

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

In the Matter of the Accusation Against:

B C I BUILDERS INC,
DENE ARMONDO BUSTICHI,
RMO/CEO/PRESIDENT
SALVADOR JOSEPH LO FRANCO,
OFFICER
4652 Scotts Valley Drive, Suite 202
Scotts Valley, CA 95066.

Contractor's License No. 595141, B, C-8,

AND

SCOTTS VALLEY GREEN BUILDERS INC
DENE ARMONDO BUSTICHI,
RMO/CEO/PRESIDENT
4652 Scotts Valley Drive, Suite 202
Scotts Valley, CA 95066

Contractor's License No. 995412, B, C-8

Respondent and Affiliated Party.

CASE NO. N2014-157

OAH NO. 2014110609

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Registrar of Contractors as her 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 B C I BUILDERS INC , License Number 595141, shall not apply for reissuance or reinstatement of any license for one year(s) from the effective date of this Decision.

IT IS FURTHER ORDERED that pursuant to Section 7102 of the Business and Professions Code and Section 870 of the Code of Regulations, Respondent SCOTTS VALLEY GREEN BUILDERS INC, License Number 995412, shall not apply for reissuance or reinstatement of any license for one year(s) from the effective date of this Decision.

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 June 23, 2015.

IT IS SO ORDERED May 21, 2015.



Cindi A. Christenson
Registrar of Contractors

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PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California (OAH), heard this matter on April 7, 2015, in Oakland, California,.

Deputy Attorney General Michael B. Franklin represented complainant Wood Robinson.

Attorney at Law Phillip A. Passafuime represented respondent B C I Builders Inc., and its responsible managing officer, chief executive officer and president Dene Armondo Bustichi, who appeared at the hearing of this matter.

Salvador Joseph Lo Franco was neither present in person nor represented at the hearing of this matter.

On April 7, 2015, the parties submitted the matter for decision and the record closed.

FACTUAL FINDINGS

License History and Current License Status

1. On May 29, 1990, the Contractors' State License Board issued license number 595141 to Dene Armondo Bustichi (respondent Bustichi) so that as sole owner he could engage in business as a classification B (General Building) contractor. After the expiration of several terms of licensure as a sole owner, respondent Bustichi caused the license to be reassigned, on September 24, 1999, to the corporation having a fictitious business name of B C I Builders Inc. (respondent B C I). The corporation's license showed respondent Bustichi as the entity's responsible managing officer (RMO), chief executive officer (CEO), and president. On February 19, 2002, the board issued respondent the specialty classification of C-8 (concrete) contractor. On September 17, 2001, Salvador Joseph Lo Franco became an officer to respondent B C I Builders Inc. The license is renewed to September 30, 2015.

2. The licensing history and current licensing status of respondent B C I is as follows:

<i>Date</i>	<i>License History and Status</i>
May 29, 1990	License Issued to respondent Bustichi
September 24, 1999	License Reassigned from Individual Owner Bustichi to Corporation B C I Builders Inc.
August 22, 2012	Suspended (Contractor's Bond Violation under Code section 996.340)
August 23, 2012	Reinstated
January 28, 2014	Suspended (Judgment in Case No. 113CV246879 under Code section 7071.17)
January 30, 2014	Reinstated

February 26, 2014	Suspended (Judgment in Case No. 113CV246879 under Code section 7071.17)
May 28, 2014	Suspended (Bond Payment of Claim No. 6037870-15 under Code section 7071.11)
May 29, 2014	Suspended (Judgment in Case No. CV175989 under Code section 7071.17)
June 2, 2014	Suspension Lifted under Code section 7071.11
June 11, 2014	License Reinstated
November 25, 2014	Suspended (Bond Payment of Claim No. 6037870-15 under Code section 7071.11)
December 22, 2014	License Reinstated
January 23, 2015	Suspended (Bond Payment of Claim No. 6037870-15 under Code section 7071.11)
January 28, 2015	License Reinstated
February 24, 2015	Suspended (Bond Payment of Claim No. 6037870-15 under Code section 7071.11)
March 26, 2015	License Reinstated

Complainant's Accusation against Respondent B C I, Respondent Bustichi and Affiliated Party

3. On October 1, 2014, Wood Robinson (complainant), in his official capacity as Enforcement Supervisor I, Contractors' State License Board (the board), Department of Consumer Affairs, made and filed the Accusation against respondent B C I and respondent Bustichi. Also, the Accusation was directed at respondent Bustichi as RMO, CEO and president and Salvador Joseph Lo Franco (Lo Franco) as an officer.

And, the Accusation named as a respondent another corporation having the name Scotts Valley Green Builders Inc., (affiliated party Green Builders) with respondent Bustichi as RMO, CEO, and president. The board has issued affiliated party Green Builders license

number 995412, which has been granted classification B (general building) contractor and the classification C-8 (concrete) contractor.

Respondent B C I and affiliated party Green Builders have the same business address on Scotts Valley Drive in the City of Scotts Valley, California.

4. Respondent B C I, respondent Bustichi and complainant stipulated and agreed that Lo Franco, although an officer of respondent B C I, had committed no known act or omission, under the allegations in the Accusation, for which Lo Franco can be determined to be subject to disciplinary action by the board. (However, for protection of the public, the Registrar may compel Lo Franco to report all of his current and future dealings and associations that he has, or may have, with respondent Bustichi.)

5. Respondent Bustichi was the only individual officer, director or owner of respondent B C I who exercised control or management duties and functions that led to the below described unprofessional conduct, which warrants license revocation.

Background and Summary

6. Respondent B C I, with respondent Bustichi as the sole negotiating officer, entered into a contract with Anthony Campo (Mr. Campo) of Monterey, California. Under the contract, Mr. Campo was to provide respondents with countertop material that was to be installed during the remodel construction project of 60 bathrooms and bartops/kitchens within Dinah's Garden Hotel (Dinah project).

The contract price that respondents agreed to pay Mr. Campo was \$254,953.50. (Respondent B C I, as general contractor for the Dinah project, was to be paid more than \$1,225,000 under the contract with the hotel's owner). Although respondents were paid the full measure of the general contractor's fees and costs for the Dinah project, respondents failed to pay Mr. Campo more than \$122,000 under contract with that material supplier long after the completion of the project in June 2013. As of the date of the hearing in this matter, respondents' debt to Mr. Campo was in an amount of \$112,333.

Joseph Anthony Campo

7. Joseph Anthony Campo offered compelling testimony at the hearing of this matter.

By his demeanor while testifying; by his deliberate, conscientious manner; by his attitude towards the proceedings; and, by the consistency of providing a compelling account of his observations of conduct and business practices of respondent Bustichi doing business as B C I, Mr. Campo demonstrated that he was a credible¹ and persuasive witness at the hearing.

¹ California Government Code section 11425.50, subdivision (b), third sentence.

8. Mr. Campo holds a board issued license with classification of C-61 (Limited Specialty) contractor with a D-12 (Synthetic Products) installation contractor classification. He is the sole owner of Tom Richards Installations. Mr. Campo's sole proprietorship enterprise primarily engages in the fabrication and installation of counter tops and wall coverings manufactured from DuPont Corian. (At the time of the hearing, the business employed three individuals.)

9. Mr. Campo's business acquires raw sheets of DuPont Corian from Butler-Johnson Corporation (Butler-Johnson), which is the sole distributor of Dupont Corian for all of Northern California and parts of Nevada. Before becoming a victim of respondent Bustichi's unprofessional conduct, Mr. Campo had fostered a sound relationship with Butler-Johnson, which extended credit to Mr. Campo's small business.

10. In late 2012, respondents contacted Mr. Campo to gain bids from Mr. Campo for two aspects of a then proposed remodeling of rooms at the Dinah project. The first bid was for the costs for installation of DuPont Corian in one room in the hotel, which would serve as a model for the owner's approval. While the second bid pertained to the costs for the installation of the material into approximately 67 rooms, which represented the entire project that would be expected upon acceptance by the hotel owner's offer by respondents for the Dinah project.

Mr. Campo presented three separate proposals, dated November 6, 2012, December 17, 2012, and February 21, 2013. Respondents accepted Mr. Campo's proposals that expanded the extent of the scope of the fabrication of DuPont Corian for the Dinah project.

11. Respondents accepted the first delivery of DuPont Corian during November 2012. Mr. Campo's first invoice, dated November 26, 2012, in the amount of \$2,625, was paid by respondents on November 30, 2012. Until approximately February 8, 2013, respondent promptly paid the invoices submitted by Mr. Campo. But, beginning in mid-February 2013, respondents began to delay payment of the invoices. By the end of February 2013, respondents' debt to Mr. Campo was \$24,163. During March 2013, Mr. Campo sent invoices to respondents in an aggregate amount \$45,126; but, respondent tendered payment to Mr. Campo of only \$10,000. Hence, by the end of March 2013, respondents owed Mr. Campo \$59,289.

During April 2013, Mr. Campo made 10 deliveries of DuPont Corian that resulted in ten invoices having an aggregate amount of \$86,541. Respondents made payment of \$16,959 on April 6, and \$37,089 on April 24. Hence with the outstanding debt from the past two months, Mr. Campo was owed by respondent the amount of \$91,782 by the end of April 2013.

During May 2013, Mr. Campo made two deliveries of DuPont Corian that resulted in respondents having a debt for that month of \$32,968. Respondent made a payment on May 16, 2013, in an amount of \$10,833, as well as a payment of \$10,000 on May 28, 2013.

Respondent B C I's debt to Mr. Campo at the end of May 2013 was in the amount of \$103,917.

Mr. Campo made a single delivery of DuPont Corian to the Dinah project of behalf of respondent B C I on June 3, 2013. That last delivery by Mr. Campo resulted in an invoice of \$17,916 for money owed by respondent B C I.

The outstanding debt owed to Mr. Campo in June 2013, on the date of the last delivery of DuPont Corian, was \$121,833. Over the remaining months of 2013, respondents made no further payment to Mr. Campo regarding the debt of \$121,833.

12. Respondents' work at the Dinah project was completed during the first week in June 2013. And, respondents received from the hotel owner the final payment in full satisfaction of the contract price by June 17, 2013.

13. Mr. Campo sent respondent Bustichi several emails that implored the general contractor to pay the debt owed due to the delivery of DuPont Corian to the Dinah project. The emails by Mr. Campo as sent directly to respondent Bustichi included the following text:

June 24, 2013 "I'm getting a little nervous; let me know where we stand please [regarding the debt of \$121,833]."

July 1, 2013 "... I'm hurting for money. Ripe receivables are all [owed by respondent B C I]. Running out of credit"

July 18, 2013 "I hate doing this, but we are talking about one hundred twenty two thousand dollars I haven't seen any money since late May and I can't get my material supplier off my back I'd like to know what is going on?"

Mr. Campo sent email messages with similar pleas to respondent Bustichi over the course of several months. Initially respondents led Mr. Campo to believe that the hotel owner had failed to pay respondent B C I the full contract price.

