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

13 In the Matter of the Accusation Against:

Case No. N2017-327

14 **HENRY MATOZA CONSTRUCTION,**
15 **INC.,**
16 **HENRY MATOZA, JR.,**
17 **RMO/CEO/PRESIDENT,**
18 **RODNEY J. QUIGLEY, SECRETARY and**
19 **CHIEF FINANCIAL OFFICER**
20 **(undisclosed principal)**
21 **ELIJAH DAVID MATOZA, OFFICER**
22 **204 Emerson Avenue**
23 **Modesto, CA 95350**

OAH No. 2018100242

FIRST AMENDED ACCUSATION

24 **Contractor License No. 893804**

Respondent.

25 **MATOZA HENRY CONSTRUCTION**
26 **HENRY MATOZA, JR., SOLE OWNER**
27 **20555 Deerfield Drive**
28 **Sonora, CA 95370**

Contractor License No. 452355

Affiliated Party.

1 Complainant alleges:

2 **PARTIES**

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

6 2. On or about April 4, 2007, the Registrar of Contractors issued Contractor License
7 Number 893804 to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/PRES,
8 Elijah David Matoza, Officer ("Respondent"). The Contractor License was in full force and
9 effect at all times relevant to the charges brought in this Accusation and will expire on April 30,
10 2019, unless renewed.

11 3. On or about February 14, 1984, the Registrar of Contractors issued Contractor
12 License Number 452355 to Matoza Henry Construction, Henry Matoza, Jr., Sole Owner. The
13 Contractor License was in full force and effect at all times relevant to the charges brought in this
14 Accusation and will expire on February 29, 2020, unless renewed.

15 **JURISDICTION**

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

20 5. **Section 118, subdivision (b)** states:

21 ~~"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a~~
22 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
23 order of a court of law, or its surrender without the written consent of the board, shall not, during
24 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
25 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
26 provided by law or to enter an order suspending or revoking the license or otherwise taking
27 disciplinary action against the licensee on any such ground."

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

7. Section 7098 states:

“Notwithstanding the provisions of Sections 7121 and 7122, when any license has been revoked under the provisions of this chapter, any additional license issued under this chapter in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be revoked by the registrar without further notice.”

8. **Section 7106.5** states:

“The expiration, cancellation, forfeiture, revocation, 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 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.”

STATUTORY PROVISIONS

9. **Section 7083, subdivisions (a) and (c) state:**

“(a) Notwithstanding any other law, licensees shall notify the registrar, on a form prescribed by the registrar, in writing within 90 days of any change to information recorded under this chapter. This notification requirement shall include, but not be limited to, changes in business address, personnel, business name, qualifying individual bond exemption pursuant to Section 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

• • •

“(c) Failure to notify the registrar of the changes within the 90 days is grounds for disciplinary action.”

10. **Section 7109, subdivision (a)** states:

“(a) 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

1 accordance with plans and specifications prepared by or under the direct supervision of an
2 architect.”

3 11. **Section 7110** states:

4 “Willful or deliberate disregard and violation of the building laws of the state, or of any
5 political subdivision thereof, or of Section 8550 or 8556 of this code, or of Sections 1689.5 to
6 1689.15, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation
7 insurance laws or Unemployment Insurance Code of the state, or of the Subletting and
8 Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of
9 Division 2 of the Public Contract Code), or violation by any licensee of any provision of the
10 Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells,
11 or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the
12 Government Code, constitutes a cause for disciplinary action.”

13 12. **Section 7116** states:

14 “The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of
15 which another is substantially injured constitutes a cause for disciplinary action.”

16 13. **Section 7117.6** states:

17 “Acting in the capacity of a contractor in a classification other than that currently held by
18 the licensee constitutes a cause for disciplinary action.”

19 **COST RECOVERY**

20 14. Section 125.3 provides, in part, that the Registrar may request the administrative law
21 judge to direct a licensee found to have committed a violation or violations of the licensing act to
22 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

23 **FACTUAL BACKGROUND**

24 15. On or about November 4, 2015, J.P. and R.P.¹ entered into a contract with
25 Respondent to construct a retaining wall at their residence in Alamo. The contract amount was
26 \$118,000.00. On or about November 4, 2015, J.P. and R.P. paid Respondent a deposit totaling
27

28 ¹ The names of individuals identified in this Accusation by initials will be disclosed pursuant to a proper discovery request.

1 \$30,000.00. J.P. and R.P. also paid Respondent \$9,300.00 on or about December 27, 2015, and
2 \$38,000.00 on or about April 8, 2016, prior to Respondent performing any work on the project.

3 16. A contractor must have an "A" General Engineering Contractor's license in order to
4 construct the type of retaining wall that Respondent agreed to build for J.P. and R.P. Respondent
5 does not have an "A" General Engineering Contractor's license. Rather, Respondent only has a
6 "B" General Building Contractor's license.

7 17. A building permit was required to construct the retaining wall at J.P.'s and R.P.'s
8 residence. Respondent did not obtain a building permit in order to construct the retaining wall.

9 18. Respondent did not begin work on the project until on or about April 14, 2016. On
10 that date, Elijah David Matoza, Respondent's officer, began digging into the bottom of a hill
11 located behind the home where the retaining wall was to be constructed. Digging into the bottom
12 of the hill was an improper way of stabilizing the earth in the hill.

13 19. In or around June 2016, J.P. and R.P. terminated their contract with Respondent. By
14 that point, J.P. and R.P. had paid Respondent a total of \$101,380.00 for the work on the project.
15 Respondent did not complete the retaining wall, and the work Respondent did perform provided
16 little, if any, value to J.P. and R.P. Respondent did not refund J.P. and R.P. any of the money
17 they had paid Respondent.

18 20. In or around March 2017, J.P. and R.P. hired another contractor to stabilize the
19 hillside, which had begun collapsing, and complete the retaining wall. J.P. and R.P. have paid the
20 contractor \$73,444.99 for that work, which has not yet been completed.

21 **FIRST CAUSE FOR DISCIPLINE**

22 (Departure from Trade Standards)
(Bus. & Prof. Code §§ 7090 and 7109, subd. (a))

23 21. Respondent has subjected its license to disciplinary action for its willful departure in
24 any material respect from accepted trade standards for good and workmanlike construction.
25 ((Bus. & Prof. Code §§ 7090 and 7109, subd. (a))). The circumstances are set forth in paragraphs
26 15 through 20, above.

1 **SECOND CAUSE FOR DISCIPLINE**
2 (Willful and/or Deliberate Disregard of Building Laws)
3 (Bus. & Prof. Code §§ 7090 and 7110)

4 22. Respondent has subjected its license to disciplinary action for its willful or deliberate
5 disregard and violation of the building laws of the state or any political subdivision of the state.
6 (Bus. & Prof. Code §§ 7090 and 7110). The circumstances are set forth in paragraphs 15 through
7 18, above.

8 **THIRD CAUSE FOR DISCIPLINE**
9 (Willful or Fraudulent Acts Resulting in Substantial Injury to Another)
10 (Bus. & Prof. Code §§ 7090 and 7116)

11 23. Respondent has subjected its license to disciplinary action for doing a willful or
12 fraudulent act as a contractor in consequence of which another is substantially injured. (Bus. &
13 Prof. Code §§ 7090 and 7116). The circumstances are set forth in paragraphs 15 through 20,
14 above.

15 **FOURTH CAUSE FOR DISCIPLINE**
16 (Acting Outside of Classification)
17 (Bus. & Prof. Code §§ 7090 and 7117.6)

18 24. Respondent has subjected its license to disciplinary action for acting in the capacity
19 of a contractor in a classification other than that held by Respondent. (Bus. & Prof. Code §§ 7090
20 and 7117.6). The circumstances are set forth in paragraphs 15 through 19, above.

21 **FIFTH CAUSE FOR DISCIPLINE**
22 (Failure to Notify of Change in Personnel)
23 (Bus. & Prof. Code §§ 7083, subds. (a) and (c) and 7090)

24 25. Respondent has subjected its license to disciplinary action for failing to notify the
25 Registrar of the addition of Rodney J. Quigley as Respondent's Secretary and Chief Financial
26 Officer within 90 days of that change. (Bus. & Prof. Code § 7083, subds. (a) and (c)). In
27 particular, according to a Statement of Information form Respondent filed with the California
28 Secretary of State on January 30, 2018, Mr. Quigley is Respondent's Secretary and Chief
29 Financial Officer. To date, Respondent has not informed the Registrar of this change in
30 personnel.

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OTHER MATTERS

26. Pursuant to Sections 7097 and 7098, if License Number 893804 issued to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any other license issued in the name of Henry Matoza, Jr. or for which Henry Matoza, Jr. furnished the qualifying experience and appearance.

27. Pursuant to Section 7121, if discipline is imposed on License Number 893804 issued to Respondent; Henry Matoza, Jr., Rodney J. Quigley, and Elijah David Matoza shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of any licensee during the time discipline is imposed, and any licensee which employs, elects, or associates Henry Matoza, Jr., Rodney J. Quigley, or Elijah David Matoza shall be subject to disciplinary action.

28. Pursuant to Section 7121.5, if discipline is imposed on License Number 893804 issued to Respondent, Henry Matoza, Jr. shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of any licensee during the time discipline is imposed, whether or not he had knowledge of or participated in the acts or omissions constituting grounds for discipline, and any licensee which employs, elects, or associates Henry Matoza, Jr. shall be subject to disciplinary action.

29. Henry Matoza, Jr., while serving as Respondent's RMO/CEO/President, had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent.

30. Elijah David Matoza, while serving as Respondent's officer, had knowledge of or participated in the acts or omissions which constitute cause for discipline against Respondent.

31. Government Code section 11519, subdivision (d) provides that specified terms of probation may include an order of restitution, and where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

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32. Section 7095 provides, in part, that the Registrar in making his order 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 its operations as a contractor disclosed at the hearing, and may further provide that until such conditions are complied with, no application for restoration of the suspended or revoked licensee shall be accepted by the Registrar.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this First Amended Accusation, and that following the hearing, the Registrar of Contractors issue a decision:

1. Revoking or suspending Contractor License Number 893804 issued to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/President, Elijah David Matoza, Officer;

2. Prohibiting Henry Matoza, Jr., Rodney J. Quigley, and Elijah David Matoza from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on License Number 893804 issued to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/PRES, Elijah David Matoza, Officer;

3. Revoking or suspending any other license for which Henry Matoza, Jr., Rodney J. Quigley, and/or Elijah David Matoza is furnishing the qualifying experience or appearance;

4. Ordering restitution of all damages according to proof suffered by J.P. and R.P. as a condition of probation in the event probation is ordered;

5. Ordering restitution of all damages suffered by J.P. and R.P. as a result of Henry Matoza Construction, Inc.'s conduct as a contractor, as a condition of restoration of License Number 893804 issued to Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/PRES, Elijah David Matoza, Officer;


1 6. Ordering Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/President;
2 Rodney J. Quigley, Secretary and Chief Financial Officer; and Elijah David Matoza, Officer to
3 pay the Registrar of Contractors costs for the investigation and enforcement of the case according
4 to proof at the hearing pursuant to Business and Professions Code section 125.3;

5 7. Ordering Henry Matoza Construction, Inc., Henry Matoza, Jr., RMO/CEO/President;
6 Rodney J. Quigley, Secretary and Chief Financial Officer; and Elijah David Matoza, Officer to
7 provide the Registrar with a listing of all contracting projects in progress and the anticipated
8 completion date of each; and

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

11 DATED: 10-23-2018

12 **FILED**
13 OCT 23 2018
14 **CSLB DSS**


12 WOOD ROBINSON
13 Enforcement Supervisor I
14 Contractors' State License Board
15 Department of Consumer Affairs
16 State of California
17 Complainant
18 RBF

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