

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

In the Matter of the Accusation Against:

**Dennis Earl Taylor Construction;**  
**Dennis Earl Taylor, sole owner**  
**348 Gull Place**  
**Pittsburg, CA 94565**

**General Contractor's License No. 508615,**

Respondent.

CASE No. N2014-140

OAH No. 2014120992

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Registrar of Contractors as her Decision in the above-entitled matter, except that it is modified to **DELETE** the following items from the terms and conditions of probation:

License is suspended for a period of 30 days

h. Respondent shall complete an education course in estimating construction costs or a related course in the field of construction science.

j. Respondent shall take and pass a course in contractors license law or a course related to construction law at an accredited community college.

The failure to comply with any of the remaining terms and conditions as set forth in the provisions of probation will be deemed a violation of probation.

IT IS FURTHER ORDERED that DENNIS EARL TAYLOR CONSTRUCTION, License Number 508615, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of \$30,000.00, for a period of not less than three years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a disciplinary bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.

IT IS THE responsibility of the Respondent, named in this Decision, to read and follow the terms and conditions of probation found in the Proposed Decision. The deadlines for meeting the terms and conditions are based upon the EFFECTIVE DATE of the Decision. No notices or reminders will be sent, as to the compliance of the terms and conditions. Proof of payments of restitution and payments for the Cost of Investigation and Enforcement if ordered, are to be sent to CSLB, Sacramento Case Management, Post Office Box 26888, Sacramento, CA 95826.

This Decision shall become effective on February 29, 2016.

IT IS SO ORDERED January 26, 2016.



Cindi A. Christenson  
Registrar of Contractors

BEFORE THE  
REGISTRAR OF CONTRACTORS  
CONTRACTORS' STATE LICENSE BOARD  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DENNIS EARL TAYLOR  
CONSTRUCTION; DENNIS EARL  
TAYLOR, Sole Owner,

General Contractor's License No. 508615

Respondent.

Case No. N2014-140

OAH No. 2014120992

**PROPOSED DECISION**

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on October 28, 2015, in Oakland, California.

Deputy Attorney General Kim Settles represented complainant Wood Robinson, Enforcement Supervisor I, Contractors' State License Board, Department of Consumer Affairs.

Respondent Dennis Earl Taylor, Sole Owner, appeared for hearing. He was not represented by an attorney.

The record was closed and the matter was submitted on October 28, 2015.

**FACTUAL FINDINGS**

1. On April 7, 1987, the Registrar of Contractors issued Contractor's License Number 508615 (Classification B – General Building Contractor) to respondent Dennis Earl Taylor Construction, Dennis Earl Taylor, Sole Owner. The license expired February 28, 2002, and was reissued and reinstated effective May 10, 2013, and is renewed until May 31, 2017.

2. On November 20, 2014, complainant Wood Robinson, acting in his official capacity as Enforcement Supervisor I, Contractors' State License Board (Board), issued an accusation against respondent.<sup>1</sup> The accusation alleges that respondent failed to comply with various provisions of the contracting laws in connection with his work on a project in Pittsburg owned by Paul Lawson (owner).

*The Lawson project*

TESTIMONY OF PAUL LAWSON, OWNER

3. The project was a complete remodel of owner's house. It involved interior demolition and gutting of the entire home, including: enlarging a bedroom to create a master bedroom suite with a walk-in closet and new bathroom; adding a den; adding space for a washer and dryer; a remodeled kitchen; and adding a partial second floor, with a bedroom and bathroom. In total, 1,000 square feet were to be added.

4. The plans were prepared by one of owner's friends, who is an architect.<sup>2</sup> The plans were approved and stamped by the City of Pittsburg on September 25, 2012. At respondent's suggestion owner obtained the permit as an "owner builder."

5. Owner and respondent met in November 2012, at which time respondent reviewed the blueprints and then provided owner with an estimate for the cost of the work. Respondent provided a "cost breakdown" which included the following items: demolition \$7,000; excavation \$9,000; foundation \$10,500; concrete \$6,000; rough lumber \$9,500; rough carpentry \$15,000; plumbing \$10,000; heating/air \$10,000; electrical \$10,000; insulation \$6,500; sheetrock \$9,500; roofing \$6,000; stucco \$12,000; painting \$3,500; cabinets/tops \$5,500; flooring \$11,000; finish lumber \$4,500; finish carpentry \$9,000; windows \$4,500; and doors \$2,500. The costs for labor and materials were not broken out separately. The total cost of these items was \$161,500.

6. Owner and respondent did not execute a written contract containing any terms and conditions; the undated "cost breakdown" represented their sole written agreement. Owner understood they had a "gentlemen's agreement" to cover all aspects of the work, including labor and materials.

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<sup>1</sup> At the hearing, complaint moved to amend the Accusation to allege violations of Business and Professions Code section 7159, subdivision (c)(3)(A), failure to provide a signed and dated contract prior to the start of work; section 7159, subdivision (c)(3)(B)(ii), failure to specify the address for a "Notice of Cancellation"; and, section 7159, subdivision (d), failure to provide a written contract prior to starting work and failure to provide written change orders. The motion to add these causes for discipline was granted.

<sup>2</sup> The plans are dated May 2012, but are unsigned and do not bear an architect's stamp.

7. The work began in late November 2012, and owner paid respondent a total of \$145,000 through April 2013. There was no payment schedule. In May 2013, owner became concerned, because the project was far from complete, but only \$16,500 remained to be paid of the agreed-upon price. At this point the walls and floors were not installed and the stucco had not been applied. Owner requested copies of receipts for materials to understand how the money was being used, because he was concerned that respondent would not finish the project for the \$16,500 remaining to be paid. Owner testified that any changes made to the plans were at respondent's request. Owner denied being told that respondent found dry rot during the course of construction. Respondent stopped working in May or June 2013.

8. Owner paid off a lien in the amount of \$7,350 to Architectural Wood Products and \$1,546.42 for damages caused by respondent to a PG&E gas line.

9. Owner could not afford to finish the project, and in 2014 he entered into a transaction with others, whereby they agreed to finish the project at their own expense, then to sell the house and divide the proceeds. The record does not indicate the current status of the work.

#### TESTIMONY OF ROBIN CATON, BOARD INVESTIGATOR

10. Robin Caton testified for Complainant. She confirmed that respondent did not have workers' compensation insurance, and that he was not a licensed contractor during the time he provided services to owner.

11. As part of her investigation, Caton interviewed respondent, who provided the following statement:

I saw the plans and gave [owner] a price based on those. When I got to the job, the approved plans were different and more detailed. I got to the rough framing phase of the project when [owner] and I had a fight and he explained he wouldn't be able to get any more money. I did as much work as I could for the amount of money he had but I couldn't continue working for free. I never intended for the \$161,500 to be the full contract amount since there was so much more to the job.

I admit, I did have a couple of people that worked for me and I don't have workers' compensation insurance.

#### TESTIMONY OF PETER DALY

12. Peter Daly has been a licensed general contractor since 1987 and he reviewed the complaint for the Board. He inspected the Lawson project in May 2014, and prepared a

written report. Because there was no written contract between the parties, Daly relied on the plans and the cost breakdown to determine the scope of the work.<sup>3</sup>

13. The work was performed to trade standards, but was not complete, and significantly less work was performed, based on the cost breakout, than Daly would have expected.

14. In his report, Daly summarized the status of the project at the time of his review as follows:

For the most part, the foundation, framing, plumbing, HVAC and electrical rough-in phases are complete. The finished roofing has been installed as have the exterior doors and windows, the weather resistive barrier and the flashings. The structure has been lathed but none of the exterior plaster coats have been applied. The work to date has been approved by the City of Pittsburg and the inspection record is up to date. In general, the quality of the work completed to date is good and has been performed in a neat and workmanlike manner. Otherwise, the insulation and all of the interior finish work remains to be done along with the completion of the exterior plaster wall finish and various site improvements and utility connections.

15. Based on the work Daly found completed, and using the cost breakdown and the blueprints to determine the scope of the intended work, Daly determined the following work still needs to be performed:

a. General Requirements (Supervision, clean-up and punch list)	\$ 10,713
b. Site Work (Earthwork—excavation, fill and grading)	\$ 5,905
c. Concrete (Foundation access; repair garage slab; new landing)	\$ 3,145
d. Masonry (Kitchen counters and bath counters and vanities)	\$ 3,080

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<sup>3</sup> In addition to the plans stamped September 25, 2012, the record contains a single page of blueprints showing a revised floorplan, which was approved by the city on December 12, 2012.

e. Wood and Plastics (Rough carpentry, interior finishes, shelves and cabinets in kitchen and baths)	\$21,222
f. Thermal and Moisture Protection (Insulation, flashing and sheet metal)	\$11,930
g. Doors, Windows and Glazing (Interior and garage doors finish hardware)	\$ 6,760
h. Finishes (Exterior plaster, drywall, kitchen and bathroom floors, wood floors, and painting)	\$65,150
i. Specialties (Bath accessories)	\$ 320
j. Equipment (Appliances)	\$ 3,777
k. Mechanical (Connect to utilities, install sinks and Tubs)	\$10,303
l. Electrical (Install final electrical)	\$ 5,963
Direct Cost Total	\$148,261
Contractor's OH and P-15 per cent	\$ 22,239
Complete Cost to Finish	\$170,500

*Respondent's evidence*

RESPONDENT'S TESTIMONY

16. Respondent knew that his general contractor's license had expired when he started the project, but he did not intend to handle the job as the "general contractor." In respondent's mind, the "owner was the contractor." He advised owner that his license was not active at the time the work occurred; respondent's intent was to facilitate the construction as the project superintendent, or "middleman," because he understood owner needed help. Respondent testified owner received a prior bid for \$300,000, and could not afford to spend that much on the project.

17. Respondent prepared the cost breakout based on what he called “preliminary plans,” not the plans finally approved by the city. Owner and respondent went to the city together, and respondent pointed out to the owner that the plans that were approved were different than those respondent had reviewed. Owner told respondent that he knew it would cost more than initially agreed, but owner asked respondent to start the job while he obtained more money, and assured respondent he would be paid. However, after respondent had the final plans, he did not prepare a new cost breakout.<sup>4</sup> Apparently respondent relied on an earlier version of the plans to prepare the cost breakdown, but these plans were not available at the hearing.

18. Respondent credibly testified that the September 12, 2012 plans were also inadequate, and that he was required to perform the following work, which was not identified or anticipated in the September 12, 2012 plans.

- a. Foundation. Once work began, respondent found that the house did not have an adequate foundation. Respondent consulted with the architect and engineer to resolve the problem; he ended up opening the floor, hand-digging room to pour a foundation, and then straightening the floor. Respondent testified owner understood this would add cost.
- b. Front door. The drawings show the front door to be three feet wide, but it was changed to 48 inches.
- c. Gutting. Respondent did not believe the house would need to be gutted based on the first plans he reviewed.
- d. Deck. The deck had to be strengthened.
- e. Roof line. The roof was sagging. Respondent jacked up the roof to straighten it, and used heavier lumber to secure it.
- f. Garage. Respondent had to improve the drainage off the roof by installing a “cricket” to divert water. Respondent also added a window in the garage at owner’s request that was not shown on the plans.
- g. Dry rot. Extensive dry rot was found at one end of the house that was not anticipated. Respondent fixed the dry rot problem, but at additional cost.

Since no change orders were issued, the cost of this work was not determined.

19. Respondent testified that somewhere during the course of the project, he wrote out a second document that reflected the additional costs he expected to incur, but a copy of

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<sup>4</sup> Respondent never identified the date of or other details regarding the so-called “preliminary plans,” prepared sometime before the city approved plans.

this document was not available at the hearing. Respondent stated it was in the same form as the original cost breakdown, and showed the additional costs would be \$45,000.

20. Respondent hired the laborers and other subcontractors who worked on the job, but owner made "all of the decisions when changes from the plans were made."

21. Respondent denies he abandoned the project, but felt he could not continue working without being paid. He left some of his tools at the project site.

22. Since respondent's license has been reinstated, he has done about 25 projects. This work primarily involved kitchen and bathroom remodels, and foundation work. No customer complaints have arisen from this work.

#### CHARACTER WITNESSES

23. Terry Polk is a licensed plumbing contractor who has known respondent for 30 years. They have worked on projects together, and Polk describes respondent's work as "meticulous and timely" and has "no question" about respondent's honesty. He has never seen respondent abandon a project.

24. Polk did the plumbing work on this project, which was inspected and signed off. He confirmed the fact that extensive dry rot was found and corrected. Polk provided his services at a discount, but did not discuss the total project cost.

25. Polk testified the blueprints were the worst he had seen in 30 years. For example, the blueprints showed an existing foundation, when in fact there was no foundation and it had to be hand dug; the bathroom floor was not level; and the placement of the electrical work was incorrect.

26. Polk was paid by respondent.

27. James Brown has known respondent for years and believes he is a "good, honest person." Owner is also Brown's neighbor. Brown saw someone remove respondent's tools from the garage a few months after work had stopped.

28. Marquis Ransom went to school with respondent and has known him since 1976. He believes respondent does good quality work and is honest. Ransom worked on this project and performed excavation work to prepare for demolition. Ransom heard owner tell respondent to stop work, and that owner was working on refinancing the house to pay respondent. Ransom heard owner say to respondent "don't worry about the money."

#### *Credibility Findings*

29. The Board's expert, Daly, provided a very detailed cost estimate showing the materials and labor that will be required to complete the renovation. His estimate is



\$170,500. Daly did not, however, consider the problems respondent encountered with the plans or the extra costs incurred due to both unforeseen circumstances and changes from the preliminary plans. Respondent, on the other hand, testified he could have completed the project in six weeks for an additional \$45,000. His estimate was much less detailed. Owner was not credible when he testified that he was not informed of the unforeseen problems or that he did not request changes to the project that were more costly than respondent's estimate.

#### *Costs*

30. The Board has incurred costs of \$9,981.12 in its investigation and enforcement of this case. Of that amount, \$931.20 is for services provided by Board personnel; \$1,400 is for an industry expert; and \$7,650 represents billings by the Department of Justice for attorney and paralegal services. These charges are supported by declarations that comply with California Code of Regulations, title 1, section 1042, and are reasonable.

### LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty. (Bus. & Prof. Code, § 7090.<sup>5</sup>)

#### *First cause for discipline: Abandonment*

2. The Board may take disciplinary action against a contractor who abandons a project without legal excuse. (§ 7107.) Cause was not established to discipline respondent's license under this section. Owner knew he did not have enough money to complete the project when work began, and he assured respondent he would be paid, but owner never obtained any additional financing. Respondent only stopped working when he was not paid. (Findings 17 and 28.)

#### *Second cause for discipline: Failure to complete project for the contract price*

3. The Board may take disciplinary action against a contractor who fails in a material respect to complete any construction project for the price stated in the contract or in any modification to the contract. (§ 7113.) The evidence established that respondent performed all services in a workman like manner and completed as much work as was possible for the contract price, which was based on the preliminary plans, not the plans approved by the city. (Findings 13 and 17.) To the extent respondent did not complete the work, this was a result of unforeseen problems that he corrected at additional cost, and as the

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<sup>5</sup> All statutory citations are to the Business and Professions Code, unless otherwise noted.

result of the use of plans other than those on which the bid was based. Cause was not established to discipline respondent's license pursuant to section 7113.

*Third cause for discipline: Failure to obtain workers' compensation insurance*

4. Pursuant to section 7125.4, the Board may take disciplinary action against a contractor for failure to maintain workers' compensation insurance. By reason of Findings 10-11, and 20, cause exists to take disciplinary action against respondent because he failed to maintain workers' compensation insurance.

*Fourth cause for discipline: Contracting without a license*

5. The Board may take disciplinary action against a contractor for failure to comply with the provisions of section 7115, contracting without a license. Respondent both directed the subcontractors and other workers he hired, and he was paid by the owner for performing construction services. Once respondent requested and received payment for these services, he became the contractor on this project. By reason of the matters set forth in Findings 10 and 16, cause exists to take disciplinary action against respondent because his license had expired when he performed the work on the project.

*Fifth Cause for discipline: Failure to comply with contract requirements*

6. The Board may take disciplinary action against a contractor for failure to comply with the provisions of section 7159, subdivision (c)(3)(A), failure to provide a signed and dated contract; section 7159, subdivision (c)(3)(B)(ii), failure to specify the address for a "Notice of Cancellation"; and, section 7159, subdivision (d), failure to provide a written contract prior to starting work and failure to provide written change orders. By reason of the matters as set forth in Findings 5-6, and 18, cause exists to take disciplinary action against respondent's license because he did not provide a written contract to owner.

*Disciplinary considerations*

7. Cause for discipline having been established, the issue is the level of license discipline to impose. The Board has adopted disciplinary guidelines to assist in making that determination. (Cal. Code Regs., tit. 16, § 871.) The guidelines state that, for any one of the causes for discipline established in this case, the minimum discipline is a suspension and/or a stayed revocation with a period of probation, up to the maximum discipline of outright license revocation.

8. Respondent took this project on informally, at a time when his license had expired, and this informality unfortunately led to his inability to complete the work. This result followed from a combination of respondent's failure to comply with the board's contracting requirements at the start of the project, his failure to issue written change orders during construction of the project, and owner's misleading statements to respondent about his ability to secure enough money to complete the work reasonably contemplated.

Respondent made a good faith effort to estimate the cost of construction based on the plans he first received, but his "back of an envelope" approach lacked necessary legal provisions, lacked specificity, and was too simplistic for the scope of the work. Owner took advantage of the situation or at best closed his eyes to the obvious lack of funding available for the work he wanted performed. (Findings 16 and 17.)

Respondent was asked to construct the project using a different set of plans from those on which he based his bid, and the approved plans expanded the scope of the work. Respondent also encountered significant construction problems not visible in the plans, and he corrected the problems he encountered, rather than neglecting them. However, it was respondent's responsibility to determine the added cost and confirm the amount with owner, and he did not do this. Owner on the other hand, shares responsibility for their unfortunate arrangement, by encouraging respondent to start and continue working on the promise he would obtain additional financing, in an uncertain amount, which never materialized.

