

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

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

IN THE MATTER OF THE LICENSE OF : NOTICE OF AGENCY ACTION
PETER DAVID BIRD : TO REVOKE CONTRACTOR'S
d/b/a FIDALGO RESTORATION :
TO PRACTICE AS A CONTRACTOR. LICENSE FOR FAILURE TO
IN THE STATE OF UTAH : COMPLY WITH ORDER AND
: FAILURE TO DEMONSTRATE AND
: MAINTAIN FINANCIAL
: RESPONSIBILITY
: .
: Case No DOPL-OSC-2010-346

THE CONSTRUCTION SERVICES COMMISSION TO PETER DAVID BIRD d/b/a
FIDALGO RESTORATION]("Respondent")

PETER DAVID BIRD
d/b/a FIDALGO RESTORATION

Anacortes WA 98221

The Division of Occupational and Professional Licensing (the "Division") hereby files this Notice of Agency Action ("Notice") to determine whether a basis exists to revoke your license to practice as a contractor for failure to comply with the Order dated October 27, 2010 and failure to demonstrate and maintain financial responsibility

This action is based upon Division records and an investigation, which show that Respondent has failed to comply with the conditions in the Memorandum of Understanding and Order dated October 27, 2010, and thereby has engaged in unprofessional conduct as provided by Utah Code Ann. §§ 58-1-501(2)(a), and Respondent has failed to maintain and demonstrate financial responsibility as required under Utah Code Ann. § 58-55-306 and

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Utah Administrative Code § R156-55a-306 and as the result no longer meets the qualifications for licensure and has engaged in unprofessional conduct as provided by Utah Code Ann §§ 58-55-502(1).

Pursuant to Utah Administrative Code § R156-55a-306, the Division may consider judgments, tax liens, collection actions, a history of late payments to creditors, and bankruptcy of a licensee or its owners, as well as prior entities owned or operated by a licensee or its owners when determining financial responsibility.

ALLEGATIONS SUPPORTING THIS ACTION

1. On or about October 27, 2010 Respondent entered into a Memorandum of Understanding and Order in case 2010-346 in which Respondent agreed to a probationary license as a result of Respondent's failure to maintain financial responsibility due to a delinquency in the amount of \$26,462.14 due to Internal Revenue Service.

I Respondent has failed to comply with order

2 Pursuant to paragraph 5 b(i)(11), and 5 c (1) (11), Respondent agreed to provide to the Division a current copy of an Experian Business Profile business credit report and a personal credit report on a quarterly basis and tax returns on an annual basis.

3 On or about May 18, 2011 the Division sent out a letter requesting Respondent to submit business and personal credit reports and tax returns.

4. Respondent has failed to provide the credit reports and tax returns Accordingly, Respondent is in violation of paragraph 5 b (1) (11), and 5 c (1) (ii)

5 Pursuant to paragraph 5 a, Respondent agreed to meet with the Construction Services Commission on August 31, 2011 and explain Respondent's failure to comply with the Order. Respondent failed to appear for this scheduled appointment. Accordingly, Respondent is in violation of paragraph 5 a.

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II Respondent has failed to demonstrate and maintain financial responsibility

7 As a result of the conduct described in paragraphs 1 to 5, Respondent has failed to maintain and demonstrate financial responsibility in violation of Utah Code Ann §§ 58-1-501(2)(a) and of Utah Code Ann. §§ 58-1-502(1) and no longer meets the qualification for licensure as provided by Utah Code Ann. § 58-55-306 and Utah Administrative Code § R156-55a-306.

8. As explained above, Respondent no longer meets the qualifications for licensure and has failed to comply with an order and has failed to maintain and demonstrate financial responsibility, which conduct constitutes unprofessional conduct and therefore provide a basis to revoke Respondent's license pursuant to Utah Code Ann § 58-1-401.

See Utah Code Ann. §§ 58-1-401(1) ("The division . . . shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title."), 58-1-401(2)(a) ("The division . . . may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the license of any licensee [who has] engaged in unprofessional conduct . . . "). See also Utah Code Ann. § 58-55-502(1) ("Unprofessional conduct includes . . . failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter.").

NOTICE OF INFORMAL PROCEEDING

The adjudicative proceeding designated herein is to be conducted on an *informal* basis, which means that you are not entitled to a hearing. The decision in this matter will be based upon a review of the Division records and any response filed.

Within thirty (30) days of the mailing date of this notice, you are requested to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and the violation alleged herein. Your written response should be mailed to:

Division of Occupational and Professional Licensing
Attn: Dan S. Jones, Bureau Manager

160 East 300 South
PO Box 146741
SALT LAKE CITY, UT 84114-6741

You may represent yourself or legal counsel may represent you, at your own expense, while this action is pending. If you are represented by legal counsel, your attorney must file a Notice of Appearance with the Division at the address stated above. Until a Notice of Appearance is filed, the presiding officer will communicate directly with you.

Dan S. Jones, Bureau Manager, is designated as the coordinator for the Construction Services Commission, which is the presiding officer over this informal proceeding. Mr. Jones can be reached at (801) 530-6720.

At the expiration of your deadline to submit a response, and without further notice to you, the presiding officer will make an informal review of the record in this matter and determine whether you have failed to comply with an order in violation of Utah Code Ann. §§ 58-1-501(2)(a), you have failed demonstrate and maintain financial responsibility, in violation of Utah Code Ann. § 58-55-306 and §§ 58-55-502(1) and if you no longer meet the qualifications for licensure as provide by Utah Code Ann. § 58-55-306.

The maximum administrative sanction in this case is revocation of your license to practice as contractor.

Please conduct yourself accordingly.

Dated this 17TH day of October, 2011.

W. Ray Walker
W. Ray Walker
Regulatory and Compliance
Officer

