

BEFORE THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA STATE BOARD OF)
ARCHITECTURE, INTERIOR DESIGN)
AND RESIDENTIAL DESIGN,)

Petitioner,)

vs.)

EIGHTH JUDICIAL DISTRICT COURT)
OF THE STATE OF NEVADA,)
DEPARTMENT 25, HONORABLE)
KATHLEEN DELANEY,)

Respondent)

and)

DENNIS RUSK,)

Real Party in Interest.)
_____)

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Aug 27 2018 03:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.

PETITIONER'S APPENDIX

Petitioner Nevada State Board of Architecture, Interior Design and
Residential Design, by and through its attorney Louis Ling, submits this Petitioner's
Appendix in support of its Petition for Writ of Prohibition.

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Signed this 27th day of August, 2018.

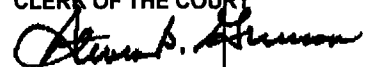
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<p style="text-align: right;">Page 66</p> <p>1 February 6th. It just elaborated a lot of things in more 2 detail. So that's kind of where I was seeing some things. 3 But especially from the understanding that the -- 4 what was presented in that original memo that it was part of 5 the expressed plan review, the intent that those -- City of 6 Las Vegas is doing that for issuing a building permit. 7 Even the way that the process is set up for 8 initial reviews, submit the drawings one week prior to the 9 appointment and then being able to go through and review it 10 with all the code officials, letters are usually issued and 11 then returned very shortly. Sometimes basically within one 12 to four days. So those are some of the things when I look 13 at this was set up as part of the original expressed plan. 14 MR. ERNY: Are we ready for a motion? 15 MR. MICKEY: Before we make a motion, there are 16 two things probably. 17 Okay. Let me make a reminder. And I want to read 18 it exactly from Judge Wiese's minutes, so I don't say it 19 incorrectly. So just as a reminder, just so everybody is 20 clear with this, and this is from the court minutes from 21 May 22nd, 2017, and this is a petition, "For the judicial 22 review is hereby granted and the Court hereby remands this 23 matter to the Board to consider whether it would be 24 appropriate to vacate its prior decision based upon the 25 newly discovered evidence consisting of the March 6th, 2007</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. WAUGH: Okay. So I'll end. 2 Do you want me to restate it correctly then? 3 MS. LONG: That's fine. 4 MR. ERNY: Second. 5 MR. MICKEY: Any discussion, further discussion on 6 the motion? 7 I'll call for a vote. All those in favor? 8 (All members join in ayes.) 9 MR. MICKEY: Anybody opposed? 10 Motion carries. 11 With that, I believe the next step is that we must 12 draw up an order. So he if -- I -- I can't if you would get 13 that please and we could go ahead and get the order crafted. 14 Thank you. 15 MR. NERSESIAN: Thank you. 16 MR. MICKEY: And we will adjourn. 17 MR. NERSESIAN: So I will get an order and nothing 18 is effective and no time frames are running until I get the 19 order? 20 MS. LONG: That's correct. 21 MR. NERSESIAN: Okay. Can I get a copy of the 22 transcript please? Thank you. Thank you all. 23 MR. MICKEY: Thank you everybody. 24 MR. NERSESIAN: And how you can find that a 25 finding that Mr. Rusk is a liar was not material --</p>
<p style="text-align: right;">Page 67</p> <p>1 Schirmer Report and drawings." 2 So that is the minutes and the order that we have 3 received from the judge. 4 And then, also, today -- I'm not going to say this 5 correctly. Yeah. There were some other items out there for 6 prosecutorial misconduct and regarding to the Schirmer 7 Report and whether you decide to take that into 8 consideration or not. 9 MS. LONG: Just to clarify, you know, the Board 10 doesn't -- you know, prosecutorial misconduct is for the 11 licensing, the Board that issued the attorney license. So 12 you're not here to regulate attorneys. However, if you do 13 feel that, you know, statements made during the original 14 hearing were material and materially affect, I guess, the 15 hearing, the original hearing, then you can pretty much take 16 that into account in your motion. 17 MR. MICKEY: So anything else for deliberations 18 for anybody? 19 All right. With that, the desire for action. 20 MR. WAUGH: I'll make a motion. 21 After reviewing the previous proceedings, previous 22 evidence, and after listening to both sides, I move that the 23 Board uphold the September 27th Order and that Cases Nos. 24 08-080R and 11 -- oh, doesn't -- 25 MS. LONG: That's it.</p>	<p style="text-align: right;">Page 69</p> <p>1 THE COURT REPORTER: Are we still on? 2 MS. LONG: Yes. 3 MR. NERSESIAN: -- to that decision is beyond me. 4 And that's the only question. So we'll see you in court. 5 MR. MICKEY: So with that, I will make an official 6 announcement that we are done with Item No. 4. 7 MR. NERSESIAN: I'm sorry about that outburst. 8 Thank you. Seriously, I apologize. Shouldn't have said 9 that, but I did. 10 MR. MICKEY: Can we take a five-minute break to 11 reorganize ourselves to continue on with our agenda, and 12 we'll finish everything up and make sure everybody can get 13 on with their day. Thank you. 14 (The proceeding was concluded at 15 4:25 p.m.) 16 ///// 17 ///// 18 ///// 19 ///// 20 ///// 21 ///// 22 ///// 23 ///// 24 ///// 25 /////</p>

NOV 20 2017



PET
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Dennis E. Rusk, and Dennis E. Rusk)	
Architect, LLC)	
)	Case No. A-17-764562-J
Appellants/Petitioners,)	Dept. No. Department 29
vs.)	
)	
Nevada State Board of Architecture,)	
Interior Design, and Residential Design)	
)	
Appellees/Respondents.)	

PETITION FOR JUDICIAL REVIEW

NOW COME petitioners, Dennis E. Rusk, and Dennis E. Rusk, Architect, LLC (hereafter collectively "Rusk"), by and through their attorneys, Nersesian & Sankiewicz, and herewith petitions for judicial review and reversal of the Decision of the Nevada State Board of Architecture, Interior Design, and Residential Design ("Board") made on October 25, 2017 and orally determining Rusk's **PETITION/MOTION REQUESTING THAT THE FINAL DECISION OF THE BOARD BE VACATED OR MODIFIED BROUGHT IN THE NATURE OF A PETITION FOR WRIT OF CORAM NOBIS OR OTHER RELIEF TO SET ASIDE ORDER OF DISCIPLINE OR ALTERNATIVELY, REMIT DISCIPLINE.**

Although the Board counsel stated at the hearing that a written order would be provided, none has been received as of yet. As the oral determination remains made, although not documented, in an abundance of caution, this Petition is filed in order to timely protect the right to appeal should the oral pronouncement be found sufficient on its own.

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Case Number: A-17-764562-J

APPX2

1 Further to this Petition, Rusk represents that a transcript of the hearing on the motion was
2 ordered, and has presently been received (this very day) by him.

3 The basis for judicial review is premised upon the infringement of the substantial rights
4 of Rusk due to the Decision of the Board denying Rusk's Petition to Vacate a prior decision
5 being made:

- 6 (a) In violation of constitutional provisions;
- 7 (b) Made upon unlawful procedure;
- 8 (c) Made in violation of statutory provisions;
- 9 (d) Clearly erroneous in view of the reliable, probative and substantial evidence on the
10 whole record;
- 11 (e) Arbitrary or capricious and characterized by abuse of discretion.

12 The outline giving rise to these errors include:

- 13 (a) Flagrant prosecutorial misconduct in the original prosecution of Rusk;
- 14 (b) Use of evidence known to be false by the prosecutor;
- 15 (c) Post-decision discovery of the alteration and secreting of evidence by the Prosecutor;
- 16 (d) Misrepresentations by the Prosecutor in the original Petition and on the Petition to
17 Vacate before the Board;
- 18 (e) Patent error of law and fact as stated on the record by Board Members during
19 deliberations on the Motion to Vacate;
- 20 (f) Fabrication of evidence by the Prosecutor demonstrated in the hearing on the motion
21 to vacate, yet ignored by the Board in its deliberations and decision.
- 22 (g) All to the effect of violating Rusk's right to substantive due process in his conviction
23 and in the impingement on his license evinced in the original Decision before the
24 Board on the Petition to Vacate.

25 Wherefore, Petitioner requests that the Decision of the Board to not vacate its original decision

26 ///

27 ///

28 ///

1 be reversed, and that an order enter requiring the Board to vacate the original decision.

2 DATED this 9th day of November, 2017.

3 Nersesian & Sankiewicz

4
5 /s/ Robert A. Nersesian
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BEFORE THE NEVADA STATE BOARD OF
ARCHITECTURE, INTERIOR DESIGN AND RESIDENTIAL DESIGN

GINA SPAULDING, Executive Director)
NEVADA STATE BOARD OF)
ARCHITECTURE, INTERIOR DESIGN)
AND RESIDENTIAL DESIGN)

Case No. 08-080R and
11-019R

Complainant,

v.

DENNIS EUGENE RUSK,
Registered Architect Number 1309
Dennis E. Rusk, Architect LLC

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REGARDING REMAND
FROM JUDGE WIESE TO DETERMINE WHETHER TO VACATE ITS SEPTEMBER 27,
2011 BOARD ORDER BASED UPON THE NEWLY DISCOVERED EVIDENCE
CONSISTING OF THE MARCH 6, 2007 SCHIRMER REPORT AND DRAWINGS**

INTRODUCTION

The above-captioned matter having come before the Nevada State Board of Architecture, Interior Design and Residential Design ("Board") during a regular agenda on October 25, 2017, Robert Nersesian, Esq. appeared on behalf of Petitioner, Dennis Rusk, who was also present; Louis Ling, Esq. appeared on behalf of the Board; and Sophia Long, Esq., Deputy Attorney General with the Nevada Attorney General's Office, appeared as Board Counsel for the Board. The parties having submitted briefs in the matter, the Board, having reviewed the papers and pleadings on file herein, and listened to respective arguments, and pursuant to the provisions of Chapter 623 of the Nevada Revised Statutes ("NRS") and Chapter 623 of the Nevada Administrative Code ("NAC") and Chapter 622A of the Nevada Revised Statutes, hereby makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Petitioner Dennis Rusk ("Rusk") was a licensed Architect in the State of Nevada, Registered Architect Number 1309.
2. On August 16 and September 11, 2011, the Board held a hearing on the Complaints (08-080R and 11-019R) against Rusk. The hearing resulted in disciplinary action against Rusk and the Board issued its final Order ("Order 1") on September 27, 2011.
3. Subsequently, Rusk appealed this matter to the Clark County District Court and the Supreme Court of Nevada.
4. On or about January 7, 2016, Rusk filed with the Board his Petition/Motion Of Dennis Eugene Rusk Requesting That The Final Decision Of The Board Be Vacated Or Modified, Brought In The Nature Of A Petition For Writ Of Coram Nobis Or Other Relief To Set Aside Order Of Discipline Or Alternatively, Remit Discipline, And Request/Motion For Appointment Of Independent Counsel ("Motion to Vacate").
5. Rusk's Motion to Vacate requests that the Board vacate its Order alleging prosecutorial misconduct during Rusk's hearing, specifically that Louis Ling, Esq., the Board's prosecuting attorney, withheld material facts and made affirmative misrepresentations to the Board resulting in "gaining a conviction of Petitioner." See Motion to Vacate, pp. 11-12, 15-16.
6. Rusk's Motion to Vacate further requests that the Board appoint independent counsel to review the Motion to Vacate, address the Motion to Vacate and to investigate prosecutor, Louis Ling's actions.
7. On January 28, 2016, the Board issued an Order ("Order 2") staying the Motion because Rusk alleged prosecutorial misconduct against the Board's prosecuting attorney, Louis Ling, Esq., and in doing so, he also filed a Nevada state bar complaint against Louis Ling, in this matter and involving this matter, therefore, the Board "will stay the hearing of Respondent's motion until the state bar

- 1 complaint has been concluded."
- 2 8. On September 26, 2016, Rusk filed with the Board his Motion to Lift Stay of
- 3 Petitioner/Motion Requesting that the Final Decision of the Board be Vacated Or
- 4 Modified, Etc., and Request For An Evidentiary Hearing ("Motion to Lift Stay").
- 5 9. Rusk's Motion to Lift Stay asserts that the state bar complaint has been
- 6 concluded.
- 7 10. Rusk's Motion to Lift Stay further requests an evidentiary hearing regarding the
- 8 actions of Louis Ling, Esq., prosecuting attorney, George Garlock, Board
- 9 member, and Board staff regarding "how the denial of due process occurred."
- 10 See Motion to Lift Stay, pp. 2-3.
- 11 11. On or about October 10, 2016, Board Staff filed its Opposition to both Motions.
- 12 12. On or about January 11, 2017, during the regular agenda, the Board heard both
- 13 Motions.
- 14 13. On or about February 8, 2017, the Board issued an order (Order 3") regarding
- 15 both Motions. Order 3 granted Petitioner's Motion to Lift Stay; Order 3 denied
- 16 Petitioner's Motion to Vacate and request for evidentiary hearing, in pertinent
- 17 part, stating that (1) the Petition is effectively a Petition for Rehearing and
- 18 therefore, Petitioner is time barred under NRS 622A.390(2)(b), and that (2)
- 19 regardless of the type of Petition, the Board lacked jurisdiction under *Allstate*
- 20 *Insurance Company v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007), as
- 21 the matter has been appealed to District Court.
- 22 14. On or about January 7, 2017, Petitioner appealed Order 3 to District Court.
- 23 15. On or about May 22, 2017, Judge Wiese conducted an evidentiary hearing
- 24 regarding Petitioner's appeal.
- 25 16. As a result of the evidentiary hearing, Judge Wiese issued a minute order,
- 26 followed by a written order dated June 26, 2017, ("District Court Order"). The
- 27 District Court Order REMANDED the matter to the Board "to consider whether it
- 28 would be appropriate to vacate its prior decision based upon the newly

1 discovered evidence consisting of the March 6, 2007 Schirmer Report and
2 drawings." See District Court Order.

3 17. On or about October 25, 2017, during the regular agenda, the Board complied
4 with the District Court Order and determined whether it would vacate Order 1 in
5 light of the Schirmer Report and drawings. The Board allowed both counsel to
6 argue their respective points, reviewed briefs submitted by the parties, received
7 exhibits into evidence, and questioned Petitioner Rusk under oath. Regarding
8 its review of the Schirmer Report and drawings and the argument, testimony,
9 and evidence received at the hearing, the Board finds:

- 10 a. The developer of the Verge Project hired Schirmer Engineering to prepare
11 fire life safety ("FLS") plans for Petitioner;
- 12 b. Schirmer sent a letter to Petitioner dated February 6, 2007 informing
13 Petitioner of a few items for his integration into his drawings, ie. Vestibule
14 requirements, elevator lobbies, exit continuity and exit discharge;
- 15 c. On March 6, 2007, Petitioner received the Schirmer Report and drawings
16 regarding the FLS plans, and the same day, he submitted his plans to the
17 City of Las Vegas Building and Safety Department ("City") for approval;
- 18 d. Petitioner neither reviewed the Schirmer Report and drawings nor integrated
19 them into his plans before submitting them to the City for approval;
- 20 e. The plans Petitioner submitted to the City were wet stamped indicating that it
21 was a first plan review (meaning if the plans satisfied the City's requirements,
22 a building permit would be issued), despite Petitioner's argument this was a
23 pre-submittal;
- 24 f. Further indication that this was a first plan review was that the City's memo to
25 Petitioner stated he was using the permits express plan review process;
- 26 g. Further indication that this was a first plan review was that the developer
27 intended to finish the Verge Project by the end of the year;
- 28 h. It was Petitioner's responsibility to coordinate the contents of the Schirmer

1 Report and drawings into his plans for submittal to the City;

- 2 i. Nine months later, Petitioner submitted coordinated plans to the City and a
3 building permit was still not issued;
- 4 j. In the practice of architecture, a report such as the Schirmer Report is
5 provided to an architect to deliver expert information and guidance, but
6 because the architect is always the professional ultimately responsible for the
7 design and plans, the architect must independently evaluate, assess,
8 integrate, and coordinate the expert's information and guidance into the
9 architect's own work product;
- 10 k. Petitioner's mere filing of the Schirmer Report and its attached drawings did
11 not meet his standard of care as the architect on the Verge Project because
12 the evidence was clear that he did not integrate and coordinate the Schirmer
13 Report into his work product;
- 14 l. The testimony at the first hearing before the Board contained ambiguities
15 regarding what FLS drawings and documents were being referred to by
16 Petitioner and his expert witness, and Mr. Ling's cross-examination and
17 closing arguments took issue with the ambiguity without resolving it;
- 18 m. The evidence received at the October 25, 2017 hearing included evidence
19 that Petitioner had the Schirmer Report in his possession before, during, and
20 after the first hearing before the Board and that neither he nor Board Staff
21 attempted to introduce the Schirmer Report into evidence at that time;
- 22 n. Because the issue before the Board at the first hearing was whether
23 Petitioner met his standard of care owed to the owners of the Verge Project,
24 and because even after reviewing the Schirmer Report, the Board has now
25 determined that Petitioner did not meet his standard of care, the Board
26 cannot agree with Petitioner's assertions and arguments that Board Staff,
27 and Mr. Ling in particular, committed any acts that would affect the Board's
28 determination that Petitioner had violated the First Cause of Action.

18. If any of the foregoing Findings of Fact are deemed Conclusions of Law, they shall so be construed.

CONCLUSIONS OF LAW

19. After reviewing the Schirmer Report and drawings, the Board concludes that Petitioner Rusk's actions related to the Verge Project still violated the First Cause of Action in Order 1.
20. Much of the relief sought by Petitioner in his Motion to Vacate is beyond the Board's lawful authority to grant, and in view of the Board's findings and conclusions, the ultimate relief sought by Petitioner, namely vacation of the September 27, 2011 Order, is unwarranted.
21. If any of the foregoing Conclusions of Law are deemed Findings of Fact, they shall so be construed.

ORDER

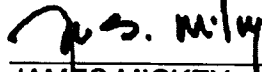
The Board, being fully apprised in the premises and good cause appearing to the Board, by a unanimous vote, ORDERS as follows:

IT IS HEREBY ORDERED that the Board's September 27, 2011 Order is affirmed and Petitioner's Motion to Vacate is denied in its entirety.

DATED this 1st day of December, 2017.

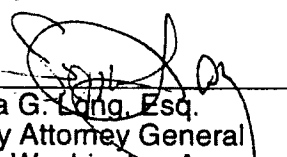
NEVADA STATE BOARD OF
ARCHITECTURE, INTERIOR DESIGN
AND RESIDENTIAL DESIGN

By:



JAMES MICKEY, A.I.A.
Presiding Chairman

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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 Dennis E. Rusk, and Dennis E. Rusk)
12 Architect, LLC)

13 Appellants/Petitioners,)

14 vs.)

15 Nevada State Board of Architecture,)
16 Interior Design and Residential Design)

17 Appellee/Respondent.)

Case No. A-17-764562-J

Dept. No. ~~XXX-18~~ 25

Date of Hearing: February 14, 2018

Time of Hearing: 9:00 a.m.

18 **ORDER REGARDING RESPONDENT'S MOTION**
19 **TO DISMISS AND MOTION TO STRIKE**

20 The motions of Nevada State Board of Architecture, Interior Design and Residential
21 Design ("NSBAIDRD") to dismiss the Petition for Judicial Review and to strike Petitioners'
22 submission of an alleged "transcript of evidence" having come on for hearing, the Court having
23 reviewed the papers filed in support and opposition, having heard oral argument, and being
24 otherwise fully advised in the premises:

25 NOW THEREFORE,

26 IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

27 **FINDINGS OF FACT**

- 28 1. Petitioner filed a petition for mandamus or judicial review on denial of his
petition/motion to vacate a September, 27, 2011, order by NSBAIDRD disciplining
Petitioner.

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Case Number: A-17-764562-J

APPX12

- 1 2. NSBAIDRD determined that it was without jurisdiction to consider the
2 petition/motion to vacate.
- 3 3. This Court through Dept. 30, granted Petitioners' petition for mandamus or judicial
4 review of the finding of lack of jurisdiction, finding that on judicial review that
5 NSBAIRD did have jurisdiction and was compelled by law to consider the
6 Petitioner's petition, and remanded the matter for consideration of Petitioner's
7 petition/motion to vacate.
- 8 4. On October 25, 2017, NSBAIDRD held the hearing on remand at which both parties
9 appeared and presented oral argument. After deliberation, a motion was made to
10 deny Petitioners' motion/petition and adopt the Board's previous order, and the Board
11 passed this motion denying Petitioners' petition/motion to vacate.
- 12 5. On November 9, 2017, Petitioner filed a Petition for Judicial Review from the
13 Board's oral ruling.
- 14 6. On December 1, 2017, NSBAIDRD issued written Findings of Fact, Conclusions of
15 Law, and Order Regarding Remand from Judge Weise to Determine Whether to
16 Vacate its September 27, 2011 Board Order Based Upon the Newly Discovered
17 Evidence Consisting of the March 6, 2007 Schirmer Report and Drawings.
- 18 7. As part of the filings by Petitioner made in conjunction with his Petition for Judicial
19 Review, Plaintiff included a copy of an entire record submitted by NSBAIRD staff to
20 NSBAIRD for consideration by NSBAIRD in determining the Petitioners'
21 petition/motion to vacate.

22 CONCLUSIONS OF LAW

- 23 1. Pursuant to NRS 233B.125, decisions of administrative bodies can be effective when
24 made orally at a hearing.
 - 25 2. The rendering of an oral decision at a public hearing in the form of a motion carried
26 adopting a prior order on the Petitioners' matter is effective on the parties when made and
27 is a triggering event for the appeal period under NRS 233B.130(2)(d).
- 28

- 1 3. NRS 233B.131(1)(a) provides that within 45 days of the filing of the Petition for Judicial
2 Review, "[t]he party who filed the petition for judicial review shall transmit to the
3 reviewing court an original or certified copy of the transcript of the evidence resulting in
4 the final decision of the agency."
5
6 4. The filing by the Petitioner of the documentation provided by staff to the NSBAIDRD is
7 not a "transcript of the evidence," as that term is used in NRS 233B.131(1)(a).

8 **ORDER**


9 Respondent's motion to dismiss the Petitioner's Petition for Judicial Review is denied;
10 and

11 Respondent's motion to strike Petitioner's lodged documents provided by staff to
12 NSBAIRD is granted. The lodged documents will be removed from this Court's file as lodged
13 within the record for determining the petition. They will remain in the record as pertinent to any
14 appeal or further review of this decision, only, on the motion to strike.

15 Dated this 9th day of AUGUST, 2018

16 
DISTRICT COURT JUDGE

17 Respectfully submitted:
18 Nersesian & Sankiewicz

19 
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Attorney for Appellants/Petitioners

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