

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

In the Matter of the Accusation Against:

D C'S ASPHALT MAINTENANCE INC.
Donny Edward Costa, RMO/CEO/Pres.
P.O. Box 2622
Rohnert Park, CA 94927

Contractor's License No. 994097, Class C-32

Respondent.

CASE NO. N2018-224

ORDER TO ADOPT
DEFAULT DECISION

[Gov. Code, § 11520]

The attached Default Decision is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter.

Contractor's License Number **994097** issued to **D C'S ASPHALT MAINTENANCE INC** is revoked.

IT IS FURTHER ORDERED that pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, title 16, Respondent License **D C'S ASPHALT MAINTENANCE INC** Contractor's License No. **994097**, shall not apply for reissuance or reinstatement of said license for one year(s) from the effective date of this Decision.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on November 14, 2019.

IT IS SO ORDERED October 14, 2019.



David Fogt
Registrar of Contractors

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Respondent.

FINDINGS OF FACT

1. On or about June 3, 2019, Accusation No. N2018-224 was filed against D C's Asphalt Maintenance Inc., Donny Edward Costa, RMO/CEO/Pres. (Respondent) before the Registrar of Contractors (Registrar) for the Contractors' State License Board (Board). (Accusation attached as Exhibit A.)

2. On or about June 28, 2014, the Registrar issued Contractor's License No. 994097, C-32 to Respondent. The Contractor's License will expire on June 30, 2020, unless renewed.

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1 3. On or about June 4, 2019, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. N2018-224, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 136, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 P.O. Box 2622
8 Rohnert Park, CA 94927.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505(c) and/or Business & Professions Code section 124.

11 5. Government Code section 11506(c) states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense . . . and the notice shall be deemed a specific denial of all
14 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
15 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
16 discretion may nevertheless grant a hearing.

17 6. The Registrar takes official notice of the Board's records and the fact that Respondent
18 failed to file a Notice of Defense within 15 days after service upon it of the Accusation, and
19 therefore waived its right to a hearing on the merits of Accusation No. N2018-224.

20 7. California Government Code section 11520(a) states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense . . . or to appear at
22 the hearing, the agency may take action based upon the respondent's express
23 admissions or upon other evidence and affidavits may be used as evidence without
24 any notice to respondent. . . .

25 8. Pursuant to its authority under Government Code section 11520, the Registrar finds
26 that Respondent is in default. The Registrar will take action without further hearing and, based
27 on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this
28 matter, as well as taking official notice of all the investigatory reports, exhibits, and statements
contained therein on file at the Board's offices regarding the allegations contained in Accusation
No. N2018-224, finds that the charges and allegations in Accusation No. N2018-224 are,
separately and severally, true and correct by clear and convincing evidence.

1 9. The Registrar finds that the actual costs for investigation and prosecution are
2 \$2,328.12 as of July 12, 2019.

3 10. The Registrar finds that the loss to P.Y. caused by the acts or omissions of
4 Respondent is \$30,000.00.

5 DETERMINATION OF ISSUES

6 1. Based on the foregoing findings of fact, Respondent D C's Asphalt Maintenance Inc.,
7 Donny Edward Costa, RMO/CEO/Pres. (Respondent) has subjected its Contractor's License No.
8 994097, C-32 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Registrar of Contractors is authorized to revoke Respondent's contractor's license
11 based upon the following violations alleged in the Accusation which are supported by the
12 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

13 a. Violation of Business and Professions Code (Code) section 7107, in that Respondent
14 abandoned the project without legal excuse.

15 b. Violation of Code section 7108, in that Respondent diverted to another project or to
16 another purpose funds that Respondent received for a specific purpose.

17 c. Violation of Code section 7113, in that Respondent failed in a material respect to
18 complete the project for the contract price.

19 d. Violation of Code section 7117.6, in that Respondent acted as a contractor in a
20 classification other than that held by Respondent.

21 e. Violation of Code section 7116, in that Respondent willfully performed an act
22 causing injury.

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1 f. Violation of Code section 7125.4(a), in that Respondent hired an employee after
2 filing an exemption from Workers' Compensation Insurance with the Board, without first filing
3 proof of Workers' Compensation coverage.

4 Pursuant to Business and Professions Code section 7121.5, the qualifier of corporate
5 licensee that is revoked shall be prohibited from serving as an officer, director, associate, partner,
6 manager, or qualifying individual of a licensee, regardless of whether the individual had
7 knowledge of or participated in the prohibited acts or omissions for which the corporate licensee
8 was revoked, and the employment, election, or association of that individual by a licensee shall
9 constitute grounds for disciplinary action. Pursuant to this section, Donny Edward Costa is
10 prohibited from serving as an officer, director, associate, partner, manager, or qualifying
11 individual of a licensee, and any licensee that employs, elects, or associates Donny Edward Costa
12 shall be subject to discipline.

REGISTRAR OF CONTRACTORS
CONTRACTORS STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS

21535488.DOCX
DOJ Matter ID:SF2018201879

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
2 Attorney General of California
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 BRETT A. KINGSBURY
Deputy Attorney General
4 State Bar No. 243744
5 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
6 Telephone: (415) 510-3472
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7 *Attorneys for Complainant*

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P.O. Box 2622
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Contractor's License No. 994097, Class C-32
Respondent

ACCUSATION

PARTIES

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

2. On or about June 28, 2014, the Registrar of Contractors (Registrar) issued
Contractor's License Number 994097, C-32 to D C's Asphalt Maintenance Inc., Donny Edward
Costa, RMO/CEO/President (Respondent). The Contractor's License was in full force and effect
at all times relevant to the charges brought herein and will expire on June 30, 2020, unless
renewed.

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JURISDICTION

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

4. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Registrar of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 7076.1, the Registrar may reinstate a cancelled license if the licensee pays all of the fees and meets all of the qualifications and requirements for obtaining an original license.

5. Section 7076.5 of the Code provides, in pertinent part, that the inactive status of a license shall not bar any disciplinary action for violating provisions of the Contractors' State License Law (Bus. & Prof. Code, section 7000, et seq.).

6. Section 7106.5 of the Code provides, in pertinent part, that the expiration, cancellation, forfeiture or suspension of a license by operation of law or by order or decision of the registrar; or a court of law, or the voluntary surrender of the license shall not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the license, or to render a decision suspending or revoking the license.

STATUTORY AND REGULATORY PROVISIONS

7. Section 7107 of the Code 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."

8. Section 7108 of the Code states:

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

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1 9. Section 7113 of the Code states:

2 "Failure in a material respect on the part of a licensee to complete any construction project
3 or operation for the price stated in the contract for such construction project or operation or in any
4 modification of such contract constitutes a cause for disciplinary action."

5 10. Section 7116 of the Code states:

6 "The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of
7 which another is substantially injured constitutes a cause for disciplinary action."

8 11. Section 7117.6 of the Code states:

9 "Acting in the capacity of a contractor in a classification other than that currently held by
10 the licensee constitutes a cause for disciplinary action."

11 12. Section 7125.4(a) of the Code states:

12 "The filing of the exemption certificate prescribed by this article that is false, or the
13 employment of a person subject to coverage under the workers' compensation laws after the filing
14 of an exemption certificate without first filing a Certificate of Workers' Compensation Insurance
15 or Certification of Self-Insurance in accordance with the provisions of this article, or the
16 employment of a person subject to coverage under the workers' compensation laws without
17 maintaining coverage for that person, constitutes cause for disciplinary action."

18 13. California Code of Regulations, title 16, section 832.32 identifies the scope of C-32
19 licensure as follows:

20 "A parking and highway improvement contractor applies and installs protective coatings,
21 vehicle stops, guard rails and mechanical devices, directional lines, buttons, markers, signs and
22 arrows on the horizontal surface of any game court, parking facility, airport, highway or roadway
23 constructed of concrete, asphalt or similar material. This classification includes the surface
24 preparatory work necessary for the application of protective coatings but does not include the re-
25 paving of these surfaces."

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COST RECOVERY AND RESTITUTION

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

15. Section 11519(d) of the Government Code provides that the Registrar may require restitution of damages suffered as a condition of probation in the event probation is ordered.

P.Y. PROJECT

9 16. On or about March 14, 2017, Respondent contracted with P.Y. to grade, patch, pave,
10 seal and stripe a parking lot in Vallejo, California. Respondent possessed only a class C-32
11 license, which did not authorize him to engage in work of this magnitude.

17. Respondent began work on the project on or about March 20, 2017.

13 18. Respondent had at least one employee working on the project. Respondent
14 nonetheless had an exemption certificate on file with the Contractors' State License Board,
15 indicating that Respondent had no employees.

16 19. Roughly 22 days into work on the project, Respondent asked for and received a
17 payment from P.Y. in the amount of \$30,000.00, for the specific purpose of buying material.

18 20. That same day, a building official issued a stop order on the project, stating that the
19 project required a permit that had not been obtained. Obtaining the permit required P.Y. to
20 expend significant time and money.

21 21. When the work was finally permitted to resume, Respondent declined to complete the
22 project for the price agreed upon. *3-3-1*

23 22. Respondent never returned the \$30,000.00 that P.Y. had paid Respondent to purchase
24 material.

FIRST CAUSE FOR DISCIPLINE

(Abandonment)

27 23. Respondent's license is subject to disciplinary action under section 7107 of the Code,
28 in that Respondent abandoned the project without legal excuse.

SECOND CAUSE FOR DISCIPLINE

(Diversion of Funds)

3 24. Respondent's license is subject to disciplinary action under section 7108 of the Code,
4 in that Respondent diverted to another project or to another purpose the \$30,000.00 paid for the
5 specific purpose of obtaining material.

THIRD CAUSE FOR DISCIPLINE

(Failure to Complete)

8 25. Respondent's license is subject to disciplinary action under section 7113 of the Code,
9 in that Respondent failed in a material respect to complete the project for the contract price, and
10 the owner was or will be required to spend a substantial sum in excess of the contract price to
11 complete the project.

FOURTH CAUSE FOR DISCIPLINE

•(Contracting Out of Classification)

14 26. Respondent's license is subject to disciplinary action under section 7117.6 of the
15 Code, in that Respondent acted in the capacity of a contractor in a classification other than that
16 held by Respondent.

FIFTH CAUSE FOR DISCIPLINE

(Willful Act Causing Injury)

19 27. Respondent's license is subject to disciplinary action under section 7116 of the Code,
20 in that Respondent willfully received and retained the \$30,000.00 Respondent was paid for
21 material, instead of using that money for the project or returning it to P.Y.

SIXTH CAUSE FOR DISCIPLINE

(Workers' Compensation)

24 28. Respondent's license is subject to disciplinary action under section 7125.4(a) of the
25 Code, in that Respondent filed a false workers' compensation exemption, hired an employee after
26 filing such an exemption without first filing a Certificate of Workers' Compensation Insurance or
27 Certification of Self-Insurance, and/or used an employee on the project without maintaining
28 coverage for that person.

OTHER MATTERS

2 29. Pursuant to sections 7097 and 7098 of the Code, if Contractor's License Number
3 994097, issued to D C's Asphalt Maintenance Inc., Donny Edward Costa, RMO/CEO/President,
4 is suspended or revoked, the Registrar may suspend or revoke, without notice, any other license
5 issued in the name of D C's Asphalt Maintenance Inc., or for which D C's Asphalt Maintenance
6 Inc. or Donny Edward Costa furnished the qualifying experience and appearance or serves as an
7 officer.

8 30. Pursuant to sections 7121 and 7121.5 of the Code, if discipline is imposed on license
9 number 994097, issued to D C's Asphalt Maintenance Inc., Donny Edward Costa,
10 RMO/CEO/President, then Donny Edward Costa shall be prohibited from serving as an officer,
11 director, associate, partner, or qualifying individual of any licensee during the time the discipline
12 is imposed, and any licensee which employs, elects, or associates Donny Edward Costa shall be
13 subject to disciplinary action.

31. Section 7095 of the Code provides, in pertinent part, that the Registrar in making an order may:

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

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

20 "(c) Impose upon the licensee compliance with such specific conditions as may be just in
21 connection with his operations as a contractor disclosed at the hearing and may further provide
22 that until such conditions are complied with no application for restoration of the suspended or
23 revoked license shall be accepted by the registrar."

PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Registrar of Contractors issue a decision;

27 1. Revoking or suspending Contractor's License Number 994097, issued to D C's
28 Asphalt Maintenance Inc., Donny Edward Costa, RMO/CEO/President;

1 2. Prohibiting Donny Edward Costa from serving as an officer, director, associate,
2 partner, or qualifying individual of any licensee during the period that discipline is imposed on
3 license number 994097;

4 3. Revoking or suspending any other license for which Donny Edward Costa is
5 furnishing the qualifying experience or appearance;

6 4. Ordering restitution of all damages according to proof suffered by P.Y. as a condition
7 of probation in the event probation is ordered;

8 5. Ordering restitution of all damages suffered by P.Y. as a result of Respondent's
9 conduct as a contractor, as a condition of restoration of license number 994097;

10 6. Ordering Respondent to pay the Registrar of Contractors its costs for the investigation
11 and enforcement of the case according to proof at the hearing, pursuant to Business and
12 Professions Code section 125.3;

13 7. Ordering Respondent to provide the Registrar with a listing of all contracting projects
14 in progress and the anticipated completion date of each;

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

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18 DATED: 6/3/2019 

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20 **FILED**

21 JUN 03 2019

22 **CSLB DSS** *HNH*

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