCTOBER 5, 2023, or until the Commission concludes its business at the following locations:**

NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
4TH FLOOR, NEVADA ROOM
LAS VEGAS, NEVADA 89102

With VIDEO CONFERENCE TO:
NEVADA DIVISION OF INSURANCE
1818 E. COLLEGE PARKWAY, SUITE 103
CARSON CITY, NEVADA 89706

Members of the public can attend the meeting virtually and participate during the agenda items designated for public comment by video or telephone using the information below:

DIAL-IN NUMBER: (844) 621-3956 OR WEBEX.COM

TUESDAY, OCTOBER 3, 2023

1-844-621-3956 ACCESS CODE/MEETING NUMBER: 2485 556 7682##

WEBEX.COM MEETING NUMBER: 2485 556 7682 MEETING PASSWORD: SVpWmAM6e47

WEDNESDAY, OCTOBER 4, 2023

1-844-621-3956 ACCESS CODE/MEETING NUMBER: 2491 194 5851##

WEBEX.COM MEETING NUMBER: 2491 194 5851 MEETING PASSWORD: yCJZf9PkG93

THURSDAY, OCTOBER 5, 2023

1-844-621-3956 ACCESS CODE/MEETING NUMBER: 2499 166 3986##

WEBEX.COM MEETING NUMBER: 2499 166 3986 MEETING PASSWORD: ZBuJtKEH323

STACKED AGENDA: Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda by the discretion of the President. Items may also be combined for consideration or pulled or removed from the agenda at any time. Persons who have business before the Commission are solely responsible to see that they are present when their business is conducted. Pursuant to NRS 241.030 the Commission may conduct a closed meeting to consider the character, allegations of misconduct, professional competence, or physical and mental health of a person.

PUBLIC COMMENT: Public Comment may be limited to three minutes per person at the discretion of the President. The Commission may only take action on those items denoted as potential action items.

Members of the public may submit written public comment by email to Maria Gallo at mgallo@red.nv.gov. Emails received prior to 4:00 p.m. on the day before the meeting will be provided to the Commission for review and entered into the record.

NOTICE: Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the Commission may refuse to consider public comment (NRS 233B.126).

1) COMMISSION/DIVISION BUSINESS:

- A. Call to order, introduction of Commissioners in attendance; and establish quorum.
- B. Introduction of Division staff in attendance.

2) PUBLIC COMMENT:

Members of the public are encouraged to address the Commission regarding any matter. However, no action may be taken on a matter. No comments may be made regarding a matter that is or may be the subject of a formal complaint before the Commission. Comment may not be limited based on viewpoint. Persons who desire to submit written testimony should submit it to the Commission Coordinator.

Anyone participating over the phone that wishes to provide public comment should press *3 on your phone to raise your hand and hosting staff will recognize that you would like to give public comment, or you can press *6 to unmute yourself and state your name.

If you are attending by video, click on the raise hand emoji to indicate that you would like to give public comment and hosting staff will recognize you or you can unmute yourself and state your name.

PUBLIC COMMENT MAY BE LIMITED TO THREE MINUTES PER PERSON AT THE DISCRETION OF THE PRESIDENT.

3) DISCUSSION AND POSSIBLE ACTION REGARDING ADVISORY REVIEW COMMITTEE INFORMAL CONFERENCE RECOMMENDATION:

- A. NRED V. **BRANDON BELK**, for possible action
Case No. 2021-46 AP21.026.S
License No. A.0207795-CR (Active)

4) DISCIPLINARY ACTION: DISCUSSION AND POSSIBLE ACTION BY THE COMMISSION:

- A. NRED v. **THOMAS L. WITHERBY**, for possible action
Case No. 2020-492 AP20.45.S
License No. A.0001528-CR (Closed)

6) COMMISSION/DIVISION BUSINESS:

- A. Discussion regarding the Administrator’s report.
- B. Discussion regarding the Disciplinary Report.
- C. Discussion regarding Appraisal Program Manager’s report on compliance caseload.
- D. For possible action: Discussion and possible action to approve the minutes of the July 18-20, 2023, meeting.
- E. Discussion regarding Practical Applications of Real Estate Appraisal (PAREA) – Presentation by the Appraisal Foundation, Gerald “Jerry” Yurek Vice Chair of Appraiser Qualifications Board (AQB).
- F. Discussion regarding NRS/NAC 645C.

7) **FOR POSSIBLE ACTION: DISCUSSION AND DECISION ON DATE, TIME, PLACE, AND AGENDA ITEMS FOR UPCOMING MEETING(S) INCLUDING SETTING THE MEETING CALENDAR FOR 2024.**

8) **PUBLIC COMMENT:**

Members of the public are encouraged to address the Commission regarding any matter. However, no action may be taken on a matter. No comments may be made regarding a matter that is or may be the subject of a formal complaint before the Commission. Comment may not be limited based on viewpoint. Persons who desire to submit written testimony should submit it to the Commission Coordinator. ***PUBLIC COMMENT MAY BE LIMITED TO THREE MINUTES PER PERSON AT THE DISCRETION OF THE PRESIDENT.***

9) **FOR POSSIBLE ACTION: ADJOURNMENT**

THIS NOTICE AND AGENDA HAS BEEN POSTED ON OR BEFORE 9:00 A.M. ON THE THIRD WORKING DAY BEFORE THE MEETING AT THE FOLLOWING LOCATIONS

Carson City Assessor
201 N. Carson Street, Suite 6
Carson City, NV 89701

Churchill County Assessor
155 N. Taylor Street, Suite 200
Fallon, NV 89406

Clark County Assessor
500 S. Grand Central Pkwy
Second Floor
Las Vegas, NV 89106

Douglas County Assessor
1616 8th Street
P.O. Box 218
Minden, NV 89423

Elko County Treasurer
571 Idaho St. Ste 101
Elko, NV 89801

Humboldt County Assessor
50 W. Fifth Street
Winnemucca, NV 89445

Lander County Assessor
315 S. Humboldt
Battle Mountain, NV 89820

Lyon County Assessor
Lyon County Courthouse
P.O. Box 460
Yerington, NV 89447

Mineral County Assessor
1st & A Street
P.O. Box 400
Hawthorne, NV 89515

Nevada Association of Realtors
760 Margrave Drive, Suite 200
Reno, NV 89510

Nevada Real Estate Division
3300 W. Sahara Avenue,
Las Vegas, NV 89102

Nevada Public Notice Website
<https://notice.nv.gov/>

NDOT-Right of Way Division
123 E. Washington Avenue
Las Vegas, NV 89301

NDOT - Chief ROW Agent
Capitol Complex
Carson City, NV 89710

Nevada Chapter Appraisal Institute
2251 N. Rampart Blvd., Suite 1495
Las Vegas, Nevada 89128

Nye County Assessor
Nye County Courthouse
P.O. Box 271
Tonopah, NV 89049

Pershing County Assessor
400 Main Street
P.O. Box 89
Lovelock, NV 89419

Washoe County Assessor
1001 E. 9th Street, P.O. Box 11130
Reno, NV 89520

White Pine County Assessor
297 Nevada Northern Rail Way, Suite 3
Ely, NV 89301

State of Nevada
Dept. of Business & Industry
State Real Estate Division
INTERNET

PAGE: http://red.nv.gov/Content/Meetings/Real_Estate_Calendar

Contact for Supporting Materials:
MARIA GALLO
Commission Coordinator
Nevada Real Estate Division
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
Phone: 702-486-4074
Email: mgallo@red.nv.gov