

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

In the Matter of the Accusation Against:

**ENERGY SERVICE PARTNERS INC.
DBA ESP CONTRACTING, KENNETH
GARY GIETZ, RMO/CEO/PRES,
NORWARD JACK MCCLARY, RME
970 West 190th Street, Suite 302
Torrance, CA 90502**

Contractor's License No. 619149

Respondent.

CASE NO. N2023-165

OAH NO. 2024090817

DECISION AND ORDER

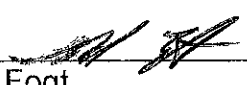
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter.

IT IS FURTHER ORDERED that respondents shall pay the investigative costs in the amount of **\$34,257.10**, is to be paid within **30 days** from the effective date of this Decision.

IT IS FURTHER ORDERED that respondent shall pay restitution amount of **\$5,000**. This amount is to be paid on or before 90 days from the effective date of this decision.

This Decision shall become effective on February 26, 2026.

IT IS SO ORDERED January 26, 2026.



David Fogt
Registrar of Contractors

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

In the Matter of the First Amended Accusation Against:

**ENERGY SERVICES PARTNERS INC. doing business as ESP
CONTRACTING, KENNETH GARY GIETZ, NORWARD JACK
MCCLARY, Respondents**

Agency Case No. N2023-165

OAH No. 2024090817

PROPOSED DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 13, 2025.

Kevin J. Rigley, Deputy Attorney General, represented complainant, Brian Melvin, Supervising Special Investigator I, Contractors State License Board (CSLB), Department of Consumer Affairs, State of California. Seth Weinstein, Attorney at Law, represented respondents, Energy Services Partners, Inc. doing business as ESP Contracting, Kenneth Gary Gietz, RMO/CEO/PRES, and Norward Jack McClary, RME.

Unless otherwise indicated, each statutory section cited below is a section of the Business and Professions Code, and more specifically provisions of the Contractors' State License Law, Chapter 9 of Division 3 of the Business and Professions Code, sections 7000 through 7191.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on November 13, 2025.

STATEMENT OF THE CASE

Respondent has installed thousands of solar systems. Following its completion of four projects the customers complained. For two of the projects, the only issue is that the home improvement salesperson was not registered with CSLB or not registered as respondent's salesperson. Work on a third project did not include a connection that would have allowed the customer to receive credits from the electrical utility company, resulting in the consumer's substantial monthly monetary loss. Some months after a fourth project was completed, the customer's roof leaked, leading to the claim respondent should pay the amount a roofer charged to replace the roof. CSLB contends substantial license discipline is warranted. Respondent presented mitigation evidence.

FINDINGS OF FACT

1. The First Amended Accusation was served on June 9, 2025. Respondent timely requested a hearing in a Notice of Defense dated July 8, 2024.

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Licensure

2. On May 11, 1991, the Registrar of Contractors issued license number 619149 to Energy Service Partners Inc. doing business as ESP Contracting (ESP). ESP's license is in Classification B, General Building, through its Responsible Managing Officer (RMO), Chief Executive Officer (CEO), and President, Kenneth Gary Gietz, and Classification C10, Electrical, through Norward Jack McClary, its Responsible Managing Employee (RME). The license is scheduled to expire on November 30, 2025.

3. Respondent's license may be renewed, but if not, under section 118, subdivision (b), the Board has continuing jurisdiction over an expired license. Section 7076.5, subdivision (h), states that the inactive status of a license does not bar disciplinary action by the Board. Section 7106.5 states: "The expiration . . . of a license by operation of law or by order or decision of the registrar or a court of law, . . . 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."

Stratford Avenue Project

4. On April 4, 2022, homeowner VP executed a home improvement contract with ESP for installation of a solar system at her home on Stratford Avenue in South Pasadena. The contract was sold by registered home improvement salesperson Raman Staradub, who was not, however, registered as a salesperson under ESP's license at that time. Mr. Staradub and respondent ESP followed their usual practice: they asked VP for an electric bill, she handed one over, and they took information about her existing electrical system from that bill. SCE bills to VP are in Exhibit 9. The bills do not appear to show that VP's residence has two meters.

5. On May 3, 2022, VP executed a second contract with ESP, canceling the original contract but including the previous scope of work and adding installation of a new roof. Salesperson Raman Staradub sold the new contract but he was still not registered as a salesperson under ESP's license.

6. There was yet a third contract between VP and ESP, this one on June 20, 2022. The new contract included the scope of work in the second contract and added installation of four more solar panels. Again salesperson Staradub sold the home improvement contract and he was still not registered as a salesperson under ESP's license.

7. Communication from ESP was poor. Roofers were sent to VP's home without advance warning. They removed the old roof and left without telling VP what to expect next. Because the weather was hot, she operated her roof-mounted air conditioning unit and soon afterwards found water leaks inside the home, below the air conditioner. A new roof was installed about one week later. About one month later, on July 8, 2022, the solar panels were set up on the roof, but were not connected to the home's electrical system. VP asked many times why and was told repeatedly ESP awaited permits. On August 31, 2022, she called a city clerk, who said that permits had not issued because ESP had not paid permit fees. By October 3, 2022, ESP had paid the fees, but there was more delay because amidst turnover among city personnel there was a new permit technician.

8. VP completed a draft complaint and later finalized with her signature on November 15, 2022, a Complaint Form that CSLB assigned number S F 2022006646. VP sought reimbursement for the cost of the solar system and money lost because she was not being credited for power the system was generating. She wrote in the Complaint Form, Exhibit 12, page A72: "Total reimbursement should be 18% of cost of

solar (\$4500) + \$500 for utilities. \$5000 reimbursed. [11] Most importantly they should not stress families with incompetency and false reassurance with an extremely disorganized company that has now not completed a 2 month job almost 6 months after starting."

9. VP was told and believed her electric bill would go down. Instead, after Southern California Edison (SCE), the utility company, billed her in February 2023, she realized the bills were not affected, she was paying as much for electricity as before the solar system was installed. Inquiries to SCE led to the discovery that VP had two accounts and two electric meters, one connected to her living spaces (the home meter), the other, connected by ESP to the garage, registered only the electricity used to charge an electric vehicle (the EV meter).

10. If respondent had connected VP's solar system to the home meter, VP could have benefited from NEM 2.0, a net energy metering (NEM) policy that mandated how much utilities paid for the solar energy produced by homes and businesses. Under NEM 2.0, a homeowner such as VP could send to SCE's electrical grid excess energy at approximately its retail value, an amount that offset power bills. The homeowner's bill would be for a net amount, the value of the energy SCE sent being offset by the value of the energy the homeowner's system generated. NEM 2.0 expired and is no longer available to VP. A new policy values electricity generated by homeowners at approximately 25 percent of its retail value.

11. When ESP learned of the problem, it promised a fix by submitting the paperwork to aggregate the two meters, so that they would function effectively as one. But SCE rejected aggregation. ESP offered VP a battery that would store energy and release it to SCE at night, so that VP would receive roughly the same credits she would have received if ESP had connected her system to the home meter. VP testified

she rejected this offer because at this point she could no longer trust ESP. She spoke to several of ESP's employees, only to be frustrated by their lack of comprehension or by how difficult it was to reach anyone able or willing to respond to her. VP acknowledged there was one exception. Bradley Comyns was knowledgeable, listened carefully to her, and was always polite and reasonable. Still, the issues persisted without resolution. Up to the present, SCE has not credited VP for the energy generated by her solar system.

Wall Street Project

12. On April 13, 2022, RD executed a home improvement contract with ESP for installation of a solar system at his home on Wall Street in Los Angeles. RD completed and submitted on October 25, 2022, a Complaint Form that CSLB assigned number N A 2022007157. Regarding this project, the only issue, now undisputed and stipulated by the parties, is that an unregistered home improvement salesperson, Carlos Mejia, sold the contract on ESP's behalf.

Jago Avenue Project

13. On March 12, 2021, JT, now deceased, co-owner of property on Jago Avenue in Clearlake, executed a home improvement contract with ESP for installation of a solar system for \$31,355. JT completed and submitted on July 16, 2022, a Complaint Form, that CSLB assigned number N A 221555. Regarding this project, the only issue, now undisputed and stipulated by the parties, is that an unregistered home improvement salesperson, Shamir Jaleel, sold the contract on ESP's behalf.

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Bristol Park Circle Project

On August 9, 2021, CC executed a contract with ESP to have a solar system installed on his residence on Bristol Park Circle in Turlock. ESP personnel inspected the roof, including removal of some roof tiles to ascertain the condition of the waterproofing felt underlayment, and found the roof suitable for the installation. CC is paying back a lender that paid in full for the project, \$43,892. ESP completed the installation in November 2021.

14. When CC returned home from work on March 23, 2023, he saw water leaking from a vent in the kitchen ceiling. An insurance agent advised him not to make an insurance claim but to call a roofer first. He called McClain's Roofing, whose principal, licensed contractor Cecil McClain, inspected the roof. CC accepted his recommendation to replace the roof for \$20,300. Mr. McClain testified that the replacement work was necessary because installation of the solar panels had caused extensive damage to the roof.

15. Correcting contractor Mr. McLain testified that the solar installation work caused roof tiles to crack, opening up places for water penetration. But photographs showed there were cracked tiles in places other than at or near where installation work was performed. The photographs show widespread staining of the felt underlayment from water intrusion. The roof had been built with one-by-two inch cedar battens. Many were completely rotted. As Mr. McLain testified, such damage "does not happen overnight." The rotted battens and the stained felt and other parts of the roof were in a poor condition of long standing, definitely before the solar installation started. The evidence demonstrated that the entire roof was failing or about to fail and needed replacement, but not because of respondent's installation work or because respondent

failed to live up to trade standards when it proceeded with the solar installation instead of recommending that a new roof be laid.

16. Mr. McLain noted that damage to the tiles was particularly heavy where, in addition to solar panels, respondent ESP built small structures atop the roof as part of the solar array, and at pathways where he could tell from the broken state of many tiles that solar panel installers had walked to do their work. This evidence did not establish that respondent ESP was the cause of the homeowner's need for a new roof.

17. Where the homeowner first discovered a leak of rainwater was in the kitchen, below a ridge of the roof away from where roof installation was performed. Water that has penetrated a roof in one place may travel over and under different parts of the roof, often making it difficult to say whether a leak apparent on the interior of a house is a good indication of where the water penetration originated. But in this case the location of the leak the homeowner first noticed indicates, more likely than not, that water penetration started in a place on the roof sufficiently far from and not caused by the installation work.

18. CC completed and submitted on August 15, 2023, a Complaint Form, that CSLB assigned number N A 2023002339. He wrote, Exhibit 35, pages A928, A930:

Upon installation tiles on my roof were cracked and broken causing water to get under tiles and completely ruin my roof. Was never made aware of any of these damages. March of 2023 water had finally penetrated through the paper on my roof tiles and was coming through my ceiling vent above my fridge and observed by roofing contractor when fixing the leak that all tiles were cracked and broken

around all my solar panels and nowhere else. I have now been through 5 months of battling with this company getting solar uninstalled and reinstalled. The company wants to give me 0 reimbursement and has been almost impossible to get into contact with until the past month when my wife went to LinkedIn and messaged everyone on their board of directors.

CC testified to the same facts during the hearing.

Respondent's Witnesses

CUSTOMER SERVICES MANAGER KRYSTAL KILBURN

19. Living in Utah, Krystal Kilburn works remotely as ESP's Customer Services Manager. She reports directly to Mr. Gietz and has worked for the company for about five years. She has approximately 10 years of experience in the solar industry. She described how respondent has updated its operations recently in order to be more responsive to customers. Each new customer is assigned a point person, someone who is familiar with all aspects of a project, able to gather information from ESP personnel working on the various aspects of a project and then relay that information to the customer in an organized, focused way. Before, responsibility for and familiarity with information was scattered among many people, so that installers for instance had some information not necessarily known to office personnel familiar with contract provisions and the like.

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COMPLIANCE OFFICER BRADLEY COMYNS

20. Bradley Comyns has an engineering license and holds a contractor's license, classification C20, Heating, Ventilating, and Air Conditioning (HVAC). He operated his own HVAC company for approximately 15 years before selling it, taking some time off, working as a professional engineer in different parts of the world, and in approximately 2018 accepting a job offer from respondent. As respondent's Compliance Officer, he deals with matters such as building permits, interactions with utilities like SCE, and regulations governing contractors in the solar industry.

21. Mr. Comyns becomes involved when a dispute "escalates," when for instance a customer alleges misrepresentation or questions are raised about whether a sales representative has been untruthful about a project or contractual provisions or if an installer is accused of theft. Mr. Comyns investigates then and does what he can to resolve disputes if possible. While disputes or issues are unresolved, he will report during weekly meetings, covering anything that he believes is not in compliance with laws or regulations. ESP provides Mr. Comyns a number of tools to keep track of the status of projects and their progress, including a database that generates alerts and will flag issues, such as when prices are out of the ordinary. Information on when a project is finished is also automated. His engineering background notwithstanding, Mr. Comyns has "zero" input on hardware issues, his work is "more on the customer service side."

22. Mr. Comyns referenced flow charts that ESP uses to stay organized. He described ESP CEO Gietz as very much a hands-on boss, acutely aware of issues and significant events, from the smallest to the largest. CEO Gietz trusts Mr. Comyns and so gives him a good deal of latitude in confronting and solving problems, but Mr.

Comyns is sensitive to when he should discuss issues with his superiors, including CEO Gietz.

EXPERT WITNESS PHILIP CRANE

23. Called as respondent ESP's expert witness, Philip Crane is a licensed contractor with several decades of experience in the construction of wooden structures both residential and commercial. He is President and General Manager of Crane Development Corporation. Respondent ESP asked him to review its policies and procedures and provide expert analysis and opinions to improve them, including in particular policies and procedures relating to salespeople. He provided respondent his report dated February 7, 2025.

24. Mr. Crane had praise for ESP and its business model. He wrote that he is a contractor with decades of experience, responsible for building millions of square feet of new construction. He then wrote, Exhibit Q, page B113, "After reviewing ESP's internal training and controls I can easily say that ESP would be in the top one percent of subcontractors I have ever come across. ESP is extremely well organized and well managed. Mr. Crane also acknowledged, Exhibit Q, page B113, that the high volume of ESP's business has inevitably led to problems: "With volume comes issues, this is inherent in any business. Boeing is a prime example of this. In one of the most highly regulated industries, in a company with tens of thousands of pages of internal policies and controls, Boeing has not been immune from the rogue employee."

25. He noted that ESP has devised a vetting and oversight program to ensure all salespeople have home improvement salesperson (HIS) certification from CSLB. He noted further that ESP employs another company, Recheck.com, to ensure its salespeople, currently numbering about 1,300, are HIS certified. His report includes

excerpts from ESP's training materials and steps laid out there for checking for HIS registration once a project is submitted. In addition, he noted that ESP has capped commissions to sales personnel to avoid upselling, the practice of selling a system larger or with more equipment than necessary.

26. Mr. Crane found that ESP's sales contracts were completed on an iPad. On his suggestion, the company is changing their electronic contract process to require a salesperson's photograph of a valid identification at the time a customer signs a contract. The dated and time-stamped photograph is later compared to the date time stamp of a customer's signature, to make sure that the salesperson listed on the contract was in fact the salesperson on site. Otherwise the contract is voided and ESP will send another salesperson if the customer chooses to continue, and will be offered a discount for the inconvenience.

27. He believes another line of defense against errors is the culture at ESP, with managers trained not to take a hard line against a complaining customer, but to seek out and agree to a resolution of issues when feasible.

CEO KENNETH GARY GIETZ

28. In his testimony, Mr. Gietz had the demeanor and presentation skills of a competent, well informed, and organized CEO. He described every important aspect of ESP's business, and strives to know and see to a resolution every issue the company faces, although he must leave much to the managers he employs. For example, he had no telephone conversations with VP, leaving that level of detail in communications to Mr. Comyns and others. But Mr. Gietz has meetings at least weekly with managers such as Ms. Kilburn and Mr. Comyns regarding important developments and how to implement or modify business strategies.

29. Mr. Gietz has seen business success and failure. He once operated a business in Arizona that built high-end homes. It was successful at first but failed in the end, leading to his relocation to California in 2011. ESP has been quite successful, expanding with the relatively new technology that enables rooftop energy production. It is a family business, as ESP employs some of his children. Mr. Gietz was the president of Habitat for Humanity in Arizona. In California he and ESP continue to donate to charities.

30. ESP started small. Mr. Gietz sold the first 25 of ESP's contracts himself. He became familiar with the technology the company handles and with laws and regulations affecting the business. He wanted to learn every aspect of the business before expansion and hirings. He strives to improve the business and, like Ms. Kilburn, is enthusiastic about their new practice of having a single manager in charge of each project, so that the manager is familiar with all aspects of its progress and is able to communicate knowledgeably and effectively with customers.

31. Under his direction and with his approval, ESP has settled cases and issues, including many of the issues that arose for the four homeowners in this matter. He stated that he does not believe it right for the company to be at odds with any customer. The goal is to provide the best service, both roofing services and installing solar arrays, to every homeowner and owner of property. In his view, this approach has paid off, as the company employs now hundreds, whereas many competitors who offered solar systems have left the business.

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Disciplinary Considerations

2019 DECISION AND ORDER

32. In a Decision and Order effective on July 22, 2019, case number N2017-309, OAH number 2018080633, CSLB disciplined license number 619148, the same as the license in this matter, with respect to contracts for installation of solar panels at two residences, and one other matter. The salesperson who sold each contract was not registered with CSLB. There was evidence that Mr. Gietz implemented changes to avoid similar problems in the future.

33. Unregistered salesperson Bobby Tetsch sold one of the contracts to a homeowner in Norwalk in November 2016. After solar panels were installed, the roof leaked. In December 2017, the City of Norwalk notified the homeowner of several deficiencies, including that: panels were improperly attached to the roof, resulting in penetration of the roofing membrane; an upgrade of the electrical meter was not ready; and the roof was in poor condition, unsuitable for the solar installation. Eventually the solar panels were removed. It was concluded the licensee caused the homeowner a \$7,475 financial injury.

34. Regarding the second contract, the homeowner contended loan documents had terms different from what the unregistered salesperson had represented. The homeowner removed solar panels from his roof himself. The homeowner did not attend a scheduled arbitration and the licensee received an award. The parties negotiated a settlement.

35. The other matter that led to discipline of license number 619148 was a renewal application Mr. Gietz submitted to CSLB in August 2012. It was found he knowingly and falsely denied that license discipline had been imposed as a result of

conduct by anyone associated with the license. There was contradictory evidence. On September 17, 1991, the Registrar of Contractors of the State of Arizona issued Arizona Contractor's License Number 091073, Classification B, to Gietz Master Builder ACC, a corporation. Mr. Gietz was the corporation's qualifying person and a corporate officer. On January 12, 2011, the Arizona Registrar revoked the license for failure to pay a civil penalty.

36. License number 619148 was revoked, revocation was stayed, and the licensee was placed on probation for three years. Mr. Gietz was prohibited from managing, partnering with, or acting as a qualifying member of any licensee during the three years of probation. The licensee was ordered to reimburse CSLB \$8,561.67.

2023 LETTER OF ADMONISHMENT

37. On December 21, 2023, CSLB issued a letter of admonishment to ESP in reference to Complaint number NA 2023-3638. CSLB had investigated ESP's project on Spring Street in Riverside. According to the investigation, in approximately March 2023 the ESP contract did not meet the Solar Energy System Disclosure Document requirements specified in sections 7115 or 7169. CSLB concluded the Registrar had probable cause to issue the letter of admonishment.

Customers' Testimony

38. Respondent called three homeowners as witnesses, Marie Conroy, an executive assistant whose home is in San Jose, Jill Zabicki, retired with a home in Santa Clarita, and George Manukyan, a banker whose home is in Glendale. They testified to their good experiences with respondent and its personnel and their satisfaction with the process of installing a solar system and the solar energy generating rooftop equipment they purchased from respondent.

Costs

39. A complainant agency may be entitled to reimbursement of costs reasonably incurred for an administrative hearing under section 125.3. CSLB incurred reasonable costs totaling \$34,257.10: prosecution costs of \$29,323.25 matter and investigation costs of \$4,933.85.

40. The court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, described circumstances that should be evaluated to ensure that a cost recovery provision did not deter a party from exercising the right to a hearing. An agency must not assess full costs if that would unfairly penalize a respondent who has committed some misconduct, but has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider subjective good faith belief in the merits of the respondent's position and whether the respondent has raised a colorable challenge. The agency must also consider a respondent's ability to pay, and may not assess investigation and prosecution costs disproportionately large compared to a respondent's relatively innocuous misconduct.

41. There was no evidence of factors, such as those described, that indicate cost recovery might be to the detriment of respondent's exercising the right to a hearing or otherwise.

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LEGAL CONCLUSIONS

PRINCIPLES OF LAW

1. Section 7090, like the other statutory sections referenced below, is a section of the Business and Professions Code. The statute states that the Registrar may take disciplinary action and describes the burden of proof:

The registrar may . . . cite, temporarily suspend, or permanently 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 causes for disciplinary action. [¶] . . . [¶]

For the purposes of this section, with respect to administrative proceedings or hearings to suspend or revoke a contractor's license, the registrar at all times shall have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

Section 7090 further provides that the Registrar may suspend or revoke a license if the licensee is guilty of or commits any one or more of the acts or omissions constituting cause for disciplinary action, such as those set out below.

2. Section 495 provides in pertinent part:

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this

code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate.

3. Section 7109, subdivision (a), provides:

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.

4. Section 7113 provides:

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.

5. Section 7116 provides:

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

6. Section 7119 provides:

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Willful failure or refusal without legal excuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence causing material injury to another constitutes a cause for disciplinary action.

7. Section 7090 provides:

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 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 7121.5 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.

10. Section 7154 states:

(a) A home improvement contractor licensed under this chapter shall notify the registrar in writing, on a form prescribed by the registrar, about the employment of a registered home improvement salesperson, pursuant to the terms of this article. This notification requirement shall include, but not be limited to, the name and registration number of the home improvement salesperson who is employed by the contractor. The form shall be submitted prior to the home improvement salesperson beginning work for the contractor.

(b) A home improvement contractor shall notify the registrar in writing, on a form prescribed by the registrar, when a registered home improvement salesperson ceases to be employed by the contractor. This notification requirement shall include, but not be limited to, the name and registration number of the home improvement salesperson who had been employed by the contractor. The

form shall be submitted within 90 days after the home improvement.

(c) A home improvement contractor who employs a registered home improvement salesperson to sell home improvement contracts, but who fails to report to the registrar pursuant to subdivision (a) or (b), is subject to disciplinary action by the registrar.

(d) A home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson as provided in this article, is subject to disciplinary action by the registrar.

11. Government Code section 11519 provides in pertinent part:

(b) A stay of execution may be included in the decision
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. [¶] . . . [¶]

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

12. CSLB's Recommended Disciplinary Guidelines (Rev 12/11/96) (Guidelines)
list factors to be considered in determining license discipline:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Performed work that was potentially hazardous to the health, safety, or general welfare of the public.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.

ANALYSIS

13. The complaints that the four homeowners submitted, as set out above, CSLB assigned to Investigator Doris Velasquez, who is a sworn peace officer and has years of experience as an investigator. Investigator Velasquez reviewed the mass of relevant documents for each project, interviewed each homeowner and personnel of respondent with knowledge of the matter, and wrote a report with findings and recommendations regarding CSLB's further action.

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STRATFORD AVENUE PROJECT

First Cause for Discipline

14. Cause exists to discipline respondent ESP's license under section 7116 with respect to the Stratford Avenue Project. Respondent ESP willfully committed acts that led to VP's substantial injury. VP's most substantial injury is that her solar system was not offsetting her electricity bills for years after its installation. VP was injured also by water that leaked into her home from the air conditioning unit after respondent removed old roofing from her housetop to make way for a new roof and solar system. VP was not warned or informed in any way about what to expect, not even about when ESP might return to install the new roof.

15. VP testified that respondent ESP should pay her \$5,000 in restitution. There is a high probability that VP's actual damages are higher than \$5,000, given that for years her solar system has not led to offsets to her electricity bills. In consequence, VP might with reason have demanded more in restitution. But VP could also have avoided all or nearly all monetary damages by accepting the battery that respondent offered. She was well within her rights to decline the offer. In any event, in these circumstances, an award of \$5,000 in restitution to VP is appropriate.

16. Respondent ESP's acts that injured VP were willful, but not fraudulent. For an act to be willful under section 7109, the general intent to do the act is all that is required. The actor need only know what the act is and intend to do the act as a free agent, as the courts held in *Sieg v. Fogt* (2020) 55 Cal.App.5th 77, 90–91, and *ACCO Engineered Systems, Inc. v. Contractors' State License Board* (2018) 30 Cal.App.5th 80, 87 (legislature's use of the term "willful" in section 7110 only requires a showing of general intent).

17. While willful, respondent's conduct was not fraudulent because there was no showing that respondent intended to deceive VP. It is quite out of the ordinary that a residence should have two meters. Respondent acted on the assumption that it was working on an ordinary residence with a metering system that was ordinary, a system with one meter only. Respondent ESP may have been negligent or otherwise remiss in failing to discover that there were two meters, but there is nothing plausible to suggest respondent acted to defraud VP.

Second Cause for Discipline

18. Cause exists to discipline respondent ESP's license under section 7119. On the Stratford Avenue Project respondent ESP willfully failed or refused without legal excuse to prosecute a construction project or operation with reasonable diligence, to VP's material injury. The analysis of respondent's conduct under section 7119 is substantially the same as the analysis above, under section 7109.

19. Respondent suggested a legal excuse for its mistake or misdeed: it was following a reasonable practice, taking information about VP's existing electrical system from the electric bill she provided upon respondent's request. The practice may be considered reasonable in most cases, but when, as here, a homeowner trusts in the expertise of a contractor to fulfill the promise of offsets to an energy bill, and fails, the adverse consequences for such a failure are properly borne by the party with expertise, the contractor, not the trusting homeowner.

Third Cause for Discipline

20. Cause exists to discipline respondent ESP's license under section 7154, subdivision (c). On the Stratford Avenue Project, respondent ESP failed to report to

CSLB that its salesperson, Raman Staradub, was one of its registered home improvement salespersons.

WALL STREET PROJECT

Fourth Cause for Discipline

21. Cause exists to discipline respondent ESP's license under section 7154, subdivision (d). On the Wall Street Project, respondent ESP employed an unregistered home improvement salesperson to solicit and sell a home improvement contract to RD.

22. By stipulation of the parties, the evidence regarding the Wall Street Project that supports discipline of respondent ESP's license under section 7154, subdivision (d), is set out in the report by Investigator Velasquez, Exhibit 16, pages A552 to A553:

The contract was sold [to homeowner RD] by Carlos Mejia, (not identified). Carlos Mejia was not registered.

Respondent hired an unregistered home improvement salesperson (B&P §7154d). Carlos Mejia advised [RD] to obtain a loan to pay for the solar project

On 06/02/2023, Investigator Velasquez spoke with [RD]. He requested the solar system to be removed and to cancel the contract because he could not afford the monthly payments.

Investigator Velasquez conducted conversations with Respondent's Project Manager Brad Cumyns. An agreement

was reached to cancel the loan and [RD] would keep the solar system. On 07/14/2023, [RD] and his daughter confirmed the loan had been cancelled. [RD] was not obligated to repay the loan. The solar system was not removed. [RD] kept the solar system.

JAGO AVENUE PROJECT

Fifth Cause for Discipline

23. Cause exists to discipline respondent ESP's license under section 7154, subdivision (d). On the Jago Avenue Project, respondent ESP employed an unregistered home improvement salesperson to solicit and sell a home improvement contract to JT.

24. By stipulation of the parties, the evidence regarding the Jago Avenue Project that supports discipline of respondent ESP's license under section 7154, subdivision (d), is set out in the report by Investigator Velasquez, Exhibit 16, pages A621 to A622:

On 03/12/2021, [JT] . . . entered into a home improvement contract with Respondent . . . for the installation of a solar system at their home The contract price was \$31,355.00 and the contract was sold by Shameer Jalil, unregistered Salesperson. CSLB records do not reflect Shameer Jalil as being a registered salesperson for Energy Service Partners Inc. (B&P Code \$7154(d).)

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The same day (03/12/2021), Shameer Jalil processed a financing application with Sunlight Financial on behalf of [JT, who] . . . was not present. The application was for \$31,355. On or about June 2021. Respondent installed the solar system.

Respondent representative Brad [Comyns] confirmed that Respondent was paid in full upon completion, on or about April 2021.

BRISTOL PARK CIRCLE PROJECT

Sixth Cause for Discipline:

25. Cause exists to discipline respondent ESP's license under section 7109, subdivision (a), with respect to the Bristol Park Circle Project. Respondent ESP willfully departed from accepted trade standards for good and workmanlike construction by installing a solar system on a roof that was not suitable for such an installation. This departure from standards was, however, of relatively little significance in light of the roof's condition when installation started. The departure from standards was not the reason that the homeowner was forced to pay in excess of \$20,000 for a new roof.

26. Respondent ESP's business includes installation of roofs. Respondent thus has incentive for recommending roof replacement in appropriate circumstances. If a homeowner accepts such a recommendation, respondent ESP has the opportunity to profit both from roof replacement and installation of solar assemblies. That respondent made no such recommendation in this case is a mistake, not evidence it sought to profit unfairly at a homeowner's expense. The mistake did little or no

substantial harm CC. Respondent removed the solar panels and re-installed them at no expense to the homeowner.

Seventh Cause for Discipline

27. Cause does not exist to discipline respondent ESP's license under Code section 7113 with respect to the Bristol Park Circle Project. The evidence does not establish that respondent ESP failed in a material respect to complete the project for the price stated in the contract. CC's roof was in poor condition and liable to fail and leak before respondent ESP undertook any work at CC's residence. It was that poor condition that obligated CC to pay another contractor \$20,300.00 to replace the roof.

Mitigation Evidence

28. There is evidence, from expert Mr. Crane in particular, in mitigation of all of respondent ESP's misconduct and misdeeds described above. It is uncertain whether implementation of Mr. Crane's recommendations will make respondent ESP a better contractor, but that respondent was willing to engage Mr. Crane is evidence in mitigation in the four matters at issue, with moreover good implications for the future in general. Respondent recognized that its business methods can be improved and it went to the expense of learning how.

29. This mitigation evidence is strengthened by Ms. Kilburn's testimony regarding how respondent ESP has been willing in the past and continues willing to improve how it treats customers and how it may accomplish its construction work and communication with others to avoid problematic behavior, a prime example being the trouble and frustration it caused VP on the Stratford Avenue Project. Adding to the mitigation evidence are statements by Mr. Gietz to Investigator Velasquez. In an interview with her on August 24, 2022, attended by respondent's legal counsel, William

Brockschmidt, Mr. Gietz stated, as reported by the investigator, Exhibit 21, page A627, that respondent ESP:

was in the process of training his personnel to avoid hiring unregistered salespeople. Gary Gietz stated that his company was paid only a small percentage of the proceedings compared to what the salespeople would be paid. Gary Gietz stated he was in the process of training his personnel to avoid hiring unregistered sales personnel and to put a limit on the pricing. Gary Gietz authorized Brad Cumyns to handle CSLB complaints.

VP stated that while generally respondent's personnel caused her much frustration, Brad Cumyns was the exception, an employee who was knowledgeable, listened to her, and responded appropriately with good information. Mr. Gietz followed up his statements during the interview with Investigator Velasquez by later engaging Mr. Crane.

30. Respondent has done right by homeowners, as shown by those who testified to their good experiences with the company and satisfaction with the systems installed at their residences.

31. A counterbalance to the evidence in respondent ESP's favor is the evidence of previous license discipline owing to misconduct by Mr. Gietz and previous employment of unregistered or improperly registered salespersons. There is no evidence that Mr. Gietz has repeated past misconduct and respondent presented substantial evidence that it is working on overcoming any tendency or bureaucratic

inertia that could lead it to commit more violations as a result of salespersons' registration status.

32. On weighing all of the evidence, the nature of respondent ESP's misdeeds and misconduct in these matters is not severe, the first of the considerations under the Guidelines. This conclusion applies especially to the projects with multiple issues, the Stratford Avenue Project and the Bristol Park Circle Project. Respondent's acted more by mistake than otherwise.

33. The second consideration under the Guidelines is harm to consumers. There was actual harm to VP on the Stratford Avenue Project. But that respondent ESP was responsible for actual harm to CC on the Bristol Park Circle Project is doubtful. The harm to the other two homeowners is real, but technical. Respondent is reforming its office practices to catch whether sales are being pitched on its behalf by salespersons it has failed to recognize are not properly registered with CSLB. Respondent showed it is making progress on such reform.

34. Respondent ESP has worked on thousands of projects and employs over 100 people, not counting the many salespersons who have negotiated with customers over the years. Respondent's is a relatively new industry, with relatively new technological issues relating to the production of energy from rooftop solar panels. Respondent must communicate with utilities like SCE and municipalities regarding building permits. It must understand and adapt to changing state policies such as NEM 2.0. Given these complexities, it is not unexpected that some missteps occur such as those affecting the four homeowners in this case, notwithstanding respondent's thorough organization and re-organization of its business. The four matters at issue here, even if combined with past license discipline involving Mr. Gietz and respondent, do not constitute a pattern of wrongdoing or institutional unwillingness to prevent

bad practices or harm to consumers. License discipline is appropriate, as stated above, but relatively light discipline.

First Cause for Other Discipline

35. Cause does not exist to prohibit Kenneth Gary Gietz from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee during the time discipline is imposed and a licensee shall not be subject to license discipline if it employs, elects, or associates Mr. Gietz, whether or not he is other than a bona fide non-supervising employee of the licensee.

Second Cause for Other Discipline

36. Cause does not exist to prohibit Norwood Jack McClary from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee during the time the discipline is imposed and a licensee shall not be subject to license discipline if it employs, elects, or associates Mr. McClary, whether or not he is other than a bona fide non-supervising employee of the licensee.

37. Respondent ESP has heeded past license discipline. It has made changes to its business practice, particularly relating to salespersons, to prevent making the mistakes or perpetrating the wrongs that harmed the four homeowners in this matter. The harm has been relatively minor, except that VP has not received the substantial restitution that is due her. The protection of the public from misconduct by contractors is the goal in disciplinary proceedings, and in this case that goal will be adequately served without an order of revocation or suspension. A reproof is sufficient.

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ORDER

1. Respondent is hereby issued a public reproof on account of the misconduct in selling home improvement contracts and in completing agreed services for the four homeowners described in this decision.

2. To reimburse costs, respondent Energy Services Partners, Inc. doing business as ESP Contracting, Kenneth Gary Gietz, RMO/CEO/PRES, and Norward Jack McClary, RME, shall pay the Contractors State License Board \$34,257.10 within 30 days of the effective date of this decision.

3. Respondent Energy Services Partners, Inc. doing business as ESP Contracting, Kenneth Gary Gietz, RMO/CEO/PRES, and Norward Jack McClary, RME, shall pay restitution for damages to VP in the amount of \$5,000.

DATE: 12/09/2025

Thomas Lucero

THOMAS LUCERO

Administrative Law Judge

Office of Administrative Hearings