BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EXTREME BUILDERS CUSTOM CONSTRUCTION
524 Griswold Avenue
San Francisco, CA 91340
ARNOLD ARMANDO URQUIDEZ III, Sole Owner

License No. **838934**, B

Respondent

TREVOR CONSTRUCTORS CORPORATION
14746 Jaguar Street
Mission Hills, CA 91345
TREVOR JULIAN GRIFFITH, CEO/President
ARNOLD ARMANDO URQUIDEZ III, RMO
CAROL DIANE LAVIS, Officer

License No. **857242**, B

Affiliated License

CASE NO. N2011-328

OAH NO. 2012080643

DECISION AND ORDER

ORDER OF NONADOPTION OF PROPOSED DECISION

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The Contractors' State License Board will decide the case upon the record, including the transcript of the hearing held on March 26, 2013 and April 24, 2013, and upon such written argument as the parties may wish to submit. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 1 day of July, 2013.

Stephen P. Sands
Registrar of Contractors

BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS' STATE LICENSE BOARD
STATE OF CALIFORNIA

In the Matter of the Accusation Against: EXTREME BUILDERS CUSTOM CONSTRUCTION ARNOLD ARMANDO URQUIDEZ III, SOLE OWNER Contractor's License No. 838934, B Respondent TREVOR CONSTRUCTORS CORPORATION TREVOR JULIAN GRIFFITH, CEO/PRESIDENT ARNOLD ARMANDO URQUIDEZ III, RMO, CAROL DIANE LAVIS, OFFICER Contractor's License No. 857242, B Affiliated License	Case No. N2011-328 OAH Case No. 2012080643

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 26, 2013 and in Santa Ana, California on April 24, 2013.

Lauro Paredes, Deputy Attorney General, Department of Justice, State of California, represented Complainant, Wood Robinson, in his official capacity as the Enforcement Supervisor of the Contractors' State License Board, Department of Consumer Affairs, State of California (CSLB).

Alfred O. Anyia, Attorney at Law, represented respondent Extreme Builders Custom Construction; Arnold Armando Urquidez III, (respondent) who was present throughout the administrative proceeding.

There was no appearance by Trevor Constructors Corporation, Trevor Julian Griffith, Ceo/President, Arnold Armando Urquidez III, RMO, or Carol Diane Lavis, Officer, for the affiliated licensees.

The matter was submitted on April 24, 2013.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 15, 2012, the accusation was signed on behalf of Complainant, Wood Robinson, Enforcement Supervisor, Contractors' State License Board (the CSLB or the Board), Department of Consumer Affairs, State of California.

The accusation alleged eleven causes for discipline against respondent.

- The First Cause for Discipline alleged that respondent Arnold Urquidez was subject to disciplinary action under Business and Professions Code section 7114, subdivision (a), because respondent aided and abetted, combined and conspired with, and allowed his license to be used by Adam J. Urquidez (his uncle), doing business as Patch Construction, an unlicensed contractor, with the intent to evade the provisions of the Contractors' State License Law.

- The Second Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7114, subdivision (a), because respondent acted as partner or associate of Adam J. Urquidez, doing business as Mr. Patch Construction, an unlicensed contractor, and allowed his license to be used by the unlicensed contractor in violation of Business and Professions Code section 7114, subdivision (a), making respondent liable for the financial injury of $19,767 caused to homeowner Roberto Avila Martinez.

- The Third Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7107 because he abandoned, without legal excuse, the unfinished Martinez Project.

- The Fourth Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7109 because respondent willfully departed in a material respect from accepted trade standards for good and workmanlike construction.

- The Fifth Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7113 because respondent failed in a material respect to complete the Martinez Project for the contract price stated in the contract.

- The Sixth Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7159.5, subdivisions (a)(3)(5), because on June 14, 2010, he obtained $12,000 from Martinez as a down payment on the contract, an amount that exceeded $1,000 and respondent obtained a total of $12,000 from Avila before commencing any work on the project.

- The Seventh Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7159, subdivisions (c)(3)(A)(B), because respondent failed to provide a dated and signed contract to the buyer prior to the commencement of work and failed to provide the appropriate information on the front page of the contract, in the correct typeface. It was further alleged that respondent violated 23 home improvement contract provisions.

- The Eighth Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7717 because he failed to include the proper name style of his business in the contract as it appeared on the Board's records.

- The Ninth Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7059.1 because respondent conducted business under more than one name using a single license number.

- The Tenth Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7125, subdivision (a), because respondent failed to maintain on file with the Board at all times a current and valid Workers' Compensation Insurance certification.

- The Eleventh Cause for Discipline alleged that respondent was subject to disciplinary action under Business and Professions Code section 7125, subdivision (b), because respondent falsely claimed to have no employees so as to quality for an exemption from maintaining a valid Certification of Workers' Compensation Insurance.

The accusation and other required jurisdictional documents were served on respondent who timely filed a Notice of Appeal contesting the accusation. This hearing followed.

2. On March 26, 2013, and on April 24, 2013, the hearing in the administrative proceeding was conducted. The record was opened, jurisdictional documents were presented, sworn testimony was taken, documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

License History

3. On May 22, 2004, the CSLB issued Contractor License number 838934, General Building Contractor Class B license to respondent Extreme Builders Custom Construction that expired on May 31, 2012.

On October 29, 2009, entity name Extreme Builders Custom Construction Inc., entity number C3236689, was suspended. No other business entity detail was submitted. No business license history was provided for affiliated licensee Trevor Constructors Corporation.

Roberto Avila Martinez's Testimony

4. Roberto Avila Martinez completed the second grade in Mexico and has been in the janitorial business for the past 25 years. He has lived in his home on Federal Avenue in Costa Mesa for the past 16 years. On June 9, 2010, Mr. Martinez entered into a written contract with Adam J. Urquidez, dba Mr. Patch Construction to remodel his home and build an addition. Adam J. Urquidez lived across the street from Mr. Martinez and was respondent's uncle.

On June 14, 2010, a contract was entered between Roberto Avila Martinez and Adam Urquidez to perform a kitchen remodel and add an addition. The contract was written on Adam J. Urquidez's letterhead with Arnold Urquidez's license number 838934 under Adam Urquidez's name. Arnold Urquidez's name was not in the contract. Mr. Martinez testified that he verified that the license number was valid but was unaware that it did not belong to Adam Urquidez. Both the uncle and nephew have the same last name of Urquidez. The contract included the services of demolition, surveying, cement work, framing, plaster, plumbing, insulation, drywall, electrical, cabinet, granite, tile, painting and finish trim work.

The first payment of $12,000 was made by Mr. Martinez to Adam Urquidez on June 14, 2010.

The second payment of $1,000 was made on July 7, 2010.
The third payment of $15,000 was made on July 15, 2010.
The fourth payment of $15,000 was made on August 25, 2010.
The fifth payment of $6,500 was made on September 13, 2010.
The sixth payment of $1,600 was made on October 8, 2010.
The seventh payment of $3,500 was made on October 19, 2010.
The eighth payment of $150.00 was made on December 22, 2010.

A total of $54,750 was paid by Mr. Martinez to Adam Urquidez. All checks were issued to Adam Urquidez and no checks were issued to licensee Arnold Urquidez. Arnold Urquidez did not sign the contract and there is no reference to Arnold Urquidez in the contract or in any agreement to work. The work was not performed to Mr. Martinez's satisfaction and the kitchen sinks, appliances, flooring, electrical and plumbing were not fully installed.

Initially Mr. Martinez testified that he had a face-to-face meeting with Arnold Urquidez regarding the work that needed to be completed. He also testified that respondent Arnold Urquidez installed the electrical panel, but later recanted that testimony and stated that his memory was "not that good" and he was unsure if respondent worked in his home at all. Mr. Martinez failed to identify respondent at the administrative hearing as the person who performed the work in his home or as the person with whom he entered into the contract to perform the work.

Mr. Martinez was a sincere, gentle witness who was not a good historian. He had difficulty recalling dates and events He could not recall if respondent performed any work at his home

Charles Walsh's Testimony and Stipulation to Expert's Report

5. Charles Walsh was called as an expert witness on behalf of the complainant. Mr. Walsh has worked in construction since 1958. He was first licensed as a General Contractor in 1975. He was previously retained "on a number of occasions" as an expert on behalf of complainants and respondents. On June 9, 2011, Mr. Walsh prepared a Report of Inspection and Estimate. In his opinion, the kitchen addition "does not meet accepted trade standards for good and workman-like construction." He estimated that the approximate costs of the work to correct the defects would be $27,515. Mr. Walsh's found that the kitchen cabinets were unfinished and uninstalled. The trim, granite countertops, hood/fan and appliances were also not installed. The tile floor was not level, the floor base and crown molding around the upper cabinets were not complete. The paint was not finished and the job was not finalized by the City Building Department. He concluded that the contractor did not finish the kitchen according to the plan and the permits were not finalized. Both parties stipulated to the content of Mr. Walsh's findings and his report.[Exhibit 2 AGO 64 to 69.]

Gustavo Avila's Testimony

6. Gustavo Avila is Mr. Martinez's son. In February 2011, Mr. Avila spoke with Arnold Urquidez by telephone to ask him to come to the house and see the unfinished project. Mr. Avila testified that Arnold Urquidez "knew exactly what project" he was referring to and told Mr. Avila "not to worry as I would get it done since I am ultimately responsible." Mr. Avila testified, "I knew that Arnold was the contractor…I looked up the license number on the contract and discovered it belonged to Arnold." Mr. Avila telephoned Arnold Urquidez twice to get the job completed. In February 2011, Arnold Urquidez came to the Martinez home and said he would try to finish the job because he "didn't want problems with his license." Mr. Avila later testified that Arnold told him, "I didn't get any money for the job and I am not going to finish the job." Mr. Avila knew that Arnold Urquidez was undergoing dialysis and could not physically perform the work but believed that someone would come to his father's home to complete the job. Mr. Avila testified that all the payments were made by check to Adam and not Arnold Urquidez. Mr. Avila testified, "Arnold was at our home in late February 2011 and never denied that he was aware of the project…Arnold told me that he was ultimately responsible and that his license was at stake…Arnold never denied his responsibility."

Mr. Avilo is a dedicated son who tried to help his father negotiate a settlement for the completion of the project. Mr. Avilo admitted that the contract his father signed was between his father and Adam Urquidez, but believed Arnold Urquidez was aware of the project. Mr. Avilo further admitted that no payments were made to Arnold Urquidez. Mr. Avilo's testimony was genuine and sincere when he stated that Arnold Urquidez knew about the project and that Arnold was not surprised by his telephone call to get the project completed.

Elisa Kemp's Testimony

7. Ms. Elisa Kemp has been an enforcement representative with the Board for the past eight years. Her duties include investigating complaints and interviewing witnesses. Ms. Kemp prepared a report of her findings [Exhibit 2 AGO pages 32-43].

Based on Ms. Kemp's investigation, she concluded the following:

a. Adam Urquidez was an unlicensed contractor who lived directly across the street from Mr. Roberto Avila Martinez.
b. On June 14, 2010, the contract was signed by non-licensee Adam Urquidez and homeowner Roberto Avila Martinez. Non-licensee Adam Urquidez was, hired to build a 300 sq ft kitchen addition and convert the existing kitchen into a laundry room and hallway.
c. Permits for the project were applied for by non-licensee, Adam Urquidez.
d. Adam Urquidez collected a total of $54,750 from Martinez. On November 16, 2010, Adam Urquidez abandoned the project.
e. Mr. Roberto Avila Martinez was unaware that Adam Urquidez was not licensed until the job was abandoned.
f. After contacting the Board, Mr. Martinez was informed that Arnold Urquidez was the sole owner of the license.
g. The project was completed by another contractor in October 2011.

On May 6, 2011, Ms. Kemp met with Mr. Martinez at the jobsite. Mr. Martinez told her that Adam Urquidez convinced him that he was a licensed contractor by providing a contract by the name of Mr. Patch Construction with license number 838934. Ms. Kemp wrote, "Mr. Avila approached Adam Urquidez at his residence across the street because he knew he was a contractor and was currently out of work."

On May 25, 2011, Ms. Kemp received a telephone call from Arnold Urquidez to discuss the complaint filed against his license. According to Ms. Kemp's report, Arnold Urquidez told Ms. Kemp that he is disabled and on dialysis three times a week. "...My uncle Adam Urquidez lives directly across the street from the Avila (Martinez) family. I got involved in this because I had the license and allowed by uncle to use it...I let my uncle Adam Urquidez do this job with my license, he wrote up the contract and he signed it...It was convenient for everyone involved because he (Adam) lives directly across the street from the Avilas (Martinez)...Right now I'm working trying to figure out all the payments

that were paid to my uncle Adam. I want to be given a chance to go in there and finish up the work, and we'll get it done." [Emphasis added]

On June 1, 2011, Ms. Kemp met with Adam Urquidez, Arnold Urquidez and expert Charles Walsh at the Norwalk Investigative Center. The meeting was not tape-recorded. Adam Urquidez told Ms. Kemp that he was hired by Mr. Martinez to build a 300 square foot addition to the Martinez's existing home. Adam Urquidez told Ms. Kemps that, "My original contract price was $72,000 but they didn't have that much money so I lowered the contract price to $50,000 and eliminated a lot of the Travertine tile and made a few more changes...Mr. Avila (Martinez) made numerous changes and requested things that were not on the plans...I ran out of money quickly...I called my nephew Arnold Urquidez and told him I need his help."

Ms. Kemp testified that at the meeting with the expert Charles Walsh, Arnold and Adam Urquidez , Arnold Urquidez admitted he allowed his uncle to use his license. Ms. Kemp further testified that Adam Urquidez told her that he (Adam) was given permission to use Arnold's license because Arnold was not physically able to work.

Arnold Urquidez told Mr. Kemp that he has another subcontractor, Trevor Construction Corporation, who is willing "to finish the job for me...I'm willing to do every (sic) and anything possible to get this project done. I can't get in a situation like this because of my health...I got a call (from) CSLB, (who) made us stop working because I don't have Workers Compensation...I've been in the construction business since I was 15 years old..."

On June 14, 2011, Ms. Kemp received expert Charles Walsh's inspection report. Mr. Walsh concluded that the project did not meet accepted trade standards. The total estimated cost to correct the project was approximately $27,515. Mr. Martinez received a bond payout from licensee Arnold Urquidez's bond company for $12,500. The financial injury to Mr. Martinez totaled $19,767. Ms. Kemp listed no prior history of prior actions against Arnold Urquidez.

Ms. Kemp referred the file to legal and listed the following violations:

a. Violation of Business and Professions Code section 7114, subdivision (a). Allowed the use of individual license number by an unlicensed person.
b. Violation of Business and Professions Code section 7114, subdivision (b). A licensee who is found by the registrar to have violated subdivision (a) shall, in accordance with the provisions of this article, be subject to the registrar's authority pursuant to section 7099 to order payment of a specified sum to an injured party, including, but not limited to, payment for any injury resulting from the acts of the unlicensed person.
c. Violation of Business and Professions Code section 7125, subdivision (b). Filed a false statement claiming exemption from worker's compensation laws.

Ms. Kemp testified that Mr. Martinez did not know Arnold Urquidez at the time he signed the contract with Adam Urquidez. Ms. Kemp testified that Mr. Martinez told her that he believed that the contract was with Adam Urquidez and that Adam was licensed.

Arnold Armondo Urquidez III's Testimony

8. Respondent Arnold Urquidez testified unequivocally that, "I never gave anyone permission to use my license." Adam Urquidez is his uncle. "I was unaware that a contract was signed by Adam Urquidez and Adam never told me that he signed a contract using my license…The first I heard of this matter was on February 2011 when Gustavo called me to come finish the job." Arnold Urquidez then called Adam Urquidez to determine what had happened and Adam informed him that he entered into a contract because, "it was convenient for him."

Arnold Urquidez testified that he had nothing to do with the project. "The reason I stepped in was because I didn't want my business tarnished…I have been on dialysis for six and one half years and recently had a kidney transplant. I don't have employees because of my illness. I have no workers compensation…I stepped in as a mediator and told Adam to finish (the job) within 30 days or I would take action against him." Arnold testified that he has recently taken action against Adam.

Mr. Arnold Urquidez categorically and unequivocally denied that he told investigator Kemp that he gave Adam Urquidez permission to use his license. Adam Urquidez and Mr. Walsh were present at the meeting with the investigator. Mr. Walsh spoke about the project deficiencies. Arnold Urquidez testified, "I never heard anyone say that Adam had permission to use my license during the meeting. I told the investigator that I never gave Adam permission to use the license...I had no idea if Adam had a contractor's license…the first time I saw the contract with Adam was at the meeting with the investigator…I have filed something in civil court against Adam after the accusation was filed against me."

From 2004 to 2011, Arnold filed a worker's compensation exemption form with the Board. Mr. Arnold Urquidez testified that he is currently "fighting his bond company's payment of $12,500" to Mr. Martinez. He testified, "I wouldn't jeopardize my license by allowing someone to use my license…I was totally surprised when I got a call from Gustavo regarding the unfinished project…I told Adam he needed to finish the project and talked sternly with him to finish it."

Arnold Urquidez is unemployed and recently underwent a kidney transplant. Adam Urquidez was not called as a witness by either side.

Cost Recovery

9. The costs of the prosecution, investigation and enforcement cost of this matter totaled $7,640 and are reasonable given the amount of work involved with the investigation of the matter. However, cause for discipline must be established before costs may be awarded.

Evaluation

10. The evidence submitted demonstrated that Arnold Urquidez was active in attempting to correct the abandoned Martinez project. He spoke with the complainant's son Gustavo Avila, met with the Board investigator, Ms. Kemp and the complainant's expert Mr. Walsh. Both Mr. Avila and Ms. Kemp provided testimony that Arnold Urquidez told them that he allowed his uncle, Adam Urquidez, to perform the contracted kitchen project because he was unable to work due to his illness. Arnold Urquidez, however, categorically denied both Mr. Avila's and Ms. Kemps' testimony.

Adam Urquidez did not testify and was not called by either side. The burden of proof is on the complainant.

The written contract clearly stated that Adam Urquidez (not Arnold Urquidez) and Mr. Martinez were the parties involved. Mr. Martinez testified that he verified that there was a valid construction license prior to the commencement of the project, but failed to determine that the license belonged to another person not listed in the contract that he signed. The complainant's position was that Arnold Urquidez allowed his uncle, Adam Urquidez, to use his license. Business and Professions Code section 7114 provides in part that ..."allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with **the intent** to evade the provision of this chapter, constitutes a cause for disciplinary action." [Emphasis added]. Intent was not established. There was no willful departure by Arnold Urquidez in any material respect from accepted trade standards in the project. The evidence failed to establish that Arnold Urquidez conducted business under Mr. Patch Construction (which was the named company on the contract); or that he hired employees; or that he hired his uncle; or that he prepared or was aware of the contract between Mr. Martinez and his uncle *prior* to the commencement of the project.

It would be reasonable for Arnold Urquidez to attempt to resolve the abandoned project once he became aware of the use of his license since there was a family member involved. Hence, it was reasonable that once Arnold Urquidez discovered that his license was used by his uncle, that he spoke with Mr. Martinez's son, met with the contractor's board investigator, Ms. Kemp and met with complainant's expert, Mr. Walsh. There was insufficient evidence to conclude Arnold Urquidez was involved in the Martinez project *prior* to it being abandoned.

The investigator, Ms. Kemp, did not submit any declarations signed by Arnold Urquidez following their meeting that indicated Arnold Urquidez admitted he allowed his uncle to use his license. The interview was not tape recorded to verify the content of the meeting. The complainant's own expert, Charles Walsh, was present at the meeting along with the investigator, Arnold Urquidez and Adam Urquidez. Mr. Walsh never testified that he heard Arnold Urquidez admit that he allowed his uncle to use his license for the project. The admission of a licensee to allow an unlicensed person to use one's license would be something an expert would rely on and would likely testify to that at the hearing. The complainant's expert, Mr. Walsh never testified that Arnold Urquidez allowed his license

number to be used by a family member, despite the fact that Mr. Walsh was at the meeting where this information was alleged to have occurred and testified in this proceeding. The evidence failed to establish that Arnold Urquidez aided or abetted an unlicensed person to evade the provisions of Business and Professions Code section 7114 or acted as agent or partner or associate of an unlicensed person with the intent to evade the provisions of this chapter. Cause for disciplinary action was therefore not established.

LEGAL CONCLUSIONS

Purpose of the Contractors' License Law

1. The purpose of the Contractors' License Law is to protect the public from incompetence and dishonesty in those who provide building and construction services. The licensing requirements provide minimal assurance that all persons offering such services have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995.)

Statutory Authority

2. Business and Professions Code section 118, subdivision (b), provides in part that the suspension, expiration, or forfeiture by operation of law of a license issued by a board shall not deprive the board of it's authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground. Board includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license and license includes certificate registration and permit.

3. Business and Professions Code section 7059.1 states in part that a licensee shall not conduct business under more than one name for each license.

4. Business and Professions Code section 7076.5, subdivision (h), provides in part that an inactive status of a license shall not bar any disciplinary action by the Board.

5. Business and Professions Code section 7090 provides in part that the Registrar may suspend or revoke any license if the licensee is guilty of one or more of the acts or omissions constituting cause for disciplinary action.

6. Business and Professions Code section 7095 provides that the Registrar may provide for the immediate suspension by the licensee of all operations as a contractor during the period fixed by the decision; permit the licensee to complete any part of the contract; impose conditions as may be just in connection with its operations and provide that until such conditions are complied with, no application for restoration of the suspended or revoked licensee shall be accepted by the Registrar.

7. Business and Professions Code section 7096 provides in part that the term license shall include a corporation and shall also include any named responsible managing officers or personnel of that licentiate whose appearance has qualified the licentiate under the provisions of section 7068.

8. Business and Professions Code section 7097 provides in part that when any license has been suspended by a decision of the registrar pursuant to an accusation, any additional license issued in the name of the licensee may be suspended by the registrar without further notice.

9. Business and Professions Code section 7098 provides in part that when any license has been revoked any additional license issued under this chapter may be revoked by the registrar without further notice.

10. Business and Professions Code section 7106.5 provides that the expiration, cancellation, forfeiture, or suspension of a license by operation of law, or by order or decision of the Registrar or a court of law, or the voluntary surrender of the license, shall not deprive the Registrar of jurisdiction to proceed with disciplinary action.

11. Business and Professions Code section 7107 provides in part that abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action.

12. Business and Professions Code section 7109, subdivisions (a)(b), provide in part that a willful departure in any material respect from accepted trade standards for good and workmanlike construction constitutes a cause for disciplinary action, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect. A willful departure from plans or specifications in any material respect which is prejudicial to another without the consent of the owner constitutes a cause for disciplinary action.

13. Business and Professions Code section 7113 provides in part that failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project constitutes a cause for disciplinary action.

14. Business and Professions Code section 7114, subdivisions (a)(b), provide in part that aiding or abetting an unlicensed person to evade the provisions of this chapter or combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person **with the intent** to evade the provisions of this chapter constitutes a cause for disciplinary action. [Emphasis added] A licensee who is found by the registrar to have violated subdivision (a) shall, in accordance with the provision of this article, be subject to the registrar's authority pursuant to section 7099 to order payment of a specified sum to an injured party, including but not limited to, payment for any injury resulting from the acts of the unlicensed person.

15. Business and Professions Code section 7117 provides in part that acting in the capacity of a contractor under any license issued except in the name of the licensee as set forth upon the license or in accordance with the personnel of the licensee as set forth in the application for such license constitutes a cause for disciplinary action.

16. Business and Professions Code section 7121 provides that any person's license which has been denied, suspended or revoked shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, and the employment, election, or association of this type of person by a licensee in any capacity other than as a non-supervising bona fide employee shall constitute grounds for disciplinary action.

17. Business and Professions Code section 7121.5 provides in part that any person who was the qualifying individual on a revoked license, or of a license under suspension, or of a license that was not renewed while it was under suspension, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked, or suspended, and the employment, election, or association of such person by a licensee shall constitute grounds for disciplinary action.

18. Business and Professions Code section 7122.5 provides in part that the performance by any individual of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who at the time was responsible managing employee whether or not he had knowledge of or participated in the prohibited act or omission.

19. Business and Professions Code section 7125 provides in part that Workers' Compensation Insurance or a Certificate of Self-Insurance is a condition precedent to the issuance, reinstatement, reactivation, renewal or continued maintenance of a license for those employers with employees.

20. Business and Professions Code section 7159 identifies the projects for which a home improvement contract is required, outlines the contract requirements and lists the items that shall be included in a contract.

21. Business and Professions Code section 7159.5 provides that if a down payment will be charged, the down payment may not exceed one thousand dollars or 10 percent of the contract amount whichever is less.

22. Business and Professions Code 125.3 provides in part that the Board/Registrar/Director may request the administrative law judge to 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.

23. Complainant had the burden of proving the violations alleged in the accusation. The respondent had the burden of establishing any factors in mitigation or rehabilitation.

Cause for Discipline Does Not Exists

24. Cause does **not** exist to impose discipline on Arnold Urquidez's license. The evidence did not establish that Arnold Urquidez was aware of the contract between Mr. Martinez and Adam Urquidez, his uncle, prior to his uncle's abandonment of the project. Arnold Urquidez was not a named party to the contract. Mr. Patch Corporation, listed on the contract, was not associated with Arnold Urquidez. The checks issued for services rendered under the contract were not paid to Arnold Urquidez. In addition, complainant's expert, Charles Walsh, who was present with Arnold Urquidez during a meeting with the Board's investigator, did not testify that Arnold Urquidez admitted that he allowed his uncle to use his license. The complainant alleged that during this meeting with the expert and the investigator, Arnold Urquidez admitted that he allowed Adam Urquidez, his uncle, to use his license. This information would have been relevant for the expert and would have been the type of information an expert would have relied on for his opinions. However, expert Mr. Walsh did not testify that Arnold Urquidez stated that he allowed his license number to be used by anyone. The evidence failed to establish that Arnold Urquidez aided or abetted an unlicensed person to evade the provisions of Business and Professions Code section 7114 or any other provision, or acted as an agent or partner or associate of a unlicensed person. Moreover, since Arnold Urquidez was not involved in the creation or execution of the contract, no violation of any of those provisions was established. Cause for disciplinary action was not established.

ORDER

Accusation Case No. N2011-328 is dismissed.

DATED: May 24, 2013

CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings