

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

In the Matter of the Petition to Revoke )  
Probation against: )  
)  
ENGLES SZE LEE SHEN ) Case No. 853-A  
1111 Corporate Center Drive )  
Monterey Park, CA 91754 )  
)  
Civil Engineer License, No. C 18906 )  
)  
Respondent. )  
\_\_\_\_\_ )

**DECISION**

The attached Stipulated Settlement and Disciplinary 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 May 19, 2017.

IT IS SO ORDERED April 21, 2017.

*Original Signed*

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

1 KATHLEEN A. KENEALY  
Acting Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 M. TRAVIS PEERY  
Deputy Attorney General  
4 State Bar No. 261887  
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5 Telephone: (213) 897-0962  
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*Attorneys for Complainant*

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

12 In the Matter of the Petition to Revoke  
13 Probation Against:

Case No. 853-A

14 **ENGLES SZE LEE SHEN**  
15 **1111 Corporate Center Drive, No. 302**  
16 **Monterey Park, CA 91754**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

**Civil Engineer License No. C 18906**

Respondent.

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. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for  
21 Professional Engineers, Land Surveyors, and Geologists (Board). He brought this action solely in  
22 his official capacity and is represented in this matter by Kathleen A. Kenealy, Acting Attorney  
23 General of the State of California, by M. Travis Peery, Deputy Attorney General.

24 2. Respondent Engles Sze Lee Shen (Respondent) is represented in this proceeding by  
25 attorney Addison Lau, whose address is: Law Offices of Addison Lau, 18901 Brittany Place,  
26 Rowland Heights, CA 91748.

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Civil engineer License No. C 18906, issued to  
3 Respondent, is revoked. However, the revocation is stayed and the previous disciplinary order,  
4 effective June 29, 2012, will remain in full force and effect except that Respondent's probation  
5 will be extended for two years to allow Respondent to complete outstanding probation conditions.  
6 This two-year extension will begin on the effective date of the Board's Decision and Order.  
7 Respondent's probation shall continue on the following terms and conditions.

8 1. **Obey All Laws.** Respondent shall obey all laws and regulations related to the  
9 practices of professional engineering and professional land surveying.

10 2. **Submit Reports.** Respondent shall submit such special reports as the Board may  
11 require.

12 3. **Tolling of Probation.** The period of probation shall be tolled during the time  
13 Respondent is practicing exclusively outside the state of California. If, during the period of  
14 probation, Respondent practices exclusively outside the state of California, the Respondent shall  
15 immediately notify the Board in writing.

16 4. **Violation of Probation.** If Respondent violates the probationary conditions in any  
17 respect, the Board, after giving the Respondent notice and the opportunity to be heard, may  
18 vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of  
19 probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter  
20 has been submitted to the Office of the Attorney General for the filing of such, the Board shall  
21 have continuing jurisdiction until all matters are final, and the period of probation shall be  
22 extended until all matters are final.

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

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1           6.    **Cost Recovery.** Respondent shall reimburse the Board reasonable costs of its  
2 investigation and prosecution of this matter in the amount of \$14,893.25, by no later than six  
3 months before the expiration of the period of probation. The Board may agree in writing to allow  
4 Respondent to pay these costs according to an installment plan. Failure to pay the costs shall  
5 constitute a violation of the probationary conditions.

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

9           8.    **Notification.** Within 30 days of the effective date of the decision, the Respondent  
10 shall provide the Board with evidence that he has provided all persons or entities with whom he  
11 has a contractual or employment relationship such that the relationship is in the area of practice of  
12 professional engineering and/or professional land surveying in which the violation occurred with  
13 a copy of the decision and order of the Board and shall provide the Board with the name and  
14 business address of each person or entity required to be so notified. During the period of  
15 probation, Respondent may be required to provide the same notification of each new person or  
16 entity with whom he has a contractual or employment relationship such that the relationship is in  
17 the area of practice of professional engineering and/or land surveying in which the violation  
18 occurred and shall report to the Board the name and address of each person or entity so notified.

19           9.    **Take And Pass College Level Course.** No later than six months before the  
20 expiration of the period of probation, Respondent shall successfully complete and pass, with a  
21 grade of "C" or better, three college-level courses, approved in advance by the Board or its  
22 designee. For purposes of this subdivision, "college-level course" shall mean a course offered by  
23 a community college or a four-year university of three semester units or the equivalent; "college-  
24 level course" does not include seminars.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Addison Lau. I understand the stipulation and the effect it will  
4 have on my Civil Engineer License. I enter into this Stipulated Settlement and Disciplinary Order  
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
6 Board for Professional Engineers, Land Surveyors, and Geologists.

7  
8 DATED: 2/22/17 Original Signed  
9 ENGLES SZE LEE SHEN  
*Respondent*

10 I have read and fully discussed with Respondent Engles Sze Lee Shen the terms and  
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
12 I approve its form and content.

13  
14 DATED: 2/23/2017 Original Signed  
15 ADDISON LAU  
*Attorney for Respondent*

16 ENDORSEMENT

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

20  
21 Dated: 2-23-17

Respectfully submitted,  
KATHLEEN A. KENEALY  
Acting Attorney General of California  
THOMAS L. RINALDI  
Supervising Deputy Attorney General

24 Original Signed

25 M. TRAVIS PEERY  
26 Deputy Attorney General  
*Attorneys for Complainant*

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28 52351973.doc

**Exhibit A**

**Petition to Revoke Probation No. 853-A**

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 M. TRAVIS PEERY  
Deputy Attorney General  
4 State Bar No. 261887  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-0962  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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 Petition to Revoke  
Probation Against:

Case No. 853-A

12 **ENGLES SZE LEE SHEN**  
13 **1111 Corporate Center Drive, No. 302**  
14 **Monterey Park, CA 91754**

**PETITION TO REVOKE PROBATION**

15 **Civil Engineer License No. C 18906**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Richard B. Moore, PLS (Complainant) brings this Petition to Revoke Probation solely  
21 in his official capacity as the Executive Officer of the Board for Professional Engineers, Land  
22 Surveyors, and Geologists, Department of Consumer Affairs.

23 2. On or about April 4, 1969, the Board for Professional Engineers, Land Surveyors, and  
24 Geologists issued Civil Engineer License Number C 18906 to Engles Sze Lee Shen (Respondent).

25 The Civil Engineer License was in effect at all times relevant to the charges brought herein and  
26 will expire on June 30, 2017, unless renewed.

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1 **PRIOR DISCIPLINE**

2 3. In a disciplinary action entitled "In the Matter of Accusation and First Supplemental  
3 Accusation Against Engles Sze Lee Shen," Case No. 853-A, the Board for Professional  
4 Engineers, Land Surveyors, and Geologists, issued a decision, effective June 29, 2012, in which  
5 Respondent's Civil Engineer License was revoked. However, the revocation was stayed and  
6 Respondent's Civil Engineer License was placed on probation for a period of four (4) years with  
7 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated  
8 by reference.

9 **JURISDICTION**

10 4. This Petition to Revoke Probation is brought before the Board for Professional  
11 Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, under the  
12 authority of Probation Condition Number 4 of the attached decision:

13 **Violation of Probation.** If Respondent violates the probationary  
14 conditions in any respect, the Board, after giving Respondent notice and the  
15 opportunity to be heard, may vacate the stay and reinstate the disciplinary order which  
16 was stayed. If, during the period of probation, an accusation or petition to vacate stay  
17 is filed against Respondent, or if the matter has been submitted to the Office of the  
18 Attorney General for the filing of such, the Board shall have continuing jurisdiction  
19 until all the matters are final, and the period of probation shall be extended until all  
20 matters are final.

21 **CAUSE TO REVOKE PROBATION**

22 **(Failure to Take and Pass College Level Courses)**

23 5. At all times after the effective date of Respondent's probation, Condition 9 stated:

24 **Take and Pass College Level Courses.** No later than six months before  
25 the expiration of the period of probation, Respondent shall successfully complete and  
26 pass, with a grade of "C" or better, three college-level courses, approved in advance  
27 by the Board or its designee. Such courses shall be specifically related to the area of  
28 the violations established in this matter. For purposes of this subdivision, "college-  
level courses" shall mean a course offered by a community college or a four-year  
university of three semester units or the equivalent; "college-level course" does not  
include seminars.

29 6. Respondent's probation is subject to revocation because he failed to comply with  
30 Probation Condition 9, in that he failed to successfully complete any of the three required college-  
level courses, approved in advance by the Board or its designee, by January 29, 2016.

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**PRAYER**

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

1. Revoking the probation that was granted by the Board for Professional Engineers, Land Surveyors, and Geologists in Case No. 853-A and imposing the disciplinary order that was stayed thereby revoking Civil Engineer License No. C 18906 issued to Engles Sze Lee Shen;

2. Revoking or suspending Civil Engineer License No. C 18906, issued to Engles Sze Lee Shen; and

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

DATED: 8/31/16

  
*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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# **Exhibit A**

**Decision and Order**

**Board for Professional Engineers, Land Surveyors, and Geologists Case No. 853-A**

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

In the Matter of the Accusation and First	)	
Supplemental Accusation against:	)	
	)	
ENGLES SZE LEE SHEN	)	Case No. 853-A
1111 Corporate Center Drive, Suite 302	)	
Monterey Park, CA 91754	)	OAH No. 2011100840
	)	
Civil Engineer License No. C 18906,	)	
	)	
Respondent.	)	
_____	)	

**DECISION**

The attached Proposed Decision of the Administrative Law Judge 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 June 29, 2012.

IT IS SO ORDERED May 25, 2012.

*Original Signed*  
\_\_\_\_\_  
BOARD FOR PROFESSIONAL ENGINEERS,  
LAND SURVEYORS, AND GEOLOGISTS  
Department of Consumer Affairs  
State of California

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

In the Matter of the Accusation and First  
Supplemental Accusation Against:

**ENGLES SZE LEE SHEN,**

Civil Engineer License No. C 18906,

Respondent.

Case No. 853-A

OAH No. 2011100840

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 21-22, 2012, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

M. Travis Peery, Deputy Attorney General, represented Joann Arnold (Complainant).

Engles Sze Lee Shen (Respondent) was present and represented himself.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. On April 4, 1969, the Board for Professional Engineers, Land Surveyors, and Geologists (Board) issued Civil Engineer License Number C 18906 to Respondent. The license was in full force and effect at all times relevant and will expire on June 30, 2013.

2. The Accusation was brought by Complainant's predecessor. Respondent submitted a Notice of Defense, which contained a request for a hearing to contest the charges. Complainant subsequently brought the First Supplemental Accusation in her official capacity as the Interim Executive Officer of the Board.

3. During the hearing, the Accusation and First Supplemental Accusation were amended over the objections of Respondent. The amendments to the two operative pleadings were discussed on the record and are reflected in a document entitled "Amendment of Accusation and First Supplemental Accusation to Conform to Proof," which was incorporated into exhibit 1.

4. On June 7, 2001, the Board issued Citation No. 5073-L against Respondent for violating Business and Professions Code section 136,<sup>1</sup> and California Code of Regulations, title 16, section 412 (failure to notify the Board within 30 days of a change of address of record), and Code section 8762 (failure to file a record of survey or notify the County Surveyor's Office of any delay in the filing of a record of survey within 90 days of setting tagged monuments). Respondent was ordered to pay an administrative fine of \$600 to the Board. The citation became final. Respondent paid the fine.

*Liu Parcel*

5. In May 2003, Respondent surveyed a parcel of land on Vravis Circle in the City of Chino Hills. The land was owned by Jeff Liu, Adjoining Parcel Number (APN) 1031-071-06 (Liu Parcel).

6. Respondent prepared a Record of Survey. On July 21, 2003, Respondent filed the Record of Survey with the San Bernardino County Surveyor's Office. On or about September 23, 2003, Dan Moye (Moye), the San Bernardino County Surveyor, sent a letter informing Respondent of numerous deficiencies in the Record of Survey.

7. By a letter dated March 8, 2004, Respondent replied to Mr. Moye's letter, in which he admitted his Record of Survey was incomplete, and intimated that such was due to his busy schedule. Though he stated he did not intend to "defend this record of survey," Respondent provided some explanation for some of the deficiencies noted by Mr. Moye, some of which are discussed below.

8. Mr. Moye was so concerned with the deficiencies he saw in Respondent's Record of Survey that he forwarded a copy of his September 23, 2003 letter to the Board. The Board began investigating the matter, which included forwarding Respondent's Record of Survey, Mr. Moye's letter, and other materials, to an expert witness in the profession of civil engineering, Patrick J. Minturn, who is currently Director of Public Works for Shasta County. Mr. Minturn agreed with Mr. Moye's deficiency findings, with a few minor exceptions. Mr. Minturn's experience in this field is impressive, and his opinions expressed during the hearing were clearly articulated, based on supporting evidence, well reasoned and persuasive. Thus, the combination of opinions expressed by (former) County Surveyor Moye (who has since retired) and expert witness Minturn were sufficient to clearly and convincingly establish the findings below. On the other hand, Respondent presented little evidence opposing these opinions, other than his own testimony which was vague or not persuasive for reasons explained in more detail below.

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<sup>1</sup> All further statutory references are to the Business and Professions Code (Code), and all further regulatory references are to title 16 of the California Code of Regulations (Regulation).

9. Respondent departed from the standard of care in his profession when he failed to include required information in the Record of Survey. Specifically, Respondent omitted the boilerplate statements required by Code section 8764.5 regarding the surveyor's statement, the county surveyor's statement, and the county recorder's statement. Respondent also omitted additional information that should have been included as a note regarding the analysis and methodology he used required by Code section 8764.

10. Respondent departed from the standard of care in his profession by relying on the Assessor's Parcel Map to resolve the boundary of the Liu Parcel in creating the Record of Survey. Assessor Parcel Maps are to be used for taxation purposes only and are not to be relied upon to determine parcel boundaries, mainly because they are generally not accurate and are not created for purposes of establishing boundaries.

11. Respondent departed from the standard of care in his profession by performing inadequate research in preparing the Record of Survey. The Liu Parcel posed a complicated boundary problem for several reasons. The parcel had been involved in a prior subdivision. The chain of title in how the Liu Parcel and several adjoining parcels were created was not straightforward. Vravis Circle is a street that was dedicated to the public in anticipation of developing the adjoining parcels, including the Liu Parcel. In sum, this situation warranted extensive research of the way the Liu parcel, and adjoining parcels, were created, including a search of the chain of title. Respondent failed to conduct that research. Only the legal description for the Liu Parcel was submitted with the Record of Survey, but there was an error in the legal description in that document, which Respondent did not explain. Respondent similarly failed to conduct sufficient research to properly evaluate the relationship and uncertainties regarding the ownership of the underlying fee between the Liu Parcel and Vravis Circle. As Mr. Moyer explained in his letter to Respondent, the lack of research and/or his failure to explain the situation in more detail left the County Surveyor unclear regarding the legal description of the Liu Parcel and its relationship with Vravis Circle.

12. Respondent departed from the standard of care in his profession by failing to carefully resolve the northwesterly boundary of Parcel 1. The Liu Parcel is a portion of Parcel 1, as shown on Parcel Map No. 2340. Based on the problems and difficulties referenced above, it was necessary for Respondent to carefully resolve the northwesterly boundary for Parcel 1 in order to clarify the northwesterly boundary for the Liu Parcel. Since the northwesterly boundary was a critical part of the Liu Parcel boundary and had been surveyed before, careful research by Respondent of that prior statement of the boundary would have allowed Respondent to establish that part of the Liu Parcel and to work off that certain position in an effort to clarify the remaining boundary lines.

13. It was not established that Respondent departed from the standard of care in his profession by accepting a not-of-record monument for the southwest corner of the Record of Survey, labeled "Fd. 1 I.P. L.S. 5479." Mr. Minturn opined that while Respondent's failure to attempt to verify the position given was questionable, it was not necessarily improper or a breach of the standard of care.

14. Respondent departed from the standard of care in his profession by failing to use the literal wording of the legal description for the Liu Parcel over the Assessor's Parcel Map. The problem here was that the closing leg of the legal description of the Liu Parcel lacks a distance call, meaning the loop creating the boundary would not properly close, or put another way, the boundary would not end where it began. This problem had to do with the confusion regarding how the adjoining parcels were created and the order of events in how those parcels were created, which required more research. Instead of conducting that research to clarify this situation, Respondent simply used the information from the Assessor's Parcel Map, and failed to explain this problem in the Record of Survey.

15. Respondent departed from the standard of care in his profession by setting monuments using wooden hubs measuring two inches by two inches. Monuments must be made of durable material, such as metal, that will remain at a location long afterward for subsequent surveyors to find, as required by Code section 8771, subdivision (a), which is the standard of care in the profession. Wood is not durable for this purpose and is not used in the profession as a permanent monument for this reason.

16. Respondent subsequently re-submitted a Record of Survey for the Liu parcel to be recorded, which addressed some, but not all of the deficiencies noted by Mr. Moye. For example, Respondent failed to support his legal description for the Liu Parcel along the area of the boundary where it would not close, and failed to provide supporting research to resolve the potential issue of senior rights in that area.

17. Respondent had not anticipated this survey would be so complicated. Once he realized how much research was required, compared to how much he would be paid by Mr. Liu, Respondent decided to take a number of short-cuts in preparing the Record of Survey and let other projects take priority. As Respondent initially explained to Mr. Moye, the press of business caused him to omit the required boilerplate information from the Record of Survey he initially filed. As demonstrated by his initial explanation to Mr. Moye, Respondent knew full well that information from the Assessor's Parcel Map cannot be used to establish boundaries in a record of survey. Respondent simply decided to use that information because it was close to what his work had revealed up to that point and he did not want to take the extra steps. Respondent conducted some research on the parcel, but it was inadequate and did not provide answers to the problems presented by this complicated situation. In any event, Respondent provided none of his research to Mr. Moye or gave him any indication of the problems he was encountering, meaning his research was of no use. Respondent blames many of the problems he encountered on mistakes and errors contained in prior survey records or recorded documents done by others. Yet, Respondent did very little to highlight those problems or reconcile them for the County Surveyor. That was what he was supposed to do. Finally, Respondent testified that he used wooden monuments because he knew the decking contractor would have to trench in the same area and remove them. However, the standard of care in such instances is to make a durable monument in an off-set position away from danger of being removed but close enough to give evidence of the proper location.

