



9/15/2023

Sharath Chandra, Administer
Nevada Real Estate Division (NVRED)
President Lee Gurr
Nevada Real Estate Commission (NVREC)
3300 W. Sahara Ave, Ste 350
Las Vegas, NV 89102

FILED

SEP 15 2023

REAL ESTATE COMMISSION

BY Kelly Valadez

Re: Marshall Carrasco [B.1000579.INDV]

Greetings Administrator Chandra and President Gurr,

By way of introduction, 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);
- 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 county 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 Capricious government conduct would be sufficient and persuasive in a District Court Judicial Review because the imposed fines are variable, unpredictable, and without reasonableness in light of fact previous offers to settle were at \$1000 for fines.

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.

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

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

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

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

1. Pursuant to NAC 645 (7)(a), the original hearings' irregularities were Mr. Carrasco's request for a continuance being denied, which created a dilemma of choosing between his family's well-being or participating in a hearing regarding his professional conduct as a licensed broker. Additionally, because his was denied due process constitutional protections, he did not have a chance to present evidence for the NVREC's consideration. Perhaps the most important irregularity - NVREC took away his broker license without an opportunity to be heard. Generally, licensed professionals possess a property right in such license. Such a license revocation substantially, significantly and negatively impacts his family because such revocations deny his opportunity to work and generate income to tend to his family in Washoe County and in Costa Rica. How do the revocations in both Matter match the harm of his violations? Mr. Carrasco believes the revocations of his Broker's license is another act by NVREC in an arbitrary and capricious manner, which could be sufficient and persuasive in a District Court's Judicial Review.

2. Pursuant to NAC 645 (7)(c), Mr. Carrasco discovered evidence that indicates a conflict of interest with the prosecuting attorney as she was a licensed real estate agent - licensed by the very governmental entity upon which imposed such harsh and punitive punishments upon him. Her license was with a competitor of Mr. Carrasco.

Please accept the aforementioned as Mr. Carrasco's humble request for your reconsideration. This petition is based upon due process protections, equitable considerations, and conflicts of interest.

Mr. Carrasco is willing to accept professional responsibility for his lack of oversight regarding Mr. Richardson's license lapse so long as he can maintain his brokerage license, and pay monthly, a reduced fine total. He's ready and willing to execute a settlement agreement/consent decree that is equitable and reasonable all for parties. With a stay of enforcement, and new hearings scheduled, then all parties avoid additional costs of both parties having to seek and defend a Judicial Review of these two Orders.

Let's discuss. Thanks in advance.

Respectfully submitted,

ROBERT G. KILROY

Robert G. Kilroy, Esquire, NVBAR 8529

² First continuance request was on August 18, 2023; NVREC did not grant such reasonable request. Second continuance request was on August 21, 2023; again, NVREC denied such reasonable request without any 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.