

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

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**BEFORE THE CONSTRUCTION SERVICES COMMISSION  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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IN THE MATTER OF THE LICENSE OF .  
**BIG M CONSTRUCTION, INC.** . **NOTICE OF AGENCY ACTION**  
TO PRACTICE AS A CONTRACTOR .  
IN THE STATE OF UTAH . Case No. DOPL-2010-145

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THE CONSTRUCTION SERVICES COMMISSION TO BIG M  
CONSTRUCTION, INC. ("Respondent"), , Salt  
Lake City UT 84104:

The Division of Occupational and Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Kim Quach, Auditor, State of Utah, a copy of which is attached hereto and incorporated herein by reference

The adjudicative proceeding designated herein is to be conducted on a formal basis. **Within thirty (30) days of the mailing date of this Notice, you are required to file a written response with this Division.** The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition. Your written response should be mailed to the following address: Division of Occupational and Professional Licensing, Attn Disciplinary Files, 160 East 300 South, PO Box 146741, Salt Lake City UT 84114-6741.

You may represent yourself or be represented by legal counsel, at your own expense, at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance and until that Entry of Appearance is filed, the presiding officer will deal directly with you.

You are entitled by law to an evidentiary hearing to determine whether your license to practice as a contractor in the State of Utah should be subject to a disciplinary action. Unless otherwise specified by the Construction Services Commission, the

Commission will serve as fact finder in the evidentiary hearing and will adopt an Order to be submitted to the Division Director for his concurrence. You will be notified by separate notice of the date, time, and place of that evidentiary hearing and of any other hearings.

During the evidentiary hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the fact finder.

The presiding officer for purposes of conducting hearings will be J. Steven Eklund, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney have any questions as to the procedures relative to the hearing, Judge Eklund can be contacted at P O Box 146701, Salt Lake City, UT 84114-6701. His telephone number is (801) 530-6648.

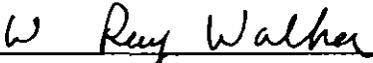
Counsel for the Division in this case is Lenore Epstein, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872. Within ten (10) days after the filing of your response, Ms. Epstein will request the scheduling of a prehearing conference

You, or if you have an attorney, your attorney, may attempt to negotiate a settlement of the case without proceeding to a hearing by contacting Ms. Epstein.

Should you fail to timely file a response, as set forth above, or fail to attend or participate in any scheduled hearing in this case, including prehearing conference(s), you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition may be imposed against you. The maximum administrative sanction in this case is revocation of licensure.

Please conduct yourself accordingly.

Dated this 3<sup>rd</sup> day of May, 2010.

  
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W. Ray Walker  
Regulatory & Compliance  
Officer

LENORE EPSTEIN (USB 6723)  
Assistant Attorney General  
MARK L SHURTLEFF (USB 4666)  
Attorney General  
Counsel for the Division of Occupational  
and Professional Licensing  
Heber M Wells Building, 5<sup>th</sup> Floor  
160 East 300 South - Box 140872  
Salt Lake City, Utah 84114-0872  
Telephone (801) 366-0310  
Facsimile (801) 366-0315

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

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IN THE MATTER OF THE LICENSE OF  
BIG M CONSTRUCTION INC TO  
PRACTICE AS A CONTRACTOR IN THE  
STATE OF UTAH

VERIFIED PETITION

Case No DOPL - 2010 - 145

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PRELIMINARY STATEMENT

The following claims were investigated by the Utah Division of Occupational and Professional Licensing ("Division") upon receipt of complaints that Big M Construction Inc ("Respondent"), a licensee of the Division, has engaged in acts and practices that constitute violations of the Division of Occupational and Professional Licensing Act ("Act"), Utah Code Ann §§ 58-1-101 to -504 (West 2004), and the Construction Trades Licensing Act, Utah Code Ann § 58-55-101 to -604 (West 2004). The allegations in this Petition are based upon the Division's information and belief arising out of that investigation. Each count in this Petition shall be deemed to incorporate the allegations set forth in all other paragraphs of the Petition.

## PARTIES

1 The Division is a division of the Department of Commerce of the State of Utah and is established pursuant to Utah Code Ann § 13-1-2 (West 2004)

2 At all times relevant to this Petition, Respondent was licensed by the Division as a contractor pursuant to Utah Code Ann §§ 58-55-101 to 604 (West 2004)

## STATEMENT OF ALLEGATIONS

3 A judgment in favor of the Utah Division of Consumer Protection in the amount of \$8,472 00 was entered against Respondent on or about December 04, 2008 in the 3<sup>rd</sup> District Court, State of Utah, Case No 080917039 As of the date of this Petition, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit 1

5 A judgment in favor of Susan Keene in the amount of \$7,605 00 was entered against Respondent on or about June 02, 2009 in the 3<sup>rd</sup> District Court, State of Utah, Case No 098900896 As of the date of this Petition, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit 2

6 On or about November 30, 2009, Respondent submitted a renewal form to the Division On the renewal form, Respondent did not report the judgments listed above, and indicated on the form that all judgments against it had been paid Based on the answers in the renewal form, Respondent's license was renewed by the Division A copy of the Respondent's license renewal form is attached as Exhibit 3

## APPLICABLE LAW

7 Utah Code Ann § 58-1-401(2) (West 2004) provides in part that the Division may refuse to renew, or may revoke, suspend, restrict, or place on probation, issue a public or private

reprimand to, or otherwise act upon the license of any licensee who has engaged in unlawful or unprofessional conduct

8 Utah Code Ann § 58-1-501(4) (2004) provides that the division may issue a cease and desist order to a licensee who violates the Act or any rules adopted under the Act

9 Utah Code Ann § 58-1-501(2)(h) (West 2004) provides that unprofessional conduct also includes practicing or attempting to practice an occupation requiring licensure by any form of action or communication which is false, misleading, deceptive, or fraudulent

10 Utah Code Ann § 58-55-502(1) (West 2004) defines unprofessional conduct to include failing to maintain financial responsibility while licensed as a contractor

#### COUNT I

11 Judgments totaling \$16,077 00 have been entered against Respondent, and have not been satisfied Therefore, Respondent has failed to maintain financial responsibility in violation of Section 58-55-502(1), which constitutes unprofessional conduct under Section 58-55-502(1)(a), and a basis exists to sanction Respondent's license pursuant to Sections 58-1-401(2) and 58-1-106(1)(d)

#### COUNT II

12 Respondent submitted a license renewal form to the Division on which it claimed that all judgments against it had been paid when in fact they had not, which constitutes unprofessional conduct under section 58-1-501(2)(h), and a basis exists to sanction Respondent's license pursuant to Sections 58-1-401(2) and 58-1-501(4)

WHEREFORE, the Division requests the following relief

- 1 that the Respondent be adjudged and decreed to have engaged in the acts alleged herein,
- 2 that by engaging in the acts described herein, Respondent be adjudged and decreed to have violated the Division of Occupational and Professional Licensing Act and the Construction Trades Licensing Act,
- 3 that Respondent be ordered to cease and desist from future violation of the Acts,
- 4 that an order be issued revoking Respondent's contractor license, and
- 5 that an order be issued imposing any other appropriate sanctions against Respondent's license to act as a contractor in the State of Utah

DATED this 16<sup>th</sup> day of April, 2010

MARK L. SHURTLEFF  
UTAH ATTORNEY GENERAL

  
\_\_\_\_\_  
Lenore Epstein  
Assistant Attorney General

VERIFICATION

STATE OF UTAH )  
 )  
 ) SS  
COUNTY OF SALT LAKE )

Kim Quach, first being duly sworn, states as follows

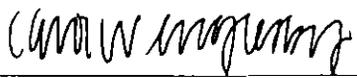
1 I am an auditor for the Utah Division of Occupational and Professional Licensing and have been assigned to work on this case

2 I have read the foregoing Petition, including the section entitled "Factual Allegations " All of the factual allegations contained in that "Factual Allegations" section are true to the best of my knowledge, information and belief

DATED this 28 day of April, 2010

  
\_\_\_\_\_  
Kim Quach

Subscribed and sworn to before me this 28 day of April, 2010

  
\_\_\_\_\_  
NOTARY PUBLIC

