

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

In the Matter of the Accusation against:)

VERNON ALBERT KALINOWSKI)
P. O. Box 993572)
Redding, CA 96099-3572)

Land Surveyor License No. L 4776,)
Respondent.)

Case No. 851-A

DECISION

The attached Stipulated Settlement and Disciplinary 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 February 26, 2010.

IT IS SO ORDERED January 27, 2010.

Original Signed

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

ORIGINAL

1 EDMUND G. BROWN JR.
 Attorney General of California
 2 ARTHUR D. TAGGART
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 7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 851-A

12 **VERNON ALBERT KALINOWSKI**
 13 **P.O. Box 993572**
Redding, California 96099
 14 **Land Surveyor License No. 4776**

**STIPULATED SETTLEMENT AND
 DISCIPLINARY ORDER**

15 Respondent.

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

19 PARTIES

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

24 2. Respondent Vernon Albert Kalinowski (Respondent) is representing himself in this
 25 proceeding, and has chosen not to exercise his right to be represented by counsel.

26 3. On or about November 19, 1979, the Board for Professional Engineers and Land
 27 Surveyors issued Land Surveyor License No. 4776 to Vernon Albert Kalinowski (Respondent).
 28

1 The license was in full force and effect at all relevant times, and will expire on June 30, 2010,
2 unless renewed.

3 JURISDICTION

4 4. Accusation No. 851-A was filed before the Board for Professional Engineers and
5 Land Surveyors (Board), Department of Consumer Affairs, and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on August 7, 2009. Respondent timely filed his Notice of Defense contesting the
8 Accusation. A copy of Accusation No. 851-A is attached as exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 851-A. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

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

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 851-A.

26 9. Respondent agrees that his Land Surveyor License is subject to discipline and he
27 agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order
28 below. Respondent further agrees that if he fails to comply with either Paragraph 2 or Paragraph 3

1 of the Disciplinary Order , then Respondent's Notice of Defense is withdrawn, and the Board
2 shall enter a "Default Decision and Order" revoking outright Respondent's Land Surveyor
3 License No. 4776. Respondent waives, relinquishes and gives up all rights of due process that he
4 might otherwise be entitled to before his license is revoked outright, including but not limited to
5 the rights described in Paragraph 6 above.

6 10. Respondent fully understands and agrees that if he fails to to comply with conditions
7 2 or 3 of the Disciplinary Order below, then the Board will revoke his Land Surveyor license and
8 thereby terminate his right to engage in any activity authorized by said License, and without an
9 administrative hearing on Accusation No. 851-A. Respondent fully understands and agrees that if
10 an order revoking his Land Surveyor license is issued, then the order will be effective on the date
11 specified in the order.

12 CONTINGENCY

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

22 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
23 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
24 effect as the originals.

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that the Land Surveyor License No. 4776 issued to Respondent
8 Vernon Albert Kalinowski be disciplined by the issuance of a Public Repeval as set forth below.

9 1. **Public Repeval.** The Board shall issue a Public Repeval against Respondent' license.
10 The Public Repeval shall be in the form of a letter, constitute a record of discipline, and shall
11 become a permanent part of Respondent's license history with the Board.

12 2. **Remedial Education.** Within one (1) year from the effective date of the decision,
13 Respondent shall successfully complete and pass a college-level land surveying course related to
14 the area of violation alleged in the Accusation, approved in advance by the Board or its designee.
15 Respondent shall bear all costs associated with completion of said course, and shall provide the
16 Board with verifiable proof of his successful completion of said course.

17 3. **Reimbursement of Costs.** Within one (1) year from the effective date of the decision,
18 Respondent shall fully pay the sum of \$6,043.50 to the Board in reimbursement of costs of
19 investigation and prosecution in this matter.

20 4. **Default Decision and License Revocation for Violation of Paragraphs 2 or 3.**
21 Should Respondent violate the terms of either Paragraph 2 or Paragraph 3 of this Disciplinary
22 Order, then Respondent's Notice of Defense is deemed withdrawn and the Board shall issue
23 "Default Decision and Order" without further process revoking the Land Surveyor license issued
24 to Respondent outright. The Default Decision and Order will revoke Respondent's Land Surveyor
25 license on the basis of the violations alleged in Accusation No. 851-A.

26 **ACCEPTANCE**

27 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
28 stipulation, the effect it will have on my Land Surveyor license, and that my license will be

1 revoked outright and without any hearing if I violate either Paragraph 2 or Paragraph 3 of the
2 Disciplinary Order. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
3 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for
4 Professional Engineers and Land Surveyors.

5
6 DATED: 11/03/2009

Original Signed
VERNON ALBERT KALINOWSKI
Respondent

8
9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Board for Professional Engineers and Land Surveyors of the
12 Department of Consumer Affairs.

13
14 Dated: 11/12/09

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

Original Signed
STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

21 SA2009308608
22 Stipulation.rtf

Exhibit A

Accusation No. 851-A

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 851-A

12 **VERNON ALBERT KALINOWSKI**
13 **P.O. Box 993572**
Redding, California 90699-3572
14 **Land Surveyor License No. L 4776**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about November 19, 1979, the Board for Professional Engineers and Land
22 Surveyors issued Land Surveyor license Number L 4776 to Vernon Albert Kalinowski
23 (Respondent). The license will expire on June 30, 2010, unless renewed.

24 **JURISDICTION**

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

28 ///

1 4. Section 8780 of the Code states, in pertinent part, that:

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

6 ...

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

8 ...

9 "(d) Any violation of any provision of this chapter or of any other law relating to or
10 involving the practice of land surveying.

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

13 5. Section 8762 of the Code provides, in pertinent part, that:

14 "(a) Except as provided in subdivision (b), after making a field survey in
15 conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer
16 may file with the county surveyor in the county in which the field survey was made, a record of
17 the survey.

18 (b) Notwithstanding subdivision (a), after making a field survey in conformity
19 with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file
20 with the county surveyor in the county in which the field survey was made a record of the survey
21 relating to land boundaries or property lines, if the field survey discloses any of the following:

22 (1) Material evidence or physical change, which in whole or in part does not
23 appear on any subdivision map, official map, or record of survey previously recorded or properly
24 filed in the office of the county recorder or county surveying department, or map or survey record
25 maintained by the Bureau of Land Management of the United States.

26 (2) A material discrepancy with the information contained in any subdivision
27 map, official map, or record of survey previously recorded or filed in the office of the county
28 recorder or the county surveying department, or any map or survey record maintained by the

1 Bureau of Land Management of the United States. For purposes of this subdivision, a 'material
2 discrepancy' is limited to a material discrepancy in the position of points or lines, or in
3 dimensions.

4 (3) Evidence that, by reasonable analysis, might result in materially alternate
5 positions of lines or points, shown on any subdivision map, official map, or record of survey
6 previously recorded or properly filed in the office of the county recorder or county surveying
7 department, or map or survey record maintained by the Bureau of Land Management of the
8 United States.”

9 6. Section 8764 of the Code provides, in pertinent part, that:

10 “The record of survey shall show the applicable provisions of the following
11 consistent with the purpose of the survey:

12 (a) All monuments found, set, reset, replaced, or removed, describing their
13 kind, size, and location, and giving other data relating thereto.

14 ...

15 (g) Any other data necessary for the intelligent interpretation of the various
16 items and locations of the points, lines, and areas shown, or convenient for the identification of
17 the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the
18 record of survey.

19 The record of survey shall also show, either graphically or by note, the reason
20 or reasons, if any, why the mandatory filing provisions of paragraphs (a) to (5), inclusive, of
21 subdivision (b) of Section 8762 apply.

22 The record of survey need not consist of a survey of an entire property.”

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

27 8. Section 118, subdivision (b), of the Code provides that the
28 suspension/expiration/surrender/cancellation of a license shall not deprive the

1 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
2 within which the license may be renewed, restored, reissued or reinstated.

3 **SURVEY FOR DIVISION OF MCFAYDEN PROPERTY**

4 9. In or about 1986, Respondent agreed to divide a parcel of land located on Main
5 Street, Cottonwood, California (the "Property") owned by George McFayden and Aileen
6 McFayden and described in a Grant Deed recorded on September 17, 1975, in Book 1295, page
7 25, Official Records of Shasta County, California ("the 1975 Grant Deed"), to create a small
8 parcel of land of approximately .5 acres and a larger parcel of approximately 4.5 acres.

9 10. In or about August 1986, Respondent prepared a Tentative Parcel Map for the
10 division of the Property showing the existing structures on the Property and division lines
11 between the two proposed parcels generally consistent with the bearings of the boundary lines of
12 the Property as shown on the 1975 Grant Deed.

13 11. Thereafter, Respondent prepared a Final Map for the division of the Property,
14 recorded on April 23, 1987, in Book 26 of Parcel Maps at Page 29, Records of Shasta County,
15 California ("the Final Map").

16 **FIRST CAUSE FOR DISCIPLINE**

17 (Negligence or Incompetence)

18 12. Respondent is subject to disciplinary action under section 8780(a), 8780(d) and
19 8780(h) because Respondent committed acts of negligence or incompetence in the practice of
20 land surveying in preparing the Final Map, including those described below.

21 (a) The bearing for the west property line of the Property conflicts with the bearing
22 of the west property line of the Property as shown on the 1975 Grant Deed and a Parcel Map
23 recorded on or about December 21, 1977, as Instrument No. 14 PM-8, Official Records of Shasta
24 County, California. Respondent violated of Code sections 8762(b)(2) and 8764(g) by failing to
25 provide an explanation for this material discrepancy on the Final Map.

26 (b) The length of the south property line conflicts with the length of that property
27 line as described in the 1975 Grant Deed and shown on a Parcel Map recorded on or about
28 December 21, 1977, in Book 14 of Parcel Maps at Page 8, Records of Shasta County, California.

1 Respondent violated Code sections 8762(b)(2) and 8764(g) by failing to provide an explanation
2 for this material discrepancy on the Final Map.

3 (c) The Final Map failed to show a physical change in the Property by not showing
4 a 1/2 inch iron pin at the southwest corner of the Property, as described in the 1975 Grant Deed.
5 Respondent violated Code sections 8762(b)(1), 8762(b)(3) and 8764(a) by failing to state on the
6 Final Map whether or not he searched for said monument, or whether or not Respondent found
7 said monument.

8 (d) The Final Map shows an angle between the westerly and southerly boundaries
9 of the Property inconsistent with the angle as described in the 1975 Grant Deed and shown on the
10 Parcel Map recorded on or about December 21, 1977, in Book 14 of Parcel Maps at Page 8,
11 Records of Shasta County, California. Respondent violated Code sections 8762(b)(2), 8762(b)(3)
12 and 8764(a) by failing to provide any explanation or justification for said inconsistency in the
13 Final Map.

14 (e) The Final Map shows that the lengths of the north and south boundary lines of
15 the Property are approximately 734 feet, in contradiction with the length of approximately 711
16 feet given for said boundary lines in the 1975 Grant Deed, and also in contradiction with a Parcel
17 Map recorded on or about December 21, 1977, in Book 14 of Parcel Maps, at Page 8, Records of
18 Shasta County, California, giving a length of 686 feet for said boundary lines of the Property.
19 Respondent violated Code sections 8762(b)(2), 8762(b)(3) and 8764(a) by failing to provide any
20 explanation or justification for said inconsistency in the Final Map.

21 (f) Respondent failed to perform the research or other professional services
22 reasonably required to discover and/or consider the effects of recorded instruments upon the
23 lengths of the north and south boundary lines of the Property, including a Grant Deed recorded on
24 May 24, 1945, in Book 137, Page 473 of Records of Shasta County, California, an instrument
25 entitled "Relinquishment of State Highway in the County of Shasta, Road II-SHA-A (New II-
26 SHA-5)" recorded in Book 803, Page 247, Records of Shasta County, California, and a
27 "Resolution Ordering Abandonment" recorded on February 17, 1977, in Book 1400, Page 512,
28 Records of Shasta County, California.

1 DISCIPLINE CONSIDERATIONS

2 13. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about November 17, 2005, in a prior action, the Board for
4 Professional Engineers and Land Surveyors issued Citation No. 5177-L in in Board Case No.
5 2001-09-185, ordering Respondent to cease and desist violation of Code section 8780(b) and
6 assessing a civil penalty of \$1,500.00. That Citation is now final, and Respondent fully complied
7 therewith.

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 4776, issued to Vernon
- 13 Albert Kalinowski;
- 14 2. Ordering Vernon Albert Kalinowski to pay the Board for Professional Engineers and
- 15 Land 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: July 27, 2009

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

25 SA2009308608
26 accusation.rtf