

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

In the Matter of the Accusation Against:

FINEST HOME REMODELING INC
22287 Mulholland Hwy., #141
Calabasas, CA 91302

LANNY JAY DUGAR, RMO/CEO/PRES.

Contractor's License No. 554502

Respondent.

CASE NO. N2014-382

OAH NO. 2017030042

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.

IT IS FURTHER ORDERED that pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, Respondent **FINEST HOME REMODELING INC**, License Number **554502**, shall not apply for reissuance or reinstatement of any license for five year(s) from the effective date of this Decision.

IT IS FURTHER ORDERED that Respondent shall pay the investigative costs in the amount of \$30,714.94, prior to issuance of a new or reinstated license pursuant to Business and Professions Code section 7102.

IT IS FURTHER ORDERED that Respondent shall pay restitution in the amounts of \$25,710.00 to Caroline Davidson, \$173,874.25 to Jim Howard, and \$11,107.20 to Fabio Silveira. These amounts are to be paid prior to issuance of a new or reinstated license pursuant to Business and Professions Code section 7102.

IT IS THE responsibility of the Respondents, named in this Decision, to read and follow the Order found in the Proposed Decision.

This Decision shall become effective on February 5, 2018.

IT IS SO ORDERED January 4, 2018.



David Fogt
Registrar of Contractors

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

In the Matter of the First Amended Accusation
Against:

FINEST HOME REMODELING INC.,
LANNY JAY DUGAR, RMO/CEO/PRES.,

Contractor's License No. 554502,
Classification B,

Respondent.

Case No. N2014-382

OAH No. 2017030042

PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in Riverside, California, on August 23 and 24, 2017, and on November 17, 2017.

Deputy Attorney General Stephen A. Aronis represented complainant.

Respondent, Finest Home Remodeling Inc., was represented by its corporate president, chief executive officer (CEO) and responsible managing officer (RMO), Lanny Dugar. Mr. Dugar was present throughout the hearing.

The matter was submitted on November 17, 2017.

FACTUAL FINDINGS

1. On January 19, 1989, Mr. Dugar was issued license number 554502 (general building contractor, classification B). The originally issued license was "a sole ownership license." (Exh. 2, pg. 1) On May 14, 2012, Mr. Dugar submitted a request to have the license reassigned as a corporate license. As part of the application process, Mr. Dugar certified under penalty of perjury that respondent's address was 22287 Mulholland Hwy., #141,

Calabasas, California 91302, when in fact that address was the address of a UPS store. Subsequently, on July 20, 2012, license number 554502 was reassigned to the corporate entity Finest Home Remodeling Inc., with Mr. Dugar as RMO. Since its issuance on January 19, 1989, the date license number 554502 was first issued, the license has the following license history:

01/19/89	Issued
01/31/91	Expired
01/28/94	Renewed Inactive
05/16/94	Reactivated
03/09/96	Suspended 996.340 (Contractor's Bond)
05/31/96	Expired Under Suspension
08/21/03	Reissued & Reinstated
05/22/04	Suspended 996.340 (Contractor's Bond)
07/06/04	Reinstated
06/15/11	Suspended 996.340 (Contractor's Bond)
06/17/11	Reinstated
07/20/12	Reassigned [as a corporate license]
01/13/16	Suspended 996.340 (Contractor's Bond)
07/31/16	Expired Under Suspension
08/17/17	Expiration Still in Effect. (Exh. 2, pg. 1)

2. The license was in full force and effect from July 20, 2012, when it was reassigned as a corporate license, and it remained in full force and effect until January 13, 2016. At the time of the instant hearing, the license status was "Expired Under Suspension."

Alleged Causes for Discipline

3. The first amended accusation alleged numerous causes for discipline based on work respondent performed or failed to perform relating to three different home improvement projects.

FIRST HOME IMPROVEMENT PROJECT: THE C.D. PROJECT

4. On August 25, 2013, homeowner C.D. met with Itamar Asulin at C.D.'s home in Brea, California. Mr. Asulin represented himself to be a salesperson for respondent. The two discussed what home improvements C.D. wanted. C.D. said she wanted to expand the master bedroom, construct a new master bathroom, and add walk-in closets. Mr. Asulin, who introduced himself as "Ben," drafted a contract for blueprints and signed the contract on behalf of respondent. C.D., who believed Asulin was a "licensed, approved salesperson for respondent Finest Home Remodeling Inc.," signed the contract and gave Asulin a check made out to "FHR" in the amount of \$3,900.

5. On October 23, 2013, Asulin and C.D. met again at C.D.'s home. They entered into a construction contract for \$69,500. Asulin signed the contract on behalf of respondent and listed 89646 as his registered home improvement salesperson number. The contract included demolition, stucco, flooring, roof extension, closet enclosure and closet walkway, electrical and plumbing "up to code," and interior and exterior painting of the "addition area." (Exh. 27) Ultimately, there were two change orders, one for \$6,500 and another for \$2,400, bringing the total contract price to \$78,400.

6. On November 1, 2013, respondent, through its employees, began work on the project. The "project manager" on the project changed a few times during the course of construction, as did the other workers on the project. Numerous workmanship problems arose including, but not limited to, the following: the City of Brea issued a notice of correction because the windows were not code compliant; the roof leaked where respondent's workers left an open seam between the roof tiles (C.D. tried to get in touch with Asulin and was told it was a religious holiday, but Asulin "would take care of it" – no one ever showed up and the living room carpet was soaked); and C.D. "felt abandoned."

7. On February 15, 2014, respondent's workers picked up their tools and discontinued work on the project. As of that date C.D. had paid respondent \$47,700.

8. During the construction project, C.D. never met Mr. Dugar and did not know he was associated with respondent. The workers and supervisors were constantly changing and C.D. never observed any direct supervision of the workers when they worked at the job site. The workers just seemed to "come and go" and at times they were just "doing nothing."

9. C.D. filed a complaint with the Contractors' State License Board. On May 31, 2014, an industry expert inspected the work site after having reviewed all of the blueprints, contract, change orders and other documents pertaining to the scope of work. The industry expert wrote a report and testified during the instant hearing in conformity with that report. The industry expert found the following departures from accepted trade standards: "the lumbar used for the rafters at the addition showed excessive wane, splits and damage, not matching the condition of the existing rafters. Blocks were installed uneven and not in line"; "the pocket door in the bathroom has not been installed"; "the gable ends of roof addition are incomplete"; "the electrical is incomplete, two junction boxes at exterior need to be removed or made accessible. Recessed lights at master bedroom are not aligned"; "the plumbing for the bathroom and irrigation sprinklers is not complete"; "the wrong type of windows were installed. Windows are not code compliant"; "several sprinkler lines were cut and not reattached. Work is not complete"; "the two way clean-out was not installed; all work performed must comply with code requirements where applicable"; "the construction debris was not removed from job site"; "the exterior stucco is not complete"; "the exterior and interior painting is not completed"; and, "concrete preparation for flooring is not complete. Flooring installation is not complete." (Exh. 38)

The estimated cost to correct the work listed above totals \$25,710.

10. During the investigation it was discovered that respondent's salesperson, job supervisor and representative, Itamar Asulin, was not a registered salesperson for respondent.

SECOND HOME IMPROVEMENT PROJECT: THE J.H. PROJECT

11. On January 20, 2014, J.H. entered into a home improvement contract with respondent's salesperson, Barak Svisa, to "build an addition [so J.H.'s] in-laws could move in to live [J.H.'s mother-in-law was paralyzed]." The scope of the work included the following: a 23 by 16-foot room add-on; plumb the addition and re-pipe existing house; install electrical according to the plans, carpet, install a light, a closet door, electrical, a washer and dryer; paint; build a handicap ramp; install a roof to match the existing room; re-pipe the entire house with the exception of the main line; Tex-Cote the house; clean up the job site; create plans; and, obtain permits. The agreed upon price was \$145,000.

12. On May 27, 2014, Svisa contacted J.H. and notified him that the plans had been approved and building permits had been obtained. Later, that same day, May 27, 2014, J.H. received a call from a person who identified himself as Jacob Sherif. Sherif told J.H. that he was respondent's construction manager and Svisa worked for him (Sherif). Sherif told J.H. that Svisa "was no one," and that the contract J.H. had negotiated with Svisa "meant nothing." According to Sherif respondent could not complete the contract for the price agreed upon and he (Sherif) would be drafting a new contract.

13. On June 30, 2014, J.H. entered into a second contract with respondent. Pursuant to the second contract respondent agreed to do the work set forth in the original contract for \$160,000. The new contract did not include a schedule of payments, but it confirmed that J.H. had paid \$6,500 as the first payment on the contract.

14. Work on the project commenced on July 1, 2014; it was to be completed by September 1, 2014. Mr. Dugar was at the project and supervised the workers on a daily basis for a few hours each day.

15. On September 18, 2014, J.H. signed a change order to remove the old patio and install a new patio, lights, solar tubes, and arched beams for an additional \$12,250, which increased the contract price to \$172,250. J.H. and Mr. Dugar also reached a "verbal agreement" for installation of heating, ventilation and air conditioning and for the construction of a four-foot walkway around to the front of the house for an additional \$2,500. Mr. Dugar told J.H. to make checks out to him since he was respondent's "owner."

16. Respondent abandoned the job on October 11, 2014, leaving much construction work to be completed. By this time J.H. had paid a total of \$142,578.54 for the project.

17. On November 5, 2014, J.H.'s homeowners association sent J.H. a letter stating:

Dear Homeowner[,]

I am writing to you on behalf of the Board of Directors for the Mountain Springs Owners Association. The Board is extremely concerned about the open trenches and construction debris on your property.

The work has not been completed, nor does there appear to have been any progress in closing these trenches and removing the pile of debris. This is of concern to the Association as it poses a physical danger as well as encourages rodents and other unwanted pests. The Association is demanding that these items be addressed and the issue reconciled immediately. Failure to do so will result in monetary penalties and/or legal action. (Exh. 11)

18. J.H. filed a complaint with the board. On December 4, 2014, an industry expert inspected the work site after having reviewed all of the blueprints, contracts, change orders and other documents pertaining to the scope of work. The industry expert wrote a report and testified during the instant hearing in conformity with that report. The industry expert found the following departures from accepted trade standards: respondent failed to ensure that the plywood subfloor over the crawl space portion of the new addition was level; respondent failed to ensure that the headers above the windows and doors were placed directly onto the entire surface of their vertical framing supports; and, respondent failed to ensure that the plaster/stucco assemblies installed on the bottom undersides of the soffit roof overhangs did not drop below the bottom edges of the fascia boards in order to avoid exposing their unfinished edges.

The industry expert found that when respondent abandoned the project, the following work had not been performed/completed: framing; plumbing and fixtures; dryer vent; roof, heating, ventilation and air conditioning; electrical wiring, service panel and fixtures; hot mopping of the shower pans; insulation; windows, exterior doors, interior doors, and jambs; stucco; drywall, finish work, baseboards, casings, and trim; finish hardware and accessories, door knobs, locks, stops, towel bars, mirrors, and medicine cabinets had not been installed; fireplace unit, venting, facing, gas and electric; ceramic tile; cabinets, countertops, shower enclosures, flooring – tile, wood and carpet not installed; interior and exterior painting; gutters and downspouts; patio cover; finish grading and drainage; retaining wall footing repair had not been done; exterior concrete work – stoops not done; and clean-up and removal of debris had not been done.

The cost to complete the project totaled \$173,874.25.

THIRD HOME IMPROVEMENT PROJECT: THE F.S. PROJECT

19. On December 15, 2015, F.S. entered into a home improvement contract with respondent for tile work and general construction work within F.S.'s Riverside residence. The scope of work included: removal of approximately 1,000 square feet of carpet and vinyl flooring from the living room, two bedrooms, three bathrooms, and one closet; float approximately 1,000 square feet of cement floor; provide and install approximately 800 square feet of quartz tile; provide and install approximately 160 square feet of porcelain tile; grout and seal; install 430 square feet of vinyl sheeting in three bathrooms, one closet, and one bedroom; provide and install 15 rolls of wall paper; and provide and install backsplash in kitchen area, including grout and seal. The agreed upon price for the work was \$30,000.

20. Work commenced on December 20, 2013; and, on February 5, 2014, F.S. was advised that the work had been completed. F.S. was not satisfied with the workmanship so, on June 19, 2014, he filed a consumer complaint with the board. In the complaint F.S. set forth the following problems: the wallpaper was not installed properly "it is upside down in areas, bubbled, patterns don't match and some of the existing wallpaper was damaged"; "the kitchen backsplash is cracked and the tile itself is wavy." F.S. continued listing the deficiencies on a second page. F.S. described the other deficiencies as follows:

The kitchen tile is so uneven that the electrical outlets/plates do not sit properly. The tile is also unevenly cut. The linoleum was cut poorly, looks like a child did it. Baseboards were not cut properly, and when they were installed they damaged a wall that was just completed. They left the house unfinished. Did not put on the light switch plates, left the house filth, with wall paper glue everywhere all over the windows. They did not cover the tile properly and it is completely stained. . . . (Exh. 18)

21. On December 19, 2014, an industry expert inspected the work site after having reviewed all of the blueprints, contracts, change orders and other documents pertaining to the scope of work. The industry expert wrote a report and testified during the instant hearing in conformity with that report. The industry expert found the following departures from trade standards: the edges of the linoleum flooring were not straight at the seams and seam sealer was not applied correctly; the glass mosaic tile assembly was installed on wall surfaces that were not "plumb and level"; the wallpaper in one of the bathrooms is "missing in areas, peeling and glue on paper"; the entry way floor consisted of "two different colors"; the wall covering in the living room was damaged; the baseboard around the light socket in the living room "is cut too high"; wall paper in one of the bathrooms was "damaged, seams do not match and glue on the paper"; the "access door to bottom of house was not cut straight in hall closet"; and, "wallpaper in master bedroom damaged, glue on paper, bubbling, put on backwards and peeling off the wall." (Exh. 22)

The cost to correct respondent's substandard work is \$11,107.20.

Respondent's Defense

22. Respondent did not testify during the hearing; however, he did present the expert testimony of Michael Wayne Brown who "has worked for the Contractors' State License Board, but never testified for the board." It was evident that Mr. Brown was at odds with the testimony of complainant's expert, Mr. David Spiegel¹, because during his testimony Mr. Brown stated that "he is a lousy expert without knowledge or experience." Mr. Brown disagreed with some of Mr. Spiegel's "assumptions" and "estimates"; however, Mr. Brown never physically visited or personally inspected the J.H. jobsite². When giving testimony, Mr. Brown, appeared to be an advocate for respondent as opposed to an objective expert. Mr. Brown's testimony was based on a review of documents and some photographs of the jobsite -- he did not inspect the project; accordingly, his testimony concerning the J.H. project was given no weight. Mr. Brown did not testify concerning the C.D. and F.S. projects; therefore, there was no defense expert testimony concerning those projects that refuted Mr. Spiegel's and Mr. Johnson's expert opinions concerning respondent's substandard and incomplete work.

23. Respondent provided no further defense(s) to the allegations contained in the First Amended Accusation.

Costs

24. The reasonable costs of the investigation and enforcement of the claims that gave rise to the instant action against respondent total \$30,714.94.

LEGAL CONCLUSIONS

1. Business and Professions Code section 7090 provides, in part:

The registrar may upon his or her own motion and shall upon the verified complaint in writing of any person, investigate the actions of any applicant, contractor, or home improvement salesperson within the state and may deny the licensure or the renewal of licensure of, or cite, temporarily suspend, or permanently revoke any

¹ Mr. Spiegel did not inspect the C.D. project. That project was inspected by industry expert Tai Johnson.

² Although Mr. Spiegel did inspect the F.S. project for complainant Mr. Brown expressed no criticisms of Mr. Spiegel's observations and opinions concerning that project.

license or registration if the applicant, licensee, or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action.

2. Business and Professions Code section 7122.5 provides, in part:

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

3. Business and Professions Code section 7096 provides:

For the purposes of this chapter, the term 'licensee' shall include an individual, partnership, corporation, limited liability company, joint venture, or any combination or organization licensed under this chapter, and shall also include any named responsible managing officer, responsible managing manager, responsible managing member, or personnel of that licentiate whose appearance has qualified the licentiate under the provisions of Section 7068.

4. Business and Professions Code section 7106.5 provides that the expiration, cancellation, forfeiture, suspension, or the voluntary surrender of, a license shall not deprive the registrar of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against the license, or to render a decision suspending or revoking a license.

5. Business and Professions Code section 7121.5 states:

Any person who was the qualifying individual on a revoked license . . . shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a license, whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked. . . .

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Causes for Discipline

THE C.D. PROJECT

6. The following causes for discipline against respondent's license(s) exist relating to the C.D. Project:

(1) Violation of Business and Professions Code section 7068.1 (failure, as RMO, to exercise direct supervision and control of the project). (Finding 8);

(2) Violation of Business and Professions Code section 7107 (respondent abandoned the project without legal excuse, when substantial work remained to be completed). (Findings 6, 7, & 9);

(3) Violations of Business and Professions Code section 7109, subdivision (a) (numerous, significant, willful departures in material respects from accepted trade standards for good and workmanlike construction). (Findings 6 & 9);

(4) Violation of Business and Professions Code section 7113 (failing to complete the project for the contract price – it will cost C.D. \$25,710 to complete the project). (Finding 9);

(5) Violation of Business and Professions Code section 7154 (employing an unregistered salesperson, Itamar (Ben) Asulin to sell the project). (Findings 4, 5, & 10)

THE J.H. PROJECT

7. The following causes for discipline against respondent's license(s) exist relating to the J.H. Project:

(1) Violation of Business and Professions Code section 7107 (respondent abandoned the project without legal excuse, when substantial work remained to be completed). (Findings 16 & 18);

(2) Violations of Business and Professions Code section 7109, subdivision (a) (numerous, significant, willful departures in material respects from accepted trade standards for good and workmanlike construction). (Finding 18);

(3) Violation of Business and Professions Code section 7113 (failing to complete the project for the contract price – it will cost J.H. \$173,874.25 to complete the project). (Finding 18)

THE F. S. PROJECT

8. The following causes for discipline against respondent's license(s) exist relating to the F.S. Project:

(1) Violations of Business and Professions Code section 7109, subdivision (a) (numerous, significant, willful departures in material respects from accepted trade standards for good and workmanlike construction). (Findings 20 & 21);

(2) Violation of Business and Professions Code section 7113 (failing to complete the project for the contract price – it will cost F.S. \$11,107.20 to complete the project). (Finding 21)

OTHER VIOLATION

9. There was a violation of Business and Professions Code section 7112 (signing and submitting an application for original contractor's license that materially misrepresented respondent's address – in that respondent used a UPS address and represented it was his home address). (Finding 1)

Cost Recovery

10. The reasonable costs of the investigations and enforcement of the instant action against respondent, recoverable by the board pursuant to Business and Professions Code section 125.3, total \$30,714.94.

Discipline

11. The purpose of discipline is . . . to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

12. The overwhelming evidence presented in the instant case established that the only level of discipline that will adequately protect the public from this incompetent licensee is outright revocation of all licenses, classifications and/or registrations issued by the CSLB, and by prohibiting respondent from serving as officer, director, associate, partner, or qualifying individual of any license(s).

ORDERS

1. Contractor's License Number 554502 issued to respondent Finest Home Remodeling Inc., Lanny Jay Dugar, RMO/CEO/President, is revoked.
2. Lanny Jay Dugar is prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee.
3. All licenses for which Lanny Jay Dugar is furnishing the qualifying experience or appearance are revoked.
4. Finest Home Remodeling Inc., Lanny Jay Dugar, RMO/CEO/President shall pay C.D. the sum of \$25,710 as restitution.
5. Finest Home Remodeling Inc.; Lanny Jay Dugar, RMO/CEO/President shall pay J.H. the sum of \$173,874.25 as restitution.
6. Finest Home Remodeling Inc.; Lanny Jay Dugar, RMO/CEO/President shall pay F.S. the sum of \$11,107.20 as restitution.
7. Finest Home Remodeling Inc.; Lanny Jay Dugar, RMO/CEO/President shall pay to the Registrar of Contractors the sum of \$30,714.94 as reimbursement for the reasonable costs of the investigation(s) and enforcement of the instant action against them.
8. Finest Home Remodeling Inc.; Lanny Jay Dugar, RMO/CEO/President shall provide the Registrar of Contractors with a listing of all contracting projects in progress and the anticipated completion date(s).

Dated: December 18, 2017

DocuSigned by:
Roy Hewitt
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ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings