

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

In the Matter of the Accusation against:)

SAVIOR P. MICALLEF)

P.O. Box 452)

Atascadero, CA 93423)

Land Surveyor License, No. L 8289,)

Respondent.)

Case No. 1115-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 August 25, 2017.

IT IS SO ORDERED July 27, 2017.

Original Signed

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

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 1115-A

12 **SAVIOR P. MICALLEF**
13 **P.O. Box 452**
Atascadero, CA 93423

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Land Surveyor License No. L 8289**

15 Respondent.
16

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

20 **PARTIES**

21 1. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for
22 Professional Engineers, Land Surveyors, and Geologists (Board). He brought this action solely in
23 his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the
24 State of California, by Maretta Ward, Deputy Attorney General.

25 2. Respondent Savior P. Micallef (Respondent) is represented in this proceeding by
26 attorney William Hake, whose address is: 525 Market Street, 17th Floor, San Francisco, CA
27 94105, 415.629.9249.

28 //

3. On or about July 27, 2007, the Board issued Land Surveyor License No. L 8289 to Savior P. Micallef (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the charges brought in Accusation No. 1115-A, and will expire on December 31, 2019, unless renewed.

JURISDICTION

4. Accusation No. 1115-A was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 21, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 1115-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1115-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 1115-A.

11

10. Respondent agrees that his Land Surveyor License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

23
24
25
26
27
28

27
28

1 administered by the Board.

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

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

15 10. **Take And Pass College Level Courses.** Within two and one-half (2 ½) years from
16 the effective date of the decision, the respondent shall successfully complete and pass three (3)
17 college-level land surveying courses, which must be related to the areas of violation alleged in the
18 Accusation. Said courses shall be approved in advance by the Board or its designee. The
19 respondent shall provide the Board with official proof of completion of the requisite courses. For
20 purposes of this condition, "college-level course" means a course offered by a community college
21 or a four-year university of three semester units or the equivalent; it does not include seminars.

22 / /

23 / /

24 / /

25 / /

26 / /

27 / /

28 / /


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William M. Hake. I understand the stipulation and the effect it will have on my Land Surveyor 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: 6-21-17


Original Signed


SAVIOR P. MICALLEF
Respondent

I have read and fully discussed with Respondent Savior P. Micallef the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/22/17

Original Signed


WILLIAM M. HAKE
Attorney for Respondent


ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists.
Dated: 6.28.17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General

(Original Signed)


MARETTA WARD
Deputy Attorney General
Attorney for Complainant

SF2015401735
41775963.doc

Exhibit A

Accusation No. 1115-A

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 ROSAILDA PEREZ
Deputy Attorney General
4 State Bar No. 284646
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1618
6 Facsimile: (415) 703-5480
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 Accusation Against:

Case No. 1115-A

12 **SAVIOR P. MICALLEF**
13 **P.O. Box 452**
Atascadero, CA 93423

A C C U S A T I O N

14 **Land Surveyor License No. L 8289**

15 Respondent.

16
17 Complainant alleges:

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 (Board), Department of Consumer Affairs.

22 2. On or about July 27, 2007, the Board issued Land Surveyor License Number L 8289
23 to Savior P. Micallef (Respondent). The Land Surveyor License was in full force and effect at all
24 times relevant to the charges brought herein and will expire on December 31, 2017, unless
25 renewed.

26 ///

27 ///

28 ///

[illegible]

2
3
4

5
6
7

8

9

10
11
12
13
14
15
16

17

18

19

20

21
22

23

24

25

26

27

28

1 “...

2 “(d) All final maps, plats, reports, descriptions, or other land surveying documents issued by
3 a licensed land surveyor or civil engineer authorized to practice land surveying shall bear the
4 signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If the
5 land surveying document has multiple pages or sheets, the signature, seal or stamp, and date of
6 signing and sealing or stamping shall appear, at a minimum, on the title sheet, cover sheet or page,
7 or signature sheet, unless otherwise required by law.

8 “...”

9 7. Code section 8780 states, in pertinent part:

10 “The board may, upon its own initiative or upon the receipt of a complaint, investigate the
11 actions of any land surveyor licensed under this chapter or any civil engineer licensed under the
12 provisions of Chapter 7 (commencing with Section 6700) who is legally authorized to practice
13 land surveying and make findings thereon.

14 “By a majority vote, the board may publicly reprove, suspend for a period not to exceed two
15 years, or revoke the license or certificate of any land surveyor licensed under this chapter or civil
16 engineer licensed under the provisions of Chapter 7 (commencing with Section 6700) who is
17 legally authorized to practice land surveying on any of the following grounds:

18 “(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

19 “(b) Any negligence or incompetence in his or her practice of land surveying.

20 “...

21 “(d) Any violation of any provision of this chapter or of any other law relating to or
22 involving the practice of land surveying.

23 “...

24 8. California Code of Regulations, title 16, section 404 provides:

25 “...

26 “(u) For the sole purpose of investigating complaints and making findings thereon under
27 Sections 6775 and 8780 of the Code, “incompetence” as used in Sections 6775 and 8780 of the
28

1 Code is defined as the lack of knowledge or ability in discharging professional obligations as a
2 professional engineer or land surveyor.

3 “... ”

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

9 “... ”

10 9. California Code of Regulations, title 16, section 411 provides, in pertinent part:

11 “... ”

12 “(g)(1) All professional engineering plans, specifications, reports, or documents (hereinafter
13 referred to as “documents”) shall be signed and sealed in accordance with the requirements of the
14 Professional Engineers Act and any other laws related to the practice of professional engineering
15 and shall be signed and sealed in a manner such that all work can be clearly attributed to the
16 licensee(s) in responsible charge of the work.

17 “(2) All maps, plats, reports, descriptions, or other professional land surveying documents
18 (hereinafter referred to as “documents”) shall be signed and sealed in accordance with the
19 requirements of the Professional Land Surveyors' Act and any other laws related to the practice of
20 professional land surveying and shall be signed and sealed in a manner such that all work can be
21 clearly attributed to the licensee(s) in responsible charge of the work.

22 “... ”

23 10. California Code of Regulations, title 16, section 476 provides, in pertinent part:

24 To protect and safeguard the health, safety, welfare, and property of the public, every person
25 who is licensed by the Board as a professional land surveyor or professional civil engineer legally
26 authorized to practice land surveying, including licensees employed in any manner by a
27 governmental entity or in private practice, shall comply with this Code of Professional Conduct. A
28 violation of this Code of Professional Conduct in the practice of professional land surveying

1 constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780
2 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating
3 complaints and making findings thereon under Section 8780 of the Code.

4 “(a) Compliance with Laws Applicable to a Project:

5 “A licensee shall provide professional services for a project in a manner that is consistent
6 with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may
7 obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional
8 engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of
9 such laws, codes, and regulations

10 “...

11 “(c) Representations

12 “...

13 “(2) A licensee shall not misrepresent to a prospective or existing client the licensee's scope
14 of responsibility in connection with projects or services for which the licensee is receiving or will
15 receive compensation from that client.

16 “...

17 “(7) A licensee shall only express professional opinions that have a basis in fact or experience
18 or accepted land surveying principles.

19 “...”

20 COST RECOVERY

21 11. Code section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

27 ///

28 ///

1 **FACTS**

2 12. In or about February 8, 2013, while working as a Land Surveyor, Respondent
3 prepared a topographic survey of 130 Olympian Way, Pacifica, CA, a vacant lot in a residential
4 area. During the course of the project, Respondent failed to prepare a written contract, failed to
5 sign and seal land surveying documents, failed to inform his clients that a topographical survey was
6 insufficient for their project, and failed to perform a required boundary survey. Had Respondent
7 performed the required boundary survey he would have discovered that property lines had
8 previously been set. Respondent's omission resulted in encroachment on the neighboring lot and a
9 monetary loss to his clients.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Incompetence and/or Negligence)

12 13. Respondent is subject to disciplinary action under section Code sections 8759, 8780,
13 subdivisions (b) and (d), and California Code of Regulations, title 16, section 404, subdivision(s)
14 (u) and/or (dd), in that he acted with incompetence and/or negligence when he failed to prepare a
15 written contract, failed to sign and seal land surveying documents, and failed to perform a
16 boundary survey, as described in paragraph 12, above.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Failed to Execute Written Contract)

19 14. Respondent is subject to disciplinary action under Code section 8780, subdivision (d),
20 in conjunction with section 8759, subdivision (a), in that Respondent failed to execute a written
21 contract prior to commencing work, as described in paragraph 12, above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 (Failed to Sign and Seal Documents)

24 15. Respondent is subject to disciplinary action under Code sections 8780, subdivision (d),
25 8761, subdivision (d), and California Code of Regulations, title 16, section 411, subdivision (g)(2),
26 in that Respondent failed to sign and seal land surveying documents, as described in paragraph 12,
27 above.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Misrepresented Scope of Responsibility)

3 16. Respondent is subject to disciplinary action under Code section 8780, subdivision (d),
4 and California Code of Regulations, title 16, section 476, subdivision (c)(2), in that Respondent
5 misrepresented the scope of his responsibility to his clients by failing to inform his clients that a
6 topographical survey was insufficient for their project, as described in paragraph 12, above.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 (Expressed Opinion Not Based in Fact)

9 17. Respondent is subject to disciplinary action under Code section 8780, subdivision (d),
10 and California Code of Regulations, title 16, section 476, subdivision (c)(7), in that he expressed a
11 professional opinion without having performed the required boundary survey, as described in
12 paragraph 12, above.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 18. Respondent is subject to disciplinary action under Code section 8780, subdivision (d)
16 and California Code of Regulations, title 16, section 476, subdivision (a), for unprofessional
17 conduct in that he failed to provide professional services in a manner consistent with the applicable
18 laws, codes, ordinances, rules and/or regulations, as described in paragraph 12-17, above.

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 Land Surveyor License Number L 8289, issued to Savior P.
24 Micallef;

25 2. Ordering Savior P. Micallef to pay the Board for Professional Engineers, Land
26 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
27 pursuant to Business and Professions Code section 125.3;

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 6/14/12


Original Signed

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

SF2015401735
41476382.doc