

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

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS AND
INDUSTRY, STATE OF NEVADA,

CASE NO.: 2018-1366 & AP 19.008.S

Petitioner,

**MOTION TO STAY ENFORCEMENT OF
ORDER PENDING RULING WITH
RESPECT TO RESPONDENT'S
PETITION FOR REHEARING**

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

FILED

JUL 19 2021

Respondent.

NEVADA COMMISSION OF APPRAISERS

Kelly Valadez

Respondent Michael L. Brunson ("Brunson"), by and through his attorneys at record, LIPSON NEILSON P.C., hereby submits his Petition to Stay Enforcement of Order Pending Ruling with Respect to Respondent's Petition for Rehearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises from allegations raised against Brunson by the State of Nevada, Department of Business and Industry, Real Estate Division ("the Division") with respect to an expert report prepared for a litigation concerning a property located at 5344 Santa Fe Heights Street, North Las Vegas, Nevada 89801 (APN 124-35-215-181 ("the Property")). Real Property Analytics was retained by Cascade Research Partners, LLC ("Cascade") by and through their retained counsel, Michael Beede, Esq., to determine whether the price paid at the NRS 116 foreclosure auction was reasonable.

Prior to the NRS 116 sale on November 18, 2014, the Property had had a series of Notices of Default going back to October 14, 2008. These notices had been issued under NRS 107 and NRS 116 through notices filed by the deed of trust holders and the HOA. The Property was underwater with a first deed of trust in the amount of \$240,000 and a second deed of trust in the amount of \$30,000. Given these facts, along with the fact that the property was being sold at a 116 auction, there was no realistic scenario in which the Property could sell in the

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX (702) 382-1512

1 traditional market.

2 In order to answer the question posed in his expert assignment, Brunson considered
3 traditional sales, short sales, 107 foreclosure sales and 116 foreclosure sales. He ultimately
4 determined that 116 sales were unique and differed from the other types of sales due to the
5 unsettled law and risks to the buyer with no warranty deed. Brunson's analysis comported with
6 methodology and valuation theory found in The Appraisal of Real Estate, 14th Edition and Real
7 Estate Damages, 3rd Edition. Based on his extensive analysis, Brunson concluded that the 116
8 sale price was reasonable.

9 A litigation report was prepared by Brunson for the purpose of providing the necessary
10 outline of his opinions anticipated for trial with respect to his assigned role. This litigation report
11 was supplemented by his considerable job file, as is allowed under the Nevada Rules of Civil
12 Procedure. R. Scott Dugan ("Dugan") was hired and paid by the banks to calculate the market
13 value of the property, ignoring the existence of the sale and to use those findings to dispute the
14 findings of Brunson. He complied and prepared a market analysis report that ignored the
15 foreclosure altogether.

16 **II. RELEVANT PROCEDURAL HISTORY**

17 On or about October 5, 2018, Brunson received a letter of investigation from the Division
18 claiming they had received a "complaint" filed against him and requesting copies of
19 Respondent's work file. Brunson prepared a response letter dated October 25, 2018 and
20 provided a copy of his extensive job file.

21 Based on the records provided by NRED and testimony during the proceedings, it was
22 determined that no actual complaint had ever been submitted against Brunson. Instead the
23 Division simply received a copy of two reports. One was the Brunson litigation report. The
24 other was an expert report authored by Dugan in the same case. NRED's investigator, Daniel
25 Walsh ("Walsh") testified that NRED never investigated, evaluated or verified the opinions of
26 Dugan before relying upon them in the Appraisal Case Analysis authored by Walsh. Walsh also
27 confirmed no peer review was done with respect to either report. NRED arbitrarily decided that
28 Dugan was right and Brunson was wrong, despite the fact that they were hired for different

1 assignments, and sent a complaint letter to Brunson.

2 The Division filed a Complaint and Notice of Hearing dated April 23, 2021 The Complaint
3 alleged multiple violations of the Litigation Report's failure to comply with USPAP. Brunson filed
4 a response disputing the claims raised by NRED.

