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

In the Matter of the Accusation Against:

OMAR G. SILLER
1168 North E Street
Tulare, CA 93274

Architect's License No. C-12149

Respondent.

Case No. 07-10-254, 08-02-32

DEFAULT DECISION AND ORDER
#10-01-0710254

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 4, 2010, Complainant Douglas R. McCauley, in his official capacity as the Executive Officer of the California Architects Board, Department of Consumer Affairs, filed Accusation No. 10-01-0710254 (Accusation) against Omar G. Siller (Respondent) before the California Architects Board (Board).

2. On or about June 8, 1981, the Board issued Architect's License No. C-12149 (License) to Respondent. The License expired on September 30, 2009, and has not been renewed.

3. On or about March 15, 2010, C. Cruz, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 1168 North E St., Tulare, CA 93274. A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

1 5. Business and Professions Code section 118 states, in pertinent part:

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

6 6. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 of the accusation not expressly admitted. Failure to file a notice of defense shall
10 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
11 may nevertheless grant a hearing.

11 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
12 of the Accusation, and therefore waived his right to a hearing on the merits of the Accusation.

13 8. Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the
15 hearing, the agency may take action based upon the respondent's express admissions
16 or upon other evidence and affidavits may be used as evidence without any notice to
17 respondent.

18 9. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 evidence on file herein, finds that the allegations in the Accusation are true.

21 10. The total cost for investigation and enforcement in connection with the Accusation
22 are \$3,929.02 as of April 16, 2010.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent has subjected his License to
25 discipline.

26 2. A copy of the Accusation is attached.

27 3. The agency has jurisdiction to adjudicate this case by default.

28 4. The California Architects Board is authorized to revoke Respondent's Architect's
License based upon the following violations alleged in the Accusation:

1 a. Respondent violated Business and Professions Code (Code) sections 5560 and 5584
2 in that Respondent was negligent in providing architectural services.

3 b. Respondent violated Code section 5560 and Title 16 of the California Code of
4 Regulations section 160, subd. (b)(2), in that Respondent failed to respond to the Board's
5 repeated requests for information regarding an investigation.

6 c. Respondent violated Code sections 5560, 5578, and 5536.22, subd. (a)(3) in that
7 Respondent failed to provide his License number in a written contract for his services.

8 d. Respondent violated Code sections 5560, 5578, and 5536.22, subd. (a)(5) in that
9 Respondent failed to provide a description of the procedure to be used by either party to terminate
10 the contract in a written contract for his services.

11 ORDER

12 IT IS SO ORDERED that Architect's License No. C-12149, heretofore issued to
13 Respondent Omar G. Siller, is revoked.

14 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
15 written motion requesting that the Decision be vacated and stating the grounds relied on within
16 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
17 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

18 This Decision shall become effective on July 30, 2010.

19 It is so ORDERED June 30, 2010

20 
21 FOR THE CALIFORNIA ARCHITECTS BOARD
22 DEPARTMENT OF CONSUMER AFFAIRS

23 10561639.DOC
24 DOJ docket number:SA2009102661

25 Attachment:

26 Exhibit A: Accusation No. 10-01-0710254
27
28

Exhibit A
Accusation No. 10-01-0710254

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
4 State Bar No. 193338
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
Facsimile: (916) 327-8643
7 E-mail: Geoffrey.Allen@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case Nos. 07-10-254 and 08-02-32

12 **OMAR G. SILLER**
13 **1168 North E Street**
14 **Tulare, CA 93274**

A C C U S A T I O N #10-01-0710254

15 **Architect's License No. C-12149**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 8, 1981, the Board issued Architect's License Number C-12149
24 (License) to Omar G. Siller (Respondent). The License expired on September 30, 2009, and has
25 not been renewed.

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JURISDICTION

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

4. Section 5560 of the Code states:

The board may upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any architect and may temporarily suspend or permanently revoke, the license of any architect who is guilty of, or commits one or more of, the acts or omissions constituting grounds for disciplinary action under this chapter [Chapter 3 (commencing with section 5500)].

5. Section 5561.5 of the Code states:

The proceedings for the suspension or revocation of licenses under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

6. Section 5578 of the Code states: "The fact that a holder of a license is practicing in violation of the provisions of this chapter [Chapter 3 (commencing with section 5500)] constitutes a ground for disciplinary action."

7. Section 5536.22 of the Code states:

(a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or his or her representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

- (1) A description of services to be provided by the architect to the client.
- (2) A description of any basis of compensation applicable to the contract and method of payment agreed upon by both parties.
- (3) The name, address, and license number of the architect and the name and address of the client.
- (4) A description of the procedure that the architect and the client will use to accommodate additional services.
- (5) A description of the procedure to be used by either party to terminate the contract.

(b) This section shall not apply to any of the following:

- (1) Professional services rendered by an architect for which the client will not pay compensation.
- (2) An arrangement as to the basis for compensation and manner of providing professional services implied by the fact that the architect's services are of the same general kind which the architect has previously rendered to and received payment from the same client.

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(3) If the client knowingly states in writing after full disclosure of this section that a writing which complies with the requirements of this section is not required.

(4) Professional services rendered by an architect to a professional engineer registered to practice engineering under Chapter 7 (commencing with Section 6700), or to a land surveyor licensed under Chapter 15 (commencing with Section 8700).

8. Section 5584 of the Code states: "The fact that, in the practice of architecture, the holder of a license has been guilty of negligence or willful misconduct constitutes a ground for disciplinary action."

9. Section 150 of Title 16 of the California Code of Regulations (CCR) states:

Willful misconduct includes the violation by an architect of a provision of the agreement with a client if:

- 1) the architect has full knowledge that the conduct or omission is a violation of the agreement, and
- (2) the architect has made no reasonable effort to inform the client of the conduct or omission.

10. Section 160 of the CCR states:

A violation of any rule of professional conduct in the practice of architecture constitutes a ground for disciplinary action. Every person who holds a license issued by the Board shall comply with the following:

(a) Competence:

- (1) An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.
- (2) In addition to subsection (a)(1) above, when practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in this state under similar circumstances and conditions.

(b) Willful Misconduct:

- (1) In designing a project, an architect shall have knowledge of all applicable building laws, codes, and regulations. An architect may obtain the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations and shall not knowingly design a project in violation of such laws, codes and regulations.
- (2) Whenever the Board is conducting an investigation, an architect or a candidate for licensure shall respond to the Board's requests for information and/or evidence within 30 days of the date mailed to or personally delivered on the architect or a candidate for licensure.

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McEWEN MATTER

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2 15. On or about September 19, 2007, Respondent entered into a written agreement to
3 provide professional architectural services for David Matthew McEwen. Respondent agreed to
4 provide Mr. McEwen with plans for the remodeling of Mr. McEwen's residence for \$2,500.00.
5 According to the written agreement, Respondent was to visit the site, photograph and explore the
6 site. Respondent was to explore options to redesign the following: path of arrival, existing floor
7 plan, building sections illustrating vertical and special relationships between the home and
8 potential views, and building elevations. Respondent was to provide sketch drawings of the
9 existing site conditions, three different conceptual floor plans, sketch options of building sections,
10 sketch options of all four building elevations, construction estimates, and notes. According to the
11 written agreement, the plans were to be completed within one (1) week.

12 16. Mr. McEwen paid Respondent \$2,500.00 by check on September 19, 2007.

13 17. Respondent only provided one floor plan option and two building elevation sketches.

14 18. Mr. McEwen repeatedly contacted the Respondent regarding the status of the plans,
15 but Respondent failed to complete his obligations under the written agreement and provide the
16 plans.

17 19. On or about January 7, 2008, Mr. McEwen requested a refund from Respondent.
18 Respondent did not respond to Mr. McEwen.

19 20. On or about January 28, 2008, Mr. McEwen contacted the Board regarding
20 Respondent. Shortly thereafter the Board opened an investigation regarding the incident. On or
21 about February 5, 2008, the Board contacted Respondent in writing and requested materials from
22 Respondent. Respondent failed to respond to the Board's request. On or about March 20, 2008,
23 the Board again contacted Respondent in writing and requested materials from Respondent. The
24 Board's request again went unanswered by Respondent. On or about April 8, 2008, the Board
25 again contacted Respondent in writing and requested materials from Respondent. Respondent
26 again failed to respond to the Board's request.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Negligence)

3 21. Respondent is subject to disciplinary action under Code sections 5560 and 5584 in
4 that Respondent was negligent in providing architectural services. The circumstances are as
5 follows:

6 22. In the Seccombe Matter, Respondent failed to provide any of the construction
7 drawings as provided for in the written agreement. Respondent was negligent in failing to
8 provide the construction drawing in the Seccombe Matter.

9 23. In the McEwen Matter, Respondent only partially performed the services to be
10 provided under the written agreement. Respondent was negligent in only partially performing the
11 services to be provided in the McEwen Matter.

12 SECOND CAUSE FOR DISCIPLINE

13 (Failure to Respond to Board)

14 24. Respondent is subject to disciplinary action under Code section 5560 and CCR
15 section 160, subd. (b)(2), in that Respondent failed to respond to the Board's repeated requests for
16 information regarding an investigation. The circumstances are as follows:

17 25. On or about November 8, 2007; and February 1, 2008, the Board contacted
18 Respondent in writing and requested materials from Respondent regarding the Seccombe Matter.
19 The Board's requests went unanswered by Respondent.

20 26. On or about February 5, 2008; March 20, 2008; and April 8, 2008, the Board
21 contacted Respondent in writing and requested materials from Respondent regarding the McEwen
22 Matter. The Board's requests went unanswered by Respondent.

23 THIRD CAUSE FOR DISCIPLINE

24 (Failure to Provide License Number)

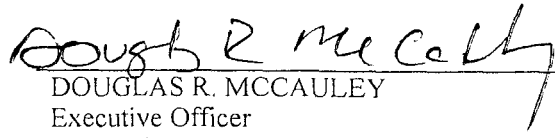
25 27. Respondent is subject to disciplinary action under Code sections 5560, 5578, and
26 5536.22, subd. (a)(3) in that Respondent failed to provide his License number in a written
27 contract for his services. The circumstances are as follows:

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3. Taking such other and further action as deemed necessary and proper.

DATED: March 4, 2010



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

SA2009102661
10520343.doc

CALIFORNIA ARCHITECTS BOARD

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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



GOVERNMENT CODE CHAPTER 5

11521. Reconsideration

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

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Department of Consumer Affairs
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GOVERNMENT CODE CHAPTER 5

§ 11522. Reinstatement of License or Reduction of Penalty

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

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CALIFORNIA CODE OF REGULATIONS

§ 110.1 Criteria for Rehabilitation

- (a) When considering the denial of an architect's license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
 - (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
 - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
 - (5) Evidence, if any, of rehabilitation submitted by the applicant.
- (b) When considering the suspension or revocation of the license of an architect on the grounds that the person licensed has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her present eligibility for licensure will consider the following criteria:
- (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.
- (c) When considering the petition for reinstatement of the license of an architect, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).