

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:)	
)	
LEO AVALOS AGUILERA)	Case No. 887-A
20644 Oleander Avenue)	
Perris, CA 92320)	
)	
Civil Engineer License No. C 31397,)	
)	
Respondent.)	
_____)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on April 13, 2012.

IT IS SO ORDERED March 8, 2012.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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Attorneys for Complainant

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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No. 887-A

12 **LEO AVALOS AGUILERA**
20644 Oleander Avenue
13 Perris, CA 92320
14 **Civil Engineer License No. C 31397**

OAH No. L-2010101046
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

- 19 1. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for
20 Professional Engineers, Land Surveyors, and Geologists. He brought this action solely in his
21 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
22 State of California, by Thomas L. Rinaldi, Deputy Attorney General.
- 23 2. Leo Avalos Aguilera (Respondent) is representing himself in this proceeding and has
24 chosen not to exercise his right to be represented by counsel.
- 25 3. On or about August 14, 1980, the Board for Professional Engineers, Land Surveyors,
26 and Geologists issued Civil Engineer License No. C 31397 to Respondent. The Civil Engineer
27 License was in full force and effect at all times relevant to the charges brought in Accusation No.
28 887-A and will expire on December 31, 2012, unless renewed.

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JURISDICTION

4. Accusation No. 887-A was filed before the Board for Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 3, 2010. Respondent timely filed his Notice of Defense contesting the Accusation.

A copy of Accusation No. 887-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 887-A. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 887-A.

9. Respondent agrees that his Civil Engineer License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Board for Professional Engineers, Land Surveyors, and
4 Geologists of the Department of Consumer Affairs.

5 Dated: 12-28-2011

Respectfully submitted,

6 KAMALA D. HARRIS
7 Attorney General of California
8 KAREN B. CHAPPELLE
9 Supervising Deputy Attorney General

10 *Original Signed*

11 THOMAS L. RINALDI
12 Deputy Attorney General
13 *Attorneys for Complainant*

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Exhibit A

Accusation No. 887-A

1 EDMUND G. BROWN JR.
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2 KAREN B. CHAPPELLE
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3 THOMAS L. RINALDI
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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *887-A*

11 **LEO AVALOS AGUILERA**
12 **20644 Oleander Avenue**
13 **Perris, CA 92320**
Civil Engineer License No. C 31397

A C C U S A T I O N

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
19 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
20 Department of Consumer Affairs.

21 2. On or about August 14, 1980, the Board for Professional Engineers and Land
22 Surveyors issued Civil Engineer License Number C 31397 to Leo Avalos Aguilera (Respondent).
23 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
24 herein and will expire on December 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board for Professional Engineers and Land
27 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.
28 All section references are to the Business and Professions Code unless otherwise indicated.

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2 4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove,
3 suspend for a period not to exceed two years, or revoke the certificate of any professional
4 engineer registered under this chapter:

5 "(a) Who has been convicted of a crime substantially related to the qualifications, functions
6 and duties of a registered professional engineer, in which case the certified record of conviction
7 shall be conclusive evidence thereof.

8 "(b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in
9 his or her practice.

10 "(c) Who has been found guilty by the board of negligence or incompetence in his or her
11 practice.

12 "(d) Who has been found guilty by the board of any breach or violation of a contract to
13 provide professional engineering services.

14 "(e) Who has been found guilty of any fraud or deceit in obtaining his or her certificate.

15 "(f) Who aids or abets any person in the violation of any provision of this chapter.

16 "(g) Who in the course of the practice of professional engineering has been found guilty by
17 the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

18 "(h) Who violates any provision of this chapter."

19 5. Section 6749 of the Code states:

20 (a) A professional engineer shall use a written contract when contracting to provide
21 professional engineering services to a client pursuant to this chapter. The written contract shall
22 be executed by the professional engineer and the client, or his or her representative, prior to the
23 professional engineer commencing work, unless the client knowingly states in writing that work
24 may be commenced before the contract is executed . The written contract shall include, but not
25 be limited to, all of the following:

26 (1) A description of the services to be provided to the client by the professional engineer.

27 (2) A description of any basis of compensation applicable to the contract, and the method of
28 payment agreed upon by the parties.

1 (3) The name, address, and license or certificate number of the professional engineer, and
2 the name and address of the client.

3 (4) A description of the procedure that the professional engineer and the client will use to
4 accommodate additional services.

5 (5) A description of the procedure to be used by any party to terminate the contract.

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

7 (1) Professional engineering services rendered by a professional engineer for which the
8 client will not pay compensation.

9 (2) A professional engineer who has a current or prior contractual relationship with the
10 client to provide engineering services, and that client has paid the professional engineer all of the
11 fees that are due under the contract.

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

14 (4) Professional engineering services rendered by a professional engineer to any of the
15 following:

16 (A) A professional engineer licensed or registered under this chapter.

17 (B) A land surveyor licensed under Chapter 15 (commencing with Section 8700).

18 (C) An architect licensed under Chapter 3 (commencing with Section 5500).

19 (D) A contractor licensed under Chapter 9 (commencing with Section 7000).

20 (E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section
21 7800).

22 (F) A manufacturing, mining, public utility, research and development, or other industrial
23 corporation, if the services are provided in connection with or incidental to the products, systems,
24 or services of that corporation or its affiliates.

25 (G) A public agency.

26 (c) "Written contract" as used in this section includes a contract that is in electronic form.
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1 substantial additional costs on the project.

2 FIRST CAUSE FOR DISCIPLINE

3 (Negligence)

4 9. Complainant refers to and incorporates the allegations contained in paragraph 8, as
5 though set forth fully. Respondent is subject to disciplinary action under section 6775
6 subdivision (c) in that he committed negligence during the course of providing engineering
7 services on the Lola Project by failing to send surveyors to the project site to obtain the actual
8 topography of the existing sewer main, Chestnut Street, and the house that was under
9 construction.

10 SECOND CAUSE FOR DISCIPLINE

11 (Improper Written Contract)

12 10. Complainant refers to and incorporates the allegations contained in paragraph 8, as
13 though set forth fully. Respondent is subject to disciplinary action under section 6775,
14 subdivision (h), in that he entered into a contract that failed to include all of the information
15 required by section 6749.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
19 decision:

20 1. Revoking or suspending Civil Engineer License Number C 31397, issued to Leo
21 Avalos Aguilera.

22 2. Ordering Leo Avalos Aguilera to pay the Board for Professional Engineers and Land
23 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
24 Business and Professions Code section 125.3;

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

DATED: 5/3/10

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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accusation.rtf