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7

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

13 In the Matter of the Accusation Against:

Case No. N2017-304

14 **SUNROOMS AMERICA INC**
2179 Stone Avenue # 17
15 San Jose, CA 95125
CONSTANCE RUTH GABRIEL, RMO/CEO/PRES

ACCUSATION

16 **Contractor's License No. 1009268, B**

17 And

18 **BAY AREA FUN SPACE DIRECT INC, dba**
SUNROOMS AMERICA DIRECT
2175 Stone Avenue, Suite #3
19 San Jose, CA 95125
CONSTANCE RUTH GABRIEL, RMO/CEO/PRES

20 **Contractor's License No. 950078, B**

21 And

22 **GABRIEL CONSTRUCTION COMPANY**
2179 Stone Avenue #17
23 San Jose, CA 95125
CONSTANCE RUTH GABRIEL, SOLE OWNER

24 **Contractor's License No. 1004259, B,**

25 Respondent and Affiliated Parties.
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1 Complainant alleges:

2 **PARTIES**

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

6 2. On or about November 30, 2015, the Registrar of Contractors issued Contractor's
7 License Number 1009268, B to Sunrooms America, Inc., Constance Ruth Gabriel,
8 RMO/CEO/Pres (Respondent). The Contractor's License expired on November 30, 2017, and has
9 not been renewed.

10 3. On or about July 19, 2010, the Registrar of Contractors issued Contractor's License
11 Number 950078, B to Bay Area Fun Space Direct, Inc, dba Sunrooms America Direct, Constance
12 Ruth Gabriel, RMO/CEO/Pres (Affiliated Party #1). The Contractor's License expired on April
13 30, 2015, and has not been renewed.

14 4. On or about June 5, 2015, the Registrar of Contractors issued Contractor's License
15 Number 1004259, B to Gabriel Construction Company, Constance Ruth Gabriel, sole owner
16 (Affiliated Party #2). The Contractor's License will expire on June 30, 2019, unless renewed.

17 **JURISDICTION**

18 5. This Accusation is brought before the Registrar of Contractors (Registrar) for the
19 Contractors' State License Board, Department of Consumer Affairs, under the authority of the
20 following laws. All section references are to the Business and Professions Code unless otherwise
21 indicated.

22 **STATUTORY PROVISIONS**

23 6. Section 7090 of the Business and Professions Code ("Code") provides, in pertinent
24 part, that the Registrar may suspend or revoke any license or registration if the licensee or
25 registrant is guilty of or commits any one or more of the acts or omissions constituting cause for
26 disciplinary action.

27 7. Section 7106.5 of the Code provides, in pertinent part, that the expiration,
28 cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of

1 the registrar, or a court of law, or the voluntary surrender of the license shall not deprive the
2 registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding
3 against the license, or to render a decision suspending or revoking the license.

4 8. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license
5 shall not deprive the Registrar of jurisdiction to proceed with a disciplinary action during the
6 period within which the license may be renewed, restored, reissued or reinstated. Under Code
7 section 7076.1, the Registrar may reinstate a cancelled license if the licensee pays all of the fees
8 and meets all of the qualifications and requirements for obtaining an original license.

9 9. Section 7076.5 of the Code provides, in pertinent part, that the inactive status of a
10 license shall not bar any disciplinary action for violating provisions of the Contractors' State
11 License Law (Bus. & Prof. Code, § 7000, et seq.).

12 10. Section 7109 of the Code states:

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

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

22 11. Section 7112 of the Code states that "[o]mission or misrepresentation of a material
23 fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification
24 to an existing license constitutes a cause for disciplinary action."

25 12. Section 7113 of the Code states that "[f]ailure in a material respect on the part of a
26 licensee to complete any construction project or operation for the price stated in the contract for
27 such construction project or operation or in any modification of such contract constitutes a cause
28 for disciplinary action."

1 13. Section 7116 of the Code states that "[t]he doing of any wilful or fraudulent act by the
2 licensee as a contractor in consequence of which another is substantially injured constitutes a
3 cause for disciplinary action."

4 14. Section 7125.4 of the Code states:

5 “(a) The filing of the exemption certificate prescribed by this article that is false, or the
6 employment of a person subject to coverage under the workers' compensation laws after the filing
7 of an exemption certificate without first filing a Certificate of Workers' Compensation Insurance
8 or Certification of Self-Insurance in accordance with the provisions of this article, or the
9 employment of a person subject to coverage under the workers' compensation laws without
10 maintaining coverage for that person, constitutes cause for disciplinary action.

11 “(b) Any qualifier for a license who, under Section 7068.1 is responsible for assuring that a
12 licensee complies with the provisions of this chapter, is also guilty of a misdemeanor for
13 committing or failing to prevent the commission of any of the acts that are cause for disciplinary
14 action under this section”

15 15. Section 7154 of the Code states:

16 “(a) A home improvement contractor licensed under this chapter shall notify the registrar in
17 writing, on a form prescribed by the registrar, about the employment of a registered home
18 improvement salesperson, pursuant to the terms of this article. This notification requirement shall
19 include, but not be limited to, the name and registration number of the home improvement
20 salesperson who is employed by the contractor. The form shall be submitted prior to the home
21 improvement salesperson beginning work for the contractor.

22 “(b) A home improvement contractor shall notify the registrar in writing, on a form
23 prescribed by the registrar, when a registered home improvement salesperson ceases to be
24 employed by the contractor. This notification requirement shall include, but not be limited to, the
25 name and registration number of the home improvement salesperson who had been employed by
26 the contractor. The form shall be submitted within 90 days after the home improvement
27 salesperson ceases to be employed by the contractor.

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 19. Government Code section 11519(d), provides, in pertinent part, that the Registrar
4 may require restitution of damages suffered as a condition of probation in the event probation is
5 ordered.

6 B.Q PROJECT

7 20. On or about August 21, 2016, Respondent, through unregistered salesperson
8 William Gabriel, entered into a contract with B.Q. to construct a sunroom in the backyard of their
9 home in San Jose, California (hereinafter "B.Q. project"). The contract amount was \$98,500.00.
10 Respondent, through unregistered salesperson William Gabriel, asked for and received a payment
11 of \$73,875.00, on August 21, 2016, telling B.Q. that the money would go towards their building
12 materials. Respondent, through unregistered salesperson William Gabriel, promised B.Q. that the
13 sunroom would be substantially completed by December 23, 2016.

14 21. Respondent began partial demolition of the existing concrete patio and removal of
15 the existing sunroom and building eaves on or about September 23, 2016. After seven months of
16 little progress, B.Q. learned that a building permit had not been pulled and thereafter fired
17 Respondent on or about April 18, 2017, at a time when the sunroom had not been completed.
18 B.Q. had paid Respondent \$3,300.00 to remove the existing concrete slab, however Respondent
19 failed to remove the existing concrete slab.

20 22. B.Q. had to hire a correcting contractor to complete the sunroom in or about May
21 2017. The correcting contractor obtained the required permits and obtained engineered drawings.
22 None of Respondent's work on the B.Q. project was salvageable and it all had to be demolished.
23 B.Q. had to pay an additional \$81,450.00 to complete the sunroom project.

24 FIRST CAUSE FOR DISCIPLINE

25 **(Departure From Accepted Trade Standards)**

26 23. Respondent is subject to discipline pursuant to Code section 7109(a), in that on the
27 B.Q. project, it willfully departed from accepted trade standards for good and workmanlike
28 construction by failing to obtain required permits and inspections, and failing to have engineered

1 plans prepared. In addition, all of the work Respondent performed on the B.Q. project was not to
2 trade standards and was not compliant with building codes and had to be demolished prior to
3 completing the project.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Misrepresentation of a Material Fact on Application)**

6 24. Respondent is subject to discipline under Code section 7112, in that licensing
7 application documents submitted by Respondent failed to accurately identify William Gabriel as
8 Respondent's President.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Complete the Project for the Contract Price)**

11 25. Respondent's license is subject to discipline under Code section 7113, in that on
12 the B.Q. project, Respondent failed in a material respect to complete the project for the contract
13 price and the homeowner was required to spend a substantial sum in excess of the contract price
14 to complete the project in accordance with the contract.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Intentional Conduct Causing Injury)**

17 26. Respondent is subject to discipline under Code section 7116, in that on the B.Q.
18 project, Respondent received \$3,300.00 to remove the existing concrete slab but failed to remove
19 the existing slab and instead poured new concrete over the existing slab.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Obtain Workers' Compensation Insurance)**

22 27. Respondent is subject to discipline under Code section 7125.4, in that on the B.Q.
23 project, Respondent utilized employees to enter the contract and perform work on the project and
24 failed to obtain Workers' Compensation Insurance for those employees.

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1 33. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number
2 1009268, B issued to Respondent, Constance Ruth Gabriel shall be prohibited from serving as an
3 officer, director, associate, partner, manager, or qualifying individual of any licensee during the
4 time the discipline is imposed, whether or not he had knowledge or participated in the acts or
5 omissions constituting grounds for discipline, and any licensee which employs, elects, or
6 associates Constance Ruth Gabriel shall be subject to disciplinary action.

7 34. Pursuant to section 7122.5 of the Code, the causes for discipline established as to
8 Respondent constitute cause for discipline against individual license number 1004259, issued to
9 Gabriel Construction Company, Constance Ruth Gabriel, sole owner, regardless of whether she
10 had knowledge of or participated in the acts or omissions which constitute cause for discipline
11 against respondent.

12 35. Section 7095 of the Code provides, in pertinent part, that the Registrar in making his
13 order may:

14 (a) Provide for the immediate complete suspension by the licensee of all operations as a
15 contractor during the period fixed by the decision.

16 (b) Permit the licensee to complete any or all contracts shown by competent evidence taken
17 at the hearing to be then uncompleted.

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

22 **PRAYER**

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

25 1. Revoking or suspending Contractor's License Number 1009268, B issued to
26 Respondent;

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1 2. Prohibiting Constance Ruth Gabriel from serving as an officer, director, associate,
2 partner, or qualifying individual of any licensee during the period that discipline is imposed on
3 license Number 1009268, B, issued to Respondent;

4 3. Revoking or suspending any other license for which Constance Ruth Gabriel is
5 furnishing the qualifying experience or appearance;

6 4. Ordering restitution of all damages according to proof suffered by B.Q. as a condition
7 of probation in the event probation is ordered;

8 5. Ordering restitution of all damages suffered by B.Q. as a result of Respondent's
9 conduct as a contractor, as a condition of restoration of license Number 1009268, B, issued to
10 Respondent;

11 6. Ordering Respondent to pay the Registrar of Contractors her costs in the investigation
12 and enforcement of the case according to proof at the hearing, pursuant to Business and
13 Professions Code section 125.3;

14 7. Ordering Respondent to provide the Registrar with a listing of all contracting projects
15 in progress and the anticipated completion date of each;

16 8. Taking such other and further action as deemed necessary and proper.

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18 DATED: 02/02/18



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

19 **FILED**
20 FEB 02 2018
21 **CSLB DSS**

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