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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. N2012-261

14 **AMERICAN ASPHALT & SEAL COATING**
15 **PROFESSIONALS**
16 **MARSHALL DOUGLAS LARKIN, SOLE OWNER**
494 Marsan Court
Marina, CA 93933

A C C U S A T I O N

17 **Contractor's License No. 953939, C-32,**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about October 27, 2010, the Registrar of Contractors issued Contractor's
25 License Number 953939, C-32 to American Asphalt & Seal Coating Professionals, Marshall
26 Douglas Larkin, sole owner (Respondent). The Contractor's License expired on October 31,
27 2012, and has not been renewed.
28

1 **JURISDICTION**

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

6 **STATUTORY PROVISIONS**

7 4. Section 7090 of the Business and Professions Code ("Code") provides, in pertinent
8 part, that the Registrar may suspend or revoke any license or registration if the licensee or
9 registrant is guilty of or commits any one or more of the acts or omissions constituting cause for
10 disciplinary action.

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

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

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

24 8. Section 7107 of the Code states that "[a]bandonment without legal excuse of any
25 construction project or operation engaged in or undertaken by the licensee as a contractor
26 constitutes a cause for disciplinary action."

27 9. Section 7109 of the Code states:

28 ///

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

5 "(b) A willful departure from or disregard of plans or specifications in any material respect,
6 which is prejudicial to another, without the consent of the owner or his or her duly authorized
7 representative and without the consent of the person entitled to have the particular construction
8 project or operation completed in accordance with such plans or specifications, constitutes a
9 cause for disciplinary action."

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

14 11. Section 7117.5 of the Code states:

15 "(a) Acting in the capacity of a contractor under any license which has been made inactive,
16 as provided in Section 7076.5, constitutes a cause for disciplinary action.

17 "(b) Acting in the capacity of a contractor under any license that has been suspended for
18 any reason constitutes a cause for disciplinary action.

19 "(c) Acting in the capacity of a contractor under any license that has expired constitutes a
20 cause for disciplinary action if the license is subject to renewal pursuant to Section 7141. The
21 actions authorized under this section shall be separate from, and in addition to, all other remedies
22 either civil or criminal."

23 12. Section 7125.4 of the Code states:

24 "(a) The filing of the exemption certificate prescribed by this article that is false, or the
25 employment of a person subject to coverage under the workers' compensation laws after the filing
26 of an exemption certificate without first filing a Certificate of Workers' Compensation Insurance
27 or Certification of Self-Insurance in accordance with the provisions of this article, or the
28

1 employment of a person subject to coverage under the workers' compensation laws without
2 maintaining coverage for that person, constitutes cause for disciplinary action.

3 . . . "

4 **COST RECOVERY/RESTITUTION**

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

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

12 **FAAC PROJECT**

13 15. On or about November 17, 2011, Respondent entered into a contract with Emerson V.
14 Reyes, Club Manager for the Filipino American Community Club [FAAC] to repair the asphalt
15 parking lot and seal coat the parking lot in Marina, California (hereinafter "FAAC project"). The
16 contract price was for \$19,200.00. Work began on or about November 18, 2011 and was
17 abandoned on or about January 5, 2012. Respondent's license was suspended for failure to
18 maintain a bond or cash deposit on November 2, 2011, before the contract was signed for the
19 FAAC project. Respondent received a total of \$19,200.00 for the FAAC project.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Abandonment)**

22 16. Respondent's license is subject to discipline under Code section 7107, in that
23 Respondent abandoned the FAAC project without legal excuse by failing to seal coat
24 approximately 30% of the parking lot as set forth in the contract.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Departure From Accepted Trade Standards)**

27 17. Respondent's license is subject to discipline under Code section 7109, subdivision
28 (a), in that on the FAAC project, Respondent willfully departed from accepted trade standards for

1 good and workmanlike construction in the following respects:

- 2 a. Failed to properly install the new asphalt in that rubberized crack filler was used on
3 approximately 2,314 square feet of the east side of the parking lot to fix low areas where water
4 was ponding.
- 5 b. Failed to remove asphalt debris in the west end of the parking lot in the planter area.
- 6 c. Failed to properly install the area around three existing asphalt curb at three corners in
7 that these areas had loose asphalt and was wavy.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Failure to Complete the Project for the Contract Price)**

10 18. Respondent's license is subject to discipline under Code section 7113, in that on the
11 FAAC project, Respondent failed in a material respect to complete the project for the contract
12 price and the owner will be required to spend a substantial sum in excess of the contract price to
13 complete the project in accordance with the contract.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Acting as a Contractor on a Suspended License)**

16 19. Respondent's license is subject to discipline under Code section 7117.5, in that during
17 the entire time of the FAAC project, Respondent acted as a contractor while the license was
18 suspended for failure to maintain a bond or cash deposit.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Maintain Workers' Compensation Insurance/False Exemption)**

21 20. Respondent's license is subject to discipline under Code section 7125.4, in that on the
22 FAAC project, Respondent employed two workers but failed to maintain Workers' Compensation
23 Insurance and had on file with the Board an exemption claiming that Respondent did not employ
24 workers.

25 **OTHER MATTERS**

26 21. Pursuant to sections 7097 and 7098 of the Code, if license number 953939, C-32
27 issued to Respondent is suspended or revoked, the Registrar may suspend or revoke, without
28

1 notice, any other license issued in the name of Marshall Douglas Larkin or for which Marshall
2 Douglas Larkin furnished the qualifying experience and appearance.

3 22. Pursuant to section 7121 of the Code, if discipline is imposed on license number
4 953939, C-32 issued to Respondent, Marshall Douglas Larkin shall be prohibited from serving as
5 an officer, director, associate, partner, manager, or qualifying individual, or member of the
6 personnel of record of a licensee of any licensee during the time the discipline is imposed, and
7 any licensee which employs, elects, or associates Marshall Douglas Larkin shall be subject to
8 disciplinary action.

9 23. Pursuant to Section 7121.5 of the Code, if discipline is imposed on license number
10 953939, C-32 issued to Respondent, Marshall Douglas Larkin shall be prohibited from serving as
11 an officer, director, associate, partner, manager, or qualifying individual of any licensee during
12 the time the discipline is imposed, whether or not he had knowledge or participated in the acts or
13 omissions constituting grounds for discipline, and any licensee which employs, elects, or
14 associates Marshall Douglas Larkin shall be subject to disciplinary action.

15 24. Section 7095 of the Code provides, in pertinent part, that the Registrar in making his
16 order may:

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

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

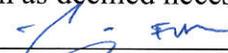
21 (c) Impose upon the licensee compliance with such specific conditions as may be just in
22 connection with its operations as a contractor disclosed at the hearing, and may further provide
23 that until such conditions are complied with, no application for restoration of the suspended or
24 revoked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

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Registrar of Contractors issue a decision:
28

- 1 1. Revoking or suspending Contractor's License Number 953939, C-32 issued to
- 2 American Asphalt & Seal Coating Professionals, Marshall Douglas Larkin, sole owner;
- 3 2. Prohibiting Marshall Douglas Larkin from serving as an officer, director, associate,
- 4 partner, or qualifying individual of any licensee during the period that discipline is imposed on
- 5 license Number 953939, C-32, issued to American Asphalt & Seal Coating Professionals,
- 6 Marshall Douglas Larkin, sole owner;
- 7 3. Revoking or suspending any other license for which Marshall Douglas Larkin is
- 8 furnishing the qualifying experience or appearance;
- 9 4. Ordering restitution of all damages according to proof suffered by the Filipino
- 10 American Community Club [FAAC], as a condition of probation in the event probation is
- 11 ordered;
- 12 5. Ordering restitution of all damages suffered by the Filipino American Community
- 13 Club [FAAC] as a result of Marshall Douglas Larkin's conduct as a contractor, as a condition of
- 14 restoration of license Number 953939, C-32, issued to American Asphalt & Seal Coating
- 15 Professionals, Marshall Douglas Larkin, sole owner;
- 16 6. Ordering American Asphalt & Seal Coating Professionals, Marshall Douglas Larkin,
- 17 sole owner to pay the Registrar of Contractors his costs in the investigation and enforcement of
- 18 the case according to proof at the hearing, pursuant to Business and Professions Code section
- 19 125.3;
- 20 7. Ordering American Asphalt & Seal Coating Professionals, Marshall Douglas Larkin,
- 21 sole owner to provide the Registrar with a listing of all contracting projects in progress and the
- 22 anticipated completion date of each;
- 23 8. Taking such other and further action as deemed necessary and proper.

24 DATED: FEBRUARY 22, 2013


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

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