

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 MICHAEL L. BRUNSON  
9 (License No. A.0207222-CG),

10                                  Respondent.

Case No. 2018-1366 & AP 19.008.S

**ANSWER TO RESPONDENT  
MICHAEL BRUNSON'S PETITION  
FOR REHEARING PURSUANT TO  
NAC 645C.505**

**FILED**

SEP 21 2021

NEVADA COMMISSION OF APPRAISERS

*Kelsey Valadez*

12           Petitioner, Sharath Chandra, Administrator of the Real Estate Division, Department  
13 of Business & Industry, State of Nevada ("Division"), by and through its counsel, Aaron D.  
14 Ford, Nevada Attorney General, and Michelle D. Briggs, Chief Deputy Attorney General,  
15 hereby file the instant Answer to Respondent Michael Brunson's Petition for Rehearing  
16 Pursuant to NAC 645C.505 ("Petition for Rehearing").

17                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19           On August 8, 2019, the Division mailed a letter to Respondent notifying Respondent  
20 that, after investigation, sufficient evidence was found to commence disciplinary action  
21 against him for violations of the Uniform Standards of Professional Appraisal Practices  
22 ("USPAP") based on an expert appraisal report Respondent prepared for litigation  
23 concerning a property located at 5344 Santa Fe Heights Street, North Las Vegas, Nevada  
24 89801 ("the Property"). On April 23, 2021, a Complaint and Notice of Hearing was filed  
25 which specified fifteen total violations, and set a hearing for May 25, 2021 through May 27,  
26 2021. The Hearing proceeded as noticed, and on July 2, 2021, the parties were mailed the  
27 Findings of Facts and Conclusions of Law and Order entered by the Nevada Commission  
28 for Appraisers of Real Estate ("the Commission"), which found five violations and assessed

1 a total monetary penalty of \$22,183.91 against Respondent.<sup>1</sup> On July 19, 2021, Respondent  
2 submitted a Petition for Rehearing Pursuant to NAC 645C.505 ("Petition")<sup>2</sup> and a Motion  
3 to Stay Enforcement of the Order pending the ruling on Respondent's Petition. On August  
4 10, 2021, a Stipulation to Stay the Enforcement of Findings of Fact and Conclusions of Law  
5 was agreed to by all parties. The Division requests that Respondent's Petition be denied as  
6 it fails to satisfy the standards of NAC 645C.505.

## 7 II. LEGAL STANDARD

8 NAC 645C.505 sets forth the standard for the Commission to evaluate a petition for  
9 rehearing and reads as follows:

10 The following procedures will be used for a rehearing in a case  
11 where a ruling or decision of the Commission is against a licensee  
12 or holder of a certificate:

13 1. The licensee or holder of a certificate may, within 15  
14 calendar days after receipt of the decision, petition the  
15 Commission for a rehearing.

16 2. The petition does not stay any decision of the Commission  
17 unless the Commission so orders.

18 3. The petition must state with particularity the point of law  
19 or fact which, in the opinion of the licensee or holder of a  
20 certificate, the Commission has overlooked or misconstrued and  
21 must contain every argument in support of the application that  
22 the licensee or holder of a certificate desires to present.

23 4. Oral argument in support of the petition is not permitted.

24 5. The Division may file and serve an answer to a petition for  
25 a rehearing within 10 calendar days after it has received service  
26 of the petition.

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27 <sup>1</sup> The total penalty reflected a fine of \$5,000, comprised of a \$1,000.00 fine for committing  
28 each of the five violations of law, plus \$17,183.91 for hearing and investigation costs. The  
total fine was due within one year of the effective date of the Order. Included with the  
Order was a Statement of Hearing Fees and Costs Pursuant to NRS 622.400(2). However,  
on September 15, 2021, the Office of the Attorney General reduced its pre-hearing attorney  
fees from \$12,858.19 to \$8,150.00. If the Commission votes to approve the reduction, the  
total monetary penalty would be reduced from \$22,183.91 to \$17,475.72.

