

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

SECURITY WALLS, LLC,

Respondent,

and

ORLANDO FRANCO,

An individual.

Case 28-CA-22483

**RESPONDENT'S STATEMENT OF CROSS-EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S
NOVEMBER 25, 2009 DECISION**

Pursuant to Section 102.46 (f)(1) of the Rules and Regulations of the National Labor Relations Board ("NLRB"), Respondent Security Walls, LLC ("Respondent") takes exceptions to the Decision of the Administrative Law Judge Margaret G. Brakebusch (the "ALJ"), dated November 25, 2009, in this matter, as follows¹.

1. To the ALJ's finding that there is nothing in Respondent's Restrictive Covenant Policy "that gives employees any assurances that the broad restrictions identified in the policy carve out or exclude discussions that would otherwise be protected by Section 7 of the Act." [ALJD at p. 19:12-14]

¹ Citations to Administrative Law Judge Margaret G. Brakebusch's November 25, 2009 Decision will in the form of "AJLD at p. ____."

2. To the ALJ's finding that there is nothing in Respondent's Restrictive Covenant Policy "that clearly explains that the restrictions apply only to 'legitimate business concerns' and not to their discussion of wages and other terms of employment that is protected." [ALJD at p. 19:14-17]

3. To the ALJ's finding that the Respondent's Restrictive Covenant Policy constitutes an "unqualified prohibition" on the rights of employees to engage in activity protected by the NLRA. [ALJD at p. 19:17]

4. To the ALJ's finding that the Respondent's Restrictive Covenant Policy contains a "written prohibition and clear warning of what will occur if an employee or former employee" breaches the covenant and engages in conduct protected by the NLRA. [ALJD at p. 19:33:36]

5. To the ALJ's finding that the language of Respondent's Restrictive Covenant Policy "does not contain a qualified prohibition and employees could easily construe the policy to prohibit their discussion of wages and other terms and conditions of employment as protected by the Act." [ALJD at p. 19:37:40]

6. To the ALJ's findings and conclusion that the language in Respondent's Restrictive Covenant Policy violates the NLRA. [ALJD at 19:40-42]

7. To the ALJ's failure to find the Restrictive Covenant Policy did not violate the NLRA in light of her statement that she had "no basis to conclude that the Respondent prepared [the Restrictive Covenant Policy] other than to safeguard the confidential information of its client and to protect itself from competitors." [ALJD at p. 19:37-39]

8. To the ALJ's failure to find that Respondent had a legitimate interest in maintaining confidentiality of information obtained during the context of a discrimination or harassment investigation. [ALJD at p. 20]

9. To the ALJ's finding that the purpose of the Respondent's confidentiality language on page 8 of its Employee Handbook was other than to protect both the victim and alleged perpetrator of a harassment complaint. [ALJD at p. 20]

10. To the ALJ's finding that the language on page 8 of the Employee Handbook precluded the victim or the alleged perpetrator of a harassment complaint from discussing the matter. [ALJD at p. 20:5-13]

11. To the ALJ's finding with respect to the language on page 8 of the Employee Handbook that "employees could easily construe the wording of Respondent's confidentiality rule as prohibiting discussions as guaranteed by their rights under Section 7 of the Act." [ALJD at p. 20:27-29]

12. To the ALJ's finding with respect to the language on page 8 of the Employee Handbook that "[t]here is no evidence of any extenuating circumstances that provide a substantial and legitimate business justification for the existing rule." [ALJD at p. 20:29-31]

13. To the ALJ's findings and conclusions that the language on page 8 of the Respondent's Employee Handbook violates the National Labor Relations Act. [ALJD at p. 20:31-32]

14. To the ALJ's conclusion that Respondent violated Section 8(a)(1) of the National Labor Relations Act "[b]y maintaining overly broad confidentiality rules

prohibiting employees from discussing wage rates, benefits, promotions, demotions, disciplinary actions, bonuses, or other terms and conditions of employment.” [ALJD at p. 21:6-9]

Dated: January 6, 2010.

Respectfully Submitted,
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