

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

In the Matter of the Accusation against:	)	
	)	
TSAI-SHYI CHU	)	Case No. 1215-A
4009 Alameda De Las Pulgas	)	
San Mateo, CA 94403	)	OAH No. 2019110581
	)	
Civil Engineer License, No. C 29056,	)	
	)	
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 March 11, 2021.

IT IS SO ORDERED February 4, 2021.

*Original Signed*

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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 Against:**

**TSAI-SHYI CHU,**

**Civil Engineer License No. C 29056**

**Respondent.**

**Agency Case No. 1215-A**

**OAH No. 2019110581**

**PROPOSED DECISION**

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on October 6 and November 6, 2020, by videoconference and telephone.

Deputy Attorney General Michael B. Franklin represented complainant Richard B. Moore, P.L.S., Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs.

Respondent Tsai-Shyi Chu represented himself.

The record closed and the matter was submitted for decision on November 6, 2020.

## **FACTUAL FINDINGS**

1. On July 12, 1978, the Board for Professional Engineers, Land Surveyors, and Geologists (Board) issued Civil Engineer License No. C 29056 to respondent Tsai-Shyi Chu. The license was in full force and effect at all times relevant to this matter and is scheduled to expire on March 31, 2021.

2. On July 31, 2019, Richard B. Moore, P.L.S., issued an accusation in his official capacity as Executive Officer of the Board, seeking to impose discipline on respondent's license based on allegations of negligence in preparing plans for a home remodeling project, and failure to include a procedure for termination in the contract with the homeowner. Respondent filed a notice of defense, and this hearing followed.

### **The Project**

3. Homeowner Jennifer Luu hired Chu Design Associates, Inc. (Chu Design), to provide plans and calculations for an addition and remodeling project on a home in San Jose. Luu met with designer Jack Chu regarding the project at Chu Design's office and during site visits at the home. Jack Chu is not a licensed professional engineer; he is respondent's son. Luu understood that Chu Design had a professional engineer on staff, but she did not meet with him.

4. On March 25, 2018, Luu signed a \$5,000 contract with Chu Designs, which was prepared by Jack Chu while she was in the office. Jack Chu signed the contract on behalf of Chu Design. Jack Chu also signed the contract on the line

reserved for the signature of respondent Tsai-Shyi Chu, and stamped the contract with respondent's professional engineer stamp.

5. The contract did not include a description of the procedure to be used to terminate the contract.

6. Luu paid a total of \$5,000, in checks made out to Jack Chu, at his request.

7. Chu Design produced a set of plans dated March 31, 2018, which contained respondent's professional engineer stamp.

8. The construction plans were approved by the City of San Jose (City) on July 13, 2018. Construction began on August 28, 2018.

9. Construction was subsequently halted by the City due to a number of issues discovered during inspections, including incorrect information on the plans regarding the setback of improvements from the property line; incomplete building elevation information on the plans; and insufficient construction details on the plans regarding the building foundation.

10. The relationship between Luu and Jack Chu deteriorated during their communications about these problems and necessary changes to the plans.

11. Chu Design prepared a revised set of plans in October 2018, which also contained respondent's professional engineer stamp, but Jack Chu refused to release those plans to the homeowner without additional payment. The home's foundation required plans for design of an eight-foot retaining wall in the basement. Jack Chu demanded an additional \$1,200 for this work and Luu refused to pay, leading to termination of the contract. Luu later hired another engineer to complete the plans for the project, at an additional cost.

12. Luu filed a complaint with the Board on November 21, 2018.

13. Julie Baker, an enforcement analyst for the Board, investigated the homeowner's complaint, including review of documents submitted by both Luu and respondent. Baker also hired an industry expert to review the complaint.

14. Baker testified credibly that it is a violation of the Board's rules for a professional engineer to allow another person to use his stamp, referring to Business and Professions Code sections 6735 and 6787, subdivision (d).

15. Glenn Goepfert, P.E., testified as an expert witness on behalf of complainant and wrote a report dated May 26, 2019. Goepfert has been a licensed professional engineer since 1987. He worked for many years in local public agencies, and has also worked as a consultant. He has participated as a design engineer and has reviewed many projects similar to this one in his work for public agencies. Goepfert has served as an engineering expert for the Board since 2005.

16. The testimony and opinions of Goepfert were credible and persuasive, and established that respondent's work on the project departed from the standard of practice for professional engineers in several respects, as detailed below.

17. There were multiple errors or instances of confusing information on the Foundation and Floor Framing Plan. The caption on a detail drawing described an existing retaining wall as being 4'6" but dimensions on the drawing itself showed the wall as being 3'10." The plan had inconsistent information about an eight-foot concrete retaining wall, stating that the existing retaining wall is to remain, but also giving an instruction to form a new footing. The plan also contained confusing information in the legend to the graphic details, with the symbols for "existing foundation" and "new foundation" appearing to be identical. The compass mark on

this sheet of the plans also had the "North" arrow misoriented, which may lead to confusion in determining the correct location for improvements.

Goepfert explained that the standard of practice requires reconnaissance and careful checking of details during the design process. If the existing conditions were difficult to determine precisely before construction, the engineer should make a note on the plan telling the contractor to verify conditions in the field, and directing that the engineer be present during excavation to confirm the design or alter it as required by the revealed field conditions. No such notation was included on respondent's plans.

In Goepfert's opinion, the above errors demonstrate a failure to properly assess existing conditions, or to establish a contingent procedure for confirming uncertain conditions in designing the foundation improvements, and constitute negligence.

18. The Proposed Site/Roof Plan contained incorrect information about the setback of improvements from the property line. On the right side, the drawing showed the setback as 6'7" but that was incorrect.<sup>1</sup> The contractor needs correct information about the setback distance, in order to locate the improvement. This error was one reason the City inspector halted construction.

19. The Rear Elevation and Front Elevation contained incorrect information. On each elevation, the dimension of the first floor to the plate level is shown as 9'1"

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<sup>1</sup> The October 2018 revised plan correctly showed the setback as 5'7" but did not have a "cloud" drawn around the figure to indicate a change.

but that was incorrect.<sup>2</sup> This creates a risk that the contractor might build the improvement to the wrong dimensions.

20. In Goepfert's opinion, providing incorrect setback and elevation dimensions was below the standard of practice and constituted negligence. He was aware that the plans with incorrect setback information had been approved by the City, but this did not change his opinion regarding respondent's errors.

21. There was a factual dispute between Luu and respondent, but resolving the issue is not required to reach a decision in this matter. Respondent contended that Luu's contractor made unapproved changes to the plan design while in the field. Luu denies that this occurred. Goepfert was aware of this dispute, but it did not affect his conclusions regarding respondent's negligence, which rested on the errors and omissions contained within the plans themselves.

## **Prior Citations**

22. On January 11, 2012, the Board issued Citation No. 10141-L to respondent for aiding and abetting an unlicensed person in two separate projects, allowing the unlicensed person to execute contracts that included civil engineering services that respondent then performed; failing to include in the contract his name, license number, and description of the procedure used to terminate the contract; and failing to report to the Board an arbitration award issued against his company. The

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<sup>2</sup> The October 2018 revised plan correctly showed this as 10'1" but did not include a cloud or other note indicating a change.

citation ordered respondent to pay a fine of \$1,750 and to cease and desist from violating relevant sections of the Business and Professions Code.

23. On January 6, 2016, the Board issued Citation No. 10470-L to respondent for aiding and abetting an unlicensed person by performing professional engineering services for a business that did not have the legal authority to offer those services. The citation ordered respondent to pay a fine of \$2,000 and to cease and desist from violating the relevant section of the Business and Professions Code.

### **Respondent's Evidence**

24. Respondent does not believe that he did anything wrong in connection with this project. Respondent contends that the homeowner's complaint to the Board was retaliation for the breakdown in the relationship between Luu and Jack Chu.

25. Respondent believes that because the City approved the plans, the "setback issue doesn't exist." He did not dispute that the approved plans contained an error in the setback dimension. Nor did he dispute any of the other errors on the plans identified by Goepfert.

