

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

In the Matter of the Accusation Against:

ARTHUR FRANK KENT,
Architect License No. C-15748,

Respondent.

Case No. 14-01-001

OAH No. 2016110572.1

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, except that, pursuant to Government Code section 11517(c)(2)(C), typographical errors in the Proposed Decision are corrected as follows:

- 1) On page 2, paragraph 6, line 1, "Ming" is corrected to read "Minh" and "barber shops" is corrected to read "barbershops."
- 2) On page 3, line 3, "gave respondent with a check" is corrected to read "gave respondent a check."
- 3) On page 3, paragraph 10, line 2, "planning department office" is corrected to read "Planning Department."
- 4) On page 3, paragraph 10, line 5, "Angles" is corrected to read "Angeles."
- 5) On page 4, paragraph 12, line 2, "Bachelors" is corrected to read "Bachelor."
- 6) On page 5, line 1, "Angles" is corrected to read "Angeles."
- 7) On page 9, paragraph 1, line 3, "(2001)" is corrected to read "(2002)."
- 8) On page 11, paragraph 11, item g, line 2, "conditions" is corrected to read "terms."

The technical modifications made above do not affect the factual or legal basis of the Proposed Decision, which shall become effective on October 13, 2017.

IT IS SO ORDERED this 7th day of September, 2017.



MATTHEW MCGUINNESS
PRESIDENT
CALIFORNIA ARCHITECTS BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

ARTHUR FRANK KENT,
Architect License No. C-15748

Respondent.

Case No. 14-01-001

OAH No. 2016110572.1

PROPOSED DECISION

Administrative Law Judge Debra D. Nye-Perkins heard this matter on June 7, 2017, at the Office of Administrative Hearings in San Diego, California.

Ron Espinoza, Deputy Attorney General, represented complainant Douglas R. McCauley, Executive Officer, California Architects Board.

Respondent Arthur Frank Kent represented himself.

The matter was submitted on June 7, 2017.

FINDINGS OF FACT

Jurisdictional Background

1. On February 29, 2016, complainant, in his official capacity as the Executive Officer of the California Architects Board, signed the accusation in case number 14-01-001 seeking the revocation of respondent's architect license no. C-15748 based upon allegations that respondent committed fraud or deceit in violation of Business and Professions Code¹ section 5583; committed negligence or willful misconduct in violation of section 5584; and failed to use a written contract executed prior to the commencement of actual work in violation of section 5536.22, subdivision (a). All of the allegations in the accusation are based upon an agreement between respondent and Minh Dang for respondent to perform

¹ All section references are to the Business and Professions Code unless otherwise indicated.

work to prepare site and utility plans to install a commercial trailer on vacant property in Whittier, California.

2. On June 14, 2016, the Board issued a Default Decision and Order, effective July 14, 2016, revoking respondent's architect license based upon respondent's failure to timely appeal the accusation.

3. On June 27, 2016, the Board issued an Order Vacating Default Decision based upon respondent's motion dated June 21, 2016, requesting that the Board vacate the default decision. The Board found good cause to vacate the default decision and this hearing followed.

License History

4. The California Architects Board granted License Number C-15748 to respondent on May 14, 1985. Respondent's license is scheduled to expire on November 30, 2017, unless renewed or revoked.

5. Respondent's license has been the subject of one prior disciplinary action. Pursuant to a stipulated settlement, respondent's license was revoked on April 27, 2007. The revocation was stayed, and respondent was placed on probation for a period of six years with certain terms and conditions, including a suspension of his license from April 27, 2007, to September 22, 2007. Respondent successfully satisfied the terms and conditions of his probation, and his license was fully restored on April 27, 2013.

Minh Cong Dang's Testimony

6. Ming Cong Dang owns and operates two barber shops, one in Loma Linda, California and the other in Palms, California. Mr. Dang is currently building his third barbershop on a vacant lot in Whittier, California. Mr. Dang has been in the barbershop business for about seven years.

7. In 2013 Mr. Dang hired respondent to help him with putting a pre-fabricated building on a vacant lot in Whittier, California in preparation for opening his third barbershop. Mr. Dang contacted respondent by telephone and set up an appointment to meet him at a Starbucks on August 1 or 2, 2013. At that first meeting, Mr. Dang informed respondent that this was his first building project and he needed respondent's assistance to guide him through the process. Respondent informed Mr. Dang at that meeting that he was going to draw up plans for the project and submit them to the County of Los Angeles for approval and to obtain the required permits prior to construction. During this first meeting, respondent did not tell Mr. Dang the cost of the entire project, but instead he provided Mr. Dang with his hourly rate of \$160 per hour. Mr. Dang testified that he had an understanding that respondent would be billing him on an hourly basis. Mr. Dang further testified that he hired respondent for the job at this first meeting, however, respondent never provided him with a written contract for the project. Also at the first meeting, respondent provided Mr.

Dang with a handwritten invoice for his initial fees for going to the site and completing a feasibility study, and for visits to the county in the amount of \$320. Mr. Dang testified that he gave respondent with a check in that amount, which respondent cashed.

8. Mr. Dang's second meeting with respondent took place on August 15, 2013. Mr. Dang testified that the purpose of this second meeting was to follow up on the first meeting, and to review preliminary drawings respondent created prior to respondent submitting them to the County of Los Angeles for review. Mr. Dang testified that at the second meeting, respondent told him that respondent would submit these drawings to the County of Los Angeles. At this second meeting, respondent provided Mr. Dang with another handwritten invoice for the costs associated with creating the drawings totaling \$960. Mr. Dang provided respondent a check for payment of that \$960 on August 22, 2013, which respondent cashed. Mr. Dang testified that in addition to providing respondent with a check in the amount of \$960, he also provided respondent with a check made out to the County of Los Angeles in an amount over \$700 to be submitted to the county, along with the drawings, as the county fee for its review. Mr. Dang testified that respondent told him that he would take the check and the drawings to the County of Los Angeles to submit them for review, a process that would take about six to eight weeks.

9. Mr. Dang stated that two or three months passed after the second meeting with respondent, during which time Mr. Dang heard nothing from respondent or the County of Los Angeles. Mr. Dang decided to contact respondent by telephone for a status check. Mr. Dang asked respondent what was happening and informed respondent that his check made out to the County of Los Angeles had not yet been cashed. Mr. Dang testified that respondent told him that he had submitted the drawings and the check to the County of Los Angeles and was simply waiting. At the end of the telephone conversation, Mr. Dang requested an appointment with respondent to meet and go to the County of Los Angeles together to inquire about the status of the drawing review. Respondent agreed. Thereafter, Mr. Dang went to respondent's office in Huntington Beach and asked respondent if he had submitted the drawings and the check. Mr. Dang testified that again respondent told him that he had submitted both the drawings and the check to the county and was just waiting for its response. At this meeting Mr. Dang and respondent agreed to go to the County of Los Angeles together the next week to check on the status.

10. About one week after the meeting at respondent's office in Huntington Beach, Mr. Dang met respondent at the County of Los Angeles planning department office. Mr. Dang stated that he and respondent walked into the building together and up to the counter of the office. At that point Mr. Dang observed respondent open a manila file folder and inside he saw the drawings and the check made out to the County of Los Angeles. Mr. Dang became angry because it was immediately apparent that respondent had never submitted the drawings or the check as he had previously stated. Mr. Dang stated that three months had passed since the meeting with respondent where respondent stated he would submit the drawings and the check, but he never did. Mr. Dang further stated that the County of Los Angeles informed them on that day that they would not accept the drawings because the drawings were not "made to scale" and Mr. Dang's name was misspelled on the drawings. Mr. Dang

confronted respondent that day and asked why he had not previously submitted the drawings and the check, despite respondent's representations that he had. Mr. Dang stated that on that day he and respondent decided to part ways and end their agreement, and respondent agreed to refund all payments to Mr. Dang. Mr. Dang testified that he gave respondent three to four months to pay him back all of the money, and eventually respondent did pay all of the money back to Mr. Dang.

11. Mr. Dang stated that he was forced to hire another architect to complete the project, and that new architect could not use the drawings made by respondent because those drawings did not comply with code requirements and contained numerous errors. Mr. Dang stated that he also did not want to use respondent's drawings because respondent was going to refund all of the money paid. Mr. Dang simply started the project again from scratch with another architect. Mr. Dang testified that because of respondent's three month delay in submitting the drawings, the entire project was delayed for about six months total.

Robert Lester Carter's Testimony

12. Robert Lester Carter has been a licensed architect in California since 1974. He obtained his Bachelors of Architecture degree from California Polytechnic State University in San Luis Obispo in 1970. During his career as an architect, Mr. Carter's practice focused on buildings in the public sector, such as schools, jails, post offices, and federal courthouses. Mr. Carter has had a long career as an architect and has worked for various large and small architecture and engineering firms, as well as a sole practitioner with his own business. Mr. Carter has worked for the Board as an independent contractor since 1998. His work for the Board consists of providing technical expertise to the Board members and consultation with regard to various violations of the Architects Practice Act. Mr. Carter has provided consultation services to the Board on about 780 different cases. Mr. Carter stated that the Board retained him in this matter to review documents and information to determine if respondent violated the Architects Practice Act in this matter.

13. Mr. Carter testified that a conceptual site plan is the initial concept plan developed after the first site visit describing in generic terms what you wish to build on the site. Mr. Carter stated that the conceptual site plan is usually submitted to the county planning department for review. He stated that this is the first step in getting a project approved by the county and involves a determination of whether the zoning and other ordinances are met. Mr. Carter stated that the next step is to develop design drawings and some county jurisdictions require review of those documents as well. The next step is development of the construction drawings, which are much more detailed. The construction drawings must be submitted to the county for a thorough review to make sure that all codes and regulations are met prior to the issuance of a construction permit.

14. Mr. Carter testified that he reviewed the drawings completed by respondent for Mr. Dang and noted that the drawings were preliminary drawings and were not construction drawings because they lacked the necessary detail. Mr. Carter concluded that the preliminary drawings completed by respondent were insufficient for any review to be done

by the County of Los Angeles. Mr. Carter stated that the drawings included deficiencies regarding accessibility and would not have been approved by any jurisdiction in California. Mr. Carter stated that the standard of care for such work would require that either respondent create more acceptable drawings for review by the County of Los Angeles, or respondent submit these drawings to the County of Los Angeles to determine their deficiencies prior to correcting them. However, in this case respondent did not submit the drawings to the County of Los Angeles at all. As a result, Mr. Carter concluded that respondent failed to meet the standard of care of an architect because he failed to submit the drawings to the County of Los Angeles as he had represented to his client. Mr. Carter opined that such a departure from the standard of care constitutes negligence. Mr. Carter further stated that it is important for architects to timely submit drawings for approval to counties because counties can take a long time for approval thereby impacting the time frame for project completion.

15. Mr. Carter further stated that he is very familiar with section 5536.22, which requires that architects have an executed written contract with a client before drawings are done in all cases, except those where the client knowingly states in writing that no such written contract is required, or except if the work is being done on a pro bono basis, or except in other listed cases. Mr. Carter noted that none of the exceptions to the general rule of section 5536.22 applied in this case and respondent was required to have an executed written contract with Mr. Dang prior to creating drawings, and he failed to do so. As a result, Mr. Carter opined that respondent deviated from the standard of care of an architect in California and his deviation constituted negligence. Mr. Carter further stated that he was aware that respondent refunded all the money Mr. Dang had paid. However, Mr. Carter clarified that respondent's negligent acts were not corrected by the refund.

Respondent's Testimony

16. Respondent is 67 years old and has been licensed in California as an architect since 1980. He graduated from Southern California Institute of Architecture with a Bachelor of Architecture degree in 1977. He has been a building designer since 1974 and has worked as a residential architect since 1980. He initially practiced at an architecture firm in Newport Beach, California. In 1996 he started working as an architect on his own, working primarily on residential homes from his garage. Also, in 1996 he began working as an adjunct instructor at a local junior college in the architecture department. Respondent continued to work as an adjunct instructor in architecture at that local junior college for 16 years until they abandoned the architecture program. After leaving the local junior college, respondent continued to work on his own as an architect, primarily with residential room additions and some minor commercial work. He currently has no employees and is working on 24 projects, all of which are small residential projects.

17. Respondent admitted to all of the allegations in the accusation. He stated that he is simply at the hearing "to accept [his] punishment." Respondent specifically admitted that he did not provide a written contract to Mr. Dang for his project. Respondent stated that it is his general practice to provide clients with a form document with spaces where he can insert information like the client's name and contact information, as well as his hourly billing

rate. However, he did not do so for his work for Mr. Dang. He stated that he ordinarily does not provide the form document until he knows the scope of the project with a client and after he determines that, he will provide the form document. However, respondent also admitted that his general practice in doing so does not meet the requirements of the Architects Practice Act.

18. Respondent further admitted that, with regard to the submission of his drawings to the County of Los Angeles on behalf of Mr. Dang, he lied to Mr. Dang and told him that he had submitted the drawings and the check, when in fact he had not done so. Respondent also wrote a letter to the Board explaining the circumstances of this case and with regard to his failure to timely submit the drawings he wrote:

[Mr. Dang] paid my invoice for \$960.00 See provided copy check #655 copy of submittal plans to follow. Mr. Dang also provided me with a \$773.00 check made out to county of Los Angeles.

HERE BEGINS THE PROBLEM!

Mr. Dang intrusted [sic] me that I would submit copy's [sic] of the plans, forms & his check to the county of Los Angeles Planning Dept.

I DID NOT, & I TOLD HIM I DID – NO EXCUSES, I just did not act professionally.

Respondent testified that the first time he lied to Mr. Dang was on the telephone when Mr. Dang called about two months after their last meeting asking about the status of the drawings. Respondent testified that he told Mr. Dang on the call that he had already submitted the drawings and the check, but in reality he had not. Respondent stated that he also lied to Mr. Dang about his submission of the drawings and check when Mr. Dang came to his office. Respondent admitted that the first time Mr. Dang learned of respondent's failure to submit the drawings and check was when they went to the planning department together. Respondent further admitted that his drawings were not acceptable to the County of Los Angeles because they did not meet the code for parking requirements, had reference to the wrong city and applied the requirements for fire systems from the City of Huntington Beach when the project was in Whittier.

19. Respondent stated that he paid Mr. Dang back all the money paid to him and did so within six weeks after Mr. Dang terminated his services. Respondent made the payments to Mr. Dang in three separate payments. Respondent stated that he did not pay Mr. Dang in a lump sum payment because his finances would not allow him to do so.

20. Respondent also testified that he has had prior discipline to his California architect license. Specifically, the Board filed an accusation against respondent, and

respondent entered into a stipulated settlement regarding that matter. The stipulated settlement was adopted by the Board, and respondent's license was suspended for 150 days, and thereafter placed on probation for six years beginning in 2007. Respondent testified that he admitted the allegations in that accusation in his stipulation. Respondent also testified at this hearing that he was disciplined in that matter because he submitted a false and incorrect soils report to the City of Huntington Beach by changing the address on a previous soils report. Respondent was caught in this act because the City of Huntington Beach plan checker noticed that the soils report had been altered. Respondent stated that he believed that his behavior in that matter was unethical but did not constitute fraud. Respondent further admitted that with regard to that project, he also failed to have a written contract prior to starting work. Respondent completed his probationary period successfully in April 2013, a mere four months prior to agreeing to work with Mr. Dang for his project and doing so without a written contract.

Respondent's Documentary Evidence

21. Respondent provided his resume, blank fee proposal forms he generally uses in his practice but did not use with Mr. Dang, and four letters of reference. Each of the four letters of reference was written by respondent's friends and is summarized below.

The first letter was written by Jeff Benbow on May 25, 2017. Respondent testified that he has known Mr. Benbow since 1976, and he asked Mr. Benbow to write this letter because his "license was being reviewed for unprofessional practice." Mr. Benbow wrote that he has known respondent for 30 years and has worked with him over the years because Mr. Benbow was a construction worker on respondent's architectural projects. He wrote that he trusts respondent's work and his word. Mr. Benbow is now a building inspector and characterized respondent as polite, professional, knowledgeable, courteous and dependable.

The second letter was written by William Whetstone, a friend and client of respondent's. Respondent testified that he has known Mr. Whetstone for nine years. Respondent testified that he asked Mr. Whetstone for this letter because respondent "was being reviewed for unprofessional acts." Respondent stated that he never told Mr. Whetstone that he needed the letter so that he could renew his license, despite what Mr. Whetstone wrote in his letter. Specifically, Mr. Whetstone wrote that he had "been asked to provide a letter attesting to the character of Mr. Art Kent, an architect upon occasion of renewal of his license." Respondent stated that Mr. Whetstone must have misunderstood his request. Mr. Whetstone wrote that respondent was a faithful member of his church who "follows the teachings and the gospel of Jesus Christ in his personal life and his business."

The third letter was written by Theo Lassig, a friend and client of respondent. Respondent testified that he has known Mr. Lassig for 40 years and has completed two architect projects for him. Respondent stated that he asked Mr. Lassig for this letter and told him that he was being reviewed for not acting professionally on a project in Whittier. Respondent stated that he did not tell Mr. Lassig about his prior license discipline. Mr. Lassig wrote that he has known respondent for 40 years, and respondent serves in his church.

Mr. Lassig further wrote that respondent is principled, trustworthy, helps others, understanding, and would never compromise his principles for any reason.

The fourth and final letter was written by Michael Ivison, a friend of respondent. Respondent testified that he has known Mr. Ivison for four or five years from church. Respondent further stated that he has been involved in a kitchen addition project for Mr. Ivison in Huntington Beach. Respondent stated that he asked Mr. Ivison to write this letter because his license was being reviewed for unprofessional conduct. Mr. Ivison wrote that he attests to respondent's skills as an architect, citizen, volunteer, and youth leader. Mr. Ivison wrote that respondent is a selfless individual and is his son's scout leader and youth volunteer at his church. He further wrote that respondent exceeds his expectations as an individual of character and a professional.

Costs of Investigation and Enforcement

22. The Board's Executive Officer signed a certification of investigative costs. That certification stated that 16.5 hours of investigative services from Barry Williams were billed at a rate of \$72 per hour, and 5.5 hours of investigative services from Robert Carter were billed at a rate of \$80 per hour. A total of \$1,628 was claimed for the costs of investigation. The certification failed to provide any description of the services provided by either of these investigators. The certification did not contain facts sufficient to support any finding regarding the Board's actual costs incurred or the reasonableness of investigative services. The certification did not describe the general tasks performed or the time spent on each task. An award for investigative costs cannot be issued because inadequate evidence was provided to support an award.

23. A certification of prosecution costs was signed by the Deputy Attorney General who prosecuted this action. The declaration stated that the deputy requested a billing summary for the case that was maintained by the Department of Justice. That billing summary was produced, and it was attached to the deputy's declaration. In contrast to the Board's certification, the billing summary contained each date on which legal services were provided, the nature of the task performed that day, the time spent that day performing a particular task, and the billing rate of the persons providing legal services. The billing rate for attorney services was \$170 per hour. The billing rate for paralegal services was \$120 per hour. These are reasonable rates. The time spent in the prosecution of the matter was reasonable given the complexity of the case and the volume of documents that had to be reviewed. The billing summary documented enforcement costs of \$7,485. The declaration and attachment supported an award of enforcement costs of \$7,485.

//

LEGAL CONCLUSIONS

Purpose of License Discipline

1. Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee but rather to protect the public. (*Griffiths v. Superior Court* (2001) 96 Cal.App.4th 757, 768.) The main purpose of license discipline is protection of the public through the prevention of future harm and the rehabilitation of the licensee. (*Ibid.*, at p. 772.)

Burden and Standard of Proof

2. In disciplinary administrative proceedings, the burden of proving the charges rests on the party making the charges. The obligation of a party to sustain the burden of proof requires the production of evidence for that purpose. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175.)

3. The standard of proof in an administrative action seeking to suspend or revoke a professional license is “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) “Clear and convincing evidence” requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Statutes and Regulations

4. Business and Professions Code section 5536.22, subdivision (a), provides:

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.

5. Business and Professions Code section 5583 provides:

The fact that, in the practice of architecture, the holder of a license has been guilty of fraud or deceit constitutes a ground for disciplinary action.

6. Business and Professions Code section 5584 provides:

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.

Cause Exists to Discipline Respondent's License

7. Clear and convincing evidence established cause to discipline respondent's license for violation of section 5536.22, subdivision (a), in that respondent failed to use a written contract when contracting with Mr. Dang for his Whittier project.

8. Clear and convincing evidence established cause to discipline respondent's license for violation of section 5583, in that respondent repeatedly and purposely lied to Mr. Dang regarding the status of submission of the drawings and check for the Whittier project, thereby constituting fraud and deceit in violation of this section.

9. Clear and convincing evidence established cause to discipline respondent's license for violation of section 5584, in that respondent purposely failed to submit the drawings and check from Mr. Dang to the County of Los Angeles in a timely manner as required, and thereafter lied to Mr. Dang about his misconduct. Respondent's acts in this regard constitute negligence or willful misconduct in violation of this section.

Disciplinary Guidelines

10. California Code of Regulations, title 16, section 154, provides that in reaching a decision in a disciplinary action under the Administrative Procedure Act, the Board must consider its disciplinary guidelines.

11. Those Disciplinary Guidelines contain factors to be considered when determining the appropriate disciplinary penalty, including:

- a. Nature and severity of the act(s), offenses, or crime(s) under consideration.
- b. Actual or potential harm to any consumer, client or the general public.
- c. Prior disciplinary record.
- d. Number and/or variety of current violations.
- e. Mitigation evidence.
- f. Rehabilitation evidence.
- g. In the case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
- h. Overall criminal record.
- i. Time passed since the act(s) or offense(s) occurred.
- j. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
- k. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

12. Under the guidelines, the recommended discipline for violation of Business and Professions Code section 5583 (fraud or deceit) is a maximum discipline of revocation and a minimum discipline of revocation stayed with 90 days actual suspension and five years' probation with terms and conditions. The recommended discipline for violation of Business and Professions Code section 5584 (negligence or willful misconduct) is a maximum discipline of revocation and a minimum discipline of revocation stayed with 90 days actual suspension and five years' probation with terms and conditions. The guidelines provide no specific recommendations for discipline for violation of section 5536.22, subdivision (a).

Evaluation

13. Respondent admitted to all of the allegations in the accusation. He provided no excuses for his actions and fully accepted responsibility for those actions. Notably, respondent had completed his six year probation on his architect license only four months prior to committing the acts alleged in this accusation. Specifically, respondent did not use a written contract for his work for Mr. Dang despite the fact that he had admitted to that violation of the Architects Practice Act in 2007 for failure to use a written contract. Furthermore, despite prior discipline on his license for deceitful acts regarding alteration of a soil report, respondent again committed acts of fraud and deceit by lying to Mr. Dang regarding the status of the submission of the drawings and delivery of the check to the County of Los Angeles. Respondent's repeated acts of deceit are extremely serious. While he did repay Mr. Dang the fees provided to him over a period of a couple of months, his willful or negligent act of failing to submit the drawings and check to the County of Los

Angeles cost Mr. Dang precious time in the completion of his project. While respondent did provide letters of recommendation from four individuals, it was unclear whether those individuals truly understood the reason for their letters, and respondent admitted that at least one of the individuals had no knowledge of his prior license discipline. Furthermore, respondent failed to provide any real assurance that he will not commit such deceitful and fraudulent acts in the future.

Given the very serious nature of his misconduct, his prior license discipline, and his failure to provide any assurance that he will not engage in such acts in the future, the only appropriate discipline in this case that provides public protection is revocation.

Costs of Investigation and Enforcement

14. The Board seeks its costs of investigation and enforcement under Business and Professions Code section 125.3.

15. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to the Board's cost recovery statute, did not violate due process. However, it was incumbent on the agency to exercise discretion to reduce or eliminate cost awards so that the costs imposed do not deter respondents with potentially meritorious claims or defenses from exercising their right to a hearing.

The California Supreme Court set forth four factors that should be considered in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3.

16. Respondent provided no evidence regarding his current financial state and ability to pay the costs associated with this matter.

17. After applying the *Zuckerman* criteria in the instant matter, it is concluded that it is reasonable to require respondent to pay the prosecution costs. That amount is reasonable pursuant to Business and Professions Code section 125.3. If respondent's license is reinstated, the Board shall be entitled to recover \$7,485 from the respondent for its costs of enforcement.

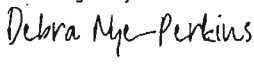
//

ORDER

1. Architect License No. C-15748 issued to respondent Arthur Frank Kent is revoked.

2. If respondent's license is reinstated, respondent shall pay to the Board the costs associated with its enforcement pursuant to Business and Professions Code Section 125.3, in the amount of \$7,485. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

Date: July 6, 2017

DocuSigned by:

73AD8C62D0DE42D
DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
4 State Bar No. 120482
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 14-01-001

13 **ARTHUR FRANK KENT**
14 **619 16th Street**
Huntington Beach, CA 92648

A C C U S A T I O N

15 **Architect License No. C-15748**

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 May 14, 1985, the Board issued Architect License Number C-15748 to
24 Arthur Frank Kent (Respondent). The Architect License was in full force and effect at all times
25 relevant to the charges brought herein, and expired on November 30, 2015.

26 ///

27 ///

28 ///

1 8. Section 5584 of the Code provides:

2 The fact that, in the practice of architecture, the holder of a license has been
3 guilty of negligence or willful misconduct constitutes a ground for disciplinary
4 action.

4 **COSTS**

5 9. Section 125.3, subdivision (a), states, in pertinent part:

6 Except as otherwise provided by law, in any order issued in resolution of a
7 disciplinary proceeding before any board within the department . . . upon request
8 of the entity bringing the proceedings the administrative law judge may direct a
9 licentiate found to have committed a violation or violations of the licensing act to
10 pay a sum not to exceed the reasonable costs of the investigation and enforcement
11 of the case.

10 **FACTS**

11 10. On or about August 2, 2013, Respondent was hired by Minh D. (Minh) to prepare site
12 and utility plans to install a commercial trailer on vacant property located at 10207 Bernardino
13 Avenue, in Whittier, California. Respondent did not provide Minh with a written contract for his
14 professional services. On or about August 1, 2013, Minh paid \$320.00 to Respondent for
15 conceptual site plans, and on or about August 22, 2013, Minh paid \$960.00 to Respondent for
16 preliminary drawings. On or about January 26, 2014, Respondent admitted to the Board that
17 Minh gave him a \$773.00 check made payable to the City of Los Angeles Planning Department
18 for permit fees on the project, and that he told Minh that he submitted the drawings to the City.
19 Respondent admitted that he did not submit the drawings or the permit fees to the City of Los
20 Angeles Planning Department, and that he acted unprofessionally. Respondent and Minh agreed
21 to terminate their professional relationship, and Respondent agreed to refund his money.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Fraud or Deceit)**

24 11. Respondent is subject to disciplinary action under section 5583 in that Respondent
25 committed fraud or deceit by accepting payment for professional services he thereafter failed to
26 perform, and lying about performing the services he promised to perform, as set forth in
27 paragraph 10, above, which is incorporated here by this reference.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE FOR DISCIPLINE

(Negligence or Willful Misconduct)

12. Respondent is subject to disciplinary action under section 5584 in that he committed negligence or willful misconduct by accepting payment for professional services he thereafter failed to perform, as set forth in paragraph 10, above, which is incorporated here by this reference.

THIRD CAUSE FOR DISCIPLINE

(Failure to Use a Written Contract)

13. Respondent is subject to disciplinary action under section 5536.22, subsection (a), in that he failed to use a written contract, executed prior to the commencement of actual work, as described in paragraph 10, which is incorporated here by this reference.

DISCIPLINE CONSIDERATIONS

14. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that December 15, 2006, the Board filed a First Amended Accusation against Respondent that charged that Respondent engaged in fraud or deceit in violation of Business and Professions Code section 5583, and negligence or willful misconduct, in violation of section 5584, by submitting an altered soils report with the building plans to the City of Huntington Beach for a project on Pecan Street, when the soils report as actually for a different project and property. Respondent was further charged with the failure to use a written contract in violation of section 5536.22, and negligence or willful misconduct, in violation of section 5584, for failing to have proper definition for proper drainage on plans he prepared for a project located on Kiner Avenue in Huntington Beach, and submitted to the Building Department for approval. On or about April 27, 2007, in a prior disciplinary action entitled *In the Matter of the Accusation Against: Arthur Frank Kent*, before the California Architects Board, in Case Number 06-03-0509245. Respondent's architect license was revoked, the revocation was stayed, and Respondent's architect license was placed on probation for a period of six years, subject to certain terms and conditions. Respondent satisfied all terms and conditions of the Board's Decision and Order, and his probation ended in April 2013.

///

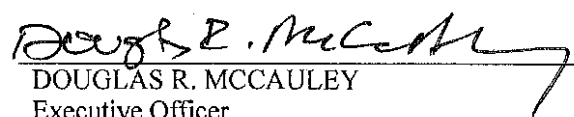
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Revoking or suspending Architect License Number C-15748 issued to Arthur Frank Kent;
2. Ordering Arthur Frank Kent to pay the California Architects 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: 2/29/2016


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

SD2015802876
81261142.doc