

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

In the Matter of the Accusation Against:

RAY ALVIN RENNEKER

dba CALIFORNIA CONSTRUCTION SERVICES,

Respondent

Agency Case No. N2017-504

OAH No. 2019121083

DECISION AFTER REJECTION OF PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 9, 10, and 12, 2020, and January 25, 26, and 28, 2021, via video and/or teleconference.

Nancy A. Kaiser, Deputy Attorney General, represented Complainant Wood Robinson. Todd M. Wolfe represented Respondent Ray Alvin Renneker, who does business as California Construction Services. The attorneys, Respondent, and the witnesses participated by video or telephone.

Near the end of the proceeding, Complainant moved to amend the Accusation, which motion was granted, and the Accusation was amended as follows:

- At page AGO 8, in exhibit 1, at line 2, the year "2016" was changed to "2017."¹
- At page 9, line 17, subparagraph (d), is deleted in its entirety.
- At page 14, paragraphs 4 and 5 are deleted in their entirety.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 8, 2021.

The ALJ issued his Proposed Decision (PD) on or about March 1, 2021. The PD was submitted to the Registrar of Contractors (Registrar) of the Contractors' State License Board (Board or CSLB), and after due consideration thereof, rejected by the Registrar on or about March 16, 2021. On April 9, 2021, the Registrar issued an Order Fixing Date for Submission of Argument on or before May 10, 2021. On April 28, 2021, the Registrar issued an additional Order Fixing Date for Submission of Argument, thereby extending the date to May 21, 2021. Written argument having been received from the parties, and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Registrar, pursuant to section 11517 of the Government Code, hereby makes the following decision:

¹ Further citations to Complainant's exhibits will be to the pages designated AGO, and only to the page numbers.

SUMMARY OF THE CASE

This case involves Respondent's conduct in connection with two construction projects. The first project, which comprises the majority of the case, pertains to Respondent's contract to repair water damage at a house on 12th Avenue in Inglewood, California. Several claims are made against Respondent in connection with that project, including abandonment of the project, and material departures from trade standards and plans and specifications. Further, it is alleged that Respondent employed his father-in-law who had his contractor's license revoked in March 1998, as a managerial employee.² This is in direct contravention of the Contractors State License Law (Bus. & Prof. Code, § 7000, et seq.) The second project arises from Respondent's contract to re-stucco a home in Laguna Beach, California. The only claim there is that after a civil dispute arose between Respondent and the homeowner, a settlement agreement, in the form of a stipulated judgement was made, which contained a provision that the homeowner would withdraw his complaint against Respondent. A similar allegation is tied to the 12th Avenue project.

Complainant has sustained some of his claims, but not all of them. The appropriate discipline order will place Respondent's license on probation.

FACTUAL FINDINGS **The Parties and Jurisdiction**

² According to CSLB licensure records, Contractor's License No. 464401, issued to Respondent's father-in-law, Jason Schlessinger was revoked on or about March 31, 1998, in response to numerous consumer complaints received by the Board against Mr. Schlessinger. (Exhibit. 15.)

1. Complainant filed and maintained the Accusation while acting in his official capacity as Enforcement Supervisor I of the Contractors State License Board (Board), Department of Consumer Affairs.

2. On August 16, 1999, the Registrar of Contractors issued Contractor's License Number 767434 to Respondent Ray Alvin Renneker, as owner of California Construction Services (Respondent or CCS). The license is a type B, General Building Contractor, and type C-35, Lathing and Plastering specialty license. The license is due to expire on August 31, 2021.

3. After Respondent was served with the Accusation, he timely filed a Notice of Defense, seeking a hearing. This proceeding ensued. All jurisdictional requirements have been met.

The 12th Avenue Project

BACKGROUND TO THE CONTRACT

4. In September 2017, Respondent entered into a contract to repair water damage at a home located on 12th Avenue in Inglewood. The damage resulted from a broken pipe in or around the home's only bathroom, though adjacent parts of the house were damaged as a result. The exact timing of some events leading up to the contract, and pertaining to its performance, are difficult to establish, due in part to the witnesses' disparate memories and a paucity of documentation.

5. The homeowner in question, S.B., resided in the home with his wife and two children. An issue was raised during the case as to whether S.B. in fact owned the home; it has been asserted the house was owned by a trust, of which S.B. was a beneficiary. S.B. testified he was an owner. In any event, and for ease of reference, S.B.

will be identified as the Homeowner (hereinafter "S.B." or "homeowner"). Certainly, he was the person CCS and others dealt with in terms of the repairs.

6. The water pipe burst on or about June 14, 2017.³ Homeowner made a claim with his homeowners' insurance, Farmers Insurance, Fire Insurance Exchange (Farmers). A Servpro water damage remediation company⁴ was contracted to begin remediation, arriving at the house on June 20, 2017. (Ex. 21, p. 417.) The initial steps apparently included cutting away damaged materials such as wall board or flooring, as part of the effort to dry the structure out. The testimony indicates the Servpro team did not handle the problem appropriately. Another Servpro company was brought in to investigate the problem and to correct it. Titan Environmental Solutions, Inc., a firm that dealt with asbestos and lead abatement was also contracted to perform testing. They took samples on July 13, 2017. (See, e.g., ex. 21, p. 367.) Another firm, P.W. Stephens Environmental (PW Stephens) performed demolition in the bathroom on August 15, 2017, for \$1,955.

7. Between the time of the first and second Servpro efforts, Homeowner hired a licensed public adjuster, Leland Coontz, to represent him in his dealings with the insurance carrier. Coontz has extensive experience in adjusting insurance claims, both for insurers and for individuals. Coontz perceived that the first Servpro team had

³ There are references in the record to the date of loss being another date, but the June 2017 date is taken from insurance documents. Hence the Accusation was amended to allege the correct year of loss.

⁴ Apparently, this company is a Servpro franchise, as was the other Servpro firm that worked on the house.

not proceeded correctly. However, he did not hire or fire any of the companies that worked on the house, as later contended by Homeowner when he complained to the Board.

8. Because the house has only one bathroom, which couldn't be used, Homeowner and his family were forced to move out. Farmers paid Additional Living Expenses (ALE) including the costs of a motel and related expenses. That funding was not unlimited, a fact that put pressure on Homeowner to complete repairs to the house as quickly as possible.

9. Coontz was able to negotiate with the insurance company to obtain more proceeds to make repairs to the house. Just how he did that is not clear from the record. That is, there are no estimate documents in the record clearly generated by Coontz. However, when Farmers communicated its final settlement, it was by a letter to Coontz, and not directly to Homeowner.

10. Coontz had worked with CCS on several occasions prior to being hired by Homeowner, and he contacted CCS about taking on the repair work. An Xactimate estimate for the repairs to the 12th Avenue property was generated by CCS—dated September 1, 2017. The Xactimate covered repairs to the bedroom adjacent to the bathroom, the hallway, the bathroom, living room, dining room, the master bedroom and another bedroom, and the kitchen and laundry. The "net claim" was estimated at \$33,961.67. (Ex. 8, p. 121.) This amount was more than Farmers ultimately settled on, as seen hereafter.

THE CONTRACT

11. On September 9, 2017, Homeowner signed a two page "Proposal and Contract" which was on CCS letterhead. Jason Schlesinger, a revoked former CSLB licensee who works for Respondent, brought the contract to S.B. for his signature.

12. The contract is short on details. Reading the document, found at exhibit 7, a stranger to it cannot discern exactly what Respondent was to do for the homeowner. Boilerplate near the top of the first page states, in bracketed language, that a description of the work to be performed and materials used should be inserted at that place, but no description was inserted on the form at that place. The form has a series of general descriptions of building components or tasks, 20 in all, such as "doors," "windows," or "concrete work." (Ex. 7, p. 106.) A small box is set out next to each category, and if checked indicates that such components or tasks are included in the contract. For each of those a line is printed next to the category, for a description of what work would be performed. While eight of the 20 categories are checked off, there is no description of the work. Hence, the box for "framing" is checked off, but there is no description of what is to be framed. Likewise, the box for "paint interior" is checked off, but no description is set forth, so one cannot determine what part of the interior is to be painted. (*Ibid.*)

13. As to payment, there is no price set out on the contract. Instead, where the price would be written in, the words "insurance proceeds only" is typed, twice, in all capital letters. (Ex. 7, p. 106.) Such is set out at another part of the contract. The copy of the contract that was electronically filed with OAH prior to the hearing is often difficult to read.

14. One indication of what the job entailed is found in a typed statement on the first page of the contract, stating "water damage estimated by Xactimate program and accepted by insurance company of owner." (Ex.7, p. 106. Original typed in all caps.) The contract further states that CCS is not responsible for any insurance deductibles, and "all insurance deductibles are due to [CCS] from the insurance repairs." (*Ibid.*)

15. The contract calls for a payment of \$5,000, as a "retainer." The contract also provides for "progressive payments of 25%50%75%100%." (Ex. 7, p. 106. Punctuation as in original.)

16. Based on the foregoing, without reference to other documents which were not appended to the contract, it cannot be determined from the document what the cost of the work was to be or what was to be done. The contract does not conform to the requirements of the Contractors State License Law (CSLL), Business and Professions Code,⁵ section 7000, et seq. for home improvement contracts, and specifically sections 7159.5, subdivision (a)(3) and 7159, subdivision (d)(5), which requires a home improvement contract to state the price in dollars and cents.

17. The contract had provisions regarding start time and completion time. There it was provided that work would commence within five working days of acceptance. September 9, 2017 was a Saturday, so under the contract Respondent had until Friday, September 15 to commence work. The contract appears to provide 16 working days to substantially complete the repairs, which would be October 10, 2017.

⁵All further statutory citations shall be to the Business and Professions Code, sometimes cited as "B & PC or Code," unless otherwise noted.

18. (A) The second page of the contract (exhibit 7, page 107) is a pre-printed form entitled "addendum to insurance proceeds contract" (Addendum). The Addendum provides that CCS is to prepare a formal Xactimate in order to file an insurance claim. The form describes what Xactimate is, and how it is relied on in the insurance industry and is similar to what insurance adjusters use to adjust claims. According to the Addendum, Xactimate is not an easy program to use, and CCS claimed to have 25 years' experience in using the program. CCS further claimed that using its services to generate such an estimate would make it easier to deal with the insurance company.

(B) The Addendum provided that if CCS prepared an Xactimate, it would be entitled to 15 per cent of the insurance proceeds negotiated with the Xactimate, if the customer did not use CCS to do the work. If the customer hired CCS to do the work "for insurance proceeds only," the estimation fee was waived.

(C) The Addendum further provides that CCS is only a contractor, and not an adjuster, but by preparing an Xactimate it will assist the customer in dealing with their insurer. Then, it is stated that CCS does have "in house Public Adjusters if one is needed." Thereafter, the Addendum provides for the customer's obligations to inform the insurer that an estimate is being generated, and for the customer to provide documentation, including copies of checks from the insurer, if requested by CCS.

THE FARMERS INSURANCE SETTLEMENT

19. On September 6, 2017, Farmers sent a settlement statement to Coontz, via e-mail. Farmers included an estimate of repair costs, which appears to have been generated by the Xactimate program, in that it is in substantially the same format as the Xactimate generated by CCS on September 1, 2017, down to the pricing list code,

CALA8X_JUL17. (Compare ex. 8, p. 110 to ex. 21, p. 339.) The Farmers settlement documents stated that the replacement costs were \$30,106.35, and after depreciation and deductible, the settlement amount was \$28,540.80. From that amount prior payments of \$5,983.25 were deducted, so that the remaining amount due Homeowner was \$22,557.55. The Farmers adjuster noted that the settlement included \$1,955 for the secondary abatement due the P.W. Stephens company. (*Ibid.*, p. 336.) That amount is found in the invoices referred to in Factual Finding 6. The \$22,557.55 that Homeowner would net was substantially less than the estimate generated by CCS.

20. The Farmers Settlement letter stated that Homeowner had arranged to pick up the check at a nearby Farmers' office. It also stated that Farmers had not allowed certain claims, mainly pertaining to painting and supervision, which may explain the difference between the CCS Xactimate of September 1, 2017, and the settlement amount.

21. The settlement letter defined Respondent's compensation under the September 9, 2017 home improvement contract. While this does not cure the failure to set out the contract amount in dollars and cents as statutorily required by the CSLL, it does define the compensation to be paid to CCS. This is because the contract, obviously drafted by Respondent, stated that the compensation was essentially "water damage estimated by Xactimate program and accepted by insurance company of owner." (Ex.7, p. 106. Original typed in all caps.)

PERFORMANCE OF THE CONTRACT

22. As found above, there is evidence that work on the 12th Avenue property began on September 6, 2017, when Yoddy Milton Muguertegui (Yoddy) began framing work in the bathroom. Yoddy, who no longer works for Respondent, had a specific

memory of starting the work on a Wednesday, with two other workers. He recalled that that first day was September 6, 2017. He believed, based on what another worker told him, that the contract had not yet been signed. This dovetails with testimony that the contract was signed on a Saturday.

23. (A) Each party to the contract has accused the other of causing problems with performance. S.B. became disenchanted within days of signing the contract, believing that the work was not being performed properly or promptly. S.B. subsequently filed a consumer complaint with the Board on September 20, 2017, or 11 days after the home improvement contract was signed, and 20 days before performance was due. (See Factual Finding 17.) It should be noted that S.B. stated on the complaint he wanted to renegotiate the contract. At the time of the complaint, S.B. could point to the fact that the building inspector had found fault with some of the framing work.

(B) According to the workmen who testified, they could only gain access to the house when S.B. was there to let them in, and they contended he was often not there when they arrived. S.B. claimed that he would come to his house to meet workers who would not be there or who would be late. So, each side has claimed, prior to the hearing or during it, that the other party would miss appointments. On at least two occasions building inspectors could not gain access to the property, delaying inspections. While it could be asserted that Respondent's workers should have been there to meet the inspector, their testimony that S.B. controlled access to the house is credited, and so they can't be blamed if the inspector could not do his inspection.

(C) Josh Beyer, the workman who did the bulk of the work on the bathroom, testified credibly that S.B. took the inspection card from the house—where inspection cards are to remain—and would bring it with him to meet the inspectors.

On October 5, 2017, Beyer was waiting for the inspector to approve the rough plumbing and the electrical in the bathroom so that he could close up the walls. The inspector arrived, but there was no inspection card. Beyer contacted S.B., who could not find the inspection card. The inspector was going to leave, but Beyer persuaded the inspector to sign a document to the effect the walls could be closed up, and the work could proceed. A photograph of that document was received as exhibit J.

24. Yoddy worked on the job for approximately three days, or at least part of three days. He testified credibly that S.B. arrived late, or didn't arrive at all, so that he put in approximately five hours of work in a three-day period. When S.B. was there, he watched Yoddy and told him how to do the work. According to Yoddy, S.B. did not want the other two workers who came with Yoddy to work on other parts of the house, and he sent them away. S.B. allegedly made comments disparaging the Hispanic workers who came with Yoddy. Other workers who testified described S.B.'s tendency to try and manage the work.

25. Upon starting the work, problems with the framing and subfloor became more apparent. Respondent made repairs in the bathroom subfloor that were not in the scope of the work. Marceil Camarga, a former employee of CCS, testified that when he went to the house for the first time, the bathroom was fully demolished, with areas where the dirt underneath the house could be seen. He found rotted subfloor and plate line, and he contacted the CCS office, explained the situation, and was authorized to repair the rotted and damaged wood.

26. Notwithstanding these issues, reconstruction of the bathroom proceeded. In late September or early October 2017, Beyer was put on the job; this was after S.B. made his complaint to the Board. Beyer rebuilt the bathroom, from structural work including framing and subfloor, to installing the tile. Beyer installed

and plumbed the tub. After he obtained clearance to close up the walls, he began to install tile on the floor, and to the surround of the bathtub, as it also functioned as a shower. He took a series of photos as he did the work. The photos indicate a workmanlike approach to the tasks.

27. Beyer completed work on the bathroom, as far as he could, around mid-October 2017. At that point, he had installed and tested the jetted tub, and he had installed the toilet and the pedestal sink. But Beyer had not finished the walls that were not tiled, nor the door. At about that time, S.B. tendered a check, dated October 10, 2017, to Respondent for \$5,000. Beyer testified to obtaining the check from S.B. and taking it to Respondent's office. Text messages indicated that the check was likely tendered on the 12th or 13th of October 2017, to Beyer on behalf of CCS.

ALLEGED DEPARTURES FROM PLANS AND SPECIFICATIONS

28. There was work performed that did not comport with the Xactimate, which has been treated as defining the scope of work. The parties to the contract are in disagreement on how and why that happened.

29. As noted above, a jetted tub was installed. The original tub was supposed to have been removed and then re-installed in the bathroom. It was cut up instead. The workers testified that S.B. did not want the old tub. S.B. denied that he wanted the old tub destroyed. He did, however, acquiesce to the installation of the jetted tub. If S.B. did not want the jetted tub, there was no reason another cast iron tub could not be installed for less than the cost of a jetted tub. During his testimony, S.B. acknowledged that his wife may have wanted the jetted tub.

30. The Xactimate called for the damaged walls, such as the bathroom walls common to the adjacent bedroom or hallway, as well as walls in the bedroom and

hallway, to be constructed of plaster on metal lath. (The house, built in 1938 according to some documents, was built with lath and plaster walls, the lath no doubt being wood lath.) Instead, wall board, including the type known as greenboard, was installed, the greenboard going into the bathroom. S.B. denied approving such a change, whereas Beyer testified that he had discussed it with the Homeowner, telling him that wallboard could be installed and finished faster than lath and plaster. S.B. decided to go with wallboard.

31. No medicine cabinet was installed, and the light was not installed. Again, Beyer testified that S.B. did not want such to be installed, and that the Homeowner wanted CCS off the job before Beyer could prep and paint the bathroom walls and door.

32. Respondent contended that change orders for such changes were prepared, but that the Homeowner refused to sign them. Coontz testified that he had explained to Homeowner that while the insurance company would pay for various items, Homeowner could substitute other items; he was not bound to the Xacitmate. For example, if the insurance would pay a certain price for flooring, and the Homeowner could obtain different flooring for less, he could install the cheaper flooring and keep the savings. Coontz believed that Homeowner wanted to maximize the cash he could tap out of the project.

33. Coontz testified that he had a number of conversations with S.B. about the project, including the changes, and that S.B. wanted Coontz to deal with the change orders. Coontz declined to do so.

34. It is found that while change orders were not executed, S.B. agreed to departures from the Xactimate. Nonetheless, this does not excuse Respondent from

compliance with the statutory requirements of B & PC section 7159, subdivision (c)(5), which mandates a change-order to be in writing and signed by the parties prior to the commencement of any work covered by a change order.

END OF THE RELATIONSHIP

35. Each party to the transaction blames the other for the termination of the relationship. Homeowner asserted that Respondent abandoned the work, and CCS contends that Homeowner threw them off the job. Respondent's contentions are credited in this issue.

36. Beyer testified that when he was ready to finish the bathroom walls, Homeowner told him that CCS was finished. He made it clear that he did not want CCS to perform the other work, such as the flooring, and the walls in the other rooms. This is consistent with the testimony of the other workers whom Homeowner had prevented working on the floors or walls. It is inferred that Homeowner either intended to obtain another contractor or contractors or do the work himself. At the time the contract terminated, Homeowner had paid \$10,000 to Respondent, but he had not paid Coontz, who testified he was entitled to 10 percent of the insurance settlement, and thus Homeowner had over \$12,000 at his disposal.

THE PROPOSED SETTLEMENT AGREEMENT BETWEEN RESPONDENT AND HOMEOWNER

37. On January 9, 2018, Paul Konapelsky, an attorney representing Respondent, wrote Homeowner regarding the CCS-Homeowner contractual relationship. Konapelsky proposed a settlement of the dispute that had arisen between the parties, the proposed terms of which are not relevant to this matter, except as to one aspect.

38. The relevant matter is found in the proposed settlement contract, which provided at paragraph 2 that Homeowner "shall withdraw and no longer pursue his claim with the Contractors' State Licensing Board against CCS . . . within 5 business days of full execution of this settlement." (Ex. 12, p. 167.)

39. No settlement was made between Respondent and Homeowner.

The Role of Jason Schlessinger

40. Jason Schlessinger is deemed a prohibited revoked licensee by Complainant. This is because Schlessinger was a partner in a firm known as California Stucco, which was licensed as a contractor between 1984 and March 1998. At that time, California Stucco's (Stucco) contractor's license was revoked on March 31, 1998, as a result of the Board receiving 12 consumer complaints against Stucco. (Exhibit 5 at p. AGO -0099.) To that end, Schlessinger's contractor license has remained revoked for over 20 years and he has failed to take any steps toward petitioning the Board for reinstatement of his revoked license.

41. Schlessinger is Respondent's father-in-law, and works for Respondent. Respondent testified to this fact under direct examination- when asked "[i]s Mr. Schlessinger currently an employee of [CCS]?" Respondent answered "yes, he is." (AR, Vol. VII, 102:23-25.)

42. S.B. credibly testified that he only dealt with Schlessinger, and that he never dealt with Respondent Renneker. This is buttressed by Renneker's testimony- admitting at the hearing under direct examination to having no contact with S.B. during the 12th Avenue project (AR, Vol. VII, 104:18-25; 105:1.) In addition, S.B. testified Schlessinger initially represented to him that he was the "owner contractor" of CCS, although Schlessinger later acknowledged he gave the company to his son-in-law. (AR,

48. Schlessinger did not testify in the proceeding.

The Claim of Defective Workmanship on the 12th Avenue Project,

49. After Homeowner filed his complaint, the Board had an independent expert inspect the work on the 12th Avenue project. That expert, David Spiegel, inspected the property on April 3, 2018, approximately six months after Respondent left the project. He concluded that the work did not meet accepted trade standards for good and workmanlike construction.

50. Some of Spiegel's negative findings pertain to item such as the failure to plaster the walls, and that the wallboard had not been readied for paint or painted. As found above, Homeowner agreed to use wallboard. The focus here is on Spiegel's findings that the floor, bathtub, and sink are not level.

51. Spiegel made measurements that showed that the pedestal sink was out-of-level by five-eighths of an inch, from one side to the other. He found that the floor was not level, measuring a five-eighths inch drop across two feet, measured from one corner of the bathroom toward another. The jetted tub was out of level, by five-sixteenths of an inch. And, Spiegel found that there was a small amount of water seepage from under the toilet, implying that the wax seal had failed.

52. Respondent countered with another expert, Douglas M. Byers. Byers was able to obtain access to the house, which was for sale, on October 29, 2020, some three years after the work on the bathroom was completed. Unlike Spiegel, Byers went under the house, inspecting the foundation. Byers found water damage that post-dated the repairs, and significantly found water damage to the ceiling of the bathroom, which was not present when Spiegel inspected the property.

53. Byers believes that the roof of the house, which has clearly not been maintained well, has leaked into the house and into the foundation areas, and that there has been settling that in part explains Spiegel's findings. Byers also asserted that there is a difference between a floor being flat and a floor being level, and that Spiegel mixed two standards up. Furthermore, Byers photographed an electronic level that was indicating that the bathtub was level.

54. As to the toilet leaking, Byers pointed to photos taken by Beyer that showed that there was caulking around the toilet where it met the floor, and he noted (and photographed) a lack of caulking three years later. He opined that a homeowner should test the tightness of the flange bolts that secure a toilet to the floor. The lack of caulking that he found in October 2020 indicated to Byers that the toilet may have been removed and re-installed between October 2017 and October 2020, or simply loosened from daily use.

55. Spiegel's findings and opinions are credited over Byers' opinions, which appear speculative. Byers saw the bathroom three years after the repair work. It is more likely that the condition of the bathroom, with the wear and tear of four people using it, would be greater than the wear and tear exhibited (or not exhibited) to Spiegel six months after the repair work.

The Settlement in the Laguna Beach Project

56. In March 2017, Respondent entered into a contract with A.G. in Laguna Beach to re-stucco a home for approximately \$45,000. Respondent proceeded with the work in April 2017. However, by November 2017, A.G. perceived cracks in the stucco. He brought the problem to the attention of the person who had sold him the job, David Silverstein, who had also supervised some of the work.

57. Respondent demanded more money from A.G. , and he would not fix the cracked stucco. Eventually, A.G. had another person remedy the problem, and A.G. sued Respondent in small claims court.

58. According to A.G. , he and Respondent were ordered to mediate the dispute. A.G. attended the mediation with Silverstein and Schlessinger, who had been identified to the homeowner as a manager of CCS.

59. Respondent Renneker testified that he was at the mediation but had to leave to deal with a family problem, and that he left Silverstein and Schlessinger to complete a settlement of the dispute.

60. A settlement was made, and the settlement agreement stated that the plaintiff (homeowner) "agrees to withdraw complaint with California State Licensing Board against Defendant within 10 days" (Ex. 20, p. 230.) It is noteworthy that the Board's complaint number was written above the quoted material.

61. Respondent testified that since a bench officer participated in the mediation, insertion of the clause that the complaint would be withdrawn was allowable.

Other Findings

62. Respondent has been cited by the Board on four occasions, specifically in 2003, 2004, 2016, and 2018.

63. The 2003 citation was for failing to provide licensing requirements, contracting out of classification, and home improvement contract violations, in violation of section 7159. The 2004 citation was for contracting out of classification and for employing an unregistered salesperson. The 2016 violation was for improper

advertising and for charging an excessive down payment. The 2018 violation found that Respondent entered into a contract with an unlicensed contractor.

64. It is fairly inferred that Respondent is not a "hands on" operator of his business. For example, his workers, at least when in the field, rarely communicated directly with him. They would call the office and speak to Daisy, or Schlessinger, who would then contact Respondent, and the intermediaries would respond to the workers' call. Respondent's contracts were signed with a rubber-stamp facsimile of his signature, that act being authorized by him. While that binds Respondent to the contract being stamped, it begs the question as to how involved Respondent is in his contracting business.

65. Moreover. Respondent Renneker told CSLB Special Investigator Huy Vo that Schlessinger is "employed as a manager," to act on behalf of CCS. (AR, Vol. II, 53:6-10.)⁶

Credibility

66. The witnesses were credible in terms of demeanor, as best as that could be discerned. The testimony of the workers was credited in part because their versions of events were internally consistent, and they were consistent with each other. The former workers were credited in part because they would have less interest in the matter than in if they still worked for Respondent. For example, Camarga hasn't worked for CCS in over two years.

⁶ "Manager" is defined as "someone who administers or supervises the affairs of a business, office, or other organization." (Black's Law Dictionary [11th ed. 2019].)

67. Coontz has a clear disdain for Homeowner, whom he believes deceived him on more than one point, including payment of Coontz's fee. Notwithstanding his animus toward Homeowner, his version of events is credited.

68. When asked if Coontz was paid for his work, Homeowner testified that Coontz waived his fee. That claim on its own would strain credulity. When compared to the vehement claims by Coontz that Homeowner made a false promise so that Coontz would sign the insurance settlement check, on which Coontz was a payee, Homeowner is discredited on a material claim.

Costs

69. The Board has incurred investigative and prosecutorial costs in this matter. A cost certification from the Board showed the Board's investigative costs as being \$3,062.76, and it stated that the Board had paid Attorney General costs of \$5,502.76. Ms. Kaiser filed a certificate that showed the Attorney General's total billing to the Board had been \$21,795.

70. It appears that the total billing described by Ms. Kaiser in her certificate could include the \$5,502.76 referenced in the Board's certificate. To avoid a double payment, the amount of \$5,502.76 should be deducted from the amount set forth in Ms. Kaiser's certificate. That would reduce attorneys' fees to \$16,292.24. To that amount should be added the investigative costs of \$3,062.76. The total costs are therefore found to be \$19,355.

LEGAL CONCLUSIONS

Jurisdiction

1. Jurisdiction to proceed in this matter was established pursuant to Business and Professions Code section 7090, based on Factual Finding 1 through 4.

Rules of General Applicability

STANDARD OF PROOF

2. Protection of the public is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 7000.6.) "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 in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business." (*Home Depot, U.S.A., Inc. v. Contractors' State License Board* (1996) 41 Cal.App.4th 1592.) To protect the public, Business and Professions Code section 7090 authorizes the temporary suspension or permanent revocation of any license if the licensee "is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action."

In addition to any penalties imposed, all persons that have had a license disciplined, whether or not the disciplinary action has been stayed, will be required to post a disciplinary bond pursuant to Business and Profession Code section 7071.8. This statutory provision provides in relevant part: "as a condition precedent to the issuance, reissuance, renewal, or restoration of a license to the applicant, or to the approval of

an application to change officers of a corporation or a limited liability company, or removal of suspension, or to the continued valid use of a license which has been suspended or revoked, but which suspension or revocation has been stayed, that the applicant or licensee file or have on file a contractor's bond in a sum to be fixed by the registrar based upon the seriousness of the violation, but which sum shall not be less than fifteen thousand dollars (\$15,000) nor more than 10 times that amount required by Section 7071.6." (Bus. & Prof. Code, § 7071.8, subd. (b).)

3. The standard of proof in an administrative disciplinary proceeding such as this to suspend or revoke a contractor's license is clear and convincing evidence. (Bus. & Prof. Code, § 7090.) Clear and convincing evidence requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a "high probability" that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.) As the party asserting the allegations in the Accusation, complainant bears the burden of proof by clear and convincing evidence. (Bus. & Prof. Code, § 7090.)

STATUTES RELEVANT TO THIS PROCEEDING

4. Complainant alleges Respondent abandoned the 12th Avenue Project in violation of section 7107. That statute states: "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."

5. Complainant also alleges that Respondent violated section 7109, by a willful departure from trade standards in violation of subdivision (a) of the statute, and by a willful departure from plans and specifications in violation of subdivision (b). The statute 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 accordance with plans and specifications prepared by or under the direct supervision of an architect.

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

6. Respondent is accused of violating section 7121 by employing Schlessinger on the 12th Avenue project. Section 7121 contains one sentence, which constitutes a long paragraph. That being noted, the statute essentially provides that a

person who has been subject to license denial, or discipline, or who while in a management position knew of improper activities by the licensee they were associated with, shall be:

prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a licensee, *and the employment, election, or association of this type of person by a licensee in any capacity other than as a nonsupervising bona fide employee shall constitute grounds for disciplinary action.*

(Emphasis added.)

7. Respondent is accused of violating section 7159.5, subdivision(a)(3), which in pertinent part provides:

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by their agent or salesperson, to comply with the following provisions is cause for discipline:

[1] . . . [11]

(3) If a downpayment will be charged, the downpayment shall not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever amount is less.

8. Respondent allegedly violated section 7159, subdivision (d)(5), which in pertinent part provides:

(d) A home improvement contract and any changes to the contract shall be in writing and signed by the parties to the contract prior to the commencement of work covered by the contract or an applicable change order and, except as provided in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with all of the following:

[1] . . . [1]

(5) The heading: "Contract Price," followed by the amount of the contract in dollars and cents.

9. Respondent is accused of twice violating section 143.5, subdivision (a), which states:

(a) No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee or that requires the other party to withdraw a complaint from the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee.

A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

Dispositive Legal Conclusions

10. It was not established by the requisite standard of proof that Respondent abandoned the 12th Avenue project in violation of section 7107. The allegations of the Accusation are that the abandonment resulted from failure to complete the various walls with plaster and to install a new light fixture, and medicine cabinet. It was found that Homeowner agreed to forgo those improvements, and Homeowner terminated the contract.

11. It was proven by the requisite standard of proof that Respondent willfully departed, in a material respect, from accepted trade standards for good and workmanlike construction, in violation of section 7109, subdivision (a). The bathroom floor and sink were significantly out of level. The bathtub was out of level, though not as much as the floor. That the toilet seeped water may not have been the result of Respondent's work.

12. It was not established that Respondent is subject to discipline under section 7109, subdivision (b), for departure from plans and specifications. The failure to complete the work on the bedroom, hallway, and bathroom walls with plaster on lath resulted from Homeowner's agreement to use wallboard to speed the project, or from him terminating the contract.

13. It was established by the requisite standard of proof, and as alleged, that Respondent employed Schlessinger in a managerial or supervisor capacity on the 12th Avenue project in violation of section 7121. The Board's regulation, California Code of Regulations (CCR), title 16, section 823 is instructive on this point. CCR section 823, subdivision (b) defines "direct supervision and control" as "any one or any combination of the following activities: [1] supervising construction, [2] managing construction activities by making technical and administrative decisions, [3] checking jobs for proper workmanship, or [4] direct supervision on construction job sites." (Cal. Code of Regs., tit. 16, § 823, subd. (b).) It was proven that Respondent did not exercise direct supervision and control over the project; rather such supervision or management was performed by Schlessinger. s. (See Factual Findings 41 through 47, 65.)

14. It was proven that Respondent requested and received an excessive down payment on the 12th Avenue project in violation of section 7159.5, subdivision (a)(3), when Respondent obtained a down payment of \$5,000 on a contract valued at just over \$22,000.

15. It was proven, as alleged, that Respondent violated section 7159, subdivision (d)(5), by entering into a home improvement contract that did not set forth the contract price in dollars and cents, instead defining the price by insurance proceeds.

16. It was proven, as alleged, that Respondent twice violated section 143.5, subdivision (a), by including, or permitting to be included, a provision in a settlement agreement that required a party to withdraw a complaint from a regulatory agency such as the Board. Whether a bench officer sanctioned the provision, or his attorney tendered the provision in a proposed settlement, Respondent permitted the activity and stood to benefit from it.

17. (A) The Board is entitled to recover its costs of investigation and prosecution pursuant to section 125.3, based on Legal Conclusions 11, 13, 14, 15, and 16. The reasonable costs are \$19,355, based on Factual Finding 68, and absent other considerations.

(B) Into the analysis must come the case of *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 (*Zuckerman*), which pertained to a cost regulation with language similar to section 125.3. In that case the Supreme Court held that an agency must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the costs statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. The court stated: "Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (29 Cal.4th at 45.)

(C) Under *Zuckerman*, the agency must also consider the licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable challenge to the proposed discipline. The Court further required that the agency must determine that the licensee will be financially able to make later payments. It concluded by stating that an agency "may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a [licensee] engaged in relatively innocuous misconduct." (*Ibid.*, footnote omitted.)

(D) In this case Respondent prevailed on two of the claims. It is thus reasonable to reduce the costs to \$14,516. .

18. The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.)

19. The Board has developed disciplinary guidelines that indicate that the minimum discipline for some of the more serious matters established herein, such as failure to comply with trade standards, is revocation stayed, and two years' probation.

20. This is not the first case where Respondent has obtained an excessive down payment; he has been cited for such. He has previously been cited for violating section 7159. Respondent entered into a vague contract, and he was rather hands off in the dealings with Homeowner on the 12th Avenue project. He has not yet crossed the line where outright revocation is required to protect the public, but he must be placed on probation so that the public can be protected. No restitution shall be ordered, because Complainant did not seek restitution given the uncertainties of the contract. Costs may be paid in installments, as approved by the Board.

ORDER

The Contractor's license issued to Ray Alvin Renneker, sole owner of California Construction Services, number 767434, is hereby revoked. However, the order of revocation is stayed, for a period of three years, on the following terms and conditions:

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

2. **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.

3. **Completion of Probation:** Upon successful completion of probation, the contractor's license will be fully restored.

4. **Violation of Probation:** If Respondent violates probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed.

5. **Provision of Documents:** Respondent shall submit copies of documents directly related to his construction operations to the Registrar upon demand during the probation period.

6. **Costs:** Respondent shall pay costs of \$14, 516.00 to the Board. He shall pay the costs of installments by a payment plan approved by the Board. The costs shall be paid in full six months prior to the termination of probation. Failure to pay costs may be deemed a violation of probation.

7. IT IS FURTHER ORDERED that for the continued valid use of Contractor's License Number 767434, which has been disciplined, Respondent shall have on file a Disciplinary Bond or post a cash deposit with the Registrar 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. The bond period shall run only while the license is current, active, and in good standing, and shall be extended until the license has been current, active, and in good standing for the required period.

The Decision shall become effective on August 2, 2021.

IT IS SO ORDERED July 1, 2021.



David Fogt, Registrar
Contractors State License Board