

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

FARKHAT SULTANOV, *Applicant*

vs.

**STELLA MOVING, LLC d/b/a STELLA MOVING COMPANY, willfully uninsured;
NURLAN NISHANBAYEV, an individual and substantial shareholder; ARSLAN
TURGANOV, an individual and substantial shareholder, *Defendants***

**Adjudication Number: ADJ15745100
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION AND/OR REMOVAL**

We have considered the allegations of the Petition for Reconsideration and/or Removal, the Answer, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny the petition.

We emphasize that the WCJ's findings came after extended proceedings where the WCJ had the opportunity to observe the demeanor of the witnesses to assess their credibility. (See *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's findings. (*Id.*)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration and/or Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 13, 2024

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**GRAIWER & KAPLAN
KWAN & ASSOCIATES
PEARLMAN, BROWN & WAX
OD LEGAL**

AW/pm

*I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this
date. o.o*

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

INTRODUCTION:

On April 15, 2024, Defendant filed a timely verified Petition for Reconsideration of the Findings of Fact and Order dated March 25, 2024. The Defendant contends Arslan Turganov is not liable for the injury and liability falls solely on Nurlan Nishanbayev.

STATEMENT OF RELEVANT FACTS:

Applicant alleged employment with all or any of the following: Stella Moving, LLC, a California Limited Liability Company; Nurlan Nishanbayev, an individual; and, Arslan Turganov, an individual. All of the listed entities denied employment. On March 25, 2024, the undersigned WCJ issued Findings of Fact. The court found Stella Moving, LLC, Nuran Nishanbayev as an individual and substantial shareholder, Arslan Turganov as an individual and substantial shareholder are jointly and severally liable for past and future expenses in this matter until the industrial nature of the injury is determined. It is from the finding that Arslan Turganov has joint and several liability that Defendant Arslan Turganov seeks relief.

DISCUSSION

RECONSIDERATION IS THE APPROPRIATE REMEDY

The finding of liability and employment is a “final” decision. Reconsideration is the appropriate remedy.

APPLICANT WAS AN EMPLOYEE OF STELLA MOVING, LLC DOING BUSINESS AS STELLA MOVING COMPANY

The fictitious name record confirms that Stella Moving LLC did create a dba called Stella Moving Company. (Exhibit C.) Stella Moving Company and Stella Moving LLC are the same entity. Applicant had his picture on Yelp for Stella Moving. (Minutes of Hearing (Further) and Summary of Evidence dated November 14, 2023 at 3:19.) Applicant was paid via Zelle out of a Stella Moving Bank Account, not out of Nurlan Nishanbayev’s personal account. (Further Minutes of Hearing and Summary of Evidence dated January 16, 2024 at 5:6.) The bank statement from which Applicant was paid was put into evidence. (Exhibit 1.) Reviewing the statement, it appears

to be small business petty case account with expenses paid to gas stations, motel rooms and fast food. The deposits were small to refill the petty cash. There are no rent payments, utility bills, department stores, medical co-payments or anything else one would make this a personal account. After a brief recess and speaking with his attorney, Nurlan Nishanbayev credibly testified “We hired Applicant as an employee, yes.” (Minutes of Hearing (Further) and Summary of Evidence dated November 14, 2023 at 6:7.) At the next trial date, Nurlan Nishanbayev clarified his statement and said he meant Stella Moving, LLC, hired the Applicant. (Further Minutes of Hearing and Summary of Evidence dated January 16, 2024 at 5:21.) The court found Nurlan Nishanbayev testimony credible and persuasive. The undersigned WCJ found Stella Moving LLC doing business as Stella Moving Company was Applicant’s employer. NEITHER NURLAN NISHANBAYEV NOR ARSLAN TURGANOV INTEREST IN THE STELLA MOVING LLC WERE TERMINATED.

An LLC’s operating agreement may provide for termination in whole or part of membership interests and transferable interests. If a transferable interest is so terminated, the member is entitled to demand and receive a return of that member’s contribution. On termination of a membership interest, the LLC must amend its current list of members. (Cal Corp Code § 17701.13(d).) There are no statutory default provisions regarding termination of membership or transferable interests. In this case, Arslan Turganov credibly testified that today, he continues to own 49% of Stella Moving LLC. (Minutes of Hearing (Further) and Summary of Evidence dated March 19, 2024 at 4:10.) Nurlan Nishanbayev credibly testified that he owned 51% of Stella Moving, LLC. (Minutes of Hearing (Further) and Summary of Evidence dated January 16, 2024 at 5:21.) There was no evidence submitted that either Arslan Turganov or Nurlan Nishanbayev were removed from the list of LLC members and their testimony confirms they were not removed as members of the LLC.

STELLA MOVING LLC WAS NEVER DISSOLVED

The first step in the voluntary dissolution of a corporation is the obtaining of the vote or written consent of shareholders with 50 percent or more of the voting power. (Cal Corp Code § 1900.) Voluntary proceedings to wind up the corporation commence on obtaining the required shareholder approval, or on the vote of the directors, and the corporation must cease to carry on its business except to the extent necessary for winding up and to preserve its goodwill and the going-concern value of its assets. (Cal Corp Code § 1903(a) & (c).) In this case, no evidence was

presented that Stella Moving LLC was voluntarily dissolved. There is a lawsuit pending regarding dissolution of the LLC. (Minutes of Hearing (Further) and Summary of Evidence dated March 19, 2024 at 4:5.) The Petition for Reconsiders states the suit was filed in May 2021 to split Stella Moving, LLC. (Petition for Reconsideration dated April 15, 2024 at 5:15.) If Arslan Turganov is successful in his suit to dissolve the LLC nunc pro tunc to a date prior to the date of Applicant's injury, he will be able to seek reimbursement of expenses in this court or seek arbitration for contribution. Arslan Turganov rights to seek indemnity from Nurlan Nishanbayev are preserved. The Applicant's need for a determination of the industrial nature of his accident in a company vehicle while returning the vehicle to the company lot after a job, outweighs the time it shall take to resolve the civil suit.

ARSLAN TURGANOV IS THE PROPER PARTY TO ADMINSTRATE THE BENEFITS

“In 2019, the business had a bank account at US Bank. The bank account was opened in Arslan's name, and the Witness was added as an authorized signer. It was done that way because Arslan had a better command of English and a Social Security Number.” When Mr. Turganov requested that the LLC be dissolved, Nurlan Nishanbayev felt threatened and immediately drove to San Diego, When Nurlan got to San Diego he took the documents and left. (Minutes of Hearing and Summary of Evidence dated January 16, 2024 at 4:2.) Mr. Turganov had the business acumen to originally purchase Workers' Compensation. (Exhibit I)

Mr. Turganov had the foresight to know the business could not afford the premiums and made a conscious decision not to replace the cancelled policy. Nurlan seemed to be a hard worker with a touch of impulsive behavior. Mr. Turganov is a more mature business orientate person that is more likely to keep a good accounting of the money spent on the Workers Compensation case. Therefore, Mr. Turganov is the appropriate choice to administrate the benefits. If the benefits are not properly administrated, UEBTF will have to take over administration with the associated penalties to Mr. Turganov and Mr. Nishanbayev.

RECOMMENDATION:

Defendant's Petition for Reconsideration filed April 15, 2024 should be denied.

Date: April 22, 2024

M. Victor Bushin
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE