

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

In the Matter of the Accusation Against:

A S C BERKELEY, INC.
dba ALL SEASONS CONSTRUCTION
MARK LYMAN CORRALLO, RMO/CEO/PRES
5277 College Ave., #10
Oakland, CA 94618

Contractor's License No. 906600, B

Respondent.

CASE No. N2017-256

OAH No. 2018100879

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter. The failure to comply with any of the terms and conditions as set forth in the provisions of probation will be deemed a violation of probation.

IT IS FURTHER ORDERED that **A S C BERKELEY, INC., dba ALL SEASONS CONSTRUCTION**, License Number **906600**, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of **\$15,000.00**, 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 FURTHER ORDERED that respondents shall pay the investigative costs in the amount of \$11,032.55, is to be paid in twenty-nine equal payments beginning on thirty days after the effective date.

IT IS FURTHER ORDERED that respondent shall pay restitution amount of \$6,850.00. This amount is to be paid within thirty days from the effective date of this Decision.

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 March 21, 2019.

IT IS SO ORDERED February 19, 2019.



David Fogt
Registrar of Contractors

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on December 11, 2018, in Oakland, California.

Deputy Attorney General Amber N. Wipfler represented complainant Wood Robinson, Enforcement Supervisor I, Contractors' State License Board.

Respondent A S C Berkeley, Inc., dba All Seasons Construction, was represented by Mark Lyman Corrallo, Responsible Managing Officer, Chief Executive Officer and President. Corrallo was present throughout the administrative hearing.

The record was left open until January 10, 2019, for receipt of a certified license history from complainant. The document was timely filed, marked as Exhibit 16 and received in evidence. The matter was deemed submitted for decision on January 10, 2019.

FACTUAL FINDINGS

Introduction

1. Wood Robinson filed the accusation in his official capacity as an Enforcement Supervisor I, Contractors' State License Board (Board).

2. On November 15, 2007, the Registrar of Contractors issued Corporate Contractor's License No. 906600, Classification B (general building contractor) to A S C Berkeley, Inc., doing business as All Seasons Construction (respondent). Mark Lyman Corrallo has been the Responsible Managing Officer (RMO) since the license was issued. The license is renewed through November 30, 2019.

3. Complainant seeks to impose discipline on respondent's license, including an order of restitution, based on his work on a detached residential garage built into a hillside. After the work was completed, the homeowners experienced water intrusion in the garage, which had not occurred beforehand. Complainant alleges that respondent deviated from acceptable trade standards and departed from the scope of work described in the contract and plans, and that he failed to complete the project for the price in the contract and to comply with mandatory contract language and requirements. Respondent asserts that his work met acceptable trade standards and that he followed the engineered plans.

The Project

4. Beverly Stone and Rick Dosa (homeowners) own a home that is listed in the registry of historical homes in Piedmont. The home has a detached garage, the outside of which is covered with brown shingles. The garage is built into a hillside on the back and sides. The hillside is heavily planted; Stone is a gardener and cherished the landscaping. The garage is surrounded on three sides by four to seven-foot retaining walls. The left and rear retaining walls are on the property line; the dirt and landscaping on the rear of the garage was near the roof of the garage. Over time, the retaining walls began to fail; on the left side, the retaining wall was collapsing into the left side of the garage wall.

Despite the heavily planted hillside surrounding three sides of the garage, there had been no appreciable water intrusion into the garage. Some areas of the retaining walls were approximately 18 inches from the wood garage walls; the water drained between the retaining walls and the garage, without invading the garage, and flowed down the driveway to the sidewalk. The homeowners sought to improve the quality of the garage walls, stop the retaining walls from caving into the garage and prevent the water from flowing down the driveway and pooling at the sidewalk.

5. On February 27, 2015, the homeowners entered into a home improvement contract for foundation and drainage work with respondent. Respondent's contract failed to comply with the requirements set forth in Business and Professions Code section 7159 in that it lacked the following:

- a) The heading "Home Improvement" was not in 10-point boldface type, as required by section 7159, subdivision (d)(3);
- b) A statement in 12-point boldface type regarding the homeowners' entitlement to a completely filled copy of the contract before commencement of the work as required by section 7159, subdivision (d)(4);

- c) A statement in 12-point boldface type regarding downpayment limitations as required by section 7159, subdivision (d)(8)(C);
- d) A heading "Note About Extra Work and Change Orders" and required statement as required by section 7159, subdivision (d)(13);
- e) A statement that the homeowners could not require the contractor to perform extra work or change-order work without providing written authorization prior to the commencement of work covered by the change order as required by section 7159, subdivision (e);
- f) A statement informing the homeowners that extra work or a change order is not enforceable against a homeowner unless the change order also identifies all of the following: i) the scope of the work encompassed by the order; ii) the amount to be added or subtracted from the contract; and iii) the effect the order will make in the progress payments or completion date as required by section 7159, subdivisions (e)(3)(A) through (e)(3)(B)(i) to (iii).
- g) A statement informing the homeowners that the contractor's failure to comply with the requirements of this paragraph does not include the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment as required by section 7159, subdivision (e)(3)(C); and
- h) A "Three Day Right to Cancel" notice and accompanying statement as required by section 7159, subdivisions (e)(6)(B) and (e)(6)(C).

6. The agreed upon price for the work described in the contract was \$34,950. The contract described the scope of work as follows:

A. Foundation

Replace the entire perimeter foundation of the left, rear and right sides of the detached garage, a total of approximately 50 linear feet.

- 1) Build temporary shoring for the garage using heavy posts and beams.
- 2) Cut and remove that portion of the exterior shingles necessary to work on new foundation, mudsill and cripple wall.
- 3) Cut the studs loose from the mudsill.

- 4) Break out and remove the old foundation and mudsill.
- 5) Attach a new 3" x 4" mudsill to bottom of studs at the height required to achieve a new foundation retaining wall that extends 8" above the exterior grade (which refers to the grade on the uphill side of the existing retaining walls that surround the building). Install 5/8" foundation J-bolts through the new mudsill approximately every 36" to be cast into the new foundation. Secure the foundation bolts to the mudsill with 3" square plate washers and 5/8" nuts.
- 6) The new foundation wall will be a retaining wall foundation with a 10" stem and 12" thick counter-footing extending into the interior side approximately 2/3rds as wide as the wall is tall at any particular point, measured from the outside of the wall. Add #4 reinforcement bar 12" OC in all directions. Appropriate drainage measures will be installed on the uphill sides of the new walls.
- 7) Concrete used to pour the new foundation will be 2500 psi pumped from a full-sized mixer.
- 8) After curing time, disassemble and remove shoring.
- 9) Replace all removed shingles, reusing existing if possible. If not, a match with the existing shingles will be attempted but cannot be guaranteed.

B. Drainage

- 1) Cut a strip in the driveway from the garage all the way to the street gutter as necessary to bury a solid 4" PVC discharge pipe.
- 2) Capture the drainage pipe for the new retaining wall foundation and the two existing discharge pipes along the right side of the driveway, connect them to the new buried pipe and send all collected water to the street gutter.
- 3) Repair all concrete.

All debris and soil from above work will be cleaned up and hauled away.

7. The contract provided that engineered plans and a building permit were required. The contract included a \$1,500 allowance for the plans and permits. The contract

stated further that respondent would immediately hire an engineer to draw the plans and that the actual construction would begin within two weeks of permit issuance. Corrallo anticipated that the work would be completed one month after the start date.

8. On March 4, 2015, Corrallo sent an email message to Stone informing her that he had met with an engineer at the property. The engineer proposed a design that was much more involved and expensive than Corrallo had envisioned. Corrallo suggested finding a different engineer. Stone agreed.

9. On March 12, 2015, Corrallo sent an email message to Stone informing her that he had met with another engineer at the home. Corrallo reported that they had discussed options and had come up with a workable solution. The engineering fees would exceed the allowance by \$1,250, which would require a change order.

10. Engineered plans were drawn up by Monte Stott and Associates, Inc. The plans were entitled "Proposed Garage Foundation Replacement." The plans described the scope of the project as "foundation replacement of the existing detached garage." The engineered plans called for building new foundation retaining walls around three sides of the garage in place of the original wood walls and to leave the failing retaining walls in place. The plans called for the installation of foundation footings, sill bolts, the use of reinforced concrete, reinforcing steel, and Douglas Fir lumber. The concrete slab on the garage floor was to be replaced.

Due to the lack of space between the exterior walls of the garage and the existing retaining walls, there was no space to install a conventional French drain¹ on the uphill sides of the new foundation retaining walls without taking out the landscaping and encroaching on the neighbors' property, which would be very expensive. Because the homeowners were reluctant to do so and had not experienced water intrusion into the garage, the engineer suggested placing a layer of MiraDrain fabric between the old and new walls and pouring concrete up against it, hoping to direct water to below the concrete slab/garage floor. The new concrete retaining walls were to be poured sequentially.

11. On March 18, 2015, Change Order No. 1 was signed by the respondent and the homeowners. The change order increased the allowance for the engineered plans and building permit to \$2,500. Change Order No. 1 also stated:

After discussions with the engineer, it has been determined that the engineered plans will be different from the scope of work described in the contract. The additional cost to execute the revised scope of work will be added to the total cost of the contract and due when the final payment is due. However, the

¹ Installation of a French drain requires digging a deep trench sloping downward. The trench is filled with drain rock or gravel and a perforated pipe that redirects water away from the area.

parties agree that the total contract price will not exceed \$40,000.

12. The engineered plans were approved by the Building Department and were on site. Corrallo did not show a copy of the engineered plans to the homeowners, explain the differences or obtain the homeowners' permission to substitute the engineered plans for the original scope of work. In performing the work on the project, Corrallo followed the engineered plans rather than the original scope of work as described in the home improvement contract.

13. The homeowners reasonably expected that the drainage work described in the contract, aimed at redirecting water off of the driveway and sidewalk would be performed, and that the garage would not suffer from water intrusion during rains.

14. Work began on the project in August 2015. On August 22, 2015, Stone sent an email message to Corrallo complaining that concrete had been placed on the front exterior walls over brown shingles, two to three feet from the ground up on one side and higher on the other. Her understanding was that concrete would only be placed on the interior of the walls. Stone was unhappy with the appearance of the concrete on the exterior. Corrallo responded, agreeing that the front of the garage did not look as charming as it did before, but he explained that there was a tremendous amount of weight that the walls needed to carry, requiring them to be thick, reinforced concrete. He suggested painting the concrete a color to match the shingles, or attaching plywood to the concrete and adding shingles on top.

Dosa also sent an email message to Corrallo complaining about the appearance of the front of the garage. Corrallo agreed to meet with the homeowners to discuss a resolution. This disagreement precipitated the homeowners' demand to view the engineered plans.

15. Corrallo stated in an email message dated August 26, 2015, that with regard to drainage, he had planned to carry the flex pipe on the side of the driveway to the street. He noted that the contract also provided for running drainage from the garage to tie into the same discharge pipe. Corrallo stated that at the time the contract was drafted, he contemplated that the engineer would have him install a full French drain system on the uphill side of the new retaining walls, which would have entailed a perforated pipe that needed to discharge somewhere. It would have been six to 12 inches underground, requiring that he cut a strip in the driveway and carry the collected water down the hill. Corrallo noted however, that the drainage system designed by the engineer involved only a MiraDrain waterproof membrane with no water collection. As a result, the need to trench from the garage to the street was no longer vital. Corrallo concluded that there was an appropriate slope to the driveway such that the two downspouts attached to the garage should properly route the water down the driveway to the street. Corrallo therefore determined that capturing the downspouts and sending them underground was unnecessary.

16. Stone responded by email message the same day, noting that they had discussed Corrallo cutting a strip down the driveway to tie in with the street to alleviate water

running down the driveway and collecting on the sidewalk. She agreed that it would be better if cutting the strip was not necessary, but the homeowners definitely needed to prevent water from flooding the lower part of the driveway and sidewalk. Stone also complained that the project lacked coordination with the engineer; and that she had never been shown the new plans following the engineer's work.

17. On August 30, 2015, the homeowners paid respondent \$15,000 for work completed on the project.

18. On September 2, 2015, respondent and the homeowners signed Change Order No. 2. The change order added the replacement of the entire garage floor slab to the scope of work. This addition added \$3,000 to the total cost of the contract.

19. On September 10, 2015, the homeowners paid respondent \$22,689.38 for work on the project.

20. In October 2015, the parties agreed to Change Order No. 3. The parties agree that the change order was signed, but a signed copy is not in evidence. Change Order No. 3 added \$900 to the cost of the project for cosmetic upgrades to the front of the garage (attaching new shingles to the concrete to improve the appearance of the garage). Work on the garage ended on October 7, 2015. On October 10, 2015, the homeowners paid respondent \$5,900 as a final payment on the project.

21. After the first rains, water entered the back of the garage flowing through the wall on the sides and corners. In addition, water was percolating up in the middle of the garage.

22. On December 26, 2015, Dosa sent an email message to Corrallo stating that after recent rains water had invaded the garage. Dosa had observed pockets or sections, which he described as mini-rivers meandering through the garage floor. It appeared that the water surfaced from the sides or from below and traveled along cracks in the cement. Dosa also commented that there was significant drainage down the driveway. Dosa did not know whether it was attributable to "our backyard neighbors or may have something to do with the French drain that was discussed but not installed."

23. On January 6, 2016, Corrallo responded, stating that there was a strong possibility that there was nothing that could be done due to the unusual site condition with the new garage walls being poured very close to the existing retaining walls making it difficult to install the "normal" type of drainage measure, a conventional French drain around the perimeter. On January 19, 2016, Corrallo reiterated that the nature of the garage and surrounding landscape precluded the installation of a French drain due to prohibitive expense, disruption to the landscaping and encroachment on the left and rear neighbors' property. Corrallo recommended that the homeowners install new downspouts and gutters.

24. Dosa responded on January 22, 2016, stating that there were two issues: drainage and water down the driveway, and water inside of the garage. The homeowners' main concern was whether the garage was water tight and waterproof.

25. On February 4, 2016, Corrallo responded, reiterating that he had followed the engineered plans and that installing a French drain would have required: 1) significantly disrupting the landscaping on the right side (to which Stone had objected); 2) obtaining the cooperation of the left side and rear neighbors to encroach on their property, disturb their landscaping and remove and rebuild the fence; and 3) spending close to \$75,000.

26. On March 8, 2016, Dosa informed Corrallo that new downspouts and gutters had been installed but they were still experiencing water invasion in the garage. He asked what type of waterproofing had been installed. On March 9, respondent advised that MiraDrain sheets had been installed.

27. On April 1, 2016, Dosa informed Corrallo that they had hired a third party, Aquatech, to examine the garage. Aquatech suggested urethane grout injections into the concrete as a possible remedy. Dosa asked Corrallo to review the findings and to suggest alternative remedies and/or take corrective action. On April 18, 2016, Dosa demanded that respondent remedy the water intrusion, stating that they had contracted for a waterproof garage.

Corrallo responded that the contract did not provide for a waterproof garage. Corrallo took the position that respondent had followed and built the engineered plans and if the plans failed to keep the garage dry, Dosa should raise the issue with the engineer. Corrallo considered the focus of the contract to be repairing and strengthening the garage structure, rather than drainage.

28. On May 3, 2016, Corrallo wrote again to Dosa. He reiterated that he had followed the engineer's plans which had been approved by the Building Department, but also stated that he did not blame the engineer due to the difficult site conditions. Corrallo believed that the only remedy was a deep French drain.

29. On May 30, 2016, Dosa updated Corrallo. The engineer and an Aquatech representative had been out to inspect the garage. Dosa acknowledged that a French drain was not an option, and stated that they were not demanding a bone dry garage, but were looking for minimizing the amount of water intrusion, or managing it when it enters the garage. Dosa had been advised that reversing the slope with epoxy might prevent pooling and would divert the water. Another option included applying urethane to the walls of the garage where they meet the garage floor, minimizing water from leaching inside of the garage. Grout injections or air vents were also possibilities raised. Dosa asked if Corrallo was willing to participate with time or money to rectify the situation.

30. On June 8, 2016, respondent asked for the cost of the proposed fixes to consider whether he could assist Dosa. On August 6, 2016, Dosa provided Aquatech's report

for Corrallo to review. Dosa hoped to resolve the matter informally without litigation or the involvement of the Board. Respondent responded on August 11, stating that he was willing to cooperate to some extent.

31. On September 2, 2016, Dosa forwarded a proposal from Hughes Construction to remediate the water intrusion in the garage. Hughes had noted significant water intrusion coming through the cold joint where the wall sits at the concrete slab as well as cracks in the wall and floor. The Hughes Construction proposal to mitigate water intrusion into the garage included: 1) concrete leak repair to prevent water intrusion; and 2) correcting the garage floor slope to drain water away.

Hughes reported that there were three defective conditions related to the concrete which allowed water to pass from the exterior into the interior: 1) cracks in the concrete walls; 2) leaking wall to slab joints likely due to the absence of water stops; and 3) moisture formation on concrete walls due to micro cracks allowing dampness but not flowing water. Hughes proposed repairing the concrete by cleaning the surface, removing defective concrete with a chipping hammer and filling it with a Koster hydraulic cement so the cold joint was effectively capped. Hughes would then treat the surface of the concrete. The cost of this work was \$6,000.

To correct the garage slope, the existing topping material would be shot blasted to get to the solid stable substrate. Then, a surface repair material will be applied to achieve sloping of two percent. The cost of this repair was \$4,000.

32. Dosa asked Corrallo to comment on the proposal and/or provide alternative proposals. Dosa requested that respondent pay for the cost of remediation and \$5,473 paid to Aquatech and \$1,500 in attorney's fees. On September 2, 2016, Corrallo suggested that Dosa file a complaint with the Board and that they attend a mediation.

33. On October 11, 2016, Dosa advised Corrallo that he felt respondent had had enough time to review the Aquatech report and a proposal from Hughes Construction. Work was planned to begin shortly. On October 14, 2016, Corrallo advised Dosa that respondent would not pay for the waterproofing treatment at a cost of \$6,000.

34. The homeowners paid Hughes Construction to perform the concrete repair at a cost of \$6,000, on November 2, 2016. The repair helped to the extent that Dosa did not have the slope of the garage slab corrected.

CSLB Investigation

35. On February 28, 2017, investigator Dawn Willis was assigned to investigate a complaint filed by the homeowners. Willis interviewed Dosa and Corrallo, and engaged the services of industry expert Don Freeman to inspect respondent's work.

36. Freeman is a licensed contractor with B (general contractor), C-8 (concrete contractor) and C-53 (swimming pool) classifications. He has been working in the construction industry for 40 years. Freeman examined the contract and change orders between respondent and the homeowners, inspected the property and wrote a report of his findings dated June 9, 2017. At hearing, Freeman opined that respondent's work failed to meet acceptable trade standards and departed from the plans in several respects.

37. Freeman noted that the garage was built into a hillside and the back and sides of the garage were in direct contact with surrounding soil. The new concrete sides and rear walls were in contact with the soil from one-half to three-quarters of the height of the building. The concrete walls terminated at or slightly above grade. Freeman noted that the MiraDrain fabric was installed on the outside of the concrete walls.

FAILURE TO INSTALL FOOTINGS AND WALLS MONOLITHICALLY

38. Freeman observed that the drawing called for the footings and walls to be installed in orchestrated segments of removal and replacement. In order to achieve this, the work would have taken 21 days to complete the concrete pours for the footings only, excluding preparation time. The footings work was performed in a monolithic manner where the walls and footings were installed at one time in a continuous concrete placement on a single day. This constituted a departure from the engineered plans.

MIRADRAIN INSTALLED BACKWARDS

39. Freeman found that the MiraDrain fabric was installed backwards, where the felt side of the drain was placed against the concrete as opposed to being turned to face the surrounding soil. The failure to install the fabric according to manufacturer instructions results in the product not performing as intended. Without the barrier between the soil and the concrete wall, the water migrates to the wall and permeates the concrete. This constitutes a departure from accepted trade standards.

40. Freeman conceded on cross examination that if the MiraDrain was placed between an existing concrete retaining wall and the new concrete wall, the direction it is installed is not significant.

DRAINAGE SYSTEM NOT INSTALLED

41. Freeman found that there was no drain installed at the lowest point of the walls to collect and redirect the excess water away from the structure. The contract included drainage work and the drawings showed a drain. Freeman was unable to see under the soil surrounding the garage to determine whether a drain was present. Freeman was unable to see the existing retaining walls, and concluded incorrectly that there were no retaining walls aside from the new concrete garage walls.

42. Freeman noted further that the contract included the removal of a strip of concrete through the existing driveway from the garage to the sidewalk to allow for the installation of a four-inch underground drain pipe to be connected to the intended drain around the walls. Freeman concluded that the combination of the wrongly installed MiraDrain, the missing drain around the lower portion of the structure and the missing drain pipe to remove the excess water created a condition where the water will enter the garage. Freeman considered this to constitute a departure from accepted trade standards and a failure to follow the plans.

43. Freeman recommended the installation of a French drain and a trench with a drain pipe from the garage to the gutter. He estimated that this work would cost \$25,000.

LOWER EDGES OF SIDING COVERED WITH CONCRETE

44. Freeman observed what he concluded to be concrete poured over wood shingles at the lower edges of the siding along the sides of the garage. The shingles were placed up against the concrete and the garage was not properly ventilated. Freeman opined that the accepted trade standard is to remove the shingles before pouring the concrete, to allow two inches between the concrete and the edge of the shingles, and to properly ventilate the garage. Freeman estimated the cost to correct the lack of ventilation and to remove affected shingles or cut the siding to two inches above the concrete at \$850.

Respondent's Evidence

45. Corrallo bought All Seasons Construction in 2006. He is not a contractor and does not perform the actual construction work. He interacts with customers, runs the business and relies on his foreman and crew to perform the work.

46. When Corrallo first met with Stone, her concern was that the retaining walls were failing and on the left side the retaining wall was collapsing into the garage wall. The original retaining walls were made of old concrete without rebar. There was a very small space between the retaining walls and the garage walls.

47. Stone did not mention a problem with water intrusion into the garage. As a result, Corrallo did not report to the engineer that ground water was a problem at the site.

48. Stone loved her garden and her neighbors loved the overgrown landscaping along the property lines. The rear and left retaining walls were built on the property lines. Stone did not want to disturb the landscaping. Installing a French drain would have been expensive, would have required removing a substantial amount of landscaping and would have been difficult due to the small space between the retaining walls/hillside and the garage. Respondent threw out a figure of \$25,000 to install a French drain at the site. Corrallo recalls that Stone declined to have that work performed.

49. Corrallo met with the engineer at the site. Because the retaining walls were in the way, and there was no drainage problem reported, the engineered plans did not describe a French drain or a complex drainage system. Corrallo installed the drainage plan described in the engineered plans rather than the one described in the contract. There was no discharge pipe described in the plans, so one was not installed. The engineer did not design an outflow for the water. There was a void created by the MiraDrain, but nowhere for the water to go. Corrallo wondered about it, but followed the plans.

Corrallo believes that the engineer did the best he could in a difficult situation with no good solution. Freeman was unable to see the original retaining walls and assumed there were none. Corrallo agrees that if there were no retaining walls, a French drain would have been the best choice. When a French drain is contemplated, it is described in the contract or plans. Corrallo never agreed to install a French drain and did not charge the homeowners for the installation a French drain. Corrallo considers the installation of a French drain at his expense to be a windfall to the homeowners.

50. Corrallo denied that respondent poured concrete over shingles, which he considers to be impossible because they would be in the way of the concrete hose. He agrees that there should be a small gap between the shingles and the concrete and asserts that this can be easily fixed. Corrallo also agrees that the garage should be ventilated.

51. Corrallo explained that the engineer's purpose in recommending a sequential concrete pour was to maintain the integrity of the historic garage and the existing retaining walls. The garage structure was on shoring and suspended. Corrallo observed no threat to the retaining walls. Corrallo reports that the engineer and the plans allowed him to exercise his discretion to eliminate the sequential pour, which Corrallo determined was acceptable.

52. Corrallo has updated respondent's home improvement contracts to comply with statutory mandates. Corrallo now informs homeowners of any changes to the scope in the contract as determined by plans.

Cost Recovery

53. The Registrar has incurred prosecution costs in the amount of \$8,932.50 through December 10, 2018, billed by the Office of the Attorney General. The Deputy Attorney General assigned to this matter described in a declaration and attachment the general tasks performed, the time spent on each task and the method of calculating the costs as set forth in an attached itemized billing statement. The amount of the costs is reasonable.

54. The Registrar has incurred investigation costs in the amount of \$2,100.05, which includes payment of an \$800 fee to the industry expert. The remainder of the costs constitute 21.33 hours spent by Willis in conducting her investigation (at a rate of \$58.27 per hour), and 1.33 hour spent by a consumer services representative (at a rate of \$42.97 per hour). The investigation costs are reasonable.

55. The total cost reimbursement requested by complainant is \$11,032.55.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence. (Bus. & Prof. Code, § 7090.)

First Cause for Discipline

2. Pursuant to Business and Professions Code section 7107, abandoning a construction project without legal cause constitutes cause for disciplinary action. Respondent failed to install a drainage system, which had been discussed and agreed upon by the parties. When the homeowners demanded that respondent return to correct the water intrusion into the garage, or pay for someone to remedy it, respondent refused. (Factual Findings 6, 10, 13, 15, 16, 22 through 34.) Cause for discipline for abandoning of the project exists pursuant to Business and Professions Code section 7107.

Second Cause for Discipline

3. Pursuant to Business and Professions Code section 7109, subdivision (a), a willful departure from accepted trade standards for good and workmanlike construction constitutes cause for disciplinary action. The term "willful" means an intention to do the act, not a specific intent to do it wrong. (See *Michelson Concrete v. Contractors State License Board* (1996) 95 Cal.App.3d 631, 634-636 [citing Pen. Code, § 7, subd. 1].) By reason of the matters set forth in Factual Findings 39, 42, 44 and 50, it was established that respondent willfully departed from trade standards by failing to: 1) install the MiraDrain pursuant to the manufacturer's instructions, 2) allow two inches between the shingles and the concrete, and 3) ventilate the garage. Cause for license discipline exists under Business and Professions Code section 7109, subdivision (a).

Third Cause for Discipline

4. Pursuant to Business and Professions Code section 7109, subdivision (b), a contractor's willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner who is entitled to have the particular construction project completed in accordance with the plans or specifications, is cause for disciplinary action. Respondent deviated from the plans by having a monolithic pour instead of a sequential pour. (Factual Findings 38 and 51.) Cause for license discipline exists pursuant to section 7109, subdivision (b).

Fourth Cause for Discipline

5. Pursuant to Business and Professions Code section 7113, a contractor's failure in a material respect to complete a construction project or operation for the price stated in the

contract constitutes cause for disciplinary action. The scope of the construction project is defined by the contractual agreement between the contractor and the consumer. (*Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602.)

The evidence did not establish that the homeowners paid more than was described and agreed to in the contract and change orders. However, the homeowners reasonably expected that an appropriate drainage system would be installed, and the garage would be free of excessive water after the repairs were made; this did not occur. The evidence did not establish that respondent is liable for the installation of a French drain, but the homeowners were required to pay \$6,000 to remedy the intrusion of water in the garage and will need to pay \$850 to properly ventilate the garage and to allow for two inches between the shingles and the concrete. Respondent therefore failed in a material respect to complete the project for the price in the contract. (Factual Findings 6 through 13, 17 through 34, 44 and 50.) Cause for license discipline exists under Business and Professions Code section 7113.

Fifth Cause for Discipline

6. Pursuant to Business and Professions Code section 7159, subdivision (d), any changes to a home improvement contract shall be in writing and signed by the parties to the contract prior to the commencement of the work covered by the change order. Cause for discipline pursuant to this section was not established by the evidence. (Factual Finding 20.)

Sixth Cause for Discipline

7. Pursuant to Business and Professions Code section 7159, a home improvement contract must contain provisions outlined in the statute. As set forth in Factual Finding 4, respondent failed to include provisions in his contract mandated by subdivisions (d)(3), (d)(4), (d)(8)(C), (d)(13), (e)(3)(A), (e)(3)(B), (e)(3)(B)(i) through (iii), (e)(3)(C), and (e)(6)(A) through (e)(6)(C)(vi). Cause for license discipline exists under Business and Professions Code section 7159.

Disciplinary Analysis

8. "The licensing law has as its purpose to protect the public from incompetent and dishonest construction and building services, such that the law provides minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business." (*Acosta v. Glenfed Development Corp.* (2005) 128 Cal.App.4th 1278, 1299.)

When Dosa informed respondent that water was invading and pooling in the garage, and reasonably requested respondent to remedy the situation, respondent refused. Cause exists to impose upon respondent reasonable discipline designed to protect the public.

9. In assessing a disciplinary penalty against a person who has not had a previous citation, revocation, suspension or denial of an application, as the result of the filing of an accusation or a statement of issues, the Registrar shall give due consideration to the disciplinary guidelines. In addition to any penalties imposed, all persons that have had a license disciplined, whether or not the disciplinary action has been stayed, will be required to post a disciplinary bond pursuant to 7071.8.² Relevant factors to be considered are:

- a. The nature and severity of the acts, offenses, or crimes under consideration.
- b. Actual or potential harm to the public.
- c. Performed work that was potentially hazardous to the health, safety, or general welfare of the public.
- d. Prior disciplinary record.
- e. Number and/or variety of current violations.
- f. Mitigation evidence.
- g. Rehabilitation evidence.

The evidence did not establish a prior disciplinary record against respondent's license. Corrallo has changed respondent's business practices so that clients have a clear understanding of the scope of the work proposed as well as any changes resulting from plans. Corrallo has also revised respondent's home improvement contract to comply with mandated provisions.

Respondent's failure to provide a watertight garage was due in part to the physical location of the garage and the homeowners' desire not to incur the expense of, and disruption caused by, installing a French drain in that particular location. Neither respondent nor the homeowners anticipated water intrusion into the garage. The evidence did not establish that respondent is responsible for paying for the installation of a French drain. The work performed by Hughes Construction appears to have remedied the problem.

However, respondent is liable for the cost of the work performed by Hughes Construction and for the cost of properly ventilating the garage and for establishing a two-inch space between the shingles and the concrete.

It is troubling that after the water intrusion was discovered, Corrallo refused the reasonable demands of the homeowners to pay the cost of remedying the situation. In consideration of all of the evidence, it is determined that revocation of respondent's license, stayed during a three-year probationary period, is an appropriate measure for public protection.

The Registrar is authorized to order restitution as a condition of probation. (Gov. Code, § 11519, subd. (d).) Restitution is appropriate in this matter. The cost of corrective measures to alleviate the water intrusion in the garage was \$6,000. Evidence

² The disciplinary guidelines for use in reaching disciplinary decisions are incorporated by reference in California Code of Regulations, title 16, section 871.

established that respondent failed to redirect water from the garage to the gutter; however, competent evidence did not establish the cost to remedy that problem short of the installation of a French drain. The cost of properly ventilating the garage and cutting the shingles to allow for a gap between them and the concrete would cost \$850. Restitution in the amount of \$6,850 is reasonable and appropriate.

Other Matters

10. If the Registrar revokes a corporate construction contractor's license, a person who "has been a partner, officer, director, manager, or associate" of the corporation shall be prohibited from serving in the future "as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a licensee." (Bus. & Prof. Code, § 7121.) This prohibition applies only if the person, "while acting as a partner, officer, director, manager, or associate had knowledge of or participated in any of the prohibited acts for which the license was . . . revoked." (*Ibid.*) Cause exists to prohibit Corrallo from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of a licensee.

11. If the Registrar revokes a corporate construction contractor's license, the corporation's RMO is prohibited in the future "from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee." (Bus. & Prof. Code, § 7121.5.) This prohibition applies whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked. (*Ibid.*) Cause exists under this statute to prohibit Corrallo from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee.

12. The strict provisions of sections 7121 and 7121.5 are stayed as to Corrallo's work for respondent, so long as respondent and Corrallo comply with the conditions of probation.

Costs Recovery Analysis

13. Pursuant to Business and Professions Code section 125.3, the Board may request the administrative law judge to direct a licensee found to have violated the licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. The Registrar has incurred costs of \$11,032.55 in the investigation and prosecution of this matter. The costs are reasonable. (Factual Findings 53 through 55.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. It must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider a respondent's subjective good faith belief in the

merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay. Respondent has not established a basis to reduce costs.

ORDER

Contractor's License No. 906600, Classification B, issued to A S C Berkeley, Inc., doing business as All Seasons Construction, Mark Lyman Corrallo, RMO, CEO, President, is hereby revoked. However, the revocation is stayed for a period of three years, during which time a probationary license shall issue on the following terms and conditions:

1. Respondent shall make restitution to Rick Dosa and Beverly Stone in the amount of \$6,850. Respondent may pay such amount in accordance with the payment schedule agreed to by the parties. If respondent fails to make a payment when such a payment becomes due and payable, the Board may, at its sole discretion, declare the entire balance of restitution due. Respondent must pay such amount prior to full restoration of Contractor's License No. 906600.

2. Respondent shall pay to the Registrar \$11,032.55, as its reasonable cost of investigation, enforcement, and prosecution of this case. Respondent may pay such amount in accordance with the payment schedule agreed to by the Board. If respondent fails to make a payment when such a payment becomes due and payable, the Board may, at its sole discretion, declare the entire balance of the costs due. Respondent must pay such amount prior to full restoration of Contractor's License No. 906600.

3. Respondent shall submit copies of building permits to the Registrar upon demand for projects undertaken during the probationary period.

4. Respondent shall submit copies of construction contracts to the Registrar upon demand during the probationary period.

5. All employees of respondent, including Mark Corrallo, shall comply with all federal, state and local laws governing the activities of a licensed contractor in California.

6. Mark Corrallo 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.

7. Upon successful completion of probation, Contractor's License No. 906600 will be fully restored.

8. 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. The Registrar may impose the disciplinary order without giving respondent an opportunity to be heard should respondent fail to comply with the restitution order.

9. Respondent shall submit copies of documents directly related to each of its construction operations to the Registrar upon demand during the probation period.

10. During the period respondent is on probation, respondent shall file a bond or post a cash deposit in an amount to be determined by the Registrar, for a period of not less than three years pursuant to and in accordance with Business and Professions Code section 7071.8. Respondent is hereby notified that practice under the probationary license cannot commence until satisfactory evidence of such bond or cash deposit is on the file with the Registrar of Contractors.

11. In accordance with Business and Professions Code sections 7121 and 7121.5, Mark Corrallo is prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee, other than A S C Berkeley, Inc., doing business as All Seasons Construction, during the period of time that discipline is imposed upon license number 906600.

12. In accordance with Business and Professions Code sections 7097 and 7098, all licenses issued for which Mark Corrallo furnishes the qualifying experience, other than A S C Berkeley, Inc., doing business as All Seasons Construction, are revoked.

DATED: January 24, 2019

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings