

SPARTACUS LAW FIRM
2777 Paradise Road, Suite 3002
Las Vegas, Nevada 89109
T: (702) 660-1234 F: (702) 441-1626

1 Chandon S. Alexander, Esq.
2 Nevada Bar No. 12033
3 **SPARTACUS LAW FIRM**
4 400 South Seventh Street, Suite 100
5 Las Vegas, Nevada 89101
6 Tel: (702) 660-1234
7 Fax: (702) 441-1626
8 *Attorney for Respondent*

FILED

FEB 06 2025

REAL ESTATE COMMISSION

BY *Kelley Valadez*

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

9 SHARATH CHANDRA, Administrator,
10 REAL ESTATE DIVISION, DEPARTMENT
11 OF BUSINESS AND INDUSTRY, STATE
12 OF NEVADA,

Petitioner,

vs.

14 ANDREW J. AREVALO,
15 (S.0184627)

Respondent.

Case No.: 2024-660

**REPLY TO PETITIONER'S
OPPOSITION TO RESPONDENT'S
MOTION TO STAY AND
CONTINUE, OR IN THE
ALTERNATIVE DISMISS**

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18 COMES NOW, Respondent ANDREW J. AREVALO ("Respondent"), by and through
19 his counsel of record, Chandon S. Alexander, Esq. of the SPARTACUS LAW FIRM, and
20 hereby submits this Reply to the Division's Opposition to Respondent's Motion to Stay and
21 Continue, or in the Alternative Dismiss.

22 **I. ARGUMENT**

23
24 The Division's Opposition lays bare the constitutional infirmities and logical
25 absurdities inherent in its position. Most fundamentally, the Division seeks to impose
26 discipline based on what it concedes will become a legal nullity in less than ten (10) months—
27 a position that not only violates Respondent's constitutional right to due process but also
28

1 demands precisely the type of “idle act” long repugnant to Nevada law. *See Bank of Nevada v.*
2 *Petersen*, 132 Nev. 644, 654 (2016) (“the law does not require idle acts not necessary to do
3 justice”). The Division compounds this error by misapprehending basic legal standards, failing
4 entirely to address Respondent's constitutional arguments, and improperly attempting to
5 prejudice these proceedings through reference to inadmissible settlement discussions.
6

7 Perhaps most tellingly, the Division can offer no coherent explanation for why the
8 Commission should rush to impose discipline now, when the very basis for that discipline will
9 cease to exist in a matter of months—and when Colorado, the forum state of the underlying
10 guilty plea, reached a very different result.

11 **A. The Division Applies the Wrong Legal Standard**

12 As an initial matter, the Division's primary argument against dismissal—that there are
13 “contested genuine issues of material fact”—demonstrates a fundamental misunderstanding of
14 the applicable legal standard. Whether material facts are in dispute is the standard for summary
15 judgment under NRCP 56, not for a motion to dismiss challenging the constitutional
16 sufficiency of a statute as applied. *See Hewitt v. Allen*, 118 Nev. 216, 220 (2002) (reciting
17 summary judgment standard). By contrast, the test at the motion to dismiss stage, under NRCP
18 12, is “whether the allegations of a [complaint] are sufficient to assert a claim for relief” and
19 “whether the allegations give fair notice of the nature and basis of [a legally sufficient] claim
20 and the relief requested.” *Guarini v. Main*, 132 Nev. 974, 2016 WL 412824 at *2 (2016).
21
22

23 The Division's reliance on this incorrect standard effectively concedes that it has no
24 response to Respondent's constitutional arguments.
25

26 **B. The Division Fails to Address Respondent’s Constitutional Arguments, and**
27 **Concedes That It Seeks to Impose Discipline for a Legal Nullity**
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1 Respondent's Motion raised serious constitutional concerns about applying NRS
2 645.330(2)(a) and NRS 645.615(1) to a deferred judgment where no final conviction exists.
3 The Division's Opposition is notable for what it does not say—it offers no defense of the
4 constitutional validity of these statutes as applied to Respondent's situation, to say nothing of
5 the absurdity of its own position. This silence is particularly telling given that the core of
6 Respondent's argument is that these statutes are unconstitutionally vague as applied because
7 they provide no notice that a guilty plea entered as part of a deferred judgment program—
8 which all parties anticipate will be withdrawn—could serve as a basis for discipline.

9
10 Instead, the Petitioner's position is apparently that it is the Division's prerogative to
11 seek discipline against Respondent for what Petitioner itself concedes will be a legal nullity in
12 scarcely ten (10) months. Petitioner seeks to distinguish the decision in *Manners v. State*
13 *15 Bd. Of Veterinary Med.*, 107 Idaho 950, 952 (1985) on the basis that the conviction or plea
14 had been vacated, but only thereby highlights the absurdity of its own position. It is not
15 surprising that the conviction had been vacated in *Manners* by the time an appeal to the Idaho
16 Supreme Court was filed and heard. But Respondent's argument here is (in part) that it violates
17 his right to due process to have disciplinary proceedings imposed on him where (as Petitioner
18 concedes) Respondent will have the right to withdraw his guilty plea in the near future—and
19 where the Nevada statutes are unconstitutionally vague as applied here in that they gave no fair
20 notice that Respondent's temporary guilty plea, in the context of a Stipulation for Deferred
21 Judgment, fell within their ambit.
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25 Petitioner also suggests that it has an independent reason to impose discipline, namely a
26 purported violation of NRS 645.615(2) for purportedly "concealing" Respondent's guilty plea
27 and not reporting it until seven (7) months later. But Petitioner fails to recognize that
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1 Respondent’s arguments are equally applicable to this charge. Given that Respondent will be
2 allowed to withdraw his guilty plea, any discipline based on a purported failure to report will,
3 likewise, be a legal nullity. Respondent cannot be held accountable for failure to report what
4 does not exist.

5 Petitioner’s absurd position is that there is nothing untoward in seeking discipline
6 premised entirely on a time-limited guilty plea, with less than ten (10) months more in
7 existence. As Nevada has long recognized, however, “the law does not require idle acts not
8 necessary to do justice.” *Bank of Nevada v. Petersen*, 132 Nev. 644, 654 (2016) (quoting
9 *Allenbach v. Ridenour*, 51 Nev. 437, 462 (1929)). Petitioner’s pursuit of discipline is a
10 quintessential example of an “idle act.”
11

12
13 **C. The Division Improperly References Settlement Discussions**

14 The Division's attempt to prejudice these proceedings by referencing “that the State
15 extended settlement terms to Mr. Arevalo which he decidedly rejected” is improper. As a
16 threshold matter, settlement discussions are generally inadmissible under NRS 48.105. More
17 importantly, here the Division never attempted to meaningfully negotiate this case with
18 Respondent, and instead only presented a punitive proposal for a two-year license revocation—
19 an entirely disproportionate response given the Colorado court's resolution and the Colorado
20 Real Estate Commission's reasoned approach to this matter.
21

22
23 **D. The Division Mischaracterizes the Nature of Board Proceedings**

24 The Division's Opposition reveals a fundamental misunderstanding of the purpose of
25 professional licensing board proceedings. Such proceedings are meant to “protect the public,”
26 “not to punish the licensee.” *Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 499
27 (2005). The Division's evidently punitive approach—particularly its insistence on proceeding
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1 despite the deferred nature of the judgment and Colorado's more measured response—suggests
2 it is improperly seeking punishment rather than public protection.

3 **E. The Division Misapplies the Concept of Moral Turpitude**

4 The Division's repeated characterization of Respondent's deferred judgment as
5 involving "moral turpitude" is both legally incorrect and inflammatory. Crimes of moral
6 turpitude are those involving inherent dishonesty or base motives. "Although the phrase 'crime
7 involving moral turpitude' is notoriously baffling" the a "crime of moral turpitude has
8 generally been understood as "conduct that shocks the public conscience as being 'inherently
9 base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed
10 between persons or to society in general." *Garcia-Meza v. Mukasey*, 516 F.3d 535, 536 (7th
11 Cir. 2008) The underlying charge here—assault—while serious, does not rise to this level.

14 **F. The Timing of the Motion is Justified by Excusable Neglect**

15 While Respondent acknowledges the Motion was filed less than ten working days
16 before the hearing, this timing is justified by excusable neglect. Respondent's counsel did not
17 have complete information regarding the Colorado criminal case, and the implications of the
18 deferred adjudication were not immediately apparent. Moreover, contrary to the Division's
19 implications, there is no attempt to "delay his Hearing until his probation terms." The
20 Commission's next meeting occurs well before December 2025, providing ample opportunity
21 for a hearing if one proves necessary.

24 **II. CONCLUSION**

25 For all the foregoing reasons, as well as those stated in Respondent's Motion, the
26 Commission should either stay these proceedings or dismiss them outright. At minimum, the
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Commission should continue the hearing to allow full consideration of the serious constitutional issues presented.

Dated this 6th day of February, 2025.

Respectfully submitted,

SPARTACUS LAW FIRM

/s/ Chandon S. Alexander
Chandon S. Alexander, Esq.
Nevada Bar No. 12033
400 South Seventh Street, Suite 100
Las Vegas, Nevada 89101
Attorney for Respondent

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CERTIFICATE OF SERVICE

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Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 6th day of February, 2025

I caused the preceding document entitled **REPLY TO PETITIONER'S OPPOSITION TO
RESPONDENT'S MOTION TO STAY AND CONTINUE, OR IN THE ALTERNATIVE**

DISMISS to be served on the following parties via the U.S. Postal Service:

REAL ESTATE DIVISION
STATE OF NEVADA
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
ATTN: Sharath Chandra

Aaron D. Ford
Christal P. Keegan
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
Attorney for Real Estate Division

/s/ Chandon S. Alexander
An Employee of SPARTACUS LAW FIRM