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OCT 20 2022
BY Kennedy

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,

Docket No. RNO 19-1998

Inspection No. 1372545

Complainant,

vs.

BAINS MOTELS, INC. dba COMFORT
INN & SUITES AIRPORT BY CHOICE
HOTELS,

Respondent.

DECISION AND ORDER OF THE BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

This case arose out of a planned program inspection of the employer's place of business. *See*, 1Tr., p. 4.¹ The State's inspection resulted in the issuance of one citation which detailed three serious violations of federal health and safety regulations. *See*, State's Exhibit 1, pp. 34-37.

¹"1Tr.," stands for the transcript of the hearing conducted on September 12, 2019, commencing at 9:10 a.m., followed by the page and line number where the matter cited can be found. "2Tr.," stands for the transcript of the deliberations conducted on September 12, 2019, commencing at 10:30 a.m.

1 The matter came before the Nevada Occupational Safety and Health Review Board (the
2 Board) for hearing on Thursday, September 12, 2019, at 9:10 a.m. *See*, 1Tr., p. 4;1. The hearing
3 was conducted in furtherance of a duly provided notice. *See*, Notice of Hearing, dated June 17,
4 2019. In attendance to hear the matter were Board Chairman Steve Ingersoll, and Board members
5 Frank Milligan and Lance Semenko. *See*, 1Tr., p. 2. The same Board members deliberated the
6 case commencing at 10:30 a.m. on that same day. *See*, 2Tr., pp. 2, 3.

7 Salli Ortiz, Esq., counsel for the Chief Administrative Officer of the Occupational Safety
8 and Health Administration of the Division of Industrial Relations of the Department of Business
9 and Industry (the State), appeared at the first hearing on behalf of the Complainant (the State).
10 *See*, 1Tr., p. 2. The Respondent (hereinafter, Respondent or Bains Motels) was represented by
11 the owner of the property, Sarvpreet Bains (Mr. Bains). *See*, 1Tr., pp. 3, 28;16.

12 Jurisdiction in this matter is conferred by Chapter 618 of the Nevada Revised Statutes,
13 NRS 618.315. Jurisdiction was not disputed. As there were three members of the Board present
14 to decide the case, with at least one member representing management and one member
15 representing labor in attendance, a quorum was present to conduct the business of the Board.

16 A complaint may be prosecuted for circumstances which arise before or during an
17 inspection of the employer's workplace. *See*, NRS 618.435(1). Nevada has adopted all Federal
18 Occupational Safety and Health Standards which the Secretary of Labor has promulgated,
19 modified or revoked and any amendments thereto. They are, then, deemed the Nevada
20 Occupational Safety and Health Standards. *See*, NRS 618.295(8).

21 The inspection of Bains Motels was a random inspection of high risk employers. *See*,
22 1Tr., p. 23;8-10. Information for the program lists is gathered through the Bureau of Labor
23 Statistics. *See*, 1Tr., p. 26;4-22. This information is inputted into a database which rates groups
24 of industries by the amount of injury and illness associated with each. *See, Id.* Using this
25 database, Nevada OSHA generates a random list of employers to inspect. *See, Id.* Bains Motels
26 came up on that list. *See*, 1Tr., p. 23;8-10.

27 The State commenced its inspection of the facility on January 18, 2019 and continued that
28 inspection on January 24, 2019. *See*, State's Exhibit 1 pp. 4, 11. Specifically, the opening

1 conference and the walk around inspection were conducted on January 18, 2019. *See*, 1Tr., p.
2 11;7-17. Further, one employee was interviewed with the aid of an interpreter. *See*, State's
3 Exhibit 1, pp. 14-15.

4 The interview with Mr. Bains and the closing conference were conducted on January 25,
5 2019. *See*, State's Exhibit 1, p. 11, *see also*, 1Tr., p. 18;22-25. As the result of violations found
6 during the inspection, the State issued a Citation and Notice of Penalty which recommended a
7 \$4,050 fine. *See*, State's Exhibit 1, p. 37. The Citation and Notice of Penalty alleged violations
8 of three Federal Regulations. *See*, State's Exhibit 1, p. 41-46. Citation 1, Item 1, charged a
9 serious violation of 29 CFR 1910.151(c), which provides:

10 Where the eyes or body of any person may be exposed to injurious corrosive
11 materials, suitable facilities for quick drenching or flushing of the eyes and body
shall be provided within the work area for immediate emergency use.

12 After giving consideration to the severity of the violation and the probability of injury resulting
13 from this alleged violation, the State recommended a fine of \$1,350. *See*, State's Exhibit 1, pp.
14 16-18.

