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

12 In the Matter of the Accusation Against:

Case No. N2015-299

13
14 **LD CONSTRUCTION; LUKA DVORNIK**
306 Wren Way
15 **Campbell, CA 95008**

A C C U S A T I O N

16 **Contractor License No. 926215**

17
18 Respondent,

19
20 **TRIADA CONSTRUCTION LLC; LUKA**
DVORNIK, RMM; DAVID ALLAN
21 **FIORE, Member; TRIADA INVESTMENT**
INC., Member
22 **2367 Arlene Drive**
23 **Santa Clara, CA 95050**

24 **Contractor License No. 997883**

25 Affiliated Party.
26
27
28

1 Complainant alleges:

2 **PARTIES**

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

6 2. On or about December 13, 2008, the Registrar of Contractors issued Contractor
7 License Number 926215 to LD Construction; Luka Dvornik (Respondent). The Contractor
8 License was in full force and effect at all times relevant to the charges brought in this Accusation
9 and will expire on December 31, 2016, unless renewed.

10 3. On or about October 23, 2014, the Registrar of Contractors issued Contractor License
11 Number 997883 to Triada Construction LLC; Luka Dvornik, RMM; David Allan Fiore, Member;
12 Triada Investment Inc., Member. The Contractor License will expire on October 31, 2018, unless
13 renewed.

14 **JURISDICTION**

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

19 5. Section 118, subdivision (b) of the Business and Professions Code (Code) provides,
20 in pertinent part, that the expiration of a license shall not deprive the Registrar of jurisdiction to
21 proceed with a disciplinary action during the period within which the license may be renewed,
22 restored, reissued or reinstated. Under Code section 7076.1, the Registrar may reinstate a
23 cancelled license if the licensee pays all of the fees and meets all of the qualifications and
24 requirements for obtaining an original license.

25 6. Section 7076.5 of the Code provides, in pertinent part, that the inactive status of a
26 license shall not bar any disciplinary action for violating provisions of the Contractors' State
27 License Law (Bus. & Prof. Code, § 7000, et seq.).
28

1 7. Section 7090 of the Code provides, in pertinent part, that the Registrar may suspend
2 or revoke any license or registration if the licensee or registrant is guilty of or commits any one or
3 more of the acts or omissions constituting cause for disciplinary action.

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

9 STATUTORY PROVISIONS

10 9. Section 7109, subdivision (a) of the Code states:

11 "(a) A willful departure in any material respect from accepted trade standards for good and
12 workmanlike construction constitutes a cause for disciplinary action, unless the departure was in
13 accordance with plans and specifications prepared by or under the direct supervision of an
14 architect."

15 10. Section 7110 of the Code states:

16 "Willful or deliberate disregard and violation of the building laws of the state, or of any
17 political subdivision thereof, or of Section 8550 or 8556 of this code, or of Sections 1689.5 to
18 1689.15, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation
19 insurance laws or Unemployment Insurance Code of the state, or of the Subletting and
20 Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of
21 Division 2 of the Public Contract Code), or violation by any licensee of any provision of the
22 Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells,
23 or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the
24 Government Code, constitutes a cause for disciplinary action."

25 11. Section 7113 of the Code states that "[f]ailure in a material respect on the part of a
26 licensee to complete any construction project or operation for the price stated in the contract for
27 such construction project or operation or in any modification of such contract constitutes a cause
28 for disciplinary action."

1 12. Section 7159, subdivision (d) of the Code states:

2 "(d) A home improvement contract and any changes to the contract shall be in writing and
3 signed by the parties to the contract prior to the commencement of any work covered by the
4 contract or applicable change order and, except as provided in paragraph (8) of subdivision (a) of
5 Section 7159.5, shall include or comply with all of the following:

6 (1) The name, business address, and license number of the contractor.

7 (2) If applicable, the name and registration number of the home improvement salesperson
8 that solicited or negotiated the contract.

9 (3) The following heading on the contract form that identifies the type of contract in a least
10 10-point boldface type: "Home Improvement."

11 (4) The following statement in a least 12-point type: "You are entitled to a completely
12 filled in copy of this agreement, signed by both you and the contractor, before any work may be
13 started."

14 (5) The heading: "Contract Price," followed by the amount of the contract in dollars and
15 cents.

16 (6) If a finance charge will be charged, the heading: "Finance Charge," followed by the
17 amount in dollars and cents. The finance charge is to be set out separately from the contract
18 amount.

19 (7) The heading: "Description of the Project and Description of the Significant Materials to
20 be Used and Equipment to be Installed," followed by a description of the project and a
21 description of the significant materials to be used and equipment to be installed. For swimming
22 pools, the project description required under this paragraph also shall include a plan and scale
23 drawing showing the shape, size, dimensions, and the construction and equipment specifications.

24 (8) If a downpayment will be charged, the details of the downpayment shall be expressed
25 in substantially the following form, and shall include the text of the notice as specified in
26 subparagraph (C):

27 (A) The heading: "Down Payment."

28 (B) A space where the actual down payment appears.

1 (C) The following statement in at least 12-point type"

2 "THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE
3 CONTRACT PRICE, WHICHEVER IS LESS."

4 "(9) If any payments, other than the down payment, is to be made before the project is
5 completed, the details of these payments, known as progress payments, shall be expressed in
6 substantially the following form, and shall include the text of the statement as specified in
7 subparagraph (C):

8 (A) A schedule of progress payments shall be preceded by the heading: "Schedule of
9 Progress Payments."

10 (B) Each progress payment shall be stated in dollars and cents and specifically reference
11 the amount of work or services to be performed and any materials and equipment to be supplied.

12 (C) The section of the contract reserved for the progress payments shall include the
13 following statement in at least 12-point boldface type:

14 "The schedule of progress payments must specifically describe each phase of work,
15 including the type and amount of work or services scheduled to be supplied in each phase, along
16 with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A
17 CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR
18 MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A
19 DOWNPAYMENT."

20 "(10) The contract shall address the commencement of work to be performed in
21 substantially the following form:

22 (A) A statement that describes what constitutes substantial commencement of work under
23 the contract.

24 (B) The heading: "Approximate Start Date."

25 (C) The approximate date on which work will be commenced.

26 "(11) The estimated completion date of the work shall be referenced in the contract in
27 substantially the following form:

28 (A) The heading: "Approximate Completion Date."

1 (B) The approximate date of completion.

2 "(12) If applicable, the heading: "List of Documents to be Incorporated into the Contract,
3 followed by the list of documents incorporated into the contract.

4 "(13) The heading: "Note about Extra Work and Change Orders," followed by the
5 following statement:

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

11 13. Section 105.1 of the California Building Code states:

12 "Any owner or authorized agent who intends to construct, enlarge, alter, repair, move,
13 demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter,
14 repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the
15 installation of which is regulated by this code, or to cause any such work to be done, shall first
16 make application to the building official and obtain the required permit."

17 14. Section 150.1, subdivision (A) of the of the Town of Woodside's Building Code and
18 Residential Code states:

19 "(A) Adoption of 2013 California Residential Code and the 2013 California Building Code.
20 The Code of rules, regulations and standards, published by the International Code Conference
21 under the title, 2013 Edition of the California Building Standards Code, Part 2.5 as well as the
22 2013 edition of the California Building Standards Code, Part 2, Volumes 1 and 2, and including
23 the following appendices: Appendix C Agricultural Buildings (Group-U), Appendix I Patio
24 Covers; and Appendix J Grading, hereinafter collectively called "California Building Code," and
25 the "California Residential Code," regulating the erection, construction, enlargement, alteration,
26 repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and
27 maintenance of all buildings and structures in the Town of Woodside, is hereby adopted, and by
28 reference incorporated herein as if fully set forth, except as hereinafter otherwise provided, as the

1 Residential Code and the Building Code of the Town of Woodside. The mandatory requirements
2 of the appendix to the Building Code shall be enforceable to the same extent as if contained in the
3 body of the Building Code. Any amendments and supplements of this Code shall be enforceable
4 to the same extent as if contained in the body of the California Building Code."

5 **COST RECOVERY PROVISION**

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

10 16. Section 11519, subdivision (d) of the Government Code provides, in pertinent part,
11 that the Registrar may require restitution of damages suffered as a condition of probation in the
12 event probation is ordered.

13 **FACTUAL BACKGROUND**

14 17. In April 2013, Respondent entered into a verbal agreement with D.C. to remodel her
15 residence in Woodside, California (the Woodside Project). The verbal agreement did not include
16 any specific details about work to be completed on the Woodside Project or a specific price. The
17 parties agreed that the project would cost approximately \$300,000.00, and that Respondent would
18 complete work on the property's plumbing, electrical, framing, concrete, glazing, and HVAC.
19 Respondent would also complete structural modifications.

20 18. On or about June 29, 2013, Respondent started work on the Woodside Project without
21 obtaining any permits from Woodside's Building Department. At some point in 2014,
22 Respondent submitted a permit application to Woodside's Building Department. On or about
23 March 20, 2014, the Building Department informed Respondent that corrections needed to be
24 made on the application. Then on or about August 8, 2014, the Building Department informed
25 Respondent of additional corrections that needed to be made on the application and asked for a
26 response within 30 days. Respondent did not submit a response. D.C. hired another contractor to
27 complete the Woodside Project and to ensure that her residence complied with the Building
28 Department's requirements.

1 19. By the time Respondent stopped working on the Woodside Project, D.C. had paid
2 \$492,781.43, on the Woodside Project. Of this amount, D.C. paid \$178,752.22, directly to
3 Respondent and approximately \$314,029.21, to subcontractors hired by Respondent.

4 20. D.S. must pay an additional \$396,633.38, to correct Respondent's workmanship
5 defects.

6 **FIRST CAUSE FOR DISCIPLINE**
7 **(Departure From Trade Standards)**
8 **(Bus. & Prof. Code, § 7109, subd. (a))**

9 21. Respondent has subjected his Contractor's License to disciplinary action by departing
10 from accepted trade standards on the Woodside Project. (Bus. & Prof. Code, § 7109, subd. (a).)
11 D.C.'s replacement contractor examined the Woodside Project and determined that Respondent
12 departed from accepted trade standards in the following ways: (1) failed to install a vapor barrier
13 to the exterior walls; (2) failed to grade the garage and driveway; (3) constructed the top deck two
14 feet beyond the amount allowed by building code; (4) failed to sufficiently reinforce the master
15 window structure; (5) installed two layers of trek material over the stairs which caused excessive
16 stair height; (6) constructed a barbeque overhang that did not conform to building code
17 requirements; (7) destroyed the drywall when performing electrical work; (8) failed to add exit
18 access to the master bedroom window; (9) failed to grout the bathtubs properly with silicon; and
19 (10) constructed gates, fence, cement walkways, and exterior stairs that did not conform to
20 building code requirements.

21 **SECOND CAUSE FOR DISCIPLINE**
22 **(Failure to Obtain Permits)**
23 **(Bus. & Prof. Code, § 7110; Cal. Building Code, § 105.1; Woodside Municipal Code §**
24 **150.01, subd. (a))**

25 22. Respondent has subjected his Contractor's License to disciplinary action by failing to
26 obtain permits on the Woodside Project, as required by building code. (Bus. & Prof. Code, §
27 7110; Cal. Building Code, § 105.1; Woodside Municipal Code § 150.01, subd. (a).) The
28 circumstances are more particularly explained in paragraph 17, above.

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THIRD CAUSE FOR DISCIPLINE

**(Failure in a Material Respect to Complete a Construction Project for the Contract Price)
(Bus. & Prof. Code, § 7113)**

23. Respondent has subjected his Contractor's License to disciplinary action by failing to complete the Woodside Project for the price stated in the contract. (Bus. & Prof. Code, § 7113.) Respondent failed in a material respect to complete this project for the contract price and D.C. will have to spend \$363,633.38, a substantial sum in excess of the contract price, to complete the project in accordance with the contract for this project. The circumstances are more particularly explained in paragraphs 16 to 19, above.

FOURTH CAUSE FOR DISCIPLINE

**(Failure to Comply with the Provisions of the Contractors' State License Law)
(Bus. & Prof. Code, § 7159, subd. (d))**

24. Respondent has subjected his Contractor's License to disciplinary action by failing to provide a home improvement contract and change orders in writing and signed by the parties, prior to commencing work on the Woodside Project. (Bus. & Prof. Code, § 7159.) Respondent entered into an oral agreement, instead of a written agreement, with D.C. The circumstances are more particularly explained in paragraphs 16 to 19, above.

OTHER MATTERS

25. Pursuant to sections 7097 and 7098 of the Code, if license number 926215 issued to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any other license issued in the name of Luka Dvornik or for which Luka Dvornik furnished the qualifying experience and appearance.

26. Pursuant to section 7121 of the Code, if discipline is imposed on license number 926215 issued to Respondent, Luka Dvornik shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of any licensee during the time the discipline is imposed, and any licensee which employs, elects, or associates Luka Dvornik shall be subject to disciplinary action.

27. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number 926215 issued to Respondent, Luka Dvornik shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of any licensee during the time the

1 discipline is imposed, whether or not he had knowledge or participated in the acts or omissions
2 constituting grounds for discipline, and any licensee which employs, elects, or associates Luka
3 Dvornik shall be subject to disciplinary action.

4 **PRAYER**

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

- 7 1. Revoking or suspending Contractor License Number 926215 issued to LD
8 Construction; Luka Dvornik;
- 9 2. Prohibiting Luka Dvornik from serving as an officer, director, associate, partner, or
10 qualifying individual of any licensee during the period that discipline is imposed on license
11 Number 926215, issued to LD Construction; Luka Dvornik;
- 12 3. Revoking or suspending any other license for which Luka Dvornik is furnishing the
13 qualifying experience or appearance;
- 14 4. Ordering restitution of all damages according to proof suffered by D.C., as a
15 condition of probation in the event probation is ordered;
- 16 5. Ordering restitution of all damages suffered by D.C. as a result of Luka Dvornik's
17 conduct as a contractor, as a condition of restoration of license Number 926215, issued to LD
18 Construction; Luka Dvornik;
- 19 6. Ordering LD Construction; Luka Dvornik to pay the Registrar of Contractors her
20 costs in the investigation and enforcement of the case according to proof at the hearing, pursuant
21 to Business and Professions Code section 125.3;
- 22 7. Ordering LD Construction; Luka Dvornik to provide the Registrar with a listing of all
23 contracting projects in progress and the anticipated completion date of each; and

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8. Taking such other and further action as deemed necessary and proper.

DATED: 01/18/17

FILED
JAN 18 2017
CSLB DSS



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



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