

FILED

DEC 06 2019

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ERIC GIL,

Complainant,

v.

CITY OF LAS VEGAS,

Respondent.

Case No. 2019-020

NOTICE OF ENTRY OF ORDER

PANEL A

ITEM NO. 852

TO: Complainants and their attorneys of record Adam Levine, Esq. and the Law Office of Daniel Marks.

TO: Respondent and their attorneys of record Morgan Davis, Chief Deputy City Attorney, James B. Lewis, Deputy City Attorney and the Las Vegas City Attorney's Office.

PLEASE TAKE NOTICE that the **ORDER ON RESPONDENT'S MOTION TO DISMISS COMPLAINT** was entered on the 5th day of December 2019, a copy of which is attached hereto.

DATED this 6th day of December 2019.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 

MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 6th day of December 2019, I served a copy of the foregoing NOTICE OF ENTRY OF ORDER by mailing a copy thereof, postage prepaid to:

Morgan Davis
Chief Deputy City Attorney
James B. Lewis
Deputy City Attorney
City of Las Vegas
495 S. Main Street, Sixth Floor
Las Vegas, NV 89101

Law Office of Daniel Marks
Daniel Marks, Esq.
Adam Levine, Esq.
610 South Ninth Street
Las Vegas, NV 89101



MARSU ROMUALDEZ ABELLAR
Executive Assistant

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Case No. 2019-020

**ORDER ON RESPONDENT'S MOTION
TO DISMISS COMPLAINT**

PANEL A

ITEM NO. 852

On December 5, 2019, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"); NAC Chapter 288 and NRS Chapter 233B. At issue was Respondent, the City of Las Vegas' (the "City") Motion to Dismiss the Complaint.

The City argues that the statute of limitations prevents this case from going forward. In Opposition, Complainant argues that his Complaint is not time-barred. Specifically, our Supreme Court has determined that NRS 288.110(4) is subject to the doctrine of equitable tolling. Time limitations are not triggered until the victim receives unequivocal notice of a final decision. *City of N. Las Vegas v. EMRB*, 127 Nev. 631, 639, 261 P.3d 1071, 1076-77 (2011). Indeed, "equitable tolling 'focuses on 'whether there was excusable delay by the plaintiff: If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs.'" *Id.* at 640. "[T]he following factors, among any other relevant considerations, should be analyzed when determining whether equitable tolling will apply: the claimant's diligence, knowledge of the relevant facts, reliance on misleading authoritative agency statements and/or misleading employer conduct, and any prejudice to the employer." *Id.*

As there are factual allegations in dispute it would not be appropriate to resolve this issue on a motion to dismiss. *See, e.g., Bantz v. Washoe County Sch. Dist.*, Item No. 832, Case No. 2017-028

1 (2018); *Woodward v. Spark Police Protective Ass'n*, Case No. 2018-026 (2019). The Board determines
2 that an evidentiary hearing is required in order to determine the issues presented including the proper
3 submission and presentation of evidence as well as credibility determinations in accordance with NRS
4 and NAC 288. A bifurcated hearing is clearly necessary (with the hearing on the applicability of
5 equitable tolling occurring first) to lessen costs, expedite the matter, avoid prejudice, and in the
6 furtherance of convenience.

7 In the alternative, the City moved for a more definite statement. NAC 288.200 requires certain
8 pleading standards which are liberally construed and may be disregarded if any defect does not affect
9 the substantial rights of a party. NAC 288.235. The Board denies the motion for a more definite
10 statement at this time but without prejudice to the City's right to refile once the first stage of the
11 bifurcated hearing has been completed.

12 IT IS, THEREFORE, ORDERED that the Motion to Dismiss the Complaint IS DENIED.

13 IT IS FURTHER ORDERED that the matter be BIFURCATED with the hearing on the
14 applicability of equitable tolling occurring first. The Board directs the Commissioner to set the matter
15 for hearing. Either party may file an objection to the bifurcation within 10 days of the date of this order
16 should it feel such bifurcation is not appropriate, including its reasons and support for such an
17 objection.

18 Dated this 5th day of December 2019.

19 GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 By: 
22 BRENT C. ECKERSLEY, ESQ., Chair
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