15 Citation 1, Item 2, alleged a serious violation of 29 CFR 1910.1030(c)(1)(i), which
16 provides:

17 Each employer having an employee(s) with occupational exposure as defined by
18 paragraph (b) of this section shall establish a written Exposure Control Plan
designed to eliminate or minimize employee exposure.

19 After giving consideration to the severity of the violation and the probability of injury resulting
20 from this alleged violation, the State recommended a fine of \$1,350. *See*, State's Exhibit 1, pp.
21 19-21.

22 Citation 1, Item 3, alleged a serious violation of 29 CFR 1910.1200(e)(1), which
23 provides:

24 Employers shall develop, implement, and maintain at each workplace, a written
25 hazard communication program which at least describes how the criteria specified
26 in paragraphs (f), (g), and (h) of this section for labels and other forms of warning,
safety data sheets, and employee information and training will be met.

27 After giving consideration to the severity of the violation and the probability of injury resulting
28 from this alleged violation, the State recommended a fine of \$1,350. *See*, State's Exhibit 1, pp.

1 22-24. The Citation and Notice of Penalty were issued on April 15, 2019. *See*, State's Exhibit 1,
2 pp. 25-38. Respondent notified the State of its intent to contest the matter on May 7, 2019. *See*,
3 State's Exhibit 1, pp. 39-40. On May 23, 2019, the State filed its formal Complaint for resolution
4 by the Review Board. *See*, State's Exhibit 1, pp. 40-50. Bains Motels answered the Complaint
5 on June 3, 2019. *See*, State's Exhibit 1, pp. 51-54. Bains Motels' Answer did not deny any of the
6 allegations of the State's Complaint. *See, Id.* Instead, Bains Motels argued that the Nevada
7 OSHA inspector had stated that its inspection was a two-part proceeding wherein only the
8 findings of the second or formal inspection could identify and sanction violations. *See*, State's
9 Exhibit 1, p. 51-52. Bains Motels alleged that the materials necessary for compliance were
10 immediately purchased and delivered on January 23, 2019. *See, Id.* Accordingly, Mr. Bains
11 alleged, "[i]t is understood that this action completed in advance of the formal inspection,
12 satisfies OSHA safety standards and requirements." *See, Id.* Attached to Bains Motels' Answer
13 was an Abatement Certification evidencing the installation of two eyewash units, the
14 establishment of a written Exposure Control Plan in order to eliminate or minimize employee
15 exposure to hazardous materials and a hazard communication program. *See, Id.* The Abatement
16 Certification provided the completion date of January 23, 2019, for all three projects. *See, Id.*

17 Bains Motels was given notice of the proceedings by first class, certified mail, return
18 receipt requested. *See*, Notice of Hearing dated June 17, 2019. Respondent and the State
19 stipulated to the admission of evidence. *See*, 1Tr., p. 7;20-25. Accordingly, the State's exhibits,
20 Numbers 1 and 2, consisting of pages 1 through 112, were admitted into evidence. *See, Id.* The
21 Respondent did not offer any documents for consideration to the Board. *See*, 1Tr., p. 7;10-25.
22 Thus, the body of evidence amassed by the State was admitted into evidence without objection.

23 At the duly noticed hearing conducted on September 12, 2019, the State presented the
24 testimony of Derek Rielly and Marc Stewart. *See*, 1Tr., p. 3. This testimony was supported by
25 the admitted evidence. Mr. Bains presented the testimony of Bains Motels. *See, Id.*

26 **FINDINGS OF FACTS**

27 Bains Motels is the employer. Bains Motels is a corporation organized under the laws of
28 the State of Nevada. *See*, State's Exhibit 1, pp., 1-3. Bains Motels is in the lodging and

1 hospitality industry. *See, Id.* Bains Motels operates at a single location, 1250 E. Plumb Lane,
2 Reno, Nevada, 89502. *See, Id.*

3 On January 18, 2019, the State conducted an inspection of the facility. *See, State's*
4 Exhibit, 1, pp. 6-9. The State's inspectors were Derek Rielly and Brandi Gill.² *See, 1Tr.*, pp. 3,
5 11;4. Additionally, Nettie Plazo-May provided translation services for this inspection. *See, 1Tr.*,
6 p. 11;3-6. At approximately 10:25 a.m. on that date, the State commenced its opening conference
7 with Mr. Bains. *See, State's Exhibit, 1, p. 4.* Mr. Bains consented to Nevada OSHA's inspection
8 of the premises. *See, Id.*

9 During the January 18, 2019, inspection, violations of Federal Health and Safety
10 Regulations were observed. Kitchen employees worked with Ecolab Ecotemp Ultra Klene (Ultra
11 Klene). *See, State's Exhibit 1, p. 9.* Ultra Klene can cause severe skin burns and eye damage.
12 *See, State's Exhibit 2, p. 61.* The employees working in this area did not have access to an
13 eyewash unit for immediate emergency use. *See, State's Exhibit 1, p. 9.*

14 Laundry employees worked with Tri-Star L2000 XP (L2000) and Laundri Destainer
15 (Laundri). *See, State's Exhibit 1, p. 9.* Both L2000 and Laundri can cause severe skin burns and
16 eye damage. *See, State's Exhibit 2, pp. 71, 82.* The employer did not provide an eye washing
17 facility for immediate emergency use of its employees working in this area. *See, State's Exhibit*
18 *1, p. 9.*

19 Kitchen and laundry employees worked with hazardous chemicals such as Ecotemp Ultra
20 Klene, Laundri Destainer, Tri-Star L2000 XP, and 63 Alkaline Bathroom Cleaner and
21 Disinfectant. Respondent knew that these were hazardous products because the safety data
22 sheets for some but not all of these products were found on the property. *See, 1Tr.*, pp. 28;23-25,
23 29;1. Despite this knowledge, Respondent had not established and implemented a written hazard
24 communication program. *See, State's Exhibit 1, p. 9.*

25 Respondent's housekeeping employees had occupational exposure to blood and other
26 potentially infectious materials. *See, 1Tr.*, p. 30;2-8. Respondent was aware that its

27
28 ² Brandi Gill conducted the safety portion of this inspection which was a distinct inspection and the
results thereof are presented in this decision. *1Tr.*, pp. 15;24-25, 16;1-4.

1 housekeeping employees found sharps, syringes and needles on a periodic basis. *See, Id., see*
2 *also*, State's Exhibit 1, p. 13. As a protective measure, the housekeeping employees were
3 provided gloves. 1Tr., p. 39;8-15. Unfortunately, the gloves would not prevent a stick and the
4 employees were not trained in how to work safely. *See, Id.* Respondent was aware of the
5 employee's bloodborne pathogen exposure because a sharps containment box was provided on
6 the property. *See*, 1Tr., p. 14;14-15. Despite this knowledge, the Respondent had not established
7 an Exposure Control Plan, including Exposure Determination, Methods of Compliance, Hepatitis
8 B Vaccination, Communication of Hazards, and Record keeping. *See*, State's Exhibit 1, pp. 9,
9 13. In the January 18th inspection, it was determined that Leonora Garcia had not been offered a
10 Hepatitis B exposure vaccination, though exposed to bloodborne pathogens or other potentially
11 infectious materials (OPIM). *See*, State's Exhibit 1, p. 14, *see also*, 1Tr., p. 13;10-11.

12 On January 25, 2019, the Nevada OSHA inspectors returned to interview Mr. Bains and
13 to conduct the closing conference. *See*, State's Exhibit 1, p. 11, *see also*, 1Tr., p. 18;22-25. In
14 advance of the State's return to the facility, Bains Motels had abated or was in the process of
15 abating all of the previously identified violations. Two eye wash stations were installed. 1Tr., p.
16 19;14-21, *see also*, State's Exhibit 1, pp. 34, 53, 54. Additionally, a Hazard Communications
17 Program had been established and implemented. *See*, State's Exhibit 1, pp. 36, 53. With respect
18 to the bloodborne pathogen Exposure Control Plan, efforts had been made but the violation was
19 not fully abated. It is uncontroverted that Mr. Bains was personally certified. 1Tr., pp. 19;9-13,
20 51;21-23. Further, Respondent stated that he could show that the employees had declined
21 vaccinations. 1Tr., pp. 47;22-25, 48;1-3. Additionally, Mr. Bains stated that he had engaged
22 translators to conduct bloodborne pathogen training on January 21 and 24. *See*, State's Exhibit 1,
23 p. 13. However, one of the State's witnesses testified that it was impossible to complete a
24 bloodborne pathogens program in a few days. *See*, 1Tr., pp. 41;15-25, 42;1-6.

25 In his interview, Mr. Bains admitted that he was unaware that written hazard
26 communications program was needed for the kitchen and laundry. *See*, State's Exhibit 1, p. 13,
27 *see also*, 1Tr., p 12;9-11. Further, Mr. Bains was unaware that eyewash facilities needed to be
28 provided in the kitchen and laundry. *See*, State's Exhibit 1, p. 13, *see also*, 1Tr., p 12;20-22.

1 During the interview, Mr. Bains stated that he had not trained the employees on bloodborne
2 pathogens. *See*, State's Exhibit 1, p. 13, *see also*, 1Tr., p. 12;5-11. Further, Mr. Bains admitted
3 that he had not offered Hepatitis B vaccinations to his employees. *See, Id.* However, Mr. Bains
4 testified that he personally was certified on bloodborne pathogens on January 17, 2019, the day
5 before the inspection commenced. *See*, 1Tr., p 46;2-13.

6 At the evidentiary hearing, Mr. Bains argued that the inspectors told him that the actual
7 inspection would be on the 25th of January. *See*, 1Tr., pp. 18-19. This is consistent with Bains
8 Motels' Answer to the Complaint. *See*, State's Exhibit 1, pp. 51-52. Mr. Bains believed that if
9 all of the issues were abated by the date of the second inspection, no fines would be assessed.
10 *See*, 1Tr., p. 19. However, Respondent was unable to produce evidence or testimony which
11 supported this allegation. *See*, 1Tr., pp. 19, 20.

12 Mr. Bains further argued that Nevada OSHA had not provided any educational materials
13 regarding its requirements. 1Tr., p 46;2-13. However, the State provided testimony that
14 education is not a function of OSHA. 1Tr., pp. 20;21-25, 21;1-15. Aside from the
15 aforementioned defenses, Mr. Bains did not present any evidence which contradicted or negated
16 the State's *prima facie* case of regulatory violations. Further, Mr. Bains did not provide any
17 defenses. 1Tr., pp. 19;4-25, 20;1-5.

18 Each of the three violations were viewed as serious because there was a substantial
19 probability of serious injury should an accident occur involving hazardous chemicals or
20 bloodborne pathogens. *See*, 1Tr., p. 32;5-24. Injuries from these conditions were also viewed as
21 being probable, *i.e.*, there is a likelihood that an injury would occur. *See*, 1Tr., pp. 32;25, 33;1-5.
22 This likelihood is determined by looking at the danger posed by the chemicals or pathogens, the
23 number of workers exposed, the frequency of the employees' exposure, the use of personal
24 protective equipment and the experience level of the employees. *See, Id.*

25 The gravity of the violations is the starting point for the calculation of the penalty. The
26 gravity of the violation is a function of the probability of an injury and the severity of the injury,
27 should one occur. *See*, 1Tr., p. 33;9-14. In this case, the gravity was considered moderate,
28 resulting in base penalties of \$5,000. *See*, 1Tr., p. 33;18-24. The base penalties were then

1 reduced by 70% because Bains Motels is a small employer. *See*, 1Tr., pp. 33;25, 34;1-5. The
2 suggested penalty was then further reduced because there have been no serious violations for the
3 last five years. *See*, 1Tr., p. 34;6-11. Based upon the above, the amount of \$1,350 was proposed
4 for each of the three violations for which a fine was assessed. *See*, 1Tr., p. 35;14-17. This
5 brought the total fines assessed against Bains Motels to \$4,050. *See*, State's Exhibit 1, p. 37.
6 However, the State provides a quick fix discount to any employer who abates a hazardous
7 condition within twenty-four hours of the inspection. *See*, 1Tr., p. 40;5-10. This discount is a
8 policy of the State, not a function of the regulations or statutes. *See*, 2Tr., p. 4;9-14. The quick
9 fix discount was also potentially available to Respondent because all of the violations were
10 abated or in the process of being abated by January 25, 2019. *See, Id.*

11 CONCLUSIONS OF LAW

12 The burden is on the State to prove by a preponderance of the evidence, a *prima facie*
13 case against the Respondent. *See*, NAC 618.788(1), *see also*, *Original Roofing Company LLC v.*
14 *Chief Administrative Officer of the Nevada OSHA*, 442 P.3d 146, 149 (Nev. 2019). Thus, in
15 matters before the Board of Review, the State must establish: (1) the applicability of a standard
16 being charged; (2) the presence of a non-complying condition; (3) employee exposure or access
17 to the non-complying condition; and, (4) the actual or constructive knowledge of the employer's
18 violative conduct. *Id.* at 149, *see also*, *American Wrecking Corp. v. Secretary of Labor*, 351 F.3d
19 1254, 1261 (D.C. Cir., 2003).

