

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 - CLOSED),

11 Respondent.

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

FILED

JUL 03 2024

NEVADA COMMISSION OF APPRAISERS

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12 **SUPPLEMENT TO PETITIONER'S MOTION TO DISMISS
13 RESPONDENT'S MOTION TO MODIFY REVOCATION ORDER**

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 presents this Supplement to
17 its Motion to Dismiss Respondent's Motion to Modify Revocation Order pursuant to NAC 645C.490(4).

DATED this 2nd day of July, 2024.

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19 Attorney General

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1 **I. BACKGROUND**

2 Upon a showing of good faith, the State respectfully wishes to supplement the Division’s Motion
3 to Dismiss Respondent’s Motion to Modify Revocation Order filed June 20, 2024. This supplement is
4 necessitated to support the Commission in determining its jurisdiction pursuant to NRS 233B.131(3), and
5 by the fact that Respondent Thomas Witherby (“Witherby”)” has added a new law NRS 645C.525 in his
6 Opposition to Motion to Dismiss Respondent’s Motion to Modify Revocation Order filed July 1, 2024
7 not raised in his initial Motion to Modify Revocation Order filed June 11, 2024.

8 Therefore, pursuant to NAC 645C.490(4), the State requests permission from the Commission to
9 supplement its Motion to Dismiss because the Commission should have before it the relevant laws and
10 information which dictate the Commission’s jurisdiction in order to properly decide the pending Motions
11 before it.

12 **II. LEGAL ARGUMENT**

13 The Division relies upon the legal support in its Motion to Dismiss filed June 20, 2024 regarding
14 the Commission’s lack of jurisdiction to modify its Order pursuant to NRS 233B.131(3)¹.

15 Therefore, turning to NRS 645C.525, the Division and the Commission plainly retain power after
16 a violator has left the industry, and the licensee remains accountable such that the Division and
17 Commission can pursue such individual. This process unquestionably protects the public and satisfies
18 the public policy of the State.

19 But at this point, NRS 645C.525² is inapplicable, because since the Commission issued its final
20 Order on October 10, 2023 in Case No. 2020-492, AP20.045.S, the Division and the Commission have
21 not pursued Witherby any further. The Division has not initiated or continued an investigation against
22 Witherby. The Commission has not conducted any further disciplinary proceedings against Witherby,
23 and Witherby’s subsequent petitions to the Commission plainly do not count as disciplinary hearings
24 under NRS 622A.390 and NRS 622A.380.

25 Further, the relevant Legislative Minutes³ further demonstrate the purpose of NRS 645C.525 was
26 to give the Division the authority to file actions against licensees who have not renewed their licenses,

27 _____
28 ¹ Exhibit 1. NRS 233B.131.

² Exhibit 2. NRS 645C.525.

³ Exhibit 3. 71st Legislative Session, Assembly Bill 621. NV Assem. Comm. Min., April 6, 2001, and NV S. Comm. Min., April 27, 2001.

1 and as discussed herein, absent any proof of active pursuit against Witherby, this law should not be
2 relied upon.

3 **III. CONCLUSION**


4 The Commission should REJECT Witherby's request for modification, because the Commission
5 does not have the discretion to modify its Order under NRS 233B.131(3), and NRS 645C.525 does
6 not apply.

7 DATED this 3rd day of July 2024.

DATED this 2nd day of July 2024.

8 STATE OF NEVADA
9 Department of Business and Industry
10 Real Estate Division

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Attorney General

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EXHIBIT 1

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NRS 233B.131 Transmittal of record of proceedings to reviewing court by party and agency; shortening of or corrections or additions to record; additional evidence; modification of findings and decision by agency based on additional evidence.

1. Within 45 days after the service of the petition for judicial review or such time as is allowed by the court:

(a) The party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency.

(b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review.

➔ The record may be shortened by stipulation of the parties to the proceedings. A party unreasonably refusing to stipulate to limit the record, as determined by the court, may be assessed by the court any additional costs. The court may require or permit subsequent corrections or additions to the record.

2. If, before submission to the court, an application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence and any rebuttal evidence be taken before the agency upon such conditions as the court determines.

3. After receipt of any additional evidence, the agency:

(a) May modify its findings and decision; and

(b) Shall file the evidence and any modifications, new findings or decisions with the reviewing court.

(Added to NRS by 1989, 1649; A 2015, 710)

EXHIBIT 2

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NRS 645C.525 Investigations, disciplinary proceedings, fines and penalties not affected by expiration, revocation or voluntary surrender of certificate, license or registration card. The expiration or revocation of a certificate, license or registration card by operation of law or by order or decision of the Commission or a court of competent jurisdiction, or the voluntary surrender of a certificate, license or registration card by a certified or licensed appraiser or registered intern does not:

1. Prohibit the Commission or Division from initiating or continuing an investigation of, or action or disciplinary proceeding against, the certified or licensed appraiser or registered intern as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the certified or licensed appraiser or registered intern.

(Added to NRS by 2001, 525)

EXHIBIT 3

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Nevada Assembly Committee Minutes, 4/6/2001 [*Excerpts of Relevant Portions*]

Assembly Bill 621: Revises provisions relating to real estate. (BDR 54-552)

Mr. David Walker, Department of Business and Industry, Real Estate Division, returned to the witness table and explained the purpose of A.B. 621. The Real Estate Commission currently had jurisdiction in the areas of revocation and fines after proper hearings. One of the problems that existed was in some of the serious cases where there had been much fraud, and the agent merely turned in his or her licenses and walked away from any disciplinary action. The bill was proposed to close such a loophole so the perpetrators were held accountable for their fraudulent actions while licensed or even after allowing their license to expire, or was suspended or revoked.

Vice Chairwoman Buckley asked if the definition of “property manager” was in current law or being added.

Mr. Walker stated “property manager” was stated in the current law under NRS 645. The question arose regarding a homeowners association who enlisted a property manager. As defined in NRS 645, a property manager was a licensed agent in property management with certification working under the direction of a broker.

Chairman Dini called for a vote on A.B. 621.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS A.B. 621.

ASSEMBLYMAN HUMKE SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY BY THOSE PRESENT. ASSEMBLYMAN ARBERRY, ASSEMBLYMAN PERKINS, ASSEMBLYMAN GOLDWATER, AND ASSEMBLYMAN NOLAN WERE NOT PRESENT FOR THE VOTE.

Nevada Senate Committee Minutes, 4/27/2001 [*Excerpts of Relevant Portions*]

ASSEMBLY BILL 621: Revises provisions relating to real estate. (BDR 54-552)

Joan Buchanan, Administrator, Real Estate Division, Department of Business and Industry, said her division drafted the proposed legislation because there was a need for enabling language to proceed with licensees whose licenses have lapsed. She explained the bill would give the division authority to file actions against licensees who have not renewed their licenses.

Senator O'Connell asked if any notifications were mailed to licensees to remind them they are in danger of defaulting on their licenses for not renewing them, to which Ms. Buchanan responded in the affirmative.

Pat Coward, Lobbyist, Nevada Association of Realtors, said his organization fully supported the proposed legislation. Mr. Coward stated the measure contained a provision allowing the division to take action against individuals who choose not to renew their real estate sales licenses because they have committed professional violations and are attempting to avoid facing possible charges against them. The measure would allow the division to pursue those individuals despite their having defaulted on their licenses. The Real Estate Commission has never before been able to discipline non-licensed real estate agents, he said. Assembly Bill 621 would change that by granting the commission the ability to take action against individuals after investigations have been conducted.

Senator O'Connell disclosed her husband is a real estate broker and Chairman Townsend said his wife held the same license; however, Chairman Townsend added, neither spouse is affected any differently than any other licensee.

Chairman Townsend asked if there was any additional testimony and there was none. He then asked if there were any further questions and there were none. Chairman Townsend called for a vote on the measure.

SENATOR O'CONNELL MOVED TO DO PASS A.B. 621.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.