

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

In the Matter of the Accusation Against:

MUSTAFA BDAIWI,
Architect License No. C-33953,

Respondent.

Case No. 16-06-136

OAH No. 2017030905

ORDER

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 and other minor changes in the Proposed Decision are corrected as follows:

- 1) On page 1, second paragraph, line 1, "Lauro M. Paredes" is corrected to read "Lauro A. Paredes," "Office of the Attorney General," is inserted after "General," and "State of California," is inserted after "Justice."
- 2) On page 1, second paragraph, line 2, "in his capacity as" is inserted after "McCauley," "(complainant)" is inserted after "Executive Officer," and "(Board)" is inserted after "Board."
- 3) On page 1, paragraph 1, line 5, under "FACTUAL FINDINGS," "a" is inserted after "receipt of."
- 4) On page 1, paragraph 1, line 6, under "FACTUAL FINDINGS," "subdivision (d)" is corrected to read "subdivision (a)."
- 5) On page 1, paragraph 1, line 9, under "FACTUAL FINDINGS," "reducing premiums, a felony" is corrected to read "reducing premiums, in violation of Insurance Code section 11880, subdivision (a), a felony" and "(Causes for Discipline One through Four.)" is corrected to read "(Causes for Discipline One through Four)."
- 6) On page 2, paragraph 2, lines 1 and 2, "December 29, 2012" is corrected to read "December 20, 2012."
- 7) On page 2, paragraph 3, line 9, "32, 33" is corrected to read "32, and 33."
- 8) On page 3, seventh paragraph, line 3, "Delati" is corrected to read "Dalati."
- 9) On page 4, lines 1 and 3, "Delati" is corrected to read "Dalati."
- 10) On page 4, paragraph 5, lines 2 and 3, "Tim" is corrected to read "Tina," "Benham" is corrected to read "Behnam," and "Jeerah Project" is corrected to read "Yaisir Khahf."

- 11) On page 5, second paragraph, lines 1, 3, and 4, "Benham" and "Benhem" are corrected to read "Behnam."
- 12) On page 5, fourth paragraph, lines 1 and 4, "Roxanne" is corrected to read "Roxane."
- 13) On page 6, paragraph 6, line 7, "21;" is corrected to read "21,".
- 14) On page 6, third paragraph of paragraph 6, line 5, "in" is deleted after "Respondent added that" and "that" is deleted after "against him."
- 15) On page 6, fourth paragraph of paragraph 6, line 1, "crime" is replaced with "crimes."
- 16) On page 7, second paragraph of paragraph 7, line 2, "," is inserted after "behalf."
- 17) On page 7, second paragraph of paragraph 7, line 3, "warrants" is replaced with "warrant."
- 18) On page 9, the subheading "*Applicable Penal Code Sections Relating to Respondent's Conviction*" is corrected to read "*Applicable Code Sections Relating to Respondent's Conviction.*"
- 19) On page 9, fourth paragraph, line 1, "Penal Code section 115 reads" is corrected to read "Penal Code section 115, subdivision (a), reads."
- 20) On page 10, paragraph 5, line 4, "Penal Code section 115," is corrected to read "Penal Code section 115, subdivision (a),".
- 21) On page 10, paragraph 5, line 5, "are" is corrected to read "is."
- 22) On page 11, first paragraph, line 3, "Penal Code section 115" is corrected to read "Penal Code section 115, subdivision (a),".
- 23) On page 12, paragraph 7, line 2, "sections 5577, 5578, 5583, 5584 and 5578" is corrected to read "sections 5577, 5578, 5583, and 5584."
- 24) On page 14, second paragraph, line 4, "." is inserted after "(a)".
- 25) On page 14, under "ORDER," line 1, "Mustafa Mohamed Bdaiwi" is corrected to read "Mustafa Bdaiwi."

The technical modifications and clarifying changes made above do not affect the factual or legal basis of the Proposed Decision, which shall become effective on January 19, 2018.

IT IS SO ORDERED this 20th day of December, 2017.



MATTHEW MCGUINNESS
PRESIDENT
CALIFORNIA ARCHITECTS BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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In the Matter of the Accusation Against:

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PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 7, 2017, in Irvine, California.

Lauro M. Paredes, Deputy Attorney General, Department of Justice, represented complainant, Douglas R. McCauley, Executive Officer of the California Architects Board, Department of Consumer Affairs, State of California.

Fredrick M. Ray, Attorney at Law, represented Mustafa Bdaiwi, respondent.

The matter was submitted on September 7, 2017.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity as the Executive Officer of the California Architects Board on December 14, 2016. By this accusation, complainant alleges that respondent's architect license is subject to discipline because of his conviction on May 11, 2015, in Orange County Superior Court, Case Number 13CF3959, of receipt of portion of wages of workmen, a felony, in violation of Labor Code section 1778; attempting to file forged instruments, in violation of Penal Code section 115, subdivision (d), a felony; multiple failures to make unemployment insurance contributions, in violation of Unemployment Insurance Code section 2108, misdemeanors; and fraudulent statement for purposes of reducing premiums, a felony (Causes for Discipline One through Four.) In addition, complainant alleges that respondent's license is subject to discipline because he committed an act involving fraud or deceit (Fifth Cause for Discipline); he committed an act involving willful misconduct (Sixth Cause for Discipline); and he committed acts

substantially related to the qualifications, functions, and duties of a licensed architect (Seventh Cause for Discipline).

2. The Board issued Architect License No. C-33953 to respondent on December 29, 2012. The license will expire on February 28, 2019, unless renewed. Respondent has no history of discipline.

May 11, 2015, Criminal Conviction

3. On May 11, 2015, in Superior Court of California, Orange County,¹ Case No. 13CF3959, respondent was convicted by his plea of guilty to the following counts as detailed in the Felony Complaint Amendment 1: under Count 1, he unlawfully took, received or conspired with another to take and receive, a portion of workmen's wages in connection with services rendered upon a public work, in violation of Labor Code section 1778, a felony; under Count 12, he knowingly and unlawfully procured and offered to be filed, recorded and registered in a public office, California Certified Payrolls, a false and forged instrument, in violation of Penal Code section 115, subdivision (a), a felony; under Counts 25, 26, 27, 28, 29, 30, 31, 32, 33, he willfully failed and refused to make contributions under the Unemployment Insurance Code, in violation of Unemployment Insurance Code section 2108, felonies, which were reduced to misdemeanors under Penal Code section 17, subdivision (b), at sentencing; and under Count 39, he unlawfully made and caused to be made a knowingly false and fraudulent statement, of a material fact in the determination of the premium, rate and cost of workers' compensation insurance, in violation of Insurance Code section 1880, subdivision (a), a felony. Respondent admitted enhancement of the sentence under Penal Code section 12022.6, subdivision (a)(2), as to Count 1.

Respondent submitted the following statement along with his guilty plea:

Between February 11, 2011 and August 30, 2011 I knowingly took a portion of wages from 11 of my workers on a public works project for personal use. I also conspired w/ Antonio Naranjo [*sic*] to file certified payroll reports required on a public works project w/ a public office. I willfully and knowingly failed to pay employment development department taxes and report my true payroll to State Compensation Insurance Fund in order to lower my insurance payments.

Pursuant to the plea agreement he signed, respondent agreed to pay restitution in the amount of \$220,463.38, as to Counts 2 through 11, 14-24, and 35 to 38, and was required to

¹ The complete caption is *The People of the State of California vs. Mustafa Mohamed Bdaiwi and Antonio Naranjo Jr.*

pay \$57,821.10 of the total restitution amount to the Employment Development Department (EDD) by May 15, 2015.²

At the time of his guilty plea, on May 11, 2015, the court sentenced respondent to five years' formal probation on the condition that he serve 365 days in county jail with 70 days credit for time served, pay restitution in the amount of \$220,463.38, pay miscellaneous fines and penalties, and comply with miscellaneous terms and conditions.

On June 16, 2017, the court terminated probation and dismissed all Counts and the enhancement as to Count 1 against respondent pursuant to Penal Code section 1203.4.

Aside from Felony Complaint Amendment 1, and respondent's statement as part of his plea agreement, no evidence was offered regarding the facts and circumstances of the crimes detailed in the Felony Complaint. Thus, no determination can be made regarding the facts and circumstances detailed in the accusation at paragraphs 19 through 21, 23, subsection (c); 24, subsection (c); and 25, subsection (c).

Respondent's Evidence and Testimony

4. Six individuals testified as character witnesses on respondent's behalf: Haitham A. Hafeez, Ray Cordova, Belal Dalati, Donna Chesson, Monte Rashwan, and Kalen Wilson.

Mr. Hafeez has been a licensed civil engineer for 25 years and has known respondent for a year and a half. Mr. Hafeez supplemented his testimony with a letter he wrote on respondent's behalf dated July 29, 2017. Mr. Hafeez worked with respondent on one project and was impressed with the quality of his work. Mr. Hafeez described respondent as a high caliber person who is honest and ethical. When asked about respondent's conviction, Mr. Hafeez suggested that respondent was not guilty of the crime and insisted that respondent is honest irrespective of the conviction. Mr. Hafeez presented less as a character witness than as respondent's advocate. His testimony that respondent is honest and ethical is given little weight as a result.

Ray Cordova has known respondent for three or four years, socializes with respondent regularly throughout the year, and has come to know respondent's family. Mr. Cordova has worked in organized labor as an organizer and served as a union president. He described respondent as a very honorable person and very respectful and committed to his family, particularly his father and brother. Mr. Cordova is aware of respondent's conviction.

Belal Dalati is Chairman of the Planning Commission for Anaheim and has worked in the construction field where he holds a contractor's license and an insurance license. Mr. Dalati supplemented his testimony with an undated letter he wrote on respondent's behalf.

² In the plea agreement, respondent agreed to pay restitution with respect to counts that were dismissed.

Mr. Delati has known respondent for 15 to 20 years. Mr. Delati described respondent as honest and sincere, very passionate about his work as an architect and he has an excellent reputation in the community for his work as an architect. Mr. Delati is aware of respondent's conviction and acknowledged that the crimes he committed represented serious violations of law.

Donna Chessen has worked as a government relations consultant for 23 years, and in this capacity, helps commercial and real estate developers with their projects. Respondent has worked with Ms. Chessen as an architect on a number of different development projects. She described him as having an excellent reputation as an architect, she said he is very clever and creative and delivers his work on time. Ms. Chessen is aware of respondent's conviction.

Monte Rashwan has known respondent for two years. Mr. Rashwan works as Director of Operations and Site Leader for an aerospace company. Mr. Rashwan supplemented his testimony with a letter dated June 25, 2016, he wrote on respondent's behalf. Mr. Rashwan came to know respondent when his company transferred him to California and respondent showed him around the area and invited him to live temporarily with him until Mr. Rashwan's family moved to California. During this time, Mr. Rashwan came to know respondent and his family. Mr. Rashwan described respondent as honest and a person Mr. Rashwan trusted. He also described respondent as very devoted to his children and family. Mr. Rashwan added that he was very impressed with respondent's work as an architect. Mr. Rashwan is familiar with respondent's conviction and said that respondent was beating himself over it and took ownership of the conduct that led to his conviction. He added that respondent went through a difficult time and has now remarried.

Kalen Wilson is a licensed civil and structural engineer and has worked with respondent the last two years. Mr. Wilson supplemented his testimony with a letter he wrote on respondent's behalf dated July 28, 2017. Mr. Wilson described respondent as a good person with whom to do business. In particular, he noted in his letter that respondent ensured he was always paid promptly. Mr. Wilson described respondent as an architect who understands the field of architecture and the need for a constructible design. Mr. Wilson is aware of respondent's conviction. Mr. Wilson testified that respondent told him that he regretted not being on top of his business.

Aside from Mr. Hafeez's testimony, the testimony of respondent's character witnesses was credible.

5. In addition to the testimony of these individuals respondent submitted character letters from Jamal Anaim, Tim and Kirk Anderson, George Benham, Edward F. Doll, Doug and Roxane Francis, Gina Kharkats, Jeerah Project, Ben and Charles Odipo, and Sean Tu.

In a letter dated August 7, 2017, Mr. Anaim stated that he has known respondent for 11 months related to his multi-million dollar house project. He found respondent to be

trustworthy, ethical and professional and he demonstrated a diverse knowledge of architecture and design. Respondent testified that Mr. Anaim knows about his conviction.

Tina and Kirk Anderson, in a letter dated December 14, 2015, stated that respondent helped them during their kitchen remodel and they found him to be a person of integrity with a strong moral code who helped them overcome problems connected with the project. Respondent testified that the Andersons do not know about his conviction.

George Benham is a licensed architect who served as respondent's mentor when respondent entered the field of architecture. In a letter dated July 8, 2016, addressed to the Board, Mr. Benhem described respondent as a person of good moral character, integrity and honesty. Mr. Benhem also described respondent as an outstanding architect. He indicated that he still holds this opinion of respondent's character regardless of the criminal charges against him.

Edward F. Doll, in a letter dated July 29, 2017, wrote that he has known respondent for a little over a year in connection with a residential project where Mr. Doll worked as a landscape architect. He described his work with respondent as very rewarding and positive. Respondent testified that he briefly talked to Mr. Doll about his conviction.

Doug and Roxanne Francis, in a letter dated January 19, 2016, stated that they were very happy with the architectural services respondent provided. They described respondent as very professional and responsive to their needs. Respondent testified that Doug and Roxanne Francis do not know about his conviction.

Gina Kharkats is a real estate agent who worked with respondent on a real estate transaction involving her client. In a letter dated June 13, 2016, Ms. Kharkats stated that a contractor highly recommended him to her to help repair a balcony with significant structural damage. Respondent worked very hard to resolve the problem to everyone's satisfaction. Respondent testified that Ms. Kharkats does not know about his conviction.

In a letter dated February 23, 2017, an individual respondent identified as Yaisir Khahf, because the person's signature was illegible, wrote that respondent displayed talent and expertise in the development of a multiple home residential development project. This person also described respondent as ethical, passionate and knowledgeable. Respondent testified that Mr. Khahf does not know about his conviction.

Ben and Charles Odipo, in a letter dated August 1, 2017, described a project in Kenya related to Pro Bono work respondent performed on the design of a multi-use facility. The project involved the development of three acres in a village in Kenya with a store, small business training center, agriculture and bio/center, clean water and sanitation center, and vocational center.

Sean Tu, President of the Islamic Center of Santa Ana, in a letter dated February 24, 2017, wrote that respondent helped the Center on a major renovation and provided valuable expertise and knowledge to facilitate the renovations.

Doug and Roxane Francis, Mr. and Ms. Anderson, and Ms. Kharkats, did not know about respondent's conviction. Their statements are thus given little weight. The statements of the remaining individuals who provided statements regarding respondent's professionalism, honesty, ethics, and integrity, are credited.

Respondent's Testimony

6. Respondent is 45 years old and obtained bachelor's degrees from Northeastern University in Boston in architecture and economics. He attended the University of Phoenix for a master's degree in business administration, but did not complete the program. He also has taken courses towards obtaining a master's degree in architecture. Respondent holds certificates in green building design and construction design and is certified by CSI as a document technologist. He also holds a contractor's license with classifications in general engineering and asbestos removal. Respondent has three children ages 21, 15 and 12 years old. He is divorced from his first wife and has remarried. His youngest child has a medical condition relating to his kidneys that requires intensive treatments including chemotherapy. Respondent lives with his children, his brother who has a serious mental health condition, and his father who is blind from diabetes and requires help.

After college in Massachusetts respondent started a property management company and then returned to California in 2002. He established a property management company in California and then started Malcon Civil Inc. He was Chief Executive Officer and Antonio Naranjo, his codefendant in the criminal matter, managed the projects. He had no partners in the company and considered himself the "umbrella" manager over the company. His company did public works and private jobs, but in 2008, as a result of the financial crisis, private work was not available and he did mostly public work projects. He cited a number of projects for public schools he worked on between 2009 and 2011.

Regarding the conviction, respondent said he paid the \$57,000 restitution to EDD within one week of his sentence and fully paid the full restitution amount by May 2017. He said he was allowed to serve his jail time through house arrest, which lasted three months. In June 2017, the court terminated probation and expunged the charges against him. Respondent added that in a civil action against him that arose from the conduct that led to his conviction and he paid in full the \$80,000 demand.

Respondent accepted responsibility for his crime. He acknowledged that subcontractors and workers were harmed by not receiving their payments timely and this weighs on his conscience all the time. Respondent characterized his conduct as a failure to properly manage his company. He said he was too passive and did not review submissions Mr. Naranjo made on his behalf and on behalf of his company. He said that by his failure he allowed the conduct to take place. Respondent stressed that he should have been more

diligent and reviewed with Mr. Naranjo what Mr. Naranjo was doing and what he was filing on behalf of the company.

As a result of his conviction, his integrity was compromised. He accepted that this is “part of his punishment.”

In mitigation, respondent explained that in 2011 he was under a lot of stress due to his son’s medical condition and difficulties in his marriage. Respondent described in detail his son’s medical problems and the treatment he has had to undergo. It was evident at the hearing that his son’s medical problems have weighed heavily on him. As a result of his son’s problems, he said he was not as attentive to the management of his company as he should have been.

Respondent testified that he has done a lot of volunteer work. He coaches soccer, has done volunteer work for YSO, a sports organization for children with developmental disabilities, and has done volunteer work for the Council on American Islamic Relations. He has also done architectural work for an organization in Kenya, run by Ben and Charles Odipo, that serves as an enterprise zone for women to start their own businesses. In addition to this work, he has done a lot of small volunteer jobs: He helped a widow with a structural problem on her property that her homeowners’ association required her to fix; and he has done architectural work for mosques and churches.

Respondent expressed his clear passion for architecture. In this regard he presented a portfolio of his work on a wide range of projects. The designs respondent created for these projects clearly displayed respondent’s passion and skills as an architect and detailed the extensive work he has done.

Respondent’s testimony was credible. He took responsibility for his conduct and offered clear insight into the conduct that led to his conviction. Throughout his testimony, he appeared committed to behaving in a manner that will restore his integrity. Respondent took the concerns raised by complainant seriously and answered difficult questions complainant posed to him without evasion.

The Parties’ Arguments

7. Complainant asked that respondent’s license be revoked because he was convicted of serious crimes that involved harm to the public and respondent did not accept responsibility for his crimes. Complainant emphasized that respondent lacks honesty and trustworthiness because he knowingly and willfully filed false public reports. Complainant added that respondent’s rehabilitation can be measured only as of June 2017, when his probation was terminated consistent with *In re Gossage* (2000) 23 Cal.4th 1080, 1099.

Respondent asked that he be placed on probation. He said that the mitigation evidence, the individuals who testified on respondent’s behalf and respondent’s letters of support warrants such a conclusion.

Cost recovery

8. The administrative hearing took about a day to complete and was not factually complex. Complainant called no witnesses. The Attorney General's Office submitted a declaration to which the billing in the matter was attached. The Attorney General's Office billed \$5,125 for legal services at an hourly billing rate of \$170 for attorney work, and \$120 for paralegal work. The billing summary provided a detailed accounting of the Attorney General's work. The \$5,125 sought in costs is reasonable.

Respondent did not testify about his ability to pay costs.

LEGAL CONCLUSIONS

Purpose of Administrative Discipline

1. Administrative proceedings to revoke, suspend, or impose discipline on a license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Standard of Proof

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable Code Sections and Regulation

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

Business and Professions Code section 5583 provides that, "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."

Business and Professions Code section 5584 provides that, "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."

Business and Professions Code section 5578 provides that, “The fact that the holder of a license is practicing in violation of the provisions of this chapter constitutes a ground for disciplinary action.”

California Code of Regulations, title 16, section 110, provides as follows:

For the purposes of denial, suspension, or revocation of the license of an architect pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions and duties of an architect if to a substantial degree it evidences present or potential unfitness of an architect to perform the functions authorized by his/her license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) Any violation of the provisions of Chapter 3, Division 3 of the Business and Professions Code.

Applicable Penal Code Sections Relating to Respondent's Conviction

4. Labor Code section 1778 reads as follows:

Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his or her own use or the use of any other person any portion of the wages of any worker or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

Penal Code section 115 reads as follows:

(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

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Unemployment Insurance Code section 2108 reads as follows:

It is a violation of this chapter for any person to willfully fail or refuse to make any contributions which are due under this division.

Insurance Code section 11880, subdivision (a), reads as follows:

(a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance issued or administered by the State Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in a county jail for one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or double the value of the fraud, whichever is greater, or by both that imprisonment and fine.

Penal Code section 12022.6, subdivision (a)(2), provides as follows:

(a) When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

[¶] . . . [¶]

(2) If the loss exceeds two hundred thousand dollars (\$200,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years.

Cause Exists to Impose Discipline against Respondent's License

5. Cause exists as set forth under the First through Fourth Causes for Discipline, pursuant to Business and Professions Code sections 490 and 5577, to impose discipline against respondent's license. On May 11, 2015, respondent was convicted of violating Labor Code section 1778, Penal Code section 115, Unemployment Insurance Code section 2108, and Insurance Code section 11880, subdivision (a), felonies. Each of these crimes are substantially related to the practice of architecture.

Cause exists as set forth under the Fifth Cause for Discipline, pursuant to Business and Professions Code section 5583, to impose discipline against respondent's license. Respondent was convicted of violating Penal Code section 115 and Insurance Code section 11880, subdivision (a), crimes that involve fraud or deceit.

Cause exists under the Sixth Cause for Discipline, pursuant to Business and Professions Code section 5584, to impose discipline against respondent's license. Respondent was convicted of crimes that involve willful misconduct as found under the First through Fifth Causes for Discipline.

Cause exists under the Seventh Cause for Discipline, pursuant to Business and Professions Code section 5578, to impose discipline against respondent's license. Respondent violated provisions of the Business and Professions Code relating to the practice of architecture as found under the First through Sixth Causes for Discipline.

The Appropriate Degree of Discipline

6. California Code of Regulations, title 16, section 110.1, subdivision (b), provides:

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.

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California Code of Regulations, title 16, section 154, provides as follows:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [2000] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

7. The Board's Disciplinary Guidelines (as amended and approved by the Board in 2000) provides that for violations of sections 5557, 5578, 5583, 5584 and 5578, a maximum penalty of revocation and a minimum penalty of revocation, stayed, 90 days actual suspension, and 5 years' probation with terms and conditions that number 1 through 7 and 11 through 14.

As detailed in the Disciplinary Guidelines, in determining whether revocation, suspension or probation is to be imposed, the following factors should be considered, in addition to the factors previously detailed under California Code of Regulations, title 16, section 110.1: the number and/or variety of current violations; mitigation evidence; compliance with the terms of sentence and/or court-ordered probation; overall criminal record; whether or not the respondent cooperated with the board's investigation or other law enforcement; and recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

Disciplinary Analysis

8. After applying the criteria under California Code of Regulations, title 16, section 110.1, and after giving due consideration to the Board's Disciplinary Guidelines, it is determined that placing respondent's license on probation for three years with appropriate terms and conditions is consistent with public protection. The following are the reasons for this conclusion.

Respondent's conviction for multiple felonies on May 11, 2015, for crimes he committed between February and August 2011, was serious. He engaged in fraud and deception and caused harm to workers and to the public. Workers on the public project were forced to wait to receive wages they were entitled to receive and respondent's failure to pay required unemployment and workers' compensation insurance was a cost to the public. Respondent has complied with all the terms of probation, including the payment of restitution. The court, on June 16, 2017, dismissed the charges against him under Penal Code section 1203.4. Other than the May 11, 2015 conviction, respondent has no history of criminal conduct. He also has no history of discipline as an architect.

His criminal misconduct is mitigated by numerous factors: After he made full restitution to the workers and to the public, the court dismissed all charges against him on June 16, 2017, as noted. He has also paid \$80,000 in settlement of a civil action against him. At the time of the crimes, he was distracted by the serious illness of his son and marital problems and, as a result, he failed to oversee the management of his business. While his problems are not an excuse, they help explain his behavior which led to the convictions.

Other evidence respondent presented show that he is sufficiently rehabilitated. He gave meaningful insight into the conduct that led to the crimes because he failed to manage his company. He also credibly testified that he learned from his misconduct. His prompt attention to the payment of restitution to the workers and the public, although conditions of probation, showed that he sought to correct his misconduct and make amends. Respondent, further, stated that he regarded the perceived loss of his integrity as a necessary form of punishment and he took the concerns raised by his conduct as addressed by complainant in the hearing seriously.

In addition, numerous individuals described respondent as a person of professionalism, integrity and honesty who is committed to the profession of architecture. Respondent took clear pride in his work as an architect and expressed his commitment to quality architectural design.

Considering these factors, revocation is not necessary to protect the public. A three year period of probation with standard terms and conditions, plus relevant education courses as directed by the Board, will ensure the public is protected. The terms and conditions of this discipline represent a departure from the Board's disciplinary guidelines, which recommend a period of suspension and five years' probation. The departure from the recommended terms and conditions is warranted based on the strong mitigation factors respondent presented and the factors already discussed.

The Reasonable Costs of Investigation and Prosecution

9. Business and Professions Code section 125.3 reads, in part:
 - (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
 - (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision

(a) The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

10. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided that in order to determine whether the actual costs of investigation and prosecution sought by a regulatory board under a statute substantially identical to Business and Professions Code 125.3 are “reasonable,” the agency must decide: (a) Whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee’s subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

As noted, the reasonable costs of investigation and enforcement are found to be \$5,125. Applying the factors detailed in *Zuckerman, supra*, a reduction in the amount of \$2,000 is allowed because respondent had a good faith belief in the merits of his position and successfully argued at the hearing against revocation of his license, as complainant requested. Thus, costs are awarded in the amount of \$3,125.

ORDER

Architect License No. C-33953, issued to Respondent Mustafa Mohamed Bdaiwi, is revoked; however, the revocation is stayed and the license is placed on probation for a term of three years under the following terms and conditions.

//

1. Obey All Laws

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

2. Submit Quarterly Reports

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

3. Personal Appearances

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

4. Cooperate During Probation

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

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

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

//

6. Continuing Education Courses

Respondent shall complete professional education courses directly relevant to the violation as specified by the Board. The professional education courses shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation. Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than 100 days prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such courses.

7. 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.


8. Completion of Probation

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

9. Cost Reimbursement

Respondent shall reimburse the Board \$3,125 for its enforcement costs. The payment shall be made within 30 days of the date the Board's decision is final.

DATED: October 5, 2017

DocuSigned by:

C84194237D2243C...
ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 16-06-136

13 **MUSTAFA BDAIWI**
14 **1431 Warner Avenue Ste B**
Tustin, CA 92780

A C C U S A T I O N

15 **Architect License No. C-33953**

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 December 20, 2012, the Board issued Architect License Number C-33953 to
24 Mustafa Bdaiwi (Respondent). Respondent has also been known as Mustafa Mohamed Bdaiwi.
25 The Architect License was in full force and effect at all times relevant to the charges brought
26 herein, and will expire on February 28, 2017, unless renewed.

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JURISDICTION

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. Code section 118 states, in pertinent part:

...

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

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

5. Code section 5560 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.

STATUTORY PROVISIONS

6. Code section 482 states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

1 7. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
2 license on the ground that the licensee has been convicted of a crime substantially related to the
3 qualifications, functions, or duties of the business or profession for which the license was issued.

4 8. Code section 493 states:

5 Notwithstanding any other provision of law, in a proceeding conducted
6 by a board within the department pursuant to law to deny an application for a
7 license or to suspend or revoke a license or otherwise take disciplinary action
8 against a person who holds a license, upon the ground that the applicant or the
9 licensee has been convicted of a crime substantially related to the qualifications,
10 functions, and duties of the licensee in question, the record of conviction of the
11 crime shall be conclusive evidence of the fact that the conviction occurred, but
12 only of that fact, and the board may inquire into the circumstances surrounding
13 the commission of the crime in order to fix the degree of discipline or to
14 determine if the conviction is substantially related to the qualifications, functions,
15 and duties of the licensee in question.

16 As used in this section, "license" includes "certificate," "permit,"
17 "authority," and "registration."

18 9. Code section 5500 states:

19 As used in this chapter, architect means a person who is licensed to
20 practice architecture in this state under the authority of this chapter.

21 10. Code section 5555 states:

22 Licenses to practice architecture remain in full force until revoked or
23 suspended for cause, or until they expire, as provided in this chapter.

24 11. Code section 5577 states:

25 The conviction of a crime substantially related to the qualifications,
26 functions, and duties of an architect by the holder of a license constitutes a ground
27 for disciplinary action. The record of conviction, or a certified copy thereof
28 certified by the clerk of the court or by the judge in whose court the conviction is
obtained, is conclusive evidence of the conviction.

 A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this section. The
board may order the license suspended or revoked, or may decline to issue a
license, when the time for appeal has elapsed, the judgment of conviction has
been affirmed on appeal, or an order granting probation is made suspending the
imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea
of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

1 12. Code section 5578 states:

2 The fact that the holder of a license is practicing in violation of the
3 provisions of this chapter constitutes a ground for disciplinary action.

4 13. Code section 5583 states:

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

7 14. Code section 5584 states:

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

10 REGULATORY PROVISIONS

11 15. Title 16 California Code of Regulations section 110 states:

12 For the purposes of denial, suspension, or revocation of the license of an
13 architect pursuant to Division 1.5 (commencing with Section 475) of the Business
14 and Professions Code, a crime or act shall be considered substantially related to
15 the qualifications, functions and duties of an architect if to a substantial degree it
16 evidences present or potential unfitness of an architect to perform the functions
authorized by his/her license in a manner consistent with the public health, safety
or welfare. Such crimes or acts shall include, but not be limited to, those
involving the following:

17 (a) Any violation of the provisions of Chapter 3, Division 3 of the
18 Business and Professions Code.

19 16. Title 16 California Code of Regulations section 110.1 states, in pertinent part:

20 ...

21 (b) When considering the suspension or revocation of the license of an
22 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
23 eligibility for licensure will consider the following criteria:

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or
offense(s).

27 (4) Whether the licensee has complied with any terms of parole,
probation, restitution or any other sanctions lawfully imposed against the licensee.
28

1 (5) If applicable, evidence of expungement proceedings pursuant
2 to Section 1203.4 of the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.
4

5 17. Title 16 California Code of Regulations section 160 states, in pertinent part:
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7 A violation of any rule of professional conduct in the practice of
8 architecture constitutes a ground for disciplinary action.
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15 **COSTS**

16 18. Code section 125.3 provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations
18 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
20 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
21 may be included in a stipulated settlement.
22

23 **DEERFIELD ELEMENTARY SCHOOL EXPANSION PROJECT**

24 19. On March 9, 2006, the California Secretary of State issued Entity Number
25 C2857728 to Malcon Civils, Inc., with Mustafa Bdaiwi (Respondent) as Chief Executive Officer
26 (CEO) and President. On April 24, 2006, the Registrar of Contractors issued Contractor's License
27 Number 881020 to Malcon Civils, Inc., with Respondent as Responsible Managing Officer
28 (RMO), CEO, and President in the B General Building Contractor classification. As RMO, CEO,
and President, Respondent associated on October 30, 2009 in the ASB Asbestos classification,
and on February 10, 2010, in the C-8 Concrete classification.

20. In December 2010, Respondent submitted a bid and won a \$444,000.00 contract
with the Irvine Unified School District for structural concrete and reinforcing to the Deerfield
Elementary School Administration Building and Classroom Building. On August 9, 2011, the
Center for Contract Compliance (CCC) provided information to the Orange County District
Attorney's Office regarding at least five workers who were misclassified, not paid prevailing

1 wage, not paid overtime, and deprived of paycheck stubs or fringe benefits. CCC's audit also
2 uncovered underreporting with the State Compensation Insurance Fund and the Employment
3 Development Authority. On September 24, 2012, Respondent disassociated as RMO, CEO, and
4 President in all classifications.

5 21. On December 19, 2013, the Orange County District Attorney's Office filed a
6 complaint against Mustafa Mohamed Bdaiwi in the Superior Court of the State of California for
7 11-count violation of Labor Code (LC) section 1778¹, two-count violation of Penal Code (PC)
8 section 115, subdivision (a)², 11-count violation of Unemployment Insurance Code (UI) section
9 2108³, and four-count violation of Insurance Code (IC) section 11880, subdivision (a)⁴.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(May 11, 2015 Conviction for Receipt of Portion of Wages of Workmen in 2011)**

12 22. Respondent has subjected his Architect License to disciplinary action under Code
13 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
14 Regulations, in that Respondent was convicted of a crime substantially related to the
15 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

16
17
18 ¹ Every person, who individually or as a representative of an awarding or public body or
19 officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who
20 takes, receives, or conspires with another to take or receive, for his own use or the use of any
21 other person any portion of the wages of any workman or working subcontractor, in connection
22 with services rendered upon any public work is guilty of a felony.

23 ² Every person who knowingly procures or offers any false or forged instrument to be filed,
24 registered, or recorded in any public office within this state, which instrument, if genuine, might
25 be filed, registered, or recorded under any law of this state or of the United States, is guilty of a
26 felony.

27 ³ It is a violation of this chapter for any person to willfully fail or refuse to make any
28 contributions which are due under this division.

⁴ It is unlawful to make or cause to be made any knowingly false or fraudulent statement,
whether made orally or in writing, of any fact material to the determination of the premium, rate,
or cost of any policy of workers' compensation insurance issued or administered by the State
Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the
insurance. Any person convicted of violating this subdivision shall be punished by imprisonment
in a county jail for one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code for
two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or double the
value of the fraud, whichever is greater, or by both that imprisonment and fine.

1 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
2 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
3 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of
4 violating LC section 1778, receipt of portion of wages of workmen, a felony. Respondent
5 admitted and the court found true the allegation that at the time of Respondent's violation of LC
6 section 1778, Respondent caused damage amounting to over \$200,000.00, a felony sentencing
7 enhancement under PC section 12022.6, subdivision (a)(2)⁵. Felony charges for additional 10-
8 count violation of LC section 1778, each with a similar sentencing enhancement under PC
9 section 12022.6, subdivision (a)(2), were dismissed under a plea bargain.

10 b. As a result of his conviction, on May 11, 2015, Respondent was sentenced to
11 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
12 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
13 formal probation under certain terms and conditions, including registry in the State DNA
14 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
15 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
16 disposal, under PC section 29810.

17 c. The facts that led to his conviction are that on August 18, 2011, and September
18 20, 2011, five of Respondent's workers confirmed that on various dates in 2011, Respondent
19 intentionally misclassified the Malcon Civils, Inc. payroll, paid his workers an hourly rate that
20 was substantially below the prevailing wage rate, and adjusted hours worked to match the higher
21 wage rate. Respondent underpaid his five workers by \$156,508.32. Respondent also under
22 reported \$80,228.09 to the State Compensation Insurance Fund and \$103,255.09 to the

23 _____
24 ⁵ When any person takes, damages, or destroys any property in the commission or attempted
25 commission of a felony, with the intent to cause that taking, damage, or destruction, the court
shall impose an additional term as follows:

26 (2) If the loss exceeds two hundred thousand dollars (\$200,000), the court, in addition and
27 consecutive to the punishment prescribed for the felony or attempted felony of which the
defendant has been convicted, shall impose an additional term of two years.

1 Employment Development Department. Adding the amount that Respondent should have
2 rightfully paid his five workers, Respondent effectively under reported \$236,736.41 to the State
3 Compensation Insurance Fund and \$259,763.41 to the Employment Development Department.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(May 11, 2015 Conviction for Attempting to File Forged Instruments in 2011)**

6 23. Respondent has subjected his Architect License to disciplinary action under Code
7 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
8 Regulations, in that Respondent was convicted of a crime substantially related to the
9 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

10 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
11 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
12 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of
13 violating PC section 115, subdivision (a), attempting to file forged instruments, a felony. An
14 allegation that at the time of Respondent's violation of PC section 115, subdivision (a),
15 Respondent caused damage amounting to over \$200,000.00, a felony sentencing enhancement
16 under PC section 12022.6, subdivision (a)(2), was stricken under a plea bargain. A felony charge
17 for an additional violation of PC section 115, subdivision (a), with a similar enhancement, was
18 dismissed under a plea bargain.

19 b. As a result of his conviction, on May 11, 2015, Respondent was sentenced
20 to 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
21 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
22 formal probation under certain terms and conditions, including registry in the State DNA
23 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
24 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
25 disposal, under PC section 29810.

26 c. The facts that led to his conviction are that on August 18, 2011, and
27 September 20, 2011, five of Respondent's workers confirmed that on various dates in 2011,
28 Respondent intentionally misclassified the Malcon Civils, Inc. payroll, paid his workers an

1 hourly rate that was substantially below the prevailing wage rate, and adjusted hours worked to
2 match the higher wage rate. Respondent underpaid his five workers by \$156,508.32, thereby
3 failing to include the amount in his report to both the State Compensation Insurance Fund and
4 the Employment Development Department. Moreover, Respondent under reported \$80,228.09 to
5 the State Compensation Insurance Fund and \$103,255.09 to the Employment Development
6 Department. Adding the amount that Respondent should have rightfully paid his five workers,
7 Respondent effectively under reported \$236,736.41 to the State Compensation Insurance Fund
8 and \$259,763.41 to the Employment Development Department.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(May 11, 2015 Convictions for Failure to Make Contributions in 2011)**

11 24. Respondent has subjected his Architect License to disciplinary action under Code
12 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
13 Regulations, in that Respondent was convicted of a crime substantially related to the
14 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

15 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
16 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
17 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of nine-
18 count violation of UI Code section 2108, failure to make contributions, all felonies reduced to
19 misdemeanors under PC section 17, subdivision (b). Felony charges for additional two-count
20 violation of UI Code section 2108, were dismissed under a plea bargain.

21 b. As a result of his convictions, on May 11, 2015, Respondent was sentenced to
22 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
23 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
24 formal probation under certain terms and conditions, including registry in the State DNA
25 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
26 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
27 disposal, under PC section 29810.

28

1 c. The facts that led to his conviction are that Malcon Civils, Inc. filed the
2 following DE-9C quarterly record with the Employment Development Department:

3

Calendar Year	Payroll Report to EDD – Malcon Civils, Inc.				Totals
	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	
4 2009	300.00	3,999.59	9,518.14	23,652.53	37,470.26
5 2010	200.00	300.00	62,053.68	400.00	62,953.68
6 2011	200.00	300.00			500.00

7

8 For the first two quarters of 2011, Respondent reported for Malcon Civils, Inc. that he was its
9 only employee earning \$200.00 for the first quarter and \$300.00 for the second quarter.
10 However, Respondent's certified payroll record for Malcon Civils, Inc. show that weekly
11 payrolls from February 6, 2011 to June 19, 2011, totaled \$103,755.09. Respondent under
12 reported \$103,255.09 to the Employment Development Department for the first two quarters of
13 2011. On May 11, 2015, Respondent admitted to failing to make the right contributions for the
14 unemployment insurance coverage of workers for the periods ending on April 30, July 30, and
15 October 30, 2009, January 30, April 30, July 30, and October 30, 2010, and January 30 and April
16 30, 2011.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(May 11, 2015 Conviction for Fraudulent Statements for Purposes of Reducing Premiums**
19 **on Various Dates in 2011)**

20 25. Respondent has subjected his Architect License to disciplinary action under Code
21 sections 490 and 5577, in conjunction with section 110 of title 16 of the California Code of
22 Regulations, in that Respondent was convicted of a crime substantially related to the
23 qualifications, functions, and duties of a licensed architect. The circumstances are as follows:

24 a. On May 11, 2015, in a criminal proceeding entitled *The People of the*
25 *State of California v. Mustafa Mohamed Bdaiwi*, in Orange County Superior Court, Central
26 Justice Center, Case Number 13CF3959, Respondent was convicted on his plea of guilty of
27 violating IC section 11880, subdivision (a), fraudulent statements for purposes of reducing
28

1 premiums, a felony. Felony charges for additional three-count violation of IC section 11880,
2 subdivision (a), were dismissed under a plea bargain.

3 b. As a result of his conviction, on May 11, 2015, Respondent was sentenced to
4 365 days in the Orange County Jail, with credit for 70 days served and 70 days for good
5 behavior, and the balance to be served at the Theo Lacy Jail. Respondent was granted five years
6 formal probation under certain terms and conditions, including registry in the State DNA
7 Database, under PC section 296. Respondent was ordered to pay fines, fees, assessments, and
8 restitution. Respondent was also ordered to comply with firearms relinquishment, sale, or
9 disposal, under PC section 29810.

10 c. The facts that led to his conviction are that Malcon Civils, Inc. workers
11 compensation insurance with the State Compensation Insurance Fund reflect the following:

Payroll Period	Payroll Report to State Compensation Insurance Fund – Malcon Civils, Inc.			
	Policy No.	Class Code	Description	Payroll of Employees
12/1/10 to 6/1/11	1960115	5205-2	Concrete/Cement >=\$24	19,027.00
	1960115	8742-1	Salesperson Outside	4,500.00

15 For the first two quarters of 2011, Respondent reported for Malcon Civils, Inc. that employee
16 payroll totaled \$23,527.00. However, Respondent's certified payroll record for Malcon Civils,
17 Inc. show that weekly payrolls from February 6, 2011 to June 19, 2011, totaled \$103,755.09.
18 Respondent under reported \$80,228.09 to the State Compensation Insurance Fund for the first
19 two quarters of 2011. On May 11, 2015, Respondent admitted to knowingly making a written
20 fraudulent statement to the State Compensation Insurance Fund for the purpose of reducing the
21 premium, rate, or cost of the insurance.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Commission of an Act Involving Fraud or Deceit)**

24 26. Respondent has subjected his Architect License to disciplinary action under Code
25 section 5583, for committing acts involving fraud or deceit, defined as unprofessional conduct
26 for a licensed architect under title 16, California Code of Regulations section 160. Respondent
27 was fraudulent and deceitful when he received a portion of wages of his workmen, intentionally
28 misclassified the Malcon Civils, Inc. payroll, paid his workers an hourly rate that was

1 substantially below the prevailing wage rate, adjusted hours worked to match the higher wage
2 rate, and under-reported payroll to the State Compensation Insurance Fund and the Employment
3 Development Department, as set forth in paragraphs 19 through 25, which are incorporated
4 herein by reference.

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Commission of an Act Involving Willful Misconduct)**

7 27. Respondent has subjected his Architect License to disciplinary action under Code
8 section 5584, for committing acts involving willful misconduct, defined as unprofessional
9 conduct for a licensed architect under title 16, California Code of Regulations section 160,
10 subdivision (b)(1). Respondent committed willful misconduct when he knew the laws as
11 provided in the Labor Code, Penal Code, Unemployment Insurance Code, and Insurance Code,
12 as they apply to the Deerfield Elementary School Expansion Project and deliberately violated
13 them, as set forth in paragraphs 19 through 25, which are incorporated herein by reference.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Violation of the Architects Practice Act)**

16 28. Respondent has subjected his Architect License to disciplinary action under Code
17 section 5578, in conjunction with section 110, subdivision (c) of title 16 of the California Code
18 of Regulations, in that Respondent committed acts substantially related to the qualifications,
19 functions, and duties of a licensed architect, as set forth in paragraphs 19 through 25, above,
20 which are incorporated herein by reference.

21 **PRAYER**

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

- 24 1. Revoking or suspending Architect License Number C-33953, issued to Mustafa
25 Bdaiwi;
- 26 2. Ordering Mustafa Bdaiwi to pay the California Architects Board the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 125.3; and,

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

DATED: 12/14/2016



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

SD2016702671
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