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

13 In the Matter of the Accusation Against:

Case No. N2021-204

14 **ALPHA DESIGN & CONSTRUCTION,**
15 **INC.**

16 **HIPOLITO ESPINOZA, RMO**
17 **MICHAEL BIMBO, OFFICER**

18 1600 Armstrong Avenue
San Francisco, CA 94124

19 Contractor License No. 982846, B

20 **HIPOLITO ESPINOZA, DBA ALPHA**
21 **CONSTRUCTION CO**

22 1600 Armstrong Avenue
San Francisco, CA 94124

23 Contractor License No. 908507, B

24 Respondents.

ACCUSATION

25 **PARTIES**

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

2. On or about April 18, 2013, the Registrar of Contractors (Registrar) issued Contractor License Number 982846 in Classification B (General Contracting) to Alpha Design & Construction, Inc. (Respondent Alpha Design). The Contractor License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2023, unless renewed. At all times referenced herein, Hipolito Espinoza (Respondent Espinoza) was the responsible managing officer (RMO). At all times referenced herein, Michael Bimbo (Respondent Bimbo) was an officer of Respondent Alpha Design.

3. On or about December 28, 2007, the Registrar of Contractors (Registrar) issued Contractor License Number 908507 in Classification B (General Contracting) to Hipolito Espinoza, dba Alpha Construction Co (Respondent Espinoza). The Contractor License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2023, unless renewed.

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:

1 The expiration, cancellation, forfeiture, revocation, or suspension of a license
2 by operation of law or by order or decision of the registrar or a court of law, or the
3 voluntary surrender of a license by a licensee, shall not deprive the registrar of
4 jurisdiction to proceed with any investigation of or action or disciplinary proceeding
5 against the license, or to render a decision suspending or revoking the license.

6
7 9. Section 7121 of the Code states:

8 A person who has been denied a license for a reason other than failure to
9 document sufficient satisfactory experience for a supplemental classification for an
10 existing license, or who has had his or her license revoked, or whose license is under
11 suspension, or who has failed to renew his or her license while it was under
12 suspension, or who has been a partner, officer, director, manager, or associate of any
13 partnership, corporation, limited liability company, firm, or association whose
14 application for a license has been denied for a reason other than failure to document
15 sufficient satisfactory experience for a supplemental classification for an existing
16 license, or whose license has been revoked, or whose license is under suspension, or
17 who has failed to renew a license while it was under suspension, and while acting as a
18 partner, officer, director, manager, or associate had knowledge of or participated in
19 any of the prohibited acts for which the license was denied, suspended, or revoked,
20 shall be prohibited from serving as an officer, director, associate, partner, manager,
21 qualifying individual, or member of the personnel of record of a licensee, and the
22 employment, election, or association of this type of person by a licensee in any
23 capacity other than as a nonsupervising bona fide employee shall constitute grounds
24 for disciplinary action.

25 10. Section 7121.5 of the Code states:

26 A person who was the qualifying individual on a revoked license, or of a
27 license under suspension, or of a license that was not renewed while it was under
28 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.

20 **STATUTORY PROVISIONS**

21 11. Section 7109 of the Code states:

22 (a) A willful departure in any material respect from accepted trade standards for
23 good and workmanlike construction constitutes a cause for disciplinary action, unless
24 the departure was in accordance with plans and specifications prepared by or under
25 the direct supervision of an architect.

26 ...

27 12. Section 7110 of the Code states:

28 Willful or deliberate disregard and violation of the building laws of the state, or
of any political subdivision thereof, or of Section 8550 or 8556 of this code, or of
Sections 1689.5 to 1689.15, inclusive, of the Civil Code, or of the safety laws or labor
laws or compensation insurance laws or Unemployment Insurance Code of the state,
or of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing
with Section 4100) of Part 1 of Division 2 of the Public Contract Code), or violation

1 by any licensee of any provision of the Health and Safety Code or Water Code,
2 relating to the digging, boring, or drilling of water wells, or Article 2 (commencing
3 with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code,
4 constitutes a cause for disciplinary action.

5 13. Section 7113 of the Code states:

6 Failure in a material respect on the part of a licensee to complete any
7 construction project or operation for the price stated in the contract for such
8 construction project or operation or in any modification of such contract constitutes a
9 cause for disciplinary action.

10 14. Section 7159.5 of the Code states:

11 This section applies to all home improvement contracts, as defined in Section
12 7151.2, between an owner or tenant and a contractor, whether a general contractor or
13 a specialty contractor, that is licensed or subject to be licensed pursuant to this
14 chapter with regard to the transaction.

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

18 ...

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

21 ...

22 15. Section 7122.5 of the Code states:

23 The performance by an individual, partnership, corporation, limited liability
24 company, firm, or association of an act or omission constituting a cause for
25 disciplinary action, likewise constitutes a cause for disciplinary action against a
26 licensee who at the time that the act or omission occurred was the qualifying
27 individual of that individual, partnership, corporation, limited liability company, firm,
28 or association, whether or not he or she had knowledge of or participated in the
prohibited act or omission.

16. Section 7154 of the Code states:

...

(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.

COST RECOVERY, RESTITUTION AND OTHER AUTHORITY

17. 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

1 or violations of the licensing act to pay a sum not to exceed the reasonable costs of
2 the investigation and enforcement of the case.

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

5 ...
6 18. Section 11519 of the Government Code states:

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

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

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

20 (d) As used in subdivision (b), specified terms of probation may include an
21 order of restitution. Where restitution is ordered and paid pursuant to the provisions
22 of this subdivision, the amount paid shall be credited to any subsequent judgment in a
23 civil action.

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

27 (f) A nonparty may not be required to comply with a decision unless the agency
28 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.

19. 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.

20. Section 7095 of the Code states:

The decision may:

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

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

3 (c) Impose upon the licensee compliance with such specific conditions as may
4 be just in connection with his operations as a contractor disclosed at the hearing and
5 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.

6 21. Section 7097 of the Code states:

7 Notwithstanding the provisions of Sections 7121 and 7122, when any licensee
8 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
9 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
10 appearance under the provisions of Section 7068, may be suspended by the registrar
without further notice.

11 22. Section 7098 of the Code states:

12 Notwithstanding the provisions of Sections 7121 and 7122, when any license
13 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
14 for which the licensee furnished qualifying experience and appearance under the
provisions of Section 7068, may be revoked by the registrar without further notice.

15 23. Section 7102 of the Code states:

16 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
17 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
18 the sound discretion of the registrar.

19 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
20 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
21 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
22 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.

23 The board shall promulgate regulations covering the criteria to be considered
24 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
25 following factors:

26 (a) The gravity of the violation.

27 (b) The history of previous violations.

28 (c) Criminal convictions.

1 When any loss has been reduced to a monetary obligation or debt, however, the
2 satisfaction of the monetary obligation or debt as a prerequisite for the issuance,
3 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.

4 **E.Y. PROJECT**

5 24. On or about November 25, 2019, Respondent Alpha Design, through unregistered
6 home improvement salesperson Sunny Bimbo, entered into a contract with E.Y. to install a new
7 roof, install a skylight and paint/repair two doors at property located in San Francisco, California
8 (E.Y. project) for \$25,300.00. The parties agreed to additional painting work a few days later,
9 increasing the project total price to \$26,050.00.

10 25. On or about November 27, 2019, Respondent Alpha Design asked for and received a
11 down payment of \$7,590.00. Work began on or about November 27, 2019. Respondent Alpha
12 Design pulled a permit for the roof replacement but failed to obtain a permit for the skylight
13 installation.

14 26. Work ceased in or about August 2020. Respondent Alpha Design received a total of
15 \$22,590.00 for the E.Y. project.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Departure from Accepted Trade Standards)**

18 27. Respondent Alpha Design has subjected its license to disciplinary action under Code
19 section 7109(a), in that on the E.Y. project, Respondent Alpha Design willfully departed from
20 accepted trade standards for good and workmanlike construction in the following material
21 respects:

22 a. Failed to properly install the roof/bitumen membrane in that the installation did not
23 allow for the proper drainage on this low slope roof.

24 b. Installed the wrong sized skylight and failed to seal the edges of the skylight to
25 prevent leaks.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Willful and Deliberate Disregard for Building Laws)**

3 28. Respondent Alpha Design has subjected its contractor's license to disciplinary
4 action under Code section 7110, in that on the E.Y. project, Respondent Alpha Design obtained a
5 permit for the roof replacement, but failed to obtain a no-plans, over the counter, building permit
6 to install the skylight from the San Francisco Department of Building Inspection.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Failure to Complete Project for Contract Price)**

9 29. Respondent Alpha Design has subjected its license to disciplinary action under Code
10 section 7113, in that on the E.Y. project, Respondent Alpha Design failed in a material respect to
11 complete the project for the contract price and E.Y. will be required to spend a substantial sum in
12 excess of the contract price to complete the project in accordance with the contract.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Contract Violations)**

15 30. Respondent Alpha Design has subjected its license to disciplinary action under Code
16 section 7159.5, in that on the E.Y. project, Respondent Alpha Design failed to comply with the
17 following provisions:

18 a. Subsection (a)(3): Respondent Alpha Design requested and accepted a down payment in
19 excess of 10 percent of the contract price or \$1,000, whichever is less.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Utilized Unregistered Salesperson)**

22 31. Respondent Alpha Design has subjected its license to disciplinary action under Code
23 section 7154, in that on the E.Y. project, Respondent Alpha Design employed unregistered home
24 improvement salesperson Sunny Bimbo.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Cause for Discipline for Qualifier – Respondent Espinoza)**

3 32. Pursuant to section 7122.5 of the Code, the causes for discipline established as to
4 Respondent Alpha Design constitute cause for discipline against Respondent Espinoza, dba Alpha
5 Construction Co, Contractor's license number 908507, regardless of whether Respondent
6 Espinoza had knowledge of or participated in the acts or omissions which constitute cause for
7 discipline against Respondent Alpha Design.

8 **CAUSES FOR OTHER ACTION**

9 **FIRST CAUSE FOR OTHER ACTION**

10 **(Restrictions on Qualifier – Respondent Hipolito Espinoza)**

11 33. Pursuant to Code section 7121.5, if license number 982846, issued to Respondent
12 Alpha Design is revoked or suspended, Respondent Espinoza shall be prohibited from serving as
13 an officer, director, associate, partner, manager, or qualifying individual of a licensee during the
14 time the discipline is imposed, whether or not he had knowledge of or participated in the acts or
15 omissions constituting grounds for discipline as alleged in the causes for discipline, above, and
16 any licensee which employs, elects, or associates Respondent Espinoza other than as a bona fide
17 nonsupervising employee shall be subject to disciplinary action.

18 **SECOND CAUSE FOR OTHER ACTION**

19 **(Restrictions on Respondent Michael Bimbo)**

20 34. Pursuant to Code section 7121, if license number 982846, issued to Respondent
21 Alpha Design is revoked or suspended, Respondent Bimbo shall be prohibited from serving as an
22 officer, director, associate, partner, manager, qualifying individual, or member of the personnel of
23 record of a licensee in that, while serving as Officer of Respondent Alpha Design, he had
24 knowledge of or participated in the acts or omissions constituting grounds for discipline as
25 alleged in the causes for discipline, above, and any licensee which employs, elects, or associates
26 Respondent Bimbo other than as a bona fide nonsupervising employee shall be subject to
27 disciplinary action.

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PRAYER

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

1. Ordering the revocation or suspension of Contractor's License Number 982846 issued to Respondent Alpha Design, pursuant to Code section 7090;

2. Ordering the revocation or suspension of Contractor's License Number 908507 issued to Respondent Espinoza, pursuant to Code section 7090;

3. Ordering restitution of all damages according to proof suffered by E.Y., as a condition of probation in the event probation is ordered for Respondent Alpha Design and/or Respondent Espinoza, pursuant to Government Code section 11519, subdivision (d);

4. Ordering Respondent Alpha Design and Respondent Espinoza 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;

5. Ordering Respondent Alpha Design and Respondent Espinoza 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;

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

7. Ordering that Respondent Michael Bimbo is prohibited from serving as an officer, director, associate, partner, manager or qualifying individual of a licensee, pursuant to Code section 7121;

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8. Taking such other and further action deemed proper.

DATED: 12-20-2021



THOMAS JAGER
Supervising Special Investigator I
Contractors State License Board
Department of Consumer Affairs
State of California
Complainant

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