

MAY BROCK LAW GROUP
2470 Saint Rose Pkwy, Suite 208
Henderson, Nevada 89074
Telephone: (702) 388-0404
Facsimile: (702) 830-5699

1 **OPP**
TONY M. MAY, ESQ.
Nevada Bar No. 8563
2 MICHEAL J. BROCK, ESQ.
Nevada Bar No. 9353
3 MAY BROCK LAW GROUP
2470 Saint Rose Pkwy, Suite 208
4 Henderson, Nevada 89074
Telephone: (702) 388-0404
5 Facsimile: (702) 830-5699
Email: tmay@maybrocklaw.com
6 Email: mbrock@maybrocklaw.com

7 *Attorneys for Respondent,*
8 **JAMES SHARKEY**

9 **BEFORE THE REAL ESTATE COMMISSION**

10 **STATE OF NEVADA**

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

14 Petitioner,

15 vs.

16 JAMES SHARKEY,
(S.0195534 - INACTIVE, BUSB.0007200 -
17 INACTIVE, B - DENIED, PROV.0001300-
TSA - CLOSED, TS.3007674 - AGEN -
18 CLOSED, TS.3012578 - REP - CLOSED,
TS.3011747 - REP - CLOSED),

19 Respondent.

Case No.: 2024-749

**RESPONDENT'S OPPOSITION
TO PETITIONER'S MOTION IN LIMINE
TO LIMIT REPETITIOUS,
IRRELEVANT, AND/OR IMMATERIAL
WITNESSES AND SIMILARLY
EXCLUDE EVIDENCE OTHERWISE
OFFERED TO CONFUSE THE ISSUES
AND WASTE TIME**

AND

**SUPPLEMENT TO THE
MOTION IN LIMINE**

Hearing Date: February 11, 2025

Hearing Time: 9:00 a.m.

22 COMES NOW, Respondent JAMES SHARKEY (hereinafter "Respondent" or
23 "Sharkey"), by and through his counsel of record, the MAY BROCK LAW GROUP, and
24 hereby submits Respondent's Opposition to Petitioner's MOTION IN LIMINE TO LIMIT
25 REPETITIOUS, IRRELEVANT, AND/OR IMMATERIAL WITNESSES AND SIMILARLY
26 EXCLUDE EVIDENCE OTHERWISE OFFERED TO CONFUSE THE ISSUES AND WASTE
27 TIME (hereinafter the "Motion"), filed on February 5, 2025, as well as the SUPPLEMENT
28 thereto, which was filed on February 6, 2025.

Defendant's Opposition to Plaintiff's MIL and Supplement thereto

FILED

FEB 10 2025

REAL ESTATE COMMISSION

BY *Kelley Valadez*

1 This Opposition is made and based upon all pleadings and papers on file herein, the
2 Memorandum of Points and Authorities included herein, any declaration attached hereto,
3 the exhibits attached hereto, and the arguments that counsel may present at the hearing of
4 this Motion.

5 Dated this 10th day of February 2025.

6 **MAY BROCK LAW GROUP**

7 */s/ Tony May*

8 TONY M. MAY, ESQ.
9 Nevada Bar No. 8563
10 2470 Saint Rose Pkwy, Suite 208
11 Henderson, Nevada 89074
12 Telephone: (702) 388-0404
13 Facsimile: (702) 830-5699

14 *Attorneys for Respondent,*
15 *JAMES SHARKEY*

MAY BROCK LAW GROUP
2470 Saint Rose Pkwy, Suite 208
Henderson, Nevada 89074
Telephone: (702) 388-0404
Facsimile: (702) 830-5699

13 ///

17 ///

21 ///

25 ///

28 ///

1 **DECLARATION OF TONY M. MAY, ESQ., IN SUPPORT OF RESPONDENT'S**
2 **OPPOSITION TO PETITIONER'S MOTION IN LIMINE TO LIMIT REPETITIOUS,**
3 **IRRELEVANT, AND/OR IMMATERIAL WITNESSES AND SIMILARLY EXCLUDE**
4 **EVIDENCE OTHERWISE OFFERED TO CONFUSE THE ISSUES AND WASTE TIME**
5 **AND SUPPLEMENT THERETO**

6 I, Tony M. May, Esq., being first duly sworn under oath, depose and state as follows:

7 1. I am counsel for Respondent, James Sharkey, and I have personal knowledge
8 of all matters stated herein and would be able to competently testify thereto and hereby
9 make this Declaration under penalty of perjury.

