

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

D. R. HORTON, INC.

and

MICHAEL CUDA, an individual

NLRB Case No. 12-CA-25764

**CHARGING PARTY MICHAEL CUDA'S EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S DECISION**

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CHARGING PARTY MICHAEL CUDA'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE DECISION

Charging Party Michael Cuda submits these Exceptions to the ALJ's Decision ("ALJD"), in which the ALJ rejected the General Counsel's and Charging Party's theory of the case and refused to provide the relief that the General Counsel had previously requested under that theory. Charging Party is submitting these Exceptions now, because the General Counsel has only recently changed its position by filing a Reply Brief in Response to Answer to Exceptions in which the General Counsel sought a more limited remedy than the General Counsel – and the Charging Party – had previously sought from the ALJ.

Exception: The ALJ erred in concluding that respondent D.R. Horton's unilaterally imposed prohibition against joint, class, and collective actions in its mandatory arbitration agreement did not violate Section 7 and Section 8(a)(1) of the National Labor Relations Act. Section 7 protects workers' right to file and pursue class, collective, and joint actions to remedy workplace violations, and an employer who bars workers from filing or pursuing such actions violates Section 8(a)(1). Upon finding such a violation, as the facts establish in this case, the proper remedy is a cease and desist order precluding the employer from imposing or continuing in effect its unlawful prohibition against class, collective, and joint actions; rescission of the prohibition on joint, class, and collective actions; and notification to current and former employees that the prohibition has been rescinded and is void and of no effect.

In support of these Exceptions, the Charging Party incorporates by reference each of the arguments set forth in the amicus curiae brief of amici Service Employees International Union ("SEIU"), Alton Sanders, and Taylor Bayer, which amicus brief was submitted to the NLRB on

or about March 25, 2011, and was accepted for filing on or about May 18, 2011.

Conclusion

For the foregoing reasons, the Board should reverse the ALJ's decision regarding Sections 7 and 8(a)(1) and should hold that D.R. Horton's prohibition against all joint, class or collective actions in any forum unlawfully interferes, restrains, and coerces employees in the exercise of their Section 7 rights and violates Section 8(a)(1).

Dated: May 25, 2011

Respectfully submitted,

MORGAN & MORGAN

By: /s/ Carlos Leach
Carlos Leach
Counsel for Charging Party

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2011, the foregoing document

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