20 The State is obligated to demonstrate the alleged violation by a preponderance of the
21 reliable evidence of the record. More than estimates, assumptions and inferences are, therefore,
22 required. Reliance on mere conjecture is insufficient. Findings must be based upon the kind of
23 the evidence which responsible persons are accustomed to rely in serious affairs. *William B.*
24 *Hopke Co., Inc.* 1982 OSHARC LEXIS 302 * 15, 10 BNA OSHC 1479 (No. 81-206, 19820
25 (ALJ). And, the Board's decision must be based on consideration of the whole record and shall
26 state all facts officially noticed and relied upon. 29 CFR 1905.27(b). *Armor Elevator Co.*, 1
27 OSHA 1409, 1973-1974 OHSD ¶ 16, 958 (1973). *Olin Construction Inc. v. OSHARC and Peter*
28 *J Brennan, Secretary of Labor*, 525 F.2d 464 (1975).

1 Bains Motels complained that the State failed to provide information it should follow
2 when working. *See*, 1Tr., 20;6-16. Derrick Reilly testified that it is not Nevada OSHA's
3 function to send educational materials on how to comply with the regulations. *See*, 1Tr., p.
4 20;20-25. Additionally, Bains Motels alleged that it was promised a second chance. *See*, 1Tr., p.
5 46;17-24. However, Bains Motels was unable to produce any evidence that this was the State's
6 procedure. In fact, Derek Reilly testified that the employer is notified of hazards during the
7 inspection and the State requested that the employer to abate the hazard(s) as soon as possible.
8 *See*, 1Tr., 20;2-5. Otherwise, Bains Motels provided no arguments, legal or factual, which
9 negated any of the elements of the State's *prima facie* case of violations of the applicable federal
10 regulations. *See*, 1Tr., pp. 44-47.

11 As explained below, *prima facie* cases were made by the State, unchallenged by Bains
12 Motels for each citation brought by the State. And the State is entitled in each instance to the
13 relief being sought. To the extent that any of the above findings of fact constitute conclusions of
14 law or mixed findings of fact and conclusions of law, they are incorporated herein.

15 In Citation 1, Item 1, there is no dispute that 29 CFR 1950.151(c) is regulatory in nature
16 and that it applies to Bains Motels. As an employer, Bains Motels must provide suitable
17 facilities for quick drenching or flushing of the eyes and body. It is beyond dispute that, before
18 January 18, 2019, Bains Motels had not provided such facilities in its kitchen and laundry as
19 required of it pursuant to 29 CFR 1910.151(c).

20 In Citation 1, Item 2, there is no dispute that 29 CFR 1910.1030(c)(1)(i) is regulatory in
21 nature and that it applies to the conditions facing Bains Motels' employees. The Respondent's
22 housekeeping employees are regularly exposed to bloodborne pathogens. *See*, State's Exhibit 1,
23 pp. 20, 35. As an employer, Bains Motels is required to establish a written Exposure Control Plan
24 given such exposure. It is beyond dispute that, before January 18, 2019, Bains Motels had not
25 established such a program as required of it pursuant to 29 CFR 1910.1030(c)(1)(i).

26 In Citation 1, Items 3 there is no dispute that 29 CFR 1910.1200(e)(1) is regulatory in
27 nature and that it applies to Bains Motels. It is beyond dispute that, before January 18, 2019,
28 Bains Motels had neither developed a written hazard communications program nor provided a

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On October 12, 2022 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 four current members of the Board, to-wit, William Steinberg, Frank Mulligan, Jorge Macias and Scott Fullerton. The Board had changed over in personnel at the time of this hearing. Acting Chairman William Spielberg and members Jorge Macias and Scott Fullerton were eligible to vote because they had read the transcripts, the pleadings and the exhibits offered and admitted into evidence (e.g., the record). See, NRS 233B.124. Upon a motion by Frank Milligan, seconded by Scott Fullerton, the Board voted 4-0 to approve this Decision of the Board as the action of the Board and to authorize William Spielberg, the Acting 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. Those voting in favor of the motion either attended the hearing on the merits or had in their possession the entire record before the Board upon which the decision was based.

On October 12, 2022 this Decision is, therefore, hereby adopted and approved as the Final Decision of the Board of Review.

Dated this 18 day of October, 2022.

NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

By: William Spielberg
William Spielberg, Acting Chairman

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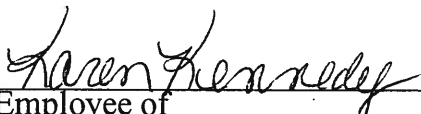
CERTIFICATE OF SERVICE

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 and Order of the Board, Findings of Fact and Conclusion of Law, 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:

Salli Ortiz, Esq.
DIR Legal
400 West King Street, Suite 201
Carson City, NV 89703

Sarvpreet Bains
c/o Bains Motels Inc.
1250 E. Plumb Lane
Reno NV 89502

Dated this 20th day of October, 2022.



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