10 2. This Declaration is made in support of a RESPONDENT'S OPPOSITION TO
11 PETITIONER'S MOTION IN LIMINE TO LIMIT REPETITIOUS, IRRELEVANT, AND/OR
12 IMMATERIAL WITNESSES AND SIMILARLY EXCLUDE EVIDENCE OTHERWISE
13 OFFERED TO CONFUSE THE ISSUES AND WASTE TIME

14 3. I have no knowledge of what the Petitioner did, or did not do prior to February
15 3, 2025, wherein I was retained by Respondent to act as his attorney for the upcoming Real
16 Estate Division hearing, which is currently scheduled for February 11, 2025.

17 4. Upon meeting with Respondent to discuss this matter, I was informed that his
18 prior counsel, Kenneth E. Hogan, Esq., had to recuse himself due to a medical issue with his
19 wife and so he could no longer continue working on this matter.

20 5. It is also my understanding that Respondent had another attorney for a short
21 period of time.

22 6. Upon being retained, I immediately contacted Kelly Valadez (i.e., the
23 Commission Coordinator) to discuss any upcoming deadlines for the February 11, 2025,
24 hearing and to discuss the possibility of seeking a small continuance so that I would have
25 time to properly prepare to assist my client since I was still recovering from a January 21,
26 2025, surgery.

27 7. During my discussion with Kelly Valadez, I was informed that the day I was
28 retained was the deadline to disclose Respondent's List of Witnesses and Documents, and
29 that I could disclose the documents after normal business hours on that day, and those
30 documents would still be considered disclosed prior to the deadline.

1 8. I prepared and submitted to the Division a Letter of Representation, via email
2 at 1:40 pm, and in same, requested a continuance, to give Respondent a better opportunity
3 to have an attorney prepared to defend them at the Division's upcoming hearing. *See* the
4 May Brock Law Group's Letter of Representation, attached hereto as **EXHIBIT A**.

5 9. Based on my cursory review of the circumstances leading up Respondent's
6 then current position, I felt the request was warranted, especially due to the extenuating
7 circumstances and the aggressive nature for which the Attorney General's office appeared
8 to be going after Respondent.

9 10. Kelly Valadez emailed me the Division's Denial Letter for the request for a
10 continuance at 4:58 p.m. on that same day (i.e., February 3, 2025). A copy of the Division's
11 Denial Letter is attached hereto as **EXHIBIT B**.

12 11. In addition to the above, I immediately contacted Christin Keegan, Esq. from
13 the Attorney General's office to let her know that I was retained and that I anticipated
14 providing her with additional documents and a list of witnesses for the upcoming hearing.

15 12. Further, according to NAC 645.850, Respondent is allowed to provide his/her
16 documents and list of witnesses no less than 5 working days before the hearing, which date
17 for this matter was February 3, 2025 (i.e., the same day I was retained).

18 13. Pursuant to Kelly Valadez' instruction and NAC 645.850, my office provided
19 the Division with a list of documents and a witness list, as well as a request for subpoenas
20 the evening of February 3, 2025 (i.e., the same day I was retained). *See* a copy of
21 Respondent's Disclosures, attached as **EXHIBIT C**.

22 14. Thereafter, on February 4, 2023, I received an email from Kelly Valadez
23 informing me that she had received Respondent's Disclosures and information on seeking
24 subpoena's related to this matter. *See* a copy of Kelly Valadez' February 4, 2023, email
25 attached hereto as **EXHIBIT D**.

26 15. Thereafter, it became evident to Respondent that there were additional
27 documents that also needed to be included within the upcoming hearing, due to an issue
28 that he just discovered that appeared to show bias against him from the Division, which

1 actions were just discovered and as a result thereof, Respondent provided documents for
2 his First Supplemental Disclosure, which was submitted and acknowledged on February 6,
3 2025. See a copy of Kelly Valadez' February 6, 2023, email attached hereto as **EXHIBIT E**.

4 16. The Attorney General's office should not have filed its Motion in Limine on
5 February 5, 2025, as this motion was filed much less than the required ten (10) working days
6 prior to hearing as is required pursuant to NAC 645.840(2), which also made it impossible
7 for Respondent to be able to prepare and submit its Opposition within the required three
8 (3) working days prior to the hearing pursuant to NAC 645.840(3).

9 17. Notwithstanding there is no rule or requirement that requires Respondent to
10 provide the Attorney General's office with its attorney-work-product related to the scope of
11 testimony being sought from Respondent's witnesses, the undersigned provided Christal
12 Keegan, Esq. with what information it could the day after being retained, in a good faith
13 effort to give her some guidance regarding Respondent's witnesses.

14 18. Notwithstanding, the undersigned is now being required to spend valuable
15 time and energy to respond to a Motion In Limine, rather than preparing for the hearing,
16 when Respondent has fully complied with NAC 645.850, despite being retained the day the
17 documents and list of witnesses were due pursuant to the Divisions own rules.

18 19. Likewise, pursuant to NAC 645.850(1), Respondent is required to supplement
19 the documents submitted as required.

20 20. Since the Attorney General's office has been working on this matter for at least
21 five (5) months, Respondent is confused as to how the Attorney General's office somehow
22 needs to file its Motion in Limine just prior to the start of the hearing, other than to cause
23 the undersigned to have to spend valuable time responding to the Motion in Limine and
24 not preparing for the upcoming hearing.

25 21. Requiring Respondent to arbitrarily limit testimony of its witnesses to only 15
26 minutes is unreasonable under the circumstances, as the Division is seeking extreme fines
27 and, upon information and belief, is seeking to bar Respondent from obtaining any license
28 with the Division for the extended future.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MAY BROCK LAW GROUP
2470 Saint Rose Pkwy., Suite 208
Henderson, Nevada 89074
Telephone (702) 388-0404
Facsimile (702) 830-5699

22. Due to the late filing of the Motion in Limine, in contradiction of NAC 645.840 and NAC 645.850, Respondent asserts that there is good cause to allow Respondent to respond to the Motion in Limine, less than three (3) working days prior to the hearing as required by NAC 645.840(3), because the late failing of the Motion in Limine made it impossible for Respondent to comply with this requirement, as it would have required Respondent to file the Opposition on the same date the Motion was filed.

I, TONY M. MAY, ESQ., DECLARE UNDER PENALTY OF PURGERY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING FACTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated this 10th day of February 2025.

/s/ Tony May
Tony M. May, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. REQUEST FOR GOOD CAUSE PURSUANT TO NAC 645.840(3)

As address above within the undersigned’s Declaration, there is good cause for the Division to accept and rule on Respondent’s Opposition, which is going to be filed less than three (3) working days of the hearing, due to the late filing of the Division’s Motion, which was filed in contradiction of NAC 645.840(1). As such, the late filing of the Motion made it impossible for Respondent to prepare and file its Opposition on the same day as the filing of the Motion, which is especially true since Counsel for Respondent had only been retained for two days prior to the filing of the Motion in Limine. This is even more true with the filing of the Supplement to the Motion in Limine. Respondent requests that the Division either strike the Motion in Limine and Supplement thereto, or grant Respondent the right to have this Opposition heard, so that this matter can proceed on its merits, as is required pursuant to NRS 233B.135(3) and the Due Process clause of the 14th Amendment of the United States Constitution.

