

1 XAVIER BECERRA  
Attorney General of California  
2 CHAR SACHSON  
Supervising Deputy Attorney General  
3 MICHAEL B. FRANKLIN  
Deputy Attorney General  
4 State Bar No. 136524  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3455  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*  
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8 **BEFORE THE**  
9 **REGISTRAR OF CONTRACTORS**  
10 **CONTRACTORS' STATE LICENSE BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. N2017-509

14 **MD COMPANIES**  
15 **MATTHEW MISKIE, QP**  
16 **MOISES BENJAMIN DURAN, GP**  
1595 Sunnyvale Avenue # 12  
Walnut Creek, CA 94597

**A C C U S A T I O N**

17 Contractor's License No. 1008616, B, C-33,

18 and

19 **MATTHEW MISKIE**  
20 **DBA MISKIE MATTHEW**  
42586 Hamilton Way  
21 Fremont, CA 94538

22 Contractor's License No. 333421, B, C-33,

23 Respondents.  
24

25 **PARTIES**

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

2. On or about November 2, 2015, the Registrar of Contractors issued Contractor's License Number 1008616 (Classification B – General Building Contractor, Classification C-33 – Painting and Decorating Contractor) to MD Companies, a Partnership (Respondent MD Companies). This Contractor's License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2019, unless renewed. Matthew Miskie (Respondent Miskie) associated as qualifying partner on November 2, 2015. Moises Benjamin Duran (Respondent Duran) associated as general partner on November 2, 2015.

3. On or about March 18, 1977, the Registrar of Contractors issued Contractor's License Number 333421 (Classification B – General Building Contractor, Classification C-33 – Painting and Decorating Contractor) to Respondent Miskie doing business as Miskie Matthew. This Contractor's License will expire on January 31, 2021, unless renewed.

### **JURISDICTION**

4. This Accusation is brought before the Registrar for the Board, under the authority of the following laws. All section references are to the Code unless otherwise indicated.

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

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

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

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1 of not less than three thousand dollars (\$3,000), but not to exceed five thousand dollars (\$5,000),  
2 or by both the fine and imprisonment.”

3 11. Section 7114 of the Code states:

4 “(a) Aiding or abetting an unlicensed person to evade the provisions of this chapter [the  
5 Contractors’ State License Law] or combining or conspiring with an unlicensed person, or  
6 allowing one’s license to be used by an unlicensed person, or acting as agent or partner or  
7 associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this  
8 chapter constitutes a cause for disciplinary action.

9 . . . .”

### 10 **COST RECOVERY AND OTHER AUTHORITY**

11 12. Section 125.3 states, in pertinent part:

12 (a) Except as otherwise provided by law, in any order issued in resolution of a  
13 disciplinary proceeding before any board within the department or before the  
14 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the  
15 administrative law judge may direct a licentiate found to have committed a violation  
16 or violations of the licensing act to pay a sum not to exceed the reasonable costs of  
17 the investigation and enforcement of the case.

18 (b) In the case of a disciplined licentiate that is a corporation or a partnership,  
19 the order may be made against the licensed corporate entity or licensed partnership.

20 . . . .

21 13. Section 7095 of the Code states:

22 The decision may:

23 (a) Provide for the immediate complete suspension by the licensee of all  
24 operations as a contractor during the period fixed by the decision.

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

27 (c) Impose upon the licensee compliance with such specific conditions as may  
28 be just in connection with its operations as a contractor disclosed at the hearing, and  
may further provide that until such conditions are complied with, no application for  
restoration of the suspended or revoked licensee shall be accepted by the Registrar.

14. Section 7097 of the Code states:

Notwithstanding the provisions of Sections 7121 and 7122, when any licensee  
has been suspended by a decision of the registrar pursuant to an accusation or

pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter [the Contractors' State License Law] in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be suspended by the registrar without further notice.

15. Section 7098 of the Code states:

Notwithstanding the provisions of Sections 7121 and 7122, when any license has been revoked under the provisions of this chapter [the Contractors' State License Law], any additional license issued under this chapter in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be revoked by the registrar without further notice.

16. Section 7102 of the Code states:

After suspension of a license upon any of the grounds set forth in this chapter [the Contractors' State License Law], the registrar may reinstate the license upon proof of compliance by the contractor with all provisions of the decision as to reinstatement or, in the absence of a decision or any provisions of reinstatement, in the sound discretion of the registrar.

After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be reinstated or reissued and a license shall not be issued to any member of the personnel of the revoked licensee found to have had knowledge of or participated in the acts or omissions constituting grounds for revocation, within a minimum period of one year and a maximum period of five years after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered when extending the minimum one-year period. The criteria shall give due consideration to the appropriateness of the extension of time with respect to the following factors:

- (a) The gravity of the violation.
- (b) The history of previous violations.
- (c) Criminal convictions.

When any loss has been reduced to a monetary obligation or debt, however, the satisfaction of the monetary obligation or debt as a prerequisite for the issuance, reissuance, or reinstatement of a license shall not be required to the extent the monetary obligation or debt was discharged in a bankruptcy proceeding. However, any nonmonetary condition not discharged in a bankruptcy proceeding shall be complied with prior to the issuance, the reissuance, or reinstatement of the license.

### **FACTUAL SUMMARY**

17. On or about March 13, 2017, Respondent MD Companies entered into a "partnership agreement" with an unlicensed person allowing the unlicensed person to advertise

1 and enter contracts using Respondent MD Companies' license number and name. In exchange,  
2 Respondent MD Companies was to receive financial compensation.

3 18. Respondent Miskie failed to exercise direct supervision to secure compliance with  
4 this chapter and the rules and regulations of the board due to the "partnership agreement"  
5 described above in paragraph 12. In addition, Respondent Miskie failed to exercise direct  
6 supervision to secure compliance with this chapter and the rules and regulations of the board in  
7 that Respondent Miskie was not involved with the operations of the license and was paid between  
8 \$200-\$300 to qualify Respondent MD Companies.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Aiding and Abetting)**

11 19. Respondent MD Companies' license is subject to discipline under Code section 7114,  
12 in that Respondent MD Companies aided and abetted an unlicensed person as described in  
13 paragraph 17 above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Exercise Direct Supervision)**

16 20. Respondent MD Companies' license is subject to discipline under Code section  
17 7068.1, in that Respondent Miskie failed to exercise direct supervision and control of construction  
18 operations, as required by Code section 7068.1 as describe in paragraphs 17 and 18 above.

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21 **CAUSES FOR OTHER ACTION**

22 **FIRST CAUSE FOR OTHER ACTION**

23 **(Restrictions on Partner Qualifier – Respondent Miskie)**

24 21. Pursuant to section 7121.5 of the Code, if license number 1008616 (Classification B –  
25 General Building Contractor, Classification C-33 – Painting and Decorating Contractor) issued to  
26 Respondent MD Companies is revoked or suspended, Respondent Miskie is subject to prohibition  
27 from serving as an officer, director, associate, partner, manager, or qualifying individual of a  
28 licensee during the time the discipline is imposed, whether or not he had knowledge of or

1 participated in the acts or omissions constituting grounds for discipline as alleged in the causes  
2 for discipline, above, and any licensee which employs, elects, or associates Respondent Miskie  
3 other than as a bona fide nonsupervising employee shall be subject to disciplinary action.

#### 4 **SECOND CAUSE FOR OTHER ACTION**

##### 5 **(Restrictions on General Partner – Respondent Duran)**

6 22. Pursuant to section 7121 of the Code, if license number 1008616 (Classification B –  
7 General Building Contractor, Classification C-33 – Painting and Decorating Contractor) issued to  
8 Respondent MD Companies is revoked or suspended, Respondent Duran, is subject to prohibition  
9 from serving as an officer, director, associate, partner, manager, qualifying individual, or member  
10 of the personnel of record of a licensee in that, while serving as general partner of Respondent  
11 MD Companies, he had knowledge of or participated in the acts or omissions which constitute  
12 cause for discipline against Respondent MD Companies as alleged in the causes for discipline,  
13 above.

#### 14 **PRAYER**

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

- 17 1. Ordering the revocation or suspension of Contractor License Number 1008616, B, C-  
18 33 issued to Respondent MD Companies pursuant to section 7090;
- 19 2. Ordering the revocation or suspension of Contractor License Number 333421, B, C-  
20 33 issued to Respondent Miskie, doing business as Miskie Mathews pursuant to section 7090;
- 21 3. Ordering Respondent MD Companies and Respondent Miskie to pay the Registrar of  
22 Contractors costs for the investigation and enforcement of the case according to proof at the  
23 hearing, pursuant to Business and Professions Code section 125.3;
- 24 4. Ordering Respondent MD Companies and Respondent Miskie to provide the  
25 Registrar with a listing of all contracting projects in progress and the anticipated completion date  
26 of each;
- 27 5. Ordering that Respondent Miskie be prohibited from serving as an officer, director,  
28 associate, partner, or qualifying individual of a licensee pursuant to Code section 7121.5.

1           6.     Ordering that Respondent Duran be prohibited from serving as an officer, director,  
2 associate, partner, or qualifying individual of a licensee pursuant to Code section 7121.

3           7.     Taking such other and further action as deemed necessary and proper.  
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6     DATED: \_\_\_\_\_

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

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