

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

In the Matter of the Accusation Against:

GABOR FRANK MAGYARI, Sole Owner,
dba ROOF – RITE ROOFING
39439 Obsidian Court
Palmdale, CA 93551

Contractor's License No. 373537

Respondent.

CASE No. N2017-216

OAH No. 2018060574

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter, except that it is modified to **DELETE** the following item from the terms and conditions of probation:

(a). Suspension: Respondent's license shall be suspended for a period of five days from the effective date of this decision and order and during the suspension period, respondent shall not exercise any of the privileges granted under the license.

The failure to comply with any of the terms and conditions as set forth in the provisions of probation will be deemed a violation of probation.

IT IS FURTHER ORDERED that **GABOR FRANK MAGYARI dba ROOF – RITE ROOFING**, License Number **373537**, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of \$15,000.00, for a period of not less than three years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a disciplinary bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.

IT IS FURTHER ORDERED that Respondent shall pay the investigative costs in the amount of \$3,006.16. Monthly payments are to be made in the amount of \$103.67, until completed. Payments are to be made at the end of each month, commencing the first full month after the effective date of this decision.

IT IS THE responsibility of the Respondent, named in this Decision, to read and follow the terms and conditions of probation found in the Proposed Decision. The deadlines for meeting the terms and conditions are based upon the EFFECTIVE DATE of the Decision. No notices or reminders will be sent, as to the compliance of the terms and conditions. Proof of payments of restitution and payments for the Cost of Investigation and Enforcement if ordered, are to be sent to CSLB, Sacramento Case Management, Post Office Box 26888, Sacramento, CA 95826.

This Decision shall become effective on November 13, 2018.

IT IS SO ORDERED October 12, 2018.



David Fogt
Registrar of Contractors

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PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on August 30, 2018.

William D. Gardner, Deputy Attorney General, represented Wood Robinson (complainant), Enforcement Supervisor I, Contractors State License Board (CSLB or Board), Department of Consumer Affairs, State of California.

Iustina G. Mignea, Attorney at Law, represented respondent Gabor Frank Magyari, sole owner and doing business as Roof-Rite Roofing (respondent), who was present at the hearing.

Oral and documentary evidence was received. During the hearing, respondent submitted a trial brief, which was marked and lodged as Exhibit D. The record remained open until September 7, 2018, for complainant to provide documentation of the dates of respondent's current probationary license issued by the Board. On September 5, 2018, complainant submitted a letter stating the term of respondent's probationary license; respondent did not raise any objection to admission of the letter into evidence. The letter was marked and admitted as Exhibit 6. The record was closed and the matter submitted for decision on September 7, 2018.

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FACTUAL FINDINGS

Parties and Jurisdiction

1. On August 28, 2013, the Registrar of Contractors (Registrar) issued Contractor's License No. 373537, in Classification C-39, roofing, to respondent. The license was issued as a probationary license pursuant to Business and Professions Code section 7073, subdivision (e), because of respondent's prior criminal history. The license is scheduled to expire on August 31, 2019.

2. Complainant filed the Accusation in his official capacity and sought discipline of respondent's license because of respondent's recent criminal conviction described in Factual Finding 3. Respondent timely filed a Notice of Defense. This hearing ensued.

Respondent's 2017 Criminal Conviction

3. On September 1, 2017, the Superior Court of California, County of Los Angeles (case number (MA071170) convicted respondent on his plea of nolo contendere to the felony violation of Penal Code section 118, subdivision (a), perjury by declaration. As part of his plea, respondent admitted to sustaining prior criminal violations, including two earlier felony convictions for violating Penal Code section 211, second degree robbery, in 1989 and 1993, respectively, and a third felony conviction in 1999 for violation of Vehicle Code section 2800.2, subdivision (a) (evading arrest).

4. A. The facts and circumstances underlying respondent's 2017 criminal conviction are that on December 13, 2016, respondent falsely reported that his truck had been stolen. The night before, respondent had fallen asleep while driving after a long day of work. He drove into ditch and damaged the front end of the truck. Once he composed himself, respondent drove the truck home. There was no evidence that any drugs or alcohol were involved in the accident.

B. The next morning respondent decided to abandon the damaged truck. Respondent testified he wanted to rid himself of the truck because of his concern the damage might invite police attention, although he was unable to explain how it would do so. After driving the truck to an abandoned spot on December 13, 2016, respondent, that same day, contacted his insurance company and the police to report the truck stolen. When he filed his report to the police, respondent inadvertently failed to sign the CHP-180 Form reflecting the theft. On December 15, 2016, respondent signed the CHP-180 Form confirming the theft of his truck under penalty of perjury.

C. Several days later, respondent realized he could not lie about the disposition of his truck. Consequently, respondent withdrew his claim to the insurance company reporting the truck stolen, and he received no moneys for his claim. Respondent also decided to "come clean" with the police. Accordingly, on December 20, 2016, approximately one week after he informed the police about the theft, respondent called the police officer who received respondent's stolen truck report and requested to speak with him

in person. The police officer returned respondent's telephone call on December 23, 2016. In that conversation, respondent told the police officer he had lied and his truck had not been stolen. Respondent also told the police officer he felt guilty for what he had done and wanted to apologize. Respondent was then arrested for perjury because he had signed Form CHP-180 attesting to the theft of his truck "under penalty of perjury."

5. Perjury is a felony ordinarily punishable by imprisonment for two to four years. (Pen. Code, §126.) At respondent's sentencing on September 1, 2017, the court rejected these sentencing terms. In addition, pursuant to Penal Code section 1385 and against the prosecution's recommendation, the court struck the allegations regarding respondent's prior felony convictions that supported enhanced sentencing. The court cited the following factors in doing so: "[respondent's] last conviction date was in 1999; the age of the cases and the strike priors; issues with regard to Penal Code section 654 with respect to the strike allegations; the facts of this case, in particular, the fact that [respondent] submitted a fraudulent document and subsequently admitted his wrongdoing and surrendered himself to law enforcement; the non-violent nature of the offense; the defendant's age; and the defendant's current ties to his family and his community." (Ex. 3, p. AG-0029.) The court then suspended the imposition of sentence and ordered respondent to serve one day in Los Angeles County jail, less credit for one day, placed respondent on three years of formal probation, and ordered respondent to complete 30 days of community labor. The court also ordered respondent to pay \$370 for fees and fines as well as the monitoring costs of probation. Respondent has thus far complied with the terms of his probation.

Mitigation and Rehabilitation

6. Respondent is 61 years old. He is recently married. He originally obtained his roofing license in 1979, but the license lapsed after respondent's criminal convictions in 1989.

7. Respondent acknowledged that he had exhibited poor judgment and made stupid mistakes earlier in his life. His two robbery convictions occurred almost 30 years ago when he was addicted to cocaine; in each instance, he robbed a 7-11 convenience store by pretending his finger was a gun. He served reduced jail sentences with each criminal conviction because of his work assisting firefighters in fighting forest fires for the State. His third conviction for evading arrest, even though for a non-violent crime, was considered a third strike conviction because it was a felony. As a result, under the then-prevailing three strikes law, respondent was sentenced to a term of 25 years to life in state prison although the crime of evading arrest carried a maximum five-year sentence. Respondent ultimately served 14 years in state prison for the third strike felony; he was released from prison in 2012 after passage of Proposition 36, which restricted the three strikes law to three violent felony convictions.

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8. After his release from prison, respondent, then 55 years old, sought to obtain a new roofing contractor license. Because of his criminal history, CSLB granted respondent a probationary license for six years on August 24, 2013. Since then, respondent has started his own roofing business, from which he has been able to support himself and employ others.

9. Respondent's testimony at hearing was open, emotional, and non-defensive. Respondent claimed he filed the false police report and insurance claim because he was fearful that the police would question him about the accident. Respondent denied he filed the report to obtain insurance proceeds. Although respondent's explanation does not make much sense, it is conceivable that respondent's fear of returning to prison clouded his judgment. Whatever his motivation, respondent realized his mistake when he received a copy of the insurance claim in the mail and immediately took corrective action. At hearing, respondent made clear his embarrassment and shame over the incident. Respondent admitted he made a serious error in judgment, and his testimony regarding the issue was sincere and remorseful. Respondent was aware that he did not have to report his deception to the police, but since leaving prison, he has committed himself to acting honorably and with honesty.

10. Respondent did not obtain any financial gain from his conduct. If respondent had not come forward to the police regarding the false statement, it is likely the police would never have discovered his deception and suffered a perjury conviction.

11. A. At the administrative hearing, respondent submitted 12 character reference letters from family, friends, and clients. (Ex. A.) Many of the authors were aware of respondent's 2017 criminal conviction and all continue to support him. Respondent's clients praised him for his knowledge and skill as a contractor. All commended respondent for his honesty, trustworthiness, knowledge, and value to his community as a licensed roofing contractor. His references found him to be a "kind and hardworking man" who works all hours and helps those in need, particularly the elderly, veterans, and others living on fixed incomes.

B. In a letter dated June 18, 2017, Ms. Melissa Kullman, who has known respondent for many years as a client, states she has "been impressed with his professionalism and trustworthy actions. . . . I have seen the way [respondent] helps guide and help[s] his workers. He reaches out to needy people. [Respondent] has turned his life into a positive pattern of assistance, guidance, kindness and giving to others. . . . Many people, within his business, and outside of it depend on his hard work, knowledge, and kindness." (Ex. A, pp. 11-12.)

C. Ms. Trudy Leuzinger-Murray, another client, wrote of respondent's "honest reputation by providing his community, with high standard of professional services. . . . [Respondent] does not only service his community, he also is here for many who do not have the means to do for themselves, either due to their disability, age or financial situation. [Respondent] will always be the business man whom I trust to take care of my homeowner repairs, he is the business man I will refer to my friends and neighbors." (Ex. A, pp. 13-14.)

D. Respondent's criminal defense lawyer, Daniel Fester, Esq., also submitted a letter on respondent's behalf. (Ex. A, p. 4.) He wrote as follows:

I had the privilege to represent [respondent] in his recent court case. I do not get the opportunity to really get to know many of my clients but [respondent] was special. At every court appearance [respondent] had friends and former clients there all wanting to speak to the judge about this man who had done so much for them over the past few years. Whether it be donating his time and expertise to help build a home for a wounded veteran, to just helping out friends and neighbors in need, [respondent] was there for them. They wanted to be with him in his time of need. The judge was also in possession of many letters of support for [respondent] that outlined his incredible generosity in the giving of his time and skills.

As for the criminal case [respondent] was involved in, the judge stated on the record that the only reason the District Attorney even had the case was due to [respondent's] voluntary confession. Had [respondent] simply remained silent, no one would have been the wiser. Even the assigned district attorney told me privately that he felt awful filing this case! Did [respondent] make a mistake, yes. But, he realized his error and did everything he could to make things right.

12. Two character witnesses also testified on respondent's behalf. Karen T. Cummings-Lilly has known respondent for over 45 years, both as a friend and a client. Ms. Cummings-Lilly characterized respondent as a kind, generous person as well as an honest contractor. Respondent has had the key to her home for many years, and she has never found anything missing. Ms. Cummings-Lilly has employed respondent multiple times, and she noted respondent has a strong work ethic, provides reasonable estimates, and completes his work in a timely fashion. Respondent has always provided Ms. Cummings-Lilly with receipts to document his expenditures, and she has found his accounting to be consistently accurate. Ms. Cummings-Lilly testified that when respondent was younger he might not have withdrawn his false report; however, during his time in prison, she has seen respondent grow and mature. She believes his insistence on telling the truth reflects that growth. Notwithstanding respondent's recent misstep, Ms. Cummings-Lilly has no doubt that respondent is trustworthy.

13. Everett Lilly, the husband of Ms. Cummings-Lilly, also testified on respondent's behalf. Mr. Lilly has a graduate degree in social work and a doctorate in social policy. He has known respondent for approximately 27 years, both as a client and as a friend. Mr. Lilly spoke of respondent's dedication to his job, respondent's devotion to pleasing his customers, and respondent's trustworthiness. Mr. Lilly owns several properties, and respondent has provided quality work at each of them. Despite respondent's initial

misrepresentations to the insurance company and the police, Mr. Lilly did not believe the misrepresentations were reflective of respondent's true character. Mr. Lilly believed that respondent quickly recognized his mistake, and Mr. Lilly has seen no evidence that respondent cannot be trusted to serve his customers in an honest and responsible fashion.

14. Respondent loves roofing and is dedicated to giving back to his community. He is a hard worker, and oftentimes accepts payment based on what people can afford, even though he loses money. His probationary license has not been the subject of any prior discipline by CSLB.

Cost Recovery

15. Complainant submitted cost certifications, requesting reimbursement of \$3,006.16 to the Board for the costs of investigation and enforcement in this matter. This amount consists of \$466.16 in investigative costs incurred by an Enforcement Representative and \$2,540.00 in legal services provided by the Attorney General's office. These costs are reasonable.

16. Respondent is able to pay these costs on a payment plan that takes into account his income and his expenses, including his ongoing obligation to pay probation monitoring costs.

LEGAL CONCLUSIONS

1. The standard of proof for the Board to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (Bus. & Prof. Code (Code), § 7090.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

2. Pursuant to Code section 7090, the Registrar may temporarily suspend or revoke a contractor's license if the licensee commits any one or more of the acts or omissions constituting causes for disciplinary action.

3. Pursuant to Code section 7123, "a conviction of a crime substantially related to the qualifications, functions and duties of a contractor constitutes a cause for disciplinary action." California Code of Regulations, title 16 (Regulations), section 868, states in relevant part that a crime shall be considered "to be substantially related to the qualifications, functions, or duties of a licensee . . . if it evidences present or potential unfitness of [a] . . . licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare." According to Regulations, section 868, the substantially related acts include, but are not limited to, "[c]rimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another." (Cal. Code Regs., § 868, subd. (c).)

4. Perjury is a crime involving dishonesty and deceit, and therefore it is substantially related to the qualifications, functions, and duties of a contractor under Regulations, section 868, subdivision (c). Respondent falsely reported his truck had been stolen to the police and to his insurance company. Honesty is an essential duty of a contractor, and respondent's falsehood evidences his potential unfitness to perform the functions authorized by his contractor's license in a manner consistent with the public health, safety, and welfare. Cause therefore exists to discipline respondent's contractor license pursuant to Code section 7123 and Regulations, section 868, subdivision (c). (Factual Finding 3.)

5. Pursuant to Regulations, section 871, the Board has adopted Disciplinary Guidelines (Guidelines) that set forth the following factors to be considered in evaluating the licensee's rehabilitation:

(1) Subject to the provisions of subsection (a)(2), an applicant or licensee may be determined to be rehabilitated if he or she meets the following criteria:

(A) For felony convictions that are substantially related to the qualifications, functions, or duties of a licensee as defined in Section 868, seven (7) years have passed from the time of release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional criminal activity or substantially-related acts.

[¶ ... ¶]

(2) The amount of time needed to demonstrate rehabilitation under subsection (a)(1) may be increased or decreased by taking into account the following:

(A) The nature and severity of the crime(s) or act(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation.

(B) Evidence of any crime(s) or act(s) committed subsequent to the crime(s) or act(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation, which also could be considered as grounds for denial, suspension, or revocation.

(C) The time that has elapsed since commission of the crime(s) or act(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation.

(D) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

(E) Consistent work history subsequent to the release from incarceration, or the completion of probation if no incarceration was imposed, or subsequent to the time of commission of the act(s).

(F) Documents or testimony from credible individuals who have personal knowledge of the applicant's or licensee's life and activities subsequent to the time of commission of the crime(s) or act(s) who can attest to the applicant's or licensee's present fitness for licensure.

(G) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(H) Other relevant evidence, if any, of rehabilitation submitted by the applicant or licensee.

(Cal. Code Regs., § 869.)

6. Although respondent remains on probation for a relatively recent felony, the unusual facts and circumstances regarding respondent's crime along with respondent's strong ties to, and admiration by the community, constitute sufficient basis to disregard the seven-year waiting period ordinarily required to establish respondent's rehabilitation under Regulations, section 871, subdivision (a)(1)(A). Applying the specific criteria of Regulation 871, subdivision (a)(2), provides further evidence of respondent's rehabilitation: respondent's crime was not serious, in that no person was harmed or property damaged; respondent has not committed any subsequent crimes; respondent is in compliance with the terms of his criminal probation; respondent has a strong work ethic and has spent the last five years building his roofing company; respondent submitted 12 letters from family, clients, and friends discussing his good character, trustworthiness, and honesty in his work; and two clients testified on respondent's behalf. In addition, the Board has not previously disciplined respondent for any work-related misconduct. More important, respondent acted honorably with great risk to his personal freedom and his vocation by turning himself in to the police when he realized his wrongdoing; respondent would most likely not have been arrested if he had not come forward. (Factual Findings 6 through 14.)

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7. Discipline of a Board licensee is not penal in nature. The purpose is not to impose additional punishment on the licensee, but to protect the public. (See e.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Given the totality of the evidence, outright revocation of respondent's license would be unduly harsh and contrary to the public interest. Complainant offered no evidence that respondent has ever acted dishonestly in his dealings with his clients; to the contrary, the evidence clearly and convincingly established respondent's integrity and ethics when working for vulnerable members of the community. (Factual Findings 11 through 13.) The evidence also overwhelmingly established respondent made a mistake that he quickly attempted to remedy, conduct that should be encouraged not punished. His singular act of bad judgment is unrelated to the crimes he committed more than 20 years ago. Respondent's value to the community was also confirmed by the statements and actions of the criminal court judge who refused to sentence respondent to any jail time other than the one day already served for his perjury because of the groundswell of community support for respondent, the non-violent nature of respondent's crime, and respondent's honesty. (Factual Finding 5.)

8. The Guidelines set forth maximum and minimum recommended penalties for specific statutory violations. For a violation of Code section 7123, the maximum recommended penalty is revocation and the minimum penalty is three years of probation. Respondent's current probationary license is set to expire on August 28, 2019. In light of the facts and circumstances set forth in Factual Findings 3 through 14 and Legal Conclusions 5 through 7, a three year probationary period (extending respondent's existing probation by approximately two more years), including a five-day suspension, is sufficient for the protection of the public.

9. Pursuant to Code section 7097, any other license for which respondent has furnished qualifying experience and appearance shall also be placed on probation for a period of three years, including five days suspension.

10. Pursuant to Business and Professions Code sections 7121, 7121.5, 7122, and or 7122.5, respondent shall be prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a Board licensee during the time the discipline is imposed.

11. Pursuant to Business and Professions Code section 125.3, complainant is entitled to recover the reasonable costs of prosecution and enforcement of this matter. As set forth in Factual Findings 15 and 16, complainant has requested costs in the amount of \$3,006.16. These costs are reasonable, and respondent has indicated he can afford to pay the costs on a payment plan that takes into account his income and expenses. (See *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

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ORDER

1. Contractor's License 373537, in Classification C-39, and accompanying licensing rights, issued to respondent Gabor Frank Magyari, sole owner and dba Roof-Rite Roofing, which is currently on probation, and any other license for which respondent has furnished qualifying experience and appearance, are revoked, but the revocation of Contractor's License No. 373537 is stayed and respondent's license shall be placed on probation for three years on the following terms and conditions:

(a). Suspension: Respondent's license shall be suspended for a period of five days from the effective date of this Decision and Order and during the suspension period, respondent shall not exercise any of the privileges granted under the license.

(b). Obey All Laws: Respondent shall comply with all federal, state and local laws governing the activities of a licensed contractor in California.

(c). Interviews with Regional Deputy: Respondent and any of respondent's personnel of record shall appear in person for interviews with the Regional Deputy or designee upon request and reasonable notice.

(d). Respondent shall submit copies of documents directly related to the person's construction operations to the Registrar upon demand during the probation period.

(e). Completion of Probation: Upon successful completion of probation, the probation status shall be removed from respondent's contractor's license.

(f). If an accusation or petition to revoke probation is filed against Respondent during the probationary period, then the Registrar shall have continuing jurisdiction of this matter until the subsequent matter is final, and the period of probation and all the conditions of probation in this matter shall be extended until the subsequent matter is final.

(g). Respondent shall respond in writing within 20 calendar days of any written inquiry or demand from the Registrar or authorized designee (Probation monitor) during the probation period. Failure to respond within the allotted timeframe shall be considered a violation of the terms of probation.

(h). During the term of this probation, Respondent understands that if he applies and receives an additional CSLB license, that license will also be deemed to be probationary status until the end of the original probationary term.

2. Respondent is prohibited from serving as an officer, director, associate, partner or qualifying individual of any other licensee under the Registrar's jurisdiction during the period of his probation.

3. Respondent shall pay to the Registrar his costs of investigation and prosecution in the amount totaling \$3,006.16 pursuant to a reasonable payment plan to be developed by the Board.

Dated: September 21, 2018

DocuSigned by:

Cindy F. Forman

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings