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**NEVADA OCCUPATIONAL SAFETY AND HEALTH  
REVIEW BOARD**

\* \* \* \* \*

**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 22-2141**

**Inspection No. 1511544**

**Complainant,**

**FILED  
October 17, 2024  
OSH Review Board  
By: Karen Kennedy**

**vs.**

**SIERRA CONCEPTS CONSTRUCTION,  
INC.,**

**Respondent.**

**ORDER**

The above-captioned matter came on for hearing when Chairman Weber called Sierra Concepts Construction, Inc. (Sierra Concepts), Docket No. RNO 22-2141 to be heard on March 13, 2024. Appearing for the Respondent, Sierra Concepts, was Justin Vance, Esq., of Dotson Law. Appearing with Salli Ortiz, Esq., on behalf of the complainant, 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, (the State) was Christopher Eccles, Esq., legal counsel to the Director of the Division of Industrial Relations.

This matter was before the Board to determine whether to approve or disapprove or take such other action as the Board might be informed by the hearing on this date regarding the Settlement Agreement entered into between the State and the Respondent. This matter was previously heard by the Board on October 11, 2023, at which time the Board determined that the Settlement Agreement did not fulfill the requirements of NAC 618.833(1) and NRS 618.015(1) which provide that the purpose of State OSHA is to preserve and protect the health and welfare of employees in the workplace and their employment.

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1 In a tentative Order entered by the Board, however, at the conclusion of the hearing on  
2 October 11, 2023, the Board amended the Settlement Agreement to conform it to this purpose.  
3 The Board then gave the parties 15 days from the date of the Order to object to the Board's  
4 disposition of this matter. According to the Board's Order, if an objection was filed, the Order  
5 would not become a final order and the matter would be set for hearing on the objection. As it  
6 turned out, both the State and the Employer Respondent lodged objections to the Board's  
7 tentative Order following the hearing on October 11, 2023. Thus, the tentative Order, dated  
8 October 16, 2023, never became final.

9 On this date, March 13, 2024, the matter was heard by a full compliment of the Board. In  
10 addition to Chairman, William Spielberg, Secretary of the Board, Jorge Macias, Scott Fullerton,  
11 Frank Milligan and Tyson Hollis were present to hear the proceedings as they unfolded  
12 regarding the Board's tentative disposition of the Settlement Agreement. Both the State and  
13 respondent argued against the Board's tentative disposition of the Settlement Agreement,  
14 asserting that they did not have the opportunity on October 11, 2023, to argue to the Board and  
15 present evidence to the Board as to why the Board was wrong when rejecting the Settlement  
16 Agreement, amending it, in part, and by adjusting the fine levied upwards to an amount that was,  
17 nevertheless, and an amount that was lower than the fine as prayed for by the State in its  
18 Complaint.

19 Specifically, the settlement, as proposed by the State and Respondent, was as follows:  
20 Total amount pled in the Complaint covering the multiple violations alleged was the sum of  
21 \$58,298 in this residential construction case. The State acquiesced and gave a \$13,653  
22 deduction by eliminating the penalty proposed for Citation 1, Item 3. This reduced fine by  
23 deducting the \$13,653 from the \$58,298 as pled leaving a balance of \$45,645. The State then  
24 agreed to a 30% discount on the \$45,645, reducing the fine according to the agreement down to  
25 the sum of \$31,251.50. Alternatively the State agreed to a discount of \$27,046.50, in addition to  
26 the remaining terms and conditions of the Settlement Agreement. The State agreed to a six  
27 month period of time to pay off the fine with no interest. If, during the six month payoff period,

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1 the Respondent failed to abate the violations as alleged in the complaint, then, the fine would  
2 revert to the full amount of \$58,298.

3 The Board takes umbrage with the claim by the Respondent and the State that they did  
4 not have the opportunity to challenge the tentative disposition by the Board with respect to the  
5 Settlement Agreement. The notice for the hearing on March 13, 2024, stated:

6 [a]s a reminder to the parties Respondent will go first and will be given 30  
7 minutes to argue its Objection **and present any evidence in support thereof.**  
8 (Emphasis added). Thereafter the Complainant will be given 30 minutes to state  
9 its position regarding the Amended Settlement **and to present any evidence in**  
10 **support thereof.** (Emphasis added). Thereafter, the Respondent will be given 10  
11 minutes to argue in rebuttal, if needed, as to why the Board's Amendments set  
12 forth in its tentative Order dated October 16, 2023, should not stand and the  
13 Settlement as proposed, should be accepted.

14 The notice also provided:

15 The Board reserves the right to question the parties and their counsel about the  
16 matters before the Board. At the conclusion of hearing on the objection(s), the  
17 Board may resolve the dispute over the amendments set forth in the Order dated  
18 October 16, 2023 or take this matter under advisement. If the Board is satisfied,  
19 the objection(s) are well founded, the Board may reinstate the settlement as  
20 originally proposed and this matter will be concluded by a final order of the  
21 Board. Similarly, if the Board concludes the objections are not well founded, the  
22 order approving the settlement as amended by the Board may be affirmed as the  
23 final order of the Board. The Board may take such other relief as the proceedings  
24 would inform the Board. *See*, Order Vacating and Rescheduling Hearing, dated  
25 and served February 7, 2024.

26 The matter was heard on March 13, 2024. The parties had from February 7, 2024 to  
27 March 13, 2024, to marshal their thoughts and defense in opposition to the action taken by the  
28 Board in its tentative order addressing the Settlement Agreement.

The simple fact of the matter is, the Board finds and concludes the parties had every  
opportunity to present whatever they felt was necessary to convince the Board to revise its  
tentative order in this matter. To claim otherwise by the parties is simply unfounded.

The parties also argued, in part, that they were denied due process because they did not  
know what the Board was thinking and, therefore, had no opportunity to be able to frame an  
opposition to the action taken by the Board. As is in all cases where a settlement is presented to  
the Board for review, the parties would not know before hand the precise thought process of the  
Board in their review of a proposed settlement, save and except that they should know before

1 hand that according to NAC 618.833, the Board is obligated to review the proposed settlement  
2 agreement and approve them, IF the settlement is "... consistent with the provisions and  
3 objectives of Chapter 618 of the Nevada Revised Statutes." NAC 618.833(1). The purposes and  
4 objectives of Chapter 618 of the Nevada Revised Statutes are set forth in NRS 618.015 where it  
5 states that it is: "... the purpose of this Chapter [the OSHA Chapter] is to provide safe and  
6 healthful working conditions for every employee..."

7 That is the statutory framework of the inquiry before the Board. That is the duty the  
8 Board is obligated to discharge when reviewing settlement agreements. The reading of the  
9 regulations and the statute would tell the parties that they have the burden to show that the  
10 settlement agreement is consistent with obligations to provide safe and healthful working  
11 conditions for every employee. At the very least, the parties should know that the Board would  
12 consider whether the Settlement Agreement was consistent with the purposes of NRS 618.015  
13 which is to promote safe and healthful working conditions for every employee. This statute and  
14 this regulation form the burden placed upon the State and Respondent when submitting a  
15 proposed settlement agreement for review by the Board. It is incumbent, also, for the Board to  
16 pursue that line of inquiry also.

17 In truth, given the second opportunity afforded the State and Respondent to convince the  
18 Board to accept the settlement proposal as written, the State and Respondent in this matter had  
19 more information at their disposal about the Board's thinking than is typically the case. The  
20 parties had the content of the hearing of October 11, 2023, to inform them when the settlement  
21 was presented as well as to be informed by the content of the tentative action taken by the Board  
22 with its order.

23 As a result, Respondent and the State, herein, had more due process rather than less due  
24 process. They had a second opportunity to convince the Board to approve their settlement  
25 proposal as written, being informed in advance of the Board's concerns as enumerated when the  
26 Settlement Agreement was first considered by the Board in October 11, 2023. Furthermore, the  
27 Board was not unmindful of its responsibility when reviewing the Settlement Agreement against  
28 the provisions of NAC 618.833(1) and NRS 618.015(1).

1           The Board and parties were advised by the observations from Chairman Weber: "This is  
2 very serious one [case] Sierra Concepts, they had guys in a house working on single planks or 12  
3 inch boards when the requirement was 18 inches of scaffolding 20 feet in the air, 14 feet in the  
4 air. They also had employees working 22 feet in the air on substandard scaffolding. He then  
5 stated:

6           And then because the information including the representation that Sierra  
7 Concepts did have a fall protection plan in place, which it subsequently provided  
8 Nevada OSHA with photographs and fall protection equipment within its  
9 inspection sheet but obviously it was not being used. So the fact that they had  
10 one, big deal. They were not using it. And there were guys subjected to 20 feet  
11 and 14 foot fall, that's potential fatalities [fatalities]. So I am not sure if I agree with  
12 an additional 30% reduction on that, so that are my thoughts on this one. *See*,  
13 Transcript pp., 8-9.

14  
15 Member Fullerton said:

16           The two biggest fears we have for these guys is fall protection and being crushed  
17 in trenches. I think those are the two biggest -- some of the biggest concerns we  
18 have when we're dealing with this kind of stuff. The fact that these guys were on a  
19 12-inch plank 20 feet in the air with no fall protection. Transcript p., 10.

20 Then Ms. Ortiz interjected:

21           I do believe that part of the Sierra Concepts is a smaller company. So that was --  
22 as you see in the agreement, that's why they had to have a payment agreement  
23 plan because they -- so from our evaluation of the company, this 31,000  
24 [\$31,000] was an extreme deterrent effect for them and the fact that we didn't  
25 withdraw or reclassify anything. So this is all on their record and it's the deterrent  
26 effect that OSHA is looking for. Transcript, p. 12.

27 Then Chairman Weber interjected:

28           You [the State] took that penalty off, right? [\$13,653 for Citation 1, Item 3] That  
was the one removed. Okay. So if that's the conflict, then I would agree with that.  
Let's take that one off. That might be -- that might not be an argument that would  
hold up here in a hearing. But to give them an additional 30 percent off the total,  
I'm not -- I'm just not sure I agree with that based on the nature of all of these  
other serious citations. Transcript, p. 14.

Then Member Jorge Macias interjected:

That was kind of hard. I mean, just because -- you know, we have accepted  
settlements before with very serious citations written with some type of reduction.  
So no reduction at all, maybe a little unfair. Maybe, you know, we suggest a less  
reduction, a less percentage because, I mean, most of these that we accept have  
some type of penalty adjustment to them. Transcript, p. 15.

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1 Then Member Fullerton stated:

2 I would like to -- I hear what Mr. Macias is saying. As I look through this, I think  
3 if OSHA's penalty is to create a deterrent on future violations and the reductions  
4 there and we're talking over the dollar amounts and it's not, you know, as Ms.  
5 Ortiz stated, they're not a profit producing business, I would be more comfortable  
6 if they get this reduction -- on the penalty side, I would be more comfortable with  
7 reduction if we had language in there that said if they had any other violations  
8 within a certain amount of time that the full amount would be reinstated.  
9 Transcript p., 16.

7 Then Ms. Ortiz added:

8 If you look at recital item number seven, [in the Settlement Agreement] it does say  
9 that if they don't comply with the terms above, which means abating and paying,  
10 they will reinstate the full penalty amount. Transcript p., 17.

10 Chairman Weber then stated:

11 Right. That way it's equitable with the other cases we've decided. I don't know. Do  
12 you want to make a proposal on this one or do you want to do something like that?  
13 Do you want to issue a proposed settlement, maybe we give them a ten percent  
14 reduction off the total but then we keep all of the things serious. To Scott's point,  
15 maybe we say if they have a re -- I don't know if we can even put that in there that  
16 a recurrence, you know, before this is paid off -- maybe we say that. Before this is  
17 paid off, if there's a recurrence of any of these citations before the time you've paid  
18 these off, the full amount becomes due and payable. Transcript pp.18-19.

16 Member Macias and Member Fullerton concurred with the results of this proposal to  
17 reduce the 30% reduction to 10%, meaning that there was a \$13,653 discount from the \$58,298  
18 fine as pled, leaving a balance of \$45,645. From the sum of \$45,645 a 10% discount was taken.  
19 This left a fine of \$40,180 to be paid according to revisions made by the Board to the Settlement  
20 Agreement. This compares with the \$31,251 fine that would have been levied under Settlement  
21 Agreement as proposed by the State and Respondent. Viewed alternatively, the total discount  
22 imposed by the Board was the sum of \$13,653, plus \$4,464 for total of \$18,117. The Board also  
23 added to paragraph 7 of the Settlement Agreement a provision that in the event there was a repeat  
24 violation during the 6 month payoff period, the fine would revert again to the full amount  
25 \$58,298.

26 From the foregoing, it is evident that during the course of the hearing on October 11,  
27 2023, the Board expressed concern about working at heights without proper personal protective  
28 equipment being worn. The Board was aware the multiple violations could give rise to serious

1 injury or death. The health and safety of employees were obviously at risk. The Board was  
2 concerned about protecting employees from conditions of a fatal nature.

3 On the other hand, the Board did not want to bankrupt or drive out of business, a small  
4 employer. The adjustment in the fine reflected a concern for both of those issues. A fine needed  
5 to be strong enough to deter employers from being lax in the provision of a safe workplace for  
6 employees. On the other hand, the fine levied need not be so large as to drive the employer out of  
7 business. It was, however, intended to be sufficient to act as a deterrent. The Board's disposition  
8 of the Settlement Agreement, therefore, fell squarely within its purview reflected by NAC  
9 618.822(1) and NRS 618.015(1). Employee safety and a safe place of employment were the  
10 Board's concerns.

11 ACCORDINGLY, it was moved by Frank Milligan, seconded by William Spielberg, to  
12 make final the tentative Order of October 16, 2023, thereby affirming the Settlement Agreement  
13 as amended by the Board on October 11, 2023. The motion was unanimously adopted on a vote  
14 of 5-0. The Board members voting on this matter were Chairman Weber, Secretary Spielberg and  
15 members Milligan, Macias and Fullerton.

16 By review of the Board, the Board finds further that the disposition set forth in the Order,  
17 above, is consistent with the action taken by the Board on October 11, 2023, and March 13, 2024  
18 as the decision and Order of the Board.

19 ACCORDINGLY, it was moved by Tyson Hollis, seconded by William Spielberg, to  
20 approve the Order set forth above as the Final Order of the Board. The motion was adopted on a  
21 vote of 5-0, with a unanimous Board affirming that the above set forth Order was consistent with  
22 the Board's disposition of the Settlement Agreement, as amended by the Order dated October 11,  
23 2023.

24 This Order may be served by email.

25 IT IS SO ORDERED.

26 Dated this 17<sup>th</sup> day of October, 2024.

NEVADA OCCUPATIONAL SAFETY  
AND HEALTH REVIEW BOARD

27  
28 By: /s/Jorge Macias  
Jorge Macias, Chairman

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**CERTIFICATE OF SERVICE**

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, *Order*, on those parties identified below by e-mailing the same to the following e-mail addresses:

- Salli Ortiz, Esq. - [sortiz@dir.nv.gov](mailto:sortiz@dir.nv.gov)
- Christopher A. Eccles, Esq. - [Ceccles@dir.nv.gov](mailto:Ceccles@dir.nv.gov)
- Robert A. Dotson, Esq. - [rdotson@dotsonlaw.legal](mailto:rdotson@dotsonlaw.legal)
- Justin C. Vance, Esq. - [jvance@dotsonlaw.legal](mailto:jvance@dotsonlaw.legal)

Dated this 17<sup>th</sup> day of October, 2024.

By: /s/Karen Kennedy  
Employee of  
The Law Offices of Charles R. Zeh, Esq.

S:\Clients\OSHA\RNO 22-2141 Sierra Concepts Construction\Final Order 10.17.2024.wpd