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

11 In the Matter of the Accusation Against:

Case No. N2014-235

12 **DECKTECH INC,**
PO Box 325
13 Grover Beach, CA 93483
RONALD JAMES MC KENNA,
14 RMO/CEO/PRES

A C C U S A T I O N

15 Contractor's License No. 796956,

16 Respondent.

17 **HUNTER JAMES INC,**
PO Box 325
18 Grover Beach, CA 93483
RONALD JAMES MC KENNA,
19 RMO/CEO/PRES,
HEATHER LYNN MC KENNA, OFFICER

20 Contractor's License No. 862903

21 Affiliated Party.
22

23
24 Complainant alleges:

25 **PARTIES**

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

1 contractor during the period fixed by the decision.

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

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

8 9. Sections 7097 and 7098 provide that when any license has been suspended or revoked
9 following a hearing, the Registrar may suspend or revoke any additional license issued in the name
10 of the licensee or for which the licensee furnished qualifying experience and appearance under the
11 provisions of 7068, without further notice.

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

17 11. Section 7121 states:

18 "A person who has been denied a license for a reason other than failure to document
19 sufficient satisfactory experience for a supplemental classification for an existing license, or who
20 has had his or her license revoked, or whose license is under suspension, or who has failed to
21 renew his or her license while it was under suspension, or who has been a partner, officer, director,
22 manager, or associate of any partnership, corporation, limited liability company, firm, or
23 association whose application for a license has been denied for a reason other than failure to
24 document sufficient satisfactory experience for a supplemental classification for an existing license,
25 or whose license has been revoked, or whose license is under suspension, or who has failed to
26 renew a license while it was under suspension, and while acting as a partner, officer, director,
27 manager, or associate had knowledge of or participated in any of the prohibited acts for which the
28 license was denied, suspended, or revoked, shall be prohibited from serving as an officer, director,

1 associate, partner, manager, qualifying individual, or member of the personnel of record of a
2 licensee, and the employment, election, or association of this type of person by a licensee in any
3 capacity other than as a nonsupervising bona fide employee shall constitute grounds for
4 disciplinary action."

5 12. Section 7121.5 states:

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

12 13. Section 7122 states:

13 "The performance by an individual, partnership, corporation, limited liability company, firm,
14 or association of an act or omission constituting a cause for disciplinary action, likewise constitutes
15 a cause for disciplinary action against a licensee other than the individual qualifying on behalf of
16 the individual or entity, if the licensee was a partner, officer, director, manager, or associate of that
17 individual, partnership, corporation, limited liability company, firm, or association at the time the
18 act or omission occurred, and had knowledge of or participated in the prohibited act or omission."

19 14. Section 7122.5 states:

20 "The performance by an individual, partnership, corporation, limited liability company, firm,
21 or association of an act or omission constituting a cause for disciplinary action, likewise constitutes
22 a cause for disciplinary action against a licensee who at the time that the act or omission occurred
23 was the qualifying individual of that individual, partnership, corporation, limited liability company,
24 firm, or association, whether or not he or she had knowledge of or participated in the prohibited
25 act or omission."

26 **STATUTORY PROVISIONS**

27 15. Section 7109, subdivision (a), states:

28 "A willful departure in any material respect from accepted trade standards for good and

1 workmanlike construction constitutes a cause for disciplinary action, unless the departure was in
2 accordance with plans and specifications prepared by or under the direct supervision of an
3 architect.”

4 16. Section 7113 states that “[f]ailure in a material respect on the part of a licensee to
5 complete any construction project or operation for the price stated in the contract for such
6 construction project or operation or in any modification of such contract constitutes a cause for
7 disciplinary action.”

8 17. Section 7159 states, in pertinent part:

9 “(a)(1) This section identifies the projects for which a home improvement contract is
10 required, outlines the contract requirements, and lists the items that shall be included in the
11 contract, or may be provided as an attachment.

12

13 “(5) Failure by the licensee, his or her agent or salesperson, or by a person subject to be
14 licensed under this chapter, to provide the specified information, notices, and disclosure in the
15 contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

16

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

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21 “(4) A statement that, upon satisfactory payment being made for any portion of the work
22 performed, the contractor shall, prior to any further payment being made, furnish to the person
23 contracting for the home improvement or swimming pool work a full and unconditional release
24 from any claim or mechanics lien pursuant to Section 3114 of the Civil Code for that portion of the
25 work for which payment has been made. . . .”

26 18. Section 7159.5 states, in pertinent part:

27 “This section applies to all home improvement contracts, as defined in Section 7151.2,
28 between an owner or tenant and a contractor, whether a general contractor or a specialty

1 contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the
2 transaction.

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

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

8

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

11 "(6) Upon any payment by the person contracting for home improvement, and prior to any
12 further payment being made, the contractor shall, if requested, obtain and furnish to the person a
13 full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to
14 Section 3110 of the Civil Code for any portion of the work for which payment has been made.
15 The person contracting for home improvement may withhold all further payments until these
16 releases are furnished. . . ."

17 **COST RECOVERY / RESTITUTION**

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

22 20. Government Code section 11519, subdivision (d), provides that the Registrar may
23 require restitution of damages suffered as a condition of probation in the event probation is
24 ordered.

25 **WEST AVENUE PROJECT**

26 21. On or about September 9, 2013, Respondent entered into a written contract with
27 homeowner F.P.S. to repair a roof top deck at his residence located on West Avenue in Morro
28 Bay, California, for \$65,442.00, which includes a change order (West Avenue Project).

1 Respondent requested and was paid a \$15,500.00 down payment. Work began on or about
2 September 11, 2013, and ended on or about November 21, 2013. Respondent was paid
3 \$51,972.00 on the project. The Respondent agreed and the homeowner paid another contractor
4 \$3,749.61 to complete a portion of the contract. An industry expert inspected the project and
5 estimated the costs to complete and correct Respondent's work is approximately \$36,220.00.

6 **FIRST CAUSE FOR DISCIPLINE**

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

8 22. Respondent is subject to disciplinary action under section 7109, subdivision (a), in that
9 on the West Avenue Project, Respondent willfully departed in a material respect from accepted
10 trade standards for good and workmanlike construction, as follows:

11 a. Respondent failed to apply enough waterproof membrane material to the plywood
12 deck to obtain a consistent 40-45 mils to 125 mils thickness causing the waterproof membrane
13 thickness to be varied in thickness of 40 mils or less.

14 b. Respondent failed to install concrete tiles at a proper slope for drainage, failed to use a
15 grout bag and grout tool for consistent grout joints, and failed to have no streaks after grouting.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Failure to Complete Project for Contract Price Stated)**

18 23. Respondent is subject to disciplinary action under section 7113, in that on the West
19 Avenue Project, Respondent failed in a material respect to complete the project for the contract
20 price, and the homeowner is required to spend substantial amounts in excess of the contract price
21 to complete the project in accordance with the contract.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Violations of Home Improvement Contract Form Requirements)**

24 24. Respondent is subject to disciplinary action under section 7159, and 7159, subdivision
25 (c)(4), in that on the West Avenue Project, Respondent violated home improvement contract
26 drafting requirements by failing to include a statement regarding unconditional claim/lien release to
27 be provided for any portion of work for which payment has been made.

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FOURTH CAUSE FOR DISCIPLINE

(Excessive Down Payment)

25. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(3), in that on the West Avenue Project, Respondent received and / or requested a down payment exceeding the lesser of one thousand dollars (\$1,000.00) or ten percent (10)% of the contract amount.

FIFTH CAUSE FOR DISCIPLINE

(Excessive Payment)

26. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(5), in that on the West Avenue Project, Respondent received and / or requested payment(s) in excess of the value of work performed or materials delivered.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Provide Requested Release)

27. Respondent is subject to disciplinary action under section 7159.5, subdivision (a)(6), in that on the West Avenue Project, Respondent failed to provide a full and unconditional lien release after having been requested to do so by the person contracting for the home improvement.

OTHER MATTERS

28.. Pursuant to sections 7097 and 7098, if license No. 796956 issued to Respondent is suspended or revoked, the Registrar may suspend or revoke, without notice, any other license issued in the name of Ronald James Mc Kenna or for which Ronald James Mc Kenna furnished the qualifying experience and appearance.

29. Pursuant to sections 7121, 7121.5, 7122 and / or 7122.5, if discipline is imposed on license No. 796956 issued to Respondent, Ronald James Mc Kenna shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of any licensee during the time the discipline is imposed, and any licensee which employs, elects, or associates Ronald James Mc Kenna shall be subject to disciplinary action.

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PRAYER

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

As to Decktech Inc

1. Revoking or suspending Contractor's License No. 796956 issued to Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES;
2. Prohibiting Ronald James Mc Kenna from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license No. 796956, issued to Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES;
3. Revoking or suspending any other license for which Ronald James Mc Kenna is furnishing the qualifying experience or appearance;
4. Ordering restitution of all damages according to proof suffered by homeowner F.P.S., as a condition of probation in the event probation is ordered;
5. Ordering restitution of all damages suffered by homeowner F.P.S. as a result of Ronald James Mc Kenna's conduct as a contractor, as a condition of restoration of license No. 796956, issued to Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES;
6. Ordering Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES to pay the Registrar of Contractors her costs in the investigation and enforcement of the case according to proof at the hearing, pursuant to Business and Professions Code section 125.3;
7. Ordering Decktech Inc, Ronald James Mc Kenna, RMO/CEO/PRES to provide the Registrar with a listing of all contracting projects in progress and the anticipated completion date of each;

As to Hunter James Inc

8. Revoking or suspending Contractor's License No. 862903 issued to Hunter James Inc, Ronald James Mc Kenna, RMO/CEO/PRES, Heather Lynn Mc Kenna, Officer;
9. Prohibiting Ronald James Mc Kenna from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed on license No. 862903, issued to Hunter James Inc, Ronald James Mc Kenna, RMO/CEO/PRES,

1 Heather Lynn Mc Kenna, Officer;

2 10. Revoking or suspending any other license for which Ronald James Mc Kenna is
3 furnishing the qualifying experience or appearance;

4 11. Ordering Hunter James Inc, Ronald James Mc Kenna, RMO/CEO/PRES, Heather
5 Lynn Mc Kenna, Officer to pay the Registrar of Contractors her costs in the investigation and
6 enforcement of the case according to proof at the hearing, pursuant to Business and Professions
7 Code section 125.3;

8 12. Ordering Hunter James Inc, Ronald James Mc Kenna, RMO/CEO/PRES, Heather
9 Lynn Mc Kenna, Officer to provide the Registrar with a listing of all contracting projects in
10 progress and the anticipated completion date of each; and

11 As to All

12 13. Taking such other and further action as deemed necessary and proper.

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DATED: November 9, 2015 for Heather Henderson

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

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