14. On approximately August 7, 2013, Mr. Campo learned that the hotel owner of the Dinah project had paid respondent B C I in full all money due to the general contractor for the remodel construction project. Also, over the following months, Mr. Campo learned that respondents had paid other subcontractors and suppliers on large debts owed by respondent B C I.

JULIE HANDLEY

15. Ms. Julia N. Handley (hotel owner or Ms. Handley) offered persuasive and compelling evidence at the hearing of this matter. By her attitude towards the proceedings; by the reliable character of her vivid testimony; by her truthful description of the extent of

her opportunity to perceive the matter about which she testified; and, by the nonexistence of bias or motive to distort testimony in this matter, Ms. Handley showed that she gave a credible and reliable testimonial evidence in this matter.

16. Ms. Handley is the owner of Dinah's Garden Hotel in Palo Alto, California.

17. In 2013, the hotel owner set out to hire respondent B C I to act as the general contractor for the major remodeling and renovations for the Dinah project. After taking bids from other contractors, Ms. Handley selected respondent B C I to perform the construction work. Hotel owner agreed to a contract price, as calculated by respondent Bustichi, ultimately resulted in the Dinah project provided respondent B C I with gross receipts of \$1,227,147.

18. On June 14, 2013, a Palo Alto city building official issued a final approval for the construction work performed by respondents.

19. On June 16, 2013, during a lunch between respondent Bustichi and Ms. Handley, respondent Bustichi asked the hotel owner as to the expected day for the general contractor's receipt of a final payment under the contract. At that point, Ms. Handley pointedly asked respondent as to whether or not all subcontractors, who had provided materials or services for the Dinah project, had been paid. Respondent Bustichi promised the hotel owner that all subcontractors had been paid in full by June 16, 2013.

20. By telling Ms. Handley on June 16, 2013, that all subcontractors had been paid, respondent Bustichi lied to the hotel owner. Respondent knew that he had not paid Mr. Campo for that subcontractor's provision of services and materials. As of mid-June 2013, respondent B C I owed Mr. Campo, doing business as Tom Richards Installations, an amount of \$122,833.

21. On or about June 19, 2013, hotel owner paid respondent B C I in full when a final check of \$39,239.26 was delivered to respondent Bustichi.

22. After having paid respondent B C I more than \$1.2 million and having heard the promise from respondent Bustichi that all subcontractors had been paid, during August 2013, Ms. Handley was surprised by the claims from three subcontractors, including Mr. Campo, that respondents had failed to pay their respective demands for satisfaction of outstanding debts relating to construction services provided in completing the Dinah project.

23. When Ms. Handley confronted respondent Bustichi during August 2013 about the subcontractors who had reported to her the failure of the general contractor to pay those subcontractors, respondent Bustichi again lied to hotel owner that all subcontractors, including Mr. Campo, would be quickly paid by respondents.

JENNIFER MILLER

24. Ms. Jennifer Miller (Investigator Miller) provided the record with credible and persuasive evidence at the hearing of this matter.

In approximately October 2013, Investigator Miller began an investigation into Mr. Campo's complaint against respondent B C I and respondent Bustichi. During her investigation, Investigator Miller interviewed several individuals including hotel owner, respondent Bustichi, and Mr. Campo.

25. Investigator Miller's investigation led to a determination that respondent B C I had been paid all money due under a contract with hotel owner. And, Investigator Miller concluded that the respondent B C I, as the general contractor, had the ability as of mid-June 2013 to have paid Mr. Campo the outstanding debt owed to that subcontractor in the amount of \$122,833. But, based upon the promises made by respondent Bustichi, and through his lawyer, that Mr. Campo would be paid the money owed to him by respondent, Investigator Miller stayed all adverse action against the licensee for more than eight months. But, by approximately the late summer of 2014, Investigator Miller concluded that respondent Bustichi was intent upon a scheme to not promptly pay the debt owed to Mr. Campo. Hence, Investigator Miller reasonably took steps to prompt the prosecution of respondents under charges now set out in the Accusation for this matter.

Respondents' Contentions

26. Respondents contend that the failure to pay a material supplier, namely Mr. Campo, was a consequence of respondent Bustichi having underbid the hotel owner's contract price, which did not accurately include labor costs. Respondents aver that because the project's costs "ran way over" because of unexpected large labor expenses, which impaired the general contractor's finances, under Business and Professions Code section 7120, a legal excuse arose to refute complainant's allegation of respondents' failure to pay a subcontractor for materials or services. And, respondents argue that the year 2013 was a difficult time for contractors in his community so that the general economic conditions barred respondent B C I from satisfying the debt owed to Mr. Campo so that the general contractor cannot be held culpable for the unlawful act of diversion of funds within the meaning of Business and Professions Code section 7108. But, respondent Bustichi was neither persuasive nor believable in attempting to refute the weight of a substantial portion of the evidence offered by complainant against respondents.

Respondents' contentions and arguments evince insufficient merit to contradict complainant's portrayal of respondent Bustichi's unprofessional performance as a responsible managing officer for a licensed general contractor.

Matters in Mitigation

27. On April 23, 2014, surety for respondent B C I issued a check to Mr. Campo for \$7,500. That money came from respondent B C I's general building contractor's bond.

28. On October 27, 2014, which was approximately two weeks after respondents' receipt of complainant's Accusation, Mr. Campo received a payment of \$2,000 from respondents.

Matters in Aggravation

29. Although Mr. Campo recovered \$7,500 through the contract bond held by respondent B C I, respondent Bustichi made it very difficult for the aggrieved subcontractor to collect the amount of the bond. Respondent Bustichi initiated a "counter" civil action against Mr. Campo so that the subcontractor/material supplier was required to expend \$3,000 in attorneys' fees to defend his right to collect the funds for which respondent Bustichi had unethically permitted to be diverted from the proper payment of the debt owed to Mr. Campo. Moreover, the contract bond payout's proceeds, after deducting the payment of attorneys' fees, were practically all paid by Mr. Campo to Butler-Johnson, the supplier of the DuPont Corian.

30. Before the Dinah project, Mr. Campo had developed a sound business relationship with Butler-Johnson, the Northern California distributor of DuPont Corian. Due to respondents' unprofessional conduct and incompetent business dealings with regard to Mr. Campo that involved the failure to pay more than \$122,000 to that subcontractor, Butler-Johnson ended the supplier's credit terms for Mr. Campo's business. Hence, due to the unethical operation of business activities by respondents, Mr. Campo's business has been markedly impaired due to respondents' willful failure to pay the debt due the victimized subcontractor.

31. Respondent Bustichi was not truthful in much of his testimony at the hearing of this matter. By respondent Bustichi's demeanor during the course of the hearing; by the incongruity of his testimony as measured against both Mr. Campo's compelling testimony and the persuasive assertions from the hotel owner; and, by respondent Bustichi's disposition and attitude toward his refusal to meet promises made to Mr. Campo, respondent Bustichi demonstrated that he was neither a credible nor reliable witness at the hearing of this matter.

Respondent Bustichi was not believable when he asserted at the hearing of this matter that respondent B C I incurred unexpected labor expenses that were not billed to hotel owner. Respondent Bustichi was not persuasive that respondents were unable to negotiate a change order with hotel owner when unexpected overtime labor costs were experienced.

And, at the hearing of this matter, respondent Bustichi asserted that Mr. Campo failed to clearly state the amount of the debt owed by respondent B C I to the subcontractor. Contrary to the false statement made by respondent Bustichi at the hearing of this matter that respondents

did not have a clear appreciation of the money due the material supplier, that is Mr. Campo, respondent Bustichi received email messages on August 6, August 7, and August 8, 2013, that vividly set out that Mr. Campo, doing business as Tom Richards Installations, was owed "\$122,833." Those emails were followed by an invoice, dated August 13, 2013, from Mr. Campo, as owner of Tom Richards Installation, that clearly stated the "amount due" from respondent B C I was an amount of \$122,833.

32. Respondent Bustichi's excuses and arguments do not counter the weight of evidence regarding respondent's violations of the Contractors' State License Law. Respondent Bustichi showed a disregard, or gross misunderstanding, for the obligations required by the law for licensed contractors in the provision of making timely and exact payment of money due to subcontractors.

33. Board Investigator Miller interviewed respondent Bustichi at the board's office in San Francisco.

During the interview, respondent Bustichi claimed that during the course of working at Dinah project, respondent B C I encountered construction delays that led to unexpected labor charges and costs. Further, respondent Bustichi asserted that he had failed to properly invoice hotel owner with the additional charges. His excuses amounted to respondent B C I, as directed by respondent Bustichi, having engaged in underbidding in order to gain the contract for the Dinah project. But, Investigator Miller did not find respondent Bustichi trustworthy or truthfully in making excuses for failing to pay Mr. Campo. Investigator Miller studied the contract, invoices and payment records relating to respondent B C I's contract for the Dinah project, and the board's investigator determined that in his making the offer to secure the original contract with hotel owner, respondent Bustichi had factored in costs for labor, materials, profit and overhead in presenting the contract price of more than \$1,200,000 for the remodel project.

Investigator Miller was credible and compelling in expressing her professional opinion that respondent B C I had the ability in June 2013, to have paid Mr. Campo the full measure of the debt owed the victimized subcontractor with regard to the Dinah project.

34. Investigator Miller found several instances where respondent B C I had been the target of complaints regarding the offense proscribed by Business and Professions Code section 7120, namely a contractor's willful or deliberate failure to pay money for materials or services rendered in connection with the operations of the contractor. Four complaints, which involved debt amounts of \$20,000 to \$50,000, did not result in any final report by a board investigator because respondents paid the subcontractors the outstanding debts. Also, respondent B C I had an unpaid debt of \$350,000 to one subcontractor, but that debt was paid before a board investigator prepared an investigative report.

35. During the interview with Investigator Miller, respondent Bustichi was unable to articulate even a general explanation for the application of the money that had been paid by hotel owner to respondent as measured against the money paid out to the subcontractors.

Respondent Bustichi provided Investigator Miller with no competent, documentary proof that the construction funds, as paid by hotel owner, were used by respondent B C I with regard to bona fide costs of the project for which the money was received by the general contractor. Respondent Bustichi's neglect established the violation under Business and Professions Code section 7108 regarding respondents' diversion of funds that are owed to other contractors.

36. During her investigative interview with respondent Bustichi, Investigator Miller heard respondent Bustichi state a lie when he proclaimed that hotel owner had not paid the full amount of the contract price for work on the Dinah project. Then during the interview when Investigator Miller showed respondent Bustichi all of the contract documents and payment records that had been sent to the investigator by hotel owner, Investigator Miller heard respondent Bustichi's retraction of the assertion that the general contractor had not received hotel owner's full payment under the contract. Upon being caught in his lie, respondent Bustichi made the admission that he simply did not pay the subcontractor/ materials supplier, namely Mr. Campo.

37. Under the control and direction of respondent Bustichi, respondent B C I has a negative history regarding prior license suspensions, that is, for: contractor's bond violations, outstanding underpaid Judgment damages, and neglected bond payment claims. The history of suspensions for respondent B C I establishes respondent Bustichi's pattern of unprofessional neglect or his incompetence in the conduct of the business of a licensed general contractor in this State.

38. Following Mr. Campo's complaints to the board regarding respondents' malfeasance in making payment related to a project for which a general contractor must be the lead licensee, there is no evidence that respondent Bustichi ever showed remorse, sympathy or regret for the frustration and misery sustained by the affected subcontractor, namely Mr. Campo, who originally had relied upon respondent as being an ethical and competent construction industry professional.

39. Moreover, respondent's unprofessional conduct and unethical steps, which defied the law regarding the duty of a licensed contractor to promptly pay a subcontractor, reflect poorly upon respondent Bustichi's integrity, good faith and honesty as a general building contractor professional.

40. By virtue of the requisite knowledge and experience necessary for any person to acquire licensure as a general building contractor, respondent Bustichi knew or should have known his corporation had violated the terms of the contract with Mr. Campo, who was the primary supplier of materials used at the Dinah project. But, at the hearing of this matter, respondent Bustichi refused to accept full, unequivocal responsibility for the harm inflicted on the material supplier and subcontractor, whose work product was integral to respondents' completion of the Dinah project, which enabled respondents to generate gross receipts of more than one million dollars.

41. Respondents called no expert witness to support any defense to complainant's evidence regarding respondents' breach of standards expected to be followed by general building contractors in avoiding the diversion of funds due a subcontractor/material supplier as shown in this matter. No expert witness appeared to offer an opinion that respondents' conduct met the standards in the industry for general building contractors regarding promptly paying subcontractors or suppliers of materials used on a project.

42. Respondents did not call to the hearing of this matter any accountant, bookkeeping officer manager or financial advisor who may have witnessed any aspect of either a supposed unexpected excessive labor costs overrun or unexpected developments at Dinah's project for which respondents had some reasonable basis to devote money that should have been paid to Mr. Campo. And respondents failed to present at the hearing any books of account or spread sheets to show that the Dinah project fostered unexpected labor costs that could not have been anticipated by a reasonably competent and reasonably skilled professional building contractor.

43. Rather than acting in good faith to resolve the dispute with Mr. Campo after August 2013 when the subcontractor learned that respondent B C I had been paid in full for the work at the Dinah project, respondent Bustichi refused to reasonably respond to the requests and inquiries of the subcontractor/material supplier. Rather, respondent Bustichi frustrated Mr. Campo's effort to recover money on the outstanding debt by asserting that he had been the subject of lawsuits and that he had no intent to expend great efforts to assure that Mr. Campo was promptly paid.

44. Respondent Bustichi offered no evidence that he has corrected his past business practices so that neither he nor his employees or agents will prospectively frustrate or victimize other subcontractors or material suppliers who may contract with respondent B C I or the affiliated corporation or other board licensees with whom respondent Bustichi may be associated.

Costs of Prosecution

45. Complainant seeks recovery of the costs of investigation and prosecution. Complainant established the costs by way of a declaration, dated April 2, 2015, by Heather Henderson, Case Management Representative, Sacramento Case Management, the board, and the declaration, dated April 2, 2005, by Deputy Attorney Michael B. Franklin. The declaration and the certificate describe that the following costs were incurred in connection with the investigation and prosecution of the Accusation against respondent B C I:

<i>Service</i>	<i>Rate per Hour</i>	<i>Hours</i>	<i>Costs</i>
<i>Investigative Services Costs</i>			
Consumer Services Representative	\$42.97	1.33	\$57.15

Enforcement Representative	\$58.27	23.25	\$1,354.78
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Office of the Attorney General [Department of Justice] Costs:

Legal Analyst	\$120	2.0	\$240.00
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Deputy Attorney General	\$170	17.25	\$2,932.50
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TOTAL Costs of Investigation and Prosecution incurred through the date of certification			\$4,584.43
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46. Respondent B C I and respondent Bustichi did not advance a meritorious defense in the exercise of their respective and collective rights to a hearing in this matter. Further, respondents cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the Accusation. And, respondents did not raise a “colorable challenge” to complainant’s Accusation.

Respondents did not persuasively assert that the subject general contractor has generated little income in the past few years. Moreover, respondents provided no form of profit and loss statement or accountant’s analysis of the licensee’s business receipts and expenses that may be germane to respondents’ current financial condition. Respondents offered no documentary or competent evidence to suggest that an order to pay the total costs of investigation and prosecution to the board will unduly impact the household of respondent Bustichi.

Respondents did not provide competent evidence establishing that complainant’s certifications of costs of prosecution is unreasonable or not appropriate.

The evidence does not establish that a substantial basis exists to warrant reduction of the assessment against respondents for the costs incurred by complainant. Hence, the imposition upon respondents of the full measure of the costs will not unfairly penalize respondent B C I or respondent Bustichi.

47. The reasonable and appropriate costs owed by respondent B C I and respondent Bustichi to the board is \$4,584.43.

Ultimate Findings

48. Respondent Bustichi directed and controlled respondent B C I so as to permit the diversion of funds that were owed to Mr. Campo, doing business as Tom Richards Installation, but also respondent Bustichi ignored the subcontractor/material supplier’s repeated pleas that the general contractor conform to the subcontractor’s reasonable expectations for prompt payment for materials delivered to the Dinah project.

49. The dealings of respondent Bustichi with Mr. Campo, a subcontractor, involved misrepresentations, deceit and dishonesty over the latter phase of the contractual relationship between respondents, the owner of the Dinah project and the subcontractor.

50. Respondent B C I, as directed and controlled by respondent Bustichi, engaged in the diversion of funds by failing to compensate Mr. Campo for materials and services as provided by the subcontractor that were necessary to complete the Dinah project. Respondents retained a portion of the payments he had no right to keep. If all funds received are not earned or used for bona fide project costs, there is evidence of an unlawful diversion. (*People v. Danny Victor Williams* (2013) 218 Cal.App.4th 1038, 1065; also, *People v. Butcher* (1986) 185 Cal.App.3d 929, 938.)

51. Respondents willfully failed to pay a subcontractor, Mr. Campo, for materials and services that the subcontractor provided respondents for the completion of the Dinah project.

52. Respondent Bustichi's unprofessional provision of incompetent business dealings with Mr. Campo, along with the matters in aggravation, establish that it would be against the public interest for respondent B C I or respondent Bustichi to hold a contractor's license in the State of California.

LEGAL CONCLUSIONS

1. "Clear and convincing proof to a reasonable certainty" is the standard of proof to be applied as to facts in dispute under the Accusation from which disciplinary action may result against the license held by respondent B C I and respondent Bustichi. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; Bus. & Prof. Code, § 7090.)

The Factual Findings and Order, herein, rest upon proof by clear and convincing evidence to a reasonable certainty that shows respondents' acts and omissions in the matters recorded herein.

2. The Contractors' State License Law (Bus. & Prof. Code, § 7000 et seq.), which provides a comprehensive scheme governing contractors doing business in California, reflects a strong policy in favor of protecting the public against unscrupulous and incompetent contracting work. Thus, the purpose of the law is to protect the public from incompetence and dishonesty in those who provide building and construction services, rather than to punish incompetent or corrupt licensees. 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. (*Hazard, Jr., Enterprises, Inc. v. Insurance Co. of the West* (1997) 52 Cal.App.4th 1088; *Norwood v. Judd* (1949) 93 Cal.App.2d 276, 286; and

Bus. & Prof. Code, § 7000.6, which establishes that “[p]rotection of the public shall be the highest priority for the Contractors’ State License Board”)

3. Business and Professions Code section 118, subdivision (b), provides that the suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

4. Business and Professions Code section 7090 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.

5. Business and Professions Code section 7096 provides that the term “licensee” shall include an individual, partnership, corporation, limited liability company, joint venture, or any combination or organization licensed under the Contractor’s State License Law, 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.

First Cause for Discipline – Diversion of Funds

6. Business and Professions Code section 7108 establishes that the diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, or failure substantially to account for the application or use of such funds or property on the construction project or operation for which such funds or property were received constitutes a cause for disciplinary action.

7. Cause for discipline exists for revocation of the license issued to respondents, pursuant to Business and Professions Code section 7108, by reason of the matters set forth in Factual Findings 12 through 15, 19 through 23, 25, 33 through 35, along with Legal Conclusions 2, 4, 5, and 6.

Respondent Bustichi, in his capacity of responsible managing officer, chief executive officer and president of respondent B C I, caused the diversion of funds, which had been received by the corporate licensee, for the completion of a specific remodeling construction project for Dinah project. Moreover, respondent Bustichi failed substantially to account for the application or use of money that should have been paid to Mr. Campo, doing business as Tom Richards Installation, who was owed \$122,833 in June 2013, when respondents had enjoyed gross receipts of more than one million dollars from the owner of the Dinah project.

Second Cause for Discipline – Failure to Pay for Material or Services

8. Business and Professions Code section 7120 provides:

Wilful or deliberate failure by any licensee or agent or officer thereof, to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

9. Business and Professions Code section 7120 establishes that a contractor is culpable for unprofessional conduct in the instance of “*wilful . . . failure . . . to pay . . . moneys when due . . .*” But, the concept of “*wilful*” is given broad meaning in the realm of administrative licensure disciplinary proceedings. “*Wilful*” does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term “*‘wilful’*. . . does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent. [Citations omitted.]” (*Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12; also, *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575, fn. 9, and *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639.)

10. Cause for discipline exists for revocation of the license issued to respondents, pursuant to Business and Professions Code section 7120, by reason of the matters set forth in Factual Findings 12 through 15, 19 through 23, 25, 33, 34 and 36, along with Legal Conclusions 2, 4, 5, 8 and 9.

Respondent B C I, which was wholly controlled and directed by respondent Bustichi willfully failed to pay moneys when due for materials and services rendered by Mr. Campo in connection with respondents’ operations as a general building contractor. Respondents’ failure occurred when respondent B C I had received sufficient funds, namely more than one

million dollars, as payment for the particular construction work, project or operation for which the services and materials were rendered by Mr. Campo.

Other Determinations

LACK OF CREDIBILITY ON THE PART OF RESPONDENT BUSTICHI

11. Respondent was neither candid nor truthful at the hearing of this matter with regard to his interactions with homeowner. His false positions reflect adversely on his integrity and professionalism, by reason of Factual Findings 13, 14, 19, 20, 23, 30 and 33.

The law is clear that “a witness, who is willfully false in one material part of his testimony, is to be distrusted in others.” Strong doubt exists regarding the veracity of most of respondent’s assertions at the hearing of this matter. The more than two thousand year old maxim, “*Falsum in uno, Falsus in omnibus*”² is applicable to a substantial portion of respondent Bustichi’s testimonial evidence. Hence, the trier-of-fact “may reject the whole testimony of a witness who willfully has testified falsely as to a material point”³

12. Respondent Bustichi’s excuses and arguments in mitigation do not counter the weight of evidence regarding respondents’ overwhelming array of violations of the Contractors’ State License Law. Respondent Bustichi showed blatant disregard for, or gross misunderstanding of, the obligations under the law imposed on licensed contractors in the provision of all obligations, duties, functions and responsibilities to not only consumers but also to subcontractors and material suppliers in the State of California.

Since the filing of subcontractor Mr. Campo’s complaint with the board, there is no evidence of respondent Bustichi’s sincere display, or believable articulation of, remorse, sympathy or regret for the frustration sustained by the affected subcontractor, and his business associates, who originally had relied upon respondent Bustichi in acting as a construction industry professional.

Other than to point blame at respondent Bustichi’s refusal to accept terms of a payment scheme, which was wholly crafted by respondents, respondent Bustichi has shown inadequate measures to ameliorate the financial loss and emotional upheaval suffered by the subcontractor, Mr. Campo, due to respondent Bustichi’s neglect and unprofessional practices.

² “False in one thing, false in everything.” The doctrine means that if testimony of a witness on a material issue is willfully false and given with an intent to deceive, the trier-of-fact may disregard all the witness’s testimony. “A witness false in one part of his testimony is to be distrusted in other parts.” (*White v. Disher* (1885) 67 Cal. 402.)

³ *People v. Reyes* (1987) 194 Cal.App.3d 957, 965-966; CALJIC No. 2.21.2, (6th ed., 1996) p. 68.

CONSIDERATION OF MATTERS IN REHABILITATION

13. The board's disciplinary guidelines, as referenced in California Code of Regulations, title 16, section 871, direct that the following factors should be considered in determining whether revocation, suspension or probation is to be imposed in a given case:

- a. Nature and severity of the acts or offenses under consideration.
- b. Actual or potential harm to the public.
- c. Performed work that was potentially hazardous to the health, safety, or general welfare of the public.
- d. Prior disciplinary record.
- e. Number and/or variety of current violations.
- f. Mitigation evidence.
- g. Rehabilitation evidence

In this matter, respondent B C I and respondent Bustichi's offenses were serious, in that the evidence established that respondent Bustichi committed the grave act of diversion of funds that are owed to another subcontractor. Respondents' misconduct is magnified by the separate cause for failure to pay for materials or services provided by another contractor. Respondent Bustichi was actively engaged in the Dinah project, and at the time of the final payment under the remodeling contract in mid-June 2013, respondent Bustichi led the owner of the Dinah project to believe that all subcontractors and material suppliers had been paid. Respondent Bustichi knew he had not paid Mr. Campo. His conduct constituted a fraud upon the hotel owner, who was aggravated and troubled by threats of having liens filed against the hotel property. Respondent Bustichi's acts subjected not only Mr. Campo, but also the owner of the Dinah project, to risks of serious loss and potential loss of good reputations as competent and ethical business persons.

Actual harm was suffered directly by Mr. Campo and his supplier, Butler-Johnson company, and indirectly by his employees, their families and the public, when respondent Bustichi caused the diversion of funds in this matter. And harm was caused to others by respondents' failure to pay for materials and services related to respondent's operations as a general contractor.

Although respondents have no history of disciplinary actions, the license history shows a record of neglect, incompetence and professionalism that spring from suspensions of licensed status for different violations of the Contractors' State License Law.

Respondent's evidence in mitigation in this matter was negligible and inadequate to lead to a conclusion other than as set forth in the Order below. And, respondent Bustichi offered insufficient matters in rehabilitation, as supported by Factual Findings 29 through 44.

14. Respondents' acts regarding the victimization of Mr. Campo involved a fraudulent conversion of money that should have been paid to the subcontractor. Respondents' misconduct was not a mere failure to comply with a contractual obligation to pay a debtor. Respondents' acts and omissions in this matter may constitute a criminal⁴ offense involving the victimized Mr. Campo. And, the offense proscribed as the criminal diversion of funds owed to a subcontractor is a general intent crime.⁵

15. When all the facts and circumstances are weighed and balanced, it is contrary to the public interest for respondent B C I or respondent Bustichi to remain licensed as a contractor at this time.

OBLIGATIONS AND OVERSIGHT FOLLOWING LICENSE REVOCATION

16. Under Business and Professions Code section 7095, in executing the Order for revocation or suspension of a contractor's license, the Registrar may:

- a. Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.
- b. Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.
- c. Impose upon the licensee compliance with such specific conditions as may be just in connection with [Respondent's] operations as a contractor disclosed at the hearing, and [the

⁴ Penal Code §484, subdivision (b), provides:

Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment and willfully fails to apply such money for such purpose by either willfully failing to complete the improvements for which funds were provided or willfully failing to pay for services, labor, materials or equipment provided incident to such construction, and wrongfully diverts the funds to a use other than that for which the funds were received, shall be guilty of a public offense

⁵ *People v. Stark* (1994) 26 Cal.App.4th 1179.

Decision] may further provide that until such conditions are complied with no application by Respondent for restoration of the suspended or revoked license shall be accepted by the registrar.

17. Under Business and Professions Code sections 7097 and 7098, if license number 595141, issued to B C I Builders, Inc., with Dene Armondo Bustichi, as responsible managing officer, is suspended or revoked, the Registrar of Contractors may suspend or revoke, without notice, any other license number associated with Dene Armondo Bustichi. Also, under the above-cited authority, the Registrar may suspend or revoke, without notice, any other license issued in the name of any company for which Dene Armondo Bustichi furnished the qualifying experience or appearance.

18. Under Business and Professions Code section 7121, if discipline is imposed on license number 595141, Dene Armondo Bustichi shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual for any licensee during the time the discipline is imposed, and any licensee who employs, elects or associates Dene Armondo Bustichi shall be subject to disciplinary action.

19. Under Business and Professions Code section 7121.5, if discipline is imposed on license number 595141, issued to B C I Builders, Inc., with Dene Armondo Bustichi, as responsible managing officer, chief executive officer and president, Dene Armondo Bustichi shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual for any licensee during the time the discipline is imposed, whether or not he had knowledge of or participated in the acts or omissions, and any licensee which employs, elects or associates shall be subject to disciplinary action.

20. Under Business and Professions Code section 7106.5, the expiration 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 disciplinary action.

Prohibition from Serving as Manager, Officer or Qualifying Individual for Another Licensed Contractor

21. Cause exists pursuant to section 7121 to prohibit respondent Bustichi⁶ from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of a licensee, and the employment, election, or association of Bustichi in any capacity by a licensee in any capacity other than as a non-supervising bona fide employee shall be subject to disciplinary action.

⁶ The Accusation does not include a prayer to prohibit respondent Salvador Joseph Lo Franco from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of a licensee, pursuant to section 7121.

22. Cause exists pursuant to section 7121.5 to prohibit respondent Bustichi, as the qualifying individual on respondent B C I's license, from serving as officer, director, associate, partner, or qualifying individual of any licensee during the time that discipline is imposed on respondent B C I's license, whether or not respondent Bustichi had knowledge of or participated in the acts or omissions constituting grounds for discipline, and any licensee which employs, elects, or associates respondent Bustichi shall be subject to disciplinary action.

Restitution

23. Due to both the diversion of funds and a failure to pay for materials and services, respondent B C I owes Mr. Campo in the amount of \$122,333 plus interest.

No application for restoration of the suspended or revoked licensure would be appropriately accepted by the Registrar unless proof is produced by respondent Bustichi that Mr. Campo has been fully compensated.

Costs of Investigation and Prosecution

24. Complainant has requested that respondent B C I Builders, Inc., with Dene Armondo Bustichi as RMO, CEO and president, be ordered to pay the board the costs of investigation and prosecution as incurred by complainant.

Business and Professions Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

Although not made directly applicable through an appellate court decision to administrative adjudication initiated on behalf of the Registrar or the Board, the California Supreme Court's reasoning in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45-46, on the obligation of a licensing agency to fairly and conscientiously impose an order for recovery of costs, is persuasive and should be considered in this matter. Scrutiny of certain factors, which pertain to the Board's exercise of discretion to analyze or examine factors that might mitigate or reduce costs of investigation and prosecution upon a licensee found to have engaged in unprofessional conduct, are set forth in Factual Finding 46. Thus, the factors under *Zuckerman* do not support a reduction of costs in this case.

The reasonable and appropriate costs of investigation and prosecution as set forth in Findings 45 and 47 amount to \$4,584.43.

ORDER

1. Classification B (General Building) and Classification C-8 (Concrete) Contractor's License Number 595141, issued to respondent B C I Builders, Inc., with Dene Armondo Bustichi as RMO/CEO/President, and Salvador Joseph Lo Franco as officer, is REVOKED, by reason of Legal Conclusions 7 and 10.

2. Classification B (General Building) and Classification C-8 (Concrete) Contractor's License Number 995412, issued Scotts Valley Green Builders Inc., with Dene Armondo Bustichi as RMO/CEO/President, is REVOKED, by reason of Legal Conclusions 7 and 10.

3. Within ten (10) business days of the effective date of the Decision in this matter, respondent B C I Builders, Inc., is to pay \$112,333 plus two percent of that amount per month for every month since June 30, 2013, to Joseph "Joe" Campo, doing business as Tom Richards Installations.

4. Respondent B C I Builders Inc. and respondent Dene Armondo Bustichi are jointly and severally liable to the board to pay the costs of the investigation and enforcement of the matter in the amount of \$4,584.43.

5. Dene Armondo Bustichi is prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the entire time that discipline is imposed on license Number 595141.

6. Any other licenses for which Dene Armondo Bustichi or B C I Builders Inc., may be furnishing the qualifying experience or appearance for such licenses, are revoked.

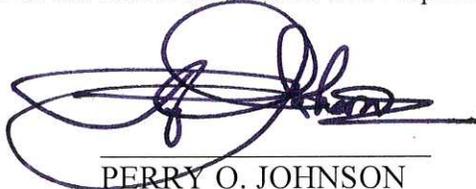
7. Within ten (10) business days following the effective date of this Decision, respondent B C I Builders, Inc., with Dene Armondo Bustichi as RMO/CEO/President, and Salvador Joseph Lo Franco as officer, are ordered to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each project.

8. Within ten (10) business days following the effective date of this Decision, Scotts Valley Green Builders Inc., with Dene Armondo Bustichi as RMO/CEO/President, is ordered to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each project.

9. Within ten (10) business days following the effective date of this Decision, respondent Dene Armondo Bustichi and Salvador Joseph Lo Franco must provide the Registrar of Contractors with a written listing of all contracting projects in progress and the anticipated completion date of each project for which either respondent Bustichi or Lo Franco, in any manner, are connected whether as a skilled laborer, journeyman, foreman,

10. Any board licensee who employs, elects or associates respondent Dene Armondo Bustichi in any position as a responsible managing employee, foreman, building manager or construction supervisory role shall be subject to disciplinary action, including revocation of licensure of such person. Nothing in this Order, however, precludes respondent Dene Armondo Bustichi from securing employment as a skilled laborer/employee for a licensee of the Contractors' State License Board where respondent Bustichi is subject to direct supervision and strict oversight of all of his functions, duties and responsibilities.

DATED: May 6, 2015

A handwritten signature in dark ink, appearing to read 'Perry O. Johnson', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

PERRY O. JOHNSON

Administrative Law Judge

Office of Administrative Hearings