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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, **Complainant,** **vs.** **GRAMERCY BAKERY, LLC** **Respondent.**	**Docket No. LV 24-2261** **Inspection No. 1696104**

FILED
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O S H REVIEW BOARD
BY

SUA SPONTE AMENDED DECISION OF THE BOARD, FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER DUE TO CLERICAL ERRORS

On September 6, 2023, the State conducted a Programed Planned inspection of the Gramercy Bakery, LLC (Gramercy or the Respondent) facility located at 7175 Belcastro Street, Unit 101, Las Vegas, Nevada. *See,* State's Exhibit 1, p. C5. Gramercy is a food manufacturing facility that makes and packages cookies and bars. *See,* State's Exhibit 1, p. C23. The Respondent's facility consists of administrative offices, a warehouse area, and a production and packaging area. *See, Id.* During the inspection, certain deficiencies were noted, resulting in the issuance of five citations. *See,* State's Exhibit 1, pp. C23-C24.

The matter came on for hearing before the Nevada Occupational Safety and Health Board of Review (Board) on November 14, 2024, in furtherance of a notice, duly provided according to law. *See,* Notice of Hearing dated October 4, 2024 In attendance at the November 14, 2024,[1] hearing were Board Chairman, Jorge Macias, Board Secretary, William Spielberg, Board Member, Tyson Hollis, Board Member, Gled Bautista and Board Member Scott Fullerton.

[1] The physical copy of the transcript is improperly dated August 14, 2024.

See, Tr., p. 2;9-20.[2] There being five members of the Board present to hear this matter with at least one member representing management and one member representing labor, in attendance, a quorum was present to hear the matter and conduct the business of the Board.

Charles R. Zeh, Esq., The law Offices of Charles R. Zeh, Esq., was present as legal counsel to the Board. *See,* Tr., p. 4;23-25. Salli Ortiz, Esq., appeared on behalf of the Complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations (the State). *See,* Tr., p. 1. James Minidis, a lay person representative, appeared on behalf of Gramercy. *See,* Tr., pp. 4;3-12, 9;5-10.

On November 27, 2023, a Citation and Notification of Penalty (Citation) was issued to the Respondent alleging violations of federal regulations.

Citation 1, Item 1, charged a serious violation of 29 CFR 1910.28(b)(3)(i), as stated below:

> Holes. The employer must ensure each employee is protected from falling through any hole (including skylights) that is 4 feet (1.2 m) or more above a lower level by one or more of the following: Covers, guardrail systems, travel restraint systems, or personal fall arrest systems.
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> The employer did not ensure that each employee was protected from falling through holes (including skylights) that are 4 feet or more above a lower level by covers, guardrail systems, travel restraint systems, or personal fall arrest systems. An employee performed preventive maintenance on the HVAC systems located on the roof up to four times a year and escorted vendors onto the roof as needed. There were five skylights on the roof that were without covers, guardrail systems, or travel restraint systems, and the employee did not utilize a personal fall arrest system when performing work on the roof. The employee worked approximately 15 to 20 feet from a skylight and was potentially exposed to serious physical injury, such as fractures, paralysis, or death, in the event of a fall of approximately 34 feet 9 inches to the next lower level. *See,* State's Exhibit 1, p. C38.

Citation 1, Item 2, alleged a serious violation of 29 CFR 1910.28(b)(iii), as stated below:

> When work is performed 15 feet (4.6 m) or more from the roof edge, the employer must: Protect each employee from falling by a guardrail system, safety net system, travel restraint system, or personal fall arrest system or a designated area. The employer is not required to provide any fall protection, provided the work is both infrequent and temporary; and implement and enforce a work rule prohibiting employees from going within 15 feet (4.6 m) of the roof edge without using fall protection in accordance with paragraphs of this section.

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[2]"Tr." stands for the transcript of the hearing conducted on November 14, 2024, followed by the page and line number where the matter cited can be found.

The employer did not ensure that each employee working on the roof was protected from falling from the roof edge by a guardrail system, safety net system, travel restraint system, or personal fall arrest system or a designated area. Additionally, the employer did not implement and enforce a work rule prohibiting employees from going within 15 feet of the roof edge without using fall protection. The roof was surrounded by a parapet wall that was approximately 34 inches tall at its highest point and shortened in height as it sloped towards the peak of the roof. An employee accessed the roof to perform preventive maintenance on the HVAC system and worked approximately 52 feet from the roof edge. The employee was potentially exposed to serious physical injury, such as fractures, paralysis, or death in the event of a fall of approximately 34 feet 9 inches to the next lower level. *See*, State's Exhibit 1, p. C42.

Citation 1, Item 3, alleged a serious violation of 29 CFR 1910.219(f)(3), as stated below:

Sprockets and chains. All sprocket wheels and chains shall be enclosed unless they are more than seven (7) feet above the floor or platform. Where the drive extends over other machine or working areas, protection against falling shall be provided. This subparagraph does not apply to manually operated sprockets.

The employer did not ensure that all sprocket wheels were enclosed. Employees utilized a conveyor style pack wrapper machine (make: Bosch, model: Pack Wrapper Infeed Conv, serial #: 12-3100) that film wrapped plastic cookie trays. Located on the infeed side, an opening was cut out on the top of the table of the machine, and the sprocket was approximately 3 feet above the floor. Employees reached directly over the hole to grab plastic cookie trays before placing them onto the conveyor and filling them with cookies. Employees were potentially exposed to serious physical injuries such as fractures and amputations in the event they came into contact with the exposed sprocket. *See*, State's Exhibit 1, p. C46.

Citation 2, Item 1, alleged a regulatory violation of 29 CFR 1910.178(a)(4), as stated below:

Modifications and additions which affect capacity and safe operation shall not be performed by the customer or user without manufacturers prior written approval. Capacity, operation, and maintenance instruction plates, tags, or decals shall be changed accordingly.

The employer did not ensure that modifications and additions which affect capacity and safe operation were not performed without manufacturer's prior written approval. Capacity, operation, and maintenance instruction plates, tags, or decals were not changed accordingly. Warehouse employees utilized a reach truck forklift (make: Crown, model: RM 6000) in conjunction with a work platform (make/model: unknown) to count inventory and reorganize boxes on the storage racks. The addition potentially affected the capacity and safe operation of the forklift, and the employer did not obtain the manufacturer's prior written approval. *See*, State's Exhibit 1, p. C50.

Citation 2, Item 2, alleged a regulatory violation of 29 CFR 1910.305(g)(1)(iv)(B), as stated below:

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> Unless specifically permitted otherwise in paragraph (sic) of this section, flexible cords and cables may not be used where run through holes in walls, ceilings, or floors.
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> The employer did not ensure that a flexible cord was not run through a hole in the wall. In the warehouse, an LED insect light trap (make: Genus, model: Fli LED) was powered by a 3-prong (make, model: unknown) flex cord that was run through the wall and plugged directly into a receptacle located inside the warehouse office. *See,* State's Exhibit 1, p. C54.

On December 29, 2023, the Respondent sent its notice of intent to contest the Citation. *See,* State's Exhibit 1, pp. C72-C78. On January 17, 2024, the State served its Complaint on the Respondent. *See,* State's Exhibit 1, pp. C79-C86. On or about February 2, 2024, Mr. Minidis answered the Complaint for the Respondent. *See,* State's Exhibit 1, pp. C87-C164.

At the hearing on the matter, the State offered for admission its Exhibits, numbered 1 and 2, consisting of a total of 244 pages. *See,* Tr., p. 9;11-14. The Respondent did not object to the admission of the State's Exhibits. *See, Id.* The State's Exhibits were subsequently admitted into evidence. *See,* Tr., p. 9;20-24.

The Respondent offered for admission 13 documents consisting of approximately 80 pages. *See,* Tr., p. 10;9-23. The Respondent's documents had not been supplied to the Board through Mr. Zeh's office. *See Id.* The State objected to the admission of all of the Respondent's exhibits because they were being offered at the last minute and because they were not numbered. *See,* Tr., p. 11;1-12. The Board considered the option taking a break to allow the State to review the Respondent's documents or continuing the matter for a later date. *See,* Tr., pp. 11;24-25, 12;1-12. In order to resolve this difficulty, the Respondent withdrew its proffered exhibits. *See,* Tr., pp. 12;8-25, 13;1-17. Jurisdiction in this matter has been conferred in accordance with Chapter 618 of the Nevada Revised Statutes.

Before any witnesses were called, Mr. Minidis confirmed that Gramercy attended the hearing only to request a reduction in the assessed penalties. *See,* Tr., pp. 54;12-24, 55;1-10. Gramercy would not be denying any of the substantive allegations or positing any affirmative defenses. *See,* Tr., p. 12;21-24. As there was no argument regarding the substantive allegations, the State limited the testimony it offered to a single witness, OSHA investigator Baocanlia Merrill. *See,* Tr., pp. 22-47. Ms. Merrill testified to the assessment of the penalties and their

calculations. *See, Id.* Gramercy presented the testimony of its President, Mr. Minidis. *See,* Tr., pp. 48-55.

FINDINGS OF FACT

Gramercy is a family-owned bakery which was started by Mr. Minidis' spouse and his mother-in-law. *See,* Tr., p. 20;14-18. Gramercy is a contract manufacturer of cookies and bars for third parties. *See,* Tr., p. 19;8-9. As the Respondent produces food for human consumption, it is regulated by multiple entities, including the FDA. *See,* Tr., pp. 20;10-12, 57;17-19. During his time with Gramercy, Mr. Minidis had worked with some of these regulatory bodies to improve safety. *See,* Tr., p. 19;14-15. This inspection was Gramercy's first encounter with OSHA. *See,* Tr., p. 19;15-18.

On September 6, 2023, Ms. Merrill conducted the Planned Program inspection. *See,* Tr., p. 23;8-10. A Planned Program inspection is an inspection of an employer's facility based upon industries which OSHA views as being particularly hazardous. This was part of the State's local emphasis program. *See,* Tr., p. 23;11-23.

During the inspection Ms. Merrill noted, *inter alia,* the lack of fall protective devices and/or equipment around the parapet wall on the building's roof and around the skylights. *See,* State's Exhibit 1, pp. C23, C165-C167, C176-C190. Further, she noted an exposed sprocket on one of the production tables. *See,* State's Exhibit 1, pp. C23, C24, C192-C197.

Ms. Merrill conducted a few employee interviews on September 6, 2023. Relevant to this matter was her interview with Cris Nava. *See,* State's Exhibit 1, p. C33. Therein, Mr. Nava stated that he occasionally accompanies third party contractors onto the facility's roof. *See, Id.* In these actions, he reported being within 40 feet of the hatch and 15-20 feet from one of the skylights. *See, Id.* Mr. Nava stated that he did not know whether he was required to wear fall protective equipment while on the roof. *See Id.*

On September 14, 2023, Ms. Merrill returned to the Gramercy facility to conduct interviews and photograph the facilities. On her return, she noted that the exposed sprocket on the production table had been covered, *i.e.*, this hazard had been abated. *See,* State's Exhibit 1, pp. C26, C198-C200.

On October 9, 2023, Ms. Merrill met with Mr. Minidis and one other company representative to conduct the Closing Conference. At this time, several deficiencies were discussed with the Respondent's representatives. State's Exhibit 1, p. C58. At the conclusion of the conference the Respondent was informed that a citation would be issued. *See,* State's Exhibit 1, p. C25. Further, the Respondent was informed that it must provide proof of its abatement(s) and that Safety Consultant Training Section assistance would be available after the final order on the citation was issued. *See, Id.*

During the Closing Conference, Mr. Minidis stated that the Respondent had instituted a policy forbidding employees, including Mr. Nava, from going onto the roof. *See,* Tr., p. 41;9-25, 42;1-11. However, Mr. Minidis also indicated that the Respondent was considering multiple options to protect its employees from these hazards. *See, Id.*

On November 27, 2023, the Citation and Notice of Penalty (Citation) was served on Gramercy. *See,* State's Exhibit 1, pp. C58-C71. Therein, the Respondent was notified that the total proposed penalty was $18,927 for the serious violations set forth in Citation 1, Items 1, 2 and 3. *See,* State's Exhibit 1, p. C71.

The Citation provided information regarding procedural issues applicable to litigating with OSHA. Specifically, the Respondent was informed that it must be abate the cited hazards within thirty calendar days from its receipt of the Citation, unless it provides Notice of Contest. *See,* State's Exhibit 1, p. C59. For each item the Respondent did not contest, it must use Abatement Certification to prove its correction of the deficiency. *See,* State's Exhibit 1, p. C60. A form to use for the Abatement Certification was provided as a page of the Citation. *See,* State's Exhibit 1, p. C65. In addition to the Abatement Certification, the Respondent had to provide documentary evidence of the abatement. *See,* State's Exhibit 1, p. C60.

The Citation also provided the Respondent with information regarding the ability to engage in an Informal Conference. *See,* State's Exhibit 1, p. C61. During the Informal Conference the Respondent would be able to:

- Resolve disputed citation(s) and penalty(ies) (thereby eliminating the need for the more formal procedures associated with litigation before the Review Board);

- Present any evidence, or views, which you believe would support an adjustment to the citation(s) and (or) penalty(ies);
- Negotiate and enter into an Informal Settlement Agreement; and
- Obtain answers to any other questions you may have. *See,* State's Exhibit 1, p. C61.

The Citation further informed the Respondent that there was a time limit for the occurrence of an Informal Conference.

> If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, **you must take care to schedule it early enough to allow time to contest after the informal conference**, should you decide to do so. *See,* State's Exhibit 1, p. C61 (Emphasis added).

The Citation informed the Respondent that after filing a Notice of Contest, it is officially in litigation. *See,* State's Exhibit 1, p. C62. Any offers the Respondent desired to make, need to be made to the State's attorney. *See, Id.*

On January 2, 2024, the State received a document which the Respondent entitled, "Gramercy Bakery's Response to OSHA Citation and Penalty".[3] *See,* State's Exhibit 1, pp. C72-C75. The Respondent's notice claimed that it had corrected all of the serious violations upon which the penalties were based. *See, Id.* However, Gramercy did not utilize the State authorized form for reporting the abatement of hazards. Specifically, Gramercy had instituted a policy that no employees were to go on the roof. *See,* State's Exhibit 1, p. C73. Further, the Respondent had covered the exposed sprocket. *See, Id.*

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The Respondent's letter went on to discuss ways in which Gramercy could work cooperatively with the State to ensure safe and healthy working conditions for Nevada's workforce. *See,* State's Exhibit 1, p. C74.

> I believe there are many opportunities that OSHA practices can be improved in the work force.

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[3]The exact date of the mailing of document was never established.

The following are some of the observations and points that we became aware of:

1. How do we improve businesses to know, understand and master the OSHA requirements or OSHA best practices?

It is difficult for a business owner to master the OSHA requirements. Bao and Jose admitted that there are so many OSHA regulations and It (sic) is impossible for them to know all of them. A business owner's bandwith is consumed with many regulating bodies along with the usual business of operating the business.

2. How can we improve the awareness for business owners to understand the OSHA regulations or to ensure OSHA excellence in the workforce?

There needs to improved cohesion between the building department, local county departments, and OSHA regulating bodies. When Bao, Jose and I were on Gramercy's roof reviewing the non-compliance of our roof, it was evident that every surrounding business roof was not compliant. I believe this can be improved by integrating the initial review with the local county and building departments. Two of Gramercy's serious violations would of never been non-conforming if they were assessed and remedied during plan review and check, before initial build out or approval of the building. This is the most effective 'preventative action' and no 'corrective action' would have been needed.

3. There needs to be more awareness and resources towards SCATS. I did not learn about SCATS until after the initial OSHA audit. How do we spread awareness of SCATS? This is a topic of Gramercy's safety committee meeting to see how can Gramercy can spread the awareness to other businesses of SCATS.

I will be personally writing a letter to both Senators Jackie Rosen and Catherine Cortez Masto.

I believe SCATS needs additional support and funding. There should be a program where SCATS / OSHA should audit a business similarly to a local Clark County Health department would; 1. in order to open the business there needs to be an initial inspection and permit, 2. any findings need to be corrected, 3. repeat violations incur penalty fees or closure of the business. This is the best 'preventative' best-in-class approach and I will give my best to advocate to try to implement this. Additionally the points of this letter will be shared.

4. We are open to discuss other ideas with OSHA representatives and select business representatives to create a council. The Intent is to identify ways to improve OSHA practices in the industry and make it easy for businesses to be excellent OSHA practices.

5. We are open for any feedback from OSHA to explore other ideas. *See,* State's Exhibit 1, p. C74.

As the result of this offer of cooperation, Gramercy requested that the State waive all penalties contained in the Citation. *See,* State's Exhibit 1, p. C75.

On January 25, 2024, the State filed and served its formal Complaint. *See,* State's Exhibit 1, pp. C79-C86. On February 2, 2024, the Respondent filed its Answer to the Complaint. *See,* State's Exhibit 1, pp. C87-C164. Therein, Mr. Minidis again informed State that the violations

were promptly abated. *See, Id.* Once again, Gramercy did not utilize the State authorized form for reporting the abatement of hazards. Gramercy provided many pages of detailed information to support the claim that the hazards were abated. State's Exhibit 1, pp. C89-C164. However, the Respondent did not deny any of the State's substantive allegations or offer any affirmative defenses. *See, Id.* The Respondent's Answer ended with an offer to work cooperatively with the State.

> We are fully committed to cooperating with OSHA and ensuring that all necessary corrections were made promptly and effectively. Our goal is to not only address the current issues but to improve our overall safety and compliance procedures to prevent future concerns.
> We respectfully request the opportunity for an informal conference to discuss these matters in more detail and to demonstrate our commitment to resolving these issues. Please let us know a convenient time for this meeting, or if there is additional information you require from us at this stage. *See,* State's Exhibit 1, p. C88.

This offer or request made no mention of the initial consultation procedure of which the Respondent had been informed in the initial Citation.

At the hearing on November 14, 2024, Ms. Merrill testified to the calculation of the penalties for each of the alleged violations. *See,* Tr., pp. 24-31. The penalty amounts were a function of the gravity of the violation and probability of injury from the violation. *See,* Id. Regarding Citation 1, Item 1, the State determined that the severity was high because one employee was exposed to a potential fall of from 15 to 20 feet. *See,* State's Exhibit 1, p. C38, *see also*, Tr., p. 25;10-19. Such fall could result in serious injury or death. *See,* Id. The probability of an accident was determined to be lesser because of the limited number of employees exposed to the hazard, their proximity to the hazard and their frequency of exposure. *See,* Tr., p. 26;1-6. The gravity of the violation was determined to be moderate. *See,* Tr., p. 26;7-16. The base penalty was then calculated to be $11,162. *See,* State's Exhibit 1, p. C39, *see also*, Tr., p. 26;17-22. This penalty amount was then discounted by 30% as the result of the Respondent's size plus another 15% for good faith. *See,* State's Exhibit 1, p. C39, *see also*, Tr., p. 27;4-22. Good faith penalty reductions are provided to employers who have effective written safety programs. *See,* Id. After these discounts were applied, the proposed penalty was reduced from $11,162 to $6,641. *See,*

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State's Exhibit 1, p. C39. This amounted to a discount of $4,521 for this alleged violation. *See,* Id.

Regarding Citation 1, Item 2, the calculation of the penalties was nearly identical. The State determined that the severity was high because one employee was exposed a potential fall of more than 34 feet. *See,* State's Exhibit 1, p. C42, *see also*, Tr., p. 25;10-19. Such fall could result in serious injury or death. *See,* Id. The probability of an accident was determined to be lesser because of the limited number of employees exposed to the hazard, their proximity to the hazard and their frequency of exposure. *See,* Tr., p. 28;10-15. The gravity of the violation was determined to be moderate. *See,* Tr., p. 28;13-18. The base penalty was then calculated to be $11,162. *See,* State's Exhibit 1, p. C43, *see also*, Tr., p. 28;16-18. This penalty amount was then discounted by 30% as the result of the Respondent's size plus another 15% for good faith. *See,* State's Exhibit 1, p. C43, *see also*, Tr., p. 28;19-13. After these discounts were applied, the proposed penalty was reduced from $11,162 to $6,641. *See,* State's Exhibit 1, p. C43. This amounted to a discount of $4,521 for this alleged violation. *See,* Id.

Regarding Citation 1, Item 3, the State also determined that the severity was high because three employees were exposed to potential fractures and amputations as the result of their proximity to the exposed sprocket. *See,* State's Exhibit 1, p. C46, *see also*, Tr., p. 29;3-8. The probability of an accident was determined to be lesser because of the limited number of employees exposed to the hazard and their frequency of exposure. *See,* Tr., p. 29;9-14. The gravity of the violation was determined to be moderate. *See,* State's Exhibit 1, p. C47, *see also*, Tr., p. 29;15-17. The base penalty was then calculated to be $11,162. *See,* State's Exhibit 1, p. C47, *see also*, Tr., p. 29;18-20. This penalty amount was then discounted by 30% as the result of the Respondent's size and another 15% for good faith. *See,* State's Exhibit 1, p. C47. This penalty amount also discounted by an additional 15% because the hazard was abated within 24 hours of the initial inspection. *See,* State's Exhibit 1, p. C47, *see also*, Tr., pp. 29;21-24, 30;1-2. After these discounts were applied, the proposed penalty was reduced from $11,162 to $5,645. *See,* State's Exhibit 1, p. C47. This amounted to a discount of $5,517 for this alleged violation. *See,* Id. No penalties were assessed for Citation 2, Items 1 and 2. *See,* Tr., pp. 30;18-25, 31;1-3.

Therefore, the Respondent received total discounts of $14,559 on the three assessed fines. *See,* State's Exhibit 1, pp. C39, C43, C47.

On cross examination of Ms. Merrill, she was asked whether she recalled being informed of Gramercy's policy that no employees were to go onto the roof. *See,* State's Exhibit 1, p. C73, *see also*, Tr., p. 41;9-22. Ms. Merrill admitted that she did recall that. *See,* Id. However, she did not find it to be proper abatement for two reasons. First, that the policy was a stopgap. The Respondent was still looking at other procedures. *See,* Tr., 42;6-11. Second, no written policy was supplied. *See,* Tr., 41;14-22. Therefore, Ms. Merrill had nothing that she could show her superiors. *See,* Id.

On redirect, Ms. Merrill testified that the Respondent had no reason to believe that any oral representation would constitute a sufficient communication of the abatement of the hazards. *See,* Tr., p. 44;1-4. Ms. Merrill testified that the Respondent was informed of the required method to communicate its abatement of hazards to the State. *See,* Tr., p. 43;4-23. Moreover, the Respondent had received the abatement certificate as part of the evidence package. *See,* State's Exhibit 1, p. C65, *see also,* Tr., 43;11-23.

Mr. Minidis asked Mr. Merrill about his Notice of Contest wherein he expressly told the State that "Gramercy had instituted a policy where no employees are allowed on the roof unless other [corrective] actions are resolved (sic)." *See,* Tr., p. 45;1-8. Ms. Merrill responded that this statement would not have been found to have been sufficient abatement of the hazard because the Respondent did not provide a written policy supporting this nor any indication that the new policy was communicated to the employees. *See,* Tr., 46;4-16. However, had Ms. Merrill requested Gramercy's written policy and it was supplied, that would have counted as abatement of the fall hazard. *See,* Tr., pp. 52;7-25, 53;1-3. Regardless, Ms. Merrill never saw a copy of the above referenced document, Gramercy's Notice of Contest. *See,* Tr., p. 46;17-22. This was presumably because it was addressed to Nicholas LaFronz, OSHA District Manager. *See,* Tr., p. 47;20-25.

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After the completion of Ms. Merrill's testimony, Mr. Minidis testified for the Respondent. *See,* Tr., pp. 55-60. Therein, Mr. Minidis stated that Gramercy had abated the cited violations almost immediately after the State's inspection. *See,* Tr., p. 56;14-20.

Mr. Minidis complained that an employer could not work with SCATS while there was a pending violation. *See,* Tr., p. 56;19-25. Mr. Minidis opined that it would be invaluable to OSHA to have an owner cooperate with the agency as opposed to litigating against it. *See,* Tr., p. 57;8-14. Mr. Minidis stated that he believed that this cooperation should be sufficient to authorize the State to waive all of the assessed penalties. *See,* Tr., p. 59;6-8. Mr. Minidis' final request was that Gramercy be allowed to participate in an informal conference. *See,* Tr., p. 59;8-13.

On cross examination, Mr. Minidis admitted that the Respondent had been provided with instructions regarding the abatement of hazards and the required documentation required by the State. *See,* Tr., pp. 60;12-23, 61;1-8. Mr. Minidis further admitted that the Citation provided specific instructions regarding Informal Conferences. *See,* Tr., p. 61;9-15. One of the instructions being that an Informal Conference must occur within 30 days of the issuance of the Citation. *See,* State's Exhibit 1, p. C61. Gramercy's request for an Initial Conference was made on February 2, 2024, well past the date in which the event needed to occur. *See,* Tr., pp. 62;5-25.

To the extent that any of the Conclusions of Law constitute Findings of Fact, they are incorporated herein.

CONCLUSIONS OF LAW

In this case, the Respondent admitted liability for each of the violations relieving the State of its burden to prove its *prima facie* case. *See,* Tr., 14;16-24. The Respondent's admission left unresolved only the determination of the amount of the penalties.

With regard to Citation 1, Items 1 and 2, the Respondent argued that the hazard was abated immediately because its employees were no longer permitted to go on to the facility's roof. *See,* State's Exhibit 1, pp. C73, C87, C92, *see also*, Tr., pp. 41;14-22, 56;12-14. The Respondent then indicated that the assessed fees should be waived or discounted substantially as

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the result of the abatement. *See,* Tr., p. 59;1-11. The Respondent's argument is both legally and factually deficient.

Legally, the State's enforcement division has the authority to assess fines regardless of whether the violation is abated. *See,* NAC 618.6482(2).

> An appropriate penalty may be proposed with respect to an alleged violation **even though, after being informed of the alleged violation by the inspector, the employer immediately abates or initiates steps to abate the alleged violation.** *See, Id.* (Emphasis added).

In this instance then, the Respondent's abatement of the fall hazards did not legally entitle it to any reduction of the penalty. Further, Nevada regulations provide express procedures in which an employer is required to report its abatement of a cited hazard. *See*, NAC 618.6494(1).

> [A]n employer **shall certify to the Enforcement Section on a form provided or approved by the Division that each violation or hazard set forth in a citation has been abated**. *See Id.* (Emphasis added).

Additionally, employers are required to provide proof of their abatement actions. *See*, NAC 618.6494(2).

> [A]n employer who provides a certification to the Enforcement Section pursuant to subsection 1 **shall submit to the Enforcement Section documents that provide proof of abatement.** The documents include evidence of the purchase or repair of equipment, photographs, videotape or other written records acceptable to the Enforcement Section. *See,* Id. (Emphasis added).

In this instance, no authorized abatement form was utilized and further no documentation of the abated was provided. Accordingly, Gramercy's purported abatement of the fall hazards from the roof (Citation 1, Items 1, 2) did not legally entitle it to any discount of the proposed penalties much less a complete waver of them.

Factually, Gramercy did not effectively communicate its policy change. The Respondent did not provide Ms. Merrill with a written policy and/or evidence that it had communicated this new policy to its employees. *See,* Tr., p. 41;14-22. Mr. Minidis' oral communication regarding the new policy were insufficient. *See*, Id. Further, Gramercy did not utilize the form provided for such communication. *See*, Tr., pp. 43;11-23, 44;1-4.

The Citation provided precise instructions regarding the method of communication of its abatement of each hazard.

> The certification **must** be emailed, mailed or faxed to our office within ten calendar days after the abatement date indicated on the citation. You are also required to submit documents that provide proof of abatement (examples: evidence of the purchase or repair of equipment, photographs, video, training records, or other written records, etc.) with the Abatement Certification. *See*, State's Exhibit 1, p. C60. (Emphasis added).

The procedure required that the Respondent provide written confirmation of the abatement of the hazards and document the action or actions taken to abate the hazards. Gramercy failed in both instances.

Regarding Citation 1, Item 3, the Respondent was also responsible for the assessed fines, regardless of its abatement of the hazard. *See*, NAC 618.6482(2). However, the Respondent benefitted from an exception to the general rules set forth in NAC 618.6494(1), (2). This exception allowed the State to provide an abatement discount to an employer without having to formally certify the abatement. *See*, NAC 618.6494(3)

> An employer is not required to certify to the Enforcement Section that each violation or hazard set forth in a citation has been abated if an inspector, during the on-site portion of the inspection:
> (a) Observes, within 24 hours after the violation or hazard has been identified, that abatement has occurred; and
> (b) Sets forth in the citation that abatement has occurred.

This is what occurred with regard to the exposed sprocket. *See*, State's Exhibit 1, pp. C23, C24, C192-C197. The citation noted that the abatement had occurred. *See*, State's Exhibit 1, p. C46. Therefore, the amount applied for Citation 1, Item 3, was properly assessed. *See*, NAC 618.6482(2). However, the employer was entitled to a 15% discount as the result of its immediate abatement of the hazard. *See*, NAC 618.6494(3)

Gramercy's offers to work cooperatively with OSHA were of no moment. The Division has two sections, enforcement and SCATS. *See,* NRS 618.257(1). The powers of the enforcement division are set out in NRS 618.325. The duties of SCATS are set out in NRS 618.353. Neither the enforcement division nor SCATS has any statutory authority to work directly with an employer to change the Division's existing procedures or reduce the amount of fines, regardless of the potential benefits.

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Board Member Hollis moved to uphold each citation, including the assessed fines. *See,* Tr., p. 101;5-9. The motion was seconded by Member Spielberg. *See,* Tr., p. 101;22-24. The motion was adopted upon a vote of 5 in favor of the motion and 0 against the motion. *See,* Tr., p. 102;4-8. The Board, by this motion, authorizes the Chairman, Jorge Macias, to execute, without further Board review, this Decision on behalf of the Board of Review.

Service of the findings of fact and conclusions of law signed by the Chairman of the Nevada Occupational Safety and Health Review Board shall constitute the Final Order of the Board.

On May 14, 2025 the Board convened to consider adoption of this decision, as written or as modified by the Board, as the decision of the Board.

Those present and eligible to vote on this question consisted of the five current members of the Board, to-wit, Jorge Macias, Chairman, William Spielberg, Secretary, Scott Fullerton, Tyson Hollis and Gled Bautista. Upon a motion by Scott Fullerton, seconded by Tyson Hollis, the Board voted 5-0 to approve this Decision of the Board as the action of the Board and to authorize Jorge Macias, Chairman, 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. Each Board Member voting in favor of the motion attended the hearing on the merits and had in his possession the entire record before the Board upon which the decision was based.

Dated this 23rd day of September, 2026.

NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

By: */s/Jorge Macias*
Jorge Macias, Chairman

NOTICE: Pursuant to NRS 233B.130, any party aggrieved by this Final Order of the Nevada Occupational Safety and Health Review Board may file a petition for judicial review to the District Court within thirty (30) days after service of this order.

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 *Sua Sponte* Amended Decision of the Board, Findings of Fact, Conclusions of Law and Final Order Due to Clerical Errors, 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:

Salli Ortiz, Esq., DIR Legal
1886 College Pkwy., Suite 110
Carson City, NV 89706

James Minidis
7175 Belcastro Street, Unit 101
Las Vegas, NV 89113

Dated this 23rd day of September, 2026.

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

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