

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

SHARATH CHANDRA, Administrator,)
REAL ESTATE DIVISION,)
DEPARTMENT OF BUSINESS &)
INDUSTRY,)
STATE OF NEVADA)
Petitioner)

Case Nos.:
2021-1122
2022-120

FILED

SEP 15 2023

vs.)
MARSHALL CARRASCO,)
(B 1000579.INDV))
RESPONDENT.)

REAL ESTATE COMMISSION

BY Kelley Valadez

PETITION REQUEST FOR REHEARING

The Respondent in the cases identified above, Marshall Carrasco, requests a Rehearing as to the specifics and seriousness of the discipline imposed in the Findings of Fact, Conclusions of Law, and Order pursuant to NAC 645.820(7) entered in these two cases.

I, Robert G. Kilroy, Esquire, with the BPE Law Group, represent Marshall Carrasco. On his behalf, we respectfully request Mr. Chandra, as the Administer of the NVRED, and, Mr. Lee Gurr, as President of NVREC. to *please* reconsidered those Findings of Fact, Conclusions of Law and Orders for both cases [2021-1122 & 2022-120](hereinafter "Matters") with newly scheduled hearing, a stay of the Orders' enforcement, and, also in the alterative, consider negotiations for an equitable and reasonable settlement to prevent a costly Judicial Review.

Based upon NAC 645.820, Mr. Carrasco humbly submits this petition, requesting the following:

- a) Pursuant to NAC 645.820 (1), Mr. Carrasco, as the licensee, petitions for a new rehearing;
- b) Pursuant to NAC 645.820 (2), Mr. Carrasco seeks the Commission to stay its decisions (Orders);

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c) Pursuant to NAC 645.820 (3), Mr. Carrasco believes several points of law and facts were overlooked:

1. Particularly, and most importantly, the point of law overlooked was the constitutional due process protections regarding the property right in professional's license. He was denied a continuance. Thus, the NVREC denied his opportunity to present his defense and actively address the Commission's concerns, issues and alleged violations. But rather, he was forced to choose between attending the August 2023 scheduled hearing or neglecting his out of country family emergency.¹

2. Additionally, the Orders are ambiguous and vague regarding the fines of \$20,000. Case 2022-120 states "Respondent shall pay an administrative fine...of \$20,000 for violations of the law,..." See Order Page 5, Lines 8-11. Here, in this specific Matter, the language of a singular "law" is confusing, because there is no justification for such a massive amount of fines applied to the violations. The Order lists three violations, so that calculates to approximately \$6,666.67 for each violation of law. How is such a fine justified? Whereas, Case 2021-1122, states "Respondent shall pay an administrative fine...of \$20,000 for violation of law on five occasions..." See Order, Page 3, lines 25-28. Here, the language is specific for the number of violations five (5), but he was only found to have violated NRS 645.633 (i)(h) and NRS 645.252 (3) In that Matter, the \$20,000 fine is based on five violations, so that calculates to \$5000 for each law violation. Regarding these fines, it appears that the Commission's imposition of such fines without specific justification could reasonable viewed is arbitrary and capricious. Arbitrary and

¹ The family emergency occurred in Costa Rica. Mr. Carrasco's son's grandmother refused medical attention in the bigger cities as she remained in a rural hospice care facility, which was located in the mountains without cellular phone service.. Because he believed that she was near death, he needed to be by her side as she was like a mother to him. For years, he assumed financial responsibility and medical care for her well-being.

1 Capricious government conduct would be sufficient and persuasive in a District
2 Court Judicial Review because the imposed fines are variable, unpredictable, and
3 without reasonableness in light of fact previous offers to settle were at \$1000 for
4 fines.

5 3. Regarding a Fact overlooked by the Commission, Mr. Carrasco requested a
6 second continuance² based upon a family emergency taking him out of
7 opportunity to be heard in the hearings. What was the justification for such a
8 denial? Now, he is available and ready to present his case.

9 d) Pursuant to NAC 645 (6), Mr. Carrasco's petition seeks the Orders enforcement be
10 stayed until either new hearings are scheduled, or in the cost savings alternative, the
11 parties of NVRED, NVREC, and Mr. Carrasco engage in good faith negotiations to resolve
12 the aforementioned Matters and avoid a costly Judicial Review.

13 Mr. Carrasco's petition is timely. It alleges both grounds and cause for a rehearing on
14 the merits.

15 e) Pursuant to NAC 645 (7), Mr. Carrasco appeals to the discretion of the NVREC for a
16 rehearing based on the following causes and grounds.

17 1. Pursuant to NAC 645 (7)(a), the original hearings' irregularities were Mr.
18 Carrasco's request for a continuance being denied, which created a dilemma of
19 choosing between his family's well-being or participating in a hearing regarding
20 his professional conduct as a licensed broker. Additionally, because his was
21 denied due process constitutional protections, he did not have a chance to present
22 evidence for the NVREC's consideration. Perhaps the most important irregularity -
23 NVREC took away his broker license without an opportunity to be heard.
24 Generally, licensed professionals possess a property right in such license. Such a

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26 ² First continuance request was on August 18, 2023; NVREC did not grant such reasonable request. Second
27 continuance request was on August 21, 2023; again, NVREC denied such reasonable request without any
28 explanation. It appears this second continuance denial is arbitrary and capricious misconduct, subject to
Judicial Review resulting in a remand back to the NREC for a new hearing consistent with Mr. Carrasco's due
process protections regarding his property right in his NREC issued Broker's License.

1 license revocation substantially, significantly and negatively impacts his family
2 because such revocations deny his opportunity to work and generate income to
3 tend to his family in Washoe County and in Costa Rica. How do the revocations in
4 both Matter match the harm of his violations? Mr. Carrasco believes the
5 revocations of his Broker's license is another act by NVREC in an arbitrary and
6 capricious manner, which could be sufficient and persuasive in a District Court's
7 Judicial Review.

8 2. Pursuant to NAC 645 (7)(c), Mr. Carrasco discovered evidence that indicates a
9 conflict of interest with the prosecuting attorney as she was a licensed real estate
10 agent - licensed by the very governmental entity upon which imposed such harsh
11 and punitive punishments upon him. Her license was with a competitor of Mr.
12 Carrasco. It appears this attorney placed her license in an inactive status during
13 the month of August 2023, prior to the scheduled hearing.

14 At this point the Division is not prejudiced by this request as the deadline for
15 payments of fines, etc., is still in the future.

16 On behalf of Respondent,

17 *ROBERT G KILROY*

18 Robert G. Kilroy, Esquire, NVBAR 8529
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AFFIRMATION PURSUANT TO NRS 239B.030

1 By signature below, the undersigned affirms that the preceding document does
2 not contain the social security number of any person.

3 Dated: September 15, 2023. Robert G. KILROY, Esquire

4 *ROBERT G KILROY*

5 _____
6 Attorney for Respondent

7 Pursuant to NRCP 5(b), I certify that I am an employee of BPE Law Group and
8 that on the 15th of September 2023, I served a true and correct copy of the preceding
9 document entitled **PETITION REQUEST FOR REHEARING** as follows:

10 Kelly Valadez, Commission Coordinator

11 Nevada Real Estate Division

12 3300 W. Sahara Avenue, Ste 350

13 Las Vegas, NV 89102

14 Deputy Attorney General Keegan

15 Department of Business & Industry

16 5420 Kietzke Land #202

17 Reno, NV 89511

18 Robert G. KILROY, Esquire

19 *ROBERT G KILROY*

20 _____
21 Attorney for Respondent