To respondent's credit, throughout the process, the work was performed to trade standard. Complainant's expert found no instance where the work was unsatisfactory, just incomplete. Daly's cost to complete estimate of \$170,000 is reasonable, and when added to the amount owner paid respondent, is remarkably close to the first cost estimate owner received. (Finding 16.) On these facts, to order restitution in the full amount of Daly's estimate would be to unjustly enrich owner, and unduly punish respondent. This is especially true when considering owner's assurances to respondent that he would come up with more money, together with the confusion owner created by using multiple sets of plans. Owner generally received the value of the amount he paid to respondent, considering the additional costs incurred either due to hidden problems or changes owner requested. The exceptions are the construction liens against the property from a supplier and from PG&E, totaling \$8,919.42. These are respondent's responsibility.

Respondent's failure to follow the contracting requirements was a significant factor leading to the cost problems at the end of the project. Respondent also failed to carry workers' compensation insurance, and his failure to reinstate his contracting license prior to performing work, were serious violations that require a period of suspension, followed by probation.

#### *Cost recovery*

9. Business and Professions Code section 125.3 provides that a licentiate found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 30, the reasonable costs of investigation and enforcement incurred by the Board are \$9,981.12.

10. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing.

Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. The evidence does not establish that the Board's cost recovery of \$9,981.12 should be reduced or eliminated.

*Other matters*

11. Pursuant to sections 7097 and 7098, if the license issued to respondent is suspended or revoked, the registrar may suspend or revoke any other license issued in the name of respondent, or for which respondent furnished the qualifying experience. Cause exists to suspend and/or revoke any additional licenses under the Registrar's jurisdiction issued in the name of Dennis Earl Taylor or for which he furnished qualifying experience.

12. Pursuant to sections 7121 and 7121.5, if discipline is imposed on the license issued to respondent, respondent shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the time the discipline is imposed, and any licensee which employs, elects or associates the respondent in any capacity other than as a nonsupervising bona fide employee shall be subject to disciplinary action. Cause exists to prohibit respondent from serving as an officer, director, associate, partner or qualifying individual of any licensee under the Registrar's jurisdiction.

ORDER


1. Contractor's License Number 508615 issued to respondent Dennis Earl Taylor Construction, Dennis Earl Taylor, Sole Owner, is revoked. However, the revocation is stayed ~~and the license is suspended for a period of 30 days~~, and then placed on probation for three years on the following terms and conditions:

- a. Respondent shall comply with all federal, state and local laws governing the activities of a licensed contractor in California.
- b. Respondent and any of respondent's personnel of record shall appear in person for interviews with the regional deputy or designee upon request and reasonable notice.
- c. If respondent violates probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed. If the decision contains an order to make restitution, the Registrar may impose the disciplinary order without giving respondent an opportunity to be heard should the respondent fail to comply with the restitution order.

- d. Respondent shall provide the registrar with a listing of all contracting projects in progress and the anticipated completion date of each.
  - e. Respondent shall submit copies of documents directly related to his construction operations to the registrar upon demand during the probation period.
  - f. Respondent shall submit copies of building permits to the registrar upon demand for projects undertaken during the probationary period.
  - g. Respondent shall submit copies of construction contracts to the registrar upon demand during the probation period.
  - h. Respondent shall complete an education course in estimating construction costs or a related course in the field of construction science. All courses must be approved in advance by the Registrar.
  - i. If not taken within the last five years, respondent shall take and pass the Contractors' State License Board law and business examination.
  - j. Respondent shall take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
  - k. During the period of probation, respondent shall provide lien releases to project owners as soon as payment is received.
  - l. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$9,981.12, in accordance with a payment plan established by the Board.
  - m. Respondent shall pay restitution to Paul Lawson in the amount of \$8,919.42, in accordance with a payment plan established by the Board.
  - n. Upon successful completion of probation, respondent's license will be fully restored.
2. In accordance with Business and Professions Code sections 7097 and 7098, any other license issued in the name of Dennis Earl Taylor, or for which he furnished the qualifying experience, is revoked.

3. In accordance with Business and Professions Code sections 7121 and 7121.5, Dennis Earl Taylor is prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee other than respondent during the period of time that discipline is imposed upon Contractor's License Number 508615.

DATED: December 22, 2015

DocuSigned by:  
  
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For KIRK E. MILLER  
Administrative Law Judge  
Office of Administrative Hearings