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

10
11 In the Matter of the Accusation Against:

Case No. 06-09-198

12 **BRYAN ALBERT OSBORN**

A C C U S A T I O N

13 P.O. Box 2365

13 Sebastopol, California 95473

14 Architect's License No. C23628

15
16 Respondent.

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 September 3, 1992, the Board issued Architect's License Number
23 C23628 to Bryan Albert Osborn (Respondent). The license was in full force and effect at all
24 times relevant to the charges brought herein and will expire on April 30, 2011, unless 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 (a) Competence:

2 . . .

3 (2) . . . [A]n architect shall act with reasonable care and competence, and shall apply the
4 technical knowledge and skill which is ordinarily applied by architects of good standing,
5 practicing in this state under similar circumstances and conditions.

6 (b) Willful Misconduct:

7 (1) In designing a project, an architect shall have knowledge of all applicable building laws,
8 codes, and regulations. An architect may obtain the advice of other professionals (e.g., attorneys,
9 engineers, and other qualified persons) as to the intent and meaning of such laws, codes, and
10 regulations and shall not knowingly design a project in violation of such laws, codes and
11 regulations.”

12 COST RECOVERY

13 10. Code section 125.3 provides that the Board may request the administrative law judge
14 to direct a licentiate found to have committed a violation or violations of the licensing act to pay a
15 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16 FACTUAL BACKGROUND

17 11. On or about May 21, 2002, Respondent, who was also a licensed general building
18 contractor, entered into a written time and materials contract with Tor Perkins (Homeowner) for
19 architectural and general contracting services in connection with the remodel of the Homeowner’s
20 newly-purchased residence located at 266 Princeton Avenue, Mill Valley, California (Perkins
21 Project). Respondent estimated the projected total remodel cost at \$147,992.00, including
22 \$29,250.00 for architectural services as follows: Phase I—as-built drawings of the existing
23 property, including floor plans, and elevations; Phase II—preliminary design drawings of the
24 remodel including floor plans and exterior elevations; Phase III—design documents suitable for
25 building permit including site plan, floor plans, and elevations; two vertical sections; foundation
26 and framing plans; construction details; utilities/electrical plan; and specifications including
27 fixture, door, and window schedules. Pursuant to Part One, the “Architectural Services” portion
28 of the contract, modifications “will be specifically illustrated to the Owners and documented in

1 writing utilizing a 'Change Order' form or letter, per Article 6." The contract specified that the
2 remodel was to have been completed within 120 working days after commencement of
3 construction.

4 12. Construction on the Perkins Project commenced on or shortly after May 21, 2002.
5 Respondent did not complete design drawings and construction documents necessary to
6 adequately define the scope of work, clarify compliance with the Building Code, and obtain a
7 building permit. Respondent nevertheless commenced construction, although he knew that
8 building permits were required by law and that the drawings had not been reviewed or approved
9 by either the City or County building department.

10 13. Throughout the course of the contract, Respondent provided only a few freehand
11 sketches and four sheets of conceptual drawings illustrating the proposed master bath and living
12 room fireplace design. Sketch-design features which violated the California Building Code
13 included: 1) proposed stairs that did not include required handrails; 2) a proposed
14 bench/guardrail that did not include the proper degree of enclosure; and 3) extension of the
15 westerly deck adjacent to an existing window that did not include tempered glass—a design
16 feature implemented during construction operations.

17 14. Respondent did not adhere to the schedule required by the contract or keep the
18 Homeowner informed of the project's progress. He did not obtain the Homeowner's written
19 authorization for change orders and/or additional work before proceeding with such work.
20 Respondent abandoned the Perkins Project on or about January 24, 2003, approximately nine
21 months after the commencement of construction. The work had only progressed as far as the
22 installation of drywall in many areas of the house. In total, the Homeowner paid Respondent
23 approximately \$230,000.00 over the original design/build contract price.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Willful Misconduct: Violated Agreement)

3 15. Respondent is subject to disciplinary action under Code sections 5584 and/or 5578,
4 and pursuant to California Code of Regulations, title 16, section 150, in that he violated
5 provisions of his contract and agreement with the Homeowner on the Perkins Project, as
6 described in paragraphs 11 through 14, above.

7 SECOND CAUSE FOR DISCIPLINE

8 (Willful Misconduct: Violated Building Code)

9 16. Respondent is subject to disciplinary action under Code sections 5584 and/or 5578,
10 pursuant to California Code of Regulations, title 16, section 160, subdivision (b)(1), in that he
11 knowingly violated building laws, codes, and/or regulations in the provision of design/build
12 services on the Perkins Project, as described in paragraphs 12 and 13, above.

13 THIRD CAUSE FOR DISCIPLINE

14 (Negligence, Willful Misconduct and/or Incompetence: Errors and Omissions)

15 17. Respondent is subject to disciplinary action under Code sections 5584 and/or 5578,
16 pursuant to California Code of Regulations, title 16, section 160, subdivisions (a)(2) and/or (b)(1),
17 in that he made significant errors and omissions in the design and documentation of the Perkins
18 Project, as described in paragraphs 12 and 13, above.

19 DISCIPLINARY CONSIDERATIONS

20 18. On or about January 8, 1985, the Contractors State License Board issued Contractor's
21 License Number 467761 (General Building, Class B) to Respondent, d.b.a. Building Design
22 Company. Or or about September 21, 2009, Respondent stipulated to the revocation of his
23 general building contractor license in resolution of a disciplinary action brought before the
24 Registrar of Contractors entitled *The Matter of the Accusation Against Bryan Osborn, D.B.A.*
25 *Building Design Company*, Case Number N2007-186, which resulted from the same facts set
26 forth herein related to the Perkins Project.

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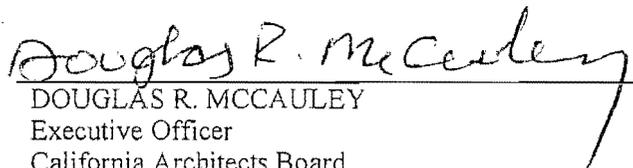
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PAYER

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's License Number C23628, issued to Bryan Albert Osborn;
2. Ordering Bryan Albert Osborn to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: February 22, 2010


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

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