

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
TRITEX CONSTRUCTION GROUP INC
TO PRACTICE AS A
CONTRACTOR IN THE STATE OF UTAH**

- **AMENDED**
- **NOTICE OF AGENCY ACTION
TO REVOKE CONTRACTOR'S
LICENSE FOR UNLAWFUL
CONDUCT BY ALLOWING ONE'S
LICENSE TO BE USED BY
ANOTHER, FOR FAILURE TO
MAINTAIN FINANCIAL
RESPONSIBILITY,
MISREPRESENTATION ON YOUR
APPLICATION FOR LICENSURE,
AND BY HIRING UNLICENSED
CONTRACTORS.**
- **Case No. DOPL-2012-403**

**THE CONSTRUCTION SERVICES COMMISSION TO TRITEX
CONSTRUCTION GROUP INC ("Respondent")**

TRITEX CONSTRUCTION GROUP INC

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, to determine if you have been contracting without a license and representing another's contractor license as your own, to determine if you have been allowing your license to be used by another and misrepresentation on your application for licensure

This action is based upon Division records and an investigation, which show that Respondent has engaged in unlawful conduct by

Allowing one's license and the authority of that license to be used by another on at least two separate occasions, in violation of Utah Code Ann Subsection 58-55-501(10),

Failing 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; and

Obtaining a license by misrepresentation in violation of Utah Code Annotated Subsection 58-55-501(9).

ALLEGATIONS SUPPORTING THIS ACTION

Each count in this notice is deemed to incorporate each of the allegations set forth in all other paragraphs in this notice.

HISTORY

History of Oscar Rosales and Entities in Which He Has Been Involved

1. On or about January 16, 1998, Rosales Inc , applied for and was granted a contractor license #353527-5501 with a B100 classification, with Oscar D Rosales being the qualifier and owner This license expired in July 2001.

2. On or about August 6, 2001, Citation #13521 in case #9414 was issued against Rosales Inc because of contracting without a license. That citation included a Cease & Desist order against Rosales Inc from engaging in the construction trades without a license.

3 On or about March 18, 2002, Rosales Inc registered Tri-Tex Inc as a dba #5089329-0151 with the Division of Corporations

4. On or about December 28, 2009, Oscar Rosales filed a registration for TCG Inc, #7550008-0142 with specialty #2361 - Residential Building Construction with the Division of Corporations. No contractor license application has been submitted to

or approved by the Division for this company.

5 On or about March 24, 2010, Oscar Rosales filed bankruptcy case #10-23537. The bankruptcy schedules indicate a negative equity of \$6,616,472 79

6. On or about January 12, 2011, Oscar Rosales associated himself with Hard Rock Masonry Inc, claiming to be an officer of said corporation, reinstated it with the Division of Corporations (which was at the time a corporation that had been expired since December 8, 2009) and changed the name to Tritex Construction Group Inc. At about the same time he changed the name on the contractor license to Tritex Construction Group Inc with the Division.

7. On or about January 19, 2011, the Division suspended license no 353527-5501 issued to Rosales Inc, because of LRF payments. See DOPL Case Nos LRF 2010-0324-01, LRF 2010-0907-01 and LRF 2010-0420-01 As a result of the LRF payout & order, Oscar Rosales was prohibited from being a qualifier or owner of any contractor licensee

8 On or about May 13, 2012 Rosales Inc submitted a Surrender of License form to the Division.

History of Joseph E Fullmer and Entities in Which He Has Been Involved

9. On or about October 8, 1997, Respondent became licensed as a contractor under License No. 3473338-5501 under a prior name "J F Construction Inc"

10 On or about April 6, 2001, Respondent changed its name to Hard Rock Masonry Inc

11 On or about December 8, 2009 Respondent's entity expired with the Division of Corporations It was subsequently reinstated and changed the name to Tritex Construction Group Inc on or about January 12, 2011 (13 month lapse) by Oscar Rosales, Officer.

12 On or about January 7, 2011 Respondent filed a federal income tax return for Hard Rock Construction Inc (Hard Rock Masonry Inc) for the year 2009 that shows no activity. No tax returns have been filed for 2010 or 2011

13 On or about February 2, 2011 Respondent changed its name with the Division of Occupational and Professional Licensing from Hard Rock Masonry Inc to Tritex Construction Group Inc

COUNT I

Allowing its license to be used by another

14. On or about July 29, 2011, Oscar Rosales submitted a credit application to L.K.L. Associates, Inc. stating the name on the credit application as TCG Inc and further stating Oscar Rosales to be the owner of the company.

15 Based on the foregoing information, Oscar Rosales has engaged in unlawful conduct by representing himself to be a licensed contractor, in violation of Utah Code Ann. Subsection 58-55-501(1) Respondent allowed Oscar Rosales to use its license and the authority of its license in violation of Utah Code Ann. Subsection 58-55-501(10) and 58-1-501(1)(d) to support the unlicensed activity of Oscar Rosales and TCG Inc.

16 Pursuant to Utah Code Ann. Subsection 58-55-503(4), Respondent should be assessed a fine in the amount of \$1,000

COUNT II

Allowing its license to be used by another

17 On or about December 9, 2011 Respondent submitted a bid with the heading

TCG Inc

Tntex Construction Group Inc.

Small print at bottom of bid states: "TCG INC is authorized to do the work "

18. Based on the foregoing information, Respondent has engaged in unlawful conduct by allowing its license and the authority of its license to be used by another, in violation of Utah Code Ann. Subsection 58-55-501(10) and 58-1-501(1)(d) Respondent allowed Oscar Rosales to use its license supporting the unlicensed activity of TCG Inc.

19 Pursuant to Utah Code Ann. Subsection 58-55-503(4), Respondent should be assessed a fine in the amount of \$1,000.

COUNT III

Respondent has Failed to Demonstrate and Maintain Financial Responsibility

Judgments against Respondent's owner – Joseph E Fullmer

20. On or about March 31, 2006 a judgment in the amount of **\$13,000.00** was entered in favor of Stephen W Rupp, Trustee against Joseph E, Fullmer (Fourth District Court, Utah County, State of Utah, Case No: 066401733). As of the date of this Notice, Respondent has not satisfied the judgment

21 On or about February 5, 2007 a judgment in the amount of **\$3,830.50** was entered in favor of EPN, Inc. against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No: 060403412) As of the date of this Notice, Respondent has not satisfied the judgment.

22 On or about February 8, 2011 a judgment in the amount of **\$387.82** was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No · 086408584). As of the date of this Notice, Respondent has not satisfied the judgment.

23. On or about November 17, 2008 a judgment in the amount of **\$975.35** was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No · 086408684) As of the date of this Notice, Respondent has not satisfied the judgment

24. On or about November 17, 2008 a judgment in the amount of **\$781.20** was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No. 086408755). As of the date of this Notice, Respondent has not satisfied the judgment

25 On or about December 22, 2008 a judgment in the amount of **\$1,051.02** was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Fourth District Court-Provo, Utah County, State of Utah, Case No · 086409841) As of the date of this Notice, Respondent has not satisfied the judgment

26 On or about May 23, 2011 a judgment in the amount of **\$805.58** was entered in favor of Utah State Tax Commission against Joseph E, Fullmer (Third District Court-Salt Lake, Salt Lake County, State of Utah, Case No 116916929) As of the date of this Notice, Respondent has not satisfied the judgment.

27. The above identified judgments and tax liens total **\$20,831.45** and have not been satisfied Accordingly, Respondent and its owner have 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.")

28. 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.").

COUNT IV

Respondent has Made Misrepresentation on an Application for Licensure

29. Division records and an investigation also show that Respondent failed to disclose the above judgments and tax liens 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) in the amount of \$1,000.00.

COUNT V

Hiring Unlicensed Contractors

31. Respondent contracted with PayDay Resources to make payments to individuals working for Respondent for construction activities performed for Respondent Payday Resources records obtained by the Division contain information indicating substantial construction activity has been conducted by Respondent. That information shows that Respondent has paid over \$500,000 in payments to 66 unlicensed individuals, all paid on 1099 forms to engage in the construction trades These persons were all paid thru PayDay Resources, a payroll processing company, on bi-weekly basis as if they were employees but all have been designated as 1099, independent contractor, type pay.

32 Based on the foregoing information, Respondent has engaged in unlawful conduct by hiring unlicensed contractors, in violation of Utah Code Ann Subsection 58-55-501(3),

33 Pursuant to Utah Code Ann Subsection 58-55-503(4), Respondent should be assessed a fine up to the amount of \$1,000 for each of the 66 unlicensed individuals so hired.

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 \$69,000 for two incidences of allowing its license to be used by another, one instance of misrepresentation on your application, 66 incidences of hiring unlicensed contractors and issuance of a cease and desist order from allowing its license to be used by another and hiring unlicensed contractors

Please conduct yourself accordingly.

Dated this 27 day of December, 2012

W. Ray Walker

W. Ray Walker
Regulatory and Compliance
Officer

