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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 **DFS CONSTRUCTION, INC** TO OPERATE AS A CONTRACTOR IN THE STATE OF UTAH	)))))	**STIPULATION AND ORDER** CASE NO. DOPL 2013-203

DFS CONSTRUCTION, INC ("Respondent") and the Construction Services Commission ("Commission") of the Department of Commerce of the State of Utah stipulate and agree as follows

1 Respondent admits the jurisdiction of the Commission and the Division of Occupational and Professional Licensing ("Division") over Respondent and over the subject matter of this action David Forest ~~Seamon~~ Seaman is the owner of Respondent company and is authorized to act as agent for and enter into binding agreements on behalf of Respondent company In this Stipulation and Order, the term "Respondent" shall mean both DFS Construction, Inc, and David Forest Seamon, individually and collectively

2 Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter.

4. Respondent understands that Respondent is entitled to a hearing before the Commission, or other Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent acknowledges that by executing this document Respondent hereby waives the right to a hearing and any other rights to which Respondent may be entitled in connection with said hearing Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in Utah Code Ann §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R151-46b-12 through R151-46b-15 Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann § 63G-4-102(4)

5. Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

6 Respondent acknowledges that this Stipulation and Order, if adopted by the Commission and Division, will be classified as a public document. The Commission and Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license to other persons and entities.

7 Respondent admits the following facts are true.

a Respondent was first licensed as a contractor in the State of Utah on or about March 29, 2010.

b Respondent's qualifier, Orvil Rudy Caldwell, has a financial history that includes substantial obligations that ultimately resulted in a bankruptcy in 2004 and 2010 In 2004, his bankruptcy declared assets of $13,775 00 and liabilities of $39,734 59 resulting in a negative equity of $25,959 59 In 2010, his bankruptcy declared assets of $251,630.00 and liabilities of $328,815 49 resulting in a negative equity of $77,185 49.

c On the application to add Orvil Rudy Caldwell as a B100 qualifier for Respondent's company, dated March 07, 2012, Respondent made a misrepresentation by claiming that all bankruptcies have been reported to the Division That representation was not accurate when made because Respondent had not disclosed the bankruptcy identified in paragraph 7(b) to the Division

d On May 1, 2013, Respondent demonstrated financial responsibility by providing a license bond to the Division in the amount of $50,000 00

8 Respondent admits that Respondent's conduct described above is unlawful conduct as defined in Utah Code Ann. § 58-1-501(1)(e) and § 58-55-501(9) and unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and § 58-55-502(1), and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) and (b). Respondent understands that the issuance of the Order in this matter is disciplinary action by the Division against Respondent's license pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann § 58-1-401(2) Respondent agrees that an Order shall be entered in this matter as follows

(1) Respondent shall pay an administrative penalty of $500 00 (five-hundred dollars) to the Division, pursuant to Utah Code Ann § 58-55-503, within 90 days of the effective date of this Stipulation and Order paid 5/10/2013

9 This Stipulation and Order, upon approval by the Commission and Division Director, shall be the final compromise and settlement of this non-criminal administrative matter Respondent acknowledges that the Commission and Director are not required to accept the terms of this Stipulation and Order and that if the Commission or Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Commission, Director, and the Respondent waive any claim of bias or prejudgment Respondent might have with regard to the Commission and Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the impression that any of the matters set forth in this Stipulation and Order are without factual basis A public statement includes statements to one or more Commission or Board members

during a meeting of the Commission or Board Any such action or statement shall be considered a violation of this Stipulation and Order

12 The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Commission and Division Director Respondent must comply with all the terms and conditions of this Stipulation immediately following the Commission and Division Director's signing of the Order page of this Stipulation and Order Respondent shall complete all the terms and conditions contained in the Stipulation and Order in a timely manner If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Commission. Failure to complete a term or condition in a timely manner shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13 Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state

14 If Respondent violates any term or condition of this Stipulation and Order, the Commission may take action against Respondent, including imposing appropriate sanction, in the manner provided by law Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction

15. Respondent has read each and every paragraph contained in this Stipulation and Order Respondent understands each and every paragraph contained in this Stipulation and Order Respondent has no questions about any paragraph or provision contained in this

Stipulation and Order.

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

BY _____
DAN S. JONES
Bureau Manager

DATE 5-14-13

RESPONDENT

BY: _____
DAVID FOREST ~~SEAMON~~
Seaman

DATE 10 May 2013

JOHN E SWALLOW
ATTORNEY GENERAL

BY _____
L MITCHELL JONES
Counsel for the Division

DATE 14 May 2013

ORDER

THE ABOVE STIPULATION, in the matter of **DFS CONSTRUCTION, INC**, is hereby approved by the Construction Services Commission, and constitutes its Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann § 58-1-401(2) The terms and conditions of the Stipulation are incorporated herein and constitute the Commission's final Order in this case

DATED this 24 day of May, 2013.

CONSTRUCTION SERVICES COMMISSION
Representative

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

DATED this 29 day of May, 2013

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

W Ray Walker, Acting Director
for MARK B. STEINAGEL
Director

Public Discipline

Utah Department of Commerce
Division of Occupational and Professional Licensing

Form Type: **Finding of Facts/Conclusion of Law**

Retention: Public/60 years

Docket Number	2013-123
Complaint Number	63039
License Number	6017430-5501
PersonID	6017430
Full Name	HC Construction LLC
Profession	Contractor
Date	05/29/2013

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 **HC CONSTRUCTION LLC** TO PRACTICE AS A CONTRACTOR IN THE STATE OF UTAH	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Case No DOPL-2013-123

FINDINGS OF FACT

1. The Division of Occupational and Professional Licensing ("the Division") filed a Notice of Agency Action in this matter on the 25th day of March 2013.

2 This action is based upon Division records as reflected in the Notice of Agency Action filed herein which show that HC CONSTRUCTION LLC, (the "Respondent"), failed to demonstrate and maintain financial responsibility as required by Utah Code Annotated Section 58-55-306 and Subsection 58-55-502(1), and Utah Administrative Code Section R156-55a-306 This action is also based on Respondent's misrepresentation or omission in connection with an application or renewal of a license, in violation of Utah Code Annotated Subsection 58-55-501(9)

3 Respondent has failed to respond to the Notice of Agency Action and, according to Division records, has failed to demonstrate and maintain financial responsibility as outlined above In addition, as outlined above, Respondent has obtained a license by misrepresentation or omission, which constitutes a basis to sanction Respondent's license pursuant to Utah Code Annotated Subsections 58-1-401(1) and (2), and Utah Code Annotated subsection 58-55-503(4)

CONCLUSIONS OF LAW

4 Respondent's failure to respond to the Notice of Agency Action constitutes a sufficient basis for entry of default against Respondent

5 The Notice of Agency Action and documents attached thereto provide a basis to conclude that Respondent has failed to demonstrate and maintain financial

responsibility as required by Utah Code Annotated Section 58-55-306 and Subsection 58-55-502(1), and Utah Administrative Code Section R156-55a-306 Further, Respondent has engaged in unlawful conduct by misrepresentation or omission in violation of Utah Code Annotated Subsection 58-55-501(9), and this conduct constitutes a basis to sanction Respondent's license pursuant to Utah Code Annotated Subsection 58-55-503(4) Based on these violations, Respondent has engaged in unprofessional conduct as defined by Utah Code Annotated Subsection 58-1-501(2)(a), and Respondent no longer meets the qualification for licensure as provided by Utah Code Annotated Section 58-55-306

6. The Division is authorized to revoke Respondent's contractor license as provided by Utah Code Annotated Subsection 58-1-401(1) because Respondent no longer meets the qualifications for licensure as required by Utah Code Annotated Subsection 58-55-102(19)

7 The Division is authorized to revoke Respondent's contractor license as provided by Utah Code Annotated Subsection 58-1-401(2)(a), for engaging in unprofessional conduct, and as provided by Utah Code Annotated Subsection 58-1-501(2)(a), for failure to demonstrate and maintain financial responsibility as required by Utah Code Annotated Section 58-55-306

8 The Division is authorized to impose a fine against Respondent as provided in Utah Code Annotated Subsection 58-55-503(4), for engaging in unlawful conduct as provided by Utah Code Annotated Subsection 58-55-501(9) because Respondent obtained a license by misrepresentation or omission

ORDER

WHEREFORE, IT IS ORDERED Respondent's default is hereby entered

WHEREFORE, IT IS ORDERED Respondent's license to practice as a contractor in this state shall be revoked, effective on the date this order is signed

WHEREFORE, IT IS ORDERED Respondent shall be assessed a fine in the amount of $500 00, which must be paid to the Division within 30 days of the date this order is signed.

On behalf of the Construction Services Commission and the Division of Occupational and Professional Licensing, I hereby certify that the foregoing Findings of Fact, Conclusions of Law, and Order were submitted to the Construction Services Commission and the Division on the 29 day of May 2013 for their review and action

Dan S Jones, Bureau Manager

ORDER

THE ABOVE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in the matter of **HC CONSTRUCTION LLC**, are hereby adopted by the Construction Services Commission of the State of Utah

DATED this 24th day of May, 2013.

CONSTRUCTION SERVICES COMMISSION
Representative

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

DATED this 29 day of May, 2013

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

W. Ray Walker, Acting Director
for MARK B STEINAGEL
Director

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City UT 84114-6701, within thirty (30) days after the date of this order A motion to set aside the order may also be filed with the presiding officer The agency action in this case was an informal proceeding The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq of the Utah Code, and Rule 151-4 of the Utah Administrative Code