

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 GREGORY TUSS  
Deputy Attorney General  
4 State Bar Number 200659  
1515 Clay Street, 20th Floor  
5 Post Office Box 70550  
Oakland, California 94612-0550  
6 Telephone: (510) 622-2143  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case Number N2013-388

12 **JOSEPH BROTHERS ENTERPRISE INC.;**  
13 **KEN JOSEPH, RMO/CEO/President**  
14 **1695 Abram Court, Suite 101**  
**San Leandro, California 94577**

**A C C U S A T I O N**

15 **Contractors License Number 849169,**  
16 **Classification B,**

17 **and**

18 **JOSEPH BROTHER'S CONSTRUCTION**  
19 **KEN JOSEPH, Sole Owner**  
**2320 109th Avenue**  
**Oakland, California 94603**

20 **Contractors License Number 719350,**  
21 **Classification B,**

22 Respondent.

23  
24 Complainant Wood Robinson alleges:

25 **PARTIES**

26 1. Complainant brings this accusation solely in his official capacity as the  
27 Enforcement Supervisor I of the Contractors State License Board (Board), Department of  
28 Consumer Affairs.



1 or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes  
2 for disciplinary action.

3 "The registrar may proceed to take disciplinary action as in this article provided against an  
4 applicant or a person licensed or registered under the provisions of this chapter even though the  
5 grounds or cause for such disciplinary action arose upon projects or while the applicant, licensee,  
6 or registrant was acting in a capacity or under circumstances or facts which, under the provisions  
7 of Sections 7044, 7045, 7046, and 7048, would otherwise exempt the person or his or her  
8 operations from the provisions of this chapter."

9 8. Section 7106.5 states:

10 "The expiration, cancellation, forfeiture, revocation, or suspension of a license by  
11 operation of law or by order or decision of the registrar or a court of law, or the voluntary  
12 surrender of a license by a licensee, shall not deprive the registrar of jurisdiction to proceed with  
13 any investigation of or action or disciplinary proceeding against the license, or to render a  
14 decision suspending or revoking the license."

15 **STATUTORY AUTHORITY**

16 9. Section 7110 states:

17 "Willful or deliberate disregard and violation of the building laws of the state, or of any  
18 political subdivision thereof, or of Section 8550 or 8556 of this code, or of Sections 1689.5 to  
19 1689.15, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation  
20 insurance laws or Unemployment Insurance Code of the state, or of the Subletting and  
21 Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of  
22 Division 2 of the Public Contract Code), or violation by any licensee of any provision of the  
23 Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells,  
24 or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the  
25 Government Code, constitutes a cause for disciplinary action."

26 10. Section 7111.1 states:

27 "The failure of, or refusal by, a licensee to respond to a written request of the registrar to  
28 cooperate in the investigation of a complaint against that licensee constitutes a cause for

1 disciplinary action.”

2 11. Section 7116 states:

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

5 12. Labor Code section 1774 states:

6 “The contractor to whom the contract is awarded, and any subcontractor under him, shall  
7 pay not less than the specified prevailing rates of wages to all workmen employed in the  
8 execution of the contract.”

9 13. Labor Code section 1776 states in part:

10 “(a) Each contractor and subcontractor shall keep accurate payroll records, showing the  
11 name, address, social security number, work classification, straight time and overtime hours  
12 worked each day and week, and the actual per diem wages paid to each journeyman, apprentice,  
13 worker, or other employee employed by him or her in connection with the public work.

14 ...

15 “(b) The payroll records enumerated under subdivision (a) shall be certified and shall be  
16 available for inspection at all reasonable hours at the principal office of the contractor on the  
17 following basis:

18 ...

19 “(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made  
20 available for inspection or furnished upon request to a representative of the body awarding the  
21 contract and the Division of Labor Standards Enforcement of the Department of Industrial  
22 Relations.

23 ...

24 “(d) A contractor or subcontractor shall file a certified copy of the records enumerated in  
25 subdivision (a) with the entity that requested the records within 10 days after receipt of a written  
26 request.

27 ...

28 “(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt

1 of a written notice requesting the records enumerated in subdivision (a).”

2 14. Labor Code section 1777.5 states in part:

3 “(m)(1) A contractor to whom a contract is awarded, who, in performing any of the work  
4 under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall  
5 contribute to the California Apprenticeship Council the same amount that the director determines  
6 is the prevailing amount of apprenticeship training contributions in the area of the public works  
7 site.”

8 **COST RECOVERY/RESTITUTION**

9 15. Section 125.3 states in part:

10 “(a) Except as otherwise provided by law, in any order issued in resolution of a  
11 disciplinary proceeding before any board within the department or before the Osteopathic  
12 Medical Board, upon request of the entity bringing the proceeding may request the administrative  
13 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
14 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
15 case.”

16 16. Government Code section 11519 states in part

17 “(d) [S]pecified terms of probation may include an order of restitution. Where restitution  
18 is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be  
19 credited to any subsequent judgment in a civil action.”

20 **FACTUAL BACKGROUND**

21 **WALNUT CREEK PROJECT**

22 17. Respondent was engaged on a public works project in Walnut Creek, California.  
23 On March 21, 2012, the California Department of Industrial Relations, Division of Labor  
24 Standards Enforcement (Division) issued Amended Civil Wage and Penalty Assessment  
25 40-29867/259 against respondent for failing to pay the prevailing wage to its employees (Lab.  
26 Code, § 1774), failing to pay the training fund contributions for its apprenticeship employees to  
27 the apprenticeship counsel (Lab. Code, § 1777.5), and failing to submit certified payroll records  
28 to the Division within the required timeframe (Lab. Code, § 1776). The Division determined that

1 the total amount of wages due was \$248,539.47 and the total amount of penalties were  
2 \$30,175.00. Respondent's prime contractors paid a portion of the assessed wages.

3 18. On May 13, 2013, in Case Number N13-0641, the Contra Costa County Superior  
4 Court entered a judgment of \$302,253.94 against respondent for the remainder of the assessed  
5 wages and penalties, and for liquidated damages.

#### 6 **BERKELEY PROJECT**

7 19. Respondent was engaged on a public works project in Berkeley, California. On  
8 June 7, 2012, the Division issued Civil Wage and Penalty Assessment 40-30746/259 against  
9 respondent for failing to pay the prevailing wage to its employees (Lab. Code, § 1774) and failing  
10 to pay the training fund contributions for its apprenticeship employees to the apprenticeship  
11 counsel (Lab. Code, § 1777.5). The Division determined that the total amount of wages due was  
12 \$86,116.84 and the total amount of penalties were \$15,650.00. Respondent's prime contractors  
13 paid a portion of the assessed wages.

14 20. On December 17, 2012, in Case Number RG12660661, the Alameda County  
15 Superior Court entered a judgment of \$156,415.93 against respondent for the remainder of the  
16 assessed wages and penalties, and for liquidated damages.

#### 17 **LARKSPUR PROJECT**

18 21. Respondent was engaged on a public works project in Larkspur, California. On  
19 September 20, 2012, the Division issued Civil Wage and Penalty Assessment 40-30747/259  
20 against respondent for failing to pay the prevailing wage to its employees (Lab. Code, § 1774)  
21 and failing to pay the training fund contributions for its apprenticeship employees to the  
22 apprenticeship counsel (Lab. Code, § 1777.5). The Division determined that the total amount of  
23 wages due was \$77,706.39 and the total amount of penalties were \$9,400.00. Respondent's prime  
24 contractors paid a portion of the assessed wages.

25 22. On April 30, 2013, in Case Number CV 1301886, the Marin County Superior  
26 Court entered a judgment of \$110,538.69 against respondent for the remainder of the assessed  
27 wages and penalties, and for liquidated damages.

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1 **BANKRUPTCY**

2 23. Respondent filed for Chapter 7 bankruptcy on December 4, 2013.

3 **FAILURE TO RESPOND TO BOARD**

4 24. On July 2, 2013, the Board sent first class and certified letters to respondent at his  
5 address of record and another address on file with the Board. These contact letters requested  
6 respondent's cooperation in the Board's investigation of the assessments and judgments against  
7 respondent for the public works projects in Walnut Creek, Berkeley, and Larkspur, California.  
8 The Board received a signed delivery confirmation for the certified letter sent to respondent's  
9 address of record. The letters sent to respondent's other address were returned to the Board as  
10 undeliverable. To date, respondent has not contacted the Board.

11 **CAUSES FOR DISCIPLINE**

12 **FIRST CAUSE FOR DISCIPLINE**  
13 **Violation of Labor Code**  
**Business and Professions Code section 7110**

14 25. The allegations in paragraphs 17-18 are realleged and incorporated by reference as  
15 if fully set forth.

16 26. Respondent has subjected its license to discipline for willfully or deliberately  
17 disregarding and violating labor laws (Bus. & Prof. Code, § 7110). Respondent failed to pay the  
18 prevailing wage to its employees (Lab. Code, § 1774), failed to pay the training fund  
19 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,  
20 § 1777.5), and failed to submit certified payroll records to the Division within the required  
21 timeframe (Lab. Code, § 1776) on a public works project in Walnut Creek, California.

22 **SECOND CAUSE FOR DISCIPLINE**  
23 **Violation of Labor Code**  
**Business and Professions Code section 7110**

24 27. The allegations in paragraphs 19-20 are realleged and incorporated by reference as  
25 if fully set forth.

26 28. Respondent has subjected its license to discipline for willfully or deliberately  
27 disregarding and violating labor laws (Bus. & Prof. Code, § 7110). Respondent failed to pay the  
28 prevailing wage to its employees (Lab. Code, § 1774) and failed to pay the training fund

1 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,  
2 § 1777.5) on a public works project in Berkeley, California.

3 **THIRD CAUSE FOR DISCIPLINE**  
4 **Violation of Labor Code**  
5 **Business and Professions Code section 7110**

6 29. The allegations in paragraphs 21-22 are realleged and incorporated by reference as  
7 if fully set forth.

8 30. Respondent has subjected its license to discipline for willfully or deliberately  
9 disregarding and violating labor laws (Bus. & Prof. Code, § 7110). Respondent failed to pay the  
10 prevailing wage to its employees (Lab. Code, § 1774) and failed to pay the training fund  
11 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,  
12 § 1777.5) on a public works project in Larkspur, California.

13 **FOURTH CAUSE FOR DISCIPLINE**  
14 **Wilful or Fraudulent Act Causing Injury**  
15 **Business and Professions Code section 7116**

16 31. The allegations in paragraphs 17-18 are realleged and incorporated by reference as  
17 if fully set forth.

18 32. Respondent has subjected its license to discipline for doing a wilful or fraudulent  
19 act causing injury to another (Bus. & Prof. Code, § 7116). Respondent failed to pay the  
20 prevailing wage to its employees (Lab. Code, § 1774), failed to pay the training fund  
21 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,  
22 § 1777.5), and failed to submit certified payroll records to the Division within the required  
23 timeframe (Lab. Code, § 1776) on a public works project in Walnut Creek, California.

24 **FIFTH CAUSE FOR DISCIPLINE**  
25 **Wilful or Fraudulent Act Causing Injury**  
26 **Business and Professions Code section 7116**

27 33. The allegations in paragraphs 19-20 are realleged and incorporated by reference as  
28 if fully set forth.

34. Respondent has subjected its license to discipline for doing a wilful or fraudulent  
act causing injury to another (Bus. & Prof. Code, § 7116). Respondent failed to pay the  
prevailing wage to its employees (Lab. Code, § 1774) and failed to pay the training fund



1 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,  
2 § 1777.5) on a public works project in Berkeley, California.

3 **SIXTH CAUSE FOR DISCIPLINE**  
4 **Wilful or Fraudulent Act Causing Injury**  
5 **Business and Professions Code section 7116**

6 35. The allegations in paragraphs 21-22 are realleged and incorporated by reference as  
7 if fully set forth.

8 36. Respondent has subjected its license to discipline for doing a wilful or fraudulent  
9 act causing injury to another (Bus. & Prof. Code, § 7116). Respondent failed to pay the  
10 prevailing wage to its employees (Lab. Code, § 1774) and failed to pay the training fund  
11 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,  
12 § 1777.5) on a public works project in Larkspur, California.

13 **SEVENTH CAUSE FOR DISCIPLINE**  
14 **Failure to Cooperate in Investigation of Complaint**  
15 **Business and Professions Code section 7111.1**

16 37. The allegations in paragraph 24 are realleged and incorporated by reference as if  
17 fully set forth.

18 38. Respondent has subjected its license to discipline for failing to respond to respond  
19 to a written request by the Board to cooperate in the investigation of a complaint against that  
20 licensee (Bus. & Prof. Code, § 7111.1). Respondent failed to respond to letters sent by the Board  
21 requesting respondent's cooperation in the Board's investigation of the assessments and  
22 judgments against respondent for the public works projects in Walnut Creek, Berkeley, and  
23 Larkspur, California.

24 **OTHER DISCIPLINARY CONSIDERATIONS**

25 39. On May 31, 2011, the Board issued Citation Number 2 2010 2467 against  
26 respondent for failing to secure workers' compensation coverage for its employees (Bus. & Prof.  
27 Code, § 7125.4, subd. (a)). Respondent paid the \$500.00 citation on or about September 12,  
28 2011.

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1 OTHER MATTERS

2 40. Section 7095 states:

3 “The [Registrar’s disciplinary decision] may:

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

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

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

12 41. Section 7097 states:

13 “Notwithstanding the provision of Sections 7121 and 7122, when any license has been  
14 suspended by a decision of the registrar pursuant to an accusation or pursuant to subdivision (b)  
15 of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter in  
16 the name of the licensee or for which the licensee furnished qualifying experience and appearance  
17 under the provisions of Section 7068, may be suspended by the registrar without further notice.”

18 42. Section 7098 states:

19 “Notwithstanding the provisions of Sections 7121 and 7122, when any license has been  
20 revoked under the provisions of this chapter [Bus. & Prof. Code, § 7000 et seq.], any additional  
21 license issued under this chapter in the name of the licensee or for which the licensee furnished  
22 qualifying experience and appearance under the provisions of Section 7068, may be revoked by  
23 the registrar without further notice.”

24 43. Section 7121 states:

25 “A person who has been denied a license for a reason other than failure to document  
26 sufficient satisfactory experience for a supplemental classification for an existing license, or who  
27 has had his or her license revoked, or whose license is under suspension, or who has filed to  
28 renew his or her license while it was under suspension, or who has been a partner, officer,

1 director, manager, or associate of any partnership, corporation, limited liability company, firm, or  
2 association whose application for a license has been denied for a reason other than failure to  
3 document sufficient satisfactory experience for a supplemental classification for an existing  
4 license, or whose license has been revoked, or whose license is under suspension, or who has  
5 failed to renew a license while it was under suspension, and while acting as a partner, officer,  
6 director, manager, or associate had knowledge of or participated in any of the prohibited acts for  
7 which the license was denied, suspended or revoked, shall be prohibited from serving as an  
8 officer, director, associate, partner, manager, qualifying individual, or member of the personnel of  
9 record of a licensee, and the employment, election, or association of this type of person by a  
10 licensee in any capacity other than as a nonsupervising bona fide employee shall constitute  
11 grounds for disciplinary action.”

12 44. Section 7121.5 states:

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

20 45. Section 7122 states:

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

28 ///



1 as a result of Ken Joseph's conduct as a contractor, as a condition of restoration of Contractors  
2 License Number 849169, Classification B, issued to respondent Joseph Brothers Enterprise Inc.;  
3 Ken Joseph, RMO/CEO/President; or Contractors License Number 719350, Classification B,  
4 issued to respondent Joseph Brother's Construction; Ken Joseph, Sole Owner;

5 7. Ordering respondent Joseph Brothers Enterprise Inc.; Ken Joseph,  
6 RMO/CEO/President; and respondent Joseph Brother's Construction; Ken Joseph, Sole Owner;  
7 to pay the Registrar of Contractors his costs in the investigation and enforcement of the case  
8 according to proof at the hearing under to Business and Professions Code section 125.3;

9 8. Ordering respondent Joseph Brothers Enterprise Inc.; Ken Joseph,  
10 RMO/CEO/President; and respondent Joseph Brother's Construction; Ken Joseph, Sole Owner;  
11 to provide the Registrar with a listing of all contracting projects in progress and the anticipated  
12 completion date of each; and

13 9. Taking such other and further action as deemed necessary and proper.

14 DATED: 10/31/14

  
15 for WOOD ROBINSON  
16 Enforcement Supervisor I  
17 Contractors State License Board  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

21 SF2014902372  
22 90447211.doc

23 **FILED**  
24 **OCT 31 2014**  
25 **CSLB DSS**