<sup>2</sup> NAC 645C.505 states that the Division may submit an Answer withing 10 calendar days  
after it receives service of the Petition however there were staffing changes in the Attorney  
General's Office, which caused unavoidable delay in responding. Although an Answer to  
the Petition is not required, the Division is asking that its Answer be considered despite  
the delay.

1           6. If a petition for rehearing is filed and the Commission is  
2 not scheduled to meet before the effective date of the penalty, the  
3 Division may stay enforcement of the decision being appealed.  
4 When determining whether a stay is to be granted, the Division  
5 shall determine whether the petition was filed in a timely manner  
6 and whether it alleges a cause or ground which may entitle the  
7 licensee or holder of a certificate to a rehearing.

8           7. A rehearing may be granted by the Commission for any of  
9 the following causes or grounds:

10           (a) Irregularity in the proceedings in the original hearing.

11           (b) Accident or surprise which ordinary prudence could not  
12 have guarded against.

13           (c) Newly discovered evidence of a material nature which the  
14 applicant could not with reasonable diligence have discovered and  
15 produced at the original hearing.

16           (d) Error in law occurring at the hearing and objected to by  
17 the applicant during the earlier hearing.

18           8. A petition for a rehearing may not exceed 10 pages of  
19 standard printing.

### 20 **III. ARGUMENT**

#### 21 **The Record Does Not Support Respondent's Contention that There was an 22 Irregularity in the Proceeding and/or Error in the Law**

23           Section A of Respondent's Petition for Rehearing argues, pursuant to  
24 NAC 645C.505(7)(a) and NAC 645C.505(7)(d), respectively, that irregularities in the  
25 proceeding and "multiple errors of law" occurred during the hearing, which justify a  
26 rehearing.<sup>3</sup> The bulk of Respondent's Petition for Rehearing attacks the costs and fees  
27 levied against Respondent by the Commission. These arguments do not qualify for any of  
28 the enumerated bases to grant a rehearing pursuant to NAC 645C.505(7).

29 ...

30 ...

31 ...

32 ...

33 ...

34 ...

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<sup>3</sup> Petition for Rehearing, p. 3, ln. 23-26.

1           **A. The Commission's statement of fees and costs is reasonable, and within**  
2           **its discretion to determine.**

3           Pursuant to NRS 622.400, the Division may recover reasonable attorney's fees  
4 and costs:

5           1. Except as otherwise provided in this section, a regulatory body may  
6 recover from a person reasonable attorney's fees and costs that are  
7 incurred by the regulatory body as part of its investigative,  
8 administrative and disciplinary proceedings against the person if the  
9 regulatory body:

10           (a) Enters a final order in which it finds that the person has violated  
11 any provision of this title which the regulatory body has the  
12 authority to enforce, any regulation adopted pursuant thereto or any  
13 order of the regulatory body;

14           ...

15           2. A regulatory body may not recover any attorney's fees and costs pursuant  
16 to subsection 1 from a person who was subject to an investigative,  
17 administrative or disciplinary proceeding of the regulatory body unless the  
18 regulatory body submits an itemized statement of the fees and costs to the  
19 person.

20           3. As used in this section, "costs" means:

21           (a) Costs of an investigation.

22           (b) Costs for photocopies, facsimiles, long distance telephone calls and postage  
23 and delivery.

24           (c) Fees for hearing officers and court reporters at any depositions or  
25 hearings.

26           (d) Fees for expert witnesses and other witnesses at any depositions or  
27 hearings.

28           (e) Fees for necessary interpreters at any depositions or hearings.

          (f) Fees for service and delivery of process and subpoenas.

          (g) Expenses for research, including, without limitation, reasonable and  
          necessary expenses for computerized services for legal research.

          (Emphasis added).

          Section C of Respondent's Petition for Rehearing argues that the fees and costs  
"awarded" are not reasonable under NRS 622.400(2). However, it's solely within the  
Commission's discretion to determine what fees and costs should be applied. Even if  
Respondent was found to be in violation of less than all the alleged violations, the same  
amount of work and time would have been put into the prosecution of the matter. In fact,

1 the Commission noted during its deliberations that violations overlapped and were  
2 duplicitous in nature. Respondent cites to *Brunzell v. Golden Gate National Bank*, 455 P.2d  
3 31, 35 (Nev. 1969) as the standard for determining the reasonableness of fees. However,  
4 the *Brunzell* factors do not apply here as this is an administrative matter rather than a  
5 civil or criminal court proceeding. However, even if the *Brunzell* factors did apply, which  
6 include “(1) the qualities of the advocate: his ability, his training, education, experience,  
7 profession standing and skill; (2) the character of the work to be done; its difficulty, its  
8 intricacy, its importance, time and skill required, the responsibility imposed and the  
9 prominence and character of the parties where they affect the importance of the litigation;  
10 (3) the work actually performed by the lawyer; the skill, time and attention given to the  
11 work; (4) the result: whether the attorney was successful and what benefits were  
12 derived.....” the factors would be unequivocally met. The costs and fees here not only  
13 include the time a Deputy Attorney General puts into a case, but also extends to the three  
14 investigators involved, and the Commission’s costs. After reviewing 1,457 pages of bates  
15 stamped documents, statutes, professional rules, and a four-day trial, the Commission  
16 found that Respondent committed multiple violations of the law.

17 Section B of Respondent’s argument that the statements from Division employee  
18 Jaye Lindsey (“Lindsey”) should have occurred during the hearing, and not afterwards, is  
19 without merit. Respondent failed to cite to any legal authority, statute, or case law, to  
20 support his argument regarding “when” fees and costs should be discussed. Moreover, the  
21 applicable legal authority, NRS 622.400, cited above, does not provide a prohibitive  
22 timeframe.

23 Respondent’s arguments that Lindsey’s testimony was improper because (1) she  
24 wasn’t sworn in; (2) she testified to “facts and evidence” not disclosed to Respondent; and  
25 (3) she lacked personal knowledge to testify to the reasonableness of attorney’s fees, all fail  
26 to hold water. During deliberations by the Commission, Lindsey informed the Commission  
27 of the total amount of costs and fees based on statement of the costs and fees. Given the  
28 nature of Lindsey’s statements, i.e. they didn’t relate to the merits of the case, only the

1 tabulation of costs and fees, swearing her in was unnecessary. In addition, its solely within  
2 the Commission's discretion to impose costs and fees so long as there is an "itemized  
3 statement of the fees and costs to the person<sup>4</sup>," which was provided to Respondent, and is  
4 attached hereto as "Exhibit A." The Commission is not required by statute to entertain  
5 frivolous objections, cross-examination, or rebuttal by Respondent on a very mechanical  
6 tabulation of sums. Respondent's objection was properly noted for the record.

7 Respondent's argument that the Commission's attorney Asheesh Bhalla ("Bhalla")  
8 took on a prosecutorial role when simply asking if the costs and fees were "reasonable,  
9 actual, and necessary," is without merit. For one, this is an administrative proceeding  
10 where costs and fees are recovered, not awarded. There was no legal authority provided by  
11 Respondent to support his contention that Bhalla acted outside of his authority during the  
12 proceeding. In fact, Bhalla stated to the Commissioners that they may adjust the Division's  
13 recommendation as they see fit. In addition, there was deliberation amongst the  
14 Commissioners on if and how the Division's recommendation should be adjusted. The  
15 Division recommended \$3,000.00 per violation, plus the \$17,183.91 in costs and fees for a  
16 total fine of \$32,183.91. Although the Commission originally discussed assessing a  
17 \$9,000.00 fine instead of \$15,000.00 fine, it ultimately decided to only issue a \$5,000.00  
18 fine when taking into consideration the high cost & fees of the investigation. The  
19 Commission considered lowering the cost and fees amount but discussed factors such as  
20 the lengthy and complicated nature of the case, and the burden to the taxpayer. In the end,  
21 weighing all the factors, the Commission decided to lessen the fine amount so the total fine  
22 (inclusive of costs and fees) of \$22,183.91 would be less burdensome to Respondent, and  
23 \$10,000.00 less than the Division's recommendation.

24 Section D of Respondent's petition states that the costs and fees totaling \$17,183.91  
25 should not be "due immediately," but rather within a year - identical to the payment due  
26 date of the \$5,000.00 fine. The cover sheet from the Commission Coordinator, Kelly  
27 Valadez, clearly states that both the fine and costs are due August 2, 2022. It is unclear

28 <sup>4</sup> NRS 622.400(2) cited above.

1 from the reading of the cover sheet or the Order, why Respondent believes there is a  
2 separate due date for costs/fees. The Order states the total fine, which would be the total  
3 monetary penalty listed as \$22,183.91 is due August 2, 2022. Therefore, Respondent's  
4 argument is moot on this point.

5 **B. The Record in this Case Demonstrates that the Commission Reached**  
6 **the Proper Conclusions of Law and Contains Substantial Evidence**  
7 **Supporting its Findings.**

8 Section E of Respondent's Petition for Rehearing argues that the Commission made  
9 factual findings that were not based on the exact language of the Complaint. However,  
10 Respondent's examples, Facts 23-29 and 31, are identical to the Complaint's Facts 32-38  
11 and 40. In addition, it is within the Commission's discretion to determine its Findings of  
12 Facts. Moreover, Respondent alleged that the Commission failed to address language in its  
13 Complaint pertaining to the Conclusions of Law specifically citing to the language:

14 "The Respondent's actions constitute unprofessional conduct and/or professional  
15 incompetence, pursuant to NRS 645C.470(2) and NAC 645C.405(1), (2), and/or (3).  
16 Respondent's actions are grounds for disciplinary action pursuant to NRS 645C.460(1)(a)  
17 and/or (b)." However, with each Conclusion of Law, the above language contained  
18 substantive findings/conclusions to support Respondent's "unprofessional conduct and/or  
19 professional incompetence." Respondent, again, refers to the *Brunzell Factors* without  
20 elaborating why or how these can be applicable in this instance or to an administrative  
21 proceeding at all.

22 Section F of Respondent's Petition for Rehearing alleges that the Commission  
23 Findings and Conclusions were not properly supported by the Division's investigation.  
24 Respondent bases his argument on the premise that the Commission relied almost  
25 exclusively on the input of a biased witness, and that witness's opinion was not peer  
26 reviewed. However, there is no requirement for a peer review of the witness in this instance  
27 despite Counsel's contention to the contrary. Moreover, Counsel only provides one case  
28 citation, *State v. Wold*, 278 P.3d 266 (AK 2012), which is an Alaska case that is non-binding

1 and holds no precedence in Nevada. Even if that case were persuasive, which it's not, the  
2 Court there found that a "reasonable mind" would not "reach the conclusion in question."  
3 In *Wold*, the expert appraiser, Ferrara's testimony was purely speculative as he did not  
4 search the market for better comparables and had no personal information regarding the  
5 existence of any regarding the Cooper Road residence,<sup>5</sup> which is distinguishable from the  
6 matter here. *Id* at 272. The Decision in Respondent's case specifically references two  
7 comparable properties that Respondent failed to include in his analysis, both of which were  
8 easily discoverable from a simple search on the Clark County Assessor's Office Database.<sup>6</sup>

9 Moreover, in *Wold*, the Court found the notion that respondent performed a "double  
10 deduction" stemmed from a statement of opinion from a Judge, and not anything Ferrara  
11 testified to or wrote. *Id* at 276-7. Certainly, the Commission's Decision here is based on  
12 more than conjecture. The facts in *Wold* are clearly distinguishable from the facts here.  
13 The Court in *Wold* held the findings were not supported by substantial evidence in light of  
14 the whole record – even Ferrara testified that he would not have filed a complaint with the  
15 Division based on the Cooper Road appraisal. *Id* at 272.

16 In Nevada, the law is clear, NRS 233B.135(3) specifically states that a reviewing  
17 "court shall not substitute its judgement for that of the agency as to the weight of evidence  
18 on a question of fact."<sup>7</sup> That is to say, so long as the Commission's decision to accept  
19 Mr. Dugan's testimony over the Respondent's on any issue of fact, is supported by sound  
20 reasoning and substantial evidence, contained in the record, a reviewing district court will  
21 not disturb the Commission's decision.

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22  
23 <sup>5</sup> In *Wold*, there were three appraisals in question. This part of the Decision refers to the  
Cooper Road property (a residential home).

24 <sup>6</sup> In the Findings of Fact, #26, states "The Respondent's limited market analysis failed to  
25 include the subsequent sales of 3801 Singing Lark Court or 3416 Casa Alto Avenue despite  
26 including at least two comparable sales within the Report's HOA foreclosure sales grid  
27 which occurred after the effective date of the report," and #29 states "Respondent's limited  
28 market analysis failed to explain why the income approach was not used when the Clark  
County Assessor's Office online database reflects that several of the comparable sales were  
rental/income properties prior to their respective lien sales."

<sup>7</sup> *Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 547, 2 P.3d 850, 853-4 (2000).



1 Section G of Respondent's Petition for Rehearing argues that the Commission  
2 committed an error of law by taking over a function of the judiciary tangentially referencing  
3 a "Pandora's box" that will open from dueling complaints by opposing experts.<sup>8</sup> However,  
4 Respondent fails to connect his far-fetched theories to an actual error of law committed by  
5 the Commission. Therefore, Respondent's Petition for Rehearing fails to demonstrate any  
6 basis to conduct a rehearing, pursuant to NAC 645C.505(7)(a) or NAC 645C.505(7)(d).

7 No irregularities regarding the presentation of Respondent's case or errors of law  
8 exist in this matter to justify a rehearing.

9 **IV. CONCLUSION**

10 Accordingly, the Division respectfully requests that Respondent's Petition for  
11 Rehearing be denied.

12  
13 DATED this 16th day of September 2021.

14  
15 AARON D. FORD  
16 Attorney General

17  
18 By: /s/ Michelle D. Briggs  
19 MICHELLE D. BRIGGS  
20 Chief Deputy Attorney General  
21 555 E. Washington Ave., Ste 3900  
22 Las Vegas, Nevada 89101  
23 Telephone: (702) 486-3809  
24 Email: MBriggs@ag.nv.gov

25  
26  
27  
28 

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<sup>8</sup> Petition for Rehearing, p. 9-10.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada,  
3 and that on September 16, 2021, I sent a copy of the foregoing, **ANSWER TO**  
4 **RESPONDENT MICHAEL L. BRUNSON'S PETITION FOR REHEARING**  
5 **PURSUANT TO NAC 645C.505**, via regular U.S. Mail, and electronic mail to the  
6 following:

7  
8 **LIPSON NEILSON P.C.**  
9 **Joseph P. Garin, Esq.**  
10 **Nevada Bar No. 6653**  
11 **Janeen V. Isaacson, Esq.**  
12 **Nevada Bar No. 6429**  
13 **9900 Covington Cross Drive, Suite 120**  
14 **Las Vegas, Nevada 89144**  
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17 ***Counsel for Respondent***

18  
19 **State of Nevada Department of Business and Industry, Real Estate Division**  
20 **Nevada Appraisal Commission**  
21 **Shareece N. Bates, Administrative Section Manager**  
22 **3300 W. Sahara Ave, Suite 350**  
23 **Las Vegas, Nevada 89102**

24  
25  
26  
27  
28  
/s/ Michele Caro  
An employee of the office of the Nevada  
Attorney General

**EXHIBIT “A”**

**EXHIBIT “A”**

STEVE SISOLAK  
Governor

STATE OF NEVADA  
COMMISSION OF APPRAISERS OF REAL ESTATE

KENNETH CRONIN  
President  
MICHAEL GANDY  
Vice President  
DAVID STEFAN  
Secretary

TERRY REYNOLDS  
Director



DATE: 7/2/2021

RESPONDENT: Michael Brunson

CASE#: 2018-1366

HEARING DATE: May 25-27, 2021 and June 23, 2021

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

Administrative Costs: \$ 100.00

Investigative Costs: \$ 850.00

Commission Costs: \$ 1,087.50

Attorney Fees: \$ 15,096.41

Witness Costs: \$ 50.00

Court Reporter Costs: \$ -

Other Services (Describe service below): \$ -

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TOTAL AMOUNT DUE: \$ 17,183.91 \*This does not include any fines or restitution ordered by the Commission