

1 working in the local construction industry. After specializing in siding for ten years, Bogdan
2 started Benjamin Custom Homes in 2009, which focused on the construction of high-end
3 modern homes. In 2013 Bogdan changed the name of Benjamin Custom Homes to
4 Petitioner Barcelo Homes, Inc. (“Barcelo”). It is undisputed that at all times Barcelo has
5 been owned solely by Bogdan.
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7 Nadia was an employee of Barcelo through 2019. She handled most permitting and
8 some bookkeeping responsibilities for Barcelo during this period. It is undisputed that at
9 no time did Nadia have any involvement with Barcelo’s actual construction activities.

10 Including its time as Benjamin Custom Homes, Barcelo has now built over 150
11 homes—including at least six on Mercer Island—and two commercial buildings. The
12 testimony at the hearing confirmed that Barcelo had never received a stop-work order from
13 any municipality during any of this construction until the construction of a home on 9104
14 SE 50th Street in 2018.

15 Petitioner Nadia Maksimchuk founded Petitioner Premium Homes of Mercer Island
16 LLC (“Premium Homes”) in 2014 with the goal of starting an independent business
17 separate from her husband that focused on remodeling and reselling homes on Mercer
18 Island. But those plans were delayed for the next five years, as Nadia focused on other
19 business and raising her and Bogdan’s five children. Nadia and Bogdan testified that
20 neither Bogdan nor Barcelo has ever had any involvement or interest in Premium Homes,
21 and the City did not produce any evidence showing that Bogdan or Barcelo ever had any
22 involvement or interest in Premium Homes.
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24 In 2019, Nadia and Bogdan agreed that Nadia would cease her employment
25 Barcelo and focus on the remodeling and reselling homes through Premium Homes.²
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² As testified to by Bogdan, Barcelo was changing or expanding its focus from high-end modern “spec” homes.

1 Accordingly, her employment with Barcelo ceased in late 2019, though, as she testified,
2 she sometimes provides advice or testimony regarding matters she was involved in while
3 she was an employee.
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5 Premium Homes purchased the Property along with another property in August
6 2020 as part of Nadia's plan to pursue a separate business from her husband.³

7 Bogdan testified he may have visited the Property while it was listed for sale. Both
8 Nadia and Bogdan testified that neither Bogdan nor anyone from Barcelo has been on the
9 Property since Premium Homes' purchase of the property on August 26, 2020. The City
10 claimed that the presence of a Barcelo Homes trailer proved that Barcelo was somehow
11 involved with the Property, but Nadia testified, and Exhibit 1001 confirms, that Premium
12 Homes leased this trailer from Barcelo to work on various Premium Homes' projects,
13 including the Property.
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15 II. Stop Work Order

16 This appeal involves a Notice of Violation issued regarding the removal of a chimney in
17 October 2020; the construction of a roof over a second-story deck (observed January 8,
18 2021); and the alleged construction of a main floor addition (allegedly observed January
19 27, 2021).

20 Nadia testified the roof of the Property was leaking and needed to be replaced,⁴ and in
21 order to do that the above-roof portion of a small, free-standing (not attached to trusses)
22 chimney that served no purpose (it apparently was related to a prior heating system for
23 that part of the home) needed to be removed. This was done on October 12, 2020. Contrary
24 to the City's representations, this work was not done by Barcelo. Rather, as noted above,
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26 ³ In November 1999, Barcelo also deeded 7216 93rd Ave. SE to Premium Homes.

⁴ Mr. Cole also observed the roof problems during an October 2020 site visit.

1 Premium Homes rented a work trailer from Barcelo to assist in the work.⁵ Also, contrary to
2 other statements, the area of the home in question was very much part of the original home
3 and directly adjacent to a portion of the home with a glass ceiling (which was part of the
4 roof badly leaking), not an addition or free-standing structure. Premium Homes applied for
5 and was issued on November 16, 2020 a permit to replace the leaking roof.
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7 Following its purchase of the Property on August 26, 2020, Premium Homes hired an
8 architect and an engineer to develop plans for the remodel.⁶ These plans and an
9 application for a remodel permit were submitted to the City the first week of January 2021.
10 But the City professed to have multiple issues with the submission,⁷ and it was not formally
11 submitted until March 2, 2021;⁸ as Nadia testified there were no changes to these plans
12 during the two-month lull. In the meantime, Premium Homes replaced the roof once it had
13 the roof-replacement permit. When Premium Homes replaced the roof, it also constructed
14 the roof over the second-story deck called for in the plans submitted for the pending
15 remodel permit;⁹ it also replaced the leaking glass roof and adjusted the pitch of another
16 section of the roof in accordance with the roofer's recommendations. All of these changes
17 are plainly open and visible for inspection and are subject to the City's approval under the
18 plans that were first (unsuccessfully) submitted in early January—if the changes, all of which
19 are set forth in the plans, are not approved, Premium Homes will include significant costs
20 to revise the work that was already done. Simply put, there is zero evidence that Premium
21 Homes was trying to “get away” with making modifications without City approval. Indeed,
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24 ⁵ Ex. 1001.

25 ⁶ Ex. 1002.

26 ⁷ Ex. 1003.

⁸ Ex. 1004.

⁹ Ex. 1002.

1 the possible ramifications have and will cost Premium Homes considerably more than if it
2 had waited for City approval.

3 Additionally, and as the plans submitted to the City show, contrary to the City's
4 assertions, there is no planned addition on the Property as part of the remodel,¹⁰ and, as
5 Nadia testified, none has been built. Rather, there are only two changes to the original
6 footprint: the roof over the existing second-story deck, which was constructed when the
7 roof was replaced; and an enclosed connection between the existing home and garage,
8 which has yet to be constructed.
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10 No work has occurred on the Property since the roof was replaced on or about January
11 14, 2021. Again, there no evidence of any addition.

12 III. CALCULATION OF PENALTY

13 As plainly shown in the testimony and documentary evidence, Premium Homes has
14 never disputed that it removed the freestanding chimney in October 2012 and that it
15 constructed the roof over the second-story deck. It strongly disputes that an addition has
16 been constructed.
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18 There are multiple issues with the calculation of the penalty imposed by the Notice
19 of Violation.

20 First, the City seeks to impose penalties against Nadia and Bogdan individually as
21 well as Barcelo. This is highly improper. First, this is 2021, and a wife is no longer the
22 chattel of her husband.¹¹ While the City tried to make an issue out of the fact that there
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¹⁰ Ex. 1002.

¹¹ RCW 26.16.190

1 was no proof of spousal notifications,¹² that does not make Bogdan personally responsible
2 for Premium Homes' code violations or torts.

3 Second, the Property is owned solely by Premium Homes, a Washington LLC. The
4 testimony and exhibits show that Bogdan and Barcelo have no relationship to the Property
5 or Premium Homes. Moreover, pursuing Nadia individually for a violation made by Premium
6 Homes is directly contrary to Washington law:
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8 Disregarding the corporate form or "Piercing the corporate veil," is an
9 equitable remedy imposed only in exceptional circumstances. A plaintiff
10 seeking to impose direct shareholder liability must demonstrate that: (1) the
11 corporate form has been intentionally used to violate or to evade a duty; and
12 (2) disregard of the corporate form is necessary to prevent an unjustified
13 loss to the creditor. Piercing the corporate veil requires a showing of fraud or
14 abuse. Piercing the corporate veil also requires an "overt intention to
15 disregard the corporate entity by using it for an improper purpose."¹³

16 The City has made no showing whatsoever supporting piercing of the LLC veil.
17 Notably, Mr. Henderson and Mr. Cole testified that they were unaware of any other instance
18 where the City has pursued the individual owners of an entity or another entity with which
19 the entity these individual owners were affiliated when issuing a penalty.

20 The City attempts to use an application filed by an architect regarding another
21 property owned by Premium Homes, 7216 93rd Ave. SE, as proof that Barcelo and Premium
22 Homes are one and the same. Given the untimely submission, Premium Homes was
23 unable to call the architect in question to testify. But as Nadia testified, this was plainly a
24 mistake, likely due to the fact that the property was owned by Barcelo before November

24 ¹² As shown by Exhibit 1006 submitted after the hearing, Nadia and Bogdan did prepare spousal notifications
25 on April 8, 2021, though Bogdan did not remember that is what they were called when asked about them.
26 Exhibit 1006 was provided due to the unanticipated line of questioning and to demonstrate that Nadia
testified truthfully when she said that such notifications existed.

¹³ § 2:7. Piercing the corporate veil, 33 Wash. Prac., Wash. Construction Law Manual § 2:7 (2020-2021 ed.)
(internal citations omitted). See also RCW 26.16.190.

1 2019 and the architect's familiarity with Nadia in her prior position with Barcelo.
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7 Third, the City misuses prior violations by Barcelo and others to radically increase
8 the amount of the penalty on the basis that they are "repeated" violations:

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- 10 • CE20-0057: This Notice of Violation was issued solely to Barcelo *for the*
11 *same violations that are in this current Notice of Violation*. The City withdrew
12 the Notice of Violation after Barcelo pointed out it did not own or otherwise
13 have a relationship with the Property. In any event, using the CE 20-0057 as
14 a basis for increasing the penalty is double counting. Notably, Mr. Henderson
15 provided no justification for using this violation in support of the penalty.
 - 16 • CE18-0140: Barcelo purchased the property in question, 7223 93rd Ave. SE
17 on April 30, 2014 and sold it November 14, 2015.¹⁴ The Stop Work Order in
18 question was issued three years later, on November 21, 2018. While
19 subsequent litigation was filed by the owners in 2018 regarding a number of
20 imagined defects, it is undisputed that Premium Homes has never had any
21 relationship with the property.
 - 22 • CE19-0007 and CE19-0023: These alleged violations involved Barcelo on
23 property it owned at the time. Premium Homes had no involvement with the
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¹⁴ Petitioners' Exhibit _____.

1 property. CE19-0023 was also strongly disputed by Barcelo, but the City told
2 Barcelo—incorrectly, Barcelo believes—that it had no right to appeal.

- 3 • CE20-0017: Barcelo, Premium Homes, Bogdan, and Nadia have no interest
4 in the property in question. The owners are family members of Bogdan and
5 Nadia, and they asked Nadia to apply for a permit after receiving a stop-work
6 order in February 2020 while they were in California and unable to travel due
7 to Covid and pregnancy. As testified by Nadia, while she applied for the
8 permit under the correct owners name, she defaulted to putting Barcelo
9 down as the contractor, since that was what she always did But it is
10 undisputed that Barcelo has never done any work on the property, including
11 the work that apparently led to a later Notice of Violation. In any event, there
12 is no dispute that Premium Homes has no involvement with this property.
13 Indeed, Mr. Henderson testified that he is dealing directly with the property
14 owners regarding correction of the violation and that Nadia never responded
15 to his emails regarding the same.
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18 IV. CONCLUSION

19 The Notice of Violation and Penalty is based on incorrect facts and law. No penalty
20 should have been issued under the circumstances. To the extent the Hearing Examiner
21 believes a penalty is warranted, it should only be against Premium Homes and not include
22 any acceleration due to prior violations. In short, as found by Mr. Henderson himself, it
23 should be no more than \$4,444, and then only if the Hearing Examiner finds there was an
24 unpermitted addition.
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