

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

In the Matter of the Accusation against:

J. B. NEWTON
19697 Day Lane
Redding, CA 96002

Civil Engineer License No. C 55936,

Respondent.

Case No. 951-A

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 September 2, 2011.

IT IS SO ORDERED July 28, 2011.

Original Signed

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

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
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7 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **J.B. NEWTON**
15 **19697 Day Street**
16 **Redding, California 96002**
17 **Civil Engineer License No. C 55936**

18 Respondent.

Case No. 951-A

OAH Case No. 2010030525

19 **STIPULATED SETTLEMENT AND**
20 **DISCIPLINARY ORDER**

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

23 PARTIES

24 1. Joanne Arnold (Complainant) is the Acting Executive Officer of the Board for
25 Professional Engineers, Land Surveyors and Geologists. She brought this action solely in her
26 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
27 State of California, by Sterling A. Smith, Deputy Attorney General.

28 2. Respondent J.B. Newton (Respondent) is represented in this proceeding by attorney
Tyler M. Lalaguna, whose address is: Tyler M. Lalaguna, Wells, Small, Fleharty & Weil, 292
Hemsted Drive, 2nd Floor, P.O. Box 991828, Redding, California 96099-1828.

///

1 3. On or about July 26, 1996, the Board for Professional Engineers, Land Surveyors and
2 Geologists (Board) issued Civil Engineer License No. C 55936 to Respondent. The Civil
3 Engineer License was in full force and effect at all times relevant to the charges brought in
4 Accusation No. 951-A and will expire on December 31, 2012, unless renewed.

5 JURISDICTION

6 4. Accusation No. 951-A was filed before the Board, Department of Consumer Affairs,
7 and is currently pending against Respondent. The Accusation and all other statutorily required
8 documents were properly served on Respondent on August 12, 2010. Respondent timely filed her
9 Notice of Defense contesting the Accusation. A copy of Accusation No. 951-A is attached as
10 exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 951-A. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

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

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

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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 Civil Engineer License No. C 55936 issued to Respondent
8 is revoked. However, the revocation is stayed and Respondent is placed on probation for
9 three (3) years on the following terms and conditions.

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

12 2. **Submit Reports.** The Respondent shall submit such special reports as the Board may
13 require.

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

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

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

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6. **Cost Recovery.** The Respondent is hereby ordered to reimburse the Board the amount of \$4,717.50 thirty (30) months from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.

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

8. **Ethics Course.** Within two (2) years of the effective date of the decision, the Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.

9. **Take And Pass Examination.** Within two (2) years of the effective date of the decision, Respondent shall successfully complete and pass, with a grade of "C" or better, one college-level course, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation and all costs associated with the course shall be paid by Respondent. 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. Respondent shall provide the Board with official proof of completion of the required course.

ACCEPTANCE

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

DATED:

5/12/11

Original Signed

J.B. NEWTON
Respondent

1
2 I have read and fully discussed with Respondent J.B. Newton the terms and conditions and
3 other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its
4 form and content.

5 Wells, Small, Fleharty & Weil

6 *original signed*

DATED: May 13, 2011

~~Tyler M. Lalaguna~~
Attorney for 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, Land Surveyors, and
12 Geologists of the Department of Consumer Affairs.

13 Dated: May 31, 2011

Respectfully submitted,

KAMALA D. HARRIS

Attorney General of California

ARTHUR D. TAGGART

~~Supervising~~ Deputy Attorney General

17 *original signed*

18 ~~STERLING A. SMITH~~

Deputy Attorney General

Attorneys for Complainant

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Exhibit A

Accusation No. 951-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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4 State Bar No. 84287
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7 *Attorneys for Complainant*

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

10
11 In the Matter of the Accusation Against:

Case No. 951-A

12 **J. B. NEWTON**
19697 Day Lane
13 **Redding, CA 96002**
Civil Engineer License No. C 55936

FIRST AMENDED ACCUSATION

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about July 26, 1996, the Board for Professional Engineers and Land Surveyors
22 issued Civil Engineer License Number C 55936 to J. B. Newton ("Respondent"). The Civil
23 Engineer License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on December 31, 2010, unless renewed.

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26 ///

27 ///

28 ///

1 **JURISDICTION**

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

6 4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove,
7 suspend for a period not to exceed two years, or revoke the certificate of any professional
8 engineer registered under this chapter:

9 ". . . (c) Who has been found guilty by the board of negligence or incompetence in his or
10 her practice.

11 . . .

12 (h) Who violates any provision of this chapter."

13 5. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 6. Section 118, subdivision (b), of the Code provides that the
18 suspension/expiration/surrender/cancellation of a license shall not deprive the
19 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
20 within which the license may be renewed, restored, reissued or reinstated.

21 **BACKGROUND**

22 7. In or about September 2007, consumers C.G. and J.G. purchased a single family
23 residence located at 4041 Rainbow Drive, Weed, California constructed by River Valley
24 Construction. As part of said construction, River Valley Construction built a four foot high,
25 concrete retaining wall at the rear of the residence without engineering or necessary permits from
26 the Siskiyou County Building Department.

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28 ///

1 8. In or about December 2007, River Valley Construction hired Respondent J.B.
2 Newton to determine and evaluate the as-built construction of the aforesaid retaining wall to
3 obtain approval of the retaining wall by the Siskiyou County Building Department.

4 9. Based upon her discussions with and review of photographs provided to her by River
5 Valley Construction, Respondent prepared "Structural Calculations for As-Built Retaining Wall
6 for River Valley Construction" dated January 4, 2008, setting forth structural calculations and
7 details for the as-built construction of the retaining wall, and submitted them to the Siskiyou
8 County Building Department for approval. Thereafter, the Siskiyou County Building Department
9 approved Respondent's submittal, subject to a required "special inspection" of the retaining wall
10 by a California licensed engineer or architect.

11 10. In or about March 2008, River Valley Construction again hired Respondent to
12 perform the required "special inspection" of the subject retaining wall. On or about March 3,
13 2008, Respondent visually inspected the subject retaining wall and prepared a "Special
14 Inspector's Report" dated March 6, 2008, stating that "all work done on this job to date has been
15 satisfactorily completed and conforms to the approved plans and requirements of the Siskiyou
16 County Code." Said "Special Inspector's Report" was submitted to the Siskiyou County Building
17 Department.

18 11. On or about March 13, 2008, Respondent received photographs of excavations of
19 footings and other components of the subject retaining wall. Respondent acknowledged that
20 according to the photographs, the retaining wall was not built as described in her "Structural
21 Calculations for As-Built Retaining Wall for River Valley Construction" dated January 4, 2008.
22 Respondent notified River Valley Construction that she would request testing to reveal the as-
23 built construction of the retaining wall, including the rebar, concrete thickness and rebar spacing
24 of the retaining wall.

25 12. Some time after June 1, 2008, at the request of River Valley Construction,
26 Respondent performed another visual inspection of the subject retaining wall to assess the
27 structural suitability of certain footings along the patio. Based upon a visual inspection, and
28 without any testing to reveal the as-built construction of the retaining wall, including the rebar,

1 concrete thickness and rebar spacing, and notwithstanding the photographs of excavations of
2 footings and other components of the subject retaining wall described in Paragraph 11,
3 Respondent determined that the footings were "more than adequate, assuming that the pads were
4 poured according to the plans".

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Negligence)

7 13. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject
8 to disciplinary action under section 6775(c) in that she committed acts or omissions that are
9 negligent and below the minimum standard of practice for civil engineers in the State of
10 California in the respects described below.

11 (a) Respondent prepared "Structural Calculations for As-Built Retaining Wall for River
12 Valley Construction" based upon her discussions with, and review of photographs provided by,
13 River Valley Construction. Respondent prepared said report without excavation or testing
14 procedures that if performed, could have provided pertinent information regarding the actual as-
15 built components of the retaining wall, including rebar size, wall thickness, rebar spacing, footing
16 size and whether or not its footings provided adequate support for the retaining wall.

17 (b) Respondent prepared the "Special Inspector's Report" based upon a visual inspection
18 of the retaining wall without excavation or testing procedures that if performed, would have
19 provided pertinent information regarding the as-built components of the retaining wall, including
20 rebar size, wall thickness, footing size, rebar spacing and whether or not its footings complied
21 with applicable codes, approved plans or design, and/or provided adequate support for the
22 retaining wall.

23 **SECOND CAUSE FOR DISCIPLINE**

24 (Incompetence)

25 14. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject
26 to disciplinary action under section 6775(c) in that she committed acts or omissions manifesting
27 incompetence in the practice of civil engineering in the respects described below.

28 ///

1 (a) Respondent prepared the "Structural Calculations for As-Built Retaining Wall for
2 River Valley Construction" based upon her discussions with, and photographs provided by, River
3 Valley Construction. Respondent purported to ascertain and evaluate the as-built construction of
4 the retaining wall without excavation or testing procedures that if performed, could have provided
5 pertinent information regarding the as-built components of the retaining wall, including rebar
6 size, wall thickness, footing size, rebar spacing and whether or not its footings provided adequate
7 support for the retaining wall.

8 (b) Respondent prepared the "Special Inspector's Report" based upon her visual
9 inspection of the retaining wall without excavation or testing procedures that if performed, would
10 have provided pertinent information regarding the as-built components of the retaining wall,
11 including rebar size, wall thickness, footing size, rebar spacing and whether or not its footings
12 complied with applicable codes, approved plans or design, and/or provided adequate support for
13 the retaining wall.

14 (c) Respondent failed to notify the Siskiyou County Building Department that after
15 submission of "Structural Calculations for As-Built Retaining Wall for River Valley
16 Construction" and "Special Inspector's Report" to the Siskiyou County Building Department, she
17 received photographs showing that the as-built condition of the subject retaining wall was not
18 built as she had represented therein, and that its footings may be inadequate to support the
19 retaining wall.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Violation of Provisions of Chapter)

22 15. Based upon the allegations of Paragraphs 7 through 12 above, Respondent is subject
23 to disciplinary action under section 6775(h). Respondent submitted her "Special Inspector's
24 Report" without including her engineering stamp or seal thereon in violation of section 6735(a).

25 **PRAYER**

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

- 1 1. Revoking or suspending Civil Engineer License Number C 55936, issued to J.B.
2 Newton;
3 2. Ordering J.B. Newton to pay the Board for Professional Engineers and Land
4 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
5 Business and Professions Code section 125.3; and
6 3. Taking such other and further action as deemed necessary and proper.

8
9 DATED: _____

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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