

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

In the Matter of the Accusation Against:

PAUL CURTIS BUNTON

Architect License No. C-18659

Respondent.

Case No. 14-12-259

OAH No. 2015080992

ORDER OF DECISION

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Architects Board as its Decision in the above-entitled matter.

This Decision shall become effective on April 7, 2016.

IT IS SO ORDERED this 8th day of March, 2016.

By: _____

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PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter on January 21, 2016, in Oakland, California.

Gregory Tuss, Deputy Attorney General, represented Douglas R. McCauley, Executive Officer of the California Architects Board.

David A. Ericksen, Attorney at Law, represented Respondent Paul Curtis Bunton.

The record closed on January 21, 2016.

FACTUAL FINDINGS

1. Complainant Douglas R. McCauley filed the Accusation in his official capacity as the Executive Officer of the California Architects Board (Board).
2. The Board issued Architect License No. C-18659 to Paul Curtis Bunton (Respondent) on September 22, 1987. The license will expire on September 30, 2017, unless renewed.
3. Respondent is the Chief Executive Officer of BCA Architects, which he founded 27 years ago. The firm's headquarters are in San Jose, and at one point in time there were offices in Sacramento, Los Angeles, and Newport Beach as well. The firm specializes in education-related projects. Beginning in 2007, BCA worked on a variety of projects for the Southwestern College District in San Diego (District). The projects included a new cafe on the campus and some modernization of existing structures.

4. In 2010, Respondent contracted with the District to provide architectural services for what was known as the Corner Lot Project for approximately \$3,162,500. At the time, Nicolas C. A. Alioto was the District's new vice president for business and financial affairs. As such, Alioto was in a position to influence the District's Board and others as to which companies would receive lucrative construction-related contracts. As a public official, Alioto was subject to reporting requirements under the Political Reform Act of 1974 (PRA). One of the requirements is to report gifts with values greater than specified amounts.

5. Prior to the award of the contract, Respondent entertained Alioto at a golf weekend in Pebble Beach. Respondent bought him a round of golf, which cost \$500, provided lodging at a friend's home, and purchased meals and drinks for Alioto. Alioto did not report these gifts.

Failure to report settlement

6. In 2012, San Diegans for Open Government (SANDog) filed a Complaint for Declaratory and Injunctive Relief against Respondent, Alioto, and many others involved in the Corner Lot project, alleging violations of Government Code section 1090¹ and civil conspiracy. (The District is named as the real party in interest.) As regards Respondent and two other companies, the complaint alleged that prior to the contract, Respondent had given food, entertainment and other gifts to Alioto and the District's senior director of business, facilities and planning. SANDog charged that the gifts were a quid pro quo exchange, made with the understanding that the officials would affirmatively lobby and encourage the District to enter into contracts with Respondent and the other companies.

The complaint also alleged that Respondent engaged in a civil conspiracy to bribe public officials. This allegation was based on a golf and wine-tasting trip to Napa Valley with Alioto. The trip was offered in an auction to benefit a foundation that is associated with the District. Respondent contributed the trip, and one of the other companies won it with a bid of \$15,000. Respondent was invited to attend, and spent time with Alioto and others. The complaint alleged that Respondent and the other defendants encouraged the public officials who participated to not disclose/report the gifts they received and expenditures made on their behalf.

7. On April 22, 2014, Respondent and the other defendants settled the lawsuit. Respondent agreed to pay \$250,000 to the District. He did not report the settlement to the Board within 30 days, as required.

8. As explanation for his failure to report, Respondent stated that he was advised by his attorney that he was not required to do so because the settlement had nothing to do with the practice of architecture. In support, he cites the fact that it was his directors

¹ Government Code section 1090 prohibits public officials from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

and officers liability policy that defended the claim, not his professional liability insurance policy. Respondent now recognizes that his belief was erroneous. When the Board informed him of his error, he supplied a letter of explanation and copies of the settlement agreement.

Criminal conviction

9. On March 26, 2012, in the San Diego County Superior Court, Respondent was convicted by his plea of guilty to a misdemeanor violation of Penal Code section 469, aiding the commission of a misdemeanor. On a date not clear in the record, imposition of sentence was suspended, and Respondent was placed on summary probation for one year. According to a letter from the district attorney's office, probation was terminated on June 20, 2014, upon the fulfillment of all of the conditions of probation. On September 30, 2014, Respondent's motion pursuant to Penal Code section 1203.4 was granted, resulting in the dismissal of the criminal case.

10. The conviction followed a criminal complaint against Respondent and Alioto, who were charged as co-defendants. Alioto was charged with felony violations of Penal Code section 118, subdivision (a) (perjury) and 115, subdivision (a) (causing the filing of a false or forged instrument), and a misdemeanor violation of Government Code section 87100 (wrongful influence by a public official). In essence, Respondent was charged with assisting Alioto to file a false Statement of Economic Interest Report/Form 700 and assisting Alioto to use Alioto's official position to influence a governmental decision in which Alioto had a financial interest.

11. Respondent submitted the following statement along with his guilty plea:

I paid for meals and entertainment for Southwestern College officials. My actions triggered reporting responsibilities by these officials under the rules of the Fair Political Practices Commission. To my knowledge, those officials subsequently did not meet their reporting responsibilities under the California Government Code.

False statement on renewal application

12. On July 31, 2013, Respondent submitted an application to the Board to renew his architect license. Above the signature line, the application states that it is signed "under penalty of perjury under the laws of the State of California that all [his] representations . . . are true, correct and contain no material omissions of fact to the best of [his] knowledge and belief." Respondent answered "no" to the following question: "In the preceding renewal period, have you . . . been convicted of a crime in any state . . . which involved a plea or verdict of guilty or a conviction following a plea of nolo contendere?"

13. Respondent's "no" answer was false, in that he had been convicted of a crime as described in Finding 9, above. The conviction was recent; he was on probation for the conviction at the time he applied for license renewal.

14. Respondent contends that he did not understand that he had suffered a conviction. He thought that there was some kind of ongoing dismissal process, because the district attorney "was saying all along that they were going to dismiss it." This explanation is disingenuous, at the least. Respondent is a highly educated person and the criminal proceedings in his case were not difficult to track or understand. Respondent also said he did not think his plea was a conviction because he did not think he had been sentenced. Nonetheless, he asked his chief financial officer, who is not an attorney, for her opinion, and she agreed. Respondent did not ask any of his attorneys whether he needed to report his conviction. He decided on his own that it was not necessary. In hindsight, Respondent acknowledges he was wrong.

15. Respondent argues that his misunderstanding prevents a finding that the failure to report was a willful act. But Respondent's involved and somewhat contradictory explanations for his failure to report his conviction on his renewal application do not ring true. Respondent was actively involved in the criminal proceeding, including testifying in a grand jury proceeding and cooperating in a wide reaching investigation of corruption. He was represented by a criminal attorney throughout. Given the totality of the circumstances and Respondent's involvement, he is not persuasive in his assertion that he did not know that he had been convicted of a crime.

Other matters

16. In 2004, Respondent's insurance carrier entered into two settlements on behalf of BCA, his architecture firm. In settlement of a lawsuit brought by Sonoma Indian Health, the carrier paid \$40,000. In settlement of a lawsuit brought by San Leandro Unified School District, the carrier paid \$101,926.61.

17. Respondent did not report these settlements to the Board until he was asked if any had occurred after this matter commenced. He stated that he believed that the carrier would report the settlements, but it did not.

Cost recovery

18. Deputy Attorney General Gregory Tuss submitted a declaration certifying that as of January 21, 2016, the Department of Justice had billed the Board \$6,512.50 for work performed in the investigation and enforcement of this matter. He also estimated that an additional amount of \$510 would be billed for further preparation up until the commencement of the hearing.

For reasons discussed below in Legal Conclusion 5, the additional estimated amount is not accepted. In the absence of evidence to the contrary, it was established that \$6,512.50

is a reasonable sum to have paid for work performed by the Department of Justice in this matter.

Respondent's additional evidence

19. Respondent testified fairly extensively regarding his practice of establishing personal relationships with the personnel who would be making decisions regarding the public agency work he seeks for his architecture firm. He seeks to get to know the people, let them get to know him, and show them some of the work his firm has done in the past. It is in this spirit that he invited Alioto to play golf at Pebble Beach shortly after Alioto was hired. He did not intend to engage in bribery. Respondent represents that prior to the events that led to this case, he "had no idea that there were restrictions" on what personnel such as Alioto could receive from those seeking contracts for public work.

20. Respondent's conviction had a devastating effect on his firm. He attempted to contact his clients so that they could "hear it from" him, instead of reading about it in the papers. Respondent met with as many clients as he could to explain the situation. Nonetheless, some public agencies terminated contracts and some existing clients refused proposals following the press reports. Some clients failed to pay existing bills. Respondent closed his San Diego office and laid off 25 staff members in Sacramento.

21. Respondent has made efforts to communicate what he has learned about the reporting requirements for public officials, and the responsibility of contracting agencies in connection with those requirements. For the last four years, he has attempted to educate his peers and others. An example is an article he wrote entitled "What Architects and Construction Professionals need to know about the FPPC Form 700 reporting responsibilities," and subtitled "Navigating Challenging Waters – Business Development for Public Projects during Times of Increased Scrutiny of Public Officials." The article was published in an educational journal for design professionals and contractors, and is posted on the BCA website.

22. Respondent now builds relationships in simpler, less expensive ways. These still include golf excursions, but at less expensive courses. Invitations include an advisement about reporting requirements. For example, an invitation to a "Client Appreciation Tournament" includes a statement at the bottom that reads: "For public officials with FPPC reporting responsibilities, your reportable amount is \$89." And each client receives a summary at the end of the year of the expenditures made and gifts given to enable the client to accurately report to the FPPC.

23. Respondent submitted numerous letters of reference; he stated that he always requests one after a job is completed. They demonstrate that he indeed had a reputation for excellent work and many very satisfied clients over the years. Only one author, however, relates awareness of Respondent's criminal and administrative difficulties.

Ron Galatolo, Chancellor, San Mateo County Community College District, authored a letter dated September 9, 2015. Galatolo wrote that Respondent served as the design architect for a number of projects, and rates him as "closer to a 13" on a scale of 10 for his extraordinary skill and his genuine personal qualities. Galatolo also described Respondent's charitable activities, including the annual golf tournament his firm sponsors which has raised approximately \$10,000 for the Court Appointed Special Advocates program. Galatolo wrote:

I understand that [Respondent] is now the subject of an inquiry by the [Board] involving allegations of a misdemeanor conviction and the failure to properly report his conviction and a civil settlement These allegations are completely inconsistent with the person I've known for more than 14 years.

LEGAL CONCLUSIONS

Failure to report settlement

1. Business and Professions Code section 5588, subdivision (a), requires licensees to report civil settlements in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture to the Board in writing within 30 days if the amount of the settlement is \$5,000 or greater.

Cause for discipline under this section was established by reason of the matters set forth in Findings 6 through 8.

Criminal conviction

2. Business and Professions Code sections 5577 and 490, subdivision (a), provide for license discipline when a licensee has been convicted of a crime that is substantially related to the practice of architecture.

Cause for discipline under this section was established by reason of the matters set forth in Findings 9 through 11.

False statement on renewal application

3. Business and Professions Code section 5579 provides for license discipline when a licensee has obtained a license by fraud or misrepresentation. Making a false statement on an application to renew an architect license signed under penalty of perjury is obtaining a license by misrepresentation.

Cause for discipline under this section was established by reason of the matters set forth in Findings 12 through 15.

Disciplinary analysis

4. Cause for license discipline having been established, it remains to decide what discipline to impose. Complainant argues for five years' probation, a 90-day suspension of practice, and costs. Respondent requests dismissal, on the condition that Respondent continues in his public education efforts. The Board has enacted disciplinary guidelines and rehabilitation criteria to assist in the analysis including when, as here, a licensee has suffered a criminal conviction. (Cal. Code Regs., tit. 16, § 110.1, subd. (b).) Pertinent to the criteria is that the crime was a minor misdemeanor and is Respondent's only conviction, and that it has been expunged under Penal Code section 1203.4. These facts militate in Respondent's favor; other facts present cause for concern.

Given his extensive and lengthy professional history of working on projects for public agencies, it is difficult to believe that Respondent was unaware of the reporting requirements of the PRA, which was enacted over 40 years ago. In addition, Respondent's argument that his actions are not related to his practice as an architect is disappointing. Honesty and integrity are essential qualities of all professionals, including architects. Unfortunately, his point of view is consistent with his explanations for his behavior in each of the three causes for discipline. In each, he engages in hair-splitting analysis to explain or excuse his conduct, such as claiming that which insurance policy covers a claim against his firm determines whether it is related to the practice of architecture. In contrast, however, is his remarkable response to the situation. He has undertaken an extensive campaign to advise others of the PRA and associated pitfalls for contractors and agency officials. These efforts stand in strong contrast to his explanations for his failures to report the settlement and his conviction to the Board. Respondent has made a great effort to educate others, which demonstrates rehabilitation.

Respondent and his firm have suffered financially for his mistakes; a term of suspension would be punitive and not necessary in these circumstances. Thus, Complainant's recommendation of a 90-day suspension, despite the fact that the Board's guidelines include such, is rejected. As regards Respondent's suggested outcome, even should a dismissal be warranted, the Board has no means to enforce an agreement after a matter is dismissed. Respondent committed serious violations that do not warrant revocation, but do require a period of increased scrutiny of his practice. All things considered, the public interest will be sufficiently protected by a three-year term of probation under standard terms.

Cost recovery

5. Business and Professions Code section 125.3 provides that a licensee may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." An agency that seeks to recover its costs must submit declarations "that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs . . ." (Cal. Code Regs., tit. 1, § 1042.) The declaration or billing records must "describe the general tasks performed, the time spent on each task and

the hourly rate or other compensation for the service.” (Cal. Code Regs., tit. 1, § 1042, subd. (b).) In the instant case, counsel requests that an additional \$510 be awarded for costs based upon his good faith estimate. Such an estimate does not describe the tasks performed or the amount of time spent on each task, and it is not supported by itemized billing statements. It is, therefore, insufficient to establish the actual costs incurred and the reasonableness of the costs. Therefore, as stated in Finding 18, \$6,512.50 was established as the amount of the reasonable costs recoverable pursuant to Business and Professions Code section 125.3.

The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining whether the cost award should be less than the actual, reasonable costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee’s subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these factors were shown to militate in Respondent’s favor. Respondent shall be required to reimburse the Board \$6,512.50 for its costs of investigation and enforcement.

ORDER

Architect License No. C-18659, issued to Respondent Paul Curtis Bunton, is revoked; however, the revocation is stayed and the license is placed on probation for a term of three years pursuant to the following terms and conditions.

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations governing the practice of architecture in California.

2. Submit Quarterly Reports

Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form (1/00) obtained from the Board (Attachment A).

3. Personal Appearances

Upon reasonable notice by the Board, Respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Cooperate During Probation

Respondent shall cooperate fully with the Board, and with any of its agents or employees in their supervision and investigation of his compliance with the terms and conditions of this probation. Upon reasonable notice, Respondent shall provide the Board, its agents or employees with the opportunity to review all plans, specifications, and instruments of service prepared during the period of probation.

5. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

In the event Respondent should leave California to reside or to practice outside the State or for any reason stop practicing architecture in California, Respondent shall notify the Board or its designee in writing within 10 days of the dates of departure and return, or the dates of non-practice or the resumption of practice within California. Non-practice is defined as any period of time exceeding 30 days in which Respondent is not engaging in any activities defined in section 5500.1 of the Business and Professions Code. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until Respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period.

6. Violation of Probation

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

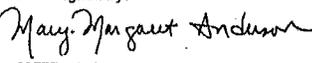
7. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

8. Cost Reimbursement

Respondent shall reimburse the Board \$6,512.50 for its investigative and enforcement costs. The payment shall be made within 30 days of the date the Board's decision is final.

DATED: February 11, 2016

DocuSigned by:

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MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings