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8 **BEFORE THE**
9 **REGISTRAR OF CONTRACTORS**
10 **CONTRACTORS' STATE LICENSE BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. N2013-275

12 **DARRYEL F. HIGGINBOTHAM**
13 **CONSTRUCTION**
14 **P.O. Box 161**
15 **Verdi, NV 89439**
16 **DARRYEL FRANKLIN HIGGINBOTHAM,**
17 **OWNER**

A C C U S A T I O N

16 **Contractor's License No. 525628, B, C-29**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Wood Robinson ("Complainant") brings this Accusation solely in his official capacity
21 as the Enforcement Supervisor I of the Contractors' State License Board ("Board"), Department
22 of Consumer Affairs.

23 2. On or about March 1, 1988, the Registrar of Contractors ("Registrar") issued
24 Contractor's License Number 525628, classification B (general building contractor), to Darryel
25 Franklin Higginbotham ("Respondent"), owner of Darryel F. Higginbotham Construction. On
26 August 6, 2009, Respondent was issued a C-29 (masonry) classification. On or about April 2,
27 2012, Theodore Franklin Higginbotham became the Responsible Managing Employee for an A
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1 (general engineering contractor) classification. On or about March 6, 2013, Theodore Franklin
2 Higginbotham disassociated and the A classification was removed from the license.
3 Respondent's contractor's license was in full force and effect at all times relevant to the charges
4 brought herein and will expire on March 31, 2014, unless renewed.

5 **JURISDICTION**

6 3. Business and Professions Code ("Code") section 7090 provides, in pertinent part, that
7 the Registrar may suspend or revoke any license if the licensee is guilty of or commits any one or
8 more of the acts or omissions constituting cause for disciplinary action.

9 4. Code section 7095 states, in pertinent part, that the Registrar in making his order may:

10 (a) Provide for the immediate complete suspension by the licensee of all operations as a
11 contractor during the period fixed by the decision;

12 (b) Permit the licensee to complete any or all contracts shown by competent evidence
13 taken at the hearing to be then uncompleted; and

14 (c) Impose upon the licensee compliance with such specific conditions as may be just in
15 connection with his operations as a contractor disclosed at the hearing, and may further provide
16 that until such conditions are complied with, no application for restoration of the suspended or
17 revoked license shall be accepted by the Registrar.

18 5. Code section 7097 states:

19 Notwithstanding the provisions of Sections 7121 and 7122, when any
20 license has been suspended by a decision of the registrar pursuant to an accusation or
21 pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any
22 additional license issued under this chapter [the Contractors' State License Law] in
23 the name of the licensee or for which the licensee furnished qualifying experience and
24 appearance under the provisions of Section 7068, may be suspended by the registrar
25 without further notice.

26 6. Code section 7098 states:

27 Notwithstanding the provisions of Sections 7121 and 7122, when any
28 license has been revoked under the provisions of this chapter [the Contractors' State
License Law], any additional license issued under this chapter in the name of the
licensee or for which the licensee furnished qualifying experience and appearance
under the provisions of Section 7068, may be revoked by the registrar without further
notice.

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1 7. Code section 7121 states, in pertinent part:

2 Any person who . . . has had his or her license revoked, or whose license
3 is under suspension, or who has failed to renew his or her license while it was under
4 suspension, or who has been a member, officer, director, or associate of any
5 partnership, corporation, firm, or association whose . . . license has been revoked, or
6 whose license is under suspension, or who has failed to renew a license while it was
7 under suspension, and while acting as a member, officer, director, or associate had
8 knowledge of or participated in any of the prohibited acts for which the license was
9 denied, suspended, or revoked, shall be prohibited from serving as an officer,
10 director, associate, partner, manager, qualifying individual, or member of the
11 personnel of record of a licensee, and the employment, election, or association of this
12 type of person by a licensee in any capacity other than as a nonsupervising bona fide
13 employee shall constitute grounds for disciplinary action.

9 8. Code section 7121.5 states:

10 Any person who was the qualifying individual on a revoked license, or of
11 a license under suspension, or of a license that was not renewed while it was under
12 suspension, shall be prohibited from serving as an officer, director, associate, partner,
13 or qualifying individual of a licensee, whether or not the individual had knowledge of
14 or participated in the prohibited acts or omissions for which the license was revoked,
15 or suspended, and the employment, election, or association of such person by a
16 licensee shall constitute grounds for disciplinary action.

14 **STATUTORY PROVISIONS**

15 9. Code section 7109 states:

16 (a) A willful departure in any material respect from accepted trade
17 standards for good and workmanlike construction constitutes a cause for disciplinary
18 action, unless the departure was in accordance with plans and specifications prepared
19 by or under the direct supervision of an architect.

19 (b) A willful departure from or disregard of plans or specifications in any
20 material respect, which is prejudicial to another, without the consent of the owner or
21 his or her duly authorized representative and without the consent of the person
22 entitled to have the particular construction project or operation completed in
23 accordance with such plans or specifications, constitutes a cause for disciplinary
24 action.

22 10. Code section 7110 states, in pertinent part, that “[w]illful or deliberate disregard and
23 violation of the building laws of the state, or of any political subdivision thereof . . . constitutes a
24 cause for disciplinary action.”

25 11. Code section 7118 states that “[e]ntering into a contract with a contractor while such
26 contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action.”

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1 12. Code section 7159 states, in pertinent part:

2 (a)(1) This section identifies the projects for which a home improvement
3 contract is required, outlines the contract requirements, and lists the items that shall
4 be included in the contract, or may be provided as an attachment.

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6 (5) Failure by the licensee, his or her agent or salesperson, or by a person
7 subject to be licensed under this chapter, to provide the specified information, notices,
8 and disclosures in the contract, or to otherwise fail to comply with any provision of
9 this section, is cause for discipline.

10

11 (d) A home improvement contract and any changes to the contract, shall
12 be in writing and signed by the parties to the contract prior to the commencement of
13 any work covered by the contract or applicable change order . . .

14 COST RECOVERY

15 13. Code section 125.3 provides, in pertinent part, that the Registrar may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 RICE-STOWER PROJECT

20 14. On or about September 4, 2010, Respondent entered into a verbal contract with
21 Pamela Rice-Stower (“Rice-Stower”) to repair water damage and remediate mold at her cabin
22 located at 20760 US Highway 50, Little Norway, California (“Rice-Stower project”). Rice-
23 Stower made a claim for the water damage with Allied Property and Casualty Insurance
24 Company (“Allied”), a Nationwide Insurance Company. Sometime after Respondent commenced
25 work on the project, the cabin was damaged by snow (the structure had shifted off its foundation).

26 15. On or about June 10, 2011, the El Dorado County Development Services Department
27 sent a Notice and Order to Rice-Stower, notifying her that the cabin had been declared to be a
28 hazard, dangerous, and a public nuisance, and that her failure to abate the violation (repair or
demolish the structure) or establish an approved abatement schedule in writing by July 14, 2011
may result in the issuance of an administrative citation with associated fines and fees.

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1 16. In or about June 2011, Allied revised the original water damage claim to include a
2 claim for the demolition and rebuilding of the cabin. That same month, Respondent entered into
3 a verbal contract with Rice-Stower to reconstruct the cabin¹. Respondent began work on the
4 project, commencing with the demolition.

5 17. In or about June 2011, Respondent received the plans for the reconstruction of the
6 cabin, which were drafted by Bobby Granade.

7 18. On or about September 8, 2011, Respondent submitted an application to the El
8 Dorado County Building Services department (“building department”) for a building permit.

9 19. On or about September 16, 2011, the building department posted a stop notice at the
10 property as Respondent was reconstructing the cabin without the required permit.² The permit
11 was not issued on the project until October 12, 2011.

12 20. In or about October 2011, the El Dorado County Planning Department approved the
13 plans.

14 21. On or about November 9, 2011, Rice-Stower and/or her mortgage company paid
15 Respondent \$31,160.60.

16 22. On or about February 6, 2012, Scott Mauldin (“Mauldin”) of Allied sent a letter to
17 Rice-Stower, stating that the repairs (reconstruction) were started prior to their review of the
18 approved plans, that the adjuster was awaiting the plans and repair estimate from Respondent to
19 determine coverage and reach an agreed cost of repairs, and that they did not receive the plans or
20 repair estimate from Respondent until January 2012.

21 23. On or about February 23, 2012, Respondent was issued a second payment of
22 \$26,008.54.

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24 ¹ The parties are not in agreement as to the contract price on the project. Rice-Stower
25 claims that the contract price was between \$165,000 and \$170,000. Respondent claims that the
26 contract price was \$239,859.46, including upgrades and verbal change orders that were requested
27 by Rice-Stower.

28 ² Respondent reported that he had performed the “demo prepping” for the retrofit, framed
the walls, and excavated for the deck piers before he pulled the permit. A building department
representative reported that the roof was nearly on the structure at the time the stop notice was
issued.

1 24. On or about February 29, 2012, Mauldin sent a letter to Rice-Stower along with an
2 estimate in the amount of \$171,192.78 for the repair or replacement of the structure “for like kind
3 and quality”. Mauldin stated that he noticed the floor plan had changed from the original A-
4 frame to a box frame with 8 foot ceilings on the lower level, and that the estimate was for the
5 replacement of an “A-Framed structure to pre-loss condition”, which was required in Rice-
6 Stower’s insurance policy.

7 25. On or about March 1, 2012, Allied issued a revised estimate in the amount of
8 \$185,861.79.

9 26. On or about March 9, 2012, Respondent was issued a payment of \$25,418,87, for
10 total payments on the reconstruction of \$82,588.01. Respondent was not paid any more money
11 on the project.

12 27. On or about July 21, 2012, Rice-Stower sent Respondent a letter, terminating his
13 services. Respondent last performed work in or about July 2012.

14 28. On or about October 10, 2012, Rice-Stower filed a complaint with the Board,
15 alleging, among other things, that Respondent had not followed the plans.

16 29. On or about October 18, 2013, an industry expert retained by the Board inspected the
17 project. The industry expert found that the work did not meet accepted trade standards for good
18 and workmanlike construction and that Respondent had deviated from the plans or specifications.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Departure from Trade Standards)**

21 30. Respondent is subject to disciplinary action pursuant to Code section 7109,
22 subdivision (a), in that on the Rice-Stower project, Respondent willfully departed from accepted
23 trade standards for good and workmanlike construction in the following material respects:

- 24 a. Respondent failed to install access doors to the enclosed attics or attic spaces.
25 b. Respondent failed to install a freeze protected main shutoff valve.
26 c. Respondent failed to set the two exterior doors at the entry vestibule with the proper
27 gaps to the jambs.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Disregard of Plans or Specifications)**

3 31. Respondent is subject to disciplinary action pursuant to Code section 7109,
4 subdivision (b), in that on the Rice-Stower project, Respondent willfully departed from or
5 disregarded the plans or specifications, with prejudice to another, without the consent of the
6 owners, or the duly authorized representative and without the consent of the persons entitled to
7 have the particular construction project completed in accordance with such plans or specifications
8 in the following material respects:

- 9 a. Respondent failed to provide or install an egress suitable window in the master
10 bedroom as called for in the plans.
- 11 b. Respondent failed to set the door in the master bedroom closet with the swing out
12 from the closet, as called for in the plans.
- 13 c. Respondent failed to install supply boxes for the 3 pendant lights over the kitchen
14 peninsula, as called for in the plans.
- 15 d. Respondent installed hollow core, Masonite, paint grade, 6-panel doors in the interior
16 of the cabin rather than wood, stain-grade doors as specified in the plans.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Failure to Obtain Building Permit)**

19 32. Respondent is subject to disciplinary action pursuant to Code section 7110 in that on
20 the Rice-Stower project, Respondent deliberately or willfully violated provisions of the 2010
21 California Residential Code, Title 24, Part 2.5, Chapter 1, as follows:

- 22 a. **Section 1.8.3.1:** Respondent failing to obtain a building permit before commencing
23 work on the project.
- 24 b. **Section R106.4:** Respondent began the reconstruction of the cabin before the plans
25 were approved by the building department.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unlicensed Subcontractor)**

3 33. Respondent is subject to disciplinary action pursuant to Code section 7118 in that on
4 the Rice-Stower project, Respondent entered into an oral contract with subcontractor H & J
5 Electric to perform the electrical work when, in fact, H & J Electric was not a licensed contractor.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Violations of the Home Improvement Contract Provisions)**

8 34. Respondent is subject to disciplinary action pursuant to Code section 7159,
9 subdivision (a)(5), in that on the Rice-Stower project, Respondent failed to comply with
10 subdivision (d) of that section, as follows: Respondent failed to provide Rice-Stower with written
11 contracts signed by the parties prior to commencing work on the September 4, 2010 and June
12 2011 contracts.

13 **OTHER MATTERS**

14 35. Pursuant to Code sections 7097 and 7098, if Contractor's License Number 525628,
15 issued to Darryel Franklin Higginbotham, owner of Darryel F. Higginbotham Construction, is
16 suspended or revoked, the Registrar may suspend or revoke, without notice any other license
17 issued in the name of Darryel Franklin Higginbotham or for which Darryel Franklin
18 Higginbotham furnished the qualifying experience or appearance.

19 36. Darryel Franklin Higginbotham had knowledge of and participated in the acts or
20 omissions alleged above constituting grounds for discipline against him.

21 37. Pursuant to Code section 7121, if discipline is imposed on Contractor's License
22 Number 525628, issued to Darryel Franklin Higginbotham, owner of Darryel F. Higginbotham
23 Construction, Darryel Franklin Higginbotham shall be prohibited from serving as an officer,
24 director, associate, partner, manager, qualifying individual, or member of the personnel of record
25 of a licensee, during the time the discipline is imposed, and any licensee which employs, elects or
26 associates Darryel Franklin Higginbotham in any capacity other than as a nonsupervising bona
27 fide employee shall be subject to disciplinary action.

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1 38. Pursuant to Code section 7121.5, if discipline is imposed on Contractor's License
2 Number 525628, issued to Darryel Franklin Higginbotham, owner of Darryel F. Higginbotham
3 Construction, Darryel Franklin Higginbotham shall be prohibited from serving as an officer,
4 director, associate, partner, or qualifying individual for any licensee during the time the discipline
5 is imposed, whether or not he had knowledge of or participated in the acts or omissions
6 constituting grounds for discipline, and any licensee which employs, elects or associates Darryel
7 Franklin Higginbotham shall be subject to disciplinary action.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Registrar of Contractors issue a decision:

- 11 1. Revoking or suspending Contractor's License Number 525628, issued to Darryel
12 Franklin Higginbotham, owner of Darryel F. Higginbotham Construction;
- 13 2. Prohibiting Darryel Franklin Higginbotham from serving as an officer, director,
14 associate, partner, or qualifying individual of any licensee during the period that discipline is
15 imposed on Contractor's License Number 525628, issued to Darryel Franklin Higginbotham,
16 owner of Darryel F. Higginbotham Construction;
- 17 3. Revoking or suspending any other license for which Darryel Franklin Higginbotham
18 is furnishing the qualifying experience or appearance;
- 19 4. Ordering Darryel Franklin Higginbotham, owner of Darryel F. Higginbotham
20 Construction, to pay the Registrar of Contractors his costs in the investigation and enforcement of
21 the case according to proof at the hearing, pursuant to Business and Professions Code section
22 125.3;
- 23 5. Ordering Darryel Franklin Higginbotham, owner of Darryel F. Higginbotham
24 Construction, to provide the Registrar with a listing of all contracting projects in progress and the
25 anticipated completion date of each;

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6. Taking such other and further action as deemed necessary and proper.

DATED: April 21, 2014


WOOD ROBINSON
Enforcement Supervisor I
Contractors' State License Board
Department of Consumer Affairs
State of California
Complainant

FILED
APR 21 2014
CSLB DSS

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