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**NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**

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| **CHIEF ADMINISTRATIVE OFFICER OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION OF THE DIVISION OF INDUSTRIAL RELATIONS OF THE DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA,**<br><br>**Complainant,**<br>**vs.**<br>**PONDEROSA HOTEL, INC.,**<br><br>**Respondent.** | **Docket No. RNO 19-1974** |

## DECISION OF THE BOARD AND FINAL ORDER

This matter came on for hearing before the Nevada Occupational Safety and Health Review Board on September 11, 2019. The deliberations and disposition of the matter also took place on the same day.

The hearing was conducted in furtherance of a notice duly provided according to law. Salli Ortiz, Esq., appeared on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations (the "State" or "OSHA"). Mark R. Thierman, Esq., Thierman Buck, LLP, 7287 Lakeside Drive, Reno, NV 89511, appeared on behalf of the Ponderosa Hotel, Inc., respondent. Kami Kesmiri, of the Ponderosa Hotel, Inc., (Ponderosa) also appeared on behalf of the respondent.

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The Board of Review members in attendance throughout this matter were Steve Ingersoll, Chairman, and Members Frank Milligan and Lance Semenko. There being three members of the Board present to hear this matter, with at least one member from management and one member from labor in attendance, a quorum was present to hear the matter and conduct the business of the Board.

Jurisdiction is not disputed and is conferred by NRS 618.315. Also, a complaint may be prosecuted which arises before or during an inspection of the employer's workplace. *See,* NRS 618.435(1). And, Nevada has adopted all Federal Occupational Safety and Health Standards which the Secretary of Labor has promulgated, modified or revoked and any amendments thereto, which are deemed the Nevada Occupational Safety and Health Standards. *See,* NRS 618.295(a).

The State's complaint sets forth the allegations of the Citations which the State claims constitute violations of the Nevada Revised Statutes and Regulations. At the outset of the hearing, the State offered for admission into evidence, Evidence Packet Number 1, from the Division of Industrial Relations, consisting of pages 1 through 172. The State also offered for admission into evidence, Evidence Packet Number 2, consisting of pages 173 and 174. Exhibits 1 and 2 were admitted into evidence without objection. Tr., p. 15;5-12. Respondent, the Ponderosa Hotel, Inc., offered no exhibits for admission into evidence, opting, instead, to defend by cross-examination of the State's witnesses and the testimony of the respondent's lone witness, Kamy Keshmari.

This matter came to the attention of State OSHA by reason of a governmental referral about alleged safety violations. The complaint consists of Citation 1, Items 1 through 4, each of which is a serious violation and carrying a fine of $5,000 reduced to $1,800, for each item. The complaint also included Citation 2, Items 1 through 5, each of which was classified as an "other" violation with no fine being assessed for each item of Citation 2.

Briefly, the Ponderosa is a former hotel and casino situated on South Virginia Street in Reno, Nevada. The property eventually evolved into a single room occupancy (SRO) form of affordable housing. The rent charged the tenants is $600 per month for a 400 square foot

(20'X20') premises, including a bathroom and kitchenette type facilities. Tr., pp. 40, 131, 132. These SROs constitute a part of the affordable housing stock serving the greater Reno-Sparks metropolitan area. Ownership claims it loses money on the rental units. The property economically survives because of the rent paid by a commercial tenant owned by the respondent and occupying the commercial space a part of the property. Tr., p. 43. Essentially, this business, respondent claims, subsidizes with its rent, the affordable housing use of the property. Absent this subsidy, market rate rent would have to be charged, a rate the tenants would be unable to afford. Tr., p. 43.

The two Citations, with nine sub-parts, revolve around the condition of the premises as opposed to any overt, unlawful conduct on the part of management or the employees. Citation 1, Item 1, alleges a serious violation of 29 CFR 1910.37(b)(1), providing that each exit route must be adequately lighted so that an employee with normal vision can see along the exit route.

Citation 1, Item 2, alleges a serious violation of 29 CFR 1910.212(a)(1), providing that one or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, in-going nip points, rotating parts, flying chips and sparks. This charge concerned an allegation that the elevator sheaves and cables were not guarded on top of the mezzanine exposing employees to the rotating parts and in-going nip points of the equipment on the sixth floor of the boiler room.

Citation 1, Item 3, alleges a serious violation of 29 CFR 1910.305(b)(2)(i), requiring that all pull boxes, junctions boxes, and fittings shall be provided with covers identified for the purpose. It was alleged that throughout the hotel, exposed electrical wiring and missing cover plates were observed.

Citation 1, Item 4, alleges a serious violation of 29 CFR 1910.305(d)(2), providing that panelboards shall be mounted in cabinets, cutout boxes, or enclosures designed for that purpose and shall be dead front. It is alleged here that throughout the hotel, panel boards were missing the dead front.

Citation 2, Item 1, alleged an "other" violation of 29 CFR 1910.157(c)(1), which provides that the employer shall provide portable fire extinguishers and shall mount, locate and identify

them so that they are readily accessible to employees without subjecting the employees to possible injury. It was alleged that throughout the hotel the fire extinguishers were observed not mounted or identified in multiple instances.

Citation 2, Item 2, alleged an "other" violation of 29 CFR 1910.303(b)(2), providing that listed or labeled equipment shall be installed and used in accordance with any instructions included in the listing or labeling. Here, in the hotel lobby convenience store, two freezers were plugged into a flexible cord with a pre-punched knockout box that was not used and installed per the manufacturer's instructions.

Citation 2, Item 3, alleged an "other" violation of 29 CFR 1910.303(g)(1), requiring that sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment. It was alleged that throughout the hotel, 120-240 volt panelboards were observed without sufficient access and working space.

Citation 2, Item 4, alleges an "other" violation of 29 CFR 1910.305(g)(1)(iv)(A), which provided that unless specifically permitted otherwise in paragraph (g)(1)(ii) of this section, flexible cords and cables may not be used as a substitute for the fixed wiring of a structure. It was alleged that extension cords were used as a substitute for fixed wiring in multiple instances.

Citation 2, Item 5, alleges an "other" violation of 29 CFR 1910.305(g)(1)(iv)(B), which provides that unless specifically permitted otherwise in paragraph (g)(1)(ii) of this section, flexible cords and cables may not be used where they run through holes in walls, ceiling or floors. It was alleged here that a fan mounted above the door of the entrance to the hotel lobby was observed with a flexible cord running through the false ceiling tile.

Pursuant to NAC 618.788, the burden throughout is upon the State or complainant to prove each element of the Citations. That is, the State must prove the *prima facie* case which attaches to each Citation. This means the State must show for each Citation: (1) the applicability of the OSHA regulation to the matter at hand; (2) non-compliance with the OSHA regulation; (3) employee exposure to the hazardous conditions, the subject of the OSHA regulation; and, (4) the employer's actual or constructive knowledge of the wrongful conduct. *See, Original Roofing*

*Company, LLC. v. Chief of Administrative Officer of the Occupational Safety and Health Administration,* 442 P.3d 146, 149 (2019). These factors apply, whether the State has alleged a serious violation or a violation of a less than serious or "other" nature. *Brennan v. Occupational Safety and Health Review Com'n.*, 511 F. 2d 1139, 1143 (9th Cir., 1975).

At the outset of the hearing, the parties, by and through counsel, stipulated that a *prima facie* case exists for all claims. Each Citation, therefore, required no additional proof of liability. According to Ms. Ortiz, counsel for the State:

> The parties have had discussions, and we are, at this point stipulating to the facts in this case as supported by the record. We're stipulating the citations are valid, and they are properly supported. We have stipulated to abatement, which is going to include a monitoring inspection to allow them [respondent] time to abate properly.
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> And the only contested matter here is the penalty amount. So that is what we are hearing testimony on, and that is what we'll be arguing over. Tr., p. 10;2-11.

Board counsel then inquired of counsel for both parties: "The contents of the complaint is (sic) stipulated as true. There is no dispute over liability, on (sic)[only] the amount of damages?" Tr., p. 11;10-12. To the question, Ms. Ortiz answered: "Correct." Mr. Theirman then responded for the respondent with the answer, "Yes" when asked if that was how he understood the stipulations. Tr., p. 11;10-15.

Citation 1, Items 1 through 4 and Citation 2, Items 1 through 5 are deemed proved and sustained. A *prima facie* case for each Citation is deemed established. Liability is accordingly deemed established for each Citation and Item thereunder. The only matter left for resolution is the amount of the penalty or assessment, in each instance. In that regard, as indicated, there are no penalties associated with Citation 2, Items 1 through 5. With the stipulation on the *prima facie* case, no further proof of Citation 2, Items 1 through 5, is necessary.

