

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
EUGENE D. STONE : TO REVOKE CONTRACTOR'S
 : LICENSE FOR FAILURE TO
 : MAINTAIN FINANCIAL
TO PRACTICE AS A CONTRACTOR : RESPONSIBILITY AND
IN THE STATE OF UTAH : MISREPRESENTATION ON
 : APPLICATION FOR
 : LICENSURE
 :
 : Case No. DOPL-2013-239

THE CONSTRUCTION SERVICES COMMISSION TO EUGENE D. STONE
("Respondent"):

EUGENE D. STONE

The Division of Occupational and Professional Licensing ("the Division") hereby files this notice of agency action. The jurisdiction and authority for this action is Utah Code Annotated §58-1-401(2).

This action is filed based upon a review of the Division's records and investigation ("file") that indicate Respondent has engaged in unprofessional and unlawful conduct by failing to demonstrate and maintain financial responsibility in violation of Utah Code Annotated §58-55-502(1), and *making misrepresentation(s) on the application for renewal of licensure, in violation of Utah Code Annotated §58-55-501(9)*, such that Respondent's license should be subject to disciplinary action.

ALLEGATIONS AND AUTHORITY

1. In particular the evidence in the Division's file indicates that Respondent has engaged in the following conduct:

2. On or about October 30, 2006, in the Third District Court, State of Utah, Case No.: 031900310, Respondent was convicted of one count of sex abuse of a child, a second degree felony. As a result of the unlawful conduct, the Respondent was placed on probation on April 8, 2008 (Case No. DOPL 2008-53).

I. FAILURE TO DEMONSTRATE AND MAINTAIN FINANCIAL RESPONSIBILITY.

3. Respondent has failed to maintain and demonstrate financial responsibility as required by Utah Code Annotated Sections 58-55-306 and 58-55-502(1).

4. 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 when determining financial responsibility.

5. On or about February 24, 2009 a judgment in the amount of **\$28,402.33** was entered in favor of Unifund CCR Partners against Eugene D. Stone (Third District Court, West Jordan, Salt Lake County, Case No.:080401004. A copy of the judgment is attached as Exhibit A.

Respondent has had substantial delinquent obligations which ultimately resulted in Respondent filing for bankruptcy on or about September 29, 2009.

6. Based on the 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 Annotated §§ 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."); Section 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 Annotated Section 58-55-502(1) ("Unprofessional conduct includes . . . failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter.")

II. MISREPRESENTATION ON AN APPLICATION FOR LICENSURE

7. Division records show that Respondent made misrepresentations on the renewal application filed on November 25, 2011.

8. Question 12 asks, "Has the licensee, the qualifier, or any other person holding 8% or more ownership had any judgments, liens, taxes, or child support delinquencies levied against them in the last five years?" Respondent answered, "No." This representation was inaccurate when made.

9. Question 12a asks, "Have all judgments, liens, taxes, and child support payments been paid in full?" Respondent answered, "Yes". This representation was inaccurate when made.

10. Question 13 asks, "Has the licensee, the qualifier, or any other person holding 8% or more ownership filed for bankruptcy in the last 3 years?" Respondent answered, "No". This representation was inaccurate when made. The renewal form has been included as *Exhibit A*.

11. Respondent admitted to making the misrepresentation in the letter he sent to the Division dated May 21, 2013, included as *Exhibit B*.

12. In response to an inquiry from the Division, the Respondent sent a letter, dated May 21, 2013, in which he stated,

"In 2011, I submitted my renewal form with a misrepresentation. I did not disclose this bankruptcy. I know I have no excuse for what I did, but I have a reason. On January 26th of 2010, I called the department and talked to Allison. I asked her what requirements the department would expect of me and she explained to me that I would have to acquire additional insurance and give a surety company 50 thousand dollars to secure a bond. I felt stonewalled and completely discouraged. I discussed with her the incapacity of myself having such funds. I remember telling her that if I had that kind of money I wouldn't be in bankruptcy. Thinking there was no way possible for me to acquire any loan or banking of this type, I lied on my renewal."

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).

RELIEF SOUGHT

The Division seeks revocation of licensure to practice as a contractor in the State of Utah and an Administrative Fine in the amount of \$500.00.

NOTICE OF PROCEDURES

This action is designated as an informal adjudicative proceeding ("proceeding") in §R156-46b-202 pursuant in accordance with §63G-4-202(1).

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 below. Until an Entry of appearance is filed, the presiding officer, or others within or representing the Division, will communicate directly with you.

Dan S. Jones, Bureau Manager, is designated as the coordinator for the Construction Services Commission ("Commission"). The Commission is the presiding officer over this informal proceeding. If you or your attorney has any questions regarding the procedures related to this matter, Mr. Jones can be contacted at the above address, or via telephone at (801) 530-6720 or by e-mail at dansjones@utah.gov.

The proceeding will be conducted pursuant to §63G-4-203. There is no right to a hearing in this proceeding. The decision in this matter will be based upon a review of the Division's file.

Within ten (10) days of the mailing date of this notice, you may obtain by written request a copy of the relevant and nonprivileged contents of the Division's file related to this proceeding. Your request, if any, should be submitted to the address stated below.

Within thirty (30) days of the mailing date of this notice, you are required to file a written response herein. A response may be helpful to clarify, refine, or narrow the facts and violations related to the basis for this action as contained in the Division's file.

If you fail to file a response, it will constitute a basis for entry of default, and an order will be entered by the

Presiding Officer without your participation. It will be based upon a review of the Division's file and, as deemed necessary, a review and recommendation by the Commission.

If you file a response, it will be included in the Division's file and will be considered by the presiding officer. An original of your response, if any, should be mailed or hand delivered to:

DIVISION of OCCUPATIONAL and PROFESSIONAL LICENSING
Attn: Informal Disciplinary Files

(By Mail):

PO Box 146741
Salt Lake City UT 84114-6741

(By Hand Delivery):

160 East 300 South, 4th floor
Salt Lake City, Utah

If you file a Response, you will be notified if this action is placed on the Commission's agenda. Commission meetings are normally open to the public and public comment may be provided if permitted by the chair of the Commission. However, please note that if this action is placed on the Commission's agenda, it is an agenda item, not a disciplinary hearing.

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 financial in violation of Utah Code Annotated Sections 58-55-306 and 58-55-502(1) and if you have made a misrepresentation to the Division in violation of 58-1-501(9).

The maximum administrative sanction in this case is revocation of your license to practice as a contractor in the State of Utah and an administrative fine in the amount of \$1000.00

Please conduct yourself accordingly.

Dated this 11 day of June, 2013.



W. Ray Walker

W. RAY WALKER
Regulatory and Compliance
Officer