XAVIER BECERRA
Attorney General of California
LINDA SCHNEIDER
Senior Assistant Attorney General
LINDA L. SUN
Supervising Deputy Attorney General
State Bar No. 207108
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6283
Facsimile: (916) 731-2126
Attorneys for Complainant

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

In the Matter of the Accusation Against: **LIGHTNING CONSTRUCTION & DESIGN INC., BARAK SVISA, RMO/CEO/PRES** 6047 Tampa Avenue, #303 Tarzana, CA 91356 Contractor's License No. 951122, B Respondent.	Case No. N2018-529 **ACCUSATION**

PARTIES

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

2. On or about August 12, 2010, the Registrar of Contractors (Registrar) issued Contractor's License Number 951122 in Classification B (General Building) to Lightning Construction & Design Inc., (Respondent Lightning). The Contractor's License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2020, unless renewed.

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3. At all times, Barak Svisa (Respondent Svisa) was the responsible managing officer (RMO), CEO and President.

JURISDICTION

4. This Accusation is brought before the Registrar for the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118, subdivision (b) states:

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

6. Section 7076.5, subdivision (h), states:

> The inactive status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes stated in this chapter.

7. Section 7090 provides, in pertinent part:

> The registrar may upon his or her own motion and shall upon the verified complaint in writing of any person, investigate the actions of any applicant, contractor, or home improvement salesperson within the state and may deny the licensure or the renewal of licensure of, or cite, temporarily suspend, or permanently revoke any license or registration if the applicant, licensee, or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action.

8. Section 7106.5 states:

> For the purposes of this chapter, the term "licensee" shall include an individual, partnership, corporation, limited liability company, join venture, or any combination or organization licensed under this chapter, and shall also include any named responsible managing officer, responsible managing manager, responsible managing member, or personnel of that licentiate whose appearance has qualified the licentiate under the provisions of Section 7068.

9. Section 7121.5 states:

> A person who was the qualifying individual on a revoked license, or of a license under suspension, or of a license that was not renewed while it was under suspension, shall be prohibited from serving as an officer, director, associate, partner,

manager, or qualifying individual of a licensee, whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked, or suspended, and the employment, election, or association of that person by a licensee shall constitute grounds for disciplinary action.

STATUTORY PROVISIONS

10. Section 7109 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.

11. Section 7113 of the Code states:

Failure 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.

12. Section 7159 states, in pertinent part:

. . . .

(e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all of the following notices shall be provided to the owner as part of the contract form as specified or, if otherwise authorized under this subdivision, may be provided as an attachment to the contract:

(1) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the following statement: "A notice concerning commercial general liability insurance is attached to this contract." The notice shall include the heading "Commercial General Liability Insurance (CGL)," followed by whichever of the following statements is both relevant and correct:

. . . .

(B) "(The name on the license or 'This contractor') carries commercial general liability insurance written by (the insurance company). You may call (the insurance company) at _____ to check the contractor's insurance coverage."

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COST RECOVERY, RESTITUTION, AND OTHER AUTHORITY

13. Section 125.3 provides, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may 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.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

. . . .

14. Section 11519 of the Government Code states:

(a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. 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.

(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 ([entitled Emergency Decision] commencing with Section 11460.10) of Chapter 4.5.

15. Section 143.5, subdivision (b), states:

Any board, bureau, or program within the Department of Consumer Affairs that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for

monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

16. Section 7095 states:

The decision 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.

17. Section 7097 states:

Notwithstanding the provisions of Sections 7121 and 7122, when any licensee has been suspended by a decision of the registrar pursuant to an accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter [the Contractors' State License Law] in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be suspended by the registrar without further notice.

18. Section 7098 states:

Notwithstanding the provisions of Sections 7121 and 7122, when any license has been revoked under the provisions of this chapter [the Contractors' State License Law], 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.

19. Section 7102 states:

After suspension of a license upon any of the grounds set forth in this chapter [the Contractors' State License Law], the registrar may reinstate the license upon proof of compliance by the contractor with all provisions of the decision as to reinstatement or, in the absence of a decision or any provisions of reinstatement, in the sound discretion of the registrar.

After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be reinstated or reissued and a license shall not be issued to any member of the personnel of the revoked licensee found to have had knowledge of or participated in the acts or omissions constituting grounds for revocation, within a minimum period of one year and a maximum period of five years after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered when extending the minimum one-year period. The criteria shall give due consideration to the appropriateness of the extension of time with respect to the following factors:

(a) The gravity of the violation.

(b) The history of previous violations.

(c) Criminal convictions.

When any loss has been reduced to a monetary obligation or debt, however, the satisfaction of the monetary obligation or debt as a prerequisite for the issuance, reissuance, or reinstatement of a license shall not be required to the extent the monetary obligation or debt was discharged in a bankruptcy proceeding. However, any nonmonetary condition not discharged in a bankruptcy proceeding shall be complied with prior to the issuance, the reissuance, or reinstatement of the license.

MEDFORD PROJECT

20. On or about March 17, 2015, Respondent Lightning entered into a contract with homeowner (RM) to provide labor and materials to build extensions to the living room, laundry room, and garage (for a total of 162 square feet) and re-roof the entire roof except where the solar panels were located. Respondent provided RM with an estimate of $49,000.00 to complete the project within two (2) months after approval of city permits.

21. On or about March 17, 2015, Respondent Lightning checked the box to indicate coverage of Commercial General Liability Insurance with no specificity as to the insurance company name or telephone number. The contract contained the following payment schedule:

i. $1,000.00 due upon signing;

ii. $6,000.00 due upon approval of design;

iii. $10,000.00 due upon start of project and roof addition;

iv. $10,000.00 due upon completion of foundation;

v. $10,000.00 due upon framing;

vi. $5,000.00 due upon completion of roof;

vii. $2,000.00 due upon completion of project.

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22. Respondent made a change order and required RM to execute a "Continuation/Addendum" to alter the provisions in the contract to include the following:

i. $13,000.00 to relocate gas and water lines

ii. $13,000.00 due upon start of project

iii. $4,000.00 due upon completion of project.

23. On or about July 15, 2015, Respondent commenced work on the project. RM paid Respondent a total $57,000.00. RM issued the following payments to Respondent Lightning as follows:

Date	Check #	Amount	Payee	Purpose
03/17/2015	7522	$1,000.00	Lightning Construction & Design	Down Payment
04/15/2015	7538	$6,000.00	Lightning Construction & Design	First Progress Payment
09/28/2015	7552	$20,000.00	Lightning Construction & Design	Progress Payment
01/11/2016	7564	$5,000.00	Lightning Construction & Design	Progress Payment
02/15/2016	7567	$10,000.00	Lightning Construction & Design	Progress Payment
03/10/2016	7572	$10,000.00	Lightning Construction & Design	Progress Payment
08/30/2016	7589	$5,000.00	Lightning Construction & Design	Progress Payment

24. On or about August 11, 2016, Respondent signed an agreement to credit RM $4,000.00 for water-damaged items. On or about March 17, 2017, Respondent ceased working on the project. On or about March 1, 2018, Respondent recorded a mechanics lien for $13,000.00 citing claim for "[i]nsulation and stucco work completed." On or about January 10, 2019, RM filed a claim for property damage with Respondent's insurance carrier, alleging, "construction defects, incomplete work, personal property damages, and ... abandonment."

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FIRST CAUSE FOR DISCIPLINE

(Departure from Accepted Trade Standards)

25. Respondent is subject to disciplinary action under section 7109, subdivision (a), in that on the Medford Project, Respondent willfully departed in a material respect from accepted trade standards for good and workman-like construction, as follows:

a. Respondent failed to repair ceiling damage caused by roof leaks

b. Respondent failed to layout/measure shiplap exposure from fascia to attic and space materials accordingly.

c. Respondent failed to check the quality of the wood where exposed.

d. Respondent failed to check the wood qualify where exposed and use spruce lumber for fascia.

e. Respondent failed to space outriggers no more than 16" apart at the corners and not more than 24" in the field.

f. Respondent failed to ensure the backing of the frame to be properly nailed/attached.

g. Respondent failed to remove or cut off exposed nails.

h. Respondent failed to use proper appearance material for the outlook near the front door entrance.

Paragraphs 20 through 24, above, are incorporated by reference as though fully stated herein.

SECOND CAUSE FOR DISCIPLINE

(Departure from Plans or Specifications)

26. Respondent is subject to disciplinary action under 7109, subdivision (b), in that on the Medford Project, Respondent willfully disregarded the project plans and specifications in a material respect, as follows:

a. Respondent did not install tongue and groove sheeting material per the contract.

Paragraphs 20 through 24, above, are incorporated by reference as though fully stated herein.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Complete Project for Contract Price Stated)

27. Respondent is subject to disciplinary action under section 7113, in that on the Medford Project, Respondent failed to complete the project for the contract price, and the homeowner is required to spend substantial amounts in excess of the contract price to complete the project in accordance with the contract. Specifically, Respondent failed to complete/correct the project for the price stated in the contract. RM was required to secure the services of other contractors to complete/correct at a cost of $25,200.00 in excess of the contract price. Paragraphs 20 through 24, above, are incorporated by reference as though fully stated herein.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Home Improvement Contract Form Requirements)

28. Respondent is subject to disciplinary action under section 7159, subdivision (e)(1)(B) in that on the Medford Project, Respondent violated home improvement contract drafting requirements. Respondent provided a statement that was not relevant/correct and or factual. Specifically, the provision regarding general liability insurance and insurance contact information. Paragraphs 20 through 24, above, are incorporated by reference as though fully stated herein.

CAUSE FOR OTHER ACTION

(Restrictions on Corporate Qualifier – Respondent Svisa)

29. Pursuant to section 7121.5, if license number 951122, issued to Respondent Lightning is revoked or suspended, Respondent Svisa shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee during the time the discipline is imposed, whether or not he had knowledge of or participated in the acts or omissions constituting grounds for discipline as alleged in the causes for discipline, above, and any licensee which employs, elects, or associates Respondent Svisa other than as a bona fide nonsupervising employee shall be subject to disciplinary action.

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PRAYER

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

1. Ordering the revocation or suspension of Contractor's License Number 951122 issued to Respondent Lightning pursuant to section 7090;

2. Ordering restitution of all damages according to proof suffered by RM as a condition of probation in the event probation is ordered for Respondent Lightning, pursuant to Government Code section 11519, subdivision (d);

3. Ordering Respondent Lightning to pay the Registrar costs for the investigation and enforcement of the case according to proof at the hearing, pursuant to section 125.3;

4. Ordering Respondent Lightning to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each, pursuant to section 7095;

5. Ordering that Respondent Svisa be prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee, pursuant to section 7121.5; and

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

DATED: 11/5/19

FILED
NOV 05 2019
CSLB DSS

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

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