

BEFORE THE
CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

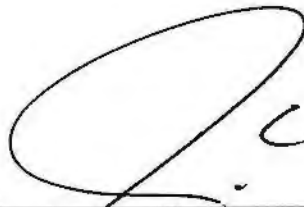
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| In the Matter of the Accusation Against: |) | |
| |) | Accusation No. 2013-14 |
| CHRISTOPHER IAN GUSTARD, |) | |
| Landscape Architect License No. LA4882 |) | Case No. LA 2013-14 |
| |) | |
| |) | OAH No. 2015090722 |
| |) | |
| Respondent. |) | |
| _____ |) | |

DECISION

The attached Corrected Proposed Decision of the Administrative Law Judge is hereby adopted by the, California Architects Board, Landscape Architects Technical Committee, Department of Consumer Affairs, State of California, as the Decision in the above-entitled matter.

This Decision shall become effective on July 13, 2016.

IT IS SO ORDERED June 9, 2016



FOR THE CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
DEPARTMENT OF CONSUMER AFFAIRS

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In the Matter of the Accusation Against:

CHRISTOPHER IAN GUSTARD,
Landscape Architect License No. LA 4882,

Respondent.

Case No. LA 2013-14

OAH No. 2015090722

CORRECTED PROPOSED DECISION

Administrative Law Judge Regina Brown, Office of Administrative Hearings (OAH), State of California, heard this matter on March 24, 2016, in Oakland, California.

Aspasia A. Papavassiliou, Deputy Attorney General, represented complainant Douglas R. McCauley, Executive Officer of the Landscape Architects Technical Committee of the California Architects Board.

Respondent Christopher Ian Gustard appeared telephonically and represented himself at hearing.

The record was left open until April 7, 2016, to allow respondent to submit additional rehabilitation documents, and for complainant to respond on or before April 14, 2016. Four character letters were submitted on behalf of respondent and were marked collectively as Exhibit B for identification. On April 13, 2016, respondent submitted additional documents marked collectively as Exhibit C for identification. No objection was received from complainant. Exhibits B and C were admitted into evidence as administrative hearsay. The record closed on April 14, 2016.¹

The matter was submitted on April 14, 2016.

¹ At respondent's request and having no objection by complainant, a protective order (marked as Exhibit D) was issued to seal the criminal court documents contained in Exhibit 4.

FACTUAL FINDINGS

1. On December 17, 2003, the California Architects Board (Board) issued Landscape Architect License Number LA 4882 to respondent Christopher Ian Gustard. The license expired on December 31, 2013, and has not been renewed.²

2. Complainant Douglas R. McCauley in his official capacity as the Executive Officer of the Landscape Architects Technical Committee of the California Architects Board, Department of Consumer Affairs, filed an Accusation against respondent alleging that discipline was warranted against respondent's landscape architect license because he has been convicted of a crime that is substantially related to the licensed activity. Respondent appealed.

3. On March 12, 2012, in the case of *United States of America v. Christopher Ian Gustard*, United States District Court, Southern District of California, Case No. 11CR1838-BEN, respondent was convicted on his plea of guilty of a violation of 18 United States Code section 2252, subdivision (a)(2)(B) (distribution of images of children engaged in sexually explicit conduct), a felony and a crime that is substantially related to the qualifications, functions or duties of a licensee. Respondent was sentenced to 120 months of imprisonment and 10 years of supervised release,³ ordered to pay a fine and assessment, and required to register as a sex offender.

The facts and circumstances leading to this conviction are that on December 3, 2010, respondent used Gigatribe, a peer-to-peer file sharing software, to provide child pornography for sharing with others. A FBI special agent with the Cyber Crime Squad downloaded 766 image files and 13 videos depicting child pornography from respondent's computer. These downloads included video clips of adult males performing sexual acts on prepubescent males, and a video clip of an adult male sodomizing a toddler.

² An expired license does not deprive the Board of jurisdiction to impose discipline against a licensee. (Bus. & Prof. Code, § 118.)

³ Respondent's supervised release includes special conditions of supervision, such as not having unsupervised contact with any child under the age of 18, unless in the presence of a supervising adult (who is aware of respondent's deviant sexual behavior and conviction), and with the prior approval of the probation officer; not loitering within 200 yards of a school, schoolyard, playground, park, amusement center/park, public swimming pool, arcade, daycare center, carnival, recreation venue, library and other places frequented by persons under the age of 18, without prior approval of the probation officer; completing an approved state-certified sex offender treatment program; not using or possessing devices which can communicate data via modem and not having access to the Internet without prior approval from the Court or probation officer; and participating in a mental health treatment program.

On January 19, 2011, members of law enforcement on the Internet Crimes Against Children task force executed a search warrant of respondent's residence. During the execution of the warrant, respondent admitted to possessing and distributing child pornography. A forensic analysis of the computers and media from respondent's residence was conducted and revealed thousands of images and videos depicting minors engaging in sexually explicit conduct.

Respondent's Evidence

4. Respondent states that he made a mistake. Respondent attributes his criminal behavior as his "subconscious attempts to assuage anxieties linked to losing [his] job, mounting financial problems, compounding childhood issues, and a failing relationship." He states that he did not know the "gravity associated with [his] addictive behaviors until a small army of law enforcement descended on [his] home office one morning at 6:00 a.m. while [he was] working on a deadline for a hotel project." Respondent states that a highly regarded forensic psychologist examined him and opined in the federal criminal court proceedings that respondent will "function safely in the community as a landscape architect once he is released from custody." He has also had many hours of therapy. According to respondent, he is making efforts at "recovery and rehabilitation from [his] past afflictions which led to [his] committing the offense, for which [he is] now serving the time society has required of [him]."

5. Respondent contends that since his license to practice landscape architecture in California has already expired, this disciplinary "action has every appearance of a vindictive attack and a prejudicial witch-hunt." He finds it difficult to see how a "computer-based crime" involved his work as a landscape architect. Also, he states that he was given "10 years for a computer offense when there are worse offenses where people have gotten less time." In a letter submitted after the hearing, respondent wrote that he "clearly understand[s] that [his] offense demonstrates some of the most disturbing sides of human behavior and people rightfully have emotions of disgust and loathing. [His] offense also, on the contrary, did not involve a conviction having anything to do with the actual abuse of minors."

6. Currently, respondent is incarcerated in federal prison in New Jersey, and he expects to be released in December 2020, when he will begin serving 10 years of supervised release. He applied for licensure in Virginia, where he plans to practice when he is released from prison. On March 15, 2016, the Commonwealth of Virginia, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects issued an opinion and order granting respondent an agreement for licensure with certain conditions to remain in effect until he is released from the supervised release. Respondent wants the Board to take the Virginia Board's opinion and order into consideration.

7. Prior to his conviction, respondent served as the San Diego chapter president of the American Society of Landscape Architects, and as co-chair of the Orchids and Onions program for the San Diego Architectural Foundation. He worked with the non-profit

domestic violence group Center for Community Solutions. He also worked at an architecture firm until 2009, when he started his own independent design business. During his incarceration, respondent has taught GED and English as a Second Language courses, yoga, masonry building, and drafting classes.

8. Respondent provided several letters from professionals, family members, and friends who support respondent retaining his landscape architect license.

Costs

9. The Board certified that costs in the amount of \$7,762.50, were incurred in connection with the enforcement of this Accusation by the Attorney General's Office.

10. Respondent did not object to the costs. Complainant's costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Complainant has the burden to prove by clear and convincing evidence that respondent's landscape architect license should be revoked. (*Ettinger v. Board of Medical Quality Assurance* (1928) 135 Cal. App. 3d 853, 856.)

2. Under Business and Professions Code⁴ section 5620.1, protection of the public is the highest priority for the Landscape Architects Technical Committee.

3. Section 490, subdivision (a), provides that a board may suspend or revoke a license on the grounds that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the profession for which the license was issued. The conviction of a felony in connection with the practice of landscape architecture constitutes a ground for disciplinary action. (§ 5675.)

California Code of Regulations, title 16, section 2655, provides that a crime or act is considered substantially related to the qualifications, functions and duties of a landscape architect "if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her license in a manner consistent with the public health, safety or welfare." Distributing images of children engaged in sexually explicit conduct reflects a lack of sound professional and personal judgment, threatens the safety of the public, and demonstrates an utter disregard of the law. Respondent's crime evidences a present and potential unfitness of respondent to perform the functions authorized by his license in a manner consistent with the public safety and welfare.

⁴ All statutory references are to the Business and Professions Code unless otherwise noted.

Cause exists to take disciplinary action against respondent's landscape architect license pursuant to sections 490, subdivision (a), and 5675, by reason of the matters set forth in Finding 3.

Disciplinary considerations

4. Cause for discipline having been established, the remaining issue is the appropriate level of discipline. It is respondent's burden to establish that he is sufficiently rehabilitated so that he can be trusted to practice safely as a landscape architect.

5. In evaluating the rehabilitation of a licensed landscape architect who has been convicted of a crime, the Board may consider the following criteria: the nature and severity of the act(s) or offense(s); total criminal record; the time that has elapsed since commission of the act(s) or offense(s); whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee; evidence of expungement proceedings; or evidence of rehabilitation submitted by the licensee. (Cal. Code Regs., tit. 16, § 2656, subd. (b).)

All evidence of respondent's efforts toward rehabilitation has been considered. However, the seriousness of his crime is heightened because it involved children, one of the most vulnerable populations in society. In addition, he will remain incarcerated until at least 2020, and good conduct is expected of one while in prison or on parole or probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) After he is released from prison, he will remain on supervised release as a registered sex offender with stringent requirements that prohibit him from being outside near children. These are places where a landscape architect, such as respondent, would likely work in his or her profession. Most importantly, respondent does not appear to take full responsibility for his conduct. He places blame on society for his lengthy incarceration and the Board for seeking discipline against his license. He considers his crime to be a mere computer-based crime, and does not fully appreciate that his crime involved real children who had been horribly victimized. Overall, respondent has failed to meet his burden of demonstrating that he is sufficiently rehabilitated from his conviction. Considering all the facts and circumstances, there is insufficient evidence of respondent's rehabilitation to allow him to remain licensed.

Costs

6. Business and Professions Code section 125.3, provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Board's certification of the actual costs constitutes prima facie evidence of the reasonable costs. The costs of \$7,762.50, as set forth in Finding 9, were established by such a certification.

The case of *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges

dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. The *Zuckerman* factors have been considered. A reduction of the costs is not warranted. The Board is authorized to recover the reasonable costs of enforcement in the amount of \$7,762.50, from respondent.

ORDER

Landscape Architect License Number LA 4882 issued to respondent Christopher Ian Gustard is revoked. Respondent shall pay \$7,762.50, to the Board for its reasonable costs of enforcement.

DATED: June 6, 2016

DocuSigned by:
Regina Brown
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REGINA BROWN
Administrative Law Judge
Office of Administrative Hearings