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

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| In the Matter of the Accusation Against:<br><br>**ONE DOT CONSTRUCTION**<br>**KEVIN NGUYEN, CEO/PRES (disassoc. 5/1/18)**<br>**ARNELIO SUNGA ANICETE, RMO**<br>**327 Castile Way**<br>**South San Francisco, CA 94080**<br><br>**Contractor License No. 1010930**<br><br>Respondent<br><br>**A S ANICETE CONSTRUCTION,**<br>**ARNELIO SUNGA ANICETE, SOLE OWNER**<br>**327 Castille Way**<br>**South San Francisco, CA 94080**<br><br>**Contractor License No. 780740**<br><br>Affiliated Party. | Case No. N2018-366<br><br>**A C C U S A T I O N** |

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Complainant alleges:

## PARTIES

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

2. On or about February 4, 2016, the Registrar of Contractors issued Contractor License Number 1010930 to One Dot Construction, Kevin Nguyen, CEO/President (disassociated May 1, 2018), Arnelio Sunga Anicete, RMO (Respondent). The license will expire on February 29, 2020, unless renewed.

3. On or about June 23, 2000, the Registrar of Contractors issued Contractor License Number 780740 to As Anicete Construction, Arnelio Sunga Anicete, Sole Owner (Affiliated Party). The license will expire on June 30, 2022, unless renewed.

## JURISDICTION

4. This Accusation is brought before the Registrar of Contractors (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 unless otherwise indicated.

Section 7090 of the Business and Professions Code ("Code") provides, in pertinent 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.

5. 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.

6. 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.

7. 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, ' 7000, et seq.).

**STATUTORY PROVISIONS**

8. Section 7068.1 of the Code states:

"(a) The person qualifying on behalf of an individual or firm under paragraph (1), (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations to secure compliance with this chapter and the rules and regulations of the board. This person shall not act in the capacity of the qualifying person for an additional individual or firm unless one of the following conditions exists:

"(1) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity.

"(2) The additional firm is a subsidiary of or a joint venture with the first. 'Subsidiary,' as used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the other firm.

"(3) With respect to a firm under paragraph (2), (3), or (4) of subdivision (b) of Section 7068, the majority of the partners, officers, or managers are the same.

"(b) Notwithstanding paragraphs (1) to (3), inclusive, of subdivision (a), a qualifying individual may act as the qualifier for no more than three firms in any one-year period.

"(c) The following definitions shall apply for purposes of this section:(1) 'Firm' means a partnership, a limited partnership, a corporation, a limited liability company, or any other combination or organization described in Section 7068.(2) 'Person' is limited to natural persons, notwithstanding the definition of 'person' in Section 7025.

"(d) The board shall require every applicant or licensee qualifying by the appearance of a qualifying individual to submit detailed information on the qualifying individual's duties and responsibilities for supervision and control of the applicant's construction operations.

"(e) Violation of this section shall constitute a cause for disciplinary action and shall be punishable as a misdemeanor by imprisonment in a county jail not to exceed six months, by a fine of not less than three thousand dollars ($3,000), but not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment."

9. Section 7107 of the Code states that "[a]bandonment 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."

10. Section 7113 of the Code states that "[f]ailure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action."

11. Section 7125.4 of the Code states:

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

"(b) Any qualifier for a license who, under Section 7068.1 is responsible for assuring that a licensee complies with the provisions of this chapter, is also guilty of a misdemeanor for committing or failing to prevent the commission of any of the acts that are cause for disciplinary action under this section"

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12. Section 7159.5 of the Code states, in pertinent part:

"This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

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

. . .

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

. . .

"(5) Except for a downpayment, the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered."

**COST RECOVERY/RESTITUTION**

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

14. 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.

**THE FREMONT PROJECT**

15. On or about October 20, 2017, A.V. entered into a contract with Respondent for Respondent to perform an interior remodel and second-floor addition at A.V.'s home in Fremont, California (Fremont Project). The total contract price was $135,000.00. On October 21, 2017, A.V. paid Respondent a downpayment of $27,000.00. Respondent had not begun any work on the project as of that date.

16. On or about October 22, 2017, Respondent began demolition of the interior of A.V.'s home. On or about December 16, 2017, Respondent requested and received another $27,000.00 payment from A.V. The payment schedule for the Fremont Project specified that the second $27,000.00 payment was due upon completion of the foundation and rough framing, and passage of the inspection. As of December 16, 2017, the foundation and rough framing were not complete and were not ready for inspection. Respondent had at least four laborers working on the Fremont Project.

17. On or about March 19, 2018, Respondent abandoned the Fremont Project. As of this date, the rough framing was nearly complete, however it had not yet been inspected. On or about May 5, 2018, A.V. hired another contractor to complete the Fremont Project for $162,240.00.

**FIRST CAUSE FOR DISCIPLINE**

**(Failure to Exercise Supervision)**

18. Respondent has subjected its Contractor License to disciplinary action in that its Responsible Managing Officer, Arnelio Sunga Anicete, failed to exercise direct supervision and control of Respondent's construction operations to secure compliance with Contractors State License Law and the rules and regulations of the Board. (Bus. & Prof. Code, § 7068.1.) Arnelio Sunga Anicete was unaware of the Fremont Project and never visited the project to review any work. The circumstances are set forth in further detail in paragraphs 15 through 17, above.

**SECOND CAUSE FOR DISCIPLINE**

**(Abandonment)**

19. Respondent has subjected its Contractor License to disciplinary action in that Respondent abandoned the Fremont Project without legal excuse. (Bus. & Prof. Code, § 7107.) Specifically, Respondent ceased work on the Fremont Project and then failed to respond to A.V.'s requests to return and complete the project. The circumstances are set forth in further detail in paragraphs 15 through 17, above.

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**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Complete Project for Price Stated)**

20. Respondent has subjected its Contractor License to disciplinary action in that it failed to complete the Fremont Project for the price stated. (Bus. & Prof. Code, § 7113.) Specifically, Respondent accepted a total of $54,000.00 from A.V. on the Fremont Project, but failed to complete the project. After Respondent abandoned the project, A.V. had to hire another contractor to correct and complete the Fremont Project for $162,240.00. A.V.'s new contractor estimated that the work performed by Respondent was worth approximately $12,000.00. The circumstances are set forth in further detail in paragraphs 15 through 17, above.

**FOURTH CAUSE FOR DISCIPLINE**

**(False Workers' Compensation Exemption)**

21. Respondent has subjected its Contractor License to disciplinary action in that it failed to secure workers' compensation for its employees on the Fremont Project. (Bus. & Prof. Code, § 7124.5.) Respondent had at least four laborers working on the Fremont Project, however it had a workers' compensation exemption on file with the Board at the time. The circumstances are set forth in further detail in paragraphs 15 through 17, above.

**FIFTH CAUSE FOR DISCIPLINE**

**(Excessive Down Payment)**

22. Respondent has subjected its Contractor License to disciplinary action in that it accepted an excessive down payment on the Fremont Project. (Bus. & Prof. Code, § 7159.5, subd. (a)(3).) On October 21, 2017, A.V. paid Respondent a downpayment of $27,000.00. Under Code section 7159.5, subdivision (a)(3), Respondent may not accept a down payment in excesss of $1,000.00 or 10% of the total contract price, whichever is less. The circumstances are set forth in further detail in paragraphs 15 through 17, above.

**SIXTH CAUSE FOR DISCIPLINE**

**(Accepting Funds in Excess of Materials Delivered or Work Performed)**

23. Respondent has subjected its Contractor License to disciplinary action in that it accepted payment in excess of work performed or materials delivered. (Bus. & Prof. Code, §

7159.5, subd. (a)(5).) Specifically, on or about December 16, 2017, Respondent accepted a second payment of $27,000.00, however the foundation and rough framing were not complete, nor had the work passed inspection. The circumstances are set forth in further detail in paragraphs 15 through 17, above.

**OTHER MATTERS**

24. Sections 7097 and 7098 of the Code provide, in pertinent part, that when any license has been suspended or revoked following a hearing, the Registrar may suspend or revoke, without further notice, any additional license issued in the name of Kevin Nguyen or Arnelio Sunga Anicete, or for which Kevin Nguyen or Arnelio Sunga Anicete furnished the qualifying experience and appearance under the provisions of section 7068 of the Code.

25. Pursuant to Code section 7121, if discipline is imposed on License Number 1010930, issued to Respondent, then Kevin Nguyen and Arnelio Sunga Anicete shall be prohibited from serving as officers, directors, associates, partners, or qualifying individuals of any licensee during the time the discipline is imposed, and any licensee which employs, elects, or associates Kevin Nguyen or Arnelio Sunga Anicete in any capacity other than as a non-supervising bona fide employee shall be subject disciplinary action.

26. Pursuant to section 7121.5 of the Code, if discipline is imposed on Contractor License Number 1010930 issued to Respondent, then Kevin Nguyen, as CEO/President, and Arnelio Sunga Anicete, as RMO, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the time the discipline is imposed, whether or not they had knowledge or participated in the acts or omissions constituting grounds for discipline, and any licensee which employs, elects, or associates Kevin Nguyen or Arnelio Sunga Anicete shall be subject to disciplinary action.

27. Section 7095 of the Code provides, in pertinent 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 his 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 license shall be accepted by the registrar."

**PRAYER**

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

1. Revoking or suspending Contractor License Number 1010930 issued to One Dot Construction, Kevin Nguyen, CEO/President (disassociated May 1, 2018), Arnelio Sunga Anicete, RMO;

2. Revoking or suspending Contractor License Number 780740 issued to A S Anicete Construction, Arnelio Sunga Anicete, Sole Owner;

3. Prohibiting Kevin Nguyen and/or Arnelio Sunga Anicete from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license Number 1010930, issued to One Dot Construction, Kevin Nguyen, CEO/President (disassociated May 1, 2018), Arnelio Sunga Anicete, RMO;

4. Revoking or suspending any other license for which Arnelio Sunga Anicete is furnishing the qualifying experience or appearance;

5. Ordering restitution of all damages according to proof suffered by A.V. as a condition of probation in the event probation is ordered;

6. Ordering restitution of all damages suffered by A.V. as a result of One Dot Construction's conduct as a contractor, as a condition of restoration of license Number 1010930, issued to One Dot Construction, Kevin Nguyen, CEO/President (disassociated May 1, 2018), Arnelio Sunga Anicete, RMO;

7. Ordering One Dot Construction, Kevin Nguyen, CEO/President (disassociated May 1, 2018), Arnelio Sunga Anicete, RMO, to pay the Registrar of Contractors costs for the

investigation and enforcement of the case according to proof at the hearing, pursuant to Business and Professions Code section 125.3;

8. Ordering One Dot Construction, Kevin Nguyen, CEO/President (disassociated May 1, 2018), Arnelio Sunga Anicete, RMO, to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each;

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

DATED: 6/18/2019

WOOD ROBINSON
Enforcement Supervisor I
Contractors' State License Board
Department of Consumer Affairs
State of California
*Complainant*

FILED
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