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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CITY LIGHT CONSTRUCTION et al.,

Plaintiffs and Respondents,

v.

STATE OF CALIFORNIA, DEPARTMENT  
OF CONSUMER AFFAIRS,  
CONTRACTORS STATE LICENSE  
BOARD, REGISTRAR OF  
CONTRACTORS,

Defendant and Appellant.

B279043

(Los Angeles County  
Super. Ct. No. BS157083)

APPEAL from a judgment of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Reversed with directions.

Xavier Becerra, Attorney General, Linda K. Schneider, Senior Assistant Attorney General, Marc C. Greenbaum and Yunah Chung, Deputy Attorneys General, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## **I. INTRODUCTION**

Defendant Contractors State License Board (the Board) appeals from a judgment granting in part a petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5). The Board filed an administrative proceeding against plaintiff City Light Construction, which is owned solely by Faramarz Taghilou, for violation of Business and Professions Code<sup>1</sup> section 7112. The Board found Taghilou violated section 7112 by failing to disclose a prior criminal conviction on his application for an addition to his general contractor's license. It imposed a penalty of staying a license revocation and placing Taghilou on three years of probation. Plaintiff<sup>2</sup> petitioned for a writ of administrative mandamus. The trial court agreed that plaintiff had violated section 7112 but vacated the penalty, concluding that the Board abused its discretion in imposing it.

The Board contends the trial court erred in finding an abuse of discretion. Alternatively, the Board requests that the trial court be ordered to remand the matter to issue a new penalty. We find the trial court erred by finding an abuse of discretion, and reverse with directions for the trial court to enter judgment denying the petition for writ of administrative mandamus.

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<sup>1</sup> Further statutory references are to the Business and Professions Code unless otherwise indicated.

<sup>2</sup> Plaintiff is described as "CITY LIGHT CONSTRUCTION, FARAMARZ TAGHILOU, SOLE OWNER."

## II. BACKGROUND

### *A. Plaintiff's Prior Licensing History and Criminal Conviction*

On June 24, 1987, Taghilou was issued a contractor's license by the Registrar of Contractors.

On January 5, 1989, Taghilou, who was 28 years old at the time, plead no contest to one felony count of violating Penal Code section 288a, subdivision (c), oral copulation with a child under the age of 14 years. The criminal court ordered Taghilou to participate in a 90-day diagnostic study with the Department of Corrections and Rehabilitation, and placed him on probation for three years. As a condition of probation, Taghilou was prohibited from associating with "young women" under the age of 16 years, and was required to register as a sex offender.

On July 24, 1992, Taghilou obtained a court order vacating his plea of no contest and dismissing the information against him, pursuant to Penal Code section 1203.4. The court order did not specifically warn Taghilou of his obligation to disclose the conviction for purposes of licensure by any state or local agency. (See Pen. Code, § 1203.4, subd. (a)(1) [stating that when a conviction is vacated, "[t]he order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency"].)

On June 6, 1994, Taghilou applied for an additional general building contractor's classification. Question number 14 of the application asked: "Have you ever been convicted of offenses in any State, or elsewhere, other than traffic violations?" The answer was marked, "No." The application was signed by Taghilou under penalty of perjury.

On August 25, 1997, Taghilou received a certificate of rehabilitation. The Los Angeles County District Attorney reported that Taghilou had lived without incident since the end of his probation, married, bought a home and cars, and worked successfully as an electrical contractor. Letters in support of Taghilou's petition for a certificate of rehabilitation attested to his reputation as a hard-working and loyal friend, family member, and contractor, and to his honesty, integrity, trustworthiness, and reliability.

Prior to 2005, the Board did not require applicants to submit fingerprints and it did not have ready access to Taghilou's conviction records. On January 27, 2014, a member of the public advised the Board of Taghilou's conviction.

#### *B. Board's Accusation*

On November 18, 2014, the Board filed a first amended accusation, alleging that Taghilou had violated section 7112, which in 1994 stated, "Misrepresentation of a material fact by an applicant in obtaining a license constitutes a cause for disciplinary action."<sup>3</sup> (Stats. 1939, ch. 37, § 1, p. 394.) The Board sought revocation or suspension of the contractor license issued to City Light Construction.

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<sup>3</sup> In 2001, section 7112 was amended to read, "Omission or misrepresentation of a material fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an existing license constitutes a cause for disciplinary action." (Stats. 2001, ch. 728, § 61.) The Board found that adding a classification was "obtaining" for purposes of former section 7112. The trial court did not disturb this finding.

### *C. Administrative Proceedings*

On February 17, 2015, the matter came on for hearing before an administrative law judge of the Office of Administrative Hearings. Taghilou testified that he did not lie or misrepresent his conviction on his application. Taghilou blamed the misstatement on an assistant at the school where he was taking course work for his general contractor license. He stated the assistant completed his 1994 application for him. Taghilou additionally stated that he was told by his criminal defense attorney that an expungement meant his case was dismissed. Taghilou also denied that he committed the crime, asserting there was no evidence the victim was 14 years of age.

On June 4, 2015, the administrative law judge issued her proposed decision, finding that Taghilou had violated section 7112. In deciding on the appropriate discipline, the administrative law judge applied criteria for rehabilitation (Cal. Code Regs., tit. 16, § 869), and noted numerous mitigating factors, including: Taghilou's unblemished work history; lack of prior disciplinary record; passage of time; the lack of clarity in the superior court's expungement order regarding the need to disclose convictions to licensing agencies; hardships imposed by Taghilou's erroneous registration as a sex offender;<sup>4</sup> and his health challenges. Consequently, the administrative law judge recommended that Plaintiff's contractor's license be revoked, but that the revocation be stayed during a three year period of probation. The administrative law judge recommended the following terms of probation: obey all laws; appear in person for

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<sup>4</sup> On April 14, 2015, the superior court ordered Taghilou's name, address, and photograph removed from the sex offender registry and Megan's law Web site.

interviews with the Regional Deputy of the Board; complete probation; submit copies of documents directly related to construction operations to the Registrar of Contractors upon demand; perform 20 days of community service; and pay the Board \$1,000 for investigation costs.

On June 26, 2015, the Board adopted the proposed decision, but declined to impose community service. The Board also imposed a \$15,000 disciplinary bond pursuant to section 7071.8.

#### *D. Trial Proceedings*

On August 5, 2015, plaintiff petitioned for a writ of administrative mandamus. Plaintiff conceded the factual findings of the Board, but asserted he had not violated section 7112 because he did not make a “willful” misrepresentation.

The matter proceeded to a hearing on August 5, 2016. On August 11, 2016, the trial court issued its decision, concluding that plaintiff had violated section 7112, but finding that the Board had abused its discretion in imposing the penalty. The trial court rejected plaintiff’s argument that a misrepresentation in violation of section 7112 required intent.<sup>5</sup> Nonetheless, the trial court also found the Board had abused its discretion in imposing the penalty: “In light of the reasonableness of [plaintiff] concluding that the dismissal of his conviction effectively erased the record of conviction, the Court finds, in exercise of its independent judgment that the discipline was an improper abuse

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<sup>5</sup> We need not address whether a non-willful misstatement can support a finding that a licensee violated section 7112 because plaintiff does not appeal the judgment.

of discretion. Any reasonable person would interpret his or her status in this way.” The trial court granted plaintiff’s petition as to the penalty imposed. The court then entered judgment, vacating the penalty in its entirety.<sup>6</sup>

### III. DISCUSSION

The sole issue before this court is whether the trial court erred in vacating the penalty imposed by the Board. “The penalty imposed by an administrative body will not be disturbed in mandamus proceedings unless an abuse of discretion is demonstrated. [Citations.] Neither an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed.” (*Barber v. State Personnel Bd.* (1976) 18 Cal.3d 395, 404.) “This rule is based on the rationale that ‘the courts should pay great deference to the expertise of the administrative agency in determining the appropriate penalty to be imposed.’ [Citation.] [¶] ‘One of the tests suggested for determining whether the administrative body acted within the area of its discretion is whether reasonable minds may differ as to the propriety of the penalty imposed. The fact that reasonable minds may differ will fortify the conclusion that there was no abuse of discretion.’” (*Hughes v. Board of Architectural Examiners* (1998) 68 Cal.App.4th 685, 692, fn. omitted (*Hughes*); see *County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1581-1582 [appellate court reviewed exercise of discretion by agency, not trial court’s decision, for abuse of discretion].)

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<sup>6</sup> Judge Robert O’Brien granted the plaintiff’s petition. Judge Amy D. Hogue entered the judgment.

We conclude the Board did not abuse its discretion. It imposed the minimum penalty for a violation of section 7112 recommended by its Disciplinary Guidelines: a stayed license revocation with three years of probation. (See Cal. Code Regs., tit. 16, § 871; Contractors' State License Board, Cal. Contractors License Law & Reference Book (2018), p. 532 (Law & Reference Book).) The terms of probation were the standard ones that the Disciplinary Guidelines recommended be included in all cases of probation. (*Id.* at p. 548.) The disciplinary bond requirement of \$15,000 was the statutory minimum bond amount for a disciplinary action. (§ 7071.8, subd. (b).) The Board declined to impose community service. Further, the order that plaintiff pay \$1,000 for the Board's investigation costs was within the discretion of the administrative law judge. (§ 125.3, subds. (a), (d).) The Board's investigation costs were \$2,710. The administrative law judge recommended reducing this amount because of plaintiff's financial condition.

On this record, in which plaintiff was found to have violated section 7112, reasonable minds can differ as to the disciplinary action taken. (*Hughes, supra*, 68 Cal.App.4th at p. 692.) We find the Board did not abuse its discretion by imposing the minimum recommended penalty for such a violation. We need not discuss the Board's alternative argument.

#### **IV. DISPOSITION**

The judgment is reversed. On remand, the trial court is directed to enter judgment denying the petition for writ of administrative mandamus. In the interests of justice, the parties



are to bear their own costs. (Cal. Rules of Court,  
rule 8.278(a)(5).)

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KIM, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.