II. INTRODUCTION

1 Not only is the Division's Motion in Limine untimely and inappropriate pursuant to
2 NAC 645.840(1) and (2), but it appears that the purpose of the Motion in Limine is to seek
3 to require Respondent's counsel, who was just retained last week, to have to spend its
4 remaining valuable time working on this Opposition, rather than preparing for the
5 upcoming hearing. The evidence of this is demonstrated by the fact that Respondent fully
6 and completely complied with the Divisions deadline to disclose documents and to provide
7 its list of witnesses, as is fully described within NAC 645.850 (i.e., not less than 5 working
8 days before a hearing before the Commission) and despite same, the Motion in Limine was
9 still filed. Further, Respondent supplemented his document pursuant to NAC 645.850(1)¹.
10 The Attorney General's office, which has been working on this matter since at least
11 September of last year has no legal or equitable basis to punish Respondent for adhering to
12 the rules and regulations set forth by the Division within NAC 645.850.

13 **III. STATEMENT OF RELEVANT FACTS**

14 1. Respondent produced its initial disclosures on the same day that its counsel
15 was retained, which was February 3, 2025, in full accordance with NAC 645.850.

16 2. Respondent's initial disclosures included a list of documents it intends to use
17 at the upcoming hearing as well as a list of witnesses they intended to call at the upcoming
18 hearing.

19 3. Respondent then discovered documents that he believed needed to be
20 included within his disclosures, because those documents showed recent bias against him
21 and therefore, those documents were disclosed on February 6, 2025.

22 4. Accordingly, NAC 645.850(1) states:

23 **Not less than 5 working days before a hearing before the**
24 **Commission, the respondent must provide to the Division a copy of all**
25 **documents that are reasonably available to the respondent which the**
26 **respondent reasonably anticipates will be used in support of his or her**
position. The respondent shall promptly supplement and update any
such documents.

27 See NAC 645.850(1)

28 _____
¹¹ This section requires Respondent to "promptly supplement and update any such documents."

1 5. After further review, Respondent only submitted a request for a subpoena to
2 two people (i.e., Amy Elser and Nathan Elser), which the division approved and issued.

3 6. Accordingly, NAC 645.840 states:

- 4 1. All motions, unless made during a hearing, must be in writing.
- 5 2. A written motion must be served on the opposing party and the
6 Commission at least 10 working days before the time set for the
7 hearing on the motion.
- 8 3. An opposing party may file a written response to a motion within
9 7 working days after the receipt of the motion by serving the
10 written response on all parties and the Commission, except that a
11 written response may be filed less than 3 working days before the
12 time set for the hearing on the motion only with the permission
13 of the Commission upon good cause shown.
- 14 4. The Commission may require oral argument or the submission of
15 additional information or evidence to decide the motion.

11 IV. LEGAL ARGUMENT

12 According to the Divisions' Rules of Evidence, found in NAC 645.845, the following
13 governs the upcoming hearing:

- 14 1. In conducting any investigation, inquiry or hearing, the Commission, its
15 officers and the employees of the Division are not bound by the technical
16 rules of evidence, and any informality in a proceeding or in the manner of
17 taking testimony does not invalidate any order, decision, rule or
18 regulation made, approved or confirmed by the Commission. The rules of
19 evidence of courts of this State will be followed generally but may be
20 relaxed at the discretion of the Commission if deviation from the technical
21 rules of evidence will aid in determining the facts.
- 22 2. Any evidence offered at a hearing must be material and relevant to the
23 issues of the hearing.
- 24 3. The Commission may exclude inadmissible, incompetent, repetitious or
25 irrelevant evidence or order that presentation of that evidence be
26 discontinued.
- 27 4. A party who objects to the introduction of evidence shall briefly state the
28 grounds of the objection at the time the evidence is offered. The party who
offers the evidence may present a rebuttal argument to the objection.
5. If an objection is made to the admissibility of evidence, the Commission
may: (a) Note the objection and admit the evidence; (b) Sustain the
objection and refuse to admit the evidence; or (c) Receive the evidence
subject to a subsequent ruling by the Commission.

25 Notwithstanding the above, the Commission is still required to ensure that the upcoming
26 hearing comports with Respondent's right of procedural due process, which is governed by
27 the Due Process Clause of the 14th Amendment. Randomly requiring Respondent to limit
28 its witnesses to only 15 minutes, or refusing to allow Respondent to call its witnesses, based

1 on opposing counsel's assumptions would also be contrary to Respondent's rights as
2 contained with the Due Process Clause of the 14th Amendment.

3 Further, according to NRS 233B.123(4), Respondent has a right to call and examine
4 witnesses and to introduce exhibits at the upcoming hearing as follows:

5 **Each party may call and examine witnesses, introduce exhibits, cross-**
6 **examine opposing witnesses on any matter relevant to the issues** even though
7 the matter was not covered in the direct examination, impeach any witness,
regardless of which party first called the witness to testify, and rebut the
evidence against him or her.

8 See NRS 233B.123(4). Likewise, according to NRS 233B.135(3), if the Division randomly
9 decides to limit Respondent's rights to call and examine witnesses, based on the Attorney
10 General's assumptions, the Division's decision may be set aside as follow:

11 The court shall not substitute its judgment for that of the agency as to the
12 weight of evidence on a question of fact.² The court may remand or affirm the
final decision or set it aside in whole or in part if substantial rights of the
petitioner have been prejudiced because the final decision of the agency is:

- 13 (a) **In violation of constitutional or statutory provisions;**
14 (b) **In excess of the statutory authority of the agency;**
15 (c) **Made upon unlawful procedure;**
16 (d) **Affected by other error of law;**
17 (e) **Clearly erroneous in view of the reliable, probative and substantial**
evidence on the whole record; or
18 (f) **Arbitrary or capricious or characterized by abuse of discretion.**

18 See NRS 233B.135(3) [**Emphasis added**].

19 In addition, according to *Bivins Construction vs. State Contractors Board*, 107 Nev. 281,
20 809 P.2s 1268 (1991), the Nevada State Contractors Board's ("NSCB") citation issued against
21 Bivins Construction was reversed by the Nevada Supreme Court due to the NSCB's actions
22 in wrongfully suspending Bivins' license, based on the limitations the NSCB placed on
23 Bivins' during the NSCB hearing, wherein the Nevada Supreme Court found that:

24 _____
25 ² Please note, pursuant to *Loper Bright Enterprises vs. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L.Ed.2d 832
26 (2024), the United States Supreme Court found that "courts need not, and under the Administrative Procedure
27 Act (APA) may not, defer to an agency's interpretation of the law simply because a statute is ambiguous," and
28 the Court "made clear, repeatedly, that '[t]he interpretation of the meaning of statutes, as applied to justiciable
controversies,' was 'exclusively a judicial function.'" which case overturned the longstanding deference
Courts were given to administrative bodies, which was created by *Chevron, U.S.A., Inc. v. Natural Resources
Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L.Ed.2d 694 (2024). Thus, courts within the United States
are mandated that they shall not simply defer to the administrative agencies but must do their own analysis
to rule on justiciable controversies.

1 (1) [the] action of [NSCB], in limiting general contractor's cross-examination
2 to matters expressly covered on direct examination, was contrary to rules
3 applicable to matters before Board and amounted to violation of contractor's
4 due process rights, and

4 (2) [the] suspension of general contractor's license pending payment of
5 subcontractor's claim was tantamount to award of contract damages, and
6 exceeded authority granted to [NSCB] in license suspension proceedings.

6 See Bivins, at 281, 1268. Nevada Supreme Court also held in Bivins that: "The rudiments of
7 fair play must be observed in administrative hearings. [citation omitted] The right to cross-
8 examine witnesses in an adjudicatory proceeding is one of fundamental importance. Its
9 denial in this case amounted to a violation of due process." See Bivins, at 283, 1270. Thus,
10 according to Bivins, the NSCB's refusal to allow the general contractor to properly defend
11 itself against the NSCB's claims resulted in the overturning of its order.

