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10 **BEFORE THE**
11 **REGISTRAR OF CONTRACTORS**
12 **CONTRACTORS' STATE LICENSE BOARD**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. N 2009-421

15 **PRO-TOUCH PAINTING**
16 **1426 East Borchard**
Santa Ana, CA 92705
17 **SAMUEL TOKKO, Owner**

A C C U S A T I O N

18 **Contractor's License No. 874617, C-33**

19 **and**

20 **SAMUEL TOKKO, INC.**
9900 Acacia #53
21 **Garden Grove, CA 92841**

22 **SAMUEL TOKKO, RMO**
JI SUN KIM, Officer

23 **Contractor's License No. 921538, C33**

24 Respondent.

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26 Complainant alleges:

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PARTIES

1. Wood Robinson ("Complainant") brings this Accusation solely in his official capacity as the Enforcement Supervisor I of the Contractors' State License Board, Department of Consumer Affairs.

License History

2. On or about March 18, 2006, the Registrar of Contractors issued Contractor's License Number 874617, classification C-33 (painting and decorating), to Samuel Tokko ("Respondent"), owner of Pro-Touch Painting. The license was suspended on April 8, 2009, for not having a contractor's bond. The license was in full force and effect at all times relevant to the charges brought herein and expired under suspension on March 31, 2010.

3. On or about September 3, 2008, the Registrar of Contractors issued Contractor's License Number 874617, classification C-33 (painting and decorating) to Samuel Tokko, Inc., with Samuel Tokko as RMO, and Ji Sun Kim, as Officer. The license was suspended on June 3, 2010, for not having a contractor's bond. The license was in full force and effect at all times relevant to the charges brought herein. The license remains under contractor's bond suspension and will expire on September 30, 2010.

JURISDICTION

4. This Accusation is brought before the Registrar of Contractors (Registrar) for the Contractors' State License Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Registrar of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under code section 7076.1, the Registrar may reinstate a canceled license if the licensee pays all of the fees and meets all of the qualifications and requirements for obtaining an original license.

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6. Code section 7095 provides, in pertinent part, that the Registrar in making his order may:

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

7. Code section 7097 states:

8. Code section 7098 states:

9. Code section 7106.5 states, in pertinent part, that the expiration, cancellation, revocation, or suspension of a license by operation of law, or by order or decision of the Registrar

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1 or a court of law, or the voluntary surrender of the license shall not deprive the Registrar of
2 jurisdiction to proceed with disciplinary action.

3 10. Code section 7121 states:

4 Any person who has been denied a license for a reason other than failure
5 to document sufficient satisfactory experience for a supplemental classification
6 for an existing license, or who has had his or her license revoked, or whose
7 license is under suspension, or who has failed to renew his or her license while
8 it was under suspension, or who has been a member, officer, director, or
9 associate of any partnership, corporation, firm, or association whose application
10 for a license has been denied for a reason other than failure to document
11 sufficient satisfactory experience for a supplemental classification for an
12 existing license, or whose license has been revoked, or whose license is under
13 suspension, or who has failed to renew a license while it was under suspension,
14 and while acting as a member, officer, director, or associate had knowledge of
15 or participated in any of the prohibited acts for which the license was denied,
16 suspended, or revoked, shall be prohibited from serving as an officer, director,
17 associate, partner, or qualifying individual of a licensee, and the employment,
18 election, or association of this type of person by a licensee in any capacity other
19 than as a non-supervising bona fide employee shall constitute grounds for
20 disciplinary action.

13 11. Code section 7121.5 states:

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

18 12. Code section 7122.5 states:

19 The performance by any individual, partnership, corporation, firm, or
20 association of any act or omission constituting a cause for disciplinary action,
21 likewise constitutes a cause for disciplinary action against any licensee who at
22 the time of such act or omission occurred was the responsible managing
23 employee, qualifying partner, responsible managing officer, or qualifying
24 member of such individual, partnership, corporation, firm, or association,
25 whether or not he had knowledge of or participated in the prohibited act or
26 omission.

24 13. Code section 7068.1 states, in pertinent part, that "[t]he person qualifying on behalf of
25 an individual or firm . . . shall be responsible for exercising direct supervision and control of his
26 or her employer's or principal's construction operations . . ."

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1 14. Code section 7107 states that "[a]bandonment without legal excuse of any
2 construction project or operation engaged in or undertaken by the licensee as a contractor
3 constitutes a cause for disciplinary action."

4 15. Code section 7108 states that "[d]iversion of funds or property received for
5 prosecution or completion of a specific construction project or operation, or for a specified
6 purpose in the prosecution or completion of any construction project or operation, or failure
7 substantially to account for the application or use of such funds or property on the construction
8 project or operation for which such funds or property were received constitutes a cause for
9 disciplinary action.

10 16. Code section 7116 states that "[t]he doing of any willful or fraudulent act by the
11 licensee as a contractor in consequence of which another is substantially injured constitutes a
12 cause for disciplinary action."

13 17. Code section 7117.5(b) states that "[a]cting in the capacity of a contractor under any
14 license that has been suspended for any reason constitutes a cause for disciplinary action."

15 18. Code section 7117.6 states that "[a]cting in the capacity of a contractor in a
16 classification other than that currently held by the licensee constitutes a cause for disciplinary
17 action.

18 19. Code section 7159 states, in pertinent part:

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20 (a)(5) Failure by the licensee, his or her agent or salesperson, or by a
21 person subject to be licensed under this chapter, to provide the specified
22 information, notices, and disclosures in the contract, or to otherwise fail to
23 comply with any provision of this section, is cause for discipline.

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24 (c) In addition to the specific requirements listed under this section,
25 every home improvement contract and any person subject to licensure under
26 this chapter or his or her agent or salesperson shall comply with all of the
27 following:

26

27 (c)(4) A statement that, upon satisfactory payment being made for any
28 portion of the work performed, the contractor shall, prior to any further
payment being made, furnish to the person contracting for the home
improvement or swimming pool work a full and unconditional release from any

1 claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that
2 portion of the work for which payment has been made.

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4 (c)(6) The contract shall contain, in close proximity to the signatures of
5 the owner and contractor, a notice stating that the owner or tenant has the right
6 to require the contractor to have a performance and payment bond.

7 (d) A home improvement contract and any changes to the contract, shall
8 be in writing and signed by the parties to the contract prior to the
9 commencement of any work covered by the contract or applicable change
10 order, and shall include or comply with all of the following:

11

12 (d)(10) The contract shall address the commencement of work to be
13 performed in substantially the following form:

14

15 (d)(10)(C) The approximate date on which work will be commenced.

16 (d)(11) The estimated completion date of work shall be referenced in the
17 contract in substantially the following form:

18 (d)(11)(B) The approximate date of completion.

19

20 (d)(13) The heading: "Note about Extra Work and Change Orders,"
21 followed by the following statements:

22 "Extra Work and Change Orders become part of the contract once the
23 order is prepared in writing and signed by the parties prior to the
24 commencement of any work covered by the new change order. The order must
25 describe the scope of the extra work or change, the cost to be added or
26 subtracted from the contract, and the effect the order will have on the schedule
27 of progress payments.

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(e)(4) Respondent failed to provide a notice of the mechanic's lien
warning.

(e)(5) Respondent failed to provide a notice of complaint referral to the
CSLB, including an address.

(e)(6)(B) Respondent failed to provide a notice of 3-day right to cancel.

20. Code section 7159.5 states, in pertinent part:

This section applies to all home improvement contracts, as defined in
Section 7151.2, between an owner or tenant and a contractor, whether a general
contractor or a specialty contractor, who is licensed or subject to be licensed
pursuant to this chapter with regard to the transaction.

1 (a) Failure by the licensee or a person subject to be licensed under this
2 chapter, or by his or her agent or salesperson to comply with the following
3 provisions is cause for discipline.

4 (a)(3) If a down payment will be charged, the down payment may not
5 exceed one thousand dollars (\$1,000) or 10 percent of the contract amount,
6 whichever is less.

7

8 COST RECOVERY/RESTITUTION

9 21. Code section 125.3 states, in pertinent part, that the Registrar may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 22. Section 11519, subdivision (d), of the Government Code states, in pertinent part, that
14 the Registrar may require restitution of damages suffered as a condition of probation in the event
15 probation is ordered.

16 WALTRIP PROJECT

17 23. On or about April 11, 2009, Respondent entered into a written home improvement
18 contract with Wanda Waltrip (Waltrip) under Contractor's License No. 874617, to restucco and
19 paint the exterior of her home, located at 10437 Stamps Road, Downey, CA 90241 (Waltrip
20 project), which included the installation of pavers in the driveway. The contract, in the amount of
21 \$11,000, was not signed by Waltrip until May 21, 2009. On May 21, 2009, Respondent requested
22 and received a down payment in the amount of \$6,000. After taking the \$6,000 down payment,
23 Respondent never returned to the Waltrip home and never commenced work on the Waltrip
24 project.

25 FIRST CAUSE FOR DISCIPLINE

26 (Abandonment)

27 24. Respondent has subjected his contractor's license to disciplinary action under Code
28 section 7107, in that on or about May 21, 2009, Respondent abandoned the Waltrip project
without legal excuse, after taking a \$6,000 down payment and never commencing work.

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a. Subdivision (c)(4): Respondent failed to provide in the contract a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the work for which payment has been made.

b. Subdivision (c)(6): Respondent failed to include in the contract, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

c. Subdivision (d)(10)(C): Respondent failed to include in the contract what constituted substantial commencement of work under the contract.

d. Subdivision (d)(11)(B): Respondent failed to include in the contract the approximate date of completion.

c. Subdivision (d)(13): Respondent failed to include in the contract a statement that “Extra Work and Change Orders” will become part of the contract once the order is prepared in writing and signed by the parties prior to the commencement of any work covered by the new change order.

f. Subdivision (c)(4): Respondent failed to include a heading or notice as to the mechanic's lien.

g. Subdivision (3)(5) Respondent failed to include a notice of complaint referral to the CSLB, including an address.

h. Subdivision (e)(6)(A): Respondent failed to provide a notice of 3-day right to cancel.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Home Improvement Contract Requirements)

30. Respondent has subjected his contractor's license to disciplinary action under Code section 7159.5, in that on the Waltrip project, Respondent failed to comply with the provisions of that Code, as follows:

a. Subdivision (a)(3): Respondent requested and received a down payment of \$6,000, an amount which exceeds the maximum down payment of \$1,000 or 10% of the contract amount, whichever is less.

OTHER MATTERS

31. Pursuant to Code sections 7097 and 7098, if Contractor's License Number 847617, issued to Samuel Tokko, owner of Pro-Touch Painting, is suspended or revoked by a decision of the Registrar, the Registrar may suspend or revoke, without notice, any other license issued in the name of Samuel Tokko or for which Samuel Tokko furnished the qualifying experience and appearance.

32. Pursuant to Code section 7121, if discipline is imposed on Contractor's License Number 847617 issued to Samuel Tokko, owner of Pro-Touch Painting, then Samuel Tokko 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 Samuel Tokko in any capacity other than as a non-supervising bona fide employee shall be subject to disciplinary action.

33. Pursuant to Code section 7121.5, if discipline is imposed on Contractor's License Number 847617 issued to Samuel Tokko, owner of Pro-Touch Painting, then Samuel Tokko shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of any license during the time the discipline is imposed, whether or not he had knowledge or participated in the acts or omissions constituting grounds for discipline, and any licensee which employs, elects, or associates Samuel Tokko shall be subject to disciplinary action.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Registrar of Contractors issue a decision:

1. Revoking or suspending Contractor's License Number 847617 issued to Samuel Tokko, owner of Pro-Touch Painting;

2. Revoking or suspending Contractor's License Number 921538 issued to Samuel Tokko, Inc., with Samuel Tokko as RMO and Ji Sun Kim as Officer;

1 3. Revoking or suspending any other license for which Samuel Tokko is furnishing the
2 qualifying experience or appearance;

3 4. Prohibiting Samuel Tokko from serving as an officer, director, associate, partner, or
4 qualifying individual of any licensee during the period that discipline is imposed on Contractor's
5 License Number 847617 issued to Samuel Tokko, owner of Pro-Touch Painting;

6 5. Ordering restitution of all damages according to proof suffered by Wanda Waltrip, as
7 a condition of probation in the event probation is ordered;

8 6. Ordering restitution of all damages suffered by Wanda Waltrip, as a result of Samuel
9 Tokko's conduct as a contractor, as a condition of restoration of contractor's License Number
10 847617 issued to Samuel Tokko, owner of Pro-Touch Painting;

11 7. Ordering Samuel Tokko to pay the Registrar of Contractors his costs in the
12 investigation and enforcement of the case according to proof at the hearing, pursuant to Code
13 section 125.3;

14 8. Ordering Samuel Tokko to provide the Registrar with a listing of all contracting
15 projects in progress and the anticipated completion date of each; and

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

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18 DATED:

July 9, 2010

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

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