

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**SELECTBUILD NEVADA, INC., a wholly owned subsidiary of
SELECTBUILD CONSTRUCTION, INC., a wholly owned subsidiary of
BUILDING MATERIALS HOLDING CORPORATION,
Debtors-in-Possession**

and

**Cases 28-CA-22242
28-CA-22364
28-CA-22529**

**LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA**

OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

On September 30, 2009,¹ a Consolidated Complaint and Notice of Hearing (the Complaint) issued in the above-captioned cases. The Complaint was captioned as above and described Respondent "by its correct name, SelectBuild Nevada, Inc., a wholly owned subsidiary of SelectBuild Construction, Inc., a wholly owned subsidiary of Building Materials Holding Corporation, Debtors-in-Possession, and herein called the Respondent." By a motion dated October 13 (the Motion), Building Materials Holding Corporation (BMH) and SelectBuild Construction, Inc. (SBC) move the Board to dismiss all claims against them. BMH and SBC misconstrue the Complaint and claim status as party respondents when such status does not exist. The Motion should be dismissed.

The Complaint correctly described SelectBuild Nevada, Inc. as a wholly owned subsidiary of SBC. The Complaint correctly described SBC as a wholly owned subsidiary of BMH. BMH and SBC admit the same in the Motion at page 2. The Complaint also describes all three as Debtors-in-Possession. BMH and SBC admit this status in the

¹ All dates are in 2009.

Motion at page 1. Although the Complaint caption describes all three as Respondent, there is no allegation in the Complaint alleging BMH or SBC as Respondents. Likewise, there is no allegation at paragraph 2 of the Complaint showing jurisdictional information as to BMH or SBC.

From the mere description of Respondent, BMH and SBC incorrectly assert that they are parties to the Complaint that “should be dismissed from the above-captioned matter.” (Motion, p. 4.) As BMH and SBC correctly note, there was no charge filed alleging them as employers. These two entities are now seeking to create an issue where none exists. General Counsel merely sought in the Complaint to correctly describe the Respondent, including the fact that SelectBuild Nevada, Inc. was a wholly owned subsidiary of another entity that, in turn, was a wholly owned subsidiary of another entity, and that all three were Debtors-in-Possession. A mere description of a respondent without substantive allegations such as a single employer, alter ego or single integrated enterprise does not accord those described as respondents that must be dismissed or removed from the complaint. To accept the argument of BMH and SBC would require the removal of their description as Debtors-in-Possession.

The evidence General Counsel intends to offer at hearing will concern the actions of SelectBuild Nevada, Inc. as the employer of the alleged discriminatees and the alleged supervisors of these discriminatees. General Counsel does not intend to litigate the status of BMH or SBC in this proceeding. Their status would not be issues in this or any other proceeding, save for a compliance proceeding where General Counsel would be required to allege and prove that they were responsible for remedying any unfair labor practices committed by SelectBuild Nevada, Inc. if SelectBuild Nevada, Inc. failed to remedy

any unfair labor practices found. “[D]erivative liability for compliance with a judicially enforced unfair-labor-practice order may be imposed upon parties not themselves charged in the initial proceedings”² and may be litigated in the compliance stage of a proceeding.³

General Counsel has correctly described Respondent. This description does not make BMH or SBC respondents or parties to this proceeding. As such, General Counsel should not be required to change his description of Respondent or remove the names of BMH or SBC from his description. The Motion should be denied.

Dated at Las Vegas, Nevada, this 23rd day of October 2009.

/s/ Stephen E. Wamser

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² *NLRB v. C.C.C. Associates, Inc.*, 306 F.2d 534, 539 (2d Cir. 1962).

³ See *Brockway Motor Trucks*, 251 NLRB 29, 33, n. 19 (1980); *George Shearer Exhibitors Delivery Service*, 246 NLRB 416, n. 3 (1979). Although the Board’s Rules and Regulations do not expressly set out the appropriate procedure for pleading derivative liability at the compliance stage of a proceeding, the preferred procedure is to serve the allegations in the form of a backpay specification and notice of hearing. *F & F Construction Co., Inc.*, 269 NLRB 287, n. 5 (1984).

CERTIFICATE OF SERVICE

I hereby certify that a copy of OPPOSITION TO RESPONDENT'S MOTION TO DISMISS, in SELECTBUILD NEVADA, INC., a wholly owned subsidiary of SELECTBUILD CONSTRUCTION, INC., a wholly owned subsidiary of BUILDING MATERIALS HOLDING CORPORATION, Debtors-in-Possession, Cases 28-CA-22242 et al., was served by E-Gov, E-File, overnight delivery via federal express, and e-mail, on this 23rd day of October 2009, on the following:

Via E-Gov, E-File:

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