

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

In the Matter of the First Amended
Accusation Against:

HAROLD CRAIG HUDSON,

Architect License No. C-14487

Respondent.

Case No. 1108184

OAH No. 2012020962

DECISION

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

This Decision shall become effective on October 18, 2012

IT IS SO ORDERED September 18, 2012

Marilyn D. Lyo

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CORRECTED PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 24, 2012.

Char Sachson, Deputy Attorney General, represented the California Architects Board.

Respondent Harold Craig Hudson represented himself.

The record was closed and the matter was submitted on July 24, 2012.

FACTUAL FINDINGS

1. The California Architects Board first issued a license to respondent to practice architecture on October 25, 1983. The license expired on August 31, 2011, and was renewed on July 5, 2012, with an expiration date of August 31, 2013.

2. Douglas R. McCauley (complainant) filed the Accusation and the First Amended Accusation (Amended Accusation) in his official capacity as the Executive Officer of the California Architects Board (board), Department of Consumer Affairs.

3. Complainant made the Accusation against respondent on January 24, 2012. Respondent filed a Notice of Defense and requested a hearing on the Accusation on February 10, 2012. The Accusation stems from a consumer complaint filed with the board on August 24, 2011, stating the consumer paid respondent \$1,500 for architectural services that were not performed. An Amended Accusation was filed on July 9, 2012, alleging respondent engaged in willful misconduct with respect to his contractual obligations; failed to respond to the board's investigation; performed architectural work without a license and performed

architectural work without a contract. The Amended Accusation seeks revocation or suspension of respondent's Architect License; the board's reasonable costs of investigation and enforcement; and such other relief as is deemed proper. Respondent's architect license has not previously been subject to discipline.

(A) Willful Misconduct

4. On June 12, 2007, respondent entered into an agreement with Meg Johnson to provide architectural services in connection with the remodel of her residence (residence). The scope of service provision in the agreement provides as follows:

To provide architectural services for the proposed kitchen and bath remodel we discussed recently at your home. The scope of service would include field measuring to verify the existing conditions, preparation of design studies for your review, preparation of permit plans sufficiently detailed for the issuance of an expected over-the-counter building permit, preparation of pricing/construction plans including documentation of product and material specifications as selected by you and construction related services as needed or requested.

The work contemplated by the agreement was broken into four phases with four separate fees. They are: pre-design phase, \$540; design phase, \$1,080; construction plans phase, \$2,160; and construction phase, at an hourly rate of \$135 per hour. On the same date, Johnson and respondent met for two hours regarding the project and she provided respondent with a check in the amount of \$1,500 for future services.

5. The residence is one of seven units, all with the same floor plan, located in a building constructed in 1915. Johnson hired respondent for a kitchen and bathroom remodel, as well as for the redesign of certain other features in the unit. Respondent entered into the same agreement for services with two other unit owners, Carlisle and Ritchie, and respondent apparently anticipated that the work he produced for one resident could be used by and benefit the others.

6. When Johnson and respondent met on June 12, 2007, she explained her design ideas for the unit. She readily acknowledged that respondent offered some unique design solutions at the outset. At the June 12, 2007, meeting, respondent provided her with a diagram he had prepared of existing conditions of the Carlisle unit (the as-built plan). Johnson testified she thought those plans were a useful starting point, but they were not plans for her unit, and Johnson understood plans specific to her unit would be prepared and delivered back to her at about the end of July.

7. Following the meeting with respondent, Johnson began looking for fixtures and appliances that might be used in the remodel. Respondent sent her one Internet link to products for her to consider, but she was not satisfied with his suggestion because the size of the proposed bathtub was too large for her space. She called respondent twice a week in

August and he did not respond. Johnson testified that e-mail exchanges were sporadic and unsatisfactory.

8. Because of the difficulty in reaching respondent, and his failure to provide the plans she understood were contemplated by the agreement, Johnson sent a certified letter to respondent setting a deadline of September 7, 2007, for him to contact her. This deadline was later extended to October 20, 2007. Johnson ultimately filed a claim in Small Claims Superior Court and was awarded \$1,600 in principal and costs of \$95.50. In a subsequent proceeding, she was also awarded interest in the amount of \$446.68 and fees in the amount of \$25.00, for a total award of \$2,167.10. Johnson testified she has yet to recover any portion of this award.

9. In addition to seeking a small claims court remedy, Johnson also filed a complaint with the board. The complaint was investigated on behalf of the board by Barry Williams, who is a licensed architect. He testified that the as-built plans of the Carlisle unit that respondent provided to Johnson did not satisfy respondent's contractual obligations to Johnson because they were not specific to her unit. Williams stated that as-built documents and design schemes specific to the Johnson unit were a prerequisite to the development of construction documents and a necessary part of the work.

10. Respondent testified that because each of the units had the same floor plan, he believed the work he did for one owner could be used in connection with the designs he was preparing for the others. Apparently for the same reason, respondent felt that by delivering the as-built plans for the Carlisle unit to Johnson, he fulfilled the pre-design phase of the contract. Respondent testified that before he could perform additional work for Johnson he needed to know the details of the appliances and fixtures she wished to use in the remodel. Respondent testified that throughout the summer of 2007, the other owners were industrious and moving forward with their projects, but that Johnson was not. He did not believe he was authorized to undertake additional work for Johnson and that rather than working constructively with him, as the other owners were doing, she was "coming after him."

11. The focus of respondent's testimony was on the similarity of the units and the resulting potential for cost savings among the different owners. Cost, however, is not the issue in this case. Johnson reasonably expected respondent to prepare plans drawn particularly for her unit. The need for this work was confirmed by Williams, the board's consultant. Williams also testified respondent had enough information about Johnson's unit to continue with the preparation of the design phase as described in the contract. After the initial meeting, respondent not only failed to supply plans, but also failed to respond to Johnson's reasonable and persistent efforts to contact him. While respondent had a good faith belief as to how he was to fulfill his contractual obligations, his understanding was not reflected in the contract itself, was not shared by Johnson, and is not supported by the evidence.

(B) Failure to Respond to the Board's Investigation.

12. By letter dated August 30, 2011, the board advised respondent that it had received a consumer complaint about his work. The customer complaint asserted that respondent never delivered any plans or design proposals for the work he had contracted to perform, and that he failed to respond or communicate with his client. The board's letter requested respondent to provide certain documents and an explanation of his position with respect to the consumer complaint by September 13, 2011. Respondent did not reply to this letter.

13. The board again contacted respondent on September 20, 2011, seeking the same information. The letter recited respondent's obligation to cooperate with a board. The deadline set for a response was October 4, 2011.

14. On October 17, 2011, respondent sent an email to the board's consultant, Barry Williams, advising that he would respond to the board's requests, but requested until October 31, 2001 to do so. Respondent explained that he had relocated his office and that between his current workload and the need to obtain records from storage, he needed the additional time.

15. On November 14, 2011, the board again wrote to respondent advising him that it had not received the information requested by the August 30, 2011, and the September 20, 2011, letters. The board also noted that respondent had not complied with his own proposed deadline, October 31, 2011, to supply the requested documents. The board provided respondent an additional extension of time to November 28, 2011, in which to respond. This request also went without a response.

16. Respondent did not contest his failure to contact the board, but testified that his distressed financial situation, and the concomitant disruption of his business and personal life, prevented him from responding. Respondent stated he has been in independent practice since 1983, and in the fall of 2008, when the economy took a significant downward turn, his business was badly hurt. Projects he had been working on stopped and were not restarted, and fees that he had earned went unpaid. He lost his car and his home, and slept on the floor in his office. At the time he received the correspondence from the board, he was working on a third office relocation and trying to prevent his stored possessions from being sold in a lien sale. As a result of the totality of the circumstances, respondent testified that he simply "did not have the courage to open the letters."

17. Respondent's testimony regarding the extreme hardship he experienced as a result of the faltering economy was credible, but the evidence is that he did not respond to the board's repeated requests for information.

(C) Performing Architectural Work Without a License

18. Respondent's architect license number C -14487 expired on August 31, 2011, and was not renewed until July 5, 2012.

19. One of respondent's clients, Mark Leonard, was referred to respondent to provide architectural services in connection with a home remodel. On June 12, 2012, respondent entered into an agreement to provide architectural services to Leonard. Prior to June 12, 2012, respondent had provided Leonard his business card indicating he was licensed, and he performed architectural services for Leonard. The letterhead on which the agreement is written contains the heading Craig Hudson/Architect, and describes the architectural services to be performed. Leonard learned respondent's license was not current when he checked its status on the board's internet site, and he suspended respondent's services at that time. Leonard also testified he was satisfied with the services respondent performed, and that he would be willing to continue to use respondent's services. Respondent does not contest these facts.

20. Respondent performed architectural services and held himself out as an architect between August 31, 2011 and July 5, 2012, during which time his architect license had expired.

(D) Performing Architectural Work Without a Contract

21. Businesses and Professions Code, section 5536.22, requires architects to use a written contract when providing professional services, which must include the following elements:

- (a) A description of services to be provided by the architect to the client;
- (b) A description of any basis of compensation applicable to the contract and method of payment agreed upon by both parties;
- (c) The name, address, and license number of the architect and the name and address of the client;
- (d) A description of the procedure that the architect and the client will use to accommodate additional services; and,
- (e) A description of the procedure to be used by either party to terminate the contract.

22. Leonard testified that he retained respondent to provide services in connection with a home remodel, and respondent performed services on Leonard's behalf prior to the time a written agreement was signed. The only agreement executed was an invoice dated June 12, 2012, at a time after work had begun, and it lacked certain provisions required by Business and Professions Code, section 5536.22, including, a termination clause and a description of the procedure that the architect and the client would use if necessary to identify additional services.

23. Respondent violated Business and Professions Code section 5536.22, by starting work on the Leonard project without a contract in place.

(E) Costs of Prosecution

24. The board seeks to recover the costs it incurred in bringing the Accusation and the Amended Accusation, and certified that the costs the board incurred through July 20, 2012, were \$2,125.00. These costs were not disputed and are found to be reasonable.

25. Respondent testified regarding his current financial condition, including his loss of income, home, car and possessions. He is currently approximately \$5,000 behind in his rent payments, and does not have a regular income.

LEGAL CONCLUSIONS

1. By reason of the matters contained in Findings 4 through 8, and 11, cause exists to revoke respondent's license pursuant to Business and Professions Code section 5584, due to respondent's willful failure to perform work he was obligated to perform.

2. By reason of the matters contained in Findings through 12 through 17, cause exists to revoke respondent's license pursuant to Business and Professions Code section 5584, and California Code of Regulations, title 16, section 160, subdivision (b)(2), due to respondent's failure to timely respond to the board's request for information regarding a consumer complaint.

3. By reason of the matters contained in Findings 18 through 20, cause exists to revoke respondent's license pursuant to Business and Professions Code section 5536, subdivision (a), due to respondent performing architectural work at a time when his license had expired.

4. By reason of the matters contained in Findings 21 through 23, cause exists to revoke respondent's license pursuant to section Business and Professions Code section 5536.22, subdivision (a), due to respondent's performance of architectural work without a contract.

5. The board has requested that respondent be ordered to pay the costs of enforcement of the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of enforcement are \$2,125, and this amount is reasonable. Respondent has limited income and financial resources, and for this reason shall be permitted to pay the board's costs in installment payments. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32)

6. The evidence showed that respondent is an able and creative architect, but that he failed to comply with his legal obligations in connection with the matters alleged in the Amended Accusation. Respondent did not provide all of the services for which he had contracted with Johnson and failed to respond to her requests for him to meet and complete

the work. When contacted by the board regarding Johnson's consumer complaint, respondent failed to provide the information the board needed to conduct its investigation. The severe downward turn in business respondent suffered with the declining economy clearly created tremendous stress and disruption in both his professional and personal life. The same stresses made it difficult for respondent to renew his license, but he nonetheless held himself out as an architect and provided architectural services during the time when his license was not in effect. Finally, he performed services without a contract. At the same time, even the consumers who brought these complaints to the board, acknowledged respondent had been helpful and creative in solving design problems, and one of them would be willing to continue respondent's services following the resolution of this matter. The devastating economic challenge respondent faced, together with the fact that respondent has not been previously disciplined, does not excuse his failure to meet his contract obligations or to fulfill his legal obligations, but it does mitigate and inform the appropriate discipline. At the conclusion of the hearing, the board recommended respondent's architect license be revoked, but with revocation stayed and the license placed on probation for six years. Under all the circumstances presented it would not be against the public interest to allow respondent to be licensed pursuant to the terms and conditions imposed in the Order below.

ORDER

Respondent's architect license is hereby revoked. The revocation is stayed, and respondent is placed on probation for six years subject 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.

3. Personal Appearances

Upon reasonable notice by the board, the 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, the 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 ten 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 thirty 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. Ethics Education

Respondent shall complete an ethics course in AIA ethical principals, or such other ethics course as approved by the board, within six months of the date of the board's final decision.

Failure to satisfactorily complete the required course shall constitute a violation of probation. Respondent is responsible for all costs of such courses.

9. Cost Reimbursement

Respondent shall pay to the board costs associated with its investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3 in the amount of \$2,125.00. Respondent shall be permitted to pay these costs in a payment plan approved by the board. Failure to satisfactorily make all payments within one year shall constitute a violation of probation.

10. Restitution

Respondent shall reimburse Meg Johnson \$2,167.10, which is the amount she was awarded, including costs and interest, in Small Claims Superior Court, Case No. CSM-08-825667. This amount can be paid in monthly installments pursuant to a board approved plan, beginning no later than 90 days following the date of the board's final decision, and shall be paid in full within one year of the date of the board's final decision. Failure to satisfactorily make all restitution payments within one year shall constitute a violation of probation.

DATED: August 31, 2012



KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings