

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

In the Matter of the Accusation Against:

**A W CONSTRUCTION, INC.; ANTONY LAP
WONG, RMO**
200 Rishell Dr.
Oakland, CA 94619

Contractor's License No. 961634, B, C-36, C-10

**ANTONEY LAP WONG,
DBA A W CONSTRUCTION**
65 Diablo Drive
Oakland, CA 94611

Contractor's License Number 736205, B

Respondents.

CASE No. N2019-348

OAH No. 2020120125

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 W CONSTRUCTION INC**, License Number **961634**, 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 two 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 pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, respondent **ANTONEY LAP WONG, DBA A W CONSTRUCTION**, License Number 736205, shall not apply for reissuance or reinstatement of any license for two year(s) from the effective date of this Decision.

IT IS THE responsibility of the respondents, 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 October 29, 2021.

IT IS SO ORDERED September 29, 2021.



David Fogt
Registrar of Contractors

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

In the Matter of the Accusation Against:

**A W CONSTRUCTION, INC.; ANTONY LAP WONG, RMO,
Contractor's License No. 961634, B, C-36, C-10**

and

**ANTONEY LAP WONG, doing business as
A W CONSTRUCTION,
Contractor's License No. 736205, B**

Respondents.

Agency Case No. N2019-348

OAH No. 2020120125

PROPOSED DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference and telephone on May 4 through 6, 2021 and August 2 through 5, 2021.

Deputy Attorney General Michael B. Franklin represented complainant Wood Robinson, Supervising Special Investigator I, Contractors State License Board, Department of Consumer Affairs.

James K. Perry, Attorney at Law, represented A W Construction, Inc., Antoney Lap Wong, responsible managing officer, and Antoney Lap Wong, doing business as A W Construction. Antoney Lap Wong, as well as Vanna Wai Choi, corporate officer, were present for the hearing.

The matter was submitted for decision on August 5, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 16, 1997, the Registrar of Contractors (registrar), Contractors State License Board (Board), issued Contractor's License No. 736205, classification B, to respondent Antoney Lap Wong, doing business as A W Construction (respondent¹). The license expired on May 31, 2017 and was not renewed.

2. On June 1, 2011, the registrar issued Contractor's License No. 961634, classifications B (general building), C-36 (plumbing) and C-10 (electrical), to A W Construction, Inc. Respondent is the responsible managing officer (RMO) of A W Construction, Inc. (A W). The license was in full force and effect during the dates of the

¹ Respondent refers to Antoney Lap Wong; the term respondents refers to both Wong and A W.

homeowner's project described below. It is scheduled to expire on June 30, 2023, unless renewed.

3. On September 2, 2020, complainant Wood Robinson brought the Accusation in his official capacity as a Supervising Special Investigator I with the Contractors State License Board (Board). The Accusation alleges that A W aided and abetted an unlicensed person. The Accusation also alleges that respondent Wong as the qualifying individual should be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee and, as an individual who allegedly performed an act constituting a cause for disciplinary action, likewise is subject to disciplinary action. On September 29, 2020, respondents filed a notice of defense and this hearing followed.

Background

4. E.W.² (the homeowner) lived with her mother in a single-story home on Elm Avenue in San Bruno, purchased in September 2012. On about three occasions from the end of 2012 to 2017, they hired Yao Hong Huang (Huang) for handyman projects at their home. Huang had been recommended by a friend and E.W. and her mother had come to trust him.

5. In 2017, E.W. and her mother decided to add a second level to the home in anticipation of E.W.'s impending marriage, so the mother could reside on the first floor and E.W. and her husband could reside on the second floor. E.W. hired an architect in mid-2017.

² Initials are used, consistent with the Accusation.

6. E.W.'s mother initially communicated with Huang who speaks only very limited English. His native language is a Chinese dialect in a rural Toisan region where he lived prior to coming to the United States 21 years ago. He could write Chinese, but "not very well." He understood Cantonese (verbal and written) spoken by E.W. and her mother. Huang was not able to read or write English, but he could read numbers and architectural drawings.

7. On April 30, 2018, E.W.'s mother asked Huang to look at the drawings and make a rough estimate because her daughter was considering if she wanted to pursue the addition after hearing it might cost over \$300,000. Huang told E.W.'s mother that he could not do the job, but would look for a licensed contractor to give an estimate when the plans were approved.

8. On May 3, 2018, the homeowner provided authorization for her architect to act as her agent for the building permit application. On May 31, 2018 the City of San Bruno Community Development Department, Building Division, (building department) received the building permit application in E.W.'s name as owner. The architect's plan was approved by the building department in mid-July 2018.

9. When E.W. asked Huang about the second story project in mid-July 2018, he told her that it would cost \$200 per square foot (about \$200,000). After E.W. obtained far greater estimates from licensed contractors, she again spoke to Huang. In late July 2018, he reported to her that after studying the plans with his "boss," the project would be \$320,000 with materials. Huang credibly testified at hearing, and told a Board investigator in June 2019, that he contacted his "friend" David Huang who provided the estimate. E.W. replied that she could not afford that much.

10. Neither E.W., who has a master's degree in biomedical research, nor her husband, a mechanical engineer working for a tech company, had any construction experience. They relied on Huang to have a licensed contractor to cover his work and help him out.

Homeowner's Agreement and Related Matters

11. E.W. credibly testified that Huang offered to do the project himself for \$160,000 in labor costs only, with the homeowner paying for all materials. Huang said because he did not have a license, he would ask his boss to cover the project with his license. E.W. did not know the identity of Huang's boss and Huang did not tell her at that time.

12. E.W. agreed to Huang's offer. On August 10, 2018, licensed contractor David Huang met with E.W. and Huang at the building department. Although it was not clearly stated, E.W. believed that David Huang was Huang's boss referenced in Findings 9 and 11. On that date, the building department issued the building permit, leaving it in E.W.'s name.

13. As directed at the building department, E.W. filed a city public service department encroachment permit listing David Huang as the contact and David Huang as the contractor, while all three of them were present. On August 17, 2018, David Huang's insurance company provided the public service department with a liability insurance certificate for David Huang.

14. On August 18, 2018, E.W. asked Huang to write the agreement and told him what to write, which was consistent with the \$160,000 payment to him for his labor. The agreement was written in Chinese, titled construction (or project)

agreement³ underneath the address which was the first line in the heading. The agreement was signed by both E.W. identified as the owner, "Party A," and Huang identified as the construction contractor (person doing the work), "Party B."

15. Part 1 of the agreement stated that Party B is responsible for the safety of the house and construction work. The agreement stated that the project was scheduled for six months. Part 4 stated that Party B should complete the work for Party A to move back to the first floor before December 25, 2018. If that did not occur, Party B would pay rent for Party A.

16. The total cost was \$160,000. Party A would pay thirty percent of the total fee on the start date of the project, sixty percent (or an additional thirty percent) when the water, electricity and wood structures inspections were finished, ninety percent (or an additional thirty percent) when the exterior walls, roof, interior insulation, drywall and bathroom were finished, and the remaining ten percent after the project's inspection was finished. The verbal agreement for the owner to pay for materials was not written in the contract.

17. On August 18, 2018, E.W. gave Huang a check made out to him in the amount of \$50,000. Huang told E.W. to write the check to Huang's mortgage company instead. To accommodate Huang, E.W. gave him a replacement check for \$50,000 payable to Superior Loan Services. On August 20, 2018, E.W. obtained a credit card in Huang's name for any materials he needed for the job, paid by the homeowner.

³ Complainant and respondents provided separate translations, with no significant differences.

18. On August 21, 2018, the city public service department notified E.W. that an auto insurance certificate was needed for either David Huang or Huang for the encroachment permit to be signed so work could begin and a dumpster could be placed at the property. E.W. obtained Huang's auto insurance certificate and forwarded it to the city public service department which approved the encroachment permit on August 23, 2018.

19. Work on the project began on August 26, 2018. Huang hired laborers whom he paid cash weekly at the rate of \$200 per day. E.W.'s husband gave Huang three additional checks: \$8,000 on November 16, 2018 for a change order described in Finding 30; \$30,000 on December 14, 2018; and \$42,000 on January 28, 2019.

Respondents' Involvement

20. Soon after the work began, Huang mentioned to the homeowner that he had a conversation with his boss (David Huang) who wanted to get out of the project. The homeowner replied that Huang needed to find a replacement licensed contractor. Huang told her that he would ask his "old boss" (respondent).

21. Approximately two days after work began, Huang noticed a problem with the plans for the first and second floor ceilings. He told the homeowner and met with the architect who agreed there was a problem. Huang then contacted respondent for whom he worked from 2002 to 2009. He previously contacted respondent on about three occasions between 2009 and August 2018, when he needed advice about construction or remodel work on his own house.

22. In response to Huang's request, on September 8, 2018, respondent went to Huang's home to review the homeowner's approved set of plans. Huang indicated he was a friend of the homeowner and doing her a favor to get a bid from a licensed

contractor for the project. Huang commented that he discovered an error on the second-floor elevation and told respondent to be sure to include that in his estimate.

23. Respondent agreed there was an error in the plans. Huang did not tell respondent that he already had a contract with the homeowner and had begun the work. Respondent spent about two hours with Huang, going over the plans and taking notes to provide a proposed contract with estimate.

24. Because Huang told respondent that the homeowner wanted to verify that the contractor had a license, respondent provided his license for Huang to photograph. Respondent knew that the Board was concerned about contractors' licenses being used by others. He claimed he was focused on getting the estimate.

25. Huang sent E.W. the photograph for A W's license card to the homeowner on September 9, 2018. The license card did not include respondent's name. Huang did not tell the homeowner the identity of his old boss. Huang stated to E.W. that he sent his boss's contractor's license for E.W. to call the city and replace the contractor. Having received the license card for A W, the homeowner reasonably believed that Huang was working under that license.

26. After spending about 18 hours preparing a proposed contract with a written estimate for the second-floor addition at the homeowner's residence, respondent called Huang on September 13, 2018 to see if respondent could meet with the owner to submit the contract. The total estimate was \$350,000 and included work to correct the error in the plan. Huang told him to call back the next day. Again, Huang did not tell respondent that he already had a contract and had begun the work.

27. The proposed contract included the homeowner's name and address. Respondent anticipated the homeowner would agree to his estimate. On

September 14, 2018, he went to the building department from his Oakland office. Respondent did not object when Huang invited himself to join him and bring the architect's plans. Respondent told the building department clerk that he was planning to do the work. While there, respondent presented his driver's license and A W's contractor's license card to the clerk.

28. A W was not previously registered to conduct business in San Mateo County or in San Bruno. As requested by the building department clerk on September 14, 2018, respondent, on behalf of A W, completed a business registration application for out-of-town businesses. He listed the contractor's license number for A W and listed Huang as the emergency local contact. The building department added A W on the building permit as the contractor for the homeowner's project.

29. Prior to leaving the building department, respondent told Huang that he wanted Huang to be the foreman for the project if the bid was accepted. He said he wanted to take his proposed contract to the homeowner that day for her review and to let her know he could start work right away. Huang told him that the owner would not be home, so respondent told Huang to take it to her and have her call respondent.

30. Huang later told the homeowner that he had to charge extra for work needed for the correction on the plans, and that he had a new estimate of \$350,000 for the project from his old boss. The homeowner responded that she already had a contract with Huang, so did not need a new estimate. Huang did not give the proposed contract or written estimate to the homeowner. The homeowner agreed to pay Huang an additional \$8,000 for costs due to correction of the plans. This agreement was not in writing.

31. Huang showed A W's business application to the homeowner. He told the homeowner that respondent provided his contractor's license to the building department. On September 21, 2018, respondent went to Huang's home and asked for an update. Huang falsely told him that the owner said it cost too much and would go with another bid. Respondent did not contact the owner directly as he usually did when proposing a contract.

32. Respondent testified at hearing that he was not suspicious of Huang's two separate actions to steer him away from the homeowner. He thought of Huang as a "casual friend" he could trust, despite having communicated only about three times over a nine-year period prior to September 2018. Respondent claimed he was not concerned that he did not have any direct contact with the homeowner after the owner requested to see his contractor's license, and after he believed that the owner received his proposed contract. Respondent intentionally failed to ensure that A W's license was not associated with the building permit for the work on the homeowner's project.

33. Respondent had no further contact with Huang until March 30, 2019. On that Saturday morning, the homeowner called respondent about Huang whose work had become unacceptable and whose communication had become intolerable. She told respondent that he needed to step in. When respondent did not initially recognize the homeowner's name he had put in the proposed contract, she told him that Huang used to work for him. Respondent then "put two and two together" about his estimate.

34. Respondent did not immediately tell the homeowner that he had nothing to do with Huang's work, that Huang was not working under his license, or that he had no knowledge that Huang was working for the homeowner on the project for which he

provided a bid of \$350,000. Respondent did not terminate the conversation, did not contact Huang, and did not check with the building department. Instead, respondent agreed to go to the homeowner's house that same day.

35. Respondent met with the homeowner and her husband for at least two hours. He initially told them, as he told a Board investigator in July 2019, that he did not have a contract with them. He did not ask them about their agreement with Huang, or when Huang began the work. Respondent told them he knew Huang as one of his best employees when Huang had worked for respondent. Respondent allowed the homeowner and her husband to show him Huang's work and how they had tried to help him. They asked respondent to tell Huang how to fix the problems.

36. Respondent agreed to speak with Huang and meet with the homeowner and Huang the following Saturday. Respondent went to Huang's home after meeting with the homeowner on March 30, 2019. He was upset with Huang and testified at hearing that he confronted Huang about his work on the homeowner's project.

37. Respondent sent the homeowner a text message that night, stating that he spoke with Huang who agreed to re-do the roofing and side window flashing at his cost. Respondent also stated that Huang was not yet finished with the painting.

38. On April 5, 2019, the homeowner and her husband sent respondent a series of photographs and text messages, mostly concerning the bathroom. On April 6, 2019, respondent and Huang met with the homeowner and her husband for about five hours. As specific problems were noted, respondent agreed the work was not up to building standards. Respondent asked the owner to write down the work problems, find out how much it would cost to correct or complete the project, and

how much was still owed to Huang. Huang ceased work on the project about that time.

39. Respondent still did not contact the building department to find out the status of the building permit. From April 6, 2019 to April 12, 2019, the homeowner and her husband sent respondent a series of photographs and text messages, mostly concerning the roof, as well as a roof report on April 12, 2019. Respondent replied to only a few of the messages, such as "okay" to their request to help convey a message to Huang not to change the outlets yet.

40. On April 15, 2019, the Board notified respondents that a complaint was received from the homeowner and requested the contractor contact the customer to try to settle the complaint. On April 17, 2019, the homeowner and her husband sent respondent a message requesting to meet again on April 20, 2019, and to remind Huang to show up at work.

41. In response to the homeowner's complaint, respondent wrote to the Board on April 22, 2019, stating that "a building permit was filed" for the homeowner's address, but "the contract did not come to agreement." He added that none of A W's employees worked on the property. He went to the building department on the same date, and withdrew A W's building permit for the homeowner's property.

42. On April 23, 2019, respondent sent the homeowner a message that he received a letter about the complaint she filed with the Board. He stated his position remained the same: he signed no contract; performed no work, and received no payment from the homeowner. He also stated that he volunteered at her request to mediate her construction problems with Huang. The homeowner replied that she would "pull out" the complaint if they could come to resolution on April 27, 2019.

Respondent then asked her for the minimum amount of compensation she wanted from Huang.

43. On April 24, 2019, the homeowner responded with attached photographs and roofing estimates. When respondent replied asking for the remaining balance on the contract with Huang and a breakdown of the outsource works, the homeowner stated on April 25, 2019 that the homeowner would "pay contractor \$7,150 [plus] drywall materials against receipt upon 90% completion (after fixing roof, siding, bathroom, drywall, paint damage and to-do list items)." On April 26, 2019, respondent replied that Huang did not agree with \$60,000 for compensation and that respondent could no longer help the homeowner with her construction problems.

44. In May 2019, respondent communicated with a consumer services representative for the Board and submitted a declaration of non-permission. The declaration stated that Huang did not have permission to use A W's license to perform a contract or enter into a contract on behalf of respondents.

Workmanship

45. On April 10, 2019, the homeowner filed a complaint with the Board concerning poor workmanship. The homeowner requested compensation for the damage and necessary repairs.

46. Respondent believed that Huang was not capable of performing the work for the project without supervision from a licensed contractor or someone experienced in building construction. When Huang worked for respondent, he had been promoted to foreman. Respondent described Huang as knowledgeable, but needing to have a licensed contractor present on jobsites.

47. Respondents stipulated that Huang's poor workmanship on the project resulted in damages in the amount of \$19,650, based on the report of the registrar's industry expert.

Respondents' Contentions

FALSELY LISTED ON BUILDING PERMIT

48. Respondent contended that A W was falsely or mistakenly added to the building permit on or after respondent went to the building department on September 14, 2018. Respondent claimed that he went there simply to "gather information," particularly about possible local licensing rules before starting a job. He was accompanied by Huang who brought the architect's plans. (Finding 27.)

49. Although Huang told respondent that the owner had a permit (owner-builder), respondent failed to verify the status of the permit before leaving the building department. Respondent contended that it was not his intent to add A W's name to the permit because he did not yet have a contract. However, he told the clerk that he was planning to do the work, presented A W's contractor's license card, and submitted a business registration application so he could start the work right away. (Findings 27 through 29.) He did not know if the building department added A W to the permit at that time. However, he reported to the Board that a permit was filed, but the contract (to work under that permit) did not come to agreement. (Finding 41.)

50. Additionally, respondent did not go to the homeowner's house that day or within a reasonable time after the homeowner would have received his proposal. He failed to follow up after allowing Huang to present A W's contractor's license to the homeowner, particularly when Huang reported a week later that the homeowner did not accept the estimate. (Findings 24 and 31.)

51. It was neither prudent nor reasonable for respondent to fail to follow up with the building department or with Huang for six months. Respondent claimed he put "two and two together" when the homeowner called on March 30, 2019. (Findings 33 and 34.) Respondent withdrew A W's license from the permit on April 22, 2019. Respondents provided no credible evidence to support the claim that A W's license was falsely or mistakenly added to the building permit.

OWNER-BUILDER PERMIT

52. An "owner-builder" is not required to have a contractor's license if the owner does the work through the owner's own employees with wages as their sole compensation or if the owner contracts with properly licensed subcontractors. (Bus. & Prof. Code, § 7044.) Respondents contended that Huang worked under the homeowner's owner-builder contract, not under A W's license or respondent's association with Huang. Relying primarily on Huang's testimony at hearing, respondents claimed that Huang was an employee of the homeowner.

53. The facts do not support this contention for several reasons. Huang never claimed to be an employee until after the homeowner filed a complaint. Huang set the total labor price for the project, scheduled the work, and hired and paid laborers. He had money owed to him for the project, but ceased work without notice.

54. The contract included no language supporting an employer-employee agreement. The language in the Part 4 of the contract contradicts such an agreement. (Finding 15.) Huang's testimony on this issue was not credible.

55. The permit was initially issued on August 10, 2018, when David Huang accompanied the homeowner and Huang to the building department. (Finding 12.) The homeowner consistently requested that Huang work under a contractor's license.

(Findings 10 through 13, 20, 24 and 25.) There is no credible evidence that the homeowner was or planned to be an owner-builder.

Homeowner Supervision

56. Respondents contended that the homeowner and her husband provided all supervision of Huang based on Huang's testimony at hearing and text messages they sent him, minimally beginning September 9, 2018, and increasing beginning in January 2019. They provided him with the architect's, manufacturer's, and other drawings and videos to help Huang when he did not know or was not able to figure out how to install certain materials. They did not realize how inept Huang was until well into the project with obvious and more serious errors beginning in January 2019. They delayed contacting respondent because they did not want to escalate problems to Huang's boss, before trying to help Huang solve the problems himself.

57. The homeowner repeatedly insisted on Huang having a licensed contractor, specifically for oversight and support of Huang. (Finding 10.) Huang brought licensed contractor David Huang to the meeting at the building department in August 2018, and when David Huang was no longer associated with the project, Huang provided a copy of A W's license. (Findings 12 and 24.) Huang's testimony at hearing that the homeowner and her husband supervised his work was untrustworthy and not persuasive. The text messages do not demonstrate "supervision" over Huang. The homeowner's testimony was credible.

58. The education and skills of the homeowner and her husband did not qualify them to supervise a construction project. The homeowner and her husband tried their best to help Huang and did not provide supervision to him.

Costs

59. The Department of Justice submitted a declaration establishing that it billed the Board \$6,291.25 for enforcement costs in this matter as of April 22, 2021. The Board submitted a certification of investigation costs in the amount of \$4,675.84. The total amount of enforcement and investigation costs is \$10,967.09. The certifications describing prosecution and investigation costs show this amount to be reasonable.

LEGAL CONCLUSIONS

1. The registrar may suspend or revoke a license if the licensee commits any acts or omissions constituting cause for disciplinary action (Bus. & Prof. Code, § 7090.) The burden of proof to establish cause for license discipline is by clear and convincing evidence. (*Id.*)

2. The purpose of contractor laws "is to protect the public against the perils of contracting with dishonest or unlicensed contractors." (*Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 606 (citations omitted).) The legislature intended that the law "be interpreted broadly in order that contractors could not easily evade the statutes' protective purposes." (*Id.*, at p. 607 (citation omitted); see Bus. & Prof. Code, § 7000.6.)

Respondent A W

FIRST CAUSE FOR DISCIPLINE

3. Aiding or abetting an unlicensed person to evade the provisions of contractor laws or combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or

associate, or otherwise, of an unlicensed person with the intent to evade contractor laws constitutes a cause for disciplinary action. (Bus. & Prof. Code, § 7114, subd. (a).)

4. Respondents argue that respondents did not have "the intent to evade" the provisions of contractor laws because there was no or insufficient evidence that respondents knew of and participated "in an objective of Huang which constitutes a violation of [Business and Professions Code section 7114, subdivision (a)]." Citing *Swickheimer v. King* (1972) 22 Cal.App.3d 220, respondent Wong contended that he had no knowledge of Huang's work when it began on August 26, 2018, until March 30, 2019 when the homeowner called. In a breach of contract case, the court in *Swickheimer* found that the licensed managing employee for a company that hired an unlicensed worker to excavate and grade a road did not participate in the making or performance of the agreements between the company, the worker, and the property owners, and was unaware of the worker's conduct because he was incapacitated by illness when the road was under construction. (*Id.*, at pp. 222, 223.)

5. In this matter, respondent Wong was initially deceived by his former employee Huang who entered into a contract and began work prior to contacting respondent on September 8, 2018. (Finding 22.) Similar to the licensed managing employee in *Swickheimer*, respondent had not participated in the making or performance of the agreement between Huang and the homeowner. However, after providing A W's license to Huang on the same date, and going in person to the building department six days later, respondent's claimed lack of knowledge is suspect, particularly after Huang told him that the homeowner rejected his proposal a week later.

6. Respondent knew that the Board was concerned about contractors' licenses being used by others who were not licensed. (Finding 24.) Respondent

intentionally failed to ensure that A W's license was not associated with the building permit after the proposed contract and bid were rejected. (Finding 32.) Respondent decided not to meet Huang prior to his first meeting with the homeowner on March 30, 2019. The evidence demonstrates that respondent allowed A W's license to be used by Huang with the intent to evade contractor laws. Cause for discipline exists against A W's license under Business and Professions Code section 7114, subdivision (a).

SECOND CAUSE FOR DISCIPLINE

7. The performance by a corporation of an act or omission constituting a cause for disciplinary action likewise constitutes a cause for disciplinary action against a licensee who at the time that the act or omission occurred was the qualifying individual of that corporation, whether or not he had knowledge of or participated in the prohibited act or omission. (Bus. & Prof. Code, § 7122.5.) As the qualifying individual for A W under Business and Professions Code section 7122.5, respondent's conduct establishes additional cause for discipline against A W. (Conclusion 6.)

DISCIPLINARY CONSIDERATIONS

8. Cause for license discipline has been established. The remaining issue is the appropriate level of discipline to impose. The Board adopted disciplinary guidelines (guidelines) to assist in assessing the appropriate level of discipline (Cal. Code Regs., tit. 16, § 871.) For the causes for discipline in this matter, the minimum recommended discipline is stayed revocation and a two-year period of probation, and the maximum is license revocation.

9. Under the guidelines, relevant factors to be considered in this matter include: the nature and severity of the acts under consideration; actual or potential

harm to the public; whether the licensee performed work that was potentially hazardous to the health, safety or general welfare of the public; prior disciplinary record; and the number or variety of current violations.

10. There was no evidence in this matter that respondents had any prior discipline. A single offense was committed by allowing Huang to use A W's license to evade contractor laws. (Conclusions 6 and 7.) Huang performed work that potentially harmed the public and was potentially hazardous to the health, safety or general welfare of the public. (Findings 38 and 47.) Upon consideration of the record, allowing A W to keep its license on a probationary basis will adequately protect the public.

Respondent Wong

QUALIFYING INDIVIDUAL

11. If A W's license is suspended or revoked, then respondent shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee, whether or not he had knowledge of or participated in the prohibited acts or omissions for which the license was suspended or revoked, and the employment, election, or association of respondent shall constitute grounds for disciplinary action. (Bus. & Prof. Code, § 7121.5.) Respondent was the qualifying individual for A W's license. (Finding 2.) Given that A W's license will be revoked and placed on probation, this prohibition need not apply to respondent's qualifying individual status for A W.

EXPIRED LICENSE

12. The inactive status of a license shall not bar any disciplinary action against a licensee for any of the causes under contractors' law. (Bus. & Prof. Code,

§ 7076.5, subd. (h).) Respondent's individual license expired in 2017. (Finding 1.) Although respondent's license is inactive, cause exists to revoke his license based on the actions derived from those causing A W's license to be revoked.

Restitution

13. Terms and conditions of probation may include an order of restitution. (Govt. Code, § 11519, subd. (d).) The homeowner's outstanding financial injury is \$19,650. (Finding 47.) Cause exists to order respondents to pay that amount in restitution as a condition of probation. Where restitution is ordered and paid, the amount paid shall be credited to any subsequent judgment in a civil action. (*Id.*)

Cost Recovery

14. The statements describing prosecution and investigation costs of \$10,967.09 are supported by declarations that comply with California Code of Regulations, title 1, section 1042, and are found to be reasonable. (Finding 59.) The Board is authorized to recover these costs. (Bus. & Prof. Code, § 125.3.)

15. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set standards for determining whether costs should be assessed in the particular circumstances of each case, 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 or her 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. (*Id.*, at pp. 44–45.) In this matter, the evidence established that probation,

rather than outright revocation, is the appropriate discipline. The factors warrant a reduction of the Board costs to \$8,226.

ORDER

A. Contractor's License No. 961634, B, C-36 and C-10, issued to respondent A W Construction, Inc., Antony Lap Wong, RMO, is revoked. However, the revocation is stayed, and respondent is placed on probation for two years on conditions 1 through 7 below.

B. Respondent Antony Lap Wong shall not be prohibited from serving as an officer, director, associate, partner or qualifying individual of A W during the time discipline is imposed on Contractor License No. 961634.

C. Contractor's License No. 736205, B, issued to respondent Antony Lap Wong is revoked.

D. Each condition of probation is a separate and distinct condition. If any condition of this Order, or any application of it, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications of it, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. Obey all Laws

Respondent shall comply with all federal, state, and local laws governing the activities of a licensed contractor in California.

2. Restitution

Respondent shall pay the homeowner \$19,650 in restitution for her financial injury, minus any amount the homeowner has collected from Huang. Respondent shall be permitted to pay this restitution in a payment plan approved by the Board with payments to be completed no later than one year prior to the end of the probation period.

3. Cost Recovery

Respondent shall pay to the Board costs associated with its investigation and enforcement in the amount of \$8,226. Respondent shall pay costs after payment of restitution has been completed, but payment of costs must be completed no later than two months prior to the end of the probation period.

4. Submission of Documents

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

5. Interviews with Regional Deputy

Respondent and any of its personnel of record shall appear in person for interviews with the Regional Deputy or designee upon request and reasonable notice.

6. Violation of Probation

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 respondent fail to comply with the restitution order.

7. Completion of Probation

Upon successful completion of probation, the contractor's license issued to A W Construction, Inc., Antony Lap Wong, RMO, will be fully restored.

DATE: 08/27/2021

Barbara O'Hearn

BARBARA O'HEARN

Administrative Law Judge

Office of Administrative Hearings