

1 **Marquis Aurbach Coffing**
Micah S. Echols, Esq.
2 Nevada Bar No. 8437
Adele V. Karoum, Esq.
3 Nevada Bar No. 11172
10001 Park Run Drive
4 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
5 Facsimile: (702) 382-5816
mechols@maclaw.com
6 akaroum@maclaw.com
Attorneys for Respondent,
7 *The Original Roofing Company*

DISTRICT COURT**CLARK COUNTY, NEVADA**

10 CHIEF ADMINISTRATIVE OFFICER OF THE
OCCUPATIONAL SAFETY AND HEALTH
11 ADMINISTRATION, DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT OF
12 BUSINESS AND INDUSTRY, STATE OF
NEVADA,

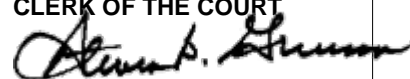
Petitioners,

vs.

17 THE ORIGINAL ROOFING COMPANY, LLC;
NEVADA OCCUPATIONAL SAFETY AND
18 HEALTH REVIEW BOARD,

Respondents.

Electronically Filed
9/14/2017 8:55 AM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Sep 22 2017 02:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: A-16-740022-J
Dept. No.: 24

NOTICE OF APPEAL

NOTICE OF APPEAL

Respondent, The Original Roofing Company, by and through its attorneys of record, Marquis Aurbach Coffing, hereby appeals to the Supreme Court of Nevada from the Order Granting Petition for Judicial Review, which was filed on August 31, 2017, and is attached as **Exhibit 1.**

Dated this 14th day of September, 2017.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols

Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145
*Attorneys for Respondent,
The Original Roofing Company*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of September, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Adam Laxalt, Esq.
Attorney General
100 N. Carson Street
Carson City, Nevada 89701

Jess Lankford, CAO OSHA
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Steve George, Administrator
Dept. of Business & Industry
Division of Industrial Relations
400 W. King Street, Suite 400
Carson City, Nevada 89703

Nevada Occupational Safety and Health
Review Board
c/o Fred Scarpello, Esq.
600 E. William Street, Suite 300
Carson City, Nevada 89701

Salli Ortiz, Division Counsel
Dept. of Business & Industry
Division of Industrial Relations
400 W. King Street, Suite 201
Carson City, Nevada 89703

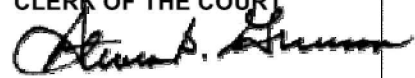
Donald C. Smith, Esq.
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit 1



Marquis Aurbach Coffing

Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
akaroum@maclaw.com

Resnick & Louis, P.C.

Bernadette A. Rigo, Esq.
Nevada Bar No. 7882
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
brigo@rlattorneys.com

*Attorneys for Respondent,
The Original Roofing Company*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHIEF ADMINISTRATIVE OFFICER OF THE
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION, DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT OF
BUSINESS AND INDUSTRY, STATE OF
NEVADA,

Petitioners,

vs.

THE ORIGINAL ROOFING COMPANY, LLC;
NEVADA OCCUPATIONAL SAFETY AND
HEALTH REVIEW BOARD,

Respondents.

Case No.: A-16-740022-J
Dept. No.: 24

**ORDER GRANTING PETITION FOR
JUDICIAL REVIEW**

Hearing Date: January 10, 2017
Hearing Time: 9:00 A.M.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

Petitioner, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, State of Nevada's petition for judicial review having come before this Court on January 10, 2017, and the Court having heard and considered the arguments of counsel, pleadings and papers submitted by the parties, and good cause appearing hereby determines as follows:

1. On October 1, 2015, Nevada OSHA issued a Citation and Notification of Penalty ("Citation") against The Original Roofing Company, LLC.

2. The Original Roofing Company, LLC contested the Citation and, on November 18, 2015, Nevada OSHA filed its Complaint with the Review Board.

3. On June 14, 2016, the Review Board's Findings of Fact, Conclusions of Law and Final Order was entered, denying the Citation. The Review Board concluded, as a matter of fact and law, no violation occurred and denied the proposed penalty.

4. The Nevada Occupational Safety and Health Review Board found that OSHA failed to establish a prima facie case.

5. OSHA filed a petition for judicial review on July 14, 2016.

6. The Nevada Occupational Safety and Health Review Board's Findings of Fact, Conclusions of Law and Final Order is reversed in its entirety.

7. The Nevada Occupational Safety and Health Review Board had insufficient evidence to support the findings of fact and conclusions of law in its prior Order.

8. The Nevada Occupational Safety and Health Review Board did not cite to any of the evidence.

9. The Original Roofing Company, LLC failed to establish the affirmative defense of employee misconduct.

10. With respect to reasonable diligence, the supervisory employee violated the safety rule.

11. Original Roofing's request for remand for the Review Board to clarify the order is denied, and the denial of the citation is reversed.

~~12 This order will remain suspended, consistent with Westside Charter Service, Inc.
v. Gray Line Tours of Southern Nevada, 99 Nev. 456, 664 P.2d 351 (1983). OSHA is not
permitted to take any action on the issues of this case until all appeals are exhausted.~~

IT IS SO ORDERED.

Dated this 29 day of August, 2017.


DISTRICT COURT JUDGE

Respectfully submitted by:

MARQUIS AURBACH COFFING

By

Adele Karoum

Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145

Bernadette A. Rigo, Esq.
Nevada Bar No. 7882
Resnick & Louis, P.C.
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118

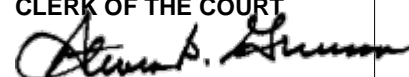
*Attorneys for Respondent,
The Original Roofing Company*

Approved as to form and content:

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

By no response

Salli Ortiz, Division Counsel
Nevada Bar No. 9140
400 W. King Street, Suite 201
Carson City, Nevada 89703
*Attorneys for Petitioner
Chief Administrative Officer of the
Occupational Safety and Health Administration,
Division of Industrial Relations of the Department
of Business and Industry, State of Nevada*



Marquis Aurbach Coffing
Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
akaroum@maclaw.com
*Attorneys for Respondent,
The Original Roofing Company*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHIEF ADMINISTRATIVE OFFICER OF THE
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION, DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT OF
BUSINESS AND INDUSTRY, STATE OF
NEVADA,

Case No.: A-16-740022-J
Dept. No.: 24

Petitioners,

CASE APPEAL STATEMENT

vs.

THE ORIGINAL ROOFING COMPANY, LLC;
NEVADA OCCUPATIONAL SAFETY AND
HEALTH REVIEW BOARD,

Respondents.

Respondent, The Original Roofing Company, by and through its attorneys of record,
Marquis Aurbach Coffing, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

The Original Roofing Company

2. Identify the Judge issuing the decision, judgment, or order appealed from:

Honorable Jim Crockett

3. Identify each appellant and the name and address of counsel for each appellant:

The Original Roofing Company, LLC ("TORC")

Micah S. Echols, Esq.
Adele V. Karoum, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

4. Identify each respondent and the name and address of appellate counsel, if known,
for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
much and provide the name and address of that respondent's trial counsel):

Chief Administrative Officer of the Occupational Safety and Health
Administration, Division of Industrial Relations of the Department of Business
and Industry, State of Nevada ("OSHA")

Donald C. Smith, Esq.
Division of Industrial Relations
1301 N. Green Valley Pkwy., Suite 200
Henderson, Nevada 89074

5. Indicate whether any attorney identified above in response to question 3 or 4 is
not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
permission to appear under SCR 42 (attach a copy of any district court order granting such
permission):

N/A.

6. Indicated whether appellant was represented by appointed or retained counsel in
the district court:

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

The petition for judicial review was filed on July 14, 2016.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This case arises from a contested citation issued by OSHA to TORC. OSHA filed a complaint to the Nevada Occupational Safety and Health Review Board ("Review Board"), alleging "repeat serious" violations by TORC of the safety regulations surrounding work on "steep roofs." TORC successfully defended the complaint before the Review Board, and the violation and proposed penalty of \$5,600 for the citation was denied in the Review Board's June 14, 2016 Findings of Fact, Conclusions of Law, and Order.

OSHA filed a petition for judicial review with the District Court on July 14, 2016, requesting review of the Review Board's Findings of Fact, Conclusions of Law, and Order. Following a hearing on January 10, 2017, the District Court entered the August 31, 2017 Order Granting Petition for Judicial Review, which reversed the Review Board's June 14, 2016 Findings of Fact, Conclusions of Law, and Order in its entirety.

TORC now appeals the District Court's August 31, 2017 order.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

N/A.

12. Indicate whether this appeal involves child custody or visitation:

N/A.

1 13. If this is a civil case, indicate whether this appeal involves the possibility of
2 settlement:

3 TORC does not believe that settlement is a possibility under the unique
4 circumstances of this case and respectfully requests to be exempted from the
NRAP 16 settlement program.

5 Dated this 14th day of September, 2017.

6
7 MARQUIS AURBACH COFFING

8
9 By /s/ Micah S. Echols

Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for *Respondent*,
The Original Roofing Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of September, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

N/A.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Adam Laxalt, Esq.
Attorney General
100 N. Carson Street
Carson City, Nevada 89701

Jess Lankford, CAO OSHA
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Steve George, Administrator
Dept. of Business & Industry
Division of Industrial Relations
400 W. King Street, Suite 400
Carson City, Nevada 89703

Nevada Occupational Safety and Health
Review Board
c/o Fred Scarpello, Esq.
600 E. William Street, Suite 300
Carson City, Nevada 89701

Salli Ortiz, Division Counsel
Dept. of Business & Industry
Division of Industrial Relations
400 W. King Street, Suite 201
Carson City, Nevada 89703

Donald C. Smith, Esq.
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-16-740022-J

Chief Admin Officer of the Occupational Safety and Health, Petitioner(s)
vs.
The Original Roofing Company Llc, Respondent(s)

§
§
§
§
§

Location: **Department 24**
Judicial Officer: **Crockett, Jim**
Filed on: **07/14/2016**
Cross-Reference Case Number: **A740022**

CASE INFORMATION

Statistical Closures
08/31/2017 Summary Judgment

Case Type: **Other Nevada State Agency Appeal**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-16-740022-J
Court Department 24
Date Assigned 07/14/2016
Judicial Officer Crockett, Jim





PARTY INFORMATION

		<i>Lead Attorneys</i>
Petitioner	Chief Admin Officer of the Occupational Safety and Health	Ortiz, Salli <i>Retained</i> 775-684-7286(W)
	Division of Industrial Relations of the Department of Business and Industry	Ortiz, Salli <i>Retained</i> 775-684-7286(W)
	Nevada State of	Ortiz, Salli <i>Retained</i> 775-684-7286(W)
Respondent	Nevada Occupational Safety and Health Review Board	
	The Original Roofing Company Llc	Rigo, Bernadette A. <i>Retained</i> 7022287717(W)













DATE

EVENTS & ORDERS OF THE COURT


INDEX

07/14/2016	 Petition for Judicial Review Filed by: Petitioner Chief Admin Officer of the Occupational Safety and Health <i>Petition for Judicial Review</i>
08/05/2016	 Transmittal Party: Petitioner Division of Industrial Relations of the Department of Business and Industry <i>Petitioner's Certificate of Transmittal of Transcript</i>
08/15/2016	 Record on Appeal Party: Petitioner Nevada State of <i>Record On Appeal</i>
09/23/2016	 Brief Filed By: Petitioner Nevada State of <i>Petitioner Division of Industrial Relations' Opening Brief</i>

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-16-740022-J

09/27/2016	 Statement Filed by: Respondent The Original Roofing Company Llc <i>Statement of Intent to Participate in Petition for Judicial Review</i>
10/04/2016	 Initial Appearance Fee Disclosure Filed By: Respondent The Original Roofing Company Llc <i>Initial Appearance Fee Disclosure</i>
10/27/2016	 Brief Filed By: Respondent The Original Roofing Company Llc <i>Respondent The Original Roofing Company's Opening Brief</i>
11/21/2016	 Errata Filed By: Respondent The Original Roofing Company Llc <i>Errata to Respondent the Original Roofing Company, LLC's Answering Brief</i>
11/29/2016	 Brief Filed By: Petitioner Division of Industrial Relations of the Department of Business and Industry <i>Petitioner Division of Industrial Relations' Reply Brief</i>
12/01/2016	 Request Filed by: Petitioner Division of Industrial Relations of the Department of Business and Industry <i>Respondent Division of Industrial Relations' Request for Submission of Petition for Judicial Review and Notice of Hearing</i>
12/02/2016	 Certificate of Mailing Filed By: Petitioner Nevada State of <i>Certificate of Service</i>
12/08/2016	 Request Filed by: Respondent The Original Roofing Company Llc <i>Respondent The Original Roofing Company, LLC's Request for Hearing</i>
01/10/2017	 Petition for Judicial Review (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Respondent Division of Industrial Relations' Request for Submission of Petition for Judicial Review and Notice of Hearing</i>
02/08/2017	 Notice of Appearance Party: Respondent The Original Roofing Company Llc <i>Notice of Appearance</i>
08/31/2017	Order Granting Judicial Review (Judicial Officer: Crockett, Jim) Debtors: Chief Admin Officer of the Occupational Safety and Health (Petitioner), Division of Industrial Relations of the Department of Business and Industry (Petitioner), Nevada State of (Petitioner) Creditors: The Original Roofing Company Llc (Respondent) Judgment: 08/31/2017, Docketed: 09/01/2017
08/31/2017	 Order Granting Filed By: Respondent The Original Roofing Company Llc <i>Order Granting Petition for Judicial Review</i>
09/01/2017	 Notice of Entry of Order

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-16-740022-J

	Filed By: Respondent The Original Roofing Company Llc <i>Notice of Entry of Order Granting Petition for Judicial Review</i>	
09/14/2017	 Notice of Appeal Filed By: Respondent The Original Roofing Company Llc <i>Notice of Appeal</i>	
09/14/2017	 Case Appeal Statement Filed By: Respondent The Original Roofing Company Llc <i>Case Appeal Statement</i>	

DATE	FINANCIAL INFORMATION	
	Respondent The Original Roofing Company Llc	
	Total Charges	261.00
	Total Payments and Credits	261.00
	Balance Due as of 9/19/2017	0.00
	Respondent The Original Roofing Company Llc	
	Appeal Bond Balance as of 9/19/2017	500.00

DISTRICT COURT CIVIL COVER SHEET

A- 16- 740022- J

Clark

County, Nevada

XXI V

Case No. _____

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): Nevada OSHA 1301 N. Green Valley Pkwy #200 Henderson, NV 89074 (702) 486-9020	Defendant(s) (name/address/phone): The Original Roofing Company, LLC Attn: Don Kelly, Safety Manager 4515 Copper Sage St., Ste. 100, Las Vegas, NV 89115 (702) 739-7663
Attorney (name/address/phone): Salli Ortiz, Division Counsel 400 W. King St., Ste. 201 Carson City, NV 89703 (775) 684-7286	Attorney (name/address/phone): _____ _____ _____

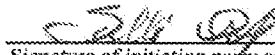
II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

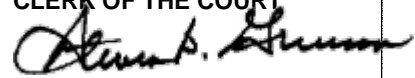
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input checked="" type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

7/13/16
Date


Signature of initiating party or representative

See other side for family-related case filings.



Marquis Aurbach Coffing

Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
akaroum@maclaw.com

Resnick & Louis, P.C.

Bernadette A. Rigo, Esq.
Nevada Bar No. 7882
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
brigo@rlattorneys.com

*Attorneys for Respondent,
The Original Roofing Company*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHIEF ADMINISTRATIVE OFFICER OF THE
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION, DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT OF
BUSINESS AND INDUSTRY, STATE OF
NEVADA,

Petitioners,

vs.

THE ORIGINAL ROOFING COMPANY, LLC;
NEVADA OCCUPATIONAL SAFETY AND
HEALTH REVIEW BOARD,

Respondents.

Case No.: A-16-740022-J
Dept. No.: 24

**ORDER GRANTING PETITION FOR
JUDICIAL REVIEW**

Hearing Date: January 10, 2017
Hearing Time: 9:00 A.M.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

Petitioner, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, State of Nevada's petition for judicial review having come before this Court on January 10, 2017, and the Court having heard and considered the arguments of counsel, pleadings and papers submitted by the parties, and good cause appearing hereby determines as follows:

1. On October 1, 2015, Nevada OSHA issued a Citation and Notification of Penalty ("Citation") against The Original Roofing Company, LLC.

2. The Original Roofing Company, LLC contested the Citation and, on November 18, 2015, Nevada OSHA filed its Complaint with the Review Board.

3. On June 14, 2016, the Review Board's Findings of Fact, Conclusions of Law and Final Order was entered, denying the Citation. The Review Board concluded, as a matter of fact and law, no violation occurred and denied the proposed penalty.

4. The Nevada Occupational Safety and Health Review Board found that OSHA failed to establish a prima facie case.

5. OSHA filed a petition for judicial review on July 14, 2016.

6. The Nevada Occupational Safety and Health Review Board's Findings of Fact, Conclusions of Law and Final Order is reversed in its entirety.

7. The Nevada Occupational Safety and Health Review Board had insufficient evidence to support the findings of fact and conclusions of law in its prior Order.

8. The Nevada Occupational Safety and Health Review Board did not cite to any of the evidence.

9. The Original Roofing Company, LLC failed to establish the affirmative defense of employee misconduct.

10. With respect to reasonable diligence, the supervisory employee violated the safety rule.

11. Original Roofing's request for remand for the Review Board to clarify the order is denied, and the denial of the citation is reversed.

~~12 This order will remain suspended, consistent with Westside Charter Service, Inc.
v. Gray Line Tours of Southern Nevada, 99 Nev. 456, 664 P.2d 351 (1983). OSHA is not
permitted to take any action on the issues of this case until all appeals are exhausted.~~

IT IS SO ORDERED.

Dated this 29 day of August, 2017.


DISTRICT COURT JUDGE

Respectfully submitted by:

MARQUIS AURBACH COFFING

By

Adele Karoum

Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145

Bernadette A. Rigo, Esq.
Nevada Bar No. 7882
Resnick & Louis, P.C.
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118

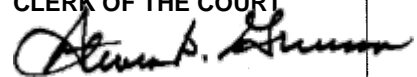
*Attorneys for Respondent,
The Original Roofing Company*

Approved as to form and content:

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

By no response

Salli Ortiz, Division Counsel
Nevada Bar No. 9140
400 W. King Street, Suite 201
Carson City, Nevada 89703
*Attorneys for Petitioner
Chief Administrative Officer of the
Occupational Safety and Health Administration,
Division of Industrial Relations of the Department
of Business and Industry, State of Nevada*



1 **Marquis Aurbach Coffing**
Micah S. Echols, Esq.
2 Nevada Bar No. 8437
Adele V. Karoum, Esq.
3 Nevada Bar No. 11172
10001 Park Run Drive
4 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
5 Facsimile: (702) 382-5816
mechols@maclaw.com
6 akaroum@maclaw.com

7 Resnick & Louis, P.C.
Bernadette A. Rigo, Esq.
8 Nevada Bar No. 7882
5940 S. Rainbow Boulevard
9 Las Vegas, Nevada 89118
Telephone: (702) 997-3800
10 Facsimile: (702) 997-3800
brigo@rlattorneys.com

11 *Attorneys for Respondent,*
12 *The Original Roofing Company*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CHIEF ADMINISTRATIVE OFFICER OF THE
16 OCCUPATIONAL SAFETY AND HEALTH
17 ADMINISTRATION, DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT OF
18 BUSINESS AND INDUSTRY, STATE OF
NEVADA,

Case No.: A-16-740022-J
Dept. No.: 24 XXIV

19 Petitioners,

20
21 vs.

22 THE ORIGINAL ROOFING COMPANY, LLC;
23 NEVADA OCCUPATIONAL SAFETY AND
24 HEALTH REVIEW BOARD,

25 Respondents.

26
27 **NOTICE OF ENTRY OF ORDER**
GRANTING PETITION FOR JUDICIAL REVIEW
28

1 **NOTICE OF ENTRY OF ORDER GRANTING**
2 **PETITION FOR JUDICIAL REVIEW**

3 Please take notice that an Order Granting Petition for Judicial Review was entered in the
4 above-captioned matter on the 31st day of August, 2017, a copy of which is attached hereto.

5 Dated this 1st day of September, 2017.

6 MARQUIS AURBACH COFFING

7
8 By Adele Karoum
9 Micah S. Echols, Esq.
10 Nevada Bar No. 8437
11 Adele V. Karoum, Esq.
12 Nevada Bar No. 11172
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 *Attorneys for Respondent,*
16 *The Original Roofing Company*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1 day of September, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

n/a

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Adam Laxalt, Esq.
Attorney General
100 N. Carson Street
Carson City, Nevada 89701

Jess Lankford, CAO OSHA
Division of Industrial Relations
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Steve George, Administrator
Dept. of Business & Industry
Division of Industrial Relations
400 W. King Street, Suite 400
Carson City, Nevada 89703

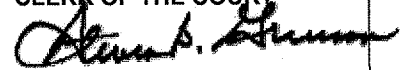
Nevada Occupational Safety and Health
Review Board
c/o Fred Scarpello, Esq.
600 E. William Street, Suite 300
Carson City, Nevada 89701

Salli Ortiz, Division Counsel
Dept. of Business & Industry
Division of Industrial Relations
400 W. King Street, Suite 201
Carson City, Nevada 89703

Donald C. Smith, Esq.
Division of Industrial Relations
1301 N. Green Valley Pkwy., Suite 200,
Henderson, NV 89074


an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



Marquis Aurbach Coffing
Micah S. Echols, Esq.
Nevada Bar No. 8437
Adele V. Karoum, Esq.
Nevada Bar No. 11172
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
mechols@maclaw.com
akaroum@maclaw.com

Resnick & Louis, P.C.
Bernadette A. Rigo, Esq.
Nevada Bar No. 7882
5940 S. Rainbow Boulevard
Las Vegas, Nevada 89118
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
brigo@rlattorneys.com

*Attorneys for Respondent,
The Original Roofing Company*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHIEF ADMINISTRATIVE OFFICER OF THE
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION, DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT OF
BUSINESS AND INDUSTRY, STATE OF
NEVADA,

Case No.: A-16-740022-J
Dept. No.: 24

Petitioners,

**ORDER GRANTING PETITION FOR
JUDICIAL REVIEW**

vs.

THE ORIGINAL ROOFING COMPANY, LLC;
NEVADA OCCUPATIONAL SAFETY AND
HEALTH REVIEW BOARD,

Hearing Date: January 10, 2017
Hearing Time: 9:00 A.M.

Respondents.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

Petitioner, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, State of Nevada's petition for judicial review having come before this Court on January 10, 2017, and the Court having heard and considered the arguments of counsel, pleadings and papers submitted by the parties, and good cause appearing hereby determines as follows:

1. On October 1, 2015, Nevada OSHA issued a Citation and Notification of Penalty ("Citation") against The Original Roofing Company, LLC.

2. The Original Roofing Company, LLC contested the Citation and, on November 18, 2015, Nevada OSHA filed its Complaint with the Review Board.

3. On June 14, 2016, the Review Board's Findings of Fact, Conclusions of Law and Final Order was entered, denying the Citation. The Review Board concluded, as a matter of fact and law, no violation occurred and denied the proposed penalty.

4. The Nevada Occupational Safety and Health Review Board found that OSHA failed to establish a prima facie case.

5. OSHA filed a petition for judicial review on July 14, 2016.

6. The Nevada Occupational Safety and Health Review Board's Findings of Fact, Conclusions of Law and Final Order is reversed in its entirety.

7. The Nevada Occupational Safety and Health Review Board had insufficient evidence to support the findings of fact and conclusions of law in its prior Order.

8. The Nevada Occupational Safety and Health Review Board did not cite to any of the evidence.

9. The Original Roofing Company, LLC failed to establish the affirmative defense of employee misconduct.

10. With respect to reasonable diligence, the supervisory employee violated the safety rule.

11. Original Roofing's request for remand for the Review Board to clarify the order is denied, and the denial of the citation is reversed.

~~12 This order will remain suspended, consistent with Westside Charter Service, Inc.
 2 v. Gray Line Tours of Southern Nevada, 99 Nev. 456, 664 P.2d 351 (1983). OSHA is not
 3 permitted to take any action on the issues of this case until all appeals are exhausted.~~

4 IT IS SO ORDERED.

5 Dated this 29 day of August, 2017.

6
 7 
 DISTRICT COURT JUDGE

8 Respectfully submitted by:

9 MARQUIS AURBACH COFFING

10
 11 By Adele Karoum

12 Micah S. Echols, Esq.
 Nevada Bar No. 8437
 Adele V. Karoum, Esq.
 Nevada Bar No. 11172
 10001 Park Run Drive
 Las Vegas, Nevada 89145

15 Bernadette A. Rigo, Esq.
 Nevada Bar No. 7882
 Resnick & Louis, P.C.
 5940 S. Rainbow Boulevard
 Las Vegas, Nevada 89118

18 *Attorneys for Respondent,
 The Original Roofing Company*

19
 20 Approved as to form and content:

21 STATE OF NEVADA
 DEPARTMENT OF BUSINESS AND INDUSTRY
 DIVISION OF INDUSTRIAL RELATIONS

23
 24 By no response

25 Salli Ortiz, Division Counsel
 Nevada Bar No. 9140
 400 W. King Street, Suite 201
 Carson City, Nevada 89703
 26 *Attorneys for Petitioner*
 Chief Administrative Officer of the
 Occupational Safety and Health Administration,
 Division of Industrial Relations of the Department
 of Business and Industry, State of Nevada

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Other Nevada State Agency
Appeal**

COURT MINUTES

January 10, 2017

A-16-740022-J Chief Admin Officer of the Occupational Safety and Health, Petitioner(s)
vs.
The Original Roofing Company Llc, Respondent(s)

January 10, 2017 9:00 AM Petition for Judicial Review

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER: Not Reported

PARTIES

PRESENT: Rigo, Bernadette A. Attorney for Respondent
 Smith, Donald C. Attorney for Petitioner

JOURNAL ENTRIES

Court noted the details of the case and FINDS the board had insufficient evidence to support the findings of fact and conclusion of law. Court stated its review, findings, and inclinations. Arguments by Ms. Rigo in opposition. Further argument by Counsel. COURT ORDERED, the board's decision REVERSED and Petition GRANTED; Upon inquiry, Court clarified it a complete reversal of the decision and noted this was a serious repeat violation and that there was a failure to provide affirmative defense of employee misconduct. Court finds the review board did not cite to any of the evidence and with regard to reasonable reliance, the supervisory employee violated safety rule in terms of reasonable diligence. Ms. Rigo further requested this be remanded for the board to clarify their order. Court declined the request and directed Mr. Smith to prepare the order reversing the decision within TEN days per EDCR 7.21.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PETITION FOR JUDICIAL
REVIEW; NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW;
DISTRICT COURT MINUTES

CHIEF ADMINISTRATIVE OFFICER OF THE
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION; DIVISION OF
INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND
INDUSTRY; STATE OF NEVADA,

Plaintiff(s),

vs.

THE ORIGINAL ROOFING COMPANY, LLC;
NEVADA OCCUPATIONAL SAFETY AND
HEALTH REVIEW BOARD,

Defendant(s),

Case No: A-16-740022-J

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 19 day of September 2017.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

WKL

Clerk of the Supreme Court

9/11/2017

122172
\$250.00

Inv.Date	Inv.No.	Invoice Description	Amount
09-11-2017	MSE14704-1.	Case No. A-16-740022-J	250.00

122712

Total:**\$250.00**

THIS DOCUMENT HAS A MULTI-COLORED FACE THAT CHANGES COLOR GRADUALLY

SEE LIST OF SECURITY FEATURES ON THE BACK. DO NOT CASH UNLESS ALL ARE PRESENT.

MARQUIS AURBACH
COFFING

ma@law.com

16001 PARK RUN DRIVE • LAS VEGAS, NEVADA 89145
TELEPHONE (702) 382-0711 • FACSIMILE (702) 382-5816NEVADA STATE BANK
A Subsidiary of Zions Utah Bancorporation
Main Office - P.O. Box 990
Las Vegas, Nevada 89125
94-77/1224122172
122712**Two Hundred Fifty and No/100 Dollars**

DATE

AMOUNT

9/11/2017

\$250.00PAY
TO THE
ORDER
OF*Clerk of the Supreme Court*201 S. Carson St., Ste. # 201
Carson City, NV 89701

⑈ 1 2 2 1 7 2 ⑈ ⑆ 1 2 2 4 0 0 7 7 9 ⑆ 0 0 0 2 1 0 0 5 4 3 ⑈