ORIGINAL

BEFORE THE IDAHO STATE CONTRACTORS BOARD

In the Matter of the Registration of:	)	
	)	Case No. CON 2009-7
SILVER CREEK LANDSCAPE,	)	
INC.,	)	**FINAL ORDER**
Registration No. RCE-12873,	)	
	)	
Respondent.	)	

THIS MATTER is before the Board pursuant to the Default Order and Findings of Fact, Conclusions of Law and Recommended Order issued on April 10, 2009 by Michael J. Elia, the designated Hearing Officer in this case. A Default Order issued because the Respondent failed to answer or appear in this matter. The factual allegations set forth Complaint against Respondent were deemed true and, therefore, no formal hearing was held.

The Board, having independently reviewed the record and considered the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order and all other matters of record, and good cause appearing therefore, enters the following Order.

IT IS HEREBY ORDERED as follows:

1. Jurisdiction. Idaho Code § 54-5206 empowers the Board to administer the Idaho Contract Registration Act codified at title 54, chapter 52, Idaho Code. In the course of administering the Act, the Board has jurisdiction over all registered and unregistered persons engaging in the business of, or acting in the capacity of, a contractor in the State of Idaho. *See* Idaho Code § 54-5204(3). The Board may discipline any person who violates the Act. *See* Idaho Code § 54-5215.

2. Findings of Fact and Conclusions of Law. The Hearing Officer's Findings of Fact and Conclusions of Law are attached hereto as Exhibit A. They are adopted incorporated herein by this reference as the Board's findings of fact and conclusions of law.

3 Discipline Imposed. Based on its findings and conclusions, the Board

imposes the following discipline upon Respondent:

a. Respondent's registration, including any right to renew that registration, is revoked.

b. Respondent is fined one thousand dollars ($1000.00). Respondent must pay this fine within sixty (60) days from the date of this Order.

c. Respondent must pay the fees and costs incurred by the Board to investigate and prosecute this matter. The amount of the fees and costs that Respondent must pay shall be determined as follows:

i. Within forty five (45) days from the issuance of this Order, the State must file an affidavit, setting forth the fees and costs incurred to investigate and prosecute this matter.

ii. If Respondent objects to the fees and costs claimed by the State, then Respondent may, within thirty (30) days from the date on which the State serves its affidavit, file a written objection to those fees and costs and, if he desires, a written request for a hearing on the objection. If Respondent files a timely objection to the State's claimed fees and costs, then the Board will consider Respondent's objection in determining the amount of costs and fees that Respondent must pay. If, however, Respondent fails to file a timely objection, then the Respondent will have waived Respondent's ability to object, and Respondent must pay the total fee and cost amount set forth in the State's affidavit.

iii. Within ninety (90) days from the issuance of this Order: (a) if Respondent filed a timely objection, then Respondent must pay the total fee and cost amount as determined by the Board; or (b) if Respondent did not file a timely objection, then Respondent must pay the total fee and cost amount set forth in the State's affidavit. .

6. Due Process Rights. This is a final order of the Board. Accordingly:

a. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the issuance of this order. The Board will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

b. Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (i) a hearing was held; (ii) the final agency action was taken; (iii) the party seeking review of the order resides, or operates its principal place of business in Idaho; or (iv) the real property or personal property, if any, that was the subject of the agency action is located.

c. Any appeal must be filed within twenty-eight (28) days of: (i) the issuance of this final order; (ii) the issuance of an order denying a petition for reconsideration; or (iii) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

7. Service of Order. The Bureau Chief of the Bureau of Occupational Licenses shall cause a true and correct copy of this Final Order to be served upon the Respondent and the State's attorney by mailing a copy to them at their respective addresses, as provided.

DATED this 18th day of DECEMBER, 20 09.

IDAHO STATE CONTRACTORS BOARD

By _____
Anthony Hughes, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Manual Baeza Ortiz
Silver Creek Landscape, Inc.
5957 N. Teekem Falls Way
Meridian, ID 83646

- [x] U.S. Mail
- [ ] Hand Delivery
- [x] Certified Mail, Return Receipt Requested
- [ ] Overnight Mail
- [ ] Facsimile: _____
- [ ] Statehouse Mail

Karin Magnelli
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- [ ] U.S. Mail
- [ ] Hand Delivery
- [ ] Certified Mail, Return Receipt Requested
- [ ] Overnight Mail
- [ ] Facsimile: _____
- [x] Statehouse Mail

Tana Cory

Tana Cory, Bureau Chief

BEFORE THE CONTRACTORS BOARD

STATE OF IDAHO

In the Matter of the Registration of:	)	
	)	Case No. CON-2009-7
SILVER CREEK LANDSCAPE, INC.,	)	
Registration No. RCE-12873,	)	**FINDINGS OF FACT,**
	)	**CONCLUSIONS OF LAW AND**
Respondent.	)	**RECOMMENDED ORDER**
	)	

Having reviewed the Complaint and other documents in this matter, the Hearing Officer hereby enters the following Findings of Fact, Conclusions of Law, and Recommended Order:

FINDINGS OF FACT

1. Silver Creek Landscape, Inc. ("Respondent") is registered with the Board under Registration No. RCE-12873 to engage in the practice of contracting. Respondent's registration expired on February 22, 2008, and Respondent's registration was canceled as of February 23, 2008. Respondent has not renewed its registration; however, pursuant to Idaho Code § 67-2614, Respondent retains the right to renew its registration for up to five (5) years after cancellation by paying the required fees.

2. On February 18, 2009, a formal administrative Complaint was filed in this matter with the Board. Said Complaint is expressly incorporated herein and made a part hereof.

3. Copies of the Complaint, along with the Notification of Procedural Rights, were sent to Respondent on February 18, 2009, by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail. The mailings were addressed to Respondent at its most recent address on file with the Board, as follows:

Manuel Baeza
Silver Creek Landscape, Inc.
5957 N. Teekem Falls Way
Meridian, ID 83646

PENGAD-Bayonne, N. J.
EXHIBIT
A

4. The certified mail return receipt indicates that the copy of the Complaint sent by certified mail was received at Respondent's address on February 19, 2009. In addition, the envelope containing a copy of the Complaint which was sent to Respondent by regular mail was not returned to the sending office.

5. The Notification of Procedural Rights informed Respondent that, under statutes and rules applicable to such proceedings before the Board, Respondent needed to file a formal Answer to the Complaint within twenty-one (21) days of service of the Complaint and that failure to timely file an Answer to the Complaint or otherwise defend against the action would constitute a default and would be sufficient grounds for proceeding administratively against Respondent's registration without the necessity of conducting a hearing.

6. On March 20th, 2009, a Notice of Proposed Default Order and Default Order, along with another copy of the Complaint and Notification of Procedural Rights, were sent to Respondent by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail, at the following address:

Manuel Baeza
Silver Creek Landscape, Inc.
5957 N. Teekem Falls Way
Meridian, ID 83646

7. Respondent failed to contest entry of the proposed Default Order within seven (7) days of service of the Notice of Proposed Default Order.

8. Concurrent herewith, a Default Order was entered against Respondent. Therefore, the allegations contained in the Complaint on file in this matter are admitted as true without the necessity of conducting a hearing.

9. As detailed in the incorporated Complaint, Respondent, while a registered contractor, did do the following: In approximately March 2007 Respondent ordered and received sod from Treasure Valley Turf, Inc. for a landscaping job. Respondent paid for the turf with an insufficient funds check in the amount of $2,894.30. Respondent's owner

promised Treasure Valley Turf, Inc. that he would make payment on the $2,894.30 but has failed to pay the entire amount.

CONCLUSIONS OF LAW

1. As a registered contractor in the State of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 52, Idaho Code.

2. The Complaint was sent to Respondent at the address on file with the Board. Respondent was duly and lawfully given notice of proceedings against its registration pursuant to the provisions of IDAPA 04.11.01.055.

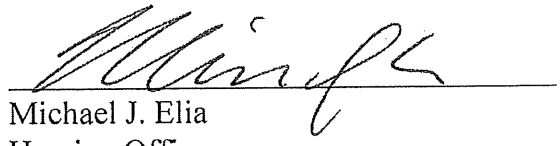
3. Respondent's failure to plead or otherwise defend in this action authorizes the Board, pursuant to Idaho Code § 67-5242(4) and IDAPA 04.11.01.700, to enter an Order of Default which is as lawful as if all the allegations in the Complaint were proved or admitted at a hearing.

4. Respondent's acts as described in the Complaint constitute grounds for discipline against Respondent's registration to practice contracting under the laws governing the practice of contracting, in the State of Idaho, specifically Idaho Code § 54-5215(2)(g) (dishonest or dishonorable dealings).

ORDER

Based upon the foregoing, it is the recommendation of the Hearing Officer that the Board take such action as it deems appropriate consistent with the Findings of Fact and Conclusions of Law stated above.

DATED this 10th day of April, 2009.



Michael J. Elia
Hearing Officer

NOTICE OF DUE PROCESS RIGHTS

This is a recommended order of the Hearing Officer. It will not become final without action of the Board. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer issuing the order within fourteen (14) days of the service date of this order. The Hearing Officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5243(3).

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

Written briefs in support of or taking exceptions to the recommended order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final order. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties and for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Manuel Baeza Ortiz Silver Creek Landscape, Inc. 5957 N. Teekem Falls Way Meridian, ID 83646	☒ U.S. Mail ☐ Hand Delivery ☒ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____
Karin Magnelli Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☐ E-mail: _____

Michael J. Elia
Hearing Officer