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REAL ESTATE COMMISSION

BY *Sucha Patel*

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LINDA HARTMAN

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

SHARATH CHANDRA, Administrator,)	Case No.: 2019-640
REAL ESTATE DIVISION,)	
DEPARTMENT OF BUSINESS AND)	
INDUSTRY, STATE OF NEVADA,)	
Petitioner)	
vs.)	
LINDA HARTMAN,)	
Respondent)	

**RESPONDENT'S MOTION FOR RECONDISERATION
(REQUEST FOR LIMITED REVIEW DE NOVO)**

COMES NOW, LINDA HARTMAN, hereinafter ("Respondent"), by and through her attorney of record BRET WHIPPLE, ESQ, of the JUSTICE LAW CENTER, and hereby moves the REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA, hereinafter ("NRED"), for Reconsideration and Limited Review de Novo of the Order which has an effective date of March 17, 2021, and in support thereof Respondent states the following:

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1 This Motion for Reconsideration is based upon the Memorandum of Points and
2 Authorities, the papers, pleadings and records contained in the NRED's file, and the
3 evidence and argument of Respondent to be presented at the scheduled hearing date
4 and time.

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6 DATED this 12th day of April, 2021.

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8 Submitted By: */s/ Bret O. Whipple, Esq.*

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- 1 6. As a direct result of the RSAR decision a fine was imposed against
2 Respondent in the amount of fifteen thousand dollars (\$15,000.00).
- 3 7. Upon information and belief Respondent states on July 3, 2019 NRED
4 received my sworn affidavit in response to the request for same.
- 5 8. Subsequently, on or about October 16, 2019, the Commission sent
6 Respondent a NRS 233B letter indicating an investigation had determined
7 there exists sufficient evidence to commence a disciplinary action by filing a
8 complaint with the Nevada Real Estate Commission, hereinafter referred to
9 as the ("Commission").
- 10 9. Subsequently, on July 29, 2020 a Complaint was filed against Respondent.
- 11 10.As a result, the NRED issued on March 17, 2021 and sent via certified mailed
12 on March 18, 2021 Findings of Fact, Conclusions of Law and Order, in NRED
13 Case No.: 2019-640, hereinafter (the "Decision and Order.")
- 14 11. Therefore, for all the foregoing reasons, the NRED Decision and Order
15 issued on March 17, 2021 in Case No.: 2019-640 is believed to be unjust and
16 thus, Respondent asks for reconsideration as follows.

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18 **IV.**

19 **LEGAL ARGUMENT**

- 20 12. Respondent hereby incorporates by reference the allegations of paragraphs
21 1 through 11 as fully set forth herein.
- 22 13. Within the Decision and Order, more specifically on Page 4 of 6, Paragraph
23 23, reads in part as follows: ". . . RSAR Board of Directors on June 3, 2019,
24 and Respondent was suspended for six (6) months and fined \$15,000.00."
- 25 14. Again, within the Decision and Order, more specifically in the Order on Page
26 5 of 6, it reads in part as follows: "IT IS HEREBY ORDERED that
27 Respondent shall pay to the Division a total penalty of \$15,285.71."
28 "Respondent shall pay the total fine within six (6) months . . ." (emphasis added)

1 A. PAYMENT OF ANOTHER FINE WILL CONSITITUTE A MANIFEST INJUSTICE

2 15.The March 17, 2021 Decision and Order requires Respondent to pay a total
3 penalty of \$15,285.71 within six (6) months of the Effective Date of the Order
4 being October 17, 2021. Under the "law of the case" doctrine, "a court is
5 generally precluded from reconsidering an issue that has already been
6 decided by the same court, or a higher court in the identical case." Thomas v.
7 Bible, 983 F.2d 152, 154 (9th Cir.). The doctrine is not a limitation on a
8 tribunal's power, but rather a guide to discretion. Arizona v. California, 460
9 U.S. 605, 618 (1983). A court may have discretion to depart from the law of
10 the case where: (1.) the first decision was clearly erroneous; (2.) an
11 intervening change in the law has occurred; (3.) the evidence on remand is
12 substantially different; (4.) other changed circumstances exist; or (5.) a
13 manifest injustice would otherwise result. Failure to apply the doctrine of the
14 "law of the case" absent one of the requisite conditions constitutes an abuse
15 of discretion. Thomas v. Bible, 983 F.2d 152 at 155. (emphasis added)

16 16.In the instant case . . . Respondent has already been suspended for six (6)
17 months and fined \$15,000.00 by RSAR the (Board of Directors for the
18 Reno/Sparks Association of Realtors, Inc.).

19 17.Respondent respectfully requests that NRED issue an Amended Order to set
20 aside the total penalty of \$15,285.71 and still include language still allowing
21 for the eighteen (18) hours of live continuing education comprised of six (6)
22 hours of agency, six (6) hours of ethics, and six (6) hours of contracts.
23 Further, the eighteen (18) hours shall not be counted towards the
24 Respondent's continuing education requirements and must be completed
25 within six (6) months of the effective date of this Order.
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1 **B. PAYMENT OF ANOTHER FINE CONSTITUTES DOUBLE JEOPARDY**

2 18. Within the Decision and Order, more specifically the Order, Page 7,
3 Paragraph 13, reads in part as follows: The Respondent shall pay ten
4 thousand dollars (\$10,000.00) constitutes double jeopardy in this action.
5 Citing Desimone v. State, 904 P.2d 1 (1995) which the decisions reads in
6 pertinent part as follows: The Double Jeopardy Clause of the Fifth
7 Amendment to the United States Constitution provides that no person shall
8 be "subject for the same offense to be twice put in jeopardy of life or limb."
9 U.S. Const. amend. Fifth. This protection is afforded the citizens of Nevada
10 through the Fourteenth Amendment and the Nevada Constitution itself. See
11 Nev. Const. Art. I § 8. The Double Jeopardy Clause protects against three
12 abuses: (1.) a second prosecution for the same offense after acquittal, (2.) a
13 second prosecution for the same offense after conviction, and (3.) multiple
14 punishments for the same offense. United States v. Halper, 490 U.S. 435,
15 440 (1989). The third abuse is at issue in this case, an abuse which "can be
16 identified only by assessing the character of the actual sanctions imposed on
17 the individual by the machinery of the state." *Id.* at 447. Considering this
18 admonition, we must determine whether penalties imposed on, but not paid
19 by Desimone . . . constitutes "punishment." A civil penalty is considered
20 "*punishment*" for double jeopardy purposes when that penalty does not solely
21 "serve a remedial purpose, but rather can only be explained as also serving
22 either retributive or deterrent purposes." Halper, 490 U.S. at 448. It is these
23 "purposes actually served by the sanction in question that must be
24 evaluated." Halper, 490 U.S. at 447. (emphasis added). Whether a tax
25 constitutes a punishment, triggering protections of the Double Jeopardy
26 Clause, was recently answered by the United States Supreme Court in Dep't
27 of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 114 S. Ct. 1937
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1 (1994). There, the Court concluded that a tax on the possession of illegal
2 drugs assessed after the State of Montana imposed a criminal penalty for the
3 same offense constituted double jeopardy. *Id.* at ____, 114 S. Ct. at 1948.

4 19. Thus, Respondent states that as a result of the facts and circumstances
5 surrounding this case ('Case No.: 2019-640'), which arises from the very
6 same facts and circumstances that underpins the decision of the RSAR's
7 Ethics Panel of the Professional Standards Committee, which resulted in the
8 imposition of a fine in the amount of fifteen thousand dollars (\$15,000.00).

9 20. Accordingly, Respondent should not be made to pay another fine, which
10 arises from the very same set of facts and circumstances.

11 21. Therefore, for all the foregoing reasons, the NRED Decision and Order
12 issued on March 17, 2021 in Case No.: 2019-640, should be reconsidered
13 and amended to a public reprimand or other similar disposition to avoid any
14 manifest injustice and double jeopardy.

15 **V.**

16 **CONCLUSION**

17 22. Respondent hereby incorporates by reference the allegations of paragraphs
18 1 through 21 as fully set forth herein.

19 23. Respondent hereby timely files this Motion for Reconsideration following
20 receipt of the NRED Decision and Order issued on March 17, 2021.

21 24. Respondent states the purpose of judicial review, reconsideration or
22 rehearing is to insure due process. If there is an error, then it should be
23 corrected, as it is the equitable thing to do. Simply stated, Respondent is not
24 asking for a complete rehearing of the facts in this matter . . . but rather a
25 *review de novo* limited to the effects of Paragraph 23 and the resulting NRED
26 Decision and Order which should ultimately result in amending the language
27 found and contained in the Order executed and issued on March 17, 2021.
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1 25. Thus, the NRED Decision and Order issued on March 17, 2021, fails to
2 comport with the "law of case" doctrine and as a result the Order subjects
3 Respondent to Double Jeopardy and therefore Respondent requests limited
4 review de novo of the NRED's Order solely as it pertains to the issue at hand.

5 VI.

6 CLAIM FOR RELIEF

7 26. Respondent hereby incorporates by reference the allegations of paragraphs
8 1 through 25 as fully set forth herein.

9 27. Respondent participated in the investigative process and subsequent hearing
10 in good faith.

11 28. Respondent received via US Mail on or about March 21, 2021 a copy of the
12 NRED Decision and Order which was mailed on March 18, 2021, that was
13 executed by the President Nevada Real Estate Commission, and thus
14 Respondent hereby timely submits this Motion for Reconsideration and
15 Request for Limited Review de Novo.

16 29. Respondent prays that the NRED reviews de novo its Decision and Order
17 issued on March 17, 2021 because (a) it is appropriate in the instant case; (b)
18 it is permitted pursuant to NRS 233B.130 through 233B.150; and (c) anything
19 less will be a manifest injustice.

20 30. Thus, for all the foregoing reasons, Respondent prays that the NRED Grant
21 this Motion for Reconsideration for Limited Review de Novo as it pertains to
22 the March 17, 2021 Order and enters an ORDER amending said Order.

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