

Electronically Filed
Dec 24 2020 11:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS
STORM LEGAL GROUP
RYAN M. VENCI, ESQ.
Nevada Bar No. 7547
3037 East Warm Springs Road, Suite 300
Las Vegas, Nevada 89120
Telephone: (702) 765-0976
Facsimile: (702) 765-0981
Email: rvenci@keyinsco.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ an individual;

Plaintiff,

vs.

VERONICA JAZMIN CASTILLO, an
Individual; and DOES I through X, inclusive,

Defendants.

CASE NO.: A-19-789525-C

DEPT NO.: IV

NOTICE OF APPEAL

Notice is hereby given that VERONICA JAZMIN CASTILLO , defendant above-named,
hereby appeals to the Supreme Court of Nevada from:

1. The Judgment on Arbitration Award entered in this action on November 24, 2020
and the Court's decision granting Plaintiff's Motion to Strike Defendant's Request for Trial de
Novo entered on November 5, 2020.

DATED this 23rd day of December, 2020.

STORM LEGAL GROUP

By: /s/ Ryan Venci

RYAN M. VENCI, ESQ.

Nevada Bar No. 7547

3037 East Warm Springs Road, Suite 300

Las Vegas, Nevada 89120

Attorneys for Defendant

CERTIFICATE OF SERVICE

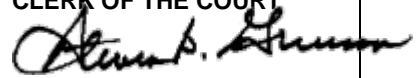
I HEREBY CERTIFY that on this 23rd day of December, 2020, I served a true and complete copy of the foregoing **NOTICE OF APPEAL** addressed to the parties below as follows:

- ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail, enclosed in a sealed envelope upon which first class postage was fully prepaid; and /or
- ☐ via facsimile; and or
- ☐ by hand delivery to parties listed below; and or
- ☒ by electronic service via Odyssey through the District Court.

ERIC R. BLANK, ESQ.
Nevada Bar No. 6910
VERNON EVANS, ESQ.
Nevada Bar. No. 14705
ERIC BLANK INJURY ATTORNEYS
7860 W. Sahara Avenue, Suite 110
Las Vegas, Nevada 89117
Telephone: (702) 222-2115
Facsimile: (702) 227-0615
E-mail: service@ericblanklaw.com
Attorneys for Plaintiff

/s/ Star Farrow

Employee, STORM LEGAL GROUP



ASTA
STORM LEGAL GROUP
RYAN M. VENCI, ESQ.
Nevada Bar No. 7547
3037 East Warm Springs Road, Suite 300
Las Vegas, Nevada 89120
Telephone: (702) 765-0976
Facsimile: (702) 765-0981
Email: rvenci@keyinsco.com
Attorneys for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ARMANDO PONS-DIAZ an individual;

Plaintiff,

vs.

VERONICA JAZMIN CASTILLO, an
Individual; and DOES I through X, inclusive,

Defendants.

CASE NO.: A-19-789525-C

DEPT NO.:IV

CASE APPEAL STATEMENT

Defendant/appellant VERONICA JAZMIN CASTILLO, through her undersigned counsel,
hereby submits the following Case Appeal Statement:

1. Name of appellant filing this case appeal statement:

Veronica Jazmin Castillo

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Kerry Earley

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Veronica Jazmin Castillo.

Counsel for Appellant: Ryan M. Venci, Esq., 3037 East Warm Springs Road, Suite
300, Las Vegas, Nevada 89120.

...

...

1
2 **4. Identify each respondent and the name and address of appellate counsel, if**
3 **known, for each respondent (if the name of a respondent's appellate counsel is**
4 **unknown, indicate as much and provide the name and address of that respondent's**
5 **trial counsel):**

6 Respondent: Armando Pons-Diaz.

7 Counsel for Respondent: Eric R. Blank, Esq., and Brian P. Nestor, Esq., 7860
8 West Sahara Avenue, Suite 110, Las Vegas, Nevada 89117.

9 **5. Indicate whether any attorney identified above in response to question 3 or 4 is**
10 **not licensed to practice law in Nevada and, if so, whether the district court granted**
11 **that attorney permission to appear under SCR 42 (attach a copy of any district court**
12 **order granting such permission):**

13 No attorney is not license to practice law in Nevada.

14 **6. Indicate whether appellant was represented by appointed or retained counsel in**
15 **the district court:**

16 Appellant was represented by retained counsel in the district court

17 **7. Indicate whether appellant is represented by appointed or retained counsel on**
18 **appeal:**

19 Appellant is represented by retained counsel on appeal.

20 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**
21 **the date of entry of the district court order granting such leave:**

22 Appellant has not been granted leave to proceed in forma pauperis.

23 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
24 **complaint, indictment, information, or petition was filed):**

25 February 15, 2019.

26 **10. Provide a brief description of the nature of the action and result in the district**
27 **court, including the type of judgment or order being appealed and the relief granted**
28 **by the district court:**

This is a personal injury action between Plaintiff/Respondent and

Defendant/Appellant. Defendant/Appellant was insured under an automobile liability policy and his insurer provided a defense. The parties submitted the matter to the court-annexed arbitration program in Clark County, Nevada, and an award was rendered in favor of Plaintiff/Respondent. Defendant/Appellant timely filed a Request for Trial de Novo. Subsequently, Plaintiff/Respondent filed a Motion to Strike Defendant's Request for Trial de Novo. The Court granted that said motion. A judgment was then entered against Defendant/Appellant on November 24, 2020. Defendant/Appellant is appealing the Judgment and the Court's order on the Motion to Strike.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

The case has not previously been the subject of an appeal or original writ proceeding in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation:

The appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This appeal involves the possibility of settlement.

DATED this 23rd day of December, 2020.

STORM LEGAL GROUP

By: /s/ Ryan Venci

RYAN M. VENCI, ESQ.

Nevada Bar No. 7547

3037 East Warm Springs Road, Suite 300

Las Vegas, Nevada 89120

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2020, I served a true and complete copy of the foregoing **CASE APPEAL STATMENT** addressed to the parties below as follows:

- [] by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail, enclosed in a sealed envelope upon which first class postage was fully prepaid; and /or
- [] via facsimile; and or
- [] by hand delivery to parties listed below; and or
- [X] by electronic service via Odyssey through the District Court.

ERIC R. BLANK, ESQ.
Nevada Bar No. 6910
VERNON EVANS, ESQ.
Nevada Bar. No. 14705
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Telephone: (702) 222-2115
Facsimile: (702) 227-0615
E-mail: service@ericblanklaw.com
Attorneys for Plaintiff

/s/ Star Farrow

Employee, STORM LEGAL GROUP

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. A-19-789525-C**

Armando Pons-Diaz, Plaintiff(s)
vs.
Veronica Castillo, Defendant(s)

§
§
§
§
§

Location: **Department 4**
 Judicial Officer: **Earley, Kerry**
 Filed on: **02/15/2019**
 Cross-Reference Case Number: **A789525**

CASE INFORMATION**Statistical Closures**

11/24/2020 Judgment on Arbitration

Case Type: **Negligence - Auto**

Case Status: **11/24/2020 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-19-789525-C
 Court Department 4
 Date Assigned 02/15/2019
 Judicial Officer Earley, Kerry

PARTY INFORMATION**Plaintiff****Pons-Diaz, Armando***Lead Attorneys***Blank, Eric R.***Retained*

702-222-2115(W)

Defendant**Castillo, Veronica Jazmin****Anderson, Mark R.***Retained*

702-765-0976(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

02/15/2019

**Complaint**

Filed By: Plaintiff Pons-Diaz, Armando
Complaint

02/15/2019

**Summons Electronically Issued - Service Pending**

Party: Plaintiff Pons-Diaz, Armando
Summons

02/15/2019

**Initial Appearance Fee Disclosure**

Filed By: Plaintiff Pons-Diaz, Armando
Initial Appearance Fee Disclosure

06/17/2019

**Affidavit of Due Diligence**

Filed By: Plaintiff Pons-Diaz, Armando
Declaration of Due Diligence (Veronica Jazmin Castillo())

06/17/2019

**Ex Parte Motion for Enlargement of Time**

Filed By: Plaintiff Pons-Diaz, Armando
Ex Parte Motion for Enlargement of Time to Serve

07/03/2019

Ex Parte Order

CASE SUMMARY

CASE NO. A-19-789525-C

Filed By: Attorney Blank, Eric R.
to Enlarge Time to Serve Defendant, bg

08/14/2019



Order

Filed By: Plaintiff Pons-Diaz, Armando
Order to Enlarge Time to Serve Defendant

08/14/2019



Affidavit of Service

Filed By: Plaintiff Pons-Diaz, Armando
Affidavit of Service upon the DMV

08/20/2019



Answer to Complaint

Filed by: Defendant Castillo, Veronica Jazmin
Defendant Veronica Jazmin Castillo's Answer to Plaintiff's Complaint

08/20/2019



Demand for Jury Trial

Filed By: Defendant Castillo, Veronica Jazmin
Demand for Jury Trial

08/20/2019



Initial Appearance Fee Disclosure

Filed By: Defendant Castillo, Veronica Jazmin
Initial Appearance Fee Disclosure

10/04/2019



Appointment of Arbitrator

Appointment of Arbitrator

10/25/2019



Notice of Early Arbitration Conference

NOTICE OF EARLY ARBITRATION CONFERENCE

11/01/2019



Notice to Appear for Arbitration Hearing

NOTICE TO APPEAR FOR ARBITRATION HEARING

11/01/2019



Arbitration Discovery Order

ARBITRATION DISCOVERY ORDER

03/20/2020



Notice of Change of Arbitration Hearing

NOTICE OF CHANGE OF ARBITRATION HEARING DATE/TIME

06/01/2020



Arbitration Award

ARBITRATION AWARD

06/30/2020



Demand for Removal from the Short Trial Program

Filed By: Defendant Castillo, Veronica Jazmin
Demand for Removal from Short Trial Program

07/14/2020



Arbitrator's Decision on Request for Fees/Costs/Interest

ARBITRATOR S DECISION ON REQUEST FOR FEES/COSTS/INTEREST

07/23/2020



Motion to Strike Trial De Novo

Filed By: Plaintiff Pons-Diaz, Armando
Plaintiff Armando Pons-Diaz's Motion to Strike Defendant's Request for Trial De Novo

07/24/2020



Clerk's Notice of Hearing

CASE SUMMARY

CASE NO. A-19-789525-C

Notice of Hearing

07/29/2020



Arbitrators Bill for Fees and Costs

ARBITRATOR S BILL FOR FEES AND COSTS

08/06/2020



Opposition to Motion

Filed By: Defendant Castillo, Veronica Jazmin

Opposition to Motion to Strike Defendant's Request for Trial de Novo

09/10/2020



Reply to Opposition

Filed by: Plaintiff Pons-Diaz, Armando

Plaintiff Armando Pons-Diaz's Reply to Defendant's Opposition to Plaintiff's Motion to Strike Defendant's Request for Trial De Novo

10/08/2020



Notice To Prevailing Party Final Judgment May Be Entered

Notice to Prevailing Party to Enter Judgment on Arbitration Award

11/05/2020



Order

Filed By: Plaintiff Pons-Diaz, Armando

Order

11/05/2020



Notice of Entry of Order

Filed By: Plaintiff Pons-Diaz, Armando

Notice of Entry of Order

11/24/2020



Judgment on Arbitration Award

Judgment on Arbitration Award

12/23/2020



Notice of Appeal

Filed By: Defendant Castillo, Veronica Jazmin

NOTICE OF APPEAL

12/23/2020



Case Appeal Statement

Filed By: Defendant Castillo, Veronica Jazmin

CASE APPEAL STATEMENT

DISPOSITIONS

11/24/2020

Judgment Upon Arbitration Award (Judicial Officer: Earley, Kerry)

Debtors: Veronica Jazmin Castillo (Defendant)

Creditors: Armando Pons-Diaz (Plaintiff)

Judgment: 11/24/2020, Docketed: 11/25/2020

Total Judgment: 20,691.06

HEARINGS

05/12/2020

Arbitration Hearing (7:00 AM)

09/15/2020

CANCELED Motion to Strike Trial De Novo (9:00 AM) (Judicial Officer: Earley, Kerry)

Vacated

Plaintiff Armando Pons-Diaz's Motion to Strike Defendant's Request for Trial De Novo

10/07/2020



Minute Order (3:00 AM) (Judicial Officer: Earley, Kerry)

Plaintiff Armando Pons-Diaz Motion to Strike Defendant s Request for Trial de Novo

Minute Order - No Hearing Held; Plaintiff Armando Pons-Diaz Motion to Strike Defendant s Request for Trial de Novo

Journal Entry Details:

CASE SUMMARY**CASE NO. A-19-789525-C**

*THIS MATTER came before the Court on Plaintiff Armando Pons-Diaz' Motion to Strike Defendant's Request for Trial de Novo, filed on July 23, 2020; the Opposition to Motion to Strike Defendant's Request for Trial de Novo, filed August 6, 2020; and Plaintiff's Reply filed on September 10, 2020. THE COURT having reviewed the matter, including all points and authorities, and exhibits, and good cause appearing hereby GRANTS Plaintiff Armando Pons-Diaz Motion to Strike Defendant's Request for Trial de Novo, based on the following: This matter arises out of a car accident that occurred on December 15, 2017. Plaintiff alleged that he was travelling southbound on Arville Street, attempting to make a right turn onto Spring Mountain Road when his vehicle was struck by Defendant's vehicle who failed to yield right of way to Plaintiff. Plaintiff argues that Defendant failed participate in the Arbitration proceedings in good faith because Defendant failed to participate in discovery during the Arbitration phase, failed to produce documents in discovery, failed to respond to Plaintiff's Interrogatories and Requests for Production, and failed to appear at her deposition which was re-scheduled twice due to defense counsel's inability to locate defendant. Plaintiff further argues Defendant failed to timely serve her Arbitration brief. The Arbitration Hearing in this matter was originally scheduled for March 19, 2020, and Plaintiff served his Arbitration Brief on March 13, 2020, in accordance with the Arbitration Discovery Order. The Arbitration Hearing was rescheduled due to COVID-19 and defense counsel's firm having technology issues preventing a telephonic Arbitration Hearing. Plaintiff argues that Defendant failed to serve an Arbitration Brief in March, and although she benefitted from the hearing being re-scheduled to May, Defendant failed to serve a timely brief because it was not served until May 11, 2020, the eve before the May 12, 2020 Arbitration Hearing. The Notice of Change of Arbitration Hearing Date/Time stated that the Arbitration Brief was due by May 7, 2020. Moreover, Plaintiff argues that Defendant did not attend the Arbitration Hearing, and did not oppose Plaintiff's Motion for Costs, Interest, and Attorney's fees. Last, Plaintiff argues that the decision to request a Trial de Novo rests solely with the client and defense counsel has not communicated with Defendant throughout the litigation thereby indicating that Defendant did not authorize the filing of the Request for Trial de Novo. In Defendant's opposition, defense counsel concedes that he was unsuccessful in communicating with Defendant and as a result could not respond to Plaintiff's interrogatories. Defendant argues that Defendant's participation at the Arbitration Hearing was not necessary because duty and breach were conceded and the only issues that remained were causation and damages, and the Defendant has a right to a civil jury trial under the Nevada Constitution. NAR 18 allows a party to file a request for trial de novo within 30 days after the arbitration award is served upon the parties. The party requesting trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (C) Rule 18. Here, the Arbitration Award was entered on June 1, 2020. Defendant's Request for Trial de Novo was filed on June 30, 2020 and contained the certification statement. Therefore, THE COURT FINDS that Defendant's Request for Trial de Novo was timely. NAR 22(A) states that the failure of a party or an attorney to defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo. The Nevada Supreme Court has held that all sanctioning orders under NAR 22(A) must be accompanied by specific written findings of fact and conclusions of law describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation. Chamberland v. Labarbera, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994). The Nevada Supreme Court has stated that although the Nevada Constitution provides a litigant with the right to a jury trial in civil proceedings. Nev. Const. art. 1, 3, this right can be waived by various means prescribed by law. One of those means is NAR 22, which states that the district court may sanction an arbitration participant by striking a request for a trial de novo if the participant has not acted in good faith. Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 900 01 (2000). The Nevada Supreme Court has equated good faith with meaningful participation in the arbitration proceedings. Gittings, 116 Nev. at 390, citing Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135, 911 P.2d 1181, 1182 83 (1996). However, the mere failure of a party to attend or call witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation. Id. at 392. It is the substance of the arbitration that is important in determining the good faith of the participants. Gittings v. Hartz, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000). A party's failure to respond to interrogatories and requests for production, or otherwise fail to participate in discovery may be grounds for striking a trial de novo request if the failure to provide the requested discovery had an impact on the arbitration proceedings or Plaintiff's ability to present their case. Bakke v. Am. Family Mut. Ins. Co., No. 75342-COA, 2019 WL 6003341, at *2 3 (Nev. App. Nov. 13, 2019) Plaintiff argued that he was prohibited from properly preparing for the Arbitration and from preparing for the numerous personal attacks contained in Defendant's Arbitration Brief, which was filed the day before the re-scheduled Arbitration Hearing. Plaintiff further stated that he was not able to fully prosecute his case due to Defendant's absence. THE COURT FINDS that Defendant failed to respond to interrogatories, requests for production, or appear at her deposition, which was noticed twice.*

CASE SUMMARY**CASE NO. A-19-789525-C**

THE COURT FURTHER FINDS that Defendant failed to produce any of the documents requested by Plaintiff during discovery. Therefore, THE COURT FINDS the Defendant's failure to participate in discovery and failure to provide the requested discovery had a negative impact on Plaintiff's ability to adequately prepare for the arbitration proceedings and on Plaintiff's ability to present his case. The original Arbitration Hearing was scheduled for March 19, 2020. Defendant's deposition had been re-set to March 4, 2020, the last day of discovery, due to Defendant's failure to appear at the first scheduled deposition based on counsel's inability to communicate with Defendant. On March 3, 2020, the day before Defendant's second deposition and nearly two weeks before the Arbitration Hearing, defense counsel's office emailed plaintiff's counsel stating we have been unsuccessful at reaching our client. Therefore we want to cancel the depo and will concede liability. Please cancel the deposition. Thank you. Moreover, Defendant's Arbitration Brief stated that it was anticipated that the named Parties will testify at the arbitration hearing. (Id. at p. 7). However, Defendant did not appear at the Arbitration Hearing. THE COURT FINDS that defense counsel's last minute concession of liability on the last day of discovery as a means to vacate the deposition of Defendant, who had already failed to respond to Plaintiff's discovery requests caused unnecessary burden and expense to Plaintiff. Plaintiff was unable to adequately conduct discovery due to Defendant's failure to respond to interrogatories and requests for production. This was exacerbated by Defendant's failure to appear for her deposition, which also caused Plaintiff to incur additional costs, and caused Plaintiff's counsel to spend unnecessary time preparing for Defendant's deposition, twice. The lack of any type of testimony under oath from Defendant prevented Plaintiff from addressing statements made in Defendant's recorded statement or obtaining information from Defendant about the subject accident and relevant to Plaintiff's claims. THE COURT FURTHER FINDS that Defendant's Arbitration Brief consisted mainly of attacks on Plaintiff's credibility citing contradictions in Plaintiff's discovery responses and deposition testimony. However, Defendant prevented Plaintiff from being able to conduct this type of analysis as Defendant did not respond to interrogatories, did not appear for her deposition, and did not attend the Arbitration hearing. Plaintiff had no opportunity to elicit any testimony from Defendant whatsoever. THE COURT FURTHER FINDS that Defendant's Arbitration Brief explicitly called Plaintiff a liar stating [b]ecause he has lied and been evasive, and because his case is reliant on the credibility of the oral representations made to his treatment providers. Therefore, testimony about the accident was a necessary part of Plaintiff's case. However, Plaintiff did not have the ability to elicit testimony from Defendant about the nature and extent of the impact, the speed at which she was traveling, whether she applied the brakes, or whether Defendant herself sustained any injuries from the subject collision so as to address the attacks on Plaintiff's testimony. Plaintiff was provided with Defendant's recorded statement, but had no opportunity to obtain any testimony from Defendant under oath and did not have the ability to cross-examine Defendant about the basis for her statements concerning Plaintiff's veracity as contained in her brief. Therefore, THE COURT FINDS that Plaintiff's inability to conduct any discovery or elicit any testimony from Defendant negatively impacted Plaintiff's case such that Defendant did not meaningfully participate in the Arbitration proceedings resulting in bad faith participation. There may be many valid reasons why a party would not wish to expend money at the arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point out discrepancies in a person's claim of injury without such testimony, or without presentation of countervailing medical evidence. *Gittings v. Hartz*, 116 Nev. 386, 392, 996 P.2d 898, 902 (2000) Defendant did not provide any expert testimony in support of her challenge to Plaintiff's injuries and treatment. Defendant's Arbitration Brief called for the Arbitrator to make a "Common Sense Evaluation" stating that "the arbitrator is not bound by case law to award Plaintiff his entire claimed medical specials, merely because Defendant has not retained a medical expert at this juncture of the case." (Defendant's Arbitration Brief, p. 6). THE COURT FURTHER FINDS that although standing alone a lack of medical experts is not a sufficient basis to strike a Request for Trial de Novo, in this matter Plaintiff received no discovery from Defendant leaving counsel's arguments in the late-filed Arbitration Brief as the only evidence regarding Plaintiff's medical treatment contained in the proceedings record. Therefore, although defense counsel argued that causation and damages were the only issues to be decided after counsel conceded liability on the last day of discovery in order to avoid Defendant's re-noticed deposition, Defendant produced no evidence during the Arbitration proceedings that provided a basis for Plaintiff to ascertain what causation and damages defenses were being presented. THE COURT FURTHER FINDS that Defendant's failure to oppose Plaintiff's Motion for Attorney's Fees, Costs, and Interest provided further evidence to lack of meaningful participation in the Arbitration proceedings. As a result, Defendant's failure to respond to Plaintiff's interrogatories and requests for production, failure to appear for her deposition (twice), failure to present any expert testimony to support the arguments about Plaintiff's medical treatment and damages, failure to appear for the Arbitration Hearing, and failure to oppose Plaintiff's Motion for Attorney's Fees and Costs demonstrate a pattern lacking meaningful participation in the Arbitration proceeding resulting in a lack of a good

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-789525-C

faith defense of this case such that sanctions pursuant to NAR 22(A) are warranted. Based on the foregoing, THE COURT FINDS that Defendant VERONICA JAZMIN CASTILLO failed to meaningfully participate in the Arbitration proceedings and failed to defend this case in good faith; pursuant to NAR 22(A) such failure shall constitute a waiver of the right to trial de novo. Therefore, Plaintiff Armando Pons-Diaz' Motion to Strike Defendant's Request for Trial de Novo is hereby GRANTED. Plaintiff's counsel is to prepare the Order in accordance with this Minute Order pursuant to EDCR 7.21 and in compliance with Administrative Order 20-17.
****CLERK'S NOTE: This Minute Order has been electronically served to all registered parties for Odyssey File & Serve.;**

DATE

FINANCIAL INFORMATION

Defendant Castillo, Veronica Jazmin

Total Charges

254.00

Total Payments and Credits

254.00

Balance Due as of 12/24/2020

0.00

Plaintiff Pons-Diaz, Armando

Total Charges

270.00

Total Payments and Credits

270.00

Balance Due as of 12/24/2020

0.00

Defendant Castillo, Veronica Jazmin

Short Trial - Removal Balance as of 12/24/2020

1,000.00

DISTRICT COURT CIVIL COVER SHEET

A-19-789525-C

Clark

County, Nevada

Case No. _____

Department 4

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

ARMANDO PONS-DIAZ

Defendant(s) (name/address/phone):

VERONICA JAZMIN CASTILLO

Attorney (name/address/phone):

Eric R. Blank, Esq. / ERIC BLANK INJURY ATTORNEYS

Attorney (name/address/phone):

unknown

7860 West Sahara Avenue, Suite 110

Las Vegas, NV 89117

Telephone: (702) 222-2115; Fax: (702) 227-0615

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ	Other Civil Filing	
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	

Business Court filings should be filed using the Business Court civil coversheet.

February 15, 2019

Date

/s/ Eric R. Blank

Signature of initiating party or representative

See other side for family-related case filings.

1 **ERIC R. BLANK, ESQ.** Nevada Bar No. 06910
2 **BRIAN P. NESTOR, ESQ.** Nevada Bar No. 13551
3 **ERIC BLANK INJURY ATTORNEYS**
4 7860 W. Sahara Avenue, Suite 110
5 Las Vegas, Nevada 89117
6 Telephone: (702) 222-2115
7 E-mail: service@ericblanklaw.com
8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 ARMANDO PONS-DIAZ, an individual,
12
13 Plaintiff,

CASE NO.: A-19-789525-C
DEPT. NO.: 4

14 vs.

15 VERONICA JAZMIN CASTILLO, an individual;
16 and DOES I through X, inclusive,
17 Defendants.

18 **JUDGMENT ON ARBITRATION AWARD**

19 **WHEREAS** this action came on for arbitration hearing on May 12, 2020, before Arbitrator F.
20 Kelly Cawley, Esq., presiding; the issues having been duly heard; a decision and award having been
21 rendered on June 1, 2020, and, the corresponding decision on Plaintiff's Request for Fees, Costs, and
22 Interest having been rendered on July 14, 2020; and

23 **WHEREAS** the Court Granted Plaintiff's *Motion to Strike Defendant's Request for Trial De*
24 *Novo* after duly considering Plaintiff's Motion, Defendant's Opposition thereto, and Plaintiff's Reply
25 to Defendant's Opposition, as reflected in the Court's October 7, 2020, minute order and the related
26 Order filed and entered November 5, 2020; and

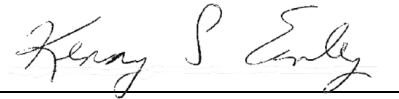
27 **WHEREAS** the Honorable ADR Commissioner filed the *Notice to Prevailing Party That Final*
28 *Judgment May Now Be Entered on Arbitration Award* on October 8, 2020:

FOR GOOD CAUSE APPEARING, the Court hereby enters Judgment on the Arbitration Award as follows:

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff, ARMANDO PONS-DIAZ, recover from the Defendant, VERONICA JAZMIN CASTILLO, the sum of \$15,000.00, in addition to awarded attorney fees in the amount of \$3,000.00, costs in the amount of \$1,741.95, and pre-judgment interest in the amount of \$949.11, for the total awarded sum of **\$20,691.06**, with post-judgment interest to accrue at the rate of \$3.18 per day until satisfied.

Dated this ____ Day of _____, 2020.

Dated this 24th day of November, 2020

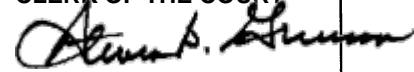


49A 21A C781 F45F
Kerry Earley
District Court Judge

Respectfully submitted by:

/s/: *Eric R. Blank*

ERIC R. BLANK, ESQ.
BRIAN P. NESTOR, ESQ.
ERIC BLANK INJURY ATTORNEYS
7860 W. Sahara Avenue, Suite 110
Las Vegas, Nevada 89117
Attorneys for Plaintiff



ARBA
F. KELLY CAWLEY, ESQ.
Nevada Bar No. 2377
2620 Regatta Dr., Ste. 102
Las Vegas, NV 89128
Telephone: (702) 384-4407
Facsimile: (702) 384-1516
Email: Kelly@Cawleylaw.com
Arbitrator

DISTRICT COURT

CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual,)		
)		
Plaintiff,)	Case No.	: A-19-789525-C
)	Dept. No.	: IV
vs.)		
)		
VERONICA JAZMIN CASTILLO, an)		
individual; and DOES I through X, inclusive.)		
)		
Defendant.)		

ARBITRATION AWARD

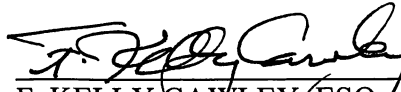
TO: Eric R. Blank, Esq., Vernon Evans, Esq., ERIC BLANK INJURY ATTORNEYS, attorney for Plaintiff;

TO: Mark Anderson, Esq., Travis Akin, Esq., STORM LEGAL GROUP, attorney for Defendant.

The Arbitration Hearing in this matter was held via teleconference on May 12, 2020. Present at the Arbitration Hearing were the Plaintiff, ARMANDO PONS-DIAZ, the Plaintiff's attorney, Vernon Evans, Esq., ERIC BLANK INJURY ATTORNEYS, and the Defendant's attorney, Travis Akin, Esq., STORM LEGAL GROUP. Having considered the pre-hearing statements, the arbitration briefs, the testimony, the exhibits offered for consideration, the arguments by the parties, and based upon the evidence presented at the arbitration hearing, I hereby find in favor of the Plaintiff, ARMANDO PONS-DIAZ, and against the Defendant, VERONICA JAZMIN CASTILLO, and award the Plaintiff

1 damages in the amount of \$15,500.00.

2 DATED this 1st day of June, 2020.

3
4 
5 F. KELLY CAWLEY, ESQ.
6 Nevada Bar No. 002377
7 2620 Regatta Dr., Suite 102
8 Las Vegas, NV 89128
9 Arbitrator

10 **NOTICE**

11 Pursuant to N.A.R. 18(A), you are hereby notified you have thirty (30) days from the date
12 you are served with this document within which to file a written Request for Trial de Novo with
13 the Clerk of the Court and serve the ADR Commissioner and all other parties.

14 Pursuant to N.A.R. 18(D), the Trial de Novo shall proceed in accordance with the Nevada
15 Short Trial Rules, unless a party timely files a Demand for Removal from the Short Trial
16 Program as provided in N.S.T.R. 5.

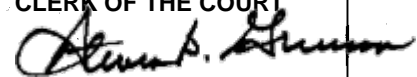
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on the 1st day of June, 2020, the foregoing ARBITRATION AWARD was
19 served upon the following by electronic mail through the Eighth Judicial District Court's electronic
20 filing and service system to the following:

21 Eric R. Blank, Esq., Vernon Evans, Esq.,
22 ERIC BLANK INJURY ATTORNEYS
23 Attorneys for Plaintiff

24 Mark Anderson, Esq., Travis Akin, Esq.,
25 STORM LEGAL GROUP
26 Attorney for Defendant

27 /s/ F. Kelly Cawley
28 F. Kelly Cawley, Esq.



1 ABFCI
2 F. KELLY CAWLEY, ESQ.
3 Nevada Bar No. 2377
4 2620 Regatta Dr., Ste. 102
5 Las Vegas, NV 89128
6 Telephone: (702) 384-4407
7 Facsimile: (702) 384-1516
8 Email: Kelly@Cawleylaw.com
9 Arbitrator

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 ARMANDO PONS-DIAZ, an individual,)
9 Plaintiff,) Case No. : A-19-789525-C
10 vs.) Dept. No. : IV
11)
12 VERONICA JAZMIN CASTILLO, an)
13 individual; and DOES I through X, inclusive.)
14 Defendant.)

14 ARBITRATOR'S DECISION ON REQUEST FOR FEES/COSTS/INTEREST

15 TO: Eric R. Blank, Esq., Vernon Evans, Esq., ERIC BLANK INJURY ATTORNEYS, attorney for
16 Plaintiff;

17 TO: Mark Anderson, Esq., Travis Akin, Esq., STORM LEGAL GROUP, attorney for Defendant.

18 An Arbitration Award was served in this matter on June 1, 2020. The Plaintiff timely filed an
19 application for attorney's fees, costs and/or interest. There was not an opposition to the application.

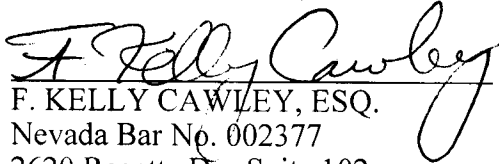
20 The undersigned finds that the analysis required under *Brunzell v. Golden Gate Nat. Bank*, 85
21 Nev. 345, 455 F.2d 31 (1969) and/or *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), was
22 satisfied. The factors addressed by that/those case(s), prerequisite to an award of attorney's fees, was
23 set forth in the moving points and authorities with specificity. Accordingly, an award of attorney's fees
24 to the Plaintiff in the amount of \$3,000.00, is warranted.

25 The undersigned finds that the Plaintiffs complied with the requirements of *Cadle v. Woods v.*
26 *Erickson*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054-1055 (2015). The Plaintiff is awarded costs in

1 the amount of \$1,741.95.

2 The undersigned further awards the Plaintiff pre-judgement interest in the amount of \$949.11.

3 DATED this 14th day of July, 2020.

4
5 
6 F. KELLY CAWLEY, ESQ.
7 Nevada Bar No. 002377
8 2620 Regatta Dr., Suite 102
9 Las Vegas, NV 89128
10 Arbitrator

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 14th day of July, 2020, the foregoing ARBITRATOR'S DECISION
13 ON REQUEST FOR FEES/COSTS/INTEREST was served upon the following by electronic mail
14 through the Eighth Judicial District Court's electronic filing and service system to the following:

15 Eric R. Blank, Esq., Vernon Evans, Esq.,
16 ERIC BLANK INJURY ATTORNEYS,
17 Attorneys for Plaintiff

18 Mark Anderson, Esq., Travis Akin, Esq.,
19 STORM LEGAL GROUP,
20 Attorney for Defendant

21 /s/ F. Kelly Cawley
22 F. Kelly Cawley, Esq.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Armando Pons-Diaz, Plaintiff(s) | CASE NO: A-19-789525-C
7 vs. | DEPT. NO. Department 4
8 Veronica Castillo, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Judgment on Arbitration Award was served via the court's electronic
13 eFile system to all recipients registered for e-Service on the above entitled case as listed
below:

14 Service Date: 11/24/2020

15 F. Kelly Cawley	kelly@cawleylaw.com
16 Eric Blank	service@ericblanklaw.com
17 Kristina Marzec	kmarzec@ericblanklaw.com
18 Kristin Orque	korque@purdyandanderson.com
19 Leslie Salas	lsalas@keyinsco.com
20 Travis Akin	TAkin@keyinsco.com
21 Star Farrow	Sfarrow@keyinsco.com

22
23
24
25
26
27
28

1 **ERIC R. BLANK, ESQ.** Nevada Bar No. 06910
2 **VERNON EVANS, ESQ.** Nevada Bar No. 14705
3 **ERIC BLANK INJURY ATTORNEYS**
4 7860 W. Sahara Avenue, Suite 110
5 Las Vegas, Nevada 89117
6 Telephone: (702) 222-2115
7 E-mail: service@ericblanklaw.com
8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 ARMANDO PONS-DIAZ, an individual,
12
13 Plaintiff,

14 vs.

15 VERONICA JAZMIN CASTILLO, an individual;
16 and DOES I through X, inclusive,
17
18 Defendants.

CASE NO.: A-19-789525-C
DEPT. NO.: 4

ORDER

Date of Hearing:
Time of Hearing:

19 THIS MATTER having come before the Court on Plaintiff Armando Pons-Diaz' *Motion to*
20 *Strike Defendant's Request for Trial de Novo*, filed on July 23, 2020; the *Opposition to Motion to Strike*
21 *Defendant's Request for Trial de Novo*, filed August 6, 2020; and Plaintiff's *Reply to Defendant's*
22 *Opposition to Motion to Strike Defendant's Request for Trial De Novo* filed on September 10, 2020;

23 With ERIC R. BLANK, ESQ. and VERNON EVANS, ESQ. of ERIC BLANK INJURY
24 ATTORNEYS, appearing as counsel for Plaintiff, and, TRAVIS AKIN, ESQ. of STORM LEGAL
25 GROUP, appearing as counsel for Defendant VERONICA JAZMIN CASTILLO (hereinafter referred
26 to as "Defendant");

27 The Court having reviewed the matter, including exhibits, all points and authorities, and for
28 good cause appearing, hereby GRANTS *Plaintiff Armando Pons-Diaz Motion to Strike Defendant's*
Request for Trial de Novo, based on the following:

This matter arises out of a car accident that occurred on December 15, 2017. Plaintiff alleged that he was travelling southbound on Arville Street, attempting to make a right turn onto Spring

1 Mountain Road when his vehicle was struck by Defendant s vehicle who failed to yield right of way to
2 Plaintiff.

3 Plaintiff argues that Defendant failed participate in the Arbitration proceedings in good faith
4 because Defendant failed to participate in discovery during the Arbitration phase, failed to produce
5 documents in discovery, failed to respond to Plaintiff's Interrogatories and Requests for Production,
6 and failed to appear at her deposition which was re-scheduled twice due to defense counsel's
7 inability to locate defendant.

8 Plaintiff further argues Defendant failed to timely serve her Arbitration brief. The Arbitration
9 Hearing in this matter was originally scheduled for March 19, 2020, and Plaintiff served his Arbitration
10 Brief on March 13, 2020, in accordance with the Arbitration Discovery Order. The
11 Arbitration Hearing was rescheduled due to COVID-19 and defense counsel's firm having
12 technology issues preventing a telephonic Arbitration Hearing. Plaintiff argues that Defendant failed to
13 serve an Arbitration Brief in March, and although she benefitted from the hearing being rescheduled to
14 May, Defendant failed to serve a timely brief because it was not served until May 11, 2020, the eve
15 before the May 12, 2020 Arbitration Hearing. The Notice of Change of Arbitration Hearing Date/Time
16 stated that the Arbitration Brief was due by May 7, 2020.

17
18 Moreover, Plaintiff argues that Defendant did not attend the Arbitration Hearing, and did not
19 oppose Plaintiff s Motion for Costs, Interest, and Attorney's fees. Last, Plaintiff argues that the decision
20 to request a Trial de Novo rests solely with the client and defense counsel has not communicated with
21 Defendant throughout the litigation thereby indicating that Defendant did not authorize the filing of the
22 Request for Trial de Novo.

23 In Defendant's opposition, defense counsel concedes that he was unsuccessful in
24 communicating with Defendant and as a result could not respond to Plaintiff's interrogatories.
25 Defendant argues that Defendant's participation at the Arbitration Hearing was not necessary because
26 duty and breach were conceded and the only issues that remained were causation and damages, and the
27 Defendant has a right to a civil jury trial under the Nevada Constitution.

28 NAR 18 allows a party to file a request for trial de novo within 30 days after the arbitration
award is served upon the parties. The party requesting trial de novo must certify that all arbitrator fees

1 and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending
2 and any balance of fees or costs shall be paid in accordance with subsection (C) Rule 18. Here, the
3 Arbitration Award was entered on June 1, 2020. Defendant's Request for Trial de Novo was filed on
4 June 30, 2020 and contained the certification statement. Therefore, the Court finds that Defendant's
5 Request for Trial de Novo was timely.

6 NAR 22(A) states that the failure of a party or an attorney to defend a case in good faith during
7 the arbitration proceedings shall constitute a waiver of the right to a trial de novo.

8 The Nevada Supreme Court has held that all sanctioning orders under NAR 22(A) must be
9 accompanied by specific written findings of fact and conclusions of law describing what type of
10 conduct was at issue and how that conduct rose to the level of failed good faith participation.
11 Chamberland v. Labarbera, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994).

12 The Nevada Supreme Court has stated that although the Nevada Constitution provides a litigant
13 with the right to a jury trial in civil proceedings. Nev. Const. art. 1, 3, this right can be waived by
14 various means prescribed by law. One of those means is NAR 22, which states that the district court
15 may sanction an arbitration participant by striking a request for a trial de novo if the participant has not
16 acted in good faith. Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 900 01 (2000).

17 The Nevada Supreme Court has equated good faith with meaningful participation in the
18 arbitration proceedings. Gittings, 116 Nev. at 390, citing Casino Properties, Inc. v. Andrews, 112 Nev.
19 132, 135, 911 P.2d 1181, 1182 83 (1996). However, the mere failure of a party to attend or call
20 witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation.
21 Id. at 392. It is the substance of the arbitration that is important in determining the good faith of the
22 participants. Gittings v. Hartz, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000).

23 A party's failure to respond to interrogatories and requests for production, or otherwise fail to
24 participate in discovery may be grounds for striking a trial de novo request if the failure to provide the
25 requested discovery had an impact on the arbitration proceedings or Plaintiff's ability to present their
26 case. Bakke v. Am. Family Mut. Ins. Co., No. 75342-COA, 2019 WL 6003341, at *2 3 (Nev. App.
27 Nov. 13, 2019).

1 Plaintiff argued that he was prohibited from properly preparing for the Arbitration and from
2 preparing for the numerous personal attacks contained in Defendant's Arbitration Brief, which was
3 filed the day before the re-scheduled Arbitration Hearing. Plaintiff further stated that he was not able to
4 fully prosecute his case due to Defendant's absence.

5 **THE COURT FINDS** that Defendant failed to respond to interrogatories, requests for
6 production, or appear at her deposition, which was noticed twice.

7 **THE COURT FURTHER FINDS** that Defendant failed to produce any of the documents
8 requested by Plaintiff during discovery.

9 **THE COURT THEREFORE FURTHER FINDS** the Defendant's failure to participate in
10 discovery and failure to provide the requested discovery had a negative impact on Plaintiff's ability to
11 adequately prepare for the arbitration proceedings and on Plaintiff's ability to present his case.

12 The original Arbitration Hearing was scheduled for March 19, 2020. Defendant's deposition
13 had been re-set to March 4, 2020, the last day of discovery, due to Defendant's failure to appear at the
14 first scheduled deposition based on counsel's inability to communicate with Defendant. On March 3,
15 2020, the day before Defendant's second deposition and nearly two weeks before the Arbitration
16 Hearing, Defense counsel's office emailed Plaintiff's counsel stating they had been unsuccessful at
17 reaching their client (the Defendant), and therefore conceded liability and asked to cancel the
18 deposition that day. Moreover, Defendant's Arbitration Brief stated that it was anticipated that the
19 named Parties will testify at the arbitration hearing. (Id. at p. 7). However, Defendant did not appear at
20 the Arbitration Hearing.

21 **THE COURT FINDS** that Defense counsel's last minute concession of liability on the last
22 day of discovery as a means to vacate the deposition of Defendant, who had already failed to respond
23 to Plaintiff's discovery requests caused unnecessary burden and expense to Plaintiff. Plaintiff was
24 unable to adequately conduct discovery due to Defendant's failure to respond to interrogatories and
25 requests for production. This was exacerbated by Defendant's failure to appear for her deposition,
26 which also caused Plaintiff to incur additional costs, and caused Plaintiff's counsel to spend
27 unnecessary time preparing for Defendant's deposition, twice. The lack of any type of testimony under
28 oath from Defendant prevented Plaintiff from addressing statements made in Defendant's recorded

1 statement or obtaining information from Defendant about the subject accident and relevant to
2 Plaintiff's claims.

3 **THE COURT FURTHER FINDS** that Defendant's Arbitration Brief consisted mainly of
4 attacks on Plaintiff's credibility, citing contradictions in Plaintiff's discovery responses and deposition
5 testimony. However, Defendant prevented Plaintiff from being able to conduct this type of analysis as
6 Defendant did not respond to interrogatories, did not appear for her deposition, and did not attend the
7 Arbitration hearing. Plaintiff had no opportunity to elicit any testimony from Defendant whatsoever.

8 **THE COURT FURTHER FINDS** that Defendant's Arbitration Brief explicitly called Plaintiff
9 a liar, stating [b]ecause he has lied and been evasive, and because his case is reliant on the credibility of
10 the oral representations made to his treatment providers. Therefore, testimony about the accident was a
11 necessary part of Plaintiff's case. However, Plaintiff did not have the ability to elicit testimony from
12 Defendant about the nature and extent of the impact, the speed at which she was traveling, whether she
13 applied the brakes, or whether Defendant herself sustained any injuries from the subject collision
14 so as to address the attacks on Plaintiff's testimony. Plaintiff was provided with Defendant's recorded
15 statement, but had no opportunity to obtain any testimony from Defendant under oath and did not have
16 the ability to cross-examine Defendant about the basis for her statements concerning Plaintiff's veracity
17 as contained in her brief.

18
19 **THE COURT THEREFORE FINDS** that Plaintiff's inability to conduct any discovery or
20 elicit any testimony from Defendant negatively impacted Plaintiff's case such that Defendant did not
21 meaningfully participate in the Arbitration proceedings resulting in bad faith participation.

22 There may be many valid reasons why a party would not wish to expend money at the
23 arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point
24 out discrepancies in a person's claim of injury without such testimony, or without presentation of
25 countervailing medical evidence. Gittings v. Hartz, 116 Nev. 386, 392, 996 P.2d 898, 902 (2000).

26 Defendant did not provide any expert testimony in support of her challenge to Plaintiff's
27 injuries and treatment. Defendant's Arbitration Brief called for the Arbitrator to make a "Common
28 Sense Evaluation" stating that "the arbitrator is not bound by case law to award Plaintiff his entire

1 claimed medical specials, merely because Defendant has not retained a medical expert at this juncture
2 of the case." (Defendant s Arbitration Brief, p. 6)

3 **THE COURT FURTHER FINDS** that standing alone, a lack of medical experts is not a
4 sufficient basis to strike a Request for Trial de Novo, however in this matter Plaintiff received no
5 discovery from Defendant. This left counsel's arguments in the late-filed Arbitration Brief as the only
6 evidence regarding Plaintiff's medical treatment contained in the proceedings record. Therefore,
7 although defense counsel argued that causation and damages were the only issues to be decided after
8 counsel conceded liability on the last day of discovery in order to avoid Defendant's re-noticed
9 deposition, Defendant produced no evidence during the Arbitration proceedings that provided a basis
10 for Plaintiff to ascertain what causation and damages defenses were being presented.

11 **THE COURT FURTHER FINDS** that Defendant's failure to oppose Plaintiff's Motion for
12 Attorney's Fees, Costs, and Interest provided further evidence to lack of meaningful participation in the
13 Arbitration proceeding. As a result, Defendant's failure to respond to Plaintiff's interrogatories and
14 requests for production, failure to appear for her deposition (twice), failure to present any expert
15 testimony to support the arguments about Plaintiff s medical treatment and damages, failure to appear
16 for the Arbitration Hearing, and failure to oppose Plaintiff's Motion for Attorney's Fees and Costs
17 demonstrate a pattern lacking meaningful participation in the Arbitration proceeding resulting in a lack
18 of a good faith defense of this case such that sanctions pursuant to NAR 22(A) are warranted.

19 **THE COURT FINDS** that Defendant VERONICA JAZMIN CASTILLO failed
20 to meaningfully participate in the Arbitration proceedings and failed to defend this case in good faith;
21 pursuant to NAR 22(A) such failure shall constitute a waiver of the right to trial de novo.
22

23 ///

24 ///

25 ///

26 ///

27 ///

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff Armando Pons-
2 Diaz' Motion to Strike Defendant's Request for Trial de Novo is hereby GRANTED.

3
4 DATED this _____ day of October, 2020.

Dated this 5th day of November, 2020

5
6 

7 **DISTRICT COURT JUDGE**

8 **DEA DAE CC53 BEFC**
9 **Kerry Earley**
 District Court Judge

10 Respectfully submitted by:

Approved as to Form and Content by:

11
12 /s/: Vernon Evans

NOT SIGNED

13 _____
14 **ERIC R. BLANK, ESQ.**
15 **VERNON EVANS, ESQ.**
16 **ERIC BLANK INJURY ATTORNEYS**
 7860 W. Sahara Avenue, Suite 110
 Las Vegas, Nevada 89117
 Attorney for Plaintiff

17 **TRAVIS AKIN, ESQ.**
18 **STORM LEGAL GROUP**
19 3057 E. Warm Springs Rd., Suite 400
20 Las Vegas, Nevada 89120
21 *Attorney for Defendant*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Armando Pons-Diaz, Plaintiff(s) | CASE NO: A-19-789525-C
7 vs. | DEPT. NO. Department 4
8 Veronica Castillo, Defendant(s)
9

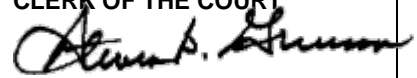
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/5/2020

15 F. Kelly Cawley	kelly@cawleylaw.com
16 Eric Blank	service@ericblanklaw.com
17 Kristina Marzec	kmarzec@ericblanklaw.com
18 Kristin Orque	korque@purdyandanderson.com
19 Leslie Salas	lsalas@keyinsco.com
20 Travis Akin	TAkin@keyinsco.com
21 Star Farrow	Sfarrow@keyinsco.com

22
23
24
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26
27
28



ERIC R. BLANK, ESQ.
Nevada Bar No. 006910
ERIC BLANK INJURY ATTORNEYS
7860 W. Sahara Avenue, Suite 110
Las Vegas, Nevada 89117
Telephone: (702) 222-2115
Facsimile: (702) 227-0615
E-mail: service@ericblanklaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ARMANDO PONS-DIAZ, an individual,

Plaintiff,

vs.

VERONICA JAZMIN CASTILLO, an individual;
and DOES I through X, inclusive,

Defendants.

CASE NO.: A-19-789525-C
DEPT. NO.: 4

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES AND COUNSEL OF RECORD

PLEASE TAKE NOTICE that the ORDER attached hereto as Exhibit 1 was entered in the above-captioned matter on November 5, 2020.

DATED this 5th day of November, 2020.

By: /s/: Eric R. Blank

ERIC R. BLANK, ESQ.
ERIC BLANK INJURY ATTORNEYS
7860 W. Sahara Avenue, Suite 110
Las Vegas, Nevada 89117
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCF 5(b) and EDCR 7.26, I certify that on this date, I filed and served the foregoing ORDER on the following parties and all parties on the Odyssey e-service list, by the selected means:

Travis Akin, Esq.
Nevada Bar No. 13059
STORM LEGAL GROUP
3057 E. Warm Springs Rd., Suite 400
Las Vegas, Nevada 89120
Takin@keyinsco.com
Attorney for Defendant

☒ **Odyssey eFileNV**
☐ **FACSIMILE**
☐ **U.S. MAIL**

DATED this 5th Day of November, 2020

/s/: Kristina M. Marzec
An Employee of Eric Blank Injury Attorneys

EXHIBIT 1

EXHIBIT 1

1 **ERIC R. BLANK, ESQ.** Nevada Bar No. 06910
2 **VERNON EVANS, ESQ.** Nevada Bar No. 14705
3 **ERIC BLANK INJURY ATTORNEYS**
4 7860 W. Sahara Avenue, Suite 110
5 Las Vegas, Nevada 89117
6 Telephone: (702) 222-2115
7 E-mail: service@ericblanklaw.com
8 *Attorneys for Plaintiff*

6 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 ARMANDO PONS-DIAZ, an individual,
10 Plaintiff,

11 vs.

12 VERONICA JAZMIN CASTILLO, an individual;
13 and DOES I through X, inclusive,
14 Defendants.

CASE NO.: A-19-789525-C
DEPT. NO.: 4

ORDER

Date of Hearing:
Time of Hearing:

16 THIS MATTER having come before the Court on Plaintiff Armando Pons-Diaz' *Motion to*
17 *Strike Defendant's Request for Trial de Novo*, filed on July 23, 2020; the *Opposition to Motion to Strike*
18 *Defendant's Request for Trial de Novo*, filed August 6, 2020; and Plaintiff's *Reply to Defendant's*
19 *Opposition to Motion to Strike Defendant's Request for Trial De Novo* filed on September 10, 2020;

20 With ERIC R. BLANK, ESQ. and VERNON EVANS, ESQ. of ERIC BLANK INJURY
21 ATTORNEYS, appearing as counsel for Plaintiff, and, TRAVIS AKIN, ESQ. of STORM LEGAL
22 GROUP, appearing as counsel for Defendant VERONICA JAZMIN CASTILLO (hereinafter referred
23 to as "Defendant");

24 The Court having reviewed the matter, including exhibits, all points and authorities, and for
25 good cause appearing, hereby GRANTS *Plaintiff Armando Pons-Diaz Motion to Strike Defendant's*
26 *Request for Trial de Novo*, based on the following:

27 This matter arises out of a car accident that occurred on December 15, 2017. Plaintiff alleged
28 that he was travelling southbound on Arville Street, attempting to make a right turn onto Spring

1 Mountain Road when his vehicle was struck by Defendant s vehicle who failed to yield right of way to
2 Plaintiff.

3 Plaintiff argues that Defendant failed participate in the Arbitration proceedings in good faith
4 because Defendant failed to participate in discovery during the Arbitration phase, failed to produce
5 documents in discovery, failed to respond to Plaintiff's Interrogatories and Requests for Production,
6 and failed to appear at her deposition which was re-scheduled twice due to defense counsel's
7 inability to locate defendant.

8 Plaintiff further argues Defendant failed to timely serve her Arbitration brief. The Arbitration
9 Hearing in this matter was originally scheduled for March 19, 2020, and Plaintiff served his Arbitration
10 Brief on March 13, 2020, in accordance with the Arbitration Discovery Order. The
11 Arbitration Hearing was rescheduled due to COVID-19 and defense counsel's firm having
12 technology issues preventing a telephonic Arbitration Hearing. Plaintiff argues that Defendant failed to
13 serve an Arbitration Brief in March, and although she benefitted from the hearing being rescheduled to
14 May, Defendant failed to serve a timely brief because it was not served until May 11, 2020, the eve
15 before the May 12, 2020 Arbitration Hearing. The Notice of Change of Arbitration Hearing Date/Time
16 stated that the Arbitration Brief was due by May 7, 2020.

17
18 Moreover, Plaintiff argues that Defendant did not attend the Arbitration Hearing, and did not
19 oppose Plaintiff s Motion for Costs, Interest, and Attorney's fees. Last, Plaintiff argues that the decision
20 to request a Trial de Novo rests solely with the client and defense counsel has not communicated with
21 Defendant throughout the litigation thereby indicating that Defendant did not authorize the filing of the
22 Request for Trial de Novo.

23 In Defendant's opposition, defense counsel concedes that he was unsuccessful in
24 communicating with Defendant and as a result could not respond to Plaintiff's interrogatories.
25 Defendant argues that Defendant's participation at the Arbitration Hearing was not necessary because
26 duty and breach were conceded and the only issues that remained were causation and damages, and the
27 Defendant has a right to a civil jury trial under the Nevada Constitution.

28 NAR 18 allows a party to file a request for trial de novo within 30 days after the arbitration
award is served upon the parties. The party requesting trial de novo must certify that all arbitrator fees

1 and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending
2 and any balance of fees or costs shall be paid in accordance with subsection (C) Rule 18. Here, the
3 Arbitration Award was entered on June 1, 2020. Defendant's Request for Trial de Novo was filed on
4 June 30, 2020 and contained the certification statement. Therefore, the Court finds that Defendant's
5 Request for Trial de Novo was timely.

6 NAR 22(A) states that the failure of a party or an attorney to defend a case in good faith during
7 the arbitration proceedings shall constitute a waiver of the right to a trial de novo.

8 The Nevada Supreme Court has held that all sanctioning orders under NAR 22(A) must be
9 accompanied by specific written findings of fact and conclusions of law describing what type of
10 conduct was at issue and how that conduct rose to the level of failed good faith participation.
11 Chamberland v. Labarbera, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994).

12 The Nevada Supreme Court has stated that although the Nevada Constitution provides a litigant
13 with the right to a jury trial in civil proceedings. Nev. Const. art. 1, 3, this right can be waived by
14 various means prescribed by law. One of those means is NAR 22, which states that the district court
15 may sanction an arbitration participant by striking a request for a trial de novo if the participant has not
16 acted in good faith. Gittings v. Hartz, 116 Nev. 386, 390, 996 P.2d 898, 900 01 (2000).

17 The Nevada Supreme Court has equated good faith with meaningful participation in the
18 arbitration proceedings. Gittings, 116 Nev. at 390, citing Casino Properties, Inc. v. Andrews, 112 Nev.
19 132, 135, 911 P.2d 1181, 1182 83 (1996). However, the mere failure of a party to attend or call
20 witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation.
21 Id. at 392. It is the substance of the arbitration that is important in determining the good faith of the
22 participants. Gittings v. Hartz, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000).

23 A party's failure to respond to interrogatories and requests for production, or otherwise fail to
24 participate in discovery may be grounds for striking a trial de novo request if the failure to provide the
25 requested discovery had an impact on the arbitration proceedings or Plaintiff's ability to present their
26 case. Bakke v. Am. Family Mut. Ins. Co., No. 75342-COA, 2019 WL 6003341, at *2 3 (Nev. App.
27 Nov. 13, 2019).

1 Plaintiff argued that he was prohibited from properly preparing for the Arbitration and from
2 preparing for the numerous personal attacks contained in Defendant's Arbitration Brief, which was
3 filed the day before the re-scheduled Arbitration Hearing. Plaintiff further stated that he was not able to
4 fully prosecute his case due to Defendant's absence.

5 **THE COURT FINDS** that Defendant failed to respond to interrogatories, requests for
6 production, or appear at her deposition, which was noticed twice.

7 **THE COURT FURTHER FINDS** that Defendant failed to produce any of the documents
8 requested by Plaintiff during discovery.

9 **THE COURT THEREFORE FURTHER FINDS** the Defendant's failure to participate in
10 discovery and failure to provide the requested discovery had a negative impact on Plaintiff's ability to
11 adequately prepare for the arbitration proceedings and on Plaintiff's ability to present his case.

12 The original Arbitration Hearing was scheduled for March 19, 2020. Defendant's deposition
13 had been re-set to March 4, 2020, the last day of discovery, due to Defendant's failure to appear at the
14 first scheduled deposition based on counsel's inability to communicate with Defendant. On March 3,
15 2020, the day before Defendant's second deposition and nearly two weeks before the Arbitration
16 Hearing, Defense counsel's office emailed Plaintiff's counsel stating they had been unsuccessful at
17 reaching their client (the Defendant), and therefore conceded liability and asked to cancel the
18 deposition that day. Moreover, Defendant's Arbitration Brief stated that it was anticipated that the
19 named Parties will testify at the arbitration hearing. (Id. at p. 7). However, Defendant did not appear at
20 the Arbitration Hearing.
21

22 **THE COURT FINDS** that Defense counsel's last minute concession of liability on the last
23 day of discovery as a means to vacate the deposition of Defendant, who had already failed to respond
24 to Plaintiff's discovery requests caused unnecessary burden and expense to Plaintiff. Plaintiff was
25 unable to adequately conduct discovery due to Defendant's failure to respond to interrogatories and
26 requests for production. This was exacerbated by Defendant's failure to appear for her deposition,
27 which also caused Plaintiff to incur additional costs, and caused Plaintiff's counsel to spend
28 unnecessary time preparing for Defendant's deposition, twice. The lack of any type of testimony under
oath from Defendant prevented Plaintiff from addressing statements made in Defendant's recorded

1 statement or obtaining information from Defendant about the subject accident and relevant to
2 Plaintiff's claims.

3 **THE COURT FURTHER FINDS** that Defendant's Arbitration Brief consisted mainly of
4 attacks on Plaintiff's credibility, citing contradictions in Plaintiff's discovery responses and deposition
5 testimony. However, Defendant prevented Plaintiff from being able to conduct this type of analysis as
6 Defendant did not respond to interrogatories, did not appear for her deposition, and did not attend the
7 Arbitration hearing. Plaintiff had no opportunity to elicit any testimony from Defendant whatsoever.

8 **THE COURT FURTHER FINDS** that Defendant's Arbitration Brief explicitly called Plaintiff
9 a liar, stating [b]ecause he has lied and been evasive, and because his case is reliant on the credibility of
10 the oral representations made to his treatment providers. Therefore, testimony about the accident was a
11 necessary part of Plaintiff's case. However, Plaintiff did not have the ability to elicit testimony from
12 Defendant about the nature and extent of the impact, the speed at which she was traveling, whether she
13 applied the brakes, or whether Defendant herself sustained any injuries from the subject collision
14 so as to address the attacks on Plaintiff's testimony. Plaintiff was provided with Defendant's recorded
15 statement, but had no opportunity to obtain any testimony from Defendant under oath and did not have
16 the ability to cross-examine Defendant about the basis for her statements concerning Plaintiff's veracity
17 as contained in her brief.

18
19 **THE COURT THEREFORE FINDS** that Plaintiff's inability to conduct any discovery or
20 elicit any testimony from Defendant negatively impacted Plaintiff's case such that Defendant did not
21 meaningfully participate in the Arbitration proceedings resulting in bad faith participation.

22 There may be many valid reasons why a party would not wish to expend money at the
23 arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point
24 out discrepancies in a person's claim of injury without such testimony, or without presentation of
25 countervailing medical evidence. Gittings v. Hartz, 116 Nev. 386, 392, 996 P.2d 898, 902 (2000).

26 Defendant did not provide any expert testimony in support of her challenge to Plaintiff's
27 injuries and treatment. Defendant's Arbitration Brief called for the Arbitrator to make a "Common
28 Sense Evaluation" stating that "the arbitrator is not bound by case law to award Plaintiff his entire

1 claimed medical specials, merely because Defendant has not retained a medical expert at this juncture
2 of the case." (Defendant s Arbitration Brief, p. 6)

3 **THE COURT FURTHER FINDS** that standing alone, a lack of medical experts is not a
4 sufficient basis to strike a Request for Trial de Novo, however in this matter Plaintiff received no
5 discovery from Defendant. This left counsel's arguments in the late-filed Arbitration Brief as the only
6 evidence regarding Plaintiff's medical treatment contained in the proceedings record. Therefore,
7 although defense counsel argued that causation and damages were the only issues to be decided after
8 counsel conceded liability on the last day of discovery in order to avoid Defendant's re-noticed
9 deposition, Defendant produced no evidence during the Arbitration proceedings that provided a basis
10 for Plaintiff to ascertain what causation and damages defenses were being presented.

11 **THE COURT FURTHER FINDS** that Defendant's failure to oppose Plaintiff's Motion for
12 Attorney's Fees, Costs, and Interest provided further evidence to lack of meaningful participation in the
13 Arbitration proceeding. As a result, Defendant's failure to respond to Plaintiff's interrogatories and
14 requests for production, failure to appear for her deposition (twice), failure to present any expert
15 testimony to support the arguments about Plaintiff s medical treatment and damages, failure to appear
16 for the Arbitration Hearing, and failure to oppose Plaintiff's Motion for Attorney's Fees and Costs
17 demonstrate a pattern lacking meaningful participation in the Arbitration proceeding resulting in a lack
18 of a good faith defense of this case such that sanctions pursuant to NAR 22(A) are warranted.

19 **THE COURT FINDS** that Defendant VERONICA JAZMIN CASTILLO failed
20 to meaningfully participate in the Arbitration proceedings and failed to defend this case in good faith;
21 pursuant to NAR 22(A) such failure shall constitute a waiver of the right to trial de novo.
22

23 ///

24 ///

25 ///

26 ///

27 ///

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff Armando Pons-
2 Diaz' Motion to Strike Defendant's Request for Trial de Novo is hereby GRANTED.

3
4 DATED this _____ day of October, 2020.

Dated this 5th day of November, 2020

5
6 

7 **DISTRICT COURT JUDGE**

8 **DEA DAE CC53 BEFC**
9 **Kerry Earley**
 District Court Judge

10 Respectfully submitted by:

Approved as to Form and Content by:

11
12 /s/: Vernon Evans

NOT SIGNED

13 _____
14 **ERIC R. BLANK, ESQ.**
15 **VERNON EVANS, ESQ.**
16 **ERIC BLANK INJURY ATTORNEYS**
 7860 W. Sahara Avenue, Suite 110
 Las Vegas, Nevada 89117
 Attorney for Plaintiff

17 **TRAVIS AKIN, ESQ.**
18 **STORM LEGAL GROUP**
19 3057 E. Warm Springs Rd., Suite 400
20 Las Vegas, Nevada 89120
21 *Attorney for Defendant*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Armando Pons-Diaz, Plaintiff(s) | CASE NO: A-19-789525-C
7 vs. | DEPT. NO. Department 4
8 Veronica Castillo, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/5/2020

15 F. Kelly Cawley	kelly@cawleylaw.com
16 Eric Blank	service@ericblanklaw.com
17 Kristina Marzec	kmarzec@ericblanklaw.com
18 Kristin Orque	korque@purdyandanderson.com
19 Leslie Salas	lsalas@keyinsco.com
20 Travis Akin	TAkin@keyinsco.com
21 Star Farrow	Sfarrow@keyinsco.com

22
23
24
25
26
27
28

Negligence - Auto

COURT MINUTES

October 07, 2020

A-19-789525-C Armando Pons-Diaz, Plaintiff(s)
vs.
Veronica Castillo, Defendant(s)

October 07, 2020 03:00 AM Plaintiff Armando Pons-Diaz Motion to Strike Defendant's Request for Trial de Novo

HEARD BY: Earley, Kerry COURTROOM: Chambers

COURT CLERK: Garcia, Louisa

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

THIS MATTER came before the Court on Plaintiff Armando Pons-Diaz' Motion to Strike Defendant's Request for Trial de Novo, filed on July 23, 2020; the Opposition to Motion to Strike Defendant's Request for Trial de Novo, filed August 6, 2020; and Plaintiff's Reply filed on September 10, 2020.

THE COURT having reviewed the matter, including all points and authorities, and exhibits, and good cause appearing hereby GRANTS Plaintiff Armando Pons-Diaz Motion to Strike Defendant's Request for Trial de Novo, based on the following:

This matter arises out of a car accident that occurred on December 15, 2017. Plaintiff alleged that he was travelling southbound on Arville Street, attempting to make a right turn onto Spring Mountain Road when his vehicle was struck by Defendant's vehicle who failed to yield right of way to Plaintiff.

Plaintiff argues that Defendant failed participate in the Arbitration proceedings in good faith because Defendant failed to participate in discovery during the Arbitration phase, failed to produce documents in discovery, failed to respond to Plaintiff's Interrogatories and Requests for Production, and failed to appear at her deposition which was re-scheduled twice due to defense counsel's inability to locate defendant.

Plaintiff further argues Defendant failed to timely serve her Arbitration brief. The Arbitration Hearing in this matter was originally scheduled for March 19, 2020, and Plaintiff served his Arbitration Brief on March 13, 2020, in accordance with the Arbitration Discovery Order. The Arbitration Hearing was rescheduled due to COVID-19 and defense counsel's firm having technology issues preventing a telephonic Arbitration Hearing. Plaintiff argues that Defendant failed to serve an Arbitration Brief in March, and although she benefitted from the hearing being re-scheduled to May, Defendant failed to serve a timely brief because it was not served until May 11, 2020, the eve before the May 12, 2020 Arbitration Hearing. The Notice of Change of Arbitration Hearing Date/Time stated that the Arbitration Brief was due by May 7, 2020.

Moreover, Plaintiff argues that Defendant did not attend the Arbitration Hearing, and did not oppose Plaintiff's Motion for Costs, Interest, and Attorney's fees. Last, Plaintiff argues that the decision to request a Trial de Novo rests solely with the client and defense counsel has not

communicated with Defendant throughout the litigation thereby indicating that Defendant did not authorize the filing of the Request for Trial de Novo.

In Defendant's opposition, defense counsel concedes that he was unsuccessful in communicating with Defendant and as a result could not respond to Plaintiff's interrogatories. Defendant argues that Defendant's participation at the Arbitration Hearing was not necessary because duty and breach were conceded and the only issues that remained were causation and damages, and the Defendant has a right to a civil jury trial under the Nevada Constitution.

NAR 18 allows a party to file a request for trial de novo within 30 days after the arbitration award is served upon the parties. The party requesting trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (C) Rule 18.

Here, the Arbitration Award was entered on June 1, 2020. Defendant's Request for Trial de Novo was filed on June 30, 2020 and contained the certification statement. Therefore, THE COURT FINDS that Defendant's Request for Trial de Novo was timely.

NAR 22(A) states that the failure of a party or an attorney to defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo.

The Nevada Supreme Court has held that all sanctioning orders under NAR 22(A) must be accompanied by specific written findings of fact and conclusions of law describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation. *Chamberland v. Labarbera*, 110 Nev. 701, 705, 877 P.2d 523, 525 (1994).

The Nevada Supreme Court has stated that although the Nevada Constitution provides a litigant with the right to a jury trial in civil proceedings. Nev. Const. art. 1, § 3, this right can be waived by various means prescribed by law. One of those means is NAR 22, which states that the district court may sanction an arbitration participant by striking a request for a trial de novo if the participant has not acted in good faith. *Gittings v. Hartz*, 116 Nev. 386, 390, 996 P.2d 898, 900 (2000).

The Nevada Supreme Court has equated good faith with meaningful participation in the arbitration proceedings. *Gittings*, 116 Nev. at 390, citing *Casino Properties, Inc. v. Andrews*, 112 Nev. 132, 135, 911 P.2d 1181, 1182 (1996). However, the mere failure of a party to attend or call witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation. *Id.* at 392. It is the substance of the arbitration that is important in determining the good faith of the participants. *Gittings v. Hartz*, 116 Nev. 386, 393, 996 P.2d 898, 902 (2000).

A party's failure to respond to interrogatories and requests for production, or otherwise fail to participate in discovery may be grounds for striking a trial de novo request if the failure to provide the requested discovery had an impact on the arbitration proceedings or Plaintiff's ability to present their case. *Bakke v. Am. Family Mut. Ins. Co.*, No. 75342-COA, 2019 WL 6003341, at *2 (Nev. App. Nov. 13, 2019).

Plaintiff argued that he was prohibited from properly preparing for the Arbitration and from preparing for the numerous personal attacks contained in Defendant's Arbitration Brief, which was filed the day before the re-scheduled Arbitration Hearing. Plaintiff further stated that he was not able to fully prosecute his case due to Defendant's absence.

THE COURT FINDS that Defendant failed to respond to interrogatories, requests for production, or appear at her deposition, which was noticed twice.

THE COURT FURTHER FINDS that Defendant failed to produce any of the documents requested by Plaintiff during discovery.

Therefore, THE COURT FINDS the Defendant's failure to participate in discovery and failure to provide the requested discovery had a negative impact on Plaintiff's ability to adequately prepare for the arbitration proceedings and on Plaintiff's ability to present his case.

The original Arbitration Hearing was scheduled for March 19, 2020. Defendant's deposition had been re-set to March 4, 2020, the last day of discovery, due to Defendant's failure to appear at the first scheduled deposition based on counsel's inability to communicate with Defendant. On March 3, 2020, the day before Defendant's second deposition and nearly two weeks before the Arbitration Hearing, defense counsel's office emailed plaintiff's counsel stating we have been unsuccessful at reaching our client. Therefore we want to cancel the depo and will concede liability. Please cancel the deposition. Thank you.

Moreover, Defendant's Arbitration Brief stated that it was anticipated that the named Parties will testify at the arbitration hearing. (Id. at p. 7). However, Defendant did not appear at the Arbitration Hearing.

THE COURT FINDS that defense counsel's last minute concession of liability on the last day of discovery as a means to vacate the deposition of Defendant, who had already failed to respond to Plaintiff's discovery requests caused unnecessary burden and expense to Plaintiff. Plaintiff was unable to adequately conduct discovery due to Defendant's failure to respond to interrogatories and requests for production. This was exacerbated by Defendant's failure to appear for her deposition, which also caused Plaintiff to incur additional costs, and caused Plaintiff's counsel to spend unnecessary time preparing for Defendant's deposition, twice. The lack of any type of testimony under oath from Defendant prevented Plaintiff from addressing statements made in Defendant's recorded statement or obtaining information from Defendant about the subject accident and relevant to Plaintiff's claims.

THE COURT FURTHER FINDS that Defendant's Arbitration Brief consisted mainly of attacks on Plaintiff's credibility citing contradictions in Plaintiff's discovery responses and deposition testimony. However, Defendant prevented Plaintiff from being able to conduct this type of analysis as Defendant did not respond to interrogatories, did not appear for her deposition, and did not attend the Arbitration hearing. Plaintiff had no opportunity to elicit any testimony from Defendant whatsoever.

THE COURT FURTHER FINDS that Defendant's Arbitration Brief explicitly called Plaintiff a liar stating [b]ecause he has lied and been evasive, and because his case is reliant on the credibility of the oral representations made to his treatment providers. Therefore, testimony about the accident was a necessary part of Plaintiff's case. However, Plaintiff did not have the ability to elicit testimony from Defendant about the nature and extent of the impact, the speed at which she was traveling, whether she applied the brakes, or whether Defendant herself sustained any injuries from the subject collision so as to address the attacks on Plaintiff's testimony. Plaintiff was provided with Defendant's recorded statement, but had no opportunity to obtain any testimony from Defendant under oath and did not have the ability to cross-examine Defendant about the basis for her statements concerning Plaintiff's veracity as contained in her brief.

Therefore, THE COURT FINDS that Plaintiff's inability to conduct any discovery or elicit any testimony from Defendant negatively impacted Plaintiff's case such that Defendant did not meaningfully participate in the Arbitration proceedings resulting in bad faith participation.

There may be many valid reasons why a party would not wish to expend money at the

arbitration stage of a case on medical experts. Effective cross-examination may be sufficient to point out discrepancies in a person's claim of injury without such testimony, or without presentation of countervailing medical evidence. *Gittings v. Hartz*, 116 Nev. 386, 392, 996 P.2d 898, 902 (2000)

Defendant did not provide any expert testimony in support of her challenge to Plaintiff's injuries and treatment. Defendant's Arbitration Brief called for the Arbitrator to make a "Common Sense Evaluation" stating that "the arbitrator is not bound by case law to award Plaintiff his entire claimed medical specials, merely because Defendant has not retained a medical expert at this juncture of the case." (Defendant's Arbitration Brief, p. 6).

THE COURT FURTHER FINDS that although standing alone a lack of medical experts is not a sufficient basis to strike a Request for Trial de Novo, in this matter Plaintiff received no discovery from Defendant leaving counsel's arguments in the late-filed Arbitration Brief as the only evidence regarding Plaintiff's medical treatment contained in the proceedings record. Therefore, although defense counsel argued that causation and damages were the only issues to be decided after counsel conceded liability on the last day of discovery in order to avoid Defendant's re-noticed deposition, Defendant produced no evidence during the Arbitration proceedings that provided a basis for Plaintiff to ascertain what causation and damages defenses were being presented.

THE COURT FURTHER FINDS that Defendant's failure to oppose Plaintiff's Motion for Attorney's Fees, Costs, and Interest provided further evidence to lack of meaningful participation in the Arbitration proceedings.

As a result, Defendant's failure to respond to Plaintiff's interrogatories and requests for production, failure to appear for her deposition (twice), failure to present any expert testimony to support the arguments about Plaintiff's medical treatment and damages, failure to appear for the Arbitration Hearing, and failure to oppose Plaintiff's Motion for Attorney's Fees and Costs demonstrate a pattern lacking meaningful participation in the Arbitration proceeding resulting in a lack of a good faith defense of this case such that sanctions pursuant to NAR 22(A) are warranted.

Based on the foregoing, THE COURT FINDS that Defendant VERONICA JAZMIN CASTILLO failed to meaningfully participate in the Arbitration proceedings and failed to defend this case in good faith; pursuant to NAR 22(A) such failure shall constitute a waiver of the right to trial de novo.

Therefore, Plaintiff Armando Pons-Diaz' Motion to Strike Defendant's Request for Trial de Novo is hereby GRANTED.

Plaintiff's counsel is to prepare the Order in accordance with this Minute Order pursuant to EDCR 7.21 and in compliance with Administrative Order 20-17.

****CLERK'S NOTE:** This Minute Order has been electronically served to all registered parties for Odyssey File & Serve.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

RYAN M. VENCI, ESQ.
3037 E. WWARM SPRINGS RD., SUITE 300
LAS VEGAS, NV 89120

DATE: December 24, 2020
CASE: A-19-789525-C

RE CASE: ARMANDO PONS-DIAZ vs. VERONICA JAZMIN CASTILLO

NOTICE OF APPEAL FILED: December 23, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order *re: Judgment on Arbitration Award filed November 24, 2020*

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; JUDGMENT ON ARBITRATION AWARD; ORDER;
NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ARMANDO PONS-DIAZ,

Plaintiff(s),

vs.

VERONICA JAZMIN CASTILLO,

Defendant(s),

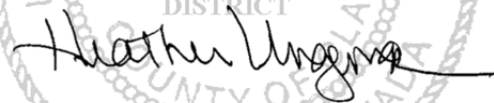
Case No: A-19-789525-C

Dept No: IV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 24 day of December 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk