

1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**

4 **DAVID TRINH,**

5 *Applicant,*

6 **vs.**

7 **TZENG LONG USA, INC.; BERKSHIRE**
8 **HATHAWAY,**

9 *Defendants,*

10 **PROFESSIONAL LIEN SERVICES, INC.;**
11 **MIKE TRAW**

12 *Parties-in-interest.*

Case No. **ADJ928027**
 (Van Nuys District Office)

ORDER REMOVING CASE TO
 THE APPEALS BOARD
 AND NOTICE OF INTENTION
 TO SUSPEND THE PRIVILEGES OF
 PROFESSIONAL LIEN SERVICES, INC.,
 AND MIKE TRAW
 OF APPEARING BEFORE THE WCAB
 PURSUANT TO
 LABOR CODE SECTION 4907
 (Appeals Board En Banc)

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14 The Appeals Board removes this case to itself on its own motion pursuant to Labor Code section
15 5310 in order to issue this Notice Of Intention To Suspend The Privileges Of Professional Lien Services,
16 Inc., And Mike Traw Of Appearing Before The WCAB Pursuant To Labor Code Section 4907 (Notice
17 Of Intention).¹

18 On August 14, 2013, the workers' compensation administrative law judge (WCJ) in this case
19 issued an Order For Costs And Sanctions (August 14, 2013 Sanction Order) against Professional Lien
20 Services, Inc., (PLS), ordering it to pay defendant's costs and attorney's fees in the amount of Two
21 Thousand Three Hundred Fifty-Five (\$2,355.00) Dollars along with a separate court sanction of One
22 Thousand (\$1,000.00) Dollars, "[w]ithin 20 days after service" of the August 14, 2013 Sanction Order.
23 As explained by the WCJ in the August 14, 2013 Sanction Order, the sanctions were imposed for PLS's
24 bad faith and frivolous conduct in pursuing a trial on the issues of penalty and interest when it did not
25 offer evidence at the trial adequate to meet its initial burden of proof.

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27 ¹ Commissioner Brass was not available to participate in this decision. Further statutory references are to the Labor Code.
Section 5310 provides in pertinent part as follows: "The appeals board may... remove to itself...the proceedings on any
claim."

1 A copy of the August 14, 2013 Sanction Order is attached and incorporated as Exhibit A.

2 Neither PLS nor its representative, Mike Traw, who communicated with the Appeals Board on
3 behalf of PLS, petitioned for reconsideration or otherwise appealed the August 14, 2013 Sanction Order
4 and it is now final and binding for all purposes.²

5 By letter dated October 29, 2013, Deputy Commissioner Rick Dietrich, Secretary of the Appeals
6 Board, notified PLS that payment of the \$1,000 August 14, 2013 court sanction was expected within ten
7 days. The October 29, 2013 letter further advised that failure to pay the sanction was grounds for
8 suspending the privilege of appearing before the Workers' Compensation Appeals Board (WCAB)
9 pursuant to section 4907.³ In a November 19, 2013 reply letter sent on behalf of PLS, Mike Traw wrote
10 that it was his understanding that the sanction was not due "until all our legal remedies are exhausted,"
11 and that PLS had petitioned for reconsideration of the August 14, 2013 Sanction Order. By letter dated
12 November 26, 2013, Mr. Dietrich replied to Mr. Traw's letter, noting that no petition for reconsideration
13 of the August 14, 2013 Sanction Order had been filed and that the sanction was due and payable as PLS
14 had earlier been advised. Mr. Dietrich again advised PLS and Mr. Traw in the November 26, 2013 letter,
15 that section 4907 authorized suspension or removal of the privilege of appearing before the WCAB for
16 failure to comply with an order to pay sanctions. No response to the November 26, 2013 letter was
17 received from Mr. Traw or PLS, and the \$1,000 court sanction remains unpaid.

18 Defendant also made efforts to recover the costs and attorney's fees that PLS is obligated to pay
19 as part of the August 14, 2013 Sanction Order. As shown by the copy of an April 15, 2014 letter to PLS
20 that defendant filed in EAMS in this case, defendant's attorneys made demand for payment of the costs

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22 ² The earlier issued August 14, 2013 Sanction Order continues in effect notwithstanding the subsequent October 1, 2013
letter filed by PLS, stating that it was withdrawing its lien claim.

23 ³ Section 4907 provides in full as follows:

24 "(a) The privilege of any person, except attorneys admitted to practice in the Supreme Court of the state, to appear in any
25 proceeding as a representative of any party before the appeals board, or any of its workers' compensation administrative law
26 judges, may, after a hearing, be removed, denied, or suspended by the appeals board for either of the following: (1) For a
violation of this chapter, the Rules of the Workers' Compensation Appeals Board, or the Rules of the Administrative Director.
(2) *For other good cause, including, but not limited to, failure to pay final order of sanctions, attorney's fees, or costs issued
under Section 5813.*

27 (b) For purposes of this section, nonattorney representatives shall be held to the same professional standards of conduct as
attorneys." (Emphasis added.)

1 and fees on more than one occasion. In addition to demanding payment in the April 15, 2014 letter,
2 defendant also requested payment in letters dated October 2, 2013 and October 21, 2013, as shown by the
3 copies of those letters enclosed with the April 15, 2014 letter.

4 The EAMS file also includes a June 25, 2014 letter from defendant's attorney to Mr. Dietrich,
5 with proof of service of a copy on PLS, advising that payment of the ordered costs and fees had been
6 demanded by defendant, but they remained unpaid. In the June 25, 2014 letter, defendant asks "whether
7 the WCAB will impose a suspension or removal of the right to appear at the WCAB on this lien
8 claimant" for disobedience of the August 14, 2013 Sanction Order.

9 None of the efforts by the Appeals Board and the defendant have resulted in voluntary
10 compliance with the August 14, 2013 Sanction Order by PLS and Mr. Traw, and it appears they are
11 willfully disobeying the August 14, 2013 Sanction Order.

12 By certified letter dated September 5, 2014, Mr. Dietrich notified PLS and Mike Traw that an
13 action to suspend their privileges of appearing before the WCAB would be instituted pursuant to Labor
14 Code section 4907 if payment of the \$1,000 court sanction was not received within 20 days. Receipt of
15 the September 5, 2014 letter was acknowledged in writing by PLS, but the court sanction remains unpaid.

16 Section 4907(a)(2) provides for suspension of the privilege of appearing before the WCAB for,
17 "failure to pay final order of sanctions, attorney's fees, or costs, issued under Section 5813." The failure
18 to comply with an order or regulation of the WCAB, including an order to pay a sanction, is an
19 interference with the judicial process that provides good cause for suspending or removing the privilege
20 of appearing before the WCAB. (Lab. Code, § 4907; *In the Matter of John Hoffman* 71 Cal.Comp.Cases
21 609, 622 (significant panel decision); *In Re Discipline, Suspension or Removal of the Privilege of Louis*
22 *Moran to Appear in Proceedings Before the Board* (1980) 45 Cal.Comp.Cases 519 (Appeals Board en
23 banc); *In Re Daniel Escamilla* (2013) 78 Cal.Comp.Cases 134 (Appeals Board en banc); cf. *Reiner on*
24 *Discipline* 2014 Cal. LEXIS 10230 (Cal. Sept. 10, 2014).)

25 Accordingly, notice is hereby given that the privilege of PLS and of Mike Traw of appearing
26 before the WCAB will be suspended for ninety (90) days pursuant to section 4907 for willful failure to
27 pay the \$1,000 court sanction and attorney's fees and costs as ordered in the August 14, 2013 Sanction

1 Order unless good cause is shown in writing why the suspensions should not be imposed for the reasons
2 set forth above within 20 days from the date of this Notice Of Intention, and/or good cause is shown
3 within that time for requesting additional hearing. Notice is further given that reinstatement of the
4 privileges of appearing will be conditioned upon compliance with the August 14, 2013 Sanction Order.

5 For the foregoing reasons,

6 **IT IS ORDERED** that this case is **REMOVED** to the Appeals Board pursuant to Labor Code
7 section 5310.

8 **IT IS FURTHER ORDERED** as follows:

9 **NOTICE OF INTENTION TO SUSPEND PRIVILEGES OF APPEARING**

10 **NOTICE OF INTENTION IS HEREBY GIVEN** that the Appeals Board intends to suspend
11 the privilege of Professional Lien Services, Inc., and Mike Traw of appearing before the Workers'
12 Compensation Appeals Board pursuant to Labor Code section 4907 for ninety (90) days unless good
13 cause is shown why the suspensions should not be imposed for the reasons set forth above **within twenty**
14 **(20) days** from the date this Notice Of Intention, and/or good cause is shown within that time for
15 requesting additional hearing.

16 **NOTICE IS FURTHER GIVEN** that upon the expiration of the ninety (90) day suspensions, if
17 there still has not been compliance with the August 14, 2013 Sanction Order, the suspensions shall
18 continue until Professional Lien Services, Inc., and Mike Traw fully comply with the August 14, 2013
19 Sanction Order.

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IT IS FURTHER ORDERED that pending issuance of the Decision After Removal, all further correspondence, objections, motions, requests, and communications shall be filed in writing with the Workers' Compensation Appeals Board, P.O. Box 429459, ATTENTION: Office of the Commissioners, San Francisco, CA 94142-9459, and not with any local office.

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

/s/ Ronnie G. Caplane
RONNIE G. CAPLANE, Chairwoman

/s/ Deidra E. Lowe
DEIDRA E. LOWE, Commissioner

/s/ Marguerite Sweeney
MARGUERITE SWEENEY, Commissioner

/s/ Katherine A. Zalewski
KATHERINE A. ZALEWSKI, Commissioner

/s/ José H. Razo
JOSÉ H. RAZO, Commissioner

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

8/27/2015

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

PROFESSIONAL LIEN SERVICES, INC.
MIKE TRAW
ROBERT PALTY
GOLDMAN MAGDALIN & KRIKES

JFS/abs**TRINH, David**