

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
Heber M. Wells Building  
160 East 300 South  
P O Box 146741  
Salt Lake City UT 84114-6741  
Telephone: (801) 530-6628

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

---

IN THE MATTER OF THE LICENSE OF	:	<b>FINDINGS OF FACT</b>
<b>SIX PENCE INC</b>	:	<b>CONCLUSIONS OF LAW</b>
	:	<b>AND ORDER</b>
TO PRACTICE AS A CONTRACTOR	:	<b>REGARDING RESPONDENT'S</b>
IN THE STATE OF UTAH	:	<b>MOTION TO SET ASIDE</b>
	:	<b>STIPULATION</b>
	:	Case No. DOPL-2009-208

---

**FINDINGS OF FACT**

1. The Division of Occupational and Professional Licensing ("the Division") filed the Notice of Agency Action in this matter on the July 8, 2009 as a formal adjudicative proceeding.
2. The Notice of Agency Action was based upon Division records which indicated Six Pence Inc, (the "Respondent") failed to demonstrate and maintain financial responsibility as required under Utah Code Annotated Section 58-55-306 and Subsection 58-55-502(1), and Utah Administrative Code Section R156-55a-306 as the result of judgments entered against Respondent totaling \$3,454.13 for which evidence of payment had not been provided to the Division.
3. The Respondent filed a response to the notice of agency action on July 14, 2009.
4. A prehearing teleconference was held on the August 11, 2009 between Ms. Epstein representing the Division, Mr. Pence representing the Respondent and J. Steven Eklund, Administrative Law Judge. This teleconference resulted in a Notice of Prehearing Conference and Scheduling Order being entered on September 1, 2009.
5. This matter was tentatively scheduled to for a formal hearing to be held on November 25, 2009. That hearing was cancelled as the result of a stipulation agreed to by the parties on or about November 21, 2009.
6. A Notice of Prehearing Conferences and Pending Stipulation was entered on the

November 25, 2009. That document summarized the prehearing teleconferences held to that date and the stipulation agreed to by the Respondent and the Division. The Stipulation was considered and accepted by the Commission on November 25, 2009 and was approved by the Division Director on November 30, 2009.

7. Respondent left a telephonic message for the Steve Eklund, Administrative Law Judge December 1, 2009 saying he did not think the entry on the Division's website which stated Respondent's license was on probationary status was appropriate.

8. As a result of Respondent's telephonic message several telephone conferences were held and are summarized in a Notice of Prehearing Conference and Scheduling Order dated the December 7, 2009. That order required Respondent to submit any such motion to vacate the Stipulation no later than the January 4, 2010. In the meantime the Stipulation would remain in effect until it was possibly superseded by any subsequent order.

9. Respondent failed to timely submit a Motion to Set Aside the Stipulation as required by the December 7, 2009 order.

10. On or about January 20, 2010 Respondent submitted a letter to Steven Eklund and an attached document entitled the "Case Review for motion to vacate stipulation".

11. Neither the January 20, 2010 letter or attached document does states it was a motion to set aside the stipulation and therefore was apparently not acted upon as such a motion by the Division. Although it is clear that this document was not titled as a motion to set aside, it can be concluded that Respondent intended this document to serve as a Motion to Set Aside the Stipulation.

12. This document recited a history of the negotiations and Respondent displeasure with the process and the result of probation but failed to state an adequate reason to set aside the stipulation. Another similar document reciting a history of the negotiations and displeasure with the process and the result of probation was purportedly sent to Steve Eklund on September 30, 2010 and a copy was provided to the Commission on December 29, 2010.

13. The primary objection made by the Respondent to the Stipulation was the posting licensing status on the internet site.

14. Respondent's motion or associated documents failed to address the fact that the Stipulation clearly stated that the stipulation is a public document (paragraph 6) and that the license status would be changed to probation (paragraph 8 a). The Respondent also failed to address the long standing practice of the Division posting the public record of the status of licenses on its internet site.

15. The public document and the status of licensure issues were both clearly and unambiguously addressed in the stipulation.

16. Respondent failed to address any reason why he could not have ascertained these provisions from simply reading the Stipulation.

17. Mr. Pence met for a probation interview at the Commission meeting March 31 2010. At that meeting Mr. Pence submitted documentation that each of the judgments totaling \$3,454.13 as outlined in the Notice of Agency Action had been resolved. However, Respondent had failed to provide the credit reports required by the stipulation and as required by the Division under Utah Administrative Code Section R156-55a-306.

18. At that meeting, Respondent orally requested that the Stipulation be set aside because of mis-numbering in the stipulation which skips paragraph 12. The Commission at that time denied the Respondent oral request finding that the mis-numbering did in any meaningful way affect the contents of the stipulation and the reference to paragraph 12 on the bottom line of page 3 could easily be located and ascertained as paragraph 11 of the agreement by simply reading the context of the reference to paragraph 12 and the reviewing the content of paragraph 11 and 13 which were immediately before and after the missing paragraph number 12.

19. The Commission did not know at the time of their March 31, 2010 meeting about the December 7, 2009 scheduling order, the January 2010 letter and attachment or that a Motion to Set Aside had been filed. The Motion to Set Aside was not scheduled for consideration at the March 31, 2010 Commission meeting.

20. At the March 31, 2010 meeting, the Commission approved termination of the probation, provided Respondent would provide a credit report and the credit report did not include other outstanding and delinquent obligations.

21. Respondent provided a credit report in response, however, the credit report indicated an unpaid federal tax lien in the amount of \$13,801.

22. As the result, the probation was not terminated and Respondent was sent letters of non-compliance to probation on April 6, 2010 and May 20, 2010.

23. Respondent failed to demonstrate the federal tax lien had been paid.

24. As the result of the outstanding federal tax lien, the Respondent's failure to maintain financial responsibility as the result and the Respondent's failure to comply with the requirements of the Stipulation, a Notice of Agency Action to Revoke Contractors License for Failure to Comply with Order and Failure to Demonstrate and Maintain Financial Responsibility was filed on September 14, 2010 as case number DOPL-OSC-2009-208. This matter was filed as an informal adjudicative proceeding as the result of a rule change becoming effective in July 2010, which changed contractor disciplinary proceeding from a formal adjudicative proceeding to an informal adjudicative proceeding.

25. Respondent failed to file an answer to the September 14, 2010 notice of agency action.
26. Based on Respondent's failure to an answer, Findings of Fact Conclusions of Law and Order was entered October 28, 2010 revoking contractor license.
27. On or about December 1, 2010 a telephone conference was held between Masuda Medcalf, Adminstrative Law Judge for the Department of Commence, Rory Pence, representing the Respondent and Dan S. Jones, Bureau Manager for the Division. During that telephone conference it was noted the right to seek agency review was incorrectly referred to in the order rather than the right to seek to set aside the default order. Mr. Pence also expressed his intent to seek to have the stipulation and default order set aside.
28. As a result of that telephone conference an amended Findings of Fact Conclusions of Law and Order was entered on the 1<sup>st</sup> day of December 2010 with a corrected reference to Utah Code Ann Section 63G-4-209 regarding the method to seek to set aside the default order.
29. On the 2<sup>nd</sup> day of December Bureau Manager Dan S. Jones also responded to the teleconference by a letter dated December 2, 2010 to Respondent. That letter tentatively set a date for review of a motion for set aside the default order, subject to Respondent filing such a motion, and reviewed the history of the case and noted the apparently defective motion to set aside the stipulation had not been ruled upon, and scheduled that motion to also be reviewed by the Commission on December 29, 2010.
30. Respondent did not submit a motion to set aside the default order so that item was removed from the Commission's agenda. As the result the default order revoking Respondent's license is still effective as a final order.
31. The Commission did review Respondent's apparently defective Motion to Set Aside the Stipulation at the Commission meeting held December 29, 2010. This Motion to Set Aside the Stipulation was handled as a informal adjudicative proceeding as the result of the rule change becoming effective in July 2010, which changed a contractor disciplinary proceeding from a formal adjudicative proceeding to an informal adjudicative proceeding.
32. Dan S. Jones reviewed the Division's position regarding the defective Motion to Set Aside the stipulation.
33. Mr. Pence reviewed the Respondent's position regarding the defective
34. Mr. Pence admitted that the federal tax lien was still outstanding but had been partially paid.



ORDER

THE ABOVE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in the matter of **SIX PENCE INC**, is hereby adopted by the Construction Services Commission of the State of Utah.

DATED this 26 day of Jan, 2011.

  
CONSTRUCTION SERVICES COMMISSION  
Representative

I concur with the above Order, which the Construction Services Commission has approved.

DATED this 27 day of January, 2011.

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

  
MARK B. STEINAGEL  
Director

Agency review of this order may be obtained by filing a request for agency review within thirty (30) days after the date of this order. If you choose to file a request for agency review, you must adhere to the attached procedures.