## FINDINGS OF FACT

This matter came to the attention of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada, Complainant (State or State OSHA) on June 25, 2019, by virtue of a governmental referral. Exhibit 1, pp. 3, 4. The respondent, the Ponderosa Hotel, Inc., (Ponderosa) is a

domestic corporation (limited liability corporation, Tr., p. 39;7-9), Exhibit 1, pp. 1, 2, located at 515 So. Virginia Street, Reno, Nevada. Exhibit 1, p. 1. While labeled a "hotel," the Ponderosa is a part of the affordable housing stock of the greater Reno-Sparks area, serving as a single room occupancy apartment of 400 square feet, for which rent of $600 per month is charged. Tr., p. 40;8.

The allegations of the State's complaint involve the conditions of the property rather than overt conduct of personnel. The parties have, however, by stipulation simplified the proceedings. They have stipulated and agreed that the contents of the complaint are true, Tr., p. 11;10-15, that the Citations of the complaint are valid and properly supported and that the parties have stipulated to abatement. Tr., p. 10;2-11. The parties have further stipulated that the only remaining contested matter is the amount of the penalty. Tr., p. 10;10-12.

By reason, then, of the stipulations of the parties that liability is established, no further analysis of Citation 2, Items 1 through 5 is needed. A *prima facie* case for Citation 2, Items 1-5 has been made out and no penalty phase analysis is required because no fines are being assessed as each Item of Citation 2 is deemed a non-serious offense warranting no gravity-based penalty. *See,* Complaint, Exhibit 1, pp. 86-97, Exhibit 1, pp. 50-64. A *prima facie* case must be proven, even for a less than serious offense but that is resolved by the stipulation that a *prima facie* case has been made out and the Ponderosa is liable. Since there are no fines or penalties assessed for Citation 2, Items 1-5, Tr., p. 26;12-14, and the Ponderosa agrees it is liable for each Item, nothing more is required to sustain Citation 2, Items 1-5. Citation 2 is sustained in its entirety.

To the extent any of the Conclusions of Law, below, constitute Findings of Fact or a mixed Findings of Fact and Conclusion of law, they are incorporated herein.

**CONCLUSIONS OF LAW**

To the extent any of the Findings of Fact constitute Conclusions of Law or mixed Findings of Fact and Conclusions of Law, they are incorporated herein. By reason of the parties' stipulations at the outset of the hearing that the contents of the complaint are true, there is no dispute over liability as pled by the State, and that the Citations in the complaint are valid and properly supported, proof of the elements of a *prima facie* case for Citations 1 and 2 and each

subpart is deemed to be established. Further, liability of the Ponderosa for each Citation and sub-part is deemed established, with only damage amounts left to be proven. As no damages are assessed for any of Citation 2, Items 1-5, no further proof is required and Citation 2, Items 1-5, is sustained. Except for proof of damages, the liability phase of Citation 1, Items 1-4, is sustained as the Ponderosa is deemed liable. Tr., p. 10;2-11. According to the Ponderosa: "...right now, we're in the healing process, and the fixing process, not the blaming process." Tr., pp. 14;24, 25;1-2.

By reason of the stipulations of the parties, only the penalty phase is left in dispute for Citation 1, Items 1-4. The Board is of the opinion, it must give due consideration to four penalty phase factors when assessing penalties. They are: "(1) the size of the employer's business; (2) the gravity of the violation; (3), the employer's good faith; and (4) the employer's history of OSHA violations." *Secretary of Labor v. Rawson Contractors, Inc.*, OSHRC Docket No. 99-0018. *See also, J.A. Jones Constr. Co.*, 15 BNA OSHC 2201, 2213-14, CCH OSHD ¶ 41,033 (No. 87-2059, 1993).

The record is clear, the State applied all four of these criterion to each of the four Items to Citation 1, which is the only Citation deemed serious and for which penalties were assessed. Each of the five sub-parts to Citation 2, were deemed less than serious or "other" violations with no penalties assessed. *See,* the Complaint, Exhibit 1, pp. 86-97, and the work sheets for all of the violations, including Items 1 through 4 of Citation 1, Exhibit 1, pp., 36-64. *See also*, the testimony of Jared Mitchell, a State OSHA safety supervisor, Tr., p. 16; and before that, a State OSHA, a safety inspector. As the safety supervisor for this matter, he had the final say on the penalties to be assessed. Tr., p. 18. That is, he reviewed and approved the work sheets developed by the investigator for each charge and fines levied or rejected in this matter. Tr., p. 18. The work sheets show the classification assigned each Citation and the calculations and factors considered to arrive at the penalty being assessed or rejected. Tr., p. 18.

