

BEFORE THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

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. )

----- )

Case No. 76792

Eighth Jud'l District Court  
Case No. A-17-764562-J

PETITIONER'S SUPPLEMENTAL APPENDIX IN COMPLIANCE WITH  
ORDER DIRECTING ANSWER, DIRECTING SUPPLEMENTATION OF  
THE RECORD, AND GRANTING EMERGENCY MOTION FOR STAY

VOLUME 5

Petitioner Nevada State Board of Architecture, Interior Design and  
Residential Design, by and through its attorney Louis Ling, submits this

Supplemental Appendix in compliance with this Court's Order Directing Answer, Directing Supplementation of the Record, and Granting Emergency Motion for Stay issued October 12, 2018.

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Signed this 17<sup>th</sup> day of October, 2018.

*Louis Ling*

-----  
LOUIS LING  
Nevada Bar No. 3101  
933 Gear Street  
Reno, Nevada 89503  
T: (775) 233-9099

Attorney for Petitioner Nevada State Board  
of Architecture, Interior Design and  
Residential Design

### CERTIFICATE OF SERVICE

I certify that I served on the below date a copy of the attached  
PETITIONER'S SUPPLEMENTAL APPENDIX IN COMPLIANCE WITH  
ORDER DIRECTING ANSWER, DIRECTING SUPPLEMENTATION OF THE

RECORD, AND GRANTING EMERGENCY MOTION FOR STAY - VOLUME  
5 filed herewith upon the following:

By U.S. Mail to the Respondent:

Judge Kathleen Delaney, Department 25  
Eighth Judicial District Court  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

By the Court's e-filing and e-service system to the Real Party in Interest:

Robert Nersesian  
Nersesian & Sankiewicz  
528 S. Eighth Street  
Las Vegas, Nevada 89128

Counsel for Real Party in Interest Dennis Rusk

Dated this 17<sup>th</sup> day of October, 2018.

*Louis Ling*

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LOUIS LING  
Nevada Bar No. 3101  
933 Gear Street  
Reno, Nevada 89503  
T: (775) 233-9099

1 is based on the papers on file to date, the attachments hereto, the following Memorandum of  
2 Points and Authorities, and any oral argument the Court deems pertinent.

3 Dated this 28th day of August, 2018.

4 **NERSESIAN & SANKIEWICZ**

5  
6 /s/ Robert A. Nersesian

7 Robert A. Nersesian

8 Nevada Bar No: 2762

9 Thea Marie Sankiewicz

10 Nevada Bar No: 2788

11 528 South Eighth Street

12 Las Vegas, Nevada 89101

13 Phone: 702-385-5454

14 Fax: 702-385-7667

15 Attorney for Appellants/Petitioners

16 **ORDER SHORTENING TIME**

17 TO: ALL PARTIES; AND THEIR ATTORNEYS OF RECORD:

18 It appearing to the satisfaction of the Court, and good cause appearing therefor, IT IS  
19 HEREBY ORDERED that the time for hearing on **PETITIONER'S MOTION FOR**

20 **DEFAULT OR ALTERNATIVELY MOTION TO PROCEED WITH BRIEFING ON**

21 **ORDER SHORTENING TIME**, be shortened to the 11<sup>th</sup> day of September, 2018, at

22 the hour of 9 a.m. Appellant's Opposition to this Motion is due on September 6, 2018

23 and Petitioner's Reply to Appellant's Opposition to this Motion is due on

24 N/A. MOTION AND OST MUST BE SERVED BY 5 P.M. AUGUST 31, 2018.

25 Dated this 30<sup>th</sup> day of August, 2018.

26  
27  
28  
DISTRICT COURT JUDGE

**AFFIDAVIT OF ROBERT A. NERSESIAN, ESQ.**  
**IN SUPPORT OF ORDER SHORTENING TIME PURSUANT TO EDCR 2.26**

STATE OF NEVADA            )  
  ) ss:  
COUNTY OF CLARK         )

I, ROBERT A. NERSESIAN, ESQ., being first duly sworn, hereby depose and state as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada, and counsel for Petitioners regarding this matter.

2. This motion is on an Order Shortening Time is being brought in good faith and so as not to cause any sort of undue delay.

3. This Court has entered an order providing that Petitioner's Brief is due on September 24, 2018.

4. Respondent, despite an acknowledgment that it is Respondent's responsibility and a prior failed attempt by Petitioner to file a record for review, has failed to file the record of the proceedings before the Nevada State Board of Architecture, Interior Design, and Residential Design.

5. This filing was due within a reasonable time following the Petitioner's filing of the transcript of proceedings over eight months ago.


6. There is every appearance that the Respondent will continue to delay filing the required documents, and Petitioner is constrained from meeting the current briefing schedule of the Court and also has been prejudiced and continues to be prejudiced through such record not being available.

7. Absent an order shortening time and a corollary order determining the default of Respondent or directing Respondent to forthwith file the required record, this matter

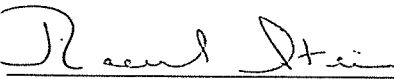
1 will continue to be unduly delayed, and the Court is at risk of receiving inadequate  
2 briefing on the Petition.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

4 Dated this 28th day of August, 2018.

5  
6  
7   
Robert A. Nersesian, Esq.

8 SUBSCRIBED AND SWORN to before  
9 me this 28<sup>th</sup> day of August, 2018.

10 

11 NOTARY PUBLIC in and for said  
12 COUNTY AND STATE



13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION AND FACTS**

15 Plaintiff was a licensed architect in Nevada until the Decision and Order attached as  
16 exhibit 1 was entered. As evident in that Order the Board made certain findings concerning the  
17 Petitioner including:

- 18 1) That there was a complete absence of evidence concerning the existence of fire-life  
19 safety ("FLS") plans for a project upon which the Plaintiff was designing;  
20 2) That the plans submitted by the Plaintiff for the project were not coordinated with the  
21 FLS engineer on the project.

22 The prosecuting attorney for the Board supported and made positive representations on each of  
23 the alleged failures set forth above. At the time of making these representations, this prosecutor  
24 had in his possession the very FLS plans he represented to the Board as missing. He also had  
25 shrunk down the plans to present as an exhibit claiming that these plans lacked coordination  
26 with the FLS engineer's recommendations. In fact, when the digital miniatures of the plans  
27 submitted for the Board's consideration in the hearing on Petitioners' are enhanced to the size of  
28 readability, it is apparent that the Petitioner had coordinated his plans to those of the FLS

1 engineer, but were not evident on the shrunken plans submitted by the prosecutor. The  
2 prosecutor also constructed and presented false testimony of a retained expert to support the  
3 claims of unsuitability regarding Petitioner's alleged misconduct as an architect. The prosecutor  
4 received a conviction of the Petitioners on at least three patent and known misrepresentations of  
5 material facts known to the prosecutor to be a misrepresentation. And when exhibit 1 is  
6 examined, it is evident that each of these material factual misrepresentations by the prosecutor  
7 were critical in the finding the alleged of incompetence of the Petitioners (that is, the ruling  
8 actually turned on the absence of the documents the Prosecutor withheld from the hearing).<sup>1</sup>

9 After the tainted decision, exhibit 1, and also after the time for appeal,<sup>2</sup> licensee found  
10 new counsel. Through outside means, it was serendipitously discovered that the allegedly non-  
11 existing FLS engineering was in the Board's files. On review of the matter, new counsel, with  
12 Petitioners' assistance, was convinced of prosecutorial misconduct resulting in the Petitioners'  
13 conviction under exhibit 1. Petitioners, through new counsel, moved before the Board to vacate  
14 exhibit 1 on the ground of prosecutorial misconduct. The Board summarily denied the motion,  
15 asserting among other factors, a claimed lack of jurisdiction. Petitioner filed a petition for  
16 mandamus or judicial review in this court. This Court granted the motion through Judge Wiese,  
17 and entered the Order attached as exhibit 2. On remand, rather than reopening the proofs, or  
18 otherwise conducting any meaningful hearing, a truncated hearing by the Board occurred. At that  
19

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20 <sup>1</sup> Indeed, as noted during the deliberations on the hearing resulting in the issuance of exhibit 1,  
21 the following is stated on the record of those deliberations:

22 Member Klai: Is there room for any question at all? I find it [a] little bit  
23 baffling. If this matter has been before us for three years and if the fire  
24 and life safety drawings are that critical to the matter and seem they are  
25 the cusp of all our concerns with regard to negligence and competence  
26 and everything else, that the Respondent<sup>1</sup> **and/or our Staff didn't take it**  
27 **upon themselves to bring these drawings forward if they truly existed**  
28 **from the date of June of '07, and bring it forward again, beyond just**  
**the architecture drawings we've seen here today.**

26 After the hearing it was discovered that the prosecutor was actually withholding the very  
27 documentation that was referenced as critical by Board Member Klai.

28 <sup>2</sup> Petitioner had appeared at the hearing in pro per after the Board denied a request for  
continuance when, on the eve of the hearing, Petitioner's attorney withdrew from representation.  
Subsequently, the Petitioner, impoverished by the decision, could not secure substitute counsel.

1 hearing the Board voted upon, and made a decision to, affirm the original order, exhibit 1. This  
2 decision is now found in the Transcript of Proceedings filed in this Court on December 8, 2018,  
3 and providing in relevant part:

4 Member Waugh: "I'll make a motion. After reviewing the previous  
5 proceedings, previous evidence, and after listening to both sides, I move  
6 that the Board uphold the September 27 [2011] order . . ." [Exhibit 1  
7 attached].

8 Presiding Member Mickey: "Motion carries."<sup>3</sup>

9 Transcript, pp. 67-68: 21-10 (copy of the pertinent portion attached as exhibit 3).

10 Petitioners again filed a petition for judicial review and the above-referenced transcript,  
11 which is the matter presently before the Court. Petitioners, on December 8, 2018, filed a  
12 transcript of the last hearing before the Board. On January 4, 2018, Petitioners filed what they  
13 believed to be the "transcript of the evidence"<sup>4</sup> from the proceeding before the Board. The Court  
14 has rejected this filing. See Order, ex. 4.

15 Following the order rejecting the filing, the Petitioners contacted Louis Ling, the  
16 Respondent's attorney, and inquired as to whether he felt that there was any further filing  
17 required of the Petitioners. He stated that he viewed that which was presented in the filing of  
18 January 4, 2018 (the transcript), as the filing obligation of the Petitioner, and that the respondent  
19 was responsible for filing the balance of the record under NRS 233B.131(1)(b) ("The agency that  
20 rendered the decision which is the subject of the petition shall transmit to the reviewing court the  
21 original or a certified copy of the remainder of the record of the proceeding under review."). The  
22 transcript of the hearing was filed, as noted, on December 8, 2018, triggering the Respondent's

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23 <sup>3</sup> "The responsibility of announcing, or declaring, the vote rests upon the chair . . .  
24 \* \* \*

25 When a quorum is present, a majority vote, that is a majority of the votes cast,  
26 ignoring blanks, is sufficient for the adoption of any motion that is in order . . ."  
27 Robert's Rules of Order, Art. VIII, Vote, § 46. Thus, the grant of the motion adopting exhibit 1  
28 as the ruling on the motion on review here is the decision of the Board subject to the current  
29 Petition.

<sup>4</sup> A "transcript of the evidence" is an apparent term of art used in NRS 233B.131, and it is the  
petitioners' responsibility to file this "transcript of the evidence." Unfortunately, there is no  
guidance as to what a "transcript of the evidence" is or what it entails. Seeking to comply, the  
Petitioners made the filing of January 4, 2018.



1 obligations under NRS 233B.131(b)(1). Despite this obligation appertaining to the Respondents  
2 for well over eight months, Respondent has ignored its acknowledged duty to provide this  
3 documentation. See email exchange, exhibit 5.

## 4 II. ANALYSIS

### 5 A. DEFAULT

6 Pursuant to NRCP 55, when a party fails to defend as provided by the rules, a default  
7 may enter against that party. By extension, this would necessarily apply to the Respondent here.  
8 Although there is no express time for filing the record under NRS 233B.131(b)(1) for the  
9 Respondent, there is an intent apparent in the statute that this be done promptly. Further, at this  
10 time, even in the face of a request and an acknowledgment of the obligation to file the record,  
11 Respondent has failed to do so. Respondent is unnecessarily burdening this process, and has  
12 delayed the process beyond reason. Respondent is in default, and this should be so determined.  
13 Further, this default, having prevented the proper presentation of Petitioner's Petition, an order  
14 determining such petition and reversing the determination of the Board is in order, and the  
15 Decision and Order attached as exhibit 1 should be reversed.

16 With a briefing schedule now set by the Court, it is not possible for the Petitioner to meet  
17 his obligations under this schedule in the absence of a record to cite. If the Court is not inclined  
18 to enter the default of Respondent in light of Respondent's gamesmanship in delaying these  
19 proceedings unnecessarily, then, alternatively, an order is requested allowing the briefing to  
20 proceed forward, reentering the record stricken by this Court but previously filed by Petitioners,  
21 and allowing citations to such record to constitute an adequate basis for such briefing.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 **II. CONCLUSION**

2 Wherefore, Petitioner requests that the Decision of the Board to not vacate its original  
3 decision be reversed, and that an order enter requiring the Board to vacate the original decision.  
4 Otherwise, the alternative relief requested above be ordered, and the Respondent be directed to  
5 file the balance of the record forthwith.

6 DATED this 28th day of August, 2018.

7 Nersesian & Sankiewicz

8  
9 /s/ Robert A. Nersesian  
10 ROBERT A. NERSESIAN, ESQ.  
11 Nevada Bar No. 2762  
12 528 South Eighth Street  
13 Las Vegas, Nevada 89101  
14 Attorney for Appellants/Petitioners

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the <sup>th</sup>~~30~~ day of August, 2018, I served a copy of the foregoing  
17 PETITIONER'S MOTION FOR DEFAULT OR ALTERNATIVELY MOTION TO  
18 PROCEED WITH BRIEFING ON ORDER SHORTENING TIME by depositing the same  
19 into the U.S. Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

20 Louis Ling  
21 933 Gear Street  
22 Reno, NV 89503

23 /s/ Rachel Stein  
24 An employee of Nersesian & Sankiewicz  
25  
26  
27  
28

# EXHIBIT 1

# EXHIBIT 1

ORIGINAL

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 Numbers: 08-080R and 11-019R

Complainant

v.

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

RECEIVED

SEP 27 2011

NEVADA STATE BOARD  
OF ARCHITECTURE

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing in this matter was held on August 16 and September 1, 2011 in Las Vegas, Nevada. Board Staff was represented by Louis Ling, Board Counsel, Mr. Rusk appeared and represented himself, and the Board was advised by Sophia Long, Deputy Attorney General. Board Staff presented the testimony of Don White, William Amor, Darren Dunkel, and Laura Bach. Mr. Rusk presented his own testimony and the testimony of Dr. Robert Fielden and David Dupont. Board Staff presented four exhibits that were entered into evidence in the matter, and Mr. Rusk presented three exhibits that were entered into evidence in the matter. Based upon the testimony and evidence presented and the presentations of the parties, the Nevada State Board of Architecture, Interior Design, and Residential Design (hereinafter the Board) makes the following findings of fact, conclusions of law, and order in this matter. Separate sections of findings of fact are made for each of the two cases that were combined for the purposes of hearing in this matter (Case Nos. 08-080R and 11-019R).

FINDINGS OF FACT FOR CASE NO. 08-08R (The Verge Project)

1. In January 2005, Mr. Rusk entered into a contract Yossi Attia and Moshe Schnapp (hereinafter "the clients") to prepare conceptual drawings for a high-rise building they were interested in building on the corner of Bonanza and Main in downtown Las Vegas. The project was originally intended to be primarily for senior citizen housing with mixed

1 Building Department.

2 5. On March 22, 2011, Mr. White, an Architectural Plans Examiner for the City of Las  
3 Vegas Building Department, issued Plan Review Comments (PRC). Over the six pages of the  
4 Plan Review Comments, Mr. White identified 24 specific deficiencies in the design documents  
5 submitted by Mr. Rusk. Most of Mr. White's comments focused on various elements of fire  
6 and life safety (FLS) design that were lacking in Mr. Rusk's design documents. At the  
7 hearing, Mr. White stated that the first set of design documents submitted were unbuildable  
8 and unapprovable because of their complete lack of FLS design and coordination. Mr. White  
9 stated that he knew that the first set of plans was for a shell building, but FLS design and  
10 engineering was still required for two reasons: (1) On several of the lower floors, Mr. Rusk  
11 had drawn occupiable space such as health club facilities, meeting rooms, a swimming pool,  
12 roof space to be used as terraces, and a restaurant; and (2) On the condominium floors  
13 where no condominium units had yet been drawn, the stairwells and other engineering  
14 elements were still required for proper FLS design and engineering because workmen on the  
15 project and subsequent residents would rely on the FLS design and engineering. Some of  
16 the issues were identified by Mr. White to be basic items that should be known by any  
17 competent architect. Other elements, particularly the various FLS elements that were lacking,  
18 would put any person in the building at substantial risk of death or injury if an emergency  
19 situation arose while that person was in the building.

20 6. In Mr. White's PRC document, the first substantive paragraph was entitled "NOTE"  
21 and stated as follows:

22 Please review the Fire Life Safety Report (FLS report) for this project, prepared  
23 by Schirmer Engineering. Note the last paragraph of the Section 1 of the report,  
24 Introduction Statement. The last two sentences state: "This document is  
25 intended to serve as coordination for both the design and construction. Where  
26 conflicts occur between the report and the design documents, this report shall  
27 take precedence." There are several major discrepancies between the plans  
28 and this report that must be resolved. I have listed most of them in the body of  
this letter.

27 7. On May 21, 2007, Mr. Rusk submitted a second set of design documents. On May  
28 23, 2007, Mr. White reviewed the second set of design documents and in an eight page PRC

1 found that ten of the items remained unresolved, one item was partially resolved, twelve of  
2 the items had been resolved, and seven new items were identified. Three items were related  
3 to accessible parking on the various parking floors. The remaining eighteen unresolved,  
4 partially resolved, or new issues were all related to FLS issues such as exiting, stairways and  
5 stairwells, fire-rated hallways and separations, and similar FLS design and engineering  
6 issues. Mr. White again started his second PRC with a reference to the FLS report prepared  
7 by Schirmer Engineering.

8 8. On July 19, 2007, Mr. Rusk submitted a third set of design documents. On  
9 August 9, 2007, Mr. White reviewed the third set of documents and in an eight page PRC  
10 found that seventeen of the eighteen issues that were unresolved or new in the previous PRC  
11 remained unresolved. Yet again, Mr. White started his third PRC with a reference to the FLS  
12 report prepared by Schirmer Engineering.

13 9. On September 4, 2007, Mr. Rusk submitted a fourth set of design documents. On  
14 September 13, 2007, Mr. White reviewed the fourth set of documents and in a six page PRC  
15 found that five of the seventeen outstanding issues remained unresolved. The unresolved  
16 issues remained FLS design and engineering elements. Yet again, Mr. White started his  
17 fourth PRC with a reference to the FLS report prepared by Schirmer Engineering.

18 10. On October 1, 2007, Mr. Rusk submitted a fifth set of design documents. On  
19 November 20, 2007, Mr. White reviewed the fifth set of documents and in a two page PRC,  
20 Mr. White indicated that all of the previous issues had been resolved at an express plan  
21 review meeting but that the design was still required to comply with the 2006 IECC and that  
22 no engineering documents had yet been provided to document the building's compliance with  
23 the 2006 IECC.

24 11. On December 6, 2007, Mr. Rusk submitted an Energy Conservation Code  
25 Comcheck Envelope report as required by Mr. White's fifth PRC.

26 12. Mr. Dunkel, President of and Marketing Manager for the Verge, explained that  
27 throughout the time that Mr. Rusk was trying to get his design documents approved, the  
28 client, based upon Mr. Rusk's representations, was moving forward with its marketing and

1 sales of condominium units in the Verge. The client built a sales office on a lot across the  
2 street from the Verge at considerable cost to the client. In June 2007, the Verge held a highly  
3 publicized sales event at which it began to take deposits from potential condominium owners.  
4 Mr. Dunckel related that the client was representing to the potential condominium owners that  
5 ground would be broken in July 2007 and occupancy would begin by the end of 2007. Mr.  
6 Dunckel further related that by August 2007, over 75% of the condominium units had earned  
7 money deposits on them. Mr. Dunckel also related that as the timeline for breaking ground  
8 and obtaining the necessary approvals slid later and later into 2007, the finances for the  
9 project became jeopardized, and by the end of 2007, the client determined that financially the  
10 project was no longer feasible. The client made Mr. Rusk aware of the infeasibility of the  
11 project. A dispute arose between Mr. Rusk and the client over payment of Mr. Rusk's fees  
12 and payment of the fees of some of the design professionals on the project. Mr. Dunckel  
13 stated that by the end of 2007 and early 2008, the Verge project was "dead." Mr. Dunckel  
14 placed much of the blame for the failure of the Verge project upon Mr. Rusk and his inability  
15 to get the design drawings completed and approved by the City of Las Vegas. Finally, Mr.  
16 Dunckel explained that as a result of the infeasibility of the project, the client has returned  
17 most of the earnest money to the potential purchasers and the client filed bankruptcy on the  
18 project.

19 13. Mr. Amor, an expert witness put forward by Board Staff, testified that in his opinion  
20 Mr. Rusk's conduct related to the Verge was grossly negligent. Mr. Amor testified that in a  
21 project such as the Verge, the architect bears ultimate responsibility for all the design and  
22 engineering elements of the project, whether produced by the architect himself or as the  
23 result of coordination by the architect with the various other disciplines. Mr. Amor testified  
24 that when an architect submits a set of design documents for a building, the documents must  
25 be complete and completely code-compliant. Mr. Amor testified that an architect must know  
26 himself or herself whether the documents are complete and code-compliant because that is  
27 the architect's professional obligation, and an architect should not depend upon a plans  
28 examiner to catch issues of non-compliance. Mr. Amor believed that Mr. Rusk's first set of

1 design drawings was grossly deficient, and therefore that Mr. Rusk was grossly negligent,  
2 because the first set completely lacked any FLS design and engineering which would  
3 endanger any people who might go into the structure, whether workmen working on the  
4 building or eventual occupants. Mr. Amor believed that the number of additional sheets Mr.  
5 Rusk was required to submit after the first set is further evidence of Mr. Rusk's negligence  
6 because the issues Mr. Rusk was addressing throughout the review process were all issues  
7 that should have been addressed and should have been apparent in what should have been  
8 the first submittal. Mr. Amor also expressed concern that many of the issues that were not  
9 properly addressed by Mr. Rusk were basic architectural issues that all architects should  
10 readily know. Mr. Amor stated that new architects seeking licensure are tested upon many of  
11 these issues and if they are missed, the new architect will fail his or her examination.

12 14. Dr. Fielden testified as an expert witness on Mr. Rusk's behalf. Dr. Fielden  
13 testified that although Mr. Rusk's operational style was unconventional and not how he would  
14 practice, he found that Mr. Rusk's practice in the Verge matter was not below the standard of  
15 care for a Nevada architect. On cross-examination, though, Dr. Fielden admitted that, in fact,  
16 Mr. Rusk's practices were below the standard of care regarding the failure to incorporate the  
17 FLS report data into the design documents where Mr. Rusk had Schirmer Engineering's  
18 report and where Mr. Rusk failed to incorporate the FLS data in the report into his own design  
19 documents. Dr. Fielden admitted that on a project such as the Verge, the architect is the  
20 person ultimately responsible to assure that the design documents are complete, buildable,  
21 and approvable.

22 15. Regarding the Verge, Mr. Rusk testified that the Verge was his first steel-framed  
23 building and his first ever high-rise design. Mr. Rusk explained that he did not partner or  
24 collaborate with another architect or firm with experience with high-rise design because Mr.  
25 Rusk considered himself an "individualist architect" who did not collaborate or partner with  
26 other architects. Mr. Rusk explained that he was responsible for all of the coordination of all  
27 of the engineering and design disciplines except for Schirmer Engineering because Schirmer  
28 Engineering had been retained by the clients. Mr. Rusk explained that he met often (at least



1 weekly) with all representatives from all of the disciplines, including representatives from  
2 Schirmer Engineering. Mr. Rusk testified that he did not include Schirmer Engineering's  
3 report and engineering into his first set of design drawings because he did not receive the  
4 report until the day of the first submittal, but Mr. Rusk could not explain why he would submit  
5 design drawings that he knew at the time would be utterly deficient of FLS engineering and  
6 design. Mr. Rusk did not explain why he did not incorporate Schirmer Engineering's FLS  
7 report into his second submittal, even though by his own chronology he had the report by the  
8 time of the second submittal. Later, Mr. Rusk changed his testimony and claimed that he  
9 personally had filed Schirmer Engineering's drawings with the City of Las Vegas, though he  
10 offered no evidence or proof either that Schirmer Engineering had, in fact, ever created any  
11 drawings or that the drawings had ever been submitted to the City of Las Vegas. In view of  
12 Mr. White's continual and serial conclusions that Mr. Rusk's design documents lacked FLS  
13 engineering and design, Mr. Rusk's claim that he filed Schirmer Engineering's drawings  
14 appears untrue. Mr. Rusk asserted a number of times that his inability to get his design  
15 drawings approved was the fault of the client, the fault of Schirmer Engineering, and the fault  
16 of Mr. White because he did not understand how to review Mr. Rusk's shell-building concept.

17 16. Mr. Rusk's demeanor and answers under cross-examination and examination  
18 from the Board members raised questions about his credibility. Mr. Rusk was incapable of  
19 accepting any responsibility for his actions or his part in the ultimate failure of the Verge  
20 project even though he was the lead design professional on whom the ultimate responsibility  
21 for the entire project fell. The Board agrees with Mr. Amor's assessment that Mr. Rusk did  
22 not know that he did not know what he did not know. Mr. Rusk's arrogance and lack of  
23 knowledge and experience in this type of project worked against himself and his client's  
24 interests in this matter, resulting, ultimately, in a failed project and the disruption of the plans  
25 of numerous members of the public who had attempted to purchase condominiums in the  
26 Verge.

27 **FINDINGS OF FACT FOR CASE NO. 11-019R (The Cutting Project)**

28 17. In August 2010, David Cutting submitted to the Clark County Building Department

1 plans for a personal residence he intended to construct as an owner/builder. After being  
2 reviewed, the plans were rejected because they were not stamped by Mr. Rusk whose title  
3 block was on the detail sheets.

4 18. At hearing, Mr. Rusk admitted that subsequent to the rejection of the plans by the  
5 Clark County Building Department, he reviewed the plans and ultimately put the architectural  
6 portions of the plans on his title block and sealed them himself for resubmittal. According to  
7 Mr. Rusk, he did this as a favor to David Cutting's father, Clarence Cutting. Clarence Cutting  
8 was Mr. Rusk's longtime friend and client. Mr. Rusk stated that his original intent was just to  
9 provide David Cutting with some architectural detail sheets, but that upon learning that the  
10 Clark County Building Department would not file David Cutting's drawings unless they were  
11 placed upon a registered architect's title block and with his or her seal, Mr. Rusk decided to  
12 place the architectural drawings on his title block and to seal them. Mr. Rusk claimed to have  
13 reviewed David Cutting's drawings and claimed that he was satisfied that the drawings that he  
14 sealed were code compliant. Mr. Rusk acknowledged that if David Cutting's architectural  
15 drawings were insufficient that he, Mr. Rusk, became responsible for the deficiencies when he  
16 placed the drawing on his title block and sealed them. Oddly, though acknowledging such  
17 responsibility, Mr. Rusk insisted that he did not receive or review the comments from the Clark  
18 County Building Department because he understood that the responsibility for the review and  
19 addressing of such comments rested with David Cutting, not Mr. Rusk.

20 19. Laura Bach, an Investigator for the Board, testified that it is a violation of Nevada  
21 law for a Nevada-registered architect to place his seal on architectural drawings that he did  
22 not prepare and that were prepared without his responsible control. Ms. Bach testified that  
23 Mr. Rusk's placing of David Cutting's architectural drawings upon Mr. Rusk's title block and  
24 thereafter sealing them violated Nevada law because Mr. Rusk did not prepare the drawings  
25 himself nor was David Cutting in any way under Mr. Rusk's responsible control.

#### 26 CONCLUSIONS OF LAW

27 1. The Board has jurisdiction over this matter because Mr. Rusk is an architect  
28 registered by the Board (#1309).

2. Regarding the Verge project, Mr. Rusk's practice of architecture violated NRS 623.270(1)(c) and (f) and Rule of Conduct 1.1 as incorporated by NAC 623.900(i). We specifically conclude that Mr. Rusk's conduct throughout the course of events involved in the Verge project were negligent (as defined in NRS 623.270(5)(c)) and incompetent (as defined in NRS 623.270(5)(b)) under NRS 623.270(1)(c), but we also conclude that Mr. Rusk's conduct did not rise to the level of gross incompetence (as defined in NRS 623.270(5)(a)).

3. Regarding the Cutting project, Mr. Rusk's practice of architecture violated NRS 623.270(1)(d) and (f) and Rule of Conduct 1.1 as incorporated by NAC 623.900(1). We specifically conclude that Mr. Rusk's conduct did not violate NRS 623.270(1)(c).

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Board orders the following as the discipline in this matter made pursuant to NRS 623.270(1):

1. Mr. Rusk shall pay a total fine of \$13,000.00 (\$10,000.00 for Case No. 08-080R and \$3,000.00 for Case No. 11-019R). The repayment terms shall be negotiated by and between Mr. Rusk and Board staff upon such terms and conditions as are acceptable to Board staff.

2. Mr. Rusk shall pay the Board's fees and costs of investigation and prosecution of this matter in a total amount of \$17,698.57. The repayment terms shall be negotiated by and between Mr. Rusk and Board staff upon such terms and conditions as are acceptable to Board staff.

3. All monies paid by Mr. Rusk in satisfaction of the fines ordered in paragraph #1 and the fees and costs ordered in paragraph #2 shall be first applied to the satisfaction of the fees and costs ordered in paragraph #2 until those have been paid in full, at which time all subsequent payments shall be applied to the fines ordered in paragraph #1 until those have been paid in full.

4. Mr. Rusk's registration as an architect (#1309) shall be placed on probation for three years from the effective date of this Order subject to the following terms and conditions:

(a) Mr. Rusk shall take and satisfactorily pass the following five ICC courses: (i) B1-Residential Building Inspector; (ii) B2-Commercial Building Inspector; (iii) 21-Accessibility

1 Inspector/Plans Examiner; (iv) 66-Fire Inspector I; and (v) 67-Fire Inspector II.

2 (b) Mr. Rusk shall submit written evidence of his satisfactory completion of the five  
3 courses listed in paragraph (4)(a) to the Board's office no later than March 21, 2012 so that  
4 those materials may be included in the Board's packet for its meeting on March 21, 2012. Mr.  
5 Rusk shall personally appear at the Board's meeting on January 18, 2012 to update the  
6 Board on his efforts to comply with the coursework required. If Mr. Rusk anticipates that he  
7 may not be able to complete the required coursework by March 21, 2012, then at the meeting  
8 on January 18, 2012, Mr. Rusk must present probable cause why he needs additional time  
9 beyond March 21, 2012 in which to complete the coursework. The Board, in its sole  
10 discretion, may grant Mr. Rusk additional time within which to complete some of the  
11 coursework based upon Mr. Rusk's presentation and reasons stated on January 18, 2012.

12 (c) If Mr. Rusk does not submit to the Board's office written evidence of his satisfactory  
13 completion of the five courses listed in paragraph (4)(a) either by March 21, 2012 or by the  
14 extended deadline set by the Board at its January 18, 2012 meeting (if the Board grants such  
15 an extension), then Mr. Rusk's registration shall be suspended on the next day without further  
16 action of the Board and shall be suspended thereafter for a period of six months. If Mr. Rusk  
17 does not complete the coursework by the end of the six-month suspension period, his  
18 registration shall continue to be suspended until such time as he provides written evidence of  
19 satisfactory completion of all ordered coursework.

20 (d) During the period of probation, Mr. Rusk shall submit to the Board office any and all  
21 contracts for architectural services for work or a project to be completed in Nevada either  
22 before he executes a contract or within five business days of executing a contract. Within five  
23 business days after receiving any such contract, the Board's staff and the Board's  
24 investigating board member shall review the scope of the work proposed in the contract to  
25 determine whether it is of the type and scope that Mr. Rusk has historically performed or  
26 whether the scope of work is unusual for its size, complexity, special design or engineering  
27 considerations, or any other similar factors that would give the Board's staff and the Board's  
28 investigating board member cause to be concerned whether Mr. Rusk could safely,

1 competently, and professionally complete the scope of the work. If the Board's staff and the  
2 investigating board member determine that Mr. Rusk can safely, competently, and  
3 professionally complete the scope of work on his own, the Board's staff shall notify Mr. Rusk  
4 in writing that he may proceed with the contract without any assistance or consultation.

5 (e) If the Board's staff and the investigating board member determine that Mr. Rusk  
6 cannot safely, competently, and professionally complete the scope of work on his own, the  
7 Board's staff shall so inform Mr. Rusk and Mr. Rusk shall not be allowed to proceed with the  
8 contract unless and until he and the Board's staff and investigating board member identify a  
9 Nevada registered architect (hereinafter known as the "peer reviewer") who will collaborate  
10 with, consult with, and advise Mr. Rusk on the scope of work, which peer reviewer can be  
11 retained as a partner, collaborator, or peer reviewer or mentor. The peer reviewer will be a  
12 Nevada registered architect who has experience, knowledge, and expertise in work of a  
13 similar type and nature of the work Mr. Rusk proposes to undertake. The peer reviewer will  
14 consult with and advise Mr. Rusk to assure that Mr. Rusk's work in the completion of the  
15 scope of work is done safely, competently, and professionally, including that the work is in  
16 compliance with all applicable statutes, regulations, ordinances, and codes. Mr. Rusk must  
17 work cooperatively with the peer reviewer and provide him or her with access to whatever  
18 records, drawings, reports, and other work product to allow the peer reviewer to assure that  
19 Mr. Rusk is safely, competently, and professionally completing the tasks necessary for the  
20 scope of work. The peer reviewer shall report on Mr. Rusk's progress with the scope of work  
21 on at least a quarterly basis, and shall report any difficulties and concerns with Mr. Rusk's  
22 compliance with this paragraph as those difficulties or concerns might arise. Mr. Rusk will be  
23 responsible for the payment of all costs associated with the compliance with this paragraph.

24 (f) During the period of probation, Mr. Rusk shall comply with all statutes, regulations,  
25 ordinances, and codes applicable to the practice of architecture in Nevada.

26 (g) If Mr. Rusk has not paid all of the fines and fees and costs ordered herein pursuant  
27 to paragraphs 2 and 3 or has not otherwise complied with all the terms and conditions of the  
28 probation as ordered within the period of probation, his architect's registration shall remain on

1 probation and all terms and conditions of the probation shall be extended until Mr. Rusk has  
2 paid in full all the fines and fees and costs ordered or he has otherwise complied with the  
3 terms and conditions of the probation as ordered.

4 5. In the event Mr. Rusk fails to materially comply with any term of this Order, Mr.  
5 Rusk's architect's registration in the State of Nevada shall be immediately suspended without  
6 any action of the Board other than the issuance of an Order of Suspension by the Executive  
7 Director. Upon complying with the term, Mr. Rusk's architect's registration in the State of  
8 Nevada will be automatically reinstated, assuming all other provisions of the Order are in  
9 compliance. Additionally, Mr. Rusk's failure to comply with any term or condition of this Order  
10 may result in further discipline by the Board, up to and potentially including revocation of his  
11 license. Board staff may take any and all actions it deems necessary to collect any sums  
12 ordered that remain unpaid. If Board staff is required to pursue judicial action to effect such  
13 collections, it shall be entitled to recover its attorney's fees and costs incurred in pursuing  
14 such judicial action.

15 SIGNED AND EFFECTIVE this 27th day of September, 2011.

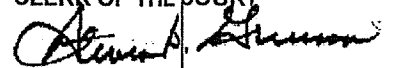
16  
17 NEVADA STATE BOARD OF ARCHITECTURE,  
18 INTERIOR DESIGN AND RESIDENTIAL DESIGN

19  
20 By: \_\_\_\_\_

21 Greg L. Erny, Chairman  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 2

# EXHIBIT 2



ORDR

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*Attorneys for Petitioner/Appellant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Dennis Eugene Rusk, and Dennis Rusk, Architect, )  
LLC, )

PETITIONER/APPELLANT

) Case No.: A-17-750672-W  
) Dept. No.: XXX

vs.

Nevada State Board of Architecture, Interior  
Design, and Residential Design,

RESPONDENT.

**ORDER DETERMINING PETITIONER'S PETITION FOR WRIT ISSUANCE OF A  
WRIT OF MANDAMUS, OR ALTERNATIVELY, JUDICIAL REVIEW OF ACTION OF  
THE NEVADA STATE BOARD OF ARCHITECTURE**

Petitioner having filed a Petition for Writ of Mandamus or Judicial Review ("Petition for Writ") before this Court contesting the denial of a Petition/Motion of Petitioner to vacate an order of discipline by the Nevada State Board of Architecture, Interior Design, and Residential Design (hereafter "NSBAIDRD" and "NSBAIDRD Petition"), the Court having reviewed the Petition for Writ, the memoranda in support and opposition, having conducted and presided over an evidentiary hearing on May 22, 2017, and being otherwise fully advised in the premises,

NOW THEREFORE,

///

///

///

**Nersesian & Sankiewicz**  
528 SOUTH EIGHTH STREET



IT IS HERBY FOUND, ORDERED, AND ADJUDGED AS FOLLOWS:

FINDINGS OF FACT

**PROCEDURAL/BACKGROUND FACTS**

1. On September 27, 2011, Petitioner was subjected to discipline by NSBAIDRD in a Findings of Fact, Conclusions of Law, and Order by NSBAIDRD;
2. Petitioner brought a Petition of Judicial Review of the NSBAIDRD decision of September 27, 2011;
3. The District Court denied Petitioner's Petition for Judicial Review of the NSBAIDRD decision of September 27, 2011;
4. Petitioner appealed the denial of his Petition of Judicial Review of the NSBAIDRD decision, and the Nevada Supreme Court dismissed Petitioner's appeal, thus concluding the matter as presented;
5. Subsequently, Petitioner filed with the NSBAIDRD a Petition to vacate or modify the NSBAIDRD's Findings of Fact, Conclusions of Law, and Order of September 27, 2011. In his Petition, Petitioner alleged as the basis for vacating the Findings of Fact, Conclusions of Law, and Order the denial of due process, the withholding of evidence, prosecutorial misconduct, and other irregularities in the original proceeding against him.
6. At a time scheduled for hearing on the NSBAIDRD Petition, NSBAIRD determined that the NSBAIDRD Petition was effectively a petition for rehearing and not a petition to vacate, and that, regardless, NSBAIDRD lacked jurisdiction to consider the NSBAIDRD Petition, indicating that NSBAIDRD did not have authority to grant the relief sought by Petitioner, and thereby denying an evidentiary hearing and denying Petitioner's NSBAIDRD Petition.

7. Through filing with this Court of his Petition for Writ on January 7, 2017, Petitioner

brought before this Court the denial of relief to Petitioner by NSBAIDRD of his  
NSBAIDRD Petition;

8. The Court conducted an evidentiary hearing concerning the Petition for Writ on May 22,  
2017.

#### FINDINGS OF OPERATIVE FACT

9. Among its relevant text, the NSBAIDRD Findings of Fact, Conclusions of Law, and  
Order of September 27, 2011, provides:

- a. Mr. Rusk testified that he did not include Schirmer Engineering's report and  
engineering into his first set of design drawings because he did not receive the  
report until the day of the first submittal;
- b. Mr. Rusk could not explain why he would submit design drawings that he knew at  
the time would be utterly deficient of FLS engineering and design;
- c. Mr. Rusk did not explain why he did not incorporate Schirmer Engineering's FLS  
report into his second submittal, even though by his own chronology he had the  
report by the time of the second submittal;
- d. Mr. Rusk testified that he personally had filed Schirmer Engineering drawings  
with the City of Las Vegas, though he offered no evidence or proof either that the  
Schirmer Engineering had, in fact, ever created any drawings or that the drawings  
had ever been submitted to the City of Las Vegas;
- e. Mr. Rusk's claim that he filed Schirmer Engineering's drawings appears untrue;
- f. Mr. Rusk's demeanor and answers under cross-examination and examination  
from the Board Members raised questions about his credibility;

10. At the hearing before the NSBAIDRD, Mr. Rusk was emphatic that he had submitted the  
Schirmer fire life safety documents including drawings with his initial submittal, but in

his closing argument, Mr. Ling stated, "There is no evidence of that today, is there? All

we have is your word. . . . If you believe Mr. Rusk, then somewhere, somehow there was a whole set of fire life safety documents that we haven't seen, that aren't part of his original submittal."

11. Although there was evidence submitted by NSBAIDRD at the evidentiary hearing before this Court that NSBAIDRD was aware of the Schirmer fire life safety documents, that such report was in the Board's file all along, that the Board was aware of it being in the file, and that it wasn't the existence of the report and drawings, but the failure to coordinate the fire life safety information into Mr. Rusk's documents, that resulted in the Findings of Fact, Conclusions of Law, and Order of September 27, 2011, the Findings of Fact, Conclusions of Law, and Order of September 27, 2011 seems to indicate otherwise;
12. There is evidence that in submission of the discipline matter against Petitioner to NSBAIDRD, the evidence did not include the Schirmer fire life safety documents;
13. The Schirmer fire life safety documents with a City of Las Vegas file stamp of March 6, 2007, were made available by NSBAIDRD to Petitioner's attorney and Petitioner in response to a subpoena duces tecum filed in an unrelated matter subsequent to the dismissal of Petitioner's Supreme Court appeal;
14. It appears that in the prosecution of Petitioner resulting in the Findings of Fact, Conclusions of Law, and Order of NSBAIDRD of September 27, 2011, that the Schirmer fire life safety documentation with attached drawings was apparently not before the NSBAIDRD at the disciplinary proceeding concerning Petitioner.
15. NSBAIDRD's determination on Petitioner's Petition/Motion to Vacate was clearly erroneous and arbitrary and capricious in the Board's refusal to consider the evidence of the fact that the March 6, 2007, Schirmer Report, with attached drawings, was apparently not before NSBAIDRD when it conducted its hearing in 2011.

### CONCLUSIONS OF LAW

1. The Court addresses the current matter as a petition for judicial review;
2. While judicial review is ordinarily limited to the record before the administrative agency, nonetheless, in matters involving alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities;
3. This Court shall not substitute its judgment for the judgment of an agency on a question of fact;
4. On the current Petition the Court may affirm, remand or set aside in whole or in part the decision of NSBAIDRD denying Petitioners Petition/Motion to Vacate if substantial rights of the Petitioner have been prejudiced because Conclusions of Law, and Order of NSBAIDRD of September 27, 2011 is:
  - a. In violation of constitutional or statutory provisions;
  - b. In excess of the statutory authority of the agency;
  - c. Made upon unlawful procedure;
  - d. Affected by other error of law;
  - e. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
  - f. Arbitrary of capricious or characterized by an abuse of discretion.
5. To be arbitrary and capricious, the decision of the administrative agency must be in disregard of the facts and the circumstances involved.
6. NSBAIDRD's determination on Petitioner's NSBAIDRD Petition was clearly erroneous and arbitrary and capricious in the Board's refusal to consider the evidence of the fact that the March 6, 2007, Schirmer Report, with attached drawings, was apparently not before NSBAIDRD when it conducted its hearing in 2011.

1 7. The NSBAIDRD Petition was not a petition for rehearing, and instead must be treated  
2 as a petition to vacate.

3 ORDER

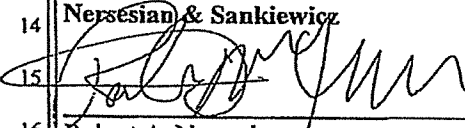
- 4 1. This matter is remanded to NSBAIDRD;  
5 2. On remand, NSBAIDRD shall assume jurisdiction and rule upon the Petitioner's  
6 NSBAIDRD Petition and consider whether it would be appropriate to vacate its prior  
7 decision based upon the newly discovered evidence consisting of the March 6, 2007  
8 Schirmer Report and drawings.

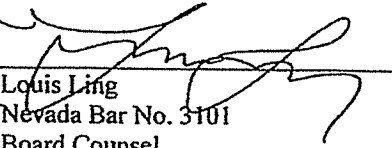
9 DATED this 26 day of June, 2017.

10  
11   
12 DISTRICT COURT JUDGE  
13 EB

13 Approved as to form and content:

14 Nersesian & Sankiewicz

15   
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25 Attorney for Respondent Nevada State Board of  
26 Architecture, Interior Design, and Residential  
27 Design  
28

23 ///  
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26 ///  
27 ///  
28 ///

Nersesian & Sankiewicz  
528 SOUTH EIGHTH STREET

Respectfully submitted:

Nersesian & Sankiewicz

/s/ Robert A. Nersesian

Robert A. Nersesian

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*Attorneys for Petitioner/Appellant*

# **EXHIBIT 3**

# **EXHIBIT 3**

1 CASE NOS.: 08-080R and 11-019R

2

3 NEVADA STATE BOARD OF ARCHITECTURE,  
4 INTERIOR DESIGN AND RESIDENTIAL DESIGN

5 -oOo-

6

7 REPORTER'S TRANSCRIPT  
8 OF  
9 REVIEW, DISCUSSION AND POSSIBLE ACTION TO VACATE 9/27/2011  
10 ORDER  
11 BEFORE THE JAMES MICKEY, CHAIRMAN  
12 WEDNESDAY, OCTOBER 25, 2017

10

11

12 APPEARANCES:

13 For the Board: LOUIS LING, ESQ.

14

15 For Dennis Rusk: ROBERT NERSESIAN, ESQ.

16

17 Members of the Board: James Mickey, Chairman; Kimberly  
18 Ciesynski, Secretary/Treasurer; Greg Erny, Ann Fleming, John  
19 Klai, John Morelli, Nathaniel Waugh

19

20 Also present: Sophia Long, Esq., legal counsel; Monica  
21 Harrison, Executive Director; T. Kenani Aguada, Executive  
22 Assistant; Ginger Hahn, public information coordinator; and  
23 Laura Bach

24 REPORTED BY: JOHANNA VORCE, CCR NO. 913

25 JOB NO.: 424644

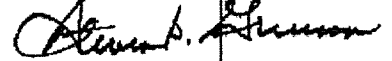


TRANSCRIPT OF PROCEEDINGS - 10/25/2017

<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>

# EXHIBIT 4

# EXHIBIT 4



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*Attorneys for Appellants/Petitioners*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Dennis E. Rusk, and Dennis E. Rusk  
Architect, LLC

Appellants/Petitioners,

vs.

Nevada State Board of Architecture,  
Interior Design and Residential Design

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.

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

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

NOW THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

**FINDINGS OF FACT**

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.

**Nersesian & Sankiewicz**  
528 SOUTH EIGHTH STREET  
LAS VEGAS NEVADA 89101

2. NSBAIDRD determined that it was without jurisdiction to consider the petition/motion to vacate.
3. This Court through Dept. 30, granted Petitioners' petition for mandamus or judicial review of the finding of lack of jurisdiction, finding that on judicial review that NSBAIRD did have jurisdiction and was compelled by law to consider the Petitioner's petition, and remanded the matter for consideration of Petitioner's petition/motion to vacate.
4. On October 25, 2017, NSBAIDRD held the hearing on remand at which both parties appeared and presented oral argument. After deliberation, a motion was made to deny Petitioners' motion/petition and adopt the Board's previous order, and the Board passed this motion denying Petitioners' petition/motion to vacate.
5. On November 9, 2017, Petitioner filed a Petition for Judicial Review from the Board's oral ruling.
6. On December 1, 2017, NSBAIDRD issued written Findings of Fact, Conclusions of Law, and Order Regarding Remand from Judge Weise 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.
7. As part of the filings by Petitioner made in conjunction with his Petition for Judicial Review, Plaintiff included a copy of an entire record submitted by NSBAIRD staff to NSBAIRD for consideration by NSBAIRD in determining the Petitioners' petition/motion to vacate.

#### CONCLUSIONS OF LAW

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

- 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

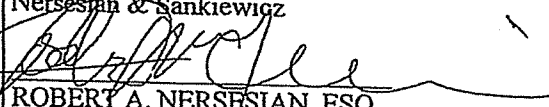
11 Respondent's motion to strike Petitioner's lodged documents provided by staff to  
12 NSBAIRD is granted. The lodged documents will be removed from this Court's file as lodged  
13 within the record for determining the petition. They will remain in the record as pertinent to any  
14 appeal or further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

15 Dated this 9<sup>th</sup> day of AUGUST, 2018

16   
DISTRICT COURT JUDGE

17 Respectfully submitted:

18 Nersesian & Sankiewicz

19   
20 ROBERT A. NERSESIAN, ESQ.

21 Nevada Bar No. 2762

22 528 South Eighth Street

23 Las Vegas, Nevada 89101

24 Attorney for Appellants/Petitioners

25 Reviewed and authorized to file:

26   
27 Louis Ling, Esq.  
28

Nersesian & Sankiewicz  
528 SOUTH EIGHTH STREET  
LAS VEGAS NEVADA 89101

# EXHIBIT 5

# EXHIBIT 5

**From:** Robert Nersesian/Thea Sankiewicz <vegaslegal@aol.com>

**To:** louisling <louisling@me.com>

**Cc:** VegasLegal <VegasLegal@aol.com>

**Bcc:** denniserusk <denniserusk@gmail.com>

**Date:** Mon, Aug 20, 2018 4:52 pm

---

Dear Mr. Ling:

Confirming our conversation of a few moments ago, I called asking what you proposed as the current resolution of getting the record before the Court. After I asked what you would propose since you had the record of the Board proceedings stricken from the Court proceedings, you stated that you agree that the responsibility for filing the record is with the Board under NRS 233B.131. You also stated that you would be filing that record if the matter proceeds, but stated an intent to seek a writ of prohibition in the Nevada Supreme Court, and would not be filing the record until such time as it is either determined by the Board to not seek the writ, or alternatively, until after the prospective writ was ruled upon. I responded that there is a Court currently exercising jurisdiction, and these excuses are inappropriate in delaying process currently pending. Your final statement is that the record would not be filed until after the above contingencies are addressed.

If I have mistaken our conversation in any way, please let me know at your earliest convenience. Thank you for your attention.

Very truly yours,  
Nersesian & Sankiewicz

Robert A. Nersesian  
Thea Marie Sankiewicz  
NERSESIAN & SANKIEWICZ  
528 South Eighth Street  
Las Vegas, Nevada 89128  
Phone: (702) 385-5454

From: Louis Ling <louisling@me.com>

To: Robert Nersesian/Thea Sankiewicz <vegaslegal@aol.com>

Subject: Re:

Date: Tue, Aug 21, 2018 9:30 am

---

Mr. Nersesian:

I returned your voicemail yesterday as I would any opposing counsel. Your voicemail did not explain what it was that you wanted to discuss. You asked me when the Board intended to file the record of proceedings in the present petition for judicial review matter. I explained that there was an item on the Board's Agenda at its meeting tomorrow at which the Board could approve the initiation of a writ by which we would seek to have the present petition for judicial review dismissed for lack of subject matter jurisdiction as we believe that the present ruling by the Eighth JD is incorrect as a matter of law.

I asked whether you would be willing to stipulate to a stay of the district court action pending resolution of the petition for the writ of prohibition, assuming the Board approved the initiation of such. You stated that you would not so stipulate. I explained that we would move for the stay.

Our position is that the district court lacks subject matter jurisdiction. If we are right, the matter should be dismissed and any further proceedings in the district court pursuant to NRS ch. 233B would be unnecessary and wasteful of the court's and our various client's resources. A stay of the district court proceedings seems necessary and appropriate where it may not, as a matter of law, have jurisdiction over the controversy. If the writ of prohibition is not issued, we will file the record of proceedings with the district court as soon as practicable and will pursue the petition for judicial review matter in due course.

Assuming the Board approves the initiation of the writ proceedings, we are required to serve the real party in interest, namely your client. Will you accept service on behalf of Mr. Rusk, or should we serve him personally?

Louis Ling

Board Counsel

Nevada State Board of Architecture, Interior Design and  
Residential Design



OPPS  
Robert A. Nersesian  
Nevada Bar No. 2762  
**NERSESIAN & SANKIEWICZ**  
528 South Eighth Street  
Las Vegas, Nevada 89101  
Telephone: 702-385-5454  
Facsimile: 702-385-7667  
*Attorneys for Appellants/Petitioners*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

Dennis E. Rusk, and Dennis E. Rusk	)	
Architect, LLC	)	
	)	Case No. Case No. A-17-764562-J
Appellants/Petitioners,	)	Dept. No. XXV
	)	
vs.	)	
	)	
Nevada State Board of Architecture,	)	Date of hearing: 9/25/18
Interior Design and Residential Design	)	Time of hearing: 9:00 a.m.
	)	
	)	
Appellee/Respondent.	)	

**PETITIONER'S OPPOSITION TO RESPONDENT'S**  
**MOTION TO STAY PROCEEDINGS**

**A. ANALYSIS IN OPPOSITION**

**1. RESPONDENT'S MOTION SHOULD BE DENIED AS OUT OF TIME**

Respondent begins its brief by stating:

The Board acknowledges that there are a series of documents and events that would normally occur at this point in this case, including the Board's filing of the Record of Proceedings, each parties' filing of their respective briefs, oral argument before the Court, and an ultimate ruling by the Court.

Respondent's Brief, p. 2: 6-9. That's pretty much all of it. Had the Respondent not unilaterally and without authority withheld the filings it was obligated to make; this stage of the proceedings would have already been completed. The only thing gained by the Respondent's delay was a delay in the entire matter being before the Supreme Court, rather than its narrow and self-serving

1 construction of the proceedings to date at variance with this Court's order and at variance with  
2 the filing requirements imposed by the proceedings.

3 This highlights the Respondent's failure. Specifically, as the Respondent acknowledges,  
4 under EDCR 2.25, the proper method of gaining a stay is by motion. Respondent's Brief, p. 1.  
5 This record was due from the Respondent no later than Thursday, January 11, 2018. NRS  
6 233B.131. Clearly, any motion to stay the requirement to file the record, and any motion to stay  
7 any requirement to so file the record was due prior to that time - - over eight months ago and  
8 over seven months before the current motion was filed. That is, absent a stay, the record on the  
9 petition was due regardless of the Respondent's motion to dismiss.  
10

11 Having failed to seek a stay for months preceding the motion, the relief sought has been  
12 waived. See Cohen v. Ins Consultants, Inc., 2015 U.S. Dist. LEXIS 22788, \*27, 2015 WL  
13 847473(D. Md. 2015); accord Holly v. UPS Supply Chain Solutions, Inc., 2015 U.S. Dist.  
14 LEXIS 65614, \*12, 2015 WL 2446110 (W.D. Ky. 2015)(Failure to promptly request a stay while  
15 ignoring filing requirements obviates the ability to receive a stay); Stragent LLC v. BMW of N.  
16 Am., LLC, 2017 U.S. Dist. LEXIS 192695, \*9 (E.D. Tex. 2017)("Defendants did not delay in  
17 filing their renewed motion to stay after the PTAB instituted review." Implying that undue delay  
18 presents a basis for denying a motion to stay.); E-Watch, Inc. v. Mobotix Corp., 2013 U.S. Dist.  
19 LEXIS 193071, \*34 (W.D. Tex. 2013); Jeld-Wen, Inc. v. Nebula Glass Int'l, Inc., 2007 U.S.  
20 Dist. LEXIS 39181, \*7, 2007 WL 1625721 (S.D. Fla. 2007); Graves v. Std. Ins. Co., 2016 U.S.  
21 Dist. LEXIS 111035, \*15, 2016 WL 4445479 (W.D. Ky. 2007)(Finding that the court could  
22 deem a motion to stay filed after the date due a waiver of the right to seek stay, stating, "A  
23 deadline is a deadline. The Court could deem Graves's continued failure to meet the magistrate  
24 judge's deadline to respond to summary judgment as an abandonment of Graves's claims and  
25 defenses."). Thusly, Defendant's delay is a waiver of the current motion to stay.  
26  
27  
28

1 From a different perspective, Respondent's motion is addressed through application of  
2 the equitable "maxim that equity regards that as done which ought to be done." Independent  
3 Wireless Tel. Co. v. Radio Corp. of America, 269 U.S. 459, 473 (1926). This is part of the  
4 common law in Nevada and applied in Nevada. NRS 1.030, and First Fed. Sav. & Loan Ass'n v.  
5 Racquet Club Condominiums, 106 Nev. 758, 762, 801 P.2d 1360, 1363 (1990).<sup>1</sup> Or as noted in  
6 Craig v. Leslie, 16 U.S. 563, 578 (1818), the court "considers things directed . . . to be done, as  
7 having been actually performed, where nothing has intervened which ought to prevent a  
8 performance." Here the Respondent was directed by statute to have filed the record last January.  
9 Without excuse, it failed to do so. As the filing is to have been "done," and Respondent has no  
10 viable excuse for having failed to do so, the filing of the record by Respondent should be  
11 directed to occur immediately (or the previously requested default entered), and the current  
12 motion should be denied.  
13

14  
15 2. UNDER THE LAW, EVEN IF THE RESPONDENT HAD ACTED WITH  
16 DILLIGENCE, NO STAY OF PROCEEDINGS IS APPROPRIATE  
REGARDLESS OF THE PETITION FOR WRIT

17 In Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 657, 6 P.3d 982, 986  
18 (2000), the Supreme Court addressed the very question before this Court. In Fritz, the trial court  
19 denied a motion to dismiss based on lack of jurisdiction. This is the same circumstance  
20 applicable here. The moving defendant in Fritz filed a petition for writ of prohibition, and sought  
21 a stay in the District Court. The District Court denied the motion for stay, and the moving  
22 defendant then sought the stay in the Supreme Court. The Supreme Court addressed both the  
23 ruling of the District Court and the matter seeking a stay before it. In doing so, it provided the  
24  
25  
26

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27  
28 <sup>1</sup> Vacated in part and affirmed on this issue in First Fed. Sav. & Loan Ass'n v. Racquet Club  
Condominiums, 107 Nev. 20, 21, 805 P.2d 601, 601 (1991).

1 test to be applied and determined that the District Court did not err in denying a stay, and that no  
2 stay of the District Court proceedings should enter.

3 The factors to be considered in determining whether a stay should issue were provided in  
4 Fritz as follows:

5 (1) Whether the object of the . . . writ petition will be defeated if the  
6 stay is denied;

7 (2) Whether appellant/petitioner will suffer irreparable or serious  
8 injury if the stay is denied the object of the appeal or writ petition will  
9 be defeated if the stay is denied;

10 (3) Whether respondent/real party in interest will suffer irreparable or  
11 serious injury if the stay is granted; and

12 (4) Whether appellant/petitioner is likely to prevail on the merits in the  
13 . . . writ petition.

14 Id at 657, 805 P.2d at 986. The application of these factors in Fritz are instructive, if not  
15 determinative, of the present motion for stay.

16 In denying the stay, the Fritz Court applied the first factor in investigating whether the  
17 “object of the writ . . . will be defeated if the stay is denied.” It determined that the object of the  
18 jurisdictional requirement remaining reviewable will not be adversely affected by the denial of  
19 the motion for stay. This is the same conclusion mandated by the current proceeding.<sup>2</sup> 657-658,  
20 805 P.2d at 986. Thus, the first factor falls squarely within the considerations mandating a denial  
21 of the motion to stay.

22 The second factor is irreparable harm to the respondent. In Fritz, the defendant argued the  
23 same potentially needless expense cited by Respondent here. Respondent’s Brief, p. 2: 10-13. In  
24 response to this argument, the Supreme Court ruled, “Such litigation expenses, while potentially  
25

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26  
27 <sup>2</sup> To the extent there exists any arguable counter-position, and that the Respondent is at risk of  
28 waiving its defense, under Fritz this would have already occurred when the Respondent filed its  
motion to strike the record previously filed by Petitioner. See Fritz, id at 656-657, 805 P.2d at  
985-986.

1 substantial, are neither irreparable nor serious.” The Supreme Court concluded with: “‘mere  
2 injuries, however substantial, in terms of money, time and energy necessarily expended in the  
3 absence of a stay are not enough' to show irreparable harm.” Id at 658, 805 P.2d at 987. Thus,  
4 under the mandate of Fritz, the second factor also balances heavily, if not exclusively, in favor of  
5 denying the stay requested.

6  
7 Turning to the third factor, here there is the potential of irreparable injury to Petitioner.  
8 Unlike Respondent, the Petitioner does not have mere money, time, and energy at risk. This  
9 proceeding regards Petitioner’s ability to practice his profession, which, provided the Court was  
10 correct in its jurisdictional analysis, has already been delayed for eight months by Respondent’s  
11 failure to follow the rules. Suffering under an improperly suspended professional license is  
12 irreparable harm. See Withrow v. Larkin, 421 U.S. 35, 44 (1975); Johnson v. Bd. of Governors  
13 of Registered Dentists of Okla., 913 P.2d 1339, 1345 (Okla. 1996); Rachel M. Weldon, LPC v.  
14 Bd. of Licensed Prof’l Counselors & Therapists, 293 P.3d 1023, 1025 (Or. 2012)(The undue  
15 revocation of a license by a State Board is an irreparable injury). Unlike Respondent, Petitioner  
16 has a continuing and expanding potential irreparable injury before this Court which a stay can  
17 grossly expand. The third factor, like the first two, strongly militates against any stay being  
18 entered in this matter.

19  
20 And finally, the fourth factor clearly balances for the Petitioner as well. This Court has  
21 already ruled that it has jurisdiction, and it would be irreconcilably inconsistent to rule that there  
22 is not a substantial likelihood of success on the merits of the jurisdiction question for Petitioner  
23 to now, essentially, conclude that the extant order is likely in error. Moreover, since the  
24 determination, the case of Department of Commerce v. Hyt, 96 Nev. 494, 495, 611 P.2d 1096,  
25 1097 (1980), has now been briefed before this Court. In Hyt, the Court confirmed the position of  
26 Petitioner argued in opposition to the prior denied motion to dismiss. That is, when an oral ruling  
27 is made by an administrative body with findings of fact and conclusions of law, and is something  
28

1 more than informal, that oral ruling constitutes a final, appealable order of the board or  
2 commission.

3 As noted in prior briefing, this was no informal ruling of the Respondent, but a binding  
4 ruling made at a duly constituted meeting of the Respondent Board on a formal motion made and  
5 carried as follows:

6 Member Waugh: "I'll make a motion. After reviewing the previous  
7 proceedings, previous evidence, and after listening to both sides, I move  
8 that the Board **uphold the September 27 [2011] order** . . ."  
9 Presiding Member Mickey: "Motion carries."

10 Reporter's Transcript filed 12/8/17, pp. 67-68. The upheld Order contained both findings of fact  
11 and conclusions of law necessarily adopted in the passage of the motion by the motion's express  
12 language. In light of this, the likelihood of Petitioner's success on the merits is greatly enhanced,  
13 and the likelihood of the Respondent's failure stands as the putative outcome. All four factors to  
14 be evaluated by this Court under Fritz clearly balance in favor of the Petitioner, and any reason  
15 for a stay to enter pending resolution of the Respondent's Petition for Writ of Prohibition fails.

## 16 **II. CONCLUSION**

17 Petitioner has spent years trying to get the current matter determined judicially. At every  
18 step, Respondent has attempted, and at times succeeded, at thwarting an actual review of actual  
19 events. It has done so through secreting documents as is evident from Judge Weise's order, it has  
20 done so through repeatedly making jurisdictional arguments rejected by the courts; it has done so  
21 through delaying tactics (e.g., attempting to have Judge Weise enter an order stripping this  
22 Department of jurisdiction), it has done so through failing to comply with statutory filing  
23 mandates, etc.

24 Now, before the Court, is a motion to indeterminately delay this matter from proceeding  
25 forward. Absent from the motion is the on-point authority of Fritz Hansen A/S v. Eighth Judicial  
26 Dist. Court, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Had Respondent taken the most

1 rudimentary research on its argument of harm in having to proceed while a petition for a writ of  
2 prohibition was pending, Fritz would have been, and likely was, discovered by Respondent.  
3 Against this, Respondent was faced with the rule of professional conduct mandating that it is a  
4 breach of professional ethics to “fail to disclose to the tribunal legal authority in the controlling  
5 jurisdiction known to the lawyer to be directly adverse to the position of the client and not  
6 disclosed by opposing counsel.” Rule 3.3(a)(2). That is what Fritz is, yet it is withheld from  
7 disclosure or briefing by Respondent.  
8

9       For the reasons set forth above, the motion to stay proceedings should be denied. Further,  
10 as it is now apparent that actions have been consistently taken for the purpose of delay, and in  
11 violation of the statutory filing requirements applicable to the Respondent. The default of the  
12 Respondent previously continued should be considered in light of the stack of repeated dilatory  
13 tactics to delay or prevent consideration. Should this Court find this improper delay and enter its  
14 order reversing the Board as the distinction from Hyt would indicate, everything, including the  
15 alleged shortfall on jurisdiction, would be immediately appealable. Certainly, considering  
16 Respondent’s concern regarding undue expense, this abbreviation of the proceedings should not  
17 be opposed by the Respondent. As Respondent stated at the onset of its brief, if the Record  
18 would have been timely filed, everything would already be before the Supreme Court on appeal,  
19 and in accord with that which should have been done shall be considered as done, that presents  
20 the proper course in this Court promptly and fully determining the matter presently in favor of  
21 Petitioner, and saving such a result, ordering that the Board immediately file the record it admits  
22

23  
24 ///

25 ///

26 ///

27 ///

28 ///

1 should have been filed over a half-year ago.

2 Dated this 17<sup>th</sup> day of September, 2018.

3 Nersesian & Sankiewicz

4  
5 /s/ Robert A. Nersesian  
6 ROBERT A. NERSESIAN, ESQ.  
7 Nevada Bar No. 2762  
8 528 South Eighth Street  
9 Las Vegas, Nevada 89101  
10 Attorney for Appellants/Petitioners

11  
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 17th day of September, 2018, I served a copy of the foregoing  
14 PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO STAY PROCEEDINGS  
15 by depositing the same into the U.S. Mail in Las Vegas, Nevada, postage prepaid, addressed as  
16 follows:

17 Louis Ling  
18 933 Gear Street  
19 Reno, NV 89503

20 A copy was also forwarded via email this date.

21 /s/ Robert A. Nersesian  
22 An employee of Nersesian & Sankiewicz  
23  
24  
25  
26  
27  
28



OPPM  
LOUIS LING  
Nevada Bar No. 3101  
933 Gear Street  
Reno, Nevada 89503  
Telephone: (775) 233-9099  
Facsimile: (775) 624-5086  
E-mail: louisling@me.com

Attorney for Appellee/Respondent  
Nevada State Board of Architecture,  
Interior Design and Residential Design

DISTRICT COURT  
CLARK COUNTY, NEVADA

DENNIS E. RUSK, AND DENNIS E.	)	
RUSK ARCHITECT, LLC	)	Case No. A-17-764562-J
	)	
Appellants/Petitioners,	)	Dep't No. 29
	)	
vs.	)	
	)	
NEVADA STATE BOARD OF	)	OPPOSITION TO PETITIONER'S MOTION
ARCHITECTURE, INTERIOR DESIGN	)	FOR DEFAULT OR ALTERNATIVELY
AND RESIDENTIAL DESIGN,	)	MOTION TO PROCEED WITH BRIEFING
	)	ON ORDER SHORTENING TIME
Appellee/Respondent.	)	
-----	)	

Respondent Nevada State Board of Architecture, Interior Design and Residential Design (the Board) opposes Petitioner's Motion for Default or Alternatively Motion to Proceed With Briefing on Order Shortening Time. This opposition is made and based on the pleadings and papers on file herein and the following points and authorities.

I. POINTS AND AUTHORITIES

It must first be said that the Board intends to and has at all times complied with NRS chs. 233B and 622A throughout its conduct of this matter, and the Board will continue to do so as this matter moves forward. The present procedural stance of this case is the result of the Board's good faith defense of itself and its Order on Remand. Should the Nevada Supreme Court deny the Board's pending Petition for Writ of Prohibition (Case No. 76792), the Board hereby pledges to file the record of proceedings so that this matter can proceed in due course pursuant to NRS chs. 233B and 622A.

1 In Petitioners' instant motion, Petitioners have provided this court with an incomplete relation of  
2 the procedural history and course of these proceedings. When the procedural history is reviewed, it will  
3 become patent that the Board has not and is not engaged in "gamesmanship in delaying these  
4 proceedings unnecessarily," (Motion for Default, at page 7, lines 18-19), but, rather, the Board has been  
5 protecting its legal rights by pursuing legitimate motions to assure that this Court does have subject  
6 matter jurisdiction over the instant controversy before proceeding.

#### 7 8 A. PROCEDURAL HISTORY

9 On February 2, 2017, Petitioners filed a matter entitled: "Petition of Dennis E. Rusk and Dennis  
10 E. Rusk Architect, LLC, for Issuance of a Writ of Mandamus, or Alternatively, Judicial Review of Action  
11 of the Nevada State Board of Architecture, Interior Design and Residential Design Taken in Reference to  
12 a Petition/Motion Filed by the Petitioners and Avoided/Determined Before Said Board on January 11,  
13 2017." (First Petition). The matter was filed with the Eighth Judicial District Court, was given Case  
14 Number A-17-750672-W, and was assigned to Department 30 (Judge Weise presiding).

15 On June 27, 2017, Judge Weise issued his Order Determining Petitioner's Petition for Writ  
16 Issuance of a Writ of Mandamus, or Alternatively, Judicial Review or Action of the Nevada State Board  
17 of Architecture (Remand Order). By this Remand Order, Judge Weise ordered that the matter be  
18 remanded to the Board, and on remand the Board "shall assume jurisdiction and rule upon the  
19 Petitioner's NSBAIDRD Petition and consider whether it would be appropriate to vacate its prior  
20 decision based upon the newly discovered evidence consisting of the March 6, 2007 Schirmer Report and  
21 drawings."

22 On October 25, 2017, the Board held the hearing on remand ordered by Judge Weise.

23 On November 9, 2017, Petitioners filed the instant Petition for Judicial Review (Case No. A-17-  
24 764562-J). By the instant Petition for Judicial Review, Petitioners expressly indicated that their intent was  
25 to seek judicial review of the Board's oral pronouncement on October 25, 2017 even though no written  
26 order had yet been issued by the Board.

1 On December 1, 2017, the Board issued its Findings of Fact, Conclusions of Law, and Order  
2 Regarding Remand From Judge Weise to Determine Whether to Vacate its September 27, 2011 Board  
3 Order Based Upon the Newly Discovered Evidence Consisting of the March 6, 2007 Schirmer Report  
4 and Drawings (Board Order on Remand).

5 On December 14, 2017, the Board appeared in the instant proceeding by filing its Notice of  
6 Intent to Participate.

7 On December 21, 2017 – only seven days after appearing in the matter – the Board filed a  
8 Motion to Dismiss. The basis of the Motion to Dismiss was that the case before Department 30 (Judge  
9 Weise) was still open and that, therefore, Judge Weise had subject matter jurisdiction over the matters at  
10 issue.

11 On January 5, 2018, the Board filed a Notice of Withdrawal of Motion to Dismiss after Judge  
12 Weise administratively closed his case.

13 On January 9, 2018 – only four days later – the Board filed a Second Motion to Dismiss, arguing  
14 therein that Petitioners' filing of its Petition for Judicial Review twenty days *before* the Board issued its  
15 written Order on Remand deprived the court of subject matter jurisdiction. The Board on the same day  
16 also filed a Motion to Strike Lodging and Notice of Lodging of DVD.

17 On August 14, 2018, this Court filed its Order Regarding Respondent's Motion to Dismiss and  
18 Motion to Strike. By this order, this Court denied the Board's Motion to Dismiss but granted the  
19 Board's Motion to Strike.

20 On August 22, 2018 – only eight days after this Court's order issued – the Board approved the  
21 initiation of a writ proceeding before the Nevada Supreme Court.

22 On August 27, 2018 at 3:09 p.m. – only five days after the Board approved the initiation of the  
23 writ proceedings, the Board filed a Petition for Writ of Prohibition and accompanying Appendix with the  
24 Nevada Supreme Court (Case No. 76792). By 3:55 p.m., the Board had served the Petition for Writ of  
25 Prohibition and Appendix upon the instant Court and had served Petitioners by regular mailing upon  
26 their counsel as required by NRAP 21(a)(1).  
27  
28

Also on August 27, 2018, at 9:07 a.m., this Court issued its Amended Order Setting Briefing Schedule on Petition for Judicial Review. Because the scheduling order was not provided to the parties electronically, it was not known to or received by the Board's counsel until the afternoon of August 31, 2018.

On August 29, 2018 – only two days after the filing and service of the Petition for Writ of Prohibition – the Board filed with this Court a Motion to Stay, seeking thereby to stay the proceedings in the instant matter until the Nevada Supreme Court could rule upon the Petition for Writ of Prohibition in Case No. 75792.

On August 30, 2018, Petitioners filed the instant motion.

#### **B. LEGAL ARGUMENT**

In *Department of Commerce v. Hyt*, 96 Nev. 494, 611 P.2d 1096 (1980) the Nevada Supreme Court had before it facts substantively similar to the instant matter. In *Hyt*, the Nevada Real Estate Advisory Commission held a hearing on January 8, 1979 in which Mr. Hyt was the respondent. The Commission ruled orally at the hearing against Mr. Hyt and imposed as discipline a suspension of his license. The Commission did not include an effective date for the suspension or findings of fact and law in the oral pronouncement. *Hyt*, 96. Nev. at 495, 611 P.2d at 1097. Only eight days later, Mr. Hyt filed a petition for judicial review of the Commission's oral order "***and concurrently demanded a certified transcript***" be filed by the Commission. *Hyt*, 96. Nev. at 495, 611 P.2d at 1097. When the Commission did not file the transcript, on February 28, 1979, Mr. Hyt moved for summary judgment because the Commission did not certify a transcript within the statutory thirty days. *Hyt*, 96. Nev. at 496, 611 P.2d at 1097. On March 1, 1979, the Commission issued a written order resultant from its hearing and made the suspension effective on April 4, 1979. Mr. Hyt filed a second notice of judicial review of the written decision thereafter. *Hyt*, 96. Nev. at 496, 611 P.2d at 1097. On March 23, 1979, the Commission filed the certified transcript, and on March 29, 1979 the district court granted summary judgment in favor of Mr. Hyt.

1           The Commission appealed to the Nevada Supreme Court. The Nevada Supreme Court reversed  
2 the district court's ruling because it found that the Commission's oral order did **not** constitute a final  
3 order from which a petition for judicial review can be taken and, instead, the subsequent written order  
4 constitutes the final order from which a petition for judicial review can be taken. *Hyt*, 96 Nev. at 497,  
5 611 P.2d at 1097. The Court's holding was clear:

6           In this case, the oral pronouncement of the determination by the Commission  
7 was insufficient to constitute a final decision under NRS 233B.125. Specific findings of  
8 fact were not included and there was no announcement of an effective date of  
9 suspension which is to be included in a proper notice of decisions under NRS  
10 645.760(2). The Commission is required to render a decision within ninety days of the  
11 final hearing on a complaint. NRS 645.760(1). Thus, the legislature has provided  
licensees with protection from undue delay. ***An administrative agency should not be  
penalized for announcing its conclusion at the end of a hearing*** by requiring the agency  
to compile a complete transcript within thirty days of that date. ***The written findings of  
fact and conclusions of law constitute the final decision.*** (Emphasis supplied.)

12 *Hyt*, 96 Nev. at 497, 611 P.2d at 1097.

13           The *Hyt* decision readily applies to Petitioners' instant motion. Petitioners filed their one and  
14 only Petition for Judicial Review only days after the Board orally pronounced its ruling and twenty days  
15 before the Board issued its written Order on Remand. After being served, the Board timely appeared,  
16 and thereafter the Board assiduously pursued its legal challenges to Petitioners' petition, which challenges  
17 were ultimately resolved only on August 14, 2018. In *Hyt*, Mr. Hyt demanded that the administrative  
18 agency file a transcript and sought judgment in his favor because he claimed the transcript was not timely  
19 filed based upon the timing established by his prematurely filed petition; in the instant case, Respondents  
20 similarly seek default in their favor by claiming that the record of proceedings was not timely filed based  
21 upon the timing established by their prematurely filed petition. In *Hyt*, the Supreme Court held that the  
22 Commission's written order constituted the final decision and that the time for the filing of the  
23 transcript did not commence until the written order was produced and served. In *Hyt*, the district court's  
24 grant of summary judgment was reversed; in the instant case, this Court must learn from and apply *Hyt*  
25 and must **not** grant the relief sought by Respondents.

26           Fundamentally, the Board has a right and, indeed, an obligation to defend itself with all the zeal  
27 and rigor allowed by law. In this case, the Board believes that Petitioners have not invoked the subject  
28