

**BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

QUALITY REMODELING, INC., doing business as

ORION REMODELING,

JAMES VALTON SIMS, RMO,

MAOR BENHAMO, CEO/President,

License No. 1022123

JAMES VALTON SIMS,

doing business as SIMS JAMES VALTON,

License No. 1020390

Respondents.

OAH No. 2019101216

PROPOSED DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter remotely by videoconference and telephone on October 12 through 14, 2020.

Deputy Attorney General Joshua Johnson represented complainant Wood Robinson, Enforcement Supervisor I of the Contractors State License Board.

Gulomjon Azimov, Attorney at Law, represented respondents Quality Remodeling, Inc., doing business as Orion Remodeling, James Valton Sims, responsible managing officer, and Maor Benhamo, chief executive officer and president, and James Valton Sims, doing business as Sims James Valton. Respondent Sims was present for all hearing dates; respondent Benhamo was present on October 14, 2020.

The matter was submitted for decision on October 14, 2020.

FACTUAL FINDINGS

Jurisdiction

1. On November 7, 2016, the Registrar of Contractors (registrar), Contractors State License Board (board), issued Contractor's License No. 1020390, classifications B (general building) and C-10 (electrical), to James Valton Sims, sole ownership, doing business as Sims James Valton. The license is inactive.

2. On December 28, 2016, the registrar issued Contractor's License No. 1022123, classifications B (general building) and C-10 (electrical), to Quality Remodeling, Inc., doing business as Orion Remodeling (Orion). Respondent Sims was associated as the responsible managing officer (RMO) and respondent Maor Benhamo was associated as the chief executive officer (CEO) and president.

3. In September 2019, respondents submitted their notices of defense to the registrar's initial accusation. On March 16, 2020, complainant Wood Robinson issued the First Amended Accusation (accusation) in his official capacity as

Enforcement Supervisor I for the board. Complainant asks the registrar to revoke the licenses of respondents Sims and Orion, and to restrict respondents Sims and Benhamo from association with other licenses based on licensing violations occurring during three separate projects in 2017 and 2018.

Socorro Avenue Project

CONTRACT AND PAYMENTS

4. Socorro Avenue homeowners P.G. and R.G. received a telemarketing call from Orion. On October 6, 2017, Ben Nino Hunter, an unregistered salesperson for Orion,¹ met with them and entered into a "home improvement contract not applicable to swimming pools." The contract price was \$1,000 to inspect their vinyl (above ground) pool liner set below ground in their backyard in Sunnyvale. The homeowners paid \$100 to Orion on October 16, 2017.

5. The contract does not comply with certain home improvement contract provisions required by Business and Professions Code section 7159. There is no required heading and statement about "Workers' Compensation Insurance" (subd. (e)(2)(B)), no required heading and statement regarding "Mechanics' Lien Warning" (subd. (e)(4)), no required notice regarding the Contractors State License Board (subd. (e)(5)), and insufficient notice regarding the "Three-Day Right to Cancel" (subd. (e)(6)(A)).

¹ On May 16, 2018, respondent Benhamo described Hunter as a supervisor for Orion.

6. P.G.² was 78 years old and R.G. was 80 years old when they entered into the contract. Their grandson, Joseph Kirby, who has lived with them for many years and is caregiver for R.G., was away at that time and did not return until the end of October 2017.

7. On October 10, 2017, Hunter suggested other work. He prepared and R.G. signed a change order increasing the contract price by \$55,000 to do various work on the pool and sunroom. The change order required \$10,000 upon signing. Work began on October 16, 2017. The homeowners paid Orion \$10,000 on October 17, 2017.

8. On that date, a second change order to remove the vinyl liner, install a concrete pool, and check the add-on bonus room for leaks increased the cost by \$23,500. The homeowners paid Orion \$20,000 on October 18, 2017. The third change order is dated October 29, 2017, increasing the cost by \$10,572 for concrete work in the pool area and a plastic corrugated roof.

9. Four "additional description" forms list additional work for contracts purportedly dated October 6, 2017, October 31, 2017, November 8, 2017, and November 17, 2017, for additional costs. The total contract price with change orders and additional work was \$164,372.

10. The homeowners additionally paid Orion \$30,000 (in two checks) on October 25, 2017, \$25,000 on October 31, 2017, and \$20,000 on November 1, 2017. In November 2017, the homeowners applied for a home loan to pay for the pool and

² P.G. passed away in June 2020.

other work. They made additional payments of \$70,000 on December 19, 2017, and \$55,000 (in three checks) on January 17, 2018. They paid a total of \$230,100.

11. After Orion performed the work, Kirby observed that the pool area was too “lumpy” for his grandparents to use a walker. At some point, he argued with Hunter about the work. Work ceased on January 22, 2018. P.G. also noticed several workmanship issues and called Orion. Someone from Orion convinced R.G. to sign a pre-printed “certificate of completion” on January 29, 2018, stating that “all works [sic] done under the property following [sic] is satisfactory [sic] completed.”

12. A fifth “additional description” form is a “punch list” dated March 19, 2018, of five items not finished. After unsuccessful attempts to get someone from Orion to return and complete the work items, P.G. filed a complaint with the board in February 2018, authorizing Kirby to handle the complaint on his behalf.

13. In March 2018, the board assigned Joseph Martinez, a peace officer and investigator for the board for 10 years, to investigate the complaint. He reviewed documents and reports from industry experts. He spoke with P.G. at his Socorro Avenue residence on April 11, 2018. He spoke with respondent Benhamo on May 16, 2018, at Benhamo’s attorney’s office in San Jose, and spoke by phone with respondents Sims and Benhamo on November 26, 2018, with their attorney, Jeffrey Widman, on the call.

14. Respondent Sims contends that he was not aware of the Socorro Avenue project until after he received the homeowners’ board complaint. He testified at hearing that he would not have recommended the project due to the lack of a pool contractor’s license. He did not explain why he told the board investigator on

November 26, 2018, that he remembered that project and that although he did not go to the site, he reviewed the contract.

15. The testimony of respondent Sims regarding his lack of awareness of this project prior to the complaint appeared sincere, but is doubtful considering his role in the corporation. Respondent Sims told the board investigator that he was actively involved with the day-to-day business as he reviewed contracts, permits, and supervised work.

16. Kirby believes that respondents took advantage of his elderly grandparents, whose mental capacity was not fully "up to standard." They had not realized they paid more than the contract price. Orion did not complete the work and did not refund the excess amount paid.

WORKMANSHIP

17. Building permits were required for Orion to install a new pool, and for plumbing work to replace a sink drain in the homeowner's bathroom. Orion did not ensure that these permits were issued by the City of Sunnyvale. The estimated cost to obtain those permits is \$6,520, including \$500 for the bathroom sink drain, and compliance with California barrier, GFI (ground fault interrupter) breaker, and VGBA (federal pool safety law) drain requirements. Additionally, respondents did not have a pool contractor's license (C-53).³

³ Complainant did not allege the lack of license as a cause for discipline in this matter.

Pool

18. The board hired Ken N. Lewis, a licensed swimming pool contractor, to investigate the pool work Orion performed at Socorro Avenue. Lewis previously has worked on up to 150 pools. His license (C-53) was issued in 2012. He worked in this field for 32 years, including under others' licenses prior to 2012.

19. Lewis inspected the pool on April 28, 2018. His testimony and his report, with photos he took on that date, were persuasive. He determined that the new swimming pool construction did not meet accepted trade standards for good and workmanlike construction. The total cost to correct pool defects described in Findings 20 through 25 is \$29,220, not including the permit fees referenced in Finding 17.

20. No pool ladder, steps or bench were installed, and there was no entry or exit point. The industry standard is to allow at least one exit point from the shallow and deep areas of the pool. The cost to correct this unsafe defect is \$5,000.

21. There were no pool lights. The industry standard is one light is for every 500 square feet of pool surface area for night swimming. The cost to correct this unsafe defect is \$2,100.

22. The pool deck tiles were uneven, without deck drainage, and the pool deck had a very exaggerated slope to the sun room. The decking showed a significant amount of expansion and contraction below the tiles, causing shifting and very little slope for water run-off.

23. The industry standard is a slope of one-quarter inch away from the pool wall, one-eighth inch away from the house across the patio, and adding a step and drainage where water could "puddle." The standard requires every installation to have

no trip hazards and to have a slope to planters or drains. The cost to correct this poor installation is \$12,870 to remove portions of decking, reset and level tiles, and add a step and drainage.

24. Grout overspray and splash was left in place on the walls of the home. The industry standard is job site clean-up. The cost to correct is \$750.

25. The pool had one suction point at the skimmer, which is designated for a vinyl pool. The pool had one return line from the filter. The industry standard is an in-ground concrete skimmer, a minimum of two suction points for safety, a minimum of three return lines for adequate flow and circulation, and added floor suction for circulation. The cost to correct is \$8,500.

Other Construction

26. The board also hired Leonard Nielson to inspect the project items other than the pool and write a report. Nielson has been licensed since 1976. He has general building (B) and electrical (C-10) contractor licenses. He is familiar with standards of workmanship and related code issues. He has been an industry expert for 30 years. He has a bachelor's degree and was trained in architecture.

27. Nielson inspected the Socorro Avenue project, other than the pool work, on April 28, 2018. His testimony and his report, with numerous photos he took on that date, were persuasive. Nielson found plumbing repairs, flooring, the handicap ramp, and exterior painting did not meet accepted trade standards for good and workmanlike construction. The total cost to correct these defects is \$21,175, not including the permit fees referenced in Finding 17.

28. The contract included painting the exterior of the sunroom and repainting the remainder of the exterior of the house (previously painted only on one side by someone else). Nielson observed no new painting of the exterior of the house. The cost to correct is \$11,750.

29. The contract also included installing new plumbing in the bathroom, and a new sink to prevent drain issues. The wall inside the vanity had been opened around the drain pipe in the wall, with a new sink trap assembly and drain connector. The pipe inside the wall was not new and the hole was not patched. The sink drained slowly. The cost to correct is \$425.

30. The contract included new flooring in the living room and hall. A pronounced slope from back to front measured by as much as one-and-a-half inches. The industry standard is for a floating floor to be installed flat to within no more than three-sixteenths inch difference in 10 feet. The cost to correct is \$4,250 to remove the base and flooring, prepare the subfloor to the manufacturer's instructions, and reinstall the padding, flooring (or replace as necessary), and baseboards.

31. As part of the homeowners' funds for the renovation project were from a government agency, a handicap ramp was required at the front door. The concrete ramp installed by Orion had no added depth, no landing, and no handrails, so it did not meet industry standards. The cost to correct this unsafe defect is \$4,750.

Aberdeen Street Project

CONTRACT AND PAYMENTS

32. On September 12, 2017, Aberdeen Street homeowners R.B. and S.B. entered into a home improvement contract with Hunter for Orion. The contract price was \$115,000 to remodel the kitchen in their home in Santa Clara.

33. The contract does not comply with certain home improvement contract provisions required by Business and Professions Code section 7159. There is no required heading and statement about "Workers' Compensation Insurance" (subd. (e)(2)(B)), no required heading and statement regarding "Mechanics' Lien Warning" (subd. (e)(4)), no required notice regarding the Contractors State License Board (subd. (e)(5)), and insufficient notice regarding the "Three-Day Right to Cancel" (subd. (e)(6)(A)).

34. R.B. was 72 years old when he signed the contract. His wife, S.B., was 63. They paid \$1,000 at that time. Hunter suggested other work and recommended that they apply for a loan. On September 13, 2017, the first change order was for a new deck and related work at a cost of \$37,500. Work on the deck began on September 14, 2017. The next change order on October 18, 2017, was for other work, including an additional room in the entryway, at a cost of \$35,000. The homeowners gave Hunter seven checks for Orion from September 12, 2017 to October 18, 2017.

35. On March 21, 2018, respondent Benhamo told the homeowners that Hunter no longer worked for Orion. Respondent Benhamo suggested additional work and prepared a change order for lights, outlets, downstairs bathroom work, and a new walkway with tile at a cost of \$50,000. The next change order on June 30, 2018 was for paver rocks instead of tile at an added cost of \$10,750.

36. On July 1, 2018, Francisco Rios arrived to start the bathroom work. No other workers were present. He told the homeowners that he was a sub-contractor for Orion. Rios was not a licensed contractor. On April 8, 2019, Rios told the board investigator that he worked as an employee for Orion, and that respondent Benhamo called him whenever needed and paid him by the job.

37. The homeowners gave respondent Benhamo a total of eight checks for Orion. The total cost of the contract with change orders was \$248,250. The homeowners paid Orion a total of \$206,704 as of July 12, 2018. They paid as requested even though work was not getting done on the kitchen, which they could not use after April 28, 2018.

38. R.B. and S.B. did not want to pay any more, particularly after noticing several workmanship issues on July 12, 2018. On July 30, 2018, respondent Benhamo provided them with an "unconditional waiver and release on final payment" form. They signed so they could stop paying Orion without owing any more money (\$46,750) on the contract.

39. R.B. filed a complaint with the board in July 2018. In August 2018, the board assigned Martinez to investigate the complaint. He spoke with R.B. at his Aberdeen Street home on April 2, 2019.

WORKMANSHIP

40. R.B. took photos of work in progress. On July 12, 2018, he noticed several workmanship issues and many work items in the contract were not finished. He subsequently hired Michael Zabalza, a contractor doing business as E-Z Home Improvement. On September 1, 2018, R.B. asked Zabalza to inspect the work completed by Orion.

41. Zabalza has been a general contractor (B license) since 1989. He completed about 100 projects similar to the Aberdeen Street project.

42. Zabalza observed several discrepancies in Orion's work. The cabinets were not installed according to the plan. Some wiring was not correct and some was undersized; electrical receptacles and LED lights were covered by cabinets; the dimming switches were not compatible; the subpanel was not connected; and there was no power to the kitchen. The island plumbing was incorrect and not connected to the drain, and the entryway header was under-sized and had to be replaced. Zabalza estimated that about 60 percent of Orion's work had to be redone.

43. The homeowners hired Zabalza to correct and complete the work. The cost was \$33,976, not including change orders for other work. The homeowners paid for all work, and for some supplies. Zabalza's testimony at hearing about Orion's workmanship was not disputed.

Monica Lane Project

44. In May 2018, homeowner M.D. (also known as Millie) called Orion after seeing a newspaper advertisement. She was 89 years old, living alone in Campbell. Her daughter, Lynn Watkinson, lives in El Dorado Hills, and is in fairly regular contact with her. M.D. wanted an estimate to install new sod in her yard on Monica Lane. Watkinson acknowledged that her mother was "very trusting" and does not use technology.

CONTRACT AND PAYMENTS

45. On May 14, 2018, M.D. met alone with respondent Benhamo. Using an incorrect first name, he told her the cost was \$15,000 for the front yard, \$10,000 for

the back, and \$16,000 for pipe and other supplies for a new sprinkler system. The total price was \$41,000. She agreed to the verbal estimate and work. She paid a down payment of \$500 by check, which Benhamo told her would be returned later when she would have to pay \$3,500.

46. After work began on May 17, 2018, respondent Benhamo gave M.D. a written contract that did not comply with certain home improvement contract provisions required by Business and Professions Code section 7159. No documents were provided to M.D. prior to the commencement of work (subd. (d)). There is no required heading and statement regarding "Mechanics' Lien Warning" (subd. (e)(4)), no required notice regarding the Contractors State License Board (subd. (e)(5)), and insufficient notice and language regarding the "Three-Day Right to Cancel" (subd. (e)(6)(A), (e)(6)(B), (e)(6)(C)(i), (ii) and (vi)). Additionally, some of the writing was not legible (subd. (c)(1)), and there were no dates for commencement of work and an approximate date of completion (subd. (d)(10)(C) and (d)(11)(B)).

47. Benhamo returned M.D.'s \$500 check and she paid \$3,500, described in the contract as a progress payment for starting the job. The contract was only for the back yard. The remainder of \$6,000 was due on completion.

48. The following day, Mohsen Khaziri, M.D.'s neighbor on Monica Lane, spoke to M.D. about the work and learned the price. On May 22, 2018, he spoke with respondent Benhamo who agreed to reduce the price to \$17,500. A change order at that time was backdated to May 4, 2018, for work on the front yard and an additional increase. As the amounts, as well as other terms of the contract, are not legible, the total price was \$17,000 or \$17,500.

49. On June 5, 2018, M.D. paid \$13,500. On June 6, 2018, M.D. was requested to pay the remaining \$500 in cash. She gave it to Khaziri to give to respondent Benhamo, who did not acknowledge it or give her a receipt.

50. Respondent Benhamo asked M.D. to sign a printed certificate of completion. She wrote that she refused because she was "not satisfied due to payments, material and labor." Respondent Benhamo did not return after June 6, 2018. The last date work was done was June 13, 2018. M.D. kept detailed notes of the progress and noted she was worried that it looked like a lot of dead lawn was showing despite her diligent watering. At hearing, she reiterated that the soil was "not good" and the lawn did "not look right."

51. M.D. received no response to her calls to respondent Benhamo. On June 16, 2018, she spoke with Khaziri about the \$500 cash. Previously, he had suggested M.D. give him cash to give to respondent Benhamo for a bonus for his employees because of their hard work.

52. M.D. filed a complaint with the board in July 2018, authorizing Watkinson to handle the complaint on her behalf. In August 2018, the board assigned Martinez to investigate the complaint. He spoke with M.D. at her Monica Lane home on April 3, 2019.

53. Martinez spoke with respondents Benhamo and Sims. Respondent Sims said he approved all jobs, but was not aware of the Monica Lane project until after the complaint was filed with the board. Respondent Benhamo acknowledged that he made the agreements (verbal and written) with M.D.

WORKMANSHIP

54. The board hired Shubhangi H. Fulambarker, a licensed landscaping contractor, to investigate the lawn work Orion performed at Monica Lane. Fulambarker worked in this field for 15 years. Her license (C-27) was issued in 2005. This license classification was required for the work at Monica Lane. Fulambarker previously has worked on more than 50 projects similar to the Monica Lane project.

55. Fulambarker inspected the yard on May 9, 2019. Her testimony and her report, with photos she took on that date, were persuasive. She found two items of the complaint did not meet industry standards. The third item concerned the grass itself, which was green on the date she observed it, so was up to industry standards.

56. Fulambarker reviewed the contract and amounts paid described in Findings 45 and 47 through 49, for the work she observed. She determined that Orion charged "over average fair market value."⁴ The industry standard is to make the homeowner aware that the charge is more than average fair market. The correction is to refund the homeowner \$3,241.88.

57. Fulambarker observed the grass was "lumpy at some areas." The cause may be attributed to not removing organic material (tree roots), and existing roots may have rotted creating space and gaps causing the lumpiness.

58. The industry standard to avoid this condition is to test the soil, measure the lawn area, remove old grass or roots, prepare and grade the site, lay and roll the new sod, fertilize and water. The cost to correct is \$7,258.12.

⁴ Complainant did not allege this issue as a cause for discipline in this matter.

Costs of Investigation and Prosecution

59. The board reasonably incurred \$5,830.43 in investigating and \$15,897.50 in enforcing this matter. These charges are supported by declarations that comply with the requirements of California Code of Regulations, title 1, section 1042. Complainant requests reimbursement of total costs of \$21,727.93. The costs are reasonable.

Respondents' Evidence

60. Respondent Sims received his first contractor's license in 1985, and held it until it expired in 2015. He inactivated his next license, issued in 2016, when he became the RMO for respondent Quality Remodeling, Inc. Under the terms of his agreement, Sims's only monetary compensation is a monthly stipend of \$1,500, even though he is required to be available "24/7" for any work needed by Orion. He is a 20 percent shareholder and had planned to retire from his position.

61. Had respondent Sims previously known about the three projects prior to the board complaints, he would have tried to do the "right thing." He wished he had money to pay restitution to the homeowners.

62. Respondent Benhamo, born on October 12, 1984,⁵ has been in the construction field most of his life. He acknowledged some of the licensing violations, such as unlicensed workers and lack of permits, and generally disputed others, such as work abandonment.

63. Respondent Benhamo denied taking advantage of elderly customers or overcharging for work. He would pay restitution to the homeowners if respondents

⁵ When he testified on October 14th, he said that day was his birthday.

were allowed to operate under probation. As of the hearing date, respondent Orion had four projects pending completion.

LEGAL CONCLUSIONS

Respondent Orion

1. Business and Professions Code section 7090 provides that the registrar may suspend or revoke any license if the licensee is guilty of or commits any one or more of the acts or omissions constituting cause for disciplinary action.

2. Business and Professions Code section 7000.6 provides that protection of the public is the board's highest priority in exercising its licensing, regulatory, and disciplinary functions. Respondent Orion's actions involved more than one elderly consumer, indicating a pattern of violations against particularly vulnerable members of the public. Despite statements by respondents Sims and Benhamo described in Findings 61 and 63, respondent Orion provided no significant evidence to assure the board that licensure under probation is consistent with public protection. Revocation is warranted in this case.

FIRST CAUSE FOR DISCIPLINE

3. Business and Professions Code section 7107 provides that the registrar may discipline a licensee for abandonment without legal excuse of any construction project undertaken by the licensee. By reason of Finding 12, cause for discipline was established concerning the Socorro Avenue Project.

SECOND, NINTH AND SIXTEENTH CAUSES FOR DISCIPLINE

4. Business and Professions Code section 7109, subdivision (a), provides that the registrar may discipline a licensee who willfully departs in a material respect from accepted trade standards for good and workmanlike construction. By reason of Findings 17, 19 through 25, 27 through 31, 42, 55, 57 and 58, cause for discipline was established for respondent Orion's work on the Socorro Avenue, Aberdeen Street, and Monica Lane Projects.

THIRD CAUSE FOR DISCIPLINE

5. Business and Professions Code section 7110, subdivision (a), provides that the registrar may discipline a licensee for a willful or deliberate disregard and violation of building laws. By reason of Finding 17, cause for discipline was established concerning respondent Orion's failure to obtain required building permits for the Socorro Avenue Project.

FOURTH, TENTH AND SEVENTEENTH CAUSES FOR DISCIPLINE

6. Business and Professions Code section 7113 provides that the registrar may discipline a licensee for failure to complete any construction project for the price stated in the contract or in any modification of the contract. By reason of Findings 10 through 12, 37, 38, 47, 49 and 50, cause for discipline was established for respondent Orion's failure to complete work for the contract price stated for the Socorro Avenue, Aberdeen Street, and Monica Lane Projects.

FIFTH AND TWELFTH CAUSES FOR DISCIPLINE

7. Business and Professions Code section 7154, subdivision (d), provides that the registrar may discipline a licensee who employs a person to sell home

improvement contracts while that person is not registered as required. By reason of Findings 4 and 32, cause for discipline was established concerning the Socorro Avenue and Aberdeen Street projects.

SIXTH, THIRTEENTH AND NINETEENTH CAUSES FOR DISCIPLINE

8. Business and Professions Code section 7159 provides that the registrar may discipline a licensee who does not comply with the requirements for home improvement contracts. By reason of Findings 5, 33 and 46, cause for discipline under Code section 7159, subdivisions (e)(4), (e)(5), and (e)(6)(A), exists concerning the Socorro Avenue, Aberdeen Street, and Monica Lane Projects.

9. By reason of Findings 5 and 33, additional cause for discipline under Business and Professions Code section 7159, subdivision (e)(2)(B), was established concerning the Socorro Avenue and Aberdeen Street Projects. By reason of Findings 45 and 46, additional cause for discipline under subdivisions (c)(1), (d), (d)(10)(C), (d)(11)(B), (e)(6)(B), and (e)(6)(C)(i), (iii) and (vi), was established concerning the Monica Lane Project.

SEVENTH AND FOURTEENTH CAUSES FOR DISCIPLINE

10. Business and Professions Code section 7159.5, subdivision (a)(5), provides that the registrar may discipline a licensee who, except for a down-payment, requests or accepts payment that exceeds the value of the work performed and material delivered. By reason of Findings 4, 7 through 10, 32, 34, 35 and 37, cause for discipline was established concerning the Socorro Avenue and Aberdeen Street projects.

EIGHTH AND FIFTEENTH CAUSES FOR DISCIPLINE

11. Business and Professions Code section 7116 provides that the registrar may discipline a licensee for the “doing of any willful or fraudulent act” in consequence of which another is substantially injured. By reason of Findings 6 through 10, 34, 35 and 37, respondents utilized their position of trust to convince the Socorro Avenue and Aberdeen Street elderly homeowners to pay excessive amounts of money for work, resulting in their substantial financial injury. Cause for discipline was established.

ELEVENTH CAUSE FOR DISCIPLINE

12. Business and Professions Code section 7114, subdivision (a), provides that the registrar may discipline a licensee for aiding or abetting an unlicensed person to evade state contractors’ laws. By reason of Finding 36, cause for discipline was established concerning the Aberdeen Street Project.

EIGHTEENTH CAUSE FOR DISCIPLINE

13. Business and Professions Code section 7117.6 provides that the registrar may discipline a licensee for acting in the capacity of a contractor in a classification other than that currently held by the licensee. By reason of Findings 2 and 54, cause for discipline was established concerning the Monica Lane Project due to the lack of a landscaping classification (C-27) contractor license.

Respondent Sims

TWENTIETH CAUSE FOR DISCIPLINE

14. Business and Professions Code section 7122.5 provides that the performance by an individual or corporation constituting cause for any disciplinary

action, likewise constitutes cause for disciplinary action against a licensee who at the time that the act or omission occurred was the qualifying individual of that individual or corporation, whether or not he had knowledge of or participated in the prohibited act or omission. By reason of Finding 2 and Conclusions 1 through 13, cause was established for disciplinary action against respondent Sims.

FIRST CAUSE FOR OTHER ACTION

15. Business and Professions Code section 7121.5 provides that a person who was the qualifying individual on a revoked license shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of a licensee, whether or not the person had knowledge of or participated in the prohibited acts or omissions for which the license was revoked. By reason of Finding 2, respondent Sims is the qualifying individual for Quality Remodeling, Inc., doing business as Orion Remodeling.

16. Business and Professions Code section 7076.5, subdivision (b), provides that the inactive status of a license shall not bar any disciplinary action against a licensee. the inactive status of respondent Sims's license (No. 1020390), referenced in Finding 1, does not bar action against that license.

Respondent Benhamo

SECOND CAUSE FOR OTHER ACTION

17. Business and Professions Code section 7121 provides in pertinent part that a person who has been an officer, director, manager, or associate of any corporation whose license was revoked shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the

personnel of record of a licensee, if that person had knowledge of or participated in any of the prohibited acts for which the license was suspended or revoked. By reason of Finding 2 respondent Benhamo is the officer of Quality Remodeling, Inc., doing business as Orion Remodeling. Respondent Benhamo had knowledge of or participated in the prohibited acts described in Findings 4, 5, 7 through 12, 32 through 38, 45 through 50, 53 and 62. He shall be prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual, or member of the personnel of record of a licensee.

Costs

18. Business and Professions Code section 125.3, subdivision (a), provides that the board may request the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. By reason of Finding 59, cause exists to order respondents to reimburse the board the sum of \$21,727.93.

19. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court enumerated several factors for a licensing body to consider in assessing costs. The licensing body must not assess the full cost of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must consider a respondent's subjective good faith and ability to pay.

20. Considering these factors, there is no basis to reduce the costs in this matter. Respondents shall be directed to pay the sum of \$21,727.93.

Restitution

21. Under Government Code section 11519, subdivision (d), a stay of execution may be included in the decision accompanied by an express condition that respondent comply with specified terms of probation, including an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

22. In the event probation is ordered, complainant requests an order of restitution of damages suffered by P.G, R.B., and M.D. As stated in Conclusion 5, revocation without probation is warranted, so restitution does not apply in this matter.

ORDER

1. Contractor's License No. 1022123, issued to respondent Quality Remodeling, Inc., doing business as Orion Remodeling, is revoked.

2. Contractor's License No. 1020390, issued to respondent James Valton Sims, doing business as Sims James Valton, is revoked.

3. Respondent Quality Remodeling, Inc., doing business as Orion Remodeling, and respondent James Valton Sims shall pay to the board its costs of investigation and enforcement in the amount of \$21,727.93.

4. As required by Business and Professions Code section 7095, the registrar may suspend or permit completion of contracting projects in progress. Respondent Quality Remodeling, Inc., doing business as Orion Remodeling, and respondent James Valton Sims shall provide the registrar with a listing of all contracting projects in progress and the anticipated completion date of each.

5. Respondent James Valton Sims is prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of any licensee.

6. Respondent Maor Benhamo is prohibited from serving as an officer, director, associate, partner, manager, qualifying individual, or member of the personnel of record of a licensee.

DATE: 11/09/2020

Barbara O'Hearn
Barbara O'Hearn (Nov 9, 2020 11:36 PST)

BARBARA O'HEARN

Administrative Law Judge

Office of Administrative Hearings