18. It was not established that Respondent was incompetent in his practice of land surveying by heavily relying on the Assessor's Parcel Map to resolve the Liu Parcel boundary. It is known in the industry that Assessor Parcel Maps should not be so used, and it is clear that Respondent understood the same. He expressed that understanding in his letter of March 2004 to Mr. Moye, and again while testifying. His decision to use that information in preparing the Record of Survey for the Liu Parcel was not the result of his ignorance or lack of training or experience in this field; it was simply a by-product of sloppiness and his desire to take short-cuts.<sup>2</sup>

#### *Joshua Street Survey*

19. In or about June 2001, Respondent was retained by the Mei family to do a survey on property located near Joshua Street, in San Bernardino County (Joshua Survey), prepare an application for a parcel subdivision of that property, present the project at public meetings, and record a parcel map. Respondent's fee was \$7,500.

20. On or about July 26, 2001, Respondent performed the survey. On March 7, 2005, Respondent submitted a Corner Record to the County Surveyor regarding his survey.

21. On September 8, 2005, Mr. Moye sent Respondent a letter informing him of numerous deficiencies he found in the Corner Record and requesting him to revisit the field, update his measurements, and file a Record of Survey. Mr. Moye also forwarded a copy of his September 8, 2005 letter to the Board. The Board investigated this matter concurrently with the Liu matter discussed above, including forwarding Respondent's Corner Record, Mr. Moye's letter, and other materials, to Mr. Minturn.

22. Mr. Minturn agreed with some of Mr. Moye's deficiency findings, with the exceptions noted below. Where the two are in agreement, as indicated, such is sufficient to clearly and convincingly establish the findings below. On the other hand, Respondent presented little evidence opposing these opinions, other than his own testimony which was vague and not persuasive for reasons explained in more detail below.

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<sup>2</sup> Incompetence generally is defined as a lack of knowledge or ability in the discharging of professional obligations. Often, incompetence results from a correctable fault or defect. (*James v. Bd. of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1109.) The technical term "incompetency" generally is used to indicate an absence of qualification, ability or fitness to perform a prescribed duty or function. (*Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 838.) In this case, Mr. Minturn simply opined that Respondent was incompetent for so heavily relying on the Assessor's Parcel Map. He did not offer an opinion that the various deficiencies of Respondent's Record of Survey demonstrated that Respondent lacked the skill, ability and expertise to handle such a complicated survey, i.e., that he demonstrated incompetence in his overall performance of the Liu Parcel survey.

23. It was not established that Respondent departed from the standard of care in his profession in the way that he reset the C-N 1/16 corner at the intersection of Beaver Avenue and Muscatel Street. Although Mr. Minturn concedes that Mr. Moye had a reasonable concern in the way that Respondent reset that corner, he opined that Respondent was not necessarily negligent in how he did so.

24. Respondent departed from the standard of care in his profession by failing to use an appropriate method of setting the N 1/16 corner for sections 25 and 30. The controlling monument at the northeast corner of section 25 was not recovered by Respondent to establish the section line. Respondent should have used the Single Proportionate Measurement method along Baldy Mesa Road to do so. Although Respondent used the Single Proportionate Measurement method, he used it incorrectly, i.e., he started at Beaver Avenue, which was appropriate, but he failed to also use Baldy Mesa Road, which was not appropriate. Respondent departed from the standard of care by incorrectly using the Single Proportionate Measurement method to establish the corner in question.

25. It was not established that Respondent departed from the standard of care in his profession by failing to provide reference information for N 1/4, section 25, and tag number of E 1/4, section 25. Although Mr. Minturn concedes that Mr. Moye's request for that reference information was reasonable, he concluded that Respondent was not negligent in failing to provide it initially.

26. It was not established that Respondent departed from the standard of care in his profession in the way he showed measured bearings and distances on the Corner Record. Mr. Minturn conceded that although he was dubious of the accuracy of Respondent's measurements, he had insufficient information to conclude that Respondent breached the standard of care in this regard.

27. Respondent departed from the standard of care in his profession by submitting a Corner Record instead of a Record of Survey. Code section 8773, subdivision (b), requires a Record of Survey to be filed instead of a Corner Record when a corner from a previous recorded survey (a lost corner) cannot be located and must be reestablished. This law also serves as the standard of care in this profession. Corner Records are appropriate only for routine surveys in which all prior corners can easily be located. In this case, Respondent had to reestablish a lost corner. The standard of care required him to file a Record of Survey instead of a Corner Record.

28. Respondent departed from the standard of care in his profession by failing to submit the Corner Record within 90 days from the date of the survey. Regulation 464, subdivision (c), required that the Corner Record be submitted within 90 days of the survey, which also serves as the standard of care in this profession. It took almost four years for Respondent to submit his Corner Record.

29. Respondent explained that the delay in submitting the Corner Record was due to various circumstances. For example, the property owners changed their mind mid-way through the process regarding how many parcels to subdivide the property into. The subdivision process was slow and laborious. At some point, the property owners hired another individual to complete the subdivision process, who filed a Record of Survey unbeknownst to Respondent. However, it was not established that any of these events occurred within 90 days of the time Respondent initially conducted his survey. In any event, none of these events excused Respondent from complying with the law. Respondent's explanation why he decided to file a Corner Record instead of a Record of Survey was unclear and unpersuasive.

30. It was not established that Respondent was incompetent in his practice of land surveying regarding the method he used in setting the N 1/16 corner for sections 25 and 30. Mr. Minturn testified that Respondent was incompetent in this regard because he failed to use the Single Proportionate Measurement method to establish the northeast corner. However, in reality, Respondent used the Single Proportionate Measurement method, he simply used it incorrectly. It was not established that Respondent lacked the qualification, ability or fitness to perform that method of measurement. (See footnote no. 2 above.)

#### *Lieng Survey*

31. In May 2004, Mui Lieng hired Respondent to perform land surveying services for her property located at 705 Padilla Street in San Gabriel, California. Respondent was hired under a verbal agreement to establish the boundaries of Ms. Lieng's property and document the encroachment on her property of a neighbor's fence for litigation purposes. Respondent did not advise Ms. Lieng that a written contract was required by law for his services, nor did she indicate a reluctance to execute a written contract. Ms. Lieng agreed to pay Respondent \$1,500 for his work, which she later did.

32. On May 22, 2004, Respondent surveyed Ms. Lieng's property, set monuments at or near the four corners of her property and then prepared a draft Record of Survey. However, Respondent advised Ms. Lieng that if he recorded the Record of Survey, it would show the encroaching fence and would become a permanent record. Respondent advised Ms. Lieng that if he waited to file the Record of Survey until the fence encroachment issue was resolved, the Record of Survey would reflect conditions with no fence appearing on the map. Ms. Lieng agreed.

33. In July 2005, Ms. Lieng resolved the fence encroachment matter and had the fence removed from her property. At that time, she advised Respondent of the resolution. Over the next three years, Ms. Lieng contacted Respondent's office over 20 times to urge him to action, but she received little or no response. In November 2008, Respondent filed a draft Record of Survey, which was reviewed and returned to him the same day for corrections. Respondent did not record the Record of Survey until November 17, 2009.

34. As was established by the persuasive expert testimony of Mr. Minturn, Respondent departed from the standard of care in his profession, as follows:

A. Respondent failed to execute a written contract to provide professional land surveying services, which is required by Code section 8759, and is the standard of care in the profession.

B. Once Respondent conducted a field survey and set monuments, he was required to file the Record of Survey within 90 days, as required by Code section 8762 and the standard of care in the profession. Over four years elapsed between the time that Respondent conducted his field survey and set monuments, and when he finally filed the draft Record of Survey. Although Respondent and Ms. Lieng discussed delaying the filing of the draft Record of Survey for reasons related to her litigation, such is not a valid reason to delay filing a Record of Survey once the field survey is done and monuments set. Respondent failed to advise Ms. Lieng of this legal requirement when they initially discussed his services. Moreover, Code section 8762, subdivision (d), allows a delay in filing a Record of Survey in limited instances, when the county surveyor has been advised of the delay in writing, including the reason for the delay and the estimated duration of the delay. By failing to advise Ms. Lieng of the legal requirements of filing a Record of Survey once a field survey is done and monuments set, or utilizing the provision of Code section 8762, subdivision (d), Respondent departed from the standard of care when he delayed in filing the draft Record of Survey.

C. Once Respondent's draft Record of Survey was returned to him with corrections, he had 60 days to re-submit it, as required by Code section 8767, which is the standard of care in the profession. Nearly one year lapsed after the draft Record of Survey was returned to Respondent before he finally recorded it.

#### *Other Relevant Facts*

35. Respondent has been in private practice his entire career. He still works full-time, and has one part-time employee. In over 40 years of licensure with the Board, Respondent has no prior history of disciplinary action. He previously held a similar license in Arizona, but it expired. Respondent has no known civil judgments against him relating to his professional license, except for one recent small claims judgment in the amount of \$600.

36. It was not established that Respondent caused any financial damage to the three consumers involved in this case. However, it does appear that all three consumers were dissatisfied with Respondent's work. In the Liu Parcel, for example, Mr. Liu hired another professional to complete the survey of his property. In the Joshua Survey, the Mei family paid Respondent only half of his fees and subsequently hired another professional to complete the survey and subdivision project. Although Ms. Lieng paid Respondent's fee in full and he ultimately recorded a Record of Survey, she was obviously unhappy with his extreme delay in doing so.

37. Respondent has accepted responsibility for most of his shortcomings revealed in this matter. No evidence was presented indicating that he has changed his survey procedures in light of the three complaints involved in this case.

*Costs*

39. As established by cost certifications submitted under Code section 125.3, the Board has incurred the following costs in the investigation and prosecution of this matter:

A.	Mr. Minturn's technical expert fees	\$ 1,950.00
B.	Department of Justice attorneys' fees	\$22,675.75
	Total	<u>\$24,625.75</u>

40. The first attorney from the Department of Justice assigned to this matter worked on the case in 2009 and 2010 and incurred fees totaling \$9,732.50. The attorney who actually prosecuted the case became involved in it in 2011 and since then has incurred a substantial amount of the total attorneys' fees.

41. The recent economic downturn has negatively impacted Respondent's business and personal finances. He has lost one property to foreclosure and has been forced to sell another. This explains why he is continuing to work full-time at his age. For this reason, Respondent does not believe that he can fully pay a significant cost order.

LEGAL CONCLUSIONS

*Burden and Standard of Proof*

1. The burden of proof in this discipline matter involving a professional license is on Complainant, and the standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) (Factual Findings 1-3.)

*Cause for Discipline Under the Accusation*

2. Respondent is subject to disciplinary action under Code section 8780, subdivision (b), with regard to the Liu Parcel, in that Respondent was negligent in the practice of professional land surveying. However, it was not established that Respondent was incompetent in the practice of professional land surveying on this project. (Factual Findings 5-18.)

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3. Respondent is subject to disciplinary action under Code section 8780, subdivision (d), with regard to the Liu Parcel, in that Respondent committed acts of unprofessional conduct by violating provisions of the Professional Land Surveyors' Act, namely, Code sections 8764 (omitting required information of analysis and methodology), 8764.5 (omitting boilerplate information), and 8771, subdivision (a) (using wood as a durable monument). (Factual Findings 5-18.)

4. Respondent is subject to disciplinary action under Code section 8780, subdivision (b), with regard to the Joshua Survey, in that Respondent was negligent in the practice of professional land surveying. However, it was not established that Respondent was incompetent in the practice of professional land surveying on this project. (Factual Findings 19-30.)

5. Respondent is subject to disciplinary action under Code section 8780, subdivision (d), with regard to the Joshua Survey, in that Respondent committed acts of unprofessional conduct by violating provisions of the Professional Land Surveyors' Act, namely, violating Code section 8773, subdivision (b) (submitting a corner record when a record of survey was required), and Regulation 464, subdivision (c) (failing to submit a corner record within 90 days of survey). (Factual Findings 19-30.)

*Cause for Discipline Under the First Supplemental Accusation*

6. Respondent is subject to disciplinary action under Code section 8780, subdivision (b), with regard to the Lieng Survey, in that Respondent was negligent in the practice of professional land surveying. (Factual Findings 31-34.)

7. Respondent is subject to disciplinary action under Code section 8780, subdivision (d), with regard to the Lieng Survey, in that Respondent committed acts of unprofessional conduct by violating provisions of the Professional Land Surveyors' Act, namely, Code sections 8759 (failing to execute a written contract); 8762 (failing to file a record of survey within 90 days of setting monuments); and 8767 (failing to re-submit a record of survey with 60 days). (Factual Findings 31-34.)

*Disposition*

8A. The Board has not published disciplinary guidelines per se, but it has promulgated Regulation 419, which provides that a minimum disciplinary order shall be reproof and the maximum shall be revocation (subd. (a)); if warranted by extenuating or mitigating factors, a disciplinary order may be stayed under probationary conditions for a period of at least two years (subd. (b)); and any decision containing a stayed disciplinary order shall include a variety of recommended conditions, depending on the established misconduct (subd. (c)). In addition, the Board makes public on its website past disciplinary decisions reached through hearing or settlement.

8B. In this case, it was established that Respondent was negligent and violated core laws pertaining to his profession on three different projects. His violations are sufficiently serious as to call into question his ability to properly conduct surveys without the necessity of some remediation. Yet, it was not proven that Respondent has taken any steps to remedy the methods that resulted in his misconduct. Therefore, serious discipline is warranted to protect the public.

8C. On the other hand, it was not established that the drastic measure of revocation is warranted. There are several mitigating facts that are in Respondent's favor. For example, after over 40 years of licensure with the Board, Respondent has no prior disciplinary history. None of the established misconduct involved dishonesty, fraud, misrepresentation or similar forms of intentional malfeasance. The three projects in question occurred several years ago. It was not established that Respondent was incompetent in this matter. These factors tend to show that Respondent's problems are explained by sloppiness over years of performing land surveys. It was not established that Respondent is unable to handle complicated surveys, just that he was willing to take short-cuts when surveys became more difficult than they appeared initially. Respondent was candid and cooperative during the hearing of this matter and accepted a large measure of responsibility for his violations, which is demonstrative of a person willing to accept his faults and correct them. Although the three consumers involved in this case were obviously unhappy with Respondent's services, it was not established that any were financially harmed.

8D. Under the circumstances, a stayed revocation of Respondent's license for a probationary period of four years is warranted. Since Respondent was negligent on multiple occasions and violated core laws, it is appropriate to require him to take and pass the Board's examination and appropriate college level courses. So too is requiring him to give notification of this discipline to his clients. The absence of intentional malfeasance means a suspension and ethics courses are not warranted. (Factual Findings 1-37.)

#### *Costs*

9A. A licensing board is entitled to reasonable costs incurred in the investigation and prosecution of a disciplinary matter pursuant to Code section 125.3.

9B. In the California Supreme Court case of *Zuckerman vs. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the court outlined three factors that must exist in a valid cost recovery scheme. One factor is to reduce or eliminate costs in a manner that will insure a licensee with a potentially meritorious defense or claim is not deterred from exercising his or her right to a hearing. With regard to that factor, the court described the following circumstances where costs should be reduced or eliminated: (1) when a licensee would be unfairly penalized by using the hearing process to dismiss some but not all charges or to reduce the severity of proposed discipline; (2) if a licensee will be financially unable to make later payments; and (3) when the involved board has conducted a disproportionately large investigation to prove a licensee has engaged in relatively innocuously misconduct. (*Id.* at p. 45.)

9C. In this case, each of the *Zuckerman* factors exist, in varying degrees. For example, although Complainant proved the bulk of her case, Respondent still prevailed on the two incompetence claims, a victory for a professional licensee that is not insignificant. Moreover, Respondent is experiencing financial difficulties and is not sure he can fund the entire cost bill. Finally, there appears to be a duplication of effort by Complainant's counsel, in that Complainant's former attorney was replaced by the current prosecutor midway through the case, resulting in a what can be argued to be a disproportionately large attorneys' fees total. Under these circumstances, a reduction of the total costs by eliminating the first attorney's charges is warranted. Therefore, the Board shall be reimbursed costs totaling \$14,893.25 (Factual Findings 39-41.)

### ORDER

Civil Engineer License No. C 18906, issued to Respondent Engles Sze Lee Shen, is revoked. The revocation is stayed and Respondent's license is placed on probation for a period of four years under the following terms:

1. **Obey All Laws.** Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.
2. **Submit Reports.** Respondent shall submit such special reports as the Board may require.
3. **Tolling of Probation.** The period of probation shall be tolled during the time Respondent is practicing exclusively outside the state of California. If, during the period of probation, Respondent practices exclusively outside the state of California, Respondent shall immediately notify the Board in writing.
4. **Violation of Probation.** If Respondent violates the probationary conditions in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against Respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.
5. **Completion of Probation.** Upon successful completion of all of the probationary conditions and the expiration of the period of probation, Respondent's license shall be unconditionally restored.
6. **Costs Recovery.** Respondent shall reimburse the Board reasonable costs of its investigation and prosecution of this matter in the amount of \$14,893.25, by no later than six months before the expiration of the period of probation. The Board may agree in writing to



allow Respondent to pay these costs according to an installment plan. Failure to pay the costs shall constitute a violation of the probationary conditions.

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

8. **Notification.** Within 30 days of the effective date of the decision, Respondent shall provide the Board with evidence that he has provided all persons or entities with whom he has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or professional land surveying in which the violation occurred with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, Respondent may be required to provide the same notification of each new person or entity with whom he has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or land surveying in which the violation occurred and shall report to the Board the name and address of each person or entity so notified.

9. **Take and Pass College Level Courses.** No later than six months before the expiration of the period of probation, Respondent shall successfully complete and pass, with a grade of "C" or better, three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of the violations established in this matter. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars.

Dated: March 8, 2012

*Original Signed*  
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ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings

