

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

In the Matter of the Accusation against:)
)
GERALD P. BROMS) Case No. 898-A
77 Wales Street)
Thousand Oaks, CA 91360)
)
Land Surveyor License No. L 2836,)
)
Respondent.)
_____)

DECISION

The attached Stipulated Surrender of License and 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 March 4, 2011.

IT IS SO ORDERED January 28, 2011.

Original Signed

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

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHAEL BROWN
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Attorneys for Complainant
7

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:

11 **GERALD PATTON BROMS**
12 **77 Wales Street**
13 **Thousand Oaks, CA 91360**
Land Surveyor License No. L 2836

14 Respondent.

Case No. 898-A

OAH No. L-2010090103

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
17 proceeding that the following matters are true:

18 PARTIES

19 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional
20 Engineers and Land Surveyors. He brought this action solely in his official capacity and is
21 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
22 by Michael Brown, Deputy Attorney General.

23 2. Gerald Patton Broms (Respondent) is represented in this proceeding by attorney
24 Craig Weinstein, whose address is 820 Manhattan Ave #203, Manhattan Beach, CA 90266.

25 3. On or about February 23, 1955, the Board for Professional Engineers and Land
26 Surveyors issued Land Surveyor License No. L 2836 to Gerald Patton Broms (Respondent). The
27 Land Surveyor License was in full force and effect at all times relevant to the charges brought in
28 Accusation No. 898-A and will expire on September 30, 2012, unless renewed.

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JURISDICTION

4. Accusation No. 898-A was filed before the Board for Professional Engineers and Land Surveyors (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 April 12, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 898-A is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 898-A. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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 understands that the charges and allegations in Accusation No. 898-A, if proven at a hearing, constitute cause for imposing discipline upon his Land Surveyor License as well as for his Civil Engineer License.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline.

1 Respondent hereby gives up his right to contest that cause for discipline exists based on those
2 charges.

3 10. Respondent understands that by signing this stipulation he enables the Board to issue
4 an order accepting the surrender of his Land Surveyor License without further process.

5 CONTINGENCY

6 11. This stipulation shall be subject to approval by the Board for Professional Engineers
7 and Land Surveyors. Respondent understands and agrees that counsel for Complainant and the
8 staff of the Board for Professional Engineers and Land Surveyors may communicate directly with
9 the Board regarding this stipulation and surrender, without notice to or participation by
10 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
11 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
12 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
13 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
14 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
15 be disqualified from further action by having considered this matter.

16 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of
17 License and Order, including facsimile signatures thereto, shall have the same force and effect as
18 the originals.

19 13. This Stipulated Surrender of License and Order is intended by the parties to be an
20 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
21 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
22 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
23 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
24 executed by an authorized representative of each of the parties.

25 14. In consideration of the foregoing admissions and stipulations, the parties agree that
26 the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

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IT IS HEREBY ORDERED that Land Surveyor License No. L 2836 issued to Respondent Gerald Patton Broms, is surrendered and accepted by the Board for Professional Engineers and Land Surveyors.

15. Respondent hereby freely and voluntarily surrenders his Land Surveyor License, Number L 2836. This voluntary surrender shall be deemed a disciplinary action which shall become part of respondent's license history with the Board.

16. Respondent shall lose all rights and privileges as a land surveyor in California as of the effective date of the decision of the Board adopting this stipulation, including the right to use any of the restricted titles associated with his license.

17. Respondent shall cause to be delivered to the Board the pocket identification cards and wall certificate for this license on or before the effective date of the decision of the Board adopting this stipulation.

18. Respondent agrees not to petition for reinstatement of the surrendered license. Respondent agrees not to apply for any license issued by the Board for three years from the effective date of this surrender. Respondent understands and agrees that if he ever applies for any license issued by the Board, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations, and procedures for licensure in effect at the time the application is filed, including but not limited to submitting a completed application and the requisite fee and taking and passing the required examination(s), and all of the charges and allegations contained in the Accusation shall be deemed to be true, correct, and admitted by Respondent when the licensing agency determines whether to grant or deny the application.

19. In exchange for these agreements, the Board will waive reimbursement of its costs of investigation and prosecution in this matter.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Craig Weinstein. I understand the stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers and Land Surveyors.

DATED: 10/19/10 Original Signed
GERALD PATTON BROMS
Respondent

I have read and fully discussed with Respondent Gerald Patton Broms the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 10-21-10 Original Signed
CRAIG WEINSTEIN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board for Professional Engineers and Land Surveyors of the Department of Consumer Affairs.

Dated: Respectfully submitted,
EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
Original Signed
MICHAEL BROWN
Deputy Attorney General
Attorneys for Complainant

EXHIBIT A

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
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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. 898-A

11 GERALD PATTON BROMS
12 77 Wales Street
Thousand Oaks, CA 91360
13 Land Surveyor License No. L 2836
Civil Engineer License No. C 34382

A C C U S A T I O N

14 Respondent.
15

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 February 23, 1955, the Board for Professional Engineers and Land
22 Surveyors issued Land Surveyor License Number L 2836 to Gerald Patton Broms (Respondent).
23 The Land Surveyor License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on September 30, 2010, unless renewed.

25 3. On or about August 18, 1982, the Board for Professional Engineers and Land
26 Surveyors issued Civil Engineer License Number C 34382 to Gerald Patton Broms (Respondent).
27 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
28 herein and will expire on September 30, 2011, unless renewed.

1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

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

9 6. Section 8761, subdivision (b), states that:

10 "All maps, plats, reports, descriptions, or other land surveying documents shall be prepared
11 by, or under the responsible charge of a licensed land surveyor or civil engineer authorized to
12 practice land surveying and shall include his or her name and license number."

13 7. Section 8780 of the Code states:

14 "The board may receive and investigate complaints against licensed land surveyors and
15 registered civil engineers, and make findings thereon.

16 "By a majority vote, the board may reprove, suspend for a period not to exceed two years,
17 or revoke the license or certificate of any licensed land surveyor or registered civil engineer,
18 respectively, licensed under this chapter or registered under the provisions of Chapter 7
19 (commencing with Section 6700), whom it finds to be guilty of:

20 ...

21 "(b) Any negligence or incompetence in his or her practice of land surveying.

22 ...

23 "(f) Aiding or abetting any person in the violation of any provision of this chapter.

24 ...

25 "(h) A violation in the course of the practice of land surveying of a rule or regulation of
26 unprofessional conduct adopted by the board."

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1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 404.2, subdivision (a), states:

3 “(a) The term "responsible charge" directly relates to the extent of control a licensed land
4 surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as
5 "legally authorized civil engineer") is required to maintain while exercising independent control
6 and direction of land surveying work or services and the land surveying decisions which can be
7 made only by a licensed land surveyor or legally authorized civil engineer.

8 (1) Extent of Control. The extent of control necessary to be in responsible charge shall be
9 such that the land surveyor or legally authorized civil engineer:

10 (A) Makes or review and approves the land surveying decisions defined and
11 described in subdivision (a)(2) below.

12 (B) In making or reviewing and approving the land surveying decisions, determines
13 the applicability of survey criteria and technical recommendations provided by others
14 before incorporating such criteria or recommendations.

15 (2) Land Surveying Decisions. The term "responsible charge" relates to land surveying
16 decisions within the purview of the Professional Land Surveyors' Act.

17 Land surveying decisions which must be made by and are the responsibility of the land
18 surveyor or legally authorized civil engineer in responsible charge are those decisions concerning
19 permanent or temporary work which could create a hazard to life, health, property, or public
20 welfare, and may include, but are not limited to:

21 (A) Selecting the methods, procedures, and tolerances of field work.

22 (B) Determining calculation and adjustment methods.

23 (C) Determining and specifying the information to be shown on maps or documents
24 furnished in connection with land surveying services, including the format of the
25 information and the format of the maps or documents.

26 (D) The decisions related to the preparation of maps, plats, land surveying reports,
27 descriptions, and other land surveying documents furnished in connection with the land
28 surveying services.

1 (E) Reviewing the sufficiency and accuracy of the work product.

2 (3) Reviewing and Approving Land Surveying Decisions. In making or reviewing and
3 approving land surveying decisions, the land surveyor or legally authorized civil engineer shall be
4 physically present or shall review and approve through the use of communication devices the land
5 surveying decisions prior to their implementation.

6 **COST RECOVERY**

7 9. Section 125.3 of the Code provides, in pertinent part, that the board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 **BOARD COMPLAINT AND INVESTIGATION NO. 2003-12-344**

12 10. On December 5, 2003, the Board received a complaint from Stephen D. Schuett,
13 Assistant County Counsel, County of Kern, California (“complainant”). This complaint, the
14 related investigation, and eventual investigative report, were assigned No. 2003-12-344 by the
15 Board. The complainant alleged that on or about July 23, 2002, Kern County (“County”) entered
16 into a contract with Sukut Construction Inc. (“Sukut”) to provide final closure construction at
17 County’s Kern Valley Sanitary Landfill. The contract required Sukut to hire a licensed land
18 surveyor or qualified registered civil engineer to provide the survey work to confirm that site
19 conditions were representative of information contained in the County’s blue line construction
20 drawings. Sukut hired BLC Surveying, Inc. (“BLC”), Respondent’s company.

21 11. BLC began work on or about August 19, 2002. Between on or about August 27,
22 2002 and on or about February 3, 2003, the County requested the survey data from Respondent
23 and/or from Sukut approximately 18 times.

24 12. On or about October 9, 2003, a letter and pre-construction survey data, on BLC
25 letterhead, signed and stamped by Respondent, was received by the County.

26 13. Complainant alleged the survey was either never actually performed, or was not
27 performed to industry standards, based on Respondent’s lack of timeliness in providing the pre-
28 construction survey data; Respondent’s lack of adequate taking of photographs of the property

1 (only 151 shots were taken for a survey of 80 acres); and the date on which the survey allegedly
2 took place (August 10, 2002) was a week after excavation at the borrow site had already begun.

3 14. A dispute between Sukut and the County regarding the instant project resulted in a
4 lawsuit¹. As part of the lawsuit, County Counsel took depositions from the following persons
5 from BLC: Respondent, Michael Anderson, James Meyers, and Robert Reljin.

6 15. On or about May 8, 2006, Board Enforcement Analyst Jacqueline Jenkins transmitted
7 this case to independent technical expert Robin B. Hamers, Registered Civil Engineer (“Mr.
8 Hamers”) for his expert opinion. Mr. Hamers opined that: (1) Respondent’s negligence in not
9 acting in responsible charge on this project led to substantial problems on the project; (2)
10 Respondent’s negligence was so widespread that it reflects incompetence in understanding his
11 professional responsibilities; and (3) because Respondent plays no active role in managing or
12 running the business other than occasionally fielding telephone calls and signing and sealing
13 plans when requested by the office, he aided and abetted two unlicensed land surveyors, James
14 Meyers and James Broms, in the unlicensed practice of land surveying.

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Negligence and/or Incompetence in the Practice of Land Surveying)

17 16. Respondent is subject to disciplinary action under section 8780, subdivision (b), for
18 committing acts that amounted to negligence and/or incompetence in the practice of land
19 surveying in that Respondent failed to act in responsible charge of BLC, signed and stamped
20 documents based on phone calls, allowed unlicensed land surveyors to determine scopes of work,
21 prepare written contracts, perform work, and represent themselves as professionals. Complainant
22 references and incorporates all the allegations contained in paragraphs 10 through 15, as though
23 set forth fully herein.

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27 ¹ *Sukut Construction, Inc. v. County of Kern*, Kern County Superior Court, Metropolitan
28 Division District, Case No. S-1500-CV-256201 SPC.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Aiding and Abetting the Unlicensed Practice of Another)

3 17. Respondent is subject to disciplinary action under section 8780, subdivision (f), for
4 aiding and abetting James Meyers and James Broms in the unlicensed practice of professional
5 land surveying. Complainant references and incorporates all the allegations contained in
6 paragraphs 10 through 16, as though set forth fully.

7 **PRAYER**

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

- 11 1. Revoking or suspending Land Surveyor License Number L 2836, issued to Gerald
12 Patton Broms;
- 13 2. Revoking or suspending Civil Engineer License Number C 34382, issued to Gerald
14 Patton Broms;
- 15 3. Ordering Gerald Patton Broms to pay the Board for Professional Engineers and Land
16 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 125.3;
- 18 4. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: April 1 2010

21 original signed
22 DAVID E. BROWN
23 Executive Officer
24 Board for Professional Engineers and Land Surveyors
25 Department of Consumer Affairs
26 State of California
27 Complainant

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27 50587268.doc
28 cak (02/19/10)