

BEFORE THE CONTRACTORS BOARD

STATE OF IDAHO

In the Matter of the Registration of:

BORGES, LLC,
Registration No. RCE-40890,

Respondent.

Case No. CON-2022-69

**STIPULATION AND
CONSENT ORDER**

WHEREAS, the Idaho Contractors Board ("Board") has received information that constitutes sufficient grounds for the initiation of an administrative action against Borges, LLC ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms of this Stipulation and Consent Order ("Stipulation"):

I.

STIPULATED FACTS AND LAW

1. The Board regulates the practice of contracting in the State of Idaho in accordance with Title 54, Chapter 52 of the Idaho Code.

2. The Board issued Respondent Registration No. RCE-40890. Respondent's registration expired on December 15, 2017, and was therefore canceled as of December 16, 2017. Respondent did not renew its registration within five years of the date of expiration and therefore lost the right to renew it. I.C. § 67-2614(8). Respondent's right, if any, to engage in the practice of contracting in Idaho is subject to Respondent's compliance with Title 54, Chapter 52, Idaho Code.

BACKGROUND

3. On December 15, 2015, Respondent first registered with the Board as a contracting entity.

4. On December 16, 2017, Respondent's registration expired and was never renewed.

5. On July 15, 2020, after its registration expired, Respondent submitted a \$4,500.00 construction bid to C.G. ("Complainant") offering to remove and replace external stairs and gabling at Complainant's home [REDACTED].

6. On July 20, 2020, Complainant accepted Respondent's bid, and the parties entered into a written construction contract. In entering into the contract, and Complainant paid Respondent a \$2,000.00 down payment.

7. Thereafter, Respondent purchased construction materials for the project from a supplier via check. Respondent's check, however, was returned for insufficient funds. As a result, the supplier reclaimed all of the construction materials.

8. Respondent never performed the agreed-upon work and failed to refund Complainant's \$2,000.00 down payment.

COUNT I Unregistered Practice of Construction

9. All facts set forth in this Stipulation are incorporated into Count I.

10. After its contractor registration expired, Respondent submitted a bid and entered into a \$4,500.00 contract with Complainant to perform specified construction work at Complainant's home.

11. The allegations set forth in Count I constitute a violation of the following laws governing the practice of contracting in Idaho: Idaho Code §§ 54-5204(1) (stating that it is unlawful for any person to engage in the business of contracting or to hold himself out as a

contractor in Idaho without being registered with the Board); and 54-5215(2)(a) (violations of the Idaho Contractor Registration Act).

COUNT II
Dishonest or Dishonorable Dealings

12. All facts set forth in this Stipulation are incorporated into Count II.
13. Respondent received a \$2,000.00 down payment from Complainant but failed to perform the agreed-upon work.
14. Respondent purchased materials for the project via check, but the payment was subsequently refused for insufficient funds, and the supplier reclaimed the materials.
15. Respondent failed to refund any of Complainant's \$2,000.00 down payment.
16. The allegations set forth in Count II constitute a violation of the following laws governing the practice of contracting in Idaho: Idaho Code §§ 54-5215(2)(g) (dishonest or dishonorable dealings); and 54-5215(2)(a) (violating the Idaho Contractor Registration Act).

II.
WAIVER OF PROCEDURAL RIGHTS

In entering into this Stipulation and Consent Order ("Stipulation"), Respondent or Respondent's legally authorized representative agrees to and acknowledges the following:

17. Respondent understands and admits the allegations pending before the Board as set forth in Section I. Respondent further understands that these allegations constitute cause for disciplinary action upon Respondent's registration or authority to practice contracting in Idaho.
18. Respondent understands that it has the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence, call witnesses, or testify; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by Idaho's Administrative Procedure Act and the laws and rules governing

the practice of contracting in Idaho. Respondent hereby freely and voluntarily waives these rights in order to enter into this Stipulation as a resolution of the pending allegations.

19. Respondent understands that in signing this Stipulation, Respondent is enabling the Board to impose disciplinary action set forth in this Stipulation upon Respondent's right to future registration without further process.

20. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Board considers and acts upon it.

III. STIPULATED DISCIPLINE

21. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth herein is reasonable under the circumstances, although not binding upon the Board unless or until it issues an Order accepting this Stipulation.

Scope of Disciplinary Action

- a. All terms and conditions set forth in this Stipulation, including the stipulated discipline, shall apply to Respondent, all of Respondent's assumed business names, anyone with an interest in Respondent¹, all registrations subsequently granted to Respondent, and all registrations subsequently granted to anyone with in an interest in Respondent.

Cease and Desist

- b. Respondent shall cease and desist from engaging in the unregistered practice of contracting.

¹ The phrase "anyone with an interest in Respondent" refers to interests owned by an individual, firm, partnership, limited liability company, limited liability partnership, corporation, trust, association, or other entity or organization capable of conducting business, or any combination thereof acting as a unit.

Fines, Costs, and Fees

- c. Respondent shall pay to the Board a civil fine in the amount of \$1,250.00 within one hundred eighty (180) days of the entry of the Board's Order.
- d. Respondent shall pay investigative costs in the amount of \$520.00 and attorney fees in the amount of \$675.00 for a total amount of \$1,195.00 within one hundred eighty (180) days of the entry of the Board's Order. All monies paid by Respondent shall be applied towards the costs and attorney fees award first before application to the civil fine.
- e. Respondent shall pay all fines, costs, and attorney fees set forth in this Stipulation directly to the Board as follows:
 - (1) Payments made via check or money order shall be mailed to the following address: P.O. Box 83720, Boise, ID 83720-0063.
 - (2) Payments may be hand-delivered to the following address: 11341 W. Chinden Boulevard, Boise, ID 83714.
 - (3) Payments made via credit card or debit card shall be made online at dopl.idaho.gov Click on Professions & Occupations in the upper left corner to locate the Contractors Board page. There you will find a "Quick Links" tab for Online Disciplinary Actions Payment. Debit and credit card payments will not be accepted over the telephone.
- f. Respondent and anyone holding an interest in Respondent shall be ineligible to renew Registration No. RCE-40890, obtain or renew any other registration issued by the Board, or hold an interest in any entity registered by the Board until the fines, costs, and attorney fees set forth in this Stipulation are paid in full.

Miscellaneous Provisions

- g. Respondent is solely responsible for all costs associated with complying with this Stipulation.

- h. Respondent's violation of any of the terms of this Stipulation may warrant further Board action. The Board, therefore, retains jurisdiction over this proceeding until all matters set forth in this Stipulation are resolved.

IV.
PRESENTATION OF STIPULATION TO BOARD

22. The Board's prosecutor shall present this Stipulation to the Board so the Board may consider whether to approve it.

23. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects this Stipulation, a formal Complaint may be filed against Respondent with the Board. In the event this Stipulation is rejected and a formal Complaint is filed, Respondent waives any potential right to challenge the Board's impartiality to hear the allegations in the Complaint based on the Board's consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

24. If the Board rejects this Stipulation, with the exception of Respondent's waiver set forth in the preceding paragraph, this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing. Additionally, and with the exception of Respondent's waiver set forth in the preceding paragraph, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

V.
VIOLATION OF STIPULATION AND CONSENT ORDER

25. In the event Respondent violates or fails to timely comply with any term or condition of this Stipulation, the Board shall be authorized to take additional disciplinary action

pursuant to the following procedures and without regard to any other requirement set forth in the Idaho Code, IDAPA rules, or any other statutory or regulatory provision:

- a. The Board's Executive Officer or the Division of Occupational and Professional Licenses shall serve Respondent with notice of the charges levied against Respondent. Within twenty-one (21) days of service, Respondent shall submit a response (along with supporting documentation, if any) to the allegations and request a hearing before the Board. If Respondent does not submit a timely response, the charges or alleged violations will be deemed admitted. If Respondent does timely and specifically request a hearing, Respondent waives any right to such hearing.
- b. At the hearing, the Board and Respondent may submit evidence and present oral argument in support of their positions. Unless otherwise ordered by the Board, oral arguments and the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation. At the hearing, the facts and substantive matters related to the violations described in Section I of this Stipulation shall not be at issue.
- c. At the hearing, the Board may impose additional discipline, including, but not limited to, the revocation or suspension of Respondent's registration, the imposition of civil fines, the recovery of costs and fees (including, but not limited to, attorney fees) incurred by the Board, and other conditions or limitations upon Respondent's practice.

26. This Stipulation is the resolution of a contested case and is a public record.

27. In the event Respondent fails to comply with the terms of this Stipulation, the Board shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or administrative hearing.

28. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

29. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

VI.
ACKNOWLEDGMENT

I have read the attached Stipulation in its entirety and have had the opportunity to discuss it with legal counsel. I understand that, by its terms, I am waiving certain rights accorded me under Idaho law. I understand that the Board may approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this _____ day of _____

1/7/23

[Redacted signature area]

Christopher Borges
Borges, LLC

ORDER

Pursuant to Idaho Code § 54-5207, the foregoing is adopted as the decision of the Board of Contractors in this matter and shall be effective on the 6th day of April, 2023. IT IS SO ORDERED.


IDAHO CONTRACTORS BOARD

By _____
Board Chair

[Redacted signature area]

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2023, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Borges, LLC	<u>X</u>	U.S. Mail
Attn: Christopher Borges	<u>X</u>	Certified Mail, Return Receipt Requested
	___	Fax Transmission

Eric F. Nelson	___	U.S. Mail
Naylor & Hales, P.C.	___	Hand Delivered
950 W. Bannock St., Ste. 610	<u>X</u>	Email: eric@naylorhales.com
Boise, ID 83702	___	Fax Transmission 208-383-9516



Staff
Division of Occupational and Professional Licenses