12 Here, any arbitrary ruling by the Division that prohibits Respondent from being able
13 to properly defend itself with regard to the allegations being asserted or to provide evidence
14 related to the Division's discretionary authority to fine Respondent pursuant to NRS
15 645.235(3),³ as well as Division's burden to prove that any of the acts allegedly performed
16 by Respondent were willful, deceitful, fraudulent or dishonest in relation to NRS
17 645.633(1)(a), (h) & (i), would constitute a denial of Respondent's Due Process. See Bivins,
18 at 283, 1270, as well as the Due Process Clause of the 14th Amendment.

19 Finally, to the extent Respondent needs to present evidence of bias, in relation to this
20 matter, Nevada law allows Respondent to seek for and present evidence of either actual bias
21 and/or an implied probability of bias as part of the Administrative proceeding, both of
22 which would constitute the deprivation of Respondent's due process rights related in this
23 matter and, pursuant to NRS 233B.135(3), provide for the overturning of the Division's
24 ruling in this matter. See Mosley v. Nevada Com'n on Judicial Discipline 117 Nev. 371, 378, 22

25
26 _____
27 ³ According to NRS 645.235(3), the Commission has a right to evaluate the following in order to determine
28 the amount of any fine related to this matter: "In determining the appropriate amount of the administrative
fine, the Commission shall consider: (a) The severity of the violation and the degree of any harm that the
violation caused to other persons; (b) The nature and amount of any gain or economic benefit that the
person derived from the violation; (c) The person's history or record of other violations; and (d) **Any other
facts or circumstances that the Commission deems to be relevant.**"

1 P.3d 655, 659 (2001). As such, Respondent respectfully requests that the Division's Motion
2 in Limine and Supplement thereto be denied and allow Respondent to proceed forward on
3 the merit at the upcoming hearing and be allowed to present the evidence necessary to
4 defend himself, in full accordance with the Nevada law and the 14th Amendment.

5 **I. CONCLUSION**

6 Based upon the foregoing, Defendants respectfully request that this Court deny
7 Petitioner's Motion in Limine and Supplement thereto and allow Respondent its right to
8 present a defense in this matter.

9 Dated this 10th day of February 2025.

10 **MAY BROCK LAW GROUP**

11 */s/ Tony May*

12 _____
13 TONY M. MAY, ESQ.
14 Nevada Bar No. 8563
15 2470 Saint Rose Pkwy, Suite 208
16 Henderson, Nevada 89074
17 Telephone: (702) 388-0404
18 Facsimile: (702) 830-5699

19 *Attorneys for Respondent,*
20 **JAMES SHARKEY**

21
22
23
24
25
26
27 **CERTIFICATE OF SERVICE**
28

1 I hereby certify that on the 10th day of February 2025, I e-served a true and correct
 2 copy of the foregoing, **RESPONDENT'S OPPOSITION TO PEITIONER'S MOTION IN**
 3 **LIMINE TO LIMIT REPETITIOUS, IRRELEVANT, AND/OR IMMATERIAL**
 4 **WITNESSES AND SIMILARLY EXCLUDE EVIDENCE OTHERWISE OFFERED TO**
 5 **CONFUSE THE ISSUES AND WASTE TIME AND SUPPLEMENT TO THE MOTION**
 6 **IN LIMINE**, via email, to the following parties:

ATTORNEY/PARTIES	EMAIL
Kelley Valadez:	<u>KValadez@red.nv.gov</u>
Christal P. Keegan	<u>ckeegan@ag.nv.gov</u>
Mercedita M. Garcia	<u>MMGarcia@ag.nv.gov</u>

13
 14 /s/ Tony May
 15 An employee or agent of MAY BROCK LAW
 16 GROUP

MAY BROCK LAW GROUP
 2470 Saint Rose Pkwy., Suite 208
 Henderson, Nevada 89074
 Telephone: (702) 388-0404
 Facsimile: (702) 830-5699