

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

In the Matter of the Accusation against:)	
)	
RUSSELL JOHN MULLINS)	Case No. 932-A
50 Oakmont Drive)	
Rancho Mirage, CA 92270)	
)	
Land Surveyor License No. L 3712,)	
)	
Respondent.)	
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DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on September 10, 2010.

IT IS SO ORDERED August 11, 2010.

Original Signed

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

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

11
12 In the Matter of the Accusation Against:

13 RUSSELL JOHN MULLINS
50 Oakmont Drive
14 Rancho Mirage, CA 92270

15 Land Surveyor License No. L 3712

16 Respondent.

Case No. 932-A

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 **PARTIES**

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

26 2. Russell John Mullins (Respondent) is representing himself in this proceeding and has
27 chosen not to exercise his right to be represented by counsel.
28

1 9. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
3 basis for the charges in the Accusation and that those charges constitute cause for discipline.
4 Respondent hereby gives up his right to contest that cause for discipline exists based on those
5 charges.

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

8 **RESERVATION**

9 11. The admissions made by Respondent herein are only for the purposes of this
10 proceeding, or any other proceedings in which the Board for Professional Engineers and Land
11 Surveyors or other professional licensing agency is involved, and shall not be admissible in any
12 other criminal or civil proceeding.

13 **CONTINGENCY**

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

24 13. The parties understand and agree that facsimile copies of this Stipulated Surrender of
25 License and Order, including facsimile signatures thereto, shall have the same force and effect as
26 the originals.

27 14. This Stipulated Surrender of License and Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
3 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
4 executed by an authorized representative of each of the parties.

5 15. In consideration of the foregoing admissions and stipulations, the parties agree that
6 the (Board) may, without further notice or formal proceeding, issue and enter the following
7 Order:

8 **ORDER**

9 IT IS HEREBY ORDERED that Land Surveyor License No. L 3712, issued to Respondent
10 Russell John Mullins, is surrendered and accepted by the Board for Professional Engineers and
11 Land Surveyors.

12 16. Respondent hereby freely and voluntarily surrenders his Land Surveyor License,
13 Number L 3712. This voluntary surrender shall be deemed a disciplinary action which shall
14 become part of Respondent's license history with the Board.

15 17. Respondent shall lose all rights and privileges as a Licensed Land Surveyor in
16 California as of the effective date of the Board's Decision and Order.

17 18. Respondent shall cause to be delivered to the Board both his wall license certificate
18 and pocket license on or before the effective date of the Decision and Order.

19 19. Respondent agrees not to petition for reinstatement of the surrendered license.
20 Respondent agrees not to apply for any license issued by the Board for three years from the
21 effective date of this surrender. Respondent understands and agrees that if he ever applies for any
22 license issued by the Board, the Board shall treat it as a new application for licensure.

23 Respondent must comply with all the laws, regulations, and procedures for licensure in effect at
24 the time the application is filed, including but not limited to submitting a completed application
25 and the requisite fee and taking and passing the required examination(s), and all of the charges
26 and allegations contained in the Accusation shall be deemed to be true, correct, and admitted by
27 Respondent when the licensing agency determines whether to grant or deny the application.

28

1 20. In consideration of the terms and conditions of the stipulation, the Board shall waive
2 reimbursement of costs for the investigation and enforcement in this matter.

3 **ACCEPTANCE**

4 I have carefully read the Stipulated Surrender of License and Order. I understand the
5 stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated
6 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
7 by the Decision and Order of the Board for Professional Engineers and Land Surveyors.

8
9 DATED: 6.22.2010 *Original Signed*
10 RUSSELL JOHN MULLINS
11 Respondent

12 **ENDORSEMENT**

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

16 DATED: June 9, 2010 Respectfully submitted,
17 EDMUND G. BROWN JR.
18 Attorney General of California
19 LINDA K. SCHNEIDER
20 Supervising Deputy Attorney General
21 *Original Signed*
22 NICOLE R. COOK
23 Deputy Attorney General
24 Attorneys for Complainant

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Exhibit A

Accusation No. 932-A

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BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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12 In the Matter of the Accusation Against:

13 RUSSELL JOHN MULLINS
50 Oakmont Drive
14 Rancho Mirage, CA 92270

15 Land Surveyor License No. L 3712

16 Respondent.

Case No. 932-A

A C C U S A T I O N

17
18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about January 6, 1970, the Board for Professional Engineers and Land
25 Surveyors issued Land Surveyor License Number L 3712 to Russell John Mullins (Respondent).
26 The Land Surveyor License was in full force and effect at all times relevant to the charges
27 brought herein and will expire on June 30, 2010, unless renewed.

28

1 **JURISDICTION**

2 3. 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 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 8780 of the Code states:

10 The board may receive and investigate complaints against licensed land
11 surveyors and registered civil engineers, and make findings thereon.

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

17 (a) Any fraud, deceit, or misrepresentation in his or her practice of land
18 surveying.

19

20 (e) Any conviction of a crime substantially related to the qualifications,
21 functions, and duties of a land surveyor. The record of the conviction shall be
22 conclusive evidence thereof.

23 **STATUTORY PROVISIONS**

24 6. Section 482 of the Code states:

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

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

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

5 8. Section 493 of the Code states:

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

13 As used in this section, "license" includes "certificate," "permit,"
14 "authority," and "registration."

15
16 9. Section 8783 of the Code states:

17 A plea or verdict of guilty or a conviction following a plea of nolo
18 contendere made to a charge substantially related to the qualifications, functions
19 and duties of a land surveyor is deemed to be a conviction within the meaning of
20 this article. The board may order the license or certificate suspended or revoked,
21 or may decline to issue a license or certificate, when the time for appeal has
22 elapsed, or the judgment of conviction has been affirmed on appeal or when an
23 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 such person to withdraw his 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.

24 **REGULATORY PROVISIONS**

25 10. Title 16, California Code of Regulations section 416 states:

26 For the purpose of denial, suspension, or revocation of the license of a
27 professional engineer or a land surveyor pursuant to Division 1.5 (commencing
28 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 a

1 professional engineer or land surveyor if, to a substantial degree, it evidences
2 present or potential unfitness of a professional engineer or land surveyor to
3 perform the functions authorized by his or her license in a manner consistent with
4 the public health, safety, or welfare. Such crimes or acts shall include, but not be
5 limited to, those involving the following:

6 (a) For professional engineers, any violations of the provisions of the
7 Professional Engineers Act or aiding and abetting any person in such a violation;

8 (b) For land surveyors, any violations of the provisions of the Professional
9 Land Surveyors' Act or aiding and abetting any person in such a violation;

10 (c) A conviction of a crime arising from or in connection with the practice of
11 professional engineering or land surveying.

12 11. Title 16, California Code of Regulations section 418 states:

13 (b) When considering the suspension or revocation of the certification of an
14 engineer-in-training or a land surveyor-in-training, or the license of a professional
15 engineer or a professional land surveyor, or the authority to use the title "structural
16 engineer," or the authority to use the title "geotechnical engineer" under Section
17 490 of the Code, the Board will consider the following criteria in evaluating the
18 rehabilitation of such person and his or her present eligibility to retain his or her
19 license:

20 (1) The nature and severity of the act(s) or crime(s) under consideration as
21 grounds for suspension or revocation.

22 (2) Evidence of any act(s) committed prior to or subsequent to the act(s) or
23 crime(s) under consideration as grounds for suspension or revocation which
24 could also be considered as grounds for suspension or revocation under
25 Section 490 of the Code.

26 (3) The time that has elapsed since commission of the act(s) or crime(s)
27 referred to in subdivision (1) or (2).

28 (4) The extent to which the licensee has complied with any terms of parole,
probation, restitution, or any other sanctions lawfully imposed against the
license.

(5) Any evidence of rehabilitation submitted by the licensee.

(6) Total criminal record.

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

1 **COST RECOVERY**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 (September 6, 2006 Conviction for Mail Fraud)

8 13. Respondent is subject to disciplinary action under sections 490 and 8780(e) of the
9 Code in that he was convicted of a crime that is substantially related to the qualifications,
10 functions and duties of a land surveyor. The circumstances are as follows:

11 a. On or about September 6, 2006, in a criminal proceeding entitled *United States*
12 *of America v. Russell John Mullins*, in the United States District Court, Central District of
13 California, case number EDCR 02-00061-RT, Respondent entered a plea of guilty to two counts
14 in violation of Title 18, United States Code, Section 1341 and 1346, mail fraud depriving the
15 public of the right to honest services of a public official. On his plea agreement, Respondent
16 admitted that (1) he knowingly and willfully participated in a scheme to defraud the public of its
17 intangible right to honest services; (2) the scheme related to material matters; (3) he acted with
18 the intent to defraud, and (4) he caused the mails to be used in furtherance of the scheme.

19 b. The facts that led to the conviction were that in 1993, Respondent owned and
20 operated R.J. Mullins & Associates, Inc., (“RJM&A”) a land surveying company incorporated in
21 California. During the period of December 1993 through 2002, Respondent was also employed
22 by the Mohave Water Agency (“MWA”), at first as a Construction Manager, and later as its
23 Director of Engineering, Operations, and Maintenance. MWA was a public entity responsible for
24 insuring safe and adequate water supplies for the citizens of the High Desert Region of San
25 Bernardino County. The MWA was responsible for contracting and administering a number of
26 public works projects including the Mojave River Pipeline and the Morongo Basin Pipeline
27 Projects. The United States Environmental Protection Agency (“EPA”) had been the principal
28 financial supporter of the Mojave River Pipeline Project since 1995. As work on the Project

1 progressed and MWA incurred expenses, it submitted its costs to the EPA and received
2 reimbursement under the agreements. Due to Respondent's employment at the MWA, he and his
3 company, RJM&A, were precluded from obtaining MWA contracts.

4 c. Respondent devised a scheme to continue surveying business with the MWA
5 despite his employment with that government agency. First, Respondent encouraged his
6 employee, James Dale Cole, Jr. ("Cole"), a professional land surveyor licensed in California, to
7 discontinue his employment with RJM&A and form his own company, J.D. Cole & Associates,
8 Inc. ("JDC&A), a surveying company incorporated in California. Respondent then used his
9 position at the MWA to assist Cole and his business JDC&A in obtaining surveying jobs with the
10 MWA. Respondent accomplished this by first recommending to his superiors that the work be
11 granted to JDC&A and then later by personally granting the work to JDC&A. Once the work was
12 performed, JDC&A submitted invoices to MWA for payment. Respondent repeatedly
13 recommended that MWA make payments, or he personally approved payments, on the invoices
14 submitted by JDC&A. Cole would then tender a significant amount of the money earned on those
15 contracts over to RJM&A, representing a premium over Cole's published hourly rates. For
16 example, Cole's published rate for a two-man crew was \$116 per hour; however, Cole billed
17 MWA at \$176 per hour. The difference in the hourly rate, plus various "administrative" and
18 "oversight" charges, were disbursed to Respondent.

19 d. The precise method through which Respondent received MWA funds
20 changed over time. However, during the period of 1993 through September 1994, Cole
21 forwarded 100% of the money he received from MWA to Respondent. During the period of
22 October 1994 through May 1996, after Cole received MWA funds, he and Respondent calculated
23 a "fee split" wherein they each received a sum according to their respective hourly rates and the
24 administrative/oversight charges. Respondent then issued an invoice equal to the amount of his
25 fee split although the invoice was characterized as the lease of equipment and office space.
26 JDC&A paid the invoices by sending checks to Respondent's company RJM&A through the U.S.
27 mail. One of the checks, in the amount of \$3,629.30, was issued by JDC&A on July 22, 1996 and
28 sent to Respondent's company, RJM&A at its San Bernardino address.

1 e. In October 1994, Cole was notified by MWA that Mullins had become the sole
2 individual responsible for awarding survey and other contracts on behalf of MWA. During the
3 period of October 1994 through May 1996, Cole concealed RJM&A's participation in the
4 projects by submitting invoices to MWA with no mention of his subcontract or lease arrangement
5 with RJM&A or any other information identifying the fact that the funds were being disbursed to
6 RJM&A.

7 f. During the period of October 1996 through March 1998, Respondent entered
8 into an arrangement with Pasquale Beneati, Jr. ("Benenati"), a professional photogrammetric
9 surveyor licensed in California, and owner and operator of Aero Tech Surveys, Inc. ("Aero
10 Tech"), an aerial surveying company incorporated in California. Respondent's arrangement was
11 that RJM&A and JDC&A would secretly perform ground control survey work on MWA contracts
12 through Aero Tech. Respondent then awarded Aero Tech aerial photogrammetric survey work on
13 MWA projects and Aero Tech subcontracted the related ground survey work to RJM&A, who in
14 turn would subcontract the ground survey work to JDC&A. RJM&A submitted invoices to Aero
15 Tech for the ground work performed by JDC&A. Aero Tech then concealed RJM&A's
16 participation in the project by submitting invoices to MWA with no mention of the subcontract
17 work engage in or by RJM&A and JDC&A. Respondent authorized payments of the Aero Tech
18 invoices by preparing and approving financial requisition forms. MWA then issued checks to
19 Aero Tech, which Respondent personally signed. Upon receipt of payment, Aero Tech paid
20 RJM&A's invoices by sending checks through the U.S. mail. One of these checks, in the amount
21 of \$2,050.60, was issued by Aero Tech on November 6, 1996 and was sent to RJM&A, who
22 subsequently paid JDC&A for the work it performed.

23 g. Respondent also concealed from the MWA, the EPA, and the public, the
24 income he received on MWA projects by filing false Statements of Economic Interest with the
25 County Clerk and otherwise failing to disclose the income and his business relationships with
26 MWA contractors despite his legal duty to do so as a government employee.

27 h. On September 6, 2006, Respondent was sentenced to nine months of home
28 detention with electronic monitoring, two years of probation, and five hundred hours of

1 community service. Respondent was ordered to pay a \$40,000 fine and required to pay \$200.00
2 special assessment to the United States.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Acted with Fraud or Deceit in Practice)

5 14. Respondent is subject to disciplinary action under 8780(a) of the Code in that he was
6 fraudulent, deceitful and misrepresentative in his professional practices as a land surveyor as
7 described above in paragraph 13, incorporated by reference as if fully set forth herein.

8 **PRAYER**

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

12 1. Revoking or suspending Land Surveyor License Number L 3712, issued to Russell
13 John Mullins.

14 2. Ordering Russell John Mullins to pay the Board for Professional Engineers and Land
15 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3;

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

18
19
20 DATED: 5/5/10

Original Signed

21 DAVID E. BROWN

22 Executive Officer

23 Board for Professional Engineers and Land Surveyors

24 Department of Consumer Affairs

State of California

Complainant

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