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

In the Matter of the Accusation Against: **SYDNEY SMITH XINOS** **1116 Elder Circle** **Austin, TX 78733** **Civil Engineer License No. C 27399** Respondent.	Case No. 929-A **A C C U S A T I O N**

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, Department of Consumer Affairs.

2. On or about July 14, 1976, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License Number C 27399 to Sydney Smith Xinos (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.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 6775 of the Code states, in pertinent part,

> [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:
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> . . . .
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> (b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in his or her practice.
>
> (c) Who has been found guilty by the board of negligence or incompetence in his or her practice.
>
> (d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.
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> . . . .

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender 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.

STATUTORY PROVISIONS

6. Section 6749 of the Code states, in pertinent part,

> (a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:
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> (1) A description of the services to be provided to the client by the professional engineer.
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> (2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.
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> (3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.
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> (4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.
>
> (5) A description of the procedure to be used by any party to terminate the contract.
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> . . . .

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 475 states, in pertinent part,

> To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional engineer, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 6775 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 6775 of the Code.
>
> (a) Compliance with Laws Applicable to a Project:
>
> A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.
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> . . . .

COSTS

8. 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.

REESE VILLAGE PROJECT

9. In September 2000, The Association for Community Housing Solutions (TACHS) retained Respondent to provide professional engineering services. This retention was based upon written contracts dated September 12, 2000 in which Respondent was to prepare an update to the street improvement plans, preparation of traffic control plans and an update to the ALTA survey for the Reese Village Project (Project) on 70th Street in the City of San Diego, California. On September 22, 2000 Respondent and TACHS entered into a contract amendment that increased the price under the agreement and shortened the date for the completion of the street improvement plans and the ALTA survey update. Those plans were to be completed no later than September 26, 2000. Respondent completed the plans approximately one year later.

10. During the construction of the Project, TACHS encountered a number of errors and deficiencies in the plans prepared by Respondent that led to cost overruns. These errors and deficiencies required changes to the plans and to the construction of the Project. These changes included: sewer relocation due to incorrect location in the plans; relocation of fire service lines due to a conflict with the utility transformer; interior elevation changes due to incorrect locations on the plans; cut out in the street and the lowering of the new driveway due to inaccurate plans and inaccurate grades; and installation of site drainage throughout the project.

11. In the fall of 2002 the project suffered damage from flooding that occurred after a rain storm. This damage was caused by improper grading of the site. This improper grading had been performed in conformance with the plans prepared by Respondent.

12. During negotiations for the contract and through the design of the Project, Respondent allowed an employee to interface with and to falsely represent to TACHS that he was an associate civil engineer, when he was not a licensed engineer of any type in the State of California.

13. By February of 2004, Respondent had not adequately addressed the complaints by TACHS with regard to the errors and improper design of the Project and the concurrent costs incurred by TACHS in correcting these errors. This led to a suit against Respondent being filed in the San Diego Superior Court. On January 25, 2006, judgment was entered against Respondent in the sum of $80,365.47, following a jury verdict.

FIRST CAUSE FOR DISCIPLINE

(Deceit and Misrepresentation in the Practice of Engineering)

14. Respondent is subject to disciplinary action under Code section 6775 (b) in that Respondent misrepresented to his client, TACHS, that his employee was a licensed engineer when he was not.

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SECOND CAUSE FOR DISCIPLINE

(Negligence in the Practice of Engineering)

15. Respondent is subject to disciplinary action under Code section 6775 (c) in that Respondent was negligent in his practice of engineering regarding the Reese Village Project on 70th Street in the City of San Diego, California, as follows.

16. The plans prepared by Respondent did not meet the standard of care for a professional civil engineer in that they contained a number of errors and deficiencies that required changes to the plans and the construction of the Project. These errors and deficiencies led to cost overruns. These errors and deficiencies included the following:

1. The sewer lines were incorrectly located in the plans.
2. The fire service lines in the plans conflicted with the utility transformer.
3. The plans included incorrect interior elevations.
4. The street and driveway were designed with inaccurate grades.
5. The site drainage plan contained numerous errors throughout the project.

THIRD CAUSE FOR DISCIPLINE

(Breach of Contract to Provide Professional Engineering Services)

17. Respondent is subject to disciplinary action under Code section 6775 (d) in that Respondent's failure to perform the engineering work in a timely manner as specified in the contract was a breach of his professional services contract with TACHS.

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 27399, issued to Sydney Smith Xinos.

2. Ordering Sydney Smith Xinos 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;

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

DATED: 4/13/10

Original Signed

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

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