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

11 In the Matter of the Accusation Against:

Case No. 1082-A

12 **HAROLD EDWARD HOWELL**
13 **4114 Opal Street**
14 **Oakland, CA 94609**

OAH No. 2015101092
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Civil Engineer License No. C17591**

16 Respondent.

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

20 PARTIES

21 1. Richard B. Moore, PLS (“Complainant”) is the Executive Officer of the Board for
22 Professional Engineers, Land Surveyors, and Geologists. He brought this action solely in his
23 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
24 State of California, by Susana A. Gonzales, Deputy Attorney General.

25 2. Respondent Harold Edward Howell (“Respondent”) is represented in this proceeding
26 by attorney Neil Bui, whose address is: 1999 Harrison Street, Suite 1700, Oakland, CA 94612-
27 4700.
28

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 1082-A, if proven at a hearing, constitute cause for imposing discipline upon his Civil
4 Engineer License.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant intends to present
7 evidence establishing a factual basis for the charges in the Accusation, and that Respondent
8 hereby gives up his right to contest those charges.

9 11. In light of the above, Respondent agrees to be bound by the Board's probationary
10 conditions as set forth in the Disciplinary Order below.

11 CIRCUMSTANCES IN MITIGATION

12 12. Respondent Harold Edward Howell has never been the subject of any disciplinary
13 action. He has cooperated with the Board's investigation and is entering into this stipulation at an
14 early stage in the proceedings.

15 CONTINGENCY

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

1 has been submitted to the Office of the Attorney General for the filing of such, the Board shall
2 have continuing jurisdiction until all matters are final, and the period of probation shall be
3 extended until all matters are final.

4 **5. Completion of Probation.** Upon successful completion of all of the probationary
5 conditions and the expiration of the period of probation, the Respondent's license shall be
6 unconditionally restored.

7 **6. Cost Recovery.** The Respondent is hereby ordered to reimburse the Board the
8 amount of \$7,428.95 within two and one-half years from the effective date of this decision for its
9 investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and
10 prosecution shall constitute a violation of the probation order, unless the Board agrees in writing
11 to payment by an installment plan because of financial hardship.

12 **7. Examination.** Within 60 days of the effective date of the decision, the Respondent
13 shall successfully complete and pass the California Laws and Board Rules examination, as
14 administered by the Board.

15 **8. Ethics Course.** Within two and one-half (2 ½) years from the effective date of this
16 decision, Respondent must successfully complete and pass a course in professional ethics,
17 approved in advance by the Board or its designee.

18 **9. Take And Pass Examinations.** Within two and one-half (2 ½) years from the
19 effective date of this decision, Respondent shall successfully complete and pass, with a grade of
20 "C" or better, two college-level civil engineering courses, approved in advance by the Board or its
21 designee, which must be related to the areas of violation alleged in the Accusation. Respondent
22 shall provide the Board with official proof of completion of the requisite courses. For purposes of
23 this subdivision, "college-level course" shall mean a course offered by a community college or a
24 four-year university of three semester units or the equivalent; "college-level course" does not
25 include seminars.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists.

Dated: 3/8/16

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Original Signed
SUSANA A. GONZALES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1082-A

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8 **BEFORE THE**
9 **BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND**
10 **GEOLOGISTS**
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11 In the Matter of the Accusation Against:
12 **HAROLD EDWARD HOWELL**
13 **4114 Opal Street**
14 **Oakland, California 94609**
15 **Civil Engineer License Number C17591,**
16 Respondent.

Case Number 1082-A

A C C U S A T I O N

17
18 Complainant Richard B. Moore, PLS, alleges:

19 **PARTIES**

20 1. Complainant brings this accusation solely in his official capacity as the Executive
21 Officer of the Board for Professional Engineers, Land Surveyors, and Geologists (Board),
22 Department of Consumer Affairs.

23 2. On or about December 18, 1967, the Board for Professional Engineers, Land
24 Surveyors, and Geologists issued Civil Engineer License Number C17591 to respondent Harold
25 Edward Howell. This civil engineer license was in full force and effect at all times relevant to the
26 charges brought in this accusation and will expire on June 30, 2015, unless renewed.

27 **JURISDICTION**

28 3. This accusation is brought before the Board under the authority of the following

1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 118 states in part:

3 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
4 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
5 order of a court of law, or its surrender without the written consent of the board, shall not, during
6 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
7 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
8 provided by law or to enter an order suspending or revoking the license or otherwise taking
9 disciplinary action against the licensee on any such ground.”

10 5. Section 6785 states:

11 “The board shall have the power, duty, and authority to investigate violations of the
12 provisions of this chapter.”

13 6. Section 6786 states:

14 “It is the duty of the respective members of the legal system to prosecute all persons
15 charged with the violation of any of the provisions of this chapter.

16 “It is the duty of the executive officer of the board, under the direction of the board, to aid
17 these officers in the enforcement of this chapter.”

18 **STATUTORY AND REGULATORY PROVISIONS**

19 7. Section 6775 states in part:

20 “The board may, upon its own initiative or upon the receipt of a complaint, investigate the
21 actions of any professional engineer licensed under this chapter and make findings thereon.

22 “By a majority vote, the board may publicly reprove, suspend for a period not to exceed
23 two years, or revoke the certificate of any professional engineer licensed under this chapter on
24 any of the following grounds:

25 ...

26 “(c) Any negligence or incompetence in his or her practice.”

27 8. California Code of Regulations, title 16, section 404, states in part:

28 “For the purpose of the rules and regulations contained in this chapter, the following terms

1 are defined. No definition contained herein authorizes the practice of professional engineering as
2 defined in the Professional Engineers Act.

3 ...

4 “(u) For the sole purpose of investigating complaints and making findings thereon under
5 Sections 6775 and 8780 of the Code, ‘incompetence’ as used in Sections 6775 and 8780 of the
6 Code is defined as the lack of knowledge or ability in discharging professional obligations as a
7 professional engineer or land surveyor.

8 ...

9 “(dd) For the sole purpose of investigating complaints and making findings thereon under
10 Sections 6775 and 8780 of the Code, ‘negligence’ as used in Sections 6775 and 8780 of the Code
11 is defined as the failure of a licensee, in the practice of professional engineering or land
12 surveying, to use the care ordinarily exercised in like cases by duly licensed professional
13 engineers and land surveyors in good standing.”

14 COST RECOVERY

15 9. Section 125.3 states in part:

16 “(a) Except as otherwise provided by law, in any order issued in resolution of a
17 disciplinary proceeding before any board within the department or before the Osteopathic
18 Medical Board, upon request of the entity bringing the proceeding, the administrative law judge
19 may direct a licentiate found to have committed a violation or violations of the licensing act to
20 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

21 FACTUAL BACKGROUND

22 10. On or about December 21, 2005, November 4, 2008, and November 26, 2008,
23 respondent filed building permit applications and plans with the city of San Francisco, California,
24 for proposed work on a house on Hyde Street.

25 **DECEMBER 21, 2005, PERMIT APPLICATION AND PLANS**

26 11. The deficiencies in the permit application and plans filed on December 21, 2005,
27 include the following:

28 a. The plans do not show the design for the header beam across the proposed

1 new garage door opening or any required strengthening of the walls on either side of the opening.

2 b. There is no plan for the proposed new stairs at the back of the residence.

3 c. There are no foundation, floor, or framing details for the storage room.

4 d. The plans do not correctly identify the exact location of the existing street
5 tree.

6 **NOVEMBER 4, 2008, PERMIT APPLICATION AND PLANS**

7 12. The deficiencies in the permit application and plans filed on November 4, 2008,
8 include the following:

9 a. There is no calculation of the amount of soil under the residence that must
10 be removed to complete the proposed work.

11 b. The application and plans use the incorrect version of codes.

12 c. Although the plans show the conversion of an existing crawl space into a
13 storage area, the permit application does not mention any excavation work related to the proposed
14 foundation work.

15 d. There is insufficient information of factors that may affect the project
16 design, such as a site plan, a lot plan, cross sections, or the existing foundation conditions of the
17 adjacent buildings.

18 e. There are no dimensions or reference markings to determine the extent of
19 scope of work proposed, especially the work related to the proposed excavation.

20 f. There are no grade plane, story levels, or other elevations to determine the
21 height of the building.

22 g. There is no indication of the structural conditions that may be affected
23 during and after the excavations of the existing basement, such as the foundation layout, or wall
24 and column layout.

25 h. Although the plans call for the "temporary removal of brick foundation and
26 sidings to install new foundation and steel," they do not mention what part or what kind of
27 architectural or structural element shall be installed in steel.

28 i. There is no structural information regarding the existing footing of the

1 subject building relative to the adjacent building properties, or any design provisions for the new
2 concrete footing and the anticipated underpinning details shown on plans.

3 j. There are no shoring notes or procedures to protect the house and adjacent
4 properties during the excavation.

5 k. There is no plan or construction detail for a retaining wall which would be
6 required due to the scope of the proposed project.

7 l. There is no foundation drainage design.

8 m. There is no structural framing layout regarding the direction and the
9 structural supports of the floor joists.

10 n. Although the plans' General Notes show the design basis for a concrete
11 slab, neither the plans nor details for the concrete slab can be found on the plans themselves.

12 o. The reference grade plane of the subject building is not established and
13 there is no calculation or determination as to whether the proposed excavated space was classified
14 as a basement or a story under the building codes.

15 p. The application and plans do not account for the building code
16 requirements and change of use of building structures for the additional story that would be
17 created by completing the proposed work.

18 q. There is no information about the existing stud size of the building and
19 whether the studs must be structurally strengthened to comply with the building codes for a four-
20 story building.

21 **NOVEMBER 26, 2008, PERMIT APPLICATION AND PLANS**

22 13. The deficiencies in the permit application and plans filed on November 26, 2008,
23 include the following:

24 a. There are two sets of steel columns that are not shown on the plans filed by
25 respondent on November 4, 2008.

26 b. There are no retrofitting structural details for the steel columns, or any
27 footing and underpinning design for the moment frames.

28 c. There are no details of the elevation of the moment frame, structural

1 connections, foundation, or grade beam.

2 d. There are no structural framing design details to support the wall loading at
3 the proposed garage door opening at the front of the building.

4 **CAUSES FOR DISCIPLINE**

5 **FIRST CAUSE FOR DISCIPLINE**

6 **Negligence**

7 **Section 6775, subdivision (c)**

8 14. The allegations in paragraphs 10-13 are realleged and incorporated by reference as
9 if fully set forth.

10 15. Respondent has subjected his license to discipline for negligence (Bus. & Prof.
11 Code, § 6775, subd. (c)). On or about December 21, 2005, November 4, 2008, and November 26,
12 2008, respondent filed building permit applications and plans with the city of San Francisco,
13 California, that contained numerous deficiencies.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **Incompetence**

16 **Section 6775, subdivision (c)**

17 16. The allegations in paragraphs 10-13 are realleged and incorporated by reference as
18 if fully set forth.

19 17. Respondent has subjected his license to discipline for incompetence (Bus. & Prof.
20 Code, § 6775, subd. (c)). On or about December 21, 2005, November 4, 2008, and November 26,
21 2008, respondent filed building permit applications and plans with the city of San Francisco,
22 California, that contained numerous deficiencies.

23 **PRAYER**

24 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
25 accusation, and that following the hearing, the Board for Professional Engineers, Land Surveyors,
26 and Geologists issues a decision:

27 1. Revoking or suspending Civil Engineer License Number C17591 issued to Harold
28 Edward Howell;

2. Ordering Harold Edward Howell to pay the Board for Professional Engineers,
Land Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this

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case under Business and Professions Code section 125.3; and

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

DATED: 11/12/14

Original Signed

RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors,
and Geologists
Department of Consumer Affairs
State of California
Complainant

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