

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
4 State Bar No. 274129
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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8 **BEFORE THE**
REGISTRAR OF CONTRACTORS
CONTRACTORS' STATE LICENSE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation Against:

Case No. N 2013-356

12 **BEYOND COMFORT HVAC CORP**
9823 Independence Avenue
13 Chatsworth, CA 91311
14 **DARROW RENAULD MIRSKY, RMO**

A C C U S A T I O N

15 Contractor's License No. 951017,

16 Respondent.

17 **MIRSKY HEATING AND AIR**
CONDITIONING
18 4558 Willis Avenue, #130
Sherman Oaks, CA 91403
19 **DARROW RENAULD MIRSKY, Sole Owner,**

20 Contractor's License No. 935128

21 Respondent.

22
23 Complainant alleges:

24 **PARTIES**

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

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1 **License Histories**

2 Beyond Comfort Hvac Corp.

3 2. On or about August 11, 2010, the Registrar of Contractors (“Registrar”) issued
4 Contractor's License No. 951017 to Beyond Comfort Hvac Corp. (“Respondent Beyond
5 Comfort”) with Darrow Renauld Mirsky as the Responsible Managing Officer (“RMO”), and
6 misrepresented as its President, Secretary and Treasurer. On May 20, 2011, RMO Darrow
7 Renauld Mirsky disassociated from the license. On December 22, 2011, the license was
8 suspended for failing to replace the RMO. On August 31, 2012, License No. 951017 expired
9 while it was suspended for lack of having a qualifier. The license has not been renewed.

10 Mirsky Heating and Air Conditioning

11 3. On or about July 6, 2009, the Registrar issued Contractor's License No. 935128 to
12 Mirsky Heating and Air Conditioning, with Darrow Renauld Mirsky as the Sole Owner
13 (“Respondent Mirsky”). The Contractor's License was in full force and effect at all times relevant
14 to the charges brought herein and will expire on July 31, 2015, unless renewed.

15 **JURISDICTION**

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

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

24 6. Section 7076.5 provides that the inactive status of a license shall not bar any
25 disciplinary action for violating provisions of the Contractors' State License Law (Bus. & Prof.
26 Code, § 7000, et seq.).

27 7. Section 7090 provides that the Registrar may suspend or revoke any license or
28 registration if the licensee or registrant is guilty of or commits any one or more of the acts or

1 omissions constituting cause for disciplinary action.

2 8. Section 7095 states that the Registrar in making his order may:

3 “(a) Provide for the immediate complete suspension by the licensee of all operations as a
4 contractor during the period fixed by the decision.

5 “(b) Permit the licensee to complete any or all contracts shown by competent evidence
6 taken at the hearing to be then uncompleted.

7 “(c) Impose upon the licensee compliance with such specific conditions as may be just in
8 connection with its operations as a contractor disclosed at the hearing, and may further provide
9 that until such conditions are complied with, no application for restoration of the suspended or
10 revoked licensee shall be accepted by the Registrar.”

11 9. Sections 7097 and 7098 provide that when any license has been suspended or revoked
12 following a hearing, the Registrar may suspend or revoke any additional license issued in the
13 name of the licensee or for which the licensee furnished qualifying experience and appearance
14 under the provisions of 7068, without further notice.

15 10. Section 7106.5 provides that the expiration, cancellation, forfeiture, or suspension of
16 a license by operation of law or by order or decision of the registrar, or a court of law, or the
17 voluntary surrender of the license shall not deprive the registrar of jurisdiction to proceed with
18 any investigation of or action or disciplinary proceeding against the license, or to render a
19 decision suspending or revoking the license.

20 11. Section 7121 states:

21 "A person who has been denied a license for a reason other than failure to document
22 sufficient satisfactory experience for a supplemental classification for an existing license, or who
23 has had his or her license revoked, or whose license is under suspension, or who has failed to
24 renew his or her license while it was under suspension, or who has been a partner, officer,
25 director, manager, or associate of any partnership, corporation, limited liability company, firm, or
26 association whose application for a license has been denied for a reason other than failure to
27 document sufficient satisfactory experience for a supplemental classification for an existing
28 license, or whose license has been revoked, or whose license is under suspension, or who has

1 failed to renew a license while it was under suspension, and while acting as a partner, officer,
2 director, manager, or associate had knowledge of or participated in any of the prohibited acts for
3 which the license was denied, suspended, or revoked, shall be prohibited from serving as an
4 officer, director, associate, partner, manager, qualifying individual, or member of the personnel of
5 record of a licensee, and the employment, election, or association of this type of person by a
6 licensee in any capacity other than as a nonsupervising bona fide employee shall constitute
7 grounds for disciplinary action."

8 12. Section 7121.5 states:

9 "A person who was the qualifying individual on a revoked license, or of a license under
10 suspension, or of a license that was not renewed while it was under suspension, shall be
11 prohibited from serving as an officer, director, associate, partner, manager, or qualifying
12 individual of a licensee, whether or not the individual had knowledge of or participated in the
13 prohibited acts or omissions for which the license was revoked, or suspended, and the
14 employment, election, or association of that person by a licensee shall constitute grounds for
15 disciplinary action."

16 13. Section 7122 states:

17 "The performance by an individual, partnership, corporation, limited liability company,
18 firm, or association of an act or omission constituting a cause for disciplinary action, likewise
19 constitutes a cause for disciplinary action against a licensee other than the individual qualifying
20 on behalf of the individual or entity, if the licensee was a partner, officer, director, manager, or
21 associate of that individual, partnership, corporation, limited liability company, firm, or
22 association at the time the act or omission occurred, and had knowledge of or participated in the
23 prohibited act or omission."

24 14. Section 7122.5 states:

25 "The performance by an individual, partnership, corporation, limited liability company,
26 firm, or association of an act or omission constituting a cause for disciplinary action, likewise
27 constitutes a cause for disciplinary action against a licensee who at the time that the act or
28 omission occurred was the qualifying individual of that individual, partnership, corporation,

1 limited liability company, firm, or association, whether or not he or she had knowledge of or
2 participated in the prohibited act or omission."

3 15. Section 7141 states:

4 "Except as otherwise provided in this chapter [the Contractors' State License Law], a
5 license that has expired may be renewed at any time within five years after its expiration by filing
6 an application for renewal on a form prescribed by the registrar, and payment of the appropriate
7 renewal fee. Renewal under this section shall be effective on the date an acceptable renewal
8 application is filed with the board. The licensee shall be considered unlicensed and there will be
9 a break in the licensing time between the expiration date and the date the renewal becomes
10 effective. If the license is renewed after the expiration date, the licensee shall also pay the
11 delinquency fee prescribed this chapter [the Contractors' State License Law]. If so renewed, the
12 license shall continue in effect through the date provided in Section 7140 which next occurs after
13 the effective date of the renewal, when it shall expire if it is not again renewed.

14 "If a license is not renewed within five years, the licensee shall make application for a
15 license pursuant to Section 7066."

16 **STATUTORY PROVISIONS**

17 16. Section 125 states:

18 "Any person, licensed under Division 1 (commencing with Section 100), Division 2
19 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a
20 misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who
21 conspires with a person not so licensed to violate any provision of this code, or who, with intent
22 to aid or assist that person in violating those provisions does either of the following:

23 "(a) Allows his or her license to be used by that person.

24 "(b) Acts as his or her agent or partner."

25 17. Section 7112 states that "[o]mission or misrepresentation of a material fact by an
26 applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an
27 existing license constitutes a cause for disciplinary action."

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1 22. Government Code section 11519, subdivision (d), provides that the Registrar may
2 require restitution of damages suffered as a condition of probation in the event probation is
3 ordered.

4 **BACKGROUND**

5 Beyond Comfort HVAC Corp formerly Divine Comfort Products Corp. License No.951017

6 23. On or about August 11, 2010, the Registrar of Contractors issued Contractor's
7 License No. 951017 to Divine Comfort Products Corp., with Darrow Renauld Mirsky listed as the
8 RMO, President, Secretary, Treasurer and owner of 51% of the corporation.

9 24. On or about May 20, 2011, Darrow Renauld Mirsky disassociated from License
10 No. 951017.

11 25. On or about June 16, 2011, Darrow Renauld Mirsky requested the cancellation of
12 License No. 951017. On or about June 27, 2011, Darrow Renauld Mirsky requested that the
13 cancellation request be overturned.

14 26. On or about August 1, 2011, License No. 951017 changed its name to Beyond
15 Comfort Hvac Corp.

16 27. On or about December 9, 2011, License No. 951017 was suspended for lacking a
17 qualifier and failing to replace its qualifier within the required 90 days.

18 28. On or about February 20, 2012, Respondent Beyond Comfort filed an application
19 seeking to reinstate Darrow Renauld Mirsky as its RMO. On or about June 18, 2012, the
20 application was voided.

21 29. On or about March 26, 2012, Darrow Renauld Mirsky reported himself as the
22 treasurer of Respondent Beyond Comfort.

23 30. On or about May 21, 2012, License No. 951017 was suspended for maintaining a
24 false workers compensation exemption. Subsequently, Respondent Beyond Comfort filed a
25 Workers Compensation Certificate of Insurance with an expiration date of May 16, 2013.

26 31. On August 31, 2012, License No. 951017 expired when its license was suspended for
27 lacking a qualifier. The license has not been renewed.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misrepresentation on License Application)**

3 32. Respondent Beyond Comfort and Respondent Mirsky are subject to disciplinary
4 action under section 7112, in that on or about April 27, 2010, Respondent Beyond Comfort
5 misrepresented a material fact on its Application for an Original Contractor's License by
6 submitting the application listing Darrow R. Mirsky as the RMO, the Corporate Executive
7 Officer, Treasurer, and President/Secretary while Respondent Beyond Comfort and Respondent
8 Mirsky knew that Darrow R. Mirsky was not a corporate officer on legal documents filed with the
9 Secretary of State. The application further claims that Respondent Mirsky is the 51% owner of
10 the corporation, which he is not, and the application does not disclose the names and titles of the
11 other claimed 49% owners. Respondent Mirsky also signed, or authorized another to sign, the
12 application under penalty of perjury to the truth and accuracy of all statements, answers, and
13 representations made in the application and its supplements. In reliance on these
14 misrepresentations, on or about August 11, 2010, the Board issued Respondent Beyond Comfort
15 contractor's license No. 951017. These misrepresentations caused substantial injury to the public
16 as delineated in paragraph 33, subparagraphs (a) through (f), below, which are hereby
17 incorporated by reference as though set forth fully.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Aided, Abetted and Conspired with Non-Licensee)**

20 33. Respondent Beyond Comfort and Respondent Mirsky are subject to disciplinary
21 action under section 125 [conspires with, allows license to be used by, or acts as the agent or
22 partner of an unlicensed person] and section 7114 [aiding or abetting or conspiring with or acting
23 as an agent, partner or associate of an unlicensed person], in that on or about April 27, 2010,
24 through on or about August 31, 2012, Respondent Beyond Comfort and Respondent Mirsky
25 aided, abetted, conspired with and acted as the agent partner or associate of Thor B. Jenkins, an
26 unlicensed contractor, in obtaining a contractor's license without disclosing Mr. Jenkins'
27 affiliation to the license: that Thor B. Jenkins was an officer and director of Respondent Beyond
28 Comfort's corporation. The circumstances regarding this cause for discipline are as follows:

1 a. During an interview with a Board investigator, Respondent Mirsky stated that he
2 listed himself as the RMO, CEO and President on Respondent Beyond Comfort's application for
3 licensure despite knowing he was not a corporate officer of Beyond Comfort and knowing that
4 Mr. Jenkins had previously applied for, but was unable to receive, a license. Respondent Mirsky
5 further admitted that he was to receive 30% of all revenues as a partner and that he needed to
6 work with Mr. Jenkins, even though Mirsky had his own license, to have access to Mr. Jenkins'
7 customer lists. After disassociating from the license on or about May 20, 2011, Respondent
8 Mirsky admitted that he signed a second application to become the RMO of Respondent Beyond
9 Comfort despite again being informed that he would have to be listed as the CEO and President of
10 Respondent Beyond Comfort.

11 b. During an interview with a Board investigator, Thor Jenkins admitted that he always
12 wanted to have his own license, but did not think he would be able to apply for one because he
13 had a long felony record. Mr. Jenkins further admitted that he specifically did not put his name
14 on the Divine Comfort Products (later renamed as Beyond Comfort) application due to his
15 criminal convictions. During his interview with the Board Investigator Respondent Mirsky
16 similarly acknowledged that we was aware Mr. Jenkins previously had problems in obtaining a
17 license from the Board.

18 c. On or about September 18, 2013, after pleading *nolo contendere*, Thor Jenkins was
19 convicted of violating Business and Professions code section 7028, subdivision (a) [acting as a
20 contractor without a license], Penal Code section 487, subdivision (a) [grand theft with property
21 valued at over \$950.00], and Business and Professions code section 7153, subdivision (a)
22 [engaging as a home improvement sales person without a registration], in the criminal proceeding
23 entitled *The People of the State of California v. Thor Brion Jenkins* (Super. Ct. Los Angeles
24 County, 2013, 3CA00042). The court sentenced Thor Jenkins to thirty-six (36) months
25 probation. The circumstances surrounding the conviction are as follows:

26 d. On or about June 10, 2011, Respondent Beyond Comfort's unlicensed salesperson,
27 Stewart Weinshank, came unannounced to the home of Evelyn Valentine. Respondent Beyond
28 Comfort then sold unnecessary services to Ms. Valentine, an 84 year old woman suffering from

1 Dementia. The unnecessary services were for air duct replacement at a cost of \$2,200.00. After
2 receiving a complaint from Ms. Valentine's daughter, Respondent Beyond Comfort reduced the
3 payment to \$1,900.00 but refused to provide a refund even though Ms. Valentine's air ducts did
4 not need to be replaced.

5 e. On or about December 22, 2011, Respondent Beyond Comfort's unlicensed
6 salesperson, Shwon Sasani, came unannounced to the home of Carol Stitz. Respondent Beyond
7 Comfort then sold unnecessary services to Ms. Stitz, a 78 year old woman suffering from
8 Dementia. The unnecessary services were to replace the heater at a cost of \$8,800.00 with a
9 downpayment of \$5,000.00. Following a recommendation by the city inspector, the homeowner
10 called Tom Sauer of Cal Climate. Mr. Sauer found that the heater removed by Respondent
11 Beyond Comfort did not need to be replaced and the installation of the new unit by Respondent
12 Beyond Comfort was not done in accordance with industry standards.

13 f. On or about March 12, 2012, Respondent Beyond Comfort's unlicensed salesperson,
14 Shwon Sasani, came unannounced to the home of Phyllis Joanne Smith. Respondent Beyond
15 Comfort then sold unnecessary services to Ms. Smith, who was 72 years old. The unnecessary
16 services were for the replacement of air ducts at a cost of \$1,825.00 with a \$1,000.00
17 downpayment. No work was completed on the project. The next day, Ms. Smith's daughter
18 found that Respondent Beyond Comfort's license was suspended, and called Respondent Beyond
19 Comfort to cancel the contract and request a full refund. In April of 2012 Ms. Smith received two
20 checks in the amount of \$500.00, for a total of \$1,000.00, from Respondent Beyond Comfort.
21 After Ms. Smith deposited both checks she was notified by her bank that one of the checks
22 bounced. An industry expert later inspected the air ducts and found that they were in fair
23 condition and did not need to be replaced.

THIRD CAUSE FOR DISCIPLINE

(Filed a False Workers Compensation Exemption Certificate)

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25
26 34. Respondent Beyond Comfort and Respondent Mirsky are subject to disciplinary
27 action under section 7125.4, in that on or about August 11, 2010, through on or about May 15,
28 2012, Respondent Beyond Comfort failed to file a workers compensation certificate of insurance

1 with the Board and, instead, maintained a fraudulent worker's compensation exemption
2 certificate.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Willful and / or Fraudulent Act)**

5 35. Respondent Beyond Comfort and Respondent Mirsky are subject to disciplinary
6 action under section 7116, in that on or about April 27, 2010, through on or about August 31,
7 2012, Respondent Beyond Comfort and Respondent Mirsky committed willful and / or fraudulent
8 acts. On or about April 27, 2010, Respondent Beyond Comfort submitted an application for a
9 contractor's license with the Board, listing Respondent Mirsky as the sole owner while knowing
10 that Thor B. Jenkins was the corporation's owner. From the license's issuance on or about
11 August 11, 2010, through the time Respondent Beyond Comfort obtained workers compensation
12 insurance on or about May 15, 2012, Respondent Beyond Comfort maintained a false workers
13 compensation exemption certificate with the Board despite knowing that it had employees. On or
14 about June 27, 2011, Respondent Mirsky continued to assist Thor B. Jenkins, an unlicensed
15 contractor, in using a contractor's license by requesting that CSLB overturn his request to cancel
16 the license. These willful and / or fraudulent acts caused substantial injury to the public as
17 delineated in paragraph 33, subparagraphs (a) through (f), above, which are hereby incorporated
18 by reference as though set forth fully

19 **OTHER MATTERS**

20 36. Pursuant to sections 7097 and 7098, if license No. 951017 issued to Respondent
21 Beyond Comfort is suspended or revoked, the Registrar may suspend or revoke, without notice,
22 any other license issued in the name of Darrow Renauld Mirsky or for which Darrow Renauld
23 Mirsky furnished the qualifying experience and appearance.

24 37. Pursuant to sections 7097 and 7098, if license No. 935128 issued to Respondent
25 Mirsky is suspended or revoked, the Registrar may suspend or revoke, without notice, any other
26 license issued in the name of Darrow Renauld Mirsky or for which Darrow Renauld Mirsky
27 furnished the qualifying experience and appearance.

28 38. Pursuant to sections 7121,7121.5, 7122 and / or 7122.5, if discipline is imposed on

1 license No. 951017 issued to Respondent Beyond Comfort, Darrow Renauld Mirsky shall be
2 prohibited from serving as an officer, director, associate, partner, manager, or qualifying
3 individual, or member of the personnel of record of a licensee of any licensee during the time the
4 discipline is imposed, and any licensee which employs, elects, or associates Darrow Renauld
5 Mirsky shall be subject to disciplinary action.

6 39. Pursuant to sections 7121,7121.5, 7122 and / or 7122.5, if discipline is imposed on
7 license No. 935128 issued to Respondent Mirsky, Darrow Renauld Mirsky shall be prohibited
8 from serving as an officer, director, associate, partner, manager, or qualifying individual, or
9 member of the personnel of record of a licensee of any licensee during the time the discipline is
10 imposed, and any licensee which employs, elects, or associates Darrow Renauld Mirsky shall be
11 subject to disciplinary action.

12 **PRAYER**

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

15 As to Beyond Comfort HVAC Corp

16 1. Revoking or suspending Contractor's License No. 951017 issued to Beyond Comfort
17 HVAC Corp, Darrow Renauld Mirsky;

18 2. Prohibiting Darrow Renauld Mirsky from serving as an officer, director, associate,
19 partner, or qualifying individual of any licensee during the period that discipline is imposed on
20 license No. 951017, issued to Beyond Comfort HVAC Corp, Darrow Renauld Mirsky;

21 3. Revoking or suspending any other license for which Darrow Renauld Mirsky, is
22 furnishing the qualifying experience or appearance;

23 4. Ordering Beyond Comfort HVAC Corp, Darrow Renauld Mirsky to pay the Registrar
24 the costs in the investigation and enforcement of the case according to proof at the hearing,
25 pursuant to section 125.3;

26 5. Ordering Beyond Comfort HVAC Corp, Darrow Renauld Mirsky to provide the
27 Registrar with a listing of all contracting projects in progress and the anticipated completion date
28 of each;

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As to Mirsky Heating and Air Conditioning

6. Revoking or suspending Contractor's License No. 935128 issued to Mirsky Heating and Air Conditioning, with Darrow Renault Mirsky as Sole Owner;

7. Prohibiting Darrow Renault Mirsky from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license No. 935128, issued to Mirsky Heating and Air Conditioning, with Darrow Renault Mirsky as Sole Owner;

8. Revoking or suspending any other license for which Darrow Renault Mirsky is furnishing the qualifying experience or appearance;

9. Ordering Mirsky Heating and Air Conditioning, with Darrow Renault Mirsky as Sole Owner to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each; and,

As to All

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

DATED: February 7, 2011


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

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