

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

In the Matter of the Accusation Against:

**KENNETH WAYNE COVINGTON**  
345 Amador Road  
Pinon Hills, California 92372

And

P.O. Box 720319  
Pinon Hills, California 92372

Contractor's License No. **599902**, B

Respondent

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**DECK - IT BY D J**  
KENNETH WAYNE COVINGTON, Qualifying  
Partner;  
DAVID GENE ADKINS, Partner  
8555 Tego  
Phelan, California 92371

Contractor's License No. **770618**, B

Affiliated License

CASE No. S 2008-180

OAH No. 2011030748

PROPOSED 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. 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 **KENNETH WAYNE COVINGTON**, License Number 599902, on or after the effective date of this Decision shall 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, and that respondent is hereby notified that practice under the license may not be restored until satisfactory evidence of such bond or cash deposit is on file with the Registrar of Contractors. The failure to obtain a Disciplinary Bond will cause the probationary period not to be in effect, until the required bond is obtained, submitted to and accepted by the Registrar of Contractors.

IT IS FURTHER ORDERED that **DECK - IT BY D J**, License Number 770618, on or after the effective date of this Decision shall file a 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, and that respondent is hereby notified that practice under the license may not be restored until satisfactory evidence of such bond or cash deposit is on file with the Registrar. The failure to obtain a Disciplinary Bond will cause the probationary period not to be in effect, until the required bond is obtained, submitted to and accepted by the Registrar.

IT IS THE responsibility of the respondents, named in this Decision, to read and follow the terms and conditions of probation found in the Proposed Decision. 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 and payments for the Cost of Investigation and Enforcement if ordered, are to be sent to CSLB, Sacramento Case Management, Post Office Box 26888, Sacramento, CA 95826.

This Decision shall become effective on March 8, 2012.

IT IS SO ORDERED February 6, 2012.

  
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Stephen P. Sands  
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, and ATTN: LEGAL ACTION DEPUTY. Fax documents can be sent to (916) 255-1688.

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:

KENNETH WAYNE COVINGTON,  
Sole Owner  
Contractor's License No. 599902, B

Respondent.

Case No. S2008180

OAH No. 2011030748

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DECK-IT BY DJ,  
KENNETH WAYNE COVINGTON,  
Qualifying Partner; DAVID GENE ADKINS,  
Partner  
Contractor's License No. 770618, B

Affiliated License.

**PROPOSED DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on November 16 and 17, 2011.

Nancy A. Kaiser, Deputy Attorney General, Office of the Attorney General, represented complainant Wood Robinson, Enforcement Supervisor, Contractors' State License Board (CSLB), Department of Consumer Affairs, State of California.

Kenneth Wayne Covington (respondent) appeared and represented himself with assistance from Danite Covington, his spouse.

No one entered an appearance on behalf of Deck-It By DJ although it was properly served with an Accusation and Notice of Hearing under Government Code sections 11505 and 11509. The matter proceeded against Deck-it By DJ by default.

David Gene Adkins (Adkins) was not served with an Accusation and Notice of Hearing. Accordingly, no findings are made with respect to Adkins.

The matter was submitted for decision on November 17, 2011. The Administrative Law Judge makes the following Findings of Facts, Legal Conclusions, and Order.

## FACTUAL FINDINGS

1. On November 9, 2010, complainant made the Accusation in his official capacity.

### *License History*

2. On August 7, 1990, the CSLB issued Contractor License Number 599902, Classification B (General Building Contractor), to respondent as the sole owner. Although the license expires August 31, 2012, the license is under suspension for failure to comply with the requirement to have workers' compensation insurance. The license has no prior history of administrative discipline.

3. On October 26, 1999, the CSLB issued Contractor License Number 770618, Classification B (General Building Contractor), to Deck-It by DJ, a partnership with respondent as Qualifying Partner and Adkins as Partner. The license expired October 31, 2011. The license has no prior history of administrative discipline.

### *Cause for Disciplinary Action*

4. Prior to November 20, 2006, Erich Whiteford (Whiteford) sold a parcel of land to Lourdes and Jesus Ortega (the Ortegas) and offered to build a custom home for the Ortegas on the property.

5. Respondent testified at the hearing that Whiteford "came to me and said these people want to build a house; can you do it. The contract was already negotiated. I looked over the numbers and everything looked alright. I took the job. He solicited the job." Accordingly, on November 20, 2006, respondent, Mr. Ortega, and Whiteford signed a Building Construction Contract to construct a 3980 square foot custom home for a contract price of \$426,790. The contract's signature page identifies Mr. Ortega as the owner and both respondent and Whiteford as "contractor." Whiteford does not hold any license issued by the CSLB.

6a. Respondent's name, address and contractor's license number do not appear on the contract as required by Business and Professions Code section 7164, subdivision (b)(1).

6b. A statement regarding the attachment of liens on the property and how to avoid liens under the heading "Mechanics' Lien Warning" does not appear on the contract as required by Business and Professions Code section 7164, subdivision (b)(4).

6c. A statement that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner does not appear on the contract as required by Business and Professions Code section 7164, subdivision (d).



7. Whiteford applied for a building permit, which was issued on March 7, 2007 to the Ortegas as "owner/builder." Although the building permit was not produced at the hearing, credible testimony establishes that no contractor license number appears on the building permit.

8. On a date not specifically established, Mr. Ortega entered into a residential construction loan agreement with The Members Own Federal Credit Union (Credit Union) which identifies "Kenneth Covington Construction" as "Builder." The loan agreement, which uses the words "borrower" and "you" to refer to Mr. Ortega, in part states the following:

You further warrant that You have entered into a contract with Builder for the construction of the improvements as identified in a construction contract that provides for Builder to construct the Project in accordance with the Plans. . . . We have agreed to lend You an amount not to exceed the Total Amount Financed as set forth in the loan agreement titled "NOTE AND FEDERAL DISCLOSURE STATEMENT FOR LOANS SECURED BY REAL ESTATE" related to this Agreement and that all Advances contemplated by this Agreement are considered to be principal of the loan subject to applicable interest charges as provided therein. In consideration thereof, You agree to use the proceeds of such loan solely for the purpose of paying actual Construction Costs. . . .

[¶] . . . [¶]

You understand that all Advances requested by You and/or Builder are subject to Our prior approval and that funds may only be disbursed according to Our voucher program. Vouchers must be completed and signed by the Builder or owner-builder for completed work or delivered materials and be accompanied by invoices and lien releases when submitted to us for payment. Disbursement of Builder's profit will only be made upon presentation of a completed building inspection card that is properly signed by all applicable count/city/town inspector(s), together with a properly executed Notice of Completion. . . .

[¶] . . . [¶]

You request that all advance made under this provision . . . be disbursed in accordance with Our voucher program. . . . You acknowledge that it is Your responsibility to ensure that all funds disbursed are used for the construction of the Project and You accept all risks in connection therewith. (Exhibit 4, at page 19.)

9. Between February 2007 and July 2007, respondent worked on the Ortega home construction project. Respondent variously testified that he "supervised the job." He "poured the foundation." He was "involved in rough plumbing." He was "involved in the framing." "I was there." "I had employees who worked for me who saw me there." "Erich Whiteford was basically the project manager. He handled the whole thing, but I was there. I actually did the work. I was not just a paper pusher."

10. At least 58 vouchers were submitted to Credit Union for payment for work completed or materials delivered. Whiteford's signature alone appears on 33 of the vouchers as an authorized signatory approving the request for payment. Respondent's signature alone appears on five of the vouchers as an authorized signatory approving the request for payment. Both Whiteford and respondent's signature appear on 21 vouchers as authorized signatories approving the request for payment.

11. Respondent testified that Whiteford "was getting paid out of the voucher system." Several vouchers indicating that checks of specified amounts were payable to Whiteford corroborate respondent's testimony. For example, voucher number 41, which Whiteford signed as an authorized signatory, requests a payment of \$6,632.50 for Whiteford. The accompanying supporting "Contractor's Invoice," dated April 12, 2007 is for the identical amount requested and bears Whiteford's signature. In addition, the Ortegas, Whiteford, and respondent's signature appear on an April 24, 2007 letter addressed to "To Whom it May Concern" which states that "The undersigned parties are aware that Erich Whiteford has been in charge of ordering material, hiring subcontractors and completing a portion of the work as needed since 12/04/06 and will continue to do so until the home is complete. We the undersigned authorize The Members Own Federal Credit Union to reimburse Erich Whiteford for such services upon a completed voucher authorized by Kenneth Covington."

12. Respondent testified that the framing and installation of dry wall was completed on the Ortegas' home when "things started to go bad." "There was an allowance reflecting the view that they (the Ortegas) were simple people. [Yet,] they wanted upgrades that were not provided for in the allowance." Respondent and Whiteford's last day of work on the Ortegas' home construction project was July 10, 2007. The Ortegas instructed Credit Union not to pay any additional vouchers submitted by respondent or Whiteford.

13. Credit Union paid out a total of \$259,427.03 in connection with the Ortegas' home construction pursuant to its voucher program.

14. On July 26, 2007, Whiteford, identifying himself as "Job Supervisor," filed a Mechanic's Lien against the Ortegas' property in the amount of \$75,586.26. Respondent and Whiteford are listed on the Mechanic's Lien as "claimants."

15. On August 8, 2007, the Ortegas filed a complaint with the CSLB.



16. Sylvia Marin, Enforcement Representative with the CSLB, investigated the Ortegas' complaint. On January 2, 2008, Whiteford admitted his involvement in the Ortegas's project to Ms. Marin as follows:

I signed the written contract. I entered into a written contract with Jesus Ortega to build a custom home for the sum of \$426,790.00. I and Ken Covington were the only people authorized to sign the voucher request forms. The bank inspector always went to the job site to check the progress before a voucher was issued.

When the project was started, me and Ken Covington worked on the project together. Between February 2007 to July 2007, me and Ken Covington kept working on the project.

[REDACTED] . . . [REDACTED]

Some of the vouchers were issued to me because the subcontractors were not getting paid by the credit union. The Ortegas went to the credit union and stopped the project. My last day of work was 7/10/07. On 7/3/07, was the day we received the last voucher. On 7/26/07, Ken Covington and I filed a mechanics lien in the amount of \$75,586.26. (Exhibit 5.)

17. On January 2, 2008, respondent also made the following statements to Ms. Marin regarding Whiteford's involvement on the Ortegas' project:

Erich Whiteford signed the written contract to build a custom home for Jesus and Lourdes Ortega. I signed the written contract the same day. Erich Whiteford and I were the only people authorized to sign the request for voucher forms. I am responsible for the Ortegas['] project.

[REDACTED] . . . [REDACTED]

My name is shown on the homeowner's construction loan agreement paperwork. The bank inspector always went to the job site to check the progress before a voucher was issued.

Some vouchers were issued to Erich Whiteford because the subcontractors were not getting paid by the credit union. . . .

[REDACTED] . . . [REDACTED]

On 7/28/07, Erich Whiteford and I filed a mechanics lien in the amount of \$75,586.26. My attorney told me to include in the lien amount my profit markup, school fees, road fees, and other fees. The credit union accidentally used part of the loan money to pay for various fees which were not part of the



written contract. The fees totaled approximately \$38,000. The fees were paid from the profit and supervision line items per the cost breakdown list. Also, I submitted a voucher request for \$21,860.88 which was for materials purchased and work performed on the projects. The Ortegas called the credit union and instructed the loan office not to pay this voucher. (Exhibit 5.)

18. During the course of her investigation, Ms. Marin requested respondent to produce documentation of Whiteford's employment status during construction of the Ortegas' home. Ms. Marin testified that respondent produced "no documentation that Erich Whiteford was his employee." In fact, the documentation established that Whiteford functioned as a contractor. For example, Whiteford's name appears on a Snowline Joint Unified School District Development Fee Certificate of Compliance as the builder/developer and a receipt acknowledging the fee payment indicates that Whiteford paid the \$17,198.22 fee. Whiteford signed a February 14, 2007 Labor Release as "the undersigned contractor" certifying and warranting that the named laborers and mechanics actually performed work and labor. A Residential Plan Check Submittal Form and a Temporary Permit for Construction Water Service list Whiteford as the "applicant" and 13680 Bear Valley Rd, Suite E-4-351, Victorville, California as the applicant's address. An April 9, 2007 Labor Release, which also identifies Whiteford as a contractor, indicates that the Bear Valley Road address is associated with "Davinei Custom Homes." Whiteford maintained a Credit Union checking account in his name that lists his address as 13680 Bear Valley Rd, Suite E-4-351, Victorville, California.

19. Ms. Marin credibly testified that during her investigative interview with Whiteford she showed him the documents set forth in Factual Finding 18 and that he "did not dispute their authenticity."

20. The evidence establishes that Whiteford acted in the capacity of a contractor without having the requisite contractor's license.

21. Ms. Marin conducted a search to determine whether respondent had the requisite workers' compensation insurance at the time of his contract with the Ortegas, and discovered that on November 20, 2006, "there was no worker's comp effective on that date." Ms. Marin testified that "work was last performed on the project on July 10, 2007. From November 2006 to April 2007, there was no workers' comp. Only during the last two months of the project was there workers' comp." A computer print out from the CSLB listing respondent's workers' compensation insurance policy number WSATMEC00310801 with a May 11, 2007 effective date corroborated Ms. Marin's testimony.

22. The evidence establishes that respondent did not have workers' compensation insurance during part of the time he was working on the Ortegas' project.

23. Respondent admitted at the hearing that "the contract wasn't right" and that he "knew it was wrong," but he maintained that he "never intended to abet a fraud." Respondent testified that he was in the process of getting a new contract after learning that



the contract he was using was "not sufficient." He claimed that he "explained to the investigator that his license number was not on the contract because [he] . . . was trying to get a better contract." Respondent additionally testified that it was "not an unusual situation to have a homeowner pull permits and then call me in." According to respondent, "there was no way [he] . . . could not have had insurance" because he "had three other jobs going on," he pulled permits for those jobs, and he "could not do that without workers' compensation." Respondent acknowledged that his ignorance of the law is no excuse.

24. The evidence establishes that respondent aided, abetted, and combined with Whiteford, an unlicensed contractor, to evade the Contractors' License Law while providing unlicensed contracting services in connection with the construction of a custom residence for the Ortegas.

#### *Factors in Aggravation and Mitigation*

25. On October 5, 2007, the Ortegas commenced a lawsuit against respondent, his construction company, and Whiteford in San Bernardino Superior Court seeking declaratory relief and claiming damages for breach of contract, fraudulent misrepresentation, anticipatory breach, and defamation. On October 24, 2007, respondent cross-claimed against the Ortegas and brought a third party claim against Credit Union alleging foreclosure of mechanics lien, breach of contract, specific performance, open book account, and slander per se. In June 2008, respondent and the Ortegas reached a settlement. The Ortegas retained another construction company to complete the construction of their home for a sum of \$310,300.

26. Respondent is a high school graduate who worked several years in the construction industry assisting his father repair and rehabilitate residential properties before obtaining his contractor's license. Several individuals for whom respondent constructed residential or commercial buildings testified about their satisfaction with respondent's professionalism and work product. All hold respondent in the highest regard.

27. Respondent testified that his license is currently suspended and that because there is no construction work he has not renewed his license.

28. Respondent is married and has children. He is active in his church.

#### *Costs of Prosecution*

29. Complainant submitted a "Matter Time Activity by Professional Type" documenting in detail the date and amount of time that prosecutorial and support personnel worked on this matter. For the time period October 1, 2010 to November 15, 2011, complainant incurred \$7,562.25 as its costs of prosecution. The sum of \$7,562.25 is a reasonable cost of the investigation and enforcement of the case in accordance with Business and Professions Code section 123.5.



30. Neither complainant nor respondent introduced evidence regarding respondent's ability to pay costs.

### LEGAL CONCLUSIONS

1. The expiration, cancellation, forfeiture, or suspension of a license by operation of law does not deprive the registrar of jurisdiction to proceed with a disciplinary proceeding. (Bus. & Prof. Code, § § 118, subd. (b), and 7106.5.) Consequently, jurisdiction exists to proceed with this disciplinary proceeding notwithstanding suspension of the license set forth in Factual Finding 2 and expiration of the license set forth in Factual Finding 3.

2. Business and Professions Code section 7090 authorizes the temporary suspension or permanent revocation of any license if the licensee "is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action."

3. Business and Professions Code section 7110 provides, among other things, that willful or deliberate disregard and violation of the compensation insurance laws constitutes a cause for disciplinary action.

4. Business and Professions Code section 7114, subdivision (a), provides that "[a]iding or abetting an unlicensed person to evade the provisions of . . . [the Contractors' State License Law] or combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of . . . [the Contractors' State License Law] constitutes a cause for disciplinary action."

5. Business and Professions Code section 7115 provides that "[f]ailure in any material respect to comply with the provisions of . . . [the Contractors' State License Law], or any rule or regulation adopted pursuant to . . . [the Contractors' State License Law] . . . constitutes a cause for disciplinary action.

6. Business and Professions Code section 7116 provides that "[t]he doing of any willful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action."

7. Business and Professions Code section 7164 requires every contract between an owner and a contractor for the construction of a single-family dwelling to be evidenced in writing (subdivision (a)) and that the writing contain the name, address, and the license number of the contractor (subdivision (b)(1)); a statement regarding the attachment of liens on the property by the contractor, subcontractors, and material suppliers and how to avoid liens under the heading "Mechanics' Lien Warning" (subdivision (b)(2)); and a statement that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner (subdivision (d)).



8. The CSLB has authority to request that the Administrative Law Judge direct a licensee found to have committed a violation of the Contractors' State License Law to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

9. The standard of proof applicable in an administrative disciplinary proceeding such as this to suspend or revoke a contractor's license is "clear and convincing evidence." (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a "high probability" that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.) As the party asserting the charges in the Accusation, complainant bears the burden of proof by clear and convincing evidence.

10. Discussion. "The purpose of the [Contractors' License Law] . . . 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." (*Home Depot, U.S.A., Inc. v. Contractors' State License Board* (1996) 41 Cal.App. 4th 1592.) Violation of the Contractors' License Law is a public welfare offense generally punishable without proof of criminal intent notwithstanding the statutory requirement of a "willful" violation. As stated in *Morissette v. United States* (1952) 72 S.Ct. 246, 249, "[t]he accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably exact from one who assumed his responsibilities." The clear and convincing evidence establishes that respondent allowed his license to be used to enter into a contract for the construction of the Ortegas' custom house. Without respondent's association with the project, Credit Union likely would not have financed the project. Respondent alone or jointly with Whiteford submitted invoices to credit union for payment for work completed and material delivered in connection with the project. Multiple payments of moneys from Credit Union to Whiteford indicate not just respondent's awareness and knowledge of Whiteford's unlicensed contracting services, but underscore the extent to which respondent aided and abetted Whiteford's unlicensed conduct. By simply not lending his imprimatur to the Ortegas' home construction project, Respondent was in a position to prevent Whiteford from evading the requirements of the Contractors' License Law.

11. Cause exists to discipline Contractors' License Number 599902 pursuant to Business and Professions Code sections 7090 and 7110 in that as set forth in Factual Findings 21 and 22, the clear and convincing evidence establishes that respondent worked on the Ortegas' home construction project from November 2006 to April 2007 without workers' compensation insurance.

12. Cause exists to discipline Contractors' License Number 599902 pursuant to Business and Professions Code sections 7090 and 7114, subdivision (a) in that as set forth in



Legal Conclusion 10 and Factual Findings 5 through 14, inclusive, 16 through 20, inclusive, and 24, the clear and convincing evidence establishes that respondent aided, abetted, and combined with Erich Whiteford, an unlicensed person, to evade the Contractors' License Law.

13. Cause exists to discipline Contractors' License Number 599902 pursuant to Business and Professions Code sections 7090 and 7116 in that as set forth in Legal Conclusion 11 and Factual Findings 5 through 14, inclusive, 16 through 20, inclusive, 24, and 25, the clear and convincing evidence establishes that respondent willful or fraudulent acts caused substantial injuries to the Ortegas.

14. Cause exists to discipline Contractors' License Number 599902 pursuant to Business and Professions Code sections 7090 and 7164, subdivisions (a), (b)(1) and (2), and (d) in that as set forth in Factual Findings 6a, 6b, and 6c, the clear and convincing evidence establishes that respondent entered into a written contract to construct a 3980 square foot custom home and the contract did not contain respondent's name, address, and contractors' license number, a statement regarding the attachment of liens on property by respondent, subcontractors, and material suppliers and how to avoid liens under the heading "Mechanics' Lien Warning," or a statement that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner.

15. Cause exists to discipline Contractors' License Number 599902 pursuant to Business and Professions Code sections 7090 and 7115 in that as set forth Legal Conclusions 10 through 14, inclusive, the clear and convincing evidence establishes that respondent failed materially to comply with the requirements of the Contractors' State License Law.

16. A determination that legal cause exists to discipline respondent's Contractors' License Number 599902 does not end the inquiry. The guidelines entitled *Disciplinary Guidelines* (Rev. 12/11/96) provides that in determining the appropriate disciplinary penalty to be imposed on a person who has not had a previous citation, revocation, or suspension as the result of the filing of an accusation, the Registrar shall give due consideration to several factors, including the nature and severity of the acts or offenses under consideration, actual or potential harm to the public, prior disciplinary record, the number and variety of current violations, and evidence of mitigation and rehabilitation.

17. Respondent aided, abetted, and combined with Whiteford, an unlicensed person, to evade the Contractors' License Law enacted for protection of the public. The seriousness of respondent's several offenses, set forth above, warrant imposition of a stayed revocation with probation as provided for in the *Guidelines*.

18. Since respondent's Contractors' License Number 599902 is subject to revocation for the reasons set forth in Legal Conclusions 10 through 17, inclusive, pursuant to Business and Professions Code section 7098 and 7121 any other license for which respondent furnishes qualifying experience and appearance may be revoked without further

notice and respondent is prohibited from serving as an officer, director, associate, partner, or qualifying individual of a CSLB licensee.

19. Cause exists pursuant to Business and Professions Code section 7098 to revoke Contractor License Number 770618 issued to Deck-It by DJ, a partnership for which respondent serves as Qualifying Partner.

20. Cause exists pursuant to Business and Professions Code section 7121 to prohibit respondent from serving as an officer, director, associate, partner, or qualifying individual of a CSLB licensee.

21. Cause exists pursuant to Business and Professional Code section 125.3 to order respondent to pay the reasonable costs set forth in Factual Finding 29.

22. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. App. 4th 32, 45, the CSLB must exercise its discretion to reduce or eliminate cost awards so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [CSLB] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The CSLB, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the CSLB must consider whether or not the licensee has raised a colorable defense. The CSLB must also consider the licensee's ability to make payment.

23. Considering all of the *Zuckerman* factors including the absence of evidence of economic hardship, respondent shall pay the CSLB its reasonable costs in the amount of \$7,562.25.

#### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Contractors' License Number 599902, Classification B, issued to respondent Kenneth Wayne Covington as sole owner is revoked. However, the revocation is stayed and the license is placed on probation for three (3) years on the following terms and conditions:

a. Obey All Laws. Respondent shall comply with all federal, state and local laws governing the activities of a licensed contractor in California.

b. Interviews with Regional Deputy. Respondent and any of respondent's personnel of record shall appear in person for interviews with the Regional Deputy or designee upon request and reasonable notice.



c. Submissions. Respondent shall submit copies of documents directly related to a person's construction operations to the CSLB upon demand during the probation period.

d. Cost Recovery. Respondent shall pay to the CSLB costs associated with its enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$7,562.25. Respondent shall be permitted to pay these costs in a payment plan approved by the CSLB, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the CSLB, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

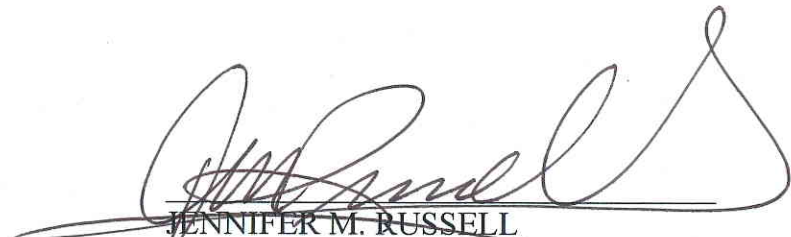
e. Violation of Probation. If respondent violates probation in any respect, the CSLB, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed.

f. Completion of Probation. Upon successful completion of probation, the contractor's license will be fully restored.

2. Contractor License Number 770618, Classification B, issued to Deck-It by DJ, a partnership for which respondent Kenneth Wayne Covington serves as Qualifying Partner, is revoked. However, the revocation is stayed and the license is placed on probation for three (3) years on the same terms and conditions set forth above in paragraphs a through f.

3. Respondent Kenneth Wayne Covington is prohibited from serving as an officer, director, associate, partner, or qualifying individual of a CSLB licensee.

DATED: December 16, 2011.



JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings