

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
AKA CONSTRUCTION INC
TO PRACTICE AS A
CONTRACTOR IN THE STATE OF UTAH

**NOTICE OF AGENCY ACTION
TO REVOKE CONTRACTOR'S
LICENSE FOR FAILURE TO
MAINTAIN FINANCIAL
RESPONSIBILITY AND
MISREPRESENTATION ON YOUR
APPLICATION FOR LICENSURE**

Case No DOPL-2012- 204

THE CONSTRUCTION SERVICES COMMISSION TO AKA CONSTRUCTION
INC ("Respondent")

AKA CONSTRUCTION INC
349 EAST 300 NORTH
ALPINE UT 84004

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 due to your failure to demonstrate and maintain financial responsibility and misrepresentation on your application for licensure

This action is based upon Division records and an investigation, which show that Respondent has failed to demonstrate and maintain financial responsibility as required by Utah Code Annotated Sections 58-55-306 and 58-55-502(1), and Utah Administrative Code Section R156-55a-306 Pursuant to Utah Administrative Code Section R156-55a-306, the Division may consider judgments, tax liens, collection actions, a history of late payments to creditors, and bankruptcy schedules filed by 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

I Respondent has Failed to Demonstrate and Maintain Financial Responsibility

A Judgments and tax liens against Respondent

1 On or about November 23, 2009 a judgment in the amount of **\$4,824.92** was entered in favor of Dal-Tile Distribution Inc against AKA Construction Inc Fourth District Court – America Fork, Utah County, State of Utah, Case No 090102513 As of the date of this Notice, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit A

2 On or about April 8, 2010 a judgment in the amount of **\$1,734.94** was entered in favor of Diamond Rental against AKA Construction Inc Third Judicial District Court, Salt Lake County, State of Utah, Case No 108900138 As of the date of this Notice, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit B

3 On or about June 16, 2010 a judgment in the amount of **\$53,236.50** was entered in favor of Robert I Merrill Company against AKA Construction Inc Fourth District Court – Provo, Utah County, State of Utah, Case No 100400041 As of the date of this Notice, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit C

B Judgments against Respondent's owner

4 Respondent's owner is Timothy S Hertig

5 On or about August 5, 2010 a judgment in the amount of **\$55,317.13** was entered in favor of Robert I Merrill Company against Timothy S Hertig Fourth District Court – Provo, Utah County, State of Utah, Case No 100400041 As of the date of this Notice, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit D

6 On or about February 8, 2011 a judgment in the amount of **\$14,755.21** was entered in favor of Bonneville Billing & Collections Inc against Timothy S Hertig Fourth District Court – American Fork, Utah County, State of Utah, Case No 100107243 As of the date of this Notice, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit E

7 On or about August 22, 2011 a judgment in the amount of **\$971.16** was entered in favor of Utah State Tax Commission against Timothy S Hertig Fourth District Court – Provo, Utah County, State of Utah, Case No 116408442 As of the date of this Notice, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit F

8 On or about April 25, 2012 a judgment in the amount of **\$352.39** was entered in favor of Child Supp Services Office of Recovery Services against Timothy S Hertig Fourth District Court – Provo, Utah County, State of Utah, Case No 116412810 As of the date of this Notice, Respondent has not satisfied the judgment A certified copy of the judgment is attached as Exhibit G

9 The above identified judgments total **\$131,192.25** and have not been satisfied Accordingly, Respondent has failed to maintain financial responsibility, which constitutes a basis to revoke Respondent's license pursuant to Utah Code Annotated Section 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 § 58-55-502(1) ("Unprofessional conduct includes failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter ")

10 Based on Respondent's above financial history, Respondent has failed to demonstrate and maintain financial responsibility, which constitutes a basis to revoke Respondent's license pursuant to Utah Code Annotated Section 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 § 58-55-502(1) ("Unprofessional conduct includes failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter ")

II Respondent has Made Misrepresentation on an Application for Licensure

1 Division records and an investigation also show that Respondent failed to disclose the above judgments, tax liens, child support, etc when asked by the Division at renewal of licensure if all judgments, lien liens, child support, etc have been paid This representation was inaccurate when made Accordingly, Respondent obtained a license by misrepresentation in violation of Utah Code Annotated Subsection 58-55-501(9), and this misrepresentation constitutes a basis to sanction Respondent's license pursuant to Utah Code Annotated Subsection 58-1-401(2) and assess a fine pursuant to Utah Code Annotated Subsection 58-55-503(4)

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. Your response 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. If you or your attorney has any questions as to the procedures related to this matter, Mr. Jones can be contacted at the above address or via telephone number 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 demonstrate and maintain financial responsibility, in violation of Utah Code Annotated Sections 58-55-306 and 58-55-502(1), and whether you obtained a license by omission or misrepresentation, in violation of Utah Code Annotated Subsection 58-1-501(1)(e).

The maximum administrative sanction in this case is revocation of your license to practice as a contractor and imposition of an administrative fine of up to \$1,000 for misrepresentation on your application.

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Please conduct yourself accordingly

Dated this 3rd day of May, 2012

W. Ray Walker
W Ray Walker
Regulatory and Compliance
Officer

