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9 **BEFORE THE**
CALIFORNIA ARCHITECTS BOARD
10 **LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12
13 In the Matter of the Accusation Against:

14 **MARK SCOTT ANNERL**
2022 Orchard Drive
15 Newport Beach, CA 92660

16 **Landscape Architect License No. LA 3400**

17 Respondent.

Case No. LA 2011-16

OAH No. 2014040874

S E C O N D A M E N D E D
A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

21 1. Douglas R. McCauley (Complainant) brings this Accusation solely in his official
22 capacity as the Executive Officer of the Landscape Architects Technical Committee, California
23 Architects Board, Department of Consumer Affairs.

24 2. On or about October 15, 1990, the California Architects Board issued Landscape
25 Architect License Number LA 3400 to Mark Scott Annerl (Respondent). The Landscape
26 Architect License expired on April 30, 2011. It was renewed on December 27, 2011. It was in
27 full force and effect at all other times relevant to the charges brought herein and will expire on
28 April 30, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the California Architects Board (Board) for the Landscape Architects Technical Committee, 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 5660 of the Code states, in pertinent part, that the board may upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any landscape architect, and may suspend for a period not exceeding one year, or revoke, the license of any landscape architect who is guilty of any one or more of the acts or omissions constituting grounds for disciplinary action under Chapter 3.5 (commencing with Section 5660) of the Business and Professions Code.

STATUTORY PROVISIONS

6. Section 5616 of the Code states:

“(a) A landscape architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the landscape architect and the client, or their representatives, prior to the landscape architect 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:

“ . . .”

“(4) The name, address, and license number of the landscape architect and the name and address of the client.

“ . . .”

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1 7. Section 5640 of the Code states:

2 “It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor
3 more than five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six
4 months, or by both that fine and imprisonment, for a person to do any of the following without
5 possessing a valid, unrevoked license as provided in this chapter:

6 “(a) Engage in the practice of landscape architecture.

7 “(b) Use the title or term ‘landscape architect,’ ‘landscape architecture,’ ‘landscape
8 architectural,’ or any other titles, words, or abbreviations that would imply or indicate that he or
9 she is a landscape architect as defined in Section 5615.

10 “(c) Use the stamp of a licensed landscape architect, as provided in Section 5659.

11 “(d) Advertise or put out a sign, card, or other device that might indicate to the public that
12 he or she is a licensed landscape architect or qualified to engage in the practice of landscape
13 architecture.”

14 8. Section 5642 of the Code states:

15 “This chapter shall not be deemed to prevent a landscape architect from forming a
16 partnership, firm, or corporation with, or employing, persons who are not landscape architects if
17 the signature, date, and license number of the landscape architect appears on all instruments of
18 service. In no case shall the other members of the partnership, firm, or corporation be designated
19 or described as landscape architects.

20 “The name of the licensed landscape architect shall appear wherever the firm name is used in
21 the professional practice of the partnership, firm, or corporation, and the landscape architect shall
22 reside in California when the partnership, firm, or corporation maintains a California office or
23 mailing address. The name of the licensee shall appear on all partnership, firm, or corporation
24 stationery, brochures, business cards and any instruments of service used or provided in the
25 professional practice of the partnership, firm, or corporation.

26 “No partnership, firm, or corporation shall engage in the practice of landscape architecture
27 unless the work is under the immediate and responsible direction of a licensee of the board.
28

1 "Failure of any person to comply with this section constitutes a ground for disciplinary
2 action."

3 9. Section 5655 of the Code states:

4 "Licenses to practice landscape architecture shall remain in full force until revoked or
5 suspended for cause, or until they expire, as provided in this chapter."

6 10. Section 5659 of the Code states:

7 "Each person licensed under this chapter shall sign, date, and seal or stamp using a seal or
8 stamp described in this section, all plans, specifications, and other instruments of service therefor,
9 prepared for others as evidence of the person's responsibility for those documents. Failure to
10 comply with this section constitutes a ground for disciplinary action. Each person licensed under
11 this chapter shall use a seal or stamp of the design authorized by the board, bearing his or her
12 name, license number, the legend 'licensed landscape architect,' the legend 'State of California'
13 and a means of providing a signature, the renewal date of the license, and date of signing and
14 sealing or stamping"

15 11. Section 5666 of the Code states:

16 "The fact that the holder of a license is practicing in violation of the provisions of this
17 chapter constitutes a ground for disciplinary action."

18 12. Section 5668 of the Code states:

19 "The fact that the holder of a license is impersonating a landscape architect or former
20 landscape architect of the same or similar name, or is practicing under an assumed, fictitious or
21 corporate name, constitutes a ground for disciplinary action."

22 13. Section 5670 of the Code states:

23 "The fact that, in the practice of landscape architecture, the holder of a license has been
24 guilty of fraud or deceit constitutes a ground for disciplinary action."

25 14. Section 5671 of the Code states:

26 "The fact that, in the practice of landscape architecture, the holder of a license has been
27 guilty of negligence or willful misconduct constitutes a ground for disciplinary action."

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REGULATORY PROVISIONS

15. Section 2670 of the California Code of Regulations states:

"A violation of any rule of professional conduct in the practice of landscape architecture constitutes a ground for disciplinary action. Every person who holds a license issued by the Board shall comply with the following:

". . .

"(b) Willful Misconduct:

(1) In designing a project, a landscape architect shall have knowledge of all applicable building laws, codes, and regulations. A landscape architect may obtain on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations and shall not knowingly design a project in violation of such laws, codes and regulations.

". . . ."

16. Section 2671 of the California Code of Regulations states:

"(a) A landscape architect shall include his or her name and the words 'landscape architect' in all forms of advertisements or presentments made to the public in connection with the rendition of landscape architectural services for which a license is required by the Landscape Architects Law, including, but not limited to, any advertisement, card, letterhead or contract proposal.

"(b) For purposes of a group practice which contains or employs two or more landscape architects, the requirements of subsection (a) of this section shall be deemed satisfied as to such group practice if the name of the landscape architect who is a partner, principal, officer or employee of the group practice and the words 'Landscape Architect' are included in its advertisements or presentments made to the public."

17. Section 2680 of the California Code of Regulations states:

"In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled 'Disciplinary Guidelines' [Rev. 2000] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is

1 appropriate where the Board in its sole discretion determines that the facts of the particular case
2 warrant such a deviation -for example: the presence of mitigating factors; the age of the case;
3 evidentiary problems.”

4 **COSTS**

5 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **LEDGER PROJECT**

12 19. On or about September 9, 2011, Respondent and his clients, Emery and Alison
13 Ledger, executed a contract for him to provide a conceptual design for rear yard landscaping on
14 their residential property in Newport Beach. On or about September 29, 2011, they executed
15 another contract for Respondent to provide construction drawings for the rear yard landscaping on
16 the property. Respondent prepared the plans and drawings but recommended various shortcuts
17 and workarounds in an attempt to circumvent the applicable permitting and approval processes,
18 particularly for a Verdura retaining wall in his plans to be constructed as part of the project. In his
19 plans, Respondent labeled the wall as pre-existing and manipulated the property line to make it
20 look like significant landscape features were within the property line, when in truth and in fact they
21 were outside of the property line. Between April 30, 2011, and December 26, 2011, Respondent’s
22 license was expired.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Negligence and/or Willful Misconduct)**

25 20. Respondent is subject to disciplinary action under section 5671 and/or Section 2670 of
26 Title 16 of the California Code of Regulations in that Respondent committed acts constituting
27 negligence and/or willful misconduct. Complainant re-alleges and incorporates by reference the
28

1 allegations set forth above in paragraph 19. The negligence and/or willful misconduct includes the
2 following:

3 a. In preparing Respondent's design work, Respondent should have used the site
4 or base plan prepared by Toal Engineering because it included mapped property lines that
5 Respondent could have used to create his design base plan.

6 b. Respondent should have clearly shown where the rear property line was located
7 on all of his plans, beginning with his concept plan work.

8 c. Respondent should have understood that construction of a swimming pool,
9 retaining wall, Verdura retaining wall, and handrail system triggered the need for agency review
10 and permitting.

11 d. Respondent knowingly created a design with significant features beyond the
12 limits of the property that violated applicable code, regulations, and review compliance.

13 e. Respondent designed features beyond project property lines and omitted
14 property lines from his plans so that design features would appear to be within property lines.

15 f. Respondent attempted to circumvent the homeowners' association review and
16 permitting process by representing to the homeowners' association that the Verdura retaining wall
17 was pre-existing, when in truth and fact it was not.

18 g. The Verdura retaining wall in Respondent's plans was located beyond the rear
19 yard property line, which made the design and plans unusable because it is unlikely that it could
20 have been permitted or constructed in the location shown.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Deceit)**

23 21. Respondent is subject to disciplinary action under section 5670 in that, in the practice
24 of landscape architecture, Respondent committed deceit. Complainant re-alleges and incorporates
25 by reference the allegations set forth above in paragraphs 19-20. The deceit includes the
26 following:

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1 a. Respondent represented to the homeowners' association that the Verdura
2 retaining wall shown on his plan was pre-existing, when in truth and in fact, as Respondent well
3 knew, it was not.

4 b. Respondent designed features beyond project property lines and purposely
5 omitted property lines from his plans so that design features would appear to be within property
6 lines, when in truth and in fact, as Respondent well knew, they were not.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Practicing Out of Licensed Name Style)**

9 22. Respondent is subject to disciplinary action in that Respondent acted in the capacity of
10 a landscape architect using "Mark Scott Associates" and not his name as licensed with the Board.
11 Respondent's name as licensed with the Board is Mark Scott Annerl. Complainant re-alleges and
12 incorporates by reference the allegations set forth above in paragraphs 19-21. This violated the
13 following statutes:

14 a. Section 5616, subd. (a)(4).

15 b. Section 5642.

16 c. Section 5668.

17 d. Section 5666 in conjunction with Code of Regulations section 2671.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Practicing with an Expired License)**

20 23. Respondent is subject to disciplinary action in that Respondent, while not possessing a
21 valid, unrevoked license, engaged in the practice of landscape architecture; used the title or term
22 'landscape architect,' 'landscape architecture,' 'landscape architectural,' or any other titles, words,
23 or abbreviations that would imply or indicate that he is a landscape architect as defined in Section
24 5615; and used the stamp of a licensed landscape architect as provided in Section 5659.
25 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
26 19-22. This violated Section 5666 in conjunction with sections 5640, subdivisions (a)-(c), and
27 5655.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Landscape Architects Technical Committee, California
4 Architects Board, issue a decision:

- 5 1. Revoking or suspending Landscape Architect License Number LA 3400, issued to
6 Mark Scott Annerl;
7 2. Ordering Mark Scott Annerl to pay the Landscape Architects Technical Committee,
8 California Architects Board, the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3; and
10 3. Taking such other and further action as deemed necessary and proper.
11

12 DATED: October 23, 2014

Douglas R. McCauley
13 DOUGLAS R. MCCAULEY
14 Executive Officer
15 Landscape Architects Technical Committee
16 California Architects Board
17 Department of Consumer Affairs
18 State of California
19 Complainant

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