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DOCKET
08-CRI-01
DATE MAR 25 2009
RECD. MAR 27 2009

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

CALIFORNIA LIVING & ENERGY (a division of William Lilly & Associates, Inc.) and DUCT TESTERS, INC.,	Docket Number 08-CRI-01
Complainants,	**Affidavit of Israel Calleros**
vs.	
MASCO CORPORATION and ENERGYSENSE, INC., Respondents.	

Being first duly sworn under oath, Israel Calleros deposes and states as follows:

1. I am a certified HERS rater employed by EnergySense, Inc., a position I have held since March 2007. I have personal knowledge of all facts set forth below.

2. I am certified as a HERS rater by the California Home Energy Efficiency Service ("CHEERS").

3. I am not an officer, director or employee of Masco Corporation or any Masco subsidiary other than EnergySense, Inc.

4. As a certified HERS rater employed by EnergySense, Inc., I am compensated entirely by EnergySense, Inc. on a straight hourly wage basis. I do not receive any form of performance-based bonus compensation.

5. I have no ownership interest in any entity whose installation work is field verified or diagnostically tested by me for Title 24 HERS compliance purposes.

6. I have no debt agreements with any person or entity whose installation work is field verified or diagnostically tested by me for Title 24 HERS compliance purposes.

7. I am not an employee or employer of any person or entity whose installation work is field verified or diagnostically tested by me for Title 24 HERS compliance purposes.

8. I have not advocated or recommended the use of any product or service as a means of gaining increased business from any builder or installer of energy efficient improvements that are subject to Title 24 HERS compliance requirements.

9. I do not share any office space, facilities, equipment or work address with any person or entity whose installation work is field verified or diagnostically tested by me for Title 24 HERS compliance purposes.

10. A true and correct copy of the Verification of Rater Agreement form signed by me and submitted to CHEERS in September 2008 is attached hereto as Exhibit 1, and I reaffirm that I remain in compliance with the terms and conditions of that agreement.

I swear or affirm, under penalty of perjury under the laws of the State of the California, that all facts set forth herein are true and correct.

FURTHER AFFIANT SAYETH NOT.

Executed this 25 day of March, 2009.

Israel Calleros

State of California))

County of Stanislaus)

On March 25, 2009, before me, JOHANNA MAFNAS, Notary Public, personally appeared Israel Calleros, who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged tome that he/she/they executed the same in his/her/their authorized capacity/ies, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Johanna Mafnas (Seal)

Notary Public

JOHANNA MAFNAS
Commission # 1715149
Notary Public - California
Stanislaus County
My Comm. Expires Jan 7, 2011

EXHIBIT 1

July 25, 2008

Israel Calleros CCNIC188228
EnergySense
1441 Coldwell Ave #D
Modesto, California 95350

YOUR ATTENTION IS REQUIRED REGARDING THE FOLLOWING MATTER

Dear Joshua:

I am informing you that CHEERS has received a complaint against EnergySense, charging violation of the conflict of interest provisions specified in the California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670 through 1675 (California Home Energy Rating System Program). The complaint alleges that EnergySense is a subsidiary of Masco Corporation and as such some of the work performed by raters employed by EnergySense violates the independent entity definition and is not allowable under State law. These allegations are not necessarily directed at the performance of individual raters in the employ of EnergySense, however, if such a relationship exists between EnergySense and Masco Corporation or one or more Masco subsidiaries, then the right of any EnergySense rater to perform Title24 HERS verification under CHEERS' authority to certify raters, may be in question. It is CHEERS' responsibility to confirm that Raters whom we certify are in compliance with these requirements.

The specific issue in question relates to the installation of measures required for compliance with Title 24 by a contractor that is related to the HERS Rater. For example: a rater who verifies Quality Installation of Insulation cannot be related to the installing contractor. This rule applies to all HERS-verified features and all raters providing verification services involving compliance with Title 24.

Your Rater certification through CHEERS is as an individual and the agreement that you signed includes the following provisions:

- HERS RATER shall comply with all applicable federal, state and local laws and regulations.

- HERS RATER acknowledges that HERS RATER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached (attachment 5) and incorporated herein by reference, understands the Regulations and agrees to provide home energy rating, field verification services and diagnostic testing services in compliance with the Regulations. HERS RATER agrees to comply with the conflict of interest requirements as specified in Section 1673(i) of the Regulations.

A copy of your signed agreement is enclosed.

For your reference, the restricted relationships are described in the following information extracted from Title 20. These apply to verifications performed by all Raters certified by CHEERS:

- Section 1671. Definitions.

o Financial Interest means an ownership interest, debt agreement or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publically traded corporation.

o Independent Entity means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(i).

- Section 1673. Requirements for Providers, subsection (i) (2).

o Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.

A RESPONSE TO THIS INQUIRY IS REQUIRED!

Using the enclosed VERIFICATION OF RATER AGREEMENT, CHEERS requests that you verify acceptance of the terms and conditions of your agreement with CHEERS as specified in the latest Rater Agreement. A copy of your most recent signed agreement is enclosed. If you are unable or unwilling to verify acceptance of the terms and conditions of you agreement with CHEERS then your certification will be suspended pending further review and action.

YOU MUST REPLY WITHIN 10 DAYS FROM THE DATE OF RECEIPT OF THIS NOTICE TO AVOID SUSPENSION.

If you have any questions or require additional information, please contact me at (800) 424-3377.

Sincerely,

Robert A. Scott

Robert A. Scott, CHEERS
Executive Director

Attachments

VERIFICATION OF RATER AGREEMENT

I have reviewed a copy of the current *CHEERS® TITLE-24/RESIDENTIAL NEW CONSTRUCTION RATER RENEWAL AGREEMENT* that contains my signature and verify that I am in compliance with its terms and conditions.

Israel Calleros
Printed Name

Signature

9-5-08
Date

SONNENSCHEIN NATH & ROSENTHAL LLP
525 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

PROOF OF SERVICE

California Living & Energy v. MASCO Corporation
Docket No. 08-CRI-01

I, Diane Donner, hereby declare:

I am employed in the City and County of San Francisco, California in the office of a member of the bar of this court and at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Sonnenschein Nath & Rosenthal, 525 Market Street, 26th Floor, San Francisco, California 94105.

On March 27, 2009, I served the following documents, filed electronically with the State of California Energy Resources Conservation and Development Commission, and described as

1. **Affidavit of David Bell**
2. **Affidavit of Jim Brewer**
3. **Affidavit of Israel Calleros**
4. **Affidavit of Dan Calton**
5. **Affidavit of Mark Curry**
6. **Affidavit of Richard A. Davenport**
7. **Affidavit of Steven Heim**
8. **Affidavit of Jaime Padron**
9. **Affidavit of Richard Smith**
10. **Affidavit of Steve Weber**
11. **Affidavit of Sharon Werner**
12. **Affidavit of Timothy Williams**

on the interested parties in this action by placing a true copy thereof, on the above date, enclosed in a sealed envelope, following the ordinary business practice of Sonnenschein Nath & Rosenthal LLP, addressed as follows:

Brett L. Dickerson (via e-mail also)
Gianelli & Associates PLC
1014 16th Street
P.O. Box 3212
Modesto, CA 95353

Dave Hegarty
Duct Testers, Inc.
P.O. Box 266
Ripon, CA 95366

Carol A. Davis
CHEERS Legal Counsel
3009 Palos Verdes Drive West
Palos Verdes Estates, CA 90274

Galo LeBron, CEO
Energy Inspectors
1036 Commerce Street, Suite B
San Marco, CA 93078

John Richau, HERS Rater
Certified Energy Consulting
4782 N. Fruit Avenue
Fresno, CA 93705

Mike Hodgson
ConSol
7407 Tam O'Shanter Drive
Stockton, CA 95210-3370

Mike Bachand
California Certified Energy Rating & Testing Services (CalCERTS)
31 Natoma Street, Suite 120
Folsom, CA 95630

Randel Riedel
California Building Performance Contractors Association (CBPCA)
1000 Broadway, Suite 410
Oakland, CA 94607

Robert Scott
California Home Energy Efficiency Rating System (CHEERS)
20422 Beach Boulevard
Huntington Beach, CA 92648

Bill Lilly, President
California Living & Energy
3015 Dale Court
Ceres, CA 95307

☒ U.S. MAIL: I am personally and readily familiar with the business practice of Sonnenschein Nath & Rosenthal for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.

☐ FACSIMILE TRANSMISSION: I caused such document to be sent by facsimile transmission at the above-listed fax number for the party.

☐ FEDERAL EXPRESS: I served the within document in a sealed Federal Express envelope with delivery fees provided for and deposited in a facility regularly maintained by Federal Express.

☐ HAND DELIVERY: I caused such document to be served by hand delivery.

SONNENSCHEIN NATH & ROSENTHAL LLP
525 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 27, 2009, at San Francisco, California.

DIANE VIVIAN DONNER

[27282008]

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