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9
10 **BEFORE THE**
REGISTRAR OF CONTRACTORS
CONTRACTORS' STATE LICENSE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. N 2010-128

14 **SEIKO POOLS**
HENRY DENNIS GANKEMA, Sole Owner
15 **160 Centennial Way, Suite 10**
Tustin, CA 92673

A C C U S A T I O N

16 **Contractor's License No. 338790, C-53**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

24 **License History**

25 2. On or about July 15, 1977, the Registrar of Contractors issued Contractor's License
26 Number 338790, classification C-53 (swimming pool contractor) to Seiko Pools, with Daryl Lee
27 Gankema as the sole owner. Daryl Lee Gankema disassociated from said license on
28 November 10, 2003 and, on the same date, Henry Dennis Gankema ("Respondent"), became the

1 sole owner of Seiko Pools. The license was in full force and effect at all times relevant to the
2 charges brought herein and will expire on November 30, 2011, unless renewed.

3 **JURISDICTION**

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

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

11 5. Code section 7095 provides, in pertinent part, that the Registrar in making his order
12 may:

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

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

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

21 6. Code section 7097 states:

22 Notwithstanding the provisions of Sections 7121 and 7122, when any
23 licensee has been suspended by a decision of the registrar pursuant to an
24 accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or
25 7090.1, any additional license issued under this chapter [the Contractors' State
License Law] in the name of the licensee or for which the licensee furnished
qualifying experience and appearance under the provisions of Section 7068,
may be suspended by the registrar without further notice.

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7. Code section 7098 states:

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

8. Code section 7106.5 states, in pertinent part, that the expiration, cancellation, forfeiture, or suspension of a license by operation of law, or by order or decision of the Registrar or a court of law, or the voluntary surrender of the license shall not deprive the Registrar of jurisdiction to proceed with disciplinary action.

9. Code section 7121 states:

Any person who has been denied a license for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, or associate of any partnership, corporation, firm, or association whose application for a license has been denied for a reason other than failure to document sufficient satisfactory experience for a supplemental classification for an existing license, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as a member, officer, director, or associate had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended, or revoked, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, and the employment, election, or association of this type of person by a licensee in any capacity other than as a non-supervising bona fide employee shall constitute grounds for disciplinary action.

10. Code section 7121.5 states:

Any person who was the qualifying individual on a revoked license, or of a license under suspension, or of a license that was not renewed while it was under suspension, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked, or suspended, and the employment, election, or association of such person by a licensee shall constitute grounds for disciplinary action.

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11. Code section 7122.5 states:

The performance by any individual, partnership, corporation, firm, or association of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who at the time of such act or omission occurred was the responsible managing employee, qualifying partner, responsible managing officer, or qualifying member of such individual, partnership, corporation, firm, or association, whether or not he had knowledge of or participated in the prohibited act or omission.

STATUTORY PROVISIONS

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

13. Section 7109 of the Code states:

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

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

14. Section 7110 of the Code states:

"Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof, or of Section 8505 or 8556 of this code, or of Sections 1689.5 to 1689.8, inclusive, or Sections 1689.10 to 1689.13, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation insurance laws or Unemployment Insurance Code of the state, or violation by any licensee of any provision of the Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells, or Article 2 (commencing with Section

1 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code, constitutes a cause for
2 disciplinary action."

3 15. Code section 7113 states that a "[f]ailure in a material respect on the part of a licensee
4 to complete any construction project or operation for the price stated in the contract for such
5 construction project or operation or in any modification of such contract constitutes a cause for
6 disciplinary action."

7 16. Code section 7116 states that "[t]he doing of any willful or fraudulent act by the
8 licensee as a contractor in consequence of which another is substantially injured constitutes a
9 cause for disciplinary action."

10 17. Code section 7154 states:

11 "A home improvement contractor who employs a person to sell home
12 improvement contracts while such person is not registered by the registrar as a home
13 improvement salesman as provided in this article, is subject to disciplinary action by
14 the registrar.

15 18. Section 7159 of the Code states:

16

17 (c) In addition to the specific requirements listed under this section,
18 every home improvement contract and any person subject to licensure under
19 this chapter or his or her agent or salesperson shall comply with all of the
20 following:

21

22 (3)(B) The contract shall contain on the first page, in a typeface no smaller
23 than that generally used in the body of the document, both of the following:

24

25 (ii) The name and address of the contractor to which the applicable

26 "Notice of Cancellation" is to be mailed, immediately preceded by a statement
27 advising the buyer that the "Notice of Cancellation" may be sent to the
28 contractor at the address noted on the contract.

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(4) The contract shall include a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor, prior to any further payment being made, shall furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any potential lien claimant claim or mechanic's lien authorized pursuant to Section 3110 of the civil Code for that portion of the work for which payment has been made.

....

"(6) The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

....

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

....

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

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

....

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

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

(A) The heading: "Down Payment.

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

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

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

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

....

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

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

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

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

(B) The heading: "Approximate Start Date.

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

(A) The heading: "Approximate Completion Date.

(B) The approximate date of completion.

....

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

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

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19. Section 7159.5 of the Code states:

This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson to comply with the following provisions is cause for discipline:

....

(3) If a down payment will be charged, the down payment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

....

(5) Except for a downpayment, the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered.

....

COST RECOVERY/RESTITUTION

20. Code section 125.3 states, in pertinent part, that the Registrar may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

BLEDSON PROJECT

22. On or about November 16, 2006, Respondent entered into a written home improvement contract with John and Debra Bledsoe (the Bledsoes) to install a pool, spa and waterfall (pool project) at their residence located at 2500 Costero Maguestuoso, San Clemente, CA ("Bledsoe project"). The contract was in the amount of \$85,175 and was presented by Tom Ouellet (Ouellet), an unregistered salesperson, on behalf of Respondent. The contract did not

1 include a payment schedule, and one was presented several months later, on February 21, 2007.
2 The contract did not include the decking, masonry, mastic and landscape, which were to be
3 completed by others. On the date of the contract, Oullet asked for and received from the Bledsoes
4 \$4,000, a \$1,000 check for the deposit and a \$3,000 check for engineering fees. Work
5 commenced in or about February of 2007 and was last performed in or about August of 2007.
6 Respondent never pulled permits for the pool project, even though the Bledsoes paid Respondent
7 to have permits pulled.

8 23. Before the Bledsoes contracted with Respondent, the Bledsoes had a separate contract
9 with a landscape contractor, Tousseing Landscape Construction, Inc. (TLC) for over \$327,000, to
10 perform landscape work. TLC told the Bledsoes that they had to go with TLC's pool contractor
11 (Respondent). The Bledsoes have numerous separate, serious complaints against TLC, including
12 a complaint that TLC charged the Bledsoes for soil testing and that said soil testing was never
13 done. The Bledsoes' home was built on 100 percent fill.

14 24. Respondent did not have any employees on the Bledsoe pool project. Respondent
15 and Oullet only showed up on the first day of the dig to spray paint the ground and the pool was
16 dug out by TLC's employees using TLC's equipment.

17 25. In or about mid-July of 2007, the Bledsoes became concerned with the workmanship
18 of the project as they noticed the glass pool tile was failing and that precast caps varied in size
19 and color. The Bledsoes were not able to resolve their dispute with Respondent and TLC.

20 26. The Bledsoes hired experts who determined that many items were substandard,
21 including faulty engineering. One of the Bledsoe's experts opined that Respondent had the soils
22 engineer adjust the specifications to lower the cost of building the pool, causing the project to be
23 built improperly. Bledsoe's expert also opined that all the work needed to be removed and
24 replaced because the Bledsoe project was built on fill dirt that was not properly compacted.

25 27. In or about February of 2008, the Bledsoes filed a complaint with the Contractors'
26 State License Board.

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1 specification for building the swimming pool which compromised the integrity of the
2 improvements, as more fully set forth in paragraphs 22 through 28, above.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Employed Unregistered Salesperson)**

5 35. Respondent has subjected his contractor's license to disciplinary action under Code
6 section 7154 in that Respondent employed an unregistered salesperson, Tom Oullet, to sell home
7 improvement contracts on behalf of Respondent.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Violations of the Home Improvement Contract Form)**

10 36. Respondent has subjected his contractor's license to disciplinary action under Code
11 section 7159, in that on the Bledsoe project, Respondent failed to comply with the provisions of
12 that Code, as follows:

13 a. Subdivision (c)(3)(B)(ii): Respondent failed to include in the contract the name and
14 address of the contractor to which the applicable "Notice of Cancellation" was to be mailed,
15 immediately preceded by a statement advising the buyer that the "Notice of Cancellation" may be
16 sent to the contractor at the address noted on the contract.

17 b. Subdivision 7159(c)(4): Respondent failed to include a statement regarding
18 unconditional lien release for portion of work for which payment has been made.

19 c. Subdivision 7159(c)(6): Respondent failed to include a notice regarding performance
20 and payment bond.

21 d. Subdivision 7159(d)(4): Respondent failed to include the statement "You are entitled to
22 a completely filled in copy of this agreement, signed by you and the contractor, before any work
23 may be started."

24 e. Subdivision 7159(d)(5): Respondent failed to include the heading "Contact Price," next
25 to the contract amount.

26 f. Subdivision 7159(d)(7): Respondent failed to include the heading "Description of the
27 Project and Description of the Significant Materials to be Used and Equipment to be Installed,"
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1 followed by a description of the project and a description of the significant materials to be used
2 and equipment to be installed.

3 g. Subdivision 7159(d)(8)(A): Respondent failed to include the heading "Down Payment."

4 h. Subdivision 7159(d)(8)(C): Respondent failed to include the statement "The
5 Downpayment May Not Exceed \$1,000 or 10 Percent of the Contract Price, Whichever is Less."

6 i. Subdivision 7159(d)(9)(A): Respondent failed to include the heading re Schedule of
7 Progress Payments.

8 j. Subdivision 7159(d)(9)(C): Respondent failed to include the statement re progress
9 payments.

10 k. Subdivision 7159(d)(10)(A): Respondent failed to include required statement describing
11 what constitutes substantial commencement of work.

12 l. Subdivision 7159(d)(10)(B): Respondent failed to include the heading re "Approximate
13 Start Date."

14 m. Subdivision 7159(d)(11)(A): Respondent failed to include the heading "Approximate
15 Completion Date."

16 n. Subdivision 7159(d)(13): Respondent failed to include the heading re "Note about Extra
17 Work and Change Orders" and required statement.

18 **NINTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with the Home Improvement Contract Requirements)**

20 37. Respondent has subjected his contractor's license to disciplinary action under Code
21 section 7159.5, in that on the Bledsoe project, Respondent failed to comply with the provisions of
22 the Code, as follows:

23 a. Subdivision (a)(3): Respondent obtained a down payment of \$4,000 from the
24 Bledsoes, an amount which exceeds \$1,000 or 10 percent of the contract price, whichever is less,
25 as set forth in paragraph 22, above, and incorporated herein by reference.

26 b. Subdivision (a)(5): Respondent obtained payments from the Bledsoes which
27 exceeded the value of work performed.

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OTHER MATTERS

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2 38. Pursuant to Code sections 7097 and 7098, if Contractor's License Number 338790
3 issued to Henry Dennis Gankema, owner of Seiko Pools, is suspended or revoked by a decision of
4 the Registrar, the Registrar may suspend or revoke, without notice, any other license issued in the
5 name of Henry Dennis Gankema or for which Henry Dennis Gankema furnished the qualifying
6 experience and appearance.

7 39. Pursuant to Code section 7121, if discipline is imposed on Contractor's License
8 Number 338790 issued to Henry Dennis Gankema, owner of Seiko Pools, then Henry Dennis
9 Gankema shall be prohibited from serving as an officer, director, associate, partner, or qualifying
10 individual of any licensee during the time the discipline is imposed, and any licensee which
11 employs, elects, or associates Henry Dennis Gankema in any capacity other than as a non-
12 supervising bona fide employee shall be subject to disciplinary action.

13 40. Pursuant to Code section 7121.5, if discipline is imposed on Contractor's License
14 Number 338790 issued to Henry Dennis Gankema, owner of Seiko Pools, then Henry Dennis
15 Gankema shall be prohibited from serving as an officer, director, associate, partner, or qualifying
16 individual of any licensee during the time the discipline is imposed, whether or not he had
17 knowledge or participated in the acts or omissions constituting grounds for discipline, and any
18 licensee which employs, elects, or associates Henry Dennis Gankema, shall be subject to
19 disciplinary action.

20 41. Pursuant to Code section 7122.5, if disciplinary action is imposed on Contractor's
21 License Number 338790, then said action likewise constitutes a cause for discipline against any
22 licensee, Henry Dennis Gankema, who at the time of the act or omission occurred was the
23 responsible managing employee or RMO, qualifying partner, or qualifying member of such
24 individual, partnership, corporation, firm, or association, whether or not he had knowledge of or
25 participated in said acts or omissions.

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1 PRAYER

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

4 1. Revoking or suspending Contractor's License Number 338790 issued to Henry
5 Dennis Gankema, owner of Seiko Pools;

6 2. Revoking or suspending any other license for which Henry Dennis Gankema is
7 furnishing the qualifying experience or appearance;

8 3. Prohibiting Henry Dennis Gankema from serving as an officer, director, associate,
9 partner, or qualifying individual of any licensee during the period that discipline is imposed on
10 Contractor's License Number 338790 issued to Henry Dennis Gankema, owner of Seiko Pools;

11 4. Ordering restitution of all damages according to proof suffered by John and Debra
12 Bledsoe as a condition of probation in the event probation is ordered;

13 5. Ordering restitution of all damages suffered by John and Debra Bledsoe as a result of
14 Henry Dennis Gankema's conduct as a contractor, as a condition of restoration of Contractor's
15 License Number 338790 issued to Henry Dennis Gankema, owner of Seiko Pools;

16 6. Ordering Henry Dennis Gankema to pay the Registrar of Contractors his costs in the
17 investigation and enforcement of the case according to proof at the hearing, pursuant to Code
18 section 125.3;

19 7. Ordering Henry Dennis Gankema to provide the Registrar with a listing of all
20 contracting projects in progress and the anticipated completion date of each; and

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

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23 DATED: October 5, 2010

for *W. Robinson*
WOOD ROBINSON

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

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