

**BEFORE THE
CALIFORNIA ARCHITECTS BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ANDREW BARMAKIAN
13241 Harness Drive
Rancho Cucamonga, CA 91739
Architect License No. C 7763

Respondent.

Case No. 09-02-32

OAH No. L-2010050754

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Architects Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 20, 2011.

It is so ORDERED December 21, 2010.



FOR THE CALIFORNIA ARCHITECTS BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of California
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8 **BEFORE THE**
9 **CALIFORNIA ARCHITECTS BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **ANDREW BARMAKIAN**
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15 **Rancho Cucamonga, CA 91739**
16 **Architect License No. C 7763**

17 Respondent.

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18 **STIPULATED SETTLEMENT AND**
19 **DISCIPLINARY ORDER**

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the California Architects Board (Board) of the Department of
22 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
23 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
24 disposition of the Accusation.

25 PARTIES

26 1. Douglas R. McCauley (Complainant) is the Executive Officer of the Board. He
27 brought this action solely in his official capacity and is represented in this matter by Edmund G.
28 Brown Jr., Attorney General of the State of California, by Scott J. Harris, Deputy Attorney
General.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 09-02-32.

4 9. Respondent agrees that his Architect License is subject to discipline and he agrees to
5 be bound by the California Architects Board's imposition of discipline as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the California Architects Board.
9 Respondent understands and agrees that counsel for Complainant and the staff of the California
10 Architects Board may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent or his counsel. By signing the
12 stipulation, Respondent understands and agrees that he may not withdraw from this agreement or
13 seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board
14 fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, and, except for this paragraph, it shall be inadmissible in any
16 legal action between the parties, and the Board shall not be disqualified from further action by
17 having considered this matter.

18 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
19 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
20 effect as the originals.

21 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
26 writing executed by an authorized representative of each of the parties.

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1 Section 5500.1 of the Business and Professions Code. All provisions of probation other than the
2 quarterly report requirements, examination requirements, and education requirements, shall be
3 held in abeyance until Respondent resumes practice in California. All provisions of probation
4 shall recommence on the effective date of resumption of practice in California. Periods of
5 temporary or permanent residency or practice outside California or of non-practice within
6 California will not apply to the reduction of this probationary period.

7 **7. Violation of Probation.** If Respondent violates probation in any respect,
8 the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and
9 carry out the disciplinary order which was stayed. If an accusation or a petition to revoke
10 probation is filed against Respondent during probation, the Board shall have continuing
11 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
12 is final.

13 **8. Completion of Probation.** Upon successful completion of probation,
14 Respondent's license will be fully restored.

15 **9. Cost Reimbursement.** Respondent shall reimburse the Board \$4,195.00
16 for its investigative and prosecution costs. The payment shall be made as follows: in monthly or
17 quarterly payments, the final payment being due one year before probation is scheduled to
18 terminate.

19 **10. Criminal Probation Reports.** Respondent shall provide the Board with a
20 copy of the standard conditions of the criminal probation, copies of all criminal probation reports
21 and the name of his probation officer.

22 **11. Notification to Clients/Cessation of Practice.** In orders which provide
23 for a cessation or suspension of practice, Respondent shall comply with procedures provided by
24 the Board regarding notification to, and management of, clients.

25 **12. Ethics.** Respondent shall take a course in ethics approved by the Board
26 within one (1) year of the effective date of the Board's decision and Order.

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Exhibit A

Accusation No. 09-02-32

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARC D. GREENBAUM
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3 NICHOLAS A. SANCHEZ
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10 In the Matter of the Accusation Against:

Case No. 09-02-32

11 **ANDREW BARMAKIAN**

12 **13241 Harness Drive**
13 **Rancho Cucamonga, CA 91739**
14 **Architect License No. C-7763**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Douglas R. McCauley (Complainant) brings this Accusation solely in his official
20 capacity as the Executive Officer of the California Architects Board (Board), Department of
21 Consumer Affairs.

22 2. On or about October 11, 1973, the Board issued Architect License Number C-7763 to
23 Andrew Barmakian (Respondent). The Architect License will expire on January 31, 2011, unless
24 renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Section 118 of the Code states:

2 “(a) The withdrawal of an application for a license after it has been filed with a board in
3 the department shall not, unless the board has consented in writing to such withdrawal, deprive
4 the board of its authority to institute or continue a proceeding against the applicant for the denial
5 of the license upon any ground provided by law or to enter an order denying the license upon any
6 such ground.

7 (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
8 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
9 order of a court of law, or its surrender without the written consent of the board, shall not, during
10 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
11 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
12 provided by law or to enter an order suspending or revoking the license or otherwise taking
13 disciplinary action against the licensee on any such ground.

14 (c) As used in this section, 'board' includes an individual who is authorized by any
15 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'
16 'registration,' and 'permit.'"

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

21 6. Section 490 of the Code states:

22 “(a) In addition to any other action that a board is permitted to take against a licensee, a
23 board may suspend or revoke a license on the ground that the licensee has been convicted of a
24 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
25 or profession for which the license was issued.

26 (b) Notwithstanding any other provision of law, a board may exercise any authority to
27 discipline a licensee for conviction of a crime that is independent of the authority granted under

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1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code.

9 (d) The Legislature hereby finds and declares that the application of this section has been
10 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
11 554, and that the holding in that case has placed a significant number of statutes and regulations
12 in question, resulting in potential harm to the consumers of California from licensees who have
13 been convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee, and that the
15 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
16 constitute a change to, but rather are declaratory of, existing law."

17 7. Section 493 of the Code states: "Notwithstanding any other provision of law, in a
18 proceeding conducted by a board within the department pursuant to law to deny an application for
19 a license or to suspend or revoke a license or otherwise take disciplinary action against a person
20 who holds a license, upon the ground that the applicant or the licensee has been convicted of a
21 crime substantially related to the qualifications, functions, and duties of the licensee in question,
22 the record of conviction of the crime shall be conclusive evidence of the fact that the conviction
23 occurred, but only of that fact, and the board may inquire into the circumstances surrounding the
24 commission of the crime in order to fix the degree of discipline or to determine if the conviction
25 is substantially related to the qualifications, functions, and duties of the licensee in question.

26 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

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1 8. Section 5500 of the Code states: "As used in this chapter [Chapter 3 (commencing
2 with Section 5500)], architect means a person who is licensed to practice architecture in this state
3 under the authority of this chapter."

4 9. Section 5555 of the Code states: "Licenses to practice architecture remain in full force
5 until revoked or suspended for cause, or until they expire, as provided in this chapter [Chapter 3
6 (commencing with Section 5500)]."

7 10. Section 5577 of the Code states:

8 "The conviction of a crime substantially related to the qualifications, functions, and duties
9 of an architect by the holder of a license constitutes a ground for disciplinary action. The record
10 of conviction, or a certified copy thereof certified by the clerk of the court or by the judge in
11 whose court the conviction is obtained, is conclusive evidence of the conviction.

12 A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to
13 be a conviction within the meaning of this section. The board may order the license suspended or
14 revoked, or may decline to issue a license, when the time for appeal has elapsed, the judgment of
15 conviction has been affirmed on appeal, or an order granting probation is made suspending the
16 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
17 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
18 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
19 indictment."

20 11. Section 5578 of the Code states: "The fact that the holder of a license is practicing in
21 violation of the provisions of this chapter constitutes a ground for disciplinary action."

22 12. California Code of Regulations, Title 16, (Regulations) section 110 states:

23 "For purposes of denial, suspension, or revocation of the license of an architect
24 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
25 crime or act shall be considered substantially related to the qualifications, functions and duties of
26 an architect if to a substantial degree it evidences present or potential unfitness of an architect to
27 perform the functions authorized by his/her license in a manner consistent with the public health,

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1 safety or welfare. Such crimes or acts shall include, but not be limited to, those involving the
2 following:

3 (a) Any violation of the provisions of Chapter 3, Division 3 of the Business and
4 Professions Code. [The Architects Practice Act, Business and Professions Code sections 5500-
5 5610.7.]”

6 FIRST CAUSE FOR DISCIPLINE

7 (Conviction of a Crime)

8 13. Respondent is subject to disciplinary action under sections 5577 and 490 of the Code,
9 in conjunction with section 110 of the Regulations, in that on or about April 3, 2009, in a criminal
10 proceeding entitled, United States of America vs. Andrew Barmakian, in the United States
11 District Court, Eastern District of Virginia, Case No. 2:08cr197, Respondent was convicted,
12 pursuant to his plea of guilty, of violating Title 15, United States Code, section 1 (Conspiracy to
13 Restrain Trade), a felony and crime substantially related to the qualifications, functions, and
14 duties of an architect. The circumstances are as follows:

15 a. Beginning in or about December 2000 and continuing until in or about May 2003, the
16 Respondent and co-conspirators entered into and engaged in a combination and conspiracy to
17 suppress and eliminate competition by allocating customers and rigging bids for contracts of
18 plastic marine pilings in the United States and elsewhere. The combination and conspiracy
19 engaged in by the Respondent and co-conspirators was in unreasonable restraint of interstate and
20 foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

21 b. The charged combination and conspiracy consisted of a continuing agreement,
22 understanding, and concert of action among the Respondent and co-conspirators, the substantial
23 terms of which were to allocate customers and rig bids for contracts of plastic marine pilings in
24 the United States and elsewhere. The victims of this conspiracy included the Department of
25 Defense, including the U.S. Navy, as well as private companies.

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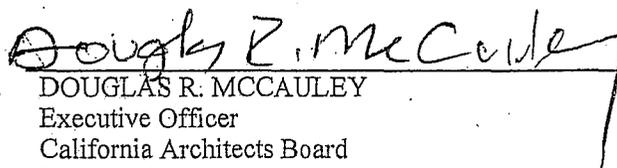
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P R A Y E R

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

1. Revoking or suspending Architect License Number C-7763, issued to Andrew Barmakian.
2. Ordering Andrew Barmakian to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/1/2010


DOUGLAS R. MCCAULEY
Executive Officer
California Architects Board
Department of Consumer Affairs
State of California
Complainant

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