

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAIDE, L.L.C. D/B/A GENTLE SPRING
CARE HOME; SOKHENA K. HUCH;
MIKI N. TON,

Appellants,

v.

CORINNE R. DILEO AS SPECIAL
ADMINISTRATOR FOR THE ESTATE
OF THOMAS DILEO; THOMAS DILEO,
JR., AS STATUTORY HEIR TO
THOMAS DILEO; AND CINDY DILEO,
AS STATUTORY HEIR TO THOMAS
DILEO,

Appellees,

Supreme Court No.: 81804

District Court No. ~~Electronically Filed~~
Feb 10 2021 04:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' OPENING BRIEF

S. BRENT VOGEL

Nevada Bar No. 006858

JOHN M. ORR

Nevada Bar No. 014251

Lewis Brisbois Bisgaard & Smith LLP

6385 South Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Telephone: 702-893-3383

Attorneys for Petitioners

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. Appellant, MAIDE, LLC, is a domestic limited liability corporation. Appellant SOKHENA “KENNY” HUCH is the sole managing member of MAIDE, LLC. No publicly held company or corporation owns 10% of MAIDE, LLC OR has any ownership interest in it.

2. The undersigned counsel of record for appellants are the only attorneys who have appeared on their behalf in this matter, both before this court and in the district court. Attorney John M. Orr, Esq., appeared for APPELLANTS SOKHENA HUCH, MIKI TON, AND MAIDE, LLC in the proceedings before the district court.

These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

Dated this 10th day of February, 2019.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ John M. Orr
S. BRENT VOGEL, ESQ.
Nevada Bar No. 004665
JOHN M. ORR, ESQ.
Nevada Bar No. 007359
2300 West Sahara Drive, Suite 300, Box 28
Las Vegas, Nevada 89102
Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
JURISDICTION.....	1
ROUTING STATEMENT	1
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	1, 2
STATEMENT OF THE CASE.....	2, 3
STATEMENT OF RELEVANT FACTS	6, 7, 8, 9, 10
SUMMARY OF APPELLANT'S ARGUMENT	8, 9
LEGAL ARGUMENT	9, 10, 11, 12, 13
A. The Agreement Complies with NRS 597.995(1).....	9-13
B. The Agreement Substantially Complies with NRS 597.995(1)	14–18
CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases

<i>Clark Co. Public Employees v. Pearson</i> , 106 Nev. 587, 798 P.2d 136, 137 (1990).....	9
<i>Fat Hat, LLC v. DiTerlizzi</i> , No. 68479, 2016 Nev. Unpub. LEXIS 762, (Nev. Sept. 21, 2016).....	10, 11, 12, 13
<i>Hardy Cos., Inc. v. SNMARK, LLC</i> , 126 Nev. 528, 245 P.3d 1149, 1155 (2010)...	15
<i>Leven v. Frey</i> , 123 Nev. 399, 168 P.3d 712, 717 (2007).....	8, 14, 15
<i>Levy v. Nat'l Default Servicing Corp.</i> , 127 Nev. 470, 255 P.3d 1275, 1278 (2011).....	14
<i>Markowitz v. Saxon Special Servicing</i> , 129 Nev. 660, 310 P.3d 569, 571 (2013)..	14
<i>Redl v. Heller</i> , 120 Nev. 75, 85 P.3d 797, 800-01 (2004).....	14
<i>Schleining v. Cap. One, Inc.</i> , 130 Nev. 323, 326 P.3d 4, 13	16

Statutes

NRS 597.995	10, 15
-------------------	--------

JURISDICTION

This is an appeal from the District Court's denial of Appellants' Application for Judicial Relief-Motion to Compel Arbitration, which is a final order in a special proceeding under NRAP 3(a). Such orders are appealable under NRS 38.247(1)(a), which provides that "[a]n appeal may be taken from an order denying a motion to compel arbitration." NRS 38.241(1)(a).

The Notice of Entry of Order denying Appellant's Motion to Compel Arbitration was filed and served on August 14, 2020. Appellant's filed their Notice of Appeal on September 12, 2020. This Court has jurisdiction over the instant appeal.

ROUTING STATEMENT

Under NRAP 17(b)(6),(12), this case would be presumptively assigned to the Court of Appeals as it concerns "a contract dispute where the amount in controversy is less than \$75,000" and a case "challenging the grant of denial of injunctive relief." NRAP 17(b)(6),(12).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred as a matter of law denying Appellant's Motion to Compel Arbitration.
2. Whether the doctrine of substantial compliance applies to NRS 597.995(1),

3. If the doctrine of substantial compliance applies to NRS 597.995(1), whether the District Court abused its discretion in not finding that the subject arbitration agreement substantially complies with NRS 597.995(1).

STATEMENT OF THE CASE

This appeal stems from Thomas Dileo's residency at Gentle Spring Care Home ("Gentle Spring"). Gentle Spring is a licensed "residential home for groups" under NRS 449 *et seq.* At the outset of Mr. Dileo's residency at Gentle Spring, Corinne Dileo, as Mr. Dileo's power of attorney, executed an arbitration agreement(the "Agreement") on his behalf. Appellants' App. Vol I at 00093. Appellees Thomas Dileo, Jr. and Cindy Dileo (the "Heirs") did not sign the Agreement. On or around June 24, 2017, Mr. Dileo developed a wound on his leg that became gangrenous and his leg was later amputated. He died on August 13, 2017, while admitted at Spring Valley Hospital. Corrine Dileo, as Special Administrator of the Estate of Thomas Dileo (the "Estate"), Cindy Dileo, and Thomas Dileo, Jr. allege that Gentle Spring negligently cared for and supervised Mr. Dileo, which purportedly caused him to develop gangrene and his subsequent need for a leg amputation. They further allege this amputation caused or contributed to Mr. Dileo's death. *See id.* at 00001–00010.

Appellants filed an Application for Judicial Relief-Motion to Compel Arbitration (the "Motion") on September 13, 2019. *Id.* at 00011. The District Court

heard this Motion on January 28, 2020. In their Opposition, Appellees argued that the Agreement did not comply with NRS 597.995(1), which requires arbitration agreements to contain a specific authorization. The Court found the Agreement complied with NRS 597.995. The Court, however, found that because the Heirs were not signatories to the Agreement, they could not be compelled to arbitrate their claims against Appellants. The Court, therefore, granted Appellants' Motion with regard to the Estate and denied it with regard to the Heirs. The order granting in part and denying in part Appellant's Motion was entered on April 22, 2020. *Id.* at 00156.

Appellees filed a Motion for Rehearing of Defendants' Motion to Compel Arbitration on April 21, 2020. *Id.* at 00110. They argued in this motion that the District Court incorrectly ruled that the Agreement complied with NRS 597.995(1). Appellees' Motion for Rehearing was heard on May 26, 2020. The Court reversed its prior order and ruled that the Agreement did not comply with NRS 597.995(1) and was, therefore, unenforceable.¹ The Court's Order granting Appellees' Motion for Rehearing and Denying Appellants' Motion to Compel Arbitration was entered on August 14, 2020. Appellants' App. Vol II at 00274.

Appellants now seek review of the District Court's Order granting Appellees' Motion for Rehearing and denying Appellants' Motion to Compel

¹ Appellants' Motion to Compel Arbitration was initially heard by Hon. Senior Judge Charles

Arbitration.

STATEMENT OF RELEVANT FACTS

Mrs. Dileo, Thomas Dileo's duly appointed Power of Attorney, executed the Agreement on January 30, 2015. Appellant's App. Vol I at 00093. The Agreement is on a single 8.5x11 inch paper. It contains two bolded headings that read "Resident Agreement Addendum" and "Grievance and Arbitration." *Id.* The Agreement contains two paragraphs. *Id.* The first paragraph is labeled, "Grievances," and provides:

1. Grievances: Resident may voice reasonable grievances about services rendered by staff of other personnel and the Home shall Record such grievances upon request to do so. In the event of a written grievances, the Home shall investigate it and make a written reply to residents of the Home's findings with a reasonable period thereafter.

Id. The second paragraph is bolded and labeled "Arbitration" and provides:

2 Arbitration: Any controversy, dispute or disagreement, whether sounding in tort or contract to law, arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, shall be settled exclusively by binding arbitration, which shall be conducted in (City, State) in accordance with American health [sic] Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the Arbitration, shall be binding of all parties to the agreement and judgment on the award rendered by the arbitrator maybe [sic] entered in any court having

Thompson. Appellees' Motion for Rehearing was heard by Hon. Adriana Escobar.

jurisdiction thereof. The parties shall agree upon a sole arbitrator of their choice and if they cannot agree on a single arbitrator there shall be three arbitrators with the neutrals [sic] arbitrator chosen by the parties' nominated arbitrators.

Id. The arbitration clause is 136-words and is in plain, 12-point font. There is no fine print or “legalese.” Approximately one-half inch below the arbitration clause is a signature line where Mrs. Dileo signed and dated the Agreement. CITE. The Agreement was set aside from the rest of the intake paperwork that Mrs. Dileo signed. Mrs. Dileo signed a five-page packet of documents that comprised Gentle Spring’s general resident agreement (the “Resident Agreement”). Appellant’s App. Vol I at 82–86. This Resident Agreement contains a single signature block on the last page that applies to the whole agreement. *Id.* at 00086. The arbitration clause is on a separate addendum that contains its own signature line where Mrs. Dileo affixed her signature and the date. *Id.* at 93.

Appellees Corrine Dileo, as the special administrator of the Estate of Thomas Dileo, and Thomas Dileo, Jr. and Cindy Dileo, as heirs to Thomas Dileo, filed a Complaint against Maide, LLC dba Gentle Spring Care Home, Miki Ton, and Sokhena Huch on June 27, 2019. *Id.* at 1–10. Appellants filed a Motion to Compel Arbitration on September 13, 2019. *Id.* at 19. Appellees filed their Opposition to Appellants’ Motion to Compel Arbitration on September 24, 2019. *Id.* at 27. Appellees argued the Agreement did not comply with NRS 597.995

because they claimed it did not contain a specific authorization for arbitration. *Id.* at 31. Appellees further argued that the Heirs could not be bound to the Agreement because they did not sign it. *Id.* at 33.

Appellants filed their reply in support of their Motion to Compel Arbitration on October 10, 2019. *Id.* at 71. They argued that the Agreement complied with NRS 597.995 because it was set apart from the general Resident Agreement and contained its own signature block where Mrs. Dileo signed and filled in the date. *Id.* at 74–75. Appellants further argued that the Estate could be compelled to arbitrate because Appellees’ claims for negligence and elder abuse belonged solely to the Estate, which is bound to Mr. Dileo’s contractual rights and obligations that existed prior to his death. *Id.* at 77–78. The Heirs do not have standing to pursue claims for negligence and elder abuse.

Appellants’ Motion to Compel Arbitration was heard on January 28, 2020. The Court found that the Agreement complied with NRS 597.995. *Id.* at 97. Appellees argued that the Agreement did not contain a specific authorization for arbitration because the Agreement contained a clause titled “grievances” and a second clause titled “arbitration”:

We have the Residential Agreement and then we have this Addendum. Both are separately signed; both are separately dated. With that being said, we have a separate contract here with the Addendum and within it, there are two provisions there, one for grievances and one for arbitration. And, under NRS 5997, you need to

have a specific authorization next to that arbitration provision. It can be an initial, it can be a signature, anything of the like...

Id. at 104:2–10. The Court noted: “The signatures are right below. It’s pretty clear.” *Id.* at 104:11–12. The Court ruled that the Agreement complied with NRS 597.995 and compelled the Estate’s claims to arbitration. It stayed the Heirs’ claims during the pendency of the arbitration pursuant to NRS 38.221(7). The Notice of Entry of Order Granting in part and Denying in Part Defendants’ Motion to Compel Arbitration was filed and served on April 22, 2020. *Id.* at 159.

On April 21, 2021, the Estate filed a Motion for Rehearing on April 21, 2020. *Id.* 110–158. The Estate reiterated its argument that the Agreement did not comply with NRS 597.995(1) because it contained two clauses related to grievances and arbitration respectively. Appellants reasserted that the Agreement complied with NRS 597.995(1) because it contained its own signature block and was set apart from the remainder of the Resident Agreement. Appellants further argued that the Agreement substantially complied with NRS 597.995(1).

On July 28, 2020, the Court issued a minute order granting Appellees’ Motion for Rehearing and Denying Appellants’ Motion to Compel Arbitration. Appellants’ App. Vol. II at 305. The Court found its prior order was clearly erroneous because the binding arbitration provision within the Agreement lacked a specific authorization requirement. *Id.* at 280 The Court further found “the subject

provision within the Arbitration Agreement did not have a separate signature block or initial section for Plaintiffs to affirmatively agree to said provision.” *Id.* Appellants now seek review of the Court’s Order denying their Motion to Compel Arbitration. Appellants seek reversal of the Court’s Order and an order compelling the Estate’s claims to binding arbitration.

SUMMARY OF APPELLANTS’ ARGUMENTS

The District Court erred in denying Appellants’ Motion to Compel Arbitration for two key reasons. First, the Court incorrectly found that the Agreement does not comply with NRS 597.995(1). The Agreement was set aside from the rest of the Admission Agreement and contains its own signature block where Mrs. Dileo signed and dated. This constitutes a “specific authorization” as required by NRS 597.995(1). Second, even if the form of the Agreement does not strictly comply with NRS 597.995(1), the District Court abused its discretion by refusing to find that the Agreement substantially complies with NRS 597.995(1). When a statute proscribes form and content requirements, substantial compliance applies. *Leven v. Frey*, 123 Nev. 399, 407, 168 P.3d 712, 717 (2007). Substantial compliance may also be applied to avoid harsh or absurd results. *Id.* In this case, the Agreement is a simple, one-page document that is clearly labeled “Grievances and Arbitration.” It is two paragraphs in length that do not contain any legalese or fine print. The signature line for the Agreement is immediately below the

paragraph labeled “Arbitration.” Appellants’ App. Vol. I at 93. The Agreement is not buried in the annals of a dense packet of documents or otherwise difficult to read. Appellees did not argue or present any evidence that Mrs. Dileo did not understand or was unaware of the Agreement at the time she signed it. For these reasons, the Agreement itself and the circumstances surrounding Mrs. Dileo’s execution of it militate in favor applying the doctrine of substantial compliance. The Court, therefore, abused its discretion in not finding that the Agreement substantially complies with NRS 597.995(1).

LEGAL ARGUMENT

A. The Agreement Complies with NRS 597.995(1)

The Supreme Court of Nevada reviews the denial of a motion to compel arbitration de novo. *Clark Co. Public Employees v. Pearson*, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990). Any “doubts regarding the propriety of arbitration are resolved in favor of requiring arbitration. *Id.* at 591, 798 P.2d at 138. NRS § 597.995(1) provides:

1. Except as otherwise provided in subsection 3, an agreement which includes a provision which requires a person to submit to arbitration any dispute arising between the parties to the agreement must include specific authorization for the provision which indicates that the person has affirmatively agreed to the provision.
2. If an agreement includes a provision which requires a person to submit to arbitration any dispute arising between the parties to the agreement and the agreement

fails to include the specific authorization required pursuant to subsection 1, the provision is void and unenforceable.

NRS § 597.995(1)–(2). This Court considered what constitutes a “specific authorization” under NRS § 597.995(1) in *Fat Hat, LLC v. DiTerlizzi*, No. 68479, 2016 Nev. Unpub. LEXIS 762, (Nev. Sept. 21, 2016) (unpublished disposition). In *Fat Hat*, Fat Hat, LLC (“Fat Hat”) was sued by several of its employees after they discovered Fat Hat had been secretly filming them in their dressing areas as they changed attire. Fat Hat moved to compel arbitration based on the arbitration clauses in the plaintiffs’ respective independent contractor or employment contracts. The district court denied this motion, so Fat Hat appealed.

On appeal, each of the six employee plaintiffs argued that their arbitration agreements did not comply with NRS § 597.995(1) because the agreements did not contain a “specific authorization” for arbitration. The court accepted this argument for four of the six employees. It reasoned:

[t]hough the arbitration provision immediately preceded the signature line on the last page for all the contracts, that was a general signature line indicating consent to all the terms of the contract. Thus, those signatures do not qualify as specific authorizations for the arbitration provision. Although Kirtz initialed at the bottom of the page with the arbitration provision, she initialed at the bottom of every page; thus, her initials fail to demonstrate that she affirmatively agreed to the arbitration provision.

Fat Hat, 2016 Nev. Unpub. LEXIS 762, at *4. The invalid agreements were three-pages in length and contained twenty-one separate paragraphs. Each paragraph was in fine print. Appellants’ App. Vol. II 239–247. The signature block at the conclusion of the agreement applied to the whole agreement. *Id.* The *Fat Hat* Court held the two remaining arbitration agreements complied with NRS 597.995(1) because “[i]n addition to a signature line at the end of the contracts, both Hebert and Mihaylova were required to fill in their names and addresses in the blank spaces of the provision, explicitly stating that the agreement to arbitrate was effective.” *Id.* at *4–*5.

In this case, Mrs. Dileo initially signed a Resident Agreement that contained five-pages with a single signature block on page “five” that applied to the whole agreement. Appellants’ App. Vol. I 82–86. She then signed a separate “Resident Agreement Addendum” (the “Addendum”) that contained the subject arbitration clause. *Id.* at 93. This Addendum contained its own signature line, and, just like the two valid arbitration clauses in *Fat Hat*, Mrs. Dileo was required to fill in her name, date, and her signature. The Addendum contained a bolded heading that reads “Grievance and Arbitration.” *Id.* While the invalid agreements in *Fat Hat* were several pages in length in all fine print, the Addendum here is on a single page, lacks any fine print, and contains its own signature block. No reasonable

person could review the Addendum and conclude that the arbitration provision is buried in the annals of fine print or difficult to read and understand.

Appellees' arguments against enforcing the Agreement evince an attempt to turn NRS 597.995(1) into a cheap technicality and a semantic nightmare. Appellees argued that because the Addendum contains two paragraphs, labeled "Grievances" and "Arbitration" respectively, that the signature block at the bottom of the Agreement was a general authorization akin to the invalid agreement in *Fat Hat*. Appellees ignore that the signature line for the invalid *Fat Hat* agreements were a sweeping authorization for over 20 paragraphs on a variety of topics spread across three-pages all comprised of fine print. Appellants' App. Vol. II 239–247. The Addendum here was one single page in standard font and contained two short paragraphs. The signature blocked applied to two paragraphs on a single page, not over 20 paragraphs of fine print spread across several pages.

Appellees argued that Mrs. Dileo did not specifically authorize the Agreement because the Addendum contained a 54-word sentence about her right to submit grievances to the group home staff but would ultimately be required to arbitrate any grievances. This argument assumes that the "Grievances" clause is a separate "provision" for purposes of NRS 597.995(1). It is not. It is an introductory clause to the Addendum. It provides that residents may voice grievances to the group home staff. Appellants' App. Vol. I at 93. The second clause states that

those grievances or disputes are ultimately subject to arbitration. These two clauses comprise a single arbitration agreement. More importantly, as highlighted above, the signature line for the Addendum is an inch below the arbitration clause. This is unlike the *Fat Hat* agreement that contained over 20 paragraphs of provisions related to arbitration, the nature and duration of work, payment, and a litany of other unrelated provisions. Appellants' App. Vol. II 239–247. Appellees' argument depends on how broadly or narrowly the Court defines' "provision for arbitration," which reinforces that Appellees' arguments relate to technicalities and minutiae, rather than ensuring a person knowingly authorizes arbitration.

Appellees lack any tenable basis to say that Mrs. Dileo was not aware of the arbitration agreement and did not specifically authorize it. She did not offer any testimony that she was unaware of the arbitration clause or that she was confused because the Addendum contained two clauses. If the Court had any doubts regarding whether the Agreement complies with NRS 597.995(1), those doubts should have been resolved in favor of arbitration. *Pearson*, 106 Nev. at 590, 798 P.2d at 137 ("doubts regarding the propriety of arbitration are resolved in favor of requiring arbitration."). For these reasons, the Court erred as a matter of law in determining that the Addendum was not compliant with NRS 597.995(1).

///

///

B. The Agreement Substantially Complies with NRS 597.995(1)

This Court reviews substantial-compliance determinations for an abuse of discretion. *Redl v. Heller*, 120 Nev. 75, 81, 85 P.3d 797, 800–01 (2004). The District Court abused its discretion in not finding that the Addendum substantially complies with NRS 597.995(1). Statutes “may contain both mandatory and directory provisions.” *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310 P.3d 569, 571 (2013). Statutory provisions that provide for “a specific time and manner for performance” are subject to strict compliance. *Id.* at 664, 310 P.3d at 572 (internal quotation omitted). “Time and manner refers to when performance must take place and the way in which the deadline must be met.” *Id.* Directory provisions, on the other hand, “are those governing form and content, which dictate who must take action and what information that party is required to provide and do not implicate notice.” *Id.* at 664–65, 310 P.3d at 572 (internal quotations omitted).

To assess whether substantial compliance applies, Nevada courts “examine whether the purpose of the statute or rule can be adequately served in a manner other than by technical compliance with the statutory or rule language.” *Levy v. Nat’l Default Servicing Corp.*, 127 Nev.470, 476, 255 P.3d 1275, 1278 (2011). Substantial compliance may be sufficient “to avoid harsh, unfair or absurd consequences.” *Leven v. Frey*, 123 Nev. 399, 407, 168 P.3d 712, 717 (2007). This Court has also held that when the purpose of a statute is to give notice to a party,

the doctrine of substantial compliance applies if the party receives actual notice and is not prejudiced. *See id* (“The purpose of NRS 108.227(1) is to notify the property owner of the lien; therefore, substantial compliance with the requirements of the statute will suffice if the owner receives actual notice and is not prejudiced.”); *see also, Hardy Cos., Inc. v. SNMARK, LLC*, 126 Nev. 528, 536, 245 P.3d 1149, 1155 (2010).

NRS 597.995’s plain objective is to ensure that a signatory is aware of an arbitration agreement and does not sign one sweeping authorization that applies to a multipage document. Its requirement that arbitration agreements have a specific authorization is a clear “form and content” provision that dictates where an authorization must appear on an agreement containing an arbitration provision. Nothing in NRS 597.995(1) prescribes the timing or manner in which performance must be rendered. *See Leven*, 23 Nev. at 407, 168 P.3d at 717. For these reasons, substantial compliance is sufficient to satisfy NRS 597.995.

On a broader level, substantial compliance must apply to all arbitration agreements and their compliance with NRS 597.995(1). This is because such agreements come in varied forms and use different language and structures. Some arbitration agreements comprise several pages. Some, as is this case here, are only one-page in length. It would be impractical to require all persons and entities in Nevada to utilize a uniform arbitration agreement. Such a rigid requirement would

unduly infringe on a person's freedom to contract. This practical reality reinforces the need to review an arbitration agreement's conformity with NRS 597.995(1) for substantial compliance.

Although NRS 597.995(1) arguably implicates notice of an arbitration provision, substantial compliance applies to NRS 597.995(1) as it relates to the facts of this case. Appellees presented no evidence or any arguments that Mrs. Dileo was unaware of the Agreement or did not have an opportunity to review it before signing it. *See Schleining v. Cap. One, Inc.*, 130 Nev. 323, 330, 326 P.3d 4, 13 (“Although Schleining claimed that his failure to act to save the property at issue was because he did not receive the appropriate notice, there was no evidence presented that Schleining attempted to refinance the property but failed due to time constraints.”). Given the brevity and simplicity of the Agreement, as described above, it would strain credulity to suggest that the Agreement was buried in the annals of a voluminous packet of documents or somehow indiscernible. Mrs. Dileo did not testify or argue that she was unaware of the Agreement at the time she signed it.

The Estate suffers no prejudice by the enforcement of the Agreement. Arbitration is not prejudicial per se. The Estate will have a full and fair opportunity to conduct discovery, present evidence, examine witnesses, be heard by a neutral arbitrator, and obtain any appropriate relief during arbitration. If anything, Gentle

Spring is prejudiced by the Estate's avoidance of the Agreement to the extent it is being robbed of the benefit of its bargain. While Gentle Spring honored its obligations under the contract to provide group home services to Mr. Dileo, the Estate has stripped Gentle Spring of its contractual right to the more efficient, inexpensive arbitration process.

The District Court also abused its discretion by not finding that the Agreement substantially complies with NRS 597.995 because not doing so produces an absurd and unfair result in this case. There is no dispute that Mrs. Dileo knowingly executed the Agreement. While NRS 597.995(1) is meant to be a protection for unwitting signatories, Appellees' arguments transform NRS 597.995(1) into a cheap technicality. It would be absurd for a person to knowingly and voluntarily authorize an arbitration agreement and then seek to avoid its enforcement by arguing that he did not specifically authorize it. Again, the Agreement was on a single-page containing standard font. It was boldly labeled "Grievances and Arbitration." Mrs. Dileo's signature is immediately below the Arbitration provision. Appellees' argument suggests that had Gentle Spring simply combined these two paragraphs, there would be no issue here with specific authorization. This underscores the tedium of Appellees' argument and their attempt to use NRS 597.995(1) as a technical trapdoor, rather than an important protection. Again, any doubts regarding whether the Agreement complies with

NRS 597.995(1) should have been resolved in favor of arbitration. *Pearson*, 106 Nev. at 590, 798 P.2d at 137 (“doubts regarding the propriety of arbitration are resolved in favor of requiring arbitration.”). To preserve the equity of this situation, substantial compliance satisfies NRS 597.995(1) as it applies to this case. The District Court, therefore, abused its discretion by refusing to apply substantial compliance to NRS 597.995(1) and allowing the Estate to invalidate an Agreement that Mrs. Dileo properly and willingly executed.

///

///

///

///

///

///

///

CONCLUSION

The District Court erred as a matter of law in finding that the subject arbitration agreement does not comply with NRS 597.995(1). It further abused its discretion by not finding that the arbitration agreement substantially complies with this same statute. Appellants, therefore, respectfully request this Court to reverse the District Court's order denying Appellants' motion to compel arbitration and to compel the Estate's claims to binding arbitration and to stay the Heir's claims pursuant to NRS 38.241(7)

Dated this 10th day of February, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

Bv: /s/ John M. Orr
S. Brent Vogel
Nevada Bar No. 006858
John M. Orr
Nevada Bar No. 014251
6385 S. Rainbow Boulevard
Suite 600
Las Vegas, Nevada 89118
702.893.3383
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or imposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record be supported by reference to the page or transcript or appendix where the matter relied upon is found. In addition, I certify that this brief satisfied NRAP 32 with an approximate word count of 3,979 words, using 14-point, Times New Roman font. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirement of the Nevada Rules of Appellate Procedure.

Dated this 10th day of February, 2021.

By: /s/ John M. Orr
John M. Orr, Esq.
6385 S. Rainbow Boulevard
Suite 600
Las Vegas, Nevada 89118
702.893.3383
Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of February, 2021, I served the foregoing APPELLANTS' OPENING BRIEF upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

Jamie S. Cogburn, Esq.
Hunter S. Davidson, Esq.
COGBURN LAW OFFICES
2580 St. Rose Parkway, Suite 330
Henderson, NV 89074
Tel: 702.748.7777
Fax: 702.966.3880
Attorneys for Real Party In Interest

/s/ *Roya Rokni*

An employee of LEWIS BRISBOIS
BISGAARD & SMITH, LLP