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JUN 16 2009

DIVISION OF OCCUPATIONAL
& PROFESSIONAL LICENSING

**BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE ISSUANCE OF)
A PROBATIONARY LICENSE TO)
MARVIN L. NEVINS)
TO PRACTICE AS A CONTRACTOR)
IN THE STATE OF UTAH)

**MEMORANDUM OF
UNDERSTANDING AND ORDER**

CASE NO. DOPL 2009-176

Marvin L. Nevins ("Respondent") submitted an application on or about April 21, 2009 for initial licensure to the Division of Occupational and Professional Licensing of the State of Utah ("Division") to act as a contractor in the State of Utah

On January 23, 2008 Respondent was convicted of one count of driving under the influence of alcohol and one count of failure to remain at the scene of an injury/accident in Fourth District Court, State of Utah

Respondent is delinquent to IRS in the amount of \$22,238.35 and is making payments on the delinquent obligation in the amount of \$250.00 per month

Based upon Respondent's conduct as described above, the Construction Services Commission, and the Division, as evidenced by their signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as a contractor in the State of Utah, subject to the following terms and conditions, which shall be in effect for a period of five years, commencing upon the date this Memorandum of Understanding and Order is approved by the Division Director as evidenced by his signature

1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c) and § 58-

55-306 Respondent understands that the issuance of the Order in this matter is disciplinary action by the Division against Respondent's license pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2)

- 2 Respondent acknowledges that Respondent enters into this Memorandum of Understanding and Order knowingly and voluntarily, and other than what is contained in this Memorandum of Understanding and Order, no promise or threat whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce Respondent to enter into this agreement
- 3 Respondent understands that Respondent has the right to be represented by an attorney in this matter, and the Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter
- 4 Respondent acknowledges that this Memorandum of Understanding and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities
- 5 Respondent shall successfully complete and satisfy the following terms and conditions
 - a Respondent shall meet with the Commission at the first scheduled Commission meeting following the effective date of this Stipulation and Order. Respondent shall then meet with the Commission on a quarterly basis or at such other greater or lesser frequency as determined by the Commission and Division for the duration of the Stipulation and Order. Respondent agrees to meet with an assigned staff member prior to the first Commission meeting
 - b If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any chemical substance, or for treatment for any emotional or psychological disorder, Respondent agrees to cause the Division and Commission to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions
 - c Respondent shall maintain a current license at all times during the period of this agreement

- d Respondent shall provide to the Division a current criminal history report for obtained from the State of Utah, Department Public Safety, or any other state requested by the Division on an annual basis or whenever directed by the Division
- e Respondent shall provide a current copy of an Experian Business Profile business credit report, a personal credit report, and a current financial statement of the Respondent to the Division on a quarterly basis, or at such other greater or lesser frequency as determined by the Commission and Division, for the duration of the Stipulation and Order. If the credit reports provided indicates any negative items not previously reported then Respondent shall additionally provide full written details of the negative items on the credit report
- f Respondent shall notify the Division within 10 days of Respondent incurring any obligation that is not paid in full when it becomes due. The notification shall state the amount not paid when due, to whom the obligation was due, and the date the obligation, including any penalties and interest, is expected to be paid
- g In the event the amount considered delinquent by creditors increases, or the credit reports provided under paragraph (b) above, or other information received by Division indicates any other obligations are delinquent, the Division may require Respondent to comply with the following additional conditions
 - i Prior to taking any new contracting work, Respondent shall inform any potential client, suppliers and subcontractors that Respondent's license is on probation for failure to maintain financial responsibility. This notice shall be in writing and a copy of each notice provided under this paragraph shall be furnished to the Division at the end of each quarter. Respondent shall, upon request of any client, supplier, or subcontractor, be provided with a copy of this Stipulation and Order
 - ii Respondent shall hire and pay a licensed CPA, pre-approved by the Division, to complete the following
 - A Respondent shall set up a trust checking account that is managed by the CPA. The CPA shall be the only person authorized to sign checks or withdrawals from the trust account
 - B If Respondent receives any funds from any client, construction project, or any other source, the funds shall either (1) be deposited in the trust account, or (2) be made payable in a joint check to any subcontractor or supplier

- C Funds from the trust account may be paid to Respondent only after full payment has been made to all of Respondent's subcontractors and suppliers on any given project
 - D Respondent shall cause the CPA shall provide a complete report of trust transactions to the Division on a quarterly basis
 - E Respondent shall cause the CPA to provide a report to the Division, on a quarterly basis, demonstrating procedures by which the CPA has reviewed any deposits going into all bank accounts in which Respondent has an interest and that the CPA has determined that all such deposits comply with the requirements set forth above
- h Respondent agrees that the maintenance of a solvent financial condition, the timely payment of all newly created obligations accruing after the date of this Stipulation and Order, and compliance with all terms and conditions of this Stipulation and Order, are conditions of maintaining Respondent's license
 - i Respondent shall maintain a current license at all times during the period of this agreement
 - j Respondent shall immediately notify the Division in writing of any change in Respondent's business address
 - k Respondent shall be responsible for payment of all costs associated with this Stipulation and Order. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of this Stipulation and Order
 - l If Respondent has still not demonstrated financial responsibility as set forth in Utah Code Ann § 58-55-306 at the end of the probationary period, the Division may take appropriate action against Respondent. The period of probation shall be tolled while any petition alleging unlawful or unprofessional conduct is pending
- 6 Respondent agrees to abide by all applicable federal and state laws, regulations, rules or orders related to Respondent's licensed field of practice
 - 7 Respondent understands that the issuance of a license pursuant to this Memorandum of Understanding and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative review of that partial denial of licensure
 - 8 If Respondent successfully completes the terms of this Memorandum of Understanding and Order, the conditions on Respondent's license to practice in Respondent's licensed field will be lifted and Respondent's license will not be subject to further restriction

- 9 If Respondent violates any term or condition of this Memorandum of Understanding, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.
- 10 The terms and conditions of this Memorandum of Understanding and Order become effective immediately upon the approval of this Memorandum of Understanding and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the Division Director signs the Order page of this Memorandum of Understanding and Order. Respondent shall complete all the terms and conditions contained in the Memorandum of Understanding and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in this Memorandum of Understanding and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner shall constitute a violation of the Memorandum of Understanding and Order and may subject Respondent to revocation or other sanctions.
- 11 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.
- 12 Respondent has read each and every paragraph contained in this Memorandum of Understanding and Order. Respondent understands each and every paragraph contained in this Memorandum of Understanding and Order. Respondent has no questions about any paragraph or provision contained in this Memorandum of Understanding and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT

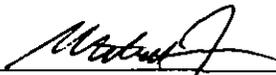
BY 
DAN S JONES
Bureau Manager


MARVIN L NEVINS

DATE 6-17-9

DATE 6-15-09

MARK L SHURTLEFF
ATTORNEY GENERAL

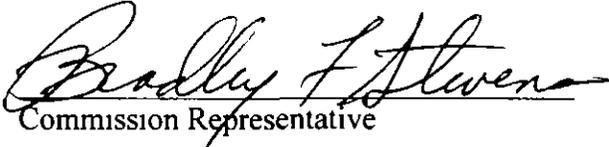
BY 
L MITCHELL JONES
Counsel for the Division

DATE 11 Jan 2009

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of MARVIN L NEVINS, is hereby approved by the Construction Services Commission. This issuance of this Order is disciplinary action pursuant to Utah Administrative Code Section R156-1-102(7) and Utah Code Ann § 58-1-401(2). The terms and conditions of the Memorandum of Understanding are incorporated herein and constitute the Commission's final Order in this case.

DATED this 24th day of June, 2009


Commission Representative

I concur with the Construction Services Commission in the matter of MARVIN L NEVINS.

DATED this 24 day of June, 2009


MARK B STEINAGEL
Director
Division of Occupational &
Professional Licensing