

IN THE SUPREME COURT OF THE STATE OF NEVADA

WPH ARCHITECTURE, INC., a
Nevada Corporation,

Appellant,

vs.

EIGHTH JUDICIAL DISTRICT
COURT and THE HONORABLE
JESSIE WALSH,

Respondent,

and

VEGAS VP, LP, a Nevada Limited
Partnership,

Real Party in Interest.

No. 54389

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Clerk of Supreme Court

APPELLANT, WPH
ARCHITECTURE, INC.'S

MOTION FOR LEAVE
TO FILE SUPPLEMENT TO
APPELLATE BRIEFING

APPELLANT, WPH ARCHITECTURE, INC.'S
MOTION FOR LEAVE TO FILE SUPPLEMENT TO APPELLATE BRIEFING

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BRIEF & RETURNED UNFILED

1 **APPELLANT, WPH ARCHITECTURE, INC.'S**

2 **MOTION FOR LEAVE TO FILE SUPPLEMENT TO APPELLATE BRIEFING**

3 **I. INTRODUCTION**

4 COMES NOW Appellant WPH ARCHITECTURE, INC. (“**WPH**”), by and through its
5 counsel of record, and submits this Motion for Leave to File Supplement to Appellate Briefing
6 pursuant to Nevada Rules of Appellate Procedure Rule 27.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 On August 21, 2009, WPH filed its Notice of Appeal in this matter. (Document 09-
9 20375) On May 4, 2010, WPH timely filed its Opening Brief. (Document 10-11465) On June
10 11, 2010, Real Party in Interest/Respondent, Vegas VP, LP (“**Vegas VP**”) filed its Answering
11 Brief. (Document 10-15221) On July 20, 2010, WPH filed its Reply Brief in this matter.
12 (Document 10-18523)

13 In its Opening Brief and Reply Brief, WPH raised both statutory and common law
14 grounds for both the Eighth Judicial District Court (the “**District Court**”) and this Court to
15 review the AAA panel of arbitrators’ (the “**Panel**”) underlying arbitration award and order
16 Vegas VP to pay WPH its attorney’s fees and costs incurred as a result of Vegas VP rejecting
17 both of WPH’s statutory offers of judgment. The statutory grounds for review of arbitration
18 awards are found in Nevada’s Uniform Arbitration Act and include whether the “arbitrator
19 exceeds his powers.” (NRS 38.241(1)(d).) The common law grounds for review of arbitration
20 awards include “whether the arbitrator manifestly disregarded the law.” (*Clark County*
21 *Education Association v. Clark County School District*, 122 Nev. 337, 131 P.3d 5 (2006).)

1 On May 12, 2015, this Court heard oral argument at which WPH and Vegas VP, by and
2 through counsel, had an opportunity to present their arguments. In the course of oral arguments,
3 the panel of Nevada Supreme Court Justices (Justices Saitta, Pickering, and Gibbons) inquired
4 as to how and whether any states *outside* of Nevada have addressed an arbitrator's refusal to
5 award attorney's fees under either statutory or common law grounds.

6 After oral argument, WPH performed research and has now located such authority in
7 order to answer the Nevada Supreme Court Justices' inquiry. **Notably, WPH has found**
8 **authority whereby both the Supreme Court of Oklahoma and the Appellate Court of**
9 **Illinois held that an arbitrator's award which refused to award attorney's fees to a**
10 **prevailing party should be vacated as the "arbitrator exceed[ed] his powers." (*Sooner***
11 ***Builders & Investments, Inc. v. Nolan Hatcher Const. Services, L.L.C.*, 2007 OK 50, 164 P.3d**
12 **1063; *Spencer v. Ryland Group, Inc.*, 372 Ill.App.3d 200, 865 N.E.2d 301 (2007).)**

13 Therefore, WPH respectfully moves for leave to discuss this and related authority in its
14 Supplement. Given that other state courts' addressing the review of arbitration awards was of
15 keen import to this Court in regards to the issues mentioned at oral argument, WPH respectfully
16 submits this Motion seeking an Order from this Court granting it leave to file a Supplement to
17 Appellate Briefing, a copy of which is attached hereto as **Exhibit "A."**

18 As stated in WPH's Opening and Reply Brief, the issues before this Court are of first
19 impression, detailed and involve interpretations from a myriad of cases in Nevada and other
20 jurisdictions. WPH's Supplement seeks to aid the Court in its analysis of these issues as well as

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1 clarify and distinguish the statements, arguments and case law raised by other states on this
2 issue.

3 To that end, with this Court's indulgence, WPH seeks to advance the following points:

- 4 • The written agreement between WPH and Vegas VP which requires that the Panel follow
5 Nevada law is the source of the Panel's power and the Panel has the obligation to
6 effectuate the intent of that agreement.
- 7 • The statutory grounds for review of arbitration awards, based on the Uniform Arbitration
8 Act, and interpreted by various jurisdictions, requires that any portion of *an arbitration*
9 *award which ignores the parties' agreement or is contrary to the parties' agreement*
10 *exceeds the arbitrators powers and must be vacated.*
- 11 • The common law grounds for review of arbitration awards, based on the "manifest
12 disregard" standard, and interpreted by various jurisdictions, requires that any portion of
13 *an arbitration award where arbitrators refuse to award attorney's fees be set aside as a*
14 *manifest disregard of the law.*

15 DATED this July 31, 2015

WEIL & DRAGE, APC

17 /s/ Jean A. Weil

18 By: _____

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