



**STATE OF NEVADA**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**PAUL MURAD**, Member,  
Real Estate Commission,  
State of Nevada,

**Request for Opinion No. 11-64C**

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Public Officer. /

**OPINION**

**I. STATEMENT OF THE CASE**

On August 9, 2011, a private citizen filed a Third-Party Request for Opinion ("RFO") with the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(2)(b) alleging that Paul Murad ("Murad"), a member of the Nevada Real Estate Commission ("NREC"), violated various provisions of the Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A by attempting to use his position as a member of NREC to influence subordinates and secure unwarranted preferences to obtain a reduction in collection fees imposed on his private property in violation of NRS 281A.400(2) and (9).

Pursuant to NRS 281A.440, the Commission conducted an investigation and an investigatory panel of two commissioners<sup>1</sup> determined that just and sufficient cause existed for the Commission to hold a hearing and render an opinion regarding one of the allegations.

The matter then came before a quorum<sup>2</sup> of the Commission during a public hearing on June 20, 2012. Murad attended the hearing and provided sworn testimony. He was represented during the Commission

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<sup>1</sup> Commissioners Timothy Cory and Gregory Gale served on the Investigatory Panel. Pursuant to NRS 281A.220(4), they took no part in the hearing or opinion in this matter.

<sup>2</sup> The quorum consisted of Chairman Erik Beyer and Commissioners John Carpenter, Magdalena Groover, Paul Lamboley, James Shaw and Keith Weaver.

proceedings by David Newton, Esq., Deputy Attorney General.

At the conclusion of the hearing on June 20, 2012, after fully considering the facts disclosed by the evidence, including stipulated facts, witness testimony and documents, the Commission deliberated on the record and orally announced its decision that a preponderance of the substantive and probative evidence did not support the outstanding allegation before the Commission. Accordingly, the Commission dismissed the allegation. However, the Commission emphasized that Murad exercised poor judgment and failed to effectively avoid conflicts of interest between his public duties and private interests. The Commission now renders this written Opinion setting forth its formal findings of fact and conclusions of law in this case.

## II. PROCEDURAL HISTORY

The Commission was presented with various assertions from the Requester of the RFO that Murad used his position as a member of NREC to benefit his private brokerage company. Murad's brokerage company purchased a condominium unit which was subject to certain collection fees. Murad believed the fees were excessive and sought to have the fees reduced through the condominium's homeowner's association board and/or its management company.

Murad's encounter/discussion with an employee of the management

company regarding his concerns with the fees resulted in allegations that Murad used his position as a NREC commissioner to influence the collection fees on his condominium unit. Specifically, the Requester alleged that Murad asserted his position as a NREC commissioner and provided the employee with his NREC business card to influence the employee to act in a manner to reduce the collection fees and/or expedite Murad's request to appear before the homeowner's association board.

After a thorough investigation, the Commission's Executive Director presented the allegations, a report concerning the investigation and a recommendation relating to just and sufficient cause to an Investigatory Panel pursuant to NRS 281A.440(4). The Panel determined that there was just and sufficient cause to forward only one of the allegations to the Commission to render an opinion pursuant to NRS 281A.440(5).

Consistent with the Executive Director's recommendation, the Panel found sufficient credible evidence<sup>3</sup> for the Commission to hold a hearing and render an opinion regarding whether Murad violated NRS 281A.400(2) by using his position in government to secure unwarranted privileges, preferences, exemptions or advantages for

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<sup>3</sup> NAC 281A.435 defines "credible evidence" as "the minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion."

himself and his business interests in the form of reduced collection fees on a condominium owned by his private business.

Further consistent with the Executive Director's recommendation, the Panel dismissed the allegation that Murad violated NRS 281A.400(9) by using his official position to influence a subordinate, an employee of the management company. Based on the evidence gathered during the investigation, the Panel concluded that the employee of the management company was not Murad's subordinate because NREC does not regulate common-interest communities (including management companies of common-interest communities). Rather, such companies are regulated by Nevada's Commission on Common-Interest Communities and Condominium Hotels. Therefore, the Panel determined there was not sufficient credible evidence to support a finding of just and sufficient cause for the Commission to hold a hearing and render an opinion regarding this allegation.

### III. FINDINGS OF FACT

1. In his public capacity, Murad serves as a Member of NREC.
2. In his private capacity, Murad is the sole officer of Metroplex Realty, LLC ("Metroplex"), a real estate brokerage company located in Las Vegas, Nevada.
3. On or about June 9, 2011, Highgate Condominium Complex

("Highgate") Unit 2122 ("Unit 2122"), located at 7100 Pirates Cove, Las Vegas, Nevada 89145, was owned by MTC Financial Inc. dba Trustee Corps, and sold to Vegas Valley Auctions, LLC ("VV Auctions") for approximately \$17,600. A Trustee's Deed Upon Sale transferring Unit 2122 to VV Auctions was recorded by the Clark County Recorder's Office on or about July 21, 2011.

4. On or about June 12, 2011, Metroplex, on behalf of a client, purchased Unit 2122 from VV Auctions for approximately \$17,600. A Grant, Bargain, Sale Deed transferring Unit 2122 to Metroplex was recorded with the Clark County Recorder's Office on or about July 21, 2011.
5. Certain unpaid homeowner's association fees (association fees, assessments, late fees, etc.) are attached to the purchase of a condominium unit in Nevada pursuant to NRS Chapter 116. Metroplex was charged \$5,726.35 in collection fees for Unit 2122 by the collection company contracted with Highgate's Homeowner's Association ("HOA"). The collection company establishes the rates for certain fees with the Highgate HOA Board in accordance with statute and retains a portion of the collected fees for processing and distributing payments.
6. Highgate HOA also contracts with a management company,

Adept Management Services, Inc. ("Adept"), for the management of Highgate's HOA and the condominium complex. Adept provides day-to-day management of the complex as well as record-keeping and book-keeping services for the HOA. Adept does not serve as the collection company for the Highgate HOA.

7. Adept is owned by Mary Bolchalk. Crystal Myers is employed by Adept as the accountant and serves as Adept's Secretary/Treasurer.
8. Pursuant to NRS Chapter 116, Adept provides new buyers of Highgate condominium units with a resale package, which includes the amount of any collection fees imposed on the property. After its purchase of Unit 2122 on or about June 21, 2011, an agent for Metroplex contacted Adept for a copy of the resale package for Unit 2122.
9. On July 26, 2011, Murad appeared in person at the Adept office to pick up the resale package. Crystal Myers was the only person present at the Adept office to provide the package to Murad. Myers provided Murad with a receipt of the purchase of the resale package and Myers and Murad had a discussion concerning the collection fees attached to Unit 2122. Murad asked Myers to include him on the next agenda for the Highgate HOA Board meeting to discuss his concerns.
10. Myers and Murad offer differing accounts regarding the nature of their discussion concerning the collection fees and the events which took place during the discussion. There were no witnesses to the discussion.
11. Myers claimed that Murad was upset over the collection fees and insisted that Adept change the collection fees despite her assertion that Adept had no authority to change the fees. Myers further claimed that Murad then insisted on being placed on Highgate HOA's next Board meeting agenda to discuss his collection fees. During the discussion, Myers felt intimidated by Murad when he discussed and effectively threatened a lawsuit against Adept and/or Highgate by mentioning other existing litigation in Clark County that involved various homeowner's associations regarding collection fees. At the conclusion of the discussion, Myers claimed that Murad handed her his NREC business card containing his personal contact information and stated that he was a NREC commissioner. Myers understood Murad to be suggesting that his public position should influence her actions to change the fees and/or put Murad on the next agenda. Myers claims that she did not ask for his business card because she already had Murad's contact information from the resale package.

12. Murad claims that he had a pleasant conversation with Myers when he picked up the resale package and that they discussed the collection fees. Murad further claimed that he knew his rights as an owner to appear before the HOA Board to discuss his concerns and that he had to assert those rights to Myers when she disagreed with him. However, Murad states it was a friendly discussion and he simply asked her to forward his request to be placed on the agenda to the proper authority and inform him of the decision. He stated that Myers asked for his business card so that Adept could inform him of its decision. Murad looked through his wallet and only had a NREC business card with him, and he gave her the card as a convenience but specifically told her that his request was not related to his role as a NREC commissioner and that his card contained his personal contact information.
13. Myers' described her version of the July 26, 2011 encounter/discussion with Murad to her supervisor, Mary Bolchalk, the owner of Adept. Bolchalk was not present during the encounter and has no personal knowledge of the discussion or nature of events which did or did not take place during the encounter.
14. Bolchalk described the incident to the President of Highgate's HOA Board.
15. At the time of the July 26, 2011 encounter/discussion both Myers and Bolchalk believed that the homeowner's associations of common-interest communities and their management companies were under NREC's jurisdiction or that NREC had influence over Adept and Highgate HOA.
16. On August 5, 2011, Bolchalk filed a Third-Party RFO with the Commission pursuant to NRS 281A.440(2) alleging that Murad violated the Ethics Law based on his encounter with Myers on July 26, 2011. The Commission received the RFO on August 9, 2011, and Murad received notice of the RFO on August 12, 2011.
17. On or about August 3, 2011, Metroplex, authorized by and on behalf of its client, sold Unit 2122 to Thomas Droney for approximately \$33,500. A Grant, Bargain, Sale Deed transferring Unit 2122 to Thomas Droney was recorded with the Clark County Recorder on or about August 8, 2011.
18. On August 8, 2011, Murad sent an email to Bolchalk to follow up on his request to appear on the next Highgate HOA Board meeting agenda. Bolchalk responded to the email on August 16, 2011 indicating his placement on the Board's September 22, 2011 meeting agenda.

19. Before the September 22, 2011 Board meeting, Murad filed a complaint against the Highgate HOA and Adept regarding the collection of past-due HOA dues and collection fees.
20. Upon the advice of legal counsel, Adept and the Highgate HOA Board cancelled its September 22, 2011 Board meeting as a result of the pending litigation, and Bolchalk informed Murad (via email) of the cancelled meeting on September 19, 2011.
21. At the time of the hearing in this matter, Murad had not met with the Board and the litigation regarding the collection fees was still pending.

#### **IV. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES**

##### **A. ISSUES**

Murad publicly serves as a member of NREC while he is privately engaged in the real estate business as a broker and agent. Murad's private brokerage company, Metroplex, recently purchased a condominium unit in the Highgate Condominium Complex, Unit 2122, in Las Vegas, Nevada. Highgate is governed by a homeowner's association, Highgate HOA, and managed by a private management company, Adept. The purchase of Unit 2122 required the payment of various outstanding collection fees attached to the property, as permitted by State law. Murad

disputed the amount of the fees and sought to have them reduced and/or eliminated.

The allegations in this RFO focus on the encounter Murad had with an employee of Adept, Crystal Myers, addressing his concerns regarding the collection fees for Unit 2122. In particular, Murad engaged in a debate with Myers concerning Adept's authority to change the fees and/or its ability to place him on the next meeting agenda of the Highgate HOA Board. At the conclusion of this discussion, Murad presented Myers with his NREC business card which contained his private contact information. No witnesses were present during this encounter and the Commission was presented with conflicting testimony from Murad and Myers about the nature and intent of Murad's comments and actions.

Myers claimed that Murad voluntarily presented his business card and asserted his status as a NREC commissioner, and she understood his actions to constitute the use of his position as a NREC Commissioner to attempt to benefit his private interests in reducing the fees on Unit 2122. However, Murad explained that his intentions were to assert his private rights as a homeowner to address the Highgate HOA Board concerning the fees, and he provided his NREC card because Myers asked for a business card and his NREC card was the only one he had available at the time. Murad claimed he specifically explained to Myers that it was the only card he had available, but it

contained his private contact information and his role as a Commissioner was unrelated to his request to appear before the Highgate HOA Board. Myers stated that she did not ask for the card because she already had his contact information.

Myers felt intimidated by Murad's actions in stating his role with NREC and providing her with his NREC business card and reported the incident to her boss, Mary Bolchalk. In response, Bolchalk filed this RFO alleging that Murad used his government position to improperly influence his subordinates (NRS 281A.400(9)) and to benefit his private interests (NRS 281A.400(2)). Because the Panel dismissed the allegation concerning NRS 281A.400(9), this Opinion addresses only the allegation regarding the use of Murad's official position to secure unwarranted benefits for his private business in violation of NRS 281A.400(2).

The Commission finds and concludes, based on a failure to satisfy a preponderance of substantial, probative evidence in this case, that Murad's actions during his encounter with Myers did not constitute the use of his public position for NREC to benefit his private interests in reducing the collection fees on his private property. Accordingly, Murad did not violate NRS 281A.400(2). Nevertheless, the Commission stresses that Murad exercised poor judgment and failed to effectively avoid conflicts of interest between his public duties and private

interests. Murad is therefore reminded of his obligation to ensure the public trust and avoid actual and perceived conflicts of interest. See NRS 281A.020.

## **B. RELEVANT STATUTES**

### **1) Use of Government Position to Secure Unwarranted Preferences**

**NRS 281A.400(2) provides:**

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

The Commission considers whether Murad used his position as a NREC Commissioner to secure an unwarranted privilege, preference, advantage or exemption by providing Myers with his NREC business card in an effort to gain access to the Highgate HOA Board and/or to seek a reduction in the

related collection fees. Based on the conflicting testimony, the Commission was unable to resolve the credibility of the witnesses in favor of one version of events over another to warrant a finding of a violation of the Ethics Law by a preponderance of the evidence as required by NRS 281A.480(9).

The Commission finds and concludes that Murad had a private right as a homeowner to pursue his position with the Highgate HOA concerning the collection fees imposed on his property. Further, Murad could only pursue this right through the administrative function of Highgate HOA's management company, Adept. Myers and Bolchalk testified that it was common to have dissatisfied homeowners appear at the office to lodge various complaints and seek redress from the HOA Board. Myers further testified that her conversation with Murad was not uncommon or distinct from concerns raised by other homeowners in similar situations.

However, this case presents the important policy behind the Ethics Law which prohibits public officers from pursuing private rights through the influence of public power. Here, regardless of whether Myers requested it or Murad volunteered it, Murad presented Myers with his NREC business card, which could lead a reasonable person in Myers' position to conclude that Murad was presenting the card to assert his position into the consideration of his request and to influence the process governing his collection fees through

his role as a NREC commissioner. Although they were mistaken, Myers and Bolchalk believed at the time that NREC had authority over common-interest community associations and management companies, including Adept. Although NREC does not in fact regulate these associations (rather, they are regulated by the Nevada Commission on Common Interest Communities and Condominium Hotels), Myers was reasonably led to believe that Murad's comments and actions in presenting his public role as a NREC commissioner was an attempt to assert some public influence into Adept's actions in response to his private request.

While Murad had every prerogative as a homeowner to assert his rights regarding the collection fees, he does not have the right to introduce his public role into the process for his private benefit. Murad claims, however, that his intentions were not to use his public position in any way to influence the private negotiations concerning the collection fees on his private property. Instead, he claims the presentation of his NREC business card was incidental to the conversation. Murad testified that his NREC card contained his private contact information and he provided it as a convenience to Myers. Murad further testified that he specifically mentioned to Myers that his role as a NREC commissioner did not relate to his request to appear before the Highgate HOA Board.

This classic "he-said, she-said" testimony without any substantiating



evidence for either position as presented in this case does not satisfy the necessary burden on the Commission to find a violation. However, Murad, in his public capacity, is reminded that he has an obligation to protect the public trust and commit to avoid conflicts between his public and private interests. NRS 281A.020.<sup>4</sup>

This case presents the Commission with another opportunity to address the use of public/governmental business cards. The Commission has recently been made aware of the regular provision and use of public business cards by public officers and employees, particularly those of part-time public officers of various governmental boards and commissions which contain personal contact information. If a public officer is to be contacted in his or her official capacity as a public officer, it seems appropriate that the card would provide the public contact information, i.e., through the staff of the public office.

Although many public bodies, including NREC, appear to offer similar business cards to all of their members, it is the public officer's responsibility to use that card appropriately in his or her public role. In this case, Murad offered his public card in a matter solely

devoted to his private interests and thereby created at least an appearance of a conflict of interest. His poor judgment in this matter does not rise to the level of a violation of the Ethics Law, but he is nevertheless educated about the appropriate use of his public position to avoid these pitfalls and conflicts with his private interests and reminded of his obligations to commit to avoid such conflicts consistent with NRS 281A.020.

## V. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Murad was a "public officer," as defined by NRS 281A.160. The Commission has jurisdiction over public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. The evidence presented in this matter does not satisfy the preponderance of evidence standard required pursuant to NRS 281A.480(9). Accordingly, Murad has not violated the Ethics Law, specifically NRS 281A.400(2), and the allegation is therefore dismissed. Murad is nevertheless reminded of his obligations under NRS 281A.020 to protect the public trust and commit to avoid conflicts of interest.

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<sup>4</sup> NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

Dated this 12<sup>th</sup> day of December, 2012.

NEVADA COMMISSION ON ETHICS

By:           /s/ Erik Beyer            
Erik Beyer  
Chairman