

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

10-16-2014

### Summary of D.R. Horton v. Betsinger, 130 Nev. Adv. Op. 84

Gil Kahn

*Nevada Law Journal*

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Civil Procedure Commons](#), and the [Legal Remedies Commons](#)

---

#### Recommended Citation

Kahn, Gil, "Summary of D.R. Horton v. Betsinger, 130 Nev. Adv. Op. 84" (2014). *Nevada Supreme Court Summaries*. 828.

<https://scholars.law.unlv.edu/nvscs/828>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

## PUNITIVE DAMAGES: REMAND, AWARD, LIABILITY

### **Summary**

The Court determined that even when a case is remanded only in order for a trier of fact to determine the amount of punitive damages, NRS 42.005(3) requires that same trier of fact to first determine whether such damages are warranted.

### **Background**

Steven Betsinger sued D.R. Horton, Inc., and DHI Mortgage Ltd., claiming fraud and deceptive trade practices. A jury found in favor of Betsinger and awarded him actual damages, emotional distress damages, and punitive damages. In the first appeal (*Betsinger I*)<sup>2</sup>, the Court reversed the emotional distress damages. The Court, however, declined to reduce punitive damages, concluding it could not determine what amount the jury would have awarded for such damages based on the now lowered damages total. The Court therefore remanded the case to determine punitive damages.

On remand, a question arose whether the new jury only needed to determine the amount of punitive damages or if it first needed to consider whether DHI Mortgage was liable for such damages. The district court ultimately instructed the jury only to determine “what amount, if any, Mr. Betsinger is entitled to for punitive damages.” Consequently, the jury awarded Betsinger a new punitive damages award. D.R. Horton and DHI Mortgage appealed, and Betsinger cross-appealed.

### **Discussion**

*NRS 42.005(3) requires the same fact-finder to determine whether liability exists for punitive damages and, if so, the amount of damages*

The Court remanded the matter for a second time, concluding that even when it remands a case in order for a fact-finder to set the *amount* of punitive damages, that same fact-finder must first determine whether such damages are warranted. NRS 42.005 governs the awarding of punitive damages. Subsection 1 defines requirements for punitive demands: “clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.” Under subsection 3, if the trier of fact decides to award such damages, “a subsequent proceeding must be conducted *before the same trier of fact to determine the amount*” of the damages.<sup>3</sup>

DHI Mortgage argued NRS 42.005(3) unambiguously required the same jury to determine a defendant’s liability for punitive damages and if applicable, the award amount. The company therefore contended that the district court erred in instructing the jury only to determine the amount of damages. In response, Betsinger argued that the statute’s “same trier of fact”

---

<sup>1</sup> By Gil Kahn.

<sup>2</sup> *Betsinger v. D.R. Horton, Inc. (Betsinger I)*, 126 Nev. 162, 232 P.3d 433 (2010).

<sup>3</sup> Emphases added.

requirement should not apply to cases on remand. He asserted that applying DHI Mortgage's interpretation would effectively result in a new trial for the company on the issue of fraud.

The Court, however, declined to look beyond the statute's plain language, determining that the text was clear on its face. Thus, the phrase "before the same trier fact," indicates that the same trier of fact must determine whether punitive damages are applicable and if so, the amount of such damages. The Court rejected Betsinger's argument that the application of NRS 42.005(3) would result in retrial, because in order to determine punitive damages, there was no reason to re-litigate issues concerning the other compensatory damages the Court previously affirmed.

Therefore, when the fact-finder must determine the amount of punitive damages on remand, NRS 42.005(3) requires that same fact-finder to first determine whether such damages are warranted under NRS 42.005(1) (i.e., whether there is clear and convincing evidence of a defendant's oppression, fraud, or malice). Although the district court's instruction permitted the jury to award no punitive damages, the instruction did not require the jury to first make the liability determination.

### *Attorney fees*

The Court affirmed the district court's denial of D.R. Horton's post-remittitur motion for attorney fees. Under the offer judgment rule, D.R. Horton was only able to seek such fees after the Court lowered compensatory damages in *Betsinger I* to an amount less than the company's pretrial offer of judgment to Betsinger. Nevertheless, the company waited nine months to file its motion. Therefore, the district court did not abuse its discretion in finding the delay unreasonable and denying the motion.

### **Conclusion**

The jury instruction on remand did not comply with NRS 42.005(3), because it only tasked the second jury with determining the amount of punitive damages without first asking the same jury to determine whether such damages were warranted. Additionally, the Court found that the district court did not abuse its discretion in denying D.R. Horton's motion for attorney fees, due to the company's nine-month delay in filing the motion. Accordingly, the Court affirmed the district's court denial of the motion but reversed the district court's punitive damages award and remanded for a new trial on this issue.