



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE GENERAL COUNSEL**  
Washington, D.C. 20570

December 31, 2013

Lyle W. Cayce  
Clerk United States Court of  
Appeals for the Fifth Circuit  
F. Edward Hebert Bldg.  
600 S. Maestri Place  
New Orleans, LA 70130-3408

Re: *D.R. Horton, Inc. v. NLRB*, 5th Cir. No. 12-60031

Dear Mr. Cayce:

On December 17, the Board submitted a proposed judgment in the above case pursuant to FRAP Rule 19. On December 27, petitioner's counsel submitted a counter-proposed judgment. The Board now responds to that counter-proposed judgment, and submits a modified proposed judgment for the Court that takes into account some, but not all, of petitioner's suggestions.

Specifically, the attached proposed judgment accomplishes the following:

1. It accepts petitioner's preference to be referred to, in short form, as "Horton" throughout the judgment.
2. Although the Board views it as unnecessary to the judgment, the attached proposed judgment accepts petitioner's desire that some reference to the Court's conclusions be stated in the opening of the second paragraph. However, petitioner's version, which was copied, in part, from the Opinion's section, "IV. Conclusion," is incomplete and misleading. Thus, if the Court chooses to include a statement of the conclusions, the Board requests that the attached version be used, which follows verbatim the Opinion's complete sentences stating its two key conclusions.

Lyle W. Cayce  
Clerk United States Court of  
Appeals for the Fifth Circuit  
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Page two

3. Importantly, paragraph 2(c) of the attached proposed judgment restores the *complete* text of paragraph 2(c) of the Board's Order, as enforced by the Court. Petitioner's version deleted three significant portions of the Board's notice-posting remedy, none of which was sanctioned by the Court. Petitioner's version of that paragraph is unacceptable, and does not reflect the Court's opinion.
4. Finally, the attached proposed judgment corrects typographical errors that petitioner's version introduced, including correcting "placed" to read "places" in paragraph 2(c), and in the title of the notice to employees, correcting "Court of Appeal" to read "Court of Appeals."

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
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Washington, DC 20570  
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**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

D.R. HORTON, INCORPORATED

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

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\*  
\* No. 12-60031  
\*  
\*  
\* Board Case No.  
\* 12-CA-25764  
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**JUDGMENT**

Before: King, Southwick and Graves Circuit Judges

THIS CAUSE came to be heard upon a petition filed by the D.R. Horton, Inc. ("Horton") to review an Order of the National Labor Relations Board dated January 3, 2012, in Board Case No. 12-CA-25764, reported at 357 NLRB No. 184, and upon a cross-application for enforcement filed by the National Labor Relations Board to enforce said Order. The Court heard argument of the parties and has considered the briefs and agency record filed in this cause. On December 3, 2013, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of D.R. Horton, Inc. and granting in part the Board's cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Fifth Circuit that Horton's petition for review of the Board's decision invalidating the Mutual Arbitration Agreement's waiver of class procedures is GRANTED. It is further ORDERED AND ADJUDGED that the Board's order that Section 8(a)(1) has been violated because an employee would reasonably interpret the Mutual Arbitration Agreement as prohibiting the filing of a claim with the Board, is ENFORCED. Accordingly, Horton, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Maintaining a mandatory arbitration agreement that employees reasonably could believe bars or restricts their right to file charges with the National Labor Relations Board.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Rescind or revise the Mutual Arbitration Agreement to make it clear to employees that the agreement does not restrict employees' right to file charges with the National Labor Relations Board.
  - (b) Notify the employees of the rescinded or revised agreement, to include providing them a copy of the revised agreement or specific notification that the agreement has been rescinded.
  - (c) Within 14 days after service by the Region, post at its facility at Deerfield Beach, Florida, and any other facility where the Mutual Arbitration Agreement has been in effect, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by Horton's authorized representative, shall be posted by Horton and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if Horton customarily communicates with its employees by such means. Reasonable steps shall be taken by Horton to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Horton has gone out of business or closed the facility involved in these proceedings, Horton shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Horton any time since August 3, 2010.
  - (d) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Horton has taken to comply.

Mandate shall issue forthwith

ENTERED:

**NATIONAL LABOR RELATIONS BOARD**

**APPENDIX**

**NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory arbitration agreement that employees reasonably could believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL rescind or revise the Mutual Arbitration Agreement to make it clear to employees that the agreement does not restrict employees' right to file charges with the National Labor Relations Board.

WE WILL notify employees of the rescinded or revised agreement, including providing them with a copy of the revised agreement or specific notification that the agreement has been rescinded.

**D. R. HORTON, INC.**

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

D.R. HORTON, INCORPORATED	*
	*
Petitioner/Cross-Respondent	* No. 12-60031
	*
v.	*
	* Board Case No.
NATIONAL LABOR RELATIONS BOARD	* 12-CA-25764
	*
Respondent/Cross-Petitioner	*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1099 14th Street, NW  
Washington, DC 20570

Dated at Washington, D.C.  
this 31th day of December 2013