

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:
12
13 **JOSEPH BROTHERS ENTERPRISE INC.;**
14 **KEN JOSEPH, RMO/CEO/President**
2320 109th Avenue
Oakland, California 94603
15 **Contractor's 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 **Contractor's License Number 719350,**
21 **Classification B,**
22 Respondent.

Case Number N2013-388

**AMENDED
ACCUSATION**

23
24 Complainant Wood Robinson alleges:

25 **PARTIES**

26 1. Complainant brings this amended 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 7113 states:

3 “Failure in a material respect on the part of a licensee to complete any construction project
4 or operation for the price stated in the contract for such construction project or operation or in any
5 modification of such contract constitutes a cause for disciplinary action.”

6 12. Section 7116 states:

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

9 13. Labor Code section 1774 states:

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

13 14. Labor Code section 1776 states in part:

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

18 ...

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

22 ...

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

27 ...

28 “(d) A contractor or subcontractor shall file a certified copy of the records enumerated in

1 subdivision (a) with the entity that requested the records within 10 days after receipt of a written
2 request.

3 . . .

4 “(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt
5 of a written notice requesting the records enumerated in subdivision (a).”

6 15. Labor Code section 1777.5 states in part:

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

12 COST RECOVERY/RESTITUTION

13 16. Section 125.3 states in part:

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

20 17. Government Code section 11519 states in part

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

24 FACTUAL BACKGROUND AND CAUSES FOR DISCIPLINE

25 WALNUT CREEK PROJECT

26 18. Respondent was engaged on a public works project in Walnut Creek, California.
27 On March 21, 2012, the California Department of Industrial Relations, Division of Labor
28 Standards Enforcement (Division) issued Amended Civil Wage and Penalty Assessment

1 40-29867/259 against respondent for failing to pay the prevailing wage to its employees (Lab.
2 Code, § 1774), failing to pay the training fund contributions for its apprenticeship employees to
3 the apprenticeship counsel (Lab. Code, § 1777.5), and failing to submit certified payroll records
4 to the Division within the required timeframe (Lab. Code, § 1776). The Division determined that
5 the total amount of wages due was \$248,539.47 and the total amount of penalties were
6 \$30,175.00. Respondent's prime contractors paid a portion of the assessed wages.

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

10 **First Cause for Discipline**
11 **Violation of Labor Code**
Business and Professions Code section 7110

12 20. The allegations in paragraphs 18-19 are realleged and incorporated by reference as
13 if fully set forth.

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

20 **Second Cause for Discipline**
21 **Wilful or Fraudulent Act Causing Injury**
Business and Professions Code section 7116

22 22. The allegations in paragraphs 18-19 are realleged and incorporated by reference as
23 if fully set forth.

24 23. Respondent has subjected its license to discipline for doing a wilful or fraudulent
25 act causing injury to another (Bus. & Prof. Code, § 7116). Respondent failed to pay the
26 prevailing wage to its employees (Lab. Code, § 1774), failed to pay the training fund
27 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,
28 § 1777.5), and failed to submit certified payroll records to the Division within the required

1 timeframe (Lab. Code, § 1776) on a public works project in Walnut Creek, California.

2 **BERKELEY PROJECT**

3 24. Respondent was engaged on a public works project in Berkeley, California, for a
4 total contract amount of approximately \$163,209.00. The prime contractor, Midstate
5 Construction Corporation (Midstate), became concerned that respondent was not acting in the
6 capacity of a responsible contractor and nor accurately reporting payroll. Midstate issued joint
7 checks to respondent and the material suppliers, and estimated the amount the employees were
8 due and paid them directly.

9 25. On June 7, 2012, the Division issued Civil Wage and Penalty Assessment 40-
10 30746/259 against respondent for failing to pay the prevailing wage to its employees (Lab. Code,
11 § 1774) and failing to pay the training fund contributions for its apprenticeship employees to the
12 apprenticeship counsel (Lab. Code, § 1777.5). The Division determined that Midstate and
13 respondent were jointly and severally liable for the total amount of wages due (\$86,116.84) and
14 the total amount of penalties (\$15,650.00).

15 26. Midstate entered into a settlement to pay the wage and penalty assessment and
16 paid \$31,467.00 to the Division on October 31, 2012. Midstate sustained a total financial injury
17 of approximately \$38,391.72 over the contract amount on the project.

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

21 **Third Cause for Discipline**
22 **Violation of Labor Code**
Business and Professions Code section 7110

23 28. The allegations in paragraphs 24-27 are realleged and incorporated by reference as
24 if fully set forth.

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

1 § 1777.5) on a public works project in Berkeley, California.

2 **Fourth Cause for Discipline**
3 **Wilful or Fraudulent Act Causing Injury**
4 **Business and Professions Code section 7116**

5 30. The allegations in paragraphs 24-27 are realleged and incorporated by reference as
6 if fully set forth.

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

12 **Fifth Cause for Discipline**
13 **Failure to Complete Project for Contract Price**
14 **Business and Professions Code section 7113**

15 32. The allegations in paragraphs 24-27 are realleged and incorporated by reference as
16 if fully set forth.

17 33. Respondent has subjected its license to discipline for failure to complete a project
18 for the contract price (Bus. & Prof. Code, § 7113). Respondent failed to pay the prevailing wage
19 to its employees (Lab. Code, § 1774) and failed to pay the training fund contributions for its
20 apprenticeship employees to the apprenticeship counsel (Lab. Code, § 1777.5) on a public works
21 project in Berkeley, California. The prime contractor covered costs associated with the
22 construction contract and entered into a settlement to pay the wage and penalty assessment. The
23 prime contractor sustained a total financial injury of approximately \$38,391.72 over the contract
24 price.

25 **LARKSPUR PROJECT**

26 34. Respondent was engaged on a public works project in Larkspur, California. On
27 September 20, 2012, the Division issued Civil Wage and Penalty Assessment 40-30747/259
28 against respondent for failing to pay the prevailing wage to its employees (Lab. Code, § 1774)
and failing to pay the training fund contributions for its apprenticeship employees to the
apprenticeship counsel (Lab. Code, § 1777.5). The Division determined that the total amount of

1 wages due was \$77,706.39 and the total amount of penalties were \$9,400.00. Respondent's prime
2 contractors paid a portion of the assessed wages.

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

6 **Sixth Cause for Discipline**
7 **Violation of Labor Code**
8 **Business and Professions Code section 7110**

9 36. The allegations in paragraphs 34-35 are realleged and incorporated by reference as
10 if fully set forth.

11 37. Respondent has subjected its license to discipline for willfully or deliberately
12 disregarding and violating labor laws (Bus. & Prof. Code, § 7110). Respondent failed to pay the
13 prevailing wage to its employees (Lab. Code, § 1774) and failed to pay the training fund
14 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,
15 § 1777.5) on a public works project in Larkspur, California.

16 **Seventh Cause for Discipline**
17 **Wilful or Fraudulent Act Causing Injury**
18 **Business and Professions Code section 7116**

19 38. The allegations in paragraphs 34-35 are realleged and incorporated by reference as
20 if fully set forth.

21 39. Respondent has subjected its license to discipline for doing a wilful or fraudulent
22 act causing injury to another (Bus. & Prof. Code, § 7116). Respondent failed to pay the
23 prevailing wage to its employees (Lab. Code, § 1774) and failed to pay the training fund
24 contributions for its apprenticeship employees to the apprenticeship counsel (Lab. Code,
25 § 1777.5) on a public works project in Larkspur, California.

26 **BANKRUPTCY**

27 40. Respondent filed for Chapter 7 bankruptcy on December 4, 2013.

28 **FAILURE TO RESPOND TO BOARD**

41. On July 2, 2013, the board sent first class and certified letters to respondent at his
address of record and another address on file with the board. These contact letters requested

1 respondent's cooperation in the board's investigation of the assessments and judgments against
2 respondent for the public works projects in Walnut Creek, Berkeley, and Larkspur, California.
3 The board received a signed delivery confirmation for the certified letter sent to respondent's
4 address of record. The letters sent to respondent's other address were returned to the board as
5 undeliverable. To date, respondent has not contacted the board.

6
7 **Eighth Cause for Discipline**
8 **Failure to Cooperate in Investigation of Complaint**
9 **Business and Professions Code section 7111.1**

10 42. The allegations in paragraph 41 are realleged and incorporated by reference as if
11 fully set forth.

12 43. Respondent has subjected its license to discipline for failing to respond to respond
13 to a written request by the board to cooperate in the investigation of a complaint against that
14 licensee (Bus. & Prof. Code, § 7111.1). Respondent failed to respond to letters sent by the board
15 requesting respondent's cooperation in the board's investigation of the assessments and
16 judgments against respondent for the public works projects in Walnut Creek, Berkeley, and
17 Larkspur, California.

18 **OTHER DISCIPLINARY CONSIDERATIONS**

19 44. On May 31, 2011, the board issued Citation Number 2 2010 2467 against
20 respondent for failing to secure workers' compensation coverage for its employees (Bus. & Prof.
21 Code, § 7125.4, subd. (a)). Respondent paid the \$500.00 citation on or about September 12,
22 2011.

23 **OTHER MATTERS**

24 45. Section 7095 states:

25 "The [registrar's disciplinary decision] may:

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

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

"(c) Impose upon the licensee compliance with such specific conditions as may be just in

1 connection with its operations as a contractor disclosed at the hearing and may further provide
2 that until such conditions are complied with no application for restoration of the suspended or
3 revoked license shall be accepted by the registrar.”

4 46. Section 7097 states:

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

10 47. Section 7098 states:

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

16 48. Section 7121 states:

17 “A person who has been denied a license for a reason other than failure to document
18 sufficient satisfactory experience for a supplemental classification for an existing license, or who
19 has had his or her license revoked, or whose license is under suspension, or who has filed to
20 renew his or her license while it was under suspension, or who has been a partner, officer,
21 director, manager, or associate of any partnership, corporation, limited liability company, firm, or
22 association whose application for a license has been denied for a reason other than failure to
23 document sufficient satisfactory experience for a supplemental classification for an existing
24 license, or whose license has been revoked, or whose license is under suspension, or who has
25 failed to renew a license while it was under suspension, and while acting as a partner, officer,
26 director, manager, or associate had knowledge of or participated in any of the prohibited acts for
27 which the license was denied, suspended or revoked, shall be prohibited from serving as an
28 officer, director, associate, partner, manager, qualifying individual, or member of the personnel of

1 record of a licensee, and the employment, election, or association of this type of person by a
2 licensee in any capacity other than as a nonsupervising bona fide employee shall constitute
3 grounds for disciplinary action.”

4 49. Section 7121.5 states:

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

12 50. Section 7122 states:

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

20 51. Section 7122.5 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 who at the time that the act or
24 omission occurred was the qualifying individual of that individual, partnership, corporation,
25 limited liability company, firm, or association, whether or not he or she had knowledge of or
26 participated in the prohibited act or omission.”

27 **PRAYER**

28 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this

1 amended accusation, and that following the hearing, the Registrar of Contractors issues a
2 decision:

3 1. Revoking or suspending Contractor's License Number 849169, Classification B,
4 issued to respondent Joseph Brothers Enterprise Inc.; Ken Joseph, RMO/CEO/President;

5 2. Revoking or suspending Contractor's License Number 719350, Classification B,
6 issued to respondent Joseph Brother's Construction; Ken Joseph, Sole Owner;

7 3. Prohibiting Ken Joseph from serving as an officer, director, associate, partner, or
8 qualifying individual of any licensee during the period that discipline is imposed on Contractor's
9 License Number 849169, Classification B, issued to respondent Joseph Brothers Enterprise Inc.;
10 Ken Joseph, RMO/CEO/President; or Contractor's License Number 719350, Classification B,
11 issued to respondent Joseph Brother's Construction; Ken Joseph, Sole Owner;

12 4. Revoking or suspending any other license for which Ken Joseph is furnishing the
13 qualifying experience or appearance;

14 5. Ordering satisfaction of the judgments according to proof issued against
15 respondent in Contra Costa Superior Court Case Number N13-0641, Alameda County Superior
16 Court Case Number RG12660661, and Marin County Superior Court Case Number CV 1301886
17 as a condition of probation in the event probation is ordered;

18 6. Ordering satisfaction of the judgments according to proof issued against
19 respondent in Contra Costa Superior Court Case Number N13-0641, Alameda County Superior
20 Court Case Number RG12660661, and Marin County Superior Court Case Number CV 1301886
21 as a result of Ken Joseph's conduct as a contractor, as a condition of restoration of Contractor's
22 License Number 849169, Classification B, issued to respondent Joseph Brothers Enterprise Inc.;
23 Ken Joseph, RMO/CEO/President; or Contractor's License Number 719350, Classification B,
24 issued to respondent Joseph Brother's Construction; Ken Joseph, Sole Owner;

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

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

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

DATED: 11/23/16



FILED
NOV 23 2016
CSLB DSS

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

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