EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
ANTOINETTE B. CINCOTTA
Deputy Attorney General
State Bar No. 120482
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
Facsimile: (619) 645-2061
Attorneys for Complainant

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **FRED FISCHER, JR.** **12409 West Marble Drive** **Sun City West, AZ 85375** **Civil Engineer License No. C 14501** Respondent.	Case No. 950-A ACCUSATION

Complainant alleges:

PARTIES

1. David E. Brown (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs.

2. On or about January 23, 1964, the Board issued Civil Engineer License Number C 14501 to Fred Fischer, Jr. (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

///

///

///

JURISDICTION AND STATUTORY AUTHORITIES

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

". . . .

"(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

". . . ."

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

REGULATORY AUTHORITY

6. Section 419 of the Title 16, California Code of Regulations states that "[f]or violations of Business and Professions Code sections 6775 and/or 8780 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional engineering and/or a professional land surveying license, the following provisions shall apply to disciplinary orders contained in decisions of the Board:

"(a) The minimum disciplinary order shall be reproval. The maximum disciplinary order shall be revocation of the license.

"(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

"(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include the following probationary conditions:

"(1) The respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

"(2) The respondent shall submit such special reports as the Board may require.

"(3) The period of probation shall be tolled during the time the respondent is practicing exclusively outside the state of California. If, during the period of probation, the respondent practices exclusively outside the state of California, the respondent shall immediately notify the Board in writing.

"(4) If the respondent violates the probationary conditions in any respect, the Board, after giving the respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

"(5) Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the respondent's license shall be unconditionally restored.

"(d) All decisions containing stayed disciplinary orders as described in subdivision (b) may include one or more of the following probationary conditions:

"(1) The respondent's license shall be suspended for a period not to exceed two years. If a suspension of the license is ordered, it shall begin on the effective date of the decision.

"(2) Within 60 days of the effective date of the decision, the respondent shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.

"(3) The respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee. The probationary condition shall include a time period in which this course shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

"(4) Within 30 days of the effective date of the decision, the respondent shall provide the Board with evidence that he or she has provided all persons or entities with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or professional land surveying in which the violation occurred with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, the respondent may be required to provide the same notification of each new person or entity with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or land surveying in which the violation occurred and shall report to the Board the name and address of each person or entity so notified.

"(5) The respondent shall provide verifiable proof to the Board that restitution has been paid as ordered. The probationary condition shall include a time period in which the verifiable proof shall be provided to the Board which time period shall be at least 60 days less than the time period ordered for the period of probation.

"(e) In addition to the conditions as may be ordered pursuant to subdivisions (c) and/or (d), the following conditions shall be included for the following specific violations:

"(1) Incompetency in the practice of professional engineering and/or professional land surveying:

"(A) The respondent shall successfully complete and pass, with a grade of "C" or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

"(B) The respondent shall take and achieve the passing score as set by the Board for the second division examination (including the seismic principles and engineering surveying examinations for civil engineers), provided that in the event the respondent holds multiple licenses, the Board shall select the examination in the area of practice of professional engineering and/or professional land surveying in which the violation occurred and in the area of professional engineering and/or professional land surveying in which the respondent is licensed. The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. The respondent shall be required to pay the application fee as described in Section 407 and shall be afforded all examination appeal rights as described in Sections 407, 443, and 444. The probationary condition shall include a time period in which the examination(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

"(C) During the period of probation, the respondent may practice professional engineering and/or professional land surveying only under the supervision of a professional engineer and/or professional land surveyor licensed in the same branch as the respondent. This person or persons shall be approved in advance by the Board or its designee. Such supervising professional engineer and/or professional land surveyor shall initial every stamped or sealed document in close proximity to the respondent's stamp or seal.

"(2) Negligence in the practice of professional engineering and/or professional land surveying:

"(A) The respondent shall successfully complete and pass, with a grade of "C" or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. The probationary condition shall include a time period in which the

course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

". . . .

"In addition to the disciplinary orders described in this section, all decisions shall address recovery of the Board's investigation and enforcement costs, as described in and authorized by Business and Professions Code section 125.3.

"Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser action as the Board deems appropriate, in the interest of protecting the public health, safety, and welfare.

"As used in this section, 'license' includes certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles 'structural engineer,' 'geotechnical engineer,' 'soil engineer,' 'soils engineer,' or 'consulting engineer.'"

COST RECOVERY

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Negligence)

8. Respondent is subject to disciplinary action under Code section 6775, subdivision (c), in that Respondent was negligent in performing various aspects of his structural design, calculations and forensic investigation for a roofing project. The circumstances are as follows:

9. In or about August 2000, Mr. and Mrs. W.B. contracted with C.O.R. to replace the wood shake roof on their residence located at 33522 Via de Agua in San Juan Capistrano, California with a new concrete tile system. C.O.R. subcontracted with Respondent to perform structural engineering for the project; E.Y. to perform field inspections, and D.D.S. to prepare the project drawings. According to D.D.S., the existing roof sat on "convential [wood] framing and

[timber] truss framing" and was to be replaced by new "tile over existing 1/2" CDX plywood sheathing." Respondent performed various engineering calculations and prepared certain sketches for the project, and determined that "the existing roof framing [was] adequate to support [the] new roof load except for minor bracing." His calculations and sketches were subsquently submitted to the City of San Juan Capistrano ("the City"), which reviewed and approved them, and thereby issued a building permit to the homeowners. The new roofing system was installed shortly thereafter.

10. Two years later, in August 2002, the homeowners began to experience difficulty when opening certain doors in the house. Around this same time, cracks appeared in stucco walls, drywall seams became increasingly visible, and certain interior walls began to bulge. This was noteworthy as Mr. W.B. had lived in the house since 1978 and had not encountered difficulties like this before.

11. In December 2004, Mr. W.B. hired another engineer to inspect the property and assess the cause of these recent problems. The new engineer observed and confirmed that:

a. Sliding glass doors along the rear wall and at both the first and second story were difficult to operate;

b. Vertical cracking was visible at mid-span of the first-floor sliding door, directly below certain structural framing elements;

c. Significant bowing of a first-floor interior wall had occurred;

d. Certain floor joists at the second floor were out of level; and

e. There was no significant foundation distress at either the building interior or perimeter.

The new engineer also reviewed the structural calculations and sketches prepared by Respondent, and opined that certain aspects of Respondent's work had been "inadequately analyzed." The new engineer recommended that Respondent's structural calculations be re-performed.

12. In February 2005, Mr. W.B. notified Respondent of the new engineer's findings and that "the roof placed on [the] residence is too heavy for the structure and needs to be replaced." At that time, Respondent was asked to help correct the condition. Respondent replied that "there

must be other factors causing the problems." Respondent offered to review any plans or construction documents pertaining to the house that Mr. W.B. could make available. Respondent then re-examined his prior structural analysis and determined that "the loads of the concrete tile roof, floors and walls do not exceed the design loads for which the house would have been constructed." Since, in Respondent's opinion, "other factors would have [had] to be the cause of the [homeowners'] problems," Respondent and E.Y. decided to inspect the property on March 6, 2005. Respondent observed that the homeowners' house was located "on a hill that has been subjected to some sliding" and that was in the process of being mechanically stablized. Respondent believed that soil sliding had caused "separation and displacement of up to 3/4 of an inch between the exterior patio slab and the house foundation" and that the homeowners' problems were entirely related to unstable soils.

13. By April 2005, conditions at the house had worsened: new wall cracks appeared, more doors became increasingly difficult to operate, and another wall had started to bulge. The homeowners sought counsel from other professionals to help resolve these problems, including discussions with:

a. Field engineer E.Y. who admitted that he did verify the header-size prior to the re-roof;

b. Geologist M.C. who observed that the structural separation and displacement cited by Respondent was a sign of common building settlement and did not necessarily indicate large-scale soil movement; and

c. Six building contractors who collectively believed that standard weight tile is too heavy for the residence and recommended that the current roof be removed before irreversible damage is done to the structure.

14. In late April 2005, field engineer, E.Y. offered to pay the homeowners to help fix the problems. At that same time, the homeowners notified Respondent that he had been provided ample opportunity to correct the errors in his original engineering analysis. Respondent notified the homeowners that:

"there is no error in the calculations for the reroofing on your house. You gave your investigative engineer the wrong calculations dates 08/11/00. I have enclosed the copy for you to

share with him. As I have noted to you before, your problem is from the soil settlement [due to] a hill that is prone to slides. Your house is in no danger of collapse. The roof is not too heavy. Your investigative engineer should of [sic] set 'tale-tells' to monitor settlement."

15. Respondent's work product for the homeowners' roofing project featured three sets of structural calculations:

a. The first contained Respondent's seal and signature on each of the five pages, which was received and approved by the City on August 9, 2000. It addressed roof loads as well as selected beam design and truss design.

b. The second set contained certain design load revisions dated August 11, 2000, and included Respondent's seal and signature on the first page only. It did not appear that said revisions were submitted to the City for additional review.

c. The third set was performed several years later, in conjunction with the homeowners' complaint (February to May 2005). It contained five pages of updated calculations for header framing at interior and perimeter walls as well as a cursory seismic analysis of the roof. None of these sheets were sealed or signed.

16. Respondent failed to perform a complete framing analysis of the homeowners' structural system and omitted various truss elements, secondary framing members and a seismic analysis. His calculations in 2000 did not consider the impact of the heavier tile roof system.

17. Respondent failed to conduct his forensic investigation in 2005 in a manner that was consistent with industry practice. Respondent developed an alternative and speculative theory of building damage that was self-serving and unsubstantiated, and that did not correspond with observed conditions in the field.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Civil Engineer License Number C 14501, issued to Fred Fischer, Jr.;

2. Ordering Fred Fischer, Jr. to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: August 4, 2010

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

SD2010701047