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

13 In the Matter of the Accusation Against:

Case No. N2021-159

14 **ANI BUILDING SOLUTIONS,**
15 **DAVID TERRY RIFFEL, RMO,**
16 **BARRY ALFRED MACOMBER, RME,**
3579 US Highway 50 E, Suite C
Carson City, NV 89701

ACCUSATION

17 Contractor's License No. 1005353, B

18 Respondent.

19
20 **PARTIES**

21 1. Thomas Jager (Complainant) brings this Accusation solely in his official capacity as
22 the Supervising Special Investigator I of the Contractors State License Board, Department of
23 Consumer Affairs (Board or CSLB).

24 2. On or about July 9, 2015, the Registrar of Contractors (Registrar) issued Contractor's
25 License Number 1005353, in Classification B (General Building) to ANI Building Solutions
26 (Respondent ANI). The Contractor's License was in full force and effect at all times relevant to
27 the charges brought herein, expired on July 31, 2021, and has not been renewed. At all times
28 referenced herein, David Terry Riffel (Respondent Riffel) was the responsible managing officer

1 (RMO). On September 27, 2016, Barry Alfred Macomber (Respondent Macomber) associated as
2 the responsible managing employee (RME) until he disassociated on September 2, 2021.

3 **PERSONNEL OF RECORD**

4 3. "Members of the personnel of record" of an entity that holds a contractor's license is
5 defined in Business and Professions Code (Code) section 7025 and "means every person listed in
6 the records of the registrar as then associated with a licensee." Respondent ANI is a corporation
7 organized under the laws of Nevada, and has listed the following individuals as associated
8 personnel, which are of record with the Board and not named as respondents herein: Scott E.
9 Lawhon, Officer.

10 **JURISDICTION**

11 4. This Accusation is brought before the Registrar for the Board, under the authority of
12 the following laws. All section references are to the Code unless otherwise indicated.

13 5. Section 118, subdivision (b) of the Code states:

14 The suspension, expiration, or forfeiture by operation of law of a license issued
15 by a board in the department, or its suspension, forfeiture, or cancellation by order of
16 the board or by order of a court of law, or its surrender without the written consent of
17 the board, shall not, during any period in which it may be renewed, restored, reissued,
18 or reinstated, deprive the board of its authority to institute or continue a disciplinary
19 proceeding against the licensee upon any ground provided by law or to enter an order
20 suspending or revoking the license or otherwise taking disciplinary action against the
21 licensee on any such ground.

19 6. Section 7076.5, subdivision (h) of the Code states:

20 The inactive status of a license shall not bar any disciplinary action by the
21 board against a licensee for any of the causes stated in this chapter.

22 7. Section 7090 of the Code provides, in pertinent part, that the Registrar may suspend
23 or revoke any license or registration if the licensee or registrant is guilty of or commits any
24 one or more of the acts or omissions constituting cause for disciplinary action.

25 8. Section 7106.5 of the Code states:

26 The expiration, cancellation, forfeiture, revocation, or suspension of a license
27 by operation of law or by order or decision of the registrar or a court of law, or the
28 voluntary surrender of a license by a licensee, shall not deprive the registrar of
jurisdiction to proceed with any investigation of or action or disciplinary proceeding
against the license, or to render a decision suspending or revoking the license.

1 9. Section 7121.5 of the Code states:

2 A person who was the qualifying individual on a revoked license, or of a license under
3 suspension, or of a license that was not renewed while it was under suspension, shall be
4 prohibited from serving as an officer, director, associate, partner, manager, or qualifying
5 individual of a licensee, whether or not the individual had knowledge of or participated in
6 the prohibited acts or omissions for which the license was revoked, or suspended, and the
7 employment, election, or association of that person by a licensee shall constitute grounds
8 for disciplinary action.

6 **STATUTORY PROVISIONS**

7 10. Section 7068 of the Code states, in pertinent part:

8 (a) The board shall require an applicant to show the degree of knowledge and
9 experience in the classification applied for, and the general knowledge of the
10 building, safety, health, and lien laws of the state and of the administrative principles
11 of the contracting business that the board deems necessary for the safety and
12 protection of the public.

11 (b) An applicant shall qualify in regard to his or her experience and knowledge
12 in one of the following ways:

13 (1) If an individual, he or she shall qualify by personal appearance or by
14 the appearance of his or her responsible managing employee who is qualified for the
15 same license classification as the classification being applied for.

15 (2) If a partnership or a limited partnership, it shall qualify by the
16 appearance of a general partner or by the appearance of a responsible managing
17 employee who is qualified for the same license classification as the classification
18 being applied for.

17 (3) If a corporation, or any other combination or organization, it shall
18 qualify by the appearance of a responsible managing officer or responsible managing
19 employee who is qualified for the same license classification as the classification
20 being applied for.

19 (4) If a limited liability company, it shall qualify by the appearance of a
20 responsible managing officer, a responsible managing manager, responsible
21 managing member, or a responsible managing employee who is qualified for the
22 same license classification as the classification being applied for.

22 ...

23 11. Section 7068.1, subdivision (a), of the Code states, in pertinent part:

24 The person qualifying on behalf of an individual or firm under paragraph (1),
25 (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for exercising
26 that direct supervision and control of his or her employer's or principal's construction
27 operations to secure compliance with this chapter and the rules and regulations of the
28 board. . .

27 12. Section 7096 of the Code states:

28 For the purposes of this chapter, the term "licensee" shall include an individual,

1 partnership, corporation, limited liability company, joint venture, or any combination
2 or organization licensed under this chapter, and shall also include any named
3 responsible managing officer, responsible managing manager, responsible managing
4 member, or personnel of that licentiate whose appearance has qualified the licentiate
5 under the provisions of Section 7068.

6 13. Section 7103 of the Code states:

7 The revocation, suspension, or other disciplinary action of a license to act as a
8 contractor by another state shall constitute grounds for disciplinary action in this state if the
9 individual is a licensee, or applies for a license, in this state. A certified copy of the
10 revocation, suspension, or other disciplinary action by the other state is conclusive evidence
11 of that action.

12 14. Section 7107 of the Code states:

13 Abandonment without legal excuse of any construction project or operation
14 engaged in or undertaken by the licensee as a contractor constitutes a cause for
15 disciplinary action.

16 15. Section 7108 of the Code states:

17 Diversion of funds or property received for prosecution or completion of a specific
18 construction project or operation, or for a specified purpose in the prosecution or
19 completion of any construction project or operation, or failure substantially to account for
20 the application or use of such funds or property on the construction project or operation for
21 which such funds or property were received constitutes a cause for disciplinary action.

22 16. Section 7116 of the Code states:

23 The doing of any willful or fraudulent act by the licensee as a contractor in
24 consequence of which another is substantially injured constitutes a cause for
25 disciplinary action.

26 **COST RECOVERY, RESTITUTION AND OTHER AUTHORITY**

27 17. Section 125.3 states, in pertinent part:

28 (a) Except as otherwise provided by law, in any order issued in resolution of a
disciplinary proceeding before any board within the department or before the
Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
administrative law judge may direct a licentiate found to have committed a violation
or violations of the licensing act to pay a sum not to exceed the reasonable costs of
the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership,
the order may be made against the licensed corporate entity or licensed partnership.

...

18. Government Code section 11519 states:

1 (a) The decision shall become effective 30 days after it is delivered or mailed
2 therein unless: a reconsideration is ordered within that time, or the agency itself
3 orders that the decision shall become effective sooner, or a stay of execution is
4 granted.

5 (b) A stay of execution may be included in the decision or if not included
6 therein may be granted by the agency at any time before the decision becomes
7 effective. The stay of execution provided herein may be accompanied by an express
8 condition that respondent comply with specified terms of probation provided;
9 provided, however, that the terms of probation shall be just as reasonable in light of
10 the findings and decision.

11 (c) If respondent was required to register with any public officer, a
12 notification of any suspension or revocation shall be sent to the officer after the
13 decision has become effective.

14 (d) As used in subdivision (b), specified terms of probation may include an
15 order of restitution. Where restitution is ordered and paid pursuant to the provisions
16 of this subdivision, the amount paid shall be credited to any subsequent judgment in a
17 civil action.

18 (e) The person to which the agency action is directed may not be required to
19 comply with a decision unless the person has been served with the decision in the
20 manner provided in Section 11505 or has actual knowledge of the decision.

21 (f) A nonparty may not be required to comply with a decision unless the
22 agency has made the decision available for public inspection and copying or the
23 nonparty has actual knowledge of the decision.

24 (g) This section does not preclude an agency from taking immediate action to
25 protect the public interest in accordance with Article 13 (commencing with Section
26 11460.10) of Chapter 4.5.

27 19. Section 143.5, subdivision (b) of the Code states:

28 Any board, bureau, or program within the Department of Consumer Affairs
that takes disciplinary action against a licensee or licensees based on a complaint or
report that has also been the subject of a civil action and that has been settled for
monetary damages providing for full and final satisfaction of the parties may not
require its licensee or licensees to pay any additional sums to the benefit of any
plaintiff in the civil action.

20. Section 7095 of the Code states:

The decision may:

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

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

(c) Impose upon the licensee compliance with such specific conditions as may
be just in connection with his operations as a contractor disclosed at the hearing and
may further provide that until such conditions are complied with no application for

1 restoration of the suspended or revoked licensee shall be accepted by the registrar.

2 21. Section 7097 of the Code states:

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

10 22. Section 7098 of the Code states:

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

16 23. Section 7102 of the Code states:

17 After suspension of a license upon any of the grounds set forth in this chapter
18 [the Contractors' State License Law], the registrar may reinstate the license upon
19 proof of compliance by the contractor with all provisions of the decision as to
20 reinstatement or, in the absence of a decision or any provisions of reinstatement, in
21 the sound discretion of the registrar.

22 After revocation of a license upon any of the grounds set forth in this chapter,
23 the license shall not be reinstated or reissued and a license shall not be issued to any
24 member of the personnel of the revoked licensee found to have had knowledge of or
25 participated in the acts or omissions constituting grounds for revocation, within a
26 minimum period of one year and a maximum period of five years after the final
27 decision of revocation and then only on proper showing that all loss caused by the act
28 or omission for which the license was revoked has been fully satisfied and that all
conditions imposed by the decision of revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered
when extending the minimum one-year period. The criteria shall give due
consideration to the appropriateness of the extension of time with respect to the
following factors:

- (a) The gravity of the violation.
- (b) The history of previous violations.
- (c) Criminal convictions.

When any loss has been reduced to a monetary obligation or debt, however, the
satisfaction of the monetary obligation or debt as a prerequisite for the issuance,
reissuance, or reinstatement of a license shall not be required to the extent the
monetary obligation or debt was discharged in a bankruptcy proceeding. However,
any nonmonetary condition not discharged in a bankruptcy proceeding shall be
complied with prior to the issuance, the reissuance, or reinstatement of the license.

1 **FACTUAL ALLEGATIONS**

2 **J.K. PROJECT**

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4 24. On or about August 18, 2020, J.K. signed a new home construction contract with
5 Respondent ANI for \$800,000.

6 25. On or about August 31, 2020, J.K. paid Respondent ANI a down payment of
7 approximately \$56,000 through a third party construction loan company.

8 26. Respondent ANI never performed any work at the job site. Respondent ANI also
9 failed to deliver any materials.

10 27. Respondent ANI ceased communications with J.K. and did not reply to J.K.'s phone
11 calls or emails.

12 **NEVADA LICENSE REVOCATION**

13 28. On or about July 2, 2021, Nevada State Contractors Board issued a decision revoking
14 Respondent ANI's Nevada Contractor's License number 79655. The Nevada State Contractor's
15 Board found that Respondent ANI had entered into an agreement with a sheet metal and steel
16 company for materials and services and willfully and deliberately failed to pay amounts due
17 under that agreement. The Nevada Contractors Board also found that Respondent ANI did not
18 cooperate with its investigation and had failed to demonstrate financial responsibility as required
19 by Nevada law.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Abandonment – Respondent ANI)**

22 29. Respondent ANI has subjected its license to disciplinary action under Code section
23 7107, in that Respondent ANI abandoned the J.K. Project without legal excuse, and without
24 performing any work on the J.K. Project. Complainant incorporates paragraphs 24 through 27 by
25 reference as though fully set forth herein.

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6. Ordering that Respondent Barry Alfred Macomber be prohibited from serving as an officer, director, associate, partner, manager and/or qualifying individual of a licensee, pursuant to Code section 7121.5; and

7. Taking such other and further action deemed proper.

DATED: 3-23-22



THOMAS JAGER
Supervising Special Investigator I
Contractors State License Board
Department of Consumer Affairs
State of California
Complainant

LA2021604849