For each sub-part of Citation 1, the classification was serious because it was determined that the threat of harm was severe. Tr., p. 19. Exhibit 1, pp., 36-64. This finding set the tone to find the gravity based fine to be levied in response to the serious classification. Specifically, for

Citation 1, Item 1, the potential harm was deemed serious because in the event of an accident or fire where employees are trying to escape, if they can't see due to inadequate lighting, they could not escape, would remain trapped and could possibly die. Tr., p. 19.

For Citation 1, Item 1, the State then considered the "probability" element. Probability is the likelihood of an accident happening. Tr., pp. 19,20. For Citation 1, Item 1, the State determined the likelihood was "lesser" because so few employees would be impacted. That is to say, the number of employees in the immediate area of the threat posed by the conditions, not the total number of employees at the Ponderosa, control the probability factor. Tr., p. 20. The probability factor was clearly considered.

The State also considered the gravity of the violation. The gravity of the offense is a function of the severity and probability elements. It is an element generated by computer. In this case, for Citation 1, Item 1, a high degree of severity and a lesser degree of probability generated a moderate classification. Tr., p. 20.

The State also considered for Citation 1, Item 1, the fourth element, the "gravity-based" penalty. Tr., p. 20. This is also computer generated. Accounting for each of these factors, the computer yielded a gravity based penalty of $5,000 for Citation 1, Item 1. Tr., p. 20.

The gravity-based penalty is not, however, the end of the analysis. The State also considers mitigating factors. The analysis of the fine to be assessed takes into account the size of the company. Here, the State concluded that the Ponderosa employed 11 persons at the time. Exhibit 1, p. 3. For employers of less than 20 employees, a 60% discount on the fine levied is given. Tr., p. 21. Because the Ponderosa, the State found, employed less than 20 individuals, the 60% discount was given. Tr., p. 21.

The State also mitigates for a clean historical record. The Ponderosa had no prior violations and according to the State, a 10% discount applies for its clean prior history. The State, therefore, the Board finds, considered for Citation 1, Item 1, all four of the factors required of it to consider in the penalty phase. The Board finds and concludes that the factors were correctly applied to Citation 1, Item 1, and as a result, the fine levied was reduced from the gravity-based amount of $5,000 to $1,800 after the gravity based penalty was calculated for

Citation 1, Item 1. Tr., p. 21.

The Board also finds and concludes that the State completed the identical analysis it applied to Citation 1, Item 1, to Citation 1, Items 2 though 4. That is, the State applied each of the four penalty-phase elements to each of the other three Items to Citation 1. The State, then, for each, applied the mitigating factors for prior history and size of the company. The end result in each case was a serious violation yielding a gravity-based fine of $5,000 which, when the mitigating factors were applied, yielded a penalty of $1,800 for Citation 1, Items 2 through 4.

The Board also finds and concludes, here, that the State properly applied the four penalty-based factors to Citation 1, Items 2-4. Similarly, the Board correctly applied all the available mitigating factors, properly yielding fines in each instance of $1,800, for Citations 2-4. *See,* Exhibit 1, Citation 1, Item 2, p. 39, Exhibit 1,Citation 1, Item 3, p. 42, and Exhibit 1, Citation 1, Item 4, p. 46.

The State also considered Nevada's version of good faith and applied it to the Ponderosa as another source of discount to the gravity-based fine. In Nevada, good faith is a function of whether the employer has an adequate safety plan. Employers with 11 or fewer employees are not required to have a safety plan. Tr., p. 35;13-20. Employers with 11 or fewer employees that do have such a plan may be given a discount against the fine that would otherwise be assessed. This is the extent of the good faith discount. Unfortunately, for the Ponderosa, it never presented a qualified safety plan. This element was not, therefore, ignored. Ponderosa was simply not eligible for a good faith discount as it was beyond dispute, the Ponderosa had no safety plan that would entitle it to a good faith credit. Tr., p. 36;6-12.

The Ponderosa offered little in defense of itself. There was, however, an actual dispute about the number of persons the Ponderosa employed. The State found and concluded that the Ponderosa Hotel had 14 employee at the work site. *See*, Exhibit 1, p. 5. The number of 14 employees at the work site was found over the signature of John Hostetler, the employer representative and a manager at the opening conference to the investigation of this claim. Exhibit 1, p. 5. True, the Ponderosa claimed it employed only 6-8 employees. Tr., p. 42. The Ponderosa's problem, here, however is that its defense is based only upon the naked claim it

employed 6 or 8 employees. It produced no payroll records to support the number of employees to which it lays claim. The Ponderosa provided no proof it was unable or incapable of producing payroll records to support the number of employees it claimed at the work site. The Board, therefore, draws the negative inference that since the Ponderosa could have produced payroll records but did not, their production would not have supported the Ponderosa's claim it employed less than 11 employees at the Hotel. *See, Bass-Davis v. Bass,* 172 Nev. 442, 448 (2006); *Turner v. Hudson Transit Lines*, 142 F.R.D. 68, 75 (S.D.N.Y., 1991). Receiving a 60% discount for employing less than 20 employees and receiving a 10% discount for having with OSHA a clean history, the Ponderosa received all of the discounts from the $5,000 penalty taking it down to $1,800 for a serious violation to which it was entitled. The State did not short change the discounts given to the Ponderosa. The Ponderosa was given this 60% discount which, when joined with the 10% discount for a clean record, reduced the fine for each Serious Citation, Citations 1-4, to $1800, the maximum allowable for these two factors.

The dispute over the number of employees might have come into play on the good faith item, where small employers, who are not required to have a qualifying safety plan, nevertheless have such a plan. If they have such a plan and only employ under 11 employees, they are entitled to up to an additional 25% discount. Ponderosa, however, never produced a qualifying safety plan in the first place. Therefore, even if the Ponderosa in fact employed only 6 employees, it was of no moment because the Ponderosa had no safety plan in the first place. None was supplied the State. Tr., p. 36;6-12.

It is true, the number of employees comes in to play when assessing the size of the penalty associated with a particular citation. *See*, Exhibit 1, pp. 36-64. *See also*, Tr., p. 27. The higher the number of employees, the greater the fine to be levied because there are more employees exposed to the presenting condition. The number of employees is not, however, the total of employees at the job site. Rather, the number entails only that number of employees directly involved with or impacted by the specific condition or incident for which the penalty is being assessed. Tr., p. 28; 4-8. For this reason, the dispute over the total number of employees was of no moment.

Ponderosa also questioned Citation 1, Item 2, the failure to provide guarding shields on the elevator sheath and elevator cables on the sixth floor in the boiler room. Tr., p. 28;9-19. The Ponderosa argued there should be no fine, because the elevator was strictly off limits. No one is supposed to be there and if no one is there, there could be no violation. Tr., pp. 28-29.

The problem is, according to the State, during the investigation and interviews, it was verified that two employees accessed the area. Tr., p. 28;9-19. In addition, if the area was off limits, the Ponderosa produced no memo or policy making it off limits and provided no evidence of training that made it clear the area was off-limits and personnel were subject to termination should someone enter the area. This defense is reminiscent of the rogue employee defense. It is, however, clearly lacking, given the absence of proof of training in the policy barring personnel from the area, no showing of the policy, itself, no proof of training in the policy and the like. *See, Sanderson Farms, Inc. v. OSHRC,* 348 F. App'x. 53, 57 (5th Cir. 2009).

The Ponderosa raises one final defense that doesn't fit in any traditional theory for an affirmative defense. Ponderosa claims, it is being victimized and harassed with this complaint in retaliation arising out of a dispute between the Ponderosa, on the one hand, and Karl Hall, City of Reno Attorney and the City of Reno, on the other. The claim goes, the Ponderosa is being excessively investigated and charged because Karl Hall and Reno want the Ponderosa persecuted because of the Ponderosa's other business. Consequently, the fines levied, are impacted by being excessive.

First, the Board finds and concludes that there is not a scintilla of evidence in the record that any Board member is aware of the alleged feud between the Ponderosa and Karl Hall and the City of Reno. Absent this knowledge, there could be no claim, the Board, itself, has joined in the alleged retaliation. *See, Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 798 (9th Cir. 1982).

Further, there is no evidence brought forward linking State OSHA with Karl Hall and the City, to pursue the Ponderosa, on behalf of Mr. Hall and the City. The Board finds and concludes that no aspect of this case was impacted in any way by this alleged dispute between the Ponderosa and the City Attorney, Karl Hall, the City of Reno.

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The Board finds and concludes as a matter of law that by stipulation, for each Citation and each Citation Item, a *prima facie* case has been established. Ponderosa liability has been proven. And, the Board finds and concludes, further, the State considered all four of the penalty phase factors which give rise to the fines as levied herein and properly applied them. The evidence is clearly present to affirm each fine of $1,800 levied for Citation 1, Items 1 through 4. The defenses mounted to challenge the fines levied are unavailing. The dispute over whether the Ponderosa employed 6, 8, or the 11 claimed by the State has no significance in the determination of the fines levied. Citation 1, Items 1 through 4, is sustained. Abatement is hereby ordered.

As for Citation 2, Items 1 though 5, no fines were assessed. The *prima facie* case for each being conceded, no challenge to Citation 2 was meaningfully mounted and Citation 2, Items 1 through 5, is sustained. Abatement is hereby ordered.

Accordingly, it was, therefore, moved by Frank Milligan, seconded by Lance Semenko, in RNO 19-1974 to accept the stipulation that the respondent, Ponderosa Hotel, Inc., was guilty as charged for each of the citations set out in the complaint. Mr. Milligan further moved the fines levied for Citations 1, Items 1 through 4, in the amount of $1,800 for each, or a total levy of $7,200, were correct and should be sustained. The motion was adopted on a vote of 3-0. The charges and fines as levied were sustained and affirmed by the Board and the Citations against the Ponderosa Hotel, Inc., were confirmed as charged.

**DECISION AND FINAL ORDER OF THE BOARD**

Thus, the Board finds and concludes that Citation 1, Items 1-4 and Citation 2, Items 1-5 are affirmed, including the fines levied of $1,800 each as well as all abatements required.

ACCORDINGLY, it is HEREBY ORDERED that Citation 1, Item 1, the penalty and abatement are sustained;

That Citation 1, Item 2, the penalty and abatement are affirmed;

That Citation 1, Item 3, the penalty and abatement are affirmed; and

That Citation 1, Item 4, the penalty and abatement are affirmed.

It is FURTHER ORDERED that for Citation 2, Items 1 through 5, though no fines were assessed, as the *prima facie* case for each was conceded and no challenge to Citation 2 was

meaningfully mounted, Citation 2, Items 1 through 5, are sustained and abatement is hereby ordered.

**APPROVAL OF DECISION AS FINAL ORDER OF THE BOARD**

On June 9, 2021, the Board convened to consider adoption of this Decision, as written or as modified by the Board, as the Decision and Final Order of the Board.

Those present and eligible to vote on this question consisted of three of the five current members of the Board, to-wit, Chairman Ingersoll, Secretary Weber and Member Mulligan. Board Spielberg and Macias were ineligible to vote on this matter as neither were present for the hearing on the merits of this case and had not reviewed the record giving rise to the decision. Secretary Rodd Weber has reviewed the entire record that was before the Board on this matter and is, therefore, also eligible to consider whether this decision tracks the Board's disposition of this matter according to NRS 233B.124. A quorum was, therefore, present and eligible to vote on whether this draft decision accurately reflected the Board's rational and action taken by the Board.

Accordingly, it was moved by Rodd Weber, seconded by Frank Milligan, to approve the draft decision prepared by Board Counsel as it accurately reflected the action taken by the Board. The Motion was adopted. Vote: 3-0-2 (Macias and Spielberg abstaining).

The Board authorizes the Board Chairman or his Designee, after any grammatical or typographical errors are corrected, to execute, without further Board review, this Decision on behalf of the Nevada Occupational Safety and Health Review Board.

Therefore, on June 9, 2021, this Decision is hereby adopted and approved, thereby constituting the Board's Findings of Fact, Conclusions of Law, Decision of the Board and the Final Order of the Board of Review.

DATED this 18th day of June, 2021.

NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

By: _____
Steve Ingersoll, Chairman

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached document, *Decision of the Board and Final Order*, on those parties identified below by placing an original or true copy thereof in a sealed envelope, certified mail/return receipt requested, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:

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Dated this 18th day of June, 2021.

Employee of
The Law Offices of Charles R. Zeh, Esq.

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