5 A hearing was held over a period of four days before the Nevada Commission of
6 Appraisers of Real Estate ("Commission"). The Commission issued Findings of Fact and
7 Conclusions of Law and Order dated July 2, 2021 ("Findings"). See Exhibit 1. The Order set
8 forth that Brunson was assessed monetary penalties in the amount of \$22,183.91, which
9 included a fine of \$5,000 and \$17,183.91 in fees and costs. The language of the Findings
10 states that Brunson "shall pay the total fine to the Division" within one (1) year of the effective
11 date of this Order." This language is contrary to the hearing in which the Commission was clear
12 that Brunson would have a full year to pay both the fines and the fees and costs. The draft
13 Findings were never provided to Brunson's counsel prior to being submitted to the Commission.

14 **III. LEGAL ARGUMENT**

15 **A. NAC 645C.505(6) Permits the Commission to Stay Enforcement to Protect**
16 **the Rights of the Respondent Especially in Light of Flawed Findings.**

17 Pursuant to NAC 645C.505 (6), "If a petition for rehearing is filed and the
18 Commission is not scheduled to meet before the effective date of the penalty, the
19 Division may stay enforcement of the decision being appealed."

20 On July 16, 2021, Brunson filed a Petition for Rehearing ("Petition") with respect
21 to the Findings of Fact, Conclusions of Law and Order ("Findings") entered by the
22 Commission pursuant to NAC 645C.505. This Petition contains a series of arguments
23 setting forth a number of irregularities and errors of law that occurred during the four-
24 day hearing. The earliest opportunity for the Petition to be heard is when the
25 Commission next meets next in October 2021.

26 ///

27 ///

28

1 In this case, the record of the proceedings will also demonstrate that the
2 Commission intended for Brunson to have a full year to pay the fees and costs and
3 fines awarded. The Findings instead provide 1 year for payment of the \$5,000 fine
4 only. The Findings were drafted by the Division's counsel, and were not provided to
5 Brunson's counsel before they were submitted. On July 2, 2021, knowing that the
6 language in the Findings contained this error, a bill was issued to Brunson in the
7 amount of \$17,183.91 as being immediately due and payable. The action of
8 submitting proposed Findings to the Panel without first providing them to opposing
9 counsel for review represents an ex-parte communication with Commission and
10 resulted in a fundamental error which will be punitive to Brunson.

11 **IV. CONCLUSION**

12 Brunson respectfully requests that the Committee grant a Stay of this matter to
13 protect him from being improperly forced by NRED to pay fees and costs prior to a
14 hearing on the merits of the Petition for Rehearing and in violation of the Commission's
15 stated ruling. This will also protect Brunson from having his Order improperly reported
16 prior to his having a full and fair opportunity to argue his due process rights. Failure to
17 do so will allow NRED to destroy Brunson's reputation in the community and potentially
18 and unreasonably withhold his license based on the error in the Findings not
19 communicated to counsel for Brunson prior to distribution to the Commission.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

1 A stay is the only way to protect Brunson's rights and correct the Findings without
2 improper repercussions to Brunson enforced by NRED under the served Statement of
3 Hearing Fees and Costs Pursuant to NRS 622.400(2).

4 Dated this 16th day of July, 2021.

5 LIPSON NEILSON P.C.

6 *Janeen V. Isaacson*

7 By: _____

8 JOSEPH P. GARIN, ESQ.
9 Nevada Bar No. 6653
10 JANEEN V. ISAACSON
11 Nevada Bar. No. 6429
12 9900 Covington Cross Drive, Suite 120
13 Las Vegas, Nevada 89144
14 (702) 382-1500 - Telephone
15 (702) 382-1512 – Facsimile
16 jgarin@lipsonneilson.com
17 jisaacson@lipsonneilson.com
18 *Attorneys for Respondent*

LIPSON | NEILSON, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512