

1 KAMALA D. HARRIS
2 Attorney General of California
3 DIANN SOKOLOFF
4 Supervising Deputy Attorney General
5 SHANA A. BAGLEY
6 Deputy Attorney General
7 State Bar No. 169423
8 1515 Clay Street, 20th Floor
9 P.O. Box 70550
10 Oakland, CA 94612-0550
11 Telephone: (510) 622-2129
12 Facsimile: (510) 622-2270
13 *Attorneys for Complainant*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

Case No. N2013-152

AMODERN CONSTRUCTION, INC., RI-
TANG CHEN, RMO, WEN PING LI,
CEO/PRES
1614 Ridgetree Way
San Jose, CA 95131

ACCUSATION

Contractor's License No. 967928, B

Respondents

RTC CONSTRUCTION CO, RI-TANG
CHEN, Sole Owner
436 Lomita Avenue
Millbrae, CA 94030

Contractor's License No. 681263, B

AND

C P COUNTY CONSTRUCTION, INC.,
RI-TANG CHEN, RMO/CEO/PRES, ZENG
ZHI PANG, Officer
432 Lomita Avenue
Millbrae, CA 94030

Contractor's License No. 844135, B

Affiliated Licenses

1 Complainant alleges:

2 **PARTIES**

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

6 2. On or about November 23, 2011, the Registrar of Contractors issued Contractor's
7 License Number 967928, Classification B (General Building Contractor), to Amodern
8 Construction, Inc. (Respondent Amodern), Ri-Tang Chen, RMO, (Respondent Chen) and Wen
9 Ping Li, CEO/President (Respondent Li) (collectively, Respondents). The Contractor's License
10 was in full force and effect at all times relevant to the charges brought in this Accusation and will
11 expire on November 30, 2015, unless renewed.

12 3. On or about November 30, 1993, the Registrar of Contractors issued Contractor's
13 License Number 681263, Classification B, to RTC Construction, Co., Ri-Tang Chen, Sole Owner
14 (Affiliated License). The Contractor's License was in full force and effect at all times relevant to
15 the charges brought in this Accusation and will expire on November 30, 2015, unless renewed

16 4. On or about August 5, 2004, the Registrar of Contractors issued Contractor's License
17 Number 844135, Classification B, C P County Construction, Inc., Ri-Tang Chen,
18 RMO/CEO/PRES, and Zeng Zhi Pang, Officer (Affiliated License). The Contractor's License
19 was in full force and effect at all times relevant to the charges brought in this Accusation and will
20 expire on August 31, 2014, unless renewed.

21 **JURISDICTION**

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

26 6. Code section 118, subdivision (b), provides, in part, that the expiration of a license
27 shall not deprive the Registrar of jurisdiction to proceed with a disciplinary action during the
28 period within which the license may be renewed, restored, reissued or reinstated. Under Code

1 section 7076.1, the Registrar may reinstate a cancelled license if the licensee pays all of the fees
2 and meets all of the qualifications and requirements for obtaining an original license.

3 7. Code section 7076.5 provides, in part, that the inactive status of a license shall not bar
4 any disciplinary action for violating provisions of the Contractors' State License Law (Bus. &
5 Prof. Code, § 7000, et seq.).

6 8. Code section 7106.5 provides, in part, that the expiration, cancellation, forfeiture, or
7 suspension of a license by operation of law or by order or decision of the Registrar, or a court of
8 law, or the voluntary surrender of the license shall not deprive the Registrar of jurisdiction to
9 proceed with any investigation of or action or disciplinary proceeding against the license, or to
10 render a decision suspending or revoking the license.

STATUTORY PROVISIONS

12 9. Code section 7090 provides, in part, that the Registrar may suspend or revoke any
13 license or registration if the licensee or registrant is guilty of or commits any one or more of the
14 acts or omissions constituting cause for disciplinary action.

15 10. Code section 7112 states that "[o]mission or misrepresentation of a material fact by an
16 applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an
17 existing license constitutes a cause for disciplinary action."

18 11. Code section 7068 states, in part:

19 (a) The board shall require an applicant to show the degree of knowledge and
20 experience in the classification applied for, and the general knowledge of the
21 building, safety, health, and lien laws of the state and of the administrative principles
22 of the contracting business that the board deems necessary for the safety and
protection of the public.

23 (b) An applicant shall qualify in regard to his or her experience and knowledge
in one of the following ways:

24 ...

25 (3) If a corporation, or any other combination or organization, it shall qualify
26 by the appearance of a responsible managing officer or responsible managing
27 employee who is qualified for the same license classification as the classification
being applied for.

28 ...

(e) Except in accordance with Section 7068.1, no person qualifying on behalf of an individual or firm under paragraph (1), (2), (3), or (4) of subdivision (b) shall hold any other active contractor's license while acting in the capacity of a qualifying individual pursuant to this section.

• • •

(g) Statements made by or on behalf of an applicant as to the applicant's experience in the classification applied for shall be verified by a qualified and responsible person. In addition, the registrar shall, as specified by board regulation, randomly review a percentage of such statements for their veracity.

12. Code section 7068.1 states, in part:

(a) The person qualifying on behalf of an individual or firm under paragraph (1), (2), (3), or (4) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations to secure compliance with this chapter and the rules and regulations of the board. This person shall not act in the capacity of the qualifying person for an additional individual or firm unless one of the following conditions exists:

(1) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity.

(2) The additional firm is a subsidiary of or a joint venture with the first. "Subsidiary," as used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the other firm.

(3) With respect to a firm under paragraph (2), (3), or (4) of subdivision (b) of Section 7068, the majority of the partners, officers, or managers are the same.

(b) Notwithstanding paragraphs (1) to (3), inclusive, of subdivision (a), a qualifying individual may act as the qualifier for no more than three firms in any one-year period.

• • •

(e) Violation of this section shall constitute a cause for disciplinary action.

REGULATORY PROVISION

13. California Code of Regulations, title 16, section 823, subdivision (b), provides:

For purposes of Section 7068.1 of the Code, “direct supervision and control” includes any one or any combination of the following activities: supervising construction, managing construction activities by making technical and administrative

1 decisions, checking jobs for proper workmanship, or direct supervision on
2 construction job sites.

3 **COST RECOVERY**

4 14. Code section 125.3 provides, in part, that the Registrar may request the administrative
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 **FACTUAL STATEMENT**

9 15. On or about August 16, 2011, in the matter entitled *People v. Wen Ping Li*, Santa
10 Clara Superior Court Case No. C1084980, Respondent was convicted of engaging in business
11 without a license (Bus. & Prof. Code, § 7028, subd.), a misdemeanor. Imposition of the sentence
12 was stayed. Respondent was ordered to serve two years of probation and pay fines.

13 16. On or about August 10, 2011, the Board received Respondent Li's application for a
14 Contractor's license. On or about August 24, 2011, the Board requested additional information
15 from Respondent Li regarding his failure to answer Question No. 11. Question No. 11 asks "Has
16 anyone listed on this application ever pleaded guilty or no contest to or been convicted by a court
17 of any misdemeanor or felony in this state or elsewhere? You are required to check "Yes" and
18 provide all of the requested information even if the conviction was sealed or expunged under
19 Penal Code Section 1203.4 or an applicable code of another state." On or about September 26,
20 2011, Respondent sent the Board an amended application, answering "No" to Question No. 11.

21 17. On or about January 20, 2012, the Board denied Respondent Li's application for
22 failure to provide verifiable documentation of his claimed work experience and for untruthfully
23 answering "No" to Question No. 11. On or about May 30, 2013, in *In the Matter of the Statement*
24 *of Issues Against Wen Ping Li* before the Contractors' State License Board, in Case Number
25 N2011-411, the Board affirmed the denial of Respondent Li's application.

26 18. On or about September 19, 2011, the Board received Respondent Amodern's
27 application for a Contractor's license. The application was signed, under penalty of perjury, by
28 Respondent Chen and Respondent Li. Respondents answered "No" to Question No. 11.

1 Respondent Chen signed the application as the qualifying individual and as Respondent
2 Amodern's Responsible Managing Officer. Question No. 13 of the application asks "The
3 Registrar of Contractors has determined that direct supervision and control includes any one or a
4 combination of the following activities: supervising construction, managing construction
5 activities by making technical and administrative decisions, checking jobs for proper
6 workmanship, or direct supervision on construction job sites. Will you, as the qualifying
7 individual, perform one or more of these duties?" Respondent Chen answered "Yes" to Question
8 No. 13.

9 19. On or about August 12, 2013, in an interview with a Board investigator, Respondent
10 Chen admitted that he does not oversee or manage the business operations of Respondent
11 Amodern, he does not supervise Respondent Li on construction job sites, and that Respondent Li
12 runs the Respondent Amodern's business.

FIRST CAUSE FOR DISCIPLINE

(Misrepresentation of Material Facts)

15 20. Respondents' licenses are subject to disciplinary action because in the September 19,
16 2011, license application, they failed to disclose a prior conviction and they misrepresented that
17 Respondent Chen had "direct supervision and control" over the activities of the business. (Bus. &
18 Prof. Code, §7112.) The circumstances are set forth more particularly in paragraphs 15 through
19 19, above.

SECOND CAUSE FOR DISCIPLINE

(Failure of Qualifier to Exercise Supervision)

22 21. Respondents' licenses are subject to disciplinary action because Respondent Chen
23 failed to exercise direct supervision and control of Respondent Amodern's construction
24 operations. (Bus. & Prof. Code, § 7068.1.) The circumstances are more particularly set forth in
25 paragraphs 2, 18, and 19, above.

26 | //

27 | / / /

DISCIPLINARY CONSIDERATIONS

2 22. To determine the degree of discipline, if any, to be imposed on Respondents,
3 Complainant alleges that on or about May 30, 2013, in a prior disciplinary action entitled *In the*
4 *Matter of the Statement of Issues Against Wen Ping Li* before the Contractors' State License
5 Board, in Case Number N2011-411, Respondent's application for a general contractor's license
6 was denied. The circumstances are set forth more particularly in paragraph 17, above. That
7 decision is now final and is incorporated by reference as if fully set forth.

OTHER MATTERS

9 23. Pursuant to Code sections 7097 and 7098, when any license has been suspended or
10 revoked following a hearing, the Registrar may suspend or revoke, without further notice, any
11 additional license issued in the name of the licensee or that for which the licensee furnished the
12 qualifying experience and appearance under the provisions of Code section 7068.

13 24. Pursuant to Code section 7121, if discipline is imposed on Contractor's License
14 Number 967928, Classification B, Ri-Tang Chen and Wen Ping Li shall be prohibited from
15 serving as an officer, director, associate, partner, or qualifying individual of any licensee during
16 the time that discipline is imposed on that license, and any licensee which employs, elects, or
17 associates Ri-Tang Chen or Wen Ping Li in any capacity, other than as a non-supervising bona
18 fide employee, shall constitute grounds for disciplinary action.

19 25. Pursuant to Code section 7121.5, if discipline is imposed on Contractor's License
20 Number 967928, Classification B, Ri-Tang Chen and Wen Ping Li shall be prohibited from
21 serving as an officer, director, associate, partner, or qualifying individual of any licensee during
22 the time that discipline is imposed on that license, whether or not he had knowledge of or
23 participation in the acts or omissions constituting grounds for discipline, and any licensee which
24 employs, elects, or associates Ri-Tang Chen or Wen Ping Li shall be subject to disciplinary
25 action.

26 | //

27 | //

PRAYER

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

1. Revoking or suspending Contractor's License Number 967928, Classification B, issued to Amodern Construction, Inc., Ri-Tang Chen, RMO, and Wen Ping Li, CEO/President;

2. Prohibiting Ri-Tang Chen and Wen Ping Li from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license Number 967928, Classification B, issued to Amodern Construction, Inc., Ri-Tang Chen, RMO, and Wen Ping Li, CEO/President;

3. Revoking or suspending Contractor's License Number 681263, Classification B, issued to RTC Construction Co, Ri-Tang Chen, Sole Owner;

4. Prohibiting Ri-Tang Chen from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license

5 Revoking or suspending Contractor's License Number 844135, Classification B, issued to C P County Construction, Ri-Tang Chen, RMO/CEO/PRES and Zeng Zhi Pang, Of

6. Prohibiting Ri-Tang Chen, RMO/CEO/PRES and Zeng Zhi Pang from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license Number 844135, Classification B, issued to C P County Construction, Ri-Tang Chen, RMO/CEO/PRES and Zeng Zhi Pang, Officer;

7. Revoking or suspending any other license for which Ri-Tang Chen or Wen Ping Li is furnishing the qualifying experience or appearance;

8. Ordering Ri-Tang Chen and Wen Ping Li to pay the Registrar of Contractors his costs in the investigation and enforcement of the case according to proof at the hearing, pursuant to Business and Professions Code section 125.3;

9. Ordering Ri-Tang Chen and Wen Ping Li to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each; and

111

1 10. Taking such other and further action as deemed necessary and proper.
2
3
4 DATED: May 14, 2014 for Heather Henderson
5 WOOD ROBINSON
6 Enforcement Supervisor I
7 Contractors' State License Board
8 Department of Consumer Affairs
9 State of California
10 *Complainant*
11
12 SF2013406386/ 90382920.doc
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
MAY 14 2014
CSLB DSS