

IN THE SUPREME COURT OF THE STATE OF NEVADA

5550 PAINTED MIRAGE RD., LLC,

Appellant

v.

TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA

Respondent

**MOTION TO DISMISS APPEAL FOR FAILURE TO FILE
OPENING BRIEF**

Supreme Court Case No. 83413

On Review from The Eighth Judicial District Court

County of Clark, Case No. A803425, Hon. Veronica Barisich

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Attorneys for Respondent

Respondent Travelers Property Casualty Company of American (“Travelers”), by and through its counsel of record, hereby files this Motion to Dismiss Appeal for Failure to File an Opening Brief pursuant to Nevada Rule of Appellate Procedure 31(d)(1).

Appellant 5550 Painted Mirage Rd., LLC (“Painted Mirage”) commenced this appeal on August 24, 2021. Following motion practice, settlement conference proceedings, and an Order for Painted Mirage to show cause, the Court issued an Order Reinstating Briefing on April 21, 2022. In that Order, the Court set a deadline of 90 days later (which came out to July 20, 2022) for Painted Mirage to file and serve its Opening Brief.

On July 19, 2022, Painted Mirage requested and received a telephonic extension of 14 days to file its Opening Brief. The new due date was August 3, 2022.

On August 2, 2022, Painted Mirage filed a Motion for Extension of Time to File Opening Brief. In its Motion, Painted Mirage requested a new deadline of September 2, 2022. Travelers did not oppose this Motion. However, the Court never granted it, meaning that the deadline remains August 2, 2022. Nevertheless, September 2, 2022, the requested, but not granted, deadline has now also come and gone. Painted Mirage has not filed an Opening Brief.

NRAP 31(d)(1) provides in pertinent part:

RULE 31. FILING AND SERVICE OF BRIEFS

...

(d) Consequences of Failure to File Briefs or Appendix.

- (1) Appellant.** If an appellant fails to file an opening brief or appendix within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal or the court may dismiss the appeal on its own motion. ...

Here, Painted Mirage is the appellant. It had (and still has) a court ordered deadline of August 2, 2022, by which to file its Opening Brief (and appendix). Not only did Painted Mirage fail to file its Opening Brief by its assigned deadline, but it has further failed to file and serve its Opening Brief by its requested (albeit not granted) extended deadline of September 2, 2022. In other words, even if the Court had grant Painted Mirage's motion for an extension, Painted Mirage has necessarily failed to meet that deadline as well. As such, Rule 31(d)(1) applies either way and this Court can and should dismiss this appeal.¹

Because Painted Mirage's failed to file its Opening Brief by either the date allowed by this Court's telephonic extension or the requested later date presented in Painted Mirage's Motion for further extension, this Court can and should dismiss

¹ Not only does the rule allow Travelers to file this Motion, but it permits the Court to dismiss the appeal on its own accord. NRAP 31(d)(1).

this appeal pursuant to Rule 31(d)(1). Travelers respectfully requests that this honorable Court dismiss this appeal.

Dated: September 7, 2022

CLYDE & CO US LLP

By: /s/ **Lee Gorlin**

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CERTIFICATE OF SERVICE

I certify that on the 7th day of September 2022, I served a copy of this Motion to Dismiss Appeal upon all counsel of record by electronic means pursuant to NEFCR 9 and NRAP 25(c)(1)(E) via this Court's electronic filing system.

DATED this 7th day of September 2022

/s/ *Regina Brouse*
An employee of Clyde & Co US LLP