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8 **BEFORE THE**
REGISTRAR OF CONTRACTORS
9 **CONTRACTORS' STATE LICENSE BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation Against:

Case No. N2014-249

13 **BERMUDEZ TRIANGLE ENTERPRISES, INC.**
14 **dba BERMUDEZ TRIANGLE LANDSCAPE,**
1058 West King Street
15 Banning, CA 92220
JOSUE BERMUDEZ, RMO/CEO/Pres.

FIRST AMENDED
PETITION TO REVOKE
PROBATION

16 Contractor's License No. 798206

17 Respondent.

18 **BERMUDEZ BELTRAN PROPERTY MGMT, INC.**
19 **dba CREATIVE DESIGN LANDSCAPE;**
1722 Miranda Lane
20 Beaumont, CA 92223
JOSUE BERMUDEZ, RMO
21 JOSE ANGEL BELTRAN NAVA, Officer

22 Contractor's License No. 929858

23 Affiliated Partys.

24
25 Complainant alleges:

26 **PARTIES**

27 1. Wood Robinson (Complainant) brings this First Amended Petition to Revoke
28 Probation solely in his official capacity as the Enforcement Supervisor I of the Contractors' State

License Board, Department of Consumer Affairs (Board).

License Histories

Bermudez Triangle Enterprises Inc.

2. On or about August 9, 2001, the Registrar issued Contractor's License No. 798206 to Bermudez Triangle Enterprises Inc. dba Bermudez Triangle Landscape, Josue Bermudez, RMO/CEO/PRES (Respondent). The Contractor's License expired on December 31, 2014, is canceled and not able to contract.

Bermudez Beltran Property Mgmt, Inc.

3. On or about March 13, 2009, the Registrar of Contractors (Registrar) issued Contractor's License No. 929858 to Bermudez Beltran Property Mgmt, Inc. dba Creative Design Landscape, Josue Bermudez, RMO, and Jose Angel Beltran Nave, Officer (Affiliated Party). The Contractor's License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2021, unless renewed.

Disciplinary Action

4. In a disciplinary action entitled *In the Matter of Accusation Against Bermudez Triangle Enterprises Inc. dba Bermudez Triangle Landscape*, Case No. N2014-249, the Registrar of Contractors, Contractors' State License Board, issued a decision, effective October 19, 2017, in which Respondents' Contractor's Licenses were revoked. However, the revocation was stayed and Respondent's Contractor's License was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

5. The Decision and Order, Case No. N2014-249 states, in pertinent part:

IT IS FURTHER ORDERED that BERMUDEZ TRIANGLE ENTERPRISES INC. dba BERMUDEZ TRIANGLE LANDSCAPE, License Number 798206, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of \$30,000.00, for a period of not less than three years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a disciplinary bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.

1 IT IS FURTHER ORDERED that unless JOSUE BERMUDEZ; RMO disassociates
2 from BERMUDEZ BELTRAN PROPERTY MGMT, INC. dba CREATIVE DESIGN
3 LANDSCAPE, on or before the effective date of this Decision, the same penalties imposed
4 upon BERMUDEZ TRIANGLE ENTERPRISES INC. dba BERMUDEZ TRIANGLE
5 LANDSCAPE shall be imposed upon License Number 929858, pursuant to and in
6 accordance with Sections 7097 and 7098 of the Contractors License Law.

7 6. The Decision and Order's terms and conditions of probation provide, in pertinent
8 part:

9 VIOLATION OF PROBATION. If Bermudez Triangle Enterprises, Inc. and Joshue
10 Bermudez violate probation in any respect, the Registrar, after giving notice and
11 opportunity to be heard, may revoke probation and impose the disciplinary orders that were
12 stayed.

13 7. On or about January 25, 2018, the Board sent a letter to Respondent notifying their
14 failure to comply with the probationary order.

15 8. On or about September 6, 2018, the Board requested that the Attorney General's
16 office prepare a Petition to Revoke Probation against Respondent's license, thereby automatically
17 extending the probationary period, which shall not expire until the accusation or petition has been
18 acted upon by the Board.

19 PETITION TO REVOKE PROBATION

20 9. Among the terms and conditions imposed by the Board in Decision,
21 Case No. N2014-249 are:

22 PAYMENT OF COSTS OF INVESTIGATION AND PROSECUTION. Respondent
23 shall pay the board costs of investigation and enforcement of this action in the amount of
24 \$5,000. Repayment of the costs shall be on such terms and conditions as mutually agreed
25 upon by the respondent and the board, and may be paid in a payment plan or a lump sum at
26 any time prior to the termination of probation. However, probation shall not terminate
27 until all such costs have been paid.

28 IT IS FURTHER ORDERED that respondent shall pay the investigative costs in the
amount of \$5,000.00. Monthly payments are to be made in the amount of \$166.67, until
completed. Payments are to be made at the end of each month, commencing the first full
month after the effective date of this decision.

4 CAUSE TO REVOKE PROBATION

5 (Payment of Costs of Investigation and Prosecution)

6 10. Respondents' and Affiliated Party's probation is subject to revocation because they
7 failed to comply with Probation Condition, Payment of Costs of Investigation and Prosecution,

1 referenced above, in that Respondent failed to comply with the cost recovery payment plan,
2 paying \$166.67 monthly to the Board. Respondent made one \$166.67 payment. The outstanding
3 cost recovery balance due to the Board is \$4,833.33.

4 **PRAYER**

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

- 7 1. Revoking the probation that was granted by the Registrar, in Case No. N2014-249
8 and imposing the disciplinary order that was stayed;
- 9 2. Revoking or suspending Contractor's License No. 798206 issued to Bermudez
10 Triangle Enterprises Inc. dba Bermudez Triangle Landscape, Josue Bermudez, RMO/CEO/PRES;
- 11 3. Revoking or suspending Contractor's License No. 929858 issued to Bermudez Beltran
12 Property Mgmt, Inc. dba Creative Design Landscape, Josue Bermudez, RMO, and Jose Angel
13 Beltran Nava, Officer; and,
- 14 4. Taking such other and further action as deemed necessary and proper.
- 15

16
17 DATED: _____

6/25/2019



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

18 **FILED**
19 **JUN 25 2019**
20 **CSLB DSS**
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Exhibit A

Decision and Order

Contractors' State License Board Case No. N2014-249

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

In the Matter of the Accusation Against:

BERMUDEZ TRIANGLE ENTERPRISES INC.
dba BERMUDEZ TRIANGLE LANDSCAPE,
1058 West King Street
Banning, CA 92220
JOSUE BERMUDEZ, RMO/CEO/Pres.

Contractor's License No. 798206,

Respondent.

BERMUDEZ BELTRAN PROPERTY MGMT,
INC.

dba CREATIVE DESIGN LANDSCAPE;
1058 West King Street
Banning, CA 92220
JOSUE BERMUDEZ; RMO; JOSE ANGEL
BELTRAN NAVA, Officer

Contractor's License No. 929858

Affiliated Party.

CASE NO. N2014-249

OAH NO. 2017040156

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, except that it is modified to **DELETE** the following probationary term:

COURSE REQUIREMENT. Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college.

The failure to comply with the provisions of the probation will cause the probationary period to be extended, until said terms are complied with or the discipline is reimposed.

IT IS FURTHER ORDERED that **BERMUDEZ TRIANGLE ENTERPRISES INC. dba BERMUDEZ TRIANGLE LANDSCAPE**, License Number **798206**, on the effective date of this Decision shall have on file a Disciplinary Bond or post a cash deposit in the amount of **\$30,000.00**, for a period of not less than three years pursuant to Section 7071.8 of the Business and Professions Code. Any suspension for failing to post a disciplinary bond or a cash deposit, or any suspension for any other reason, shall not relieve the Respondent from complying with the terms and conditions of probation. Furthermore, suspension of the license during the period of probation, for any reason under this chapter, will cause the probationary period to be automatically extended in time equal to the length of time that the license is not in a clear and active status.

IT IS FURTHER ORDERED that unless **JOSUE BERMUDEZ; RMO** disassociates from **BERMUDEZ BELTRAN PROPERTY MGMT, INC. dba CREATIVE DESIGN LANDSCAPE**, on or before the effective date of this Decision, the same penalties imposed upon **BERMUDEZ TRIANGLE ENTERPRISES INC. dba BERMUDEZ TRIANGLE LANDSCAPE** shall be imposed upon License Number **929858**, pursuant to and in accordance with Sections 7097 and 7098 of the Contractors License Law.

IT IS FURTHER ORDERED that respondent shall pay the investigative costs in the amount of \$5,000.00. Monthly payments are to be made in the amount of \$166.67, until completed. Payments are to be made at the end of each month, commencing the first full month after 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 the Order. 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 if ordered, and payments for the Cost of Investigation and Enforcement are to be sent to CSLB, Sacramento Case Management, Post Office Box 26888, Sacramento, CA 95826.

This Decision shall become effective on October 19, 2017.

IT IS SO ORDERED September 18, 2017.



David Fogt
Registrar of Contractors

INFORMATION PURSUANT TO §11521 OF THE GOVERNMENT CODE

If you wish to file a Petition for Reconsideration pursuant to Government Code §11521, the text which appears below for your review, the Petition must be received prior to the effective date of the Decision. However, please be aware that the Board needs approximately 5 working days to process a Petition. Petitions should be sent to the following address: CONTRACTORS STATE LICENSE BOARD, P.O. BOX 269121, SACRAMENTO, CA 95826, ATTN: LEGAL ACTION DEPUTY. Fax documents can be sent to (916) 255-3933.

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

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

In the Matter of the Accusation Against:

BERMUDEZ TRIANGLE ENTERPRISES,
INC. DBA BERMUDEZ TRIANGLE
LANDSCAPE, JOSUE BERMUDEZ,
RMO/CEO/PRES

License No. 798206

Respondent.

BERMUDEZ BELTRAN PROPERTY
MANAGEMENT, INC., DBA CREATIVE
DESIGN LANDSCAPE, JOSUE
BERMUDEZ, RMO; JOSE ANGEL
BELTRAN NAVA, OFFICER

License No. 929858,

Affiliated Party.

Citation No. N2014-249

OAH No. 2017040156

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 14 and 15, 2017, in San Bernardino, California.

Alvaro Mejia, Deputy Attorney General, represented complainant Wood Robinson, Enforcement Supervisor I, Contractors' State Licensing Board (CSLB), Department of Consumer Affairs, State of California.

Josue Bermudez represented respondent, Bermudez Triangle Enterprises, which is owned by Mr. Bermudez.

The matter was submitted for decision on August 15, 2017.

FACTUAL FINDINGS

Jurisdictional Matters

1. Josue Bermudez is the sole owner of Bermudez Triangle Enterprises, Inc., doing business as Bermudez Triangle Landscape and has held license number 798206 since 2001, in class B (general contractor), class C-27 (landscaping), and class C-53 (swimming pool). The license was cancelled by Mr. Bermudez on December 31, 2014. Other than a citation in 2014, there is no prior history of discipline against this license.¹ There was, at the time of the events that formed the basis for this matter, a workers' compensation exemption certificate on file certifying that the licensee had no employees other than Mr. Bermudez.

2. Mr. Bermudez is also the responsible managing officer of Bermudez Beltran Property Management, Inc., doing business as Creative Design Landscape, and has held license number 929858 since 2009, in class C-27 (landscaping). The license is valid and in effect until March 31, 2019, unless renewed, suspended, or revoked. There is no prior history of discipline against this license. This license has a workers' compensation exemption certificate on file certifying that the licensee had no employees other than Mr. Bermudez.

3. On January 7, 2016, complainant signed the Accusation alleging 14 causes for discipline against respondent² stemming from two swimming pool projects, the Figwood Project and the Overton Project, including the following: abandonment, departure from accepted trade standards, departure from plans or specifications, failure to pull building permits, failure to include contractor license number on advertisements, failure to complete project for price stated, working out of name style, excessive down payment, and filing a false worker's compensation exemption certificate.

4. Respondent timely appealed and filed a notice of defense; this hearing ensued.

The CSLB's Investigation

5. Sylvia Marin, Enforcement Representative II, testified on behalf of complainant. Ms. Marin authenticated the investigative report concerning the Figwood and Overton projects, which was completed by Sharon Abrantes, who is now deceased. Regarding the Figwood project, Ms. Abrantes summarized Mr. Bermudez's statement to her as follows:

¹ Complainant did not provide a full history of the license so it is unknown what the nature of the citation was. Records did reflect that respondent complied with the terms of the citation.

² In this decision, the term "respondent" shall mean Bermudez Triangle Enterprises, Inc. Mr. Bermudez will be referred to as himself, where appropriate, since he is not an individual respondent.

The Garcia's were referred to me by a friend. I entered into a contract with them to build a swimming pool for \$41,600. I started working in July 2013. I had the plans approved by the City of Fontana. I did have sub-contractors working for me and I will get back to you with that information. I did have two employees working for me I am aware that I did not have worker compensation insurance in place.

I was in the middle of blowing concrete when Richard called me and wanted to enlarge the grotto. I explained to him that I could not change things in the middle of installing concrete. Richard insisted so I stuck in more rebar during the concrete installation. When I presented him with the written change order he refused to sign it. At that point I had already installed more rebar to enlarge the grotto. He also wanted the gas and electric line re-routed because his wife was not happy with where they were located. I explained to him it would cost more money, but he refused to sign a change order. I will provide you a copy of the change order I submitted to Richard. I paid \$350 for the new gas line and \$2800 for the rebar for the change order he refused to sign.

The notice from the city of Fontana was done after I had the rebar inspected and sign[ed] off. It was not a correction notice it was just a notice that they [gave] to Richard. So I am not sure what they are talking about. All of my inspection[s] were passed and signed off by the city of Fontana.

I received the industry expert report and I do not agree with the expert report. I have been working in this field for 12 years and the industry expert is incorrect. I was terminated by text [in] approximately September 2013. This was not the first time I was fired by Richard. The first time was about three months earlier. After two weeks, he called me back and told me he just wanted to move forward and get the pool completed. I did not abandon the project at any time. I am still owed \$14,600 by the Garcias.

6. Regarding the Overton project, Ms. Abrantes summarized Mr. Bermudez's statement to her as follows:

I entered into a written contract with Diana Nevarez to build a swimming pool, spa retaining wall, concrete patio with drains, an island with grill, sink refrigerator, and palapa for \$54,800.00 at her home in San Jacinto. I accepted a down payment of

\$1000, which I know was a violation. I completed everything in the contract except I did not install the grill and palapa. Diana did not allow me back to install them. She has only paid me \$51,900; she still owes me \$6,700.

A permit was not obtained for the retaining wall per Diana instructions. Diana wanted the wall higher after we began building the wall. At that point, I told her that she would need a permit. This was an owner/builder project from the beginning. She did not want to go through the city and obtain a permit. I did not want to do this but she pressured me. I explained to her that she would be responsible for any violations from the city, she agreed.

I did have two employees working with me and did not have worker's compensation insurance. I am not willing to go back out and make correction since my bond company has already settled with Diana.

I received the industry expert report and I do not agree with the expert report. I have been working in this field for 12 years and the industry expert is incorrect. I will write down my response to the report and send it to you.

7. According to Ms. Abrantes's report, no further information was ever received from Mr. Bermudez pertaining to either project.

8. A copy of the front of respondent's business card presented to the owner of the Figwood project was contained in the investigative report. The front of the business card did not contain a license number. The back of the business card, where Mr. Bermudez testified the license number was located, was not found in Ms. Abrantes's report. It could not be determined from the report whether Ms. Abrantes failed to copy the rear of the card or did not copy the card because it was blank.

The Figwood Project

9. Mr. Bermudez and Richard Garcia entered into a contract to build a swimming pool on Mr. Garcia's property on July 2, 2013. The contract included a provision that all written change orders be in writing. The total contract price was \$41,600. The contract contained respondent's license number and the name "Bermudez Triangle Pools & Spas." The contract did not contain respondent's licensed name, Bermudez Triangle Enterprises, Inc., or the "doing business as" name listed on the license, Bermudez Triangle Landscape.

MR. GARCIA'S SUMMARIZED TESTIMONY

10. According to Mr. Garcia, Mr. Bermudez had five or six employees who were not subcontractors working on the project. Mr. Garcia testified that he paid Mr. Bermudez a total of \$27,000 before Mr. Bermudez abandoned the project. Mr. Garcia originally became concerned about the project when Mr. Bermudez was going to run a gas pipe through the attic; Mr. Garcia believed that the pipe was to be much smaller than it was. A dispute arose. Mr. Bermudez presented Mr. Garcia with a change order, but Mr. Garcia refused to sign it. Mr. Bermudez stopped work, and Mr. Garcia called the CSLB. He also exchanged text messages with Mr. Bermudez for several weeks. Eventually the two came to an agreement, and even though Mr. Garcia did not sign the change order, Mr. Bermudez returned to work and completed the gas line at his own expense.

A dispute then arose concerning the size of the pool. Mr. Garcia testified that he asked and contracted for a pool that was 16 feet by 35 feet and 8 feet deep. He measured the pool and it was not compatible with the measurements depicted in the diagram he and Mr. Bermudez agreed to. Mr. Garcia was also unhappy with the appearance of the rocks around the pool.

Mr. Garcia became further concerned when a city inspector issued a "notice" regarding the rebar being used for the spa. Mr. Garcia contacted Mr. Bermudez about the rebar problem and Mr. Bermudez told Mr. Garcia that it had already been inspected and was fine. When Mr. Garcia said it needed to be changed, Mr. Bermudez said it would cost more money; Mr. Garcia said he would not pay more money. Mr. Garcia said Mr. Bermudez came, picked up his tools, and left without completing the project.

Mr. Garcia insisted that he never stopped Mr. Bermudez from working and was surprised when he picked up his tools and left. He said he did not want Mr. Bermudez to stop working on the project; he did not want to hire anyone else; and he did not want to change the project. Nonetheless, Mr. Garcia hired someone else to finish the pool and claimed he spent \$28,000. He did not provide evidence of that expense.

INDUSTRY EXPERT'S SUMMARIZED TESTIMONY AND REPORT

11. Billy Howse has been a licensed contractor since approximately 2002. He holds licenses in class C-27 (landscape construction), C-53 (swimming pools), and Class B (general contractor). Prior to becoming licensed, Mr. Howse had landscaping experience from working with his father and brother-in-law, as well as general contracting experience. All of his work has been residential. Mr. Howse has installed approximately 100 swimming pools, 30 of which were "rock" pools like the ones requested by the homeowners in this matter. Mr. Howse became an industry expert for the CSLB in 2005 and has reviewed approximately 300 projects. Mr. Howse qualifies as an industry expert in his classifications.

Mr. Howse concluded that the project was not completed according to specifications and the standard in the industry in multiple respects.

The pool, spa, and waterfall were not complete. The standard in the industry would have been to form the rock to look natural and coat with three coats of paintable concrete sealer prior to painting and staining with concrete stains and/or stucco type paint. Upon inspection, Mr. Howse noticed that Mr. Bermudez did not install artificial rock border outside the pool wall to the ground; did not sculpt the artificial rock to look like real rock; did not seal the coping; did not stain and paint the artificial rock; and did not install plaster, fill, and start the pool. The cost to correct all these items was estimated to be \$23,400.

Regarding the pool size and depth, Mr. Howse found the pool size and depth to be 14 feet by 32 feet. The contract called for a pool that was 16 feet by 35 feet. The pool was also supposed to be 7x5x2 feet in depth from the deep end to shallow end. The actual dimensions were 7x4x18. So, although the pool was not built according to specifications and the standard in the industry – which would have been to build it to the proper dimensions – there was no need to correct. Mr. Howse found that CSLB Board ruling 880 applied to the situation, which states that even though an item may not be exactly to specifications, if it functions correctly and it is not practical to reconstruct it, it is acceptable.

Regarding the waterfall, the City of Fontana approved plans that showed the waterfall rebar was supposed to have a minimum of 24-inches overlap onto the rebar in the pool shell. The waterfall was also supposed to be six feet while the actual waterfall is eight feet. Mr. Howse found that the waterfall rebar was not installed with a minimum of 24-inches overlap into the pool shell. The method of correction for this item would be to jackhammer out the pool wall to expose the rebar to allow ample room for bonding of new concrete. Then, a contractor would have to install new rebar with proper overlap, apply concrete to the pool shell, and reduce the size of the waterfall to six feet instead of eight feet. The cost of correction for these items was not specifically itemized; Mr. Howse's report referred to the overall cost to redo the pool which was estimated to be \$23,400. Broken down within that figure was the amount of \$15,000, attributable to the waterfall and grotto corrections.

Mr. Howse also found that no pool equipment (i.e. filter, filter pump, heater, boost pump, controller with salt system, pool light, spa light) was installed. The cost to correct this deficiency was estimated to be \$12,100.

Mr. Howse finally found that the dirt removed from the pool had been left in the backyard. The standard in the industry would be to remove all of the excavation soil and backfill the plumbing trenches around the pool. The cost to correct his deficiency was estimated to be \$800.

MR. BERMUDEZ'S SUMMARIZED TESTIMONY

12. Mr. Bermudez did not dispute that he had employees working for him on the Garcia project who were not subcontractors.

Mr. Bermudez testified that that there were two times while he was working on Mr. Garcia's pool where Mr. Garcia changed the plans. The first was the gas line; Mr. Garcia

originally agreed to have the gas line run through the attic, however, when his wife saw how big the pipe was, she did not want it running down the side of the house. Mr. Bermudez told Mr. Garcia that if the pipe had to be re-routed, he would have to break concrete and run it through the ground, at an extra cost of about \$2,500. Mr. Garcia refused to pay any extra money, so work stopped. He continued to speak with Mr. Garcia through text messages and eventually agreed to come back and redo the gas line. Mr. Bermudez finished the gas line at his own expense.

The next dispute arose while they were working on the rock formations around the pool. Mr. Garcia became concerned that the rocks did not look the way he wanted. Mr. Bermudez said he invited Mr. Garcia to come down into the pool to show exactly what Mr. Garcia wanted. After Mr. Bermudez completing a few samples, Mr. Garcia was happy with the product so Mr. Bermudez continued with the pattern. Several days later, Mr. Garcia was not happy with the rock formations and told Mr. Bermudez to break it out and start over.

Another dispute arose concerning the waterfall. Mr. Bermudez said that the plans called for a waterfall – not a grotto. He said a waterfall is just water; a grotto is a structure with a roof. In reviewing the sketch attached to the contract, Mr. Bermudez is correct; the plans called only for a waterfall and not a grotto. He said the waterfall was built according to specifications. The rebar and waterfall area had already been inspected and passed by the city when Mr. Garcia decided to change plans to a grotto. Mr. Garcia wanted to change the plans to a grotto but would not pay any extra money. Mr. Bermudez said he presented Mr. Garcia with a change order but Mr. Garcia would not sign it. So, Mr. Garcia stopped the project and told him he was not doing any more work until he signed the change orders.

Mr. Bermudez contended that the pool itself was built to specifications and the soil left on the site was not excessive. He also said he was paid up to what had been completed and did not take any money in excess of the work he completed. He said he is actually owed money for the sculpting of the rock.

The Overton Project

13. Mr. Bermudez and Diana Nevarez entered into a contract to build a swimming pool on Ms. Nevarez's property on March 8, 2013. The contract included a provision that required change orders to be in writing and permitted the substitution of "equipment of equal quality" in the event of non-availability. The total contract price was \$54,800. The contract contained respondent's license number and the name "Bermudez Triangle Pools & Spas." The contract did not contain respondent's licensed name, Bermudez Triangle Enterprises, Inc., or the "doing business as" name listed on the license, Bermudez Triangle Landscape. The contract showed a down payment of \$1,000, and a payment of \$3,400 for plans, engineering, and permitting. Although Ms. Nevarez wrote on the \$3,400 check that it was for a "deposit/payment," the contract and Mr. Bermudez's testimony established that the \$3,400 was not a down payment and instead was for the purpose of obtaining plans and permits.

MS. NEVAREZ'S SUMMARIZED TESTIMONY

14. Ms. Nevarez testified at the hearing and her testimony is summarized as follows:

According to Ms. Nevarez, Mr. Bermudez had anywhere from two to four people working with him during the project that were not subcontractors. They referred to Mr. Bermudez as their "boss."

Ms. Nevarez testified that she paid Mr. Bermudez almost the full price of the contract. Checks provided to the CSLB showed she paid \$51,900. She assumed Mr. Bermudez would get the permits that were required for the job. She would ask him as the project progressed whether he obtained the proper permits and he would "give her the run around." She became concerned so she called the city and an inspector said no permits had been pulled for the job. The city issued a stop order. Once the proper permit was pulled, Mr. Bermudez began working on the pool.

The relationship, according to Ms. Nevarez, deteriorated because Mr. Bermudez would not show up for work as promised. She said she continued to pay him even though he was "not doing a good job."

At some point, a dispute arose about the pool retaining wall. Ms. Nevarez said she thought it would be about five feet tall, despite that not being specified in the contract. She said she told Mr. Bermudez to build it higher and he responded that building it higher would require a permit. At that point she learned that all retaining walls needed a permit and that Mr. Bermudez had not pulled a permit for her retaining wall. Ms. Nevarez testified that she "did not care how high the wall was just that it was permitted." The relationship continued to break down following this incident. She also became upset because the pool pump installed was not the same brand as specified in the contract and the pool was not completed by June 30, 2013, which is when she had wanted it completed.

Ms. Nevarez provided a series of text messages, which she stated were not all the text messages exchanged between her and Mr. Bermudez, showing communication between the two in July 2013. The text messages show Mr. Bermudez diligently communicating with Ms. Nevarez regarding what he intended to do on the project, and Ms. Nevarez expressing concern about the project. The text messages were very difficult to understand because many were undated and were not in order; they also clearly were bits and pieces of communications between the parties and not the complete record. However, one thing is clear: Ms. Nevarez told Mr. Bermudez on an unspecified date that he had 72 hours to complete the entire project. At the time Ms. Nevarez threatened termination, the palapa and barbecue for the pool area had been ordered; just not installed. Subsequent text messages indicated Mr. Bermudez was in the process of obtaining those items from a subcontractor. Ms. Nevarez said when Mr. Bermudez came to her home with the items, she was not home. Ms. Nevarez told her son not to permit Mr. Bermudez to enter.

Ms. Nevarez stated she obtained bids from other contractors to finish the job but has not finished it because of personal and financial issues. She said she complained to the CSLB and to Mr. Bermudez's bond company. She received \$9,598 from the bond company to settle her complaint.

INDUSTRY EXPERT'S SUMMARIZED TESTIMONY AND REPORT

15. Regarding the retaining wall, Mr. Howse noted that no permit had been pulled to build the wall and that the City of San Jacinto requires a permit for all retaining walls. Mr. Howse could not conclude whether the wall was installed correctly because it was not inspected by the city. The method of correction stated would be to remove and replace the wall and regrade the hillside. The cost to correct this deficiency was estimated to be \$10,200.

Regarding the concrete deck, Mr. Howse found it presented a tripping hazard and that the cement was not level. Mr. Bermudez installed the concrete deck with a 5/8 inch vertical displacement lower than the existing concrete deck. It also had chips and the flow between the concrete sections were not level. The standard in the industry is to construct concrete decks with soils and subsurfaces that are compacted sufficiently to prevent excessive movement. Decks and patios should be constructed to slope away from the house with a slope a quarter of an inch per foot of deck. Cracks in hard surfaces exceeding a quarter of an inch in width, or a quarter of an inch in vertical displacement are not acceptable. The estimated cost to correct these deficiencies was estimated to be \$7,000.

Regarding the soil behind the retaining wall, Mr. Howse found that the soil level was behind the retaining wall cap and there were gaps on either side of the wall, which can cause soil and water to run through the gap and into the pool.

Regarding the island, Mr. Howse found that the island was incomplete because the palapa and barbecue had not been installed. The cost to correct this item was estimated at \$3,200.

Regarding the pool equipment, Mr. Howse found that the pool pumps and filter were different brands than that specified in the contract. He found that the pool equipment was the same efficiency rating and that equipment substitutions are common in the swimming pool industry. He did not state a method of correction for that reason. Also, the pool equipment was not level and the pool pumps leaked when running. The standard in the industry is to install the pool equipment level and ensure nothing is leaking. The cost to correct these deficiencies was estimated to be \$400. The pool heater was also not connected to the gas line. The estimated cost to connect the pool heater to the gas line was estimated to be \$300.

Regarding the pool depth, Mr. Howse found the depth to be 6 feet 10 inches. The plans indicated that the pool was to be 8 1/2 feet deep. However, with respect to the cost for correction, Mr. Howse found that CSLB Board ruling 880 applied to the situation, which

states that even though an item may not be exactly to specifications, if it functions correctly and it is not practical to reconstruct it, it is acceptable.

Regarding the rock coping, Mr. Howse found that it was not relatively level around the perimeter of the pool. The standard in the industry would be to keep the rock coping level. Mr. Howse stated this is a quality and craftsmanship issue as opposed to a workmanship issue. However, with respect to the cost for correction, Mr. Howse found that CSLB Board ruling 880 applied to the situation, which states that even though an item may not be exactly to specifications, if it functions correctly and it is not practical to reconstruct it, it is acceptable.

Regarding the deck drains, Mr. Howse stated they were not level with the concrete surrounding them and were not positioned correctly around the pool deck. They also should be taken out to the street but it could not be verified if they did drain to the street. The standard in the industry would be to position the drains around the pool to channel water away from the yard to the street. The cost to correct these deficiencies was estimated to be \$800.

MR. BERMUDEZ'S SUMMARIZED TESTIMONY

16. Mr. Bermudez did not dispute that he had employees working for him on the Overton project who were not subcontractors.

Mr. Bermudez said he did start the project according to law because all he had done prior to obtaining the permit was remove grass and cut into the hillside, which does not require a permit. He obtained the proper permit for the pool. When he submitted his sketch to obtain the permit, the retaining wall was on the sketch, and nobody told him he needed a permit for the wall. Mr. Bermudez believed that as long as the wall did not exceed 12 inches, he did not need a permit. He said he told Ms. Nevarez that they could build a 12 inch wall and terrace up the hillside without having to go through the permitting process, and she agreed. Once he finished the wall, Ms. Nevarez was not happy and so they reconstructed it to meet her demands. When they did so, it triggered a permit requirement. He did not, however, obtain the permit prior to building the wall.

Mr. Bermudez said everything pertaining to the pool was about finished, with the exception of the custom barbecue and palapa, which were being provided by a third party. He said that they agreed on a gas barbecue but when he ordered it, she said she wanted a charcoal barbecue. He told her that would take longer, but he did order it. When he delivered the barbecue and palapa, Ms. Nevarez's son told him that they did not want him back on their property.

Regarding the allegations in the Eighth Cause for Discipline, Mr. Bermudez said the decks were installed, and although they may have been higher than they should have been, it could have been fixed. He said the wall was built according to his agreement with Ms. Nevarez. He said he compacted the soil appropriately, but he did not have the means to test

to ensure it was 95 percent; he also stated that the expert did not test the soil to make sure it was compacted to 95 percent. Mr. Bermudez also said there was no evidence he failed to level the pool pad before installing the filter or failed to install the threaded plumbing fittings correctly to prevent leakage. He said the deck drains were installed as per the plans and it was appropriate, and is common in the industry, to substitute different brands of pool pumps as long as they are the same in efficiency. - - -

Overall, he denied that he departed from the plans or specifications with respect to the depth of the pool and rock border. He said he did get the proper permits for the project but Ms. Nevarez's changes to the wall triggered a permit requirement. He said he would have obtained one if she paid for the permit; which she did not.

Mr. Bermudez believed he was paid up to what he intended to be paid. He noted that the pool was operating and being used by the homeowner, who appeared to have been enjoying the pool. He took the time to show her how to operate the waterfall and other features of the pool.

Costs of Investigation and Enforcement

17. Business and Professions Code section 125.3 authorizes complainant to seek recovery of the reasonable costs of its investigation and enforcement in disciplinary matters. Complainant submitted a certification of costs for work performed by the Office of the Attorney General. The certification reflected work completed in 2015. Attached to that certification is a form entitled, "Matter Time Activity By Professional Type." The attachment contains a general description of the tasks performed, the time spent on the tasks, and the hourly rate charged for the work of each employee. The certification of costs submitted in this matter established that the Department of Justice billed \$10,575 for its time expended on the case at a rate of \$170 per hour for attorneys and \$120 per hour for paralegals. The certification satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certification supports a finding that costs in the amount of \$10,575 are reasonable in both the nature and extent of the work performed.

18. A certification of costs was also submitted for the costs of investigation. This certification shows costs in the amount of \$2,465.29. It broke down the costs into general categories of "investigative services, industry expert, and costs of obtaining documents, but did not specify the exact task being performed by each employee and for how many hours each employee worked on that task. Although the accuracy of the certification is not questioned, this certification is not specific enough in its description of the nature and extent of the work performed to comply with California Code of Regulations, title 1, section 1042, subdivision (b). Thus, these costs cannot be awarded.

19. Mr. Bermudez testified that he is currently unemployed. He also filed for bankruptcy in 2015.

LEGAL CONCLUSIONS

The Purpose of the Contractors' Licensing Law

1. The purpose of the Contractors' State Licensing Law contained in Business and Professions Code section 7000 et seq., is to protect the public from incompetence and dishonesty in those who provide building and construction services. The licensing requirements provide 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. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; *Smith v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 117, 126.) Protection of the public is the board's highest priority. (Bus. & Prof. Code, § 7000.6.)

Standard and Burden of Proof

2. The proper standard of proof in an administrative hearing to revoke or suspend a contractor's license is clear and convincing evidence and the burden is in complaint. (Bus. & Prof. Code, § 7090.)

Applicable Law

3. The registrar may, but is not required, to suspend or revoke, without notice, any other license issued in the name of a licensee if discipline is imposed against another license held by the licensee. (Bus. & Prof. Code, § 7097.)

4. A person who has had discipline imposed against his or her license is prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a licensee. (Bus. & Prof. Code, § 7121.)

5. A licensee is required to have on file with the board a valid Certificate of Workers' Compensation Insurance. (Bus. & Prof. Code, § 7125, subd. (a).) A licensee is exempt from maintaining workers' compensation insurance if he or she has no employees and files a certificate with board attesting to the same. (Bus. & Prof. Code, § 7125, subd. (b).) Employing a person subject to workers' compensation laws after the filing of an exemption certificate, constitutes cause for disciplinary action. (Bus. & Prof. Code, § 7125.4, subd. (a).)

6. A licensee is required to include his or her license number in all construction contracts, subcontracts and calls for bid, and on all forms of advertising. (Bus. & Prof. Code, § 7030.5.)

7. Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action. (Bus. & Prof. Code, § 7107.)

8. Willful departure in any material respect from accepted trade standards for good and workmanlike construction constitutes a cause for disciplinary action, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect. (Bus. & Prof. Code, § 7109, subd. (a).)

9. Willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner or his or her duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans or specifications, constitutes a cause for disciplinary action. (Bus. & Prof. Code, § 7109, subd. (b).)

10. Business and Professions Code section 7110 provides:

Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof, or of Section 8550 or 8556 of this code, or of Sections 1689.5 to 1689.15, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation insurance laws or Unemployment Insurance Code of the state, or of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code), or violation by any licensee of any provision of the Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells, or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code, constitutes a cause for disciplinary action.

11. Failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action. (Bus. & Prof. Code, § 7113.)

12. Acting in the capacity of a contractor under any license issued hereunder except in the name of the licensee as set forth upon the license constitutes a cause for disciplinary action. (Bus. & Prof. Code, § 7117, subd. (a).)

Evaluation

CAUSES FOR DISCIPLINE RELATING TO THE FIGWOOD PROJECT

13. Clear and convincing evidence did not establish that respondent abandoned the Figwood Project, without legal cause, in violation of Business and Professions Code section 7107 [First Cause for Discipline]. Mr. Bermudez was in the middle of working on the project when a dispute arose about the waterfall. The sketch attached to the contract showed a waterfall. However, Mr. Garcia decided he wanted a grotto and change in the

specifications for the waterfall area. The change from a waterfall to a grotto structure would result in a change in cost and the need for a change order. Mr. Bermudez credibly testified that he presented a written change order to Mr. Garcia, which is what was required by contract, but Mr. Garcia would not sign it. At that point, Mr. Bermudez was essentially faced with a constructive termination. He could not proceed with the plan according to specifications because he was told that was not what Mr. Garcia wanted. He also could not proceed with the grotto, because a signed change order was not effectuated. Thus, he informed Mr. Garcia he was stopping work until a change order was signed.

Based on the testimony, Mr. Garcia and Mr. Bermudez had a difficult relationship earlier regarding the gas line, but that work stoppage resulted in Mr. Bermudez eventually coming back and making the requested change at his own expense. In other words, Mr. Bermudez had legally sufficient cause to stop work on the project because he was left with an impossible choice: finish the project according to the contract against the homeowners' wishes or finish the project at his own expense in a manner that departed from the plans. When presented with this scenario, a contractor cannot be faulted for halting work until the dispute is resolved. Mr. Bermudez did not finish the project, including the items listed in paragraph 26 of the accusation, because the waterfall dispute was not resolved. Mr. Garcia hired a new contractor to complete the project, and by doing so, ratified the earlier constructive termination of Mr. Bermudez. This is not abandonment under Section 7107.

14. Clear and convincing evidence established that respondent departed from accepted trade standards on the Figwood project, in violation of Business and Professions Code section 7109, subdivision (a) [Second Cause for Discipline]. Respondent did not install the waterfall rebar with a minimum of 24 inches overlap onto the pool wall rebar. Respondent also did not build the pool according to the dimensions stated in the contract. However, because respondent was constructively terminated, Mr. Bermudez was not permitted to complete or correct the project. Thus, it cannot be hypothesized that the job would not have been completed correctly.

15. Clear and convincing evidence did not establish that respondent failed to include its license number on an advertisement, as required by Business and Professions Code section 7030.5 [Third Cause for Discipline]. Complainant provided a copy of the front of respondent's business card, but the copy did not include the back of the business card. Respondent credibly testified that his license number was on the back of his business card. No explanation was provided as to why a true and correct copy of the entire business card was not included.

16. Clear and convincing evidence did not establish that respondent failed to complete the Figwood Project for the price stated in the contract, in violation of Business and Professions Code section 7113 Fourth Cause for Discipline]. In *Tellis v. Contractors' State License Board* (2000) 79 Cal.App.4th 153, 160, the court stated that a violation of section 7109 does not necessarily lead to the conclusion that there was also a violation of section 7113. The court noted that section 7113 is violated if the substandard work exists *at the time of full payment of the contract project* (citing to *Terminix Co. v. State Contractors Board*

(1948) 84 Cal.App.2d 167, 175-176.) Respondent never received the full contract price because it was constructively terminated from completing the job for the reasons discussed in Legal Conclusions paragraph 14. Further, because Mr. Garcia changed the job from that which was reflected in the original contract, respondent could not have been expected to complete the changed project for the original contract price. Finally, in *Mickelson Concrete Co. v. Contractors' State License Bd.* (1979) 95 Cal.App.3d 631, 635, the court sustained the finding that the contractor had violated Business and Professions Code section 7113 where the contractor had agreed to perform work at a specified price, the work did not meet trade standards, and the contractor failed to correct the problem after repeatedly being asked to do so. Respondent was never asked to correct the items alleged to have been deficient because most of the alleged deficiencies were not noted until the expert reviewed the project. It is also unknown, if he had been asked, whether he would have fixed those deficiencies prior to his constructive termination. This cause for discipline cannot be sustained.

17. Clear and convincing evidence established that respondent contracted for the Figwood Project under a business name different than that which was reflected on the actual license, in violation of Business and Professions Code section 7117, subdivision (a) [Fifth Cause for Discipline].

18. Clear and convincing evidence established that respondent had employees working for the company on the Figwood Project when respondent had on file with the board an exemption certificate indicating it had no employees, in violation of Business and Professions Code section 7125.4 [Sixth Cause for Discipline].

CAUSES FOR DISCIPLINE RELATING TO THE OVERTON PROJECT

19. Clear and convincing evidence did not establish that respondent abandoned the Overton Project, without legal cause, in violation of Business and Professions Code section 7107. There was some communication between Mr. Bermudez and Ms. Nevarez, via text message regarding the project in July 2013. The text messages expressed clear frustration by Ms. Nevarez, because the project had not been finished when she wanted it to be finished. The text messages also show Mr. Bermudez's clear intention to complete the project. The text messages and Mr. Bermudez's testimony also showed that Mr. Bermudez was working on getting the barbecue and palapa delivered, which were being supplied by a subcontractor. In an undated text message, Mrs. Nevarez gave Mr. Bermudez 72 hours to complete the entire project. Mr. Bermudez eventually delivered the barbecue and palapa, but Mrs. Nevarez's son would not allow entry. By her own admission, Ms. Nevarez did not provide all the text messages that took place between her and Mr. Bermudez. Thus, it is difficult to rely on the text messages, most of which are undated and out of order. It is plausible that Mr. Bermudez was taking longer to finish the project than Ms. Nevarez desired, but the evidence showed he was continuing in good faith to work on the project. He could not complete the project, however, because Ms. Nevarez terminated his ability to do so. Respondent therefore did not abandon the project.

20. Clear and convincing evidence established that respondent departed from accepted trade standards on the Overton project, in part, violation of Business and Professions Code section 7109, subdivision (a). Respondent failed to install a new concrete deck with a 5/8-inch vertical displacement lower than the existing concrete deck; graded the hillside above the retaining improperly; failed to level the pool equipment before installing the filter; and failed to install the threaded plumbing fittings correctly in the pumps to prevent leakage. No evidence showed that respondent failed to connect the deck drains evenly around the pool or send the outflow of water to the street, as that could not be verified. Respondent did not fail to install the proper pool equipment; it is standard in the industry to substitute equipment of the same efficiency level for other brands, and the contract stated that this was permitted. With respect to compacting the soil, because respondent was not permitted to finish the job, it cannot be held responsible for failing to clean up. Respondent also could not complete or correct these items, because Ms. Nevarez terminated respondent's ability to do so.

21. Clear and convincing evidence established that respondent departed from the plans, in violation of Business and Professions Code section 7109, subdivision (b) [Ninth Cause for Discipline]. Respondent failed to dig the pool deep enough and failed to keep the tops of the artificial rock coping relatively level. Respondent also could not complete or correct these items, because Ms. Nevarez terminated respondent's ability to do so.

22. Clear and convincing evidence established that respondent failed to pull the required building permit for the retaining wall, in violation of Business and Professions Code section 7110 [Tenth Cause for Discipline].

23. Clear and convincing evidence did not establish that respondent failed to complete the Overton Project for the price stated in the contract, in violation of Business and Professions Code section 7113 [Eleventh Cause for Discipline]. Respondent was not permitted to complete the project. (*Tellis and Mickelson*, supra.) Although it appeared that respondent had received almost the entirety of the contract price at the time the services were terminated, because the services were terminated, it cannot be speculated as to whether respondent would have finished the job for the contract price.

24. Clear and convincing evidence established that respondent contracted for the Overton Project under a business name different than that which was reflected on the actual license, in violation of Business and Professions Code section 7117, subdivision (a) [Twelfth Cause for Discipline].

25. Clear and convincing evidence established that respondent had employees working for the company on the Overton Project when it had on file with the board an exemption certificate indicating he had no employees, in violation of Business and Professions Code section 7125.4 [Thirteenth Cause for Discipline].

26. Clear and convincing evidence did not establish that respondent accepted an excessive down payment on the Overton Project, in violation of Business and Professions

Code section 7159.5, subdivision (a)(3). Respondent accepted a \$1,000 down payment, which is appropriate. The \$3,400 payment received the same day as the down payment was for plans and permits and written on a different check than the down payment. Although Ms. Nevarez wrote on the \$3,400 check that it was a down payment, the contract clearly indicated that this amount was not a down payment.

Restitution and Damages

27. For the reasons discussed above, no damages or restitution are awarded on either the Overton or Figwood projects. Respondent did not abandon either project; thus, it cannot be speculated as to whether the few deficiencies noted would have been corrected had he been permitted to complete the job. No case law was cited by either party stating that restitution or damages are permissible in a case where a contractor is prevented from completing or correcting his or her work.

Moreover, respondent appeared to be about halfway done with the Figwood project and received approximately half of the \$41,600 contract price. Regarding the Overton project, respondent had received \$51,900 of the \$54,800 contract price. It appeared, based on the evidence presented with respect to both projects, that respondent received an appropriate amount of money for the work completed up to the point that Mr. Garcia and Ms. Nevarez terminated respondent's ability to complete the project.

This conclusion has no bearing on the propriety of Mr. Garcia or Ms. Nevarez seeking restitution or damages in a civil proceeding.

Appropriate Level of Discipline

28. In reaching a decision on a disciplinary action the board must consider the disciplinary guidelines entitled "Disciplinary Guidelines" (rev. 12/11/96). (Cal. Code Regs., tit. 16, § 871.) Under the guidelines, several factors should be considered in determining the measure of discipline, including: the nature and severity of the acts, offenses, or crimes under consideration; the actual or potential harm to the public; whether work was performed that was potentially hazardous to the health, safety, or general welfare of the public; any prior disciplinary record; the number and/or variety of current violations; the mitigating evidence; any rehabilitation evidence; and, in case of a criminal conviction, compliance with terms of sentence.

Mr. Bermudez did not act in bad faith in his attempt to complete the Figwood and Overton projects. Although some of the work may not have been according to standards, none of the minor deficiencies noted posed a threat to the health, safety, or welfare of the public. There were multiple causes for discipline alleged, but many were not sustained. Mr. Bermudez has been a contractor since 2001, and has no prior history of discipline except for a citation which was not entered into evidence. Thus, although some discipline is warranted, revocation of his license is not. Probation is therefore appropriate under the circumstances.

Prosecution and Investigation Costs

29. Business and Professions Code section 125.3, subdivision (a), authorizes an administrative law judge to direct a licensee who has violated the applicable licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. The reasonable costs in this matter were stated as \$10,575 for the prosecution and \$2,465.29 for investigation.

30. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth five factors to be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and Professions Code section 125.3. Those factors are: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective 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 in light of the alleged misconduct. (*Ibid.*)

31. Applying the *Zuckerman* factors to this case leads to the following conclusions: respondent was successful in getting most of the charges dismissed or reduced; he exhibited a subjective good faith belief in the merits of her position; he raised a colorable challenge to the proposed discipline; and the scope of the investigation was appropriate in light of the alleged misconduct. Finally, respondent lacks the ability to pay costs because he has filed bankruptcy and is currently unemployed. Therefore, costs are to be reduced, and respondent shall pay to the board \$5,000 for the prosecution of this matter. Respondent shall be permitted to enter into a monthly payment plan with the board, if desired, or he may choose to wait and pay the lump sum at any time prior to the end of his probation.

32. The \$2,465.29 in investigative costs are not awarded because the certification does not permit a finding of reasonableness as required by California Code of Regulations, title 1, section 1042.

ORDERS

1. Contractor's License No. 798206, issued to Bermudez Triangle Enterprises, Inc., Joshue Bermudez, RMO/CEO/President is revoked; however, the order of revocation is stayed and the license is placed on probation for three years on the terms and conditions of probation set forth below.

OBEY ALL LAWS. Bermudez Triangle Enterprises, Inc. and Joshue Bermudez shall comply with all federal, state and local laws governing the activities of a licensed contractor in California.

INTERVIEWS WITH REGIONAL DEPUTY. Bermudez Triangle Enterprises, Inc. and Joshue Bermudez and any of the personnel of record shall appear in person for interviews with the Regional Deputy or designee upon request and reasonable notice.

COMPLETION OF PROBATION. Upon successful completion of probation, the contractor's license issued to Bermudez Triangle Enterprises, Inc. and Joshue Bermudez, and any other licensee whose license has been revoked and placed on probation as a result of the Decision in this matter shall be fully restored.

VIOLATION OF PROBATION. If Bermudez Triangle Enterprises, Inc. and Joshue Bermudez violate probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary orders that were stayed.

SUBMISSION OF DOCUMENTS. Bermudez Triangle Enterprises, Inc. and Joshue Bermudez shall submit copies of documents directly related to each one of its construction operations to the Registrar upon demand during the probation period.

MAINTENANCE OF VALID LICENSE. Should Josue Bermudes apply to reinstate or renew Bermudez Triangle Enterprises, Inc., or any other license that was affected by the Decision in this matter, that contractor license shall be subject to any and all conditions of this probation not previously satisfied.

TAKE AND PASS CONTRACTORS' STATE LICENSING BOARD EXAMINATION. If not taken within the past 5 years, Joshue Bermudez must take and pass the CSLB law and business examination.

COURSE REQUIREMENT. Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.

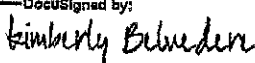
SUBMIT BUILDING PERMITS. Submit copies of building permits to the Registrar upon demand for projects undertaken during the probation period.

PAYMENT OF COSTS OF INVESTIGATION AND PROSECUTION. Respondent shall pay the board costs of investigation and enforcement of this action in the amount of \$5,000. Repayment of the costs shall be on such terms and conditions as mutually agreed upon by the respondent and the board, and may be paid in a payment plan or a lump sum at any time prior to the termination of probation. However, probation shall not terminate until all such costs have been paid.

2. The request to order Bermudez Triangle Enterprises to provide the registrar with a listing of all contracting projects in progress and the anticipated completion date of each is denied. No statutory or regulatory authority was cited authorizing this order.

3. The request for any action against Bermudez Beltran Property Management, dba Creative Design Landscape, is denied. This license was not at issue in this proceeding. The registrar may, but not required, to suspend or revoke, without notice, any other license issued in the name of a licensee if discipline is imposed against another license held by the licensee. (Bus. & Prof. Code, § 7097.) The condition precedent for that authority is discipline. Until a proposed decision is adopted and becomes effective, that condition precedent does not exist and may not be ordered prematurely.

DATED: August 31, 2017

DocuSigned by:

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KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings