



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**Ashok Mirchandani**, Deputy Director,  
Department of Business and Industry,  
State of Nevada,

Request for Opinion No. **14-64C**

\_\_\_\_\_ Public Employee. /

**STIPULATED AGREEMENT**

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-64C before the Nevada Commission on Ethics (“Commission”) concerning Ashok Mirchandani (“Mirchandani”), Deputy Director,<sup>1</sup> Department of Business and Industry, State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Ashok Mirchandani served as the Deputy Director of the Department of Business and Industry. As such, Mirchandani was an appointed public employee, as defined in NRS 281A.150. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Mirchandani in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about September 22, 2014, the Commission received this RFO from Madeline Bravo Pritchard, acting in her capacity as the compliance officer for Nevada Affordable Housing Assistance Corporation (“NAHAC”), a non-profit

\_\_\_\_\_ <sup>1</sup> Mirchandani currently is the former Deputy Director, Department of Business and Industry.

- entity, alleging that Mirchandani violated Nevada's Ethics in Government Law, specifically NRS 281A.020(1), NRS 281A.400(2), NRS 281A.400(5), NRS 281A.400(9), and NRS 281A.420(1) and (3). The Commission issued a Notice to Subject of the RFO, which outlined these allegations and included alleged additional allegations of possible violations of NRS 281A.400(4) and (7).
- b. As required by NAC 281A.410, the Commission provided Mirchandani with notice of the RFO by mail. Pursuant to NRS 281A.440(3), Mirchandani was provided an opportunity to respond to the RFO and did so on December 16, 2014.
  - c. Mirchandani waived his rights to a panel determination pursuant to NRS 281A.440, and acknowledges that his former status as a public employee imposed a duty to avoid conflicts between his private interests and those of the public he served to protect the public trust and conform his conduct to NRS Chapter 281A. See NRS 281A.020; see also *In re Woodbury*, Comm'n Opinion No. 99-56 (1999). This Stipulated Agreement promotes and clarifies the goals of the Ethics Law, in particular the jurisdictional reach of the Ethics Law, and serves to educate all public employees and public officers similarly situated.
  - d. In lieu of a panel determination and a hearing, Subject and the Commission now enter into this Stipulated Agreement finding no violation of the Ethics Law set forth in NRS Chapter 281A, including the alleged violations of NRS 281A.020(1), NRS 281A.400(2), NRS 281A.400(4), NRS 281A.400(5), NRS 281A.400(7), NRS 281A.400(9), and NRS 281A.420(1) and (3).
4. **STIPULATED FACTS:** At all material times, the following stipulated facts were relevant to this matter:
- a. **Relevant Persons and/or Entities**
    - 1) Mirchandani was the Deputy Director of Nevada's Department of Business and Industry ("B&I"), a public employee as defined in NRS 281A.150.
    - 2) The Department of Business and Industry ("B&I") is a cabinet level agency in Nevada State government. B&I's objective is to encourage and promote

the development and growth of business and to ensure the legal operation of business in Nevada to protect consumers by maintaining a fair and competitive regulatory environment. The Director's office manages a number of programs and initiatives to address the needs of small businesses, homeowners and consumers including small business advocacy, bond programs, access to capital, housing retention programs, constituent services and fraud prevention and education.

- 3) Bruce Breslow was the Director of B&I, and a public officer as defined in NRS 281A.160. The Nevada Housing Division ("NHD"), a division of the Department of Business and Industry, was created by the Nevada Legislature in 1975 when it was recognized that a shortage of safe, decent, and sanitary housing existed throughout the State for persons and families of low income.
- 4) The Nevada Affordable Housing Assistance Corporation ("NAHAC") was created in 2003 as a non-profit component unit of the NHD.<sup>2</sup>
- 5) Mirchandani was appointed by Bruce Breslow to be the Government Director of NAHAC.
- 6) On January 25, 2012, pursuant to NRS 232.520(4), B&I created Home Means Nevada ("HMN"), a non-profit entity, to perform outreach for various affordable housing programs managed by NHD.
- 7) Beginning in June of 2014, Mirchandani served as a member of the Board of Directors in his capacity as a formal governmental representative of B&I.

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<sup>2</sup> NAHAC was originally reported as a discreetly presented component unit of NHD because NHD was financially accountable for NAHAC.

In 2010, NAHAC amended its bylaws. Under the 2010 bylaws, there were seven directors, one of whom, the "Government Director," would be appointed by the Administrator of NHD ("State Administrator"), and serve as Chairman of the Board. Six at large directors were to be selected by the Board and approved by the State Administrator. During the period of time referenced by the RFO, in his capacity as the Director of B&I, Bruce Breslow was the acting State Administrator of NHD.

In 2013, external auditors and NAHAC's legal counsel determined that because of changes to the composition of the Board of Directors made by the 2010 bylaws, NAHAC was no longer a component unit of NHD.

**b. Foreclosure Crisis in Nevada**

- 1) The foreclosure crisis in Nevada centered upon a large decline in home prices, mortgage delinquencies, foreclosures and the devaluation of housing-related securities.
- 2) Nevada was one of the hardest hit states in the nation with a majority of its homeowners owing a mortgage that was much greater than the value of their home.
- 3) During the timeframe in question, NAHAC administered programs that received and distributed federal funds to Nevada homeowners affected by the foreclosure crisis.
- 4) The primary program was the Home Retention Program. Under this program, underwater mortgages were purchased from banks and refinanced to homeowners at the current market value; enabling the owners to retain their homes.
- 5) State officials, including the Director of B&I (Bruce Breslow), originally wanted NAHAC to purchase the underwater mortgages directly, using federal money from the Hardest Hit Funds (HHF).<sup>3</sup>
- 6) NAHAC was poised to purchase mortgages from banks in large groups or “pools.”<sup>4</sup> However, the United States Treasury (“UST”) forbade this practice because the “pools” might include homes that were vacant or being used as investment/rental properties, so the purpose of home retention would not be accomplished. Furthermore, UST decided the funds could not be used to *purchase* mortgages; only to rebate the program (in a dollar for dollar

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<sup>3</sup> An underwater mortgage is defined as a home purchase loan with a higher balance than the free-market value of the home. This situation prevents the homeowner from selling the home unless s/he has cash to pay the loss out of pocket. It also prevents the homeowner from refinancing in most cases. Thus, if the homeowner wants to sell the home because s/he can't afford the mortgage payments anymore, perhaps because of a job loss, the home will fall into foreclosure unless the borrower is able to renegotiate the loan.

<sup>4</sup> By purchasing blocks of mortgages, NAHAC would have been able to obtain properties at a discounted price substantially below market value.

match) when the restructuring of the mortgage resulted in homeowners being able to remain in their homes.

- 7) Ultimately, UST suggested the State utilize a different non-profit entity to purchase the mortgages, and have NAHAC process the rebates.
  - 8) Consequently, the State decided to use HMN to purchase the loans. NAHAC would then rebate to HMN the purchase price of any properties whose owners qualified to participate in the Home Retention Program. Other properties were subject to alternate means of disposal by HMN, i.e., foreclosure and resale on the open market.
  - 9) Since HMN had no funding with which to ramp-up for the launch of the Home Retention Program, NAHAC funds were used to pay certain HMN's start-up costs. Additionally, HMN temporarily used other NAHAC resources, including employees, office equipment and office space. All of the funds utilized by HMN came from a line item in NAHAC's budget for the development of "key business partners," and were later reimbursed by HMN, under the direction of Bruce Breslow. The line item was disclosed to UST with NAHAC's proposed budget, and described as being for "initial Home Retention Program activities."
  - 10) UST approved NAHAC's proposed budget without making any direct references to HMN.
  - 11) Based on UST's approval of the budget, along with directions given to Mirchandani during conference calls with UST, Mirchandani believed NAHAC's use of hardest hit funds to help HMN initiate the Home Retention Program was approved by UST.
- c. **Results of UST Audits of NAHAC and Mirchandani's Tenure as Chairman**
- 1) In January – February 2013, UST performed a compliance audit of NAHAC, covering the period from October 1, 2011 – December 31, 2012. The results of the audit were reported to NHD on February 28, 2013. Auditors identified 26 areas in which NAHAC was not in compliance with UST

guidelines and corrective actions were needed. The audit's findings jeopardized Nevada's ability to receive Hardest Hit Funds.

- 2) In response to the audit, Bruce Breslow appointed Mirchandani as the President and Chairman of NAHAC, the "Government Director," and directed him to bring the organization into compliance with UST regulations. (See FN 1).
- 3) During Mirchandani's tenure as Chairman, he enacted measures designed to address the issues raised in the UST audit and bring the organization into compliance with UST policies and directives.
- 4) In June 2013, UST performed a second compliance audit, covering the period from January 1, 2013 – May 31, 2013. In part due to Mirchandani's actions, auditors determined that 23 of the 26 concerns noted in the previous audit had been addressed and that progress was being made on the remaining 3 areas of concern.
- 5) In June 2014, HMN adopted new bylaws which included the formal organization of a Board of Directors. The bylaws required B&I's Director and Deputy Director to serve as Board members. Therefore, Bruce Breslow and Mirchandani were named as board members because of their respective positions at B&I.
- 6) At the July 2014 NAHAC board meeting (the first meeting after HMN's board was formally organized), Mirchandani disclosed his appointment to the Board of HMN, and temporarily removed himself as the Chairman of NAHAC, pending a resolution of any conflicts of interest that might arise from him serving on both boards. The intent was for Mirchandani to transition out of his role as Chairman over the course of a month, and for Kolleen Kelley to replace him as interim Chair at the August board meeting. Mirchandani continued to function as President of NAHAC, but did not vote on decisions being made by the Board.

7) On September 12, 2014, Mirchandani permanently resigned as President and Chairman of NAHAC.

d. **Mirchandani's use of NAHAC company credit card**

1) As the Chairman of the Board of NAHAC, Mirchandani was issued a company credit card to use for qualified business expenses.

2) On September 21, 2013, Mirchandani inadvertently used the NAHAC credit card to pay for a personal meal at Lucille's restaurant in the Red Rock Casino. Mirchandani subsequently discovered the error on his own, while reviewing credit card receipts, and promptly reimbursed NAHAC.

e. **Audits of NAHAC following Mirchandani's resignation**

1) In November 2014, UST performed an on-site review of NAHAC's compliance with the Participation Agreement between NHD and UST which allocated \$194,026,240 in federal monies to NAHAC's HHF program (the "Review").

2) The Review concluded that during Mirchandani's tenure as Chairman of NAHAC, HHF funds were improperly used to pay non-compliant administrative expenses, including HMN expenses and travel expenses, etc., relating to Mirchandani.

3) A subsequent Independent Accountant's Report on Applying Agreed-Upon Procedures (the "Independent Report"), issued on March 26, 2015, addresses UST's findings regarding non-compliant expenses related to Mirchandani.

4) The Independent Report found that all but one of the charges relating to Mirchandani's personal use were legitimate expenses.<sup>5</sup>

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<sup>5</sup> Only the inadvertent charge for a personal meal at Lucille's was found to be improper in the Independent Report.

## 5. **ETHICS COMPLAINT FILED BY MADELINE BRAVO PRITCHARD**

### a. **Allegations**

On September 22, 2014, Madeline Bravo Pritchard, acting in her capacity as the compliance officer for NAHAC, filed an RFO with the Ethics Commission, alleging that Mirchandani:

- 1) Failed to disclose to NAHAC and UST that he was an officer or board member of HMN;
- 2) Improperly used NAHAC funds to pay for HMN's startup costs;
- 3) Improperly used his NAHAC credit card to pay for HMN expenses and Mirchandani's personal expenses;
- 4) Improperly directed Ms. Bravo Pritchard and NAHAC's counsel, Stefani Sharp, not to involve themselves in the drafting of underwriting guidelines;
- 5) Failed to timely return his company credit card and bank token after resigning from NAHAC;
- 6) Traveled to attend a Core Logic conference at NAHAC's expense, after resigning as Chairman of the Board; and
- 7) Failed to disclose to the NAHAC Board that he was the lone signatory on a NAHAC bank account at Nevada State Bank that was not disclosed to the Board.

### b. **Ethics Investigation**

The ethics allegations raised by Ms. Bravo Pritchard were thoroughly investigated by the Ethics Commission, while contemporaneous investigations were undertaken by the Human Resource Division for the State of Nevada and the UST. The parties agree to the following stipulated facts as a result of the Ethic's investigation:

- 1) Mr. Mirchandani disclosed his role with HMN to NAHAC and UST, and he removed himself as the Chairman of NAHAC expressly to avoid any conflicts of interest that might arise from serving on both boards.



- 2) The use of NAHAC funds for HMN's startup costs was approved by the NAHAC'S Board and management, and the funds were subsequently reimbursed by HMN.
- 3) Each of the NAHAC credit card charges attributed to Mirchandani were legitimate charges for NAHAC business, except for Mirchandani's inadvertent use of the card on 9/21/13 to pay for a personal meal.
- 4) Mirchandani's instructions to Ms. Bravo Pritchard and Ms. Sharp appear to be proper based on their roles at NAHAC and the fact that NAHAC's underwriting manager had been previously directed to draft the guidelines.
- 5) Mirchandani timely returned his bank token to NAHAC and the credit card was subsequently cancelled.
- 6) Mirchandani's attendance at the Core Logic Conference occurred while he was still functioning as the President of NAHAC. Furthermore, the trip was approved by the Board. Nevertheless, upon learning Ms. Bravo Pritchard had questioned the propriety of his attendance, Mirchandani reimbursed NAHAC for all costs associated with the trip.
- 7) Mirchandani did not know about the bank account referenced in the RFO, and that there were no transactions on the account after he was appointed as Chairman. Furthermore, even if Mirchandani had known about the account, no disclosure on his part was required, because NAHAC should have received monthly bank statements regarding the account.

6. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Mirchandani and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in section 4 and 5 of this Stipulated Agreement are agreed to by the parties.<sup>6</sup> For purposes of the Conclusions of Law, the Commission accepts each of the stipulated facts as true and correct.

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<sup>6</sup> Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17), as amended by Assembly Bill 60, 78<sup>th</sup> Session of the Nevada State Legislature, effective May 27, 2015. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- b. Mirchandani held public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada.
- c. To promote integrity in public service, the Commission is concerned with situations involving public officers that create the appearance of impropriety and conflicts of interest, as well as actual impropriety and conflicts. (*See In re Maltman*, Comm'n Opinion No. 12-66A (2012)).
- d. The Commission through this Stipulated Agreement is clarifying the jurisdictional reach of the Commission regarding actions by public employees and public officers serving on non-profit entities as part of their public duties.
- e. Public employees and public officers may participate in the formation or management of non-profit entities in an official capacity.
- f. In order for public employees and public officers to serve a non-profit entities in their official capacity: (1) the governmental entity must create or be a participant in the nonprofit entity; (2) any public official or employee may be designated to serve on the nonprofit entity, but the governing body must formally designate the official or employee to represent the governmental entity; (3) the public official or employee must be formally instructed to represent the governmental entity and its interests; and (4) there must be no other conflict of interest on the part of the designated representative. *See Ohio 1991 Op. Att'y Gen. No. 91-007, at 2-37.*<sup>7</sup>
- g. NAHAC and HMN were created by State government (B&I).
- h. Government employees participated in the management of the non-profit entities and each entity's bylaws initially required such government employee participation.
- i. B&I formally designated Mirchandani to serve on the boards.
- j. NAHAC and HMN were supported by public funds that were to be used exclusively for public purposes.

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<sup>7</sup> These facts presented unique circumstances of first-impression to the Commission and the Nevada Commission on Ethics. The Commission finds the factors set forth in Ohio 1991 Op. Att'y Gen. No. 91-007 to be persuasive and adopts it, through issuance of this opinion, as Commission precedent.

- k. Mirchandani's service to the non-profit entities was performed in his official capacity as a public employee. (See Ohio Ethics Comm'n, Advisory Op. No. 94-001; *accord Ohio* 1996 Op. Att'y Gen. No. 96-007)<sup>8</sup>
- l. Therefore any actions by Mirchandani in his official capacity on NAHAC or HMN Boards are subject to the Ethics Laws.
- m. The Commission intends that this opinion provide clarification that public employees and public officers who serve on behalf of government sponsored non-profit entities are subject to the Ethics Law if they serve on the boards of directors of non-profit entities in their official capacity.
- n. The transfer of monies, people and equipment between the two non-profit entities was not for Mirchandani's private gain or benefit but rather based upon the change in policy for the use of federal funds by the UST and the State of Nevada's goal for homeowners to retain their homes.
- o. Mirchandani's use of the NAHAC credit card, with the exception of one private lunch charge, was for NAHAC<sup>9</sup> official purposes.
- p. Mirchandani did not received any private financial gain as the result of his conduct in this matter.
- q. Mirchandani has been diligent to cooperate with and to participate in the Commission's investigation and analysis, as well as the resolution process.
- r. Based upon the Stipulated Facts, the Commission finds that no violation of NRS Chapter 281, as alleged in the RFO 14-64C occurred, which specific alleged violations are NRS 281A.020(1), NRS 281A.400(2), NRS 281A.400(4), NRS 281A.400(5), NRS 281A.400(7), NRS 281A.400(9), and NRS 281A.420(1) and (3).
- s. This Stipulated Agreement depends on and applies only to the stipulated facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition

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<sup>8</sup> *Id.* This Stipulated Agreement does not opine on whether an appointed public official serving on a non-profit entity in his official capacity has a private or fiduciary interest in the non-profit entity. Those matters are left to applicable law.

<sup>9</sup> Under these specific circumstances, one accidental misuse of a credit card that was repaid upon its discovery does not equate to a violation of the Ethics Law.

to or differ from those contained herein may create a different resolution of this matter.

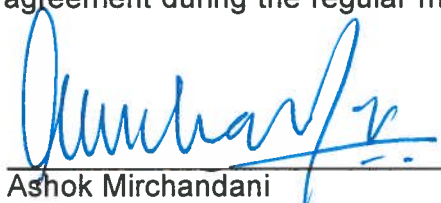
- t. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Mirchandani.

7. **WAIVER:**

- a. Mirchandani knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in this RFO (No. 14-64C) and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Mirchandani knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

8. **ACCEPTANCE:** We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on July 15, 2015.

DATED this 27 day of July, 2015.

  
\_\_\_\_\_  
Ashok Mirchandani

The above Stipulated Agreement is approved by:

DATED this 27 day of July, 2015.

FOR ASHOK MIRCHANDANI, Subject

  
\_\_\_\_\_  
John Wickett, Esq.  
Counsel for Subject

FOR YVONNE M. NEVAREZ-GOODSON,  
Executive Director, Commission on Ethics


DATED this 28 day of July, 2015.

  
\_\_\_\_\_  
Jill C. Davis, Esq.  
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 28<sup>TH</sup> day of July, 2015.

  
\_\_\_\_\_  
Tracy L. Chase, Esq.  
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.<sup>10</sup>

DATED July 15, 2015.

By: /s/ Paul H. Lamboley  
Paul H. Lamboley  
Chairman

By: /s/ Gregory J. Gale  
Gregory J. Gale  
Vice-Chairman

By: /s/ John C. Carpenter  
John C. Carpenter  
Commissioner

By: /s/ Magdalena Groover  
Magdalena Groover  
Commissioner

By: /s/ Timothy Cory  
Timothy Cory  
Commissioner

By: /s/ Cheryl A. Lau  
Cheryl A. Lau  
Commissioner

By: /s/ James M. Shaw  
James M. Shaw  
Commissioner

By: /s/ Keith A. Weaver  
Keith A. Weaver  
Commissioner

<sup>10</sup> Commissioner Gale disclosed that he had worked with Chan Lengsavath, Esq., one of Subject's attorneys, approximately 6 years ago in the audit division of the Gaming Control Board and this relationship would not affect his impartiality or the impartiality of a reasonable person in his position, and he would be participating in this matter.

Commissioner Weaver disclosed that in a private capacity he represented a health care provider adverse to John Wickett, Esq. attorney for the Subject, and asked Mr. Wickett if he had any concerns with his participation in this proceeding. Mr. Wickett confirmed that he had no concerns with the participation of Commissioner Weaver

Since both of the foregoing Commissioners participated in this matter and Mirchandani had waived his rights to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, no Commissioner was precluded from participating in this Stipulated Agreement under the provisions of the Ethics Laws including NRS 281A.220.