26. Respondent admits that as the engineer of record on the plans, he is responsible for the contents of the plans. He also admits that he is responsible for the contract the homeowner entered into for professional engineering services.

27. Respondent admitted that he did not sign or stamp the contract for this project. He authorized his son Jack Chu to use his stamp and sign for him. Respondent argued that he is too busy to stamp every drawing and plan.

## **Costs**

28. The Board has incurred a total of \$9,213.25 in costs to investigate and prosecute this accusation, including \$1,350 in expert costs and \$7,863.25 in attorney's fees. These costs are supported by certifications that describe the tasks performed, time spent on each task, and method of calculating the cost, in compliance with the requirements of California Code of Regulations, title 1, section 1042. In the absence of any evidence to the contrary, these costs are found to be reasonable.

## **LEGAL CONCLUSIONS**

1. The Board may impose license discipline on a professional engineer who commits negligence in his practice, or who commits violations of the laws governing the practice of professional engineering. (Bus. & Prof. Code, § 6775, subds. (c) & (h).)

2. Respondent committed negligence in failing to properly assess existing conditions or to establish a contingent procedure for confirming uncertain conditions. (Factual Finding 17.) Cause for discipline exists under Business and Professions Code section 6775, subdivision (c).

3. Respondent committed negligence by providing incorrect setback and elevation information on the approved construction plans. (Factual Findings 18-20.) Cause for discipline exists under Business and Professions Code section 6775, subdivision (c).

4. A professional engineer must use a written contract when contracting to provide professional engineering services to a client, and the contract must include a description of the procedure to be used by both parties to terminate the contract.

(Bus. & Prof. Code, § 6749, subd. (a)(5).) Respondent's contract with the homeowner failed to include the required information regarding contract termination. (Factual Finding 5.) Cause for discipline exists under Business and Professions Code section 6775, subdivision (h).

5. The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.)

6. Respondent's negligence in preparing plans created a risk of errors in construction, and led to the City halting construction on the homeowner's project. If this were an isolated incident, it might be appropriate to place respondent on probation with terms and conditions to ensure that he understands his professional responsibilities. In this case, however, respondent had two prior citations for aiding and abetting unlicensed activity, and one of those citations also provided respondent notice that he must include termination language in his contracts. Respondent does not accept responsibility for his actions and his testimony evidenced a lack of understanding of his professional responsibilities. Given these circumstances, public protection requires revocation of respondent's license.

## **Costs**

7. Business and Professions Code section 125.3 provides that a licensee found to have committed a violation of the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Respondent violated provisions of the laws governing professional engineers, as set forth in Legal Conclusions 2 through 4. As set forth in Factual Finding 28, the Board

incurred \$9,213.25 in reasonable costs for the investigation and enforcement of this matter.

8. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these considerations support a reduction in cost recovery here.

## **ORDER**

1. Civil Engineer License No. C 29056, issued to respondent Tsai-Shyi Chu, is revoked.
2. Respondent Tsai-Shyi Chu shall pay the Board's costs of investigation and enforcement, in the amount of \$9,213.25.

DATE: 12/03/2020

*Original Signed*

HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 1215-A

13  **TSAI-SHYI CHU**  
4009 Alameda de Las Pulgas  
14 San Mateo, CA 94403

**ACCUSATION**

15 **Civil Engineer No. C 29056**

16 Respondent.

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18 **PARTIES**

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

22 2. On or about July 12, 1978, the Board for Professional Engineers, Land Surveyors,  
23 and Geologists issued Civil Engineer Number C 29056 to Tsai-Shyi Chu (Respondent). The  
24 Civil Engineer was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on March 31, 2021, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board for Professional Engineers, Land  
28 Surveyors, and Geologists (Board), Department of Consumer Affairs, under the authority of the

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

3 **STATUTORY PROVISIONS**

4 4. Section 6775 of the Code states, in pertinent part, that:

5 [T]he board may publicly reprove, suspend for a period not to exceed two years, or revoke  
6 the certificate of any professional engineer licensed under this chapter on any of the following  
7 grounds:

8 . . .

9 (c) Any negligence or incompetence in his or her practice.

10 . . .

11 (f) Aiding or abetting any person in the violation of any provision of this chapter or any  
12 regulation adopted by the board pursuant to this chapter.

13 . . .

14 (h) A violation of any provision of this chapter or any other law relating to or involving the  
15 practice of professional engineering.

16 5. Section 6749 of the Code states, in pertinent part, that:

17 (a) A professional engineer shall use a written contract when contracting to provide  
18 professional engineering services to a client pursuant to this chapter. The written contract shall  
19 be executed by the professional engineer and the client or the client's representative prior to the  
20 professional engineer commencing work, unless the client knowingly states in writing that work  
21 may be commenced before the contract is executed. The written contract shall include, but not  
22 be limited to, all of the following:

23 . . .

24 (5) A description of the procedure to be used by both parties to terminate the contract.

25 **COST RECOVERY**

26 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
27 administrative law judge to direct a licentiate found to have committed a violation or violations of  
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **FACTUAL ALLEGATIONS**

4 7. Chu Design Associates, Inc. (Chu Design) prepared plans and calculations for a  
5 master suite addition and remodel of a home in San Jose, California. Respondent stamped and  
6 signed the plans and calculations. Chu Design entered into the contract on March 25, 2018, with  
7 homeowner J.L. for \$5,000.00.

8 8. Construction plans were approved by the City of San Jose on or about July 13, 2018,  
9 and construction began August 28, 2018.

10 9. Construction was halted by the City of San Jose due to a number of issues, including  
11 the setback of the improvements from the property line called out in the plans was incorrect, the  
12 building elevation information called out on the plans was incomplete. In addition, the  
13 construction details necessary for the foundation were insufficient.

14 10. Chu Design and J.L. terminated the contract over an additional charge of \$1,200.00  
15 for the design of an 8-foot retaining wall for a portion of the foundation to accommodate a  
16 previously existing basement.

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Negligence)

19 11. Respondent is subject to disciplinary action under section 6775(c) in that Respondent  
20 failed to exercise sufficient professional care by not properly assessing existing conditions, or  
21 alternatively, failed to establish a contingent procedure for confirming uncertain conditions to  
22 provide a workable design for foundation improvements. This error led to the construction to be  
23 halted and the dispute that led to the termination of the contract as described in paragraph 10  
24 above. This conduct constitutes negligence.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Negligence)

27 12. Respondent is subject to disciplinary action under section 6775(c) in that Respondent  
28 failed to exercise sufficient professional care in that Respondent provided incorrect setback and

1 incomplete elevation information on the approved construction plans as described in paragraph 9  
2 above. This conduct constitutes negligence.

3 **THIRD CAUSE FOR DISCIPLINE**

4 (Failure to Include a Procedure for Termination of Contract)

5 13. Respondent is subject to disciplinary action under section 6775(h), for violation of  
6 6749(a)(5), in that Respondent's contract with the homeowner in this case failed to include a  
7 description of the procedure to be used by both parties to terminate the contract.

8 **DISCIPLINE CONSIDERATIONS**

9 14. To determine the degree of discipline, if any, to be imposed on Respondent,  
10 Complainant alleges that on or about January 11, 2012, in a prior action, the Board for  
11 Professional Engineers, Land Surveyors, and Geologists issued Citation Number 10141-L and  
12 ordered Respondent to pay a fine of \$1,750.00 for the violation of sections 6749(a), 6749(a)(3)  
13 and (5) and 6775(f). That Citation is now final.

14 15. To determine the degree of discipline, if any, to be imposed on Respondent,  
15 Complainant also alleges that on or about January 6, 2016, in a prior action, the Board for  
16 Professional Engineers, Land Surveyors, and Geologists issued Citation Number 10470-L and  
17 ordered Respondent to pay a fine of \$2,000.00 for the violation of section 6775(f). That Citation  
18 is now final.

19 **PRAYER**

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

- 23 1. Revoking or suspending Civil Engineer Number C 29056, issued to Tsai-Shyi Chu;  
24 2. Ordering Tsai-Shyi Chu to pay the Board for Professional Engineers, Land  
25 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,  
26 pursuant to Business and Professions Code section 125.3; and,

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

DATED: 7/31/19

*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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