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

In the Matter of the Accusation Against: **PAUL LEWIS EXLEY** **1145 Barham Drive, SP 236** **San Marcos, CA 92048** **Civil Engineer License No. C 34613** Respondent.	Case No. 900-A **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 17, 2010, Complainant David E. Brown, in his official capacity as the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs, filed Accusation No. 900-A against Paul Lewis Exley (Respondent) before the Board for Professional Engineers and Land Surveyors.

2. On or about August 18, 1982, the Board for Professional Engineers and Land Surveyors (Board) issued Civil Engineer License No. C 34613 to Respondent. The Civil Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on August 30, 2011, unless renewed.

3. On or about March 17, 2010, Elsa Valdez, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 900-A, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 1145 Barham Drive, SP 236, San Marcos, CA 92048.

A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 900-A.

7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. 900-A are true.

9. The total cost for investigation and enforcement in connection with the Accusation are $3,037.50 as of April 28, 2010.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Paul Lewis Exley has subjected his Civil Engineer License No. C 34613 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board for Professional Engineers and Land Surveyors is authorized to revoke Respondent's Civil Engineer License based upon the following violations alleged in the Accusation:

a. Respondent was negligent in the practice of engineering in violation of Business and Professions Code section 6775 (c).

b. Respondent breached his contract to provide professional engineering services, in two separate matters, in violation of Business and Professions Code section 6775 (d).

c. Respondent was in violation of required contract provisions, in two separate matters, in violation of Business and Professions Code section 6775 (h).

ORDER

IT IS SO ORDERED that Civil Engineer License No. C 34613, heretofore issued to Respondent Paul Lewis Exley, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

Pursuant to Business and Professions Code section 6780, Respondent may petition for reinstatement of the revoked license not less than one (1) year from the effective date of this decision.

This Decision shall become effective on June 10, 2010.

IT IS SO ORDERED May 5, 2010.

Original Signed

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

Exhibit A
Accusation No. 900-A

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BEFORE THE
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STATE OF CALIFORNIA

In the Matter of the Accusation Against: **PAUL LEWIS EXLEY** **1145 Barham Drive, SP 236** **San Marcos, CA 92048** **Civil Engineer License No. C 34613** Respondent.	Case No. 900-A **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 18, 1982, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License Number C 34613 to Paul Lewis Exley (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on August 30, 2011, unless renewed.

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JURISDICTION

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

4. Section 6775 of the Code states, in pertinent part,

> [T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:
>
> . . . .
>
> (c) Who has been found guilty by the board of negligence or incompetence in his or her practice.
>
> (d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.
>
> . . . .
>
> (h) Who violates any provision of this chapter.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Section 6749 of the Code states, in pertinent part,

> (a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:
>
> (1) A description of the services to be provided to the client by the professional engineer.
>
> (2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.
>
> (3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.
>
> (4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.
>
> (5) A description of the procedure to be used by any party to terminate the contract.
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> . . . .

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 475 states, in pertinent part,

> To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional engineer, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 6775 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 6775 of the Code.
>
> (a) Compliance with Laws Applicable to a Project:
>
> A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.
>
> . . . .

COSTS

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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.

IMPERATO PROJECT

9. In June 2002, P. Imperato retained Respondent to prepare structural calculations for a house he was building at 4002 Millagra Drive in Fallbrook, in the County of San Diego, California. This retention was based upon a written proposal dated June 13, 2002 in the sum of $1,800.00. The one page proposal was signed by both Respondent and Mr. Imperato. Respondent submitted the calculations to the building designer for the preparation of the building plans. The plans were rejected by the County of San Diego because the structural calculations did not match the plans; the County requested changes and resubmittal. By February of 2003, Respondent had not adequately addressed the County's comments on the structural calculations,

and the plans were still not approved. Mr. Imperato was forced to hire another engineer to perform the engineering work Respondent was originally hired to perform. Respondent refused to return the $1,800.00 paid by Mr. Imperato. Mr. Imperato sued Respondent in San Diego County Small Claims Court to recover the amount paid and received a judgment for the full amount of the proposal plus costs. To date Mr. Imperato has only collected a small portion of the judgment.

FIRST CAUSE FOR DISCIPLINE

(Negligence in the Practice of Engineering)

10. Respondent is subject to disciplinary action under Code section 6775 (c) in that Respondent was negligent in his practice of engineering regarding the house located at 4002 Millagra Drive in Fallbrook, in the County of San Diego, California, as follows.

11. The structural calculations and plan submittals were incomplete and lacked sufficient detail necessary for project approval and were below the standard of care.

12. The structural calculations did not comply with the standard of care for plan preparation in that they did not have connection or fastener details; did not have other structural details required to convey the engineer's intent; and lateral load calculations were perfunctory and lacked adequate reference to the building.

SECOND CAUSE FOR DISCIPLINE

(Breach of Contract to Provide Professional Engineering Services)

13. Respondent is subject to disciplinary action under Code section 6775 (d) in that Respondent's failure to perform the engineering work adequately was a breach of his professional services contract with Mr. Imperato.

THIRD CAUSE FOR DISCIPLINE

(Violation of Required Contract Provisions)

14. Respondent is subject to disciplinary action under Code section 6775 (h), for violation of Code section 6749 (a) (5), in that Respondent failed to include in a written contract a description of the procedure to be used to terminate the contract.

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DREWELOW PROJECT

15. In May 2004, M. Drewelow retained Respondent to prepare structural calculations and working drawings for a property in Encinitas, in the County of San Diego, California. This retention was based upon a written proposal dated May 12, 2004 in the sum of $600.00. Mr. Drewelow paid Respondent a $300.00 retainer. The one page proposal was signed by both Respondent and Mr. Drewelow. Respondent failed to provide the calculations and working drawings to Mr. Drewelow and failed to respond to his request for the return of the retainer.

FOURTH CAUSE FOR DISCIPLINE

(Breach of Contract to Provide Professional Engineering Services)

16. Respondent is subject to disciplinary action under Code section 6775 (d) in that Respondent's failure to perform the engineering work was a breach of his professional services contract with Mr. Drewelow.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Required Contract Provisions)

17. Respondent is subject to disciplinary action under Code section 6775 (h), for violation of Code section 6749 (a) (3), (4) and (5), in that the written contract given to the client, Mr. Drewelow, was insufficient as a contract in that it did not provide the following required items:

(a) The address of the client;

(b) No procedure was identified to accommodate additional services;

(c) No procedure was identified to terminate the contract.

PRAYER

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

1. Revoking or suspending Civil Engineer License Number C 34613, issued to Paul Lewis Exley.

2. Ordering Paul Lewis Exley to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/17/10

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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