

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

INTERNATIONAL ACADEMY OF STYLE,  
Appellant,

vs.

DIVISION OF INDUSTRIAL RELATIONS,  
Respondent.

No. 82864

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Jun 01 2021 12:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Second Judicial District Department 8  
County Washoe County Judge Barry L. Breslow  
District Ct. Case No. CV2000445

**2. Attorney filing this docketing statement:**

Attorney Tyson D. League, Esq. Telephone (775) 853-8746  
Firm Hutchison & Steffen, PLLC  
Address 500 Damonte Ranch Pkwy, Suit 980, Reno, NV 89521

Client(s) INTERNATIONAL ACADEMY OF STYLE

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Donald Smith, Esq. Telephone (702)486-9070  
Firm State of Nevada Division of Industrial Relations - Division Counsels Office  
Address 3360 W. Sahara Ave. Ste. 250, LV, NV 89102

Client(s) Division of Industrial Relations

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |  |
|--|--|
| <input type="checkbox"/> Judgment after bench trial                | <input type="checkbox"/> Dismissal:  |
| <input type="checkbox"/> Judgment after jury verdict               | <input type="checkbox"/> Lack of jurisdiction  |
| <input type="checkbox"/> Summary judgment                          | <input type="checkbox"/> Failure to state a claim  |
| <input type="checkbox"/> Default judgment                          | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief         | <input checked="" type="checkbox"/> Other (specify): <u>Order Denying Petition for Judicial Review</u> |
| <input type="checkbox"/> Grant/Denial of injunction                | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief        | <input type="checkbox"/> Original <input type="checkbox"/> Modification                                |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____  |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Not applicable.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

INTERNATIONAL ACADEMY OF STYLE,

Petitioner,

vs.

DIVISION OF INDUSTRIAL RELATIONS, and the NEVADA DEPARTMENT OF ADMINISTRATION,  
APPEALS OFFICER SHEILA MOORE,

Respondents.

Nevada Second Judicial District Court

Case No. CV20-00445

Final Order entered March 1, 2021

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

See the attached separate sheet.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

See the attached separate sheet.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Not applicable

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

The issue of first impression of the court is to be considered.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively to be assigned to The Court of Appeals pursuant to NRAP 17(b)(9). It is requested that the Supreme Court retain this matter as it is one of particular public importance. It is also a matter that could have significant impact upon the public system established by the Industrial Insurance statutes.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Not applicable.

## TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from March 1, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served March 31, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** April 30, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Not applicable.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court issued a final order upholding the determination of the Appeals Officer, this is the final order of the District Court based on the Petition for Judicial Review.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

International Academy of Style  
Division of Industrial Relations  
Nevada Department of Administration  
Appeals Officer Sheila Moore

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The case was appealed to District Court from the Department of Administrations Appeals Division. Our office appealed the Appeal Officer Sheila Moore's Decision and Order.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

See Attached

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

1. Petition for Judicial Review
2. Order Denying Petition for Judicial Review
3. Notice of Entry of Order - Order Denying Petition for Judicial Review

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

International Academy of Style

Name of appellant

June 1, 2021

Date

Nevada, Washoe County

State and county where signed

Tyson D. League Esq.

Name of counsel of record

Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 1st day of June, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Donald Smith, Esq.  
State of Nevada Division of  
Industrial Relations - Division  
Counsels Office  
3360 W. Sahara Ave. Ste. 250,  
Las Vegas, NV 89102  
*Attorney for Division of  
Industrial Relations*

Laurie A. Yott  
6900 S. McCarran Blvd., Ste.3040  
Reno, NV 89509  
*Settlement Judge*

Dated this 1st day of June, 2021

Signature

## **DOCKETING STATEMENT SEPARATE APPEALS (CONTINUED SHEET)**

8. International Academy of Style ("IAS") is a small for-profit institution located in Reno, Nevada offering licensure in Cosmetology, Hair Design, Esthetician, and Nail Technician. Since 1998, every cosmetology professional engaged by IAS executed a contract with IAS recognizing them as independent contractors working with the school. These contracts constitute written agreements between IAS and cosmetology professionals, expressly providing that cosmetology professionals performing services under the Agreement are not employees under the Nevada Industrial Insurance Act ("NIIA"). Out of caution and based on an agreement with the State of Nevada, each Independent Contractor planning to work with IAS obtained a Certificate of Liability Insurance for 2017, signing an Independent Instructor Agreement in the process, and acquiring a Sole Proprietor Business License in the state of Nevada. Meanwhile, IAS also obtained workers' compensation insurance for 2016 and 2017.

Simply, the Division of Industrial Relations ("DIR") has misclassified the cosmetology professionals who contract with IAS. IAS is not the "Employer" of the cosmetology professionals they contract with. Instead, cosmetology professionals who contract with IAS are "Independent Contractors" and "Independent Enterprises" under Nevada Law. They are not in the "same trade or business" as IAS.

The March 14, 2017, DIR determinations assessing a premium penalty in the amount of \$251.10 for the period of December 1 to December 30, 2016, and a premium penalty in the amount of \$16,390.94 for the period of December 21, 2010, to November 30, 2015, against IAS are not supported by the evidence or Nevada law. Every cosmetology professional who contracted with IAS had workers' compensation coverage either through their own coverage or through coverage provided by IAS during the relevant period of inquiry, December 1 to December 30, 2016. Moreover, the premium penalties for the period December 21, 2010 to November 30, 2015 were unlawfully assessed against IAS and should have been barred by the

Appeals Officer under the Doctrine of Res Judicata, the Doctrine of Laches, and the Doctrine of Equitable Estoppel from asserting claims for premium penalties.

In this regard, the Appeals Officer has abused her discretion in affirming the determinations of DIR to impose premium penalties. IAS seeks this appeal to review the Appeals Officer's findings of fact and conclusions of law under NRS 233B.135(3) because the final decision of the Appeals Officer has prejudiced its rights under the Nevada Industrial Insurance Act ("NIIA"), has been affected by other grievous errors of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and is otherwise arbitrary, capricious, or characterized by abuse of discretion.

9. In IAS's Petition for Judicial Review, filed on March 6, 2020, IAS requested that the Decision and Order be reviewed because: (1) the Appeals Officer erred as a matter of law by concluding the instructors of IAS should not be excluded from the definition of "Employee" under Nevada law. (2) The Appeals Officer erred as a matter of law by concluding that IAS is the "Employer" of the cosmetology professionals they contract with under Nevada law. (3) The Appeals Officer erred as a matter of law by concluding the cosmetology professionals who contract with IAS are not "Independent Contractors" under Nevada law. (4) The Appeals Officer erred as a matter of law by concluding the cosmetology professionals who contract with IAS are not "Independent Enterprises." (5) The Appeals Officer erred as a matter of law by concluding the cosmetology professionals who contract with IAS are in the "Same Trade" as IAS. (6) The Appeals Officer erred as a matter of law in concluding that despite the fact that all cosmetology professionals had workers' compensation coverage either through their own coverage or through coverage provided by IAS, the Division of Industrial Relations ("DIR") determinations issued on March 14, 2017, and assessing a premium penalty in the amount of \$251.10 for the period of December 1 to December 30, 2016, and a premium

penalty in the amount of \$16,390.94 for the period of December 21, 2010, to November 30, 2015, were supported by the evidence presented and Nevada law. (7) The Appeals Officer erred as a matter of law in concluding DIR is not barred by Res Judicata, the Doctrine of Laches, and the Doctrine of Equitable Estoppel from asserting claims for premium penalties for the period December 21, 2010 to November 30, 2015.

Oral Arguments were heard before the District Court on February 11, 2021.

On March 1, 2021, the District Court issued an Order Denying Petition for Judicial Review. The Court's Order and consequential holding is now the subject of this appeal.

**23.** (1) the Appeals Officer erred by concluding the instructors of IAS should not be excluded from the definition of "Employee" under Nevada law. (2) The Appeals Officer erred by concluding that IAS is the "Employer" under Nevada law. (3) The Appeals Officer erred by concluding the professionals who contract with IAS are not "Independent Contractors" under Nevada law. (4) The Appeals Officer erred by concluding the cosmetology professionals who contract with IAS are not "Independent Enterprises." (5) The Appeals Officer erred by concluding the cosmetology professionals who contract with IAS are in the "Same Trade" as IAS. (6) The Appeals Officer erred in concluding that despite the fact that all cosmetology professionals had workers' compensation coverage either through their own coverage or through coverage provided by IAS, the Division of Industrial Relations ("DIR") 16 determinations issued on March 14, 2017, and assessing a premium penalty in the amount of \$251.10 for the period of December 1 to December 30, 2016, and a premium penalty in the amount of \$16,390.94 for the period of December 21, 2010, to November 30, 2015, were supported by the evidence presented and Nevada law. (7) The Appeals Officer erred in concluding DIR is not barred by Res Judicata, the Doctrine of Laches, and the Doctrine of Equitable Estoppel from asserting claims for premium penalties for the period December 21, 2010 to November 30, 2015

1 Jason D. Guinasso, Esq.  
Nevada Bar No. 8478  
2 Alex R. Velto, Esq.  
Nevada Bar No. 14961  
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500 Damonte Ranch Parkway, Suite 980  
4 Reno, NV 89521  
Attorneys for Petitioner, International Academy of Style  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 \*\*\*\*\*

9 INTERNATIONAL ACADEMY OF STYLE,

10 Petitioner,

11 vs.

12 DIVISION OF INDUSTRIAL RELATIONS,  
and the NEVADA DEPARTMENT OF  
13 ADMINISTRATION, APPEALS OFFICER  
SHEILA MOORE,

14 Respondents.  
15

Case No.: \_\_\_\_\_

Dept. No.: \_\_\_\_\_

**PETITION FOR JUDICIAL  
REVIEW**

16  
17 Petitioner, INTERNATIONAL ACADEMY OF STYLE, by and through her attorney of record,  
18 Jason D. Guinasso, Esq., and Hutchison & Steffen, PLLC, hereby requests that the Second Judicial  
19 District Court of the State of Nevada review the Decision and Order of Appeals Officer Sheila Moore,  
20 entered on February 20, 2020, in the case officially designated "In the Contested Matter of  
21 INTERNATIONAL ACADEMY OF STYLE, Appeal Nos. 1702537-SYM & 1702545-SYM". A copy  
22 of the referenced order is attached hereto as "Exhibit No. 1." In support of this Petition, International  
23 Academy of Style respectfully submits the following:

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**I.**

**JURISDICTION**

1. This Court has jurisdiction to review the findings of fact and conclusions law of the Nevada Department of Administration Appeals Officer Sheila Y. Moore. See NRS 616C.370; NRS 233B.130. In this regard, NRS 233B.130 provides that:

1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and  
(b) Aggrieved by a final decision in a contested case,  
is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.

2. Petitions for judicial review must:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;  
(b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred; and  
(c) Be served upon:  
    (1) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and  
    (2) The person serving in the office of administrative head of the named agency; and  
(d) Be filed within 30 days after service of the final decision of the agency.\*\*\*  
6. The provisions of this chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.

2. This Petition has been timely filed in the Second Judicial District Court in and for Washoe County.

**II.**

**PARTIES**

3. The Petitioner in this matter is International Academy of Style, ("IAS").

4. The Respondent in this matter is the Division of Industrial Relations, ("DIR").



1 5. IAS is the party of record to the administrative proceeding under review herein that has  
2 been “aggrieved” by the final decision of Appeals Officer Sheila Moore.

3 **III.**

4 **ISSUES PRESENTED FOR JUDICIAL REVIEW**

5 6. Petitioners submit the following issues for Judicial Review by this honorable Court:

- 6 a. Whether the Nevada Department of Business and Industry, Division of Industrial  
7 Relations (“DIR”), Workers’ Compensation Section’s March 14, 2017, Notice  
8 of Determination of Premium Penalty in the amount of \$16,390.94 is supported  
9 by the evidence and Nevada law.
- 10 b. Whether the Nevada Department of Business and Industry, Division of Industrial  
11 Relations (“DIR”), Workers’ Compensation Section’s March 14, 2017, Notice  
12 of Determination of Premium Penalty in the amount of \$251.10 is supported by  
13 the evidence and Nevada law.
- 14 c. Whether IAS was indeed in compliance with Nevada Law when they  
15 discontinued Worker’s Compensation insurance for their Independent  
16 Contractors.

17 **IV.**

18 **STANDARD OF REVIEW**

19 7. Judicial review of a final decision of an agency must be conducted by the District Court  
20 without a jury and is confined to the record on appeal. NRS 233B.135(1).

21 8. The final decision of the agency shall be deemed reasonable and lawful until reversed or  
22 set aside in whole or in part by the Court. NRS 233B.135(2).

23 9. The burden of proof is on the party attacking the decision to show that the final decision  
24 is invalid. NRS 233B.135(2).

10. However, the District Court may set aside, in whole or in part, a final decision of an administrative agency where substantial right of the petitioner has been prejudiced because the final decision is in violation of statutory provisions, affected by other error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary, capricious or characterized by abuse of discretion. NRS 233B.135(3).

11. IAS now petitions this Court for Judicial Review of the Appeals Officer's findings and fact and conclusions of law under NRS 233B.135(3). The Appeals Officer Decision has affected grievous errors of law, is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and is otherwise arbitrary, capricious or characterized by abuse of discretion.

V.

## APPEALS OFFICER'S LEGAL ERROR

12. The Appeals Officer erred as a matter of law when she affirmed the decisions of the DIR to impose premium penalties under Appeal Nos. 1702545-SYM & 1702537-SYM, finding that the Instructors working at the school are Employees rather than Independent Contractors.

13. DIR asserts in their closing argument that the Independent Contractor Agreements that establish the relationship between IAS and the cosmetology professionals are void under NRS 616B.609; however, this statute is not applicable to the Independent Contractor Agreements in this case because they are contracts that are specifically approved and contemplated in the definition of employee under the NIIA. In this regard, NRS 616A.105 defines, in pertinent part, “Employee” and “worker” as:

*“every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed...”*

NRS 616A.110 then expressly excludes certain persons from the definition of Employee. Importantly, NRS 616A.110(9)(c) expressly excludes any person who:

1        “[p]erforms pursuant to a written agreement with the person for whom the services are  
2        performed which provides that the person who performs the services is not an employee for the  
3        purposes of this chapter.”

4        **[Emphasis added]**.

5            14. The cosmetology professionals clearly satisfy this exclusion. Cosmetology professionals  
6        acknowledge in a written agreement that they are not employees as defined in NRS 616A for purposes  
7        of worker’s compensation coverage, but rather they are expressly exempted from the definition  
8        pursuant to NRS 616A.110(9)(c). Specifically, they are excluded from the definition of employee  
9        because they perform services pursuant to a “written agreement,” which expressly provides that  
10       cosmetology professionals are not performing services as employees for purposes of NRS 616A.  
11       Copies of proof of worker’s compensation coverage or a notice of sole proprietorship with no  
12       employees are attached to the Agreements. Nothing in the Independent Contractor agreements  
13       “modifies” IAS’s or the cosmetology professionals’ duties, responsibilities, or liabilities under the  
14       NIIA. Accordingly, IAS is not required to maintain workers’ compensation coverage on the  
15       cosmetology professionals they contract with because they are expressly excluded from the definition  
16       of employee pursuant to NRS 616A.110(9)(c).

17            15. Applying NRS 616B.609 in the way suggested by DIR would lead to the absurd result of  
18        nullifying all written agreements between employers and independent contractors in the State of  
19        Nevada. DIR’s argument is not supported by the express provisions of Nevada’s workers’  
20        compensation laws and should have been rejected by the Appeals Officer.

21            16. For purposes of Nevada’s worker’s compensation law, an “independent contractor” is  
22        defined as:

23            . . . any person who renders service for a specified recompense for a specified result, under  
24        the control of the person's principal as to the result of the person's work only and not as to  
25        the means by which such result is accomplished.

1 NRS 616A.255. In determining whether an employer-employee relationship exists, in  
2 addition to considering a written agreement, the courts apply a five-factor test, known as  
3 “the control test,” giving equal weight to the following factors:

4 (1) the degree of supervision;

5 (2) the source of wages;

6 (3) the existence of a right to hire and fire;

7 (4) the right to control the hours and location of employment; and

8 (5) the extent to which the worker’s activities further the general business concerns of  
9 the alleged employer.

10 Clark County v. State Indus. Ins. Sys., 102 Nev. 353, 354 (1986). In applying these five factors  
11 to the cosmetology professionals, each factor weighs in favor of independent contractor classification.

12 17. DIR also argued that the cosmetology professionals who contracted with IAS are in the  
13 “same trade” as IAS. However, this argument fails because it is based on the mistaken assumption that  
14 the cosmetology professionals were required to obtain an instructor license under NRS 644.395 and  
15 NAC 644.105 and that having an instructor license was essential to IAS’s business operations as a  
16 school. While it is true that each school of cosmetology must have two licensed instructors and one  
17 additional licensed instructor for each 25 enrolled students, IAS has always satisfied this requirement  
18 without having to rely on their contracts with cosmetology professionals.

19 18. Moreover, to determine whether an independent contractor is a statutory employee for  
20 purposes of worker’s compensation coverage, the Nevada Supreme Court applies the Meers test.  
21 Meers v. Haughton Elevator, 101 Nev. 283, 286, 701 P.2d 1006, 1007 (1985). However, DIR failed to  
22 cite, apply, analyze or discuss this test in their closing argument. Under Meers, the Nevada Supreme  
23 Court stated that the type of work performed by the independent contractor determines whether an  
24 employment relationship exists. **Id.** The test is not whether the independent contractor’s activity is  
25 useful, necessary or even absolutely indispensable to the statutory employer’s business; rather, the test

1 is whether that “indispensable activity” is, in that business, normally carried on through employees  
2 rather than independent contractors. Id. This test is codified in NRS 616B.603, which states that an  
3 employment relationship only exists if the parties are, “in the same trade, business, profession or  
4 occupation.”

5 19. In addition to being “independent contractors”, the cosmetology professionals satisfy the  
6 definition of “independent enterprises.” Pursuant to NRS 616B.603(2), an “independent enterprise” is  
7 a person who holds himself out as being engaged in a separate business and holds a business license in  
8 his own name or owns, rents, or leases property used in furtherance of his or her business.

9 20. All cosmetology professionals hold themselves out to be engaged in separate businesses  
10 from IAS, including having their own business licenses in their own names and/or owning/renting  
11 property in furtherance of their businesses. Therefore, the Appeals Officer committed an error as a  
12 matter of law by holding that CCMST’s denial of a second vocational rehabilitation program was lawful  
13 and appropriate.

14 21. Therefore, the Appeals Officer committed an error as a matter of law by holding that  
15 DIR’s premium penalties were lawful and appropriate.

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VI.


PRAYER FOR RELIEF

22. Petitioners respectfully request that this Court grant their Petition for Judicial Review and further instruct Appeals Officer to REVERSE DIR's premium penalties issued on March 14, 2017 under Appeal Nos. 1702537-SYM & 1702545-SYM.

AFFIRMATION

The undersigned does hereby affirm that the foregoing document filed in this matter does not contain the social security number of any person.

DATED this 10<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
Jason D. Guinasso, Esq.  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 500 Damonte Ranch Parkway, Suite 980, Reno, Nevada 89521.

On March 10, 2020, I served the following:

**PETITION FOR JUDICIAL REVIEW**

on the following in said cause as indicated below:

INTERNATIONAL ACADEMY OF STYLE BONNIE SCHULTZ & LONI CASTEEL 2295 MARKET STREET RENO, NV 89502 (VIA U.S. MAIL)	LEGAL SECTION DIVISION OF INDUSTRIAL RELATIONS 400 WEST KING STREET, SUITE 201 CARSON CITY, NV 89703 (VIA U.S. MAIL)
NEVADA DEPARTMENT OF ADMIN. APPEALS DIVISION 1050 E WILLIAM ST., SUITE 450 CARSON CITY, NV 89701 (VIA U.S. MAIL)	NEVADA DEPARTMENT OF ADMIN. PATRICK CATES, DIRECTOR 515 EAST MUSSER ST., 3 <sup>RD</sup> FLOOR CARSON CITY, NV 89701 (VIA U.S. MAIL)
ATTORNEY GENERAL'S OFFICE 100 N CARSON STREET CARSON CITY, NEVADA 89701 (VIA U.S. MAIL)	DIVISION OF INDUSTRIAL RELATIONS 400 WEST KING STREET, SUITE 400 CARSON CITY, NV 89703 (VIA U.S. MAIL)

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 10, 2020, at Reno, Nevada.

  
\_\_\_\_\_  
KATRINA A. TORRES

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LIST OF EXHIBITS  
PETITION FOR JUDICIAL REVIEW

EXHIBIT	DOCUMENT TITLE	# OF PAGES
Exhibit 1	Appeals Officer Decision, February 20, 2020	13



# EXHIBIT 1

# EXHIBIT 1

RECEIVED  
FEB 21 2020

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

FILED

FEB 20 2020

DEPT. OF ADMINISTRATION  
APPEALS OFFICER

In the Contested Matter of:

Complaint No. 1706718

Appeal No. 1702537-SYM  
1702545-SYM

INTERNATIONAL ACADEMY OF  
STYLE

DECISION AND ORDER

This matter came on for hearing on November 6, 2018. The alleged employers, Loni Casteel ("Casteel") and Bonnie Schultz ("Schultz") dba International Academy of Style ("IAS") were represented by Jason Guinasso, Esq. Appearing on behalf of the Division of Industrial Relations ("DIR or "Division") was Donald C. Smith, Esq., Senior Division Counsel.

The following documents were entered into evidence:

IAS's Documentary Exhibit #1 was marked as Exhibit "1."

IAS's Documentary Exhibit #2 was marked as Exhibit "2."

IAS's Documentary Exhibit #3 was marked as Exhibit "3." Pages 159-166 are excluded.

IAS's Documentary Exhibit #4 was marked as Exhibit "4."

IAS's Documentary Exhibit #5 was marked as Exhibit "5."

IAS's Documentary Exhibit #6 was marked as Exhibit "6."

IAS's Documentary Exhibit #7 was marked as Exhibit "7."

Division's Evidence Packet filed in 1702537-SYM was marked as Exhibit "8."

Division's Evidence Packet filed in 17024545-SYM was marked as Exhibit "9."

Division's Supplemental Evidence Packet was marked as Exhibit "10."

1 The issues at the hearing were whether the Division was correct in its determination letters  
2 dated March 14, 2017 assessing two premium penalties against IAS pursuant to NRS 616D.200 for  
3 allegedly operating without workers' compensation coverage for the periods December 21, 2010  
4 through November 30, 2015 and from December 1, 2016 through December 30, 2016.

5 Based upon the documentary evidence, the testimony of Loni Casteel and the arguments of  
6 counsel, the undersigned Appeals Officer, finds and concludes as follows:

7 **FINDINGS OF FACT**  
8

9 1. IAS is a school of cosmetology licensed with the Nevada Board of Cosmetology  
10 whose mission statement is to "reach all students and equip them with the skills they need to be  
11 successful in the professional industry of cosmetology to mentor students to have a command of  
12 skills so they can make a positive difference in the world." Exhibit "8" at 47.

13 2. In 2014, the Attorney General of the State of Nevada conducted an investigation into  
14 IAS. Exhibit "9" at 3-40. a criminal complaint, Case No. RCR2015-083504, was filed by the  
15 Attorney General for a misdemeanor violation of NRS 616D.200(3)(a) for not maintain workers'  
16 compensation insurance for its employees for the period of December 21, 2010 through September  
17 2, 2015. *Id* at 39-40. IAS completed the terms of the deferred prosecution agreement on March 17,  
18 2016 and on October 19, 2016, charges were dismissed. Exhibit 9 at 38, 57.

19 3. IAS obtained workers' compensation for the business effective December 1, 2015.  
20 Exhibit 8 at 7. However, IAS failed to renew its workers' compensation insurance policy effective  
21 December 1, 2016. Exhibit "8" at 10

22 4. On December 14, 2016, the Division notified IAS by mail to its owners Schultz and  
23 Casteel that the business was required to maintain workers' compensation insurance. Failure to  
24 provide evidence of workers' compensation insurance or evidence the school was out of business  
25  
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1 or had no employees would result in further action taken by the State including a premium penalty  
2 pursuant to NRS 616D.200(1). Exhibit "8" at 95.

3 5. IAS' attorney called the Division to request a two week extension and advised that  
4 there was a "formal agreement with DIR. Do not need to cover instructors as they all work at other  
5 salons." Exhibit "8" at 96. A new policy of insurance was obtained effective December 31, 2016.  
6 *Id.* at 98.

7 6. On December 30, 2016, DIR investigators visited the business at approximately  
8 10:59 a.m. Exhibit "8" at 146-147. The doors were locked with a sign posted reading that the  
9 business was closed through January 1, 2017. Investigators posted a Stop Work Order. A woman  
10 inside the building noticed the sign and identified herself as Char and stated she was an employee.  
11 *Id.* Char contacted one of the owners, Bonnie Schultz, who arrived at the business. Ms. Schultz  
12 stated they have independent contractors, not employees. Investigators informed Ms. Schulz that  
13 the independent contractors did not meet the criteria for an exemption from workers'  
14 compensation. For example, the investigators mentioned two individuals, Amber Larosa and  
15 Maggie Rosado did not have cosmetology licenses. Ms. Schultz stated Ms. Larosa was not a  
16 cosmetologist but rather performed admissions and financial aid tasks for the school. *Id.*  
17 Investigators confirmed that IAS reinstated workers' compensation insurance that same day and  
18 removed the Stop Work Orders. *Id.*

19 7. The Division issued a determination dated March 14, 2017 to impose a premium  
20 penalty in the amount of \$16,390.94 for a lapse in coverage from December 21, 2010 through  
21 November 30, 2015. Exhibit "9" at 1-2. IAS appealed the determination on March 20, 2017. *Id.* at  
22 1-2.

23 8. The Division issued a determination to impose a premium penalty of \$251.10 for  
24 the lapse of insurance from December 1, 2016 through December 30, 2016 on March 14, 2017.  
25 Exhibit "8" at 1-4. IAS appealed the determination on March 20, 2017. *Id.* at 157.

1           9.       On June 9, 2017, the Division amended its March 20, 2017 determination assessing  
2 a premium penalty from December 21, 2010 through December 1, 2015 to December 31, 2010  
3 through December 1, 2015 for a corrected premium penalty of \$16,190.15.

4           10.       IAS argued that all of its personnel are independent contractors. On December 20,  
5 2016, IAS' counsel sent to the Division copies of Certificates of Liability Insurance for Maggie  
6 Rosado aka Maggie Vong, Amber Larosa, Charissa Banks, Mychel Christian, Laura Hartman,  
7 Jeannine Achter, Meledie Wolf, and Melissa Wolf. However, those policies were general liability  
8 insurance rather than workers' compensation insurance. Exhibit "9" at 43-51. Moreover, the  
9 policies all had effective dates ranging from October 19, 2016 through November 1, 2016, after the  
10 first lapse period expired on December 1, 2015.

11           11.       In preparation for the hearing of these appeals, IAS produced additional Certificates  
12 of Liability Insurance for Ashley Singer, Faustine Flamm, and Cheyanna Wolf. Exhibit "6" at 349-  
13 572. However, in addition to not being workers' compensation policies, the effective dates of the  
14 certificates were also after the expiration of the first lapse. *Id.*

15           12.       In addition, IAS produced "Independent Instructor Agreements ("Agreements"), W-  
16 9 forms, Nevada State and Reno business licenses for Charissa Banks, Melissa Wolf, Meledie  
17 Wolf, Laura Hartman, Jeannine Achter, Maggie Rosado aka Maggie Vong, Mychel Christian,  
18 Ashley Singer, Faustine Flamm, and Cheyanna Wolf. Exhibit "6." Likewise, none of these  
19 Agreements was dated during the first lapse period from 2010 through 2015.

20           13.       Said Agreements purported to declare each instructor an independent contractor.  
21 Each contractor declared that he or she provided cosmetology services, hair design services,  
22 licensed instructor services and aesthetician and/or nail technology services. Exhibit "6." Each  
23 contract claimed that while IAS was an educational facility licensed pursuant to NRS 644.380 to  
24 conduct a school of cosmetology, it further claimed to abrogate the legal requirements of a school  
25 of cosmetology denoted in NRS 644.395 which requires IAS to maintain a staff of at least two  
26 licensed instructor and other requirements. *Id.*

1           14.     The Agreements required the Instructor to pay a monthly chair rental agreement to  
2 IAS while one did not [Ashley Singer] Exhibit "6" at 513. Each Agreement contained a Schedule  
3 of Services wherein it states, "Instructor must perform services under this Agreement for IAS  
4 students during IAS regularly scheduled hours unless Instructor and student(s) agree in writing to  
5 hours outside of normal IAS hours." Exhibit "6," various. Each Agreement contained a schedule  
6 during which the Instructor was to work between Tuesday and Saturday with hours ranging from  
7 8:45 a.m. to 10:30 p.m. In addition, IAS stated in the Agreement that "IAS will not be responsible  
8 for cancellations, substitutions or modifications to the above schedule under this Agreement." See,  
9 e.g., *Id.* at 541. Moreover, "student complaints regarding an Instructor not fulfilling any promises  
10 or requirements under this Agreement may subject Instructor to a breach of this Agreement and any  
11 liabilities that arise out of said breach." *Id.*

12           15.     The Agreement also required that "actual service of instruction provided to students  
13 under this Agreement must be performed by Instructor personally, as the services agreed to are  
14 specialized in nature based on Instructor's own personal experience, skill and knowledge." *Id.*

15           16.     At the hearing of this matter, Loni Casteel testified that IAS opened in 1998 and  
16 started using salon workers in the same year. She claimed that IAS always had agreements dating  
17 back to 1998 but said agreements were not produced. She testified that the instructors set their  
18 own schedules; that they can teach at other schools but usually do not do so. Some do product  
19 demonstrations. She also testified that the instructors perform no other tasks and that a no show  
20 does not have any effect on the instructor. She herself testified that her responsibilities include  
21 student aid and instructor for nails. The co-owner Bonnie Schultz also instructs in hair and skin.

22           17.     Ms. Casteel testified that in 1998, IAS had 25 students and from 2010 through 2015  
23 had 50 students. She testified she changed contracts in 2015-2016 because of an unemployment  
24 compensation claim filed by one of the instructors.

25           18.     IAS argued that NRS 616A.110(9)(c) expressly excludes employees who perform  
26 services pursuant to a written agreement and that since the instructors had written agreements with  
27 IAS about the services they provided, they are not employees.

1           19. Based upon the probative, relevant and substantial evidence in the record, the  
2 Appeals Officer finds the instructors do not solicit or sell products and do not receive remuneration  
3 based on sales, NRS 616A.110(9) does not apply to exclude the instructors as employees of IAS.

4           20. Next, IAS argued that the instructors are engaged in an independent enterprise and  
5 should have been classified as independent contractors and not employees. The Division argued  
6 that IAS was a licensed school of cosmetology which was required to have at least two licensed  
7 instructors on premises, are in the same trade or business, and therefore, the instructors are  
8 employees pursuant to NRS 616B.603.

9           21. The Appeals Officer finds that the substantial, probative and relevant evidence  
10 shows that the instructors are clearly furthering the operation of the business of the school by  
11 providing the instruction necessary to qualify as a cosmetology school. The instructors are clearly  
12 in the same trade business, occupation or profession as Ms. Casteel and Ms. Schultz. *See, also,*  
13 *Meers v. Houghton Elevator*, 101 Nev. 283, 701 P.2d 1006 (1985) defining the "normal work" test.

14           22. IAS further argues that the instructors are independent contractors pursuant to NRS  
15 616A.255 and the five factor test enunciated in *Clark County v. SIIS*, 102 Nev. 353 (1986). The  
16 five factors to be weighed in *Clark County* to determine independent contractor status are (1) the  
17 degree of supervision; (2) the source of wages; (3) the existence of a right to hire and fire; (4) the  
18 right to control the hours and location of employment; and (5) the extent to which the worker's  
19 activities further the general business concerns of the alleged employer.

20           23. The Appeals Officer finds the testimony of Loni Casteel was self-serving and  
21 appeared scripted and therefore not found to be credible. Furthermore, the witness statements in  
22 Exhibit 5 were nearly verbatim and obviously prepared by the same individual and therefore were  
23 given no weight. IAS must ensure that the instructors are providing proper instruction according to  
24 the guidelines of the Board of Cosmetology. To do so, some amount of supervision is necessary.  
25 Second, the source of wages come from IAS. Simply designating a specific account does not  
26 negate this fact. A certain amount of money is set aside from student tuition to provide for  
27 compensation to the instructors similar in fashion to corporation setting aside a certain amount of  
28

1 profit for the compensation of employees. Third, IAS argues that it does not have a right to hire  
2 and fire. Clearly, IAS has the right to sever a relationship with an instructor that is not teaching  
3 according to the guidelines of the Board of Cosmetology. Fourth, IAS controls the location of  
4 employment since the instruction must be done at the school. The instructor is not allowed to  
5 provide the instruction at a salon or residence. The hours are controlled by the school as two  
6 instructors are required to be present at all times. Lastly, obviously the instructors are furthering the  
7 business concerns of the school they provide instruction for, including Ms. Casteel and Ms. Schultz  
8 who also both instruct students. Therefore, the instructors are not independent contractors.

9       24.     The doctrine of *res judicata*, also known as issue preclusion, does not apply. The  
10 Division was not a party to the prosecutorial actions taken by the Attorney General in Case No.  
11 RCR2015-083504. *Res judicata* requires identical issues and identical parties.

12       25.     Likewise, the doctrine of laches does not apply. A premium penalty was assessed  
13 for failure to have workers' compensation coverage from December 1, 2010 to November 30,  
14 2015. The determination notifying IAS of the premium penalty was dated March 14, 2017. No  
15 statute requires the Division to issue a premium penalty within a certain timeframe. Fifteen  
16 months is not an extensive period of time in which to investigate of an employer-employee  
17 relationship. Lastly, IAS was not disadvantaged by the delay.

18       26.     IAS incorrectly argues that equitable estoppel applies due to the fact that the  
19 Division honored an agreement with the State during the prosecution. No evidence exists for this  
20 assertion. Furthermore, equitable estoppel requires the party asserting the estoppel be ignorant of  
21 the true state of the facts in the matter. Although IAS may not have understood the law regarding  
22 the requirement to carry workers' compensation coverage for its employees, they were not ignorant  
23 of any facts in this matter.

24       27.     Much of IAS's argument surrounds the fact that it had an agreement in place with  
25 its instructors, NRS 616B.609 renders void any agreement designed to modify liability under  
26 Chapters 616A to 616D of the NRS.



28. The Appeals Officer finds that the probative, substantial and relevant evidence demonstrates that the premium penalty for the amended period of December 31, 2010 through November 30, 2015 in the amount of \$16,390.94 was properly calculated using the correct class codes for each individual instructor and staff. Exhibit "9" at 59-64, 73-85.

29. The Appeals Officer finds that the probative, substantial and relevant evidence demonstrates that the premium penalty for the period of December 1, 2016 through December 30, 2016 in the amount of \$251.10 was properly calculated using the correct class codes for each individual instructor and staff.

30. Any finding of fact more properly construed to be a conclusion of law shall be so deemed and vice versa.

### CONCLUSIONS OF LAW

1. **NRS 616B.633 Applicability to all employers who employ at least one employee.** Where an employer has in his service *any employee* under a contract of hire, except as otherwise expressly provided in chapters 616A to 616D, inclusive, of NRS, the terms, conditions and provisions of those chapters are conclusive, compulsory and obligatory upon both employer and employee.

NRS 616B.633 [Emphasis added].

2. **NRS 616D.200 Failure of employer to provide, secure and maintain compensation: Procedure for determination and appeal; penalty.**

1. If the Administrator finds that an employer within the provisions of NRS 616B.633 has *failed to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS or that the employer has provided and secured that compensation but has failed to maintain it*, he shall make a determination thereon and may charge the employer an amount equal to the sum of:

(a) *The premiums that would otherwise have been owed to a private carrier pursuant to the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS, as determined by the Administrator based upon the manual rates adopted by the Commissioner, for the period that the employer was doing business in this state without providing, securing or maintaining that compensation, but not to exceed 6 years; and*

(b) Interest at a rate determined pursuant to NRS 17.130 computed from the time that the premiums should have been paid.

↳ The money collected pursuant to this subsection must be paid into the

Uninsured Employers' Claim Account.

2. The Administrator shall deliver a copy of his determination to the employer. An employer who is aggrieved by the determination of the Administrator may appeal from the determination pursuant to subsection 2 of NRS 616D.220.

NRS 616D.200 [Emphasis added].

3. **NRS 616A.110 "Employee": Persons excluded.** "Employee" excludes:

1. Any person whose employment is both casual and not in the course of the trade, business, profession or occupation of his or her employer.
2. Any person engaged as a theatrical or stage performer or in an exhibition.
3. Musicians when their services are merely casual in nature and not lasting more than 2 consecutive days, and not recurring for the same employer, as in wedding receptions, private parties and similar miscellaneous engagements.
4. Any person engaged in household domestic service, farm, dairy, agricultural or horticultural labor, or in stock or poultry raising, except as otherwise provided in chapters 616A to 616D, inclusive, of NRS.
5. Any person performing services as a voluntary ski patroller who receives no compensation for his or her services other than meals, lodging, or use of the ski tow or lift facilities.
6. Any person who performs services as a sports official for a nominal fee at a sporting event that is amateur, intercollegiate or interscholastic and is sponsored by a public agency, public entity or private, nonprofit organization. As used in this subsection, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sporting event.
7. Any member of the clergy, rabbi or lay reader in the service of a church, or any person occupying a similar position with respect to any other religion.
8. Any real estate broker, broker-salesperson or salesperson licensed pursuant to chapter 645 of NRS.
9. Any person who:
  - (a) Directly sells or solicits the sale of products, in person or by telephone:
    - (1) On the basis of a deposit, commission, purchase for resale or similar arrangement specified by the Administrator by regulation, if the products are to be resold to another person in his or her home or place other than a retail store; or
    - (2) To another person from his or her home or place other than a retail store;
  - (b) Receives compensation or remuneration based on sales to customers rather than for the number of hours that the person works; and

(c) Performs pursuant to a written agreement with the person for whom the services are performed which provides that the person who performs the services is not an employee for the purposes of this chapter.

4. **NRS 616D.200 Failure of employer to provide, secure and maintain compensation: Procedure for determination and appeal; penalty.**

1. If the Administrator finds that an employer within the provisions of NRS 616B.633 has failed to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS or that the employer has provided and secured that compensation but has failed to maintain it, the Administrator shall make a determination thereon and may charge the employer an amount equal to the sum of:

(a) The premiums that would otherwise have been owed to a private carrier pursuant to the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS, as determined by the Administrator based upon the manual rates adopted by the Commissioner, for the period that the employer was doing business in this State without providing, securing or maintaining that compensation, but not to exceed 6 years; and

(b) Interest at a rate determined pursuant to NRS 17.130 computed from the time that the premiums should have been paid.

↳ The money collected pursuant to this subsection must be paid into the Uninsured Employers' Claim Account

5. **NRS 616A.255 "Independent contractor" defined.** "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of the person's principal as to the result of the person's work only and not as to the means by which such result is accomplished.

6. **NRS 616A.210 "Employee": Subcontractors and employees.**

1. Except as otherwise provided in NRS 616B.603, subcontractors, independent contractors and the employees of either shall be deemed to be employees of the principal contractor for the purposes of chapters 616A to 616D, inclusive, of NRS.

2. If the subcontractor is a sole proprietor or partnership licensed pursuant to chapter 624 of NRS, the sole proprietor or partner shall be deemed to receive a wage of \$500 per month for the purposes of chapters 616A to 616D, inclusive, of NRS.

3. This section does not affect the relationship between a principal contractor and a subcontractor or independent contractor for any purpose outside the scope of chapters 616A to 616D, inclusive, of NRS.

7. **NRS 616B.603 Independent enterprises.**

1. A person is not an employer for the purposes of chapters 616A to 616D, inclusive, of NRS if:

- (a) The person enters into a contract with another person or business which is an independent enterprise; and
- (b) The person is not in the same trade, business, profession or occupation as the independent enterprise.

2. As used in this section, "independent enterprise" means a person who holds himself or herself out as being engaged in a separate business and:

- (a) Holds a business or occupational license in his or her own name; or
- (b) Owns, rents or leases property used in furtherance of the business.

3. The provisions of this section do not apply to:

- (a) A principal contractor who is licensed pursuant to chapter 624 of NRS.
- (b) A real estate broker who has a broker-salesperson or salesperson associated with the real estate broker pursuant to NRS 645.520.

4. The Administrator may adopt such regulations as are necessary to carry out the provisions of this section.

8. **NRS 616A.350 "Trade, business, profession or occupation of his or her employer" defined.** "Trade, business, profession or occupation of his or her employer" includes all services tending toward the preservation, maintenance or operation of the business, business premises, or business property of the employer.

9. **NRS 644.395 Staff of instructors.** Each school of cosmetology shall maintain a staff of at least two licensed instructors and one additional licensed instructor for each 25 enrolled students, or major portion thereof, over 50 students. A school of cosmetology must have at least two licensed instructors present and teaching at any time while the school is open. Persons instructing pursuant to provisional licenses issued pursuant to NRS 644.193 are considered instructors for the purposes of this section.

10. **NAC 644.105 Instructors; badges; limitation on practice by certain students.** (NRS 644.110, 644.395, 644.408)

4. No instructor in a licensed school of cosmetology may, during the hours in which he or she is on duty as an instructor, devote his or her time to the public or to the private practice of cosmetology for compensation. Each instructor shall devote the instructor's full time during the hours he or she is on duty as an instructor to instructing students.

11. **NRS 616B.609 Devices modifying liability void; exception.**

1. Except as otherwise provided in subsection 2:

(a) A contract of employment, insurance, relief benefit, indemnity, or any other device, does not modify, change or waive any liability created by chapters 616A to 616D, inclusive, of NRS.

(b) A contract of employment, insurance, relief benefit, indemnity, or any other device, having for its purpose the waiver or modification of the terms or liability created by chapters 616A to 616D, inclusive, of NRS is void.

2. Nothing in this section prevents an owner or lessor of real property from requiring an employer who is leasing the real property from agreeing to insure the owner or lessor of the property against any liability for repair or maintenance of the premises.

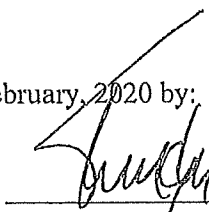
12. The Appeals Officer concludes that the imposition of the premium penalty as amended of \$16,190.19 for the period of December 31, 2010 through November 30, 2015 was proper.

13. The Appeals Officer concludes that the imposition of the premium penalty as amended of \$251.10 for the period of December 1, 2016 through December 30, 2016 was proper.

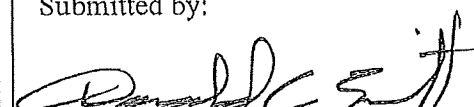
### ORDER

Based on the findings of fact and the conclusions of law in Appeal Nos. 1702537-SYM and 1702545-SYM, the Appeals Officer **AFFIRMS** the Divisions Determinations dated March 14, 2017 as amended to impose two premium penalties in the amounts of \$16,190.19 and \$251.10, respectively.

IT IS SO ORDERED this 19<sup>th</sup> day of February, 2020 by:

  
Sheila Y. Moore, Esq.  
Appeals Officer

Submitted by:

  
Donald C. Smith, Esq.  
Senior Division Counsel  
Division of Industrial Relations  
3360 W. Sahara Ave., Ste. 250  
Las Vegas, NV 89102

**NOTICE:** Pursuant to NRS 233B.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after the service by mail of this Decision.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Hearings Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing DECISION AND ORDER was deposited into the State of Nevada Interdepartmental mail system, **OR** with the State of Nevada mail system for mailing via United States Postal Service, **OR** placed in the appropriate addressee runner file at the Department of Administration, Hearings Division, 1050 E. Williams Street, Suite 450, Carson City, Nevada, 89701 to the following:

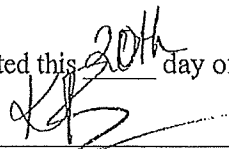
INTERNATIONAL ACADEMY OF STYLE  
BONNIE SCHULTZ & LONI CASTEEL  
2295 MARKET ST  
RENO, NV 89502

JASON GUINASSO, ESQ  
HUTCHISON & STEFFEN  
500 DAMONTE RANCH PKWY STE 980  
RENO NV 89511

LEGAL SECTION  
DIVISION OF INDUSTRIAL RELATIONS  
400 WEST KING STREET STE 201  
CARSON CITY, NV 89703

DIVISION OF INDUSTRIAL RELATIONS  
400 W KING ST STE 400  
CARSON CITY NV 89703

Dated this 20th day of February, 2020.

  
\_\_\_\_\_  
Kristi Fraser, Legal Secretary II  
Employee of the State of Nevada

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

INTERNATIONAL ACADEMY OF STYLE, Case No. CV20-00445  
Petitioner,  
vs. Dept. No. 8

DIVISION OF INDUSTRIAL RELATIONS, and the  
NEVADA DEPARTMENT OF  
ADMINISTRATION, APPEALS OFFICER  
SHEILA MOORE,

Respondents.  
/

**ORDER DENYING PETITION FOR JUDICIAL REVIEW**

Before the Court is a Petition for Judicial Review of a decision issued after the underlying worker's compensation matter was heard before Appeals Officer Sheila Moore on November 6, 2018. Petitioner International Academy of Style ("Petitioner" or "International Academy") filed its *Petition for Judicial Review* on March 6, 2020, and its *Opening Brief* on June 1, 2020. Respondent State of Nevada, Department of Business and Industry, Division of Industrial Relations ("Respondent" or the "Division") filed an *Answering Brief* on August 13, 2020, to which Petitioner replied on September 14, 2020. A hearing was held on February 11, 2021, in which the parties had the opportunity to address all issues.

Having reviewed the record, briefs, the parties' arguments, and applicable authority, the Court **DENIES** the *Petition for Judicial Review*. Thus, the Court **AFFIRMS** the Appeals Officer's *Decision and Order* filed on February 20, 2020.

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## BACKGROUND

Based upon the record, the briefings of parties, and other documentary evidence submitted, the Court is aware of the following facts:

In 2014, the Attorney General of the State of Nevada filed a criminal complaint against International Academy for failing to maintain workers compensation insurance for its employees for the period of December 21, 2010 through September 2, 2015, a misdemeanor violation of NRS 616D.200(3)(a). International Academy then completed the terms of a deferred prosecution agreement on March 17, 2016, and the charges were dismissed on October 19, 2016.

As part of the deferred prosecution agreement, International Academy obtained workers' compensation insurance for the business effective December 1, 2015. However, International Academy apparently failed to renew the policy once the charges were dismissed, effective December 1, 2016. The Division notified International Academy of its obligation to maintain workers' compensation and warned that failure to provide evidence the business was closed or had no employees would result in further action taken by the state. A new workers' compensation policy was obtained, effective December 31, 2016.

The Division issued a determination on March 14, 2017, therein imposing two premium penalties in the amounts of: (1) \$251.10 for the lapse of coverage from December 1, 2016, through December 30, 2016; and (2) \$16,390.94 for the prior lapse of coverage from December 21, 2010 through November 30, 2015. International Academy appealed the determination on March 20, 2017. On June 9, 2017, the \$16,390.94 premium penalty was amended to \$16,190.15.

After an evidentiary hearing on or about November 6, 2018, and a closing argument hearing on or about August 1, 2019, the Appeals Officer found against International Academy. In particular, in its *Decision and Order* filed February 20, 2020, the Appeals Officer concluded the instructors were employees, and International Academy was required to, but failed to maintain workers' compensation coverage for these employees. Additionally, the Appeals Officer found both premium penalties, as amended, were properly calculated using the correct class codes for each individual instructor and staff. More specifically, the Appeals Officer concluded: (1) the instructors of International Academy are not exempt from the employee classification under Nevada law; (2) the



instructors are not engaged in an independent enterprise pursuant to the applicable statute; (3) the instructors do not meet the legal criteria to qualify as independent contractors; and (4) the asserted defenses are inapplicable.

Thereafter, International Academy filed the instant petition for judicial review. The Court now addresses the instant *Petition for Judicial Review* and finds the following.

## STANDARD OF REVIEW

When a party of record in an administrative proceeding is aggrieved by a final decision in a contested case, it may file a petition for judicial review. NRS 233B.130(1). Judicial review of agency decisions is governed by the Administrative Procedure Act, codified in NRS Chapter 233B: The Nevada Administrative Procedure Act. *Liberty Mut. v. Thomasson*, 130 Nev. 27, 30, 317 P.3d 831, 834 (2014). Pursuant to NRS 233B.135(1), judicial review of a final decision of an agency must be conducted by the Court without a jury and confined to the record. The reviewing court may remand, affirm or set the decision aside in whole or in part, if the substantial rights of the petitioner have been prejudiced because the final decision of the agency 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 or capricious or characterized by abuse of discretion.

NRS 233B.135(3)(a)-(f); *See North Las Vegas v. Pub. Serv. Comm'n*, 83 Nev. 278, 281, 429 P.2d 66, 67–68 (1967); *see also Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 249, 327 P.3d 487, 490 (2014) (clarifying that NRS 223B.135 outlines a standard of review and not a standard of proof).

Legal questions are reviewed de novo. *Southern Nevada Operating Engineers v. Labor Commissioner*, 121 Nev. 523, 527–28, 119 P.3d 720, 724 (2005) (citing *State, Dep’t of Bus. & Indus., Office of Labor Com’r v. Granite Const. Co.*, 118 Nev. 83, 86, 40 P.3d 423, 425 (2002)). However, the final decision of the agency, i.e. the appeals officer, is deemed reasonable and lawful until it is reversed or set aside (in whole or in part) by the court. NRS 223B.135(2).

