

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

D. R. HORTON, INC.)	
)	
and)	Case 12-CA-25764
)	
MICHAEL CUDA,)	
an Individual)	
)	

**RESPONDENT’S EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE’S DECISION**

D.R. Horton, Inc. (“Company”), Respondent herein, by its undersigned counsel and pursuant to the Board’s Rules, files the following Exceptions to the decision of Administrative Law Judge (“ALJ”) William N. Cates dated January 3, 2011.

1. The Company excepts to the ALJ’s statement that the issue before him on which he found against the Company is whether the Company’s arbitration agreements “lead employees reasonably to believe that they are barred or restricted from filing charges with the NLRB, thereby violating Section 8(a)(4) and (1)” (ALJD p.2, lines 8-10. As argued in the Company’s brief in support of these exceptions, filed contemporaneously herewith, the question whether the arbitration agreements violate Section 8(a)(4) and (1) involve additional factors than those identified by the ALJ.

2. The Company excepts to the ALJ’s failure to describe fully and accurately the provisions of the arbitration agreement that are relevant to the question whether the Company’s agreement restricts employee access to the Board and that the Company has violated Section 8(a)(4) and (1) of the Act by requiring employees to sign the agreement.

Thus, the ALJ's description of the agreement at p. 2 lines 25-30 of his Decision is incomplete. The complete agreement is in evidence as Joint Exhibit 2. In the Company's brief in support of these exceptions and in its post-hearing brief it filed with the ALJ, the Company identifies all of the language of the agreement that is relevant to this issue and argues from that language why the ALJ's conclusion that the Company has violated Section 8(a)(4) and (1) is erroneous. The Company takes exception to the ALJ's failure to consider all of the relevant language identified by the Company.

3. The Company excepts to the ALJ's failure to find that there is no evidence that the Company in fact ever took the position or disputed the right of employees to seek access to administrative agencies including the Board or ever took adverse action of any kind against employees for doing so, including the individual Charging Party in this case (see Tr. 36-37), notwithstanding the alleged unlawful scope of the arbitration agreement.

4. The Company excepts to the ALJ's reliance on U-Haul Co. of California, 347 NLRB 375 (2006) and Bill's Electric, 350 NLRB 292 (2007). See ALJD at p. 5 line 28 through p. 6 line 11. The ALJ should have found those cases to be distinguishable from the instant matter, as argued in the supporting brief filed herewith.

5. The Company excepts to the ALJ's finding (ALJD p. 6 lines 15-18) that employees would not understand that the arbitration agreement did not prevent them from filing charges with the Board and that the language of the agreement "would lead employees reasonably to believe they could not file charges with the Board."

6. The Company excepts to the ALJ's implicit finding (ALJD 20-24) that the language of the arbitration agreement may be ambiguous but that even so and if not followed the agreement still violates the Act.

7. The Company excepts to the ALJ's conclusions of law as erroneous and unsupported in fact and law (ALJD p. 6 lines 26-27, 34-38).

8. The Company excepts to the ALJ's remedy and order (ALJD p. 6 lines 40-43, p. 7 lines 3-42, p. 8 lines 1-5) in their entirety.

9. The Company excepts to the ALJ's conclusions, remedy, and order because they contravene the Federal Arbitration Act and cannot be enforced by this proceeding.

WHEREFORE, for the reasons stated herein and in Respondent's brief in support of exceptions filed contemporaneously herewith, Respondent prays that the Board dismiss the complaint herein in its entirety.

Respectfully submitted,



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