EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
ERIN M. SUNSERI
Deputy Attorney General
State Bar No. 207031
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2071
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: KEN NUSSBAUM 11258 1/2 San Jacinto Street Morongo Valley, CA 92256 Land Surveyor License No. L 6298 Respondent.	Case No. 910-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 March 9, 1990, the Board for Professional Engineers and Land Surveyors issued Land Surveyor License Number L 6298 to Ken Nussbaum (Respondent). The Land Surveyor License expired on September 30, 2008, and has not been renewed.

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

5. Section 8780 of the Code states:

> The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.
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> By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:
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> . . . .
>
> (b) Any negligence or incompetence in his or her practice of land surveying.
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> . . . .
>
> (d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.
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> . . . .

STATUTORY PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering suspension or revocation of a license under Section 490.
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> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 8762 of the Code states:

(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder.

8. Section 8765 of the Code states:

A record of survey is not required of any survey:

(a) When it has been made by a public officer in his or her official capacity and a reproducible copy thereof, showing all data required by Section 8764, except the recorder's statement, has been filed with the county surveyor of the county in which the land is located. Any map so filed shall be indexed and kept available for public inspection.

(b) Made by the United States Bureau of Land Management.

(c) When a map is in preparation for recording or shall have been recorded under the provisions of the Subdivision Map Act.

(d) When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise

location of property corners thereon, provided that a corner record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(e) When the survey is a survey of a mobilehome park interior lot as defined in Section 18210 of the Health and Safety Code, provided that no subdivision map, official map, or record of survey has been previously filed for the interior lot or no conversion to residential ownership has occurred pursuant to Section 66428.1 of the Government Code.

9. Section 8771(a) of the Code states:

(a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the perpetuation or facile reestablishment of any point or line of the survey.

10. Section 8772 of the Code states:

Any monument set by a licensed land surveyor or registered civil engineer to mark or reference a point on a property or land line shall be permanently and visibly marked or tagged with the certificate number of the surveyor or civil engineer setting it, each number to be preceeded by the letters "L.S." or "R.C.E.," respectively, as the case may be or, if the monument is set by a public agency, it shall be marked with the name of the agency and the political subdivision it serves.

Nothing in this section shall prevent the inclusion of other information on the tag which will assist in the tracing or location of the survey records which relate to the tagged monument.

REGULATORY PROVISIONS

11. Title 16, California Code of Regulations section 418 states:

(b) When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, or the license of a professional engineer or a professional land surveyor, or the authority to use the title "structural engineer," or the authority to use the title "geotechnical engineer" under Section 490 of the Code, the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any act(s) committed prior to or subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which could also be considered as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the license.

(5) Any evidence of rehabilitation submitted by the licensee.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

12. Title 16, California Code of Regulations section 476 states:

To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional land surveyor or professional civil engineer legally authorized to practice land surveying, 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 land surveying constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 8780 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.

. . . .

COST RECOVERY

13. 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.

FACTUAL ALLEGATIONS

14. Respondent holds a land surveying certificate and is the owner of K.N. Land Survey, which performs surveys in San Bernardino County, California. On June 19, 2006, Daniel Moye, the San Bernardino County Surveyor, sent Respondent a letter, which followed up a verbal conversation, concerning deficiencies in Respondent's work. The letter contained a photograph of a 2"x 2" wooden hub and lathe, labeled "APN 602-182-03," which was the Assessor Parcel Number of a property Respondent had surveyed. Moye directed Respondent to set durable monuments (such as iron pipe or rebar), instead of wooden hubs; tag monuments with his Land Surveyor Number; file corner records or records of survey for future surveys; and ensure compliance with these directions on his previous surveys. Moye advised Respondent that he would bring the issues to the attention of the Joint Professional Practice Committee (JPPC).

15. On July 9, 2006, Respondent sent a letter to Moye stating, "The surveys that I made setting our 2x2 hubs (pine) have are (sic) will be pulled out. The hubs were +/-1 ft. Not good enough for ties. I would not like another surveyor tying into these as they were for the realistate (sic) companies or land owners only to see where the property they were selling or had was (sic)." Respondent also stated, "I realize that I should not have set anything in the ground without being right on and filling (sic) a corner of record."

16. On August 7, 2006, Moye sent another letter to Respondent and cautioned him from pulling any pins. On August 22, 2006, Respondent responded to Moye stating, "There is still a 4' lath at the hubs that I took out and the location is still marked. I told my clients that they were not registered (I now know that was wrong) and not set pricely (sic). They were set very accurtly (sic), sometimes there were other corners to tie into. I could not find my other letter to you but if I said the corners were + 1 foot it should have said 0.1'+/." Respondent also stated, "I do not have any records of past surveys and I do not have the money to go back and re-survey all of my surveys. I now realize that I do not have the equipment, time, or knowledge to run a survey company. I do have plans to stop K.N. Land survey and go back to work with another survey company." Respondent concluded his letter by stating, "Bottom Line: I cannot re-survey all of my surveys. I am going to stop K.N. Land Survey and find another job but if I had my license, it

would help but if it is taken away it will not be the end of the world. I do not have any money to pay any fine that is imposed."

17. On December 12, 2006, Richard Siegmund, the Chairman of the JPPC filed a complaint with the Board citing seven surveys ("Undocumented Surveys") that Respondent had performed without filing a corner record or record of survey as required by the Land Surveyors Act. Respondent was notified of the complaint and responded to the Board on January 20, 2007 by stating that corner records would be submitted for five of the Undocumented Surveys (among others) within a week. On February 14, 2007, the Board responded to Respondent and asked him to specify which five of the seven Undocumented Surveys he would be submitting corner records for.

18. On February 26, 2007, Respondent sent a letter to the Board listing four parcels for which he had submitted corner records. Respondent disputed the need for a corner record on the fifth parcel (APN 587-231-50). Adequate control had been found for the East boundary, which had been the focus of the survey. However, Respondent had previously acknowledged setting a hub to monument a corner elsewhere on this boundary, in his letter dated January 20, 2007. Respondent stated that as for the other surveys for APN 631-132-28 and APN 454-041-33, "Each of them will probably require a record of survey. I have a P.L.S. who may help me with them. I have not been back to these surveys and as my record keeping was not up to par I do not know what was found or set, my record keeping has improved a lot since then. I have told clients that I cannot do a record of survey as I do not have the drafting equipment (no computer) and I hate to keep asking for help. I cannot go back to the client to ask for more money so I will have to do it on my own. Can I just give them back the money and take out anything I set?"

19. On July 10, 2007, the Board sent a letter to Respondent advising him that if the three outstanding parcels were not surveyed within 30 days, disciplinary action may be taken against Respondent's license. On August 5, 2007, Respondent sent a letter to the Board indicating the following: APN 0631-132-28: Respondent stated that he had monumented the NE Corner and some easements and that he had subsequently removed them; APN 0454-041-33: Respondent stated that he had searched in vain for control and set nothing; APN 0587-231-50: Respondent

FOURTH CAUSE FOR DISCIPLINE

(Violation of Chapter – Failure to Set Monuments with Sufficient Durability)

23. Respondent is subject to disciplinary action under section 8780(d) of the Code for violating Code section 8771(a), in that he failed to set monuments with sufficient durability, as set forth in detail in paragraphs 14-19, incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Chapter – Failure to Properly Label Monuments)

24. Respondent is subject to disciplinary action under section 8780(d) of the Code for violating Code section 8772, in that he failed to properly label monuments, as set forth in detail in paragraphs 14-19, incorporated herein by reference.

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 Land Surveyor License Number L 6298, issued to Ken Nussbaum;

2. Ordering Ken Nussbaum 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: 6/25/10

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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