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

In the Matter of the Accusation Against: **MURPHY MCKENNA CONSTRUCTION; SEAN PATRICK MC KENNA, RMO; ANTHONY STEPHEN MURPHY, CEO/PRESIDENT; CYNTHIA SALVISBERG-HAEUSER, OFFICER** **P.O. Box 70515** **Richmond, CA 94807** **Contractor's License No. 692995, B** Respondents.	Case No. N2023-141 **ACCUSATION**

PARTIES

1. Brian Melvin (Complainant) brings this Accusation solely in his official capacity as the Supervising Special Investigator I of the Contractors State License Board (Board), Department of Consumer Affairs.

2. On or about July 28, 1994, the Registrar of Contractors (Registrar) issued Contractor's License Number 692995, in classification B (General Building) to Murphy McKenna Construction (Respondent Murphy McKenna Construction). The Contractor's License was in full

force and effect at all times relevant to the charges brought herein and will expire on December 31, 2025, unless renewed. Sean Patrick McKenna (Respondent McKenna) associated as the Responsible Managing Officer (RMO) on July 28, 1994. Anthony Stephen Murphy (Respondent Murphy) associated as the Chief Executive Officer (CEO) and President on November 23, 2022.

3. Cynthia Salvisberg-Haeuser (Respondent Salvisberg-Haeuser) is listed as the Chief Financial Officer of Respondent Murphy McKenna Construction in the records of the California Secretary of State, effective April 23, 2022. However, Respondent Murphy McKenna Construction has not disclosed to the Registrar that Respondent Salvisberg-Haeuser occupies this position. Therefore, Respondent Salvisberg-Haeuser is not a member of the personnel of record for Respondent Murphy McKenna Construction.

JURISDICTION

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

5. Section 118, subdivision (b), of the Code, 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), of the Code 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 of the 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.

8. Section 7106.5 of the Code states:

> The expiration, cancellation, forfeiture, revocation, or suspension of a license by operation of law or by order or decision of the registrar or a court of law, or the voluntary surrender of a license by a licensee, shall not deprive the registrar of

jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the license, or to render a decision suspending or revoking the license.

9. Section 7121 of the Code states:

A person who has been denied a license for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a partner, officer, director, manager, or associate of any partnership, corporation, limited liability company, firm, or association whose application for a license has been denied for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as a partner, officer, director, manager, or associate had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended, or revoked, 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.

10. Section 7121.5 of the Code 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

11. Section 7112 of the Code states:

Omission or misrepresentation of a material fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an existing license constitutes a cause for disciplinary action.

12. Section 7117 of the Code states:

Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

COST RECOVERY, RESTITUTION AND OTHER AUTHORITY

13. Section 125.3 of the Code states, 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; provided, however, that the terms of probation shall be just as reasonable in 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 (commencing with Section 11460.10) of Chapter 4.5.

15. Section 143.5, subdivision (b), of the Code 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 of the Code 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 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 licensee shall be accepted by the registrar.

17. Section 7097 of the Code 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 of the Code 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 of the Code 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.

FACTUAL ALLEGATIONS

20. On or about October 24, 2022, Respondent McKenna and Respondent Murphy both signed and submitted an Application to Add New Personnel to Existing Corporate or Limited Liability Company License, under penalty of perjury, to add Respondent Murphy to Respondent Murphy McKenna Construction's license number 692995.

21. Question 11 of the application asks, "Have you (or any company you are or were a part of) ever received a citation from CSLB or had a contractor license or other professional or vocational license or registration denied, suspended, revoked, or otherwise disciplined by this state or elsewhere ...?" Respondents checked the box marked "No".

22. However, on August 3, 2010, the Board had revoked license number 721472 issued to A Murphy Construction, Inc., and license number 936946 issued to A M Contractors Inc., for a period of two years in Board case number N2009-283. Respondent Murphy was the RMO/CEO/President at the time for both revoked licenses. In the October 24, 2022 Application to Add New Personnel to Existing Corporate or Limited Liability Company License, Respondent Murphy failed to disclose the prior revocations as required by Question 11.

FIRST CAUSE FOR DISCIPLINE

(Misrepresentation in Obtaining/Renewing License)

23. Respondent Murphy McKenna Construction has subjected its license to disciplinary action under Code section 7112, in that Respondent Murphy McKenna Construction omitted or misrepresented a material fact in obtaining, or renewing its license by failing to notify the Board in its October 24, 2022 application, that Respondent Murphy had a license (license numbers 721472 and 936946) that had been revoked, as required by question 11 in the application, as set forth above.

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SECOND CAUSE FOR DISCIPLINE

(Personnel Variation / Undisclosed Principal)

24. Respondent Murphy McKenna Construction has subjected its license to disciplinary action under Code section 7117, subdivision (b), in that Respondent Murphy McKenna Construction acted in the capacity of a contractor under its license in a manner not in accordance with the personnel of the licensee as forth in its October 24, 2022 application, as set forth above. Respondent Salvisberg-Haeuser became Chief Financial Officer of Respondent Murphy McKenna Construction in the records of the Secretary of State, effective April 23, 2022. However, Respondent Murphy McKenna Construction failed to disclose to the Board that Respondent Salvisberg-Haeuser became an officer.

CAUSES FOR OTHER ACTION

FIRST CAUSE FOR OTHER ACTION

(Restrictions on Qualifier – Respondent Sean Patrick McKenna)

25. Pursuant to Code section 7121.5, if license number 692995 issued to Respondent Murphy McKenna Construction is revoked or suspended, Respondent Sean Patrick McKenna 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 Sean Patrick McKenna other than as a bona fide nonsupervising employee shall be subject to disciplinary action.

SECOND CAUSE FOR OTHER ACTION

(Restrictions on Respondent Anthony Stephen Murphy)

26. Pursuant to Code section 7121, if license number 692995 issued to Respondent Murphy McKenna Construction is revoked or suspended, Respondent Anthony Stephen Murphy shall be prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a licensee in that, while serving as CEO/President of Respondent Murphy McKenna Construction, he had knowledge of or

participated in the acts or omissions constituting grounds for discipline as alleged in the causes for discipline, above.

THIRD CAUSE FOR OTHER ACTION

(Restrictions on Respondent Cynthia Salvisberg-Haeuser)

27. Pursuant to Code section 7121, if license number 692995 issued to Respondent Murphy McKenna Construction is revoked or suspended, Respondent Cynthia Salvisberg-Haeuser shall be prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a licensee in that, while serving as CFO of Respondent Murphy McKenna Construction, she had knowledge of or participated in the acts or omissions constituting grounds for discipline as alleged in the causes for discipline, above.

PRAYER

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

1. Ordering the revocation or suspension of Contractor's License Number 692995 issued to Murphy McKenna Construction, pursuant to Code section 7090;

2. Ordering Respondent Murphy McKenna Construction to pay the Registrar costs for the investigation and enforcement of the case according to proof at the hearing, pursuant to Code section 125.3;

3. Ordering Respondent Murphy McKenna Construction and Respondent Sean Patrick McKenna to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each, pursuant to Code section 7095;

4. Ordering that Respondent Sean Patrick McKenna is prohibited from serving as an officer, director, associate, partner, manager or qualifying individual of a licensee, pursuant to Code section 7121.5;

5. Ordering that Respondent Anthony Stephen Murphy is prohibited from serving as an officer, director, associate, partner, manager, qualifying individual or member of the personnel of record of a licensee pursuant to Code section 7121;

6. Ordering that Respondent Cynthia Salvisberg-Haeuser is prohibited from serving as an officer, director, associate, partner, manager, qualifying individual or member of the personnel of record of a licensee pursuant to Code section 7121;

7. Taking such other and further action deemed proper.

DATED: 11/30/2023

BRIAN MELVIN
Supervising Special Investigator I
Contractors State License Board
Department of Consumer Affairs
State of California
Complainant

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