Moreover, in assessing a final agency decision, great deference is afforded to the fact-based conclusions of law made by an appeal officer and his decision will not be overturned if it is supported by substantial evidence. *Grover C. Dils. Med. Ctr. v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005). Review of an administrative agency's decision is limited to the determination of whether the record contains substantial evidence to support the agency's decision. *See Taylor v. State Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013); *State, Dep't. of Motor Vehicles & Pub. Safety v. Becksted*, 107 Nev. 456, 458, 813 P.2d 995, 996 (1991) (citing *State Dep't of Motor Vehicles v. Jenkins*, 99 Nev. 460, 462, 663 P.2d 1186, 1188 (1983)). In this case, "substantial evidence" is evidence which a reasonable mind might accept as adequate to support a conclusion. NRS 233B.135(4). This standard of review thus refers to the quality and quantity of the evidence necessary to support factual determinations. *Nassiri*, 130 Nev. at 249–50, 327 P.3d at 490. "It contemplates deference to those determinations on review, asking only whether the facts found by the administrative factfinder are reasonably supported by sufficient, worthy evidence in the record." *Id.*

The inquiry is confined to a search for an abuse of discretion, clear error, or an arbitrary and capricious decision. *See Taylor*, 129 Nev. at 930, 314 P.3d at 951; *see also Employment Security Dep't v. Holmes*, 112 Nev. 275, 279, 914 P.2d 611, 614 (1996) ("...[the Court] must review the evidence presented to the administrative body and ascertain whether the body acted arbitrarily or capriciously, thus abusing its discretion."). "[A]n abuse of discretion is characterized by an application of unreasonable judgment to a decision that is within the actor's rightful prerogatives..." *Falline v. GNLV Corporation*, 107 Nev. 1004, 1009–10 n.3, 823 P.2d 888, 892 n.3 (1991). A decision is arbitrary and capricious when the administrative agency disregards the facts and circumstances involved. *Meadow v. Civil Serv. Bd. of Las Vegas Metro. Police Dep't*, 105 Nev. 624, 627, 781 P.2d 772, 774 (1989) (citing *State v. Ford*, 110 Wash.2d 827, 830, 755 P.2d 806, 808 (1988)). In addition, "although statutory construction is generally a question of law reviewed de novo, this court defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." *Taylor*, 129 Nev. at 930, 314 P.3d at 951 (citing

1 *Dutchess Bus. Serv., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165  
2 (2008) (internal quotations omitted)).

### 3 **DISCUSSION**

4 In evaluating the arguments made by both International Academy and the Division, the  
5 Court has considered the record in its entirety, supporting documentation, parties' arguments, and  
6 the pleadings. In doing so, it finds that the Appeals Officer's *Decision and Order* filed on  
7 February 20, 2020, is not in violation of constitutional or statutory provisions, affected by error of  
8 law, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole  
9 record. Further, International Academy was not arbitrary or capricious or characterized by abuse of  
10 discretion nor did it exceed the Appeals Officer's authority. Rather, the Court finds that there was  
11 substantial evidence to support the Appeals Officer's final order under review by this Court.

12 In reaching this conclusion, the Court finds as follows:

#### 13 **A. The Record Supports the Employee Classification Finding**

14 The Appeals Officer found NRS 616A.110(9) to be inapplicable to exempt instructors from  
15 the employee classification pursuant to NRS 616A.105. International Academy challenges this, and  
16 argues the Appeals Officer erred as a matter of law in finding NRS 616A.110(9) inapplicable. More  
17 specifically, International Academy contends NRS 616A.110(9) applies because, *inter alia*, the  
18 instructors perform services pursuant to a written agreement, which provides that instructors are not  
19 employees for the purposes of NRS 616A.

20 A review of the statute advises the Appeals Officer properly determined NRS 616A.110(9)  
21 inapplicable. Nevada Revised Statute 616A.110(9) provides that a person who meets the following  
22 criteria is exempt from the definition of employee:

23 (a) Directly sells or solicits the sale of products, in person or by  
24 telephone;

25 (2) To another person from his or her home or place other than a  
26 retail store;

26 (b) Receives compensation or remuneration based on sales to  
27 customers rather than for the number of hours that the person  
28 works; **and**

(c) Performs pursuant to a written agreement with the person for  
whom the services are performed which provides that the person

1                   who performs the services is not an employee for the purposes of  
2                   this chapter.

3           Based upon the Court's observation, it is clear the Appeals Officer adequately analyzed the  
4   statute as evidenced in finding that "...the instructors do not solicit or sell products and do not  
5   receive remuneration based on sale, NRS 616A.110(9) does not apply to exclude the instructors as  
6   employees..." And while International Academy maintains the Appeals Officer erred with respect  
7   to NRS 616A.110(9), this Court finds the contrary. Instead, this Court determines that by presence  
8   of the term "and," NRS 616A.110(9) requires all three prongs to be met for a person to be excluded  
9   from the definition of employee. Furthermore, a review of the record depicts the Appeals Officer  
10   had substantial evidence to conclude NRS 616A.110(9) inapplicable because the instructors failed  
11   to meet subsection (b), i.e., receiving compensation or remuneration based on sales rather than for  
12   the number of hours worked. Therefore, the Court concludes the Appeals Officer did not err as a  
13   matter of law, and its decision is supported by substantial evidence. Thus, this Court is unwilling to  
14   disturb the Appeals Officer's findings.

15           **B. The Record Supports Independent Enterprise Finding**

16           Next, International Academy contends its instructors are an independent enterprise pursuant  
17   to NRS 616B.603. The Appeals Officer found:

18                   [T]he instructors are clearly furthering the operation of business of the  
19                   school by providing the instruction necessary to qualify as a  
20                   cosmetology school. The instructors are clearly in the same trade  
                    business, occupation or profession as Ms. Casteel and Ms. Schultz.

21           International Academy maintains that because the instructors are not in the same trade, they  
22   are an independent enterprise under NRS 616B.603. Additionally, International Academy argues, it  
23   can operate without any of the instructors.

24           Nevada Revised Statute 616B.603 provides that a person is not an employer if:

- 25                   (a) The person enters into a contract with another person or business  
26                   which is an independent enterprise; and  
27                   (b) The person is not in the same trade, business, profession or  
28                   occupation as the independent enterprise.  
                    2. ... "independent enterprise" means a person who holds himself or  
                    herself out as being engaged in a separate business and:

- 1 (a) Holds a business or occupational license in his or her own name;  
2 or  
3 (b) Owns, rents or leases property used in furtherance of the business.

4 Furthermore, the Nevada Supreme Court has held that “[i]f a principal contractor is not a  
5 licensed contractor, it will be the statutory employer only if it can show that it is in the “same trade”  
6 under the *Meers* test. *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1349 (1995). The *Meers*  
7 test “is not one of whether the subcontractor’s activity is useful, necessary, or even absolutely  
8 indispensable to the statutory employer’s business.... The test is whether that indispensable activity  
9 is, in that business, normally carried on through employees rather than independent contractors.”  
10 *Meers v. Haughton Elevator*, 101 Nev. 283, 286 (1985).

11 The record suggests the Appeals Officer had substantial evidence to conclude that the  
12 instructors were not engaged in an independent enterprise. For instance, NRS 616B.6039(1)(a)  
13 requires both parties to enter into a contract. However, International Academy did not have any  
14 written agreements in place prior to 2013. Thus, International Academy failed to meet the statutory  
15 requirement for the period from 2010 to 2013. Moreover, the fact that International Academy  
16 requires instructors to pay “chair rental fees” or “choose at his or her own discretion to teach other  
17 general classes in lieu of the rental fee,” fails to meet the criteria under NRS 616B.6039(2)(b) since  
18 the original agreements did not include any mention of rental chairs or booths. The Court concludes  
19 the Appeals Officer’s decision is supported by substantial evidence, and thus it is unwilling to  
20 disturb the Appeals Officer’s findings.

### 21 **C. The Record Supports the Independent Contractor Finding**

22 International Academy’s next contention is that the Appeals Officer erred in finding the  
23 instructors were not independent contractors pursuant to NRS 616A.255 and the five-part “control  
24 test” enunciated by the Nevada Supreme Court in *Clark Cty. v. State Indus. Ins. Sys.*

25 Nevada Revised Statute 616A.255 defines an “Independent contractor” as a “person who  
26 renders service for a specified recompense for a specified result, under the control of the person’s  
27 principal as to the result of the person’s work only and not as to the means by which such result is  
28 accomplished.” Furthermore, in determining whether an employer-employee relationship exist,  
courts apply the following five-part “control test”:

- (1) the degree of supervision;
- (2) the source of wages;
- (3) the existence of a right to hire and fire;
- (4) the right to control the hours and location of employment; and
- (5) the extent to which the workers' activities further the general business concerns of the alleged employer.

*Clark Cty. v. State Indus. Ins. Sys.*, 102 Nev. 353, 354 (1986).

A review of the record depicts the Appeals Officer had substantial evidence to conclude that the control test weighed against the International Academy. Consider, for example, the following:

First, the Appeals Officer found International Academy "must ensure that instructors are providing instruction according to the guidelines of the Board of Cosmetology. To do so, some amount of supervision is necessary." The record illustrates multiple instances of supervision, including: (1) one specific contract requires the instructor to record grades and attendance; (2) statements from Ms. Casteel's to the Attorney General's investigator in which she explained International Academy terminated an instructor because the instructor required a student to bring her food. Conduct which Ms. Casteel deemed unacceptable; (3) termination clauses in later agreements which provided International Academy "may terminate this agreement at any time "for cause," the grounds for which are defined below." Those grounds include "C. Instructor fails to perform his or her services in a competent manner" and "G. Instructor fails to perform the terms and conditions as agreed upon under this Agreement." The Court notes some degree of supervision is required to determine whether an instructor was performing pursuant to the terms of the agreement and providing competent instruction in accordance with the professional standards.

Second, the Appeals Officer found the source of the instructors' wages derives from International Academy. While International Academy appears to maintain that it is not the source of wages because it has designated a specific account for wages, the Appeals Officer considered this evidence by finding that "simply designating a specific account does not negate this fact," and drawing the following analogy: "A certain amount of money is set aside from students tuition to provide for compensation to the instructors similar in fashion to corporation setting aside a certain amount profit for compensation of employees."

1 Third, the Appeals Officer found “[c]learly, [International Academy] has the right to sever a  
2 relationship with an instructor that is not teaching according to the guidelines of the Board of  
3 Cosmetology.” This Court again notes Ms. Casteel’s statements regarding the termination of an  
4 instructor for requiring a student to bring her food. The instructor ultimately filed a successful  
5 unemployment claim with the Department of Employment, Training and Rehabilitation against  
6 International Academy, giving further credence to this factor.

7 Fourth, the Appeals Officer found that International Academy “controls the location of  
8 employment since the instruction must be done at the school. The instructor is not allowed to  
9 provide the instruction at a salon or residence. The hours are controlled by the school as two  
10 instructors are required to be present at all times.” This Court notes each agreement contains a  
11 schedule during which the instructor is to work between Tuesday and Saturday with hours ranging  
12 from 8:45 a.m. to 10:30 p.m. Thus, suggesting control of the hours and location of employment.

13 Fifth, the Appeals Officer found “obviously the instructors are furthering the business  
14 concerns of the school they provide instruction for, including Ms. Casteel and Ms. Schultz who also  
15 both instruct students.” The record does not suggest otherwise.

16 Finally, the Appeals Officer found the testimony of Ms. Casteel to be self-serving, noted that  
17 it appeared to be scripted and therefore not found to be credible. Additionally, the Appeals Officer  
18 also found the witness statements introduced by International Academy to be “nearly verbatim and  
19 obviously prepared by the same individual and therefore were given no weight.”

20 Based upon the Court’s observation of the persuasive evidence above, as well as the record  
21 as a whole, it is clear the Appeals Officer adequately analyzed both the law and the specific factual  
22 allegations which were lodged against International Academy. And while International Academy  
23 contends that the evidence in the record depicts that the Appeals Officer’s decision was “clearly  
24 erroneous,” this Court finds quite the contrary. Instead, this Court determines that there was  
25 virtually overwhelming evidence from which the Appeals Officer concluded the instructors did not  
26 meet the independent contractor classification. Further, the Court concludes the Appeals Officer did  
27 not violate NRS 233B.135(3), and thus it is unwilling to disturb the Appeals Officer’s findings.

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Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this \_\_\_\_ day of March, 2021, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

NONE

Further, I certify that on this 1 day of March, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

JASON GUINASSO, ESQ.

DONALD C. SMITH, ESQ.

Christine Kuhl

---

Judicial Assistant

1 **CODE: 2540**

Jason D. Guinasso, Esq.

2 Nevada Bar No. 8478

Hutchison & Steffen, PLLC

3 Email: [jguinasso@hutchlegal.com](mailto:jguinasso@hutchlegal.com)

Alexander R. Velto, Esq.

4 Nevada Bar No. 14961

Email: [avelto@hutchlegal.com](mailto:avelto@hutchlegal.com)

5 500 Damonte Ranch Parkway, Suite 980

Reno, NV 89521

6 *Attorney for International Academy of Style*

7  
8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 \*\*\*\*\*

11 INTERNATIONAL ACADEMY OF  
STYLE,

12 Petitioner,

13 vs.

14 DIVISION OF INDUSTRIAL  
RELATIONS, and the NEVADA  
15 DEPARTMENT OF ADMINISTRATION,  
APPEALS OFFICER SHEILA MOORE,

16 Respondents.  
17

Case No.: CV20-00445

Dept. No.: 8

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE that an Order Denying Petition for Judicial Review was entered on  
20 March 1, 2021, a copy of which is attached as **Exhibit "1."**

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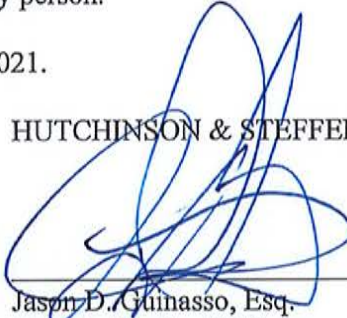
**AFFIRMATION**

The undersigned does hereby affirm that the preceding document, **NOTICE OF ENTRY OF ORDER**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED this 31<sup>st</sup> day of March, 2021.

HUTCHINSON & STEFFEN

By:



Jason D. Guinasso, Esq.  
Nevada Bar No. 8478  
Alexander R. Velto, Esq.  
Nevada Bar No. 14961  
500 Damonte Ranch Parkway, Suite 980  
Reno, NV 89521  
*Attorney for International Academy of Style*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Hutchinson & Steffen, and that on the 31 day of March, 2021, I electronically filed a true and correct copy of the **NOTICE OF ENTRY OF ORDER**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Donald Smith, Esq.  
400 West King Street, Suite 400  
Carson City, Nv 89703  
*Attorney for Division Of Industrial Relations*

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 31 day of March, 2021, I deposited for mailing in Reno, Nevada a true and correct copy of the **NOTICE OF ENTRY OF ORDER**, addressed to:


International Academy of Style  
Bonnie Schultz & Loni Casteel  
2295 Market Street  
Reno, NV 89502

Nevada Department of Admin.  
Appeals Division  
1050 E William St., Suite 450  
Carson City, NV 89701

Attorney General's Office  
100 N Carson Street  
Carson City, NV 89701

Legal Section  
Division of Industrial Relations  
400 West King Street, Suite 201  
Carson City, NV 89703

Nevada Department of Admin.  
Director  
515 East Musser St., 3<sup>rd</sup> Floor  
Carson City, NV 89701

  
\_\_\_\_\_  
Ga'Brieala Mitchell

## **EXHIBIT LIST**

Exhibit #	Description	Pages
Exhibit "1"	Order Denying Petition for Judicial Review	11

FILED  
Electronically  
CV20-00445  
2021-03-31 04:08:15 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8371348

**Exhibit “1”**

**Exhibit “1”**



1 **BACKGROUND**

2 Based upon the record, the briefings of parties, and other documentary evidence submitted,  
3 the Court is aware of the following facts:

4 In 2014, the Attorney General of the State of Nevada filed a criminal complaint against  
5 International Academy for failing to maintain workers compensation insurance for its employees for  
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instructors are not engaged in an independent enterprise pursuant to the applicable statute; (3) the instructors do not meet the legal criteria to qualify as independent contractors; and (4) the asserted defenses are inapplicable.

Thereafter, International Academy filed the instant petition for judicial review. The Court now addresses the instant *Petition for Judicial Review* and finds the following.

## STANDARD OF REVIEW

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NRS 233B.135(3)(a)-(f); *See North Las Vegas v. Pub. Serv. Comm'n*, 83 Nev. 278, 281, 429 P.2d 66, 67–68 (1967); *see also Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 249, 327 P.3d 487, 490 (2014) (clarifying that NRS 223B.135 outlines a standard of review and not a standard of proof).

Legal questions are reviewed de novo. *Southern Nevada Operating Engineers v. Labor Commissioner*, 121 Nev. 523, 527–28, 119 P.3d 720, 724 (2005) (citing *State, Dep’t of Bus. & Indus., Office of Labor Com’r v. Granite Const. Co.*, 118 Nev. 83, 86, 40 P.3d 423, 425 (2002)). However, the final decision of the agency, i.e. the appeals officer, is deemed reasonable and lawful until it is reversed or set aside (in whole or in part) by the court. NRS 223B.135(2).

1           Moreover, in assessing a final agency decision, great deference is afforded to the fact-based  
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9 (1983)). In this case, "substantial evidence" is evidence which a reasonable mind might accept as  
10 adequate to support a conclusion. NRS 233B.135(4). This standard of review thus refers to the  
11 quality and quantity of the evidence necessary to support factual determinations. *Nassiri*, 130 Nev.  
12 at 249–50, 327 P.3d at 490. "It contemplates deference to those determinations on review, asking  
13 only whether the facts found by the administrative factfinder are reasonably supported by sufficient,  
14 worthy evidence in the record." *Id.*

15           The inquiry is confined to a search for an abuse of discretion, clear error, or an arbitrary and  
16 capricious decision. *See Taylor*, 129 Nev. at 930, 314 P.3d at 951; *see also Employment Security*  
17 *Dep't v. Holmes*, 112 Nev. 275, 279, 914 P.2d 611, 614 (1996) ("...[the Court] must review the  
18 evidence presented to the administrative body and ascertain whether the body acted arbitrarily or  
19 capriciously, thus abusing its discretion."). "[A]n abuse of discretion is characterized by an  
20 application of unreasonable judgment to a decision that is within the actor's rightful prerogatives..."  
21 *Falline v. GNLV Corporation*, 107 Nev. 1004, 1009–10 n.3, 823 P.2d 888, 892 n.3 (1991). A  
22 decision is arbitrary and capricious when the administrative agency disregards the facts and  
23 circumstances involved. *Meadow v. Civil Serv. Bd. of Las Vegas Metro. Police Dep't*, 105 Nev.  
24 624, 627, 781 P.2d 772, 774 (1989) (citing *State v. Ford*, 110 Wash.2d 827, 830, 755 P.2d 806, 808  
25 (1988)). In addition, "although statutory construction is generally a question of law reviewed de  
26 novo, this court defer[s] to an agency's interpretation of its governing statutes or regulations if the  
27 interpretation is within the language of the statute." *Taylor*, 129 Nev. at 930, 314 P.3d at 951 (citing  
28

1 *Dutchess Bus. Serv., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165  
2 (2008) (internal quotations omitted)).

### 3 DISCUSSION

4 In evaluating the arguments made by both International Academy and the Division, the  
5 Court has considered the record in its entirety, supporting documentation, parties' arguments, and  
6 the pleadings. In doing so, it finds that the Appeals Officer's *Decision and Order* filed on  
7 February 20, 2020, is not in violation of constitutional or statutory provisions, affected by error of  
8 law, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole  
9 record. Further, International Academy was not arbitrary or capricious or characterized by abuse of  
10 discretion nor did it exceed the Appeals Officer's authority. Rather, the Court finds that there was  
11 substantial evidence to support the Appeals Officer's final order under review by this Court.

12 In reaching this conclusion, the Court finds as follows:

#### 13 A. The Record Supports the Employee Classification Finding

14 The Appeals Officer found NRS 616A.110(9) to be inapplicable to exempt instructors from  
15 the employee classification pursuant to NRS 616A.105. International Academy challenges this, and  
16 argues the Appeals Officer erred as a matter of law in finding NRS 616A.110(9) inapplicable. More  
17 specifically, International Academy contends NRS 616A.110(9) applies because, *inter alia*, the  
18 instructors perform services pursuant to a written agreement, which provides that instructors are not  
19 employees for the purposes of NRS 616A.

20 A review of the statute advises the Appeals Officer properly determined NRS 616A.110(9)  
21 inapplicable. Nevada Revised Statute 616A.110(9) provides that a person who meets the following  
22 criteria is exempt from the definition of employee:

- 23 (a) Directly sells or solicits the sale of products, in person or by  
24 telephone;  
25 (2) To another person from his or her home or place other than a  
26 retail store;  
27 (b) Receives compensation or remuneration based on sales to  
28 customers rather than for the number of hours that the person  
works; **and**  
(c) Performs pursuant to a written agreement with the person for  
whom the services are performed which provides that the person

1                   who performs the services is not an employee for the purposes of  
2                   this chapter.

3           Based upon the Court's observation, it is clear the Appeals Officer adequately analyzed the  
4   statute as evidenced in finding that "...the instructors do not solicit or sell products and do not  
5   receive remuneration based on sale, NRS 616A.110(9) does not apply to exclude the instructors as  
6   employees..." And while International Academy maintains the Appeals Officer erred with respect  
7   to NRS 616A.110(9), this Court finds the contrary. Instead, this Court determines that by presence  
8   of the term "and," NRS 616A.110(9) requires all three prongs to be met for a person to be excluded  
9   from the definition of employee. Furthermore, a review of the record depicts the Appeals Officer  
10   had substantial evidence to conclude NRS 616A.110(9) inapplicable because the instructors failed  
11   to meet subsection (b), i.e., receiving compensation or remuneration based on sales rather than for  
12   the number of hours worked. Therefore, the Court concludes the Appeals Officer did not err as a  
13   matter of law, and its decision is supported by substantial evidence. Thus, this Court is unwilling to  
14   disturb the Appeals Officer's findings.

15           **B. The Record Supports Independent Enterprise Finding**

16           Next, International Academy contends its instructors are an independent enterprise pursuant  
17   to NRS 616B.603. The Appeals Officer found:

18                   [T]he instructors are clearly furthering the operation of business of the  
19                   school by providing the instruction necessary to qualify as a  
20                   cosmetology school. The instructors are clearly in the same trade  
                    business, occupation or profession as Ms. Casteel and Ms. Schultz.

21           International Academy maintains that because the instructors are not in the same trade, they  
22   are an independent enterprise under NRS 616B.603. Additionally, International Academy argues, it  
23   can operate without any of the instructors.

24           Nevada Revised Statute 616B.603 provides that a person is not an employer if:

- 25                   (a) The person enters into a contract with another person or business  
                    which is an independent enterprise; and  
26                   (b) The person is not in the same trade, business, profession or  
                    occupation as the independent enterprise.  
27                   2. ... "independent enterprise" means a person who holds himself or  
28                   herself out as being engaged in a separate business and;

- 1 (a) Holds a business or occupational license in his or her own name;  
2 or  
3 (b) Owns, rents or leases property used in furtherance of the business.

4 Furthermore, the Nevada Supreme Court has held that “[i]f a principal contractor is not a  
5 licensed contractor, it will be the statutory employer only if it can show that it is in the “same trade”  
6 under the *Meers* test. *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1349 (1995). The *Meers*  
7 test “is not one of whether the subcontractor’s activity is useful, necessary, or even absolutely  
8 indispensable to the statutory employer’s business.... The test is whether that indispensable activity  
9 is, in that business, normally carried on through employees rather than independent contractors.”  
10 *Meers v. Haughton Elevator*, 101 Nev. 283, 286 (1985).

11 The record suggests the Appeals Officer had substantial evidence to conclude that the  
12 instructors were not engaged in an independent enterprise. For instance, NRS 616B.6039(1)(a)  
13 requires both parties to enter into a contract. However, International Academy did not have any  
14 written agreements in place prior to 2013. Thus, International Academy failed to meet the statutory  
15 requirement for the period from 2010 to 2013. Moreover, the fact that International Academy  
16 requires instructors to pay “chair rental fees” or “choose at his or her own discretion to teach other  
17 general classes in lieu of the rental fee,” fails to meet the criteria under NRS 616B.6039(2)(b) since  
18 the original agreements did not include any mention of rental chairs or booths. The Court concludes  
19 the Appeals Officer’s decision is supported by substantial evidence, and thus it is unwilling to  
20 disturb the Appeals Officer’s findings.

### 21 **C. The Record Supports the Independent Contractor Finding**

22 International Academy’s next contention is that the Appeals Officer erred in finding the  
23 instructors were not independent contractors pursuant to NRS 616A.255 and the five-part “control  
24 test” enunciated by the Nevada Supreme Court in *Clark Cty. v. State Indus. Ins. Sys.*

25 Nevada Revised Statute 616A.255 defines an “Independent contractor” as a “person who  
26 renders service for a specified recompense for a specified result, under the control of the person’s  
27 principal as to the result of the person’s work only and not as to the means by which such result is  
28 accomplished.” Furthermore, in determining whether an employer-employee relationship exist,  
courts apply the following five-part “control test”:

- (1) the degree of supervision;
- (2) the source of wages;
- (3) the existence of a right to hire and fire;
- (4) the right to control the hours and location of employment; and
- (5) the extent to which the workers' activities further the general business concerns of the alleged employer.

*Clark Cty. v. State Indus. Ins. Sys.*, 102 Nev. 353, 354 (1986).

A review of the record depicts the Appeals Officer had substantial evidence to conclude that the control test weighed against the International Academy. Consider, for example, the following:

First, the Appeals Officer found International Academy "must ensure that instructors are providing instruction according to the guidelines of the Board of Cosmetology. To do so, some amount of supervision is necessary." The record illustrates multiple instances of supervision, including: (1) one specific contract requires the instructor to record grades and attendance; (2) statements from Ms. Casteel's to the Attorney General's investigator in which she explained International Academy terminated an instructor because the instructor required a student to bring her food. Conduct which Ms. Casteel deemed unacceptable; (3) termination clauses in later agreements which provided International Academy "may terminate this agreement at any time "for cause," the grounds for which are defined below." Those grounds include "C. Instructor fails to perform his or her services in a competent manner" and "G. Instructor fails to perform the terms and conditions as agreed upon under this Agreement." The Court notes some degree of supervision is required to determine whether an instructor was performing pursuant to the terms of the agreement and providing competent instruction in accordance with the professional standards.

Second, the Appeals Officer found the source of the instructors' wages derives from International Academy. While International Academy appears to maintain that it is not the source of wages because it has designated a specific account for wages, the Appeals Officer considered this evidence by finding that "simply designating a specific account does not negate this fact," and drawing the following analogy: "A certain amount of money is set aside from students tuition to provide for compensation to the instructors similar in fashion to corporation setting aside a certain amount profit for compensation of employees."

1 Third, the Appeals Officer found “[c]learly, [International Academy] has the right to sever a  
2 relationship with an instructor that is not teaching according to the guidelines of the Board of  
3 Cosmetology.” This Court again notes Ms. Casteel’s statements regarding the termination of an  
4 instructor for requiring a student to bring her food. The instructor ultimately filed a successful  
5 unemployment claim with the Department of Employment, Training and Rehabilitation against  
6 International Academy, giving further credence to this factor.

7 Fourth, the Appeals Officer found that International Academy “controls the location of  
8 employment since the instruction must be done at the school. The instructor is not allowed to  
9 provide the instruction at a salon or residence. The hours are controlled by the school as two  
10 instructors are required to be present at all times.” This Court notes each agreement contains a  
11 schedule during which the instructor is to work between Tuesday and Saturday with hours ranging  
12 from 8:45 a.m. to 10:30 p.m. Thus, suggesting control of the hours and location of employment.

13 Fifth, the Appeals Officer found “obviously the instructors are furthering the business  
14 concerns of the school they provide instruction for, including Ms. Casteel and Ms. Schultz who also  
15 both instruct students.” The record does not suggest otherwise.

16 Finally, the Appeals Officer found the testimony of Ms. Casteel to be self-serving, noted that  
17 it appeared to be scripted and therefore not found to be credible. Additionally, the Appeals Officer  
18 also found the witness statements introduced by International Academy to be “nearly verbatim and  
19 obviously prepared by the same individual and therefore were given no weight.”

20 Based upon the Court’s observation of the persuasive evidence above, as well as the record  
21 as a whole, it is clear the Appeals Officer adequately analyzed both the law and the specific factual  
22 allegations which were lodged against International Academy. And while International Academy  
23 contends that the evidence in the record depicts that the Appeals Officer’s decision was “clearly  
24 erroneous,” this Court finds quite the contrary. Instead, this Court determines that there was  
25 virtually overwhelming evidence from which the Appeals Officer concluded the instructors did not  
26 meet the independent contractor classification. Further, the Court concludes the Appeals Officer did  
27 not violate NRS 233B.135(3), and thus it is unwilling to disturb the Appeals Officer’s findings.

28 //

1       **D. The Record Supports the Defenses Finding**

2           Finally, the Appeals Officer found the doctrine of *res judicata*, laches, and equitable  
3 estoppel did not apply. International Academy challenges these findings. The Court notes that *res*  
4 *judicata* requires identical issues and parties. However, as the Appeals Officer points out, the  
5 Division was not a party to the prosecutorial action taken by the Attorney General. Moreover,  
6 laches requires International Academy to be disadvantaged by the period of 15-months leading up  
7 to the penalties, in which the investigation was taking place. There is no evidence in the record to  
8 suggest International Academy was disadvantaged. Additionally, equitable estoppel requires  
9 International Academy to be ignorant of the true state of the facts in the matter. The record suggests  
10 quite the contrary as International Academy was put on notice by the Attorney General after it  
11 failed to renew the policy once the initial charges were dismissed. Thus, the Court can perceive of  
12 no basis for a violation of NRS 233B.135(3).

13                               **CONCLUSION**

14           Based on the aforementioned reasons, IT IS HEREBY ORDERED that International  
15 Academy's Petition for Judicial Review is **DENIED** and the Appeals Officer's *Decision and Order*  
16 filed February 20, 2020 is **AFFIRMED**.

17           **IT IS SO ORDERED.**

18           **DATED** this 1 day of March, 2021.



19                               BARRY L. BRESLOW  
20                               District Judge



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this \_\_\_\_ day of March, 2021, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

NONE

Further, I certify that on this 1 day of March, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

JASON GUINASSO, ESQ.

DONALD C. SMITH, ESQ.



\_\_\_\_\_  
Judicial Assistant